

Australian Energy Market Commission

FINAL REPORT

2019 RETAIL ENERGY COMPETITION REVIEW

28 JUNE 2019

REVIEW

INQUIRIES

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

E aemc@aemc.gov.au
T (02) 8296 7800
F (02) 8296 7899

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ABOUT THE AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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SUMMARY

- 1 The Retail energy competition review is an annual report that provides an assessment of the state of competition in the retail energy market and the outcomes that consumers are achieving from it. It is an important tool for mapping progress over time and identifying strategic priorities for retail market reform.

Context

- 2 Our 2018 review found that competition was not delivering the expected benefits to energy consumers. After a long period of stable or improving consumer satisfaction and confidence, levels of residential and small business consumer satisfaction and confidence with the retail energy market had declined significantly. In particular, the Commission concluded that the predominant form of retail energy offers at the time — large, pay-on-time conditional discounts, off inconsistent and variable base rates — were not benefiting consumers.
- 3 Major regulatory changes have been made to the retail energy market in the past year. The Victorian and Australian Governments have made changes which will re-introduce a form of retail electricity price regulation on 1 July 2019. The Australian Government's changes also introduce a reference price for discounts to be advertised against.
- 4 This report is the last retail competition review prior to the introduction of these changes. Future reports will focus on whether recent regulatory changes have benefited consumers and how they can be improved to act in the long-term interests of consumers.

Analysis of the retail market

- 5 The Commission adopts a structure-conduct-performance framework to analyse the state of retail competition and the outcomes it is producing for consumers. This framework recognises that no one indicator can reveal the state of competition. It uses a combination of metrics to assess how the structure of a market influences the conduct of participants and in turn the performance of the participants and outcomes for consumers as a whole.
- 6 This year we have also conducted specific research into:
- how retailers are innovating in relation to behind the meter battery technology
 - a mapping analysis of consumer protections for energy consumers across relevant Australian legislation
 - the voluntary actions retailers are taking to address customers in financial difficulty.
- 7 The Commission has done this because we consider this report should build on the assessment of the current state of competition to identify policy challenges to be addressed in the future.

Electricity

- 8 Outcomes for consumers in contestable retail electricity markets improved this year. Increased competition led to decreases in prices and reductions in market concentration in all

markets except Tasmania. New and emerging retailers are driving lower prices and the market is starting to shift towards simpler and more comparable pricing structures, and greater product innovation. Consumer satisfaction and confidence increased, approaching 2017 levels.

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Market structure: There were improvements in the key structural competition metrics:

- The number of competitors in the market increased. Five new retail brands entered the market and five existing brands expanded into new jurisdictions.
- Switching rates increased, reaching a record high NEM wide average of 24.4 per cent. Reflective of the rise of tier 2 retailers, the greatest increases in switching rates were switching from the big 3 to tier 2 retailers.
- Market concentration continued to decrease in all markets other than Tasmania. The percentage decrease in market concentration was the largest recorded in the past 10 years for Victoria and the Australian Capital Territory, and the second largest for South East Queensland.
- Reflecting these changes, for the first time, the big 3 no longer hold the three largest market shares in South East Queensland and South Australia.

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Despite this, retailers consider that barriers to entry and expansion in the market are likely to increase in the future. In particular, new and emerging retailers noted in interviews with the Commission that the introduction of a regulated cap on standing offers will decrease product innovation and switching, making it harder for new and emerging retailers to enter and expand.

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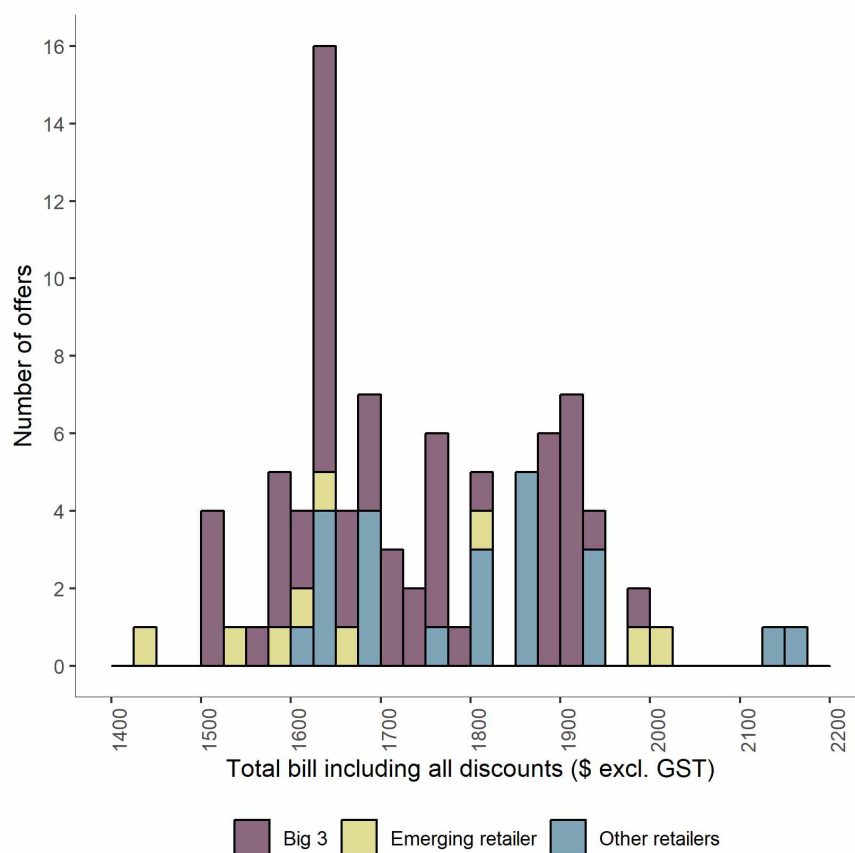
Conduct — price levels: Retail prices generally decreased over the past year. Key indicators of price changes include:

- Median standing offers fell in all deregulated jurisdictions. South East Queensland saw the largest fall of four per cent.
- Market offers generally fell further than standing offers across deregulated jurisdictions. There continues to be significant opportunities for consumers to save from shopping around. Changes in market offers included:
 - The median market offer fell in all deregulated jurisdictions. The largest falls were in South East Queensland where the median market offer fell by seven per cent.
 - The minimum market offer fell across all regions except Victoria where it increased marginally.
 - The median offer was generally closer to the minimum offer across the jurisdictions and particularly in Victoria and New South Wales, with the majority of offers in the lower range of the distribution.
- The proportion of customers on standing offers continued to decline and this decline accelerated in most jurisdictions. As of December 2018 six, nine, 14 and 15 per cent of small customers were on standing offers in Victoria, South Australia, New South Wales and South East Queensland respectively. By 1 July 2019, when the regulated price cap on standing offers is introduced, it is likely that on average less than one in nine customers across these jurisdictions will be on standing offers.

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In the past year deregulated retail energy markets have facilitated the entry and expansion of new retailers. As displayed in Figure 1, these retailers are offering many of the lowest priced offers in the market and the key market structure metrics indicate consumers have responded by switching retailers to take up these offers.

Figure 1: Distribution of representative bills by retailer type -- Energex



Source: Energy Made Easy data, AEMC analysis

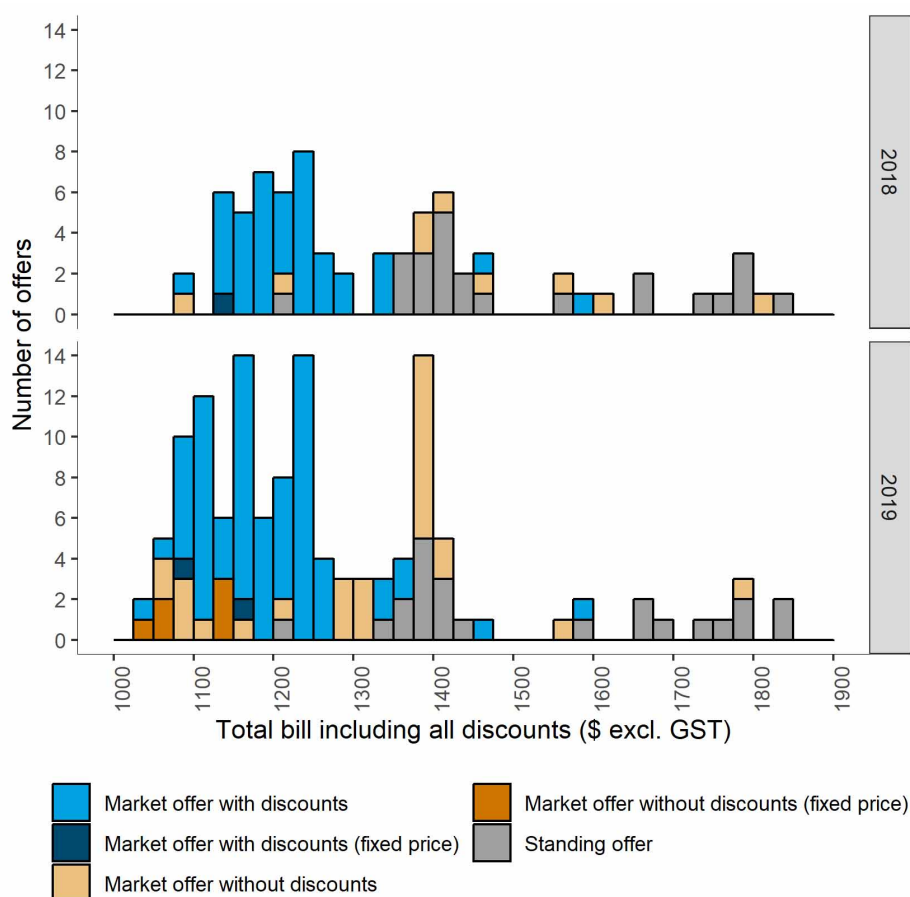
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Conduct — pricing practices: The market shifted towards simpler and more stable priced offers:

- There was an increase in the number and proportion of simply priced products available in the market. For example, the proportion of offers without conditional discounts across the entire market rose by 10 per cent. New and emerging retailers, such as Tango Energy, Energy Locals and ReAmped Energy based their business models on providing no discount offers. These offers should make it easier for consumers to compare retail market offers.
- There was an increase in the number and proportion of fixed or capped price offers available. For example, the proportion of fixed or capped price offers rose from only one per cent of the market to seven per cent this year. These offers provide consumers with

- greater levels of price and bill certainty and reduce the need for them to monitor price changes or switch offers as often.
- As displayed in Figure 2, these fixed price and no discount offers are often combined in one offer and are the cheapest, or amongst the cheapest in the market. Retailers noted the significant uptake of these offers over the past year in interviews with the Commission.
 - A number of new, innovative pricing structures were also introduced. These ranged from simple plans similar to mobile phone packages from amaysim, to dynamic plans which fully pass through network and wholesale costs from Energy Locals in partnership with Amber Electric.

Figure 2: Distribution of representative bills by offer type – Ausgrid



Source: Energy Made Easy data, AEMC analysis

analysis and targeted regulatory interventions.

- 15 The introduction of the reference price element of the *Competition and Consumer (Industry Code — Electricity Retail) Regulations 2019* (DMO Code) on 1 July 2019 is intended to assist consumers in comparing offers. The Commission will incorporate this change in its monitoring, analysis and rule change processes. This will commence with the Commission initiating rule changes in July 2019 related to restricting conditional discounts and information requirements for customers on standing offers.
- 16 **Conduct — products and services:** Greater levels of retail competition led to consumers being able to access a wider range of products and services:
- Leveraging off solar PV and battery technology, new business models, products and services were trialled, tested and offered to consumers. Sophisticated global battery providers such as Tesla and Sonnen partnered with new and emerging retailers to provide battery and solar PV based retail offers to consumers.
 - Gradual increases in product bundling from previous years continued. This included increases in the number of electricity retailers offering retail gas, retailers linking their products to mobile phone services or broadband, and discounts attached to taking up other products (e.g. NRMA membership).
- 17 The continued diversification and innovation of products and services is benefiting consumers through offers that meet their preferences. However, this greater array of product availability enhances the need for consumers to be provided with effective tools and advice to allow them to compare and select retail offers they want.
- 18 **Performance — consumer satisfaction and confidence:** Energy Consumers Australia's residential consumer sentiment survey reported that consumer satisfaction increased. In particular, the percentage of consumers confident:
- in their ability to make choices increased by four per cent from April 2018 to 62 per cent
 - in the availability of easily understood information increased by three per cent from April 2018 to 53 per cent
 - the market is working in their long-term interests increased by six per cent from April 2018 to 31 per cent.
- 19 While these increases are positive, they are coming off a significant low in 2018 and have not yet returned to the highs seen in April 2017.
- 20 In 2018, following strong criticism on the low levels for trust in the energy sector and pressure on the industry to do more for consumers, a number of energy businesses worked together to develop the Energy Charter. The Charter was signed in January 2019 by 12 of the largest electricity and gas companies (six of which are retailers) which sets out their commitment to energy consumers. The Commission supports the approach from energy business to improve consumer outcomes as, in the Commission's view, regulation does not always solve poor retailer practices.
- 21 **Performance — retailers**
- 22 In previous reviews the Commission has reported, in a limited way, on the gross margins of

the big 3, based on voluntarily provided information. In the absence of information gathering powers, the Commission is not able to provide a complete picture of the margins retailers are realising in the electricity market. However, the Australian Competition and Consumer Commission's (ACCC) Retail electricity pricing inquiry reviewed margins and its information gathering powers allowed it to take a more in-depth look at the margins of all retailers. In its final report, while noting Victoria and New South Wales have the highest margins, the ACCC made no finding that it considered retail margins are inefficient or that retailers are earning excessive profits.

Gas

- 23 Market shares, switching rates and the types of products and services in the retail gas market were steady over the year. Similar to previous years, gas continued to be considered as a secondary related product to electricity rather than a stand-alone service. In particular, retailers in Victoria noted that it is difficult to be an electricity only supplier as many customers prefer dual fuel retail offers.
- 24 The form of retail price regulation introduced by the Commonwealth and Victorian Governments does not apply to gas. The Commission will include in its monitoring of the impact of these price regulations on retail gas prices.

Battery and related technologies — innovation and business models

- 25 The Commission's research into behind the meter battery products demonstrates that de-regulated retail markets are resulting in product innovation. The different financial positions, skill sets and business philosophies encompassed within NEM retailers has resulted in experimentation, innovation and the introduction of a range of behind the meter battery related products. As the cost of battery technology declines over time and government subsidy schemes are introduced, these products will become a more prominent feature of the market and it is important that regulatory barriers do not prohibit this innovation.
- 26 While innovation is occurring in this space, there are regulatory reforms being implemented and considered that are important to allow the efficient realisation of the value that batteries can provide. The Commission considers these should be progressed. For example, the *Distribution network pricing arrangements* rule change is being implemented by distribution network service providers (DNSPs) and the Australian Energy Regulator (AER), and the *Five minute settlement* rule change is being implemented by the Australian Energy Market Operator (AEMO) and industry. Similarly, AEMO is undertaking virtual power plant trials and the Commission is assessing three *Wholesale demand response mechanism* rule changes.
- 27 The Commission plans to complete similar analysis and assessment of innovation in the retail energy market in relation to electric vehicles retail energy competition review.

Consumers protections

- 28 The National Energy Customer Framework (NECF) and Australian Consumer Law (ACL) are the two frameworks that offer protections to energy consumers in the NEM. The Commission has mapped the consumer protections provided by the NECF and the ACL as the first step in

assessing whether energy consumers are receiving appropriate consumer protections and barriers to innovation are minimised.

29 Energy consumers are protected by the core principles of the ACL's consumer protections for the supply of goods and services. The ACL includes prohibitions to protect consumers from certain conducts that harm effective competition, fair trade and commerce. In addition to the general protections under the ACL, energy consumers are protected by the energy-specific provisions under the NECF for the sale of energy. For example, while both frameworks limit energy retail practices and market participants' behaviour, the NECF provides targeted protections related to energy supply being an essential service, vulnerable consumers and information requirements that are not covered by the ACL.

30 The Commission's mapping exercise highlights that the two frameworks largely complement each other to maintain consumer protections in the provision of energy. However, the market has evolved significantly in recent years in relation to non-traditional energy products and services and the nature and application of the NECF has not adapted to these changes. The AEMC will review the NECF to determine if consumer protections need to be extended to new energy service provision without creating barriers to innovation.

Consumers in hardship or payment difficulty

31 Under the NECF and Victorian payment difficulties framework, retailers are required to provide support and assistance to consumers who may be having difficulty paying their energy bills. From a review of retailer support programs, the Commission has found that there are a range of measures and support options available, however these vary significantly. Larger retailers have a suite of measures and tools available, while smaller retailers have more focussed and targeted options.

32 Across all retailers, the delivery, application and accessibility of programs also varies. Generally, there is inconsistency in how each retailer responds to consumers who identify as having payment and financial difficulty.

33 The Commission notes that there is room for retailers to improve their approach and implementation of the support and assistance they offer to consumers that are experiencing payment and financial difficulty. The key areas for improvement include:

- awareness of protections and support available
- improving early identification programs
- reporting of indicators and measures.

Retail market priorities for 2019-20

Effective comparisons and switching

34 As competition continues to evolve the number of retailers and the range of products and offers available for consumers to choose from continues to increase. This is providing consumers with a wide range of products and services to meet their needs. The market has also responded to problems of confusing pricing structures noted in last year's report with improved availability of simple and stable priced products.

- 35 While these moves are positive, the ability of consumers to effectively compare and consistently access retail offers that they want remains the major issue in the retail market. The Commission's priorities for reform in the retail market in the coming year are therefore:
- Facilitating consumer choice through decreasing switching times. The Commission has received a rule change request from AEMO to speed up the time it takes customers to change retailers. If made, the rule change would mean that all consumers, including those with accumulation meters, would be able to change retailer within 48 hours of the cooling-off period expiring.
 - Rule changes related to advertising and information provision. The Commission will assess rule change requests which seek to place restrictions on the level of conditional discounts and require retailers to notify customers who have been on standing offers for 12 months or more.
 - Providing consumers with effective tools and advice to allow them to select retail offers they want:
 - The Australian Government and the ACCC should implement and enforce a mandatory code of conduct for commercial comparator sites as a priority. These sites are now widely used within the market, but our analysis shows there is little transparency over how many offers they compare, or how commissions from retailers influence their recommendations to customers.
 - The Australian Government should also carry out actions to improve consumer awareness of Energy Made Easy. As the Australian Government's independent market comparison site, Energy Made Easy provides an important tool to allow customers to compare all generally available offers. However, consumer awareness of the site remains low. With the enhancements the AER is making to the website going live at the end of 2019 it is an opportune time to take greater steps to inform consumers of its availability.

Consumer protections

- 36 The competitive retail market should be backed by a strong consumer protection framework for those that need it most. Enhancements to this framework are a key priority for the Commission in the coming year.
- 37 The Commission has proposed fundamental reforms to the regulation of embedded networks (e.g. apartments and shopping centres) so that consumers within these networks receive the same level of consumer protections as all other consumers in the NEM. Consumer protections are particularly important for embedded network customers because the nature of their supply arrangement means they often do not have access to retail choice and cannot switch away from suppliers that do not meet their needs. The Commission's reforms include both rule and law changes and propose that these new arrangements be applied to all new and some pre-existing embedded networks. We recommend that the COAG Energy Council makes the proposed law changes and submits rule changes to the Commission for priority action.
- 38 Building on the consumer protection mapping undertaken in this review, the Commission will analyse changes needed to update the NECF in relation to non-traditional energy services

and products. This analysis will likely start with assessment of appropriate consumer protections for distributed energy resources.

Retail market monitoring and advice

- 39 The Commission will continue to monitor the effectiveness of retail energy markets and the impacts that regulatory changes have on retail energy markets. For example, the Commission will report on the effects of the introduction of a regulated cap on standing offers and the introduction of a reference price.
- 40 The Commission has also noted that policy-makers should have access to more information about the retail offers that small consumers are on in order to assess the effectiveness of retail competition. The Commission will work with other market bodies, industry and government to make data on the number of customers on each market offer available in a form that enhances the transparency of the impact of retail competition on the long-term interests of consumers.
- 41 The Commission will also monitor and report on the effect that changes to retail markets are having on the wholesale market. The ability of retailers to contract with generators over multiple years is a key feature of the NEM because it supports generation investment and reduces risk for generators and retailers. Regulating retail prices for 12 months at a time risks limiting retailers' willingness to enter into contracts for longer than 12 months because they will not have control or knowledge of the prices they will be able to charge customers.
- 42 It will also be important to take into account these retail market regulatory changes when designing changes within the wholesale market. For example, the introduction of the Energy Security Board's Retailer Reliability Obligation places obligations on retailers to contract with generators. It is important that the design of these changes takes into account regulations in the retail market. The Commission will continue to provide advice to these processes.

A guide to this review

- 43 The Commission has provided various formats and levels of summaries for the different audiences that engage with the Retail energy competition review. The formats and their target audience are:
- Communications materials and [microsite](#), including:
 - Jurisdictional summaries: for stakeholders interested in a snapshot of outcomes in each jurisdiction.
 - Data portal: for stakeholders seeking to access the data behind the report.
 - Summaries of each research piece. For stakeholders interested in a summary of each research study.
 - This final report, including:
 - Executive summary: for stakeholders interested in reading a short document to understand the report, including context and analysis, snapshots of each research piece and the Commission's retail market priorities for 2019.

- Summary of key statistics: for stakeholders wanting a snapshot of key market statistics.
- Summary of recommendations. For stakeholders wanting to know the Commission's recommended actions in the coming year.
- Full report: for those wanting the Commission's in-depth analysis. Broken down in to:
 - Chapters 1 and 2 provide background: for stakeholders who want to understand the context and external factors that influence retail competition.
 - Chapters 3 to 7 provide the Commission's assessment of the state of retail competition: for stakeholders interested in the detailed analysis of the market contained in the structure-conduct-performance framework.
 - Chapters 8 to 10 provide the three research studies: for stakeholders interested in detailed analysis of behind the meter battery technology, consumer protections or retailers programs for customers in financial difficulty.

44 In this year's review we have changed the publication approach to include information that is specific to individual jurisdictions on the [microsite](#) and not in this Final report. In addition, within the [microsite](#) the Commission has added a data portal. This allows stakeholders to access the data that the Commission has used to conduct its analysis.

45 The Commission will be carrying out a round of stakeholder engagement after publication of the report. Stakeholders who are interested in discussing the Review are welcomed to contact Commission staff to organise a time for discussion.

Recommendations and actions for the AEMC

46 In this report the Commission has made a number of recommendations for governments and market bodies, and noted a number of areas the AEMC will action, that will:

- support the continued evolution of the market
- assist consumers in seeking information to allow them to make more informed decisions
- improve consumer protections.

47 These are outlined below.

BOX 1: SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1: EMBEDDED NETWORKS

In June 2019, the AEMC published its final report setting out a new regulatory framework for embedded electricity networks, and drafting instructions and amendments for recommended law and rule changes to give effect to the new framework. The new framework will elevate embedded electricity networks into the national regulatory regime, and improve consumer protections and access to retail market competition for embedded network customers.

It is recommended that the COAG Energy Council progress the recommendations made in the Commission's *Updating the regulatory frameworks for embedded networks review* in order to

strengthen protections and improve access to competitive retail offers for customers in embedded networks.

The DMO Code that will come into effect on 1 July 2019, excludes embedded networks from the definition of a small customer. To provide consistent consumer protections the Commission recommends that the Australian Government review the DMO Code with a view to including embedded network customers. The Commission notes that similar issues with consistent consumer protections, for embedded network customers exist in Victoria, with the Victorian Default Offer.

RECOMMENDATION 2: COMMERCIAL COMPARISON SITES

As recommended by the Commission in the 2018 Review and subsequently by its ACCC in the Final retail electricity pricing inquiry report, the Australian Government should develop a mandatory code of conduct for third party comparison sites to improve the ability of consumers to find the best retailer and energy plan for their circumstances. This should include requirements to provide consumers with information about the commercial relationship between retailers and the site.

RECOMMENDATION 3: ENERGY CHARTER

In 2018, following strong criticism of the low levels for trust in the energy sector and pressure on the industry to do more for consumers, a number of energy businesses worked together to develop the Energy Charter. The Commission supports the approach from energy businesses to improve consumer outcomes through the Energy Charter and encourages more widespread adoption of the Energy Charter.

RECOMMENDATION 4: CUSTOMER NUMBERS BY NETWORK REGION

Currently, despite market structure developments occurring at a network level, market share data is only publicly available at a jurisdictional level. More granular publicly available data is required to allow the Commission and policy-makers to better analyse and report on the emerging market structure. The Commission therefore recommends that the AER require that retailers provide data on customer numbers (including customers on market and standing offers) by network region.

RECOMMENDATION 5: ENERGY MADE EASY

Energy Made Easy provides an important tool to allow customers to seek out information on offers that might be best for them. The AER will have an enhanced website go live at the end of 2019 with iterative changes made through to July 2020. The Commission recommends that the Australian Government carry out actions to improve awareness of the enhanced Energy Made Easy to allow consumers to benefit from the website.

RECOMMENDATION 6: NATIONAL ENERGY REGULATORY CONSISTENCY

Consistent with previous years, the Commission recommends that states and territories recommit to harmonising energy regulation wherever possible to reduce the costs borne by customers where retailers are required to comply with multiple regulatory frameworks.

Queensland has started a review to assess whether the state specific modifications have resulted in increased efficiencies or adversely affected consumer protection in pursuit of national consistency. The Commission supports these reviews and encourages future jurisdictional modifications to the NECF to be addressed through the rule change process.

BOX 2: SUMMARY OF AEMC ACTIONS

ACTION 1: INCREASING TRANSPARENCY OF RETAIL MARKET OUTCOMES

In the course of the analysis presented in chapter 4 the Commission has noted that there is a lack of available data regarding the number of customers on individual retail tariffs. This restricts the ability of policy-makers to assess whether retail competition, and specific practices and elements of retail competition, are working in the long-term interest of consumers. For example, the Commission has drawn many of its conclusions in this section through combining the availability of offers on Energy Made Easy and Victorian Energy Compare with changes in market share data from chapter 3 or retailer interview information on the popularity of different pricing practices. However, this is an imperfect substitute for actual tariff information.

To address this lack of information, the AEMC will work with other market bodies and industry to make data on the number of customers on specific market offers available in a form that enhances the transparency of the impact of retail competition on the long-term interests of consumers. Under the Energy Charter framework, it is expected that industry would take an active role in this process and support the Commission's work in this space.

ACTION 2: REVIEW OF RETAIL PRACTICES/CONDUCTS UNDER ACL'S PROTECTIONS

In 2019, one of the ACCC's priorities is consumer issues arising from opaque and complex pricing of energy.

The Commission supports the ACCC's focus on compliance with the ACL in the retail energy market. Consistent with the 2018 retail energy competition review, the Commission continues to note concerns with retailer pricing practices. Reviewing retailer practices under the ACL's unfair contract term provisions, misleading and unfair practices and information standards will assist in promoting retail competition practices that deliver better outcomes for consumers. The Commission will work together with the ACCC to improve coordination and consumer protections under both frameworks (NECF and ACL).

ACTION 3: NON-TRADITIONAL ENERGY SERVICES AND PRODUCTS

The Commission will review whether changes to the NECF are necessary to make consumer protections fit for purpose and reduce barriers to innovation. This review will likely analyse the regulatory approach for new non-traditional energy services and products. For example, consumer protections in relation to distributed energy resources.

Summary of measures and indicators

Table 1: Electricity

	MEASURE	TREND	COMMENT
Structure	Barriers to entry, expansion & exit	Stable	<ul style="list-style-type: none"> Claims that increased intervention (namely price re-regulation) and regulatory divergence are increasing retail costs and creating barriers to entry and expansion Continues to be issue with wholesale contract liquidity
	Market concentration / share	Improving	<ul style="list-style-type: none"> Decreased market concentration and share of big 3 at 65% Tier 2 retailers challenging the big 3, with a new market structure emerging Five new retailers and five new brands entered, including one entry into the Tasmanian residential market
Market conduct	Consumer activity & confidence	Improving / mixed	<ul style="list-style-type: none"> Switching increased to 24% overall 17% of residential consumers and 18 per cent of small businesses likely to switch retailer or plan in the next 12 months 4% increase in residential confidence in ability to make decisions in the energy market 13% decrease in business confidence in finding good information to choose an energy plan
	Retail pricing strategy	Stable / improving	<ul style="list-style-type: none"> The proportion of customers on market offers increased Discounts remain the prevalent form of pricing competition Guaranteed or no discount offers (53% of offers) are now more prominent than conditional discount offers (47% of offers)
	Retail energy prices	Stable / improving	<ul style="list-style-type: none"> Residential electricity bills decreased between 2% and 7% per cent (\$19 to \$131), except in AusNet Service's distribution zone where median prices remained static* Business electricity bills decreased between 1% and 8% per cent (\$27 to \$531), except in Powercor's distribution zone where median prices remained static*

	MEASURE	TREND	COMMENT
Market outcomes / performance	Consumer outcomes / Satisfaction	Improving / mixed	<ul style="list-style-type: none"> Improved residential satisfaction: <ul style="list-style-type: none"> level of competition in energy markets increased by 4% customer service increased 1% value for money remained static Mixed business satisfaction: <ul style="list-style-type: none"> choice of electricity provider increased 7% customer service decreased 2% value for money decreased 7%
	Complaints	Increasing	<ul style="list-style-type: none"> Complaints to retailers decreased overall, however exact figures are distorted by changes to how some retailers define a complaint Complaints to ombudsmen increased by 15%
	Retailer margins	Stable / increasing	<ul style="list-style-type: none"> The ACCC found that EBITDA margins in Victoria, South Australia and South East Queensland decreased in 2016-17 and increased in New South Wales.

Note: *Bill estimates are based on the median market offer and indicative consumption profiles in each jurisdiction. There are large differences in business consumption profiles which will affect the bill estimates.

Table 2: Gas

	MEASURE	TREND	COMMENT
Structure	Barriers to entry, expansion & exit	Stable	<ul style="list-style-type: none"> Access to reasonably priced gas commodity and transport a barrier for entry/expansion The Prime Minister's roundtable improved access to gas
	Market concentration / share	Improving	<ul style="list-style-type: none"> Decreased market concentration with gas markets becoming more competitive Big 3 share of the market down to 79% Three new retailers entered the gas market

	MEASURE	TREND	COMMENT
Market conduct	Consumer activity & confidence	Improving / mixed	<ul style="list-style-type: none"> Switching increased — Victoria was the highest (24%) and the Australian Capital Territory one of the lowest (6%) 4% increase in residential confidence in ability to make decisions in energy market 13% decrease in businesses confidence in finding the right information to choose an energy plan
	Retail pricing strategy	Stable / improving	<ul style="list-style-type: none"> The proportion of customers on market offers increased Discounts remain the predominant form of pricing competition
	Retail energy prices	Stable / improving	<ul style="list-style-type: none"> The proportion of customer on market offers increased Residential gas bills decreased between 2% and 11% (\$5 to \$103)
Market outcomes / performance	Consumer outcomes / Satisfaction	Mixed	<ul style="list-style-type: none"> Improved residential satisfaction: <ul style="list-style-type: none"> level of competition in energy markets increased by 4% customer service increased 2% value for money remained static Mixed business satisfaction: <ul style="list-style-type: none"> customer service decreased 2% value for money decreased 8%
	Complaints	Mixed	<ul style="list-style-type: none"> Complaints to energy retailers decreased overall, however exact figures are distorted by changes to how some retailers define a complaint Complaints to ombudsmen decreased slightly

Note: For the review the Commission did not assess retail margins for gas retailers.

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1 INTRODUCTION AND SCOPE OF THE REVIEW

1.1 Purpose

The Australian Energy Market Commission's (hereby referred to as the AEMC or the Commission) 2019 retail energy competition review (Review) assesses the state and possible future development of retail competition, and the outcomes small customers are experiencing in the national electricity market (NEM) and gas markets.¹ Based on this assessment the review makes recommendations to enhance competition and improve consumer outcomes.

1.2 Market definition

The review covers residential and small business consumers in retail electricity and gas markets in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Victoria.²

Each of the jurisdictions is considered as a single geographic market with two product markets: electricity and gas. The exception is Queensland, which is considered as two geographic and product markets: South East Queensland and regional Queensland.³

1.3 Assessment framework

The Terms of Reference for the review from the Council of Australian Governments (COAG) Energy Council specify indicators to assess when considering the effectiveness of competition. These are:

- independent rivalry within the market
- the ability of retailers to enter the market
- the exercise of market choice by customers
- differentiated products and services
- price and profit margins
- customer switching behaviour.

Consistent with the approach taken in 2018, this review considers these indicators and others within a structure-conduct-performance analysis framework. The framework assists in assessing how the structure of a market influences the conduct of participants and in turn the performance of the participants and the market as a whole. Within the framework:

1 The AEMC conducted jurisdiction by jurisdiction reviews from 2007 to 2013. This was in response to the 2004 commitment under the Australian Energy Market Agreement to remove retail price regulation where effective competition could be demonstrated. From 2014, following revised terms of reference from the Standing Council on Energy Resources (now the COAG Energy Council), the reviews were conducted on a NEM-wide basis. The focus of the reviews moved to the state of competition and outcomes for consumers in competitive retail energy markets.

2 Each jurisdiction has a specific consumption threshold that defines a small customer for legislative and regulatory purposes. The maximum annual consumption thresholds are: South Australia — Electricity 160MWh, Gas 1TJ; Australian Capital Territory — Electricity 100MWh, Gas 1TJ; New South Wales — Electricity 100MWh, Gas — 1TJ; Victoria — Electricity 40MWh, Gas 1TJ; Tasmania — Electricity 150MWh, Gas 10TJ; Queensland — Electricity 100MWh, Gas 1TJ.

3 South East Queensland and regional Queensland have differences that justify their treatment as separate markets. South East Queensland has approximately 2.1 million small customers in a geographic area of 25,000 square kilometres, compared to regional Queensland which has about half the customer numbers in an area greater than one million square kilometres.

- **Structure** refers to factors that govern and shape the activities within a market. These are often relatively stable over time, although that depends on the nature of the products and services on offer, and the rate of technological change in the market. In this review structural factors include:
 - the level of market concentration
 - the level of rivalry in the market
 - barriers to entry, expansion or exit.
- **Conduct** refers to the way buyers and sellers behave in the market. In this review, observable indicators of retailer conduct are their advertising, price and non-price strategies, and other forms of differentiation. For consumers, the indicators include assessment of engagement and activity, such as switching.
- **Performance** refers to the results that firms and consumers achieve in the market. In this review, retailer margins and profitability are referenced as performance indicators, whereas for consumers the indicators include consumer satisfaction, complaints and disconnections.

1.4 Specific focus areas for this year's review

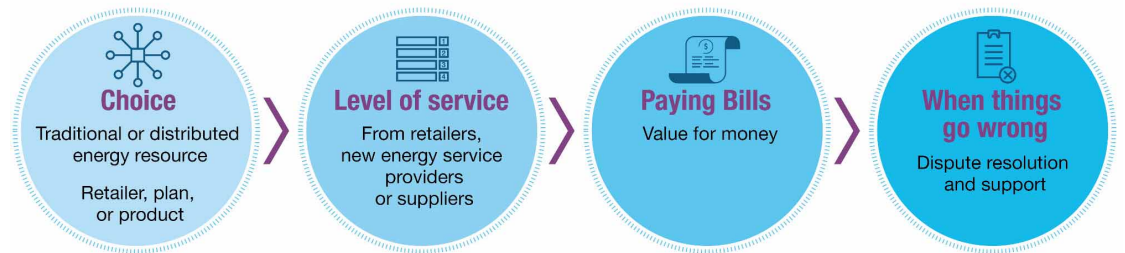
This year's review has three new areas of focus that provide a deeper understanding of specific aspects of the market. These are:

- **How the retail market is responding to the uptake of battery technology.** The uptake of battery technology increases with the decreasing cost of battery technologies and the introduction of state and federal subsidy schemes. This review assesses how retail competition within the NEM is servicing consumers through innovation related to battery storage technology.
- **The National Energy Customer Framework (NECF) and Australian Consumer Law (ACL).** This review provides an overview of the role of the NECF and ACL in providing consumer protections for energy customers.
- **How retailers support customers in financial difficulty.** As recommended in the *2018 Retail Energy Competition Review (2018 Review)*, this review provides an overview of the commercial assistance and support measures provided by retailers over and above their minimum legislative requirements.

1.5 Customer experience map

As a perspective with which to understand consumer outcomes, the review uses a customer experience map (shown at Figure 1.1).

Figure 1.1: Customer experience map



Source: AEMC

1.6 Understanding the range of data and indicators

Each chapter of the review presents a range of data and other indicators. As in the 2018 Review, when assessing competition and the outcomes it delivers for consumers, the Commission bases its conclusions not on any one particular piece of information, but rather, from a more complete assessment of all the data and indicators.

It is also more useful to consider the development and effectiveness of competitive markets over time, rather than via specific point-in-time observations.

1.7 Structure of the report

The report is structured as follows:

- Chapter two describes the context within which retail markets are operating. Specifically, it identifies the reviews, market changes and market interventions that have been announced or enacted since the 2018 Review.
- Chapter three assesses the structure of the retail energy market, by examining observable market data and the perceptions of market participants.
- Chapter four examines retailer behaviour, including their pricing offers and non-price competitive positioning.
- Chapters five and six look at residential and small business consumer behaviour and experience.
- Chapter seven summarises market performance outcomes for small consumers and retailers. The outcomes for consumers are measured against a range of satisfaction metrics, and for retailers with reference to their retail margins.
- Chapters eight to ten cover the three focus areas outlined in section 1.4.

2 RETAIL MARKET ENVIRONMENT

BOX 3: SUMMARY OF KEY FINDINGS

- The past several years has seen substantial changes in the retail energy market and the environment in which it operates.
- On 1 July 2019, a form of price regulation will be re-introduced in Victoria, South East Queensland, New South Wales and South Australia. This report is the last retail competition review released prior to the introduction of these changes. It will therefore provide a break point to assess against post price regulation outcomes.
- There have been a number of government and regulatory changes in the market designed to improve consumer outcomes through better consumer experiences, increased market efficiency, revised retailer behaviour and reduced energy bills. This includes a number of rule changes and reviews by the AEMC.
- Other actions in the market including wholesale and networks, will support retail competition and may lead to lower prices.

RECOMMENDATION 1: EMBEDDED NETWORKS

In June 2019, the AEMC published its final report setting out a new regulatory framework for embedded electricity networks, and drafting instructions and amendments for recommended law and rule changes to give effect to the new framework. The new framework will elevate embedded electricity networks into the national regulatory regime, and improve consumer protections and access to retail market competition for embedded network customers.

It is recommended that the COAG Energy Council progress the recommendations made in the Commission's *Updating the regulatory frameworks for embedded networks review* in order to strengthen protections and improve access to competitive retail offers for customers in embedded networks.

The *Competition and Consumer (Industry Code — Electricity Retail) Regulations 2019* (DMO Code) come into effect on 1 July 2019, excludes embedded networks from the definition of a small customer. To provide consistent consumer protections, the Commission recommends that the Australian Government review the DMO Code with a view to including embedded network customers. The Commission notes that similar issues with consistent consumer protections for embedded network customers exist in Victoria, with the Victorian Default Offer.

RECOMMENDATION 2: ENERGY CHARTER

In 2018, following strong criticism of the low levels for trust in the energy sector and pressure on the industry to do more for consumers, a number of energy businesses worked together to develop the Energy Charter. The Commission supports the approach from energy businesses to improve consumer outcomes through the Energy Charter and encourages widespread adoption of the Energy Charter.

The past several years has seen substantial changes in the retail energy market and the environment in which it operates. An increased focus from media and politicians has seen an unprecedented level of government intervention which means the operating environment is rapidly changing. This chapter will look at current interventions in the market and provides an overview of specific actions being carried out that affect the retail market.

2.1 Exploration of issues in the energy market

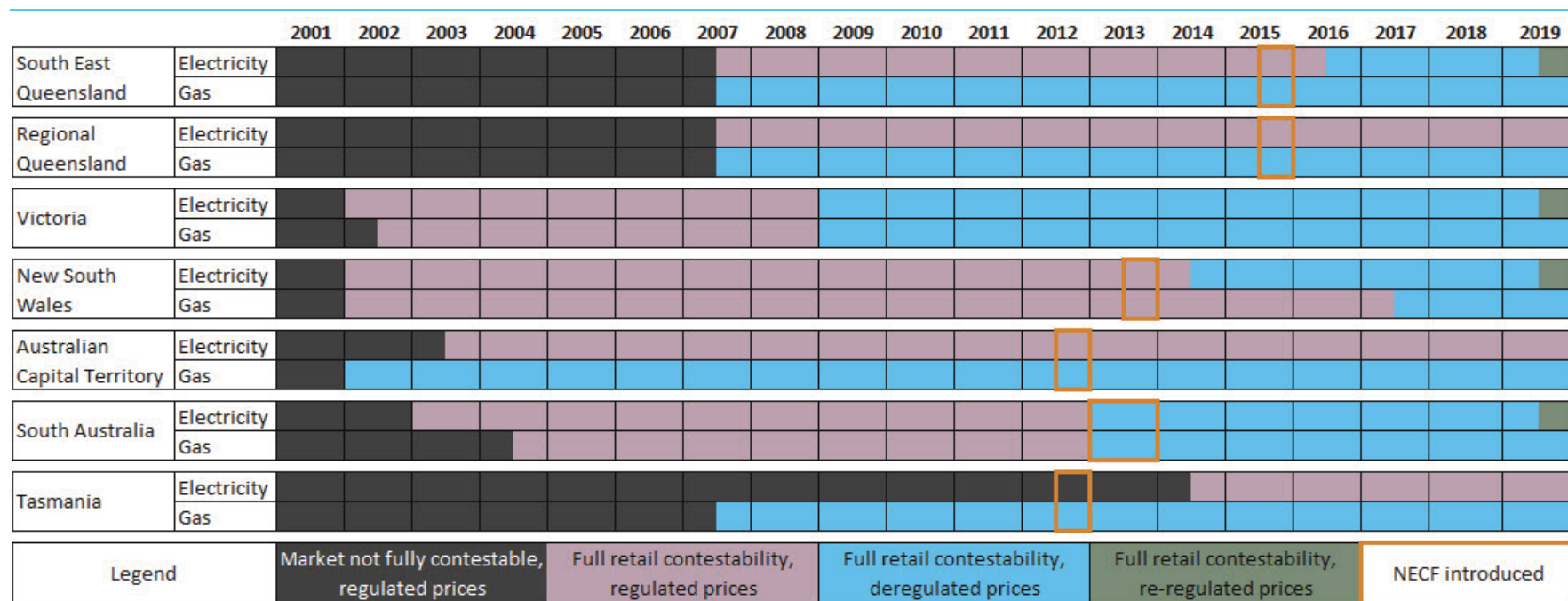
The recent increase in the focus on the energy sector has led to questions about whether competitive energy markets are performing as well as they should.

In the Commission's view, effective competition results in more efficient pricing than when regulators determine prices. These competitive price benefits are in addition to improvement in choice, customer service and levels of innovation that can also be expected in an effectively competitive market.

Until recently, in the retail energy market, price deregulation of electricity and gas markets had been implemented in most jurisdictions. However, on 1 July 2019, a form of price regulation will be introduced in Victoria by the Victorian Government, and in South East Queensland, New South Wales and South Australia by the Australian Government. Figure 2.1 below shows the timing of retail market reforms across each jurisdiction in the NEM. It highlights that for electricity:

- Victoria had been deregulated the longest
- South East Queensland was the most recent deregulated region (mid-2016)
- the Australian Capital Territory, Tasmania and regional Queensland have not been deregulated
- Victoria, South East Queensland, New South Wales and South Australia are now facing a form of price regulation
- all jurisdictions have deregulated their gas markets, and these will remain deregulated on 1 July 2019.

Figure 2.1: Progress of retail energy market reform across jurisdictions



2.1.1

Re-regulation of energy prices

The form of price re-regulation noted in Figure 2.1 is one of the most significant changes to the retail energy market since the introduction of full retail contestability across the NEM. In order to bring in this form of price regulation, both the Australian Government and the Victorian government have enacted legislation to introduce the default market offer (DMO) and Victorian default offer (VDO) respectively. The DMO and VDO are outlined further below.

Default market offer

On 11 July 2018, the Australian Competition and Consumer Commission (ACCC) released its *Retail Electricity Pricing Inquiry — Final Report* (REPI). From this, the ACCC recommended that standing offers should be replaced with a DMO at or below a price set by the Australian Energy Regulator (AER).⁴ In order to give effect to this, on 4 April 2019, the Australian Government enacted the *Competition and Consumer (Industry Code — Electricity Retail) Regulations 2019* (the DMO Code). The DMO Code will come into force on 1 July 2019 and will apply in New South Wales, South Australia and South East Queensland.

The main requirements of the DMO Code are that retailers must:

1. not set their standing offer prices for certain small customers in excess of the AER's determined annual price (the DMO)⁵
2. clearly communicate or advertise the difference between their retail offers and the DMO⁶
3. not advertise conditional discounts as the 'headline' discount.⁷

Therefore, the DMO acts as both a cap on standing offers that retailers are able to offer their residential and small business customers on flat rate tariffs, and acts as a reference price for flat rate and time of use tariffs. Further information and analysis of how the reference price aspects of the DMO Code are likely to interact with current retail pricing practices are set out in chapter 4.

On 30 April 2019, the AER released its final determination on the DMO. The AER used a top-down approach to develop the DMO, which is set at 50 per cent of the average of all standing offers and the average of all market offers in each distribution network. The AER set the DMO in this way with the aim to:

- reduce the level of standing offer prices
- incentivise consumers and retailers to participate in the market
- allow retailers to recover the efficient costs of servicing consumers.⁸

⁸ AER, *Default Market Offer Prices 2019-20 — Final Determination*, April 2019, p. 7.

⁴ ACCC, *Retail Electricity Pricing Inquiry — Final Report*, 11 July 2018, Canberra, p. xxii.

⁵ DMO Code, section 10. Under section 6 of the DMO Code, small customers are defined as residential customers, or small business customers who use less than 100MWh a year. Customers who are on a network-wide demand tariff, have a prepayment meter, or are supplied by means of an embedded network are excluded from the definition of small customer. For the purposes of section 10, customers on a time-of-use tariff are excluded from the cap on standing offers.

⁶ DMO Code, section 12.

⁷ DMO section 14).

Victorian default offer

In October 2018, the Victorian Government released its response to the *Independent Review of the Electricity and Gas Retail Markets in Victoria* (the Thwaites Review) in which it supported the recommendation that a VDO be introduced to replace standing offers.⁹ From this, the Government enacted the *Energy Legislation Amendment (Victorian Default Offer) Act 2019* to give effect to the VDO. The Victorian Essential Services Commission (ESC) was provided Terms of Reference to develop a methodology to recommend a VDO to the Government that should:

- be set for each distribution zone
- be based on the efficient cost to run a retail business
- include an allowance for a maximum retail profit margin
- include a modest allowance for customer acquisition and retention costs
- not include an allowance for headroom.¹⁰

The purpose of the VDO is to provide customers with access to a 'fair' priced electricity offer.¹¹ On 3 May 2019, the ESC provided its final advice to the Victorian Government on the level of the VDO which was developed with a bottom-up approach. Consistent with the objectives given to the ESC and AER, the VDO has been set at a rate that is generally considered to be relatively (taking into account differences in retailer input costs across jurisdictions) lower than the DMO.¹² On 31 May 2019, the Victorian Minister for Energy, Environment and Climate Change, announced the VDO which was in line with the final advice from the ESC.

2.1.2

Reviews into the supply of electricity in the NEM

The AEMC's Retail energy competition review is one of several reviews that report regularly on aspects of the performance of retail markets, including the:

- annual report on compliance and performance of the retail energy market by the AER
- Victorian energy market report by the ESC
- review of the performance and competitiveness of the retail electricity market in New South Wales by the Independent Pricing and Regulatory Tribunal (IPART)
- South East Queensland retail electricity market monitoring report by the Queensland Competition Authority (QCA).

Retail Electricity Pricing Inquiry

Further to the annual reviews highlighted above, the Australian Government also tasked the ACCC with REPI. The final REPI report made 56 recommendations which fall into four main areas:

⁹ ESC, *Victorian Default Offer to apply from 1 July 2019 — draft advice*, 8 March 2019, p. 8.

¹⁰ *ibid* p. 6.

¹¹ *ibid* p. iii.

¹² *ibid* p. iv.

- boosting competition in the generation and retail sectors (9 recommendations)
- lowering costs in networks, retail and environmental schemes (19 recommendations)
- enhancing consumer experiences and outcomes (20 recommendations)
- improving business outcomes (8 recommendations).

The responsibility for assessing and implementing the recommendations rests with:

- governments through the COAG Energy Council, Australian Government, and State and Territory Governments
- market bodies through the AEMC, Energy Security Board (ESB) the Australian Energy Market Operator (AEMO), the AER and ACCC.

Monitoring of supply in the National Electricity Market

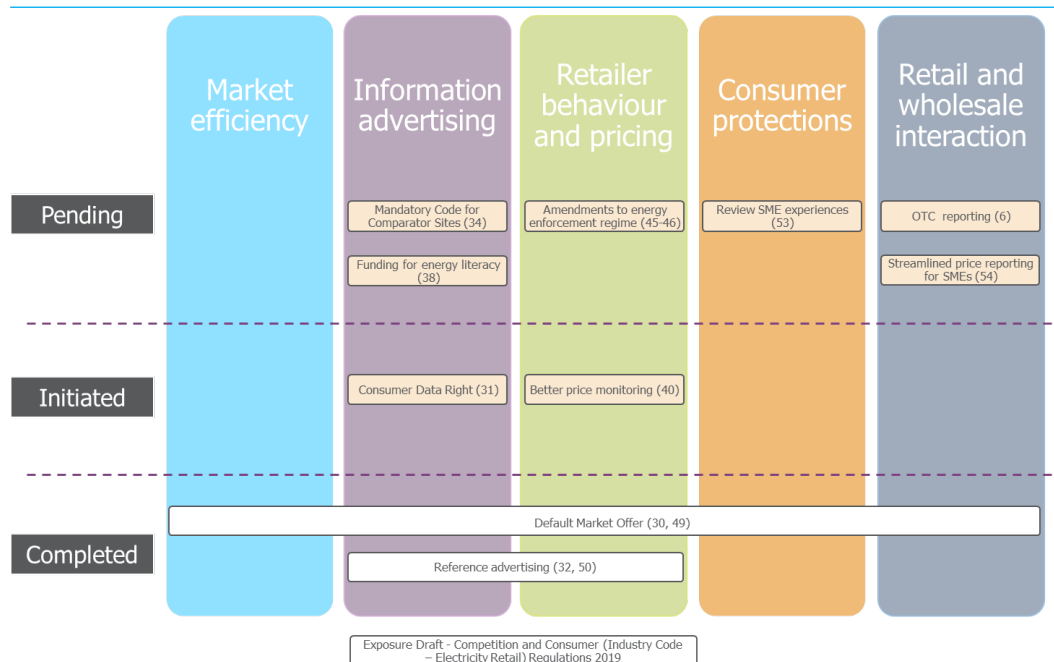
Following REPI, in August 2018, the Australian Government directed the ACCC to hold a six-monthly public inquiry to monitor the prices, profits and margins in the supply of electricity in the NEM. The first *Monitoring of supply in the National Electricity Market Report* was released on 29 March 2019. It focused on setting out the framework for how the ACCC will monitor the supply of electricity in the NEM in its subsequent six-monthly reports, with the reviews due to be completed in August 2025.

The first report provides an update on the 56 REPI recommendations and comments that there have been some welcome developments in the market but progress has been slow.¹³ The ACCC also notes its support for the DMO but suggests that there does not appear to have been any significant change in market conditions since REPI was released.¹⁴

¹³ ACCC, *Monitoring of supply in the National Electricity Market Report*, March 2019, Canberra, p i.

¹⁴ *ibid.*

Figure 2.2: ACCC retail recommendations



Source: ACCC Retail Electricity Pricing Inquiry, Final Report, 2018.

Note: This figure does not include AEMC projects related to ACCC's recommendations (see Figure 1.3).

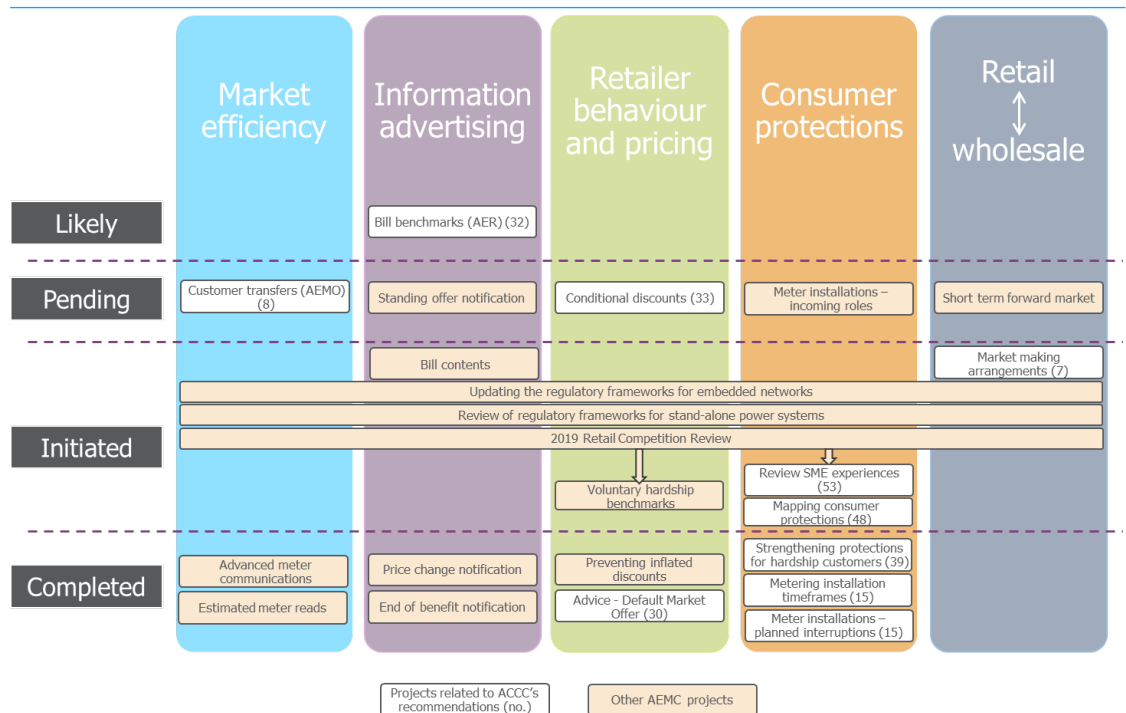
2.2 Rule changes and market developments

Over the past year, a number of reforms to the retail energy market have been put in place, are progressing or being considered by the AEMC. Many of these are designed to improve consumer experience, increase market efficiency, revise retailers' behaviour and reduce energy bills.

Since April 2018, the AEMC has completed or commenced over 20 rule changes, a number of which are related to the retail market, these are summarised in Figure 2.3 below. Additionally, in 2018 the AEMC initiated three reviews related to the retail market:

- review of regulatory frameworks for stand-alone power systems
- this 2019 retail energy competition review
- updating the regulatory frameworks for embedded networks review.

Figure 2.3: AEMC retail projects



Note: AEMC projects are classified by topics and each project may be related to more than one topic.
Source: AEMC.

2.2.1

Market efficiency

Table 2.1 below summaries the rule changes the Commission has completed or is in the process of considering that relate to market efficiency through the transactions between market participants (customers, retailers, metering coordinators, etc.) to deliver more efficient services which may lead to lower prices, and improve access to products and services that suit customers' preferences.

Table 2.1: Market efficiency rule changes

RULE CHANGE	DESCRIPTION	CONSUMER OUTCOME
Global settlements and market reconciliation	Introduced a global settlements framework, where every retailer is billed for the loss-adjusted metered electricity that is consumed by their customers within the area plus a proportion of unaccounted for energy (UFE). The full commencement	By sharing UFE between all retailers, global settlement will create a level playing field for retailers and therefore facilitate more effective retail competition. Overall system costs, which are ultimately passed through to

RULE CHANGE	DESCRIPTION	CONSUMER OUTCOME
	of global settlement begins on 6 February 2022.	consumers in retail prices are likely to be reduced under global settlement. This is because allocating UFE to all retailers results in retailers facing improved incentives to reduce UFE.
Estimated meter reads	If a small customer receives an estimated bill, and considers it is inaccurate, the customer can request that the retailer adjust the bill by providing their own reading of the meter.	Customers won't have to pay for high bills from overestimates or face bill shock in the future from underestimates.
Meter installation — advanced meter communications	Customers can choose to have metering coordinators deactivate the remote communications capability on an installed advanced interval meter.	The rule change will decrease costs for the individual customer by allowing an installed type 4 meter to be converted into a type 4A meter.
Customer transfers (pending)	On 24 May 2019, AEMO submitted a rule change to the AEMC proposing to mandate a customer transfer being completed within two days of the cooling-off period expiring.	Reducing the time it takes customers to switch retailers will give customers access to the products and services they want quicker. It will improve incentives on retailers to continuously offer customers products and services that they want because customers will be able to change retailers more effectively if retailers do not meet their needs.

Note: Further detail on these rule changes can be found at www.aemc.gov.au.

2.2.2

Information provision

Table 2.2 below summaries the Commission's rule changes that are designed to provide better information to assist customers. By improving the information to customers the key outcomes that are likely to result from these rule changes include customers being better able to:

- decide if and when they want to change retailer or plan, before they are impacted by price changes or the end of their benefit period
- understand their contracts and energy usage.

Table 2.2: Information provision rule changes

RULE CHANGE	DESCRIPTION	CONSUMER OUTCOME
Advance notice of price changes	Retailers must provide consumers with advance notice of price changes in relation to electricity and gas retail contracts.	By requiring retailers to inform their customer in advance of such changes, customers will be able to choose a different retailer or tariff if they want.
Notification of the end of a fixed benefit period	Retailers must notify consumers in advance of any changes to their benefits. It aims to stop the practice of retailers failing to tell customers when their benefits changed or ended.	This notification will mean consumers are informed that they are about to lose their benefits and enhance their ability to select a better offer.
Bill contents — customers with interval meters	The rule change request proposed requiring all electricity retailers to display start and end meter readings in the bill for every customer with an advanced interval meter.	The Commission decided not to make a rule because it would likely increase consumer confusion.
Long-term standing offer notification — Pending	On 13 June 2018, the Hon. Josh Frydenberg MP, then Minister for the Environment and Energy submitted a rule change request requiring retailers to provide an annual notice to customers that have been on standard retail contract for a length of one year or more to pursue better offers in the market. Due to the close interaction of the rule change request with the DMO, the Commission will not initiate this rule change until the DMO has come into effect.	

Note: Further detail on these rule changes can be found at www.aemc.gov.au.

2.2.3

Retailer behaviour and pricing

Table 2.3 below summaries the Commission's rule changes relating to retailer behaviour to address customer confusion when choosing the best energy plan for them.

Table 2.3: Retail behaviour and pricing rule changes

RULE CHANGE	DESCRIPTION	CONSUMER OUTCOME
Preventing discounts on inflated energy rates	Prohibits retailers from offering discounts off rates that are higher than their standing offer rate.	Stops customers from being confused by retailers inflating the base rate of a market offer so that they can advertise a larger discount.

RULE CHANGE	DESCRIPTION	CONSUMER OUTCOME
Regulating conditional discounts — pending	The proposed rule change would limit conditional discounts offered by retailers to the reasonable cost savings that a retailer expects if a consumer satisfies the conditions attached to the discount. The rule change request was submitted by the Hon. Angus Taylor MP, Minister for Energy, on behalf of the Australian Government on the basis of a recommendation in the ACCC's REPI. Due to the close interaction of the rule change request with the DMO, the Commission will not initiate this rule change until the DMO has come into effect.	
Restricting save and win back activity — potential rule change	In its annual market review, IPART recommended that the New South Wales Government submit a new transitional rule change to the AEMC to prohibit retailers from engaging in retention and win-back activities for six months following a switch.	

Note: Further detail on these rule changes can be found at www.aemc.gov.au.

2.2.4

Consumer protections

Throughout the following rule changes the Commission identified important consumer protections to:

- improve access to assistance when a customer is facing hardship to better allow them to pay their power bills
- support the roll-out of smart meters, an important part in improving a consumer's access to innovative products and services.

These rule changes are summarised in Table 2.4 below.

Table 2.4: Consumer protection rule changes

RULE CHANGE	DESCRIPTION	CONSUMER OUTCOME
Strengthening protections for hardship customers	In accordance with the rule change, the AER has developed retailer customer hardship policy guidelines to improve retailer hardship policies.	In improving retailers' hardship policies so that customers can better understand their rights and get the help they need to pay their power bills.
Metering installation timeframes	Retailers are to agree a date for the installation of their electricity meter with the customer. If no timing can be agreed, the retailer will need to install the meter within six business days at a new connection, or within 15	Provides customers with greater control and confidence over when their electricity meter will be installed

RULE CHANGE	DESCRIPTION	CONSUMER OUTCOME
	business days if the customers has requested a simple meter exchange.	
Meter installations — planned interruptions	The AEMC consolidated this rule change with Metering installation timeframes rule change. The final rule allow customers to agree to a date range for metering works or connections services that require an interruption to the customer's electricity supply.	Customers can agree to planned interruptions to be on a specific date, and retailers and Distributed Network Service Providers (DNSPs) have more flexibility to notify customers of planned interruptions.
Meter installation — creation of incoming roles — pending	The Australian Energy Council submitted a rule change request to clarify the responsibilities of a metering coordinator during the customer churn process. The proposal seeks to allow a retailer to nominate a new Metering Coordinator/Metering Provider/Metering Data Provider (MC/MP/MDP) during the churn process without affecting the roles of the incumbent MC/MP/MDP.	

Note: Further detail on these rule changes can be found at www.aemc.gov.au.

2.2.5

Retail and wholesale market interaction

While not specifically relating to the retail market, there are a number of actions in the wholesale market (including two wholesale market rule changes) that may lead to changes in the interaction between retailers and generators. These are outlined below.

Retailer Reliability Obligation

On 3 May 2019, the ESB provided the COAG Energy Council amendments to the National Electricity Rules (NER) to implement the Retailer Reliability Obligation (RRO). The rules package was accepted by COAG Energy Council on 4 June 2019, to be implemented by the South Australian Parliament by 1 July 2019.

The RRO builds on existing spot and financial market arrangements in the NEM to facilitate investment in dispatchable capacity and demand response. It requires retailers to support reliability through contracting. One component of the RRO is the Market Liquidity Obligation (MLO) which requires certain generators to market make. The MLO operates between T-3 and T-1 in a region when the RRO is triggered.

Contract market liquidity

The degree to which a contract market delivers benefits to retailers and consumers depends on the liquidity of the various contracts being traded. The benefits accrue to a greater degree in regions where the market for the contracts being traded is relatively liquid.

A liquid contract market is one where generators and wholesale market customers are confident they can buy or sell to suitably hedge their risks at any time and without significantly affecting the price. By lowering transaction costs and the cost of entry and exit, a liquid contract market supports greater levels of competition and more efficient levels of reliability.

There are a number of projects underway in the market that are likely to improve the liquidity of the contract market in the NEM, and therefore support greater levels of competition. These include:

- The MLO component of the RRO (as noted above).
- *Voluntary market-making* — On 1 July 2018, the ASX commenced a process to introduce voluntary market making in the Electricity Futures market which is planned to commence on 1 July 2019.
- The AEMC's *Making arrangements in the NEM rule change* — This rule change request from Engie proposes that the NER mandate a tender process for market making responsibilities in the NEM. The service is potentially beneficial in less liquid markets so that retailers and other market participants always have an opportunity to buy and sell electricity futures contracts.

2.2.6

Reviews

There are a number of reviews that the Commission is currently carrying out or completed in 2018 to increase market efficiency, provide better information to consumers, revise retailer behaviour and improve consumer protections.

Advice to COAG Energy Council – default offer

In December 2019, the AEMC provided advice to the COAG Energy Council's Senior Committee of Officials (SCO) regarding the proposed implementation of a cap on standing offers.¹⁵

In this advice the Commission considered that caution should be exercised when introducing the default offer as a regulated price cap. In the Commission view there are short and long-term risks that needed to be considered when introducing the DMO, including:

- increased prices for customers for at least some customers on market offers
- decreased range of offers available in the market
- leading to lower levels of innovation as 'discounts off the standing offer' becomes the most common offer

¹⁵ AEMC, *Advice to COAG Energy Council: customers and competition impacts of a default offer*, final report, 20 December 2018.

- creating higher barriers to entry for new retailers, as well as changes in consumer behaviour, resulting in decreased competition in the energy retail market and ultimately higher average prices for consumers.

The Commission formed the view that a comparison rate or reference price would be a less risky approach and could:

- reduce customer confusion without risking price increases for customers on market offers
- remove any incentive to inflate standing offers above the comparison rate just to advertise large discounts.
- be less likely to have a negative impact on innovation and competition.

The Commission will monitor the impacts of the DMO and VDO on retail competition and its impacts on consumers.

Updating the regulatory frameworks for embedded networks

In June 2019, the AEMC published its final report setting out a new regulatory framework for embedded electricity networks, and drafting instructions and amendments for recommended law and rule changes to give effect to the new framework. It is proposed that these new arrangements be applied to all new and some pre-existing embedded networks. The new framework will elevate these embedded electricity networks into the national regulatory regime and improve consumer protections and access to retail market competition for embedded network customers.

The proposed changes will not be implemented until COAG Energy Council progresses changes to the electricity and energy retail laws and rules based on the AEMC's law change drafting instructions and rules drafting, and these are implemented by the South Australian Parliament and South Australian Minister.¹⁶

The Commission recommends that COAG Energy Council progress the recommendations made in the *Updating the regulatory frameworks for embedded networks* review in order to strengthen protections and improve access to competitive retail offers for customers in embedded networks.

Review of regulatory frameworks for stand-alone power systems

This review is examining the potential for stand-alone power systems to be used as an alternative to standard grid supply. Under the terms of reference for the review, the Commission is considering two priority areas:

1. Priority 1 focused on the development of national framework to stand-alone power systems to be used by DNSPs as an alternative to standard grid supply where it would be economically efficient to do so, while preserving consumer protections comparable to those afforded to customers supplied via the interconnected grid.¹⁷

¹⁶ AEMC, *Updating the regulatory frameworks for embedded networks*, final report, 31 January 2019.

¹⁷ AEMC, *Review of stand-alone power systems*, final report, 30 May 2019.

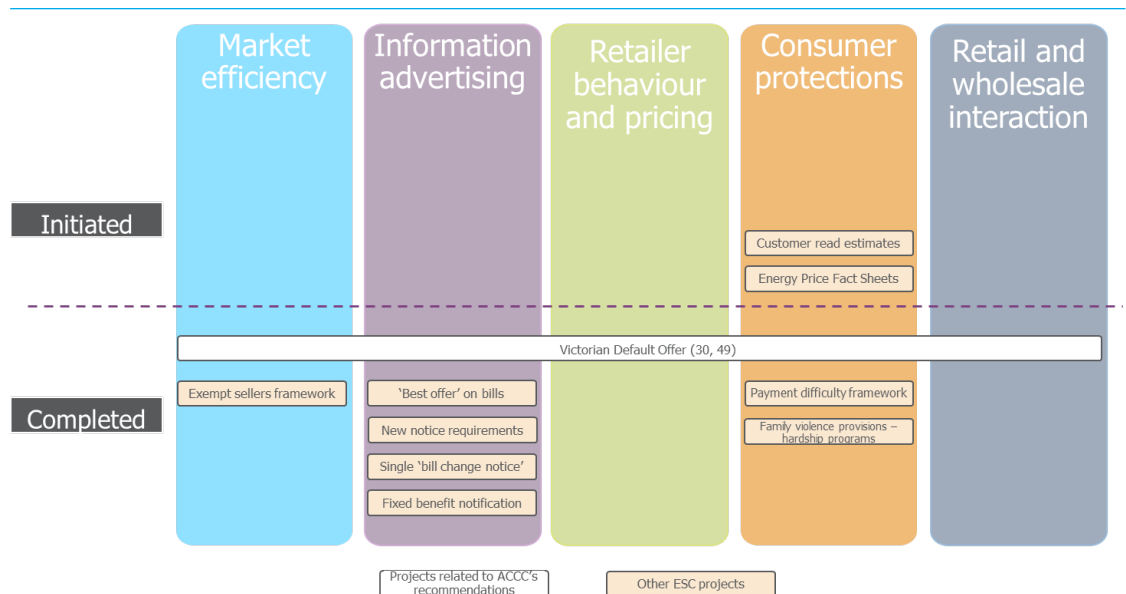
2. Priority 2 focuses on the development of a national framework to support the supply of electricity from stand-alone power systems by parties other than local DNSPs (third parties). In June 2019, the AEMC published a draft report on priority 2 to discuss potential issues, comparator arrangements and policy considerations to provide appropriate protections to small customers supplied under these power systems.¹⁸

2.2.7

Victorian retail projects

Victoria has its own retail regulatory framework under the Energy Retail Code and the ESC regulates the retail energy sector in Victoria.¹⁹ As with the NEM, Victoria has been undergoing a significant number of reforms in the retail market. Figure 2.4 illustrates a number of reforms to the Energy Retail Code that have been put in place, are progressing or have been considered by the ESC over the last year.

Figure 2.4: 2018-19 Victorian retail changes



Source: ESC

Note: Initiated: ESC proposed changes to the code; Completed: changes made to the code.

2.3

Compliance and enforcement activities

In order to maintain consumer protections, the AER and ESC are responsible for monitoring, investigating, enforcing and reporting on compliance by retailers and DNSPs under the National Energy Customer Framework (NECF) and Retail Energy Code respectively. In addition to this, the ACCC is also the national regulator responsible for enforcement and compliance with obligations under the ACL (see chapter 9 for further detail on the

¹⁸ AEMC, *Review of stand-alone power systems*, consultation paper, 1 March 2019.

¹⁹ The NECF was originally based on the Energy Retail Code and the two frameworks were originally reasonably aligned.

enforcement regimes of the AER and ACCC). Over the past 18 months there has been a number of actions taken by the AER, ESC and ACCC in relation to energy consumers. These are outlined further below.

2.3.1

AER compliance and enforcement activities

As outlined in the below table, since 2018, the AER has performed a number of audits and compliance checks, and issued infringement notices relating to:

- life support customers, hardship programs and payment plans
- offer presentation and marketing to customers
- new rules for competition in metering.²⁰

Table 2.5: AER compliance and enforcement activities

ACTION	OUTCOME
Infringement notices	<p>Since 2018, the AER has issued 23 infringement notices to retailers and DNSPs totalling \$460,000 for allegedly:</p> <ul style="list-style-type: none"> • breaching the life support rules: <ul style="list-style-type: none"> • Energex — 8 infringement notices (\$160,000) • Evoenergy — 3 infringement notices (\$60,000) • TasNetworks — 4 infringement notices (\$80,000) • failing to submit accurate market performance data: <ul style="list-style-type: none"> • Alinta Energy — 2 infringement notices (\$40,000) • EnergyAustralia — 1 infringement notice (\$20,000) • selling energy without appropriate authorisation or exemption: Taplin — 3 infringement notices (\$60,000) • failing to obtain explicit informed consent: Alinta Energy — 2 infringement notices (\$40,000)
Compliance checks and audits	<ul style="list-style-type: none"> • Resolving customer transfers without consent • Explicit informed consent in an embedded network • Timeframes for the installation and repair of meters for small customers
Audits	<ul style="list-style-type: none"> • Hardship and life support

Source: AER

2.3.2

ESC compliance and enforcement activities

The ESC regularly monitors and reports on how retailers are complying with their requirements under the Retail Energy Code, as well as issuing penalty notices for breaches of

²⁰ AER, *Annual report on compliance and performance report of the retail energy market 2017-18*, December 2018, p121.

the code and relevant legislation.²¹ The ESC's compliance and enforcement work since 2018 is outlined in the table below.

Table 2.6: ESC compliance and enforcement activities

ACTION	OUTCOME
Penalty notices	<p>Since 2018, the ESC has issued penalty notices to retailers and DNSPs, totalling \$630,000 for allegedly:</p> <ul style="list-style-type: none"> • failing to give customers notice on planned power outages: <ul style="list-style-type: none"> • Jemena — \$50,000 • United Energy — \$90,000 • AusNet Services — \$150,000 • failing to obtain explicit informed consent: <ul style="list-style-type: none"> • 1st Energy — \$20,000 • Simply Energy — \$20,000 • Alinta Energy — \$300,000.
Compliance activities	AGL failure to provide accurate 2017-18 performance data
Audits	Baseline audits, payment difficulty framework and heat relief

Source: ESC

2.3.3

ACCC enforcement

Further to the enforcement activities of the AER and the ESC, the ACCC took action against three retailers in 2018 and 2019 regarding activities that contravened the ACL:

- Alinta energy agreed to provide compensation to customers in Victoria for making misleading electricity price comparisons which the ACCC considered were likely in breach of the ACL.
- One Big Switch were issued two infringement notices totalling \$25,000 for alleged false and misleading energy price representations.
- In response to action taken by the ACCC, the Federal Court ordered amaysim Energy (trading as Click Energy) pay penalties of \$900,000 for making false or misleading marketing claims about potential discounts and savings.²²

²¹ ESC, *Electricity and gas market performance and reporting*, found at www.esc.vic.gov.au/electricity-and-gas/electricity-and-gas-market-performance-and-reporting, accessed 5 June 2019.

²² ACCC, *Media announcements*, <https://www.accc.gov.au/media> accessed 5 June 2019.

2.4 Changes in regulation and policy

Further to the developments discussed in the above sections, over the past year there has been at least 20 actions taken by the Commonwealth and jurisdictional governments, and market bodies with the aim to improve consumer experience in the retail energy market.

2.4.1 The Energy Charter

In 2018, following strong criticism on the low levels for trust in the energy sector and pressure on the industry to do more for consumers, a number of energy businesses worked together to develop the Energy Charter. In January 2019, 12 of the largest electricity and gas companies (of which six are retailers) signed the charter which sets out their commitment to energy consumers. The vision of the charter is of an industry that works 'together' across the supply chain to 'deliver energy for a better Australia'.²³

The five principles of the Charter are to:

1. put customers at the centre of our business and the energy system
2. improve energy affordability for customers
3. provide energy safely, reliably and sustainably
4. improve the customer experience
5. support customers in vulnerable circumstances.²⁴

Energy businesses that commit to the charter will be required to publicly disclose how they are meeting or making progress towards their commitments in the charter.²⁵

The Commission supports the approach from energy business to improve consumer outcomes as, in the Commission's view, regulation does not always solve poor retailer practices. The Commission encourages all retailers to sign up to the Energy Charter.

2.4.2 Government actions

Table 2.7 below illustrates recent actions taken by Commonwealth and jurisdictional governments to improve consumer experience.

Table 2.7: Recent regulatory and policy changes

ACTION	DATE	DESCRIPTION
Customer choice — traditional versus DER		
Victorian Solar Homes Package	August 2018	<p>The Victorian Government introduced the Solar Homes Package which includes rebates of \$1.3 billion, on top of the \$74 million already provided, over the next 10 years for:</p> <ul style="list-style-type: none"> 650,000 rooftop solar systems

²³ The Energy Charter, *The Energy Charter — Edition 1*, January 2019, p. 7.

²⁴ Ibid p. 6.

²⁵ Ibid p. 9.

