

Essential Services Commission
Level 8/570 Bourke St
Melbourne VIC 3000

Submitted via www.engage.vic.gov.au

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Dear Commissioners,

Energy Retail Code of Practice Review

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission in response to the Essential Services Commission's ('ESC') *Energy Retail Code of Practice Review* Issues Paper ('Issues Paper').

The AEC is the peak industry body for electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. AEC members generate and sell energy to over 10 million homes and businesses and are major investors in renewable energy generation. The AEC supports reaching net-zero by 2050 as well as a 55 per cent emissions reduction target by 2035 and is committed to delivering the energy transition for the benefit of consumers.

The AEC and its members are strong supporters of protections that provide appropriate support for all customers and the need to ensure regulation is fit for purpose in the evolving energy market. We have a history of engagement with the ESC on issues relating to the Energy Retail Code of Practice ('the Code') and believe that this review provides an opportunity for a less prescriptive, more pragmatic and effective Code that serves the needs of all Victorians.

A comparison of the outcomes of the Victorian Payment Difficulty Framework ('PDF') and those in the National Energy Customer Framework ('NECF') indicates similar outcomes. The AER's Payment Difficulty Issues Paper refers to the 2022–2023 NECF retail performance data which suggests that about 4.3% of energy consumers are in debt. The Payment Difficulty Issues Paper cites that in 2022–23, 4% of electricity and gas customers in Victoria owed their retailer more than \$300 and were not engaged in a payment plan. The average debt of these customers was \$1,264 for electricity and \$1,109 for gas which is also comparable to that for the NECF jurisdictions.¹ While it is not possible to directly compare metrics across the NECF and the Victorian framework due to differences in retailers' performance reporting requirements, the indications are that the outcomes are not wildly disparate.

The AEC and its members are strong supporters of appropriate protections and support for customers facing payment difficulty. Both the additional support which retailers provide over and above regulatory obligations and the comparable outcomes of the different frameworks, suggest that any changes to either framework need to be carefully considered for unintended consequences. We welcome the direction which the AER has signalled that in its Payment Difficulty review it will carefully consider costs and benefits of any potential changes, as customers will ultimately pay for any costs and in a cost-of-living context these need to be very carefully weighed. We strongly urge the ESC to also carefully consider costs and benefits of any potential changes. In relation to the AER's Payment Difficulty review, the AEC appreciates that the AER is

¹ AER (2024) Review of Payment Difficulty Protections in the NECF Issues Paper at <https://www.aer.gov.au/industry/registers/resources/reviews/review-payment-difficulty-protections-national-energy-customer-framework/initiation>

proposing to use retailer costs as one of the market indicators for assessing potential changes. The AEC welcomes this focus on retailer costs.

The AEC has concerns that the current broad scope of the proposed changes in the Issues Paper are a departure from the narrow but effective changes to the Code the ESC has introduced in the past. While we support the intent behind this review, the AEC believes that some of the potential changes put forward by the ESC do not have a compelling case behind them. It is imperative to ensure that regulatory changes are justified. The AEC urges the ESC to prioritise consideration of the necessary balance between providing additional regulation and monitoring consumer outcomes. It is apparent to the AEC in our review of the available evidence that where one or two cases of negative consumer outcomes can be identified, the volume of complaint or the level of harm is not sufficient to warrant further regulatory provisions. In some of these cases, the AEC urges the ESC to take a monitoring approach to see if the complaints become more widespread over time.

While in principle the AEC supports greater harmonisation across jurisdictions as a means of reducing compliance costs, we do not think bringing the NECF into alignment with the Victorian payment difficulty framework, or vice versa, would achieve this. The AEC agrees with the limitations set out in the AER's Payment Difficulty Issues Paper, that systems and processes will be costly to re-align and there is an ever-present risk that the frameworks will diverge again in future.

The AEC provides specific feedback to the questions from the Issues Paper below.

