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**Victorian Default Offer – Draft Orders Consultation paper –
15 April 2019**



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

We appreciate the opportunity to provide feedback on the draft Order in Council to implement the Victorian Default Offer (VDO). We are especially appreciative of the constructive and open engagement we have had with departmental staff this year on the design and implementation of the VDO.

We strongly encourage the Government to publish its final Order and VDO prices as soon as possible. If the Government intends to retain the requirement for retailers to gazette prices, this adds additional time pressures for meeting the 1 July implementation date, noting retailers are already working to implement other regulatory changes by this date.

The Government faces some challenges in translating its policy intentions for the VDO, many of which we agree with, into practical legal requirements for retailers. As is the case with the Default Market Offer to apply in other jurisdictions, we support developing a common point of comparison to empower customers in identifying the best market offer. However, the way in which this can be done involves a trade-off between simplicity and accuracy.

The requirements for advertising offers by the five Victorian distribution zones will likely add confusion, and be inaccurate, as customers confront multiple reference points based on where they live, how much electricity they consume, what type of tariff they are on and whether or not they have solar — each having a bearing on their final bill. Rather, we favour simplicity for advertising mediums such as television, billboards, google ads and radio, with the option for customers to seek more information online or through a phone call.

We strongly encourage the Government to provide for a state-wide VDO comparison rate, as a weighted average of VDOs across all distribution zones. While an average VDO reduces the accuracy of the distribution-specific VDO comparisons, it has the advantage of being a single reference point for all offers. By being repeated in all advertising it could therefore be a more trusted and less confusing point of comparison. The

requirement for distribution-based comparisons could continue for retailer websites and search engines.

We strongly encourage the Government to ensure the final Order has regard for all the matters the Essential Services Commission (ESC) is legislated to consider when making a price determination, as outlined in section 33 of the Essential Services Commission Act. There has been no justification provided for the explicit exclusions in the Order for several matters the ESC would ordinarily consider, which ensure its price determinations do not negatively impact customers and businesses. These matters include regard for returns on assets, the trade-offs between costs and service standards, and ensuring the costs of the determination do not exceed the benefits. These are all basic principles of good public policy. Their exclusion suggests an avoidance of accountability in considering potentially negative impacts on consumers.

Lastly, we urge that clause 16 regarding the Order's review refer to whether the VDO is delivering net public benefits or is promoting the long-term interests of consumers, and is completed within the first twelve months of the VDO taking effect. This will be essential in ensuring the VDO is delivering better outcomes for all customers and will enable the Order to be 'fine-tuned', if necessary, in a timely manner. Five years will be too long a wait to fix any issues that may arise.

Our detailed responses are attached. If you would like to discuss this submission, please contact Lawrence Irlam on [REDACTED] or [REDACTED].

Regards

Sarah Ogilvie

Industry Regulation Leader

The Government must publish the final VDO and Order as soon as possible

We strongly encourage the Government to publish its final Order and VDO prices as soon as possible.

We face serious challenges in preparing prices for gazettal by 16 June, noting publication by this date, alongside calculations of weighted average customer impacts, requires information to be provided to the Gazette by 2 June. This is occurring at the same time as retailers are preparing for other regulatory changes required by 1 July. An earlier publication of the final VDO Order will ease this burden. We would require the final Order to be published by around 10 May to allow us enough time to properly implement the full range of VDO requirements.

The ESC's final advice will be available from 3 May and could be made public from this date. This would give retailers much needed extra time to prepare prices and related information for gazettal and for customer communications. We recognise the ESC's advice is created specifically at the Minister's request, however the ESC's methods and reasoning must be published eventually. The ESC's draft advice was also published without prior Ministerial approval or delays. We do not see any benefits to the Minister of delaying publication of the final advice.

The overall success of the VDO is significantly affected by its start date, and we urge caution should the Government wish to proceed before 1 January 2020. We understand, however, that the Government is firm on a July 2019 implementation date for all aspects of the VDO, including advertising restrictions, as it wants to deliver on its 2019 election commitments. If the VDO is introduced without appropriate care, it will add to customer confusion and dissatisfaction. For example, it is unclear how the Government plans to communicate the VDO's introduction to ensure a smooth transition for customers.

The Government should reconsider billing notifications regarding the VDO

We have several issues with clauses 7(2) and (3) of the draft Order, which require retailers to provide information prominently on bills about how customers can access the VDO. We recommend these requirements be removed or be amended to allow retailers to determine how best to inform their own customers of the VDO.