ACTION	DATE	DESCRIPTION
		<ul style="list-style-type: none"> 60,000 solar hot water systems 10,000 solar battery systems 50,000 rental homes to install rooftop solar. <p>As of July 2019 interest free loans will be available for rooftop solar installations.</p> <p>For more information see: www.solar.vic.gov.au/.</p>
Rebates and no-interest loans for solar or batteries	January 2018	<p>The Queensland Government has established a \$21 million fund to provide households and small businesses with no-interest loans for solar or battery installations.</p> <p>For more information see: www.qld.gov.au/community/cost-of-living-support/concessions/energy-concessions/solar-battery-rebate</p>
Solar and batteries installed on public housing	February 2018	<p>The South Australian Government has committed to stage two of the previous government's trial virtual power plant (VPP) plan. Stage two involves the installation of 1,100 solar and battery systems on housing trust properties in South Australia which then could function as a VPP.</p> <p>For more information see: www.sa.gov.au/topics/energy-and-environment/energy-bills/solar-feed-in-payments/solar-panels-and-battery-scheme.</p>
Demand Management Trials	2019	<p>The South Australian Government is funding trials that can show how new and distributed technologies can help make the grid more efficient and reward consumers for managing their own demand. The Demand Management Trials Program is allocating \$11 million of funding towards activities aimed at advancing the use of demand response and distributed energy resources to benefit both customers and the grid.</p> <p>For more information see: www.energymining.sa.gov.au.</p>
Home Battery Scheme	October 2018	<p>From October 2018, 40,000 South Australian households can access \$100 million in State Government subsidies and \$100 million in loans to pay for the installation of home battery systems. While the subsidy is available to all South Australians, Energy Concession Holders are eligible to access a higher subsidy, ensuring low-income households are supported to access the Scheme.</p> <p>For more information see: www.homebatteryscheme.sa.gov.au/.</p>
Smart Energy	November	The New South Wales Government has committed \$50 million

ACTION	DATE	DESCRIPTION
for Homes and Businesses	2018	to create a 'distributed' power plant, of homes and businesses with smart batteries or air conditioners, with demand response capability of up to 200MW. For more information see: energy.nsw.gov.au/renewables/clean-energy-initiatives/smart-energy-homes-and-businesses .
Empowering Homes Program	2019	The New South Wales Government made an election commitment to provide up to 300,000 households across NSW over 10 years with a no-interest loan to purchase solar-battery and battery systems. For more information see: nsw.liberal.org.au/candidates/gladys-berejiklian/news/articles/EXTRA-BILL-RELIEF-WITH-SOLAR-ENERGY .
Queensland Solar for Rentals trial	March 2019	The Queensland Government introduced the Solar for Rentals trial helping landlords and tenants in Bundaberg, Gladstone and Townsville install solar PV systems and share the financial benefits. As part of the trial around 1,000 rebates of up to \$3,500 are available for eligible landlords to install a solar system with solar monitoring technology. For more information see: www.qld.gov.au/community/cost-of-living-support/concessions/energy-concessions/solar-for-rentals-trial .
Customer choice - Retailers, plans or products		
Removal of non-reversion policy	September 2018	The Queensland Government removed its non-reversion policy in regional Queensland to allow customers who leave Ergon Energy to re-join later. For more information see: www.dnrme.qld.gov.au/energy/initiatives/affordable-energy-plan .
Energy brokers for vulnerable households	March 2018	The Victorian Government will partner with a community organisation to design and deliver an energy brokerage service for up to 10,000 vulnerable consumers. For more information see: www.premier.vic.gov.au/delivering-a-fairer-and-more-affordable-energy-market .
\$50 bonus for using Victorian Energy Compare	November 2018	The Victorian Government's \$50 bonus for each household that uses the Victorian Energy Compare website was extended until 30 June 2020. For more information see: compare.energy.vic.gov.au/ .

ACTION	DATE	DESCRIPTION
Energy Switch service	May 2019	The New South Wales Government has expanded the Energy Switch service to provide an online comparison and switching service for gas customers. For more information see: nsw.liberal.org.au/candidates/gladys-berejiklian/news/articles/ENERGY-SWITCH-WILL-HELP-SLASH-GAS-BILLS .
Paying Bills		
Solar for low income households	Late 2019	The New South Wales Government will be trialling a new way to help people on low incomes with their power bills by installing free solar systems for up to 3,400 eligible households. For more information see: energysaver.nsw.gov.au/households/solar-and-battery-power/solar-low-income-households .
Seniors Health Card	July 2019	The New South Wales Government made an election commitment to commence an energy rebate of \$200 from the 1st of July 2019. For more information see: www.nsw.gov.au/your-government/the-premier/media-releases-from-the-premier/2020-energy-rebates-for-self-funded-retirees/ .
Social Program for Energy Code	May 2019	The New South Wales Government made reforms to the Social Program for Energy Code to require energy retailers to inform customers if there are better offers available to them and to prevent retailers from claiming back payments from rebate customers where they have been made in error.
Negotiated rate for concession holders	April 2019	The South Australian Government negotiated a higher discount for concession customers on the SA Concession Energy Discount Offer available through Origin Energy. For more information see: www.sa.gov.au/topics/care-and-support/financial-support/concessions/energy-bill-concessions/energy-discount-offer .
Concessions Review	Mid 2019	The South Australian government is considering models for the administration of the energy concession, to ensure timely and efficient payment of the energy concession to benefit customers.
Concessions Review	May 2019	The South Australian government is reducing 'red tape' to make access to concessions easier.

ACTION	DATE	DESCRIPTION
Queensland affordable energy plan	January 2018	<p>The Queensland Government launched its affordable energy plan that includes more than \$300 million in initiatives to keep electricity prices below inflation over the next two years. The plan includes a range of measures, for example a \$50 per year electricity rebate, payable to all Queensland households in 2018 and 2019.</p> <p>For more information see: www.dnrme.qld.gov.au/energy/initiatives/affordable-energy-plan.</p>
Keeping customers informed	July 2019	<p>The ESC has created new entitlements for Victorian customers to have:</p> <ul style="list-style-type: none"> • their retailers 'best offer' shown on each bill • five days' notice of any changes that could affect their bill • clear advice about the offers they select. <p>For more information see: www.esc.vic.gov.au/electricity-and-gas/electricity-and-gas-inquiries-studies-and-reviews/electricity-and-gas-retail/electricity-and-gas-retail-markets-review-implementation-2018-bills-and-marketing.</p>
Monitor/ report on competitiveness and efficiency of Victorian retail energy market	March 2018	<p>The Victorian Government has commissioned the ESC to review the Victorian retail energy market and report by 31 December 2019.</p> <p>For more information see: www.esc.vic.gov.au/electricity-and-gas/inquiries-studies-and-reviews/electricity-and-gas-retail-markets-review-implementation-2018/electricity-and-gas-retail-markets-review-implementation-2018-victorian-default-offer.</p>
Dispute resolution and customer support		
Payment difficulties framework	January 2019	<p>The ESC made changes to the Energy Retail Code to increase the minimum debt amount for a customer to be disconnected to \$300. From 1 January 2019 if you have an unpaid energy bill of \$55 or more retailers must offer tailored assistance.</p> <p>For more information see: www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-policies-and-manuals/energy-retail-code</p>

2.5

Additional developments that may affect the retail market

There have been a number of other developments and actions in the energy sector that, while outside of the retail market, could affect the state of competition in the retail sector. These are outlined below:

- *Networks costs* — As network costs are the largest component of a customer's bill, work to promote the efficient investment in and operation of the network is essential to managing network costs. The recent work program has included:
 - the *Annual Electricity Network Economic Regulatory Framework Review* which assessed whether network businesses had the right tools and sufficient flexibility to manage changes such as increased rooftop solar²⁶
 - the introduction of new transmission connection and planning arrangements²⁷
 - establishing the value of customer reliability to inform the development of reliability standards in network and wholesale markets²⁸
 - the introduction of competition in metering which came into effect in all NEM jurisdictions (except Victoria) on 1 December 2017.
- *Integrated System Plan (ISP)* — On 17 July 2018, AEMO released its inaugural ISP for the NEM to address one of the Finkel review recommendations for improved system planning.²⁹ The ISP is an engineering plan that forecasts the overall transmission system requirements for the NEM over the next 20 years. The ISP identifies a potential plan of transmission investments to support the development of renewable energy zones and the reliable supply of electricity.³⁰
- *Converting the Integrated System Plan into Action*: In December 2018, the ESB issued its ISP Action Plan, that provided 12 recommendations on how the ISP should be actioned.³¹ This will assist in a staged approach to an "optimised least cost portfolio of integrated system investments to maintain the reliability and affordability of the energy system as it transitions to lower emissions and more distributed generation".³²
- *Coordination of generation and transmission investment (COGATI)* — On 21 December 2018, the AEMC published the final report of its inaugural COGATI review. The final report recommended a comprehensive reform package to better coordinate investment in renewable generation and transmission infrastructure, facilitating transmission and generation in the right place at the right time at an efficient cost. On 1 March 2019, the AEMC published a consultation paper to commence the access and charging review.³³

26 AEMC, *Economic Regulatory Framework Review — Promoting efficient investment in the grid of the future*, 26 July 2018.

27 AEMC, *Final determination, National Electricity Amendment (Transmission Connection and Planning Arrangements) Rule 2018*, 23 May 2017.

28 AEMC, *Final determination, National Electricity Amendment (Establishing Values of Customer Reliability) Rule 2018*, 5 July 2018.

29 AEMO, *Integrated System Plan — For the National Electricity Market*, July 2018

30 *ibid.*

31 ESB, *Converting the Integrated System Plan into Action — Consultation paper*, May 2019.

32 *ibid* p. 3.

33 For more information see www.aemc.gov.au/market-reviews-advice.coordination-generation-and-transmission-investment-implementation-access-and-

3

RETAIL ENERGY MARKET STRUCTURE

BOX 4: SUMMARY OF KEY FINDINGS

Electricity

There were improvements in the key structural competition metrics in the past year:

- The number of competitors in the market increased. Five new retail brands entered the market and five existing brands expanded into new jurisdictions. As of March 2019 there were 38/33 retail brands/companies in the NEM.
- Switching rates increased, reaching a record high NEM wide average of 24.4 per cent. Reflective of the rise of tier 2 retailers, the greatest increases in switching rates were switching from the 'big 3' to tier 2 retailers.
- Market concentration continued to decrease in all markets other than Tasmania. The percentage decrease in market concentration was the largest recorded in the past 10 years for Victoria and the Australian Capital Territory, and the second largest for South East Queensland.
- For the first time, the 'big 3' retailers no longer hold the three largest market shares in South East Queensland and South Australia.

Reflecting these changes a new market structure is emerging. In each network region, the emerging market structure is:

- the incumbent retailer — the retailer that purchased the customer base at deregulation
- tier 1 retailers — retailers with more than 10 per cent of market share, who are typically vertically integrated and together hold as high as 55 per cent of the total market share
- tier 2 — the remaining retailers operating in the market, who aggregated hold as high as 13 per cent of the market share.
- The main barrier to entry and expansion identified by retailers was government intervention in the retail market. Retailers generally considered that retail price regulation in the form of the VDO and the DMO are the biggest barriers. Retailers also noted that:
 - the amount of compliance changes for retailer's systems is reducing their ability to innovate for customers
 - there continues to be issues with liquidity in the wholesale contract market.
- Some smaller retailers see increased benefit from vertical integration as a result of difficulties accessing affordable wholesale contracts.

Gas

The key structural competition metrics indicate:

- Three new companies entered the market in the past year. As of March 2019, there were 19/16 retail brands/companies active in the gas market.

- Market concentration declined in all markets to varying degrees, except in Tasmania where it has been static over the past year.
- Several retailers noted again this year that access to transport and the high price of gas commodities are the main factors affecting competition going forward.

RECOMMENDATION 3: CUSTOMER NUMBERS BY NETWORK REGION

Currently, despite market structure developments occurring at a network level, market share data is only publicly available at a jurisdictional level. More granular publicly available data is required to allow the Commission and policy-makers to better analyse and report on the emerging market structure. The Commission therefore recommends that the AER require that retailers provide data on customer numbers (including customers on market and standing offers) by network region.

Analysing market structure provides perspective on the effectiveness of retail competition in electricity and gas markets, and in-turn the outcomes for consumers. No single indicator at a single point-in-time is able to independently reveal whether a market is effectively competitive and delivering good outcomes for consumers. The Commission therefore analyses multiple indicators over an extended period. Factors that can affect the performance and conduct of retailers, which are examined in this chapter include:

- structure of retail businesses
- retail market concentration and retailer market share
- customer switching between retailer types (as an indicator of competitive rivalry)
- wholesale contract market outcomes
- barriers to entry or expansion
- economies of scale and scope.

This chapter examines a range of observable data and reports on retailer views on the structure of the retail energy market. The data is sourced from the AER, AEMO and the ESC, as well as data voluntarily provided by market participants.

Further to the observable data, our annual retailer interviews provide insights from retailers about what they believe is affecting market structure and retail competition. The interviews were carried out in February and March 2019 and involved retailers of various sizes and business structures.

Generally, gas has been a secondary consideration for most customers as it is possible for most to opt out of the gas market (unless it is part of a business process). As a result, this chapter focuses on the electricity market structure, with the final section discussing matters relating to gas.

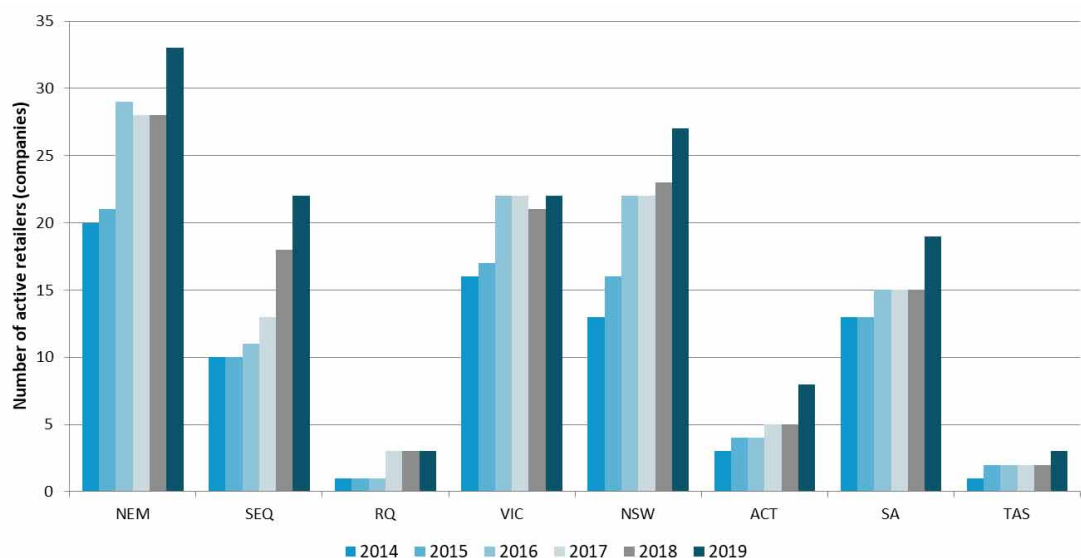
3.1 Electricity market structure

Electricity retail businesses can be grouped together to gain a better understanding of the changing electricity market structure. This chapter first looks at the number of active electricity retailers before grouping them by their business structure and market share by jurisdiction. The trends and magnitude of market concentration and customer switching between retailers is then analysed to give an insight into the level of independent rivalry among retailers and its subsequent influence on market structure.

3.1.1 Active electricity retailers

As of March 2019, there was a total of 38 active retail electricity brands in the NEM, operated by 33 electricity companies as shown in Figure 3.1 below. Further detail on where each retailer operates is provided in appendix c.

Figure 3.1: Active electricity retail companies



Source: AEMC

In 2018, a retailer that previously only serviced commercial and industrial customers, Tango Energy, entered the residential and small business segments of the electricity market. Similarly, Locality Planning Energy expanded from exclusively servicing embedded network customers to also serving the residential and small business segments of the electricity market. Four other businesses; DC Power Co., Elysian Energy, Powerclub, and ReAmped Energy; also entered the small customer electricity retail market in the past year.

A number of retailers expanded their operations into new jurisdictions in the past year:

- in March 2019, Powershop entered the South Australian market
- 1st Energy was the first retailer to enter the residential electricity market in Tasmania (in February 2019)

- Red Energy entered the Australian Capital Territory market
- Sumo Power enter the New South Wales market
- Energy Locals entered the Australian Capital Territory and South Australian markets.

COzero and Flow Systems both exited the electricity market in the past year.³⁴ COzero exit was not a retailer of last resort (ROLR) event as all customers had switched to other retailers prior to the business going into liquidation in July 2018.³⁵ Flow Systems (an embedded network business) went into voluntary administration in December 2018 and as a result the AER issued a ROLR notice but did not revoke their authorisation to sell electricity at this time because a buyer is expected to be found.³⁶

Embedded network retail brands have been excluded from the figure above and in this review. As discussed in chapter 2, the Commission has reviewed these businesses in the *Updating the regulatory frameworks for embedded networks* review. Future retail energy competition reviews may provide more detailed analysis of embedded networks.

3.1.2

Structures of electricity retail businesses

Electricity retailers can be divided into two main groups in terms of the structure of their retail business — vertically integrated retailers and standalone retailers. These groups can be further split into those retailers that are privately-owned and those that are government-owned.

Vertically integrated retailers

A vertically integrated retailer is a business that owns generation assets as well as selling electricity to customers in the mass market. Vertical integration in the electricity market provides a means for retailers and generators to internally manage the risk of price volatility in the wholesale spot market as they have a physical hedge.

A physical hedge means that they have direct access to generation contracts to cover their customer's demand (also known as their load). The business therefore does not need to purchase that quantity of generation contracts from another party to manage its risk. However, these retailers' load and generation is unlikely to ever be perfectly matched, and they will therefore still have to purchase derivative products to manage their risk. Likewise, other risk management tools (such as demand response) may be used to hedge the retailers load to the desired level of risk.

The trend of retailers in the electricity market vertically integrating continued in 2018. This included acquisition of generation assets and entering into long-term contracts with generators, such as joint ventures.

³⁴ COzero — AER, *Annual report on compliance and performance of the retail energy market 2017-18*, p. 17. Flow Systems — AER, *RoLR notice issued for Flow Systems Pty Ltd's Retailer of Last Resort Event*, 15 February 2019, <https://www.aer.gov.au/communications/rolr-notice-issued-for-flow-systems-pty-ltds-retailer-of-last-resort-event>.

³⁵ COzero Energy Retail was not included as an active retailer in previous retail energy competition reports as they did not reach the benchmark of more than 50 customers in any jurisdiction.

³⁶ AER, *RoLR notice issued for Flow Systems Pty Ltd's Retailer of Last Resort Event*, 15 February 2019, <https://www.aer.gov.au/communication/rolr-notice-issued-for-flow-systems-pty-ltds-retailer-of-last-resort-event>.

Some retailers noted in the retailer surveys and interviews that some form of vertical integration is becoming a prerequisite to be able to expand to an efficient scale.

Arm's-length vertical integration

A retailer that is vertically integrated through an arms-length relationship has access to wholesale hedging contracts through its parent company that owns, or is, a generation business. Unlike traditional vertically integrated retailers, the retail business and generation assets are generally separate businesses. For generators, such as Pacific Hydro, adding a retail arm like Tango Energy can reduce the risk they face in the contracts market by providing an extra path to market for their generation.

These retailers have access to contracts from their parent company's generation, typically purchased at market rates, and terms and conditions. Any further uncontracted load is then purchased through the wholesale contract market or left exposed to the spot price. This structure allows the retailer to have a greater level of certainty that it will have access to contracts to provide a hedge against a volatile and/or illiquid market.

Standalone retailers

A standalone retailer is one that does not own, or have a commercial relationship with, any generation business to manage their customer's load. These retailers typically have to contract for their whole risk management portfolio with external parties. Therefore, to manage their risk to the same level, a standalone retailer will need to enter more commercial contracts with external parties relative to a vertically integrated retailer.

Standalone retailers typically have a higher cost to serve each customer due to the larger amount of derivative contracts they must purchase to hedge their load. The cost of hedge contracts stem from the associated premiums (and other costs) to ASX and over-the-counter (OTC) contracts. These businesses also face uncertainty of the availability and price of contracts in the future. Neither the costs nor uncertainty faced by standalone retailers are present to the same degree for vertically integrated retailers because they internally hedge.

While, in theory, standalone retailers may get access to lower costs on a transient basis compared to a vertically integrated retailer, over the longer term their costs are expected to be higher.

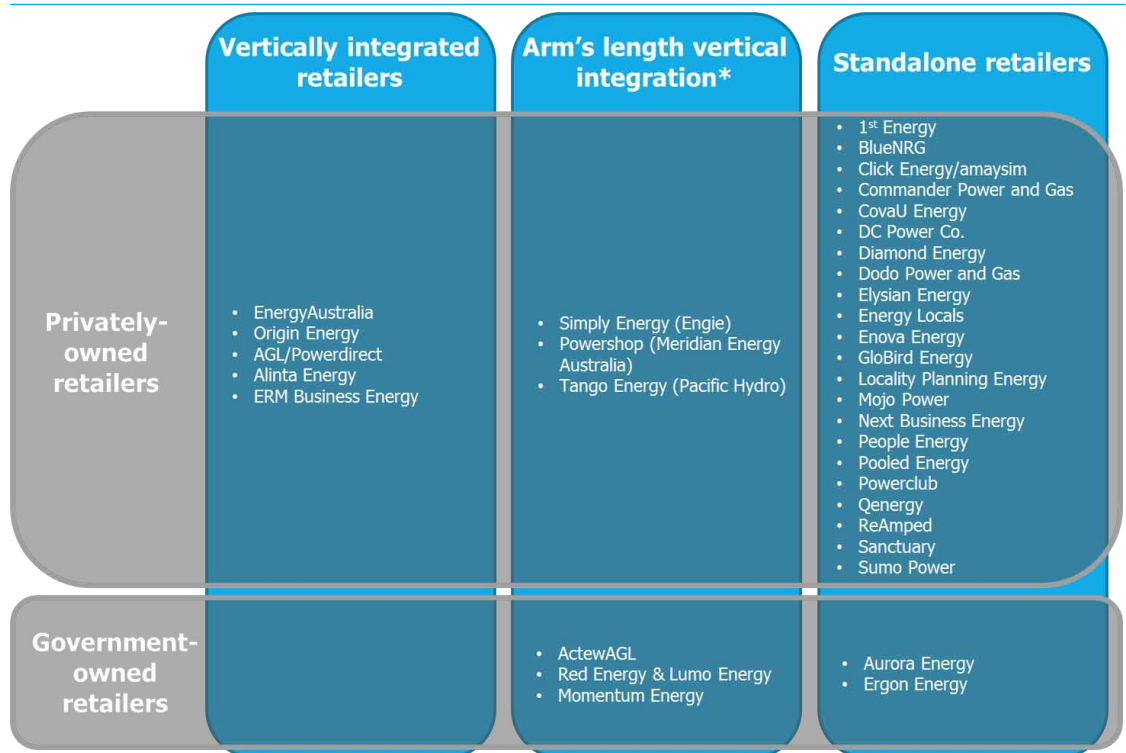
Government-owned and privately-owned retailers

Differences in the entity that owns a retail business can have an effect on the business' access to capital and strategic goals. Generally, retailers that have government ownership tend to have some restriction placed on their strategic goals and ability to access capital. However, some of these retailers may also be able to access cheaper capital than privately-owned retailers because of their government ownership.

Generally, government-owned and privately-owned retailers contract and interact in a similar way with the wholesale market. Therefore, this further split of who owns a retailer does not usually have a significant impact on the risk management strategies used to the same extent as if they own generation assets.

Some retailers also noted in their interviews with the Commission that they are not able to enter particular markets due to their government-ownership which prevents them from operating in certain jurisdictions. This can affect a government-owned retailer's ability to interact with the NEM as dynamically as privately-owned retailers.

Figure 3.2: Structure of electricity retail businesses in the NEM



Source: AEMC

Note: *A retail business that is 'at arms length' from their parent business who owns, or is, a generation business.

3.1.3

Market share of electricity retailers and market concentration

This section examines the shifting dynamics in the market share of both vertically integrated and standalone retailers, and the impact of these dynamics on the electricity retail market structure.

Most NEM retail market reviews describe a group of retailers — Origin Energy, AGL and EnergyAustralia — as being the big 3. This is due to their market influence and those businesses having the largest three market shares NEM-wide. The big 3 have traditionally held significant market share because these businesses are the incumbent retailer — the

business that purchased the retail customer base at privatisation — for at least two network regions.³⁷

The exceptions to this are in the Australian Capital Territory, Tasmania and regional Queensland. The incumbent retailers in each of these jurisdictions is as follows:

- ActewAGL Retail — a joint venture of AGL and Icon Water (formerly ACTEW Corporation) in the Australian Capital Territory.
- Aurora Energy in Tasmania
- Ergon Energy Retail in regional Queensland.

These markets are still maturing and are yet to see the shift in market structure that is being observed in the other NEM regions. Retailers noted in interviews that entry and operation into these markets is difficult due to price regulation and the small size of the customer base.

Traditionally, retailers that are vertically integrated have tended to be able to gain a larger market share in comparison to retailers that are standalone. Until recently, vertically integrated retailers were generally limited to the big 3. However, as the market evolves and new structures develop, a shift in the dynamics of the market is occurring.

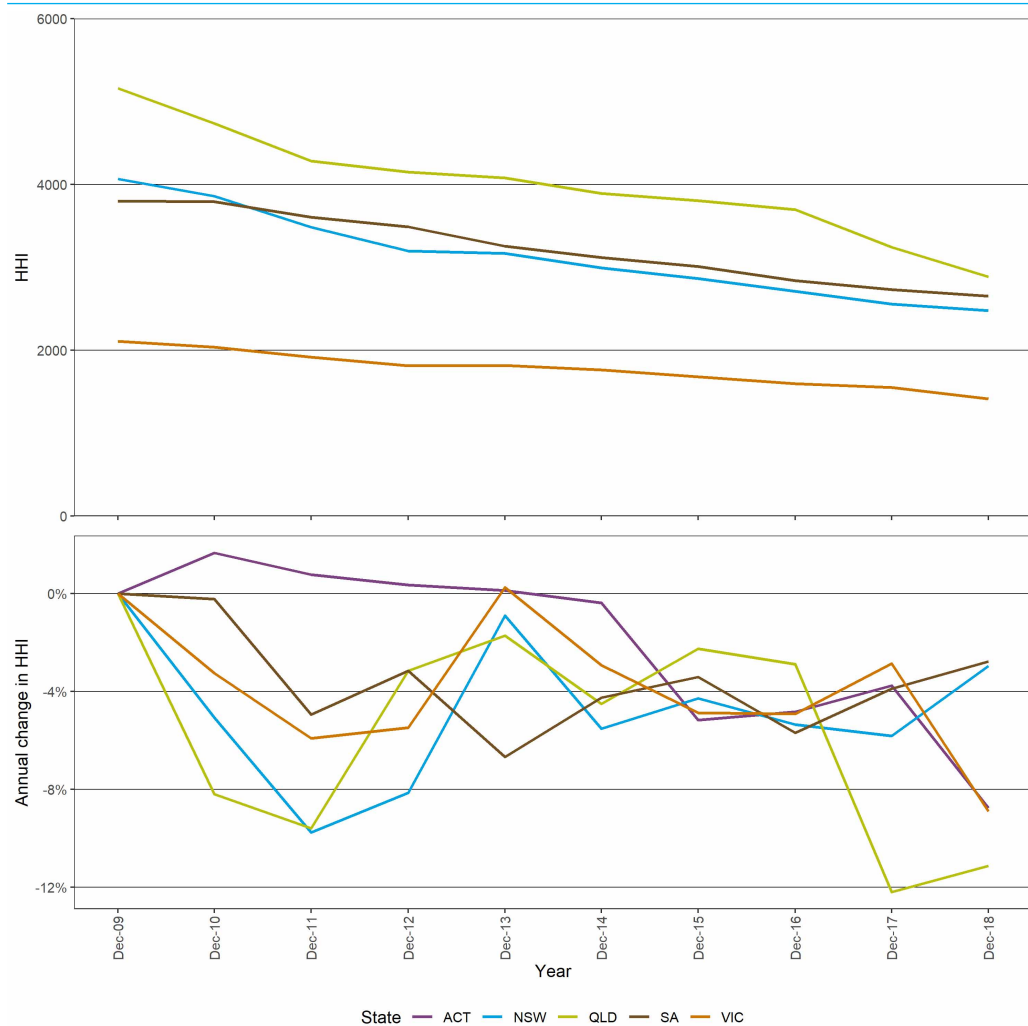
Long-term changes in market concentration

The Herfindahl-Hirschman Index (HHI) is a commonly used measure of market concentration. It is calculated by summing the squares of the market share of all firms competing in a market.

The change in HHI over the long-term shows the evolution of competition to date and is shown in Figure 3.3 below. The second graph shows the rate of change in HHI. This shows the rate of change in market concentration for each year rather than the degree or level of concentration.

³⁷ Origin Energy is the incumbent retailer for Citipower, Powercor, Essential Energy, Endeavour Energy and Energex network regions. AGL is the incumbent retailer for United Energy, Jemena, Energex and South Australian Power Networks (SAPN) network regions. EnergyAustralia is the incumbent retailer for AusNet Services and Ausgrid network regions. The incumbent retailer is also the local area retailer (LAR) for that network region, except for in Energex where Origin Energy only is the LAR. The LAR has certain obligations to contract with customers under the NECF.

Figure 3.3: Long-term changes in HHI, 2009 to 2018 (electricity)



Source: AER and ESC, AEMC analysis.

Note: The Australian Capital Territory HHI is not presented in the top chart because its significantly higher score distorts the scale.

Figure 3.3's top graph shows that market concentration, as measured by HHI, has significantly decreased in all jurisdictions since 2009. Victoria, which has been deregulated for the longest period, has the lowest market concentration in the NEM.

The lower graph in Figure 3.3 shows that NEM jurisdictions have generally seen decreases in market concentration each year since 2009. The exception to this is the Australian Capital Territory which only saw decreases in market concentration in 2013. The lower graph also demonstrates the record decreases in market concentration in 2018 in South East Queensland, Victoria and the Australian Capital Territory since 2009.

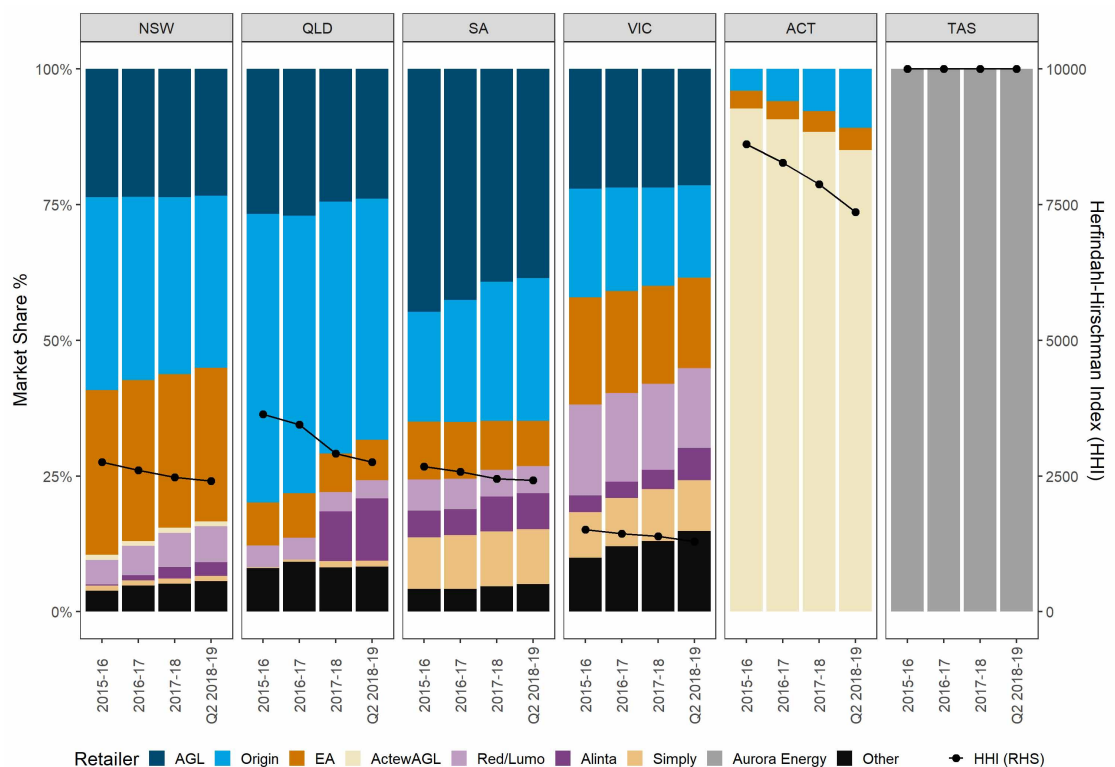
Since retail contestability, incumbent retailers have progressively lost their significant market share to other competitive retailers. These retailers have offered a better price and/or customer service to convince customers to switch from the incumbent retailer. Initially this mainly occurred where other big 3 retailers entered network regions to compete against the incumbent.

Smaller retailers then entered the retail electricity market, with the most successful of these businesses being, or becoming, vertically integrated. Consumer switching activity away from the incumbent retailers as well as new retailer entry into the retail electricity market was generally observed to increase after price deregulation occurred in each jurisdiction.

Short-term changes in market concentration

Competitive markets generally exhibit low levels of market concentration and a diversity of business types. The retail electricity market is becoming more competitive over time. This is shown as market concentration, as indicated by the HHI, which continues to decrease (see Figure 3.4 below).

Figure 3.4: Short-term changes in market share, 2015-16 to Q2 2018-19 (electricity) – Residential



Source: AER and ESC, AEMC analysis.

Note: Queensland refers to the South East Queensland region. The market share measures (and related HHI calculations) were taken from the fourth quarter of each financial year.

Analysis of market share in the retail market at a NEM-wide level shows that the three incumbent retailers continue to have the largest market share. However, the three businesses with the largest market share in some network regions no longer consist of the big 3. This is a significant shift in the retail electricity market structure and retailers noted in their interviews that this shift has fundamentally changed the way that these jurisdictional retail markets are operating.

In the retailer survey, many retailers agreed that a change in the way that market structure is categorised is needed. They noted that the market structure has shifted from the big 3 to a 'big 5/6'³⁸ and that the changes vary significantly by distribution network area. However, some smaller retailers considered that this discussion should not diminish the strong generation position and significant economies of scale advantage that the three incumbent retailers have NEM wide.

As a general indicator of the level concentration in the market it is interesting to note that the ACCC state that horizontal competition concerns are less likely to be identified with a merger if a market's HHI is below 2000 post-merger.³⁹ A HHI score of 2,000 therefore could be considered as one indication of a workably competitive market. From both Figure 3.3 and Figure 3.3 it can be seen that the Victoria electricity market is below a HHI of 2,000. New South Wales, South Australia and South East Queensland are also close to, and trending towards, 2,000 HHI.

Alongside the trend of decreasing market concentration, there are a number of specific examples that highlight how competition is improving across the NEM, including:

- The disruption of the South East Queensland market by the aggressive entry and expansion from Alinta Energy. Notably, Alinta gained about 125,000 customers in a year.
- Tango Energy's entry into the small customer segment of the Victorian market. Tango Energy gained a notable amount of customers in a single year using a strategy of simple offers at low prices.
- Powershop has expanded into South Australia and are offering customers the ability to lower their bill for demand response activities. AGL and EnergyAustralia are also offering or trialling similar products.
- Retailers are generally moving away from discounting practices — Red Energy/Lumo Energy has moved from large headline conditional discounts to small discounts for e-billing and direct debit; Momentum Energy and Powershop do not have discounts on any of their offers; AGL, EnergyAustralia and Origin Energy are moving away from big headline discounts to various other offers. However, some retailers are continuing to offer large headline discounts as they consider that this is what customers want.
- Retailers have noted consumers' preference for simpler and more stable pricing products over the past two years. A number of these are still being developed or trialled by a variety of retailers. An example of these innovative offers responding to consumer sentiment are:

38 AGL, EnergyAustralia, Origin Energy, Simply Energy, Alinta Energy and Red Energy/Lumo Energy.

39 For more information see: <https://www.accc.gov.au/system/files/Merger%20guidelines%20-%20Final.PDF>.

- Origin Energy's *Predictable Plan*. This offer sets a bill amount for a year using historical energy usage/bills with the customer's future energy usage being uncapped.
- AGL's *Essentials Plus*. This offer is for a 24 month fixed price with no lock in contract. AGL stated in their interview that this product has performed better than expected, with high take up in all markets where offered.

These trends are further explored in chapter 4.

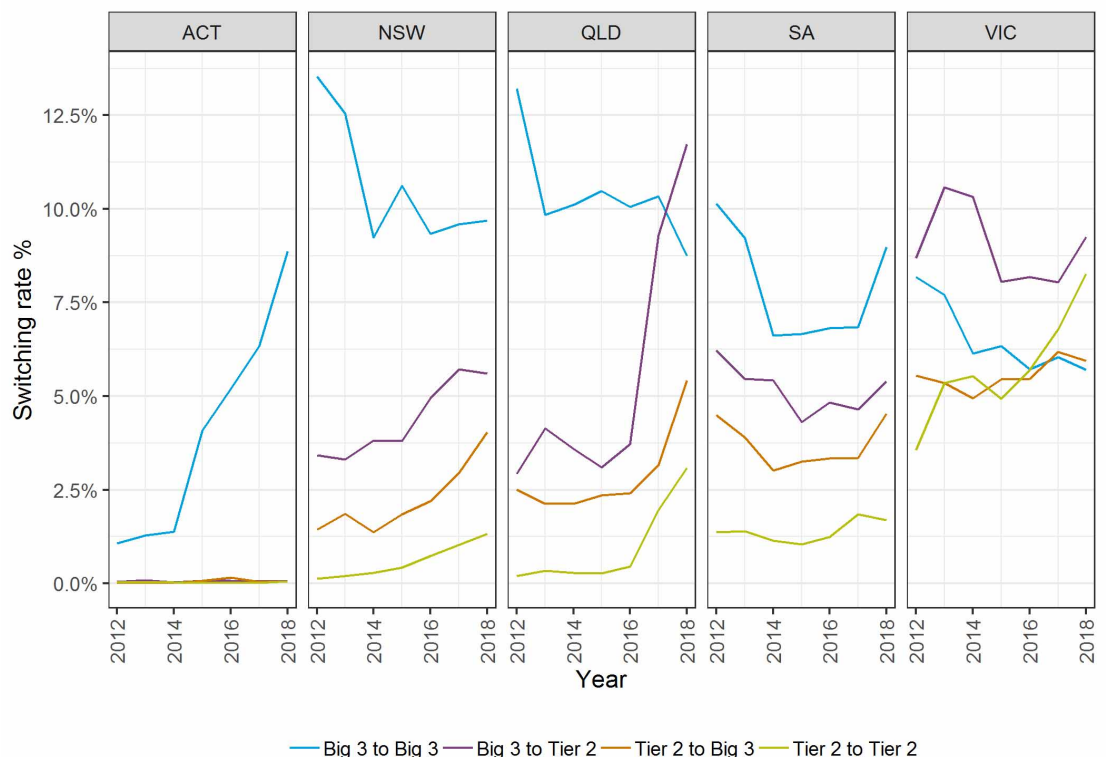
3.1.4

Consumer switching between electricity retailer types

Consumer switching between electricity retailer groups can provide an indication of where the shifts in retailer market shares have occurred. In turn, this can indicate where consumers find value for their money and how they are reacting to changes in market offers. Information about consumers switching between different types of retailers provides an indicator of progress in achieving effective competition in a market. Further, the rate of switching between the big 3, and from tier 2 retailers to the big 3, provides an insight into how effectively the incumbent retailers are competing for consumers. Consumer behaviour, such as overall switching and consumer satisfaction, is discussed further in chapter 5.

Figure 3.5 below shows switching between and within different retailer groups over time.

Figure 3.5: Consumer switching within and between retailer tiers, 2012 to 2018



Source: AEMO, AEMC analysis.

The main conclusions that can be drawn from Figure 3.5 are:

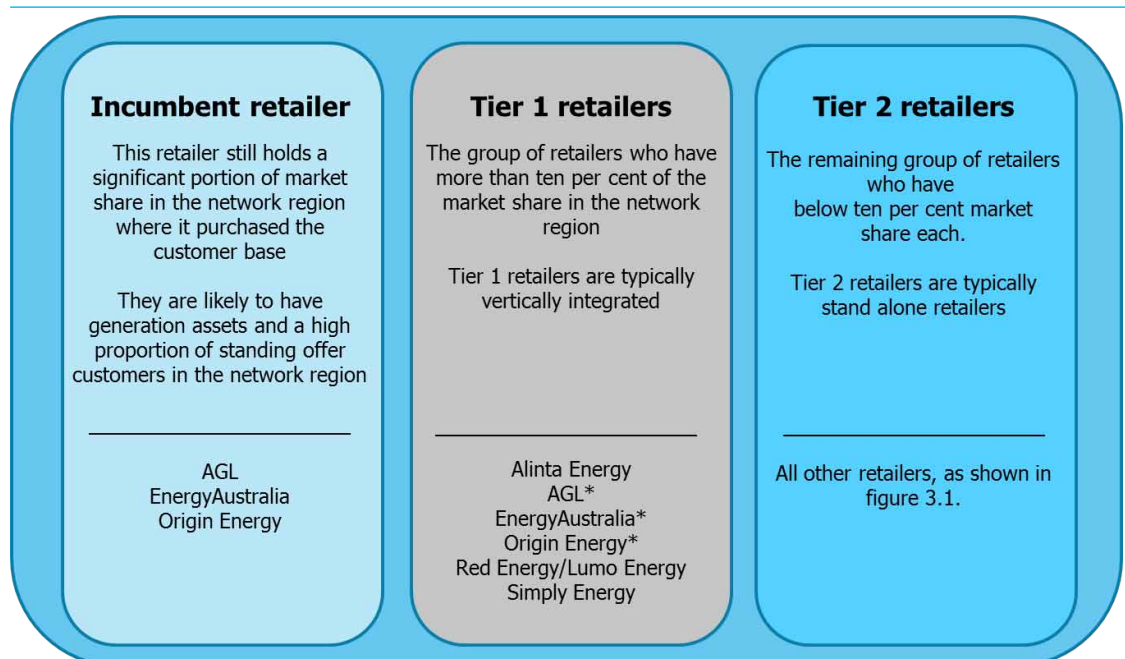
- Overall consumer switching continued to increase in 2018.
- Switching from the big 3 to the tier 2 retailers also continued to increase significantly. Most notably, this can be seen with Alinta Energy's aggressive entry and expansion in the South East Queensland market. This resulted in an increase in switching activity from both the big 3 and tier 2 retailers to other tier 2 retailers.
- Generally, switching behaviour of consumers between tier 2 to tier 2 retailers is increasing while switching between the big 3 retailers has decreased.
- Victoria continues to see an increase in switching from both the big 3 and tier 2 retailers to other tier 2 retailers.
- The Australian Capital Territory has seen an increasing trend in switching between the big 3 retailers since 2014, mainly due to Origin Energy's activity in the region.
- Consumer switching between electricity retailer types also shows the changing dynamics in the electricity market structure.

3.1.5

Emerging market structure

From the above analysis, the Commission now considers that the retail electricity market structure for each network region is as set out below in Figure 3.6.

Figure 3.6: Emerging retail electricity market structure

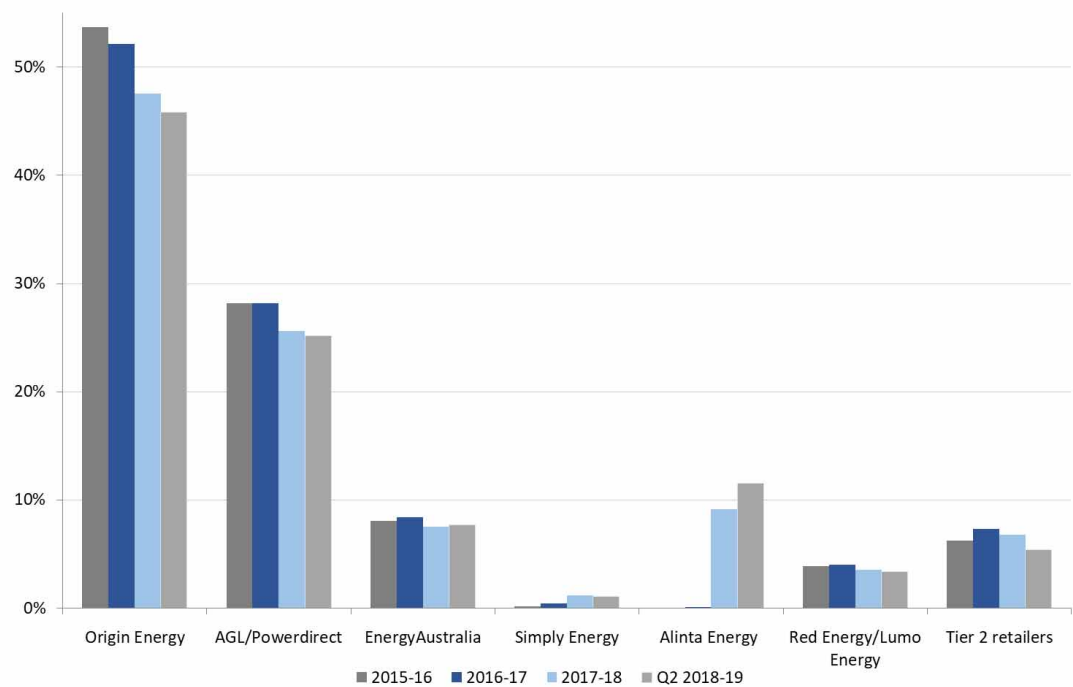


Source: AEMC

Note: *AGL, EnergyAustralia and Origin Energy are considered a tier 1 retailer in those network regions where it is not an incumbent retailer. Origin Energy is the incumbent retailer for Citipower, Powercor, Essential Energy, Endeavour Energy and Energex network regions. AGL is the incumbent retailer for United Energy, Jemena, Energex and South Australian Power Networks (SAPN) network regions. EnergyAustralia is the incumbent retailer for AusNet Services and Ausgrid network regions.

This emerging market structure can already been seen in a number of network regions including, for example, South East Queensland which is shown in Figure 3.7 below.

Figure 3.7: Case study of emerging electricity retail structures – South East Queensland



Source: AER, AEMC analysis

Note: Ergon retail and retailers who exclusively retail to embedded networks were removed from the AER's Queensland dataset to obtain these results. Includes residential and small business customers.

As can be seen in Figure 3.7 above, the incumbents in South East Queensland, Origin Energy and AGL, have been progressively losing their market share over time. Alinta Energy has predominantly captured this market share following their joint venture with CS Energy. By gaining access to generation in South East Queensland, through the joint venture, Alinta was able to aggressively enter the market with low priced offers.

South Australia has seen a similar change in market share with Simply Energy now holding approximately 10 per cent of the market share and EnergyAustralia approximately eight per cent.⁴⁰ The Commission has also observed similar trends in other network regions within jurisdictions.

Currently, the Commission is only able to report on market structure on a jurisdictional basis. In order for the Commission and policy-makers to better analyse this emerging market structure more granular publicly available data is required. This would allow policy-makers the ability to understand the nature of the market on a network region level, and make an

⁴⁰ AER, Q2 2018-19 Retail Performance Data, www.aer.gov.au/retail-markets/performance-reporting/retail-energy-market-performance-update-for-quarter-2-2018-19, accessed 11 April 2018.

assessment on how competition is working in those regions. The Commission therefore recommends that the AER require retailers to provide, and make public, market share and standing and market offer customer numbers by network region.

As the Commission is not able to report on market share by network region, this review continues to report on the big 3 and tier 2 retailers.

3.2 Barriers to entry, expansion and exit — electricity

Competition will generally be more effective in markets that have low barriers to entry and expansion. Ease of entry and expansion in markets creates competitive pressures on retailers to deliver more efficient services, charge efficient prices, and improve products and services being offered to consumers. If barriers prevent new entry then there may be a flow on effect to price and innovation in that market. Also, businesses may not enter a market if they are not able to exit that market easily.

This section focuses on retailers' views on barriers to entry, expansion and exit in the electricity market. The Commission notes that interviews were conducted before the ESC's draft advice for the VDO, the AER's draft determination for the DMO and the Australian Government's draft DMO Code were released.

Some retailers reiterated that the significant number of active retailers in the market suggests that the barriers to entry and expansion are not insurmountable. This is consistent with observations in the 2018 report. Most retailers noted that the issues that have an impact on their ability to enter or expand in a market are:

- significant political and regulatory intervention
- jurisdictional regulatory divergence
- concerns regarding the ability to appropriately manage risk in the wholesale contract market
- the practice of saves and win-backs by retailers.

3.2.1 Political and regulatory intervention

Retailers considered that political and regulatory intervention had increased in the past year. The introduction of a form of price regulation of standing offers in Victoria by the Victorian government and in New South Wales, South Australia and South East Queensland by the Commonwealth DoEE was the most noted barrier to entry and expansion by retailers.

Victorian default offer

As set out in chapter 2, the Victorian Government will introduce a regulated standing offer on 1 July 2019. All retailers expressed concern about the Victorian reforms and noted that they consider these are creating a barrier to entry and expansion. Retailers raised the greatest concerns with the VDO because they believe it would be set at a level too low for effective competition.

The ESC's payment difficulty framework, with the associated complexity and credit risk, was also noted by retailers as a risk.

Small retailers were concerned that this type of intervention would entrench the market share of big 3 retailers. This concern stems from the belief that consumer switching activity would fall. Some retailers' noted that other retailers have been heavily competing for market share since the announcement of the VDO going ahead, surmising that it was an attempt to gain customers prior to a decrease in consumer switching.

Retailers also expect the VDO to blunt the 'cut through' of any innovative product that they were offering, or going to offer, to customers. Retailers also considered that product differentiation would be less relevant with customers giving preference to the government-endorsed price of the VDO. Some retailers noted that, because of this risk, their innovative offers will not be trialled in Victoria, despite it being the best place to do it due to the high penetration of advanced meters.

The Commission will continue to monitor the impacts of the VDO in the market, including analysis whether retailers' concerns come to fruition.

Commonwealth DoEE's default market offer

Retailers were also concerned about the DMO, although at the time it was not expected to be a hard cap, but only a reference bill. However, retailers commented that if the ('soft cap') reference bill was set too low it would become an effective hard cap on prices. Retailers also noted that the reference bill would drive consumer behaviour and that as a result the level that it was set at would become important.

Increasing compliance burden and its effect on innovation and product development

All retailers surveyed noted that the costs and time required to meet new compliance measures meant that they had to halt or divert resources from product and service innovation. The changes required by the payment difficulty framework and five minute settlement rule change were the most common examples provided by retailers for this occurring.

Some retailers noted that this year their business was solely focused on compliance with no resources working on innovation or product development. One retailer noted that their entire business is built around being able to consistently innovate for their customers but that they would not be able to do so this year. This focus on compliance is being driven by the high number of large regulatory changes being implemented concurrently with little or no transitional period.

3.2.2

Regulatory divergence

Divergence of regulatory frameworks

The NECF was designed to regulate the sale and supply of electricity and gas to retail customer across the NEM. Its purpose was also to provide national consistency to lower compliance costs and reduce barriers to expansion. However, state and territory laws can modify the application of parts of the National Energy Retail Law (NERL) and associated the NERR in that state or territory. This has resulted in different versions of the NECF applying in

each state or territory. The consumer protection frameworks of the NECF do not apply in Victoria as it has its own framework under the Energy Retail Code.

Further to this, and as noted in chapter 2, the DMO Code gives effect to the Australian Government's decision to set a cap on standing offers in New South Wales, South East Queensland and South Australia. The NECF is a state and territory-based legal framework and the introduction of the Commonwealth framework to regulate electricity prices introduces a new layer of regulation for retailers and consumers.

Divergence of regulatory objectives

Many retailers noted to the Commission that there are conflicting policy objectives for the different parts of the electricity supply chain. For example, networks are moving to become cost reflective, which is more volatile, while retail prices are moving in the opposite direction with the introduction of a cap on standing offers, which is static for a year. The divergence of policy objectives in regulatory processes are conflicting with each other and potentially stunting the long-term positive effects for consumers of the conflicting policies.

Retailers stated that a coherent set of strategic objectives should be set by policy-makers for all parts of the supply chain. Retailers considered this would allow different policies for different sections of the supply chain to operate together and move the market in a singular direction. This may provide the certainty required for investment in the various supply chain elements, even if the policy direction is not necessarily where each individual market participant wishes the market would move towards.

3.2.3

Wholesale market contracts and risk management

Some retailers, including both standalone and vertically integrated businesses, noted that there is an issue with contract market liquidity, particularly in South Australia. The issue of liquidity has been raised for a number of years and is currently the focus of the *Market making arrangements in the NEM* rule change and the MLO component of the RRO.⁴¹

Retailer views on whether contract market liquidity is an issue, from the retailer interviews and from an AEMC's workshop on the market making rule change, remain split into two main camps:

- Some retailers stated there is no issue with liquidity in any of the markets because they can access the required risk management tools to sufficiently hedge themselves. However, the Commission notes the majority of these retailers are vertically integrated businesses.
- Other retailers stated that they believe there is an issue with liquidity, but did not know the cause/s of the lack of liquidity at any of the regional reference nodes. The retailers noted that these issues are inhibiting them — particularly smaller, standalone retailers — from being able to appropriately manage their exposure to the wholesale market in a way they would like to:

⁴¹ For more information on the market making arrangements in the NEM rule change see: <https://www.aemc.gov.au/rule-changes/market-making-arrangements-nem>.

- A vertically integrated retailer noted that difficulties in obtaining competitive contracts in some markets where they don't have physical assets has meant that they have had to change their retail strategies in those markets.
- Some small retailers stated that their inability to contract adequately is acting as a barrier to entry and expansion in various markets, with the issue being most prevalent in South Australia.

3.2.4 Customer win-backs and saves

A small retailer reiterated concerns from the 2018 Review that the issue of customer win-backs and saves still occur in the market. They also reiterated that they are concerned about the prevalence and aggressiveness of saves and win-backs, and the lack of transparency of the practice.

The Commission notes that in December 2018, the AEMC and AEMO provided their joint advice to COAG Energy Council on ACCC recommendations 8 and 9 regarding customer transfers. COAG considered this advice at their COAG EC December meeting. As noted in chapter 2, in May 2019, AEMO submitted a rule change to the AEMC proposing to mandate a customer transfer being completed within two days of the end of the cooling-off period. If made, this rule will likely impact the ability of retailers to carry out aggressive save activities prior to the customer switching.

3.2.5 Barriers to exit

No retailers identified any barriers for a business to exit the electricity market.

In last year's review, the non-reversion policy for regional Queensland (Ergon Energy network) customers was noted as a barrier to exiting the market for retailers. The non-reversion policy was that a customer who left Ergon Energy Retail to take up a market offer with another retailer was not able to return to Ergon Energy Retail. This locked both that premise and retailer into retailing electricity with each other indefinitely. The Queensland Government removed the non-reversion in 2018 as part of their Affordable Energy Plan, and consequently the non-reversion policy is no longer a barrier to exit from the regional Queensland market.

3.3 Economies of scale and scope

3.3.1 Economies of scale

As with previous reviews, nearly all retailers noted that economies of scale are very important to be able to operate a successful business. Obtaining economies of scale enables retailers to spread the fixed costs and investments associated with providing retail services over a larger customer base.

Some smaller retailers noted that economies of scale is achieved at approximately 100,000 to 200,000 customers. Smaller retailers generally face higher costs to serve each customer until they reach this scale.

Some retailers also cited that high levels of regulatory divergence and intervention are requiring economies of scale to be reached in each region and not simply across the entire NEM customer base. However, larger retailers continue to note that changing large established systems, which are less agile and more expensive, is difficult in the current ever-changing regulatory environment.

3.3.2

Economies of scope

Gas remains the core product to be added with electricity for a business to gain economies of scope. A few retailers noted that they considered being able to retail gas (usually as a dual fuel) is essential to being able to competitively retail electricity in Victoria. This is because of the high penetration of gas networks and appliances in the Victorian small customer market and the desire by customers to have a single retailer for both electricity and gas.

A few retailers have begun to differentiate themselves by focusing on gaining economies of scope. Offering multiple different products was seen as an alternate path to market and an efficient marketing and acquisition tool, rather than the traditional benefit of cost reductions of obtaining economies of scope. These economies of scope may not directly decrease the business's costs of providing energy, but may reduce the cost of customer acquisition and retention. For example, Origin Energy, Sumo Power and Click Energy/amaysim also offer telecommunication (mobile phone and home internet) products alongside their energy products.

Retailers noted that it was difficult to gain cost reductions through economies of scope with these 'non-energy' products due to the misalignment of regulatory and compliance measures. This can be as simple as billing requirements that stop the business being able to have a single bill for all the services that the customer uses.

Many retailers — including AGL, Simply Energy, Energy Locals, ActewAGL, Origin Energy, EnergyAustralia, Red Energy and Powershop — are all offering solar and battery products to residential customers. Some retailers interviewed said the business feels obligated to offer these products to retain specific customers. Other retailers are very focused on this area in light of their future strategy and retail offers. Retailer battery product offers are further discussed in chapter 8.

3.4

Wholesale contract market

The wholesale contract market is an important feature of the NEM, which supports retail competition. This section explains why and how retailers interact with the wholesale contract market. Retailer views on the contract market are covered in section 3.2.3.

3.4.1

Why retailers interact with the wholesale contracts markets

The NEM wholesale spot market is a gross pool market where generators are paid for the electricity they produce, and retailers pay for the electricity their customers consume.⁴² The wholesale spot market price per megawatt hour varies from -\$1,000 to \$14,700. Retailers and generators therefore use electricity wholesale contracts as a way to manage the risk they are exposed to from fluctuating spot market prices.

The wholesale contract market has implications for retail market outcomes. Wholesale contracts allow retailers to have a form of insurance so that they are able to know the price that they will pay for electricity in the medium-term. This in turn allows them to write longer-term retail contracts with consumers, providing stable retail prices. For generators, wholesale contracts provide the revenue certainty that is critical when seeking finance for new generation investments.

A more liquid wholesale contract market typically supports a more effectively competitive retail market. This is because retailers are able to get the contracts they require to manage the wholesale market risk. A liquid wholesale contract market is typically characterised by:

- no single transaction being likely to move the price excessively
- individual trades that are able to be easily executed
- an ability to trade large volumes of energy in a short period
- a market that can recover towards its natural equilibrium after being exposed to a shock.

The Commission has analysed liquidity in the NEM's wholesale contracts market in the *Market making arrangements in the NEM* rule change and therefore this Review will not analyse the liquidity of the wholesale contracts market.⁴³

3.4.2

How retailers interact with the wholesale contracts market

Contracts in the NEM are currently traded either on the ASX or OTC through bilateral contracts. Swaps, cap options and power purchase agreements (PPAs) are the typical types of wholesale market contracts.⁴⁴ These contracts are written to relate to a specific regional reference node and therefore only cover the risk for a retail load in that region. Different contracts also have a different certainty, or firmness, attached to them. Examples of this are:

- A PPA contract from a generator is not as certain (or firm) as a base swap or cap contract because the retailers is still exposed to high prices if the generator is not generating at the time.

⁴² A gross pool market is an electricity trading arrangement used in the NEM where generators are required to sell all the energy they produce and retailers buy all the energy they purchase through a single market — the wholesale spot market. A gross pool market differs from a net pool market where generators only sell energy that they have not already sold through bilateral contracts.

⁴³ For more information on the market making arrangements in the NEM rule change see: <https://www.aemc.gov.au/rule-changes/market-making-arrangements-nem>.

⁴⁴ A swap contract trades a given volume of energy during a fixed period for a fixed price. A cap contract trades a fixed volume of energy for a fixed price when the spot price exceeds a specified price. A PPA is an agreement between generator and a purchaser of electricity for a certain amount of electricity to be supplied for a certain price. For further explanation of what these contracts are see: <https://www.aemc.gov.au/sites/default/files/2018-06/Final%20Report.pdf>, pp. 35-36.

- Interregional hedging is generally not as firm a contract as those written for the region where the generator is located. For example a New South Wales base contract will only cover the risk of the New South Wales wholesale spot price and not that of the retailer's customers in another state. This can mean that while a business may manage their risk by contracting between regions, these hedges are not as firm as the same contract with a generator in the same region as the load. This means that generation assets are most valuable in the state where they exist.

Along with the typically high use of swap, cap and PPA products, there has been the emergence of more bespoke products, such as weather derivatives and load-following hedges. These contracts are becoming a common way for retailers to manage a portion, or all, of their risk exposure to the wholesale market. There is currently poor visibility on who is using these products as they are not traded on the ASX, and the Australian Financial Markets Association (AFMA) electricity OTC derivatives survey does not provide detailed information for these types of contracts.

3.4.3

Developments in the wholesale contract market

There are a number of developments in the wholesale contracts market that will affect the way retailers hedge their retail load. These are:

- The RRO: As noted in chapter 2, the RRO builds on existing spot and financial market arrangements in the NEM to facilitate investment in dispatchable capacity and demand response. It requires retailers to support reliability through contracting.
- The voluntary market making scheme on the ASX: on 1 July 2019, the Commission understands that at least five market participants will begin to market make base quarter and cap quarter contracts. The scheme provides market makers a rebate on their exchange fees as well as a proportion of any additional revenue made by the ASX due to market making activities. This scheme has been designed to align as closely as possible with the MLO and as such, will enable market participants to meet the requirements set out in the obligation.
- Market making arrangements in the NEM rule change: on 27 June 2019, the Commission published a draft determination on this rule change. In the determination the Commission addresses key matters raised by the rule change proponent. This includes a lack of liquidity in the contract market and the causes for this, particularly in relation to South Australia. Further, it assesses the most appropriate mechanism for establishing market making in the NEM at the current time.

3.5

Price deregulation

The Commission considers that prices should be deregulated where competition is effective. We are also tasked, under the Australian Energy Market Agreement and the Terms of reference from COAG Energy Council for this Review, with making an assessment as to which jurisdictions' have suitable retail competition that allow for the removal of jurisdictional retail energy price regulation.

From the data outlined in this and later chapters, as well as retailers' views, effective competition is yet to fully emerge in the Australian Capital Territory, regional Queensland and Tasmanian electricity markets. This may be due to:

- the limited size of the Tasmanian and Australian Capital Territory electricity markets
- the continuation of the uniform tariff policy in regional Queensland.⁴⁵

Therefore, the Commission does not consider that price deregulation is currently warranted in these regions.

However, there has been improvements in competition in these regions in the past year. Most notably, these developments have included the:

- removal of the non-reversion policy that was acting as a barrier to exit for retailers that may wish to enter regional Queensland
- entry of 1st Energy into the Tasmanian residential electricity market, as the first retailer to compete against the incumbent Aurora Energy
- significant decreases in market concentration and increase in competitive market offers in the Australian Capital Territory's electricity small customer market.

The Commission will continue to monitor these markets in light of these improvements for their suitability for price deregulation.

3.6 Gas market structure, issues and barriers

This section examines the gas market structure by investigating the number of active retailers and their ownership structures as well as consumers switching. Market participation and market share, consumer switching, and any gas market issues raised by retailers through our annual survey are then analysed to provide further perspective on the level and effectiveness of competition in the gas market.

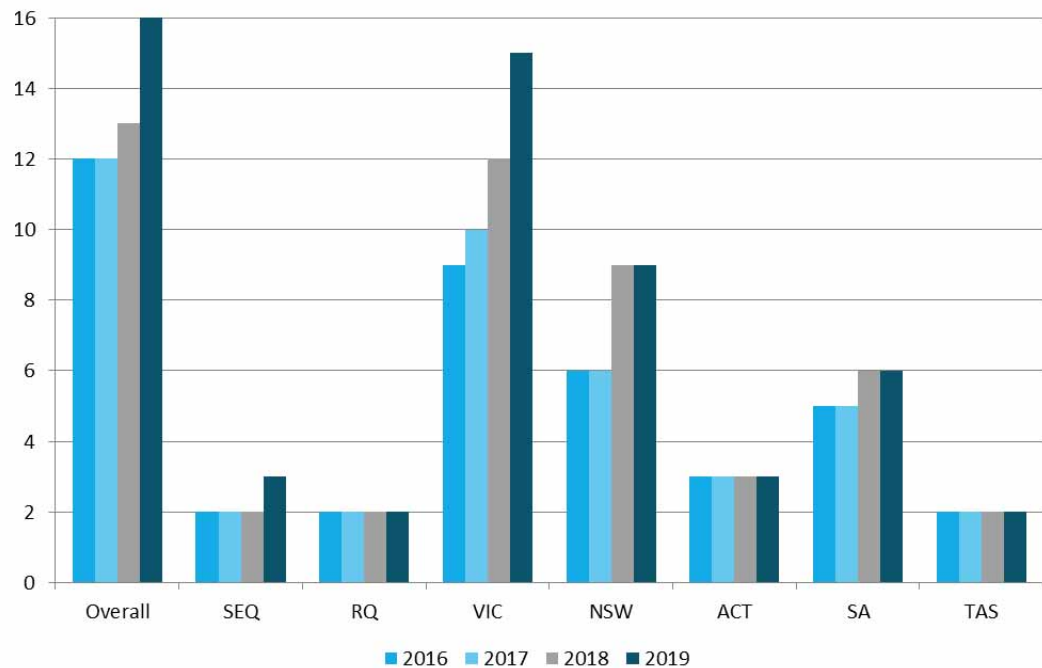
3.6.1 Gas market structure

Active gas retailers

As of March 2019, there was a total of 19 active retail gas brands across the NEM jurisdictions, representing 16 retail gas businesses. Since 2018, three new businesses have entered the gas market. GloBird Energy and Powershop expanded their electricity retail business into the gas market, while DC Power Co. is a new entrant into both energy markets.

⁴⁵ The uniform tariff policy (UTP) is a payment from the Queensland Government to Ergon Energy's retail business to ensure the price paid by small customers are equivalent to those paid by the same customer in the competitive market in South East Queensland. However, as the subsidy is not available to other retailers, it creates a barrier for them to offer competitively priced service. The Queensland Government has made no commitment to change the current arrangements.

Figure 3.8: Active gas retail companies



Source: AEMC

The Commission notes a similar trend of retailers only servicing embedded network is also prevalent in gas as it is in electricity.

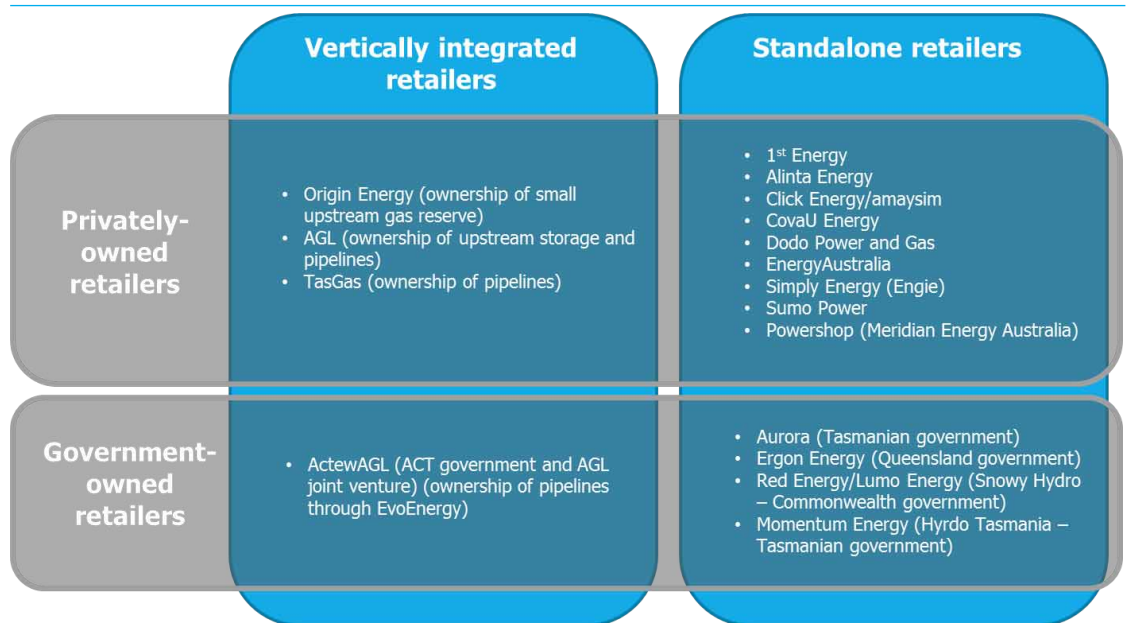
Structures of gas retailers

Vertical integration in gas refers to ownership of a retailer and upstream assets, such as pipelines, storage or owning a production/exploration field. Unlike in electricity, the trend in recent years has been for retailers in the gas market to divest their upstream interests.

However, there has been a number of investments announced in the past year by retailers in upstream assets, for example, AGL's liquified natural gas (LNG) import terminal in Victoria. These investments are still being progressed and the Commission will monitor the impact of these on the domestic retail gas market.

Figure 3.9 below shows the gas retailer ownership structure. There have not been any changes to this overall structure since the 2018 Review.

Figure 3.9: Gas retailer structures



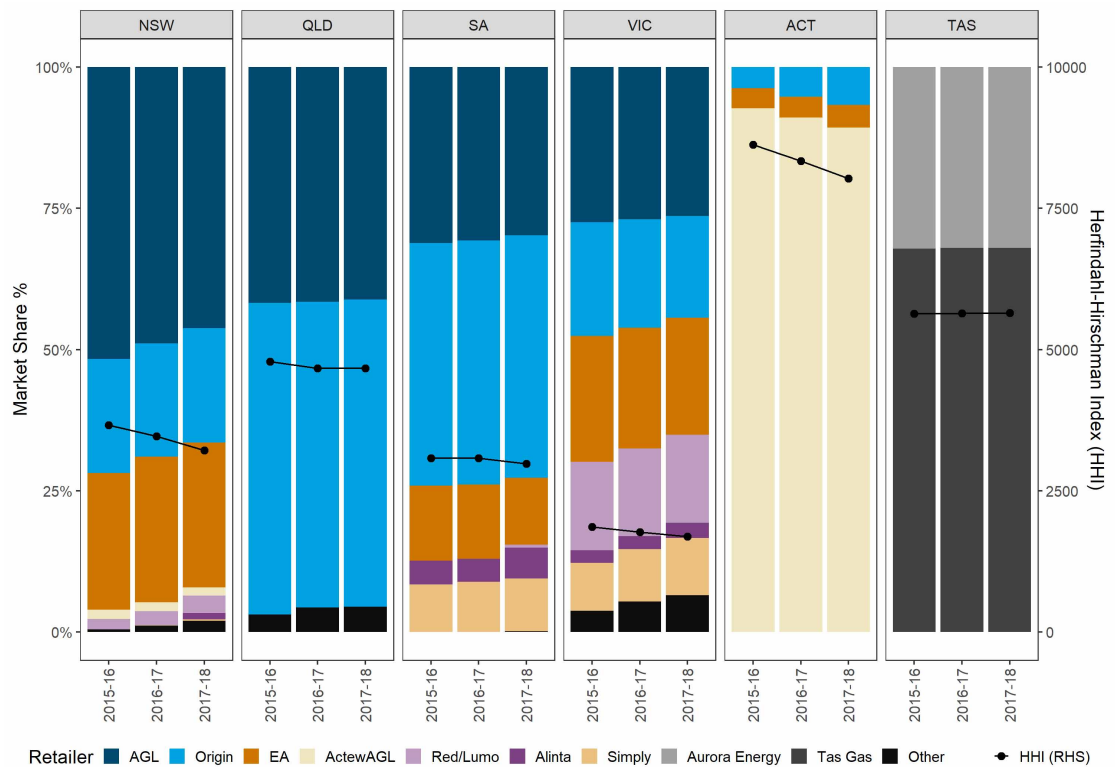
Source: AEMC

Market participation and market shares in gas markets

The level of market concentration across gas markets was examined using the same indicators as for electricity markets. Gas markets are becoming more competitive across all jurisdictions except for Tasmania whose gas market competition has been static since 2015-16. This is reflected in decreasing HHI across all jurisdictions other than Tasmania.

The short-term changes (between 2015-16 to 2017-18) in the HHI as well as the market share of each of the retailers that hold significant market share for each jurisdiction can be seen in Figure 3.10 below.

Figure 3.10: Short-term changes in market share, 2015-16 to 2017-18 (gas)



Source: AER, ESC and AEMO, AEMC analysis.

Note: This graph is based on residential customer numbers.

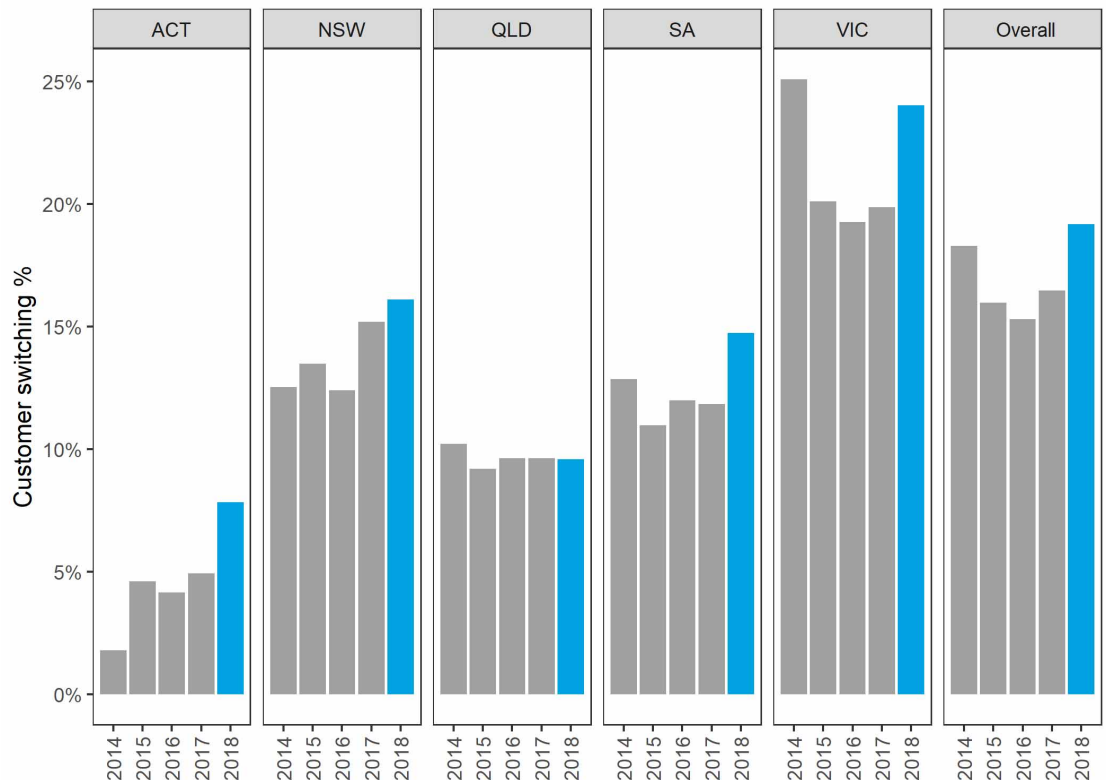
The shift in gas market structure has not been as significant as that seen in the electricity market structure in the past few years. Despite this, from the HHI, it can be seen that:

- New South Wales and the Australian Capital Territory have become less concentrated in the past year
- while South East Queensland's market share is mainly held by AGL and Origin Energy, it is not highly concentrated
- only small decreases in market concentration have occurred in South East Queensland, South Australia and Victoria since 2015-16.

Overall customer switching, by jurisdiction

Customer switching can indicate the level of rivalry between gas retailers in the market. The percentage of customer switching by jurisdiction is shown below in Figure 3.11.

Figure 3.11: Overall gas switching, 2015-2018 (by jurisdiction)



Source: AEMO, AEMC analysis.