Strengthening family violence protections

- 1. Are there any specific rules in the National Energy Retail Rules (NERR) that we should consider including in the code of practice that would strengthen protections for Victorian customers?*
- 2. Are there any family violence protections in the water sector we should replicate in the code of practice?*
- 3. Are there any other protections we should consider including in the code of practice to further support consumers affected by family violence?*

As noted by the ESC, the Australian Energy Market Commission introduced new regulatory protections for consumers impacted by family violence in 2022, following a rule change proposed by AEC members, Red Energy and Lumo Energy. Due to this rule change, the consumer protections in the NECF and Victoria are now aligned.²

The ESC notes the work it has done in relation to regulated Victorian water businesses and also the options it is exploring in the Safety by Design partnership to support energy and water consumers experiencing family violence. Given this ongoing work, the AEC recommends that any further enhancements related to family violence be introduced via the family violence guidance material. The AEC welcomes the work being done in the Safety by Design process and encourages the process to include input from retailers to test and analyse the operational perspectives.

Obligation to place debt on hold for six months

- 7. Are you aware of any customers who have had their debt placed on hold? If so, has the hold helped them reduce their debt in the long term?*
- 8. How might this obligation be amended to better support customers experiencing significant payment difficulties?*

The AEC has serious concerns with the obligation to place debt on hold for six months. While in some cases the debt hold may provide helpful relief to some customers, particularly those facing short-term difficulty and low debt, for the majority of customers this obligation does not provide a long-term solution. Indeed, in

² ESC (2024) Energy Retail Code of Practice review at <https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-and-policies/energy-retail-code-practice/reviewing-energy-retail-code-practice>

cases where a customer's arrears are on hold and the retailer is accepting payments below consumption, over the long term the customer will be facing a larger and more unmanageable debt than they did six months prior. This process likewise negatively impacts a customer's engagement with their retailer which creates another barrier to the establishment of sustainable payment solutions.

The AEC recognizes that in some cases, the six-month debt hold may be appropriate. For example, retailers are aware of the changing nature of the hardship customer profile. Rather than a predominance of customers with entrenched income inequality, medium to high income earners are also entering hardship. While it is too early to tell exactly what the best supports for these customers are, the six-month debt hold may be appropriate in these cases.

With the above comments in mind, the AEC believes there is scope for improvement of the debt hold obligation and for a greater balance to be struck between providing customers with short-term flexibility and the possible long-term harm of unmanageable debt accumulation. The AEC proposes two options for consideration:

1. The application of the debt hold could be made discretionary, noting that there are some customers for whom this assistance will not help in the long term. The AEC recognises that guidance may be desirable to provide certainty to retailers on the scope of the proposed discretion. This guidance might for example include a minimum debt hold obligation of two or three months.
2. The debt hold obligation could be shortened from six months to two or three months but still be mandatory, to reduce the potential accumulation of unmanageable arrears.

In both options, clarification should be provided on the obligation under s.128(1)(g)(ii) to provide more certainty on the ESC's expectation that the retailer does not accept payment arrangements for "unreasonably small amounts that are disproportionate to the customer's arrears."³ There may likewise be opportunities for external assistance, such as a financial counsellor, to support a customer's ability to manage their finances in conjunction with the start of the debt hold.

Supporting customers who want to disconnect from gas

13. Do you see a need for improving processes and information for a customer who wants to disconnect from or abolish their gas connections?

14. Do you have any views on our proposed provision-of-information requirements related to disconnections and abolishments?

15. Do you have any views on whether there is a need for new rules on timeframes and notification requirements for abolishing gas connections?

16. To strengthen protections for a customer wanting to disconnect from gas, are there any other obligations on a retailer we should consider introducing in the code of practice?

The AEC acknowledges that an increasing number of Victorian customers are expected to reduce or stop using gas in the coming years. However, even according to AEMO modelling this will be a comparatively staged process rather than a rapid one. While information provision is important for customers, at this stage of the process, there is no evidence of widespread market failure. The AEC recommends simple guidance for customers, with information available on websites if customers require clarifications.

