

Authorised Version

Energy Legislation Amendment (Victorian Default Offer) Act 2019

No. 6 of 2019

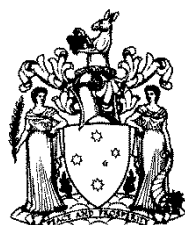
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Authorised Version



Victoria

**Energy Legislation Amendment
(Victorian Default Offer) Act 2019[†]**

No. 6 of 2019

[Assented to 26 March 2019]

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purpose

The main purpose of this Act is to amend the **Electricity Industry Act 2000**, the **Essential Services Commission Act 2001** and the **Gas Industry Act 2001** to facilitate—

- (a) reforms to energy retail contract pricing; and

- (b) the introduction of a Victorian default offer providing a fair price for energy for households and small businesses.

2 Commencement

This Act comes into operation on the day after the day on which it receives the Royal Assent.

Part 2—Amendment of Electricity Industry Act 2000

3 Regulation of tariffs for prescribed customers

(1) In section 13(1) of the **Electricity Industry Act 2000**, after "Governor in Council" (where first occurring) **insert** ", on the recommendation of the Minister,".

(2) For section 13(1A) of the **Electricity Industry Act 2000** substitute—

"(1A) The Minister may make a recommendation under subsection (1)—

(a) if, under an MCE directed retail competition review, the AEMC—

(i) concludes that competition in a market for electricity is not effective; and

(ii) recommends, in accordance with the MCE's written direction for that review, that price controls on prices for retail electricity services be (as the case requires) retained or reintroduced; or

(b) if the Commission makes a recommendation in a report under section 10AAB of the **Essential Services Commission Act 2001** that price controls on prices for retail electricity services be (as the case requires) retained or reintroduced.

(1B) In addition, the Minister may make a recommendation under subsection (1) on the basis of any other information available to the Minister, including information made

available to the Minister before the commencement of this subsection.

(1C) Before making a recommendation under subsection (1), the Minister must consult the Premier and the Treasurer."

(3) After section 13(2) of the **Electricity Industry Act 2000** insert—

"(2AA) Without limiting the generality of subsection (1), an Order under that subsection may—

- (a) prohibit or exclude any specified cost, matter or thing from being had regard to by the Commission in making a decision, including a price determination, in respect of any tariff for the sale of electricity to prescribed customers or a class of prescribed customers; and
- (b) regulate the offer, or the giving, of a discount or other benefit to prescribed customers or a class of prescribed customers, including—
 - (i) the maximum amount or value of a discount or other benefit that may be offered or given to prescribed customers or a class of prescribed customers; and
 - (ii) the periods when a discount or other benefit may be offered or given to prescribed customers or a class of prescribed customers."

(4) In section 13(2A) of the **Electricity Industry Act 2000**—

- (a) after "tariffs" (where secondly occurring) **insert** "paid or";
- (b) **omit** "during the review period".

(5) For section 13(3) of the **Electricity Industry Act 2000 substitute**—

"(3) An Order under subsection (1) may—

- (a) direct the Commission to make a decision, including a price determination, in respect of any factors and matters, or in accordance with any procedures, matters or bases, that are specified in the Order; and
- (b) direct the Commission to make amendments to any instrument made by the Commission to give effect to any matter specified in the Order; and
- (c) confer powers and functions on, and leave any matter to be decided by, the Commission; and
- (d) include saving and transitional provisions.

(3A) An Order under subsection (1) may—

- (a) be of general or limited application;
- (b) differ according to differences in time, place and circumstances.

(3B) An Order under subsection (1) has effect according to its tenor despite anything to the contrary in any agreement or contract."

(6) In section 13(4A) of the **Electricity Industry Act 2000**, for "Sections 53 and 54" **substitute** "Divisions 1 and 2 of Part 7".

(7) In section 13(6) of the **Electricity Industry Act 2000**—

- (a) in the definition of *prescribed customer*, for "applies." substitute "applies;"
- (b) insert the following definition—

price determination means a determination under section 33 of the **Essential Services Commission Act 2001**;

- (c) the definition of *review period* is repealed.

