13 February 2013

By email: energy.submissions@esc.vic.gov.au

Commissioners
Essential Services Commission
Level 37
2 Lonsdale Street
Melbourne 3000

Dear Commissioners,

Submission to the Essential Services Commission Victoria Harmonised Energy Retail Code – Consultation Paper

The undersigned organisations have jointly prepared our comment on the *Essential Services Commission (*the **Commission)** *Harmonised Energy Retail Code –Consultation Paper* (**consultation paper**).

Collectively, our organisations represent the interests of the majority of Victorian residential and small business energy consumers – being particularly cognisant of the special needs of low income and vulnerable households – and we have a keen interest in ensuring that consumer protections in this evolving energy market are not diminished and that Victorian consumers are not worse off.

In June 2012, the Victorian Government deferred Victoria's transition to the National Energy Customer Framework (NECF) to *"ensure there was no reduction in key protections for Victorian consumers, [and to] "explore opportunities to align Victoria's retail and consumer protection arrangements with the NECF where it did not result in lower standards for Victorian consumers."*[1] Subsequently, the Minister for Energy and Resources requested the Commission to consider harmonising the regulations contained in Victorian Codes and Guidelines to the extent possible with the NECF, as set out in the National Energy Retail Law (Victoria) Bill 2012. In the Minister's July 2012 letter to the Commission, the Minister noted that the *"the current Victorian regulatory regime and the proposed framework under the National Energy Retail Law (Victoria) Bill 2012 (NERVLA) were substantially equivalent in terms of protections to Victorian energy consumers"*.[2]

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1 Essential Services Commission, Harmonisation of Energy Retail Codes and Guidelines with the National Energy Customer Framework Consultation, at 1.

2 Essential Services Commission, Harmonisation of Energy Retail Codes and Guidelines with the National Energy Customer Framework Consultation, at 1.

We support transition to the NECF with appropriate derogations to maintain protections for Victorian consumers. In the interim, we support aligning Victoria's Energy Retail Code with the NECF where it does not result in lower consumer protections for Victorians. However, we are concerned with the Commission's proposed Energy Retail Code Version 11 (ERC V11) which if implemented, would result in lower protections for Victorian consumers. Our analysis of ERC V11 (which is elaborated fully in **Table 1** below) reveals that the consumer protections are not only un-equivalent to those that exist under ERC V10, but are in fact substantially lower than current protections.

Victoria's retail energy market is the most dynamic and deregulated in Australia. Industry often hails it as the model for other markets to follow. A cornerstone of the Victorian policy framework has been the well designed consumer protection regime that aims to ensure that consumers can confidently participate in the competitive market. As energy market reform continues to be further advanced in Victoria than other states, it is essential to maintain this regime to support the operation of the competitive market. Consumer protections serve to complement, rather than detract from, innovations such as price deregulation and time of use pricing. A loss of consumer protection may erode consumer confidence in the market and reduce the willingness of consumers to participate. In turn, this would reduce the effectiveness of competition.

Victorian regulations have traditionally provided stronger consumer protections than other jurisdictions. It is fundamentally important that Victorian consumers' current protections are not compromised particularly in a time where there are increasing prices and market complexity. We support best practice consumer protection in essential services and this should be reflected in the overall approach towards transitioning to the national framework, regardless of the complexities involved.

We would like to see Victoria continue to be a leader in the provision of energy services to consumers and for the energy market to continue to evolve without undermining the key consumer protections currently available to Victorian consumers. To ensure that "there is no reduction in key protections for Victorian consumers", the Commission's development of ERC V11 must take into account the evolution of the Victorian market through the introduction of competition, deregulation and more recently smart meters. The Energy Legislation Amendment (Flexible Pricing and Other Matters) Bill 2012 proposes amendments to the Electricity Industry Act 2000 to enable, by order in council, the implementation of appropriate consumer protections where energy retailers choose to make available flexible pricing plans to their electricity customers. The Commission needs to ensure that the proposed ERC V11 accommodates any changes which may be brought about by flexible pricing in July 2013. Further, ERC V11 must be aligned with the spirit and integrity of the previous Energy Retail Code Version 10 (ERC V10).

This can be achieved by ensuring we continue to respect and protect the role and rights of consumers in the market, and serves the dual purpose of ensuring Victoria continues to be the nation's leader in both the market innovation and robust consumer protection.

We have in this section summarised the key consumer protections which have been eroded in the proposed ERC V11

- **Explicit Informed Consent (EIC) -** The role of EIC is to ensure that consumers are actively engaging with the energy market in an informed manner. This includes understanding their rights and obligations and the particulars of their energy contract. Changes to the use of EIC in ERC V11 will change the way consumers participate in the market:
    - The omission of words such as 'adequately disclosed in *plain English'* and 'consent given *by a person competent to do so*' from ERV V10 - are of particular concern in light of the problems around mis-selling at the door, and will particularly impact those consumers from a non-English speaking background or with poor literacy.
    - The failure to prohibit reliance on verbal EIC when a customer chooses a shorter billing cycle or to receive estimated bill will potentially result in a number of consumers misunderstanding their obligations or the impact it may have on their payment cycle or budget management.

- The use of words 'consent', or 'agreement' in ERC V11 instead of *'Explicit Informed* Consent' where EIC is expressly warranted undermines the balance of the relationship between the retailer and the consumer. In ERC V10 the use of EIC in the above examples, would normally place the onus on the retailer to ensure the consumer understood the implications of their decision. These changes serve to reduce that obligation on the retailer and place further responsibility on a consumer who is already relatively uninformed.

- **Universal access –**The ERC V11 if implemented will have the effect of preventing access to an essential service for an increasing number of vulnerable Victorian consumers.

  - *Payments plans and hardship programs;* The approach ERC V11 has taken towards payment plans and hardship programs suggests that the entire lifecycle of a consumer's energy needs and the ongoing challenge vulnerable and potentially vulnerable consumers have in balancing their bill payments, have not been adequately considered. Universal access to payment plans has been a longstanding component of the Victorian framework. It is an important tool for consumers experiencing financial hardship or payment difficulties, as well as those on low or fixed incomes. Victorian consumers have been able to use payment plans as a preventative strategy to manage consumption costs to minimise financial stress and avoid falling into hardship – with good outcomes for customers, retailers, and community services programs and agencies. ERC V11 however, limits access to payment plans to "*hardship customers or other residential customers experiencing payment difficulties if the customer informs the retailer in writing or by telephone that the customer is experiencing payment difficulties or the retailer otherwise believes the customer is experiencing repeated difficulties in paying the customer's bill or requires payment assistance."*[3] ERC V11 further limits the obligation of retailers; to consider a customer's capacity to pay, arrears, and the customer's expected energy consumption needs over the following 12 month period, to hardship customers (i.e. customers in hardship programs). Such an approach to payment plans will likely increase the already large numbers of consumers in hardship programs, and limit customers' ability to be proactive in managing their financial affairs. This will place additional strain on those consumers teetering on the brink of hardship.

  - *Concessions regime;* It is essential that the Commission recognises the impact of these changes to access to payment plans will have upon efficacy and effect of the concessions regime and other community support. For example, the failure to require companies to offer payment plans to all consumers may result in many households being unable to access fortnightly payment plans. This will limit their ability to effectively budget for large quarterly bills and as such would see an increase in the number of households seeking assistance though the utility relief grant scheme, more consumers at emergency relief and financial counselling agencies. In extreme cases, it may place a greater number of households at risk of imminent and actual disconnection.

- **Standing offers –** have traditionally provided a minimum level of protection recognised as the basic protections necessary for those that are not able to engage in the competitive market, including those most vulnerable members of our society. ERC V11 has failed to recognise this and will potentially result in a number of consumers materially worse off, due to the following:

  - *Obligation to offer;* ERC V11 should clearly articulate that a retailer has an obligation to make a standing offer available to a customer and that this obligation is not superseded by offering a customer a market retail contract. Further, in making an offer to a customer, a retailer should be able to clearly

[3] Clauses 33(1) and 72(1A) ERC V11.

explain the differences between a standing retail contract and a market retail contract such as price, and customer protections.

- *Deemed vs standing offers*; because the deemed offer (which is what would happen if customer moves in without setting up an account) is actually the standing offer, it is important for the standing offer terms to be comprehensive.

- *Transitional issues;* There will be fundamental changes to the contractual relationships of existing customers through a transition to ERC V11. It appears that those customers on standing offers may automatically move to the new standing offer contracts. Based upon the current drafting of the ERC V11, it will result in those consumers being worse off since the model terms and conditions in the standard retail contract are not as comprehensive as what we currently have in the standing offer. This is a transition issue we attempted to address in work with the Department of Primary Industries in 2011 in relation to the NECF, however this is now a key issue for July 2013 should this harmonisation proceed, and we can not see evidence of this being addressed.

- **Dual fuel –** Approximately 65% of Victorian consumers are dual fuel customers. This is a significant number of consumers and is not recognised by the Commission in its approach to ERC V11 which notes that the 'new draft instrument will not maintain specific dual fuel obligations'[4], and has proceeded to eliminate specific protections in this draft. We are therefore concerned about the position of dual fuel customers in the new framework; in particular that consumer protection will be eroded. For example in relation to:

    - *Billing frequency;*.
    - *Security deposits;*
    - *Early termination charges and agreed damages;*
    - *Timing of disconnection (de-energisation)*.

- **Smart meters –** by mid 2013 at which time this harmonised Code is proposed to be active in Victoria, the majority of Victorian consumers will have a smart meter. We are deeply concerned that ERC V11 fails to recognise this and will not provide necessary protection to those customers due to:

    - *Model terms and conditions;* that apply to standard retail contracts, do not include any provisions around smart meters, yet this is to form the basis of information for consumers relating to their rights and responsibilities. For example, there is no term prohibiting the use of supply capacity control for credit management; or the provision of in-home displays, or stronger disconnection provisions arising from remote disconnection.

    - *Access to data; the* ERC V11 needs to ensure that customers with smart meters have access (not limited to two years) to historical billing and metering data which should be provided electronically and in an understandable and accessible format. Otherwise ERC V11 will be at odds with government processes and intent, which is to ensure consumers are able to access their data to participate proactively in the market.

- **Proactive informing of consumers by retailers –** ERC V11 is drafted in a way which does not require retailers to be pro-active in engaging with their customers. There are a number of instances in ERC V11 where there has been a diminution of requirements for retailers to be proactive in informing consumers of their rights or of information that will assist them to enact their rights. For example:

[4] Footnote 76 ERC V11.

- *Information on websites;* ERC V11 suggests that a retailer's obligation to provide customers with information is met by providing information on its website – *"a summary of the rights, entitlements and obligations of small customers"* which includes their standard complaints and dispute resolution procedures and contact details of the relevant energy ombudsman.[5] Customers who request such information are referred to the website, or provided with the information in hardcopy if the customer makes such a request. Directing customers to the website is inadequate as some consumers may not have access to the internet or they may be limited in their capacity. Retailers need to proactively engage with their customers so that consumers are able to play an informed role in the market.

- *Complaints;* The provision on customer access to the energy ombudsman sits in Part 2, Division 7 – Market retail contracts[6], thereby suggesting that it only applies to market retail contracts. There is no similar provision for standard retail contracts. EWOV access is mentioned for customers on standard retail contracts and market retail contracts in the context of a billing dispute, suggesting that such customers only have a right to access the services of the energy ombudsman when they have an unresolved complaint about their bill.[7] Thus a customer on a standard retail contract with a non-billing related complaint will not have access to EWOV. Information about EWOV should be made available to consumers on both standing retail contracts and market retail contracts, in the contract and also at the time the retailer addresses an unresolved customer complaint.