The AEC further notes that gas abolishment is a relatively straightforward process with any clarity needed by the customer readily sorted out by a retailer's call centre. However, presently there is little customer demand or quantified market failure to warrant prescription or additional obligations in this area. The AEC

³ Energy Retail Code of Practice (version 2) at <https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-and-policies/energy-retail-code-practice>; Energy Compliance and Enforcement Policy: Guidance note – Payment difficulty and disconnection at https://www.esc.vic.gov.au/sites/default/files/documents/payment-difficulty-framework-energy-compliance-and-enforcement-policy-guidance-note-20171222_v2.pdf

notes that distributors own the abolishment process and that distributors should have carriage of the notification process. A standard leaflet produced or maintained on Victorian Energy Compare by Victorian distributors that retailers can draw on should be sufficient as an effective means of providing customers standardised information about disconnection or abolishment of their gas connections.

Bill information requirements

17. Do you see a need for full alignment of energy bills with the Australian Energy Regulator's Better Bills Guideline? If so, what do you think would be the key benefits?

18. Do you think the inclusion of details for the Energy and Water Ombudsman Victoria (EWOV) would be of benefit to billing information?

19. Do you support the need for prescribed requirements related to bill communications? Are there any practical implementation issues we should consider?

The AEC does not believe that the options listed in the Issues Paper will achieve the ESC's stated goal of reducing bill complexity.

Option 1: Alignment of bills with the Australian Energy Regulator Better Bills Guideline

The AEC opposes the alignment of bills with the Australian Energy Regulator Better Bills Guideline. The implementation of the Better Bills Guideline represented a significant upfront and ongoing cost to retailers. The AEC engaged Seed Advisory Pty Ltd (Seed) to assist in preparing an independent report to be provided to the AER as part of an AEC submission that analyses and assesses the high-level costs of implementing the AER's draft Guideline. Seed found that:

- "There are material overall implementation costs associated with the proposed AER changes. In aggregate the upfront costs to implement the changes suggested could be in the order of \$2,700,000 per retailer with a wide range around that average cost."
- "From an ongoing cost perspective, there may be material ongoing costs in excess of \$500,000 per annum per retailer to implement the best offer requirement alone."⁴

Given that the AER has not conducted a post-implementation review, there is no evidence that the purported benefits were achieved.

In addition to the issue of costs, the AEC notes that full alignment with the AER Better Bills Guideline is not possible because there are different regulatory requirements for each jurisdiction.

Option 2: Inclusion of EWOV details on the front page of bills

The AEC does not believe that prescribing the inclusion of details for the Energy and Water Ombudsman Victoria (EWOV) on the front page of billing information will be of benefit to customers. We are concerned such prescription will lead customers to the false impression that EWOV is their first and best point of contact when they have an issue, rather than the retailer. Indeed, when a customer does contact EWOV prior to having raised their issue with their retailer, EWOV refers the customer back to the retailer to attempt to resolve the issue directly. EWOV information on the front page of bills is likely to only contribute to the complexity of the bill and cause confusion on the part of the consumer. EWOV should instead serve as a second stage contact if a customer cannot reach a resolution with their retailer. The AEC is not aware of any evidence which indicates that having Ombudsman details on the front page of NECF retail bills has led to improved outcomes for customers.

Option 3: Addressing bill communication requirements

The AEC does not support additional prescription on bill communication requirements. We note that email billing is a primary communication piece for digital customers, and they are a medium where innovation

⁴ See Better Bills Guideline – Retailer Cost Analysis at <https://www.energycouncil.com.au/media/3djpqgv5/aec22-better-bills-guideline-final-9-feb-2022.pdf> p.2

and adaptability to customer's preferences is essential. The AEC strongly believes that the ebill is not a site for further regulation of billing information requirements.