The level of gas switching has increased in all jurisdictions other than Queensland where it slightly decreased in 2018. All jurisdictions' switching rates are at their highest since 2014 (except for Queensland) which may indicate that consumers are more engaged now than they have been in the past four years.

3.6.2

Gas market issues

As part of the retailer survey, the Commission asked participants to make comment on the state of the gas market. There is limited commentary as some retailers interviewed do not retail any gas products. However, the comments that were provided by retailers were consistent across all participants and are summarised below.

- As previously noted, a few retailers noted that they considered being able to retail gas (usually as a dual fuel) is essential to being able to competitively retail energy in Victoria. This is because of the high penetration of gas networks and appliances in the Victorian small customer market segments and the desire for customers to have a single retailer for both electricity and gas.

- It was noted to the Commission that the DMO and VDO reforms do not apply to small customer retail gas markets. There may be an increase in gas prices where retailers seek to recover decreases in electricity revenue.
- Almost all retailers who offer gas products stated that access to suitable gas market contracts, especially in Victoria, has become more difficult over the last year. This is believed to be for both contracts for the gas itself and for access to gas pipelines for transportation.
- A retailer noted that some of their larger customers (be that smaller businesses and/or commercial and industrial users) have opted for wholesale gas spot exposure as well as shorter contract lengths due to the current high gas contract prices.
- However, most retailers did note that there has been an increase in gas contracts following the Prime Minister's gas roundtable last year.

4

RETAILER BEHAVIOUR AND PRICING

BOX 5: SUMMARY OF KEY FINDINGS

- Energy prices for small consumers generally decreased over the past year. Driven by lower prices from new and emerging retailers, the largest decreases were for residential electricity market offers. Key indicators of price decreases include:
 - The median market offer fell in all deregulated jurisdictions. The largest falls were in South East Queensland where the median market offer fell by eight per cent.
 - The minimum market offer fell across all regions except Victoria.
 - The median offer was generally closer to the minimum offer across the jurisdictions. This was particularly the case in Victoria and New South Wales, with the majority of offers in the lower range of the distribution.
 - Median standing offers fell in all deregulated jurisdictions. South East Queensland saw the largest fall of four per cent.
- The proportion of customers on standing offers continued to decline and this decline accelerated in most jurisdictions. As of December 2018, six, nine, fourteen and fifteen per cent of small customers were on standing offers in Victoria, South Australia, New South Wales and South East Queensland respectively. By 1 July 2019, it is likely that on average, less than one in every nine customers will be on standing offers.
- In last year's review, the Commission found that the predominant form of retail energy offers at the time — large, pay-on-time conditional discounts, off inconsistent and variable base rates — were not benefiting consumers. Over the past year:
 - There has been an increase in the number and proportion of no discount offers available in the market. These offers make it easier for customers to compare between offers.
 - There has been an increase in the number and proportion of fixed or capped price offers available. These offers provide more certainty to customers and reduce the need to shop around as often.
 - These fixed price and no discount offers are often combined in one offer. Furthermore, they are often the cheapest, or among the cheapest in the market.
- The market moving towards fixed and no discount offers is a positive move. However, offers with large conditional discounts off variable base rates still represent a significant share of the market and the levels of conditional discounts within these offers continued to increase over the past year. The Commission considers these practices warrant continued monitoring, analysis and targeted regulatory interventions.
- The introduction of the reference price element of the DMO Code on 1 July 2019 is intended to assist consumers in comparing offers. The Commission will incorporate these changes in its monitoring, analysis and rule change processes. This will commence with

the Commission initiating rule changes in July 2019 related to restricting conditional discounts and information requirements for customers on standing offers.

- Continued increases in product and pricing innovation also occurred over the past year, including:
 - new dynamic tariffs for those customers seeking to respond to price signals and utilise distributed energy resources (for example, solar PV and battery technology)
 - new tariffs that are transparent about the mark up above input costs the retailer is charging, targeted at customers with a lack of trust in retailers
 - gradual increases in product bundling from previous years continued.

BOX 6: ACTION 1 — INCREASING TRANSPARENCY OF RETAIL MARKET OUTCOMES

In the course of the analysis presented in chapter 4, the Commission has noted that there is a lack of available data regarding the number of customers on individual retail tariffs. This restricts the ability of policy-makers to assess whether retail competition, and specific practices and elements of retail competition, are working in the long-term interest of consumers. For example, the Commission has drawn many of its conclusions in this section through combining the availability of offers on Energy Made Easy and Victorian Energy Compare with changes in market share data from chapter 3 or retailer interview information on the popularity of different pricing practices. However, this is an imperfect substitute for actual tariff information.

To address this lack of information, the AEMC will work with other market bodies and industry to make data on the number of customers on specific market offers available in a form that enhances the transparency of the impact of retail competition on the long-term interests of consumers. Under the Energy Charter framework, it is expected that industry would take an active role in this process and support the Commission's work in this space.

Having assessed the structure of the electricity and gas markets in chapter 3, the report now focuses on the conduct of market participants. This chapter examines how retailers compete for customers through price and non-price offerings, describes retailer behaviour, and sets out the trends in:

- the types and structure of pricing offers
- bill outcomes for residential consumers
- pricing practices of retailers in the residential and small business markets
- pricing and product innovation.

The analysis considers retailer conduct in relation to small consumers in both the electricity and gas markets.

4.1 Types and structures of retail energy offers

This section looks at the types of structures and energy offers available in the market and how they have changed since the 2018 Review. This is done by examining the:

- difference and amount of customers on standing and market offers
- different components of residential electricity and gas bills
- various retail tariff structures available in the market.

4.1.1 Standing and market offers

Initially, in the energy market a regulated standing offer was available to all consumers. When full retail contestability was introduced, retailers could offer market contracts. All residential and small business energy offers are either a standing or market offer.⁴⁶ The main difference between the two is the terms and conditions in the contract, and the price. Market offers allow retailers to determine most of the terms and conditions in the contract.⁴⁷

Market offer contracts are generally cheaper than standing offer contracts, and provide additional flexibility in tariff design. A common feature of market offers are discounts, such as pay-on-time or direct debit discounts. These discounts are generally off standing offer rates, which are not consistently set across retailers. See section 4.2.3 for an indication of the spread of standing offers for a representative customer.

All retailers must offer at least one standard retail contract at standing offer prices and these are often the default contract when a consumer does not choose a specific plan. A standing (or standard) offer contract contains terms and conditions including that prices cannot change more than once every six months⁴⁸ and there is a minimum amount of time before customers can be disconnected if they do not pay their bill.

Proportion of small customers on standing offers

Table 4.1 below shows the proportion of small customers on standing offers for electricity and gas.

Table 4.1: Proportion of small customers on standing offers in 2018

JURISDICTION	ELECTRICITY STANDING OFFER	CHANGE FROM 2017 TO 2018	GAS STAND- ING OFFER	CHANGE FROM 2017 TO 2018
Queensland*			24%	↓ 4%
South East Queensland	15%	↓ 5%		

⁴⁶ A very small subset of customers may also consume energy under a 'deemed customer retail arrangement' in certain circumstances. The terms of such an arrangement are the terms and conditions of the retailer's standard retail contract. See Part 2, Division 9 of the NERL.

⁴⁷ Some conditions are still required to be part of the market contracts as per Part 2, Division 2 of the NERR.

⁴⁸ The full characteristics of a standing contract are set out in Part 2, Division 1 of the NERR.

JURISDICTION	ELECTRICITY STANDING OFFER	CHANGE FROM 2017 TO 2018	GAS STAND- ING OFFER	CHANGE FROM 2017 TO 2018
New South Wales	14%	↓ 5%	13%	↓ 2%
Australian Capital Territory	51%	↓ 19%	49%	↓ 19%
South Australia	9%	↓ 3%	11%	↓ 2%
Tasmania**	92%	↑ 2%		
Victoria***	6%	↓ 1%	7%	↓ 2%

Source: AER retail statistics and the ESC's Victorian Energy Market Report 2017-18. Note: rounded figures may not sum to 100 per cent. Data as of December 2018, except for Victoria which is based on 2017-18.

Note: *Gas statistics are Queensland-wide and electricity statistics are for the deregulated region (South East Queensland). **While Tasmania has three gas offers, the AER does not publish customer numbers. ***Victorian numbers are based on residential customers only.

The table shows that the proportion of customers on standing offers has decreased across all jurisdictions except Tasmania. In the electricity retail market, the proportion of customers on standing offers has decreased over time in all jurisdictions that have removed price regulation as customers moved to lower priced market offers. By 1 July 2019, it is likely that on average, less than one in every nine customers will be on standing offers across deregulated jurisdictions.

Analysis of standing offer customers demonstrates that there are specific groups of customers who have not responded to the availability of lower-priced market offers. The Commission's analysis in the 2018 Review and advice to COAG Energy Council on the DMO highlighted that higher proportions of rural and small business customers remain on standing offers.

The Commission expects that a small segment of the market who are on standing offers for a short period will always exist. These customers would be on a standing offer temporarily when they move house or create a new connection and have not yet selected a market offer. This segment consists of approximately two to four per cent of all residential customers.

Re-regulation of standing offers

As noted in chapter 2, from 1 July 2019, the price for standing offer contracts in deregulated NEM jurisdictions will be capped under the DMO and VDO.⁴⁹ Standing offers in South East Queensland, New South Wales and South Australia will be capped under the DMO; while standing offers in Victoria will be capped under the VDO. Standing offer contracts in regional Queensland, the Australian Capital Territory and Tasmania will continue to be set by state and territory regulators. The DMO and VDO will be set below the majority of the current standing offer bills in the market. This means that customers on most standing offer contracts will see

⁴⁹ More precisely, a representative bill will be capped under each of these arrangements. Retailers will be free to vary the supply and volume charge provided that the total bill for a representative consumption level does not exceed the amount stipulated in the DMO or VDO.

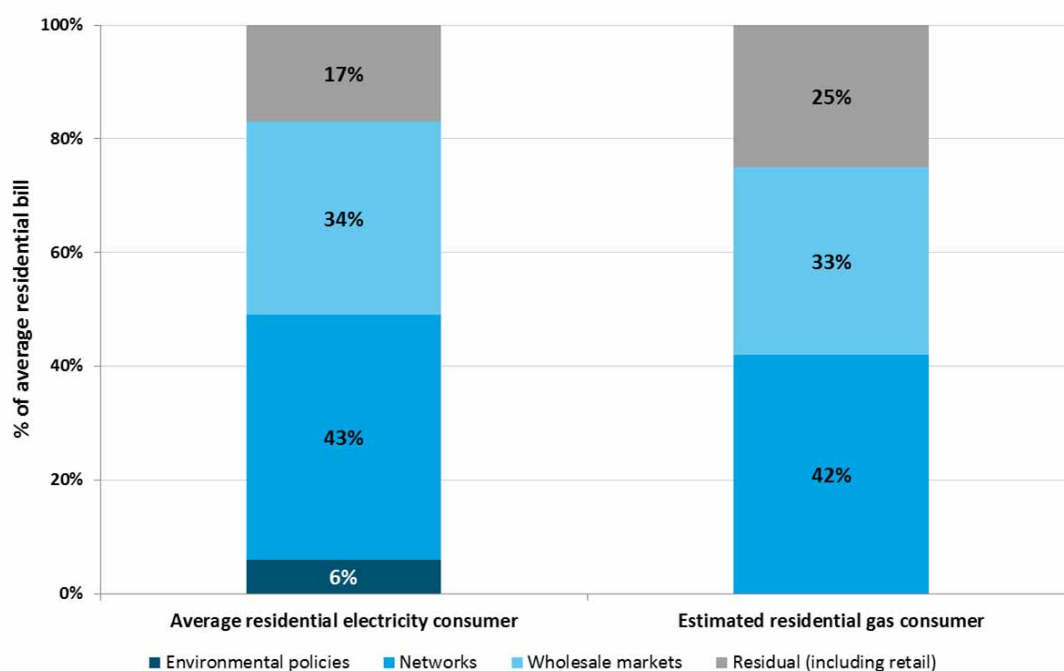
a fall in prices and standing offers will likely become more consistent after the introduction of the DMO and VDO. The Commission notes that, while customers on standing offers may see a reduction in their bills, there will still be merit in customers shopping around for cheaper market offers.

4.1.2

Components of residential energy bills

Residential energy offers can be broken down into their components to gain a better understanding of their structure and the effect of retail competition on residential energy bills. A significant proportion of a typical retail bill is determined by upstream factors. Wholesale market, transmission and distribution network costs make up the majority of the final price that customers face. Figure 4.1 presents indicative cost components of residential electricity and gas bills.

Figure 4.1: Indicative cost components of residential electricity and gas bills



Source: ACCC, *Retail Electricity Pricing Inquiry — Final Report 2018*; Oakley Greenwood, *Gas Price Trends Review 2017*.

Note: The electricity bill is for the NEM but does not include Tasmania in the NEM average, while the gas graph shows the national average bills.

Figure 4.1 shows that on average across Australia, network (transmission and distribution) and wholesale costs make up around 70 per cent of an electricity residential customer's bill and 75 per cent of a gas residential customer's bill.

- Wholesale costs — A retailer's ability to influence their wholesale market risk and associated costs, and network costs to a lesser degree, influences the retail prices they can offer the market. Increased wholesale spot market costs have led to higher contract

prices, which in turn increases costs to retailers, particularly those that are not vertically integrated.

- Network costs — DNSP pricing structures have traditionally taken the form of a fixed and variable component which retailers generally adopt and pass on to consumers. However, there is a move towards more cost-reflective pricing driven by the Power of Choice reforms.⁵⁰ Additionally, with the introduction of competition in metering in December 2017, retailers now have the responsibility of choosing the provider of meters and metering services for electricity consumers.⁵¹

4.1.3

Retail tariff structures

There are several tariff structures available to consumers on both market and standing offers. Retailers package up the different components of energy bills into a price for their customers. The most common way for retailers to do this is using a two part retail energy tariff, consisting of:

- a fixed daily supply charge that is charged regardless of the amount of energy consumed or time of day
- a variable energy charge that is charged for each unit of energy consumed.

The difference between tariff types typically arises from the way the variable energy charge is designed, to provide a clearer (or blunter) price signal to consumers. Table 4.2 sets out the main types of retail tariff structures used in the energy market today.

Table 4.2: Retail tariff structures

TARIFF TYPE	DESCRIPTION OF TARIFF	HOW AND WHEN THE TARIFF IS USED
Block tariffs	<p>Block tariffs charge different per unit prices for different consumption levels.</p> <p>Block tariffs can be inclining or declining (where the energy charge increases or decreases) from one block to the next block, with a different charge then applying for consumption beyond that level of usage.</p> <p>In its simplest form, this tariff can be</p>	<ul style="list-style-type: none"> • The most common tariff structure for residential electricity and gas customers. • These tariffs can also vary from summer to winter, known as a seasonal tariff structure. • Most gas tariffs use this structure.

⁵⁰ Further analysis of network pricing is available in the AEMC's 2018 Residential Electricity Price Trends — Final Report, 21 December 2018. For more information on the move towards cost-reflective network pricing see the Distribution Network Pricing Arrangements rule change www.aemc.gov.au/rule-changes/distribution-network-pricing-arrangements.

⁵¹ Competition in metering has been implemented in all NEM states besides Victoria which has delayed implementation until 2021. For more information on competition in metering see: www.aemc.gov.au/rule-changes/expanding-competition-in-metering-and-related-serv.

TARIFF TYPE	DESCRIPTION OF TARIFF	HOW AND WHEN THE TARIFF IS USED
	a single block, where one price is charged for all electricity consumed.	
Time-of-use (TOU) tariffs	<p>TOU have up to three separate energy charges that vary by time of day (peak, off-peak, and shoulder).</p> <p>The duration and timing of these periods is determined by the DNSP, although the retailer is not obliged to use these same periods, or even mirror these tariff structures.</p> <p>This tariff type can have multiple blocks (inclining or declining) and can vary by seasons.</p>	<ul style="list-style-type: none"> TOU tariffs require customers to have an interval meter.
Demand tariffs	<p>Demand tariffs are an emerging tariff type that has an energy charge, as well as a per-kW 'demand' charge, which is based on a consumer's peak demand (in kW).</p>	<ul style="list-style-type: none"> Demand tariffs have previously been offered to large consumers, but are increasingly being offered to small customers. Networks have driven the rollout of demand tariffs as a form of cost-reflective network pricing. Demand tariffs require customers to have an interval meter.
Fixed payment tariffs	<p>These tariffs are where the customer pays a predetermined fixed amount each month up to a usage cap.</p>	<ul style="list-style-type: none"> These are more common amongst businesses. Some retailers, like Origin Energy, are offering these to residential customers.
Subscription tariffs	<p>These tariffs are where customers pay a (yearly or monthly) subscription fee to their retailer. As a result of this constant income the retailer may be able to offer lower fixed and variable rates than if using another tariff structure.</p>	<ul style="list-style-type: none"> These tariffs may allow a retailer to have a separate amount that transparently indicates to the customer the retailer's gross margin (the amount required to operate their business as well as their profit). This tariff has been noted by some retailers as a reaction to gain customer's trust again due

TARIFF TYPE	DESCRIPTION OF TARIFF	HOW AND WHEN THE TARIFF IS USED
		to recent low consumer confidence in the retail energy market.
Wholesale market spot price pass-through tariffs	<p>These tariffs are where the 30-minute wholesale price is passed through to the end customer.</p> <p>The retailer also typically directly passes through the other components of a residential bill and adds a separate, transparent subscription fee that contains their gross margin (the amount required to operate their business as well as their profit).</p>	<ul style="list-style-type: none"> Spot price pass-through tariffs require customers to have an interval meter. These prices may allow customers to dynamically interact with the wholesale market. Customers with household battery storage tend to be best suited to these tariffs as they can react (by self supplying with their own battery) to high price periods in the wholesale market.

All of the described tariffs in Table 4.2 can be paired with a controlled load and/or a feed-in tariff.⁵²

- **A controlled load** is the electricity used by appliances, such as electric hot water systems, which are controlled by a third party (typically the DNSP) and are metered separately. A controlled load tariff is typically a low rate tariff, as these appliances operate during the hours of low demand.
- **A feed in tariff (FiT)** is a rate paid to customers for electricity, typically generated by solar PV, that is fed into the distribution network.

Comparing different tariff structures can be complicated for consumers. This is because, to make an optimal decision, consumers need to understand their consumption level and profile. This may be compounded by the multitude of offers available and makes it more difficult for consumers to comprehend and compare tariffs. However, the AER's comparator website Energy Made Easy and Victoria's Victorian Energy Compare simplifies the comparison for consumers by providing the lowest priced offers available to a customer based on information they input to the website.⁵³ The New South Wales Government has also launched their own switching service, Energy Switch, which automatically provides a comparison of offers based upon an e-bill uploaded by consumers.⁵⁴ Further information on these government comparison sites is provided in chapter 5.

⁵² Controlled load can be referred to using different names such as dedicated circuit, off peak, Tariff 41 in Tasmania or Tariff 31 or Tariff 33 in Queensland

⁵³ The AER's Energy Made Easy can be accessed at www.energymadeeasy.gov.au, Victoria's Victorian Energy Compare can be accessed at compare.energy.vic.gov.au.

⁵⁴ The New South Wales Government's Energy Switch can be accessed at energyswitch.service.nsw.gov.au.

Over time, it is likely that comparing across retail market offers is likely to grow easier as more granular and regular data is made available to customers with the roll out of smart meters. Access to data for customers and parties acting for them is also likely to be assisted by introduction of consumer data right reforms.

Differences between retail and network tariff structures

The retail tariff structures described in Table 4.2 should not be confused with distribution network tariff structures. While they share a similarity — as retailers often pass through the distribution tariff structures in their retail offers — a retailer does not have to pass through the distribution tariff structure that each of their customers are on.

A retailer may offer their customers a simple offer, like a fixed payment tariff-based offer, which may have a more dynamic distribution network tariff associated with it. In this case, the retailer manages the risk associated with the mismatch of the distribution network charges and their retail offer to the customer in a similar way that they manage the wholesale market risk for that customer.

4.2 Pricing behaviour of retailers — residential

This section outlines the changes in residential standing and market offer annual bills for a representative consumer across the NEM-based jurisdictions from 2018 to 2019. These changes in the pricing behaviour of retailers in relation to residential energy offers can provide insight into how the market has developed over the past year. This section provides an overview for both electricity and gas of the:

- methodology for calculating annual bill outcomes from standing and market offers
- magnitude of annual bill outcome changes between 2017-18 and 2018-19
- changes in distribution of different offers types between 2017-18 and 2018-19
- potential savings a customer could make moving from a median standing offer to the cheapest market offer.

4.2.1 Bill outcomes methodology

The analysis in this chapter is based on publicly available data from Energy Made Easy and Victorian Energy Compare. The analysis uses the DNSP of the capital city in each region as a proxy for changes in bill outcomes for that region. All discounts are assumed to be realised for market offers and all estimated annual bills are calculated excluding GST. See section 4.4.1 for further information on discounts achieved by consumers.

Bills have been calculated based on the 'representative consumer' on a block tariff in each jurisdiction. Residential electricity consumption levels for each jurisdiction outside of Tasmania are based on the AER's Final Determination on the DMO⁵⁵ and the ESC's Draft VDO advice to the Victorian Government⁵⁶. Consumption for Tasmania and the Australian Capital Territory is based on the AEMC's *2018 Residential Electricity Price Trends*. Gas consumption

⁵⁵ AER, *Default Market Offer Prices 2019-20 — Final Determination*, April 2019.

⁵⁶ ESC, *Victorian Default Offer to apply from 1 July 2019 — draft advice*, 8 March 2019

levels are consistent with the 2018 Review and are based on the AER's 2017 *Bill Benchmarking Report*. A summary of these assumptions is provided in Table 4.3 below.

Table 4.3: Representative residential consumer electricity and gas consumption

STATE	DISTRIBUTION ZONE	RESIDENTIAL ELECTRICITY CONSUMPTION (KWH)	RESIDENTIAL GAS CONSUMPTION (MJ)
New South Wales	Ausgrid	3,800	24,387
	Endeavour Energy	4,900	
	Essential Energy	4,600	
Australian Capital Territory	Evoenergy	7,151	38,451
South East Queensland*	Energex	4,600	7,366
South Australia	SA Power Networks	4,000	26,602
Tasmania**	TasNetworks	7,908	
Victoria	All distribution networks	4,000	62,528

Source: Electricity — based on AER's Draft DMO advice and the ESC's VDO advice. Gas — AEMC assumptions.

Note: *Energex includes a controlled load tariff. **Consumption for Tasmania is based on AEMC — Residential Electricity Price Trends 2018 and includes 3,559 kWh on T31 (light and power) and 4,349 kWh on T41 (heating and hot water). Assumptions for gas consumption are set to be the same across all gas distribution areas within each state.

The Commission notes that the bill comparison in this section is for a representative consumer without solar PV. Analysis of solar customers is provided on the [microsite](#) accompanying this report.

It should be noted that all annual bill calculations in this section are based only on flat offers drawn from Energy Made Easy and Victoria Energy Compare and therefore exclude non-flat (time of use, demand based, etc.) retail tariff structures and restricted offers. Therefore, the 'cheapest' offer presented for a particular network region may not be the cheapest offer for a different consumption level or another retail tariff structure.

Changes to the Retail Information Pricing Guidelines

In April 2018, the AER released an updated *Retail Information Pricing Guidelines* (RPIG). The update broadened the scope of 'generally available' offers to improve transparency and ensure customers are better able to find a plan that suits their needs.⁵⁷ Retailers are required to publish all generally available plans accessible to small customers, unless specific

⁵⁷ AER, *Notice of Final Instrument: AER Retail Pricing Information Guidelines — Version No. 5 — April 2018*, 23 April 2018, p. 31.

restrictions apply.⁵⁸ This change results in an increase in the number of plans retailers are required to publish on Energy Made Easy.⁵⁹

From this, retailers have modified the way that offers are published on Energy Made Easy and this has affected our analysis of retailer's pricing behaviour. The decision the Commission has applied to the Energy Made Easy offers is to count offers as just one offer if the retailer, the offer name, the distribution area and the total discounted value of the estimated bill are the same.⁶⁰

4.2.2

Changes in residential standing and market offer annual bills — electricity

The median standing offer fell across all NEM jurisdictions except in the Australian Capital Territory and Tasmania over the past year, while the median market offer fell across every deregulated NEM jurisdiction. This is likely to have improved energy affordability. The savings available to standing offer customers who move to lower market offers remained significant, suggesting that these consumers could benefit from shopping around.

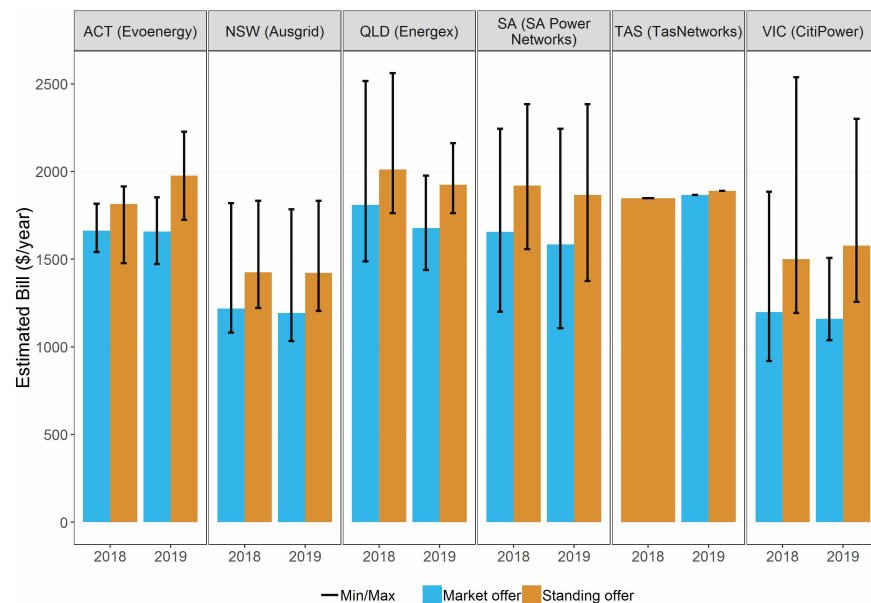
Figure 4.2 shows the median, minimum and maximum bills for representative customers on electricity standing and market offers. Dispersion of market offers is best shown in section 4.2.3. The graph shows this for the distribution area of the capital city for all NEM regions as at March 2018 and 2019. Analysis of all distribution network regions is provided on the [microsite](#) accompanying this report.

58 AER, *AER Retail Pricing information Guidelines — April 2018 — Version 5.0*, 23 April 2018, p. 5.

59 Retailers are not required to publish retention and win back offers on Energy Made Easy as the AER considers that these are not 'generally available'. See AER, *Notice of Final Instrument: AER Retail Pricing Information Guidelines — April 2018 — Version 5.0*, 23 April 2018, p. 33.

60 For example, the Basic Home standing offer with EnergyAustralia is available through 12 different switching or connection services. While these switching services may offer different inducements to new customers (for example by offering free pizza delivery), the Commission considers that the electricity offer (and the underlying tariff structure) is the same and so is counted as one offer.

Figure 4.2: Median residential standing and market offer electricity bill



Source: Energy Made Easy (accessed 1 March 2018 and 1 March 2019) and Victorian Energy Compare (data query for 1 March 2018 and 1 March 2019). Tasmanian bill based on regulated T31/T41 offer.

Figure 4.2 shows that the annual bill for a representative consumer:

- The largest increase in the median standing offer bill was in the Australian Capital Territory (Evoenergy) where it increased by around nine per cent.
- The largest decrease in the median standing offer and market offer annual bill was in South East Queensland (Energex) which fell by four per cent and eight per cent respectively. The spread of standing offers also markedly reduced reflecting a withdrawal of high standing offers.
- The spread of standing offers in South Australia (SA Power Networks) increased with the minimum standing offer falling by nearly 12 per cent.
- The median market offer bill was generally closer to the minimum bill across the jurisdictions and particularly in Victoria (CitiPower) and New South Wales (Ausgrid) with the majority of bills in the lower range of the distribution.
- The minimum market offer bill fell across all regions except Victoria where it increased marginally. The annual bill for the highest priced market offer in South East Queensland (Energex) and Victoria (CitiPower) fell substantially over the past year.

4.2.3

Distribution of residential standing and market offer annual bills — electricity

While the change in minimum, median and maximum offers provides insight into changes in the retail market, the distribution of bills can provide a deeper level of insight into the competitive dynamics of the market. This section presents the distribution of annual bills for

representative distribution zones.⁶¹ Specifically, this section looks at a comparison of the distribution of the bills in 2018 and 2019 from standing offers, market offers with discounts and market offers without discounts, and market offers with fixed prices. In addition, this section presents market offers by retailer type for 2019 to provide an indication of the price levels that the big 3, new and emerging, and all other retailers are pricing at.

The main conclusions from Figure 4.3 to Figure 4.11 are:

- In general, there has been an increase in the number of offers at the lower end of the estimated bill distribution relative to 2018, particularly among market offers. In addition, some higher priced offers have been withdrawn from the market.
- There has been an increase in the number of fixed priced market offers and market offers without discounts. Often these market offers are both fixed price and non-discounted. Importantly, many of these offers are among the lowest priced offers in the market, even after assuming that conditional discounts are realised on offers with conditional discounts.
- Offers from new and emerging retailers, which we define as those that have entered the market in 2018 or 2019 in the relevant jurisdiction, include the lowest or among the lowest offers in the market.

The data presented in Figure 4.3 to Figure 4.11 is also used to discuss changes in retailer pricing practices in section 1.4 below.

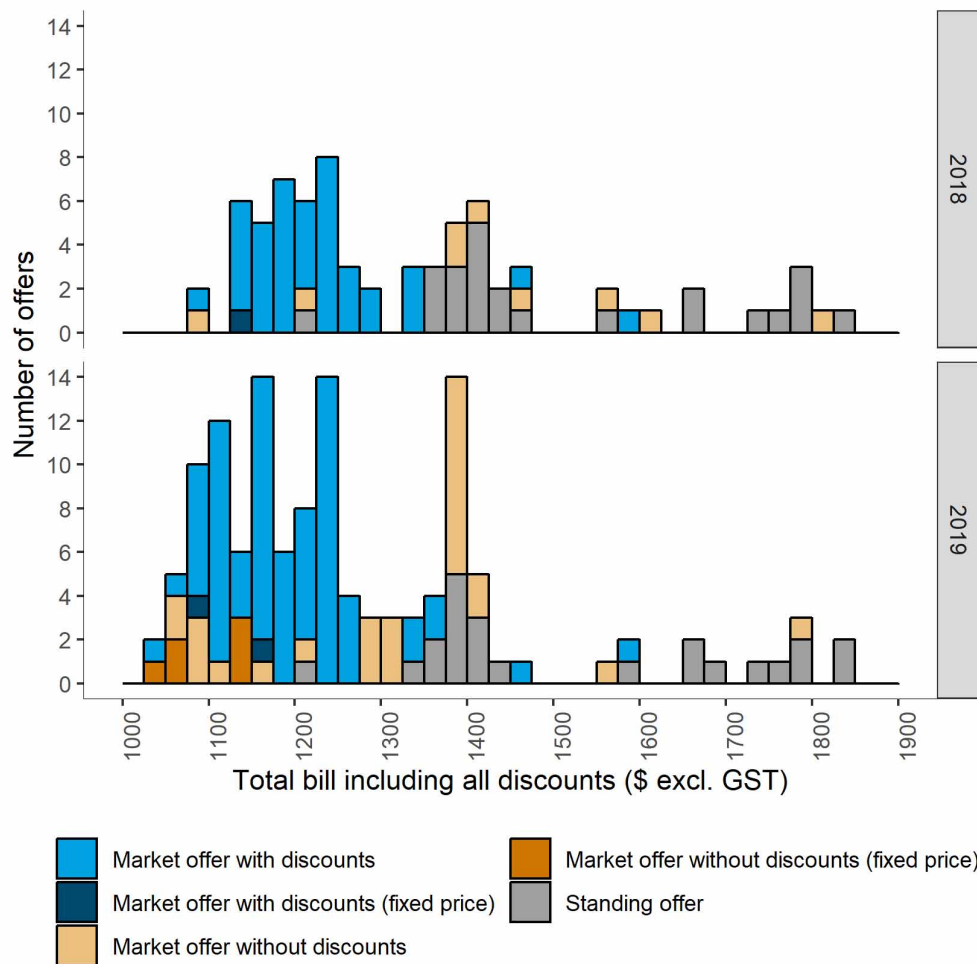
New South Wales – Ausgrid

Figure 4.3 shows an increase in the number of lower priced offers available in the Ausgrid distribution zone, relative to 2018. The results also show that there has been an increase in the number and proportion of no-discount and fixed priced offers, and that these offers are amongst the lowest price offers in the market. Figure 4.4 shows that the lowest offer in the market is from a new or emerging retailer.

The equivalent figures for the Endeavour and Essential Energy distribution zones are available on the [microsite](#) accompanying this report. The Commission notes that similar trends are also observable in these distribution zones.

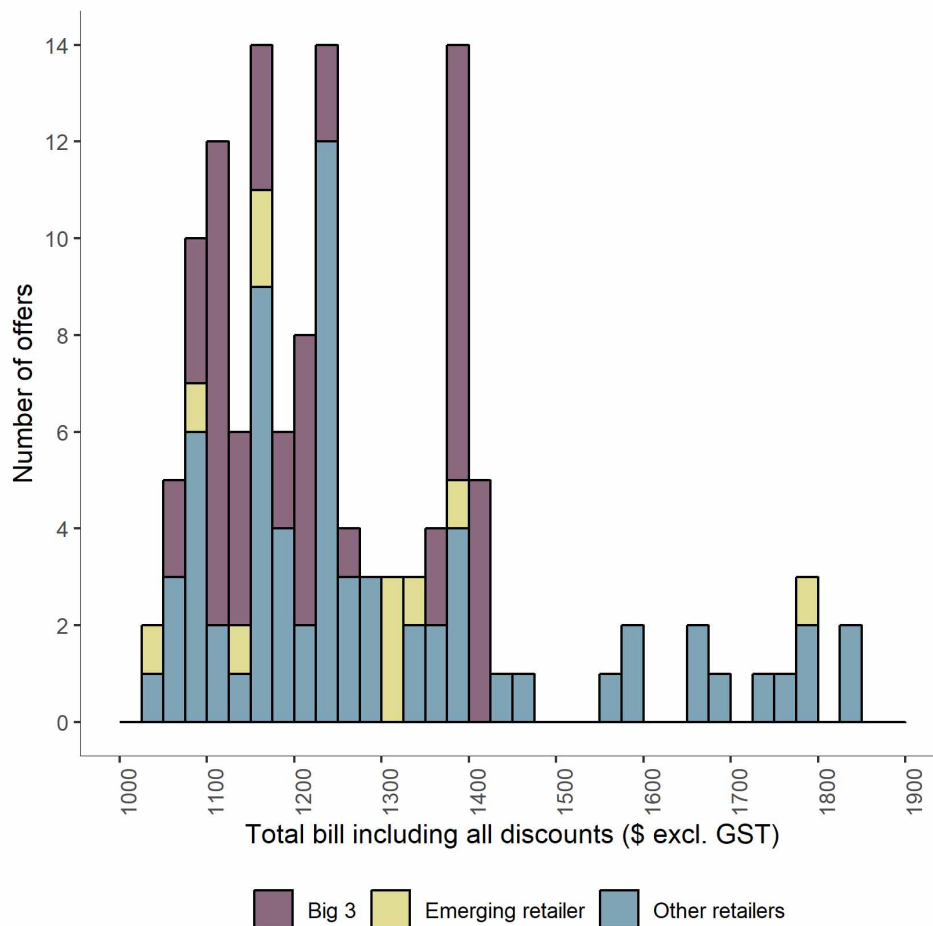
⁶¹ The distribution network regions that represent the capital city of the state/territory have been used for this section of the report as a proxy for each jurisdiction. The distribution for the other deregulated distribution zones in the NEM are available on the [microsite](#).

Figure 4.3: Distribution of representative residential bills by offer type – Ausgrid



Source: Energy Made Easy (accessed 1 March 2018 and 1 March 2019) and Victorian Energy Compare (data query for 1 March 2018 and 1 March 2019).

Figure 4.4: Distribution of representative residential bills by retailer type – Ausgrid

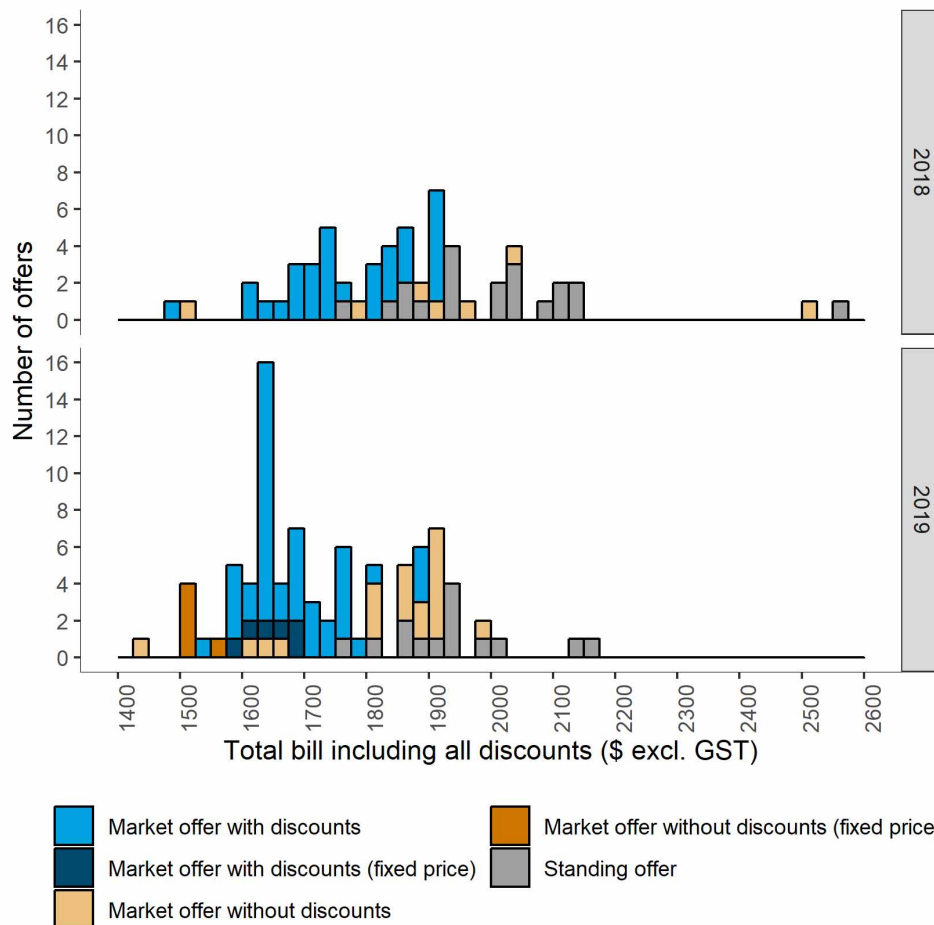


Source: Energy Made Easy (accessed 1 March 2018 and 1 March 2019) and Victorian Energy Compare (data query for 1 March 2018 and 1 March 2019).

South East Queensland – Energex

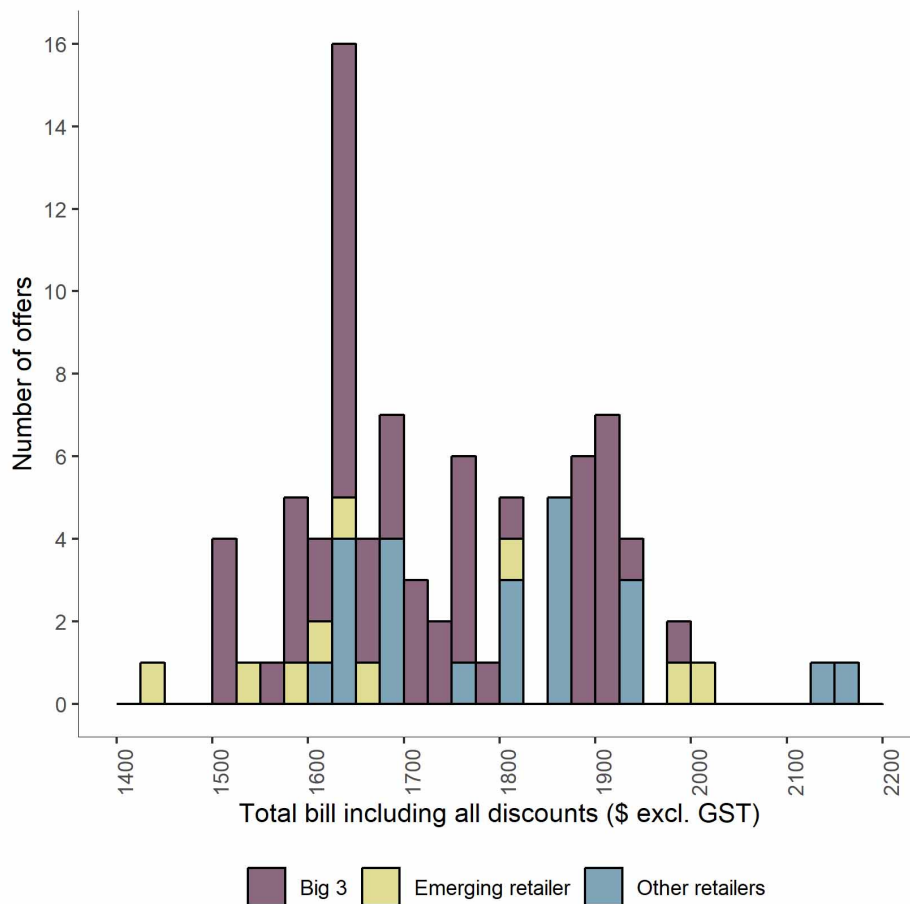
A similar trend is visible in South East Queensland which has seen an increase in the number of lower priced offers and the removal of the highest standing and market offers, as seen in Figure 4.5. The results also show that there has been an increase in the number and proportion of no-discount and fixed priced offers, and that these offers are amongst the lowest priced offers in the market. Figure 4.6 shows that the lowest offer in the market is from a new or emerging retailer.

Figure 4.5: Distribution of representative residential bills by offer type – Energex



Source: Energy Made Easy (accessed 1 March 2018 and 1 March 2019) and Victorian Energy Compare (data query for 1 March 2018 and 1 March 2019).

Figure 4.6: Distribution of representative residential bills by retailer type – Energex

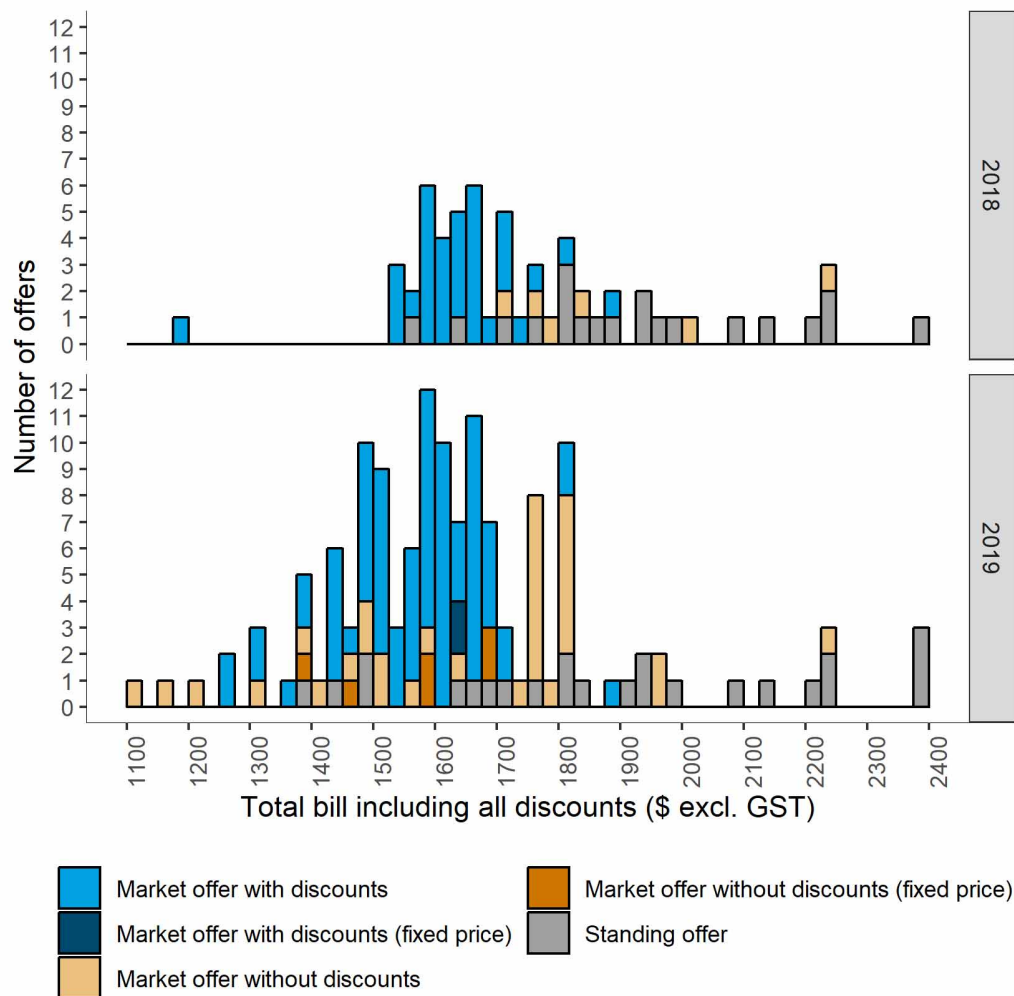


Source: Energy Made Easy (accessed 1 March 2018 and 1 March 2019) and Victorian Energy Compare (data query for 1 March 2018 and 1 March 2019).

South Australia – SA Power Networks

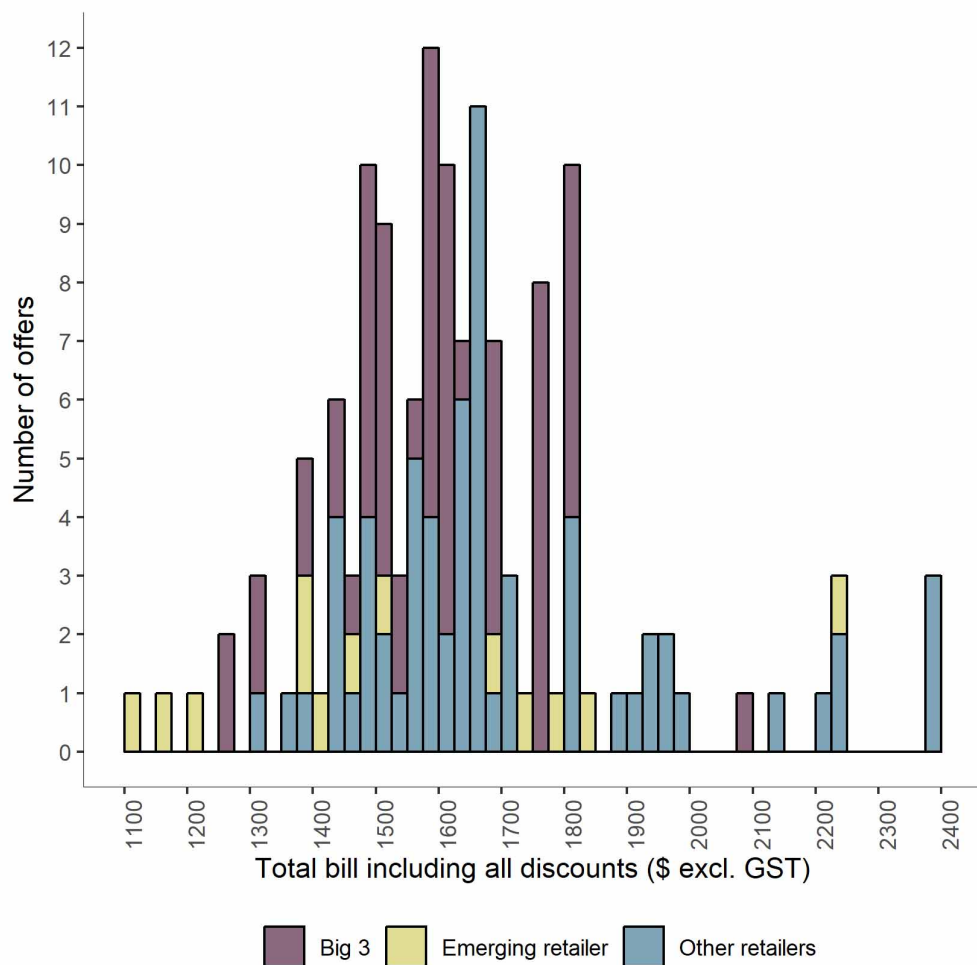
Figure 4.7 shows the results for South Australia, where there has been a number of new offers priced substantially below the second lowest offer in 2018. However, there has not been the same reduction in offers at the higher end observed in other states. Similar to other jurisdictions, there has been a substantial increase in the number and proportion of no-discount and fixed priced offers. While the no-discounts offers are amongst the lowest priced offers in the market, in contrast to other jurisdictions the fixed priced offers are largely on higher priced offers. Figure 4.8 shows that the lowest offers in the market are from a new or emerging retailer.

Figure 4.7: Distribution of representative residential bills by offer type – SA Power Networks



Source: Energy Made Easy (accessed 1 March 2018 and 1 March 2019) and Victorian Energy Compare (data query for 1 March 2018 and 1 March 2019).

Figure 4.8: Distribution of representative residential bills by retailer type – SA Power Networks

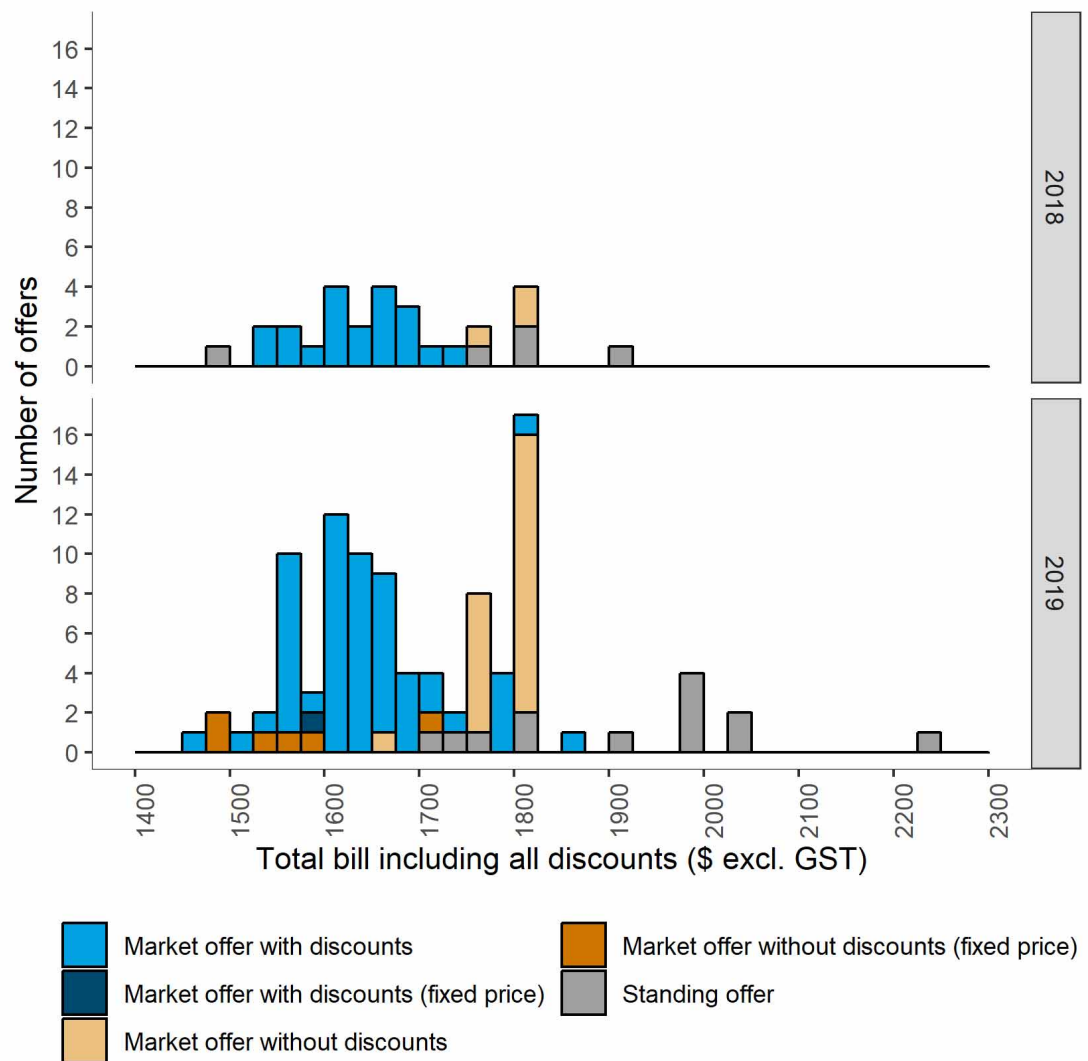


Source: Energy Made Easy (accessed 1 March 2018 and 1 March 2019) and Victorian Energy Compare (data query for 1 March 2018 and 1 March 2019).

Australian Capital Territory – Evoenergy

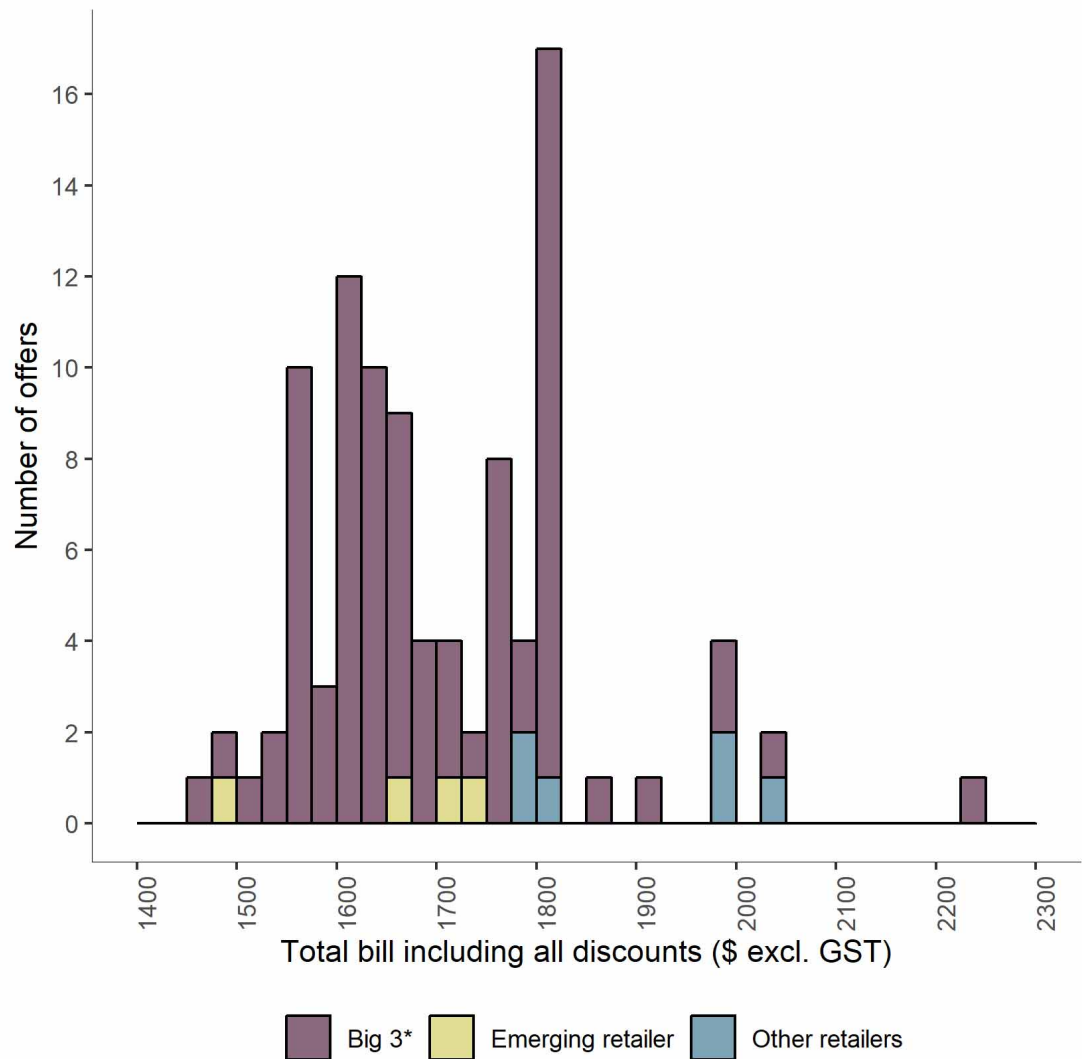
In the Australian Capital Territory, there has been a significant increase in the number of offers available on Energy Made Easy, with numerous lower priced offers, as seen in Figure 4.9. However, there has also been a number of new standing offers at higher prices than the highest priced offer in 2018. Similar to other jurisdictions, there has been a substantial increase in the number and proportion of no-discount and fixed priced offers, and these offers are amongst the lowest priced offers in the market. Consistent with our market structure analysis in chapter 3, Figure 4.10 demonstrates that there are less available offers from new and emerging retailers in the Australian Capital Territory.

Figure 4.9: Distribution of representative residential bills by offer type – Evoenergy



Source: Energy Made Easy (accessed 1 March 2018 and 1 March 2019) and Victorian Energy Compare (data query for 1 March 2018 and 1 March 2019).

Figure 4.10: Distribution of representative residential bills by retailer type – Evoenergy



Source: Energy Made Easy (accessed 1 March 2018 and 1 March 2019) and Victorian Energy Compare (data query for 1 March 2018 and 1 March 2019).

Note: ActewAGL has been noted as part of the big 3 in the Australian Capital Territory along with Origin Energy and EnergyAustralia.

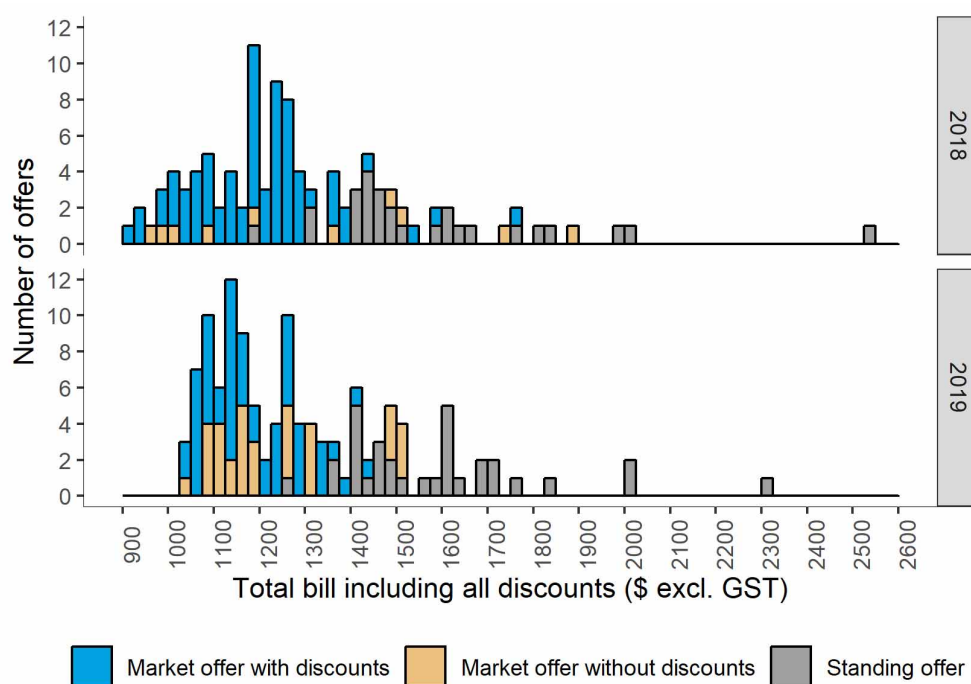
Victoria – CitiPower

Figure 4.11 shows an increase in lower priced offers and a reduction in the number of higher priced market offers in Victoria relative to 2018. Similarly, as seen in the other jurisdictions, the cheapest offers in the market are market offers without discounts. Some of the lowest offers have appeared to have been withdrawn between 2018 and 2019, but there are more low priced offers in the \$1,000-\$1,200 range overall.

Due to publication and data access constraints with Victorian Energy Compare, the Commission is not able to provide a market wide breakdown of fixed and variable prices in Figure 4.11. We are also not able to provide offers by retailer type (as presented in other jurisdictions). However, based on a sampling of Victorian Energy Compare and information provided by retailers in interviews the Commission considers that, as with other regions, there are:

- an increasing number of low, fixed priced offers
- market leading offers from new and emerging retailers.

Figure 4.11: Distribution of representative residential bills – CitiPower



Source: Energy Made Easy (accessed 1 March 2018 and 1 March 2019) and Victorian Energy Compare (data query for 1 March 2018 and 1 March 2019).

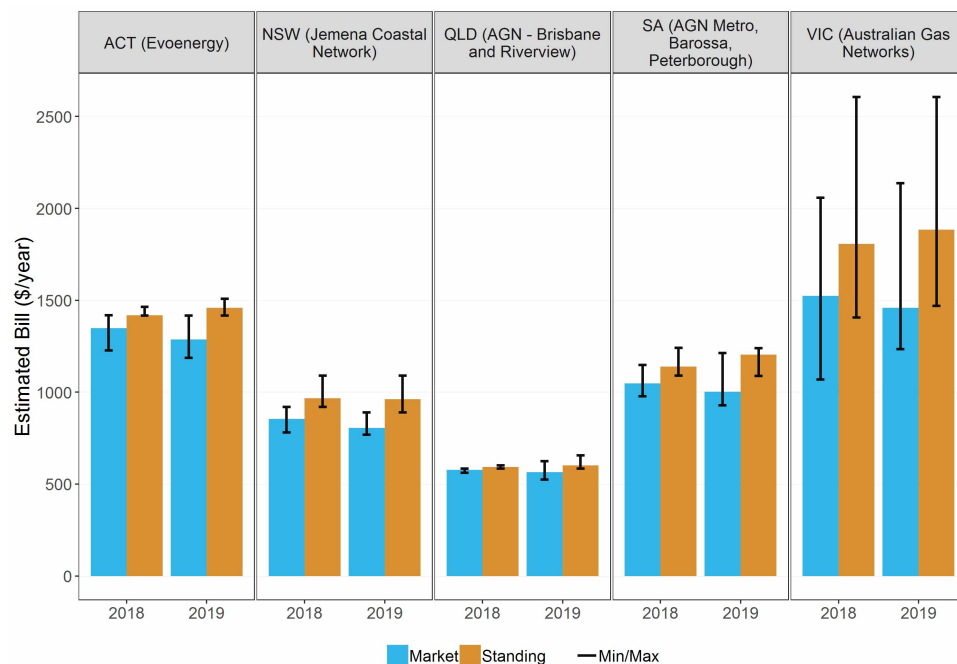
4.2.4

Changes in residential standing and market offer annual bills — gas

Over the past year the change in the distribution of estimated gas bills was relatively small. The median standing offer gas bills increased slightly across most regions and the range of offers was largely unchanged. However, the affordability of market offers generally improved across the different regions.

Figure 4.12 shows the minimum, median and maximum bills for representative customers on gas standing and market offers. The graph shows this for the distribution area of the capital city for all NEM regions as at March 2018 and 2019. Analysis of all distribution network regions is provided on the [microsite](#) accompanying this report.

Figure 4.12: Median residential standing and market offer gas bill



Source: Energy Made Easy (accessed 1 March 2018 and 1 March 2019) and Victorian Energy Compare (data query for 1 March 2018 and 1 March 2019).

Figure 4.12 shows that the annual bill for a representative consumer:

- The median standing offer increased slightly across most regions.
- There was a small increase in the range of Queensland (AGN Brisbane and Riverview) standing offers and a reduction in the range of Victorian offers due to an increase in the lower end.
- The median market offer bill fell across all regions ranging from around a two per cent reduction in Queensland (AGN Brisbane and Riverview) to a six per cent reduction in New South Wales (Jemena Coastal Networks).
- Overall, the range of market offers was largely unchanged except for in Victoria (AGN) where both the lowest and highest priced offers increased (despite a four per cent fall in the median offer).
- Across most regions the median offer was closer to the minimum offer in the market with a cluster of offers in the lower price range.

4.2.5

Bill savings available from switching from standing to market offers

Although affordability has generally improved over the past year, there remains substantial savings available for customers on standing offer contracts to switch to market contracts in both the electricity and gas retail markets.

Electricity

The analysis below shows the amounts a representative residential consumer can save by moving from the median electricity standing offer to the cheapest electricity market offer.

Table 4.4: Switching from standing offer to market offer savings – residential electricity

STATE (DISTRIBUTION ZONE)	RESIDENTIAL CUSTOMERS ON STANDING OFFERS	2019 SAVINGS (% OF BILL)
ACT (Evoenergy)	50%	\$504 (26%)
NSW (Ausgrid)	13%	\$389 (27%)
VIC (CitiPower)	6%	\$539 (34%)
South East QLD (Energex)	14%	\$487 (25%)
SA (SAPN)	9%	\$760 (41%)

Source: Energy Made Easy (accessed 1 March 2019) and Victorian Energy Compare (data query for 1 March 2019).

Note: Standing offer proportions are for the whole state (except South East Queensland) while the savings are based on the indicated distribution zone. These percentages are based on residential customers only and differ from the small customer percentages.

Table 4.4 shows that the savings range from \$389 per year for a customer in the Ausgrid distribution zone, up to \$760 per year in the SA Power Networks distribution zone.⁶² In all zones a customer on a median standing offer contract may be able to save at least 25 per cent of their bill by switching to the cheapest market offer.⁶³

Gas

The analysis below shows the amounts a representative residential consumer can save by moving from the median gas standing offer to the cheapest gas market offer.

Table 4.5: Switching from standing offer to market offer savings – residential gas

STATE (DISTRIBUTION ZONE)	RESIDENTIAL CUSTOMERS ON STANDING OFFERS (%)	2019 SAVINGS (% OF BILL)
ACT (Evoenergy)	49%	\$273 (19%)
NSW (Jemena Coastal Network)	12%	\$192 (20%)
VIC (Australian Gas Networks)	7%	\$649 (34%)

⁶² It should be noted that not all customers may be able to access the cheapest offer in their distribution zone. Offers may be unavailable depending on geographic location (postcode), and some retailers may undertake credit checks on customers before entering into a contractual agreement.

⁶³ In addition to the above note, these saving percentages assume a consumption level. Savings may be higher or lower depending on electricity consumption.

STATE (DISTRIBUTION ZONE)	RESIDENTIAL CUSTOMERS ON STANDING OFFERS (%)	2019 SAVINGS (% OF BILL)
QLD (AGN — Brisbane and Riverview)	24%	\$77 (13%)
SA (AGN Metro/Barossa/Peterborough)	11%	\$277 (23%)

Source: Energy Made Easy (accessed 1 March 2019) and Victorian Energy Compare (data query for 6 March 2019).

Note: Standing offer proportions are for the whole state while the savings are based on the indicated distribution zone.

Table 4.5 shows that customers on gas standing offers can make significant savings, between 13 and 34 per cent for the representative consumer, by shopping around for a market offer. The benefits are particularly significant in areas with high residential gas usage.

4.3 Pricing behaviour of retailers — small business

The methodology for calculating the bill outcomes for small business consumers was the same for residential consumers. The only difference was the small business electricity consumption levels, which was set at 20,000 kWh across all regions. This is consistent with the assumed consumption levels in the AER's DMO Final Determination.⁶⁴

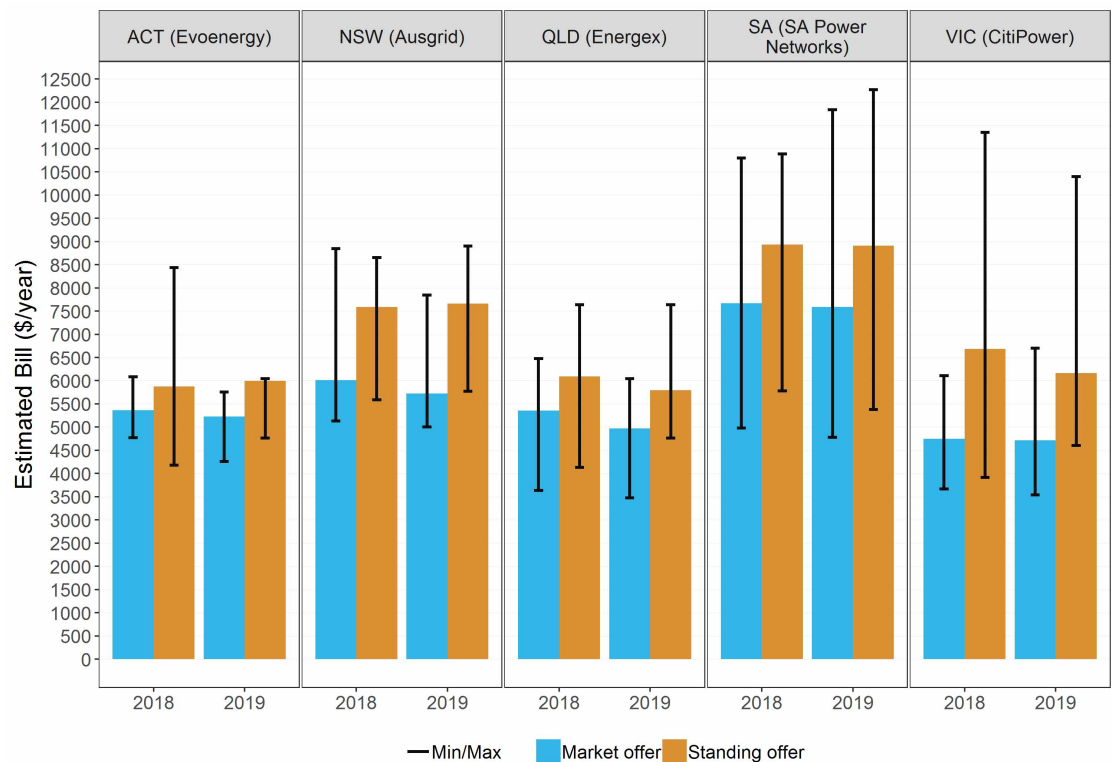
4.3.1 Changes in small business standing and market electricity offers annual bills — electricity

Small business bills for median and minimum market offers fell across all regions. Standing offers for small business customers increased in some regions and decreased in others. There are substantial benefits available to small businesses that are willing to shop around and these benefits are available to a wide group of customers as a larger proportion of small businesses are on standing offers (compared to residential customers).

Figure 4.13 shows the median, minimum and maximum bills for representative customers on electricity standing and market offers. The graph shows this for the distribution area of the capital city for all NEM regions as at March 2018 and 2019. Analysis of all distribution network regions is provided on the [microsite](#) accompanying this report.

⁶⁴ AER, *Default Market Offer Prices 2019-20 — Final Determination*, April 2019.

Figure 4.13: Median small business standing and market offer electricity bill



Source: Energy Made Easy (accessed 1 March 2018 and 1 March 2019) and Victorian Energy Compare (data query for 6 March 2018 and 6 March 2019).

Note: Assumed consumption of 20,000 kWh/year across all regions. Analysis includes only generally available offers, i.e. excludes restricted and win-back offers.

Figure 4.13 shows that the annual bill for a representative consumer:

- Standing offers decreased in South East Queensland (Energex) and Victoria (Citipower). Other regions saw only a small change. The reduction in the range of standing offers in the Australian Capital Territory (Evoenergy) reflects the small number of standing offers available.
- There was a significant improvement in affordability across small business market offers in most regions.
- The lowest priced market offer generally fell across the regions.
- The range of market offers increased in South Australia driven by an increase in the higher priced market offers and a fall in the lower priced market offers. The range reduced considerably in Victoria with higher priced market offers withdrawn from the market.

4.3.2 Switching from standing to market offers

As seen in Table 4.6, there remains substantial savings available for the remaining small business customers on standing offers. The analysis shows the amounts a representative small business consumer can save by moving from the median standing offer to the cheapest market offer.

Table 4.6: Switching from standing offer to market offer savings – small business electricity

STATE (DISTRIBUTION ZONE)	SMALL BUSINESS CUSTOMERS ON STANDING OFFERS (%), AS OF 31 DECEMBER 2018	ANNUAL BILL SAVINGS (% OF BILL)
ACT (Evoenergy)	70%	\$1,733 (29%)
NSW (Ausgrid)	21%	\$2,660 (35%)
VIC (CitiPower)	-	\$2,619 (43%)
South East QLD (Energex)	25%	\$2,321 (40%)
SA (SAPN)	15%	\$4,132 (46%)

Source: Energy Made Easy (accessed 1 March 2019) and Victorian Energy Compare (data query for 6 March 2019).

Note: Standing offer proportions are for the whole state while the savings are based on the indicated distribution zone. The ESC has not published updated data on the proportion of small business customers on standing offer contracts.

This shows that the level of savings available for small businesses is even greater than that available to residential customers. The representative small business standing offer customer could save between 29 and 46 per cent by changing to the lowest market offer. As noted in section 4.1.1, the proportion of small business customers on standing offers remains higher than that of residential customers across all regions. While there are signs that this is improving, the shift of small business customers to competitive market offers has not progressed as quickly as for residential customers.

4.4 Pricing practices, products and innovation

A competitive retail market forces retailers to remain relevant in the market by continuously changing and innovating their pricing strategies and products in order to better meet consumer needs. This section explores this by looking at:

- pricing practices of retailers
- innovative products and services
- non-price products
- branding of retailers.

4.4.1 Retail pricing practices

The pricing practices of retailers has been a major focus of a number of recent reviews into the energy retail market, including our 2018 Review. In that review, the Commission found

that the predominant form of retail energy offers at the time — large, pay-on-time conditional discounts, off inconsistent and variable base rates — were not benefiting consumers. The Commission considered these practices raised a number of significant issues:

- **Inconsistent base rates:** Most retailers at the time focused their advertising on percentage discount rates, and consequently many consumers would choose their retailer and plan based on the level of the discount rate. However, the base rates from which these discounts apply vary between retailers and plans, which makes it difficult for consumers to compare offers.
- **Large conditional discounts:** Some consumers may choose a product based on high conditional discounts. However, if they do not satisfy the conditions they will pay the higher rate. This can be particularly burdensome for vulnerable customers.
- **Variable base rates:** Even when a customer manages to make a meaningful comparison across retailers and offers, and achieve the conditional discount, they still may not receive the expected price. This is because under the variable base rate the retailer could increase the price at any point in time. To actually receive the expected price customers would therefore need to regularly check if their prices had changed and switch offers if their existing offer increases.

This section explores changes in the market in the past year with regard to each of these issues. It also sets out regulatory changes that have occurred or are under way in each of these areas and their potential affects on these practices and consumers.

Types of discounts offered

There are two main types of discounts currently available to consumers in the retail energy market:

- **An unconditional discount:** which is an automatic deduction from the customer's bill.
- **A conditional discount:** which means that the customer only receives the deduction from their bill upon meeting certain requirements. If the conditions are not met, then the discounts are not applied and the customer can end up paying substantially higher bills, and often face standing offer rates. Examples of the requirements of current conditional discounts relate to customers:
 - paying on time
 - only receiving bills online
 - paying via an approved payment method (e.g. via direct debit)
 - having electricity and gas with the same retailer (dual fuel).

Both discount types may apply to the total bill or just the usage portion of the total bill, and may be a percentage of the applicable portion of the bill or a given dollar amount from the bill.