- **Fixed term contracts** - ERC V11 allows retailers to unilaterally vary prices in fixed term contracts – meaning that while a customer signs onto a contract for a fixed period of time, the price can change during the term of that contract. Not only is this conduct considered unfair in the Australian Consumer Law (with such clauses becoming void), it also hinders the effective consumer choice in Victoria's retail energy market. Under current arrangements, a consumer can select an offer that suits their needs at a particular point in time. However, this offer can be rendered unsuitable and uncompetitive even prior to them receiving their first bill if the retailer unilaterally increases the price. The customer can then be subject to exit fees if they then wish to select a new offer. CUAC research indicates that 86 per cent of consumers are of the view that current arrangements are unfair. 94 per cent of consumers believe that a change in the regulations is warranted to prevent retailers changing prices during fixed term contracts.[8] We believe that regulatory change is required to achieve just this. Such a move will improve competition by allowing consumers to have confidence in their choices and thus encourage participation.

- **Model terms and conditions for standard retail contract -** We are very concerned with the Commission position in relation to model terms and conditions for standard retail contracts.

  According to the Commission:

  > *"The draft ERC will permit retailers to adopt the model terms, and provides that where they do so it is not necessary to obtain Commission approval before they are published in the Government Gazette. However, the ERC does not make adoption of the model terms mandatory. Should an energy retailer wish to submit their own standing offer terms and conditions for Commission approval they will be entitled to do so. The guiding principle is that the model terms or any standing offer terms submitted by retailers will need to address all relevant obligations outlined in the harmonised document."*[9]

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5 Clause 56, ERC V11

6 Clause 50, ERC V11

7 Clause 29, ERC V11

8 Consumer Utilities Advocacy Centre, *Fixing up fixed terms contract for energy customers; What are consumers saying?* (November 2011)

9 Harmonisation of Energy Retail Codes and Guidelines with the National Energy Customer Framework Consultation Paper (December 2012), at 11.

The model standard retail contract as set out in ERC V11 is inadequate to cover all the consumer protections outlined in ERC V11. In many respects, ERC V11 does not offer consumers the same level of protection as set out in ERC V10. We have in **Table 2** mentioned some of the deficiencies. As previously mentioned, a key omission is that there are no smart meter specific customer protections in the model standard retail contract. Thus, smart meter customers who have a model standard retail contract would not be sufficiently protected since retailers who adopt the model standard retail contract need not seek the Commission's approval before publication in the Government Gazette. Further, we looked at an example of a Victorian standing offer contract for small residential and small business customers from a large retailer's website. Our overall impression is that the standing offer terms were comprehensive and reflective of what is currently in ERC V10. In contrast, the standard retail contract model terms – which in our view offer less consumer protections than the Victorian standing offer contract- does not reflect what is in ERC V11.

Further, the lack of clarity and certainty arising from poor drafting throughout ERC V11 also creates unintended consequences that undermine the consumer protection framework and consumers' confidence in the energy market. This uncertainty ultimately makes complaint resolution at EWOV, as well as regulation and enforcement, difficult.

We cannot accept the erosion of the rights of Victorian consumers, and the increased responsibility placed unfairly upon them, given the key consumer protection concerns we have identified above. We urge the Commission to re-assess and re-draft ERC V11 in light of the concerns which we have raised. We also welcome the opportunity to meet with the Commission to work through the issues we have identified.

Please direct any queries in relation to this submission in the first instance to Janine Rayner of Consumer Action Law Centre or Deanna Foong of the Consumer Utilities Advocacy Centre, (details provided below).

Yours sincerely,

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Table 1: Comparison table between Energy Retail Code Version 10 and Version 11

ERC V11 Section	Section heading	Issues identified / comments	Joint consumer response and required action by ESC
3	**Definitions**	Confusing definitions, a few which overlap. For example: "relevant customer", "domestic or small business customer" and "small customer" appear to all mean the customer category.	**Action 1:** Simplify the number of references to customer type for ease of use
3	**Payment plan (definition)**	Instalment plan is undefined. However, there is universal access – clause 12.1, ERC V10. Definition of payment plan in ERC V11 suggests that payment plans are available only to hardship customers and non-hardship customer experiencing payment difficulties. Significant reduction in customer protection for Victorian consumers. Payment plans must be available to all customers – customers experiencing payment difficulty or hardship, customers who need one for budgeting purposes (e.g. due to a change or anticipated change in personal circumstances). Universal access is critical particularly with the anticipated increase in the price of energy.	**Action 2:** Provide universal access to payment plans in ERC V11. **Action 3:** See our comments under clauses 33 and 72, ERC V11.
3C	**Explicit Informed Consent**	ERC V10 reads *"....clearly, fully and adequately disclosed In Plain English..."* Plain English is missing in ERC V11 ERC V10 "*by a person competent to do so"* is missing in ERC V11 ERC V10 prohibits verbal EIC when a customer chooses a shorter billing cycle or to receive estimated bill – missing in ERC V11. The wording of EIC in ERC V11 is an example of how	**Action 4:** Reflect "Plain English" & "competency" in ERC V11.

		the National Energy Retail Rules (NERR) weighs heavily in favour of the retailers. The exclusion of the reference to "plain English' & "competency" are a concern in light of the problems there are around mis-selling at the door, particularly where the consumer is from a non-English speaking background or has poor literacy.	
14	**Terms and conditions of market retail contracts**	In ERC V11, the applicability of a particular clause to a standard retail contract or a market retail contract is identified under each clause. In contrast, ERC V10 has a prescribed list of clauses in its Appendix 1 which can be varied in the formation of a market retail contract.	The approach in ERC V10 makes it easier to identify which clauses in the ERC are allowed to be varied, and which can't and thus would constitute the minimum conditions of a market retail contract. **Action 5:** We recommend that in addition to a clause by clause approach the Commission includes a similar schedule that identifies those provisions that constitute minimum provisions of a market retail contract.
Division 2A	**Energy Price and Product disclosure**		**Action 6:** This division requires clear intent and authority, as previously provided Paragraph 1.2 of Guideline 19. It also needs to apply to both standing and market retail contracts.
15	**Application of provisions of this Code to market retail contracts**	See above.	See above.
15A	**Internet publication of standing offer tariffs**	The templates in Schedule 4 are for small businesses (gas and electricity standing offers) and residential (gas standing offers). Guideline 19 has a template for residential (electricity standing offer) which has been omitted from Schedule 4.	**Action 7:** Include the template for residential electricity standing offer in Schedule 4.
16	**Pre-contractual**	Section 35, Electricity Industry Act 2000 requires a retailer to provide a standing offer to a domestic and	**Action 8:** Re-draft clause 16(2), ERC V11 to first require a retailer to make a standing offer available to

	duty of retailers	small business customer.	a customer. Clearly reflect that a retailer's obligation to make a standing offer is not superseded by offering a customer a market retail contract. **Action 9:** Inform customers about what the key difference is between a standing offer and a market retail contract so they can make an informed decision – customers should be informed that while the market retail contract price is lower than a standing offer, the standing offer generally has stronger customer protections.
18	**Pre-contractual request to a designated retailer for sale of energy (SRC)**	Regarding clause18(5), it would be sensible for the designated retailer to offer a payment plan to the customer when including charges under the SRC for outstanding amounts owned by that customer from an unpaid account. Implication - If payment plans are not universally accessible, then it could mean that a customer in the sort of situation envisaged by clause 18(5), ERC V11, might not be offered a payment plan from the retailer & starts off on the new contract with arrears carried over from another account..	**Action 10:** Provide universal access to payment plans in ERC V11.
19	**Responsibilities of designated retailer in response to request for sale of energy (SRC)**	Clause 26.2, ERC V10, obliges a retailer to provide a customer with their charter (which outlines a retailer's, and customer's rights and obligations). On request, a retailer is also required under clause 26.3, ERC V10, to provide a copy of the ERC. Further, a retailer has to include information about its complaints handling processes in their charter, under clause 28.1, ERC V10. ERC V11 is drafted in a way which does not encourage retailers to be pro-active in the manner in which they engage with their customers.	**Action 11:** Re-draft to ensure customers receive: (1) a copy of the standing offer; (2) a copy of the ERC (if they want one); (3) information on how to access rebates, concessions, relief schemes etc. See also comments regarding clause 56, ERC V11.
20	**Basis for Bills**	Clause 5.1, ERC V10, requires a customer's explicit	**Action 12:** Re-draft ERC V11 so that explicit informed

		informed consent if a bill is not to be based on an actual meter reading. There is no similar explicit informed consent requirement in clause 20, ERC V11 - A retailer and small customer can agree to any other method for basing their bills. This is an example of where there is a reduction in consumer protection in ERC V11.	consent is required for any change in the method on which a customer's bill is based on.
21	**Estimation as basis for bills (SRC and MC)**	Clause 5.1, ERC V10, states that bills are to be based on an actual meter reading unless the customer gives explicit informed consent. Clause 21(1)(a), ERC V11 states that a bill can be based on an estimation where the customer "consents." There is no requirement of explicit informed consent. This is another example of where there is a reduction in consumer protection in ERC V11. Clause 21(4)(b), ERC V11 places the onus on the customer to request the retailer for more time to pay an adjusted bill (arising from previous undercharging). In contrast, clause 5.4(a), ERC V10, refers to the retailer adjusting the bill in accordance with clause 6 of the ERC. Clause 6.2(d) doesn't place the onus on the customer – *"the retailer must offer the customer time to pay..."* This is another illustration of how ERC V11 does not encourage retailers to be pro-active in engaging with their customers. It is reasonable to expect a retailer to offer more time to pay an adjusted bill particularly when the undercharging did not arise from a customer's act or omission.	**Action 13:** Reflect the requirement for explicit informed consent before estimates can be used as a basis for calculating bills, in ERC V11. There should be a positive obligation to ensure bill based on meter read regularly, and it should be easier for retailers in a smart meter environment. **Action 14:** Ensure that retailers are required to offer customers more time to pay an adjusted bill in ERC V11.
24	**Frequency of bills (SRC)**	Clause 3.1(c), ERC V10, covers billing frequency for dual fuel contracts. This is not reflected in clause 24, ERC V11.	**Action 15:** Provide for billing frequency for dual fuel contracts in ERC V11.

		"Additional retail charge" should be referenced in the definitions section in ERC V11.	
25	**Contents of bill (SRC and MC)**	Clause 4.2(g), ERC V10 provides that a bill has to include *"the total amount of electricity (in kWh) or gas (in MJ) or of both consumed in each period or class of period in respect of which a relevant tariff applies to the customer, and if a customer's meter measures and records consumption data only on an accumulated basis, the dates and total amounts of the immediately previous and current meter readings or estimates."* There is no equivalent provision in ERC V11. Clause 25(1)(n), ERC V11, does not reflect what is currently found in clause 4.2(g), ERC V10. Clause 25(1)(n) ERC V11 does not provide for the inclusion of the applicable tariff for each relevant period; there is no reference to kWh or MJ. It is also unclear whether the reference to "tariffs and charges" and "the basis on which tariffs and charges are calculated" – clauses 25(1)(g) & (h), ERC V11, encompasses flexible pricing. Clause 4.2(m), ERC V10 requires a bill to have "a summary of payment methods and payment arrangement options." Clause 25(1)(4), ERC V11 refers to "payment methods." Clause 25(1)(o), ERC V11, we suggest you amend the sentence to read *"where the bill is a reminder notice and an electricity bill...."* Clause 4.2(n), ERC V10 states that a bill has to include "details of the availability of concessions." Clause 25(1)(s), ERC 11 states that a bill has to "reference the availability of government funded energy charge rebate, concession or relief schemes." "Index read" in clause 25(1)(y), ERC V11, is	**Action 16:** Reflect clause 4.2(g), ERC V10 in ERC V11. **Action 17:** Amend ERC V11 clause 25 (1)(4) to include "payment arrangement options" to ensure consumers have adequate knowledge of the options available to them in relation to paying their bills. For example, payment by instalment or Centrepay. This information is a significant resource for those consumers are attempting to manage their finances. **Action 18:** Amend clause 25(1)(r), ERC V11 to include "payment methods & payment arrangement options." –as per clause 4.2(m), ERC V10. **Action 19:** Amend clause 25(1)(s), ERC V11 so that the bill does not merely reference the availability of concessions, rebates etc that are available but how a customer can access them (e.g. call a telephone number). **Action 20:** Define "index read' in ERC V11, this is important for those consumers with smart meters. **Action 21:** Include a provision in ERC V11 that reflects ERC V10 4.2 (i) and 4.3 in relation to information regarding charges including network charges. **Action 22:** Provide in ERC 11, that payments made should be first applied to the supply or sale of energy before applying it to other goods and service, unless the customer states otherwise. The potential for payments to be directed to non-usage costs, have the potential to contribute to consumers

