

26 November 2024

Essential Services Commission – Energy Reform Team

Via: energyreform@esc.vic.gov.au

EWOV FEEDBACK ON PROPOSED ENERGY CONSUMER REFORMS TO THE ENERGY RETAIL CODE OF PRACTICE

The Energy and Water Ombudsman (Victoria) (EWOV) welcomes the opportunity to provide input to the Essential Services Commission's (the Commission) Review of the Energy Retail Code of Practice (the Code).

EWOV provides free, independent redress to Victorian consumers by receiving and resolving energy and water complaints. We work to ensure fair and reasonable outcomes when energy and water problems arise. We use our unique data insights about consumers' experiences of the Victorian energy and water markets to improve consumer and market outcomes, through our engagement with businesses, government, regulators and the wider community.¹

As we noted in our previous submission to this Review², EWOV welcomes changes that would drive fairer outcomes for consumers in payment difficulty or experiencing vulnerability, and stronger protections for consumers seeking to actively engage in the renewable energy transition.

We support the Commission's approach to stage the review to first consider five initial reforms proposed by the Energy and Climate Change Ministerial Council, which focus on how energy consumer protections can further safeguard households and businesses. As the Minister for Energy in Victoria noted, it is essential Victoria's energy rules remain fit-for-purpose and continue to safeguard Victorian households, in the context of enduring cost-of-living pressures and a transitioning energy market.³

EWOV agrees that the proposed reforms build on Victoria's already strong consumer protection framework and have the potential to deliver material energy cost relief to consumers. For example:

- Facilitating switching for consumers experiencing payment difficulty will help ensure this cohort are on lower cost offers.
- Addressing barriers and increasing access to the best offer more broadly will reduce friction for consumers who are willing and able to engage with the market.
- Limiting conditional discounts for all Victorian consumers will help to address the issue where consumers on legacy contracts are effectively penalised and stranded on high underlying prices as a consequence of not shopping around the market.

¹ See Clause 5.1 of [EWOV's Charter](#).

² [EWOV Submission to the Essential Services Commission – Review of the Energy Retail Code of Practice](#), July 2024.

³ [Letter from the Minister of Energy and Resources to the ESC Chairperson](#), 24 October 2024.

- Introducing a proactive requirement for retailers to check whether new and existing customers are eligible for a concession will help to ensure more consumers are accessing the concessions they are entitled to and reduce their energy bills.

EWOV also strongly supports introducing a requirement for retailers to include EWOV on bills. Consumer awareness of, and access to, EWOV's independent dispute resolution service is critical to support consumer protections amidst ongoing financial pressures and a rapidly evolving energy market. Independent dispute resolution is necessary for building consumer confidence and trust in the energy sector, and for equitable access to impartial complaint resolution assistance.

In our view, these changes provide an additional layer of protection for consumers who face challenges engaging with the market for various reasons and who experience harm due to this non-engagement.

Throughout this submission, EWOV highlights key issues facing consumers, drawing on:

- Quantitative data and case insights
- Systemic issues investigations when we identified serious and/or widespread concerning practices
- Broader industry and community data, and evidence from other jurisdictions.

EWOV values our continued engagement with the Commission and would be pleased to provide any additional insights to support this Review as it continues to progress.

Contents

Key enablers to achieve the intent of these consumer-focused reforms	4
An overarching obligation to act Efficiently, Honestly and Fairly	4
Retail staff are sufficiently trained and capable in supporting consumers	5
1. Improving the ability to switch to the best offer	6
1.1 Changes to address practical barriers to switching	6
1.2 Changes to improve consumer awareness of and access to the best offer	7
2. Automatic best offer for customers experiencing payment difficulty	10
2.1 Switching to an appropriate tariff	13
2.2 Possible mechanism for implementing best offer switching	13
2.2.1 Applying deemed best offer to non-market retail contracts	13
2.2.2 Inclusion of the deemed best offer to Part 6 entitlements	14
2.3 Proactive engagement with consumers to switch to the best offer	14
3. Improving the application of concessions to bills	16
4.1 Defining 'proactive' in the context of concession eligibility checks	17
4.2 Broader changes to improve consumer awareness of, and access to, their entitlements	18
4. Extending protections for customers on legacy contracts	20
5.1 Ensure retailers communicate the impact of their own pricing	21
5.2 Changes to conditional discounts and fees	22
5. Improving awareness of independent dispute resolution services	23
5.1 Options to increase consumer awareness of external dispute resolution via consumer bills	23
5.2 Additional requirements to provide information to consumers about how and when to raise a complaint with EWOV	25

Key enablers to achieve the intent of these consumer-focused reforms

While we support a staged approach the Review of the Code, EWOV recommends the Commission consider two overarching obligations that could assist with delivering on the intent of these consumer-focused reforms:

- An overarching conduct obligation to act *efficiently, honestly and fairly*.
- A requirement that retail staff are sufficiently trained and capable in supporting consumers. As outlined in our previous submission to this Review, the Commission might consider a more prescriptive requirement for proactive identification of consumer vulnerability and hardship as part of a suite of changes in support of these overarching obligations.