Retailer discounts are set from headline rates (usually their standing offer rates).⁶⁵ The headline rates differ by retailer meaning that a given percentage discount cannot be compared across retailers. For example, the price of an offer with a 40 per cent discount off a 40c/kWh usage charge by retailer A is actually *higher* than a 25 per cent discount off a 30c/kWh usage charge by retailer B (24c/kWh vs. 22.5c/kWh). This is commonly referred to as the "discounts off what?" problem.

BOX 7: REGULATORY CHANGE: REFERENCE PRICE

As described in chapter 2, in addition to capping standing offers, the introduction of the DMO Code on 1 July 2019 will introduce a reference bill. In accordance with the DMO Code, all retailers must clearly communicate or advertise the difference between their retail offers and the DMO, stated as a percentage of the reference price. For example, if, based on the AER's model annual usage, a customer's bill under offer A was \$1,350 and the DMO was \$1,500, the retailer must advertise that offer A is 10 per cent below the reference price.

In our advice to the COAG Energy Council on the DMO in December 2018, the Commission supported the concept of a reference price. The Commission considered that, if designed and implemented effectively, it would assist consumers in comparing offers.

Despite the potential benefits of the introduction of a reference price, there are risks in the design of any reference price that need to be carefully considered. For example, where the reference price does not take a consistent form to other common consumer comparison tools (for example, government comparison sites) it may result in greater confusion for consumers.

There are also flow on risks that need to be monitored. For example, there is a risk that, at a time when the market has been moving away from discounting as the primary form of advertising, the reference price may cement discounting as the predominant pricing practice. Reference pricing can also make introducing more dynamic and innovative pricing structures and products more difficult because they do not neatly align with a standardised reference price concept.

The Commission will continue to monitor the effects of regulatory changes on the market through future retail energy competition reviews and recommend changes where appropriate.

Trends in types of discounts offered

Table 4.7 provides a comparison of the prevalence of retail discounting practices between March 2018 and 2019 available across the NEM regions. The prevalence of discounting has decreased but remains common throughout the NEM regions.

⁶⁵ In 2018 the AEMC made a rule to prevent retailers from discounting off rates higher than their standing offer. For more information see the Preventing discounts on inflated energy rates rule change at: www.aemc.gov.au/rule-changes/preventing-discounts-on-inflated-energy-rates.

Table 4.7: Prevalence and change in discounting practices

DISCOUNTING PRACTICE	MARCH 2018	MARCH 2019
Total number of unique gas and electricity offers available	1,850 offers	3,469 offers
At least one conditional discount	57 per cent	47 per cent
At least one unconditional discount	25 per cent	26 per cent
No discounts	20 per cent	27 per cent

Source: Energy Made Easy and Victorian Energy Compare data, AEMC analysis

Note: A different methodology was used this year to remove duplicate offers. The new methodology has also been applied to the 2018 offers for comparability.

There has been a shift away from conditional discounts and a shift toward retailers making simpler offers without discounts. Figure 4.3 to Figure 4.11 also demonstrate that there is not just a greater availability of no discount offers, these offers are among the lowest priced offers available in the market, even when all the conditions within conditional discount offers are assumed to be realised. For example, in all distribution areas other than Evoenergy, the lowest or equal lowest priced offer is a no discount offer. See section 4.2.3 for a comparison of bills for discount and no-discount offers.

BOX 8: REGULATORY CHANGE: HEADLINE ADVERTISED DISCOUNTS MUST BE UNCONDITIONAL

Another element of the DMO Code is that retailers must not advertise conditional discounts as the 'headline' discount. For example, a retailer may be able to advertise that an offer is 10 per cent below the reference price, but there can be no conditions placed on the customer in order to achieve this discount. However, the retailer is then able to offer a further conditional discount above the unconditional 10 per cent. For example offer B provides the customer with a 10 per cent guaranteed discount, and a further three per cent to pay-on-time.

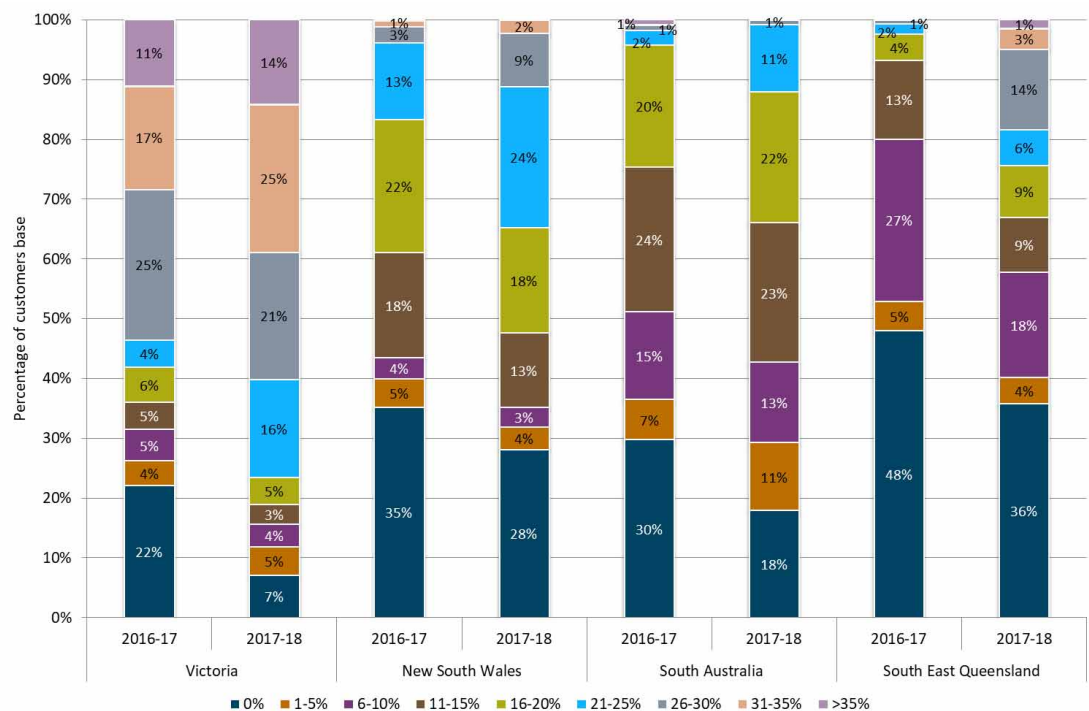
This requirement will potentially result in a shift from conditional to unconditional discounts. This is likely to represent a positive for consumers that have difficulty in determining if they will be able to meet the terms of conditional discounts. In contrast, there is the potential that those customers who are able to achieve conditional discounts may receive lower discounts and higher prices in the future if retailers move away from conditional discounting.

The Commission will be assessing the benefits and detriments of conditional discounting through the Conditional Discounts rule change. This is discussed in box 10 below.

Trends in size of discounts

In order to assess achievable discount levels, the Commission sought data from retailers. Figure 4.14 presents this data across jurisdictions for the big 3 to provide trends in discount levels over the two years. The cross-sectional data also provides insight into what discounts are currently available to customers of the big 3 across jurisdictions. Unlike the data in Table 4.7 above, Figure 4.14 is based on the offers that customers are actually on and therefore includes offers which are not generally available. This means that it includes offers that are made to customers through retailer 'save' and 'win-back' activity.

Figure 4.14: Discounting levels of big 3 retailers – 2016-17 and 2017-18



Source: Retailer data, AEMC analysis.

Key trends in discounting in the past year from the big 3:

- There has been a significant decrease in the proportion of customers on zero discount offers across all jurisdictions. This ranges from a seven per cent decrease in New South Wales to a 15 per cent decrease in Victoria. This is likely driven by decreases in the proportion of customers on standing offers, particularly because the big 3 held the vast majority of these customers. Furthermore, within the year the big 3 introduced a variety of new discounting policies on some standing or no-discount offers for specific groups of

customers. For example, Origin Energy automatically applied a 15 per cent discount to all of its existing Victorian no-discount customers.⁶⁶

- The level of discounts across all jurisdictions generally increased in the past year. For example, in every jurisdiction the proportion of customers on more than 10 and 20 per cent discounts increased.
- Victoria has significantly higher discount levels than other jurisdictions and this continued over the past year. For example, more than 60 per cent of customers in Victoria are on a contract with a discount greater than 26 per cent while the next highest jurisdiction is South East Queensland with 18 per cent.

The Commission also sought data from tier 2 retailers. However, the majority of retailers did not provide this information and therefore it is not presented. A significantly higher proportion of data was provided in South East Queensland, and the Commission has therefore provided a case study below.

A common pricing practice in the retail electricity market is 'save' and 'win-back' activity. This is activity where a retailer, after being informed of a customer seeking a competitor's offer, makes targeted offers to the customer to either 'save' them before their transfer to the new retailer is complete, or win them back ('win-back') after they have switched retailer. In the 2017 and 2018 Reviews the Commission commented on the widespread use of this practice. The Commission also noted that these offers tend to be heavily discounted, but they are not generally available and therefore do not appear in information on Energy Made Easy or Victorian Energy Compare websites.

BOX 9: REGULATORY CHANGE: TRANSFER TIMES

As described in chapter 2, the Commission received a *Customer transfer* rule change request from AEMO on 24 May 2019. The rule change request seeks to decrease the time it takes customers to switch retailer to two days after the cooling-off period expires. The requirements in the current transfer process for the losing retailer to be notified of a customer transfer request before the transfer is complete would also likely be removed.

If made, the rule change may have a significant effect on save and win-back activity and potentially on discount levels. For example, with transfer times reduced and advanced notification removed, the losing retailer will have significantly less ability to undertake save activity. This may provide a greater incentive for retailers to seek to keep customers on lower priced offers rather than increasing prices for customers over time until the customer seeks to change retailer and then making them a low priced 'save' offer. In contrast, win-back activity may be enhanced because the time taken to transfer back to the original retailer will be reduced and there will have been no opportunity to undertake save activity.

The Commission may also consider the issue of whether win-back activity is in the long-term

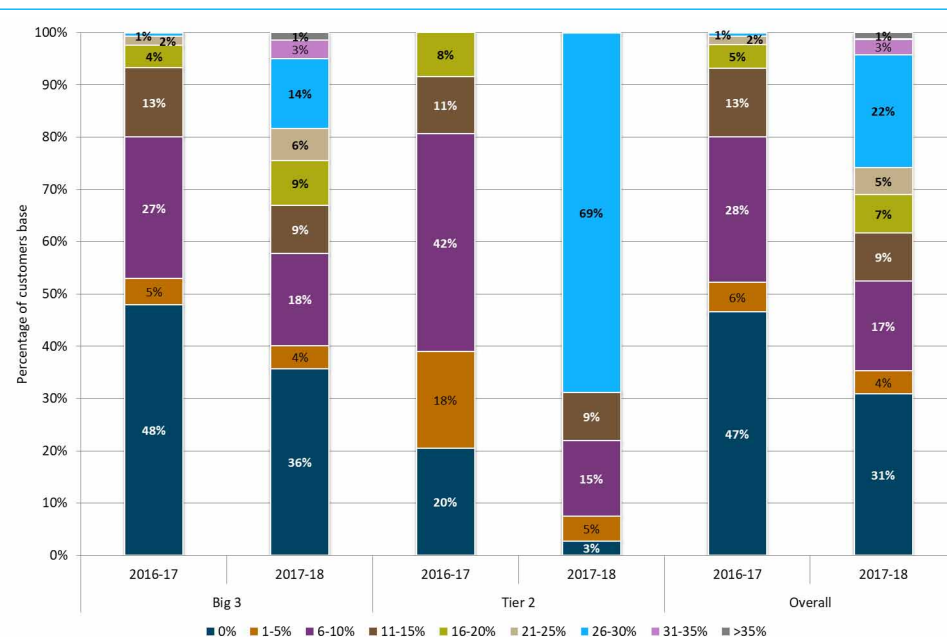
⁶⁶ See: <https://www.originenergy.com.au/about/investors-media/media-centre/origin-delivers-lower-electricity-prices-to-more-victorian-households.html>.

interests of consumers. In its 2018 review of competition in New South Wales, IPART recommended that the New South Wales Government submit a rule change request to the AEMC placing a temporary ban on win-back activity.

South East Queensland – Discounting practices case study

Figure 4.15 compares discounts in South East Queensland from last year to this year and also provides a split between the big 3 and tier 2 retailers.

Figure 4.15: South East Queensland – changes in discounting practices from 2016-17 to 2017-18



Source: Retailer data, AEMC analysis.

As set out in chapter 3, rapid changes have been occurring in the South East Queensland market over the past year. These changes have primarily been driven by the expansion of Alinta Energy in the market. Notably, Alinta Energy's primary advertising and market offers have included discounts above 25 per cent. This has resulted in the significant growth evident in Figure 4.15 in the proportion of tier 2 customers on 26 to 30 per cent discounts. Also of note is the effect that this has had on big 3 discounting levels, with a corresponding increase in the number of customers on 26 to 30 per cent discounts (from one to 14 per cent).

While the problems regarding discounting practices are well-known, South East Queensland provides an example of how discounting can be an effective tool that consumers have responded to. This is particularly the case in the early stages of deregulated retail markets

because the practice is effective at driving customers to engage with the retail market and move from higher standing offer to lower priced discounted market offers.

In interviews with the Commission, retailers' views on discounting as a pricing strategy varied. Some retailers noted that discounting resonates with customers, which is why they continue to offer it as the main form of offer. Other retailers noted a move away from conditional discounts and large headline discounts as their main pricing approach. Within both of these groups there was general acknowledgement that the increasing level of discounts and the varying base rates is an issue that needs to be addressed.

Discounts achieved by consumers

The Commission gathered data from retailers on discount levels with customers' existing contracts across 2017-18 that were achieved, as outlined in Table 4.8 below.

Table 4.8: Discounts achieved by consumers

JURISDICTION	ACTUAL DISCOUNTS REALISED	DISCOUNTS NOT REALISED AS A PROPORTION OF TOTAL REVENUE
New South Wales	90.7%	1.2%
Victoria	89.3%	1.8%
South East Queensland	91.2%	0.9%
South Australia	88.4%	1.3%

Source: Retailer data, AEMC analysis.

Note: All proportions have been weighted by each retailer's market share of the dataset being analysed.

The data suggests that between 12 and 14 per cent of conditional discounts are not achieved by customers across all jurisdictions. However, the Commission notes that the discounts achieved column includes data from both unconditional and conditional discounts and is therefore an overestimate of the proportion of conditional discounts that are being achieved. Furthermore, while receiving data from the big 3, the Commission did not receive data from all tier 2 retailers.

BOX 10: REGULATORY CHANGE: LIMITING CONDITIONAL DISCOUNTS TO COSTS

In addition to the changes to the advertising of conditional discounts discussed earlier, the Australian Government has submitted a rule change to the AEMC seeking to limit the level of conditional discounts. The proposed rule would restrict conditional discounts offered by retailers to the reasonable cost savings that a retailer expects if a consumer satisfies the conditions of the discount. The Commission will initiate the rule change request in July 2019.

This rule change process will allow for a thorough consideration of the benefits and detriments of conditional discounting. The Commission is likely to seek further data on conditional discounting, including the proportion of conditional discounts achieved by subsets of customers (for example, vulnerable customers).

The Conditional discounts rule change will also be the first rule change request where the Commission addresses the interaction of the NECF with the DMO Code. For example, the restrictions within the DMO Code on advertising conditional discounts may reduce the prevalence of conditional discounting and therefore the materiality of the problem set out in the rule change request.

Variable base rates

A feature of market offers is that retailers have the ability to increase prices at any time unless they have specified otherwise in the contract. Furthermore, discounts within market retail contracts typically only last for 12 or 24 months. The ability to vary retail prices is important for retailers in the NEM to manage risks because it allows them to respond to varying input costs. Particularly because the dynamic nature of the wholesale market means their input costs can change rapidly.

However, this does come with the downside for customers that unless they find a fixed or capped price offer they need to be aware of price changes on an ongoing basis. For example, in late 2018, retailer Sumo Power allegedly increased some of its customers' prices by over 50 per cent within weeks of signing the customer up.⁶⁷ Further the original lower priced offer was still available to new customers who wanted to switch to Sumo Power.⁶⁸ Box 11 outlines recent regulatory changes to enhance a consumer's ability to respond to price changes of this kind.

The availability of fixed or capped price offers in the market is therefore important to meet the needs of customers who do not wish to engage on an ongoing basis.

Table 4.9 sets out the proportion of offers with fixed prices in March 2018 and 2019. It also provides the proportion of fixed price offers which also include no discounts.

Table 4.9: Prevalence and change in pricing practices

PRICING PRACTICE	MARCH 2018	MARCH 2019
Number of EME electricity offers	297	968
Percentage of total offers that are fixed price	1 per cent	7 per cent

⁶⁷ Choice, *Bait and switch?*, 10 December 2018, found at: www.choice.com.au/shopping/shopping-for-services/utilities/articles/sumo-powers-big-rate-increase, accessed 27 May 2019.

⁶⁸ *ibid.*

PRICING PRACTICE	MARCH 2018	MARCH 2019
Proportion of fixed price offers that also have no discounts	0 per cent	75 per cent

Source: Energy made easy, AEMC analysis.

Note: The table above does not analyse offers within Victoria. This is because fixed or variable priced offer statistics were not accessible from Victorian Energy Compare.

Table 4.9 demonstrates how in the past year fixed priced offers have started to become available in the market where previously they were largely unused. Table 4.9 also shows how the majority of these fixed price offers are also no discount offers. This means that customers accessing these offers have a price locked in over the period. Figure 4.3 to Figure 4.11 also demonstrate that these offers have not only been introduced but that they represent some of the lowest priced offers in the market.

In the Commission's retailer interviews a number of retailers noted that these offers have been taken up in large numbers. For example, one large retailer noted that their fixed price no discount offer represented more than 50 per cent of their residential customer acquisitions in the past year. The combination of the Commission's market structure analysis and pricing practice analysis also shows these offers are being taken up by customers.

BOX 11: REGULATORY CHANGE: NOTIFYING CUSTOMERS OF PRICE CHANGES

The Commission made the *Advance notice of price changes* and *Notification of the end of a fixed benefit period* rule changes on 27 September 2018 and 7 November 2017 respectively. These rule changes require retailers to inform their customers when they are changing prices or prices change as a result of the customers' benefit period expiring.

These changes enhance consumers' ability to respond to price changes by providing them with notification of the changes and allowing them to shop around for a better deal before impacted by the change. The changes being considered through AEMO's *Customer transfers rule change*, if made, will also enhance consumers' ability to respond to price changes by allowing them to change retailer more quickly if they wish to if their existing retailer increases their prices. The combination of these changes may provide stronger incentives for retailers to make fixed price offers and maintain low prices for existing customers over time.

The Commission also notes that there are other regulatory changes that are worth considering in regard to fixed price contracts. For example, a number of jurisdictions have in place restrictions on exit fees. Removing these restrictions for fixed price contracts would allow retailers to provide customers with the certainty that their prices will not increase while providing retailers with the certainty that they will retain the customer (or be compensated if they lose the customer) for the length of the fixed price.

Evaluation of pricing practices

In the past year the market has reduced its reliance on the practice of large conditional discounts off variable and inconsistent base rates. There has been increases in the number and proportion of no discount and unconditional discount offers available in the market. Similarly, there has been increases in the number and proportion of offers with fixed or capped prices. Importantly, these offers, which are often combined into a no discount fixed price offer, are among the lowest price offers in the market in most jurisdictions and are being adopted by large numbers of customers.

However, these offers still represent a significant share of the market and the levels of conditional discounts within these offers continued to increase over the past year. The Commission considers these practices warrant continued monitoring, analysis and targeted regulatory interventions. Furthermore, the introduction of the DMO and VDO on 1 July 2019 will influence these pricing practices. The Commission will incorporate these changes into its monitoring, analysis and rule change processes.

In the course of this analysis, the Commission has noted that there is a lack of available data regarding the number of customers on individual retail tariffs. This restricts policy-makers' ability to assess whether retail competition, and specific practices and elements of retail competition, are working in the long-term interest of consumers. For example, the Commission has drawn many of its conclusions in this section through combining the availability of offers on Energy Made Easy and Victorian Energy Compare with changes in market share data from chapter 3 or retailer interview information on the popularity of different pricing practices. However, this is an imperfect substitute for actual tariff information.

To address the lack of available data the AEMC will work with other market bodies and industry to make data on the number of customers on specific market offers available in a form that enhances the transparency of the impact of retail competition on the long-term interests of consumers. Under the Energy Charter framework, it is expected that industry would take an active role in this process and support the Commission's work in this space.

4.4.2

Innovative pricing strategies and products

In addition to the overall market changes described above there have also been new pricing strategies and products introduced or expanded in the retail market this year. Interestingly, these new prices and products appear to be aimed at consumer groups with quite specific preferences (i.e market segmentation). This section provides a summary and examples of prices and products targeted at consumers that appear to desire:

- simplicity and stability through simple offers
- interaction and use of new technology through dynamic offers
- trust and transparency through transparent gross margins.

Simple offers

There has been an increase in simple offers in the past few years, which provide a higher level of bill certainty and are likely to cater to those customers who do not want to engage

with the market. These type of offers include amaysim energy's mobile phone style offer, Origin Energy's Predicable Plan offer and AGL's Essential Plus offer. While these offers may not result in the lowest bill outcome for consumers, they do provide certainty about a consumer's bill allowing them to plan accordingly.

Amaysim energy's mobile phone-style electricity offer is similar to having monthly instalment payments but has some different elements. The offer is explored further in Box 12 below.

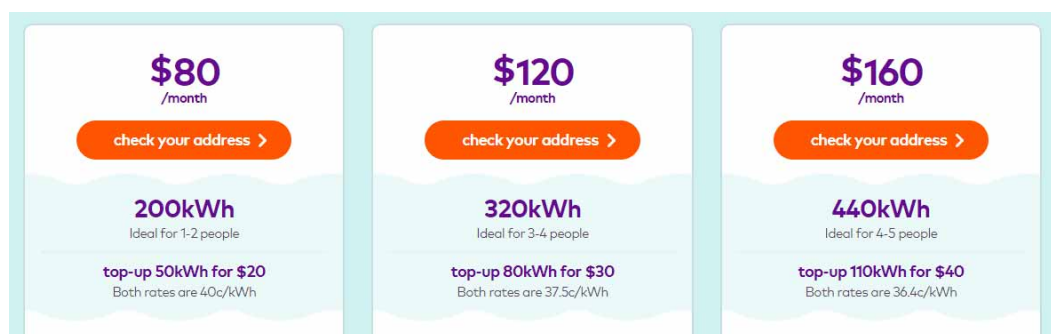
BOX 12: AMAYSIM ENERGY'S MOBILE PHONE-STYLE ELECTRICITY OFFER

Amaysim energy's offer is structured similar to offers for mobile phone plans. Every month the customer prepays for a set amount of electricity. If the customer uses:

- *more than the set amount:* amaysim will apply an automatic top-up, charging the customer the same rate per kWh as their current plan. Any unused energy from this top-up, will roll over into the following month.
- *less than the set amount:* any unused electricity consumption rolls over and accumulates on the customer's account for up to three years.

Amaysim energy states that the electricity a customer 'saves' in autumn and spring will help the customer through the higher consumption months of winter and summer. Customers can also change to a higher, or lower plan, at any point if the customer's usage needs change. The offer is currently only available for electricity.

Figure 4.16: Amaysim energy's mobile phone-style electricity offer



Source: <https://www.amaysim.com.au/energy> Source: Accessed 21 May 2019.

Dynamic offers

On the opposite end of the spectrum, retailers have now introduced dynamic tariffs for those customers seeking to respond to price signals from the market. Often these prices and products are only accessible for customers on specific technologies (for example a battery). These products include:

- Powerclub and Amber Electric both have residential customer wholesale spot market pass through electricity offers.

- Powerclub have offers targeting solar PV and battery customers using offers with high FiTs and other incentives.

Chapter 8 details how battery technology and related products are promoting innovation in the retail energy market. Dynamic offers are explored throughout chapter 8 with detailed examples of these types of offers.

Transparent gross margins

A number of retailers have reacted to distrust and general negative consumer sentiment towards the retail energy market in the way they design their offers and businesses. Being transparent about their retail gross margins has been a method of building trust with customers that retailers have used to date. Other methods, such as those explored below in section 4.4.4, see retailers using branding to associate a particular retail business with positive propositions and/or sentiments regarding that company.

Examples of retailers carrying out this behaviour include DC Power Co.⁶⁹, Amber Electric⁷⁰ and Powerclub.

Powerclub and Amber Electric both have residential customer wholesale spot market pass through electricity offers. This pass through allows these businesses to split off the customer's energy usage charges from their gross margin charges. The result of this split is that the retailer no longer has an incentive to increase their profits by increasing the customer's consumption rate.

Powerclub charges customers an annual membership fee to cover licensing fees as well as a small daily and usage charges to cover operational costs. They state that any excess profits received from customers will be returned to members (their customer base) or reinvested into Powerclub for their members benefits.⁷¹ Amber Electric's business model is covered in chapter 8.

DC Power Co. offers are explored below in Box 13, in reference to how their transparent margins help build consumer trust in energy retailers.

BOX 13: DC POWER CO. AND TRANSPARENT GROSS MARGINS IN THEIR OFFERS

DC Power Co. retails electricity and gas in:

- Victoria as an authorised retailer
- partnership with Energy Locals in NECF jurisdictions.

DC Power Co.'s business model operates using cost price electricity charges and a capped monthly 'DC Fee' of \$10 (GST exc). The DC fee is the businesses gross margin — the

⁶⁹ DC Power Co. operates as in partnership with Energy Locals in the NECF regions and as its own authorised retailer in Victoria.

⁷⁰ Amber Electric operates in partnership with Energy Locals in the NECF regions.

⁷¹ Powerclub, *Got a question? — FAQs*, <https://powerclub.com.au/faqs>, accessed on 21 May 2019.

difference between total revenues and the cost of goods sold. Retailer's gross margin has typically been included in the daily and/or usage rates. DC Power Co clearly states that their gross margin DC fee "isn't hidden in your usage rate" as a point of difference to the way other retailers are currently operating.

DC Power Co. argues that this "means we have no financial interest in selling you more electricity. In fact, our aim is to help you lower your electricity use with services tailored to you." The resulting offer from DC Power Co. is shown in Figure 4.17.

Figure 4.17: DC Power Co.'s flat tariff offer with a transparent gross margin – CitiPower

Electricity Rates

We have no vested interest in getting you to use more electricity from the grid. Our capped \$10 (GST exc) monthly DC Fee isn't hidden in your usage rate, it's called out on your bill.

Distributor
CitiPower

	Exc GST	Inc GST
Daily charge	86.49 c/day	95.14 c/day
Usage rate	21.03 c/kWh	23.13 c/kWh
DC Fee	\$10/month	\$11/month

The usage rate listed is the single rate tariff & may not apply to you. View Basic Plan Information Document for full list of rates.

Basic Plan Information Document

Source: <https://www.dcpowerco.com.au/offer/#3000>Source: . Accessed 21 May 2019.

4.4.3

Non-price product add-ons

Retailers are increasingly diversifying their offerings through value-add enticements to compete for customers. To examine the state of what retailers are currently offering to customers outside of pricing practices, the Commission conducted a desktop review of retailer websites in April 2019. The non-price product add-ons can be cash/credit or non-cash incentives. Table 4.10 provides a snapshot of these offers.

Table 4.10: Retailers add-ons (excluding fixed/conditional discounts)

RETAILER	CASH/CREDIT BONUS	PRODUCTS (NON-CASH)
Origin Energy	<ul style="list-style-type: none"> \$200 sign up bonus when you move 	<ul style="list-style-type: none"> Mobile phone app Broadband options Free Smart Home Kit, valued at \$299, for online sign up
AGL	<ul style="list-style-type: none"> \$50 online sign up bonus for Gas/Electricity accounts \$20 per electricity/gas account paid every six months for e-billing 	<ul style="list-style-type: none"> Flybuys points AGL Energy mobile phone app Free Amazon Echo Dot AGL Rewards — exclusive deals from Australia's biggest brands such as movie tickets, groceries,

RETAILER	CASH/CREDIT BONUS	PRODUCTS (NON-CASH)
		restaurants and more
EnergyAustralia	<ul style="list-style-type: none"> \$50 online sign up bonus for Gas/Electricity accounts 	<ul style="list-style-type: none"> Carbon neutral at no extra cost.
Red Energy	<ul style="list-style-type: none"> Refer a friend for \$50 	<ul style="list-style-type: none"> Qantas points sign on and earn Offer solar/battery and energy monitoring solution Red Energy Rewards — discounts on hotels, restaurants, movie tickets, groceries, fuel etc
Lumo Energy	<ul style="list-style-type: none"> Refer a friend for \$50 	<ul style="list-style-type: none"> Lumo Ameego — discounts on movie tickets, groceries, fuel and white goods
Alinta Energy		<ul style="list-style-type: none"> Alinta Energy Rewards — discounts on movies, attractions, gifts and electronics
Simply Energy	<ul style="list-style-type: none"> \$50 online sign up bonus for Gas/Electricity accounts. \$10 AFL 'kick off' credit applied to each gas/electricity accounts. 	<ul style="list-style-type: none"> Free movie tickets. Motoring associations' members offer (NRMA etc)
Momentum Energy	<ul style="list-style-type: none"> \$50 online sign up bonus for Gas/Electricity accounts 	
Powershop	<ul style="list-style-type: none"> \$75 discount for every mate you switch \$100 discount when you join online 	<ul style="list-style-type: none"> 100% Carbon neutral at no extra cost Customer mobile phone app
Sumo Power		<ul style="list-style-type: none"> Sumo Perks — movies, groceries, retail, white goods and flights
Click Energy	<ul style="list-style-type: none"> \$50 sign on bonus 	
Tango Energy	<ul style="list-style-type: none"> \$50 e-billing bonus 	

Table 4.10 shows how many retailers are offering incentives aimed at specific groups of customers as a point of difference. The most common non-price product add-ons were:

- **Cash or credit incentives:** a main advertising piece on many websites is cash or credit incentives to sign up online or refer a friend to the service. The sign up bonuses are primarily exclusive to online only offerings.

- **Partnerships:** a number of retailers have partnered with a range of organisations to create a rewards scheme for their customers. This provides them with deals and discounts on movie tickets, groceries, restaurants, fuel, accommodation and white goods.
- **Carbon offsets:** there are a select number of retailers currently providing carbon offsets to a consumer's consumption at no extra cost. This provides an avenue for carbon conscious consumers to reduce their impact outside of the green energy offerings that come at a significant cost offered by other retailers.

An example of a retailer providing cash and non-cash incentives is outlined in Box 14.

BOX 14: SIMPLY ENERGY

Simply Energy has brought to market multiple offerings in 2019 that shift away from discount only offerings, towards a diverse array of options.

The offers are structured with a base pay-on-time discount of 10 per cent for electricity and gas usage charges through Simply Save. Customers can then choose to increase their pay-on-time discount through Simply Plus or Simply NRMA Plus if they are a current members.

Alternatively, customers can add non pay-on-time discounts through the Simply AFL Plus. Simply AFL Plus is an AFL branded offering which provides a fixed payment which acts as a reduction on fixed charges by \$10 per month for both electricity and gas accounts.

Another offer, Simply Movies Plus, offers the option of one Gold Class ticket or two Traditional tickets per gas and electricity account every three months to Event Cinemas in NSW.

Figure 4.18: Simply offers



Source: Simply Energy, accessed 10 April 2019 (using postcode 2156), www.simplyenergy.com.au/home/compare-energy-plans/

4.4.4

Branding

Retailers are increasingly advertising using specific branding. Strong retail branding allows a business to gain recognition from customers when they use comparison websites as

customer typically will only sign up to retailers they know, have heard of or align with their values.

A number of brand propositions that are prominently advertised by retailers are summarised in Table 4.11. These were taken from a desktop study carried out by the Commission in April 2019.

Table 4.11: Retailer's brand proposition in 2018-19

RETAILER	BRAND PROPOSITION
AGL	<ul style="list-style-type: none"> • Proudly Australian • Biggest ASX-listed renewables investor
Alinta Energy	<ul style="list-style-type: none"> • Partnership with Cricket Australia • Promotion in which new customers go into the running to win a trip to the Ashes for two worth \$10,000
Lumo Energy	<ul style="list-style-type: none"> • Red Shield Appeal Community Supporter
Powershop	<ul style="list-style-type: none"> • 'Renewables we love them'
Red Energy	<ul style="list-style-type: none"> • 'Over 20 awards in 9 years' • Newcastle Knights partnership • Breast Cancer Network Australia partnership.
Momentum Energy	<ul style="list-style-type: none"> • '100% Aussie' • Award winning customer satisfaction
EnergyAustralia	<ul style="list-style-type: none"> • Customer experience awards
Sumo Power	<ul style="list-style-type: none"> • Australian owned
Click Energy	<ul style="list-style-type: none"> • 'Discounts that don't expire' • Online only service
Tango Energy	<ul style="list-style-type: none"> • 'Award winning customer satisfaction'

5

RESIDENTIAL CONSUMER BEHAVIOUR

BOX 15: SUMMARY OF KEY FINDINGS

- Residential consumer confidence in the energy market increased in 2019.
- The ECA's *Energy Consumer Sentiment Survey* showed in April 2019 that consumer confidence:
 - in their ability to make choices increased four per cent from April 2018 to 62 per cent
 - in the availability of easily understood information increased three per cent from April 2018 to 53 per cent
 - the market is working in their long-term interest increased six per cent from April 2018 to 31 per cent.
- According to a survey by Choice, electricity is no longer the expenditure item of most concern to households.
- There has been an increase in consumers changing energy retailer in the last year in all mainland jurisdictions:
 - Victoria and South East Queensland had the highest electricity switching rates of 29 per cent
 - Victoria and New South Wales had the highest gas switching rates of 21 and 16 per cent respectively.
- There are market developments occurring that may change retailer behaviour and consumer outcomes in the near future.

RECOMMENDATION 4: COMMERCIAL COMPARISON SITES

In the Commission's view the regulation of comparator sites is key to ensuring consumers have access to effective tools and advice to allow them to find the best offer to suit their needs and preferences.

As recommended by the Commission in the 2018 Review and subsequently by the ACCC in its Final retail electricity pricing inquiry report, the Australian Government should develop a mandatory code of conduct for third party comparison sites to improve the ability of consumers to find the best retailer and energy plan for their circumstances. This should include requirements to provide consumers with information about the commercial relationship between retailers and the site.

RECOMMENDATION 5: ENERGY MADE EASY

Energy Made Easy provides an important tool to allow customers to seek out information on offers that might be best for them. The AER will have an enhanced website go live at the end of 2019 with iterative changes made through to July 2020. The Commission recommends that the Australian Government carry out actions to improve awareness of the enhanced Energy Made Easy to allow consumers to benefit from the website.

Having examined the structure of the retail market and retailer conduct earlier in the report, this chapter examines consumer behaviour. In particular, it examines consumer:

- preferences
- sentiment and confidence
- trust in the energy market
- actual and intended activity.

Data on consumer sentiment is sourced from the ECA's biannual *Energy Consumer Sentiment Survey* (the ECA Survey). Survey results have been compared on a year-to-year basis due to seasonality in the biannual survey responses. The ECA survey results show that September/October results are generally more pessimistic than April.

In the 2018 Review, the Commission noted the low levels of consumer sentiment that likely resulted from large retail price increases, and heightened media and political interest in the sector. The last two ECA survey responses in October 2018 and April 2019, indicate that consumer sentiment has returned to the levels seen in the September 2017 survey.

For this year's report, results have been reported on a NEM-wide basis. Detail on jurisdictional results can be found on the report's [microsite](#).

The chapter then outlines the options, behavioural and otherwise, consumers have to help them make decisions in the market:

- There are government and commercial comparison services available to consumers.
- Technological and regulatory developments continue to provide tools for consumers to deal with complexity and make good energy purchasing decisions.
- Consumers have options to reduce their bill through the adoption of distributed energy resources (DER) (e.g. solar PV and batteries) and/or energy efficiency initiatives.

5.1 Preferences of consumers

As well as having a general preference for affordable and reliable products and services, consumers have a range of preferences in how they would like offers to be presented to them. The 2018 Review highlighted that consumers can find retail energy offerings to be confusing⁷² and to deal with the complexity they often utilise imperfect mental shortcuts that

⁷² Wood, T., Blowers D., and Morgan, G. (2017). *Price Shock: is the retail electricity market failing consumers?*, Grattan Institute, p. 32.

are open to exploitation by firms.⁷³ A 2018 report by the Consumer Policy Research Centre identified the need for consumer information to be comprehensible, relevant and clear if it is to be of use to consumers.⁷⁴

In light of these trends in how retailers have presented information to consumers, there is evidence in the market of some retailers trialling simplified electricity product offerings. These are described in chapter 4. However, the predominant retail market offer remains a service with a fixed cost component, variable charges based on usage and the achievement of a range of discounts.

With these consumer preferences and predominant retailer pricing practices as context, the ECA surveyed customers to understand their perceptions of how well the market is meeting their requirements.

5.2 Residential consumer perceptions of the market

The ECA Survey asked consumers about their:

- confidence to make choices in the energy market
- confidence in the availability of easily understood energy market information
- confidence that the energy market was working in the long-term interest of consumers.

5.2.1 Consumer confidence in abilities to make choices

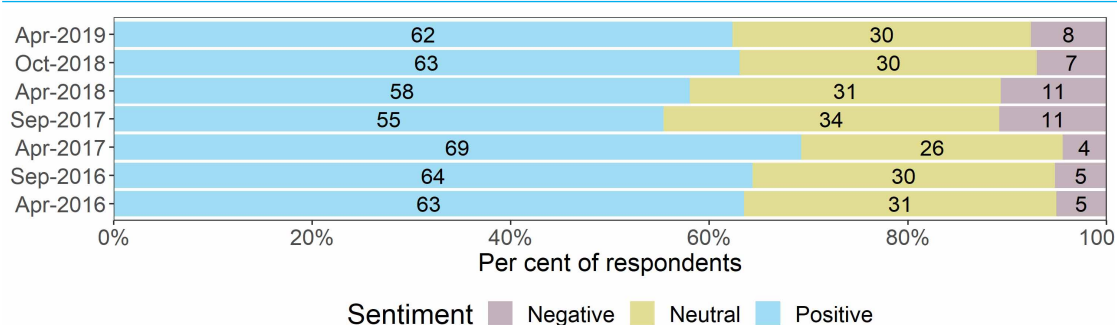
In an effectively functioning competitive market the expectation would be for consumers to have increasing confidence in their ability to make decisions over time. Such an increase would be driven by retailers competing to meet consumer needs, and by consumers' increasing levels of familiarity with competitive markets.

Figure 5.1 shows that there has been an increase in residential consumers' confidence in their ability to make choices about the electricity and gas markets in the past year. Confidence in all markets has increased by four per cent overall since April 2018, with an average of 61 per cent positive responses in April 2019, except for Tasmania where the decrease was one per cent in the same period.

⁷³ Oxera (2016), *Behavioural insights into Australian retail energy market, report to the AEMC*, March 2016.

⁷⁴ L Solomon, B Martin-Hobbs (2018), *Five preconditions of effective consumer engagement — a conceptual framework*, Consumer Policy Research Centre, March 2018.

Figure 5.1: Consumer confidence in their abilities to make choices about the energy market



Source: ECA, AEMC analysis. Question C1 (A) in the questionnaire.

Note: Jurisdictional results can be found [here](#).

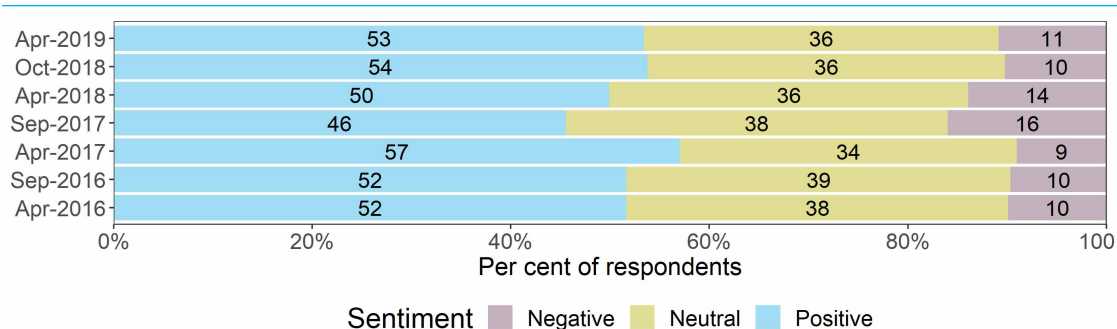
The data shows that since the negative results of September 2017, there has been an increase in consumers who feel confident, and a decrease in consumers who are not confident in their ability to make choices in the energy market. The decrease in non-confident responses is evenly spread between the neutral and negative responses.

5.2.2

Consumer access to easily understood information

Figure 5.2 indicates that in the past year consumers have become more confident that there is easily understood information about the electricity and gas markets available to them. This has occurred in all jurisdictions, by one to five per cent, except Tasmania with a four per cent decrease. Overall, the average percentage of consumers in the NEM that are positive about their access to easily understood information increased to 53 per cent. Further, there has been a decrease in the average percentage of consumers that are not confident about their ability to easily understand information across the NEM, from 14 per cent in April 2018 to 11 per cent in April 2019.

Figure 5.2: Consumer confidence in their access to easily understood information



Source: ECA, AEMC analysis. Question C1 (B) in the questionnaire.

Note: Jurisdictional results can be found [here](#).

The expectation for improvement in this metric is similar to that for consumer confidence in their ability to make choices. An effectively competitive market should see improvements in consumer confidence about their access to easily understood information. This indicates that retailers are increasingly meeting customers' expectations on these metrics or that the retail market is showing improved competition.

5.2.3

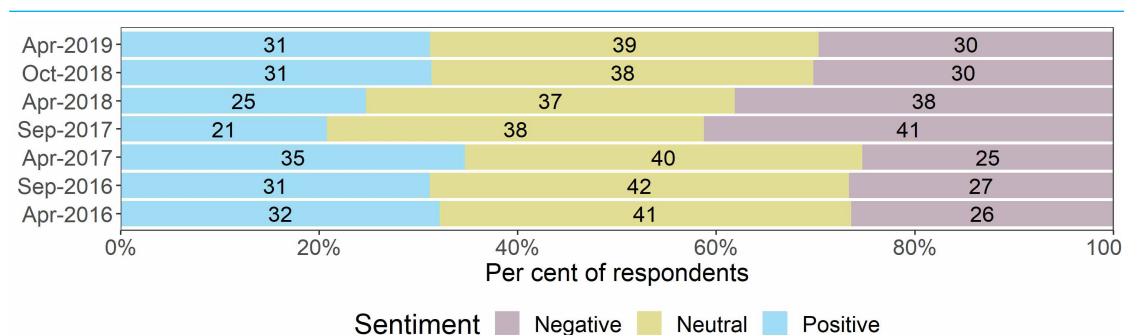
Consumer confidence in the long-term

Figure 5.3 below indicates that consumers have generally had low levels of confidence that energy markets are working in their long-term interests. However, this confidence has increased across all jurisdictions of the NEM since April 2018, except Tasmania.

Across the NEM, the proportion of consumers that were:

- confident that the market is working in their long-term interests increased from 25 per cent in April 2018 to an average of 31 per cent in April 2019
- not confident the market is working in their long-term interests decreased from 38 per cent in April 2018 to 30 per cent in April 2019.

Figure 5.3: Consumer confidence that the energy market is working in their long-term interests



Source: ECA, AEMC analysis. Question C2 in the questionnaire.

Note: Jurisdictional results can be found [here](#).

5.2.4

Consumer Concerns

Choice's Consumer Pulse survey measures consumer concerns about household expenditure across a range of sectors and has been carried out every quarter since 2014. It asks consumers how concerned they are about the cost (expenditure) of each specific expense item for their household, which includes electricity and gas.

From the beginning of the survey in 2014 to 2018, electricity had been the highest cost concern. However, Choice reported that in March 2019 that health insurance has overtaken

electricity as the highest cost concern. There has been a six per cent drop in consumers concerned about electricity from 83 per cent in January 2018 to 77 per cent.⁷⁵

5.3 Market Engagement

Another measure of the development of competition is how well consumers interact with and are engaged in the retail energy market. The 2018 Review drew upon a CSIRO report which highlighted barriers to consumer engagement in the energy market being low visibility of consumption, low levels of literacy in energy markets, concepts and terms, and status quo bias for consumers to stay with their default retailer or plan.⁷⁶ Drivers of consumer engagement highlighted by the 2018 Review were economic and environmental concerns, dissatisfaction with current retailer and direct marketing from retailers.⁷⁷ The 2018 Review analysed comparison websites as an important facilitator of effective market engagement, in connecting consumers with better energy deals, and are discussed below.

5.3.1 Comparison Websites

Government sites

There are a number of government run comparison sites designed to assist consumers in finding the best deal for their circumstances.

1. The AER runs the Australian Government comparison website Energy Made Easy.⁷⁸ This site allows customers to input individual data and receive information about what offers might be best for them. The site compares all generally available offers in the market for all NEM jurisdictions other than Victoria. The AER will have an enhanced website go live at the end of 2019 with iterative changes made through to July 2020. This includes improved bill upload functionality, translating the site into other languages and a platform for new technologies. The Commission recommends that the Australian Government carry out targeted actions to improve awareness of Energy Made Easy to allow consumers benefit from the enhanced website.
2. The Victorian Government offers the Victorian Energy Compare website which services Victorian energy consumers.⁷⁹ The Victorian Government introduced a \$50 incentive for Victorians to register with the site which has been extended to 30 June 2020. In the first three months, switching rates increased from 7.9 per cent to 9.1 per cent for electricity and 6.5 to 7.7 per cent for gas in Victoria compared to the previous quarter.⁸⁰
3. The New South Wales Government offers the Energy Switch⁸¹ comparison tool which provides customers the ability to upload an e-bill to access advice on the best electricity

⁷⁵ Jonathon Brown, Choice, viewed on 21 March 2019, <https://www.choice.com.au/money/insurance/health/articles/health-insurance-costs-consumer-concerns>.

⁷⁶ Gardner, J and Nilsson, D (2017) *Exploring the drivers and barriers of consumer engagement in the Victorian retail energy market*, CSIRO, Australia.

⁷⁷ *ibid.*

⁷⁸ <https://www.energymadeeasy.gov.au/>.

⁷⁹ <https://compare.energy.vic.gov.au/>.

⁸⁰ AER, *Quarterly Retail Performance Data Q2 2018-19 Summary*, AER, Melbourne, 2019.

⁸¹ <https://energyswitch.service.nsw.gov.au/>

and gas offers available. The tool then offers to assist in the switching process to help ease the process of changing electricity retailers.⁸²

Commercial comparison sites

In the 2018 Review, the Commission found that there are also approximately 19 commercial energy comparison sites.⁸³ These sites offer to find customers a better deal and organise the switching process for them. Comparison sites are typically paid a commission or referral fee by retailers when a customer uses their site to switch to that retailer. These services help consumers find a suitable deal, given the number and complexity of offers in the market.

However, the 2018 Review raised concerns with the lack of any code of conduct guiding comparison websites, with low levels of transparency in what commercial relationships exist between retailers and comparison sites. The Commission recommended that retailers and comparison service providers establish a code of conduct and obtain ACCC authorisation if necessary. Failing the development of a code, the Commission recommended that regulatory measures may be considered. The Commission also called for a requirement for commercial comparison sites to display the number of retailers and plans represented as a portion of available retailers and plans, and to detail how they are remunerated by retailers.

The ACCC also recommended in REPI that:

- a mandatory code for comparator websites be introduced so that offers are recommended based on customer benefit, not commissions paid
- the Australian Government and Victorian Government should commit to ongoing funding to raise awareness of the government-run comparator websites similar to the approach taken in New Zealand with the 'What's My Number' campaign.⁸⁴

In the Commission's view the regulation of comparator sites is key to ensuring consumers have access to effective tools and advice to allow them to find the best offer to suit their needs and preferences. Therefore, as recommended by the Commission in the 2018 Review and the ACCC, the Australian Government should develop a mandatory code of conduct for third party comparison sites. This should include requirements to provide consumers information about the commercial relationship between retailers and the site.

5.3.2

Switching

One way that consumers can engage with the energy market is by switching retailers or plans. This section analyses:

- actual consumer switching activity
- the reasons why consumers switched
- consumer intention to switch retailer and/or plan in the next 12 months.

⁸² The Energy Switch service was expanded to provide comparisons and switching for gas customers in May 2019.

⁸³ AEMC analysis as at March 2018.

⁸⁴ ACCC, 2018, *Retail Electricity Pricing Inquiry — Final Report*, ACCC, Canberra, November 2018.

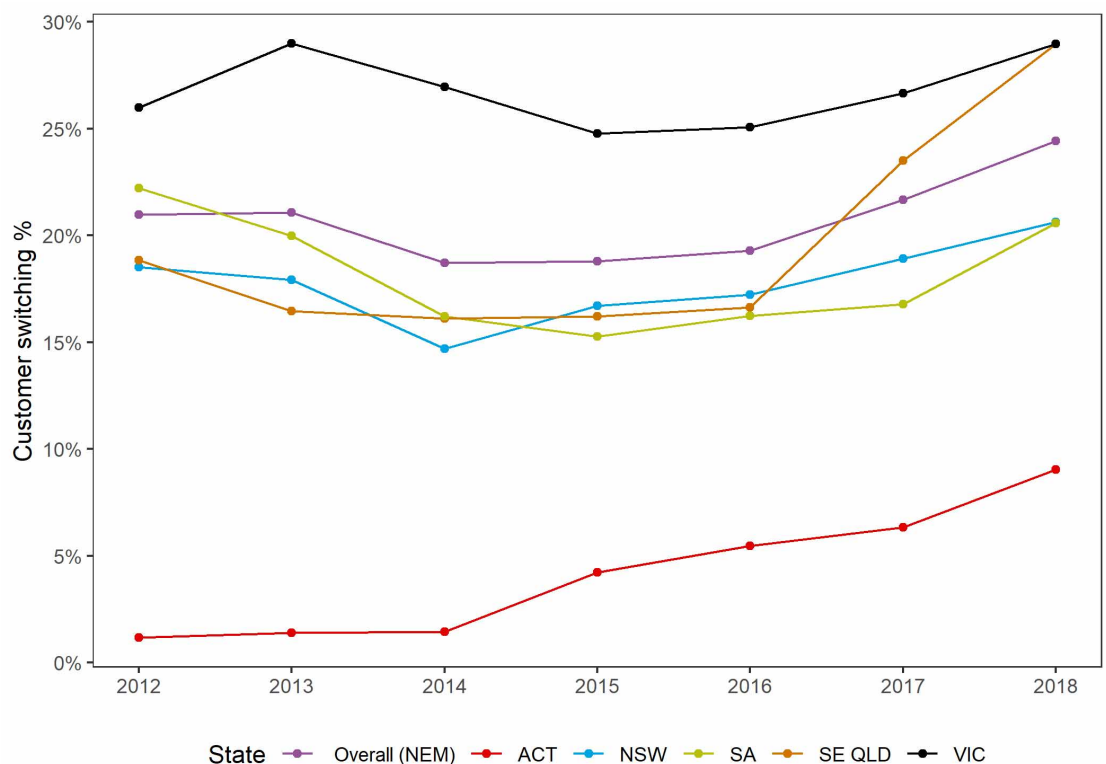
Actual switching activity

Consumers can switch between retailers and plans to achieve a better energy deal. This section looks at the reasons consumers give for why they have switched as well as their intentions to switch energy provider or plans in the next year.

Overall switching rates in the electricity market have increased since 2017, as seen in Figure 5.4 below. The figure also shows that for 2018:

- Victoria and South East Queensland have the highest rate of switching in the NEM at 29 per cent. There has been an increase in the number of customers switching in South East Queensland, following price deregulation and the aggressive entry of Alinta into that market.
- New South Wales also saw an increase in switching rates following price deregulation in July 2014, although not to the levels seen in Victoria and South East Queensland.
- New South Wales and South Australia have similar switching rates of 21 per cent.
- The Australian Capital Territory has the lowest level of switching; however switching has increased from around one per cent in 2014 to nine per cent in 2018. As noted in chapter 3, this is mainly a result of Origin Energy's activity in this market.

Figure 5.4: Overall customer electricity switching



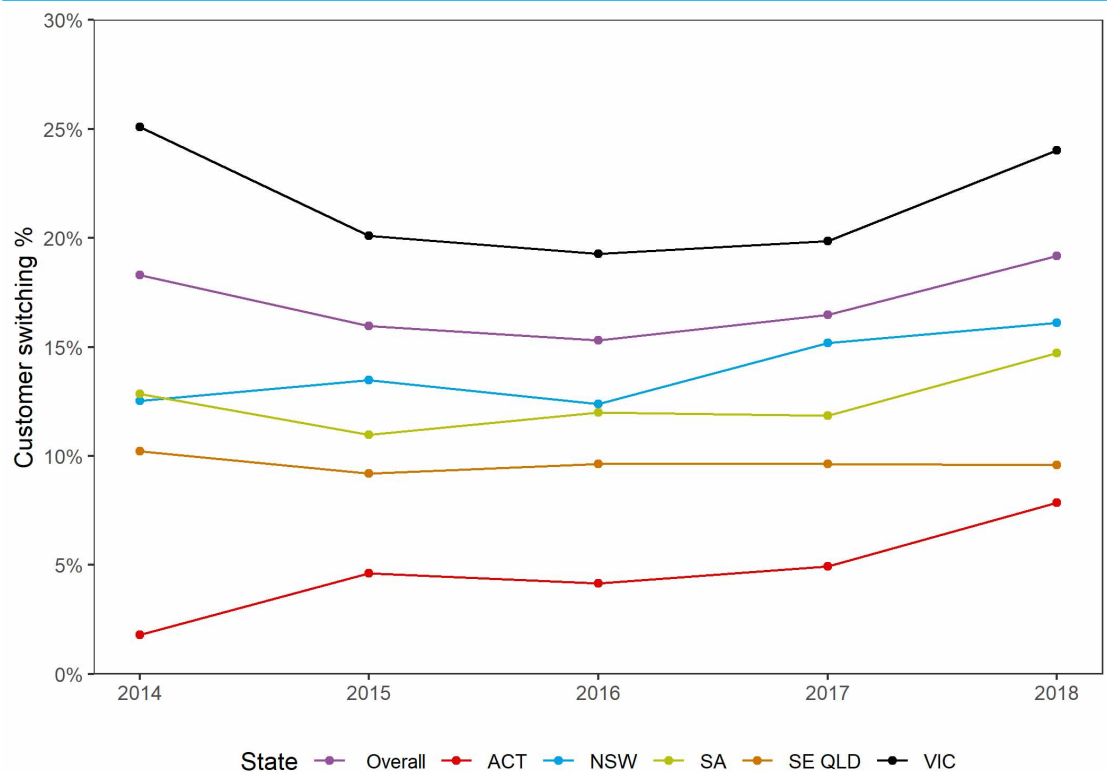
Source: AEMO, AEMC analysis

Note: Data does not include where a customer has changed plans with its current retailer. QLD refers to South East Queensland.

The switching rates for gas across the NEM jurisdictions was at 19 per cent for 2018, as seen in Figure 5.5 below. The switching rates for gas are slightly lower than those seen for electricity for each jurisdiction. The figure below also shows the gas switching rate is:

- 24 per cent for Victoria, the highest of all jurisdictions
- eight per cent for the Australian Capital Territory, the lowest of all jurisdictions.

Figure 5.5: Overall customer gas switching



Source: AEMO, AEMC analysis.

Note: data does not include where a customer has changed plans with its current retailer. QLD refers to South East Queensland.

Rationale for switching

The ECA Survey found that the most common reasons cited by consumers for switching were that they:

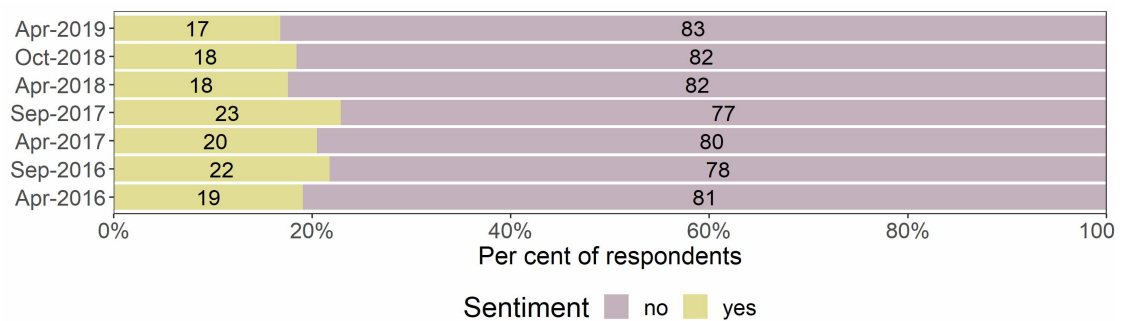
- were not satisfied with the value for money from their retailer
- had searched for a better plan on a price comparison website.

Intention to switch

In Figure 5.6 below, 17 per cent of consumers overall in jurisdictions in the NEM have indicated they are likely to switch retailer or plan in the next 12 months. The intention to switch is lowest in South East Queensland, where 13 per cent of consumers indicated they

are looking to switch in the next year. The highest positive response to the survey was in Victoria where 22 per cent indicated they were looking to switch.

Figure 5.6: Consumers intending to switch in the next 12 months



Source: ECA, AEMC analysis. Question A8 in the questionnaire.

Note: Jurisdictional results can be found [here](#).

5.3.3

Distributed energy resources

Distributed energy resources (DER) has become an increasingly attractive option with Australia having the highest uptake of solar globally, with more than 2.06 million systems installed as of February 2019.⁸⁵ As highlighted by financial analysis done in the 2018 Review, investments in solar panels can reduce consumer energy consumption and bills. Residential battery storage installations are predicted to grow rapidly⁸⁶ and chapter 8 provides a detailed look into the growing role of batteries in the retail market.

5.3.4

Reducing Energy Usage

Consumers can also reduce their bills by understanding and reducing their energy usage.

Various government agencies have programs to help consumers manage their usage and lower their bills. Such programs include:

- New South Wales' Energy Savings Scheme
- Queensland's Energy Savvy Families
- Victorian Energy Upgrades Scheme
- South Australia's Retailer Energy Efficiency Scheme
- Australian Capital Territory's Energy Efficiency Improvement Scheme.

All these schemes, which include education and opportunities to access more efficient appliances, aim to reduce consumers' energy bills without impacting customer lifestyles.

⁸⁵ Department of the Environment and Energy 2019, Canberra, viewed on 16 April 2019 <https://www.energy.gov.au/households/solar-pv-and-batteries>.

⁸⁶ AEMO and Energy Networks Australia 2018, Open EnergyNetworks, consultation Paper.

6 SMALL BUSINESS BEHAVIOUR

BOX 16: SUMMARY OF KEY FINDINGS

- Businesses are significantly different in terms of size, turnover and energy intensity. Accordingly, the way they behave and react to market conditions varies materially.
- There is a lower proportion of small businesses than residential customers across the NEM who have taken up a retail electricity market offer. Though the proportion for small businesses has increased by three per cent since 2018 to 69 per cent in 2019.
- In 2019, 44 per cent of businesses reported experienced bill shock. This was an eight per cent increase from 2018. Of those businesses:
 - 42 per cent absorbed the price rise (down from 53 per cent in 2018)
 - 30 per cent made efforts to reduce their consumption (down from 51 per cent in 2018)
 - 15 per cent switched retailers.
- Businesses reporting being approached by an alternative retailer (offering to sell electricity or gas) has decreased by 15 per cent to 64 per cent in 2019. Of these approaches 80 per cent were by a call, down from 90 per cent in 2018.
- There was a 13 per cent decrease in confidence in finding the right information to help choose energy plans to 49 per cent in 2019.
- Victorian businesses had a 42 per cent increase in awareness of Victorian Energy Compare to 55 per cent in 2019. Businesses awareness in jurisdictions serviced by Energy Made Easy fell by five per cent to 24 per cent in 2019.
- 29 per cent of the surveyed businesses indicated they had switched energy company or plan in the last 12 months. Businesses that reported switching in the past five years were generally satisfied with the outcome and process.

This chapter provides an overview of small business consumers and their behaviour, and analyses:

- business characteristics and retailer interaction
- switching behaviour
- other bill management responses
- cross-sectional analysis of different business types.

The analysis in this chapter is largely based on consumer research conducted by Colmar Brunton for the Commission in March and April 2019.⁸⁷ The research conducted by Colmar Brunton utilised a computer assisted telephone interview (800 responses). Results in section

⁸⁷ The report and accompanying data is available on the Commission's website.

6.1, section 6.2 and section 6.3 have been weighted to ABS business counts data by location and business size.⁸⁸

Minimum quotas by industry type were also set to ensure the data was representative of the broader small business population. Demographic analysis presented in section 6.4 has been conducted using the unweighted survey results to allow for a better comparison.

As per the Terms of Reference for this review, this chapter focuses on businesses that are defined as small customers in the NERR. This definition is based on a consumption threshold that varies between each region, ranging from 40MWh to 160MWh per annum for electricity, and 400GJ to 10,00GJ per annum for gas.

6.1 Understanding characteristics and engagement with the retail sector

Small business experience and behaviour in the retail energy market can be analysed through the following key characteristics:

- annual energy costs
- choice of energy retailer
- typical energy contracts
- reaction to price increases.

6.1.1 Annual energy costs

Respondents to the survey suggested that they had an average bill in 2019 for:

- electricity, \$3,381 per year
- gas, which fewer businesses use, around \$1,300 per year.⁸⁹

As discussed in chapter 4, businesses have experienced an improvement in affordability across small business offers in most regions.

6.1.2 Choice of energy retailer

Electricity

Small business retail market share is dominated by the big 3 who service 63 per cent of the market across the NEM. The main tier 2 small business retailers, outside of regulated markets, in the NEM in 2018 were Momentum Energy with 4.15 per cent, Powerdirect with 3.14 per cent, Simply with 2.91 per cent, Lumo Energy and Red Energy combined with 3.68 per cent and Alinta with 2.84 per cent.⁹⁰ The small business survey results are broadly consistent with the actual market shares of small business retailers in the NEM.⁹¹

88 8165.0 — Counts of Australian Businesses, including Entries and Exits, June 2014 to June 2018, 2019 data was unavailable.

89 2019 Retail Competition Review, *Small Business Survey Report*, Colmar Brunton, Canberra, 2019. p.73

90 AEMC analysis of AER and ESC small business numbers by retailer.

91 2019 Retail Competition Review, *Small Business Survey Report*, Colmar Brunton, p.67 (Q66a.) Canberra, 2019.

Gas

For gas, the three major energy retailers have a surveyed market share consistent with previous surveys of AGL (39 per cent), Energy Australia (16 per cent) and Origin Energy (16 per cent).

6.1.3

Typical energy contracts

Business customers have a range of energy contracts available to them, as outlined in chapter 4. Results from the small business survey indicate that:

- the majority of businesses are on a standard block or flat-rate tariffs, at 50 per cent
- close to one-third of businesses are on time-of-use tariffs, at 29 per cent
- a smaller portion are on a fixed price over a given period for their electricity usage, at 13 per cent
- eight per cent 'don't know' what tariff they are on.⁹²

Energy contract

As highlighted in chapter 4, there is a higher proportion of small business customers remaining on retail standing offers compared to the residential market. Across the NEM the number of small business electricity customers who have taken up a retail market offer has increased by three per cent since 2017 to be 69 per cent in 2018.⁹³ This aligns with the approximately two-thirds of surveyed small businesses who reported in 2019 that they actively chose to be on their electricity (66 per cent) and/or gas (70 per cent) contract or plan.⁹⁴

Expiration date of electricity contract

In the past year there has been a significant increase of 24 per cent of businesses who indicated their electricity contracts have no expiry date, up now to 42 per cent. This is coupled with 30 per cent of businesses who don't know if their contract has an expiry date.⁹⁵ Consumers who are not actively aware of, and monitoring, their energy contract may not realise that a benefit period has ended until the time when they experience a higher bill than expected. Though as of February 2018, retailers must provide notification to small businesses when benefits in their contracts are about to change or end.⁹⁶

6.1.4

Bill shock & business responses

According to the latest small business research results, the number of business consumers that experienced bill shock has increased by eight per cent to 44 per cent in 2019.⁹⁷ As

92 2019 Retail Competition Review, Small Business Survey Report, Colmar Brunton, p.67 (Q66a.) Canberra, 2018.

93 AEMC analysis of AER and ESC small business market offer numbers

94 *ibid.* p.65 (Q66 / Q77)

95 *ibid.* p.66 (Q65.)

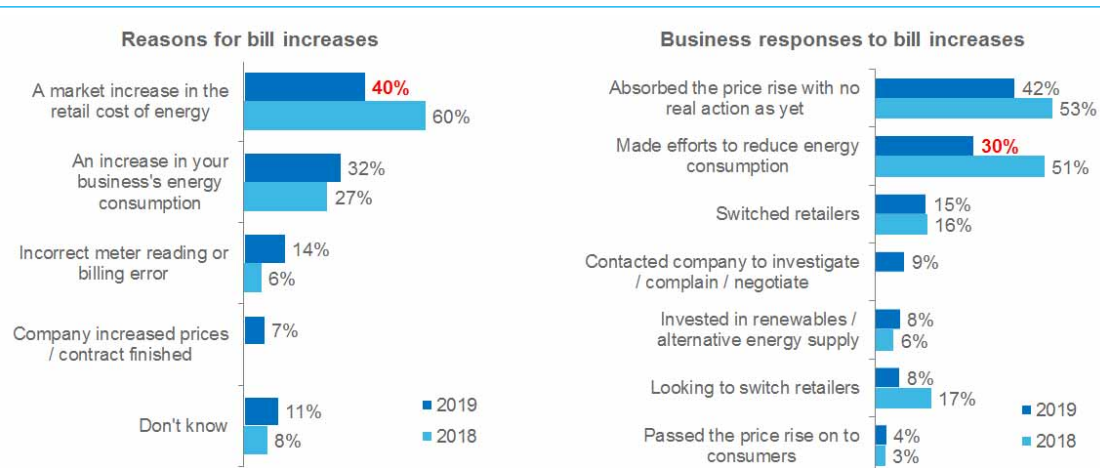
96 National Energy Retail Amendment (Notification of end of fixed benefit period) Rule 2017 No. 2, AEMC, 2017.

97 *ibid.* p.69 (Q80).

illustrated in Figure 6.1 below, those experiencing surprise or shock from bill increases, attributed the increase to the following:

- 40 per cent to an increase in the cost of retail energy, a significant decrease from 60 per cent in 2018
- 32 per cent to an increase in consumption
- 14 per cent to an incorrect meter reading or billing error
- seven per cent to a contract expiring and prices increasing
- 11 per cent did not know why their bill increased.⁹⁸

Figure 6.1: Reasons for and responses to bill increases



Source: 2019 Retail Competition Review - Small Business Survey Report, Colmar Brunton p.70.

Note: The analysis of business responses to bill increases allowed the respondents to tick multiple boxes, which means that the responses could sum to greater than 100 per cent.

The main response of small businesses to bill increases was 42 per cent stating they 'absorbed the price rise with no real action as yet'. There was a significant reduction in businesses who stated that they 'made efforts to reduce energy consumption' from 51 to 30 per cent. Notably, only eight per cent of businesses surveyed opted to explore switching retailers, and nine per cent contacted their retailer to investigate their price rise. Eight per cent of businesses invested in renewable or alternative energy supply.⁹⁹

As discussed in chapter 4, businesses can save considerable amounts by switching to a more optimal retail tariff. The following sections explore switching behaviour, impediments to switching and other measures businesses can pursue to reduce their bills.

⁹⁸ *ibid.* p.70 (Q83).

⁹⁹ *ibid.* Q82.

6.2 Switching behaviour

Switching energy providers or plans can reduce the retail energy bills for businesses and is also one of the main contact points between businesses and retailers. This section explores:

- why businesses switched retailers
- investigation of options
- switching rates
- outcomes from switching
- reasons businesses don't switch.

This analysis gives an indication of the level of engagement of business consumers as well as their confidence in the energy market. There are several measures and indicators of effective competition, including switching behaviour. However, each of these measures and indicators need to be interpreted together to provide a holistic interpretation of the state of competition.

6.2.1 Motivations for switching

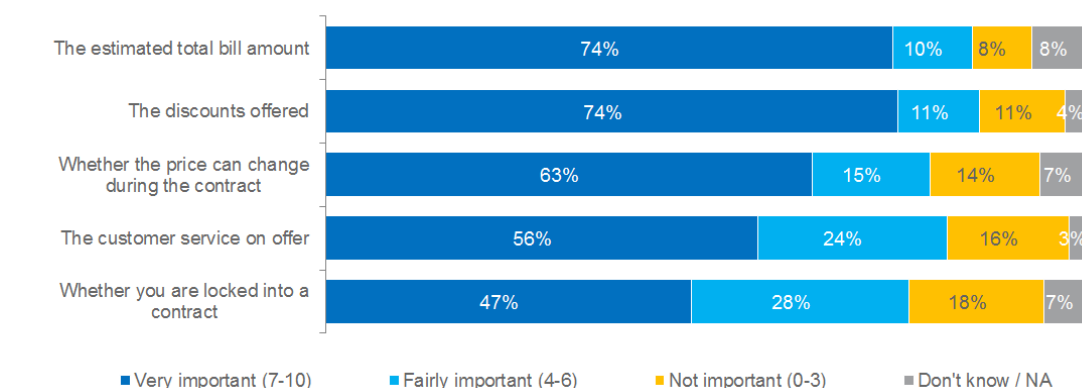
The main reason businesses gave for switching has not changed substantially over the past few years. Of those switching, 78 per cent of business consumers wanted or were offered a better price for their energy. Much smaller proportions of businesses are switching because they:

- moved business premises (seven per cent)
- had come to the end of their contract and wanted to change (five per cent)
- preferred different billing arrangements or wanted green power or solar (both four per cent).¹⁰⁰

These results were confirmed when businesses were prompted to rank the importance of a range of factors that influence motivations for switching, as illustrated in Figure 6.2.

¹⁰⁰ *ibid.* p.51, Q22.

Figure 6.2: Factors considered in past switching



Source: 2019 Retail Competition Review — Small Business Survey Report, Colmar Brunton, p.52.

Although the estimated bill amount and discounts offered has continued to be the most important factor in switching there was a significant increase in respondents who answered 'not important' to both.¹⁰¹

Savings required to switch

Businesses suggested the bill savings required to consider switching had:

- decreased by \$18 to \$228 per quarterly bill for electricity
- increased by \$51 to \$105 per quarterly bill for gas.

Retailers approaching businesses

Retailers have been less active in approaching small businesses, with 64 per cent of businesses surveyed noting they were approached by a retailer offering to sell electricity or gas, down from 79 per cent in 2018. The primary channel which retailers approach businesses has continued to be through telephone (80 per cent), through visiting business premises (23 per cent) or through email (10 per cent).¹⁰² Compared to 2018, businesses surveyed were less likely to report that retailers marketing practices were overly aggressive.¹⁰³

6.2.2

Investigating options to switch

As with last year, businesses are generally aware they can choose their energy plan, price structure and contract details. However, overall this decreased for:

- electricity by six per cent to 78 per cent

¹⁰¹ *ibid.* p.52 (Q49).

¹⁰² *ibid.* p.39 (Q18/Q19).

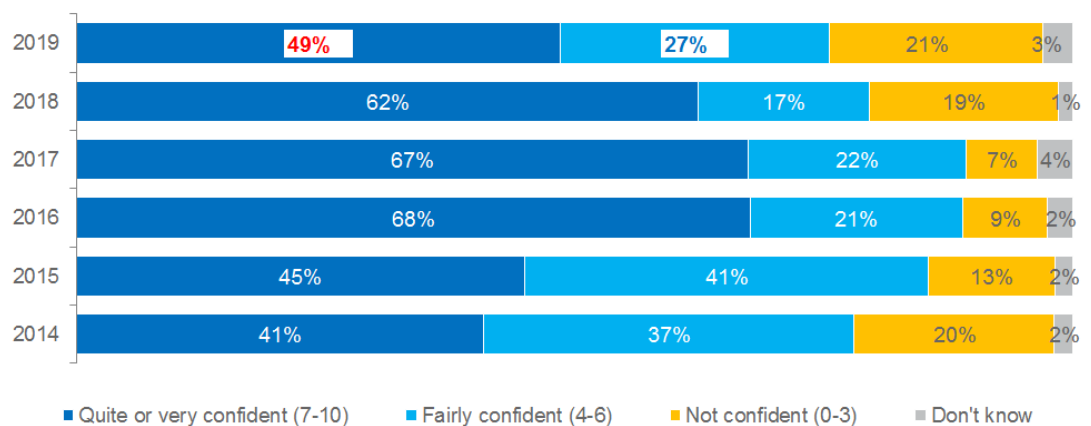
¹⁰³ *ibid.* p. 40 (Q18c).

- gas by four per cent to 73 per cent.¹⁰⁴

While most businesses are aware they can choose their retailer and plans, they are becoming less confident that they can find the right information to help them choose the right plan.

The decreasing trend in confidence since highs in 2016 and 2017 can be seen in Figure 6.3 below. Notably, there is a significant decrease of 13 per cent in 'quite or very confident' responses down to 49 per cent in 2019.

Figure 6.3: Confidence in finding the right information to help choose plan



Source: 2019 Retail Competition Review — Small Business Survey Report, Colmar Brunton, p. 32.

The most common way businesses source information when investigating energy plans, among those who switched, was:

- 26 per cent through google and internet searches
- 21 per cent through phoning a retailer
- 12 per cent through price comparison websites
- 10 per cent visited a retailer's website, down 12 per cent from 2018.¹⁰⁵

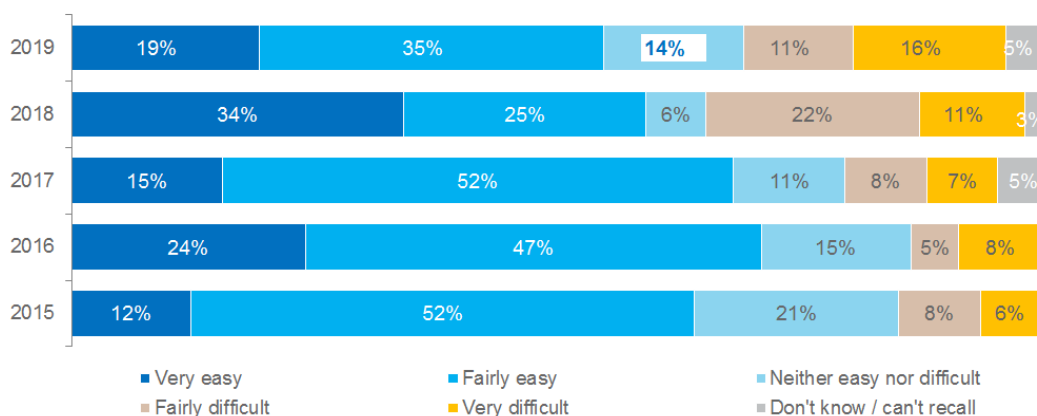
There is a decreasing portion of businesses who find it either 'very easy' or 'fairly easy' to compare deals down five per cent to 54 per cent. This coincides with an increase of five per cent to 16 per cent in businesses who find it 'very difficult' to compare offers made by retailers, as illustrated in Figure 6.4 below.¹⁰⁶

¹⁰⁴ ibid p.28 & p.29.

¹⁰⁵ ibid p.35 (Q23).

¹⁰⁶ ibid p.59.

Figure 6.4: Ease of comparing options



Source: 2018 Retail Competition Review — Small Business Survey Report, Colmar Brunton, p. 59.