		undefined whereas it is defined in ERC V10. Clause 4.2(i), ERC V10 states that a bill has to include *"if the retailer directly passes through network charge...the separate amount of that network charge."* There is no corresponding requirement in ERC V11. Clause 4.3, ERC V10 obliges a retailer to provide a customer with reasonable information on network, retail and other charges relating to the sale and supply of energy comprised in the amount payable under the customer's bill. There is no equivalent clause in ERC V11. Clause 25 (2), ERC V11 requires a bill to include amounts billed for goods and services (other than the sale and supply of energy) in a separate bill or as a separate item in an energy bill. This is similar to clause 4.2, ERC V10, except that clause 4.2 states that a retailer is to unless otherwise directed by a customer, "apply the payment to the charges for the supply or sale of energy before applying any part of it to the other goods and services." Clause 4.4, ERC V10 requires certain information to be graphically presented. There is no corresponding requirement for graphs on bills, in ERC V11. However, it is possible that some of the contents for bills stipulated in clause 25, ERC V11, be presented graphically.	entering into a debt spiral.
25A	**Greenhouse gas disclosure on electricity customer's bills**	Clause 25A, ERC V11 refers to a previous version of Guideline 13: Greenhouse gas disclosure on electricity customer's bills Clause 25A, ERC V11 should reflect the updated version of Guideline No 13 which is dated January 2013. There are incorrect references to:	**Action 23:** Amend clause 25A, ERC V11 to refer to the January 2013 (i.e. latest) version of Guideline 13. **Action 24:** Address the drafting, typo and definition issues stated in the left column.

		• Website in clause 25A(1)(d) and the figures in Schedule 7; • SV; • SV and other authorities (referred to in definition of "green power"). "Commission" is also undefined in this section and in the definitions section of ERC V11.	
27	**Apportionment**	Clauses 4.5 and 4.6(b), ERC V10 provide that any payments received from a consumer must be applied to sale or supply of energy and applied proportionately (before applying it to another good or service). The apportionment provision in ERC V10 applies to both standing offers and market contracts. In contrast, clause 27, ERC V11 does not apply to market retail contracts.	**Action 25:** Amend the apportionment provisions in ERC V11 to ensure that they apply to both SRC and MRC.
28	**Historical billing information**	ERC V11 significantly reduces the ability of consumers to access historical billing and metering data. In contrast to ERC V11, clause 27.2, ERC V10 does not restrict a customer's right to obtain historical billing or metering data from his current retailer, to two years. The limitation of two years in ERC V10 operates only where the customer has transferred to another retailer and requests metering data from his/her previous retailer. The term "historical billing information" is used in clause 28(2A), ERC V11, suggesting that the provision does not apply to metering data. Clause 27.2(d), ERC V10, is not reflected in ERC	**Action 26:** Re-draft ERC V11 to reflect ERC V10 provisions on access to historical billing and metering information. Unlimited customer access to historical billing & metering data from <u>current</u> retailer (not limited to two years) **Action 27:** Amend ERC V11 to state that historical billing and metering data should be provided electronically and in an understandable and accessible format, to a customer with a smart meter. Consumer access to historical billing and metering data is especially important in the context of data ownership and smart meters. **Action 28:** Amend ERC V11 to reflect ERC V10 27.2 (d) to ensure retailers are not able to charge customers for providing data, particularly in relation to complaints.

		V11. *"If historical billing and metering data is required for the purpose of handling a genuine complaint made by a customer, in no circumstances may a retailer charge the customer for providing the data."* Clause 27.1, ERC V10, is not reflected in ERC V11. *"A retailer must retain a customer's historical billing and metering data for at least two years, even though in the meantime the customer's energy contract with the retailer may have terminated."*	**Action 29:** Amend ERC V11 to require retailers to retain a customer's billing data, despite a contract ending, for at least two years. . This is particularly important as there may be billing disputes with customer's previous retailer.
29	**Billing disputes**	ERC V11 significantly reduces consumer protections when there is a billing dispute. Clause 29(5)(c), ERC V11, states that if the meter test or metering data is proven faulty or incorrect, the customer is still responsible for the cost of the meter test and meter check. This is a reduction in customer protections. Under clause 6.1, ERC V10, a customer only pays for a meter test where the meter is found compliant with applicable regulatory instruments. Clauses 29(2) and (3), ERC V11, refer to a retailer's "*standard complaints and dispute resolution procedures."* Clause 28.1, ERC V10, refers to *"relevant Australian Standard on Complaints Handling"* in the context of a retailer handling customer complaints.	**Action 30:** Amend ERC V11 clause 29 (5)(c) to include a clause which ensures customers are only be required to pay for a meter test is the meter is found to be compliant. **Action 31:** Amend ERC V11 Clauses 29(2) and (3), ERC V11, to refer to relevant Australian Standard on Complaints Handling.
30	**Undercharging**	The provision under Section 30 prescribes that a consumer has a maximum period of 12 months to pay an undercharged amount, in agreed instalments, in cases where undercharging covered a period of more than 12 months and resulted from the customer's fault, unlawful act or omission. It appears that a retailer, under clause 6.2(d), ERC V10, would need to provide a customer equal time to pay the undercharged amount (time equal to the period over which the undercharging occurred), even in such	Clause 30, ERC V11 is not aligned with clause 6.2, ERC V10, and arguably reduces consumer protections where such scenarios arise and has the additional potential of placing the consumer at risk of further financial detriment. **Action 32:** The period for repaying undercharged amounts must remain uncapped, in all instances, including those resulting from the customer's fault, unlawful act or omission

		instances. We note the inclusion of undefined terms 'customer fault', or 'omission', and the subjectivity of these terms. A further variation from ERC V10 which could potentially disadvantage a consumer is the change in drafting from limiting recovery to be proportional to "relevant periods between dates on which the customer's meter has been read", to charging the customer "at the original and changed tariffs in proportion to the relevant periods during which the original and changed tariffs were in effect" (enabling the retailer to charge a higher tariff).	**Action 33:** To truly limit the impact of undercharging on consumers the drafting needs to ensure consumers are charged only the lowest relevant tariff across the *entire* undercharged period when the fault lies with the retailer AND also be proportionate to the relevant periods between meter reads.
31	**Overcharging (SRC and MC)**	Clause 31(4), ERC V11 does not appear in ERC V10. "No interest is payable on amount overcharged." Clause 31(5), ERC V11 limits repayment of overcharged amounts to 12 months where the overcharging resulted from the customer's unlawful act or omission. There is no similar provision in ERC V10.	We oppose the introduction of a clause which prevents interest being payable by the retailer on overcharged amounts. For many consumers, having to pay above and beyond what they actually owe can place significant strain on their finances, particularly if that charge is unexpected. In several instances, overcharging can be the fault of the meter, or billing error which can take time and effort to ascertain and rectify, and often involves the services of EWOV. In this instance, by ensuring interest is payable to the consumer, the Commission is recognising this impost and facilitates a form of compensation for the consumer. We note that "Commission" is not a defined term in ERC V11. **Action 34:** Interest needs to be payable to those overcharged customers, on the basis that the retailer has been earning interest on that overcharged amount.

			Action 35: Define "Commission" in ERC V11.
32	**Payment methods (SRC and MC)**	There are no provisions to offer another payment method if direct debit arrangements are cancelled by the customer there are in ERC V10. Includes payment in advance ERC V10 S7.3. Clauses 32(3) and (4), ERC V11, deal with direct debit arrangements. "Last resort event" which is referred to in clause 32(4)(c), ERC V11 is undefined. This term is, however, defined in ERC V10.	We strongly support the Commission's inclusion of all payment methods listed to be available for all retail contracts. Consumers face considerable changes in circumstances in relation to their financial obligations, and may need to cancel a direct debit arrangement for example. In these instances, a retailer must be obligated to offer an alternative payment option. **Action 36:** The Commission include an obligation for retailers to offer all payment methods for all retail contracts, including as alternative payment options should for example, direct debit be cancelled. We also support the inclusion of Centrepay as a payment option for these retail contracts. **Action 37:** Centrepay must be available to all customers *before* they enter a hardship program, as a means of preventing financial difficulty or hardship. **Action 38:** Define "last resort event".
33	**Payment difficulties (SRC and MRC)**	ERC V11 significantly reduces the requirement for retailers to identify payment difficulties, capacity to pay or to offer a range of assistance to consumers. An important feature in ERC V10 is that clause 11.2, ERC V10 ("Assessment and assistance to domestic customers"), sits under the heading "Payment Difficulties." Thus, all the obligations on retailers set out in clause 11.2 such as - assessing information provided by the customer on capacity to pay; providing information on	**Action 39:** Amend ERC V11 to ensure that all customers regardless of whether they are in payment difficulty or experiencing hardship, have a right to obtain a payment plan from their retailer. **Action 40:** Include similar provisions to clauses 11.2, 12.1 and 12.1, ERC V10 in ERC V11. See comments under clauses 3 (definition of payment plan) and 72, ERC V11.

		concessions, including utility relief grants scheme, telephone information about energy efficiency and advice about the availability of an independent financial counsellor - apply to all customers who are experiencing payment difficulty and not merely to customers who are in hardship program. Further, many of these obligations are not reflected in ERC V11. Clause 12.1, ERC V10 obliges retailers to offer instalment (payment) plans to those who are in arrears, as well as, those who may need to budget and make payments in advance. Payment plans are not restricted to customers who are experiencing payment difficulty or who are in the hardship program. In making an instalment plan available to any customer, a retailer is also obliged under clause 12.2, ERC V10 to – a. specify the period and the amount ("which must reflect the customer's consumption needs and capacity to pay"), number of instalments, how the amount is calculated, amount of instalments, estimated consumption; b. re-calculate the amount of instalments; c. monitor the customer's consumption and address payment difficulties a customer may face while on the plan In contrast, under clause 33, ERC V11, retailers are obliged to offer a payment plan to customers who are experiencing hardship and to residential customers in payment difficulties who inform their retailer that they are experiencing payment	

		difficulty. Matters which a retailer is to consider in establishing a payment plan such as capacity to pay, amount of arrears, estimated consumption etc only applies to a customer who is a "hardship customer" (the drafting suggests that a retailer need not consider these matters if the customer is merely experiencing payment difficulty but not in hardship) –see clause 72(1), ERC V11. This is another example of how ERC V11 is weighed heavily in favour of retailers. Clause 72(1A), ERC V11 also requires retailers to offer a payment plan to residential customers *if "the retailer otherwise believes the customer is experiencing repeated difficulties in paying the customer's bill or requires payment assistance."* While we believe that there should be a universal right of access to payment plans, from a purely drafting perspective, clauses 33(1) and 72(1A), ERC V11, are not consistently drafted. While clause 33(4), ERC V11 refers to Clause 72 (i.e. *"Clause 72 applies to a residential customer referred to in subclause (1)(b)."*), it is confusing to read.	
33 (2)(a)		Clause 33(2)(a), ERC V11 states that a retailer does not need to offer a payment plan to a customer if the customer has had two payment plans cancelled in the previous 12 months due to non-payment. Clause 11.2(3), ERC V10, however, states *"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."*	**Action 41:** Amend ERC V11 to ensure that a customer's capacity to pay is considered when a retailer makes an offer of (or a customer requests) a payment plan.

