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5 December 2024

Energy Reform  
Essential Services Commission  
Level 8, 570 Bourke Street  
Melbourne VIC 3000

Dear Energy Reform team,

## **Re: Reviewing the Energy Retail Code of Practice – Stage 1: Energy Consumer Reforms – Discussion paper**

We thank you for the opportunity to comment on the Essential Services Commission of Victoria's (ESCV) Energy Retail Code of Practice (ERCOP) Energy Consumer Reforms discussion paper published on 24 October 2024.

In responding, we aim to support your review by sharing relevant insights from our work on the AER's *Towards energy equity – a strategy for an inclusive energy market*, which includes implementing and evaluating the Better Bills Guideline (action 4), advocating for Game changer reforms (action 15), and reviewing payment difficulty protections in the National Energy Customer Framework (NECF) (actions 8, 9 and 10).<sup>1</sup> We hope that sharing our insights to date will support more coordinated reforms and better consumer outcomes across the NECF and Victoria.

### **Automatic best offer for customers experiencing payment difficulty**

We welcome the ESCV's proposed changes to introduce an automatic best offer for customers experiencing payment difficulty. As noted in your discussion paper, this proposal was a key part of the Game changer reforms presented by the AER to Energy Ministers in December 2023, reflecting its potential to drive significant change for consumers. We note that this proposal was strongly supported by stakeholders across the sector, with the Game changer leadership group ranking it as the third-highest priority overall.<sup>2</sup>

We also support the ESCV's proposal to test assumptions, options and preferences related to these reforms through consumer focus groups. We believe this will provide invaluable insight to help ensure that the reforms maximise consumer benefits and minimise the risk of unintended consequences. Noting our feedback below, we consider that such research is likely to be particularly useful in the context of implementing an automatic best offer.

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<sup>1</sup> AER, [Towards energy equity – a strategy for an inclusive energy market](#), October 2022; AER, [Review of payment difficulty protections in the National Energy Customer Framework](#), May 2024; AER, [Better Bills Guideline \(Version 2\)](#), January 2023; AER, [Game changer report: A package of reforms to improve outcomes for consumers in energy hardship](#), November 2023.

<sup>2</sup> AER, [Leadership group workshop slides](#), March 2023, p 15.



### *Crediting the difference between the current plan and the best offer*

Of the three proposed options, AER staff suggest that the crediting mechanism may be most likely to achieve the intended outcome while maximising the benefits and minimising the risks for consumers (provided that implementation challenges can be resolved).

In addition to ensuring that customers experiencing payment difficulty pay no more than their retailer's best offer, learnings from recent research and consultation (including for our Customer engagement toolkit and Review of payment difficulty protections in the NECF) suggest that this approach may improve the relationship between retailers and their customers more broadly. This could have flow-on benefits, such as improving the identification of vulnerability and payment difficulty. For example, a customer who proactively receives a credit from their retailer during a time of payment difficulty may be more likely to consider that their retailer has their best interests in mind. This can affect their willingness to engage with their retailer and identify as experiencing vulnerability and payment difficulty into the future.<sup>3</sup>

The crediting mechanism also aligns with the recent 'Assisting hardship customers' rule change request submitted to the AEMC, following endorsement at the Energy and Climate Change Ministerial Council meeting in July 2024.<sup>4</sup> We note the implementation efficiencies that can be achieved through harmonisation across the Victorian framework and the NECF, which would benefit both retailers and consumers.

### *Reducing tariffs to match the best offer*

In contrast, changing consumers' tariffs to align with the best offer may pose a risk of unintended consequences, such as increasing the complexity of the market for consumers and making it more difficult for them to engage.

This observation arises from preliminary evidence from our evaluation research for the Better Bills Guideline. Following implementation of the guideline, we have been conducting research to monitor its real-world impact. This research included focus groups earlier this year with a range of consumers (including younger customers, small business owners, First Nations customers, and older consumers who have low digital literacy and/or engagement). Responses from participants indicate that consumers sometimes experience confusion as a result of better offer messages that refer to a plan with a name that is similar to the name of their existing plan, and that consumers may be less likely to trust and act on the better offer message when this happens. It also seems to impact consumer trust in their retailer.

This suggests that reducing tariffs to match the best offer without changing the customer's plan may risk unnecessary confusion for some customers, if it results in more plans with similar names but different tariffs. This has the potential to negatively impact consumer trust in best and better offer messages, as well as their trust in their retailer. As a result, we suggest that the ESCV's proposed consumer research could explore these potential risks for consumers and opportunities to mitigate them.

### *Automatic switching*

As outlined in your discussion paper, the Game changer proposal for an automated better offer suggested a range of potential opt-in and opt-out models, noting the importance of ensuring that consumers retain appropriate agency over their energy plans.<sup>5</sup> It concluded that consultation suggested the benefits of an automated better offer would likely outweigh

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<sup>3</sup> AER, [Customer engagement toolkit: Better practices for identifying and supporting consumers experiencing vulnerability: Draft for consultation](#), March 2024.

<sup>4</sup> AEMC, [Assisting hardship customers](#), 2024.

<sup>5</sup> AER, [Game changer report](#), November 2023, p 12.



risks for disengaged consumers, but that further consideration is required to mitigate the risk of any unintended consequences from changes to explicit informed consent arrangements.<sup>6</sup> These recommendations reflected feedback received directly from consumers in the Game changer consumer exploration workshops<sup>7</sup> (as well as broader stakeholder feedback), which suggested that switching customers without providing them with the opportunity to opt in or opt out may not align with consumer preferences and could risk damaging customer trust. Again, we suggest that the proposed consumer research could aim to gain further insight into the potential impact of this option (including specific opt-in and opt-out models) on consumers, including their level of trust and engagement in the energy market.