Best offer obligations

20. Do you support our proposal for addressing accessibility and availability of best offers? Why or why not?

21. In your opinion, is there a clear benefit in reviewing how deemed best offers are calculated?

22. Are you aware of any other issues with best offer obligations that this review could consider?

The AEC believes that, prior to implementing changes to the best offer obligation, the ESC should conduct a post-implementation review. The AEC notes that there is a very large amount of processing power utilised by retailers in developing best offer messages. Any increases in best offer requirements will add to what is already an immense strain on retailers and is likely to drive up costs significantly. The proposition of adding to best offer obligations is that more customers will take up better offers. However, this is a potentially very costly assumption with little evidence to indicate that the costs will be outweighed by the benefits. We strongly urge the ESC to consider retail costs when reviewing these obligations.

As part of a post implementation review, the ESC should consider the case for raising the best offer threshold up from \$22 noting that:

- The threshold was set six years ago. Price rises since has resulted in the threshold becoming less meaningful to customers.
- In relation to supporting low income and vulnerable customers, it is imperative to ensure that the best offer threshold remains meaningful and accurate to reduce the risks of harming customers. A low threshold creates the risk of a negative message arising from abnormal changes in a customer's consumption prior to when the best offer check is performed that if acted upon, will leave the customer worse off.
- There is a risk that customers receiving multiple best offers based on insignificant savings will not regard the better offer as meaningful and not pay attention when there is one with meaningful savings.

Presumed receipt of written communications

45. Do you have any comments on aligning the code of practice with the 'presumed receipt' rules set out in the Electricity Distribution Code of Practice?

The AEC is strongly opposed to aligning the code of practice with the 'presumed receipt' rules set out in the Electricity Distribution Code of Practice for all types of delivery e.g. in person, post or email.

The AEC highlights that Australia Post Delivery timeframes provide a far more practical and preferable indication of receipt compared with the arbitrary 4 business day period under the Electricity Distribution Code of Practice. Under clause 139(3) the Code outlines that "Information sent by post to a residential customer must be taken to be delivered at the time at which it would be delivered in the ordinary course of post".⁵ *Ordinary course of post* can be informed by Australia Post delivery timeframes.⁶

The implementation of a presumed receipt clause would have significant flow-on implications on other areas of compliance as well as create significant burdens for retailers. For instance, lengthening the presumed receipt from Australia Post's three business days to four would affect a retailer's ability to comply with the Bill change alert's 5-day notice period for price changes. The timeframe between when a retailer receives the final VDO price and sends a letter to customers is already tight as it is, with a retailer's team often needed to work weekends to achieve this. Shortening this time would only create higher risks of non-compliance by subjecting retailers to unreasonable time pressures.

⁵ Energy Retail Code of Practice (version 2) at <https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-and-policies/energy-retail-code-practice>

⁶ See: <https://auspost.com.au/sending/delivery-speeds-and-coverage>

The table below provides feedback on selected questions from the Issues Paper:

Question	AEC Response
<p>Accessibility of Utility Relief Grants (URGs) information <i>9. In your experience, are retailers implementing URGs and energy concessions obligations as intended? Are there any barriers that need to be addressed, and if so, how?</i> <i>10. Are there any potential adjustments to the URGs and energy concessions obligations that we should consider including in the code of practice?</i></p>	<p>The AEC does not consider that there is a case for further guidance or potential adjustments to the URGs and energy concessions obligations. Retailers already have the incentive to help customers apply for URGs as a means to help customers reduce their debt.</p> <p>We recommend that the ESC engage with Services Australia and DFFH to see if any further efficiencies can be identified within Services Australia and DFFH. For instance, the AEC believes there could be efficiencies in applying URGs to final bills.</p>
<p>Assistance and information on energy efficiency <i>11. Should the code of practice introduce more prescriptive or expanded obligations about how energy efficiency advice should be delivered? What are the costs and benefits of these changes?</i> <i>12. Are there other non-prescriptive alternatives to encourage better practice across retailers to connect customers with existing energy efficiency government programs (such as the Victorian Energy Upgrades program)?</i></p>	<p>The AEC does not believe more prescriptive obligations would lead to better customer outcomes. The AEC supports retailers connecting customers with available support programs and tools to receive valuable advice, such as a Residential Efficiency Scorecard.</p>
<p>Accuracy of information on Victorian Energy Compare Website <i>23. Do you support the need to review relevant definitions in the code of practice or is this better managed through the Energy Fact Sheet Guidelines?</i> <i>24. In your opinion, would there be any issues presented by prescribing a timeframe for removal of outdated offer information from Victorian Energy Compare?</i></p>	<p>The AEC agrees that there is scope for a review of definitions with the code of practice to provide clarity for retailers. This could even the playing field and deliver a material benefit in the interests of customers.</p>
<p>Bill Frequency Obligations <i>25. Do you consider that bill frequency obligations and best offer frequency obligations are not clearly aligned and require amendment to achieve consistency? Why or why not?</i> <i>Summary Essential Services Commission Energy Retail Code of Practice review</i> <i>26. Do you have any preferred options for achieving consistency between bill frequency obligations and best offer frequency</i></p>	<p>The AEC prefers no changes to bill frequency obligations. The AEC considers that the obligations are now well understood, and that any consistency gains are outweighed by the additional retail costs.</p>

<p><i>obligations? What are the costs and benefits of those options?</i></p>	
<p>Clarifying unclear definitions: Standard offers 27. <i>What benefits do you see in limiting when a retailer can use the language of ‘standard offers’ for advertising?</i> 28. <i>Do you think we should prohibit the term ‘standard offer’ when referring to market offers at the same price as a standing offer for gas?</i></p>	<p>While the AEC understands the intent behind the ESC’s proposals, we are not convinced that prohibiting terms is in the interests of customers. We are concerned that any changes will create further customer confusion.</p>
<p>Clarifying unclear definitions: Pay-by date 29. <i>In your opinion, should we define the term ‘pay-by date’ in the code of practice? Why or why not?</i> 30. <i>Do you think clarifying the definition of pay-by-date will reduce scope for confusing communications, or are further interventions required (such as targeted training requirements)?</i> 31. <i>Do you believe that a ‘pay-by date’ should be extended when a retail customer has entered into a payment arrangement? Why or why not?</i></p>	<p>The AEC does not believe that a sufficient case has been made for alterations to definitions around the pay-by-date.</p>
<p>Requirement to publish changes of tariffs and charges in newspapers 38. <i>What are some of the costs, benefits or issues you see in publishing variations to tariffs online only (and not in newspapers)?</i></p>	<p>The AEC supports removing the requirement to publish notices and changes to tariffs and charges in newspapers.</p>
<p>Use of preferred communication method 43. <i>In your view, when must preferred methods of customer communication be used?</i> 44. <i>Are there any costs or benefits that would arise from always requiring the use of preferred methods of communication with small customers?</i></p>	<p>The AEC does not support a requirement to always use preferred methods of communication with small customers. Particularly in cases where a customer is in arrears, there is a need for a retailer to be able to use a full suite of communication methods in case the preferred method fails.</p>

In relation to the consultation timelines being considered by the ESC, the AEC strongly urges the ESC to review the proposed implementation timeline which would require retailers to implement changes within a six-month period following the Final determination. Six months is nowhere near enough time to introduce the potentially large volume of substantial changes. The AEC is open to reconsidering this position once the Draft determination has been published and it is clear how many changes are likely to be proposed. However, having reviewed the Issues Paper, at this stage the AEC is strongly of the view that six months is insufficient time for implementation.

Any questions about this submission should be addressed to Jo De Silva, General Manager Retail Policy by email to [REDACTED] or by telephone on [REDACTED]

Yours sincerely,

[REDACTED]

Jo De Silva
General Manager Retail Policy