33(3)		References to energy efficiency advice and the availability of an independent financial counsellor in clause 11.2(4) ERC V10 are not reflected in clause 33(3), ERC V11.	**Action 42:** Refer to comments under clause 33, ERC V11, above.
34	**Shortened collection cycles (SRC and MRC)**	'Agreement' of the customer implies it is negotiable. Reminder notice for two consecutive bills rather than three, and disconnection warnings for two consecutive bills omitted. Improved provisions in ERC V11 for a customer to remove themselves from a shortened collection cycle. There is no clause related to ERC V10 10.1 Shorter billing cycle in relation to the EIC provided by customers in the negotiation of moving to a shorter (eg monthly) billing cycle. Clause 9.1(a), ERC V10, allows a retailer to place a domestic customer on a shortened collection cycle (SCC) only after the retailer "has complied with clause 11.2 and..." Clause 11.2 ERC V10, is the section on *"assessment and assistance to domestic customers"* under the clause 11 big heading "Payment Difficulties." In contrast, clause 34(2)(a), ERC V11, provides that a retailer may place a residential customer on a SCC only if the customer *"is not experiencing payment difficulties..."*. There is no further clarification here, or reference to a defined section on payment difficulties or capacity to pay. Another pre-requisite before a retailer can place a customer on a SCC, is the number of reminder and disconnection notices that first has to be issued to the customer. Clause 9.1(b), ERC V10,	We have concerns about the inclusion of 34 (1) which suggests that the placement of a customer on a shortened collection cycle would be with the *agreement* of the customer. It must firstly be with the explicit informed consent of a customer to ensure they are fully aware of their revised obligations. It is unlikely a customer would *agree* to a shortened collection cycle if they felt it would not assist them to meet their payment obligations. Where ERC V11 restricts the use of a shortened collection cycle if the customer is experiencing payment difficulties, ERC V11 must define this further, for example, the retailer must be first required to identify, whether a customer may be experiencing payment difficulties and then work with the customer to determine the most appropriate payment arrangements such as a payment plan, taking into consideration capacity to. A shortened collection cycle will not necessarily circumvent payment difficulty. Further, we note the reduction in the number of reminder notices that a customer must receive before a retailer can place a customer on a shortened collection cycle. We urge the Commission to amend this to retain the protections available to consumers under ERC 10 and to reflect the need to have *"reminder or warning notice for 3 consecutive bills"* given that a customer who is on a shortened collection cycle has to **pay** *"3 consecutive bills in the customer's billing cycle by the pay-by-date"* before being removed from the shortened collection cycle. , if the requirements for being placed on a shortened collection cycle have been reduced, the requirements for being removed from a shortened collection cycle

		stipulates *"reminder notices for three consecutive bills or disconnection warnings for two consecutive bills."* In contrast, clause 34(2)(b), ERC V11, stipulates *"reminder or warning notice for 2 consecutive bills."* Thus, clauses 34(2)(b) & (c), ERC V11, offers a lower standard of protection than clause 9.1(b), ERC V10. The former should be amended to reflect the need to have *"reminder or warning notice for 3 consecutive bills."* This is fair proposition given that a customer who is on a SCC has to pay *"3 consecutive bills in the customer's billing cycle by the pay-by-date"* before being removed from the SCC.	should be reduced accordingly. **Action 43:** Define payment difficulties, and ensure the inclusion of a reference to payment plans and capacity to pay. **Action 44:** Replace with the "*agreement* of the customer" with the "*explicit informed consent* of the customer." **Action 45:** Retain the need to have *"reminder or warning notice for 3 consecutive bills"* or reduce the requirements for being removed from the shortened collection cycle to 2 consecutive bills. **Action 46:** Include a provision which requires a customer's Explicit informed consent in the negotiation of moving to a shorter (eg monthly) billing cycle.
35	**Request for final bill (SRC)**	No equivalent clause in ERC V10.	We believe it is useful and valuable to define 'best endeavours', as a common definition, due to the importance of a final meter read for consumers exiting properties. Currently it is unclear as to what 'best endeavours' may entail, and making a payment for a final bill against an estimate is potentially unfair for consumers who may pay above what they owe, with little recourse for reimbursement. **Action 47:** Define "best endeavours".
35A	**Additional retail charges (SRC and MRC)**	Clause 30, ERC V10 has been directly incorporated as clauses 35A(1) to (3) & 34, ERC V11, without taking into account appropriate cross-referencing and terminology. For e.g: • "market contract" is referred to rather than "market retail contract"; • The reference to *"clause 30 of this Code*" is inappropriate given that clause 30 is the provision on undercharging; • The reference to *"In this clause additional*	We are concerned with the drafting of Clause 35 A. For e.g: • "market contract" is referred to rather than "market retail contract"; • The reference to *"clause 30 of this Code*" is inappropriate given that clause 30 is the provision on undercharging; • The reference to *"In this clause additional retail charge means..."* does not consider that the term "additional retail charge" also appears in

		retail charge means..." does not consider that the term "additional retail charge" also appears in other parts of ERC V11 (such as clause 24(2), ERC V11). Clause 35A(4), ERC V11, which is a reflection of clause 7.5, ERC V10 is somewhat misplaced. An "Additional retail charge" is a charge which a retailer imposes because it is *"related to the sale of energy*"- clause 35A(3). Dishonoured payment and merchant service fees (which is the heading for clause 7.5, ERC V10) are different; they are not fees additionally imposed by a retailer but arise because the initial payment made by the customer has been dishonoured.	other parts of ERC V11 (such as clause 24(2), ERC V11). Further, Clause 35A(4), ERC V11, which is a reflection of clause 7.5, ERC V10 is somewhat misplaced. An "Additional retail charge" is a charge which a retailer imposes because it is *"related to the sale of energy*"- clause 35A(3). Dishonoured payment and merchant service fees (which is the heading for clause 7.5, ERC V10) are different; they are not fees additionally imposed by a retailer but arise because the initial payment made by the customer has been dishonoured. **Action 48:** Redraft Clause 35 A taking into consideration the errors we have identified, and ensuring policy intent is clear.
35B	**Merchant Service Fee (SRC and MRC)**	The end words of clause 7.5(b), ERC V10 are missing in clause 35B of ERC V11 – *"if their energy contract is a market contract."* Clause 7.5(b), ERC V10 allows the retailer to recover merchant fees from a domestic customer if their energy contract is a market contract. In contrast, clause 35(b), ERC V11 allows a retailer to recover merchant fees from residential customers on standard retail contracts and market retail contracts. This is a reduction in protections for Victorian consumers.	While the imposition of a merchant fee appears reasonable, the amount of the merchant fee must be fair. Retailers can impose surcharges for credit cards— but generally this hasn't related to cost of payment service (though the Reserve Bank of Australia has now allowed visa and mastercard to limit surcharges to reasonable costs). **Action 49:** Define "merchant fees" taking into consideration Reserve Bank of Australia definitions of ***Merchant service fee:*** Total income derived from transaction-based fees charged to merchants for acquiring card transactions; and ***Credit and charge transactions:*** 'Credit and charge transactions' refers to general-purpose credit card and charge card transactions that are acquired by the reporting organisation.
36	**Obligations on retailers (SRC)**		Due to the unfairness associated with unilateral tariff reassignment clauses in contracts, it is important that retailers are prohibited from unilaterally varying the price. If the retailer feels they can't offer that price any

			more, they should allow the consumer to exit the contract without penalty (and then they can find a new contract). This would be pro-competitive. **Action 50:** Apply clause 36 to Market Retail Contracts where tariff changes may occur in relation to fixed term contracts. Further, amend drafting to reflect the need for a retailer to obtain the explicit informed consent of a customer prior to any tariff change on a fixed term contract.
38	**Change in use (SRC)**	There appears to be no equivalent clause in ERC V10.	It is unclear from the drafting in Clause 38 what may constitute a change in use. Nor is 'reclassification' defined. As a result, it is unclear what a consumer's rights and obligations are in relation to this clause. For example, is the installation of an air conditioning unit change in use, or is it for the entire premises, perhaps being used as a retail premises rather than a residential premises. **Action 51:** To ensure consumer rights and obligations are clear in relation to 'Change in use', Include a definition of 'change in use' and 'reclassification'.
39	**Consideration of credit history**	Clauses 39 & 40(2)(d), ERC V11 allow a retailer to take into account any "credit history" in deciding whether to require a small customer to provide a security deposit. In contrast, clause 8.1A, ERC V10 allows a retailer to have *"regard only to any relevant default"* by a domestic customer, in deciding whether a customer has an unsatisfactory credit rating. "Relevant default" is specifically defined in clause 34, ERC V10; it has a narrower scope than a customer's entire credit history.	This clause should only relate to utility debts. The ability for a retailer in Victoria to charge a security deposit based upon entire credit history would be new and regressive for Victorian consumers. Historically in Victoria, security deposits were introduced to guard against potential retailer losses for non payment, not as an option designed to enhance supply for consumers. We have considerable concern about the accuracy and relevance of information held by credit rating agencies. The nature of utility costs and bill paying is also unique within a household budget and consumers are likely to be unfairly penalised in terms of accessing energy

			services, for unrelated credit issues. To ensure consumers do not experience further detriment any debts also need only to be limited to 'relevant defaults' and debts of $120. **Action 52:** Limit the scope of considered credit history to utility debts only. **Action 53:** Ensure scope is limited to 'relevant defaults' (as defined in ERC V10). **Action 54:** Define relevant defaults (as defined in ERC V10).
40	**Requirement for security deposit (SRC and MRC)**	See comments and recommendations for ERC V11 39, which refers to a retailer having *"regard only to any relevant default"* by a domestic customer, in deciding whether a customer has an unsatisfactory credit rating. Note also our comments in relation to 'relevant default'. Clause 40(2)(e), ERC V 11 allows a retailer to require a security deposit from a business customers if the business has *"no history of paying energy accounts"* or an *"unsatisfactory record in relation to the payment of energy accounts."* Clause 8.2, ERC V10 allows a retailer to request a refundable advance (i.e. security deposit) from a business customer if the retailer's decision *"to require the provision of a refundable advance is fair and reasonable in all the circumstances."* Under clause 40(3)(c), ERC V11 (added by the ESC), a retailer cannot require a security deposit without having complied with clause 33 – Clause 33 requires retailers to offer a payment plan to customers who are experiencing hardship and to	It is unclear what the Commission's intent is in relation to this clause is as we are seeing some contradictions with the drafting which confuse some of the outcomes. For example: • It is unclear why clause 40(3)(c), ERC V11 has been included in light of clause 40(4). • Clauses 70(7) and 40(8) appear to be contradictory; and • While we think the objective is to align the outcomes of ERC V10 11.2 and ERC V11 33, they are not equivalent clauses. **Action 55:** The Commission to revise its intent in relation to ERC V11, 40 and ensure the drafting reflects this.

		residential customers in payment difficulty who inform their retailer that they are experiencing payment difficulty. However, clause 40(4), ERC V11 also requires a retailer to offer a payment plan before a security deposit can be obtained. Clause 40(4), ERC V11 appears to be similar to clause 8.1(b), ERC V10 which refers to the need for a retailer to offer a payment plan before requiring a refundable advance. It is unclear why clause 40(3)(c), ERC V11 has been included in light of clause 40(4). Clause 40(7), ERC V11 states that *"payment or partial payment of a security deposit is not a pre condition to the formation of a standard retail contract."* Clause 40(8), ERC V11, states that *"[clause 40] applies in relation to standard retail contracts".* The two clauses appear to contradict. If the intent is for a retailer to comply with the assessment and assistance obligations (NB: clause 8.1(b), ERC V10, 1st dot point refers to clause 11.2 which is the section on "assessment & assistance to domestic customers) before obtaining a security deposit from the customer, clause 33, ERC V11 is not equivalent to clause 11.2, ERC V10.	
41	**Payment of security deposit (SRC)**	There appears to be no equivalent clause to 41. There is no equivalent provision in ERC V10 to clause 41(2), ERC V11. I think it can be understood that re-energisation may be refused for non-payment of security deposit. Clauses 13.4 & 15.1, ERC V10 respectively allow disconnection for refusal to provide a refundable advance, and requires reconnection when the customer	It is essential that the retailer provides ample opportunity and time for a customer to pay the security deposit. This should be no less than the pay-by-date of a normal billing cycle, in order to ensure that the consumer has two fortnightly payment periods in which to obtain money for the security deposit or, enable the customer to pay it as part of a payment plan over an extended period of time (the supply of energy is not withheld at this time).