Below we set out EWOV's view in relation to these points before providing feedback on the proposed reforms:

1. Improving the ability to switch to the best offer
2. Automatic best offer for customers in payment difficulty
3. Improving the application of concession to bills
4. Extending protections for customers on legacy contracts
5. Improving awareness of independent dispute resolution.

An overarching obligation to act Efficiently, Honestly and Fairly

As noted in our previous submission to this Review, a key priority for EWOV is a shift in focus from processes to a focus on fair consumer outcomes. EWOV considers this could be achieved by introducing an overarching obligation for retailers to act *efficiently, honestly and fairly*.

EWOV considers an overarching obligation would:

- Shift the emphasis from compliance to a stronger focus on conduct which takes better account of risks to good consumer outcomes
- Drive a culture of greater sensitivity to consumer interests
- Ensure the consumer protection framework is able to keep up with a fast-changing market in which new products, services and business models are being developed, rolled out and taken up at an accelerated pace
- Support access to energy and active engagement with the transitioning market for those consumers who can do so.

In our view, this obligation would encapsulate the consumer protection intent of the Code in an enforceable obligation and also frame the more specific provisions of the Code which apply to particular circumstances and risks of harm. In this way, the Code and the consumer protection framework it provides is able to bring together principles and rules based regulatory approaches, to deal with the full range of risks and conduct in the dynamic Victorian energy market.

EWOV considers the introduction of an obligation to act efficiently, honestly and fairly could preserve current consumer protections while also driving a stronger focus on achieving fair consumer outcomes.

For example, a conduct obligation to act *efficiently, honestly and fairly* could assist with achieving the intent of the proposed best offer reforms. This would restrict retailers from switching consumers to inappropriate offers, such as where a lower rate has a short expiry or where behaviour change is required to deliver the promised lower bill and has not been properly explained.

Retail staff are sufficiently trained and capable in supporting consumers

EWOV regularly observes missed opportunities to provide early and effective support to consumers when retail staff are not adequately trained in identifying and responding to indicators of vulnerability and the potential need for support.

EWOV considers this may be driven by inconsistent approaches to training, both across the market and within providers, with some providers concentrating their vulnerability and payment difficulty capabilities in a specialist team, and others providing shallow/basic training to a broad range of agents.

To address these issues, EWOV continues to encourage the Commission to introduce a training requirement in the Code that ensures energy retail staff are sufficiently trained and capable in identifying and responding to consumers experiencing vulnerability.

Ensuring retail staff are sufficiently trained and capable in identifying consumer support needs and providing suitable support is a key enabler of these reforms. For example, where a consumer contacts their retailer about a high bill, affordability issues and/or the need for payment difficulty assistance, a trained staff member is able to identify this as a suitable opportunity to proactively conduct a concession check and provide assistance to access energy concessions.

1. Improving the ability to switch to the best offer

EWOV welcomes the Commission's proposal to improve the ability to switch to the best offer.

EWOV observes cases where consumers reported difficulties in seeking to switch from their current plan to the best offer. We noted these difficulties in our previous submission to this Review, which we consider can broadly be categorised into two themes: practical barriers to switching as well as low consumer awareness and understanding of the best offer.

EWOV considers the following changes could help to address these related but distinct issues.

1.1 Changes to address practical barriers to switching

EWOV considers an outcomes-based approach will likely be most effective to improve the ability for consumers to switch to the best offer. The Commission should also consider establishing guidance to support this approach.

We observe there are consumers who are aware of the best offer but face challenges with accessing it when they try to switch. For example, they may not be able to reach their provider or the provider does not offer sufficient information about the best offer, leaving consumers to perceive switching as risky, time-consuming or complicated.

EWOV supports introducing a requirement for retailers to introduce an effective mechanism that makes the process of switching to the best offer as streamlined, short, and safe for consumers as possible. This would be in addition to the existing requirement to include 'clear and simple instructions on how to switch to the deemed best offer' on bills.

EWOV believes an outcome-based approach could provide greater flexibility in developing an effective mechanism to switch consumers. Supplementary guidance could enable retailers to innovate and improve on the mechanism as technology and markets evolve.