Implementing additional bill changes at this late stage, in time for 1 July, will be extremely challenging. Regrettably, we have been unable to receive guidance on the Order's likely final bill notification requirements.

We recognise that the Government's desire to provide customers bill notifications of the VDO follows one part of recommendation 3G of the Thwaites Review.¹ We believe this notification requirement was not central to the desire to ensure customers received "understandable and comparable information" to "promote engagement with the market and consumer empowerment."² In particular, the Review Panel did not appear to turn its mind to what benefits it would deliver for customers, including how it would operate alongside other recommendations. Indeed, we cannot find any mention of this VDO

¹ Recommendation 3G - Require retailers to include the following information on customer bills: How the customer can access the Victorian Energy Compare website; How the customer can access the Basic Services Offer; The retailer's best offer for that customer based on their usage patterns; The total annual bill for that customer based on the customer's current offer and usage patterns.

² Thwaites, J. et al, *Independent review into the electricity & gas retail markets in Victoria*, August 2017, p. 56.

notification requirement outside of the statement of recommendations in the review's final report, or in the Government's response.³

From 1 July, customers will already be notified of their best offer from their retailer, and of the Victorian Energy Compare website where customers can search for and access potentially better offers from other retailers. Customers will also see prices expressed consistently in GST-inclusive terms, receive clear advice prior to signing contracts and warning of bill changes. These interventions are designed to improve customer awareness, encourage them to engage with their retailer and engage with the broader market, thereby ensuring retailers compete more effectively on price terms. Customers who do not engage in the market and end up on the default standing offer will be protected by the VDO.

Providing further information regarding how to access the VDO appears to reflect a further intention to cater for customers, already on market offers, who may wish to access a more 'fair' or 'trusted' offer without having to shop around. The Government should clarify whether this is its intention, as it is potentially detrimental to competition, and for these customers.

Our strong view is that it is unnecessary to provide information about the VDO on the bill itself. In the event a retailer's cheapest offer for that customer is the VDO, that will appear as the best offer on the customer's bill. If a retailer's cheapest offer is better than the VDO, there is no benefit to the customer of receiving information about the VDO on their bill.

A requirement to place this information prominently on bills and without appropriate context may raise customer expectations that the VDO is somehow better for them than the 'best offer' already listed on the bill. The risk that customers may demand to be placed on the VDO, even though they would be worse off, could be material where the VDO is promoted as a "better energy deal for all Victorians" that could deliver savings of "around \$200 to \$500 a year" on energy bills.⁴

Customers who are disengaged, and are the intended beneficiaries of the VDO, are unlikely to notice information about the VDO on the bill, or would already be on the VDO. Engaged and informed customers are unlikely to be interested in seeking information on the VDO, and will be more interested in seeking out better market offers.

As an aside, if the VDO causes market offers to converge on its "fair" price⁵, the usefulness of having information on best offers and Victorian Energy Compare will also be diminished. That is, as any savings to customers from switching electricity plans may not be large enough to offset the customer's effort of searching for better offers.

If clauses 7(2) and (3) are retained, we encourage the Government to consider a transitional approach that allows retailers to provide customers information about the VDO "with" their bill rather than "on" their bill from 1 July. After allowing for this first round of communications (e.g. from 1 October 2019), retailers should then have the freedom to determine where on the bill they provide information about the VDO. Our

³ Victorian Department of Environment, Land, Water & Planning, Victorian Government, *Final Response to the Independent Review of the Electricity & Gas Retail Markets in Victoria*, 2018, p. 6.

⁴ The Hon Dan Andrews MP, "Delivering a better energy deal for all Victorians", media release, 19 February 2019.

⁵ Essential Services Commission, *Victorian Default Offer to apply from 1 July 2019 - Draft advice*, 8 March 2019, p. iii-iv.

concern is that providing this information prominently on the bill, e.g. next to the best offer box, will add confusion for customers as noted above.

We also recommend the Government liaise with retailers regarding its own VDO communications from 1 July. Ideally customers would be given consistent messaging around the VDO in both Government and retailer communications.

We support effective requirements for advertising discounts off the VDO

We support the policy intention to ensure customers receive clear, complete and accurate information in advertising, and that confusion is minimised. Giving legal effect to all these intentions is challenging. The prominent disclosure requirements in draft clause 14 are currently unworkable in several forms of advertising and may jeopardise delivering on the Government's intent.