		provides the refundable advance.	**Action 56:** Ensure the retailer provides a fair and reasonable period of time to pay the security deposit.
42	**Amount of security deposit (SRC)**	Clause 8.1 (c) of ERC V10 is largely reflected here but not inclusive of dual fuel contracts. This clause must apply to market contracts. Not providing coverage to market contracts allows retailers to charge above fair and reasonable costs for some customers. Clause 8.1(c)(B)(i) provides that for dual fuel contracts where "the retailer requires the refundable advance because the retailer has decided the domestic customer has an unsatisfactory credit rating, 25%.." There is no equivalent provision in ERC V11.	This rule must also apply to market retail contracts. Security deposits are required to guard against potential retailer losses for non payment and the calculation methods used in this rule provides a fair and reasonable means to calculate this. Not providing coverage to market contracts allows retailers to charge above fair and reasonable costs for some customers. **Action 57:** Apply the obligation on amount of security deposit to market retail contracts.
44	**Use of security deposit (SRC)**	This clause must apply to market contracts. Not providing coverage to market contracts allows retailers to apportion the security deposit to amounts owing for services or goods other than the sale of energy first. Clause 44(1), ERC V11 is similar to clause 8.3, ERC V10, except that there is a reference to a clause on the "customer's right of reconnection" (clause 15.1, ERC V10). It would be appropriate for clause 44(1)(a), ERC V11, to include a similar reference, i.e. to clause 121(1), ERC V11.	**Action 58:** Apply this clause to market retail contracts. **Action 59:** Include a reference, i.e. to clause 121(1), ERC V11 within clause 44 1 (a).
45	**Obligation to return security deposit (SRC)**	This clause must apply to market contracts. Not providing coverage to market contracts allows retailers to determine unreasonable repayment arrangements for the security deposit, potentially withholding the security deposit unfairly.	**Action 60:** Apply this clause to market retail contracts.
46	**Tariffs and charges**	Retailers do not need to obtain the customers consent prior to varying terms and conditions (or	Consumers must be provided with assurance that the terms and conditions that they sign up to do not vary

		tariffs), as ERC V11 requires the retailer to give notice "as soon as practicable, and in any event, in the case of customers with smart meters, 20 business days prior to the variation, and otherwise no later than the customer's next bill."	within the term of their fixed term contract. We are particularly concerned about fixed-term contracts and unilateral variation clauses, in relation to price — the ability of retailers to unilaterally amend prices is not only at odds with standards of fairness in consumer laws, but impedes consumers' ability to drive competition by making informed choices. It is a reasonable assumption by the customer that the terms they have agreed to in a fixed-term contract remain fixed or that any variation in terms ensures that a consumer is given ample notice to consider the change and, if they reject it, to exit the contract without penalty. The Australian Consumer Law provides, as one of its examples of unfair contract terms, 'a term that permits, or has the effect of permitting, one party (but not another party) to vary the terms of the contract'. Under the Australian Consumer Law, a term of a consumer contract that is found to be unfair is void. **Action 61:** Ensure the terms of a contract are fixed in a fixed term contract. **Action 62:** Where the contract is not a fixed term contract, require retailers to gain the explicit informed consent of a consumer prior to varying terms and conditions. This needs to be done at the time of the proposed variation. Consumers must then be given the right, without penalty, to exit the contract should they reject the variation.
48	**Retailer notice of end of fixed term retail contract**	Under clause 26.4, ERC V10, *"[a] retailer must give notice to a customer of any variation to the amount and/or structure [of the] retailer's tariffs*	**Action 63:** clause 46(3), ERC V11 be amended to include a reference to; *"variation to the amount and/or structure of the tariffs, and charges that affects the*

		that affects the customer." Under clause 46(3), ERC V11, *"[t]he retailer must give notice to the customer of any variation to the tariffs and charges that affects the customer."* It is not so clear whether variations to the tariff structure is caught within clause 46(3), ERC V11.	*customer."*
49	**Termination of market retail contract**	There is no equivalent provision in ERC V10 which specifies the time at which termination of an energy contract is effective as per ERC V10 24.5 There are specific provisions in ERC V10 which relate to termination by customer, termination for customer's breach, termination in the event of last resort event – equivalent clauses do not appear to be found in ERC V11.	To ensure there is clear guidance to customers and retailers in relation to rights and obligations around termination of a contract, under ERC V11, it is important to retain the guidance provided in ERC V10. **Action 64:** Retain the provisions under clause 24.5 of ERC V10.
49A	**Early termination charges and agreed damages terms**	Clause 24.6 Termination in the event of a last resort event has not been included in ERC V11, which prevented the charging of early termination fees under a RoLR. Nor has any provision been made for RoLR of dual fuel contracts.	While a RoLR event is not defined or recognised in ERC V11, consumers will remain exposed to poor business practices of energy retailers should a last resort event occur. Much of the protection developed and included in ERC V10 ensures that the customers in last resort events would be provided additional, necessary protection. **Action 65:** Retain consumer protections in ERC V10 that relate to Retailer of Last Resort events.
50	**Small customer complaints and dispute resolution information**	No provisions to inform customer of right to complain to a higher level. Otherwise relatively consistent. A significant difference between clause 50 ERC V11 and clause 28 ERC V10 is that the latter applies to both standing offers and market contracts. Clause 50 ERC V 11 sits in the Part 2 Division 7 which is entitled "Market retail contracts – particular requirements." There is no similar	Often customers need to be informed or reminded about what their options are in the midst of a complaint, particularly as this can be a time of high stress. Requiring retailers to simply publish details of complaints processes or energy ombudsman schemes in the original contract's terms and conditions or even on their websites (which is stipulated in clause 56(1)(b), ERC V11) is therefore insufficient advice to consumers, and a reduction in protections available from ERC V10.

		provision regarding access to the energy ombudsman in relation to standard retail contracts. Access to the energy ombudsman under clause 29(7), ERC V11 (a provision which applies both to both standard retail contracts and market retail contracts) appears to apply only to billing disputes. Clause 28.1, ERC V10 refers to "relevant Australian Standard on Complaints Handling", while clause 50(1)(b), ERC V11 refers to "retailer's standard complaints and dispute resolution procedures." The wording in clause 28.2, ERC V10, suggests that a retailer has to advise a customer about his/her right to raise the complaint to a higher level and thereafter to EWOV if he/she is not satisfied with the outcome, in the course of addressing a customer complaint. This is different from clause 50((1), ERC V11, which requires a retailer to include provisions in the market retail contract informing customers about their complaint process and right to access the services of the energy ombudsman.	**Action 66:** Redraft ERC V11 to clearly articulate that customers on both standard retail contracts and market retail contracts have access to the energy ombudsman for all disputes which are within the jurisdiction of the energy ombudsman. **Action 67:** Reflect the reference to Australian Standard on Complaints Handling in ERC V11.
51	**Liabilities and immunities**	A substantive omission in ERC V11 is not extending clauses 51 (Liabilities and immunities) and 52 (Indemnities) of ERC V11 to standard retail contracts. Both these clauses sit in Part 2 Division 7 which is entitled – "Market retail contracts – particular requirements." Thus, standard retail contracts are not covered. In contrast, clauses 16 (No limitation of liability) and 17 (Indemnity) of ERC V10 cannot be varied in the formation of a market contract – thus, these clauses apply to standing offers and market	**Action 68:** Ensure the Voltage Variation Guideline is appropriately reference in ERC V11. **Action 69:** Apply this clause to Standard Retail Contracts as well as Market Retail Contracts.

		contracts under ERC V10. Clause 16, ERC V10 includes clauses which are relevant to the Voltage Variations Guideline – a retailer must not include a term "in the case of a domestic customer, requiring the customer to take reasonable precautions to minimise the risk of loss or damage to any equipment, premises, or business if the customer which may result from poor quality or reliability of energy supply". However, a retailer can include such a term if the customer is a business customer. Currently, the Voltage Variation Guidelines still apply in Victoria. Therefore this needs to be appropriately referenced in ERC V11. Further, we have in previous submissions strongly argued for the inclusion of the Voltage Variation Guidelines as we are of the view that it offers a higher standard of consumer protection that Part 7 (Small Compensation Scheme) of the National Energy Retail Law. Refer to joint consumer submission dated 11 May 2012, pages 4-5, 8-11[10].	
55	**Referral to interpreter services**	Inclusion of interpreter services to all residential customers is a positive inclusion. Need definition of 'reasonable needs' otherwise this is at the discretion of the retailer.	**Action 70:** Include definition of "reasonable needs".
56	**Provision of information to customers**	56(1), ERC V11, requires a retailer to *"publish on its website a summary of the rights, entitlements and obligations of small customers, including the retailer's standard complaints and dispute resolution procedure; and the contact details for*	We have concerns with the level of information that is contained on retailer's websites and whether customers are able to navigate to the relevant webpage to access information easily.

[10] http://www.cuac.org.au/index.php?option=com_docman&task=doc_download&gid=251&Itemid=26

		the relevant energy ombudsman", Clause 56(2) ERC V11, limits the information which a customer requests to "the kind referred to in subclause (1)"; clause 56(3) , ERC V11 also refers to a retailer providing "a copy of any information of that kind..." at the customer's request. This suggests that retailers need only provide customer with (a) a summary of the rights, entitlements and obligations; (b) complaints and dispute resolution procedures and (c) energy ombudsman contact details. The relevant clauses in ERC V10 are worded very differently and we think would result in customers being more informed about what their rights, obligations and entitlements are as retailers are required to bring this information to the customer's attention. Clause 26(2), ERC V10 deals with a retailer's obligation to provide a copy of their charter to their customers. Clause 26(3), ERC V10 further requires a retailer to provide, on request, to a customer, a copy of the ERC. This clause also requires a retailer *"to 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."*	We note that there is no requirement in ERC V11 for retailers to provide their customers with a Customer Charter, and instead to rely on the website for a summary of the customer's rights, entitlements and obligations.. Not all customers have internet access; also, some customers may be unable to find the information they are looking for, on the website easily. The model terms and conditions for a standard retail contract include references to the ERC. Thus, as a minimum, retailers should provide customers with a copy of the ERC, if they request for a copy. **Action 71:** Retailers must be obligated to actively advise a customer of their rights to escalating complaints, including to EWOV, at the time of a complaint. **Action 72:** Retailers must be obligated to actively inform customers of their rights and obligations. This includes, reflecting clauses 26(2) and (3), ERC V10 in ERC V11.
57	**Retailer obligation in relation to customer transfer**	Ensures explicit informed consent for a transfer, as well as requires a customer retail contract to be in place to confirm the sale. A transfer can proceed however, prior to the completion of the cooling off period (provided the transfer can be reversed if the customer elects to withdraw from the contract). Clause 57 allows a customer to be transferred during the cooling off period, provided that the	Transfers must not proceed prior to the cooling off period being completed. Should a consumer evoke their cooling off rights but a transfer has already commenced, there is a potential to cause unnecessary issues for the consumer reducing the ability to exercise cooling off rights, as consumers would be told 'we've already transferred'. **Action 73:** Transfers must not be permitted to proceed until the cooling off period has been completed.