Price comparison websites

Businesses had a greater unprompted awareness of comparison websites of 34 per cent in 2019 compared to 22 per cent in 2018. However, no government provided comparison service made the top five responses. Of the commercial comparison websites the greatest overall awareness was iSelect at 14 per cent and Compare the Market at 12 per cent in 2019.¹⁰⁷

Total prompted and unprompted awareness, within specific regions that government comparison sites service, decreased for Energy Made Easy by five per cent to 24 per cent and increased for Victorian Energy compare by 42 per cent to 55 per cent. The significant increase in awareness within Victorian businesses of Victorian Energy Compare is most likely linked to incentive programs outlined in chapter 5. The difference between prompted and unprompted awareness could suggest that businesses may not be aware they could use these websites for their businesses.¹⁰⁸

6.2.3

Rate of switching

Over half of all businesses surveyed indicated they would be interested in switching, or are currently looking to switch energy providers. This is down three per cent to 51 per cent in 2019.¹⁰⁹

The surveyed rate of recent switching of energy companies or plans in the last 12 months by small businesses has remained at similar levels as shown in Table 6.1. This is significant as there was an increase of 12 per cent from 2017 to 32 per cent in 2018. Businesses tended to

¹⁰⁷ *ibid* p.37 (Q38).

¹⁰⁸ *ibid* p.38 (Q38, 39, 40, 63, 82).

¹⁰⁹ *ibid* p.58.

switch electricity and gas retailer more than they switched plans. South East Queensland businesses had a significant decrease in the rate of switching electricity plan or company in 2019 (down 29 per cent to 16 per cent). South Australian businesses had a significant increase in the rate of switching electricity plan (up 13 per cent to 18).

Table 6.1: Surveyed switching rates – energy company or plan in the past 12 months

REGION	ELEC. COMPANY	ELEC. PLAN	GAS COMPANY	GAS PLAN	ENERGY COMPANY OR PLAN
Overall average	18% (↓1%)	14% (↓3%)	20% (↓10%)	10% (↓14)	29% (↓3%)
New South Wales	15% (↑4%)	17% (↓2%)	24%	7%	27% (↓2%)
Victoria	28%	13% (↓3%)	22%	12%	38% (↑4%)
South Australia	14% (↓2%)	18% (↑13%)	11%	10%	32% (↑13%)
South East Queensland	10% (↓14%)	8% (↓16%)	5%	7%	16% (↓29%)
Australian Capital Territory	19% (↑10%)	9% (↑4%)	0%	0%	23% (↑11%)

Source: 2019 Retail Competition Review — Small Business Survey Report, Colmar Brunton. Note: Statistical base for all jurisdictions were too small for gas company and plan switching to be reported in 2018.

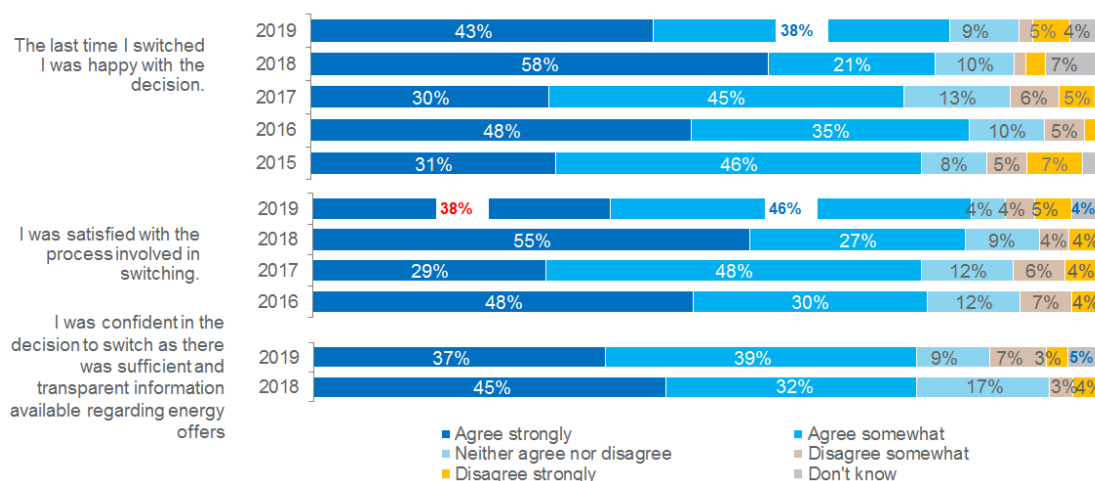
6.2.4

Outcomes from switching

Those business consumers that reported switching energy provider or plan within the past five years were generally satisfied with the outcome. 76 per cent of consumers agreed that their confidence in switching was driven by sufficient and transparent information regarding alternative offers, as illustrated in Figure 6.5.

This result suggests that customers that can navigate the market and switch, do so relatively easily. This reinforces the importance of efficient information transfers from retailers to consumers. When it occurs correctly, it facilitates switching that is more likely to result in improved outcomes for consumers.

Figure 6.5: Outcomes from switching



Source: 2019 Retail Competition Review - Small Business Survey Report, Colmar Brunton, p. 58.

6.2.5

Reasons for not switching

The most common reason given for not switching for businesses 'too busy / too much hassle / couldn't be bothered' has increased by 22 per cent to 33 per cent in 2019. Other reasons given were:

- 'no significant price differentiation' increased 15 per cent from zero per cent in 2018
- 'happy with current retailer / arrangement / plan' increased nine per cent to 13 per cent in 2019
- 'too confusing' increased nine per cent to 10 per cent in 2019.¹¹⁰

There has been a significant decrease in those businesses who did not specify a reason for not investigating switching options over the past 12 months. There was a 41 per cent decrease to seven per cent in 2019. This could be a sign of increased engagement by businesses in the retail energy market but as illustrated in the most common responses above there are still significant barriers to effective engagement.

6.3

Other bill management responses

Switching retailers or plans is one way that businesses can manage their energy bills. Another option is to augment their energy supply through the installation of other technology, such as solar panels, solar hot water and energy management systems. The grant programs from the New South Wales and Queensland governments mentioned in chapter 2 can assist in implementing alternative sources of energy and/or purchasing new equipment that enhances productivity to offset energy costs.

¹¹⁰ *ibid.*

The technology that businesses stated they 'already have' the most was smart meters at 38 per cent. This was predominately and predictably by Victorian businesses, at 56 per cent. Interestingly, almost all household and small business consumers in Victoria have smart meters installed, which is notably higher than the response from the businesses surveyed. This could suggest that not all businesses are aware they have smart meters. If true, this diminishes some value that businesses can ascertain from their installed smart meter.

This is followed by solar panels at 33 per cent uptake which is a significant jump from the 18 per cent observed in 2018. The uptake of energy management systems remains steady at six per cent of businesses. Battery storage and electric vehicle technology had the lowest uptake, with one per cent or less of businesses stating they already have these technologies.

6.4 Preferences and issues for different business types

As discussed earlier, businesses are a diverse segment of the economy, with vastly different energy needs and behaviour. This section of the chapter provides a breakdown of these different preferences and issues for a range of business types.

The analysis examines differences along the following characteristics:

- jurisdiction
- number of employees
- metropolitan and regional location.

This section uses information from the computer assisted telephone interviews carried out by Colmar Brunton in the Small Business Survey Report.

6.4.1 Differences between jurisdictions

There are a number of differences between the experience of business consumers across jurisdictions.

Generally speaking, businesses from jurisdictions with price deregulation were more satisfied than those jurisdictions with price regulation with the:

- value for money of electricity
- choice of energy companies and plans
- confidence in finding the right information to choose energy plans.

However, this distinction is not present in the satisfaction with customer service provided by electricity retailers, which is relatively uniform across the NEM. Consumers in jurisdiction with price regulation are less likely to have been approached by alternative energy retailers in the last 12 months.

Metropolitan and regional businesses

Businesses that operate in metropolitan regions are significantly more satisfied than regional regions with the level of choice available for energy companies and plans, and value for money provided by retailers. Metropolitan businesses had significantly higher confidence in finding the right information to help choose an energy plan.

Metropolitan businesses are also significantly more likely than regional businesses to:

- have been approached by an alternative energy retailer in the last 12 months
- not be interested in switching energy provider or plan
- be actively involved in choosing their particular contract or plan
- be intending to pass on prices to customers of their business
- be speakers of a language other than English at home.

6.4.2

Differences by business size

Non-employing businesses

Businesses that comprise sole traders and partnerships had an annual cost of electricity that was significantly lower than the average across all businesses. The average for this segment was \$1,891 per annum in 2019, \$1,490 lower than the average small business. They also reported significantly less quarterly savings on their electricity bills required to consider switching and lower average amount in their bill shocks. These business operators also:

- had significantly higher average agreement with the statement 'it is too complicated to try and compare the various options and offers available'
- more likely to be aware of the comparison site Choice.

'Micro' businesses (1-4 employees)

Businesses that employ one to four employees had an annual cost of electricity that was higher than the average across all businesses, with a segment average of \$4,259. These businesses were also significantly more likely to:

- source information from general advertising when investigating a switch
- report being offered rewards or discounts by their retailer.

'Small' businesses (5-19 employees)

Businesses that fall into the small business size segment have significantly higher annual electricity costs than the average across all small businesses. The average for this segment was \$8,268 per annum in 2019, \$4,886 higher than the average business.

'Medium' businesses (20-199 employees)

Businesses that employ 20 to 199 employees had an annual cost of electricity that was significantly higher than the average across all small businesses. The average for this segment was \$22,411 per annum in 2019, \$19,029 higher than the average business.

These businesses were also significantly more likely to have a higher mean satisfaction with:

- current electricity provider
- value for money among electricity providers
- with value for money from a non big three electricity retailer.

They were also significantly:

- less likely to experience bill shock
- more likely to already have an energy management system
- more likely to have a higher mean confidence in finding the right information to help choose energy plans
- more likely to use an energy broker/advisor to source information when investigating a switch
- less likely to agree with:
 - 'I generally don't trust energy companies that promise a better deal'
 - 'I'm concerned that if I switch energy company or plan there might be hidden fees and charges'
 - 'It is too complicated to try to compare the various options and offers available' and
 - 'I don't have the time or energy to think about switching.'

These trends may indicate that businesses with more employees have greater capacity to investigate switching and navigate through the energy market. This is important as it suggests that efforts by policy-makers to provide support and assistance to small businesses should not be targeted at businesses of this size.

6.4.3

Culturally and linguistically diverse businesses

Culturally and linguistically diverse businesses (CALD) made up nine per cent of the survey population. Of this population there was a reduction in the businesses who experienced language barriers in the energy market. The reduction was significant for those considering an alternative energy company, plan or contract down 11 per cent to one per cent in 2019. Only one and two per cent experienced language barriers in understanding energy bills and considering investing in energy management or generation respectively in 2019.

7

OUTCOMES FOR CONSUMERS AND RETAILERS

BOX 17: SUMMARY OF FINDINGS

Residential customers

- Electricity consumer satisfaction has improved since the 2017 price spike induced a fall in consumer satisfaction.
- Responses to the ECA's *Energy Consumer Sentiment Survey* in April 2019 show that residential consumer satisfaction (compared to April 2018) with the:
 - level of energy market competition increased four per cent to 47 per cent
 - level of customer service from their retailer increased one per cent to 62 per cent, and in their gas retailer by two per cent to 68 per cent
 - value for money for electricity remained at 47 per cent and for gas decreased one per cent to 60 per cent.
- Consumers remain less satisfied with value for money in electricity and gas sectors when compared to other industries such as banking, mobile phones, water and insurance.
- In relation to hardship programs in 2017-18 the:
 - number of customers in hardship programs increased, except in Queensland
 - the level of debt on entry decreased for electricity in New South Wales and Tasmania, and in New South Wales and the Australia Capital Territory for gas
 - the proportion of customers successfully exiting programs decreased
 - the proportion of consumers excluded from hardship programs increased.
- Disconnections for small consumers (residential and small business) increased in 2017-18.

Small business consumers

- Responses to the Small Business survey showed that small business satisfaction in April 2019 (compared to February 2018) with the:
 - choice of energy companies and plans increased seven per cent to 61 per cent, with jurisdictions with more retailers having higher satisfaction
 - level of customer service from their electricity retailer decreased two per cent to 55 per cent and increased by five per cent with their gas retailer
 - value for money for electricity decreased seven per cent to 40 per cent and by eight per cent to 53 per cent for gas.

Retailers

- In its REPI report, while noting Victoria and New South Wales have the highest margins, the ACCC made no finding that it considered retail margins are inefficient.
- The ACCC will use its information gathering powers to carry out an in-depth review of trends in costs and profit margins, due in September 2019.

The preceding analysis in this report has examined the structure of the electricity and gas markets, and how this affects the conduct of retailers and consumers. This chapter focuses on what outcomes small consumers and retailers are achieving. It does this by examining small consumer perceptions and observable data on the following:

- consumer satisfaction as measured by consumer surveys
- observable data on:
 - the level of consumer complaints to retailers and Ombudsmen
 - disconnections
 - customers in hardship.

The results in this chapter have been compared on a NEM-wide basis and detail of jurisdictional results can be found on the report's [microsite](#).

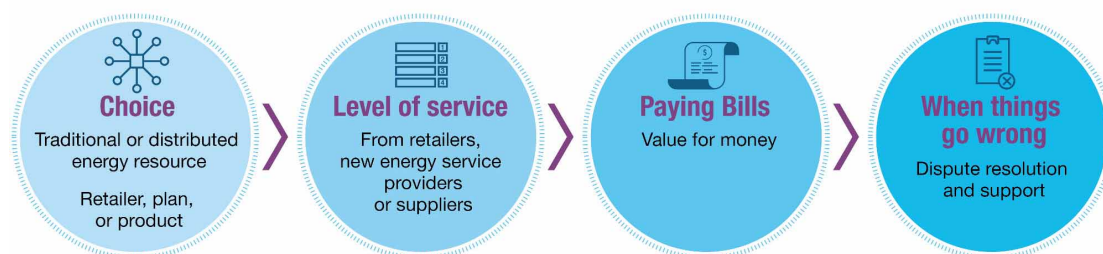
Following the analysis of small consumer outcomes, this chapter looks at how competition is affecting the performance of retailers in the NEM, based on observations made by the ACCC.

7.1 Customer Experience

As discussed earlier, in a well-functioning competitive market, customers who engage can drive better outcomes for themselves and the market overall by influencing the design of products and level of service provided. The elements shown in Figure 7.1 that have been adopted as a framework to assess a customer's experience in a market relate to:

- their level of choice (section 7.2.1)
- the quality of customer service (section 7.2.2)
- pricing and billing outcomes (section 7.2.3)
- dispute resolution options and support available if things go wrong (section 7.3 and section 7.4).

Figure 7.1: Customer experience map



7.2 Consumer satisfaction

A high proportion of consumers who are generally satisfied with different aspects of the market can signal an effectively competitive market. The following section explores consumer satisfaction, as expressed in their perceptions of:

- the level of competition
- customer service
- perceived value for money of products or services.

As with the 2018 Review, this year the Commission has based its analysis on the residential customer results and trends from the ECA Survey, which asks consumers about their views on a range of matters in the electricity and gas markets. The survey was conducted in April 2016, 2017, 2018 and 2019 as well as September 2016, 2017 and October 2018. As noted in chapter 5, the September survey generally has more pessimistic responses whereas the April survey has more optimistic results from respondents. As such, the waves have been compared on a year-to-year basis.

As noted in chapter 5, the last two ECA survey responses indicate that consumer sentiment has returned to the levels prior to the lows seen in the September 2017 survey.

The Small Business survey asked businesses about their satisfaction with the level of choice of energy companies and plans available to them. The questions related to energy services, so included perceptions of electricity and gas services.

7.2.1

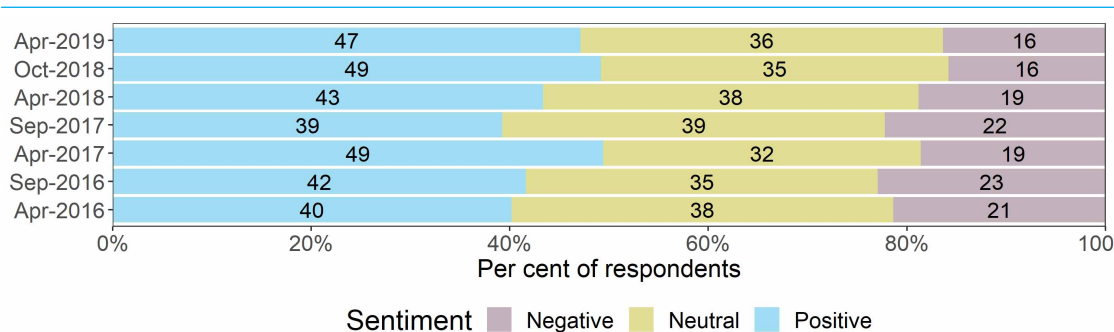
Consumer satisfaction with level of competition

Residential

In relation to the choice element of the customer experience map in Figure 7.1, the ECA Survey asks consumers about their satisfaction with the level of competition in the energy market.

As shown in Figure 7.2 below, overall satisfaction with the level of competition increased from April 2018 to April 2019, this trend was seen in every jurisdiction. The last two survey's, April 2019 and October 2018, have had the lowest levels of negative responses at 16 per cent overall.

Figure 7.2: Satisfaction with the level of competition in the energy market



Source: ECA, AEMC analysis. Question O1 (B) of the questionnaire.

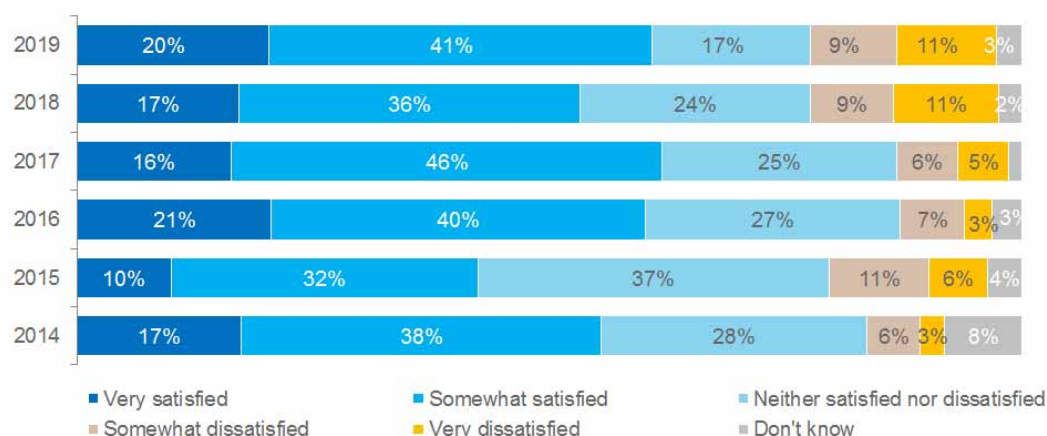
Note: Jurisdictional results can be found [here](#).

Small Business

The proportion of satisfied businesses across the NEM jurisdictions with choice of energy company and plan is shown in Figure 7.3. Satisfaction with choice of energy company and plan increased by seven per cent in 2019 to 61 per cent.

In general, there is a correlation between the levels of business consumers' satisfaction with the level of choice in a jurisdiction and the number of active retailers in those regions. For example, businesses in Victoria, New South Wales, South East Queensland and South Australia have above average levels of satisfaction, whereas businesses in regional Queensland and Tasmania are less likely to be satisfied with the level of competition.

Figure 7.3: Satisfaction with level of choice of energy companies and plans



Source: 2019 Small Business Survey Report, Colmar Brunton.

Note: A 'satisfied' consumer gave a rating of four or five, and a 'dissatisfied' consumer gave ratings of one or two.

7.2.2

Consumer satisfaction with level of service

Residential

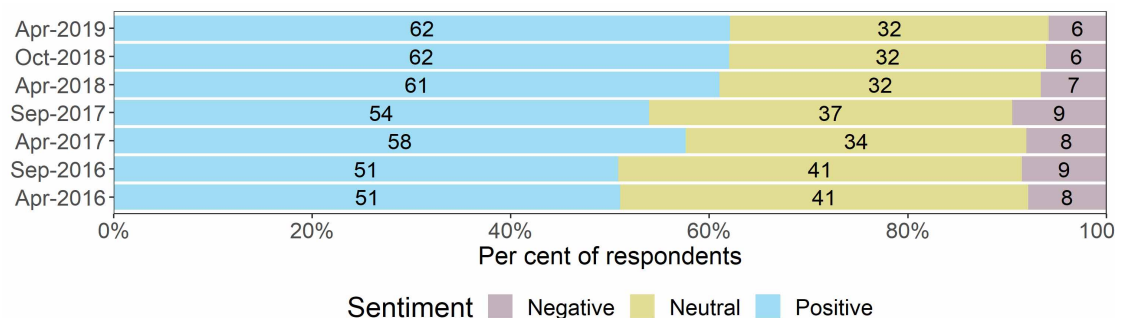
In relation to the service element of the customer experience map in Figure 7.1, the ECA Survey asks consumers about their satisfaction with the service they receive from their electricity and gas retailers.

As shown in Figure 7.4 below, between April 2018 and April 2019, satisfaction with customer service increased on average in the NEM from 61 per cent to 62 per cent. Despite the small average increase there was an 11 per cent increase in the Australian Capital Territory, nine per cent in South East Queensland and eight per cent in South Australia.

The trend of increasing satisfaction in Tasmania continued with satisfaction at 65 per cent in April 2019 compared to 59 per cent in April 2018. This increase brings Tasmanian consumer satisfaction above the overall average.

Satisfaction with the level of customer service declined in New South Wales and Victoria by six and five per cent respectively between April 2018 and 2019.

Figure 7.4: Satisfaction with level of customer service – electricity

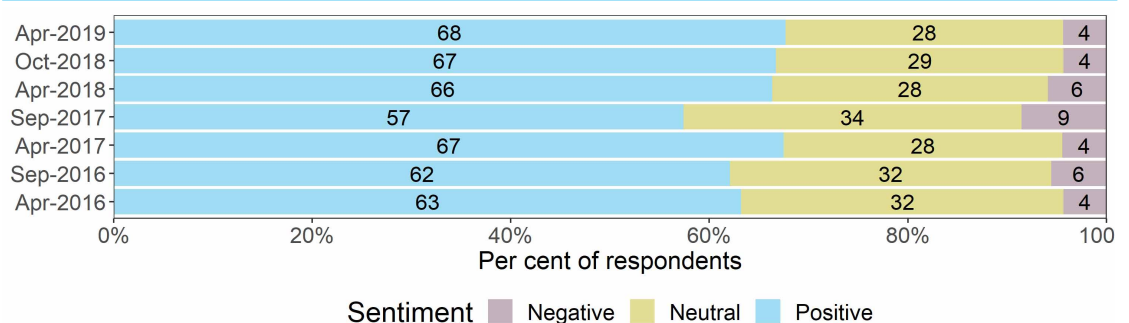


Source: ECA, AEMC analysis. Question E2 (A) of the questionnaire.

Note: Jurisdictional results can be found [here](#).

Satisfaction with the level of service from gas retailers is generally higher across jurisdictions in the NEM than that for electricity retailers, as shown in Figure 7.5 below. This is despite the smaller number of retailers in the residential gas market. Satisfaction with customer service from gas retailers increased by two per cent overall between April 2018 and April 2019. The increase was seen across every jurisdiction except for decreases of one per cent in New South Wales and Victoria.

Figure 7.5: Satisfaction with customer service – gas



Source: ECA, AEMC analysis. Question G3 (A) of the questionnaire.

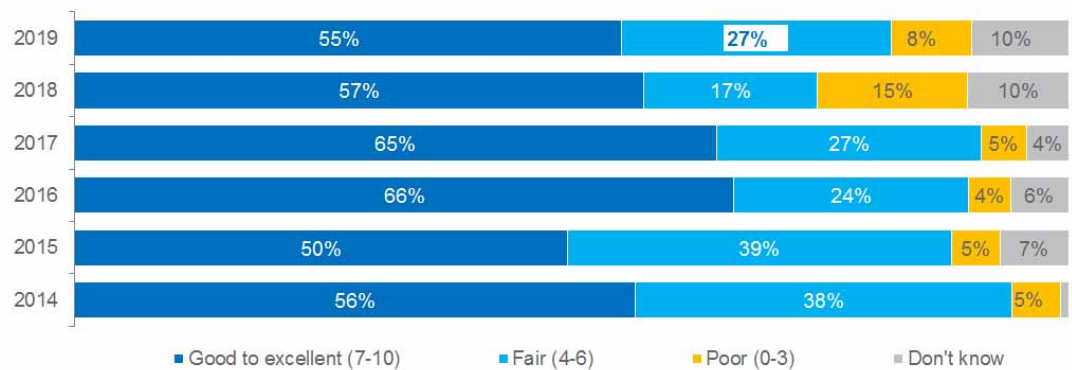
Note: Jurisdictional results can be found [here](#).

Small business

Figure 7.6 below shows business satisfaction with the level of customer service from their electricity providers. The proportion of satisfied customers remained similar to 2018 with a two per cent decrease to 55 per cent. Notably, there was a significant increase of 10 per cent

in the proportion of businesses that responded 'fair' to 27 per cent in 2019. This coincided with a decrease in 'poor' responses of seven per cent to eight per cent in 2019.

Figure 7.6: Satisfaction with the level of customer service from electricity retailers

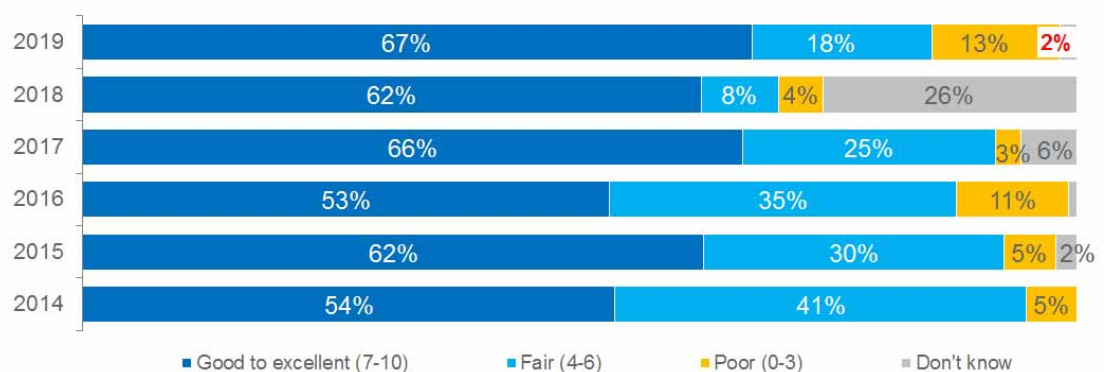


Source: 2019 Retail Competition Review - Small Business Survey Report, Colmar Brunton.

Note: A rating of seven to ten indicates that a consumer is 'satisfied' with the level of customer service.

Figure 7.7 below shows business satisfaction with the level of customer service from their gas providers. There was a small increase in the proportion of customers that were satisfied from 62 per cent in 2018 to 67 per cent in 2019. This was driven by a significant decrease in the proportion of businesses that chose 'don't know' in relation to the level of customer service. This went from 26 per cent in 2018 to two per cent in 2019. The variability in these results may be due in part to the smaller sample size of business respondents using gas in 2018.

Figure 7.7: Satisfaction with the level of customer service from gas retailers



Source: 2019 Retail Competition Review — Small Business Survey Report, Colmar Brunton.

Note: A rating of seven to ten indicates that a consumer is 'satisfied' with the level of customer service.

7.2.3

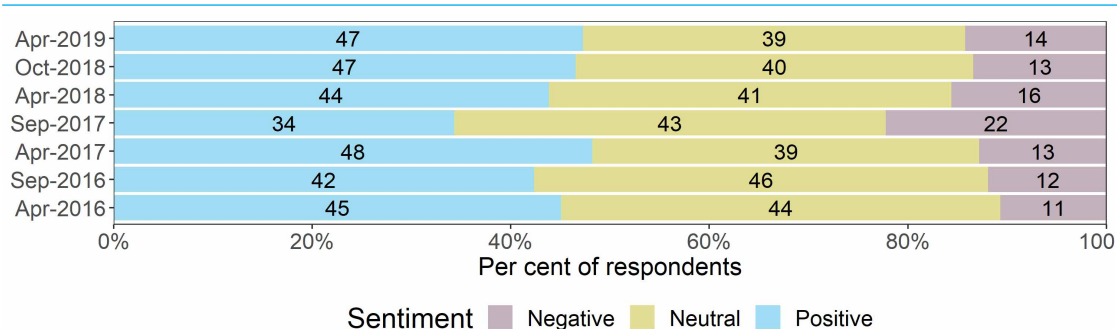
Consumer satisfaction with value for money

Residential

In relation to the price element of the customer experience map in Figure 7.1, the ECA Survey asks consumers about their satisfaction with value for money for both gas and electricity.

As shown in Figure 7.8 below, the satisfaction ratings for the value for money of electricity increased three per cent overall between April 2018 and April 2019. This trend is seen across all jurisdictions except New South Wales with a one per cent decrease to 45 per cent and Victoria stable at 46 per cent.

Figure 7.8: Satisfaction with value for money – electricity



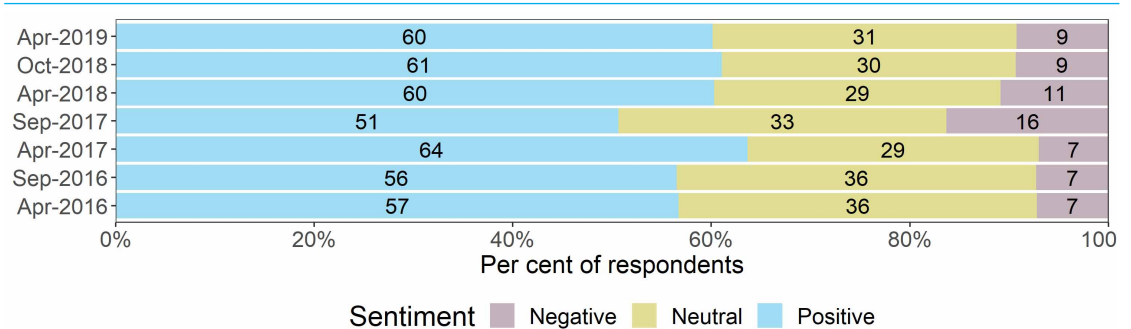
Source: ECA, AEMC analysis. Question E2 (A) of the questionnaire.

Note: Jurisdictional results can be found [here](#).

This increase in satisfaction for value for money was preceded by a large reduction between September 2016 and September 2017, across all jurisdictions except Tasmania. This reduction in satisfaction correlated with price increases seen across retail electricity offers in July 2017 and a greater focus on affordability issues in the sector. However, following those large price increases, satisfaction has returned to similar levels seen between April 2016 and April 2017.

Across jurisdictions, customer satisfaction with value of money for gas at April 2019 was 60 per cent, which is 13 per cent higher than electricity. Positive sentiment for the value for money of gas has remained stable from April 2018 to April 2019, as shown in Figure 7.9. Jurisdictional results showed increases or stable responses in every area excluding decreases in New South Wales of four per cent and Victoria of three per cent.

Figure 7.9: Satisfaction with value for money – gas



Source: ECA, AEMC analysis. Question G3 (A) of the questionnaire.

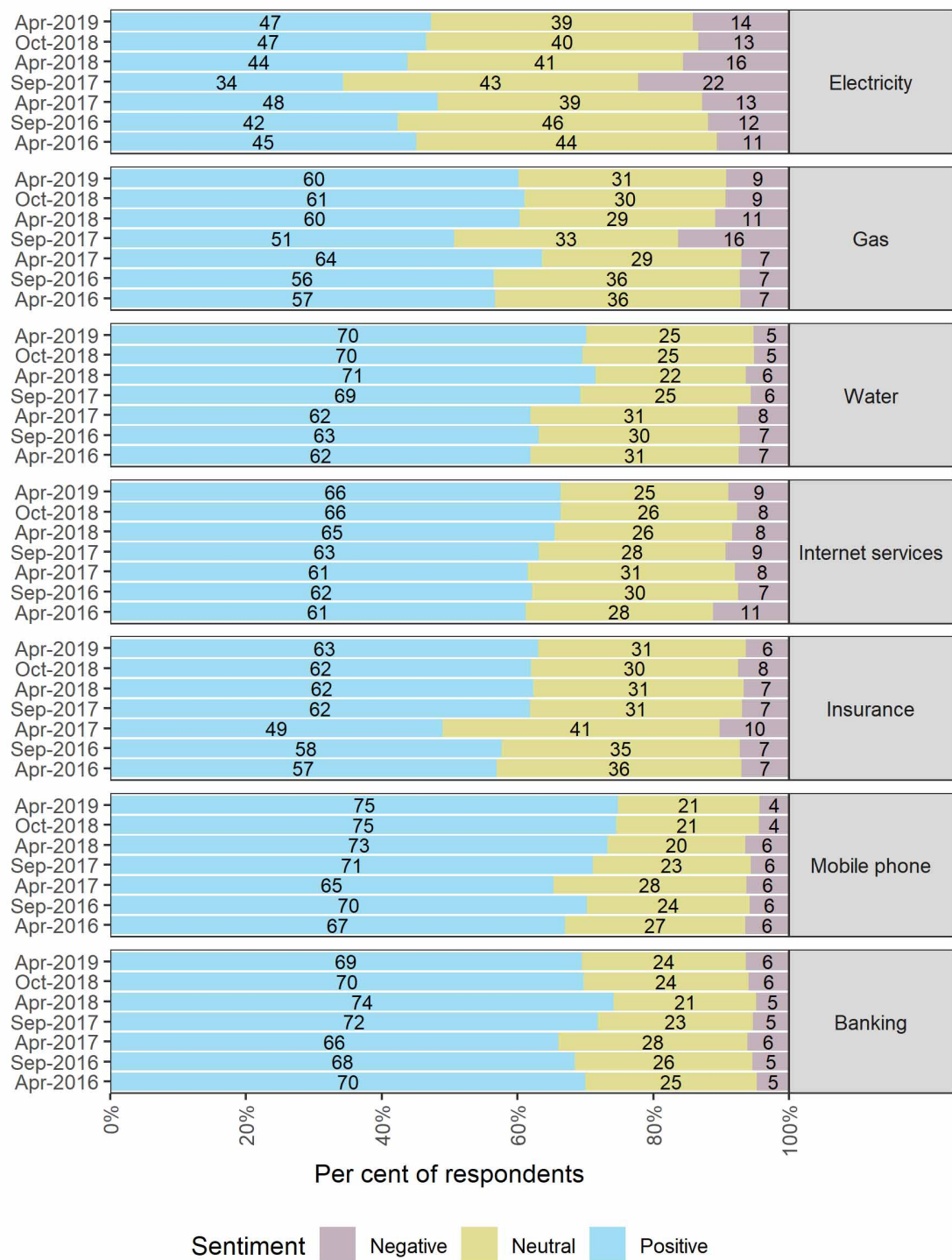
Note: Jurisdictional results can be found [here](#).

The ECA Survey asks residential customers about their satisfaction with value for money with insurance, internet, mobile phones, banking and water. This provides a comparison of value for money across industries. The below observations look at the positive and negative responses as a way to determine satisfaction or dissatisfaction with value for money.

As shown in Figure 7.10 below, consumer satisfaction with value for money across sectors shows that:

- consumers are consistently least satisfied with the electricity sector, as it has the lowest positive sentiment and the highest negative sentiment
- consumer responses place gas as the second lowest value for money utility at 60 per cent, closest to insurance at 63 per cent for April 2019
- mobile phones, as at April 2019, held the highest positive satisfaction rating; followed by water, banking internet services and insurance.

Figure 7.10: Satisfaction with value for money – cross-sector comparison



Source: ECA, AEMC analysis. Question E1, G2 & O2 of the questionnaire.

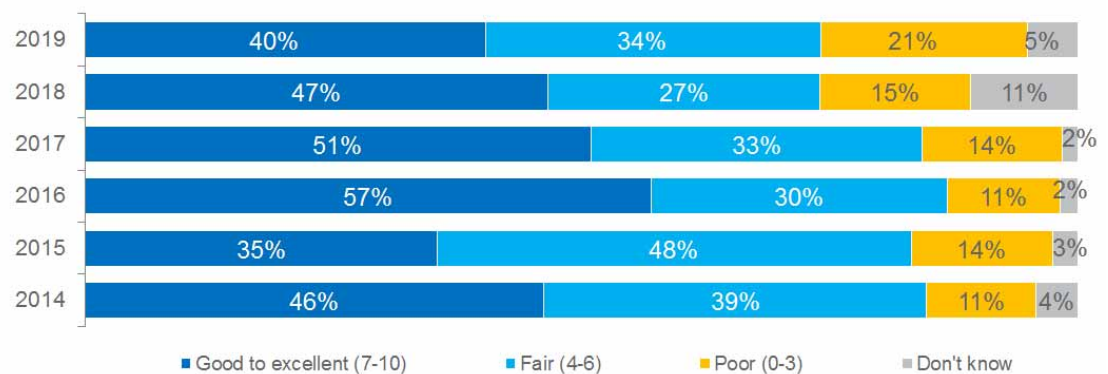
While not a measure of trust, the difference between the electricity and banking sectors satisfaction ratings is notable given the high levels of political attention and media scrutiny both sectors have received over the past year. Based on consumers surveyed, positive sentiment about value for money in the banking sector, as at April 2019, was 22 per cent higher than the electricity sector.

In its annual *Health of the NEM* report, the ESB has noted that the outlook for satisfaction is improving to moderate with 25 new rules, policies and programs introduced since 2017 to assist energy consumers.¹¹¹ This is supported by the latest quarterly Choice Consumer pulse survey in March 2019 which saw health insurance overtake electricity as the main household cost concern, the first time electricity has not been rated highest since the survey started in 2014.¹¹²

Small business

Figure 7.11 below shows the satisfaction of businesses with value for money from electricity providers. The proportion of satisfied businesses has declined consistently each year from 57 per cent in 2016 to 40 per cent in 2019. Despite this, responses of 'good to excellent' and 'fair' combined totalled 74 per cent in 2019, consistent with 2018.¹¹³ For small businesses serviced by tier 2 retailers there has been a nine per cent increase in satisfied businesses to 52 per cent compared to those with the big 3 down 12 per cent to 36 per cent in 2019.¹¹⁴

Figure 7.11: Value for money from electricity retailers



Source: 2019 Retail Competition Review - Small Business Survey Report, Colmar Brunton.

Note: A rating of seven to ten indicates that a consumer is 'satisfied' with the level of customer service.

111 ESB, *The Health of the National Electricity Market* — 2018, December 2018, Sydney, p. 7.

112 Jonathon Brown, Choice, viewed on 21 March 2019, <https://www.choice.com.au/money/insurance/health/articles/health-insurance-costs-consumer-concerns>

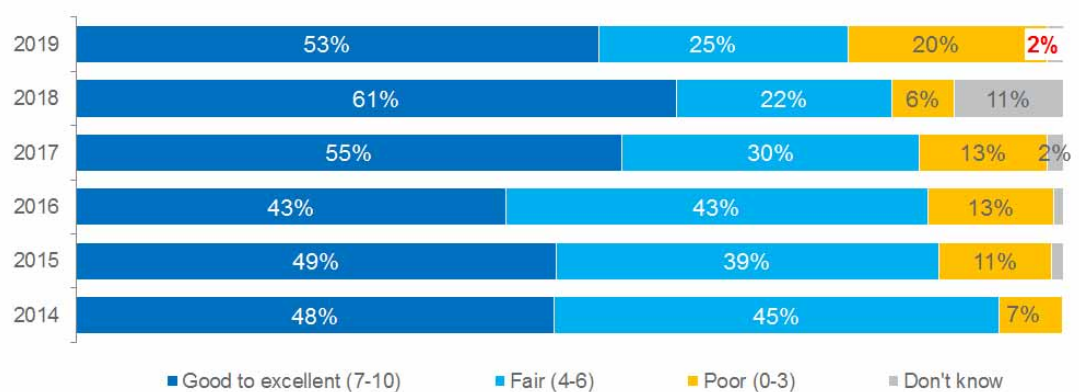
113 2019 Retail Competition Review - Small Business Survey Report, Colmar Brunton. P.23 Q4.

114 *ibid.* P.25

Figure 7.12 below shows the satisfaction of businesses with value for money from gas providers. The proportion of satisfied businesses decreased from 61 per cent in 2018 to 53 per cent in 2019.

There was a significant drop in 'don't know' responses from 11 per cent in 2018 to two per cent in 2019. 'Poor' responses increased 14 per cent to 20 per cent in 2019, the highest level since surveying began in 2014.

Figure 7.12: Value for money from gas retailers



Source: 2019 Retail Competition Review - Small Business Survey Report, Colmar Brunton.

Note: A rating of seven to ten indicates that a consumer is 'satisfied' with the level of customer service.

7.3 Consumer complaints

There is a hierarchy of resolution mechanisms available to customers when they have an issue with matters such as billing, wrongful disconnections, credit arrangements, poor customer service and marketing practices:

1. consumers make their complaint directly to their retailer for resolution
2. if this does not produce a suitable outcome, then depending on the nature of the complaint, consumers can take a matter to their jurisdictional energy ombudsman, state-based fair trading agency or the ACCC.

The following analysis is based on customer complaints made to electricity retailers and complaints made by the ombudsmen in relation to gas and electricity for 2017-18, and compared to our findings to previous years.

7.3.1 Complaints to retailers

Residential

Across the NEM the total number of complaints made directly to retailers (electricity and gas) decreased by about 49 per cent over the last financial year. The AER and the ESC both note

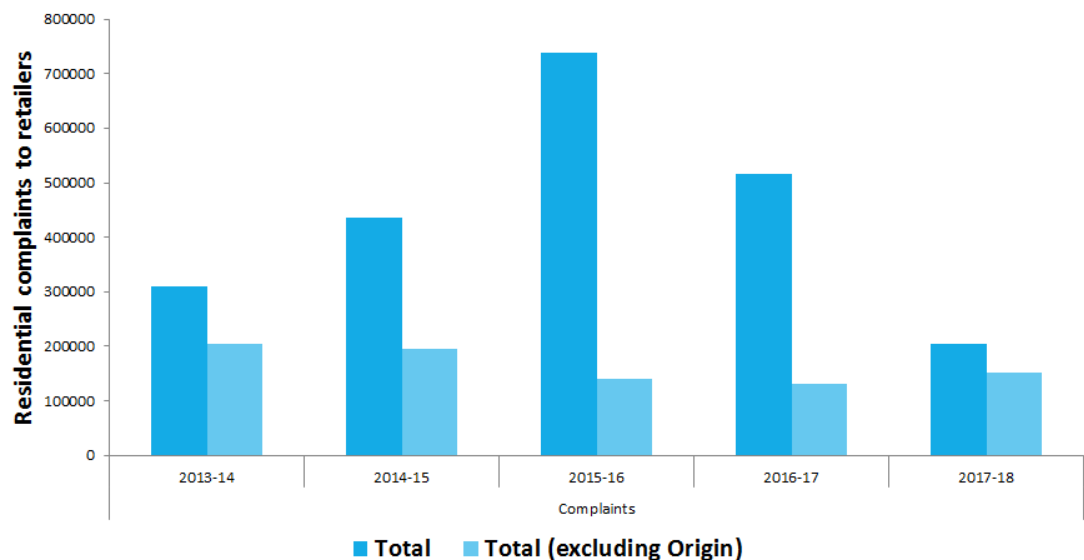
that retailer complaint figures nationally were significantly influenced by large decreases in complaints reported by Origin Energy.¹¹⁵ This was due to Origin making changes to its complaint recording methodology, to correct an over-capture of complaints in late 2016-17.

Figure 7.13 below shows that complaints increased by about 16 per cent when Origin's data is excluded across AER jurisdictions. A similar trend is seen in Victoria with a 12 per cent increase in complaints when Origin's data is excluded.¹¹⁶

In Tasmania the number of complaints to retailers increased from 9,019 to 15,792, which is a 75 per cent rise.¹¹⁷ Aurora Energy has reported to the Commission that this increase is due to a change in customer complaints recording methodology which has captured any level of customer dissatisfaction. This has occurred coincident with increasing levels of residential consumer satisfaction in Tasmania as detailed in section 7.3.2.¹¹⁸

While the overall number of complaints indicates consumer satisfaction levels, various issues that contribute to satisfaction are not directly controlled by retailers. The AER notes that "some of the complaints may not be directly attributable to the retailer: such as supply issues".¹¹⁹

Figure 7.13: Residential complaints to retailers



Source: AER; AEMC analysis.

Note: Includes both electricity and gas. Does not include Victoria.

¹¹⁵ AER, *Annual Report on Compliance and Performance of the Retail Energy Market 2017-18*, AER, Melbourne, 2018 and Essential Services Commission 2019, *Victorian Energy Market Report 2017-18*, 26 February.

¹¹⁶ AEMC analysis of Essential Services Commission 2019, *Victorian Energy Market Report 2017-18*, 26 February.

¹¹⁷ AER, *Annual Report on Compliance and Performance of the Retail Energy Market 2017-18*, AER, Melbourne, 2018

¹¹⁸ Tasmania also recorded the lowest percentage (0.9 per cent) of complaints escalated to the Ombudsman.

¹¹⁹ AER, *Annual Report on Compliance and Performance of the Retail Energy Market 2017-18*, 2018, Melbourne, 2018, p. 45.

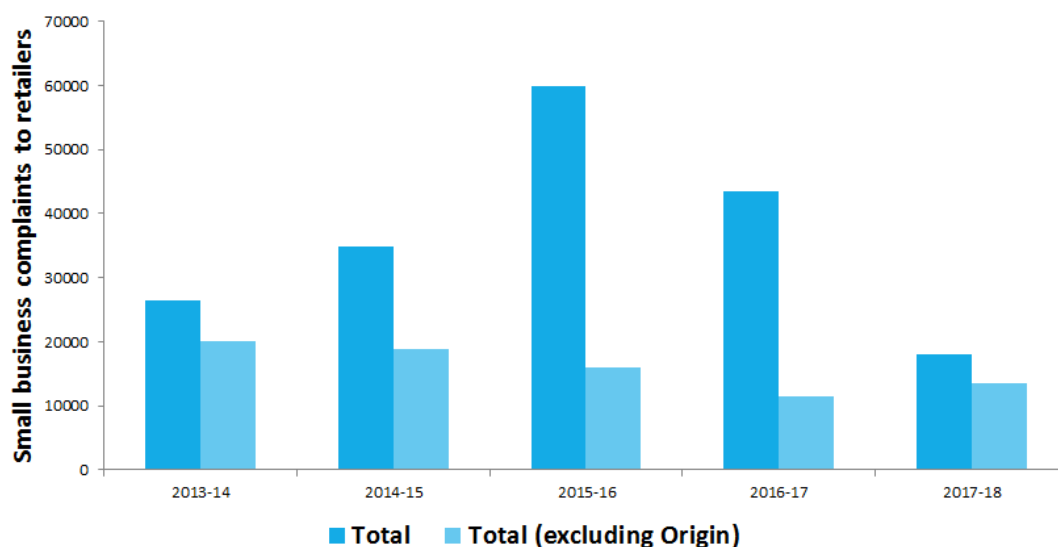
As with previous years, the two biggest categories of complaints to energy retailers are 'billing' and 'other'. Marketing complaints decreased by about 48 per cent in 2017-18 and these complaints are a relatively low percentage of overall complaints at about six per cent.¹²⁰

Small business

The following analysis explores data on complaints by small businesses to retailers (electricity and gas) in regions that have adopted the NECF. It does not cover Victoria, as the ESC does not record complaints to retailers separately for residential and business consumers.

Overall complaints have reduced from 2018 to 2019 by 59 per cent. Though, as with residential complaints, Origin has altered the recording methodology of complaints to correct for over capture. This can be seen in Figure 7.14 below. With Origin numbers excluded, complaints increased by 19 per cent across NECF jurisdictions.

Figure 7.14: Small business complaints to retailers



Source: AER; AEMC analysis.

Note: Includes both electricity and gas. Does not include Victoria.

Across jurisdictions, with Origin data excluded in each jurisdiction, the number of small business complaints from 2018 to 2019:

- increased by 33 per cent in New South Wales
- increased by 38 per cent in South Australia
- increased by 60 per cent in Tasmania¹²¹

¹²⁰ AER, *Annual Report on Compliance and Performance of the Retail Energy Market 2017-18*, AER, Melbourne, 2018 and Essential Services Commission 2019, *Victorian Energy Market Report 2017-18*, 26 February.

¹²¹ This is due to changes in complaints recording methodology as noted by Aurora Energy which has a dominant market share of small businesses. Origin has no customers in Tasmania.

- decreased by 64 per cent in the Australian Capital Territory¹²²
- decreased by 25 per cent in Queensland.¹²³

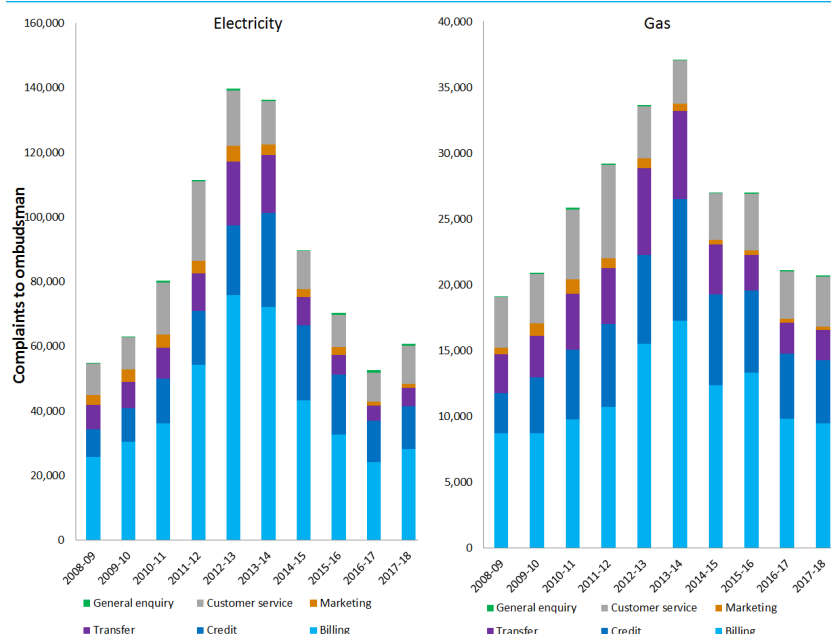
7.3.2

Complaints to ombudsmen

Small customer complaints to ombudsmen increased overall by 15 per cent in the electricity sector and reduced by two per cent in the gas sector, as seen in Figure 7.15. As with 2016-17, the three largest categories of complaints to ombudsmen are those related to billing, credit and customer service.

Small customer electricity complaints to ombudsmen increased in New South Wales, Victoria, Queensland and South Australia while decreasing in Tasmania and the Australian Capital Territory.¹²⁴ Small customer gas complaints to ombudsmen increased in Victoria and Queensland while decreasing in South Australia, New South Wales and the Australian Capital Territory.¹²⁵

Figure 7.15: Small customer complaints to ombudsmen



Source: Jurisdictional ombudsman schemes, AEMC analysis

Note: Data for the Australian Capital Territory only collected from 2011-12 and South Australia from 2012-13. A single complaint can sit in more than one category. Applies to both residential and business consumers.

The increase in complaints to ombudsmen in the electricity sector was mainly due to changes to metering services responsibility, from 1 December 2017, from the distributor to retailers

¹²² The Australian Capital Territory's small business complaints, excluding Origin, decreased from 169 in 2018 to 61 in 2019.

¹²³ AER, *Annual Report on Compliance and Performance of the Retail Energy Market 2017-18*, AER, Melbourne, 2018

¹²⁴ AEMC analysis of Ombudsmen data.

¹²⁵ *ibid.*

alongside increases in new meter installations.¹²⁶ Despite an overall increase in complaints to ombudsmen over the last year, since 2013-14 complaints have decreased by 53 per cent. This is, in part, due to industry participants successfully resolving less complex customer complaints through their improved internal dispute processes as noted by the Energy and Water Ombudsman Victoria (EWOV).¹²⁷

The Energy and Water Ombudsman New South Wales (EWON) has noted that participants will need to continue to improve these internal complaints handling systems to ensure complaints to ombudsmen do not continue to increase.¹²⁸ This will be important given the expected increase in complaints due to ombudsmen becoming the dispute service provider for embedded network customers.¹²⁹

7.4 Residential consumers in hardship and concessions

This section of the report reviews the outcomes for consumers between 2016-17 and 2017-18 who may be in hardship, and retailer performance in providing assistance to these customers.¹³⁰ More discussion on how retailers are assisting customers in hardship is discussed in chapter 10.

7.4.1 Consumers facing financial difficulty

Affordability relates to a consumer's capacity to pay their electricity bills and is dependent on the amount of energy used, prices paid, income and other costs of living.¹³¹

Since 2007, there have been large increases in electricity prices that have not been matched by wage growth or price increases in other areas of the economy.¹³² The ACCC reported in 2018, that household electricity costs have increased by 56 per cent in real terms over the past ten years, much faster than wages growth or inflation.¹³³ These price increases have been particularly difficult for low income households who on average spend four times as much of their income on energy as high income households.¹³⁴ The ESB has rated the status of affordability and consumer satisfaction as at a critical state in its *Health of the NEM* report.¹³⁵

In order to support residential customers who are facing financial difficulty, the NERL and NERR, and the Victorian Retail Energy Code, require that retailers have a hardship policy which must include an appropriate payment plan. The payment plan must take into account:

126 EWOSA, *2017-18 Annual Report*, EWOSA, Adelaide, 2018, p. 8. EWOQ, *2017-18 Annual Report*, EWOQ, Brisbane, 2018, p. 8.

127 EWOV, *2018 Annual Report*, EWOV, Melbourne, 2018, p. 8.

128 EWON, *Annual Report 2017-2018*, EWON, Sydney, 2018, p. 4.

129 EWOV, *2018 Annual Report*, EWOV, Melbourne, 2018, p. 10. Embedded network customers have previously not had access to state ombudsmen schemes. They still do not have access in Queensland at this stage.

130 Under the NERL a hardship customer is defined as a residential customer who is identified as a customer experiencing financial payment difficulties due to hardship in accordance with the retailer's customer hardship policy.

131 ESB, *The Health of the National Electricity Market — 2017*, ESB Sydney, p. 19.

132 *ibid* p. 18.

133 ACCC, *Retail Electricity Pricing Inquiry — Final Report*, ACCC, Canberra, June 2018.

134 ESB, *The Health of the National Electricity Market — 2018*, ESB, Sydney, p. 7.

135 *ibid*.

- a customer's capacity to pay
- any arrears owing by the customer
- the expected energy consumption needs of the customer.

Despite this requirement, there has been an increasing trend in the number of customers not being able to pay their bills, being disconnected and being excluded from hardship programs.¹³⁶ The following sections look at observable data on trends in hardship and disconnections since 2013-14 to assess the outcomes for consumers facing financial difficulties.

Notably, retailers offer payment plans to customers who are having difficulty paying their bills, whether they are hardship customers or not. In the past year the number of customers on payment plans has decreased from 2.5 per cent to 2.3 per cent for electricity and from 1.6 per cent to 1.5 per cent for gas.¹³⁷ Alongside this reduction in overall numbers there was an increase in cancellation rates of payment plans in gas and electricity, which the AER highlighted as an area warranting further attention.¹³⁸

7.4.2

Hardship program performance

The key metrics for assessing whether hardship programs are providing support for customers facing financial difficulty are the:

- number of customers on hardship
- level of debt of hardship customers
- number of customers successfully exiting programs.

While these indicators do provide an indication of the performance of retailers in ensuring customers in financial difficulty receive adequate support, they do not directly relate to the effectiveness of retail competition. Effective competition can deliver efficient prices, but even these may be unaffordable to some consumers given their personal circumstances.

Number of customers on hardship

The AER reports that the number of electricity customers on hardship remains low, even though numbers have generally increased from 2016-17. The total number customers on hardship programs increased for:

- electricity by 15 per cent from 59,654 in 2016-17 to 68,832 in 2017-18¹³⁹
- gas by 10 per cent from 12,421 in 2016-17 to 13,701 in 2017-18.¹⁴⁰

Jurisdictions under the NECF have between 0.6 and two per cent of electricity customers, and 0.5 and 1.3 per cent of gas customers on a hardship program.¹⁴¹

¹³⁶ AER, *Annual Report on Compliance & the Performance of the Retail Energy Market 2017–18*, AER, Melbourne, 2018, p. 50.

¹³⁷ *ibid.*

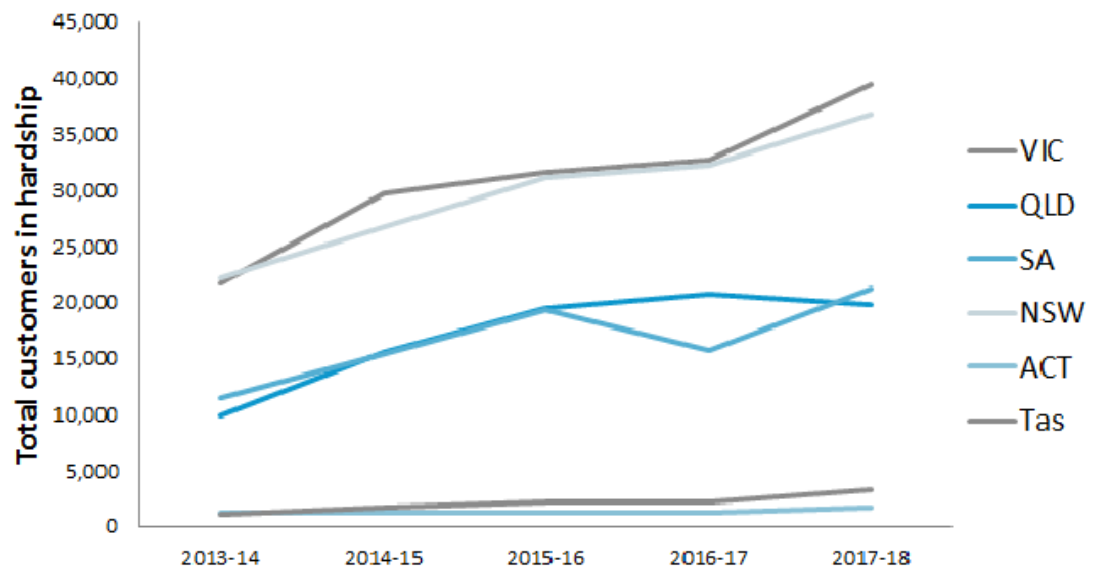
¹³⁸ *ibid.*

¹³⁹ Note these figures do not include Victoria, where the customer numbers for hardship are not reported separately for electricity and gas.

¹⁴⁰ *ibid.*

¹⁴¹ AER, *Annual Report on Compliance and the Performance of the Retail Energy Market 2017–18*, AER, Melbourne, 2018, p. 61.

Figure 7.16: Number of customers on hardship programs (electricity and gas)



Source: AER and ESC, AEMC analysis.

As shown in Figure 7.16 above, all jurisdictions except Queensland had an increase in customers on hardship programs. The number of customers on hardship programs (electricity and gas) as at 30 June 2018, compared to 30 June 2017:

- increased by 34 per cent in the Australian Capital Territory from 1,211 to 1,623
- increased by 14 per cent in New South Wales from 32,231 to 36,759
- increased by 47 per cent in Tasmania from 2,208 to 3,251
- increased by 21 per cent in Victoria from 32,664 to 39,453
- increased by 35 per cent in South Australia, from 15,659 to 21,129, South Australia has the highest proportion of customers on hardship programs
- decreased by five per cent in Queensland from 20,766 to 19,771.¹⁴²

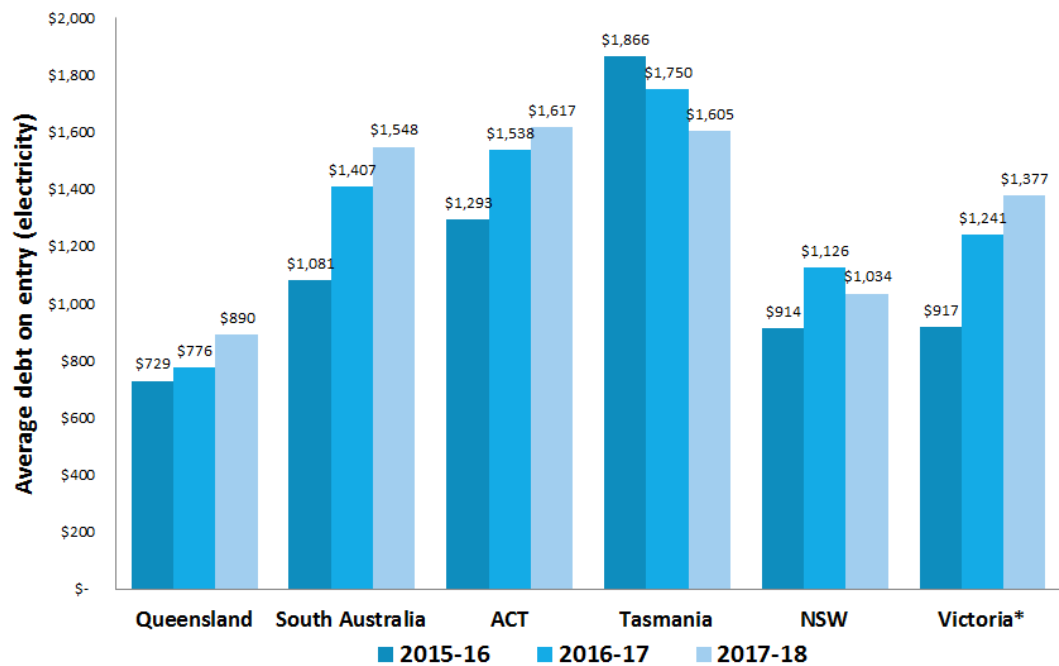
Customer debt on hardship programs

The average debt on entry to a hardship program is an indicator of energy affordability for vulnerable customers. Higher debt on entry may mean that a customer is less likely to be able to effectively manage their debt and exit a hardship program successfully. The AER reported that an increased proportion of electricity and gas customers had significant debt at over \$2,500.¹⁴³ As shown in Figure 7.17, the average debt on entry for electricity hardship customers in the NEM increased in all jurisdictions except Tasmania and New South Wales.

¹⁴² *ibid.*

¹⁴³ AER, *Annual Report on Compliance and the Performance of the Retail Energy Market 2017–18*, AER, Melbourne, 2018, p. 61-2.

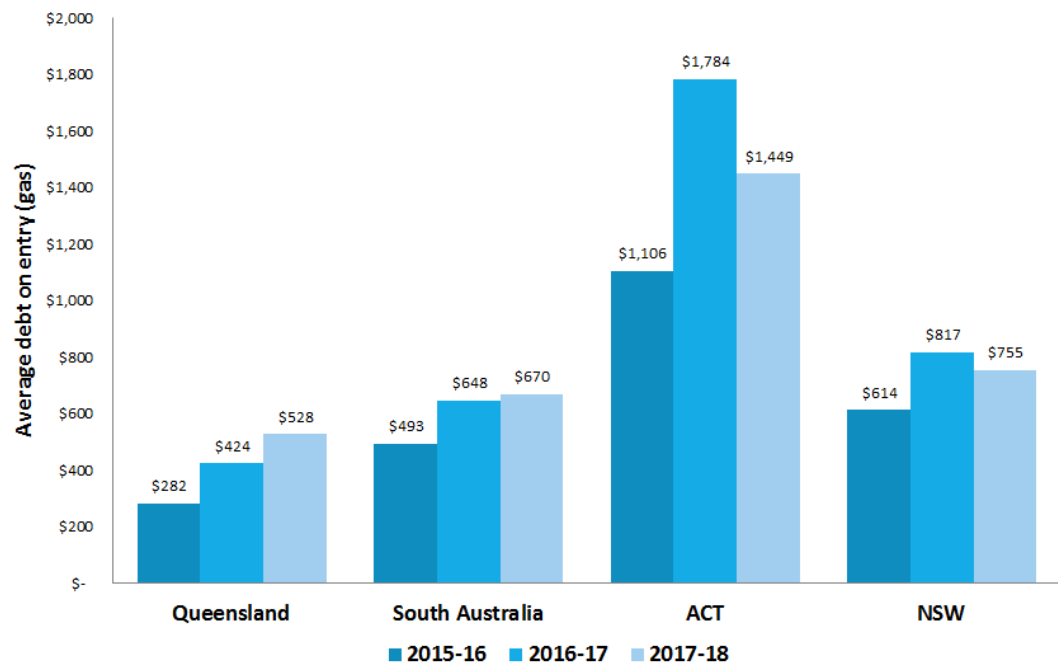
Figure 7.17: Hardship customers' average electricity debt on entry



Source: ESC, AER, AEMC analysis. Note: * Victorian data includes gas and electricity customers.

As shown in Figure 7.18, the average debt on entry for gas hardship customers increased in South Australia and Queensland while decreasing in the Australian Capital Territory and New South Wales. The Australian Capital Territory has the highest levels of average debt on entry for customers in hardship, though it has decreased by 19 per cent since 2016-17.

Figure 7.18: Hardship customers' average gas debt on entry



Source: AER, AEMC analysis.

Note: Given Tasmania's small gas market, it has not been included here. Victorian gas data shown in Figure 8.11 as data is not reported separately.

The increases in the average debt on entry into a hardship program across both electricity and gas could be linked to increases in electricity and gas prices. However, they could suggest that retailers do not have adequate processes in place for the early identification of customers who are experiencing financial difficulties, before debt levels become unmanageable.

Under new energy rules which came into effect on 1 January 2019, Victorian customers who owe at least \$55 (including GST) are now entitled to tailored assistance from their retailer to help them manage their bills.¹⁴⁴ As noted in chapter 5, the AER released a new Customer Hardship Policy Guideline in March 2019. This guideline obliges retailers to not only work harder to quickly identify consumers struggling with their bills, but also to meaningfully engage them to help manage their bills on an ongoing basis.¹⁴⁵

¹⁴⁴ ESC 2019, ESC, viewed on 10 April 2019, <https://www.esc.vic.gov.au/electricity-and-gas/information-consumers/having-trouble-paying-your-energy-bills-you-have-rights>

¹⁴⁵ AER, *Customer Hardship Policy Guideline*, AER, Melbourne, March 2019

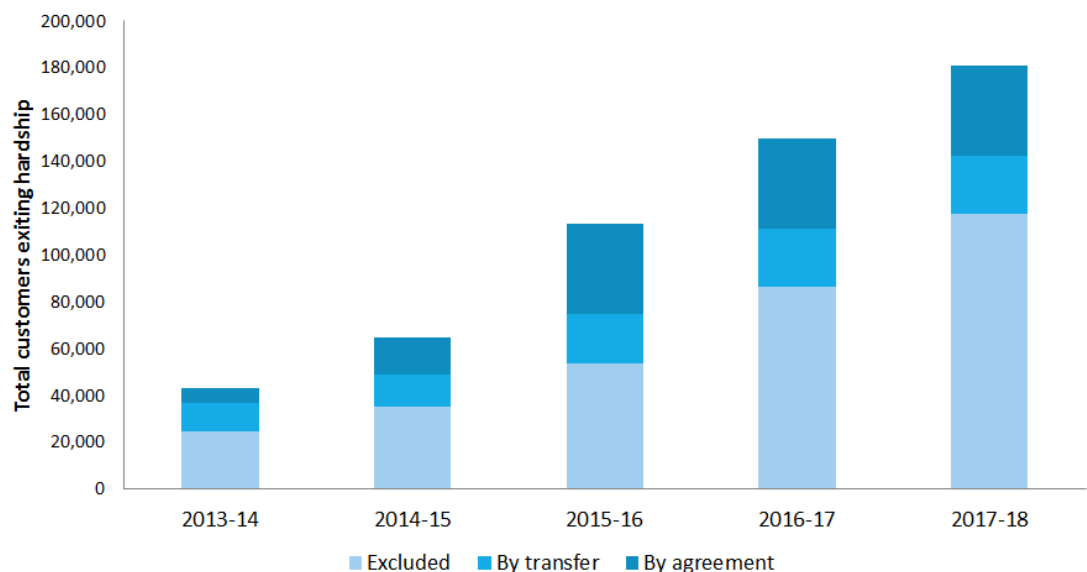
Customers exiting hardship programs

Another indicator of the success of hardship programs is customers paying off their arrears and exiting the program. The AER and the ESC look at the rates at which customers:

- successfully exit a hardship program by paying off their debt
- switch or were transferred to another retailer
- were excluded or removed from a program.

Where a customer is excluded from a hardship program, this indicates that the customer is unable to meet the payment arrangements set up under the program.

Figure 7.19: Customers exiting electricity and gas hardship programs



Source: ESC, AER, AEMC analysis.

Note: Includes electricity and gas for the NEM

The number of customers exiting hardship programs after successfully paying off their debt remained around the same between 2016-17 and 2017-18, as shown in Figure 7.19.

However, as a proportion of customers exiting hardship programs, the number of exits for successfully completing a hardship program fell from 26 to 21 per cent. The results differ between electricity and gas (outside of Victoria which does not report on gas and electricity separately), with the number of customers successfully completing hardship programs for:

- electricity, decreasing from 27 per cent in 2016-17 to 22 per cent in 2017-18
- gas, decreasing from 18 per cent to 17 per cent.

Of concern is the increase in the proportion of customers excluded from hardship programs, as these customers are most susceptible to being disconnected at a later point in time.¹⁴⁶ Figure 7.19 shows an increase in the excluded customers from 58 per cent in 2016-17 to 65 per cent in 2017-18. The AER's new Customer Hardship Policy Guideline which aims to make programs more accessible and strengthen the protections available to energy consumers should help address this issue and decrease the proportion of exclusions.¹⁴⁷

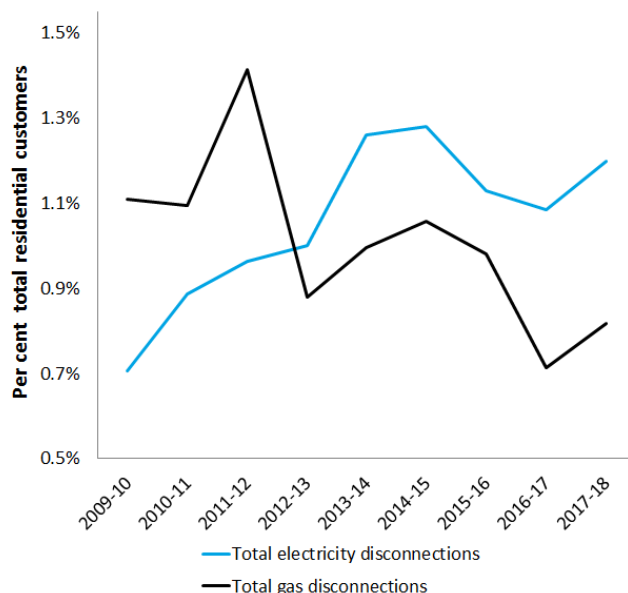
7.4.3

Disconnections

Residential

Customer disconnections can arise as a result of non-payment of bills. The level of customer disconnections is an example of a consumer outcome that may only be in part related to the effectiveness of competition. The rate of disconnections provides information about consumers' ability to pay their bills after going through any support programs. It may be an indication of energy affordability and the ability of consumers to engage in the market. The AER notes that AGL has indicated that disconnection numbers reported in the previous year may be inaccurate.¹⁴⁸ As shown in Figure 7.20, there was an increase in the number disconnections for non-payment across the NEM for both gas and electricity.

Figure 7.20: Total annual disconnection (for non-payment) rate



Source: AEMC analysis based on data obtained from AER and ESC. Data is for residential consumers.

¹⁴⁶ Customers are excluded from hardship programs for failing to meet the requirements of the program, including for non-payment.

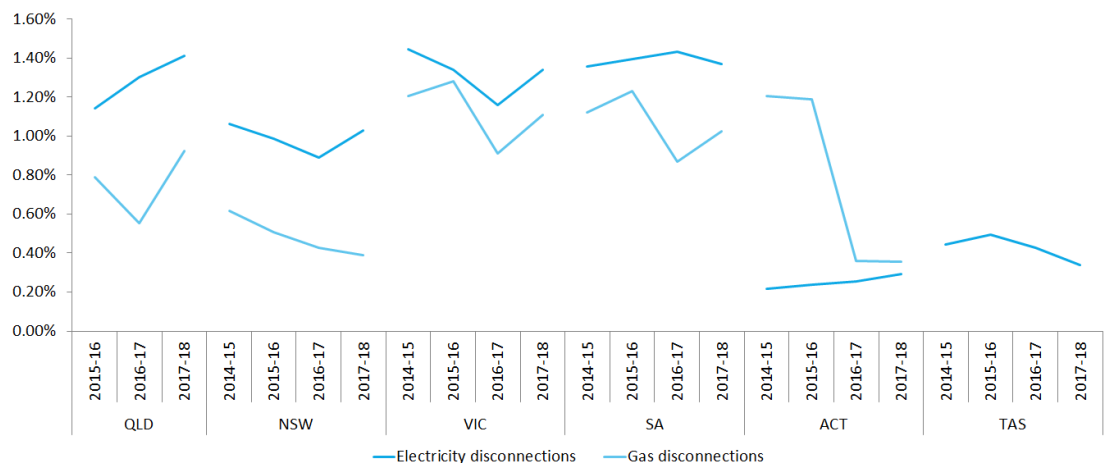
¹⁴⁷ AER, *Customer Hardship Policy Guideline*, AER, Melbourne, March 2019.

¹⁴⁸ AER, *Annual Report on Compliance and the Performance of the Retail Energy Market 2017-18*, AER, Melbourne, 2018, p.vii.

The AER has previously reported that disconnection may occur because consumers are unwilling to engage with their retailer when facing financial difficulty.¹⁴⁹ For 2017-18 the AER noted low disconnection rates for hardship customers at 0.1 per cent of disconnections.¹⁵⁰ This highlights the benefits of consumers discussing their payment difficulties with their retailer.

Figure 7.21 below shows trends in residential customer disconnections for non-payment relative to the customer base in each NEM jurisdiction, for retail electricity and gas markets.

Figure 7.21: Disconnection (for non-payment) rates by jurisdiction



Source: AEMC analysis based on data obtained from AER and ESC.

Note: Given Tasmania's small gas market, it has not been included here.

Figure 7.21 shows that disconnection rates for electricity consumers:

- increased in New South Wales, Queensland and the Australian Capital Territory
- decreased in Victoria, Tasmania and South Australia.

It also shows that disconnection rates for gas consumers:

- increased in Victoria, Queensland and the South Australia
- decreased in New South Wales and the Australian Capital Territory.

Small business

Disconnection for non-payment of business customers has increased across the NEM by 16 per cent for electricity, and 37 per cent for gas in 2017-18.

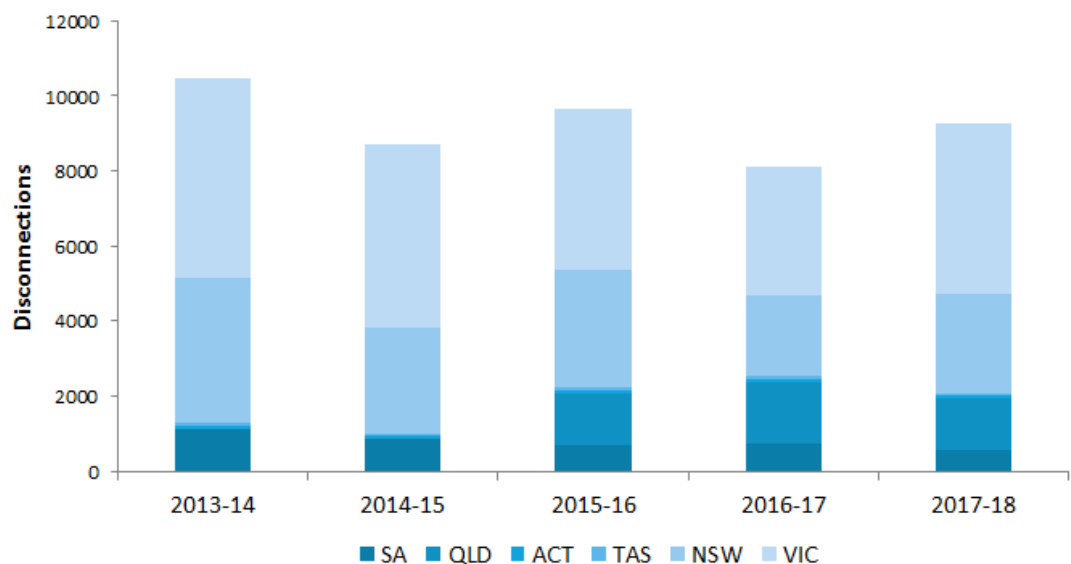
Electricity disconnections increased across the NEM by 15 per cent for small businesses in 2017-18. As shown in Figure 7.22 below, this increase brings the disconnection rate to a level similar to 2015-16. The following occurred in each jurisdiction:

¹⁴⁹ AER, *Annual Report on the Performance of the Retail Energy Market 2015-16*, AER, Melbourne, p. 47.