A major issue with the proposed requirements is they do not accommodate retailers advertising state-wide products. The draft Order attempts to place priority on accuracy, by basing all comparisons on the VDO prices set by distribution zone, moving it somewhat closer towards communicating what customers would actually pay. However, any calculation of annual VDO costs is necessarily an abstraction, given that a customer's bill and discount would only equal the advertised values if:

- the customer resides in that particular distribution zone
- the customer knows their distribution zone
- their consumption matches the benchmark consumption profile.

All of these conditions are unlikely to be satisfied. The customer would need to be able to determine from the advertised information, including terms, conditions and consumption benchmarks, how their discount and final bill would be affected. These points highlight that accuracy may not be achievable or high levels of transparency may not deliver benefits in practice.

Our strong preference is that simplicity should be given more weight in advertising. Accordingly, we recommend the Order provide for the calculation of a state-wide VDO annual cost, as a weighted average of VDOs across all distribution zones. Weights could reflect customer numbers, consumption or a combination of both. While an average VDO annual cost abstracts from the accuracy of the distribution-specific VDO comparisons, it has the advantage of being repeated in all advertising and could therefore be more trusted and less confusing as a single reference point for all offers. The draft Order requirements would result in customers seeing multiple comparison points, and retailers could cherry-pick a particular distribution zone and associated VDO that maximises the apparent discount of their market offers.

We would also encourage the Government to reconsider requirements to disclose the calculation of discounts, terms and conditions and other information on advertising. The requirement in draft clause 14(2)(c) appears to allow some flexibility in when and how certain disclosures take place (i.e. directly with the customer) and could be made more explicit with respect to advertising requirements in clause 14(8). This information is voluminous and could not be feasibly communicated on advertising on radio, television and on some digital channels (e.g. webpage banners).

We recognise the need for transparency and simplicity in order for customers to understand competing offers. However some practicalities must prevail in order for this to happen. As such, we encourage the Government to accommodate use of disclaimers, 'one click' methods and other means to encourage customers to seek information from retailers. For example, customers could be directed to a landing page on their retailer's website that contains further details, should customers be interested in further information. If the customer is able to provide their own usage estimate, offer comparisons could be tailored to that customer rather than be based on benchmark usage profiles. Overall this would better ensure all offer details, including what the customer is likely to pay, are accurately communicated, rather than having to rely on the customer inferring this from advertising information.

The legislative functions of the ESC should be preserved

Various parts of the draft Order deal with the ESC's legislative functions. We have concerns about:

- Clause 3 – the VDO Objective, namely an offer that is simple, trusted and safeguards customers from high prices.
- Clause 11(10)(a) – this disapplies a requirement of the Essential Services Commission Act for the ESC to have regard to the return on assets in the regulated industry.
- Clause 11(10)(b) – this disapplies the requirements of the Essential Services Commission Act for the ESC to ensure its VDO determinations deliver an expected positive (or zero) net benefit, and to take into account and articulate any trade-offs between costs and service standards.

We disagree with each of these proposed clauses, none of which are explained in the Government's consultation paper. They are inconsistent with regulatory best practice and are unlikely to be in the long-term interest of Victorian consumers.⁶

VDO Objective and ESC's consideration of net benefits

The draft VDO Objective and removing the requirement for VDO determinations to deliver a net benefit appear to be linked. The draft VDO Objective only refers to the VDO acting as a 'safeguard' whereas the Government's terms of reference also indicated it would act as such "without impeding the consumer benefits experienced by those who are active in the market".⁷ The ESC's draft advice considered this second element was a "statement of policy design rather than a factor which we must take into account when developing a pricing methodology."⁸

The Government has not taken the opportunity to clarify its position in its consultation paper. We infer from the draft VDO Objective, and clause 11(10)(b) in relation to net benefits, that the Government is not concerned with whether the VDO affects the benefits to those active in the market, and that the ESC should also disregard these impacts in making its determinations. The Government should explicitly state its intentions. We would be highly concerned if the Government were focussed solely on

⁶ Section 8(1) of the Essential Services Commission Act.

⁷ <https://www.esc.vic.gov.au/sites/default/files/documents/retail-market-review-victorian-default-offer-terms-of-reference-20181221.pdf>

⁸ Essential Services Commission, *Victorian Default Offer to apply from 1 July 2019 – Draft advice*, 8 March 2019, p. 12.

delivering benefits for the 6% of Victorian customers on standing offers while consciously disregarding the remaining 94%.⁹

Our view is that the VDO Objective should retain some reference to preserving the benefits to customers who engage in the market, as articulated in the Government's terms of reference to the ESC.