		transfer can be reversed if the customer elects to withdraw. There is no similar provision in the Electricity Customer Transfer Code (ECTC). Transfers can only occur after the cooling off period currently.	
59	**Notice to small customers where transfer delayed**	There is no discussion regarding timeframes for transfers as there are in the ECTC, only suggestion of contacting client if there is a delay to transfer. There appears no discussion of transfer when there is a smart meter as there is in the transfer code.	**Action 74:** Include timeframes in relation to transfer for smart meters in ERC V11.
Division 10	**Energy Marketing**		
61	**Overview of this Subdivision**	This is a significant reduction in energy marketing protections for consumers. ERC V11 suggests that other Acts (eg Australian Consumer Law), '*may also* apply to retail marketers carrying out energy marketing activities'. There is no mention of minors or authorised customers as there is in ERC V10 4.3, We note these provisions were included in the Code of Conduct for Marketing, and in fact have been relied upon over recent years, as minors and unauthorised consumers were continually being marketed to.	**Action 75:** We strongly urge the Commission to conduct a review of the Code of Conduct for Marketing that fully considers the implication of not including this Code in ERC V11 taking into account the applicable provisions in the ACL. **Action 76:** ERC V11 must recognise and emphasise that other Acts, eg the Australian Consumer Law DO apply to retail marketers undertaking energy marketing activities. **Action 77:** This clause must also apply to customers of standard retail contracts.
62	**Requirement for and timing of disclosure to**	Applies only to market retail contracts.	**Action 78:** This clause must also apply to standard retail contracts.

	small customers		
63	**Form of disclosure to small customers**	Applies only to market retail contracts Allows required information to be provided verbally. This is not consistent with ERC V10 where a "***retailer*** must provide the ***consumer*** with a reasonable opportunity to consider this information before entering into the ***contract***." Required information including price must be provided in writing (not just verbally) prior to a customer consenting to a contract. This does not otherwise comprise Explicit Informed Consent as it is open to error and misinterpretation. There is no time frame for provision of written information ie "On or before the second ***business day*** after the ***relevant date"***	**Action 79:** Retailers must be obligated to provide required information in a written format and for this to form part of explicit informed consent. **Action 80:** Provision must be made for consumers to have a reasonable opportunity to consider the information before entering into the contract. **Action 81:** This clause must also apply to standard retail contracts.
64	**Required information**	Information in 64 *1) (a) – (e) including specifically that under (1) (a) regarding prices, charges, concessions etc are NOT mandated to be provided to customers on standing offers. No commitment to ensuring price is inclusive of all costs including GST. No information regarding being available for an audit regarding consent. This clause is not consistent with ERC V10 which provides consumers with "a reasonable opportunity to consider this information before entering into the ***contract***." While the ERC V11 does require energy retailer to notify customers of the right to complain to the retailer and the ombudsman, it does not provide	**Action 82:** We strongly urge the Commission to conduct a review of the Code of Conduct for Marketing that fully considers the implication of not including significant provisions in ERC V11.

		any information on how to do this.	
65	**No contact lists**	The new clause does not require retailers to confirm in writing that they are on the no contact list. It imposes a limitation of a period of 2 years, at which time the customer must reapply to be on the list (currently ongoing).	**Action 83:** To remain consistent with ERC V10, and to ensure consumers are informed of their status on contact lists, retailers must be obliged to confirm, in writing, that customers are on the no contact list. **Action 84:** Remove the 2 year renewal requirement. Consumers can contact the retailers if they WANT to be marketed to. **Action 85:** Retailers must advise consumers, at the time of marketing, of the no contact list, and the procedures for being placed on the list.
68	**Record keeping**	In ERC V11 It is not explicit as to what details must be kept, such as the premises visited, the dates and times (including the time at which the visit concluded); and the names of marketing representatives. This is a further challenge for as consumers won't know the identification of marketers due to the removal of the requirements to wear identification. Relies on records of retailers only.	**Action 86:** Refer to our comments in response to Clause 60 of ERC V11.
Division 11	**Miscellaneous**		
71	**Obligation of retailer to communicate customer hardship policy**	Clause 71(1), ERC V11, obliges a retailer to inform a *"hardship customer... of the existence of the ...hardship policy as soon as practicable after the customer is identified as a hardship customer."* Clause 71(2) requires a retailer to provide "*a customer or financial counsellor with a copy of the hardship policy on request and at no expense."* Clause 71(3), requires a retailer to publish details of its hardship policy on its website. These provisions present another example on how ERC 11 does not encourage retailers to be	**Action 87:** Amend clause 71, ERC V11 – To ensure that retailers make details about their hardship policies accessible to customers and third parties (such as financial counsellors, social workers, those acting on the customer's behalf etc), and to pro-actively communicate their hardship policies across to customers and third parties.

		pro-active in the way in which they engage with their customers. • Publication of their hardship policies is a positive step but it is insufficient by itself, to draw customers' attention to them. • Retailers should pro-actively communicate their hardship policies and how to access this, to their customers before they are in payment difficulty or in hardship. • Once a customer is in the hardship program, a retailer should also provide that customer with a copy of the policy. Clause 2.3, Guideline No. 21 is reflected in clause2 71(2) and (3), ERC V11. However, we also note that clause 2.2, Guideline No 21, the ESC has the expectation that a retailer's financial hardship policy, *"be transparent, accessible and communicated to domestic customers, financial counsellors and community assistance agencies."* This suggests pro-active communication by retailers.	
71 A	**Minimum requirements for customer hardship policy**	We note that ERC V11 incorporates the minimum requirements for customer hardship policies articulated in section 44, National Energy Retail Law (NERL)., with additional clauses drawn from Guideline No 21 (i.e. energy audits and appliance replacements) The following clauses from clause 2.2(b) Guideline No 21 have been omitted or not fully captured in ERC V11. That the ESC expects a hardship policy to: " *iii. provide details of the processes and criteria the*	**Action 88:** Include "criteria' in clause 71A(1)(a), ERC V11. **Action 89:** Include in clause 71A(1), ERC V11 a requirement for information on how domestic customers will be assisted to maintain their participation in instalment plans or any other options offered to them. **Action 90:** Include in clause 71A(1), ERC V11 a similar requirement to clause 2.2(b)(v), Guideline No. 21.

		retailer will use to identify domestic customers in financial hardship" – clause 71A(1)(a) refers to "process to identify...". Retailers should also document the criteria for identifying customers experiencing hardship in its hardship policy *"iv provide details of the options that will be provided to domestic customers in financial hardship and how domestic customers will be assisted to maintain their participation in instalment plans or any other options offered to them."* – Clause 71A(1) omits the second half of iv a hardship policy should also include information on how a retailer will assist customers maintain participation in payment plans or other options. "*v. Provide details of the processes the retailer will use to work with the domestic customer and where appropriate a financial counsellor to assess the appropriate options to be provided by the retailer."* – Clause 71A, ERC V11 omits this provision. Clauses 71A(1)(a) and (1)(b), ERC V11 respectively refer to process to identify customers experiencing hardship and processes for early response. However, those provisions do not cover the entire process involved with working with the customer and financial counsellor. *"vi. Offer fair and reasonable payment options with fair and reasonable instalment intervals that accommodate the particular circumstances of domestic customers in financial hardship and to monitor the domestic customer's payments, including the accumulation of debt"* –There is no similar provision in clause 71A(1); it should be stipulated as a minimum requirement for a customer hardship policy, this should be part of what the retailer communicates across to customers.	**Action 91:** Amend clause 71A(1), ERC V11, to ensure that retailers notify and refer customers to concession programs, financial counselling services and other support agencies. **Action 92:** Include clauses 2.2(b)(x), (xi) and (xii), Guideline 21, in clause 71A(1), ERC V11. **Action 93:** Include clauses 2.2(b)(xiii), Guideline 21, in clause 71A(1), ERC V11. **Action 94:** Amend clause 71A(1)(f), ERC V11 to include clause 2.2(b)(xiv), Guideline 21. **Action 95:** Amend clause 71A(1)(f), ERC V11 to include clause 2.2(b)(xx), Guideline 21. **Action 96:** Address any drafting and editing issues which need correction.

		"ix. Provide for the referral of domestic customers in financial hardship to other support agencies and scheme where appropriate" – Clause 71A(1)(d), ERC V11 refers to *"processes to identify...concession programs and appropriate financial counselling services and to notify hardship customers of those programs and services."* Retailers should not merely notify customers about concession programs and financial counselling services but refer customers to them as well as to other support agencies. *"x. Set out the process retailers will follow to advise domestic customers of their rights and obligations in respect of their agreement under the retailer's hardship program"* *"xi. Set out the circumstances in which a hardship arrangement between a domestic customer and the retailer will cease."* *"xii. Require the retailer's staff to be made aware of the policy and require all staff involved in the administration of the financial hardship program to have the necessary skills to sensitively engage with domestic customers about their payment difficulties and in offering assistance,...* – Clause 71A(1) omits x, xi and xii. *"xiii. Be transparent, accessible and communicated to domestic customers, financial counsellors and community assistance agencies"* – this is not captured in clause 71A(1) as a minimum requirement of a hardship policy – This should be stipulated as a minimum requirement for a customer hardship policy, this should be part of what the retailer communicates across to customers. *"xiv. Recommend the most appropriate tariff at the time of entry to the financial hardship program,*	

		bearing in mind: (A) cost effectiveness; and (B) whether the customer has dedicated off-peak appliances; and (C) the customer's previous tariff (including network charge); and (D) the customer's overall power usage; and (E) the customer's previous bills, if available; and (F) any other relevant information provided by the customer." – xiv does not appear to be reflected in clause 71A(1), ERC V11. Clause 71A (1)(f), ERC V11 refers to *"processes to review the appropriateness of a hardship customer's market retail contract in accordance with the purpose of the customer hardship policy"* Clause 71A(1)(f) does not mention the "most appropriate tariff"; it is also unclear whether it covers all the factors which need to be considered in xiv (A) to (F). Clause 71A(1)(f), refers to the "purpose of the customer hardship policy" but this is undefined in ERC V11. *"xv. Require the retailer to monitor the behaviour and consumption during their participation in the financial hardship program to ensure that they continue on the most appropriate tariff and facilitate a change if necessary."* – There is no similar provision in clause 71A(1), ERC V11. There are two subparagraphs 1(a) to 71A. Clause 71A(1)(a) refers to section 48G of the Gas Industry Act. It should read 48G(2).	
71B	**Approval and variation of customer hardship policy**	We note that clause 71B is drawn from sections 45(1) and (2), 43(3), (4) and (5), NERL with additional clauses inserted from Guideline No. 21. Clause 71B(3)(b), ERC V11 appears to mirror section 43(3)(b), NERL. However section 43(3)(b)(iv) - *"maintain and implement the policy"* – is missing from clause 71B(3)(b), ERC V11.	**Action 97:** Include section 43(3)(b)(iv), NERL in clause 71B(3)(b), ERC V11. **Action 98:** Include in clause 71B, ERC V11 a requirement for retailers to periodically review their hardship policies to ensure it meets customers' needs. **Action 99:** Address any drafting and editing issues

		Section 71B(6), ERC V11, partly reflects clause 2.4, Guideline No. 21. It omits the first part of clause 2.4, Guideline No. 21 – *"The Commission expects retailers to periodically review their financial hardship policies in accordance with normal business practice."* A similar requirement should be included in clause 71B since retailers should periodically review their hardship policies to ensure it meets customers' needs. Clause 71B(1)(b)(i), ERC V11, should refer to section 48I(2), Gas Industry Act rather than 48I. Clause 71B(b)(ii), ERC V11, should refer to the Electricity Industry Act and not Electricity Act.	which need correction. .
72	**Payment plans**	Clause 71B(1A), ERC V11 restricts access to payment plans to hardship customers and customers experiencing payment difficulties who self-identify or who have been identified by their retailer as experiencing payment difficulties . As mentioned before, we strongly believe that there should be universal access to payment plans. Clause 72(1), ERC V11 sets out the factors which a retailer has to consider in setting up a payment plan for a "hardship customer" – i. customer's capacity to pay; ii. any arrears owing by the customer; and iii. the customer's expected energy consumption needs over the following 12 month period; iv. Include an offer for the customer to pay for their energy consumption in advance or in arrears by instalment payments – these considerations should apply to <u>all</u> customers offered a payment plan and not just hardship customers. In contrast, clause 12.2, ERC V10, which sets out	**Action 100:** Provide for universal access to payment plans in ERC V11. See comments under clause 3 (definition of payment plan) and 33, ERC V11. **Action 101:** Clause 72(1), ERC V11 should apply to all customers on a payment plan not merely to hardship customers. Ensure clause 12.1, ERC V10 is reflected in ERC V11. **Action 102:** Address the structure of ERC V11. – It is inappropriate to place payment plan under Part 3 (customer Hardship) as not everyone on a payment plan is in hardship.