### **Improving the ability to switch to the best offer**

We support efforts to improve the ability of customers to switch to a best offer. While best and better offer messages encourage consumers to consider switching, the benefits of these messages are maximised when switching processes are as simple and accessible as possible for customers. We think that this could be achieved through either a principles-based or more prescriptive approach. However, we highlight the importance of considering the needs of all consumers in progressing this reform. Engaging with the energy market, including switching plans, can be particularly difficult for specific groups of consumers such as those who are digitally excluded, those who come from culturally and linguistically diverse communities, and consumers with disability. We suggest that in designing any obligations related to switching processes, it is important to account for the needs and circumstances of these customers by considering the different barriers they face. For example, you may wish to consider whether these customers' diverse needs will be met through a single-channel approach to simplifying switching processes. Targeted engagement with diverse consumers as part of your proposed consumer research could be beneficial in ensuring the needs of a wide range of consumers are appropriately considered in this reform.

### **Improving the application of concessions to bills**

We agree with the importance of reducing the concession gap to improve outcomes for energy consumers experiencing vulnerability and payment difficulty. We also agree with the barriers identified in your discussion paper and note that our own analysis for the Game changer identified a range of barriers at the individual, market and structural level. These barriers contribute to the concession gap across the consumer journey, from knowing assistance is available to maintaining assistance over time. While we acknowledge that broader changes are out of scope for your review, we note that the Game changer design process concluded that upgrades to automate the application of concessions were most likely to effectively address these barriers across the consumer journey. However, we also acknowledge feedback from stakeholders in our Review of payment difficulty protections in the NECF that energy retailers could play a greater role in closing the concession gap. For example, some stakeholders advocated for stronger obligations on retailers to ensure that concessions are applied earlier in the payment difficulty journey, including requiring retailers to do so before providing other common forms of assistance (such as payment plans).<sup>8</sup>

While we agree with the importance of concessions being applied as early as possible in the payment difficulty journey, we also note that requiring retailers to seek information about customers' eligibility only addresses some of the barriers to consumers accessing their concessions. To maximise the potential benefits of any such obligation, it could be beneficial

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<sup>6</sup> AER, [Game changer report](#), November 2023, p 21.

<sup>7</sup> Uniting, [Game changer consumer exploration workshops](#), August 2023.

<sup>8</sup> AER, [Review of payment difficulty protections in the NECF – Consultation summary – Workshop 2 \(Consumer organisations\)](#), 2024; Consumer Action Law Centre, [Submission to the review of payment difficulty protections in the National Energy Customer Framework](#), 28 June 2024, p 17; Uniting Vic.Tas, [Submission to review of payment difficulty protections in the NECF](#), 28 June 2024, p 4.



to ensure that any mandatory communication (such as the proposed periodic reminder from retailers) is evidence-based and behaviourally designed, with consideration of the context in which it is provided to consumers. This could include considering when a reminder would be most salient for the customer, how the reminder can best encourage the customer to take action, and any potential trade-offs of providing the reminder in certain ways (for example, including it alongside other information or providing it separately).

### **Improving awareness of independent dispute resolution services**

We welcome and support the ESCV's proposal to include information about the Energy and Water Ombudsman of Victoria on the front page of consumers' bills. However, in progressing this reform, we encourage the ESCV to consider the potential trade-offs of increasing the amount and complexity of information provided on consumer bills. Evidence suggests that many consumers spend only a few seconds reviewing their energy bill.<sup>9</sup> This is why it is essential to carefully consider every piece of information included on the front of a consumer's bill – the more information that is included, the less time there might be for consumers to notice and understand it.

As such, we suggest that the information provided about the ombudsman scheme on the front of consumer bills should be focused on the most critical information. We also suggest that the phone number is the most important contact information to include. This is because consumers who are digitally excluded may find it difficult to find this information elsewhere. However, we would expect that consumers who are not digitally excluded may readily find the ombudsman scheme's website by searching with basic information, such as the ombudsman scheme's name and phone number. In addition, noting that the Better Bills Guideline requires retailers to provide a telephone number for the relevant energy ombudsman (and does not allow retailers to include information not required by the guideline on the front page of a customer's bill except in specific circumstances),<sup>10</sup> we again highlight the implementation efficiencies that can be achieved through harmonisation across the Victorian framework and the NECF, which would benefit both retailers and consumers.

We note that we are engaging with ombudsman schemes on the impact of our Better Bills Guideline, as part of our review of the costs and benefits of the guideline. We will continue to engage with the ESCV as this review progresses and share insights from our research evaluating the benefits of the guideline for consumers.

If you have any questions about this submission, please contact the AER's Consumer Policy team at [REDACTED].

Yours sincerely,

[REDACTED]

Danielle Chifley  
Acting General Manager, Policy  
Consumers, Policy and Markets

Sent by email on: 05.12.2024

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<sup>9</sup> Ipsos-London Economics-Deloitte consortium and European Commission, [Consumer study on 'precontractual information and billing in the energy market – improved clarity and comparability': Final report](#), 2018, pp 125–127.

<sup>10</sup> AER, [Better Bills Guideline \(Version 2\)](#), January 2023.