4 Offer to domestic or small business customers

- (1) In section 35(1) of the **Electricity Industry Act 2000**, after "section 13" insert "or a price determination in force under such an Order".
- (2) In section 35(3) of the **Electricity Industry Act 2000**, after "(3G)" insert "and to any Order in force under section 13 or a price determination in force under such an Order".
- (3) For section 35(3A) of the **Electricity Industry Act 2000** substitute—

"(3A) Subject to subsection (3AB), a licensee must not vary tariffs under subsection (3) that have been in effect for less than—

- (a) the period (not exceeding 12 months) determined by the Commission; or
- (b) if no period is determined under paragraph (a)—6 months.

(3AB) Subsection (3A) does not apply if—

- (a) the variation is necessary to comply with an Order in force under section 13 or a price determination in force under such an Order; or

(b) the Commission, being satisfied that there are special circumstances, exempts the licensee from compliance with that subsection."

(4) **Insert** the following definition in section 35(8) of the **Electricity Industry Act 2000**—

"price determination means a determination under section 33 of the **Essential Services Commission Act 2001**;"

5 Terms and conditions of contracts for sale of electricity to certain customers

After section 36(1)(a)(iii) of the **Electricity Industry Act 2000** insert—

- "(iia) specify the circumstances in which the licensee may, or must not, offer or give a discount or other benefit to a relevant customer, including—
- (A) the maximum amount or value of a discount or other benefit that may be offered or given to a relevant customer; and
 - (B) the periods when a discount or other benefit may be offered or given to a relevant customer; and
- (iib) specify a period during which the licensee must not vary the tariffs applying under the contract unless exempted to do so by the Commission; and".

Part 3—Amendment of Essential Services Commission Act 2001

6 Definitions

In section 3 of the **Essential Services Commission Act 2001**, in the definition of *empowering instrument*, after paragraph (c) insert—

"(ca) any Order made under section 21 of the **Gas Industry Act 2001**; or".

7 New section 10AAB inserted

After section 10AA of the **Essential Services Commission Act 2001** insert—

"10AAB Commission's functions in relation to the retail energy market

Without limiting section 10(a), the **Electricity Industry Act 2000** or the **Gas Industry Act 2001**, the functions of the Commission under this Act include to monitor and report on the competitiveness and efficiency of the Victorian retail markets for electricity and gas."

8 Right of appeal

For section 55(1)(c) of the **Essential Services Commission Act 2001** substitute—

"(c) a determination of the Commission, other than a price determination under section 33 in respect of—

- (i) tariffs for the sale of electricity regulated by Order under section 13 of the **Electricity Industry Act 2000**; or

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Part 3—Amendment of Essential Services Commission Act 2001

- (ii) tariffs for the sale of gas regulated by Order under section 21 of the **Gas Industry Act 2001**; or".

Part 4—Amendment of Gas Industry Act 2001

9 Definitions

In section 3 of the **Gas Industry Act 2001**, in the definition of *Tariff Order*, paragraph (a) is **repealed**.

10 New section 20A inserted

After section 20 of the **Gas Industry Act 2001** **insert—**

"20A Powers in relation to price regulation

For the purposes of Part 3 of the **Essential Services Commission Act 2001**, the power to regulate prescribed prices in respect of prescribed goods and services is conferred on the Commission in respect of tariffs for the sale of gas regulated by Order under section 21, to the extent specified in such an Order."

11 Regulation of tariffs for prescribed customers

- (1) In section 21(1) of the **Gas Industry Act 2001**, after "Governor in Council" (where first occurring) **insert** ", on the recommendation of the Minister,".
- (2) For section 21(1A) of the **Gas Industry Act 2001** **substitute—**
 - "(1A) The Minister may make a recommendation under subsection (1)—
 - (a) if, under an MCE directed retail competition review, the AEMC—
 - (i) concludes that competition in a market for gas is not effective;
and

- (ii) recommends, in accordance with the MCE's written direction for that review, that price controls on prices for retail gas services be (as the case requires) retained or reintroduced; or
 - (b) if the Commission makes a recommendation in a report under section 10AAB of the **Essential Services Commission Act 2001** that price controls on prices for retail gas services be (as the case requires) retained or reintroduced.
- (1B) In addition, the Minister may make a recommendation under subsection (1) on the basis of any other information available to the Minister, including information made available to the Minister before the commencement of this subsection.
- (1C) Before making a recommendation under subsection (1), the Minister must consult the Premier and the Treasurer."
- (3) After section 21(2) of the **Gas Industry Act 2001** **insert—**
 - "(2AA) Without limiting the generality of subsection (1), an Order under that subsection may—
 - (a) prohibit or exclude any specified cost, matter or thing from being had regard to by the Commission in making a decision, including a price determination, in respect of any tariff for the sale of gas to prescribed customers or a class of prescribed customers; and