		the requirements for a payment plan; applies to all customers and not just to customers who are experiencing hardship. Retailers have to consider "the customer's consumption needs and capacity to pay,"....make provision for re-calculating the amount of the instalments...monitor the customer's consumption..." From a purely structural perspective it is inappropriate to put the section on payment plans – clause 72, ERC V11 – under Part 3: Customer Hardship. Not every customer on a payment plan is in hardship.	
72A	**Debt recovery**	We note that clause 72A, ERC V11 is drawn from section 51, NERL and clause 11.4(c), ERC V10. Clause 11.4(a), ERC V10 provides that a retailer; *"may not commence legal proceeding for recovery of a debt from a domestic customer unless and until the retailer has complied with all applicable requirements of clause 11.2."* The above requirement is not reflected in clause 72A, ERC V11. Clause 72A(b)(ii) prohibits a retailer from commencing proceedings for debt recovery where the retailer has failed to *"comply with the requirements of this Electricity Industry Act or Gas Industry Act and this Code relating to non-payment of bills, payment plans and assistance to hardship customers or residential customers experiencing payment difficulties"* – this sub-clause does not replicate clause 11.4(a), ERC V10 (which refers to clause 11.2 since there is no equivalent to clause 11.2, ERC 10 in ERC V11. (Please refer to our comments on clause 11.2 at clause 33, ERC V11). Further, as previously mentioned ERC V11 limits payment plans to hardship customers and those with payment	**Action 103:** Strengthen clause 72A – by reflecting clause 11.4(a), ERC V10; provide for universal access to payment plans; ensure that retailers consider capacity to pay, amount of arrears, estimated consumption etc (clause 72(1), ERC V11) for all customers on a payment plan (not just hardship customers).

		difficulties. Clause 72A(b)(a), ERC V11 prohibits a retailer from commencing proceedings for debt recovery where the *"customer continues to adhere to the terms of a payment plan or other agreed payment arrangement."* Unless a customer's capacity to pay, arrears amount and energy consumption is taken into account (currently, clause 72(1), ERC V11 requires a retailer to take these matters into account for a hardship customer only) by the retailer in setting up a payment plan, clause 72A(b)(a), is not going to offer the customer much protection from debt recovery.	
74	**Payment by Centrepay (SRC and MRC)**	Clauses 32(2) and 74, ERC V11 limits payment by Centrepay to "hardship customers." As a matter of principle, all customers should be offered payment by Centrepay – it is a preventative measure to debt; it helps customers manage their ongoing payments.	**Action 104:** Amend ERC V11 so that all customers have access to Centrepay.
Division 1	**Preliminary**		
108	**Definitions**	ERC V11 uses the term "De-energisation" and "Re-energisation" while ERC V10 uses the term "Disconnection" and "Reconnection." "Disconnection" and "reconnection" are terms which consumers are more familiar with rather than "De-energisation" and "Re-energisation." In addition, disconnection" is also a term which is found in the Electricity Industry Act 2000 and Gas Industry Act 2001, in the context of wrongful disconnection payment. We note that the Commission's publications including performance reports, uses the term "Disconnections" and "re-connections." We suggest that these same terms be used in ERC V11.	**Action 105:** Use the terms "Disconnections" and "Reconnections" throughout ERC V11 instead of "De-energisation" and "Re-energisation."

111	**De-energisation for not paying bill**	We note that the drafting of clause 111 has failed to fully consider the context of the clause that has been copied across from ERC V10. In particular, clause 111 (3) has only partially captured the intent of ERC V10 clause 13.2 which has been drafted explicitly with reference to smart meters. As a result, clause 111 of ERC V11 does not adequately address the needs of those consumers with smart meters.	We are concerned with the reliance of this clause on payment plans that do not consider capacity to pay. Without ensuring payment plans take into consideration capacity to pay, the requirement for retailers to offer payment plans prior to de-energisation is undermined by the prospect of those payment plans being unaffordable by consumers, likely resulting in high incidences of de-energisation. **Action 106:** Ensure ERC V11 includes consideration of capacity to pay in the development of payment plans. **Action 107:** Ensure drafting of this clause fully considers the context of the 'equivalent' clause in ERC V10 13.2 (b) and ensure it is reflected in ERC V11.
113	**De-energisation for denying access to meter**	Retailer not required to use 'best endeavours' to offer reasonable alternative arrangements.	**Action 108:** Define "best endeavours" and require it be used in relation to offering reasonable alternative arrangements.
114	**De-energisation for illegally using energy**	Clause 29(a), ERC V10 provides that where there is illegal consumption, "the retailer may estimate the consumption for which the customer has not paid and take debt recovery action for the entire unpaid amount." This is a completely different approach to what is provided for in clause 114, ERC V11 where a customer can be disconnected immediately. .	**Action 109:** Amend clause 114, ERC V11 along the lines of clause 29(a) ERC V10. Further we note that this clause recognises it applies to standard retail contracts and market retail contracts. We suggest that if the use is illegal that there is no contract. Application of this clause to contract types is therefore redundant.
117	**Timing of de-energisation where dual fuel contract**	We note the Commission's observations that there will be no requirement to maintain a separate regime for dual fuel customers in the new draft instrument.	**Action 110:** It is unclear what payment process/periods will apply for dual fuel customers.

Table 2: Model Contract

In reading **Table 2**, please refer to the comments we have made in the **earlier part of the** submission for the relevant ERC V11 clauses which we have identified in **Table 1**.

ERC V11 Model Terms for Standard Retail Contracts (SRC)	**ERC V11 Clause**	**Model Contract Term Section**	**Cross-references with ERC V11**	**Actions**
Clause 4.3(1)(i), SRC	Clause 70 ERC V11	When does this contract end?	Clause 24.1(b), ERC V10 – termination with 28 days notice from customer Clause 4.3(1)(i). ERC V11 – date for termination has to be agreed with the retailer. The above is an example of how ERC 11 is weighed in favour of retailers.	**Action 111:** Protect a customer's right to terminate the contract unilaterally.
Clause 4.3, SRC	Clause 35, ERC V11 (SRC)	Request for final bill Vacating your premises	Clause 35(1), ERC V11 – "*If a customer requests the retailer to arrange for the preparation and issue of a final bill for the customer's premises, the retailer must use its best endeavours to arrange for: (a) a meter reading and (b) the preparation and issue of a final bill for the premises in accordance with the customer's request."* Clause 4.3, SRC – *"(a) if you are vacating your premises, you must provide your forwarding*	**Action 112:** The terms in the model SRC need to be based on corresponding provisions in the ERC V11.

			address to us for your final bill in addition to a notice under clause 4.2(a)(i) of this contract. (b) When we receive the notice, we must use our best endeavours to arrange the reading of the meter on the date specified in your notice (or as soon as possible after that date if you do not provide access to your meter on that date) and send a final bill to you at the forwarding address stated in your notice. (c) you will continue to be responsible for charges for the premises until your contract ends in accordance with clause 4.2 of this contract." The two clauses do not reflect each other – clause 4.3 SRC is wider than clause 35, ERC V11	
Clause 6.1, SRC	Clause 18, ERC V11 Clause 39,	Pre-contractual request to designated retailer for sale of energy (SRC) Consideration of credit history Your general obligations	Clauses 18(3)(a) & (b), ERC V11 is specific as to the type of information which a customer needs to provide his/her retailer when they buy energy under a SRC – acceptable identification, contact details for billing. Clause 39(1)(a), ERC V11 allows the retailer to also ask for information relating to a customer's credit history in deciding whether a security deposit is appropriate. Clause 6, SRC is however, widely drafted as a customer is required to *"give [the retailer] any information [the retailer] reasonably require for the purposes of this contract."* The above is an example of how ERC 11 is	**Action 113:** The type of information needed should be clearly articulated in the model SRC.

	ERC V11		weighed in favour of retailers.	
Clause 7, SRC	Clauses 51 & 52, ERC V10 – only applies to MRC	Liabilities and immunities; Immunities Our liability	Clause 7(b) SRC states that "*to the extent permitted by law, [the retailer gives] no condition, warranty, or undertaking, and [they] make no representation to [the customer] about the condition or suitability of energy, its quality, fitness for purpose of safety, other than those set out in this contract."* Clause 51, ERC V11 provides that *"a retailer must not include any term or condition in a market retail contract with a small customer that limits the liability of the retailer for breach of the contract or negligence by the retailer."* Clause 52, ERC V11 provides that *"a retailer must not include any term or condition in a market retail contract with a small customer under 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."* Clause 7(b) SRC does not appear to be reflected in ERC V11. Clauses 51 and 52, ERC V11 apply to MRCs only and thus is not in the model SRC. This is in contrast to clauses 16 (no limitation of liability and 17 (indemnity), ERC V10 which applies to	**Action 114:** Ensure that equivalent provisions to clauses 16 and 17, ERC V10 apply to SRC and MRC. Reflect this in ERC V11 and the model SRC.

			both standing offers and market contracts as these clauses cannot be varied. This is a significant diminution of consumer protections especially for SRC customers.	
Clause 8.3, SRC	Clause 38, ERC V11	Change in use Variation of tariff due to change of use	Clause 8.3(a), SRC states, *"if a change in your use of energy means you are no longer eligible for the particular tariff you are on, we may transfer you to a new tariff under our standing offer prices (a) if you notify us there has been a change of use – from the date of notification..."* Clause 38(2), ERC V11 states, *"where a small customer notifies a retailer of a change in use of the customer's premises, the retailer may require the customer to transfer to a tariff applicable to the customer's use of that premises with effect from the date on which the retailer notifies the customer of the new tariff."* The wording in clause 8(3), SRC suggests that the relevant date is the date on which the customer notifies the retailer of the change in use. The wording in clause 38(2), ERC V11, however, suggests that the relevant date is the date on which the retailer notifies the customer of the new tariff. The above clauses are inconsistent and require clarification. How does clause 8.3(c), SRC connect with the	**Action 115:** Clarify what applies – clauses 8.3(a), SRC and 38(2), ERC V11. **Action 116:** Clarify the intent of clause 8.3(c), SRC and correct the typo.

			rest of clause 8.3?	
Clause 8.6, SRC		GST	Clause 8.6(a), SRC provides that, *"amounts specified in the standing offer prices from time to time and other amounts payable under this contract may be stated to be exclusive or inclusive of GST....."* There is no GST provision in ERC V11. However, clause 15B(7)(c), ERC V11 states that, *"each price and product information statement must adhere to the following format requirements: all monetary amounts must be shown on both a GST-exclusive and GST-inclusive basis..."* Thus, it appears that clause 8.6(a), SRC is inconsistent with clause 15B(7)(c), ERC V11.	**Action 117:** Align clause 8.6, SRC with clause 15B(7)(c), ERC V11.
Clause 9.3, SRC	Clause 21, ERC V11	Estimation as basis for bills Estimating the energy usage	The smart meter specific provisions in clause 21(2A), ERC V11 have been omitted from the model SRC. Clause 9.3, SRC allows estimations if the customer consents. If estimation is to be used as a basis for a bill, the customer's explicit	**Action 118:** Include smart meter specific provision in model SRC. **Action 119:** The need for "explicit informed consent" should be included in the

			informed consent should be required. Clause 9.3, SRC (which is intended to reflect clause 5.2(5) ERC V11) – both these clauses weigh heavily in favour of the retailer – any "actions" of the customer which results in an unsuccessful meter read would result in the customer incurring cost if the customer subsequently request for an actual read. The wording of the clauses gives retailers much discretion in determining what constitutes an "action".	model SRC, in the context of using estimations for bills. **Action 120:** Refer to our earlier comments under clause 21, ERC V11
Clause 9.4, SRC	Clause 28, ERC V11	Historical billing information Your historical billing information'	Without commenting on the actual content, from a consistency perspective, none of the clauses included by the ESC in clause 28, ERC V11 are reflected in clause 9.4, SRC.	**Action 121:** Limits customer's right to access historical billing information and metering data. Refer to our earlier comments under clause 28, ERC V11
Clause 9.5, SRC	Clause 23, ERC V11	Bill smoothing Bill smoothing	Clause 9.5, SRC needs to reflect that a customer's explicit informed consent is required before bill smoothing. Not just "where you agree...". Clause 23(2), ERC V11 refers to a customer's explicit informed consent.	**Action 122:** Insert the requirement for explicit informed consent in clause 9.5, SRC.