The Government has not released details of its analysis but we understand it has determined that the VDO will deliver a net benefit to customers. This is a matter of some contention, but we take the Government's decision at face value, noting the Australian Competition and Consumer Commission (ACCC) also found that a form of retail price regulation appeared justified in the markets it examined. The Government may consider it unnecessary or a waste of public resources for the ESC to repeat such a cost-benefit assessment.

However, we consider it contravenes basic policy design and public administration principles for a government to direct an independent regulatory agency to disregard a requirement like section 33(4)(a) of the Essential Services Commission Act. Provisions like this prevent regulatory interventions that are not in the public interest, and have their origins in the competitive economic reforms that have delivered substantial productivity improvements to the Victorian economy and revenue to state budgets.¹⁰ That the draft Order contains this exclusion suggests to us that the Government has identified this provision as being potentially in conflict with the VDO. The ACCC has already raised concerns about the VDO's effect on competition and on the long-term interests of consumers.¹¹ The AEMC has also cast doubts about the impact of price regulation on the broader market.¹² The impact of the VDO on the market is expected to be central to the ESC's forthcoming Victorian Energy Market Reports, that is, unless the Government amends the ESC's obligations there as well.¹³ The impact of the VDO will also be scrutinised by the ACCC, AER and AEMC in their similar market monitoring roles.

Regardless of whether the policy decision to implement the VDO stands on its own merit, the ESC must be guided by cost-benefit considerations for the various matters under its discretion. This includes, for example, whether to extend the VDO to non-flat tariffs, whether to set the VDO as a maximum or prescribed price, whether to extend or vary price determinations etc.

Should the Government maintain a view that market impacts be excluded from the VDO Objective, we urge that clause 16 of the draft Order contain a requirement that the Order's review consider whether the VDO is delivering net public benefits or is promoting the long-term interests of consumers. As currently drafted, a review under clause 16 would only consider if the Order is effective in protecting the small proportion of customers that are unwilling or unable to engage in the market. We also consider that the review under clause 16 should be completed within twelve months of the Order taking effect. We anticipate there will be various implementation issues that will require 'fine-tuning', and five years may be too long to wait to fix any issues that may arise.

⁹ Essential Services Commission, *Victorian Energy Market Report 2017-18*, February 2019, p. 39.

¹⁰ See, for example, as per the Competition Principles Agreement 1995 (clauses 5(1) and (5)) and in the subsequent legislative 'gate-keeping' functions of all state and territory governments. <https://www.coag.gov.au/sites/default/files/agreements/competition-principles-agreement-amended-2007.pdf>

¹¹ https://www.esc.vic.gov.au/sites/default/files/documents/4_4_2019%20VDO%20draft%20advice%20submission%20ACCC.pdf

¹² <https://www.aemc.gov.au/market-reviews-advice/advice-coag-energy-council-default-offer>

¹³ See the ESC's reporting obligations under sections 54V and 54W of the Essential Services Commission Act 2001 and section 39A of the Electricity Industry Act 2000.

ESC's consideration of return on assets for the regulated industry

We assume the intention of excluding the operation of sections 33(3)(c) and (d) of the Essential Services Commission Act is because the Order requires the ESC to determine a retail operating margin rather than a return on assets (or capital), which is the case for some other industries regulated by the ESC.

This does not mean the ESC should not be required to "have regard to" returns on assets in making its determinations on operating margins, or on other elements of the cost stack involving risk. The ESC already considered benchmark returns on capital in making its draft advice¹⁴, and will likely do so again in its final advice. Other regulators have also used information on expected returns on capital in setting regulated retail margins for electricity retail businesses.¹⁵

ESC consideration of service standard and cost trade offs

The requirement in section 33(4)(b) of the Essential Services Commission Act reflects basic regulatory economics and must not be excluded by the Order. The ESC cannot make a judgement on efficient costs without at least implicitly passing judgement on what level of service standards this equates to. The draft Order does not, and need not, require the ESC to develop explicit service quality measures.

Regulatory practice can involve assuming that current or historic average levels of service are acceptable to customers, however the ESC should be able to pass judgement on this in considering the prudent scope of activities all along the cost stack. As noted in our detailed comments in the table below, the Order should allow for the ESC to explicitly consider the "prudent" scope of activities in determining all efficient costs, not just in the case of "modest" customer acquisition and retention costs. Without any regard to service standards, regulatory theory also suggests price caps result in a deterioration of service quality, which undermines the safeguard aspect of the VDO and is also not in the long-term interest of consumers.