- (b) regulate the offer, or the giving, of a discount or other benefit to prescribed customers or a class of prescribed customers, including—
 - (i) the maximum amount or value of a discount or other benefit that may be offered or given to prescribed customers or a class of prescribed customers; and
 - (ii) the periods when a discount or other benefit may be offered or given to prescribed customers or a class of prescribed customers."
- (4) In section 21(2A) of the **Gas Industry Act 2001**—
 - (a) after "tariffs" (where secondly occurring) **insert** "paid or";
 - (b) **omit** "during the review period".
- (5) For section 21(3) of the **Gas Industry Act 2001** **substitute**—

"(3) An Order under subsection (1) may—

 - (a) direct the Commission to make a decision, including a price determination, in respect of any factors and matters, or in accordance with any procedures, matters or bases, that are specified in the Order; and
 - (b) direct the Commission to make amendments to any instrument made by the Commission to give effect to any matter specified in the Order; and
 - (c) confer powers and functions on, and leave any matter to be decided by, the Commission; and

- (d) include saving and transitional provisions.
- (3A) An Order under subsection (1) may—
 - (a) be of general or limited application;
 - (b) differ according to differences in time, place and circumstances.
- (3B) An Order under subsection (1) has effect according to its tenor despite anything to the contrary in any agreement or contract."
- (6) In section 21(4A) of the **Gas Industry Act 2001**, for "Sections 53 and 54" substitute "Divisions 1 and 2 of Part 7".
- (7) In section 21(6) of the **Gas Industry Act 2001**—
 - (a) **insert** the following definition—

"price determination means a determination under section 33 of the **Essential Services Commission Act 2001**.";
 - (b) the definition of *review period* is **repealed**.

12 Offer to domestic or small business customers

- (1) In section 42(1) of the **Gas Industry Act 2001**, after "section 21" **insert** "or a price determination in force under such an Order".
- (2) In section 42(3) of the **Gas Industry Act 2001**, after "(3G)" **insert** "and to any Order in force under section 21 or a price determination in force under such an Order".
- (3) For section 42(3A) of the **Gas Industry Act 2001** **substitute**—

"(3A) Subject to subsection (3AB), a licensee must not vary tariffs under subsection (3) that have been in effect for less than—

- (a) the period (not exceeding 12 months) determined by the Commission; or
 - (b) if no period is determined under paragraph (a)—6 months.
- (3AB) Subsection (3A) does not apply if—
- (a) the variation is necessary to comply with an Order in force under section 21 or a price determination in force under such an Order; or
 - (b) the Commission, being satisfied that there are special circumstances, exempts the licensee from compliance with that subsection."
- (4) **Insert** the following definition in section 42(8) of the **Gas Industry Act 2001**—

"price determination means a determination under section 33 of the **Essential Services Commission Act 2001**;"

13 Terms and conditions of contracts for sale of gas to certain customers

After section 43(1)(a)(iii) of the **Gas Industry Act 2001** insert—

- "(iiiia) specify the circumstances in which the licensee may, or must not, offer or give a discount or other benefit to a relevant customer, including—
- (A) the maximum amount or value of a discount or other benefit that may be offered or given to a relevant customer; and
 - (B) the periods when a discount or other benefit may be offered or given to a relevant customer; and

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Part 4—Amendment of Gas Industry Act 2001

- (iib) specify a period during which the licensee must not vary the tariffs applying under the contract unless exempted to do so by the Commission; and".

Part 5—Repeal of amending Act

14 Repeal of amending Act

This Act is **repealed** on the first anniversary of the day on which it receives the Royal Assent.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

[†] *Minister's second reading speech—*

Legislative Assembly: 20 February 2019

Legislative Council: 7 March 2019

The long title for the Bill for this Act was "A Bill for an Act to amend the **Electricity Industry Act 2000**, the **Essential Services Commission Act 2001** and the **Gas Industry Act 2001** to facilitate reforms to energy retail contract pricing and the introduction of a Victorian default offer providing a fair price for energy for households and small businesses and for other purposes."