¹⁵⁰ *ibid* p. 68.

- South Australia decreased by 22 per cent from 727 disconnections to 566
- Queensland decreased by 16 per cent from 1,641 to 1379
- Victoria increased by 32 per cent from 3,434 to 4,548
- New South Wales increased by 25 per cent from 2,131 to 2,654
- Tasmania decreased 49 per cent from 83 to 42 and the Australian Capital Territory remained relatively static.

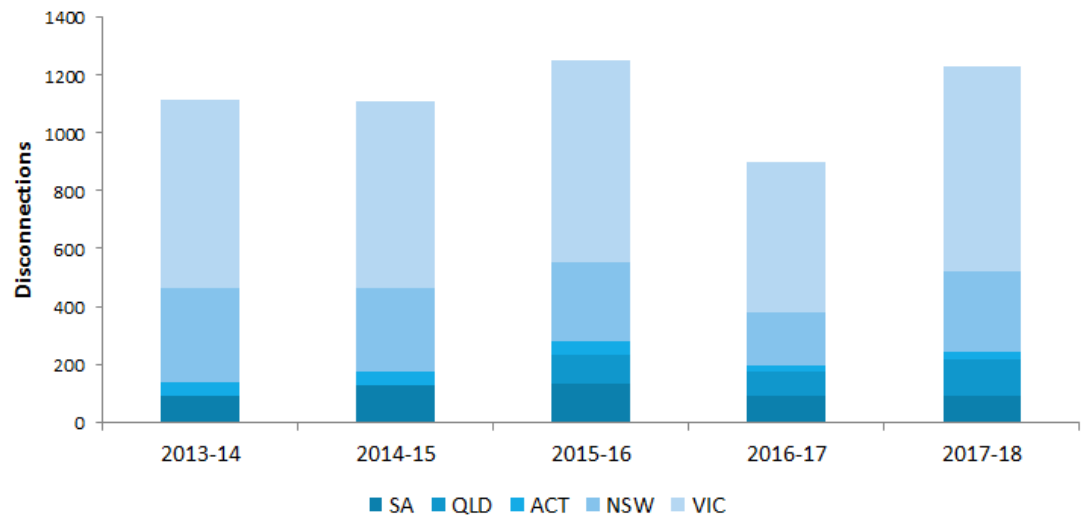
Figure 7.22: Electricity disconnections for businesses



Source: AER/ESC data, AEMC analysis.

Gas disconnections increased across the NEM by 37 per cent for small businesses in 2017-18. Each jurisdiction recorded an increase, except South Australia which remained static. Figure 7.23 shows this increase followed a preceding equivalent decrease, bringing disconnections back to a similar level recorded in 2015-16.

Figure 7.23: Gas disconnections for businesses



Source: AER/ESC data, AEMC analysis.

Retails have responsibility for hardship programs for residential customers (as discussed further in chapter 10). However, in the Commission's view business energy affordability issues are an industry policy issue rather than one of social policy.

7.5 Outcomes for retailers

The preceding analysis examines the performance of the competitive energy sector in delivering outcomes for small consumers. This section focuses on how competition is affecting the performance of retailers in the retail electricity markets in Victoria, South Australia, New South Wales and South East Queensland.

In previous reviews the Commission has reported, in a limited way, on the gross margins of the big 3 retailers, based on voluntarily provided information. In the absence of information gathering powers, the Commission is not able to provide a complete picture of how retailers are performing in the electricity market with regard to margins. However, the ACCC's electricity and pricing inquiry reviewed margins and its information gathering powers allowed it to take a more in-depth look at the financials of all retailers.

This section will:

- look at bill outcomes for residential consumers and the associated outcomes for retailers
- briefly look at the types of retail margins
- note the findings of the ACCC in REPI and its March 2019 *Monitoring of supply in the National Electricity Market* report.

7.5.1

Understanding retail margins

To provide services to consumers, retailers need to earn revenue that covers their costs and generate a return that is commensurate with the risk they manage in the market. A particular risk managed by electricity retailers is to shield customers from being exposed to the price volatility of the wholesale electricity spot market in the retail prices they pay. Previous retail energy competition reviews have noted that electricity retailers faced similar risks to financial institutions.

Types of retailer margins

There are three widely-used measures of margins:

- Gross margin is defined as a retailer's revenue less the costs of goods sold. This is the broadest type of margin and a high gross margin for a business may simply reflect high operating costs or high risks, rather than the business being economically profitable.
- Net margin, also sometimes known as earnings before interest tax, depreciation and amortisation (EBITDA), is a retailer's revenue less the costs of goods sold, less the costs associated with operating the retail business. While a better measure of profitability than gross margin, a positive net margin may simply reflect that the business has large infrastructure costs or has substantial risks that it is trying to recover, rather than it being economically profitable.
- Risk-adjusted net margin, also sometimes known as economic value add, is the net margin less the return of (depreciation) and return on capital. This margin reveals more about the true profitability of the business and is the closest accounting measure to assessing economic profit. In an effectively competitive market, this margin would, in the long-run, expected to be close to zero.

The risk-adjusted net margin is the best margin from which to carry out an assessment of the effectiveness of competition over time. It is also the hardest to measure. In particular, the risk-adjusted net margin relies on information about a retailer's return on capital, which in turn is a function of a retailer's cost of debt and cost of equity. While the cost of debt is observable, the cost of equity requires estimation.

7.5.2

Bill outcomes

Bill outcomes can reveal the differences between retailing energy in each jurisdiction covered in this Review. This section explores bill outcomes by analysing the average prices paid by consumers in New South Wales, Victoria, Queensland and South Australia.

The analysis on prices paid by consumers here is based on data that was voluntarily provided by retailers on total revenue from electricity sold to residential consumers.¹⁵¹ The analysis only focuses on electricity as insufficient data was provided by retailers on gas.

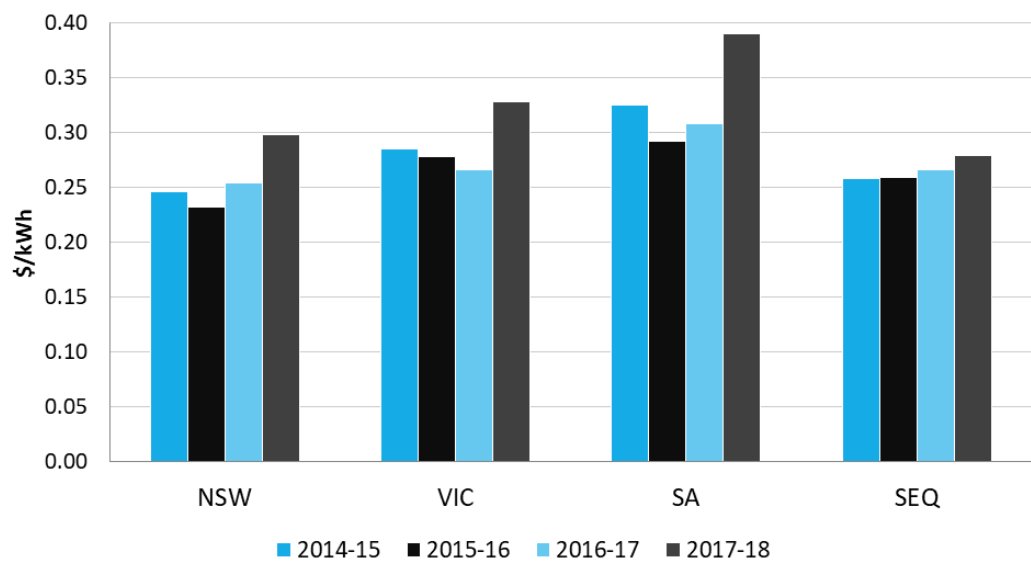
¹⁵¹ There are two datasets collected by the Commission being used the analysis presented in this section. One dataset is for 2014-15, 2015-16 and 2016-17 and one for the 2017-18. The two datasets were collected at different times from a slightly different subset of retail energy businesses. While both datasets represent significant proportion of the market (and hence are a good representation of the market), there may be differences in the time series data due to the different sources of the two datasets that are not reflective of the changes between the years.

In previous years we have provided a comparison of data between the big 3 and tier 2 retailers in New South Wales and Victoria. However, the Commission received insufficient data from tier 2 retailers to be able to provide a meaningful comparison.

Average prices paid by consumers

Figure 7.24 shows the weighted-average prices paid for electricity consumers in New South Wales, Victoria, Queensland and South Australia. The figure below shows that the average price paid by consumers increased in all jurisdictions in 2017-18. This is to be expected because prices paid in 2017-18 correspond with the increases in prices reported in Commission's analysis of residential electricity prices in the 2018 Review¹⁵² and the *Residential electricity price trends review 2018*.¹⁵³

Figure 7.24: Average price paid by residential electricity consumers



Source: Retailer data provided voluntarily, AEMC analysis.

The main driver found for these price increases was the increases in wholesale electricity contract prices for 2017-18 following the exit of a number of large generators, especially Hazelwood in Victoria. Increases in environmental schemes and some distribution network costs also contributed to the price increases, but to a significantly lesser degree and these increases vary by jurisdiction.

¹⁵² For more information see: <https://www.aemc.gov.au/sites/default/files/2018-06/Final%20Report.pdf>.

¹⁵³ For more information see: <https://www.aemc.gov.au/market-reviews-advice/residential-electricity-price-trends-2018>.

Comparison of average prices paid – big 3 and tier 2 retailers

The Commission notes that while Figure 7.24 is a useful indication of the average price paid by consumers over the last four years, the data that it is built from does have some limitations. This includes a limited amount of data from tier 2 retailers.

As noted in chapter 4, access to relevant data is essential for policy-makers to make informed assessments about the retail market. The lack of data from tier 2 retailers, while noting this can be a time-consuming and costly task for retailers, means the Commission is unable to meaningfully assess the outcomes for consumers and retailers with regards to average price paid. To make this possible, the Commission will work with industry and other market bodies to develop standardised data collection strategies. Under the Energy Charter framework, it is expected that industry would take an active role in this process and support the Commission's work in this space.

7.5.3

ACCC analysis of retailer net margins

In its 2018 inquiry into retail electricity pricing, the ACCC was tasked with reviewing the "profitability of electricity retailers through time, and the extent to which profits are, or are expected to be, commensurate with risk".¹⁵⁴ In its final report, the ACCC made the following observations about margins:¹⁵⁵

- Victoria and New South Wales have the highest retail margins, and South Australia and Queensland the lowest
- EBITDA margins in Victoria, South Australia and South East Queensland have remained relatively flat between 2007-08 to 2017-18, but have increased in New South Wales.
- tier 2 retailers are earning smaller margins than the big 3, and it is the larger tier 2 retailers who are the biggest threat to the big 3
- retailers with smaller customer numbers have greater variability in their revenues and electricity demand which increases their energy and financial risk
- signs of a competitive market are present with a proliferation of offers, high levels of churn and extensive marketing.

From this, the ACCC made no finding that it considered retail margins are inefficient or that retailers are earning excessive profits.¹⁵⁶

In March 2019, the ACCC released its first *Monitoring of supply in the National Electricity Market* report. As part of this report, the ACCC reviewed the publicly available data of five retailers and reported that AGL, EnergyAustralia, Origin Energy, Red Energy and Lumo Energy, and Momentum Energy had all reported a decline in profits since 2016-17.¹⁵⁷ The ACCC will use its information gathering powers to carry out a more in-depth review of trends in costs and profit margins for its next report, due in September 2019.¹⁵⁸

¹⁵⁴ ACCC, *Retail Electricity Pricing Inquiry — Final Report*, June 2018, chapters 6 and 10.

¹⁵⁵ ACCC, *Retail Electricity Pricing Inquiry — Final Report*, June 2018, p. 136, and 145 to 147.

¹⁵⁶ *ibid*, chapters 6 and 10.

¹⁵⁷ ACCC, *Monitoring of supply in the National Electricity Market*, March 2019, pp. 20-23.

¹⁵⁸ *ibid*, p. 19.

7.5.4

Interpreting retail margin data

Effective competition drives individual retailers to optimise their revenues by meeting customer needs and minimising their costs by restricting expenditures to economically efficient levels. Collectively, effective competition should mean that over time any excess margins are competed away. A view of retailer margins over time can therefore be an indicator of the effectiveness of competition. However, interpreting margin results is not necessarily straightforward. The process of innovation — whether that is at a product, pricing or service level — may mean one retailer gains an advantage in the market for a period. That advantage may relate to its revenues or costs, but will increase margins until its competitors catch up or surpass its offerings.

It can be very difficult to draw any definitive conclusions on the effectiveness of competition from just assessing margins in isolation. Margins need to be considered with a range of other measures and factors. For example, there may be no concerns about the effectiveness of competition where margins are increasing due to much lower operating costs, and customers are still experiencing lower prices and higher levels of satisfaction. In contrast, high gross margins being earned over time by a business where it is undertaking little innovation, managing minimal risks, and having decreasing levels of customer satisfaction, is likely to suggest problems with the effectiveness of competition in that sector.

8 BATTERY AND RELATED TECHNOLOGIES — INNOVATION AND BUSINESS MODELS

BOX 18: SUMMARY OF KEY FINDINGS

- This chapter assesses whether retail energy competition is promoting innovation related to behind the meter battery products and services. This is important because the prevalence of behind the meter residential batteries is growing due to the costs of battery technology declining, favourable consumer sentiment and the introduction of government subsidy schemes.
- The Commission has identified a new business type that has emerged in the retail market. The battery service provider (BSP) controls behind the meter batteries and may come in many forms. A BSP aggregates battery storage units, and potentially other types of DER, into a VPP.
- There are three main business models — which describe the commercial relationship between retailers, BSPs and consumers — that are currently supplying residential customers with battery related products and services. These business models are:
 1. Retailer led — In this business model the customer only interacts with their electricity retailer. The retailer coordinates the sale, installation, operation, and maintenance of the battery for the customer. The retailer realises the benefits, and pays the costs, of the battery's operation to realise the various value streams. An example of this model is AGL's VPP in South Australia.
 2. Retailer and BSP coordination — In this business model a BSP and a retailer develop joint product offerings for customers. Typically, this involves the BSP selling, installing and operating a battery for the customer. The retailer then makes specific retail market offer(s) available on the condition the customer is also contracted with the BSP. Examples of this model are Reposit and Powershop, and Sonnen and Energy Locals.
 3. Passive retailer-BSP led — This model involves no active participation or coordination from the retailer. The customer has a standard relationship with the retailer and has a separate relationship with a BSP that operates and provides value from their battery. An example of this model's passive retailer is Amber Electric (in partnership with Energy Locals).
- The Commission's analysis reveals that all models have their own benefits and drawbacks. Over time competition will reveal which business models consumers prefer. In contrast, those which do not meet consumers preferences are likely to fall away.
- While early in the development phase of battery technology, this analysis indicates that contestable retail markets are facilitating innovation and are likely to result in electricity offers that meet consumers preferences. The wide variety of retailer sizes, strategies and skills within the NEM is facilitating innovation in the behind the meter battery storage space.

The retail energy competition review assesses the state of retail energy competition in the NEM and how it is developing over time. A key benefit of competitive markets is that they provide incentives for retailers to innovate to provide consumers with products and services that meet their preferences. However, in the context of electricity, the underlying product is homogeneous. A key source of innovation in retail markets is therefore innovation on related products and services that lower the costs of electricity supply, improve user experience, or provide other benefits to consumers.

The prevalence of behind the meter residential batteries in the retail market is growing with the declining cost of battery technology and the introduction of government subsidy schemes. This is likely to disrupt the retail market and provides both an opportunity and a challenge similar to the rise of residential solar PV installations in the early 2000s.

Given this context, it is valuable to assess how retail energy competition is resulting in innovation related to battery products and services. This chapter assesses this through setting out:

- the context for analysis
- an overview of current market settings related to behind the meter battery technology
- the expectations of a competitive retail market for behind the meter battery technology at this point in time
- an outline of business models, with relevant case studies, that provide currently battery products and services
- conclusion and evaluation against expectations.

8.1 Context for analysis

This section provides a high level overview of the cost of battery technology, forecasts of battery technology uptake, government subsidy schemes and consumer attitudes toward battery technology. This gives context for the expectations and assessment of the battery technology segment of the retail market. More detailed descriptions of current battery technology economics can be found in the Commission's 2018 Review and AEMO's ISP.¹⁵⁹

8.1.1 Decreasing cost of battery technologies

The learning curve of battery technologies to date has been significant. This trend is expected to continue into the future being driven by the strong uptake of behind-the-meter storage, industrial and utility scale batteries, and electric vehicles.

By 2050 Bloomberg New Energy Finance, which is used by AEMO as the basis of their ISP modelling, expects a further 41 per cent price reduction on 2017 prices for residential systems to a price of \$698 per kWh of storage capacity.¹⁶⁰

¹⁵⁹ For more information regarding the 2018 Retail Energy Competition Review see <https://www.aemc.gov.au/markets-reviews-advice/2018-retail-energy-competition-review>, and for AEMO's ISP see <https://www.aemo.com.au/Electricity/National-Electricity-Market-NEM/Planning-and-forecasting/Integrated-System-Plan>.

¹⁶⁰ Bloomberg New Energy Finance, Annabel Wilton, *2018 Australia Behind-the-meter PV and Storage Forecast*, 31 May 2018, Sydney.

Further to this, residential solar PV with storage systems are forecast to achieve 'socket parity' — when the average LCOE of grid-connected residential solar PV with a storage systems is equal to that of the price a consumer can purchase energy from the grid — for most Australian states around 2019-2020. However, investment in battery storage systems alone remain contentious as to their economic viability. This is due to the number of variables that affect a battery storage system's economics in a market for a maturing technology.

The 2018 Review concluded that residential solar PV is already economically attractive. However, it stated that battery technology does not yet stack up economically due to its high capital requirement. However, with battery costs falling, the average payback period of residential solar PV with battery storage is expected to decline to under 10 years by 2022. Furthermore, if the additional value streams (discussed in section 8.2) are made widely available in the future, the payback periods for solar PV with battery storage may overtake solar PV by itself. The high capital costs of battery technologies will also be significant reduced by a number of government subsidy schemes, which are outlined in section 8.1.4.

In addition to this, some consumers are purchasing battery products and services that are not based on an economic rationale. Rather, these decisions are based on the desire to be more self-sufficient, use 'green' technologies, or some other non-financial factor.

8.1.2

Forecasts of residential battery technology uptake

The decreasing cost of battery technologies, and its consequential 'socket parity' and attractive payback periods, results in significant installation rate forecasts of residential battery technology installations.

Battery installations as an investment are most attractive when coupled with a solar PV system. Bloomberg New Energy Finance estimates that behind-the-meter solar PV system capacity in the NEM is forecast to grow from the 6.5GW in 2017 to 57 GW in 2050, mainly driven by industrial installations.¹⁶¹ Alongside this, the installed capacity of behind-the-meter storage is expected to increase by 58GWh, with 39GWh or 68 per cent being residential installations. With this projection, 51 per cent of houses will have solar PV systems and 33 per cent of residential buildings will have a storage system installed.

These forecasts show that there is a potentially large market for battery technology operation, optimisation and cooperation. The extent to which this market is able to grow will determine the manner in which it works in both consumers and the markets best interests.

8.1.3

Consumer attitudes towards battery storage

The ECA Consumer Sentiment Survey has shown a consistent trend of consumers' interest in battery storage systems increasing since the first wave of the survey in March 2016. The survey reflects the interest shown by consumers who already have an installed solar system to install a battery storage system. Evidence of this was in the latest survey in October 2018. It reported that of consumers surveyed who have an installed solar system:

¹⁶¹ *ibid.*

- six per cent are considering purchasing a battery storage system in the next 12 months
- 53 per cent are considering purchasing a battery storage system in the longer term.

8.1.4

Subsidy schemes for battery (and related) technology

As previously discussed, there are a number of state and proposed federal subsidy schemes for battery and related technologies. These subsidies will further decrease the cost of battery technologies making them an attractive investment for residential consumers. The subsidy schemes include the:

- South Australian Government's \$100 million Home Battery Scheme to encourage 40,000 new battery storage systems¹⁶²
- Victorian Government's \$40 million subsidy to encourage 10,000 new battery storage systems¹⁶³
- New South Wales Government's \$50 million Smart Energy for Homes and Businesses program to encourage 40,000 new battery storage systems¹⁶⁴
- Australian Capital Territory Government's Next Generation Energy Storage program, is supporting up to 5,000 battery storage systems in Australian Capital Territory homes and businesses.¹⁶⁵
- Queensland Government's Interest-free loans for solar and storage program that offers households and small businesses 3,650 assistance packages of interest-free loans and grants to purchase a battery system.¹⁶⁶

Australia is forecast to make up 30 per cent of the global demand for residential battery technology in 2019. These forecasts are driven strongly by government subsidy schemes supporting the industry and solidifying Australia as one of the most attractive markets in the world.¹⁶⁷ This is reinforced by AlphaESS, Sonnen GmbH and Eguana Technologies setting up assembly facilities in South Australia.

8.2

Current market settings for behind the meter battery technology

This section provides an overview of the current market design for behind the meter battery technology. It does so by defining each value stream that batteries can provide, how they can be realised, any barriers to their realisation and the current regulatory processes addressing barriers under the current market design.

¹⁶² South Australian Government. Home Battery Scheme, available at www.energymining.sa.gov.au/energy_implementation/home_battery_scheme.

¹⁶³ Victorian Government, available at www.premier.vic.gov.au/cheaper-electricity-with-solar-batteries-for-10000-homes/.

¹⁶⁴ New South Wales Government. Smart energy for homes and businesses, available at energy.nsw.gov.au/renewables/emerging-energy/cleanenergy-initiatives#-smart-energy-for-homes-and-businesses-.

¹⁶⁵ Australian Capital Territory Government, Home Battery Storage. Available at: www.actsmart.act.gov.au/what-can-i-do/homes/discounted-battery-storage.

¹⁶⁶ Queensland Government, Interest-free loans for solar and storage, www.qld.gov.au/community/cost-of-living-support/concessions/energy-concessions/solar-battery-rebate/about-the-program.

¹⁶⁷ BNEF, *Australia to be largest residential storage market in 2019*, about.bnef.com/blog/australia-largest-residential-storage-market-2019/.

The focus of this chapter is how the retail market is serving customers regarding battery related products and services, not on the market design across the supply chain. This section therefore provides a high level overview of the market design. More detailed descriptions on market design across the supply chain can be found in the AEMC's *Distribution market model review*, the *Reliability frameworks review* and the *Wholesale demand response mechanism rule change*.¹⁶⁸

8.2.1 Batteries — what value can batteries provide?

Battery storage devices have a range of technical capabilities, including the provision of energy, voltage control, frequency regulation and reactive power. These capabilities can be used to provide a range of services that are of value to a number of parties, including consumers, retailers, energy service providers, AEMO and network businesses.

1. **Customer services:** Consumers may use battery storage devices to manage their demand, reduce their reliance on the grid, maximise the value of their solar PV system, provide back-up supply or arbitrage their retail tariff. These services are described as 'customer services'.
2. **Network support services:** DNSPs or Transmission Network Service Providers (TNSPs) may procure the services provided by batteries to help them provide distribution or transmission services. For example batteries are capable of reducing peak load in order to defer network augmentation, or to help manage the technical characteristics of their networks.
3. **Wholesale market services:** Electricity retailers may use the electricity generated and/or consumed by distributed energy resources in aggregate to manage their risk of participating in the NEM, or for actual participation as a generator in the NEM.
4. **Frequency Control Ancillary Services (FCAS) market services:** Other parties may use distributed energy resources to provide ancillary services, such as FCAS, to AEMO.

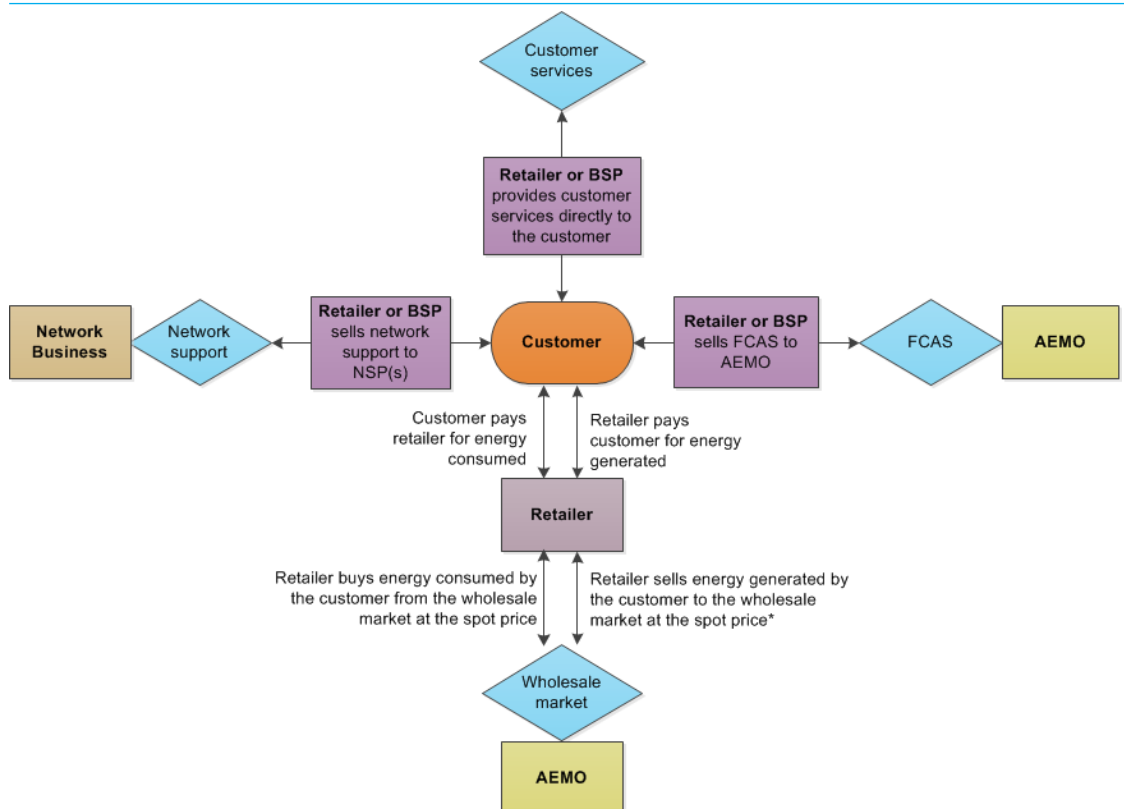
A range of parties are able to benefit from the services that battery storage devices can provide. We name a party that is not a retailer that is controlling behind the meter batteries a BSP. BSPs are a new business type and may come in many forms. A BSP aggregates battery storage units, and potentially other types of DER, into a VPP. After aggregation, the BSP can operate their VPP to maximise value from the batteries. It is important that the market design provides price signals to BSPs regarding the value that batteries and VPPs can provide. This will provide incentives to BSPs to maximise the value that batteries and VPPs can provide which will reduce overall system costs in the long run.

8.2.2 Batteries — what value streams can be realised?

While batteries are capable of providing a range of services, a key question for how the retail market is able to serve consumers through battery related offers is the ability of different parties to realise these value streams. Figure 8.1 displays the different value streams and which parties can realise them under the current market design.

¹⁶⁸ See: www.aemc.gov.au/markets-review-advice/distribution-market-model, www.aemc.gov.au/markets-reviews-advice/reliability-frameworks-review, and www.aemc.gov.au/rule-changes/wholesale-demand-response-mechanism.

Figure 8.1: Existing market design – Access to value streams



Source: AEMC

Note: Energy exported from the customer's connection point enters settlement as negative demand for the retailer. This has the same financial effect for the retailer as selling energy.

8.2.3

Batteries — what are the barriers to realising these value streams?

The key regulatory barriers that exist for realisation of the four value streams are explored below.

1. **Customer services:** no regulatory limitations or barriers have currently been identified.
2. **Network support services:** any party can contract with a Network Service Provider (NSP) for network support. However:
 - NSPs will usually require a minimum level of scale within the specific area of the network requiring support. This is likely to restrict early value realisation until battery penetration reaches greater levels.
 - Network support is procured through bilateral contracting with NSPs. This is likely to increase transaction costs because of a lack of standardisation of contracting and requirements to negotiate individual contracts with each NSP.
3. **Wholesale market services:** As displayed in Figure 8.1 above, under the current market settings only the retailer can buy and sell energy on behalf of the customer from

the wholesale market. For battery related value from the wholesale market to be realised, either the retailer will need to control the battery, a BSP will need to have a relationship with a retailer, or the consumer and BSP have access to a retail tariff that passes through wholesale price signals.

4. **FCAS market services:** Any party can register as a market ancillary service provider (MASP). However, this is a relatively new feature of the market and there are technical issues which are being worked through by AEMO and participants.

It should also be noted some barriers to the integration of distributed energy resources exist separate to the realisation of the value streams outlined above. These relate to the connection, pricing and access frameworks. Stakeholders seeking further information on these issues can refer to the Commission's *Distribution market model*, *Reliability Frameworks review*, and annual *Electricity network economic regulatory frameworks reviews*.¹⁶⁹

There are currently also non-regulatory challenges for BSPs and retailers to overcome for them to be able to fully access these value streams:

1. **Orchestration of DER** — refers to the aggregation of many individual battery storage units in a way that can be controlled by the BSP. This allows the BSP to operate the DER in the fashion required to allow the realisation of (at least one) value stream/s. With many of the value streams requiring a level of scale to realise, orchestration is a key feature to maximise value from battery storage devices. This may be particularly difficult for BSPs and retailers attempting to orchestrate different battery types/brands.
2. **Optimisation of DER** — refers to the ability of the BSP to maximise value from the battery. For example, on a hot day in summer when there is high peak demand, network support services would typically be required for a few hours. However, these hours might be different to when the wholesale price is at its highest and therefore the BSP would seek to realise wholesale market value. With the available battery capacity the BSP is only likely to be able to realise one value stream and will need to make sophisticated decisions to maximise value. Hence, while 'stacking' of the value streams increases the viability of a battery system investment, it is unlikely to be possible to fully realise all the potential value streams. The most successful businesses will be those that can optimise when and which value streams to realise and adapt over time as conditions change.

8.2.4

Batteries — what are the related changes in regulation?

There are a number of regulatory processes under way regarding these issues:

- **Wholesale demand response mechanisms:** the Commission is assessing rule change requests from the Australian Energy Council, South Australian Government, and a joint request from the Public Interest Advocacy Centre (PIAC), Total Environment Centre and the Australia Institute. The rule changes arise from a recommendation in the Commission's *Reliability frameworks review* that a rule change request be submitted to consider changes be made to the market design. The recommendation was to place

¹⁶⁹ See: www.aemc.gov.au/markets-reviews-advice/distribution-market-model, www.aemc.gov.au/markets-reviews-advice/reliability-frameworks-review, and www.aemc.gov.au/markets-reviews-advice/electricity-network-economic-regulatory-framework-review-2019.

demand response providers on equal footing with generators in the wholesale market. This would allow them to more readily offer transparent wholesale demand response.

- **Multiple trading relationships:** the Commission also recommended in the *Reliability frameworks review* that consumers be permitted to engage multiple retailers/aggregators at the same connection point.
- **VPP trials:** AEMO has established a VPP demonstration program. AEMO notes that these demonstrations are the first step in a broad program of work designed to inform changes to regulatory frameworks and operational processes so DER can be effectively integrated into the NEM, maximising value to consumers while also supporting power system security. Notably, within the demonstrations AEMO has loosened restrictions on VPP providers supplying raise and lower FCAS services to assess the ability to reduce the technical barriers of these services.

There are also completed rule changes which are being implemented that are likely to facilitate the efficient uptake of behind the meter battery technology. These include:

- **Five minute settlement:** The Commission's *Five minute settlement* final rule was published on 28 November 2017 and will come into effect on 1 July 2021. This will reduce the time interval for financial settlement in the NEM from 30 minutes to five minutes. Five minute settlement will provide more dynamic price signals to generators and retailers about the cost of energy. More dynamic price signals are likely to facilitate the uptake of battery technology because of its ability to quickly respond to such dynamism.
- **Distribution network pricing arrangements:** The Commission's *Distribution network pricing arrangements* final rule was published on 27 November 2014 and is being progressively rolled out by DNSPs over time. The change means that DNSPs are moving from flat tariffs based on total energy consumption to tariffs that more closely reflect the costs of network service provision at different points in time. Similar to the five-minute settlement rule change, this is likely to result in more dynamic retail tariffs over time. This will advantage customers with battery technology because of its ability to respond to such price signals.
- **Competition in metering:** The Commission's *Expanding competition in metering and related services* final rule was published on 26 November 2015 and is being progressively rolled out. The rule requires all new and replacement meters to be type 1-4 meters (smart meters). Consumers or their retailer can also install smart meters where they wish to. This reform will facilitate efficient battery uptake because smart metering is a pre-requisite for realisation of most value streams for behind the meter batteries.

8.3 Expectations and indicators of a well functioning retail market

It is important to set out the expectations and indicators of a well functioning retail market to analyse whether the retail market is acting in the best interest of consumers in relation to making battery related offers. This section defines those expectations.

BOX 19: CURRENT EXPECTATIONS OF A COMPETITIVE RETAIL BATTERY TECHNOLOGY MARKET

At this stage in the development path of battery technology, we would expect that a competitive retail market would exhibit the following six characteristics:

1. Testing of a range of:
 - a. business models to supply battery related products and services
 - b. offers to customers to evaluate consumer preferences
 - c. suppliers of battery and battery related products to evaluate performance.
2. Existing retail businesses would leverage off their strengths and competitive advantages to provide value to customers.
3. New parties with skills related to batteries would enter the retail market or partner with existing retailers to provide battery related retail products.
4. Active engagement in regulatory processes to decrease barriers to entry and value realisation.
5. Active engagement in government subsidy programs.
6. Commercialisation for early adopters and where specific subsidy schemes make battery products and services economic for consumers.

From these expectations come a number of indicators by which each business model can be evaluated. These indicators have been split into two assessment frameworks, one from a consumer perspective and the other from a retailer perspective. These are outlined in Table 8.1 below. These frameworks are important because they allow us to assess whether the business models being utilised in the development phase are likely to be fit-for-purpose in the long run to meet customers needs.

Table 8.1: Consumer and retailer assessment framework

INDICATOR	DESCRIPTION OF INDICATOR
Consumer experience assessment framework	
Retail choice	Does the business model facilitate consumers continuing to be able to choose a retailer or are they locked in to one retailer throughout the life of the battery? How is this likely to affect uptake of the products and services?
Consumer protections	What level of consumer protection regarding performance of the battery and related products will the consumer receive under the business model?
Value stream realisation	Does the business model facilitate efficient value realisation from the battery and therefore increase potential value to the customer? Is the interest of the customer likely to be aligned to the interest of the party operating the battery?

INDICATOR	DESCRIPTION OF INDICATOR
Complexity	How complex is it for the customer to take up the offer? For example, is the customer required to contract with multiple parties or does one party coordinate sale, installation, maintenance and operation of the battery as well as their retail supply for the customer?
Retailer experience assessment framework	
Value realisation	Does the business model facilitate efficient value realisation from the battery and therefore increase potential value to the retailer?
Customer acquisition and retention	Will the offers made as a result of the business model be marketable to customers? Both in terms of new and existing retail customers? Once a customer has signed up to the offer, is it likely increase customer retention?
Transaction costs	Does the business model require coordinating and contracting with multiple parties? How complex are those contracting requirements likely to be?
Skills acquisition	Does the business model require the retailer to develop new skill sets?

8.4 Business models of BSPs

This section explores the three main business models that are currently supplying residential customers' with battery related products and services. Case studies of each of the business model that are currently available in the market are presented along with an evaluation of the business model by the consumer and retailer assessment frameworks set out above.

The three business models are:

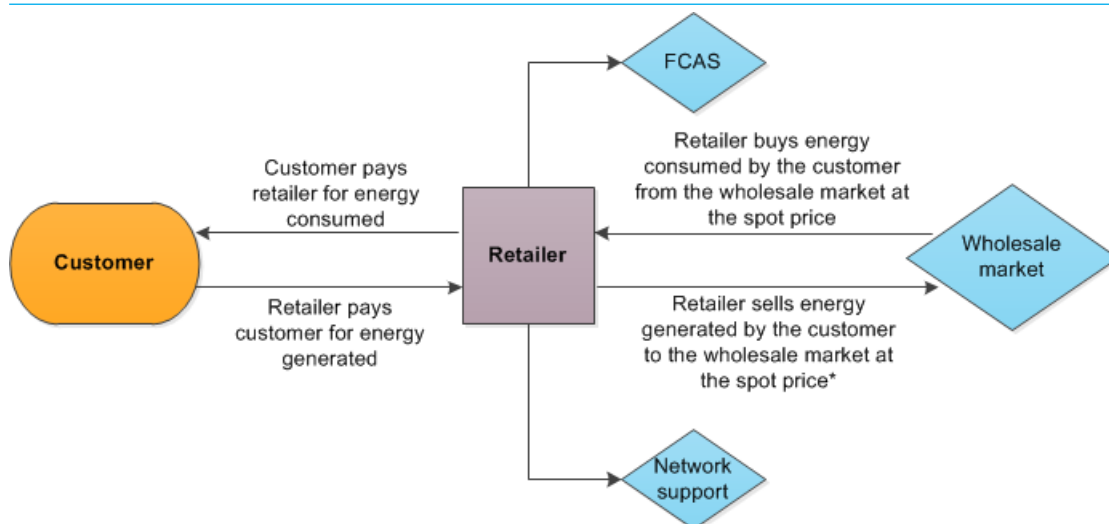
1. retailer led
2. coordinated offers from retailers and BSP
3. BSP led with a passive retailer.

8.4.1 Business model 1 — Retailer led

In this business model the customer only interacts with their electricity retailer (as outlined in section 8.4.1 below). The retailer coordinates the sale, installation, operation, and maintenance of the battery for the customer. The retailer realises the benefits, and pays the costs, of the battery's operation to realise the various value streams.

The retailer may have contracts with a number of battery providers, operators, installers and maintenance companies under this model, or it may choose to bring all of these functions in-house. Regardless, the distinguishing feature of this model is that the customer is not required to contract or engage with any of these parties directly because the retailer coordinates them all.

Figure 8.2: Business model 1 – Retailer-led



Source: AEMC

Note: *Energy exported from the customer's connection point enters settlement as negative demand for the retailer. This has the same financial effect for the retailer as selling energy.

Specific retail offers made to customers within this business model may vary. For example, when ceding control over the battery to the retailer, the customer may receive a discount off the battery purchase price up front and then receive a typical retail offer. Alternatively, the customer may pay the retailer the full cost of the battery but be rewarded when the retailer is able to make value from the battery, such as an elevated feed-in-tariff for generation at times of high wholesale prices.

There are some retailer-led products available which only minimise that consumer's consumption from the grid due to the battery market being immature and still exhibiting barriers to utilising all of the value streams that batteries can provide. This may change in the near future once BSPs are able to further develop the learnings of the orchestration and optimisation aspects of the business.

Examples of the retailer led business model include AGL's Australian Renewable Energy Agency (ARENA) sponsored VPP in South Australia and EnergyAustralia's solar plus storage publicly available products. The AGL VPP example is explored further in Box 20 below.

BOX 20: AGL VPP TRIAL

In February 2017, AGL commenced its VPP trial in South Australia. The trial involves AGL installing and operating 1,000 behind-the-meter residential energy storage systems capable of dispatching up to 12MWh of stored energy. As at May 2018, 312 batteries had been installed. The project is valued at \$19.22 million with ARENA providing \$5 million in the trial.

Under the trial, customers in metropolitan Adelaide purchase LG Chem and SolarEdge products, or a Tesla Powerwall 2 at a subsidised price (ranging from \$3,990 to \$7,990 respectively). The customer therefore owns the battery and solar PV products, but must contract with AGL for a 5-year period. Customers are able to exit the scheme early but are subject to a termination fee that takes into account the period of time on the VPP trial and the value of the battery and solar system installed.

The normal operating methodology for the customer's storage systems is to reduce bills by maximising solar self-consumption. The battery is operated to charge when the solar production is greater than household load and then discharge when the household load exceeds solar production. AGL carried out a trial orchestration in December 2017.

There are a number of value streams available to both customers and AGL resulting from the trial:

- The customer is able to maximise solar self-consumption and reduce peak usage leading to lower bills.
- Early results from the VPP trial indicate that it may be able to participate in the six-second contingency market. Further work will be carried out to test this in future stages.
- AGL reports that the trial can provide network support through peak demand management.
- The aggregation of batteries provides a physical hedge and arbitrage opportunity in the wholesale market.

Table 8.2 explores the positive and negative aspects of the retailer led business model for consumers and retailers using the corresponding assessment framework.

Table 8.2: Consumer and retailer experience of business model 1 – retailer led

INDICATOR	ASSESSMENT
Consumer experience assessment	
Retail choice	<p>The retailer is the one stop shop for the customer. While this is likely to minimise confusion for consumers it is also likely to present a significant barrier to retailer choice for the customer.</p> <p>This is likely to necessitate long-term contracts which customers may be reluctant to enter in to, especially given low levels of trust in the retail market.</p>
Consumer protections	As a retailer, the NECF applies, potentially providing a greater suite of consumer protections to the customer.
Value stream realisation	Retailers have the easiest access to all three non-customer value streams and therefore are most easily able to realise the full value that batteries can provide. This value can therefore be shared with the customer.

INDICATOR	ASSESSMENT
Complexity	Very simple for the customer. Only having to interact with one party is likely to be a benefit for customers.
Retailer experience assessment	
Value	Having control of a fleet of controllable distributed generators is likely to present significant value to the retailer. This will effectively act as a physical hedge in the wholesale market. It will also provide the ability to minimise network costs for their customer base.
Customer acquisition and retention	Acquisition: Signing customers to these types of products is likely to be difficult because it is likely to lock in the customer for the life of the asset and trust in the retail market is low. Retention: Alternatively, if new customers can be gained or existing customers add batteries they are likely to be long-term customers.
Transaction costs	Coordinating all the different parties for the customer may not be easy.
Skills acquisition	Currently, few if any retailers have the skill sets required to operate this model. This would either require significant skill development or acquisition of businesses that do. Some retailers may also gain these skills through contracting.

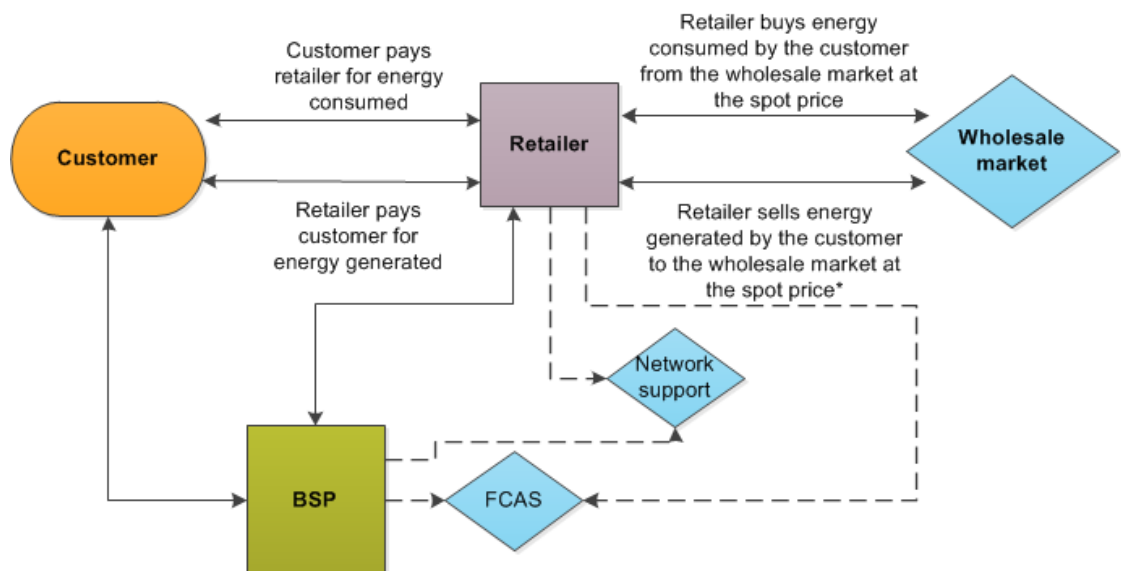
8.4.2

Business model 2 — Retailer and BSP coordination

In this business model a BSP and a retailer develop joint product offerings for customers. Typically, this involves the BSP selling, installing and operating a battery for the customer. The retailer then makes specific retail market offer(s) available on the condition the customer is also contracted with the BSP.

The BSP and retailer enter into commercial arrangements for the BSP to operate the battery to the commercial advantage of the retailer. This arrangement may be complex and take a number of forms based on how the parties seek to optimise the battery. As displayed in Figure 8.3, the retailer is purchasing and selling energy on behalf of the customer in the wholesale market while the BSP or the retailer may be able to earn network support payments and participate in FCAS.

Figure 8.3: Business model 2 – Retailer/BSP coordination



Source: AEMC

Note: Energy exported from the customer's connection point enters settlement as negative demand for the retailer. This has the same financial effect for the retailer as selling energy.

There are a variety of products that fall under this model. The offers made to customers, who and how they interact with the BSP and retailer, and the product offering vary.

Two examples of the retailer/BSP cooperation business model are provided in Box 21 and Box 22 below. Other examples include, Reposit Power's partnerships with Diamond Energy and ActewAGL, and Energy Local's partnership with Tesla.

BOX 21: REPOSIT POWER AND POWERSHOP

A Reposit box is a hardware product for consumers with a solar and battery system that learns the customer's consumption, solar generation, battery behaviour and energy costs in real-time. It monitors usage patterns to optimise battery charging and discharging via its 'intelligent pre-charge'.

The Reposit box enables customers to earn GridCredits by discharging their battery during peak demand periods. It also enables customers to benefit from the intelligent pre-charge function where the battery is charged at off-peak rates. Reposit estimates these two additional revenue streams may be worth up to \$236 per year and \$350 per year respectively.

Powershop offers Reposit customers its Grid Impact retail offer. This allows Powershop to activate a customer's solar battery systems when electricity prices or demand for electricity are high. In exchange, customers earn a set amount of GridCredits every three months.

BOX 22: SONNEN AND ENERGY LOCALS

Sonnen and Energy Locals in partnership offer residential customers in New South Wales, South East Queensland, South Australia, the Australian Capital Territory and Tasmania the SonnenFlat package. Customers that purchase solar PV and a battery from Sonnen are eligible for SonnenFlat. The options for customers are set out in Table 8.3.

Table 8.3: SonnenFlat packages

	ECONOMY	FAMILY	AUTONOMY
Minimum solar (kW)	5.0	7.5	10.0
Minimum Sonnen battery size	8	10	12
Monthly membership fee	\$42	\$52	\$62
Yearly (free) energy allowance (kWh)	7,500	10,000	12,500

Source: <https://sonnen.com.au/sonnencommunity/>

The partnership consists of Sonnen performing the BSP role. This includes the sale, installation, maintenance and operation of the battery and solar PV. Energy Locals is the authorised retailer and this partnership is consistent with the "platform retailer" product that Energy Locals provides for a number of new energy service providers.

The positive and negative aspects of the retailer and BSP business model in relation to the consumer and retailer experience assessed against the relevant framework is summarised in Table 8.4.

Table 8.4: Consumer and retailer experience of business model 2 – Retailer/BSP coordination

INDICA-TOR	ASSESSMENT
Consumer experience assessment	
Retail choice	Facilitates retail choice. However, choice will be limited to the number of retailers the BSP has contracted with. For example, in the Reposit Power case study above, Reposit Power currently has contracts with Diamond Energy, Powershop and ActewAGL.
Consumer protections	Consumer protections through the ACL. The NECF is unlikely to apply because the battery will be provided by the BSP.

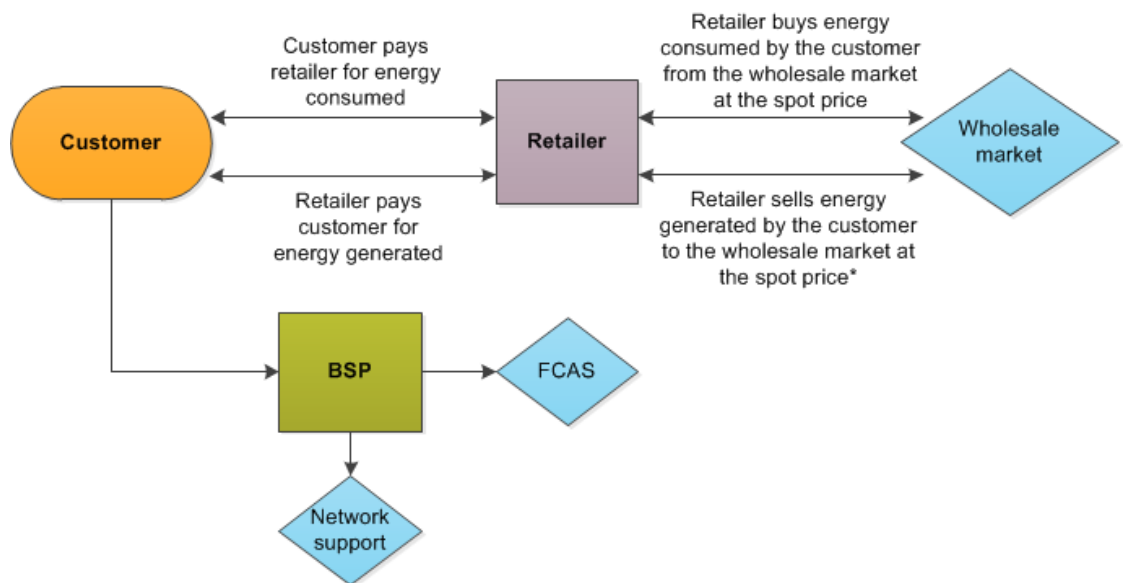
INDICA-TOR	ASSESSMENT
Value stream realisation	Access to full value streams likely to decrease cost/result in better products
Complexity	The customer has to engage and contract with both the BSP and a retailer which increases complexity relative to option one. However, the deliberate coordination between the retailer and the BSP is likely to make this a smoother experience for the customer than option three.
Retailer experience assessment	
Value	The ability to realise value under this model is determined by the strength of the relationship between the BSP and the retailer.
Customer acquisition and retention	Customer acquisition: The retailer may avoid marketing costs because the BSP may do much of this for them. Customer retention: Doesn't create the level of customer stickiness of one.
Transaction costs	Similar to the customer side, this model may be complex for the retailer because the contractual arrangements with the BSP will need to be sophisticated. The retailer may also need to contract with a number of BSPs if it wishes to gain market share through this business model.
Skills acquisition	This avoids the substantial skill gains necessary for business model 1 while allowing a level of control/value realisation that is not available in business model 3.

8.4.3

Business model 3 — Passive retailer-BSP led

This model, as shown in Figure 8.4 below, involves no active participation or coordination from the retailer. The customer has the regular relationship with the retailer (buys and sells energy from and to it). Similar to business model 2, the customer contracts with the BSP to sell, install, maintain and operate the battery. The key distinction between models 2 and 3 is that under model 3 there is no relationship between the retailer and BSP.

Figure 8.4: Business model 3 – BSP led



Source: AEMC

Note: *Energy exported from the customer's connection point enters settlement as negative demand for the retailer. This has the same financial effect for the retailer as selling energy.

Any retail product can technically fall within this model. However, the retail offers that are most likely to suit this model are those that reflect wholesale and network costs to a greater degree than traditional flat rate retail tariffs. Amber Electric's spot pass through product is an example of a retail tariff that is likely to be well suited to the passive retailer business model and is set out in Box 23 below.

In the Commission's retailer interviews a number of retailers noted that once batteries reached a material penetration they would be likely to develop specific tariffs to attract customers. Retailers noted this would be similar to how they have developed specific tariffs for solar customers and more recently for electric vehicles customers. While this is common across all three business models, market develop in that fashion is specifically important for this business model to be widely available.

BOX 23: AMBER ELECTRIC — SPOT PRICE PASS THROUGH

Amber Electric, in coordination with Energy Locals, currently offers residential customers in New South Wales and South Australia a fully cost reflective market offer. The offer includes:

- 30 minute wholesale spot price charges for energy usage
- 30 minute wholesale spot price payments for energy generation
- network tariff pass through

- \$10 per month fixed charge to recover Amber Electric's operating costs.

The offer is ideally suited to the passive retailer model because the dynamic nature of the pricing allows the battery's technical capabilities to be fully utilised by a BSP. Furthermore, the direct pass through of the wholesale spot price for both generation and load allows a BSP to capture the wholesale market value that a battery can provide without becoming a retailer. The BSP therefore has the ability to access all value streams for the customer.

In interviews with Commission staff Amber Electric noted that the tariff would be likely to become even more dynamic over time as cost reflective network tariffs are rolled out and five minute settlement is introduced.

This section explores the positive and negative aspects of the passive retailer business model in relation to the consumer and retailer experience, as summarised in Table 8.5.

Table 8.5: Consumer and retailer experience of business model 3 – Passive retailer – BSP led

INDICATOR	ASSESSMENT
Consumer experience assessment	
Retail choice	Retail choice fully retained. However, the number of retailers which currently offer spot price pass through is limited.
Consumer protections	Consumer protections through the ACL. The NECF is unlikely to apply because the battery will be provided by the BSP.
Value stream realisation	Value in the wholesale market cannot be realised other than to the extent the retail tariff reflects such value (e.g. spot price pass through tariffs). In this case however, the consumer would be expected capture the greatest amount of value.
Complexity	Relatively simple because the battery service provision is provided through the BSP and the customer has a normal relationship with the retailer.
Retailer experience assessment	
Value	The retailer will have little knowledge or control of the operation of the battery. The effect of this on the retailer is likely to be unpredictable and may result in higher risks for retailers which are not passing through their input costs to retail tariffs. This is because the retailer's load may become more volatile than a typical residential customer, and therefore harder to hedge for these customers.
Customer acquisition and retention	This business model is likely to facilitate customer acquisition at low cost for retailers willing to develop retail offers that suit customers and BSPs.
Transaction costs	Transaction costs are low in this model.
Skills acquisition	Not applicable.

8.5 Summary and conclusion

This section provides a summary of the consumer and retailer experience of each business model. It then concludes with the Commission's assessment of how retail energy competition is promoting innovation related to behind the meter battery products and services.

8.5.1 Summary of consumer and retailer experiences

Table 8.6 provides a summary of the strengths and weaknesses of the different business models explored above.

Table 8.6: Comparison of consumer and retailer experience of each business model

BUSINESS MODEL	RETAILER LED	RETAILER & BSP COORDINATION	PASSIVE RETAILER - BSP LED
INDICATOR	ASSESSMENT OF INDICATOR		
Retailer experience assessment			
Value	Strength	Strength	Weakness
Customer acquisition	Weakness	Neutral	Strength
Customer retention	Strength	Neutral	Weakness
Transaction costs	Neutral	Weakness	Strength
Skills acquisition	Weakness	Strength	Strength
Consumer experience assessment			
Retail choice	Weakness	Neutral	Strength
Consumer protections	Strength	Weakness	Weakness
Access to full value streams	Strength	Strength	Weakness
Complexity	Strength	Weakness	Neutral

None of the business models is strictly superior from either the consumer or retailer perspective. The Commission expects that over time competition will reveal which business models and specific pricing structures and offers consumers prefer. In contrast, those which do not meet consumers preferences are likely to fall away. Through this process retailers and BSPs will be provided with strong incentives to meet consumers preferences.

The Commission's assessment against the expectations of a well functioning market at this stage of the development phase of battery technology is:

- Retail competition is facilitating a wide variety of business models and products being trialled and tested.
- Retailers are leveraging off their competitive advantages to provide consumers with products and service. For example:

- vertically integrated retailers are using their wholesale market expertise to make retailer led offers available where they can fully utilise the functionality of battery technology
- stand-alone retailers are making and analysing tariff options that support customer take up of batteries through the passive retailer-BSP led business model
- larger retailers are using their financial strengths to acquire BSP businesses to bring within their suite of products and services.
- Retail contestability is allowing new retailers to enter the market that specialise in providing offers specific to battery related products. It also allows BSPs a number of options to partner with to provide services. Retailers and BSPs are testing different cooperative relationships.
- There is strong participation in regulatory processes to decrease barriers to entry and increase the ability to realise value.
- Innovation in business models is occurring to overcome what have previously been considered as barriers to battery value realisation. For example Energy locals as a platform retailer to allow wholesale market value to be realised by BSPs without the need to gain retailer authorisation.

8.5.2

Conclusion

While early in the development phase of battery technology, this analysis indicates that contestable retail markets are facilitating innovation and are likely to result in offers that meet consumers preferences. Of particular note is that the wide variety of retailer sizes, strategies and skills within the NEM is facilitating innovation in the behind the meter battery storage space. This is important because it demonstrates that while smaller retailers often find it difficult to compete on a purely cost basis, they are providing a crucial role in product innovation in NEM retail energy markets.

Given the importance of new and emerging retailers to innovation it is also important to consider how other regulatory changes are likely to effect barriers to entry and expansion in the retail market. For example, retailers and BSPs noted in interviews with the Commission that price regulation through the DMO and VDO is likely to increase barriers and restrict innovation. The Commission will continue to monitor the impact of regulation to reduce regulatory barriers to innovation.

In contrast, there are regulatory reforms that are currently being implemented and considered that are important to allow the efficient realisation of the value that batteries can provide. The Commission considers these should be progressed. For example, the *Distribution network pricing arrangements* rule change is being implemented by DNSPs and the AER, and the *Five minute settlement* rule change is being implemented by AEMO and industry. Similarly, AEMO is undertaking VPP trials and the Commission is assessing three *Wholesale demand response mechanism* rule changes.

The Commission plans to complete similar analysis and assessment of innovation in the retail energy market in relation to electric vehicles in the 2020 retail energy competition review.

9

CONSUMER PROTECTIONS: NECF AND ACL

BOX 24: SUMMARY OF KEY FINDINGS

- The NECF and ACL are two different frameworks that complement each other to provide consumer protections to energy consumers. Each framework protect consumers in different ways and to different degrees. In order to understand these differences, and as a first step to reviewing how the NECF can continue to be fit for purpose, this chapter maps and explains the consumer protection elements of the NECF and the ACL.
- Energy consumers are protected by the core principles of the ACL's consumer protections for the supply of goods and services, including the supply of energy and energy related products (such as solar panels). The ACL includes prohibitions to protect consumers from certain conducts that harm effective competition, fair trade and commerce.
- In addition, and complementary to the general protections under the ACL, energy consumers are protected by energy-specific provisions under the NECF for the supply of energy. These protections focus on:
 - energy as an essential service (retail offers, disconnection and reconnection requirements)
 - vulnerable consumers (financial difficulty and hardship customers, consumers requiring life support equipment)
 - information requirements.
- Under the NECF and the ACL, compliance and enforcement powers are exercised in different ways. Each framework has its own regulators, agencies and processes. The NECF contains civil and private enforcement remedies. In addition to these, the ACL contains other civil and administrative remedies but also criminal enforcement remedies.
- As noted in chapter 2, since 2018, the AER has issued 23 infringement notices to retailers and DNSPs totalling \$460,000 for allegedly breaching a number of provisions of the NECF. This is compared to the \$900,000 in penalties ordered by the Federal Court when the ACCC took action against Click Energy for a breach of the ACL.
- There has been significant market evolution in recent years in relation to non-traditional energy services and products. The specific nature and application of the NECF has not adapted to these changes. There is a need to analyse and update the NECF framework to remove barriers to innovation and extend consumer protections to new models of essential service supply.

BOX 25: AEMC ACTION 2 — REVIEW OF RETAIL PRACTICES/CONDUCTS UNDER ACL'S PROTECTIONS

In 2019, one of the ACCC's priorities is consumer issues arising from opaque and complex pricing of energy.

The Commission supports the ACCC's focus on compliance with the ACL in the retail energy market. Consistent with the 2018 retail energy competition review, the Commission continues to note concerns with retailer pricing practices. Reviewing retailer practices under the ACL's unfair contract term provisions, misleading and unfair practices and information standards will assist in promoting retail competition practices that deliver better outcomes for consumers. The Commission will work together with the ACCC to improve coordination and consumer protections under both frameworks (NECF and ACL).

BOX 26: AEMC ACTION 3 — NON-TRADITIONAL ENERGY SERVICES AND PRODUCTS

The Commission will review whether changes to the NECF are necessary to make consumer protections fit for purpose and reduce barriers to innovation. This review will likely analyse the regulatory approach for new non-traditional energy services and products. For example, consumer protections in relation to distributed energy resources.

RECOMMENDATION 6: NATIONAL ENERGY REGULATORY CONSISTENCY

Consistent with previous recommendations, the Commission recommends that states and territories recommit to harmonising energy regulation where possible to reduce the costs borne by customers where retailers are required to comply with multiple regulatory frameworks.

Queensland has started a review to assess whether the state specific modifications have resulted in increased efficiencies or adversely affected consumer protection in pursuit of national consistency. The Commission supports these reviews and encourages future jurisdictional modifications to the NECF to be addressed through the rule change process.

There are two main sources of consumer protection for energy products and services, the NECF¹⁷⁰ and the ACL.¹⁷¹ The ACL is the principal consumer protection and fair trading law in

¹⁷⁰ The NECF is a suite of legal instruments primarily made up of the National Energy Retail Law (NERL) and the National Energy Retail Rules (NERR) that regulate the sale and supply of electricity and gas to retail customers. It is applied in each participating State or Territory through State or Territory laws. Those State or Territory laws can also modify the application of parts of the NERL and NERR in that State or Territory.

¹⁷¹ The ACL is set out in Schedule 2 to the *Competition and Consumer Act 2010* (CCA). The ACL is a single national law enforced in all jurisdictions (states and territories). Each state and territory applies the ACL in its own jurisdictional legislation.

Australia.¹⁷² The NECF regulates the sale and supply of electricity and gas to retail customers, and harmonises most energy consumer protections across participating jurisdictions. The NECF complements and operates alongside the generic consumer protections in the ACL, and state and territory regimes.¹⁷³

The NECF was developed in the context of regulating traditional services and the Australian energy retail market being opened up to competition. At the heart of this framework is the principle that consumers have a right to access energy (as an essential service) on fair and reasonable terms.¹⁷⁴ Since the NECF was established, the energy market has undergone significant transformation due to new technology, innovation in products and services, and changes in consumer preferences. The way in which electricity is supplied to consumers and how consumers engage with the market is changing. These changes have potential regulatory implications, in particular on regulations designed to protect energy consumers.

In previous reviews the Commission has noted that the evolving nature of the energy market provides an opportunity to consider whether the existing energy specific consumer protection framework continues to meet its objective.¹⁷⁵ There are differences between energy-specific consumer protections and more general consumer protections contained within the ACL. In order to understand these differences, and as a first step to reviewing how the NECF can continue to be fit for purpose, this chapter reviews and maps the consumer protection elements of the NECF and the ACL.¹⁷⁶ The chapter is structured as follows:

- mapping of the consumer protections under the NECF and the ACL identifying consumer outcomes under each framework
- a description of jurisdictional differences within the NECF
- a description of the enforcement powers to compare how consumers are protected under both frameworks and which are the applicable penalties and remedies
- analysis of consumer protection for non-traditional energy services and products.

9.1 Mapping the NECF and the ACL

To assist in comparing how consumer protections operate under the NECF and the ACL, the Commission identified five categories of protection that are applicable to both frameworks:

1. the contract (contract terms provisions)
2. retailer and distributor general information obligations before a contract is formed (marketing and offers) and once the contract is formed (additional information requirements)

¹⁷² Australian Government, Australian Consumer Law guide, *The Australian Consumer Law, A framework overview*, 2013, p. 1

¹⁷³ The NECF currently applies, with jurisdictional specific modifications, in Queensland, New South Wales, South Australia, Tasmania and the Australian Capital Territory. Victoria has adopted the NECF in a limited manner.

¹⁷⁴ NERL (Adoption) Bill 2012, Second Reading Speech.

¹⁷⁵ AEMC, *2018 Retail Competition Review*, final report, 15 June 2018, p. 163.

¹⁷⁶ There are other consumer protections that are not included in this review, as follows: retailer's authorisation and exemption framework under the NECF, prepayment meter provisions under the NECF and pricing provisions under the ACL. The Commission notes that the Competition and Consumer (Industry Code Electricity Retail) Regulations 2019 introduced an Electricity Retail Code of Conduct with new requirements on retailers in addition to the ACL and NECF provisions. The Electricity Retail Code of Conduct is not included in this chapter.

3. service standards and quality
4. complaints and dispute resolution procedures (ombudsman schemes)
5. additional protections (financial difficulty, disconnection/reconnection, life support equipment).

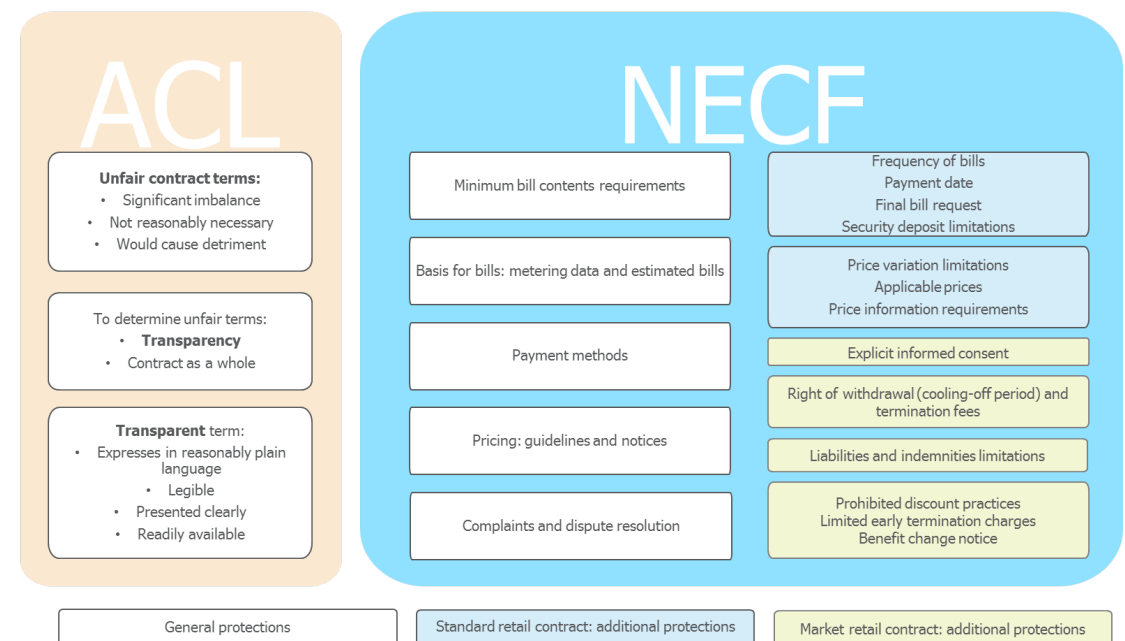
9.1.1

Contract terms

Under the NECF a retailer can only provide retail services to small customers¹⁷⁷ under two types of contracts; standard and market retail contracts.¹⁷⁸ Retailers must comply with minimum requirements under each contract to guarantee the provision of energy. In general, the NECF prescribes what these contracts must and must not include. However, it does not provide any general principles for retailers to follow when designing contract terms. In contrast, the ACL does not specify specific terms applicable to the sale of goods and services but includes a set of principles that businesses must have in mind when designing and entering into consumer contracts, including energy contracts.

Figure 9.1 below summarises the key consumer protections that both frameworks contain.

Figure 9.1: Contract terms consumer protections



Source: NERL, NERR, ACL.

¹⁷⁷ Under the NECF, a small customer is a residential customer or a small business. NERL, Section 5.

¹⁷⁸ NERL, Section 20(2).

National Energy Customer Framework

The NECF sets minimum requirements for energy contracts (including both standard and market retail contracts) that are related to four main areas (further detail is provided in appendix d):

1. billing, including the content of a bill and the basis for calculating or estimating bills.¹⁷⁹
2. payment obligations and methods¹⁸⁰
3. pricing, including compliance with the RPIG¹⁸¹ and notifying customers of price variations¹⁸²
4. customer complaints and dispute resolution.¹⁸³

In addition, the NECF contains specific requirements for standard and market retail contracts.

Standard retail contract

Following the introduction of retail competition, retailers are required to offer at least one standard retail contract at standing offer prices to provide small consumers access electricity from each retailer. The NECF therefore created the standard retail contract that retailers are obligated to offer:

- when there is no existing connection at the customer premises the designated retailer (local area retailer)¹⁸⁴ must make an offer under the retailer's standard retail contract¹⁸⁵
- where there is an existing connection but no energy is supplied, the designated retailer must advise the customer of the availability of the retailer's standing offer.¹⁸⁶

Additionally, the NECF specifies certain circumstances where the standard retail contract is the default contract when the customer does not choose any specific plan¹⁸⁷, when:

- a customer moves-in and the customer starts consuming energy at the premises¹⁸⁸
- the customer's previous retail contract terminates and the customers continues to consume energy at the premises¹⁸⁹
- a customer is designated to a retailer of last resort ROLR.¹⁹⁰

Further to the above, the NECF requires that once a customer has requested the provision of retail services under a standing offer, the retailer cannot decline to enter into a standard retail contract.¹⁹¹

¹⁷⁹ NERR, Rule 25 and NERR, Rules 20, 21, 22, 30 and 31.

¹⁸⁰ NERR, Rule 32.

¹⁸¹ NERL, Sections 24, 37.

¹⁸² NERR, Rules 46 and 12; Schedule 1, Model terms and conditions for standard retail contracts, Clause 8.2.

¹⁸³ NERL, Part 4.

¹⁸⁴ NERL, Section 2.

¹⁸⁵ NERL, Section 22.

¹⁸⁶ Unless the customer is a small market offer customer. NERR, Rule 16.

¹⁸⁷ NERR, Rules 12 and 54, Schedule 1, Model terms and conditions for standard retail contracts; NERL, Section 26.

¹⁸⁸ NERR, Rule 54.

¹⁸⁹ Ibid.

¹⁹⁰ NERL, Part 6.

¹⁹¹ If the customer comply with any pre-condition to contract formation in the NERR. NERL, Section 26.

Additionally, the NECF prescribes the model terms and conditions of this standard form contract.¹⁹² Any alterations to these contracts must only be those permitted or required under the NERR. Permitted alterations are those related to a retailer's contact details and identity or minor alterations that do not change the substantive effect of the model terms and conditions.¹⁹³ Required alterations are those prescribed by the NERR in relation to matters of each jurisdiction or matters otherwise required under the NERR.¹⁹⁴

The contract requirements prescribed in the NECF to protect consumers under a standard retail contract include (see Appendix D for further details):

1. billing, including frequency of bills and payment dates
2. pricing, including price variations and information on prices.

Market retail contract

The requirements for a market retail contract are less prescriptive than the standard retail contract under the NECF. There are no model terms and conditions for market retail contracts under the NECF, with most terms being as agreed between the retailer and the small customer.¹⁹⁵ However, this contract must be consistent with the applicable minimum requirements under the NERR¹⁹⁶, any variation must be consistent with the NERR variation requirements¹⁹⁷ and in case of any inconsistency, the NERR will prevail.¹⁹⁸

The minimum requirements are related to the following areas:

1. explicit informed consent¹⁹⁹
2. withdrawal and termination²⁰⁰
3. liabilities and indemnities²⁰¹
4. prices and charges, including discounting practices, early termination charges and benefit change notification.²⁰²

Customer connection services

A distributor must provide customer connection services if a customer request those services and their premises are connected, or they are seeking to have those premises connected to the distribution system.²⁰³ These customer connection services must be provided in accordance with the relevant contract requirements prescribed under the NERL, NERR, NER and National Gas Rules.²⁰⁴

¹⁹² NERL, sections 25(1), 25(3), 27, 29; NERR, Rule 12, Schedule 1, Model terms and conditions for standard retail contracts.

¹⁹³ NERL, Sections 25(4).

¹⁹⁴ NERL, Sections 28.

¹⁹⁵ NERR, Rule 14.

¹⁹⁶ NERL, Section 34.

¹⁹⁷ NERL, Section 35.

¹⁹⁸ NERL Section 36; NERR, Rule 15.

¹⁹⁹ NERL, Section 38.

²⁰⁰ NERR, Rule 47 and 49(2).

²⁰¹ NERR, Rule 51 and 52.

²⁰² NERR, Rules 46B, 49A and 48A).

²⁰³ NERL, Section 66(1).

For small customers, distributors must, as soon as practicable after the retailer notifies the distributor of the formation of a retail contract, provide customer connection services under the model terms and conditions of a deemed standard connection contract.²⁰⁵ This provision assists consumer in being supplied with energy connection services from distributors once a retail contract is formed.

Australian Consumer Law

In contrast, the ACL does not prescribe what consumer contracts must and must not include. In general, it is a principles-based approach to promote competition and fair trading, and for providing consumer protection.²⁰⁶ The ACL includes legal requirements, penalties and remedies relevant to businesses and individuals that deal 'in trade or commerce'. This means that it essentially covers everybody, whether it is a consumer buying products or services, or whether it is a business that sells products or services to individuals or other businesses.²⁰⁷

In particular, the ACL has restrictions regarding unfair contract terms.²⁰⁸ The ACL's unfair contract term provisions apply to consumer contracts for the supply of goods or services for personal, domestic or household use or consumption.²⁰⁹ For the purposes of the ACL, electricity and gas are 'goods'.²¹⁰ Energy contracts are therefore covered by the ACL and the unfair contract term provisions are applicable to retail energy contracts.²¹¹

The ACL defines what an unfair contract term is and what a court may take into account when determining whether a contract term is unfair.²¹² There are three limbs that are part of the unfairness test under the ACL and all must be proven to exist for a court to decide that a term is unfair:²¹³

1. a term of a consumer contract is unfair if it would cause a significant imbalance in the parties' rights and obligations under the contract
2. it is not reasonably necessary to protect the interests of the party that would be advantaged by the term
3. if the term would cause detriment to a party if it were to be applied or relied on.

²⁰⁴ NERL, Section 66(2).

²⁰⁵ NERR, Part 4; Schedule 2.

²⁰⁶ Competition and Consumer Act 2010, Part 1, Section 2.

²⁰⁷ The ACL applies to small business contracts to the extent they meet the definition under Section 23(4), which provides that: a small business contract is defined as the contract for a supply of goods and services (or a sale or grant of an interest in land) and at the time the contract is entered into, at least one party to the contract is a business that employs fewer than 20 persons; and either of the following applies: the upfront price payable under the contract does not exceed \$3000,000; or the contract has a duration of more than 12 months and the upfront price payable under the contract does not exceed \$1,000,000. ACL, Section 23(4).

²⁰⁸ ACL, Part 2-3.

²⁰⁹ A consumer contract is defined under the ACL as a contract for: a supply of goods or services (or a sale or grant of an interest in land) to an individual whose acquisition of the goods, services or interest is wholly or predominantly for personal, domestic or household use or consumption. ACL, Section 23(3).

²¹⁰ ACL, Section 2.