Other matters not dealt with in the draft Order

We recommend retailers not be required to gazette regulated prices. We understand from discussions with departmental staff that retailers, rather than the Government, must currently gazette VDO prices. We note that the VDO to apply from 1 July to 31 December 2019 will have prices prescribed in the final Order. The requirement for all retailers to re-publish these same prices imposes a material cost of compliance, which is eventually passed onto consumers, but with no added benefit for consumers.

It also appears that the Order does not contemplate the existing requirements in section 35(1) and (3) of the Electricity Industry Act for retailers to gazette regulated prices at least one month prior to taking effect. This significantly impacts the procedural and timing aspects of the Order and must be addressed.

The ESC's VDO determinations from 1 January 2020 may involve a maximum set of prices rather than prescribing what retailers must charge, which could justify having retailers separately prepare and gazette their own compliant standing offer prices. Specifically, there could be a requirement on retailers to gazette prices only where they

¹⁴ Essential Services Commission, *Victorian Default Offer to apply from 1 July 2019 — Draft advice*, 8 March 2019, pp. 58-9.

¹⁵ See for example, IPART, *Review of regulated retail prices and charges for electricity from 1 July 2013 to 30 June 2016 — Electricity - Final Report*, June 2013, pp. 90-95.

differ to the VDO values determined by the ESC. We note, however, that the process for the Default Market Offer involves the ACCC monitoring retailers' compliance. This imposes considerably less cost and complexity than gazettal, and the ESC would need to monitor gazetted prices in any case.

As we have raised with the ESC, there is a risk to retailers of having customers on flexible network tariffs request to be placed on the flat tariff VDO at the retail level. There appears to be some expectation that the ESC will develop a flexible VDO that may solve this issue, however the ESC could ultimately determine that this is inconsistent with the VDO Objective to have a "simple" pricing option for customers. Even with a flexible tariff VDO, there may be procedural or administrative barriers in ensuring customers switching to the VDO are assigned to an appropriately structured network tariff. These issues were previously encountered and addressed to some extent by clauses 8 to 10 of the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013¹⁶, which could be adopted with some modification for the VDO Order. These provide for a customer to revert back to a flat network tariff from a flexible tariff, with requirements on distribution businesses to have a corresponding flat tariff.

¹⁶ <http://www.gazette.vic.gov.au/gazette/Gazettes2013/GG2013S216.pdf#page=1>

EnergyAustralia comments on specific clauses of the Draft VDO Order

Draft Clause	Description	EnergyAustralia comment
3	Objective of the Victorian default offer	<p>The Objective should refer to market impacts.</p> <p>If market impacts are not included, review in clause 16 should refer to long-term interests of consumers or similar concept.</p>
6(4)	Cross reference error	This should refer to (2) and (3).
7(1)	Obligation to make regulated standing offers available	The drafting should clarify the intent that not all retailers are obliged to offer the VDO, just those with Standing Offers.
7(2) and (3)	Obligation to inform customers on bills how to access the VDO	<p>We consider these requirements add little benefit and potential confusion for customers and should be deleted.</p> <p>Otherwise, retailers should be given the flexibility to notify customers how to access the VDO "on or with" the electricity bill. This clause should also recognise transitional issues in amending bills for 1 July 2019, including different requirements that take effect from 1 October 2019.</p> <p>The requirement for information to be "prominent" should be reconsidered or potentially removed. The VDO should not be elevated to the same apparent importance as 'best offers' information on the bill. That is, retailers should have flexibility on where to place this information on or with the bill.</p>
9	Commission to determine VDO prices at least 42 days prior to a regulatory period	<p>This clause should be amended to reflect minimum time needed for ESC to accommodate network price determinations e.g. "no less than 5 business days after network tariffs are published, and no later than 42 days prior..."</p> <p>Longer lead times will be required for more complex instances of VDO compliance, for example, the inclusion of a flexible VDO and where the ESC sets maximum rather than prescribed prices.</p>