Clause 10.4, SRC		Late payment fees [Not Used]	It is important to include in the SRC a provision stating that retailers cannot charge their customers late payment fees.	**Action 123:** Include provision in SRC prohibiting retailers from charging customers late payment fees.
Clause 12.1, SRC	Clause 30, ERC V11	Undercharging Undercharging	Clause 12.1, SRC should specify that the amount recovered will be separately itemised in the bill together with an explanation. This is a requirement under clause 30(2)(c), ERC V11. Clause 30(2A), ERC V11, which was inserted by the ESC has not been reflected in the model SRC.	**Action 124:** Amend clause 12.1, SRC to align with clauses 30(2)(c) and 30(2A), ERC V11.
Clause 12.2, SRC	Clause 31, ERC V11	Overcharging Overcharging	The drafting of clause 12.2, SRC suggests that the default option for the retailer is to credit the overcharged amount to the customer's next bill, rather than seeking the customer's instructions. On the other hand, clause 31(2)(b), ERC V11, states that *"if there is no such reasonable direction (from the customer), credit the amount to the next bill..."* Both clauses are unaligned.	**Action 125:** Amend clause 12.2, SRC to reflect the intent of clause 31(2)(b), ERC V11.

Clause 12.3, SRC	Clause 29, ERC V11	Billing disputes Reviewing your bill	Clause 29(5)(b), ERC V11 states that "*if the small customer requests that, in reviewing the bill, the meter reading or metering data be checked or the meter tested: the customer must pay for the cost of the check or test (which the retailer may **not** request be paid in advance."* Clause 12.3, SRC states that *"...[the retailer] **may** request payment in advance"* if the customer asks for a *"check of the meter reading or metering data or for a test of the meter in reviewing the bill."* Both provisions contradict each other. The SCR also does not state that appropriate adjustments would be made to a customer's bill following a bill review – this is stated in clause 29(6), ERC V11.	**Action 126:** Amend clause 12.3, SRC such that is aligns with clause 29(5)(b), ERC V11. Customers should not have to pay for the test in advance. **Action 127:** Include a clause in the SRC to state that appropriate adjustments would be made following a bill review – as per clause 29(6), ERC V11.
Clauses 13.1 to 13.4, SRC	Clauses 39 – 45, ERC V11	Customer retail contracts – security deposits Security deposit; Interest on	The model SRC is skimpy on what customer and retailers rights are in relation to security deposits – for e.g. it would be important to set out specifically when a security deposit may be requested of a customer (when there is an unsatisfactory credit history) and when it is prohibited (e.g.in hardship situations, and	**Action 128:** Amend clause 13.4, SRC to align with clause 45, ERC V11.

		security deposits; Use of a security deposit; Return of security deposit	where a payment plan has not been offered before). Clause 45(1), ERC V11 provides, *"If a small customer has been required by a retailer to pay a security deposit, the retailer must repay to the small customer in accordance with the small customer's reasonable instructions the amount of the security deposit, together with accrued interest, 10 business days after the small customer..."* Clause 13.4, SRC addresses the return of security deposit and accrued interest .to the customer. The wording suggests that the onus is on the customer to contact the retailer to provide instructions on how he/she would want to have the security deposit and accrued interest returned – *"(b) if you do not give us reasonable instructions, we will credit the amount of the security deposit, together with any accrued interest, to your next bill."* In addition, clause 13.4, SRC does not provide for the 10 business day timeframe within which a retailer has to return the security deposit and accrued interest to the customer. Clause 13.4, SRC does not align completely with clause 45, ERC V11.	

Clause 14, SRC	Clauses 107-118, ERC V11	De-energisation (or disconnection) of premises – small customers Disconnection of supply	The model SRC does not provide sufficient information to customers as to what their rights are in relation to disconnection. While the terms articulate the retailer's rights in certain situations to disconnect, they do not refer to a customer's right to payment plans, to receive a reminder notice and disconnection warning in the form and in the times prescribed. These are set out in clause 111, ERC V11. Clause 14.1, SRC inadequately reflects when a retailer can disconnect a customer. For e.g. subclause (b) refers to disconnection for failure to provide a security deposit. The corresponding clause in ERC V11, clause 112b refers to security deposit as well refusal to provide acceptable identification as circumstances which could result in a customer being disconnected. The model SRC does not capture the latter. Clause 14.1(e), SRC is widely drafted; a retailer is permitted to disconnect the customer's premises if *"[the retailer is] otherwise entitled or required to do so under the Code or by law."* This is one example of how the model SRC weights heavily in favour of retailers. The inclusion of clause 14.1(e), SRC suggests that the situations set out in clauses 111 to 115, ERC V11, as to when disconnection is	**Action 129:** Amend model SRC to articulate customer's rights before disconnection. **Action 130:** Ensure that clause 14.1 SRC, is aligned with what is provided for in ERC V11. **Action 131:** Explain what the intent of clause 14.1 SRC is. Delete clause 14.1(e), SRC. **Action 132:** Include ERC V10 smart meter protections in the model SRC. **Action 133:** Clarify the drafting in the SRC. State that there is a prescribed form and times for reminder notices and disconnection warning notices. **Action 134:** Ensure that clause 14.2, SRC adequately reflect the situations in which a retailer cannot disconnect a customer's premises. **Action 135:** Explain which

			permitted are not exhaustive. A significant omission from the SRC disconnection provisions is that none of the smart meter specific provisions relating to disconnection (which are in ERC V10) have been included. Given that Victorian consumers have/will have a smart meter, this is a real concern. Clause 14.2, SRC refers to *"relevant warning notice requirements..."*. It is unclear whether this refers to both reminder notices and disconnection warning notices; the terminology used in clauses 109 and 110, ERC V11. Clause 14.3, SRC, inadequately sets out when a customer's premises cannot be disconnected. Clause 14.3(a), SRC covers only the protected period. There are other situations, set out in clause 116, ERC V11 where the retailer cannot disconnect; that is –. premises which have life support equipment (also stated in clause 124(1)(d) ERC V11), where the customer has a complaint with the retailer and/or energy ombudsman; adhering to a payment plan; where the amount owing is less than $120 (excluding GST); where the customer has applied for a rebate, concession and is awaiting the outcome of that application; where the arrears relate to the supply of other goods and services other than the sale of energy. These are important customer protections which should be articulated in the SRC so customers	provisions in ERC V11, clause 14.3(b)(i) to (iv), (vi) and (vii), SRC, are based upon.

			are aware of what their rights are. In contrast, clause 14.3(b), SRC sets out what the retailer's rights are in relation to disconnecting during the protected period. It is unclear where subclauses (b)(i) to (iv), (vi) and (vii)), SRC have their basis – these subclauses do not appear in the disconnection provisions of ERC V11.	
Clause 15, SRC	Clause 121, ERC V11	Re-energisation of premises Reconnection after disconnection	Clause 121(2A), ERC V11 should be reflected in clause 15, SRC – *"if a small customer whose premises have been de-energised is eligible for a Utility Relief Grant and within 10 business days of the de-energisation, applies for such a grant, then the small customer is to be taken by the retailer to have rectified the matter that led to the de-energisation."*	**Action 136:** Reflect clause 121(2A), ERC V11 in clause 15, SRC
	Clause 122A, ERC V11	Time for re-energisation	There are no clauses in the SRC which set out the reconnection times, including the reconnection times for customers with smart meters. This is a key term which should be included in a SCR.	**Action 137:** Ensure that reconnection times are included in the SRC.

Clause 17, SRC		Notices and bills	There is no equivalent provision in ERC V11 to clause 17, SRC. Section 319, National Energy Retail Law (NERL) addresses "Giving of notices and other documents under Low or Rules". However section 319, NERL has not been reflected in ERC V11.	**Action 138:** Include a notice provision in ERC V11.
Clause 18, SRC		Privacy Act Notice	A retailer's obligations regarding privacy should be fleshed out in the SRC. Referring a customer to their website is inadequate as some customers do not have internet access. Not all retailers have privacy information prominently located on their websites, which means that some customers may not be able to access the information easily. Clause 18 SRC also presents the customer with the option of contacting the retailer's privacy officer for questions on privacy. This unrealistically assumes that the customer is aware of the contact details for the retailer's privacy officer.	**Action 139:** Privacy Act Notice clause in SRC needs to be fleshed out.
Clause 19, SRC	Clause 29, ERC V11 Clause 50, ERC V11	Billing disputes Small customer complaints and dispute resolution information Complaints and dispute resolution	Clause 19.1 SRC, states that a customer, *"may lodge a complaints with [the retailer] in accordance with [their] standard complaints and dispute resolution procedures."* The note to this subclause states that, *"[the retailer's] standard complaints and dispute resolution procedures are published on [the retailer's] website."* This process does not facilitate customer access to dispute resolution – for e.g. there is no indication that customers could call the retailer (on the number stated on their bill). It does not	**Action 140:** Amend clause 19.1, SRC to facilitate ease of access for customers wanting to lodge a complaint. This is a serious structural issue with ERC V11 which needs to be addressed.

			consider the fact that not all customers have internet access. This is yet another example on how the ERC V11 and SRC weighs heavily in favour of retailers, rather than consumers. Clause 19.2, SRC refers to a customer's right to access the services of the energy ombudsman. We support customer access to the energy ombudsman. However, it is unclear which part of ERC V11 provides the basis for this provision. • Clause 50 ERC V11, which is the section on customer access to the energy ombudsman sits in Part 2, Division 7 – Market retail contracts particular requirements. • Clause 29(7), ERC V11 obliges a retailer to inform a small customer of his/her right to *"lodge a dispute with the energy ombudsman after completion of the retailer's review of a bill, where the customer is not satisfied with the retailer's decision in the review ...".* Clause 29 applies to both SRC and MRC. The wording of subclause (7) and the heading of clause 29 – Billing, suggests that customers only have a right to access the services of the energy ombudsman when they have an unresolved complaint about their bill. In no other cases, is access to the energy ombudsman possible.	

Clause 20, SRC		Force Majeure	ERC V11 does not have a provision on force majeure, though clause 20, SRC, includes one.	**Action 141:** Since the SRC is, as we understand, meant to reflect ERC V11, ERC V11 should have a force majeure provision.
Clause 22, SRC		Retailer of last resort event	While clause 22, SRC mentions retailer of last resort (RoLR), ERC V11 has no clauses on this, presumably because the NERR on which ERC V11 is based does not have any RoLR provisions as RoLR is addressed by Part 6, NERL.	**Action 142:** Include in ERC V11 a reference to the Victorian RoLR provisions.

We note that some SRC terms refer to the "Code" – e.g. clauses 4.2(a)(ii)(B)(vi), 13.2, 13.2, 14.1. It would be difficult for customers to know what the Code has to say in relation to their rights as there is no obligation on retailers to provide a copy of the Energy Retail Code to their customers. Clause 56(1), ERC V11 obliges a retailer to publish on their website, *"a summary of the rights, entitlements and obligations of small customers, including the retailer's standard complaints and dispute resolution procedure and the contact details for the relevant energy ombudsman".* Clause 56(3), ERC V11 states if a small customer *"request information of the kind [referred to in subclause 1], the retailer must refer the customer to the retailer's website or provide the information to the customer."* In contrast, clause 26.3, ERC V10, obliges a retailer to provide a customer a copy of the Energy Retail Code if the customer requests. This is another example of how ERC V11 and the SRC are drafted in a way which weighs heavily in favour of retailers.