²¹¹ Section 2 of the ACL provides that the definition of 'goods' includes gas and electricity. To the extent that a contract provides for the provision of 'services' (as defined), additional protection may apply.

²¹² ACL, Section 24.

²¹³ ACL, Section 24(1); see ACCC, *Unfair contract terms — A guide for business and legal practitioners*, p. 11.

When a court is determining if a contract term is unfair, the term must be considered in the context of the contract as a whole and it may take into account the extent to which the term is transparent.²¹⁴ For example, terms that may not be considered transparent are those hidden in fine print or schedules, phrased in legalese or in complex or technical language or are ambiguous or contradictory.²¹⁵ This transparency provision is an example of the principle-based regulation under the ACL that is applicable to consumer contracts including energy retail contracts.

There are some contract terms where the ACL unfair contract term provisions do not apply. For example, the ACL unfair contract term provisions do not apply to a term that defines the main subject matter of the contract (the good or service of a consumer contract) or a term that sets the upfront price payable under the contract.²¹⁶ This is mainly because a consumer had the choice whether to make the purchase on the basis of what was offered, and with the price that was disclosed before the contract was formed.²¹⁷

The definition of 'upfront price' in the ACL is key to understanding which terms are covered by the unfair contract term provisions.²¹⁸ The upfront price includes any payments to be provided for the supply, sale or grant under the contract that are disclosed at or before the time the contract is entered into.²¹⁹ If the term that sets the price under the contract includes any other consideration that is contingent on the occurrence or non-occurrence of a particular event, it is not an upfront price as defined under the ACL.²²⁰ For example, terms that impose fees and charges levied as a consequence of something happening or not happening at some point over the period of the contract are not upfront prices and therefore, are covered by the ACL's unfair contract term provisions.²²¹

When considering if a future payment is an upfront price or not, the court may take into account whether these payments were transparently disclosed to the consumer. A court may also consider whether the consumer was made aware of the basis on which such payments would be determined, at or before the time the contract was made.²²²

For energy, standing and market retail contract prices are a retailer's standing and market offer prices. The application of the ACL's unfair contract terms provisions to the price terms of an energy retail contract will depend on how these terms are structured. If the retail contract term related to payment is not disclosed at or before the time the contract is formed, or includes any other payment that is contingent on the occurrence or non-occurrence of a particular event, it would not be an upfront price and therefore, the ACL's unfair contract term provisions would apply.

²¹⁴ ACL, Section 24(2).

²¹⁵ ACCC, *Unfair contract terms - A guide for business and legal practitioners*, p. 12.

²¹⁶ ACL, Section 26.

²¹⁷ ACCC, *Unfair contract terms - A guide for business and legal practitioners*, p. 12.

²¹⁸ ACL, Section 26(2) defines 'upfront price'.

²¹⁹ ACCC, *Unfair contract terms FAQs*, *What is the upfront price payable? can be accessed at* <https://www.accc.gov.au/business/business-rights-protections/unfair-contract-terms/unfair-contract-terms-faqs>

²²⁰ ACL, Section 26(2).

²²¹ ACCC, *Unfair contract terms - A guide for business and legal practitioners*, pp. 9-10.

²²² Explanatory Memorandum to the Trade Practices Amendment (Australian Consumer Law) Bill (No. 1) 2009 (Cth), cl [2.73].

In the energy retail market, price competition using conditional discounts is a very common pricing practice. This practice has led to concerns raised in the ACCC's REPI, the Thwaites Review and the AEMC's 2017, 2018 and this retail energy competition review. There is a view that this form of pricing practice has led to consumer confusion, makes offers by retailers harder to compare and results in lower levels of engagement in the energy sector.²²³ For example, if the terms in consumer contracts that set conditional discounts are not upfront prices (as defined under the ACL) then these terms will be covered under the ACL's unfair contract term provisions. Reviewing this retail practice under ACL's could improve retail competition practices and deliver better outcomes for consumers.

9.1.2

Marketing and Offers

Under the NECF, retailers and retail marketers must comply with legal requirements in terms of information and marketing of retail contracts. In contrast, under the ACL there are no requirements specifically for retailers or retail marketers but there are broadly applicable consumer protections including:

- core consumer general protections prohibiting misleading or deceptive conduct, unconscionable conduct²²⁴
- specific protections against unfair practices, including (amongst others):²²⁵
 - false or misleading representations about goods or services²²⁶
 - misleading or deceptive conduct as to the nature of goods or services²²⁷
 - offers and unsolicited supplies of goods and services.²²⁸

Figure 9.2 below compares key consumer protections for marketing and offerings under both the NECF and the ACL frameworks.

²²³ AEMC, *2018 Retail Energy Competition Review*, p. 18.

²²⁴ ACL, Part 2-1 and 2-2.

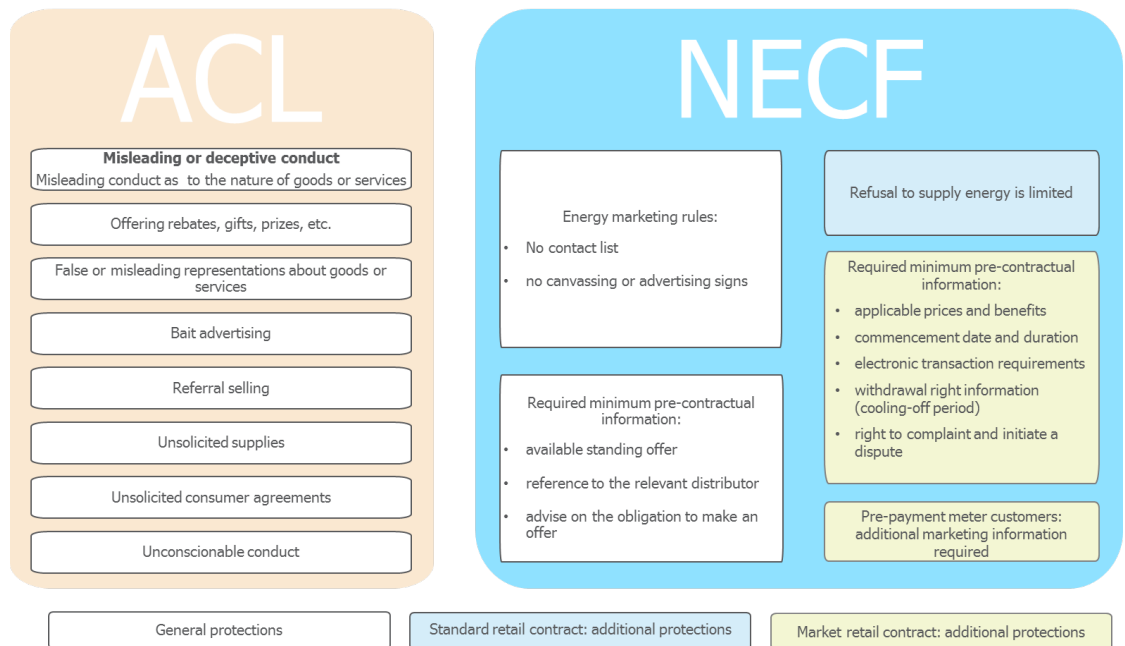
²²⁵ ACL, Part 3-1.

²²⁶ ACL, Part 3-1, Section 29.

²²⁷ ACL, Part 3-1, Sections 33-34.

²²⁸ ACL, Part 3-1, Division 2.

Figure 9.2: Marketing and offer consumer protections



Source: ACL, NERL, NERR.

National Energy Customer Framework

The NECF sets a specific framework to regulate energy marketing activities and what any person who carries out these activities must comply with.²²⁹ Under the NECF, energy marketing activities are any activities that market, advertise or promote consumer connection services or customer retail services.²³⁰ These activities are regulated not only by the energy marketing rules set out in the NERR²³¹ but also by the ACL.²³² The NECF includes, pre-contractual information and marketing rules (no contact list, no canvassing and advertising signs. See Appendix D for further details).

In terms of specific regulation for retail contract (standard and market retail contracts), the NECF sets additional marketing requirements as follows.

²²⁹ NERL, Section 53(2).

²³⁰ NERL, Section 2. 'Customer connection services' include (among other things) a service relating to a new connection or connection alteration and 'customer retail service' is the supply of energy by a retailer to a customer.

²³¹ NERR, Rule 60.

²³² In addition to the ACL and NECF, there are protections for telemarketing under the *Telecommunication Act 1991* and the *Do not call register Act 2006* that are applicable to the energy sector that are not covered under this chapter. For example, the hours when consumers can be contacted are limited and any contact with consumers must comply with the identification and information requirements contained in these Acts. NERL, Division 8, note; NERR, Division 10, Note.

Standard retail contract

As mentioned, a designated retailer cannot decline to enter into a standard retail contract if the consumer makes the request and complies with the pre-conditions set out in the NERR. Additionally, a designated retailer cannot refuse the sale of energy to a residential customer under a standard retail contract on the grounds that the customer owes the retailer outstanding amounts from an unpaid account.²³³ These pre-contractual obligations are part of many other NECF provisions to guarantee the supply of energy.

Market retail contract

For market contracts, there is minimum information that must be provided to consumers before the formation of the market retail contract or as soon as practicable once the contract is formed. This includes pre-contractual information on the applicable prices, charges and benefits, commencement and duration of the contract, right to withdraw during a cooling-off period and dispute resolution.²³⁴

Australian Consumer Law

Under the ACL, there are a number of provisions prohibiting certain conducts to protect consumers, including (see Appendix D for further detail):

1. misleading and deceptive conduct (general protection)²³⁵, misleading conduct as to the nature of goods or services (specific protection)²³⁶
2. unfair practices,²³⁷ including offering rebates, gifts or prices, false, misleading representations, bait advertising and referral selling
3. unsolicited supply of goods and services²³⁸
4. unsolicited consumer agreements²³⁹
5. unconscionable conduct (the term “unconscionable conduct” is not defined in the ACL, its meaning has been developed by the courts.²⁴⁰)

When a consumer receives unsolicited supplies of goods or services, the ACL protects them by providing that in such case, the consumer is not liable to make any payment for the goods or services and is not liable for loss or damage as a result of the supply of the goods or services.²⁴¹ Energy consumers will be covered by these provisions for the supply of electricity or gas (goods for the purposes of the ACL) and for the supply of any other goods or services such as other energy products or services (i.e. batteries, solar panel, etc.).

²³³ NERR, Rule 18.

²³⁴ NERR, Rule 64.

²³⁵ ACL, Part 2-1.

²³⁶ ACL, Part 3-1, Section 33-34.

²³⁷ ACL, Part 3-1.

²³⁸ ACL, Part 3-1, Division 2, Sections 40-42.

²³⁹ ACL, Part 3-2, Division 2.

²⁴⁰ ACL, Part 2-2, Chapter 2. However, the ACL is not limited by the unwritten law relating to unconscionable conduct. The ACL gives statutory recognition to the doctrine of unconscionable conduct at common law level. ACL, Sections 20(1) and 21(4)(a).

²⁴¹ ACL, Sections 40-42.

Additionally, the ACL includes limitations on marketing practices when suppliers or sales persons approach or call a consumer without requesting it or being invited (unsolicited consumer agreements).²⁴² Situations that can lead to unsolicited agreements are (amongst others):

- door-knocking and calls to offer the sale of products or services or invitations to switch to a different service provider
- personal approaches at any public place (i.e. shopping centre) with the mentioned purposes
- messages left on answering machines for the customer to respond.

These provisions and the ACL's unfair practices provisions more generally, compliment the consumer protections under the NECF and are applicable to price competition practices in relation to energy contracts and retail advertising in the NEM. For example, on 9 July 2018 the ACCC announced it was taking action against Click Energy for false or misleading marketing claims under the ACL. In March 2019, the Federal Court ordered penalties of \$900,000 against Click Energy for making false or misleading marketing claims by offering discounts 'off-rates' that were higher than Click Energy's standing offer rates available to all consumers.²⁴³ This means that the effective discounts offered by Click Energy were smaller than what was advertised and, in some cases, consumers effectively received no discount at all. Of note, this amount nearly double the amount civil penalties the AER issued to retailers and DNSPs from 2018 for alleged breaches of the NECF, which totalled \$460,000 for allegedly breaching the NECF.

The Click Energy case also demonstrates the overlapping nature of the ACL and NECF in some instances. On 20 March 2018, the Commission received a rule change request from the then Hon. Minister Josh Frydenberg MP, Minister for the Environment and Energy on behalf of the Australian Government, to restrict retailers from similar pricing practices.²⁴⁴ On 15 May 2018, the Commission made a rule to prohibit confusing retail discounting practices where retailers increase the base rate of a market offer to above the level of its standing offer to advertise a larger discount.²⁴⁵

As mentioned in section 4.4.1, there are other retail pricing practices that raise consumer protection issues. For example, Choice states that in late 2018, Sumo Power allegedly increased some of its customers' prices by over 50 per cent within weeks of signing the customer up with the offered rate.²⁴⁶ Further, this original lower priced offer was still available to new customers who wanted to switch to Sumo Power.²⁴⁷ The ACCC has announced through its Compliance and Enforcement Priorities that in 2019 a focus will be on opaque and complex pricing practices of essential services, in particular energy and telecommunications.

²⁴² ACL, Part 3-2, Division 2.

²⁴³ ACCC, *ACCCCount report of the ACCC's activities*, 31 March 2019.

²⁴⁴ AEMC, *Preventing discounts on inflated energy rates, rule change request*, 15 May 2018.

²⁴⁵ AEMC, *Preventing discounts on inflated energy rates*, final determination, 15 May 2018.

²⁴⁶ Choice, *Bait and switch?*, 10 December 2018, found at: www.choice.com.au/shopping/shopping-for-services/utilities/articles/sumo-powers-big-rate-increase, accessed 27 May 2019.

²⁴⁷ *ibid.*

Within this framework, the practice of retailers significantly raising prices soon after a customer transfers on a variable priced contract is likely to be a focus.²⁴⁸

The Commission has also considered changes to the NERR to address similar behaviour. For example, in 2018 the Commission introduced regulatory changes to enhance a consumer's ability to respond to price changes through introducing notification requirement on retailers in advance of changing prices.²⁴⁹ The Commission also analysed similar conduct in 2014 within its *Retailer price variations in market retail contracts* rule change. The Commission made a rule requiring retailers to improve the information they give to consumers when entering energy contracts about whether prices can change and when they will notify consumers of any price changes.²⁵⁰

The above examples highlight the need for the Commission and the ACCC to work together to improve coordination and consumer protections under both frameworks (NECF and ACL). It is when these frameworks compliment each other that consumers will receive appropriate consumer protections and regulatory compliance burdens will be minimised.

9.1.3

NECF additional information requirements

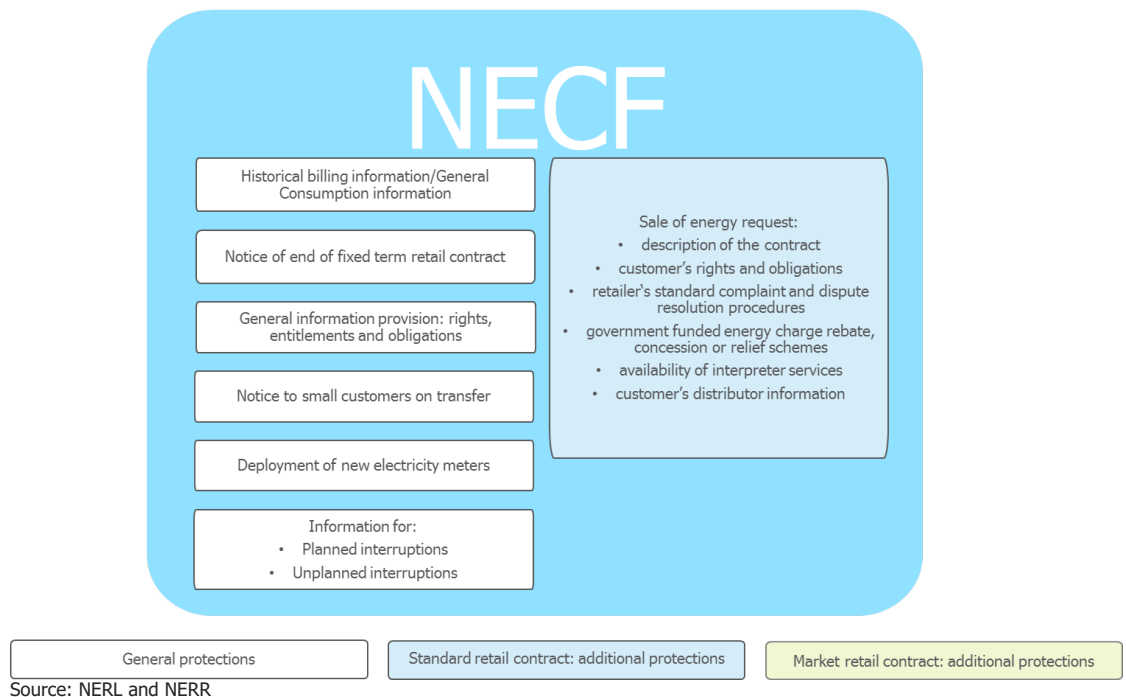
Most of the information requirements are related to pricing and are included as contractual requirements in the previous section (see section 9.1.1). In addition, the NECF contains other requirements related to consumer information requests, general information for the supply of energy, and notification for new meter deployments and energy interruptions. Under the ACL there are no equivalent consumer protections to these information requirements under the NECF. Figure 9.3 below summarises these additional information requirements.

²⁴⁸ ACCC, 2019 ACCC Compliance and Enforcement Priorities, December 2018.

²⁴⁹ AEMC, Advance notice of price changes rule change and Notification of the end of a fixed benefit period rule change.

²⁵⁰ AEMC, Retailer price variations in market retail contracts, final determination, October 2014.

Figure 9.3: Information requirements



Retailers and distributors have the obligation to provide information in accordance with the NECF. In general, the following are additional information requirements applicable to retail contracts including (further detail can be found in Appendix D):

- providing historical billing data when requested (retailers and distributors)²⁵¹
- billing review, metering data can be checked or the meter be tested (retailers)²⁵²
- notifying customers of the end of the fixed term contract (retailers)²⁵³
- general information provision about a customer's rights, entitlements and obligations (retailers and distributors)²⁵⁴
- customer transfer notices (retailers)²⁵⁵
- information on new electricity meter deployment (retailers)²⁵⁶
- information when energy is interrupted (retailers and distributors)²⁵⁷

²⁵¹ NERR, Rules 28, 86A-86B and 56A.

²⁵² NERR, Rule 29.

²⁵³ NERR, Rule 48.

²⁵⁴ NERR, Rules 56 and 80 and 85.

²⁵⁵ NERR, Rule 58.

²⁵⁶ NERR, Rule 59A.

²⁵⁷ NERR, Rules 59C, 90, 91, 100 and 111.

Standard retail contracts

The NECF contains additional information requirements specifically for standard retail contracts. Once a small customer requests the sale of energy under a retailer's standing offer, the retailer must provide the customer with the following information:²⁵⁸

- a description of the retailer's standard retail contract and how copies can be obtained
- a description of the retailer's and customer's rights and obligations
- a description of the retailer's complaints and dispute resolution procedures
- on the availability of government funded energy charge rebates, concession or relief.

9.1.4

Service standards and quality

In terms of services standards and quality, the NECF has a provision to ensure that consumers continue to receive electricity and/or gas supply in the event of retailer failure.²⁵⁹ Additionally, the NECF has certain specific requirements that are limited to distribution services, and connection and disconnection standards. The ACL has a broader scope and provides consumer guarantees for consumer transactions relating to the supply of goods. These consumer guarantees do not apply to the supply of electricity and gas but may apply to other energy products or services.²⁶⁰ Figure 9.4 below lists the different consumer protections under both frameworks.²⁶¹

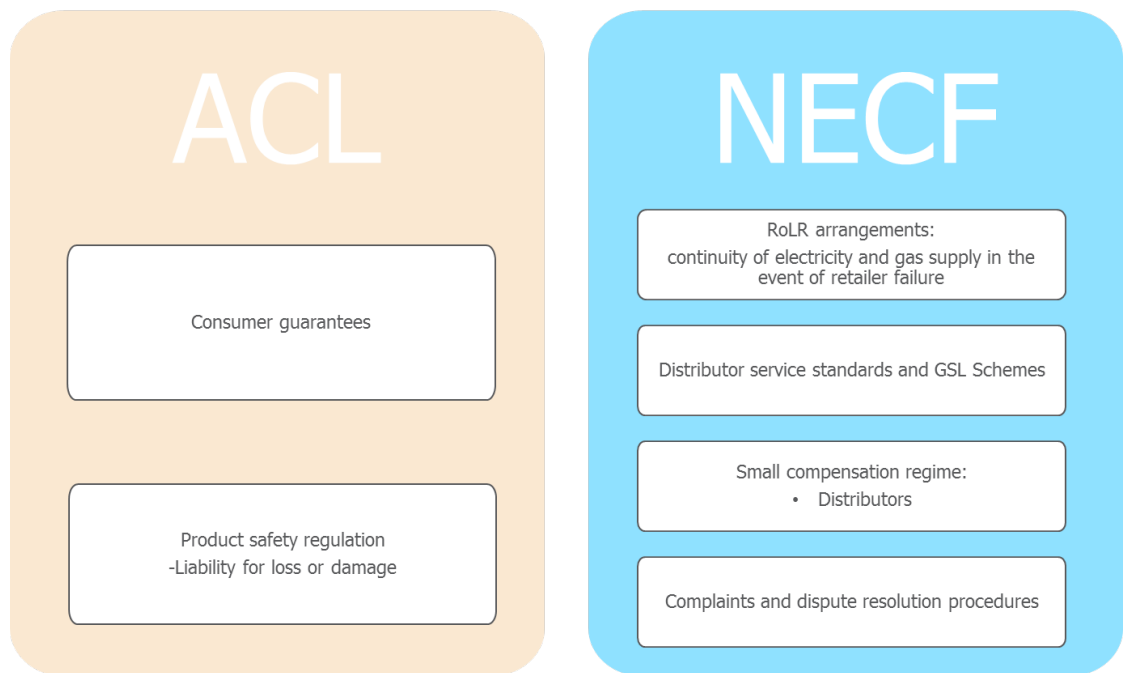
258 NERR, Rule 19.

259 NERL, Part 6, RoRL.

260 ACL, Section 65.

261 There is also other legislation that is relevant to the energy market that is out of scope for this first stage of the review. Some jurisdictions have legislative frameworks for the regulation of consumer safety in relation to gas and electrical products and services. For example, *Gas and Electricity (Consumer Safety) Act 2017 (NSW)*.

Figure 9.4: Service standards and quality consumer protections



National Energy Customer Framework

The NERL contains a small compensation claims regime to enable small customers to make small claims for compensation from distributors who provide customer connection services to their premises.²⁶² At present, the scope of this regime is limited to compensation for property damage on a customer's appliances or equipment due to voltage variations. However, no participating jurisdiction has opted-in to the small claims compensations framework to date.

Under the NECF, distributors must also comply with any applicable distributor service standards, including Guarantee Service Level (GSL) schemes.²⁶³ Customers (small customers only in some jurisdictions) who are connected directly to the distributor's network are subject to, by way of local legislation or codes, GSLs covering areas such as reliability customer service and connection and disconnection. Each jurisdiction prescribes GSL schemes, generally for each distribution business. These GSL schemes are determined by jurisdictional regulators and are usually included in a code or license conditions administered by the jurisdictional regulator.²⁶⁴

²⁶² NERL, Part 7.

²⁶³ NERR, Rule 84.

²⁶⁴ Chapter 5 in the NER details some power system performance and supply standards (technical requirements), as well as conditions for connection, but do not cover reliability. AEMC, *Review of the regulatory frameworks for stand-alone power systems*, Priority 1 - Draft, 18 December 2018, p. 117.

Additionally, distributors and retailers are required to be members of a jurisdictional ombudsman scheme. Energy ombudsmen provide independent dispute resolution services for disputes relating to energy. Small customers can access jurisdictional energy ombudsman to resolve disputes and complaints with their retailer and/or distributor whom are bound by the ombudsman's decision.²⁶⁵ Customers have the right to refer a complaint against retailers and distributors before the relevant ombudsman and which could be in relation to an energy service, as is explained in more detail in section 9.1.5.

Australian Consumer Law

The ACL provides general protections related to consumer guarantees for the supply of goods and services, and liability of manufacturers for goods with safety defects. Under the ACL, the term 'goods' include, among other things, gas and electricity.²⁶⁶ However, the ACL excludes the application of consumer guarantees to the supply of electricity and gas.²⁶⁷ The term 'services' include duties, work, facilities, rights or benefits provided in the course of business.²⁶⁸ Therefore, the ACL has a broad application and will not apply to the supply of electricity and gas, but may apply to other energy services and products acquired by consumers.

Consumer guarantees

Consumer guarantees provide consumers with a set of rights for the goods and services they acquire.²⁶⁹ Suppliers and manufacturers automatically provide guarantees about certain goods they sell, hire or lease, and services they provide to consumers. These rights exist regardless of any specific warranty provided by the supplier or manufacturer.²⁷⁰

In particular, the ACL excludes the application of consumer guarantees to the supply of electricity and gas. However, these provisions may apply in relation to the provision of other goods, such as solar panels or batteries. In general, other energy goods and other types of energy related services may be covered by consumer guarantees when they are sold in trade or commerce and bought by an energy consumer.

Consumers are provided with the following guarantees applicable to goods. A supplier and manufacturer will guarantee that:²⁷¹

- the goods are of acceptable quality
- will match any description provided
- and any express warranties must be honoured.

A supplier guarantees that a consumer is buying goods:

- that have clear title, unless otherwise stated

²⁶⁵ AEMC, *Review of the regulatory frameworks for stand-alone power systems*, Priority 1 — Draft, 18 December 2018, p. 123.

²⁶⁶ Ibid, p. 38.

²⁶⁷ ACL, Section 65.

²⁶⁸ Ibid, p. 39.

²⁶⁹ ACCC, *Consumer guarantees, a guide for business and legal practitioners*, 2016.

²⁷⁰ Ibid p. 7.

²⁷¹ ACL, sections 51-64A.

- that do not have undisclosed securities
- that are fit for any disclosed purpose
- with the right to undisturbed possession
- that match the sample or demonstration model provided.

In terms of services, a supplier guarantees that services are provided:

- with due care and skill
- which are fit for any specified purpose
- within a reasonable time (when no time is specified).²⁷²

Liability of manufacturers for goods

Consumers can also seek compensation for the amount of loss or damages caused by a safety defect in goods supplied by a manufacturer (such as batteries or solar panels). A manufacturer of goods is liable to compensate an individual if they supply a good with a safety defect and the consumer or another individual suffers injury because of the safety defect.²⁷³ The manufacturer is also liable to compensate an individual if they supply a good with a safety defect and:

- other consumer goods are destroyed or damaged by the safety defect.²⁷⁴
- land, buildings or fixtures are destroyed or damaged by the safety defect.²⁷⁵

Energy customers are protected by the specific provisions under the NECF for the supply of energy and by the core principles of ACL's consumer guarantees for the supply of other energy goods and services, such as batteries or solar panels.

9.1.5

Complaints and dispute resolution

As mentioned earlier, under the NECF, energy customers have two mechanisms to resolve complaints and disputes. Under the NERL, retailers and distributors must have their own standard complaint and dispute resolution procedures and, must also be members of an energy ombudsman scheme to resolve any relevant matter concerning the customer and a retailer or distributor.²⁷⁶

The NECF provides certain circumstances where the customer can initiate a dispute or submit a complaint to the retailer or distributor, under their standard complaints and dispute resolution procedures, or to the relevant energy ombudsman. Below are some examples of disputes that customers can initiate under the NECF:²⁷⁷

- the carrying out of an energy marketing activity by a person

²⁷² Ibid.

²⁷³ ACL, Sections 138, 139.

²⁷⁴ ACL, Section 140.

²⁷⁵ ACL, Section 141.

²⁷⁶ NERL, sections 80-86.

²⁷⁷ Customers can request the review of their energy bill and the retailer must review it, reply to the customer and inform that the customer may lodge a dispute with the energy ombudsman after the retailer reviews the bill if the customer is unsatisfied with the decision. NERR, rule 29.

- retailer's obligations before and after a customer retail contract is formed
- deemed standard connection contracts between small customers and distributors and deemed standard arrangements between small customers and retailers
- a negotiated connection contract between a small customer and a distributor
- a distributor's decision under the small compensation regime²⁷⁸
- billing disputes.

9.1.6

Additional protections

In addition to the above mentioned protections, the NECF provides other protections that recognises energy as an essential service. These additional protections for energy consumers are related to:

- guaranteed connection and limitations on disconnections and energy interruptions
- customers facing financial difficulty
- customers requiring life support equipment.

Disconnection/reconnection

Under the NECF, retailers and distributors must comply with different requirements before disconnecting a customer's premises, there are also certain limitations for interruptions and there is a general obligation to maintain customer connection. These consumer protections include (see appendix d for more detail):

- distributor planned²⁷⁹ and unplanned interruptions requirements²⁸⁰
- limiting when a retailer can arrange de-energisation²⁸¹ including:
 - when the customer does not pay the energy bill²⁸²
 - when the customer denies access to the meter²⁸³
 - when the move-in or carry over customers refuses or fails to take the appropriate steps to enter into a customer retail contract²⁸⁴
 - for illegal use of energy or interference²⁸⁵
- restricting de-energisation where:²⁸⁶
 - the premises are registered as having life support equipment
 - the customer is a hardship customer or a residential customer on a payment plan
 - the retailer is aware that the customer has formally applied for assistance to an organisation responsible for a rebate, concession or relief

²⁷⁸ NERL, Section 79.

²⁷⁹ NERR, Rule 90(1) and (3).

²⁸⁰ NERR, Rule 91.

²⁸¹ NERR, Rule 107.

²⁸² NERR, Rule 111.

²⁸³ NERR, Rule 113.

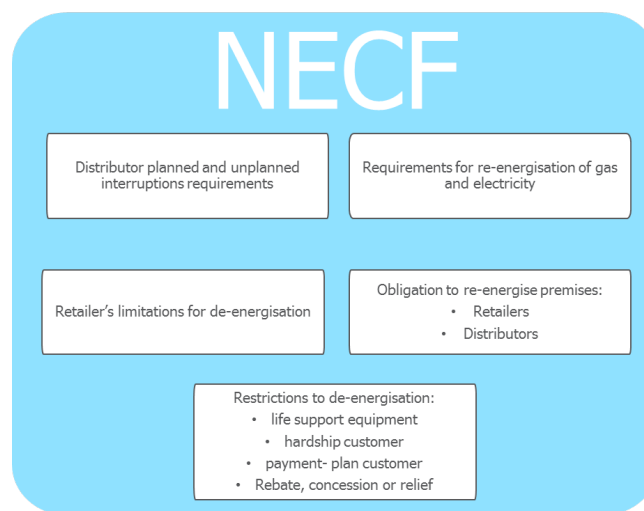
²⁸⁴ NERR, Rule 115.

²⁸⁵ NERR, Rules 114, 119.

²⁸⁶ NERR, Rule 116.

- re-energisation of gas and electricity: a retailer must deal with the requirements under the gas and electricity laws to arrange the re-energisation of premises²⁸⁷
- obligation to re-energise (retailer and distributor).²⁸⁸

Figure 9.5: Disconnection/reconnection protections



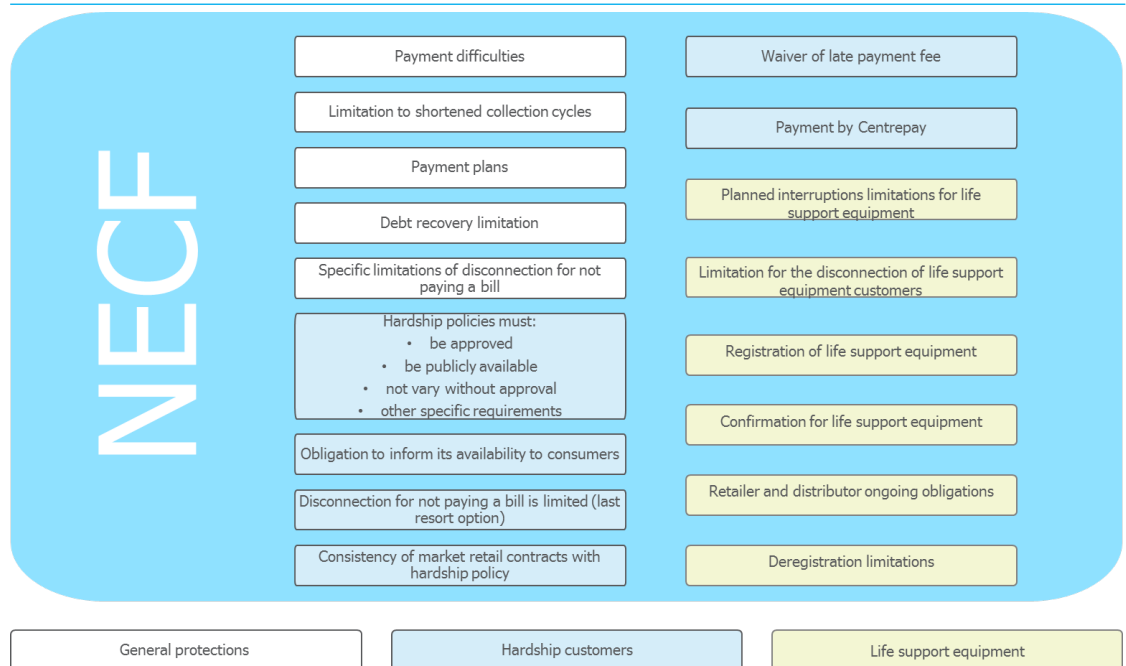
Financial difficulty

The NECF has additional protections for consumers when they are experiencing payment difficulties with their energy bills, they are in financial difficulty due to hardship, or they need life support equipment. As the NECF is an energy specific framework, these type of regulations are focused on energy consumers and therefore, the ACL does not contain any similar provisions. Figure 9.5 below lists these additional consumer protection under the NECF.

²⁸⁷ NERR, Rules 106, 106A,

²⁸⁸ NERR, Rules 121 and 122.

Figure 9.6: Additional protections



Under the NECF, retailers are required to provide support and assistance to their customers who are experiencing financial difficulty to pay their energy bills. The following are the additional consumer protections that the NECF provides:

- retailers must provide to hardship customers or other residential customers experiencing payment difficulties certain information on concessions and rebates²⁸⁹
- retailers cannot place customers experiencing payment difficulties on a shortened collection cycle²⁹⁰
- a retailer must offer and apply payment plans for hardship customers and customers experiencing payment difficulties²⁹¹
- retailers must not commence proceedings for recovery of a debt if the customer is complying with a payment plan or other payment arrangement²⁹²
- specific limitations of disconnection for not paying the bill
- retailers must develop and maintain a hardship policy for residential customers that must be approved by the AER and be publicly available on the retailer's website.²⁹³

289 NERR, Rule 33.

290 NERR, Rule 34.

291 NERL, Section 50(1).

292 NERL, Section 51.

293 NERL, Section 43.

Life support equipment

Additionally, the NECF protects customers that require life support equipment. The following are the specific consumer protections for these customers:

- a retailer or distributor may only arrange a planned interruption to the premises of a person that requires life support equipment by obtaining the affected customer's explicit consent to the interruption occurring on a specific date.²⁹⁴
- a retailer or distributor must not arrange the de-energisation of a customer's premises where the premises are registered as having life support equipment.²⁹⁵

9.2 Jurisdictional modifications

The NECF applies in each participating jurisdiction through state and territory laws.²⁹⁶ Each jurisdiction has adopted the NECF at different periods of time.²⁹⁷ Also, jurisdictions can (and have) modified the application of parts of the NERL and NERR in their state or territory for example, by creating additional consumer protections or obligations on retailers or distributors.

The NECF was designed to regulate the sale and supply of electricity and gas to retail customers across the NEM. As noted in chapter 3, state or territory modifications are creating regulatory inconsistency across jurisdictions which can potentially increase costs and barriers to entry and expansion in the retail market. In previous reviews the Commission noted that jurisdictions should consider harmonising their energy consumer protection arrangements so that barriers and costs are minimised.

The Queensland Government has commenced a review to assess whether the NERL (as adopted in Queensland) has met its objectives in terms of increased efficiencies and consumer protections, and to ensure the regulation is delivering a net benefit to Queensland customers.²⁹⁸ Specifically the review is focussed on the impact of the NERL, including the state specific modifications, on consumers of energy and whether the implementation of the Law has resulted in increased efficiencies or adversely affected customer protection in pursuit of national consistency.²⁹⁹

The Commission supports this type of review and notes that other jurisdictions may wish to consider this process as a way to continue with regulatory consistency across the NEM. The Commission encourages that any jurisdictional modification should be considered as changes across the national framework and done through the rule change process. In addition to these jurisdictional actions (reviews), states and territories should recommit to pursue nationally consistent energy regulation wherever possible.

294 NERR, Rules 59C, 90.

295 NERR, Rules 116, 120.

296 NERL, Part 2.

297 The NECF commenced in the Australian Capital Territory and Tasmania on 1 July 2012, followed by South Australia on 1 February 2013, New South Wales in 1 July 2013 and Queensland on 1 July 2015. Victoria has adopted the NECF in a limited manner.

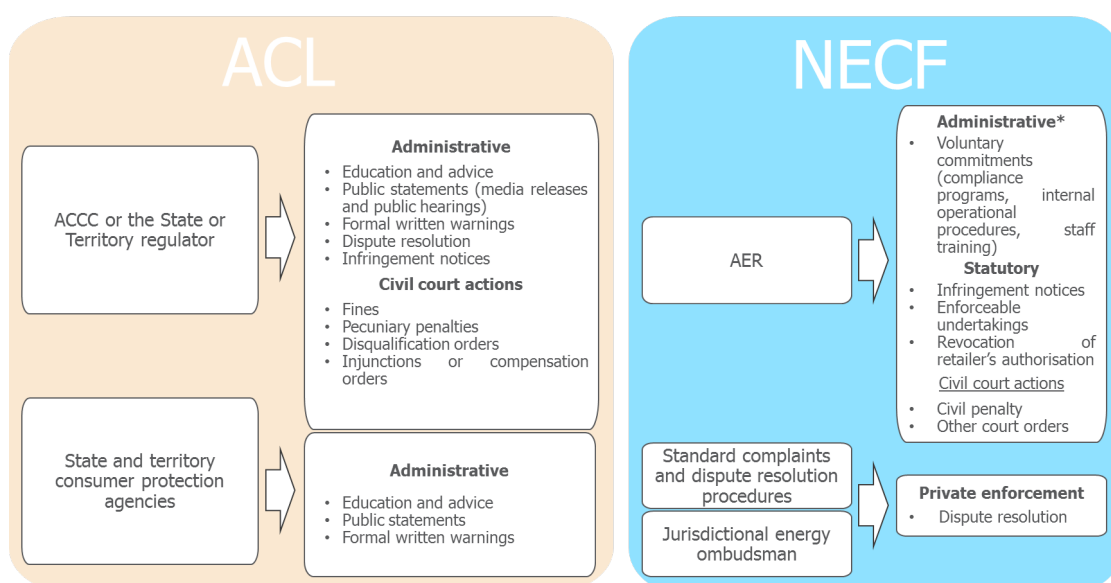
298 Queensland Government, *Review of the National Energy Retail Law in Queensland*, Discussion paper, January 2019.

299 Ibid.

9.3 Remedies and enforcement

Under the NECF and the ACL, compliance and enforcement powers are exercised in different ways. Each framework has its own regulators, agencies and processes to ensure consumer protection. The NECF contains civil and private enforcement remedies. In addition to these, the ACL contains civil and administrative remedies but also criminal enforcement remedies. Figure 9.7 contains more detail about these elements of compliance and enforcement.

Figure 9.7: Remedies and enforcement



9.3.1 National Energy Customer Framework

Under the NECF, the AER has responsibilities for enforcement of the laws and rules relating to electricity and gas retail markets in participating jurisdictions. One of the guiding principles when introducing the national energy market was the need to achieve consistency in energy regulation. The aim of consistency is one of the reasons for the enforcement regime and remedies under the NECF (including quantum of pecuniary penalties) being similar to those on the NEL and the National Gas Law.³⁰⁰ Many of the information, contract terms, hardship and life support requirements under the NERR are civil penalty provisions and, as such, carry a more significant consequence in case of a breach.

Enforcement functions and power of the AER

The AER is responsible for monitoring, investigating, enforcing and reporting on compliance by regulated entities under the NERL and NERR.³⁰¹ The AER has a range of enforcement

³⁰⁰ COAG, Review of enforcement regimes under the National Energy Laws.

³⁰¹ See section 204 of the NERL for AER's functions.

responses to breaches of obligations under NECF, which can be categorised broadly as either 'administrative' or 'statutory' actions.³⁰²

Administrative responses

Administrative responses are informal enforcement options, which are not expressly provided for under the statutory framework. For example, such responses may include voluntary commitments to rectify non-compliance by implementing a compliance program, improving internal operational procedures or conducting staff training. The AER has no legal power to enforce voluntary commitments.³⁰³

As stated in the AER's current Compliance and enforcement — Statement of approach, the AER is more likely to act administratively where the effect of an actual or potential contravention is limited, and the business has taken (or agreed to take) appropriate steps to end the conduct and to remedy any harm done.³⁰⁴ A decision by the AER to resolve a matter by way of an administrative response does not amount to an acceptance or approval of the conduct, nor does it remove a business's responsibility for the breach. In each case the AER reserves the right to take statutory enforcement action in the event that information on which they based their initial assessment is subsequently found to have been incomplete, inaccurate or misleading or if the administrative action proves to be ineffective.³⁰⁵

Statutory enforcement

Statutory enforcement action involves the AER taking action under its enforcement powers under the NERL. For example, by issuing an infringement notice or initiating court proceedings.

The AER undertakes a risk assessment of each obligation in the NECF to assist in targeting and prioritising monitoring and compliance activities. The risk assessment involves an analysis and ranking of each obligation to determine its compliance risk, based on two criteria:³⁰⁶

- the impact on businesses, consumers and other stakeholders of a breach of the obligation
- the probability that a breach would occur.³⁰⁷

The AER is more likely to institute civil proceedings in cases where conduct:

- resulted in significant detriment
- demonstrated a blatant, ongoing or serious disregard for the law
- is widespread, such that enforcement action is likely to have a significant deterrent effect

302 While terms 'administrative' and 'statutory' responses are not formally used in the NERL, they have been adopted by the AER under its Compliance and Enforcement — Statement of approach.

303 AER, Compliance and Enforcement — Statement of approach, April 2014.

304 AER, Compliance and Enforcement — Statement of approach, April 2014, p. 13.

305 *ibid*, p. 13.

306 *ibid*.

307 *ibid*, p. 5.

- is that of a person, business or sector that has a history of previous breaches of energy laws
- is of significant public interest or concern
- involves a new or emerging market issue.³⁰⁸

AER's statutory enforcement actions

The AER has certain statutory rights of action that it may take in respect of a breach (or purported breach) of the NERL and NERR prior to (or as an alternative to) initiating Court enforcement proceedings. These include the power to:

- issue infringement notices³⁰⁹
- seek enforceable undertakings.³¹⁰

Infringement notices

Under the NERL, the AER may serve an infringement notice on a person that the AER has reason to believe has breached a civil penalty provision. The AER must serve an infringement notice no later than 12 months after the date on which it forms a belief that there has been a breach of a civil penalty provision.³¹¹

Infringement penalties are set at \$4,000 for a breach by a natural person or \$20,000 for a breach by a body corporate. In each case, this represents 20 per cent of the maximum civil penalty that may be imposed by a Court in respect of the same breach. Once the AER issues an infringement notice, it cannot subsequently start formal proceedings unless the recipient of the notice fails to comply with the notice within the time for payment specified or the AER has not otherwise withdrawn the infringement notice. If the infringement penalty is not paid, then proceedings may be instituted.

Civil proceedings

The AER may, institute civil proceedings in a Court in relation to an alleged breach of any provision of the NERL and NERR, provided the provision is not an 'offence provision'.³¹²

Where an application is made, a Court may make an order declaring that a person is in breach of a provision of the relevant NERL, NERR or regulations.³¹³ The Court's order may include one or more of the following:

³⁰⁸ *ibid.*

³⁰⁹ An infringement notice provides the recipient the option of either paying a penalty, or choose to have the matter heard in Court. Under s. 308 of the NERL, the AER's infringement notice regime in Part 7 of Chapter 8 of the NGL apply to civil penalty provisions in the NERL in the same way as they apply to civil penalty provisions in the NGL.

³¹⁰ Under s. 288 of the NERL, the AER may accept a written undertaking from a person in respect of a breach by that entity of the NERL, NERR or Regulations. An entity may withdraw or vary the undertaking at any time, but only with the consent of the AER. If the AER considers the entity person has breached the terms of the undertaking, it can apply to a Court for an order - e.g. an order that: (a) the party comply the undertaking; (b) the party pay the Cth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach; (c) an order directing the party to compensate any person who has suffered loss or damage as the result of the breach.

³¹¹ NGL, Section 277 (which is adopted by way of NERL, Section 308).

³¹² Civil penalty provisions and conduction provisions are not "offence provisions" for the purposes of the NERL. The NERL defines an offence provision as a provision of the NERL "the breach or contravention of which by a person exposes that person to a finding of guilt by a court".

³¹³ NERL, Section 291.

- *civil penalty* — an order that the person pay a civil penalty (provided it is a breach of a civil penalty provision)
- *order to cease* — an order that the person cease, within a specified period, the act, activity or practice constituting the breach
- *order to remedy breach* — an order that the person take such action, or adopt such practice, as the Court requires for remedying the breach or preventing a recurrence of the breach
- *compliance program* — an order that the person implement a program for compliance with the NERL, NERR or regulations
- *other orders* — an order of a kind prescribed by the Regulations.³¹⁴

Where the order requires payment of a civil penalty, the Court must (when determining the quantity of the penalty) have regard to:

- the nature and extent of the breach
- the nature and extent of any loss or damage suffered as a result of the breach
- the circumstances in which the breach took place, whether the person in breach has engaged in any similar conduct and whether the person had established and been complying with any compliance policies systems and procedures.³¹⁵

The NERL defines a civil penalty as:³¹⁶

- in respect of a breach by a natural person, an amount not exceeding:
 - \$20,000
 - \$2,000 for every day during which the breach continues
- in respect of a breach by a body corporate, an amount not exceeding:
 - \$100,000
 - \$10,000 for every day during which the breach continues.

In addition to the orders set out above, the Court may also, on application by the AER, grant an injunction restraining a person from engaging specific conduct or otherwise requiring the person to undertake an act.³¹⁷

Revocation of retailer's authorisation

The AER also has the powers under the NERL to revoke a retailer authorisation if it is satisfied that there has been a material failure by a retailer to meet its obligations under the NERL, and there is a reasonable concern that the retailer will not be able to meet its obligations in the future. Revoking a retailer authorisation prohibits a retailer from selling energy in any participating jurisdiction.³¹⁸ The AER is required to provide reasons for any

³¹⁴ NERL, Section 291(2).

³¹⁵ NERL, Section 294.

³¹⁶ NERL, Section 2.

³¹⁷ NERL, Section 291(3) and (4). AER, Compliance and Enforcement — Statement of approach, April 2014, p. 17

³¹⁸ NERL, Section 120. AER, Compliance and Enforcement — Statement of approach, April 2014, p. 17.

revocation and provide the retailer with an opportunity to demonstrate why its authorisation should not be revoked and to present a proposal to address the AER's concerns.³¹⁹

Private enforcement

Under the NERL 'a person other than the AER' may seek an order from a Court to recover the amount of loss or damage based resulting from a breach of a conduct provision.³²⁰ However, there are currently no conduct provisions nominated in the NERL.

Small compensation claims regime

Additionally, as mentioned in section 9.1.4, the NERL also provides a small compensation claims regime which enables residential and small business customers to make claims for compensation from distributors. Under the regime, customers do not have to establish fault, negligence or bad faith on the part of a distributor in order to receive compensation from the distributor.³²¹ However, no participating jurisdiction has opted-in to the small claims compensation framework to date.

Customer dispute resolution via energy ombudsman

As explained in section 9.1.5, the NERL provides for small customer complaints management by jurisdictional energy ombudsman. Ombudsman services are free to consumers. Under that framework, jurisdictional energy ombudsman:

- receives small customer complaints and disputes
- investigates those complaints and disputes
- facilitates the resolution, and resolve, those complaints and disputes
- identifies and advises on systemic issues as means of preventing complaints and disputes.³²²

Retailers must be a member of, or subject to, an energy ombudsman scheme for each jurisdiction where it sells electricity to small customers or engages in an energy marketing activity. Distributors must also be members of, or subject to, such schemes for each jurisdiction where it has small customers connecting to their distribution system.³²³

Coordination of the ACCC and the AER

The AER works together with the ACCC to ensure that misconduct in the energy market is addressed and that they seek to avoid duplication and ensure they apply a consistent and coordinated approach. Businesses operating under the NECF also have obligations under the ACL that apply to their relationships with energy customers, including obligations relating to unsolicited consumer agreements. The AER notes that the ACL and the NECF operate together, providing the framework in which these businesses are required to operate.³²⁴

³¹⁹ NERL, Section 120(3) and (4). AER, Compliance and Enforcement — Statement of approach, April 2014, p. 17.

³²⁰ NERL, Sections 292, 293.

³²¹ NERL, Part 7.

³²² NERL, Part 4.

³²³ NERL, Section 86.

³²⁴ AER, Compliance and Enforcement — Statement of approach, April 2014.

There is an information policy between the AER and the ACCC which provides guidance on the collection, use and disclosure between the two agencies.³²⁵

9.3.2

Australian Consumer Law

The ACL is administered and enforced jointly by the ACCC (national), the jurisdictional regulators and the state and territory consumer protection agencies, with the involvement of Australian Securities and Investments Commission on relevant matters.³²⁶ For the purposes of the application of the ACL, each state and territory regulator is independent and has its own enabling legislation and exercises its powers and functions accordingly.³²⁷ The ACCC has national responsibilities and can act in all states and territories.

The ACCC is the national regulator responsible for monitoring, investigating, enforcing and reporting on compliance with obligations under the ACL in respect of systemic conduct in trade or commerce at a national level and consistent with published priorities.³²⁸ Each state and territory regulator is responsible for the same compliance functions and powers but at a jurisdictional level. The ACCC and the jurisdictional regulators (ACL regulators) can choose how they will use their resources to pursue particular cases to achieve the most effective outcomes for both individual consumers and consumers in general.³²⁹

Because ACL regulators cannot pursue every complaint received, they must consider complaints carefully and exercise discretion, directing resources to matters that can result in industry-wide change or provide the greatest overall benefit for consumers. As these discretionary matters may vary within or between jurisdictions, priorities for enforcement action differ accordingly.³³⁰ Each year, the ACCC sets out its compliance and enforcement priorities. In 2019, its priorities include 'consumer and competition issues arising from opaque and complex pricing of essential services, in particular those in energy and telecommunications'.³³¹

The ACCC is not a complaint handling body, and rarely becomes involved in individual consumer or small business disputes. For example, there are certain matters that are less likely to be pursued by an ACL regulator that:

- are one-off, isolated events
- are more appropriately resolved directly between the parties under an industry code (for example, by mediation or an industry dispute resolution body such as the energy ombudsman)
- involve issues more effectively dealt with by another agency

325 See www.aer.gov.au/publications/corporate-documents/accc-and-aer-information-policy-and-disclosure-of-information.

326 Some consumer protection provisions in the ACL are mirrored in the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act) in relation to financial products and services. ASIC is responsible for administering and enforcing the ASIC Act.

327 Compliance and enforcement: How regulators enforce the Australian consumer law, p. 12.

328 Compliance and enforcement: How regulators enforce the Australian consumer law, p. 5.

329 Compliance and enforcement: How regulators enforce the Australian consumer law, p. 8.

330 Compliance and enforcement: How regulators enforce the Australian consumer law, p. 8.

331 Compliance and enforcement: How regulators enforce the Australian consumer law, p. 8.

- are best deal with between private parties.³³²

Instead, consumers are encouraged to bring complaints related to these matters to the consumer protection agency in their state or territory. Each state and territory has its own consumer protection agency that administers the ACL in its jurisdiction.³³³ These agencies have signed a Memorandum of Understanding which sets out the way in which they will work together to administer and enforce the ACL.³³⁴

ACL regulators have a range of enforcement tools and strategies to facilitate compliance with the law. In addition to those, the ACL provides private rights that consumers can enforce through federal, state and territory courts and tribunals. Each of these compliance and enforcement options are explained below.

Enforcement tools and remedies

Each ACL regulator carries out its compliance and enforcement obligations using its own framework, tailor-made for its own jurisdiction, but aimed at consistent application of the ACL across all jurisdictions. ACL regulators take a risk-based approach to enforcement. Compliance and enforcement activity targets areas of strategic priority, with a focus on incidents with evidence or likelihood of consumer detriment.³³⁵

To be effective, compliance measures must be supported by a range of escalating enforcement options that can be used if a trader fails to comply or when there is a serious contravention of the ACL. The ACL regulators have a range of civil, administrative and criminal enforcement remedies at their disposal under the ACL and supporting state and territory legislation.³³⁶

ACL regulators will choose the most appropriate enforcement tools to achieve these outcomes in a timely and proportionate manner. The regulators have a range of possible enforcement responses to breaches of obligations under the ACL, including both administrative style enforcement options, as well as civil and criminal enforcement remedies. Administrative tools and strategies include:³³⁷

- providing education and advice to traders
- making public statements such as media releases and public warnings
- issuing formal written warnings
- encouraging dispute resolution
- issuing infringement notices.

³³² *ibid.*

³³³ ACT: Access Canberra; NT: Northern Territory Consumer Affairs; VIC: Consumer Affairs Victoria; NSW: NSW Fair Trading; QLD: QLD Office of Fair Trading; SA: Consumer and Business Services South Australia; WA: WA Department of Commerce, Consumer Protection.

³³⁴ See the MOU here: consumerlaw.gov.au/files/2015/06/acl_mou.pdf.

³³⁵ Compliance and enforcement: How regulators enforce the Australian consumer law, p. 5.

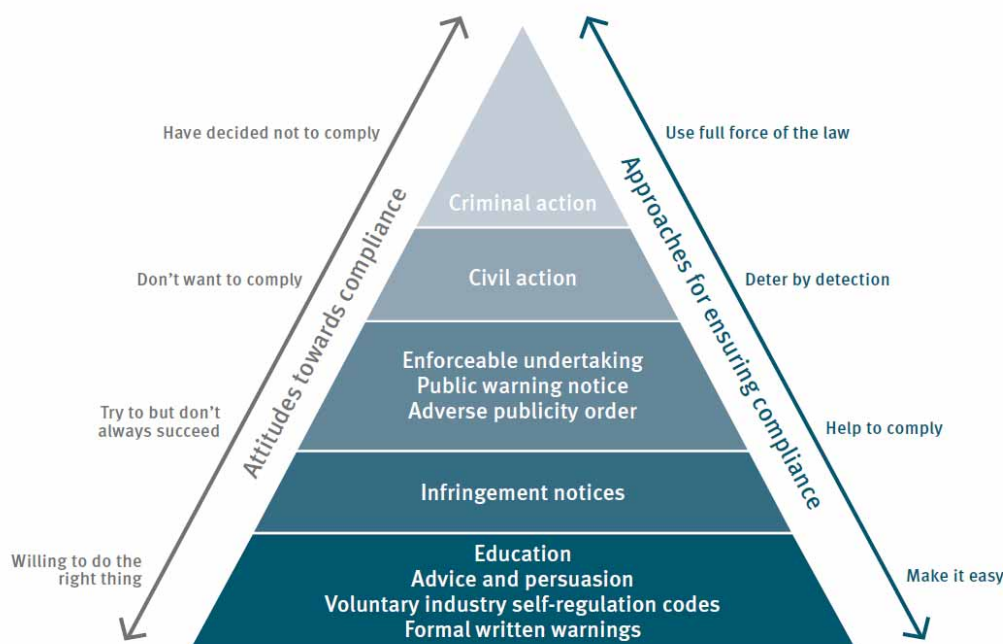
³³⁶ Compliance and enforcement: How regulators enforce the Australian consumer law.

³³⁷ *ibid.*

Civil court action may result in fines, pecuniary penalties, disqualification orders, injunctions or compensation orders.³³⁸

The pyramid below (Figure 9.8) summarises the general compliance approach under the ACL.

Figure 9.8: Compliance and enforcement options



Source: Commonwealth of Australia, Compliance and enforcement, How regulator enforce the Australian Consumer Law, January 2017, p. 12.

The ACL is enforced by courts and tribunals in each jurisdiction subject to the specific rules that apply to enforcement processes, courts and tribunals in each state and territory jurisdiction. Litigation is costly compared to administrative compliance and enforcement actions. Aside from compliance and enforcement by the ACL regulators, the ACL creates private rights that consumers can enforce through Commonwealth, state and territory courts and tribunals.

In order to take enforcement action in this way, consumers need to be aware of their rights and responsibilities, and how to obtain redress. Providing information and advice to consumers for this purpose is a key function of the ACL regulators. It is often recognised that there are substantial barriers to seeking redress through the formal court mechanisms discussed above, which makes it difficult for individuals to seek redress. These barriers include the intimidating nature of the legal process, lack of awareness about existing legal rights, the time and cost of seeking redress as well as the emotional stress involved. For this

³³⁸ ACL, Chapter 5.

reason, more informal forms of redress are considered important in ensuring more effective implementation and enforcement of consumer law.

As mentioned, the ACCC does not handle individual disputes; rather it prioritises enforcement action on more widespread issues that reflect the potential for greater consumer detriment. State and territory ACL regulators therefore play an important role in resolving disputes between consumers and traders about goods and services covered by the ACL. These local regulators provide information on their websites about dispute resolution and trader engagement programs.

If a consumer has a complaint about a business, they are first encouraged to contact the business to resolve or settle the dispute informally. If the consumer cannot resolve the concern in this way, they may contact their State or Territory ACL regulator. The local ACL regulator can investigate a business when a law may have been broken, even if the complaint was resolved. Where a dispute cannot be resolved directly between the consumer and business, alternative dispute resolution schemes can help consumers to resolve issues with businesses without going to court, such as energy ombudsman schemes.

Table 9.1 contains more detail on how courts and regulators apply the enforcement tools and who is the person that can start the process (claimant) under the ACL (as contained in the *Competition and Consumer Act 2010*).

Table 9.1: Tools and remedies

TOOL OR REMEDY	ENFORCEMENT BODY	DESCRIPTION
Pecuniary penalties	Court	A Court may order a person to pay to the Commonwealth, State or Territory, as the case may be, a pecuniary penalty where it is satisfied the person has contravened or attempted to contravene a relevant provision. However, pecuniary penalties do not apply to unfair contract term provisions (ACL, Part 2-3).
		The pecuniary penalty must not exceed the amount worked out using the table set out in the ACL. If the person is a body corporate, the greatest of: <ul style="list-style-type: none"> • \$10,000,000 • if the court is able to determine the value of the benefit obtained directly or indirectly attributable to the conduct – then 3 times the value of

TOOL OR REMEDY	ENFORCEMENT BODY	DESCRIPTION
		<p>that benefit</p> <ul style="list-style-type: none"> if the court cannot determine the value of the benefit – 10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the conduct occurred or started to occur. <p>If the person is not a body corporate, \$500,000.</p>
Injunctions	Court or Regulator	<p>A court may grant an injunction if satisfied that a person has engaged in conduct that would constitute a contravention of the general protections (ACL, Chapter 2). This includes unfair contract term provisions, misleading or deceptive conduct, unconscionable conduct.</p> <p>The injunction may be granted on application by the regulator or any other person.</p>
Damages	Court	<p>If a person suffers loss or damage because of the conduct of another person and the conduct contravened the general and specific protection under the ACL (Chapter 2 and 3), the claimant may recover the amount of the loss or damage by action against that other person.</p>
Compensation orders for injured person	Court	<p>An injured person may apply to a court for an order where the person has suffered loss or damage because of the conduct of another person contravened the general and specific protection under the ACL (Chapter 2 and 3), or constitutes applying or relying on a term of a contract that has been declared under section 250 to be an unfair term.</p> <p>The order must compensate the injured person or prevent or reduce the loss or damaged suffered.</p> <p>A regulator may make an application for</p>

TOOL OR REMEDY	ENFORCEMENT BODY	DESCRIPTION
		an order on behalf of one or more persons where those persons have consented in writing to the making of the application.
Declarations	Court	A court may declare that a term of a consumer contract is an unfair term, on application by a party to the contract or by the regulator. However, such an order can only be made where the contract is a standard form contract and unfair contract terms provisions apply to the contract.

9.4 Non-traditional energy services and products

The evolving nature of the market provides an opportunity to analyse the regulatory challenges, many which lie behind the consumer protection framework under the NECF and the ACL. The Commission will describe three examples to underline specific regulatory challenges that have been identified to start the second stage of the consumer protections review. The examples are the following:

- DER
- embedded networks
- bulk hot water.

9.4.1 Customer protection for distributed energy resources

The NECF was originally developed with the view that all small consumers would be supplied through the interconnected electricity system and would need to enter a retail contract to access energy supply. However, as technology has developed, many products and services, such as solar and battery systems, are now provided by different entities (other than traditional retailers) and the roles of both retailers and these new entities is becoming less distinct.

Currently, the NECF and ACL can apply in different ways depending on the way in which an energy related product or service is provided. Consumers who invest in DER may not have the same protections as customers of traditional grid-supplied electricity. Further, it may not always be clear to a customer what the correct avenue is to resolve a particular complaint relating to DER products.³³⁹

³³⁹ The Clean Energy Council provides customers with guidelines on how to address disputes under different scenarios, and these may provide assistance to reduce some level of customer confusion. For further information see: Clean Energy Council, *Guide to installing solar for households*, Clean Energy Council, Melbourne, 2014.

Solar PV and battery system bought from a third party

Under the NECF, the sale of electricity to consumers is prohibited unless the seller holds a current retailer authorisation or an exemption. Where energy is supplied by an exempt seller, the ACL applies in addition to any conditions placed on the exempt seller under the NECF through their exempt seller authorisation.

Currently, when a customer buys a solar PV and battery system from a third party, they will (most likely) be connected to the grid and therefore must purchase electricity from an authorised retailer. In this case, the applicable consumer protections are the:

- NECF for the electricity purchased from the grid
- ACL for the solar PV and battery system.

When things go wrong

Customers need to know which is the applicable consumer protection framework when things go wrong. For example, if a customer finds that something has gone wrong in relation to their energy contract with a traditional retailer, the customer is able to contact its retailer in accordance with the dispute resolutions provisions under the NECF. If the result is not satisfactory, the customer is able to escalate the issue to the jurisdictional ombudsman for resolution.

If there is an issue with the solar PV and battery system the customer must contact the original supplier to resolve the fault. If the solar PV and battery components are sourced from different suppliers, they must determine which component is at fault, then contact that supplier. If the manufacturer has gone out of business, the customer must seek resolution elsewhere, possibly the importer (whereas grid supplied customers are protected in the event of a retailers going out of business under the RoLR provisions of the NECF). The customer may also raise any issues with its state-based fair trading agency or the ACCC. Both can assist customers with the mediation of commercial matters, such as warranties, payments and contract issues.

The COAG Energy Council requested industry, consumer groups and other stakeholders to develop an industry-wide Code of Conduct for sellers of distributed energy resource products, systems and services including solar and storage technologies. On 30 April 2019, the Clean Energy Council, the Australian Energy Council, the Smart Energy Council and the ECA lodged an application for authorisation for a New Energy Tech Consumer Code. The proposed voluntary code will set "minimum standards of good practice and consumer protection that will be provided by signatories covering all aspects of the customer experience". The Commission support the industry taking steps to develop a code to address consumer protections for new energy service providers. The Commission will take the proposed voluntary codes into account when assessing whether changes to the NECF are also required to protect consumers for DER.

9.4.2

Consumer protection for embedded network customers

What are embedded networks?

Embedded networks are private electricity networks — that is, they are owned and operated by parties that have been exempted from the requirement to register with AEMO — which serve multiple customers and are connected to another distribution or transmission system through a parent connection point. Generally, the exempt network service provider also purchases electricity at the parent connection point and on-sells it to customers at child connection points within the embedded network. Such sales are referred to as being 'off-market', in that they are not conducted through the NEM. On-selling entities must hold a retailer authorisation from the AER or be exempted by the AER from having to hold a retailer authorisation.

Common examples of embedded networks include shopping centres, retirement villages, apartment complexes and caravan parks. Embedded networks may occur as new developments or as retrofits of existing buildings. In recent years, there has been a significant increase in the number and scale of embedded networks, with the residential apartment market being the primary driver of this growth. The Commission estimates there are more than 500,000 customers within embedded networks and this number is growing.

How are embedded networks regulated?

The NERL requires that a person must be authorised to sell energy to a person for premises unless exempted by the AER from obtaining an authorisation. Similarly, the NEL requires that an entity which owns, controls or operates a transmission or distribution system register with AEMO unless exempted by the AER from doing so. The development of embedded networks brought both opportunities for innovation and potentially new risks for consumers, which challenged the regulatory framework under the NECF.

Problems with embedded networks

To address this regulatory challenge, the Commission started the *Review of the regulatory frameworks for embedded networks* which was completed in December 2017. From this, the Commission found that the exemption framework is no longer fit for purpose in the face of the growth in the number and scope of embedded networks. The current framework does not strike an appropriate balance between innovation, consumer protection and facilitating consumer access to retail market competition.

In particular, the Commission found significant practical barriers to customers in embedded networks accessing retail market competition, despite earlier regulatory reforms that sought to put in place arrangements to allow for this. Currently, customers of exempt on-sellers in embedded networks are not included in AEMO's retail market systems, and so competing NEM retailers are unable to quote, transfer and bill customers using standard market processes. Bespoke embedded network tariffs and billing arrangements also require NEM retailers to adapt product offerings and operate manual processes to manage transactions with embedded network customers. These issues mean that, in practice, embedded network

customers have limited ability to change supplier if they are unhappy with the price they are paying or the level of service they are receiving.

Embedded network customers do benefit from some consumer protections imposed by the AER as conditions of exempting embedded network operators from registering as an NSP and being authorised as a retailer. However, these consumer protections are more limited than those applicable for standard supply arrangement customers. Consumer protection gaps exist in areas such as:

- de-energisation and re-energisation obligations
- obligations to provide connection services
- life support arrangements
- information provision and ROLR arrangements
- reliability standards and guaranteed service level payments for outages
- safety obligations in some jurisdictions
- access to concessions and ombudsmen schemes in some jurisdictions.

Finally, the current exemption frameworks suffers from an inadequate compliance and monitoring regime. The AER does not place reporting requirements on exempt parties and therefore has no visibility over their compliance with exemption conditions. There are also limited enforcement options available to the AER.

Next steps

Given the above problems with embedded networks, the Commission recommended changes to the regulatory framework for embedded networks to address the identified issues. The proposed package of changes included:

- improving consumer access to retail market competition in legacy and new embedded networks, by capturing all embedded network customers in AEMO's market systems and by standardising network billing arrangements between embedded networks and NEM retailers
- elevating new embedded networks into the national regulatory frameworks, including through the registration of embedded network service providers (ENSPs), the authorisation of on-selling retailers and the extension of standard NEM metering arrangements to embedded networks
- narrowing the network service provider and selling exemption frameworks for new embedded networks to apply only to circumstances where the costs of registration as an ENSP and retail authorisation would outweigh the benefits to consumers and where the need for regulatory oversight is low
- enhancing consumer protections in legacy and new embedded networks through improving the AER's ability to monitor and enforce exemption conditions, addressing gaps in the NERL and NERR for embedded network customers supplied by an authorised retailer and improving the information provided to consumers entering embedded networks or involved in the conversion of a property to an embedded network.

In its June 2019 final report, the Commission set out a comprehensive package of law and rule changes to implement these recommendations. These are discussed further in chapter 2.

9.4.3

Consumer protection for bulk hot water customers

New apartment buildings, usually high rise buildings, have common hot water systems to heat water in a centralised water plant and distribute it to each unit instead of having individual heaters (known as, bulk hot water). This service is being provided to consumers by energy retailers and embedded network operators. The provision of this service has created consumer confusion as it is not clear if it is an energy service, how it is charged and if the NECF is applicable (see Box 27 for further detail).

BOX 27: HOW BULK HOT WATER IS PROVIDED

Consumers that are tenants in buildings with a centralised hot water plant, are facing different supply models depending on:

1. Hot water plant ownership: the hot water plant can be developed, maintained, operated and owned by three different persons; a body corporate, an embedded network operator or a retailer.
2. Boundary meters: the hot water plant usually has two boundary meters, one to measure the amount of energy (electricity or gas) that is required to heat and maintain the water heated and another one to measure the amount of water that enters the water plant. In some cases the energy boundary meter does not comply with the energy metering regulations.
3. Hot water meter: hot water is distributed through water pipes and each apartment has a water meter that individually measures the amount of hot water consumed in each unit. However, the ownership and the meter reading responsibilities vary, depending on each building. For some buildings, individual hot water meters are provided by DNSPs. In others, a retailer or embedded network operator is responsible for metering.
4. Other meters: each apartment also has energy and water meters to measure electricity, gas (cook tops) and water individually. However, there are cases where the gas (cook tops) meters are not installed and consumers are charged a fixed rate.*
5. Billing: a consumer can be billed by an embedded network operator, by a retailer or by a body corporate depending on each case. It is possible that the consumer is billed by different retailers for hot water, gas and electricity.

In general, the retailer or embedded network operator is chosen by the body corporate and consumers (tenants) are not likely to be able to choose the provider for hot water and gas. If implemented, under the new embedded network framework being proposed by the Commission, consumers will be able to choose an electricity provider.

Note: *the network provider only charges the embedded network for the site's total gas consumption by its energy retailers. Gas meter readings are supplied by the network provider.

Problems with bulk hot water

Is bulk hot water an energy service?

The NECF does not provide a definition for 'sale of energy' or if it is limited to the supply of electricity and gas.³⁴⁰ Under the NECF it is not clear if the sale of bulk hot water is a sale of energy. Hot water is being provided to customers, in some cases, by energy market participants (authorised or exempted sellers) however, this does not mean that this service is covered by the regulatory framework under the energy laws and rules.³⁴¹

Different energy bodies have provided different regulatory approaches to bulk hot water. For example, the AER states in their retail guidelines that the sale of bulk hot water cannot be considered a 'sale of energy' under the NERL and the NERR.³⁴² AEMO, without mentioning if the sale of hot water is sale of energy or not, provides in their retail market procedures information on how to calculate energy for hot water (common factor) and a hot water meter definition.³⁴³

Because it is not clear if bulk hot water is a sale of energy, some retailers are including their own definition of bulk hot water in their contracts and applying the contract terms and conditions of a standard retail contract. For example, in the contract terms and conditions of a bulk hot water contract, retailers are including as a requirement that this service must be consistent with the NERL, NERR and the standard retail contract.³⁴⁴ Under these contractual arrangements, most bulk hot water consumers are paying standing offer prices.

How is bulk hot water metered and billed?

Retailers and embedded network operators are metering hot water with different types of water meters. The meter used to measure bulk hot water in each building unit is a water meter and not an energy meter. Therefore, it is unclear which metering requirements are applicable and if the energy metering regulation would apply.

For billing, retailers and embedded network operators issue hot water bills or an energy bill that includes separately hot water charges. To calculate the hot water price in cents for each building unit (consumer), providers use a conversion factor (or common factor). The way this factor is calculated and how hot water consumption is disclosed in the bill (in MJ's or litres) may vary depending on each provider.

As a result of these arrangements, consumers are paying an estimated amount of the cost to heat the water they consume which will depend on other external factors as follows:

³⁴⁰ NERL, Section 88.

³⁴¹ In 2006, Victoria modified the Energy Retail Code to introduce bulk hot water definitions and billing requirements. Energy Retail Code, Part 1, Division 1; Part 2, Division 4, section 20A; Schedule 6, bulk hot water formulas.

³⁴² "Energy selling covers a wide range of activities, from energy retailing by authorised retailers to households and businesses to landlords recovering energy costs from their tenants. Energy 'sales' do not necessarily have to be for profit—even passing on energy at cost to another person is a sale. But we do not consider energy is being sold where energy costs are only one part of another fixed charge (for example, a hotel tariff or rent that includes energy costs), or where the costs are shared (for example, in a group house or a community facility)". AER, Retail Exempt Selling Guideline, March 2018.

³⁴³ AEMO, [Retail Market Procedures \(NSW and ACT\) version 20 \(Clean\)](#) — Effective 14 December 2018.

³⁴⁴ "Bulk Hot Water System" means the system by which water is centrally heated by gas and delivered to multiple premises located within the premises, but does not include the Meter. EnergyAustralia, Terms and Conditions, www.energyaustralia.com.au/sites/default/files/legacy/817/740/bhw_final_ts_and_cs_28062016.pdf

- **Vacancy of the building:** the conversion factor will vary depending on the number of people that are consuming hot water in the building. This factor is usually calculated as an average of energy consumed to heat the water plant and the hot water consumers in the building. The boiler will consume the same amount of energy to maintain the water heated at a predetermined temperature and that cost will be divided in the number of hot water consumers. Therefore, each unit will pay a higher price if there is a low rate of vacancy in the building for that billing period.
- **Water plant maintenance:** if the water plant is not well maintained it will need greater amounts of energy to heat the water at a predetermined temperature.
- **Temperature settings:** the temperature is set by a designated body (Body Corporate Strata, Owners Corporation, etc.). The higher the temperature is set the more energy is needed to heat the water and it cannot be altered by tenants (for example for saving purposes).
- **Water plant efficiency:** the water plant needs to be well-designed and insulated to avoid high distribution losses (in terms of energy) that usually happens if the water is stationary in the pipework.
- **Individual meters:** when the hot water meter is inside the unit and there is no meter data logger (which transmits the meter reading from the internal hot water to a panel elsewhere in the building) customers receive estimated bills for the amount of hot water consumed.

It is therefore likely that consumers are paying high or inaccurate bills for hot water because of these external factors.

Are there other relevant regulations?

Other regulations, such as the Residential Tenancy Acts, include general requirements to charge tenants for the supply of electricity, gas or in general other services. For example, only if the premises are metered separately, providers may charge the tenant.³⁴⁵ The NSW Civil and Administrative Tribunal decided that the way bulk hot water service is metered does not appear to meet the requirements of the Residential Tenancies Act.³⁴⁶ The Tribunal found that the supply of gas is indirect and the charges are based on a calculation that includes *extraneous factors*. The Tribunal concluded that is not satisfied with the system disseminating the cost of gas supplied to the premises of every resident and that it is not separately metered.

Is bulk hot water covered by the Ombudsman schemes?

The government approved ombudsman schemes to solve complaints and dispute resolution between energy consumers and retailers and distributors in each state. However, it is not clear when consumers can access these schemes for hot water services.

³⁴⁵ *Residential Tenancies Act 2010* —NSW, *Residential Tenancies Act 1997* — VIC, *Residential tenancies Act 1995* — SA, *Residential Tenancies Act 1987* — WA, *Residential Tenancies Act* — Northern Territory, *Residential Tenancies and Rooming Accommodation Act 2008* — QLD.

³⁴⁶ Application to the Tribunal concerning UNIT 28/1-17 Alice Street Newtown NSW 2042 Australia, Applicant: Eva Tiborc, Respondent: NSW Land & Housing Corporation. File No. SH 17/34768.

The main issues identified by these agencies are:

- inability of customers to access market offers (lack of competition)
- limitation in access to NECF consumer protections
- limitation in access to dispute resolution schemes
- bundles with other services, electricity/bulk hot water, chilled water for air conditioning, air conditioning, telephone and internet services, pay TV, amongst others.

For example, EWON reports that it is able to investigate billing disputes but not those related to the following matters:³⁴⁷

- the efficiency, age or condition of the hot water system itself
- the occupancy rate of the dwelling
- action or inaction of a strata corporation, property manager or landlord.