Draft Clause	Description	EnergyAustralia comment
10(3)	ESC can vary the length of VDO determinations by six months	This requirement should be accompanied by processes for consultation and stakeholder notification, similar to those in clause 12.
11(1)	ESC approach and method must be in accordance with s. 33(2) of Essential Services Commission Act (and in turn the objectives of the Electricity Industry Act)	The VDO's design, by excluding competitive allocation, is potentially in conflict with one objective of the Electricity Industry Act, "to promote the development of full retail competition".
11(4)(d) and 11(5)	"modest" CARC costs and definition of modest	<p>The lengthy definition of "modest" and considerations in clause 11(5) are unlikely to provide sufficient or meaningful guidance to the ESC.</p> <p>Including the concept of "modest" appears to reflect the need to combine 'efficient' costs with a 'prudent' scope of services or benchmark behaviour, as found in other regulatory regimes.</p> <p>The Government appears to consider that customer acquisition and retention costs currently incurred in Victoria reflect practices that are imprudent or likely to cease with the introduction of the VDO, even though the costs incurred may be efficient.</p> <p>The Commission will need to consider the prudent level or scope of all activities in the cost stack. This should be addressed via a broader reference in subclause 11(3) e.g. "efficient costs of a retailer acting prudently..." etc</p>
11(6)	"maximum" retail operating margin	<p>We suggest "maximum" be deleted as it is not clear what this means in the context of the ESC determining a margin. By the operation of regulated prices, all elements of the cost stack are effectively maxima.</p> <p>As with "modest" customer acquisition and retention costs, the principles that margins "not be excessive" and be "reasonable in all the circumstances" are unlikely to provide practical</p>

Draft Clause	Description	EnergyAustralia comment
		<p>guidance to the ESC or other stakeholders, particularly in addition to the overriding requirement in clause 11(3) that the ESC base prices on “efficient costs”.</p> <p>As with other regulatory regimes, the ESC should be required to have regard to the risks involved in providing the regulated services, including consideration of margins expected in providing services of comparable risk.</p>
11(10)(a); 11(11)	ESC not required to consider return on assets	These clauses should be deleted. Having regard to “return on assets” under sections 33(3)(c) and (d) of the Essential Services Commission Act would inform the ESC’s decision on margins under the Order.
11(10)(b)	ESC not required to ensure expected costs its VDO determinations do not exceed benefits; ESC not required to consider trade-offs between costs and service standards	<p>Allowing the ESC to make a determination where the costs potentially exceed the benefits contravenes basic regulatory and policy principles. There are detailed elements of the VDO implementation that the ESC should also consider on net benefit grounds.</p> <p>Setting efficient costs cannot and should not be done without knowing what service standards are being achieved.</p>
12(6)	Commission to give retailers adequate notice of variation to VDO determination	Timing considerations around VDO determinations and variations should be considered in tandem with public gazettal requirements. We consider gazettal to be burdensome and unnecessary.
13	Consultation on VDO determinations	This clause should explicitly require the ESC to undertake some form of consultation.
14	VDO reference price for advertising discounts	The provisions of this clause are unclear and require revision. The “prominent” disclosure requirements are unworkable for some forms of advertising, and advertising offers by distribution zone will also add confusion. We propose the Order provide for a state-wide VDO for the purposes of comparison. The requirement to disclose all terms and conditions should be amended to reflect the capacities afforded by different media.

Draft Clause	Description	EnergyAustralia comment
		<p>We support the ability of retailers to disclose certain information directly to customers, as envisaged by clause 14(2)(c), and this should be clarified against the operation of 14(8) which appears to require all disclosures in advertising.</p> <p>“Benefit” should be a defined term e.g. anything that affects the prices or bill of the customer, rather than non-price benefits.</p> <p>These provisions only apply to offers that have a discount (or other benefit), which seems inconsistent with the policy intent as offers that are not discounted would not need to be compared to the VDO.</p>
16	Review of the Order	<p>This review should accommodate market impacts (e.g. via amendment to the VDO Objective) or otherwise refer to long-term interests of consumers or similar principle.</p> <p>This review should be completed within twelve months of the Order taking effect.</p>
Schedule 3	Calculation of annual costs for purposes of comparison/ discounting	<p>The formulae and usage allocations do not accommodate all the flexible tariffs on offer. This schedule needs parameters for different daily usage and seasonal consumption values. Clause 14(7) also requires reconsideration and could result in material errors in annual cost calculations.</p> <p>This schedule needs to prescribe methods applicable in all cases to all retailers – we have strong concerns at the drafting of clause 14(5)(b) as a potential “catch-all” that is likely to result in divergent practices between retailers and potential gaming.</p>