In Victoria, where bulk hot water is being regulated, EWOV has declared that there are certain cases that it cannot investigate, such as:³⁴⁸

- most issues with the bulk water system (storage tank and heating equipment)
- most issues related to switching bulk hot water companies
- any complaint related to an Owner's Corporation or Building Management as EWOV can only receive complaints about Scheme Participant.

Currently, some ombudsman agencies have no jurisdiction to provide dispute resolution to embedded network customers or bulk hot water services. Some retailers (if it is the case that hot water is provided by an authorised retailer) have included in their hot water contracts provision to give end users full access to energy ombudsman schemes, Office of Fair Trading and hardship programs. These commercial decisions provide more benefits to consumers and improve competition between retailers and embedded network operators when supplying this service. However, it is unclear how these provisions will fully cover consumers especially if it is not defined as an energy service.

9.4.4

Areas for improvement and next steps

The market has evolved significantly in recent years in relation to non-traditional energy services and products. The specific nature of the NECF has not adapted to these changes. There is a need to analyse and update the NECF framework to remove barriers to innovation and extend consumer protections to new models of essential service supply.

The Commission will review whether changes to the NECF are necessary to make consumer protections fit for purpose and reduce barriers to innovation. This review will likely analyse the regulatory approach for new non-traditional energy services and products. For example, consumer protections in relation to DER and bulk hot water.

347 EWON, www.ewon.com.au/page/making-a-complaint/what-can-i-complain-about/common-hot-water.

348 www.ewov.com.au/files/fact-sheet-25-bulk-hot-water_0.pdf.

10 RETAILER APPROACHES TO CONSUMERS IN PAYMENT AND FINANCIAL DIFFICULTY

BOX 28: SUMMARY OF KEY FINDINGS

- Under the NECF and Victorian payment difficulties framework, retailers are required to provide support and assistance to consumers who may be having difficulty paying their energy bills.
- A range of measures and support options are provided by retailers, however these vary significantly. The larger retailers have a suite of measures and tools available, while smaller retailers have more focussed and targeted options. Across all retailers, the delivery, application and accessibility also varies. Generally, there is inconsistency in how each retailer responds to consumers who identify as having payment and financial difficulty.
- There are a range of retailer programs offered to consumers which extend beyond their minimum requirements. Some examples include:
 - Early identification measures. A few retailers have introduced programs that seek to predict and identify early, those customers that may be at risk of falling into payment difficulties. These customers are notified about the support and assistance available to them.
 - Available payment options. Many retailers offer a suite of payment options including incentive payments, more predictable plans, deferral payments, payment extensions and monthly billing if required. Recently, a number of the larger retailers have introduced programs that look to waive debt for customers in hardship or other personal circumstances, for example, family violence situations.
 - Understanding and managing energy use. Most retailers will offer tailored in home energy audits and financial incentives such as rebates for replacement of appliances. Advances in technology is also allowing retailers to offer on-line and mobile applications that allow customers to monitor their usage and understand what and where energy is being used in their home.
 - Partnerships or collaboration with third parties. Most retailers have some level of partnership and collaborate with community groups to provide financial counselling services. Some also are part of outreach programs such as bring your bill day, switched on communities programs more recently the industry collaboration project Thriving Communities.
- The AER's Customer Hardship Policy Guidelines that includes standardised statements and more targeted guidance may improve consistency, access to retailer support, and identification of assistance to consumers.

BOX 29: AREAS FOR IMPROVEMENT

- There is room for retailers to improve their approach and implementation of the support and assistance they offer to consumers that are experiencing payment and financial difficulty. The AER have noted that retailer conduct and performance with regard to their hardship policies has not improved over time and consumer experiences and confidence are also not improving.
- The key areas for improvement include:
 - Awareness of protections and support available. Retailers to collaborate with jurisdictions and other organisations to further promote consumer awareness of their support programs available. This includes considering a one stop information source on the available concessions, government energy rebates and other assistance measures that may be available to a consumer experiencing payment and financial difficulty.
 - Improving early identification programs. Retailers should implement early identification programs to identify those customers who are having difficulty paying their energy bills and require payment assistance.
 - Reporting of indicators and measures. The existing indicators and reporting measures could be expanded to provide a better indication of the different consumers requiring assistance and whether they are aware of support measures available and taking these up when required.
 - Review of the NECF. The AEMC will continue its two stage review of the NECF. In regard to consumer protections, some broad themes and issues that may warrant consideration include:
 - the existing objectives of legislative requirements and if these are applicable for current market.
 - the distinction between customers experiencing payment difficulties and hardship customer, including whether it limits early identification of consumers struggling to pay their energy bills.
 - the current terminology related to 'hardship' and whether this has a certain stigma that deters consumers from accessing advice and support
 - whether retailers continue to have incentives to apply support and assistance consistently and equitably
 - whether there is a need to reduce the requirements for credit checking so all customers can access the best offers in the market before they enter into payment or financial difficulty.

In the 2018 Review, the Commission recommended that it assess how retailers generally support customers who are having difficulty paying their bill and are in financial difficulty in the 2019 review. This was as a result of ongoing concern related to energy affordability and significant price increases.

The payment options and support services that retailers offer to customers varies significantly. For example, there are a number of retailers that provide assistance in accordance with the minimum requirements under the existing legislation. A number of other energy retailers have implemented much broader initiatives beyond their legal obligations.

This chapter considers:

- existing minimum legislative requirements related to protecting small consumers in payment and financial difficulty (both NECF and non-NECF jurisdictions)
- existing levels of energy bill debt and consumers accessing payment and hardship plans
- retailer approaches for providing assistance, focusing on commercially driven initiatives
- areas for improvement.

10.1

Existing legislative requirements

10.1.1

NECF jurisdictions

Under the NERL and NERR, retailers are required to provide support and assistance to their customers who are experiencing difficulty paying their energy bills and are in financial difficulty due to hardship.³⁴⁹

The NERL specifically requires energy retailers to develop and maintain a customer hardship policy for identifying and assisting customers with difficulties paying their energy bills due to hardship.³⁵⁰ There are other separate protections that require retailers to have processes in place to promptly identify customers who are in debt and help them better manage their energy bills by offering payment plans.³⁵¹

Under the NERL, the AER is responsible for monitoring, investigation and enforcement of the existing NERR requirements.³⁵² The AER is also responsible for developing and maintaining the Customer Hardship Policy Guidelines.³⁵³ On 29 March 2019, the AER released its new binding Customer Hardship Policy Guidelines. This was in response to the Commission's final rule determination that required the AER to develop a binding and enforceable hardship guideline that is to include consistent and specific statements retailers must have in their hardship policies. The Commission also recommended that the new rules be civil penalty provisions.³⁵⁴

The Customer Hardship Policy Guidelines require retailers to update their hardship policies in line with new rules and have these approved and published by no later than 2 October 2019.³⁵⁵ The AER has also developed the voluntary sustainable payment plans framework to further support consumers and assist retailers in assessing consumers' capacity to pay.³⁵⁶

³⁴⁹ NERL Division 6 and 7.

³⁵⁰ NERL Section 43 (2) (c).

³⁵¹ NERL Section 50 (b).

³⁵² NERL Section 204 (b).

³⁵³ NERR Rule 75 (A) 1.

³⁵⁴ AEMC, *Strengthening protections for customers in hardship*, Rule Determination, 15 November 2018.

³⁵⁵ AER, *Customer Hardship Policy Guidelines*, 2 April 2019.

³⁵⁶ AER, *Sustainable payment plans framework*, Version 1, July 2016.

10.1.2 Victorian payment difficulty framework

In Victoria, the legislative requirements for retailers operating in that state are different to participating NECF jurisdictions. The Payment Difficulty Framework forms Part 3 of Victorian Energy Retail Code and came into force on 1 January 2019. This framework sets out the minimum standards of assistance residential energy customers anticipating or facing payment difficulties are entitled to. Under the framework, there are two types of assistance measures, standard or tailored assistance. For each assistance measure, retailers are required to offer a number of payment options as set out in the code.³⁵⁷ A key feature of the new framework is that any customer with a debt of \$55 is entitled to tailored assistance from their retailer.

10.2 Consumers in payment and financial difficulty

Accumulating debt is one signal to an energy retailer that a customer is, or may be, having trouble paying their energy bill. The AER quarterly March update to their annual retail performance report data highlighted that across NECF jurisdictions:

- average residential and small business customer electricity and gas non-hardship debt continues to increase³⁵⁸
- the average debt for non-hardship residential electricity customers for the quarter two 18/19 was about \$996 and \$607 for gas³⁵⁹
- small business average non-hardship debt was around \$2,562
- the average debt for customers entering into, or on a retailer hardship program decreased in the March 2019 quarter as compared to March 2018
- average debt on entry to a hardship program is about \$956 for electricity customers and \$514 for gas³⁶⁰
- in Victoria, average debt on entry to a hardship programs was about \$1,377 for the first quarter of 2018-19.

There is limited public reporting of the consumer segments that may have higher levels of debt or are accessing payment and hardship plans from retailers. However, the AER performance data indicates that residential electricity customers in NECF jurisdictions have the highest average debt and are more likely to be on payment plans.³⁶¹ The customer research undertaken by the ACCC for the 2018 REPI also found that there are some groups of consumers who are more likely to have higher average debt. These consumers are more likely to:

- live in rental accommodation and have older homes
- have less energy efficient appliances
- have larger families

³⁵⁷ ESC, Energy Retail Code, Version 12, Part 3, 1 January 2019.

³⁵⁸ AER, *Quarterly Retail Performance Report, Quarter 2 2018-2019 summary*, March 2019, p.8.

³⁵⁹ AER, *Quarterly Retail Performance data, Quarter 2 2018-2019*, March 2019.

³⁶⁰ AER, *Quarterly Retail Performance Data, Quarter 2 2018-2019*, March 2019.

³⁶¹ *ibid*, p.8.

- be pensioners and immigrants
- be in short or longer term unemployment.³⁶²

Trends in consumers accumulating energy bill debt and the differences in the spectrum of consumers that may be having difficulty paying their bill would provide useful input for retailers to develop strategies for promoting awareness of their programs and implement early identification measures.

Regarding consumer awareness of retailer and government support, both the ACCC 2018 customer research and the AEMC customer research for the *2016 Retail energy competition review* found that there are groups of consumers that may not be aware of the protections and assistance available to them. The ACCC 2018 customer research found these customers are more likely to accumulate debt or ration their electricity use as a means to reduce their energy bills. These consumers are more likely to be:

- the elderly
- have larger families
- from non-english speaking backgrounds.³⁶³

The AEMC vulnerable consumer research found that consumers in the vulnerable middle income segment³⁶⁴ tend to have higher electricity bill and more likely to miss or be late paying a bill. Generally, they are least aware and very unlikely to be accessing support services when needed. These consumers indicated that they are unlikely to ask for assistance as they feel embarrassed and hence are not utilising the support available to them.³⁶⁵

In the AER March quarterly update, the AER highlighted that some retailers have been working towards improving early identification measures and may be a factor for the reductions in average debt for those consumers who are entering or on hardship programs.³⁶⁶ Some retailer identification strategies are discussed in section 10.3.2.

The number of residential consumers taking up payment plans remains steady, at about 2.09 per cent of total customer numbers in NECF jurisdictions. While the number of customers on payment plans has remained flat in comparison to the same time last year, there has been a significant increase in the number of payment plans cancelled. For quarter two 2018-19, around 54 per cent of residential electricity customers' payment plans were cancelled. Gas customer payment plan cancellations have not changed and remain around 51 per cent.³⁶⁷

The AER notes that the high cancellations for electricity customers may be due to consumers failing to make the required payments in accordance with their payment plan and therefore could relate to wider affordability issues.³⁶⁸ The Commission notes that a number of retailers

³⁶² ACCC, *Restoring Affordability and Australia's Competitive Advantage, Retail Electricity Pricing Inquiry Final Report*, June 2018, p.307.

³⁶³ ACCC, *Restoring Affordability and Australia's Competitive Advantage, Retail Electricity Pricing Inquiry Final Report*, p.307.

³⁶⁴ The vulnerable consumer research found that consumers in the vulnerable middle income segment tended to be dual parent households that are renting and have only one parent working with a child at home.

³⁶⁵ AEMC, *2016 Retail Energy Competition Review*, June 2016, p.46.

³⁶⁶ AER, *Quarterly Retail Performance Report, Quarter 2 2018-2019 summary*, March 2019, p.9.

³⁶⁷ *ibid*, p.6.

³⁶⁸ AER, *Annual report on compliance and performance of the retail energy market 2017-2018*, p.57.

have implemented debt reduction programs for some of their customers and broadened the different payment options available to consumers. These are also discussed in the next section.

Hardship programs are offered to customers who cannot pay their bills by the due date or meet a standard payment plan arrangement. From 2017 to quarter two 2017-18, the number of electricity customers entering a hardship program in NCEF jurisdictions increased by about 17 per cent. The AER notes that while there has been an increase in the number of customers gaining extra assistance by being placed on hardship programs rather than payment plans, the increase may also suggest that more people are struggling to pay their energy bills.³⁶⁹ The number of gas customers in hardship programs also increased, with New South Wales and the Australian Capital Territory having the largest increase in number of customers in gas hardship programs. Victoria also experienced an increase in the number of customers participating in hardship programs and considered that more consumers are struggling to pay their energy bills.

Although the rate at which customers are completing hardship programs has improved, residential and small business electricity disconnections continue to increase across NECF jurisdictions. Residential gas disconnections have decreased slightly, except in Queensland and the Australian Capital Territory. Similar to payment plan cancellations, disconnections may be linked to consumers missing payment milestones and wider affordability issues and pressures. Victoria has experienced a 14 per cent reduction in disconnections for non-payment of energy bills compared to 2017-18.

Similar to ACCC and AEMC findings, PIAC found in its 2018 qualitative and quantitative survey on disconnections that those consumers who were disconnected are more likely to be:

- renting
- live in social housing
- paying off a mortgage
- have at least one child at home
- have one person in the home unemployed or sole parent
- speak another language other than English.³⁷⁰

The PIAC research also noted that those consumers surveyed indicated that they did not know where to obtain assistance, what assistance to ask for and felt embarrassed or uncomfortable to seek support from retailers. Many of these consumers considered it would be useful, among other things, to have a representative advocate that could assist in conversations with energy retailers and to be offered more realistic, affordable payment plans.³⁷¹

³⁶⁹ AER, *Quarterly Retail Performance Report, Quarter 2 2018-2019 summary*, March 2019, p.10.

³⁷⁰ PIAC, *Close to the Edge - a qualitative and Quantitative Study*, Final, November 2018, p.15-18.

³⁷¹ *ibid*, p.11.

10.3 Retailer approaches for supporting customers in payment and financial difficulty

The existing NECF legislative framework provides retailers with the flexibility to determine the level of assistance based on a consumer's circumstance. As a result, retailer support and assistance varies in their application, delivery and access. In Victoria, there are conditions for retailers to offer assistance, for example, a retailer must provide consumers with timely, clear advice on the assistance the consumer is entitled to if they missed a payment and owe in excess of \$55.³⁷²

The information outlined below has been informed by retailer responses to a short retailer survey on approaches to consumer payment difficulties,³⁷³ the AER compliance and performance retail energy market reports and other public information about retailer hardship policies. Retailer approaches and support measures have been grouped across a number of key themes that are considered important for supporting customers in payment difficulty and hardship.

- promoting awareness of protections and support available
- early identification approaches and ongoing training of staff
- available payment options
- programs to assist customers manage energy use
- coverage of retailer programs and collaboration and partnership with third parties.

10.3.1 Promoting awareness of protections and support available

Retailers use a variety of channels and tools to inform their customers of the protections and support available when experiencing payment difficulty. Generally, larger retailers have broad based assistance programs which are offered to their customers and can be used to market the suite of assistance measures available. Examples of some retailer broad based hardship programs are outlined in Box 30.

Most retailers promote their policies and programs via their websites, but the other means of communication include:

- letters
- emails
- texts
- social media advertising
- call centre staff
- leaflets provided to financial counsellors and their outreach centres
- representation at community events.

³⁷² ESC Victoria, *Payment Difficulty Framework*, October 2017.

³⁷³ A short retailer survey consisting of seven questions was sent to around 21 retailers. We received around 10 responses from both large and smaller retailers.

Some retailers have also introduced on-line tools to assist customers to understand what support they may be entitled to. For example, AGL has introduced an on-line tool that identifies the state-based concession programs that a customer might be eligible for.³⁷⁴ Noting that further measures could be implemented to assist consumers from CALD communities, most retailers offer telephone interpreter services if required.

BOX 30: RETAILER BROAD BASED HARDSHIP PROGRAMS

- Energy Assist Program (EnergyAustralia). This program sets up payment arrangements with the customer that can extend up to 24 months, and partial or full debt waivers on a case-by-case basis. It also applies all discounts regardless of whether the customer is making agreed payments and payment matching of customers regular payments, for example for every six payments, a credit of one payment is applied to the customers account.
- Energy Savvy Family Program (Ergon Energy). This program is aimed at assisting low income households to manage their bills and improve energy efficiency. It is delivered in cooperation with the Queensland Government and the Queensland Department of Natural Resources, Mines and Energy. The Program offers the following for consumers:
 - Reduce Your Juice, mobile based digital game, social media and rewards program
 - installation by Ergon Energy Retail of a smart meter with monthly billing
 - access to the Ergon Energy Retail HomeSmart Savvy program
 - access to a local Champion.
- The Staying Connected Hardship Program (AGL/Powerdirect). This program is offered in NECF jurisdictions. A separate program is offered in Victoria. This program offers a range of payment and other support services for customers in hardship but is complemented by AGL's \$50 million Affordability program that was announced in August 2018 and involved cancelling debt aged more than 12 months and dollar matching on other debt repayments.
- The Energy Assistance Program (M2 Energy). This program has been designed for the Victorian Payment difficulties framework but and allows customers to:
 - pre pay by scheduled instalments
 - extend pay by date — up to one full billing cycle
 - short-term payment arrangements — pay off arrears over a billing cycle and up to six months
 - long-term payment arrangements — up to 24 months of instalments to cover arrears and ongoing estimated costs
 - parking of arrears up to six months short term payment arrangement based on capacity to pay whilst working toward energy affordability

³⁷⁴ <https://www.agl.com.au/help/payments-billing/energy-concessions-rebates-grants>.

- telephone energy audits — the ability to understand usage, what are contributing factors and tips on reducing costs.
- Power on Program (Origin Energy). Power on is available to any Origin Energy residential customer who is having trouble paying their bills because of hardship. This program provides tailored solutions including direct bill relief, getting customers on the right deal and helping them access concessions and other government or community support. Origin Energy will provide personalised case management support, tailored payment plans which may include matched incentive payments, free energy audits, and energy efficient appliance upgrades to help our customers get back on top of their bills.

10.3.2

Early identification measures and ongoing training of retailer staff

Retailer approaches to early identification are varied. Some retailers have basic monitoring of account and debts, but some larger retailers have introduced automated triggers or flags within their systems to notify them when a debt threshold. Box 31 provides some examples of the recent programs that have been put in place and activities by smaller retailers.

All retailers who responded to the survey noted that they have ongoing training for their call centres and specialist staff to recognise and assist customers when they self identify as having difficulty paying their energy bill. Generally, classroom specific training or one-on-one coaching is provided to staff that will have direct contact with customers with payment difficulties. Some retailers engage financial counsellors to assist call centre or specialist staff with customer enquires and conversations. Most retailers have some level of monitoring and assurance of their training activities and will provide ongoing training around every six months.

BOX 31: EXAMPLES OF RETAILER EARLY IDENTIFICATION STRATEGIES

- In January 2019, AGL launched its Predictive Early Hardship communications program. This program uses predictive analysis to determine the potential suite of customers that may be at high risk of falling into payment difficulties. To date, according to AGL, around 25,000 customers have been sent information about support and assistance available to them. Of those customers, around 13 per cent have taken up the following support options:
 - payment arrangements set up
 - set up bill smoothing
 - concessions set up on account, and
 - on boarded to Staying Connected.
- Origin Energy uses a statistical predictive modelling system to help assess the likelihood of a customer experiencing payment difficulties within a six-month period. It incorporates

a demographic analysis of their customer base along with customer behaviour analysis, including payment frequency and amounts, whether payments are made in full and on time. This program also considers whether there have been requests for payment extension, account concession information, the account balance and cancelled payment plans.

- Powershop has introduced two additional collection steps to the regulated process — one at the start and one at the end. The first is to offer a courtesy email to advise customers they may have overlooked their account. The final is to provide a disconnection notice after a disconnection warning. This has achieved over a 60 per cent response rate and minimised disconnection activity as a result.
- 1st Energy, a smaller retailer, indicated that it relies on early and upfront intervention strategies that include:
 - sending electronic communications reminding customers their bill is nearly due and to not miss out on pay on time discounts
 - improving customer correspondence
 - updating their websites to be more user friendly
 - embracing digital technology solutions from third parties such as TALKINGTECH.

10.3.3

Available payment options

Retailers will generally assess and offer customers different payment options and plans depending on the customer's circumstance and ability to meet conditions of payment. To date, there has been significant inconsistency in access and retailer responses to consumers for payment options. As noted earlier, there has been a large increase in the number of payment plans cancelled and this may be due to consumers not being able to meet their payment plan arrangements.

Retailers are required to offer flexible payment options for consumers who are having difficulty paying their energy bills and in financial hardship. They must also, amongst other things, review the customers retail market offer and provide information about government energy rebates, concession or relief programs. Payment options offered by retailers that extend beyond the minimum legal requirements can include offerings such as predictable plans, deferral payments, payment extensions, monthly billing, incentive payment plans and subsidised payment options.

In addition to suite of payment arrangements, most retailers will offer some form of debt waiver or discounts for customers in certain circumstances. For example:

- Click Energy, AGL, and EnergyAustralia provide debt relief for customers who may be in or impacted by family violence situations, long term affordability or terminal illness.³⁷⁵

³⁷⁵ Victoria has recently released its final decision on supporting customers in family violence situations, which considers the application of payment assistance to those customers who are experiencing family violence.

- In 2018, EnergyAustralia introduced the Clean Slate initiative which provided debt waiver for customers on Energy Assist Program and who had been in a position to make payments over a 12-month period but did not have the ability to repay outstanding balances.
- In 2017-18, Aurora Energy provided up-front assistance and credit of up to \$500 consumers receiving cancer treatment.
- In January 2019, AGL introduced a safety net protection that provides automatic discounts of up to 10 per cent for electricity customers who have been on standing offers for more than a year.
- Origin Energy recently increased their Energy Concessions Discounts for South Australian concession holders from 18 to 20 per cent.

10.3.4

Understanding and managing energy use

All retailers provide some support for consumers to manage their energy use and improve energy efficiency. Most retailers will offer telephone energy audits, however many will also offer tailored in-home energy audits. Some retailers also offer financial incentives such as rebates, replacement of appliances, and also debt waivers for appliances. Advances in technology is assisting retailers to develop on-line and mobile applications that allow consumers to monitor usage and understand what and where energy is being used in the home. Some broader retailer energy efficiency options and programs offered are provided in Box 32.

BOX 32: RETAILER PROGRAMS TO SUPPORT CONSUMERS TO MANAGE ENERGY USE

- Powershop provides all customers with access to its smart phone application. This application allows customers to track and manage their energy use. Customers who do not have a smart meter are also able to use the application to enter meter reads and this allows them to track their energy on a more regular basis than quarterly readings. This allows Powershop to provide a comprehensive energy audit over the phone with the customer. Powershop are also looking to partner with organisations that can offer energy efficiency improvements to low income customers at little or no cost.
- Ergon Energy Sunny Savers Program. The Sunny Savers Program involves two trials where solar is installed at public housing premises with the intention of reducing cost of living pressures for public housing tenants. Trials include:
 - Remote trial - Lockhart River: A rooftop solar array in a remote indigenous community with a diesel-powered network
 - Regional trial - Cairns and Rockhampton Housing Service Centre (HSC).
- These programs are run in addition to Ergon Energy's hardship program that has been designed to exceed existing legislative hardship provisions. The programs intersect in the

customers eligible for these programs are usually also eligible for the broader hardship program.

- In 2017, AGL announced a \$1 million partnership with the New South Wales Government to deliver solar energy to assist in reducing energy costs for customers experiencing energy hardship. Through this program, AGL are working with social housing providers to deliver eligible households with solar panels, a digital meter, and an AGL Solar Command energy monitoring system. Tenants will also receive a home energy visit by Kildonan UnitingCare, who will connect them with other social support services and provide information on how to maximise the benefits of their new solar package. This program builds on the \$1.5 million of energy saving partnerships in South Australia and Victoria that were established in 2016.
- Simply Energy offers an online Energy Check up tool with a free tailored report to understand where a consumer is using energy in the home and tips for reducing energy use.
- Alinta Energy offer a field energy efficiency audit service and, as required, can offer advice on purchase or supply of replacement appliances to assist customers manage their energy consumption and costs.

10.3.5

Coverage and collaboration/partnerships with third parties

Retailer responses to the survey noted that the assistance and support provided by each retailer is available to all their residential customers in states in which they operate, although some commented that some of their programs are targeted and in partnership with community organisations and financial counselling services in specific jurisdictions.

Most retailers highlighted that they have partnerships and collaborate with community groups to provide financial counselling programs or, at a minimum, have processes in place to notify customers of financial counselling services available. Some retailers participate in community outreach programs such as 'bring your bill' days organised by Energy and Water Ombudsman or other community groups. These forums allow customers to access assistance and information in person. Aurora Energy noted they have a relationship with Anglicare where an Anglicare financial counsellor works on-site two days a week for immediate referrals, in addition to home visits and financial literacy advice.

Box 33 provides an example of the switched on communities program which is a partnership between AGL and the Queensland Government. Some retailers are also part of broader community initiatives such as Thriving Communities³⁷⁶ and also partner with other essential services programs offered. For example, EnergyAustralia has a pilot cross referral program with Yarra Valley Water where Yarra Valley Water have the ability to refer to the Energy Australia hardship program if they identify the customer is an active Energy Assist Customer.

³⁷⁶ <https://thriving.org.au/>.

BOX 33: SWITCHED ON COMMUNITIES PROGRAM

AGL and the Queensland Government have partnered to provide \$500,000 for not-for-profit community organisations in South-East Queensland to assist their communities become switched on. Grants of up to \$100,000 are provided and used to improve the access of information available to consumers and on issues including:

- electricity usage
- electricity pricing and contract conditions
- how to compare offers to find a better electricity deal
- how to access assistance and consumer protections.

A key area of the program is to build capacity within not-for-profit community organisations to ensure community workers have the skills necessary to educate consumers on energy matters and are able to assist consumers in engaging with the electricity retail market.

10.4

Areas for improvement and recommendations

There are a range of retailer assistance programs being implemented. However, there is room for improvement, particularly in relation to promoting consumer awareness of the protections and support available and early identification of customers who may be having difficulty paying their energy bill.

The AER, as part of the release the new binding Customer Harship Policy Guidelines, indicated that retailer conduct and performance with regard to their operation of their hardship policies has not improved over time, and the experience for many customers is also not improving. The AER considered that further action is required to strengthen the protections for customers experiencing hardship.³⁷⁷ Some key improvements and recommendations that could be made are outlined below.

Improving awareness of protections and support available

As noted, there are groups of consumers who are unlikely to be aware of the protections and support available to them. This is particularly the case as the spectrum of consumers who are struggling to pay their energy bills increases. There are also many consumers who find it difficult to navigate the existing retailer support, and do not know what they need to do to access the appropriate level of assistance.

There are range of actions that retailers, government and community groups could take to improve consumer awareness of the protections available and general consumer engagement. The ACCC in its 2018 REPI final report recommended that in addition to existing funding, the Australian Government and the relevant state or territory government should jointly fund (to a value of \$5 per household in each NEM region, or \$43 million NEM-

³⁷⁷ AER, *Notice of Final Instrument, AER Customer Hardship Policy Guideline, Version 1*, March 2019, p.10.

wide, per annum) a grant scheme for consumer and community organisations.³⁷⁸ This would provide targeted support to assist vulnerable consumers to improve energy literacy, including to understand financial assistance schemes such as those offered by retailers and governments.³⁷⁹ This recommendation currently sits with the COAG Energy Council to action.

Other awareness programs or initiatives that could be implemented include:

- Collaboration or partnerships between retailers and jurisdictions, similar to Queensland Switched on Communities Program or the Queensland/New South Wales deregulation communication programs that utilised the AEMC consumer blueprint.³⁸⁰ The AER have indicated that as part of monitoring the implementation of the new binding hardship guidelines they intend to understand the extent to which retailers are experiencing customer disengagement from hardship programs. The AER will also seek to determine how retailers are monitoring engagement and are working to improve their customer engagement levels through research, having regard to behavioural insights and tools.³⁸¹
- Retailers, in collaboration with jurisdictions and community organisations, establish a one stop information source on the available concessions, government energy rebates and other assistance measures that may be available to a consumer experiencing payment and financial difficulty.³⁸² Most retailers have information on their websites of the assistance and support available, including the range of rebates and concessions offered by each jurisdiction. Having a one stop information source may increase engagement and awareness for those groups of consumers who are less likely to approach retailers or take up government assistance when in payment and financial difficulty. We understand that a number of retailers have signed up to the Thriving Communities Partnership that is also considering a complementary one stop, one story hub. The objective of the hub is to provide a single-entry point to access all vulnerability support services across private, public and community based organisations.³⁸³
- To date, early identification programs by retailers has been limited. While a few retailers have put in place some programs, there is a need for all retailers to consider and implement improved processes to identify those customers who are having difficulty paying their energy bills and require payment assistance. The rates of disconnections have increased as with the cancellation of payment plans. This has been attributed to some retail customers potentially being placed on unaffordable payment plans for their individual circumstance and hence missing their payment milestones. Retailers should take into account the needs of a customer when establishing payment plans so that they

378 The Australia Government is conducting a review of the coordination and funding of financial counselling services across Australia. See: www.dss.gov.au/communities-and-vulnerable-people-programs-services-financial-wellbeing-and-capability/review-of-the-coordination-and-funding-of-financial-counselling-services-across-australia.

379 ACCC, *Restoring Affordability and Australia's Competitive Advantage, Retail Electricity Pricing Inquiry Final Report*, June, p.307.

380 The AEMC consumer blueprint highlights and identifies the various channels needed to effectively communicate across and within consumer segments and also the broader community.

381 AER, Notice of Final Instrument, AER Customer Hardship Policy Guideline, Version 1, March 2019, p.18.

382 Service NSW has established a similar information website, where consumers can view all the NSW government rebates and savings they may be entitled to. See: <https://www.service.nsw.gov.au/campaign/cost-living>.

383 <https://thriving.org.au/what-we-do/our-projects/the-one-stop-one-story-hub>.

reflect the consumer's individual circumstance and ability to manage energy costs and use.

The ACCC, in its final REPI report recommended that COAG should improve concession schemes across the NEM to ensure that, to the extent possible, there is a uniform, national approach to electricity concessions and consumers are aware and accessing them. Currently any review of concession schemes sits with the respective jurisdictions.³⁸⁴

Improving reporting and compliance

The AER currently monitors and reports on a number of hardship related indicators. From 1 January 2019, the AER retail performance reports included an expanded set of hardship related indicators to better understand how customers are moving through retailer hardship programs.³⁸⁵ The expanded set of indicators will provide more information, for example, on the number of customers referred to a hardship program via financial counsellors and those consumers that self-identified versus retailer referral. The AER has also indicated they intend to understand the impacts of the various measures introduced under the NECF and Victorian frameworks, related to consumers experiencing payment difficulty. This includes the potential for a 'debt trigger' and determine if any amendments are required.³⁸⁶

There is a question of whether additional information reported by retailers and collected by the AER would be useful to understand the spectrum of consumers who are having trouble paying their bill and accessing payment and hardship programs. Improved reporting measures and data can assist retailers, governments and consumer groups to consider the different consumers requiring assistance and whether they are aware of support measures available and taking these up when required. Consideration could also be given to whether the indicators need to be further enhanced to provide a better indication of the effectiveness of implementation of the suite of retailer payment and hardship approaches.

Review of the NECF

Similar to our recommendations for the review of concession schemes, the Commission has recommended that there should be a review of NECF, particularly in light of technology advancements and innovation. The ACCC made a similar recommendation in its REPI report.³⁸⁷

The AEMC consumer action plan has indicated that the AEMC would commence a review in 2019. Stage one of this review is related to NECF and ACL mapping in chapter 9. Stage 2 is likely to commence in the second half of 2019.

In respect to a review of the consumer protections related to payment and financial difficulty, some broad themes and issues that may warrant consideration include:

³⁸⁴ NSW provided its response to the Audit Office of NSW Performance report, Energy Rebates for Low Income Households. The response noted that the government will continue to provide advice on opportunities to enhance the design and implementation of its energy rebate scheme. See: https://www.audit.nsw.gov.au/sites/default/files/auditoffice/2017-Reports/Energy%20Rebates%20for%20low%20income%20households/05_Energy_Rebates_Appendix_One.pdf. South Australia is considering the models for administration of their energy concession scheme and the need to reduce red tape to make it easier for consumers to access concessions available to them.

³⁸⁵ AER, Performance Reporting Procedures, Version 3, April 2018.

³⁸⁶ AER, *Notice of Final Instrument, AER Customer Hardship Policy Guideline, Version 1*, March 2019, p.10.

³⁸⁷ ACCC, *Restoring Affordability and Australia's Competitive Advantage, Retail Electricity Pricing Inquiry Final Report*, June, p.299.

- the existing objectives of legislative requirements and if these are applicable for current market
- the distinction between customers experiencing payment difficulties and hardship customer, including whether it limits early identification of consumers struggling to pay their energy bills
- the current terminology related to 'hardship' and whether this has a certain stigma that deters consumers from accessing advice and support
- whether retailers continue to have incentives to apply support and assistance consistently and equitably
- whether there is a need to reduce the requirements for credit checking so all customers can access the best offers in the market before they enter into payment or financial difficulty.

ABBREVIATIONS

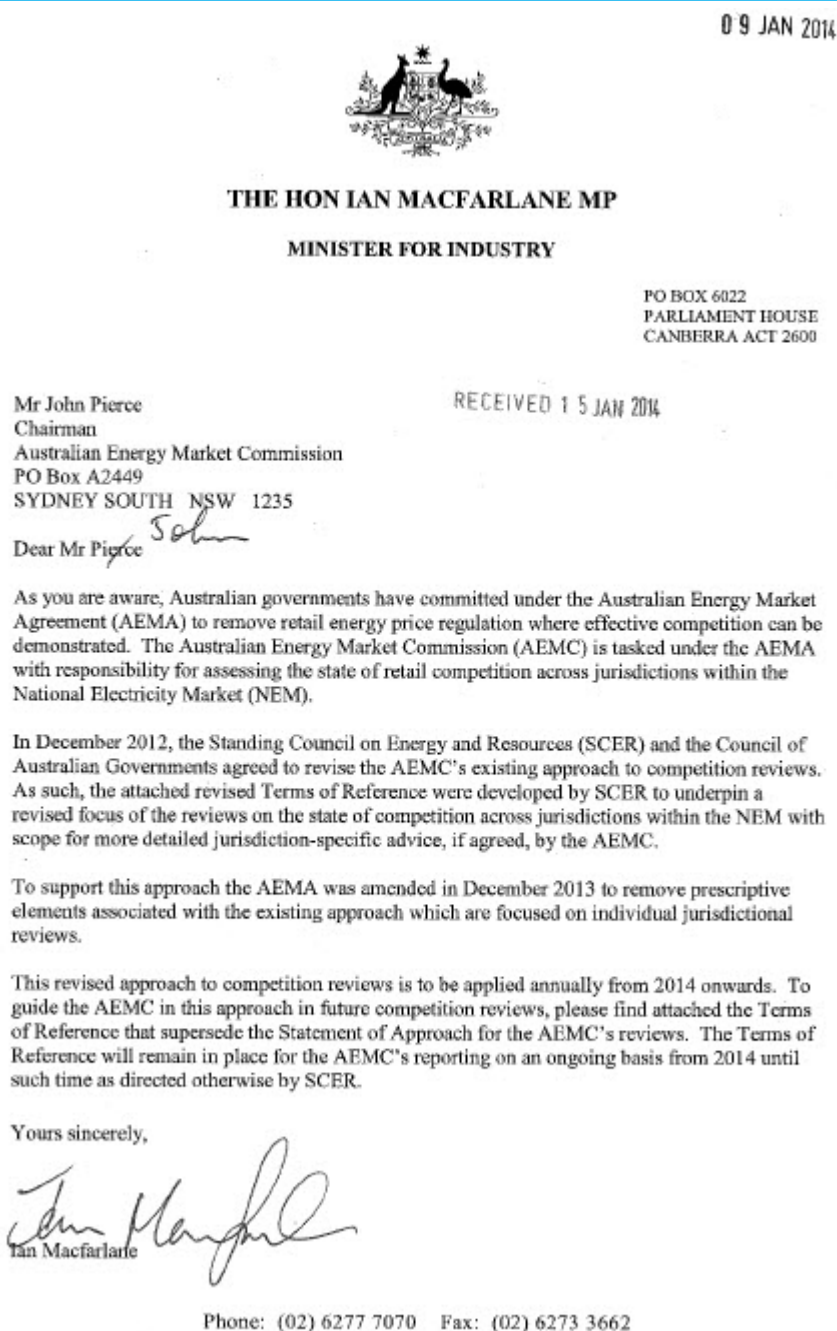
2018 Review	<i>2018 Retail Energy Competition Review</i>
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
ACT	Australian Capital Territory
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
AFMA	Australian Financial Markets Association
ARENA	Australian Renewable Energy Agency
ASX	Australian Stock Exchange
BSP	Battery service provider
CALD	Culturally and linguistically diverse
COAG	Council of Australian Government
COGATI	<i>Coordination of generation and transmission investment</i>
Commission	See AEMC
DER	Distributed energy resources
DMO	Default market offer
DMO Code	<i>Competition and Consumer (Industry Code — Electricity Retail) Regulations 2019</i>
DNSPs	Distribution network service providers
EBITDA	Earnings before interest tax, depreciation and amortisation
ECA	Energy Consumers Australia
ECA Survey	Energy Consumers Sentiment Survey
ENSPs	Embedded network service providers
ESB	Energy Security Board
ESC	Essential Services Commission
EWON	Energy and Water Ombudsman New South Wales
EWOV	Energy and Water Ombudsman Victoria
FCAS	Frequency Control Ancillary Services
FiT	Feed-in-tariff
GJ	Gigajoule
GSL	Guaranteed Service Level
GW	Gigawatt
GWh	Gigawatt hour
HHI	Herfindahl-Hirschman Index
IPART	Independent Pricing and Regulatory Tribunal
ISP	Integrated System Plan

KW	Kilowatt
KWh	Kilowatt hour
LNG	Liquified natural gas
MASP	Market ancillary service provider
MCE	Ministerial Council on Energy
MLO	Market Liquidity Obligation
MW	Megawatt
MWh	Megawatt hour
NECF	National Energy Customer Framework
NEL	National Electricity Law
NEM	National electricity market
NER	National Energy Rules
NERL	National Energy Retail Law
NERR	National Energy Retail Rules
NGR	National Gas Rules
NSP	Network service provider
NSW	New South Wales
OTC	Over-the-counter
PIAC	Public Interest Advocacy Centre
PPA	Power purchase agreement
QCA	Queensland Competition Authority
QLD	Queensland
ROLR	Retailer of last resort
RPIG	Retail Information Pricing Guidelines
REPI	Retail Electricity Pricing Inquiry
RRO	Retailer Reliability Obligation
SA	South Australia
SAPN	South Australian Power Network
SCO	Senior Committee of Officials
SEQ	South East Queensland
SME	Small to medium enterprise
TAS	Tasmania
Thwaites Review	<i>Independent Review of the Electricity and Gas Retail Markets in Victoria</i>
TNSPs	Transmission network service providers
TJ	Terajoule
UFE	Unaccounted for energy
VDO	Victorian default offer
VIC	Victoria
VPP	Virtual power plant

A

2019 COAG TERMS OF REFERENCE

Figure A.1: Retail energy competition review Terms of Reference



B SUMMARY OF PREVIOUS RECOMMENDATIONS

Table B.1: Summary of previous recommendations

YEAR	RECOMMENDATION
2014	The Commission recommended that jurisdictions remove energy retail price regulation where competition is effective.
	The Commission recommended that jurisdictions ensure concession schemes are delivering on their intended purpose in an efficient and targeted way.
	The Commission recommended that jurisdictions continue to harmonise regulatory arrangements across jurisdictions to minimise costs, including implementing the National Energy Customer Framework.
2015	The Commission recommended that jurisdictions remove energy retail price regulation where competition is effective.
	The Commission recommended that jurisdictions consider tailored communications to different audiences as set out in the AEMC's consumer engagement blueprint.
	The Commission recommended that jurisdictions ensure concession schemes are delivering on their intended purpose in an efficient and targeted way.
	The Commission recommended that jurisdictions continue to harmonise regulatory arrangements to reduce the long term costs of competing across jurisdictions.
	The Commission recommended that jurisdictions implement the recommendations of the AEMC's review of electricity customer switching to improve the accuracy and timeliness of the customer transfer process.
2016	The Commission recommended that jurisdictions continue to phase out retail price regulation for electricity and natural gas where effective retail competition can be demonstrated, as agreed under the Australian Energy Market Agreement.
	The Commission recommended that jurisdictions coordinate the development of NEM-wide awareness and engagement programs to make it easier for customers to access the best options for their circumstances and improve customer confidence in the energy markets.
	The Commission recommended that jurisdictions review concession policies to assess opportunities to better target them to customers most in need and to harmonise their structure across jurisdictions, where substantive differences exist.
	The Commission recommended that jurisdictions continue to harmonise regulatory arrangements to reduce the long-term costs of new businesses or retailers competing across jurisdictions.

YEAR	RECOMMENDATION
2017	The Commission recommended that ECA in partnership with the jurisdictions develops a broad information program that would support consumer awareness and confidence in the options that are available to manage energy bills.
	The Commission recommended that the AER should be resourced to run an effective awareness campaign of their Energy Made Easy website and are resourced to maintain and develop the site.
	The Commission recommended that the AER considers opportunities to improve the information provided by retailers to consumers related to the comparison of retail market offers as well as the AER considers opportunities to improve the transparency of information provided to consumers in relation to expiring fixed benefit periods in market offers.
	The Commission recommended that retailers and distributors make it easier and limit delays for consumers (and their agents) to access their metering data. In particular, retailers and distribution network businesses must develop streamlined arrangements for obtaining informed consent from consumers to the provision of metering data to their authorised representatives. The work by ECA and electricity distribution network businesses on streamlining information requirements from consumers and their agents should continue.
	The Commission recommended that retailers, consumer advocates and jurisdictions assist in transitioning vulnerable consumers, particularly those on hardship plans or experiencing payment difficulties, away from higher priced standing offers or market offers with expired fixed benefit periods.
	The Commission recommended that COAG Energy Council write to COAG and the relevant jurisdictions to review the application of their energy concession schemes with a strategy on awareness of energy concession schemes among different consumer segments.
	The Commission recommended that jurisdictions to harmonise their energy customer protection arrangements so that barriers and costs for traditional and new retailers who operate across the NEM are minimised. To facilitate this work, COAG Energy Council request the AEMC to provide advice on the existing suite of modifications that have been made by jurisdictions to the NECF and the differences between NECF jurisdictions and Victoria. This program of work should be completed within two years.
	The Commission recommended that COAG Energy Council should continue to consider how the NECF can be reformed given the diversity of new retailers, service providers and product and service offering available in the competitive retail energy market.

YEAR	RECOMMENDATION
	The Commission recommended that industry develops a credible survey to address the lack of data for electricity trading hedging products. In the absence of industry action, the AEMC will consider, as part of its G20 over-the-counter derivatives review, whether electricity OTC products should continue to be exempt from derivative trade reporting requirements.
2018	The Commission recommended, that taking into account any voluntary codes that have been developed by industry and the ECA to protect consumers receiving services from new energy service providers, the AEMC will assess whether changes to the NECF are also required to protect these consumers.
	The Commission recommended, that unless directed otherwise by COAG Energy Council, the AEMC would assess how retailers support customers in financial difficulty.
	The Commission recommended that retailers and comparison service providers establish an industry code of conduct for energy comparison sites and obtain ACCC authorisation for the code if necessary. Failing the development of an effective code, the Commission recommended that regulatory measures be considered.
	The Commission further recommended that all comparison websites display, in a prominent location the number of retailers and plans represented on their site as a proportion of all retailers and plans available in the consumer's distribution area.
	The Commission recommended that the AER separately report on customer numbers, switching rates and contract type for both residential and small businesses to improve understanding of the different market segments.
	The Commission recommended that the AEMC would work with industry to make data on OTC electricity contracts available to the market in a form that enhances transparency of the wholesale cost of energy. This would be done in conjunction with any proposed mechanism that would give visibility of over-the-counter contracts in the (then) National Energy Guarantee work program.

C LIST OF ACTIVE RETAILERS

Retailer	NEM	OVERALL	SE QLD		RQLD		VIC		NSW		ACT		SA		TAS	
	Electricity	Gas	Electricity	Gas	Electricity	Gas	Electricity	Gas	Electricity	Gas	Electricity	Gas	Electricity	Gas	Electricity	Gas
1st Energy															STATE	
ActewAGL																
AGL																
Alinta Energy																
amaysim Energy																
Aurora Energy																
BlueNRG																
Click Energy																
Commander Power & Gas																
CovaU																
DC Power Co	NEW	NEW	NEW				NEW	NEW	NEW							
Diamond Energy																
Dodo Power & Gas																
Elysian Energy	NEW						NEW									
Energy Australia																
Energy Locals^											STATE		STATE			
Enova Energy																
Ergon Energy																
ERM Business Energy																
Globird Energy		NEW						NEW								
Locality Planning Energy*	NEW		NEW													
Lumo Energy																
Mojo Power																
Momentum Energy																
Next Business Energy																
Origin Energy																
People Energy																
Pooled Energy																
Powerclub	NEW		NEW						NEW		NEW		NEW			
Powerdirect																
Powershop		NEW						NEW					STATE			
QEnergy																
ReAmped Energy	NEW		NEW						NEW							
Red Energy				STATE							STATE					
Sanctuary Energy																
Simply Energy																
Sumo									STATE							
Tango Energy																
TasGas																
TOTAL BRANDS	38	19	25	3	3	2	27	17	32	12	8	3	23	7	3	2
TOTAL COMPANIES	33	16	22	3	3	2	22	15	27	9	8	3	19	6	3	2
NEW ENTRANTS - NEM	5	3	4	-	-	-	2	3	3	-	1	-	1	-	-	-
NEW ENTRANTS - STATE	-	-	-	1	-	-	-	-	1	-	2	-	2	-	1	-

Note: Taken as of 29 March 2019.

D DETAILED SUMMARY OF NECF AND ACL

This appendix provides further detail on the NECF and ACL as outlined in chapter 9.

D.1 Contract terms

D.1.1 National Energy Customer Framework

The NECF sets general minimum requirements for energy contracts, which include:³⁸⁸

1. Billing:
 - a. Bill contents: the NERR set the minimum information that retailers must include in energy bills so that a small customer can easily verify that the bill conforms with their contract.³⁸⁹
 - b. Basis for bills: the rules also specify how retailers must bill customers, the metering data they must use and the circumstances and requirements where an estimated bill is permitted.³⁹⁰ Consumer protections are aimed at preventing overestimation, underestimation and bill shock.
2. Payment obligations:
 - a. Payment methods: the rules specify the payment methods retailers must accept to assist customers to comply with their payment obligations.³⁹¹
3. Pricing:
 - a. Price: retailers must comply with the AER's RPIG when presenting standing and market offer prices.³⁹²
 - b. Price variation: a retailer must notify a customer at least five business days before price variations apply, and must comply with the notice requirements under the rules.³⁹³
4. Customer complaints and dispute resolution: under the NECF, small customers have two mechanisms to resolve complaints and disputes. Under the NERL, retailers and distributors must have their own standard complaint and dispute resolution procedures. Additionally, energy ombudsman schemes also have the power to resolve complaints and disputes once the retailer or distributor had the opportunity to address these in accordance with their standard procedures.³⁹⁴
 - a. Terms and Conditions: the NECF requires that retailers, energy marketers and distributors, must include in all energy contracts a provision to inform customers that

³⁸⁸ These requirements may operate differently in certain jurisdictions as a result of jurisdictional modifications on the application of the NECF.

³⁸⁹ NERR, Rule 25.

³⁹⁰ NERR, Rules 20, 21, 22, 30, 31.

³⁹¹ NERR, Rule 32.

³⁹² NERL, Sections 24, 37.

³⁹³ NERR, Rules 46 and 12; Schedule 1, Model terms and conditions for standard retail contracts, Clause 8.2.

³⁹⁴ NERL, Part 4.

they have access to both avenues to resolve complaints and disputes (retailer's standard procedures and energy ombudsman schemes).³⁹⁵

Standard retail contract

The requirements prescribed in the NECF to protect consumers under a standard retail contract include:

1. Billing:
 - a. Frequency of bills: retailers must issue standard retail contract bills at least once every 100 days.³⁹⁶
 - b. Payment date: retailers must set the pay-by-date for standard retail contract bills no earlier than 13 business days from the issue date.³⁹⁷
 - c. Other goods and services: retailers must apply any payments to satisfy the charges of energy sale and supply before any other payable amounts for goods and services in the bill, unless the customer otherwise agrees.³⁹⁸
 - d. Final bill: a customer can request a final bill and the retailer must use its best endeavours to arrange a meter reading and issue it.³⁹⁹
2. Pricing:
 - a. Applicable price: standing offer prices are the prices applicable to standard retail contracts.⁴⁰⁰
 - b. Price variation: any variation to standing offer prices must be made in accordance with any jurisdictional requirements and can not vary more often than every six months.⁴⁰¹
 - c. Information: if retailers vary their standing offer prices, they have to publish the variation in the tariffs in a newspaper and in their website at least ten business days before it starts.⁴⁰²

Market retail contract

The requirements for a market retail contract are less prescriptive than the standard retail contract under the NECF. There are no model terms and conditions for market retail contracts under the NECF, with most terms being as agreed between the retailer and the small customer.⁴⁰³ However, this contract must be consistent with the applicable minimum requirements under the NERR⁴⁰⁴, any variation must be consistent with the NERR variation requirements⁴⁰⁵ and in case of any inconsistency, the NERR will prevail.⁴⁰⁶

³⁹⁵ NERR, Rules 50, 56, 64, 68, 80, 81.

³⁹⁶ NERR, Rule 24(1).

³⁹⁷ NERR, Rule 26.

³⁹⁸ NERR, Rule 27.

³⁹⁹ NERR, Rule 35.

⁴⁰⁰ NERR, Rule 12, Schedule 1, Model terms and conditions for standard retail contracts, Clause 8.

⁴⁰¹ NERL, Section 23(2); NERR, Rule 12, Schedule 1, Model terms and conditions for standard retail contracts, Clause 8.3.

⁴⁰² NERL, Section 23(2) and (5); NERR, Rule 12, Schedule 1, Model terms and conditions for standard retail contracts, Clause 8.2.

⁴⁰³ NERR, Rule 14.

⁴⁰⁴ NERL, Section 34.

The minimum requirements are related to the following areas:

1. Consent: as a key difference with standard retail contracts, retailers must obtain the explicit informed consent of a small customer when entering into a market retail contract.⁴⁰⁷
2. Withdrawal and termination:
 - a. Rights and obligation of withdrawal: the NERR provides a cooling-off period to act as a safeguard for consumers, enabling them to change their mind about a purchase they have made or contract they have entered into. Energy consumers have a right to withdraw from a market contract and it may be exercised within 10 business days after the customer received the contract information prescribed under the NERR.⁴⁰⁸
 - b. Termination notice: energy customers do not have to give more than 20 business days' notice to terminate a market retail contract. Any term and condition that extends this period has no effect.⁴⁰⁹
3. Liabilities and indemnities:
 - a. Breach of the contract or negligence by the retailer: retailers must not include any term or condition that limits the liability of the retailer for breach of the contract or negligence.⁴¹⁰
 - b. Limits to indemnities: retailers must not include any term or condition under which a customer indemnifies a retailer in an amount greater than the retailer would otherwise have been able to recover at general law for breach of contract or negligence of the customer.⁴¹¹
4. Prices and charges:
 - a. Discount practices: a retailer must not include any term or condition offered as discounts that might leave customers worse off with a higher rate than the retailer's standing offer rate.⁴¹² This prevents retailers confusing customers by advertising a larger discount on an inflated base rate.
 - b. Early termination charge: the NECF limits the nature of a term or condition that provides an early termination charge.⁴¹³
 - c. Benefit change: retailers must notify the customers of a benefit change no later than 20 business days before each benefit change to their market retail contract and must comply with AER's Benefit Change Notice Guidelines.⁴¹⁴

405 NERL, Section 35.

406 NERL Section 36; NERR, Rule 15.

407 NERL, Section 38.

408 NERR, Rule 47.

409 NERR, Rule 49(2).

410 NERR, Rule 51.

411 NERR, Rule 52.

412 NERR, Rule 46B.

413 NERR, Rule 49A.

414 NERR, Rule 48A.

Customer connection services

A distributor must provide customer connection services if a customer request those services and their premises are connected, or they are seeking to have those premises connected to the distribution system.⁴¹⁵ These customer connection services must be provided to in accordance with the relevant contract requirements prescribed under the NERL, NERR, NER and NGR.⁴¹⁶

The NECF sets out minimum requirements for each customer connection contract, as follows:

1. Deemed standard connection contract: for small customers and large customers for whom there is no applicable deemed AER approved standard connection contract⁴¹⁷
 - model terms and conditions prescribed under the NERR⁴¹⁸
2. Deemed AER approved standard connection contracts (large customers)⁴¹⁹
 - A deemed AER approved standard connection contract may vary or exclude any or all of the other provisions of Part 4, whether by express statement or by implication.
3. Negotiated connection contracts (small and large customers)⁴²⁰
 - Liabilities and immunities: a distributor must not include any term and condition in a negotiated connection contract that limits the liability of the distributor for breach of the contract or negligence by the distributor.

D.2

D.2.1

Marketing and offers

National Energy Customer Framework

Under the NECF, energy marketing activities are any activities that market, advertise or promote customer connection services or customer retail services.⁴²¹ These activities are regulated not only by the energy marketing rules set out in the NERR⁴²² but also by the ACL.⁴²³

1. Pre-contractual information: under the NECF retailers and retailer marketers have some pre-contractual obligations in terms of the information provided to small customers. If the retailer is the designated retailer (local area retailer) it has to inform the customer about their available standing offer, if it is not the designated retailer it must refer the customer to its relevant distributor and the distributor must advise the customer which retailer has an obligation to make a standing offer.⁴²⁴ These first requirements are not part of the energy marketing rules defined under the NERL but are related to information

⁴¹⁵ NERL, Section 66(1).

⁴¹⁶ NERL, Section 66(2).

⁴¹⁷ NERL, Part 3; NERR, Part 4.

⁴¹⁸ NERR, Section 81, Schedule 2

⁴¹⁹ NERL, Part 3; NERR, Section 78.

⁴²⁰ NERR, Section 82.

⁴²¹ NERL, Section 1.

⁴²² NERR, Rule 60.

⁴²³ There are additional protections for telemarketing under the *Telecommunication Act 1991* and the *Do not call register Act 2006* that are applicable to the energy sector that are not covered under this Chapter.

⁴²⁴ NERR, Rules 16-17.

requirements before the contract is formed and when retailers or retail marketers are offering retail services.

2. Marketing rules: there are two provisions under the energy-specific marketing regulation defined under the NERL.⁴²⁵
 - a. No contact list: energy marketing rules retailers must create and maintain a 'no-contact list' for retail marketers, whether by the retailer itself or by a person or organisation on behalf of the retailer. Small customers may indicate they wish to be placed on the list and a retail marketer must not make contact with a small customer whose name is on the relevant contact list.⁴²⁶
 - b. Canvassing and advertising signs: additionally, under the NECF retailers and retail marketers must comply with any signs at a person's premises indicating canvassing is not permitted or no advertising or similar material, is to be left at the premises or letterbox.⁴²⁷ The protection is intended to stop any undesired marketing activities.

Standard retail contract

A designated retailer cannot decline to enter into a standard retail contract if the consumer makes the request and complies with the pre-conditions set out in the Rules. Additionally, a designated retailer cannot refuse the sale of energy to a residential customer under a standard retail contract on the grounds that the customer owes the retailer outstanding amounts from an unpaid account.⁴²⁸ These pre-contractual obligations are part of many other NECF provisions to guarantee the supply of energy.

Market retail contract

For market contracts, under the energy marketing rules, there is minimum information that must be provided to consumers before the formation of the market retail contract or as soon as practicable once the contract is formed, as follows:

1. Pre-contractual information: the NECF intends that a consumer is well-informed about the contract terms and conditions that will be accepting. Therefore, a retail marketer are required to provide a small customer with the information related to:⁴²⁹
 - a. all applicable prices, charges and benefits to the customer (to the extent both are not otherwise part of prices), early termination payments and penalties, security deposits, service levels, concessions or rebates, billing and payment arrangements and how any of these matters may be changed (including, where relevant, when changes to prices will be notified by the retailer to the customer)
 - b. the commencement date and duration of the contract, the availability of extensions, and the termination of the contract if the customer moves out during the term of the contract

425 NERL, Division 8.

426 NERR, Rule 65.

427 NERR, Rule 66.

428 NERR, Rule 18.

429 NERR, Rule 64.

- c. any requirement that is to be or may be complied with by an electronic transaction—how the transaction operates and, if appropriate, an indication that the customer will be bound by the electronic transaction or will be recognised as having received the information contained in the electronic transaction
- d. the rights that a customer has to withdraw from the contract during the cooling-off period, including how to exercise those rights
- e. the customer’s right to complain to the retailer in respect of any energy marketing activity of the retail marketer conducted on behalf of the retailer and, if the complaint is not satisfactorily resolved by the retailer, of the customer’s right to complain to the energy ombudsman.

D.2.2

Australian Consumer Law

Under the ACL, there are general consumer protections, as well as more specific protections to prohibit certain conduct. These include:

1. Misleading and deceptive conduct:⁴³⁰ any person (including retailers, distributors, retail marketers, in general any energy market participant) must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
2. Unconscionable conduct:⁴³¹ the ACL includes provisions prohibiting a person from engaging in unconscionable conduct towards consumers or businesses.⁴³² The term “unconscionable conduct” is not defined in the ACL, as its meaning has been developed by the courts.⁴³³ Conduct may be unconscionable if it is particularly harsh or oppressive such that it goes against good conscience, and to be considered unconscionable, the conduct must be more than simply unfair.⁴³⁴

In considering whether conduct to which a contract relates is unconscionable, a court may, non-exhaustively, consider the terms of the contract and the manner in which, and the extent to which, the contract is carried out, and is not limited to consideration of the circumstances relating to formation of the contract.⁴³⁵ The ACL sets a number of matters a court may consider when assessing whether certain conduct is unconscionable, which include:

- the relative strengths of the bargaining positions of the supplier and the customer
- whether the customer was able to understand any documents relating to the supply of goods
- whether any undue influence or pressure was exerted on the customer or any unfair tactics were used against the customer

⁴³⁰ ACL, Chapter 2, Part 2-1.

⁴³¹ ACL, Part 2-2.

⁴³² Trade practices amendment (Australian Consumer Law) Bill (No. 2) 2010, Explanatory memorandum.

⁴³³ ACL, Part 2-2, Chapter 2. However, the ACL is not limited by the unwritten law relating to unconscionable conduct. See ACL, Section 21(4)(a) The ACL gives recognition to the doctrine of unconscionable conduct at common law level.

⁴³⁴ ACCC, Advertising and selling guide, November 2017, p. 35.

⁴³⁵ Section 21(4) ACL.

- the amount the customer could have acquired identical or equivalent goods from a person other than the supplier.
3. Unfair practices: additionally, the ACL also provides specific protections for unfair practices which could relate to marketing and offering activities in the energy sector.⁴³⁶
- a. False or misleading representations:⁴³⁷under this framework, a person cannot, in trade or commerce, in connection with the supply or possible supply of goods or services, make false or misleading statements. For example, a person must not make a false or misleading representation with respect to the price of goods or services.⁴³⁸ This provision, and the ACL's unfair practices provisions more generally, can apply to price competition practices in relation to energy contracts and advertisement in the NEM.
- The Australian Competition and Consumer Commission's retail pricing inquiry raised a concern that retailers have made pricing structures confusing and have developed a practice of discounting which is opaque and not comparable across the market.⁴³⁹
- b. Offering rebates, gifts, prizes: additionally, the ACL also limits the offer of any rebate, gift, prize or other free item with the intention of not providing it or of not providing it as offered.⁴⁴⁰ Consumers are protected of unfair commercial practices that will not deliver what the customer is expecting from the offer.
 - c. Bait advertising: the ACL contains a specific prohibition for bait advertising which takes place when an advertisement promotes certain (usually 'sale') prices on products that are not available or available only in very limited quantities.⁴⁴¹ This provision considers the specified offer price, the quantities and the nature of the advertising.⁴⁴²
 - d. Referral selling: a person must not induce a consumer to buy goods or services by representing that the consumer will receive some benefit, such as a rebate or commission, in return for helping the business supply goods or services to other customers.⁴⁴³

D.3 National Energy Customer Framework — additional information requirements

The NECF includes certain information disclosure requirements for retailers, including the following:

⁴³⁶ ACL, Chapter 3, Part3-1.

⁴³⁷ ACL, Section 29(1).

⁴³⁸ ACL, Section 29(1)(i).

⁴³⁹ ACCC, retail Electricity Inquiry, final report, p. V.

⁴⁴⁰ ACL, Section 32.

⁴⁴¹ ACCC, False or misleading claims, found at: www.accc.gov.au/consumers/misleading-claims-advertising/false-or-misleading-claims, accessed 27 May 2019.

⁴⁴² ACL, Section 35.

⁴⁴³ ACL, Section 49.

1. Historical billing data request: under the NECF an energy customer can request historical billing data (for the previous two years) from their retailer and distributor. Both the retailer and distributor have an obligation to provide the data without charge. If the customer has requested this information an earlier period or more than 4 times in the past 12 months for electricity or once in the previous 12 months for gas, the retailer or distributor may charge a reasonable amount.⁴⁴⁴ The NECF also provides that this energy information must be provided in the manner and form required under the metering data provision procedures.⁴⁴⁵
2. Bill review: a retailer must review a bill if requested by a small customer. In reviewing the bill the small customer may request a meter reading or metering data be checked or the meter tested. The retailer may require the customer to pay for the cost of the check or test if the check or test shows that the meter or the metering data was not faulty or incorrect.⁴⁴⁶
3. End of fixed term contract notice: a customer must be informed when their energy contract is due to end. Retailers must send this notice no earlier than 40 days and no later than 20 business days before the end date of the contract and must follow the rules in terms of content and manner when sending it.⁴⁴⁷
4. General information provision:
 - a. Retailers: must publish on their website a summary of a small customer's rights, entitlements and obligations and if a customer request any of this information, retailers must provide a copy without charge.⁴⁴⁸ The information must include:
 - retailer's standard complaints and dispute resolution procedures
 - contact details for the energy ombudsman
 - in case of electricity, energisation and re-energisation time frames.
 - b. Distributors: have different contractual relationship with retail customers. However, under the NERR they have similar obligations to retailers with respect to publishing certain general information on their website. For example, they must publish the details of their connection contracts, the applicable energisation and re-energisation time frames, the details of customer connection services charges, the distributor's standard complaints and dispute resolution procedures, among others. Like retailers, they must also publish information on the rights, entitlements and obligations of small customers, including the distributors standard complaints and dispute resolution procedure and contact details of the energy ombudsman.⁴⁴⁹
A distributor must also maintain a 24-hour fault information and reporting telephone number for customers.⁴⁵⁰

⁴⁴⁴ NERR, Rules 28 and 86A-86B.

⁴⁴⁵ NERR, Rule 56A.

⁴⁴⁶ NERR, Rule 29.

⁴⁴⁷ NERR, Rule 48.

⁴⁴⁸ NERR, Rule, 56.

⁴⁴⁹ NERR, Rule 80.

⁴⁵⁰ NERR, Rule 85.

5. Customers on transfer: retailers must, after receiving notice that they are responsible for a transferring customer, notify the customer that they have commenced selling energy and the date on which they commenced selling that energy to that customer.⁴⁵¹
6. New electricity meter deployment: if a retailer proposes to undertake a new meter deployment, it must inform the relevant customer of the proposed deployment, that the customer can elect not to have their meter replaced and the applicable rates for the new meter.⁴⁵²
7. Information when energy is interrupted:
 - a. Retailers: a retailer may arrange a planned interruption by obtaining the customer's consent and must notify the affected customers that the supply of energy will be interrupted (planned interruption). If the retailer does not obtain the consent, the retailer must notify the affected customer by any appropriate means at least 4 business days before the interruption. In some specific cases, such as life support, retailer's need customer's explicit consent to interrupt the supply of energy.⁴⁵³

In case of an unplanned interruption, if a customer contacts a retailer by phone about a fault or emergency, the retailer must refer the customer to the distributor's fault enquiries or emergency telephone number.⁴⁵⁴
 - b. Distributors: a distributor may arrange a planned interruption by obtaining the customer's consent and must notify the affected customers that the supply of energy will be interrupted.⁴⁵⁵ If the retailer does not obtain the consent, the retailer must notify the affected customer by any appropriate means at least 4 business days before the interruption.

A distributor must also, within 30 minutes of being advised of an unplanned interruption, or otherwise as soon as practicable, make available a 24-hour telephone service, provide the information on the nature of the interruption and an estimate of the time when supply will be restored or when reliable information on restoration of supply will be available. Additionally, the distributor must use its best endeavours to restore supply to affected customers as soon as possible.⁴⁵⁶

Distributors and retailers must cooperate and refer a customer to each other depending on the type of planned interruption (distributor or retailer planned interruption) to provide relevant information to the customer.⁴⁵⁷

451 NERR, Rule 58.

452 NERR, Rule 59A.

453 NERR, Rule 59C, NERR, Rule 111.

454 NERR, Rule 100.

455 NERR, Rule 90.

456 NERR, Rule 91.

457 NERR, Rule 99.

D.3.1 Standard retail contracts

The NECF contains additional information requirements specifically for standard retail contracts, including:⁴⁵⁸

- a description of the retailer's standard retail contract and how copies of the contract can be obtained
- a description of the retailer's and customer's rights and obligations
- a description of the retailer's complaints and dispute resolution procedures
- the availability of government funded energy charge rebates, concession or relief
- the customer's distributor details if the premises are energised.

D.4 National Energy Customer Framework — additional protections

In addition to the above mentioned protections, the NECF provides other protections that recognises energy as an essential service. These additional protections for energy consumers are related to:

- guaranteed connection and limitations on disconnections and energy interruptions
- customers facing financial difficulty
- customers requiring life support equipment.

D.4.1 Disconnection and reconnection

Under the NECF, retailers and distributors must comply with different requirements before disconnecting a customer's premises, there are certain limitations for interruptions and there is a general obligation to maintain customer connection. These consumer protections include:

1. Distributor planned interruptions: a distributor must use its best endeavours to restore the customer's energy supply as soon as possible.⁴⁵⁹
2. Limitations for de-energisation: retailers and distributors must not de-energise a customer's premises except in accordance with the rules.⁴⁶⁰ The circumstances where retailers or distributors may de-energise a customer premises are prescribed by the rules as follows:
 - a. when the customer does not pay the energy bill⁴⁶¹
 - b. when the customer does not pay the security deposit⁴⁶²
 - c. when the customer denies access to the meter⁴⁶³
 - d. for illegally use of energy or interference⁴⁶⁴

458 NERR, Rule 19.

459 NERR, Rule 90(3).

460 NERR, Rule 107.

461 NERR, Rule 111.

462 NERR, Rule 112.

463 NERR, Rule 113.

464 NERR, Rules 114, 119.

- e. for non-notification by move-in or carry-on customers⁴⁶⁵
- f. other specific reasons for distributors (health and safety, false information, safe access, among others).⁴⁶⁶
- 3. Requirements for de-energisation: retailers and distributor must not arrange the de-energisation of a customer's premises where:⁴⁶⁷
 - a. the premises are registered as having life support equipment
 - b. the customer has made a complaint directly related to the reason for the de-energisation
 - c. the customer has contacted the retailer raising the issue that no explicit consent was obtained and the issue remains unresolved
 - d. the customer is a hardship customer or a residential customer into a payment plan
 - e. the retailer is aware that the customer has formally applied for assistance to an organisation responsible for a rebate, concession or relief
 - f. the de-energisation ground is for non-payment of other goods and services other than the sale of energy
 - g. the amount outstanding that has not been paid by the customer is less than an amount approved by the AER
 - h. the customer is going to be disconnected for not paying the bill during extreme weather event or during a protected period.
- 4. Re-energisation of gas and electricity: retailers and distributors are required to re-energise a customer gas and electricity supply in accordance with the energy laws. Retailers and distributors must notify each other that the premises have been re-energised as soon as practicable.⁴⁶⁸
- 5. Obligation to re-energise: retailers and distributors must arrange the re-energisation of premises if, within ten business days, the customer rectified or made satisfactory arrangement to solve the matter that lead to the de-energisation.⁴⁶⁹

D.4.2

Financial difficulty

Under the NECF, retailers are required to provide support and assistance to their customers who are experiencing financial difficulty to pay their energy bills. The following are the consumer protections that the NECF provides:

- 1. Payment difficulties: retailers must provide, to hardship customers or other residential customers experiencing payment difficulties, information about the availability of government funded energy charge rebate, concessions or relief schemes.⁴⁷⁰

⁴⁶⁵ NERR, Rule 115.

⁴⁶⁶ NERR, Rules 119.

⁴⁶⁷ NERR, Rule 116.

⁴⁶⁸ NERR, Rule 106.

⁴⁶⁹ NERR, Rules 121, 122.

⁴⁷⁰ NERR, Rule 33.

2. Shortened collection cycles: retailers may place a small customer on a shortened collection cycle, unless the customer is experiencing payment difficulties.⁴⁷¹
3. Payment plans: a retailer must offer and apply payment plans for hardship customers and customers experiencing payment difficulties.⁴⁷² A retailer must comply with the requirements on how to offer and when to offer payment plans.⁴⁷³
 - a. The payment plan must consider:⁴⁷⁴
 - the customer's capacity to pay
 - any arrears owing by the customer
 - the customer's expected energy consumption needs over the following twelve months
 - including an offer of advance payments or in arrears by instalment payments.
 - b. Information: a retailer must inform the customer of certain information about the plan and payment instalments.⁴⁷⁵
4. Debt recovery: retailers must not commence proceedings for recovery of a debt if the customer is complying with a payment plan or other payment arrangement or the retailer has failed to comply with the requirements of its hardship policy, payment plans and assistance for customers experiencing hardship or payment difficulties.⁴⁷⁶
5. Specific limitations of disconnection for not paying the bill: once a customer (hardship customer or residential customer) informs the retailer that the customer is experiencing payment difficulties, a retailer must not arrange the de-energisation of the customer's premises for not paying the bill. It may only arrange the de-energisation if the retailer has offered the customer 2 payment plans in the previous 12 months and:
 - the customer agreed to neither of them
 - the customer has agreed to a plan but it has been cancelled due to non-payment.⁴⁷⁷
6. Hardship policy: retailers must develop and maintain a hardship policy for residential customers that must be approved by the AER and be publicly available on the retailer's website.⁴⁷⁸ Any variation to a hardship policy is subject to the approval of the AER.⁴⁷⁹
 - a. Obligation to inform consumers: the NERL requires that where it appears to the retailer that a customer did not pay its energy bill due to hardship, the retailer must inform the residential customer the availability of the policy.⁴⁸⁰ A retailer must inform a hardship customer of the retailer's hardship policy as soon as practicable after the customer is identified as a hardship customer. A retailer must also provide the

471 NERR, Rule 34.

472 NERL, Section 50(1).

473 NERL, Section 50(2).

474 NERR, Rule 72.

475 Ibid.

476 NERL, Section 51.

477 NERR, Rule 111.

478 NERL, Section 43.

479 NERL, Section 43(4).

480 NERL, 46.

hardship customer with a copy of the customer hardship policy on request and at no expense.⁴⁸¹

- b. Policy requirements: a retailer's customer hardship policy (or variation) submitted to the AER must:⁴⁸²
 - i. comply with the customer hardship policy guideline
 - ii. include standardised statements informing customer of how the retailer will comply with the minimum requirements and providing guidance on customer rights and retailer obligations
 - iii. contain clear and specific statements of the actions the retailer will take to meet the minimum requirements
 - iv. be submitted within 3 months of any amendment to the AER's guideline
 - v. be implemented as approved by the AER
 - vi. be published on the retailer's website as soon as practicable after it has been approved.
- c. Disconnection as last resort: a retailer must give effect to the general principle that de-energisation (disconnection) of the premises of a hardship customer due to the inability to pay is a last resort option.⁴⁸³
- d. Contractual consistency: the terms of a market retail contract have no effect to the extent they are inconsistent with the application of the retailer's hardship policy to the relevant customer.⁴⁸⁴
- e. Payment by Centrepay: any standard retail contract offered to a hardship customer must have Centrepay available as a payment option.⁴⁸⁵
- f. Waiver of late payment fee: a retailer must waive any fee payable for late payment under a customer retail contract with a small customer who is a hardship customer.⁴⁸⁶

D.4.3

Life support

Additionally, the NECF protects customers that require life support equipment:

1. Planned interruption limitations: a retailer or distributor may only arrange a planned interruption to the premises of a person that requires life support equipment by obtaining the affected customer's explicit consent to the interruption occurring on a specific date.⁴⁸⁷
2. Limitations for disconnection: a retailer or distributor must not arrange the de-energisation of a customer's premises where the premises are registered as having life support equipment.⁴⁸⁸

⁴⁸¹ NERR, Rule 71.

⁴⁸² NERR, Rule 75B.

⁴⁸³ NERL, Section 47.

⁴⁸⁴ NERL, Section 48.

⁴⁸⁵ NERR, Rule 74.

⁴⁸⁶ NERR, Rule 73.

⁴⁸⁷ NERR, Rules 59C, 90.

⁴⁸⁸ NERR, Rules 116, 120.

3. Registration of life support equipment: when a retailer is advised by a customer that a person residing or intending to reside at the premises requires life support equipment, the retailer or distributor must:⁴⁸⁹
 - a. register that a person at the premises requires life support equipment and the date from which the life support equipment is required
 - b. inform the customer that is being registered within five business days
 - c. notify the retailer or distributor (as applicable) that a person residing or intending to reside at the premises requires life support equipment and the date from which the life support equipment is required.
4. Medical confirmation requirements: the retailer or the distributor must give the customer fifty business days to give medical confirmation and send in the meanwhile two reminder notices that this must be provided.⁴⁹⁰
5. Ongoing obligations: the retailer or the distributor must not arrange for the de-energisation of registered premises as requiring life support equipment, except in the case of an interruption.⁴⁹¹
6. Deregistration of premises: a retailer or distributor may only deregister a customer's premises that requires life support equipment if:⁴⁹²
 - a. the customer did not provide medical confirmation and the retailer or distributor has:
 - i. complied with the timeframe and notification requirements (medical confirmation requirements)
 - ii. taken reasonable steps to contact the customer
 - iii. provided the customer with a deregistration notice no less than fifteen business days from the issue of the second confirmation reminder notice.
 - b. the customer has advised that the person from whom the life support equipment is required has vacated the premises or no longer requires life support equipment, the retailer or distributor provided the required written notice with the date of deregistration.
 - c. the distributor becomes aware that the customer has transferred retailers at that premises, the distributor may deregister with the required written notice and the date of deregistration.

489 NERR, Rule 124.

490 NERR, Rule 124A.

491 NERR, Rule 124B.

492 NERR, Rule 125.