Guidance would also allow the Commission to set clear expectations of retailers about what an effective mechanism may look like, with best practice being able to evolve to address a range of barriers consumers may face at the current time. This could include guidance related to:

- Identifying consumers anticipating or experiencing payment difficulty, the need for assistance and an opportunity to assist the consumer with a best offer check and assistance to switch.
- Providing clarity around plan names, to reduce confusion where new energy plans are named the same as older energy plans with higher rates.
- Accessible options for people who face digital access barriers.

An outcomes-based approach could be supported by further rule changes to increase consumer awareness of, and access, to the best offer.

1.2 Changes to improve consumer awareness of and access to the best offer

EWOV encourages the Commission consider changes that would require retailers to:

- Proactively conduct best offer checks and provide assistance with switching for all consumers contacting retailers anticipating or experiencing payment difficulty and the need for standard or tailored assistance.
- Communicate deemed best offers beyond current bill messaging requirements.

As we noted in our previous submission to this Review, EWOV observes missed opportunities for retailers to provide advice about the best offer or conduct a best offer check before consumers experience payment difficulty or arrears accrue. For example, we observe cases where consumers contact their retailer about high bills and/or affordability concerns, or explicitly express payment difficulty to their retailer. However, the retailer's call centre staff have not discussed switching to the best offer, though it would assist with energy affordability.

Currently, as a minimum standard, the retailer requirement to offer a tariff review only applies to consumers with arrears who cannot afford ongoing usage and only after receiving other forms of tailored assistance.⁴ While retailers can provide any suitable assistance to consumers in payment difficulty in addition to assistance required as a minimum standard,⁵ EWOV continues to see retailers treat minimum standards as a ceiling, rather than a floor they can exceed, where it is fair and reasonable to do so in light of the consumers' circumstances. Introducing additional requirements for proactive best offer assistance would drive better consumer outcomes at an earlier opportunity.

EWOV also observes a broader lack of awareness and understanding of best offer amongst consumers. This may be because consumers:

- Do not see the best offer notice on their bill, which may be because they have automatic payment arrangements (such as Centrepay or direct debit) set up.
- May see the best offer notice but do not register genuine benefits of switching to a better offer, as they may see it as marketing, or they might have a discount they perceive as already beneficial.
- Are confused about plan names, or wrong/conflicting/confusing information from their provider or an energy compare service.

For example, we observe how large conditional discounts may create confusion for consumers, by masking higher underlying prices, price changes, and the benefits of switching to a better offer.

⁴ *Energy Retail Code of Practice* (Vic), clauses 128(1)(f)(i) and 128(3).

⁵ *Energy Retail Code of Practice* (Vic), clause 142(1).

Jeffs* story – low consumer understanding of the benefits of switching to the best offer

Jeff complained to us about a high electricity bill of around \$400, claiming his usual bills were around \$115. Jeff explained he has not purchased any new appliances that would increase the usage. He had contacted his retailer and it advised the bill was correct and payable. His provider had offered a payment plan but Jeff did not want to accept the plan. He had been a customer of the retailer for five years and told us he had never received such a high bill.

During our investigation, we discovered that Jeff had, at times, received bills for \$110 or similar amounts, however, these were often during milder months. We conducted a tariff review and found that Jeff had been billed correctly, and concluded the reason for the high bill was that the cost of electricity had increased significantly year-on-year. Although Jeff's plan included a large 45% pay-on-time discount, the price increases still resulted in significant cost increases on the bill.

Through our conciliation of this case, the retailer applied a \$250 customer service gesture and provided him with a revised bill with an extended due date. The retailer also completed a rate comparison and provided two quotes for alternative energy plans for Jeff to consider switching to.

The best offer notification provided to Jeff on his bill indicated that he would be \$800 better off if he swapped to the retailers' best offer, but Jeff had not taken this offer up. This may have been because he perceived the discount to be more beneficial.

EWOV considers consumer awareness of the best offer could be improved by changes that require retailers to communicate deemed best offers beyond the current bill messaging requirements. The following sets out actions that may achieve this.

Include the best offer notice in the transmittal in addition to the bill.

- This may be useful for those who do not read their bill (attached to an email) due to automatic payment arrangements.
- This may also help those who struggle to understand their bill in its current form, given the volume of information and branding on bills.
- This may require further limitations on what information is included in emails to avoid overcomplicating email body text.

Improve the salience of the best offer notice on the bill/transmittal.

This might be achieved by ensuring best offer notification is not perceived by consumers as marketing.⁶ Best offers are often included in a retailers' own branding colours and style. The Commission could consider introducing a requirement to improve prominence of the best offer in colours and formatting that ensures the message is more prominent - e.g. bright red background where consumers are not on best offer and green where they are, as identified in the AER's Better Bills research.⁷ This could be achieved through development of specific ESC/Victorian Government branding messaging on the best offer notification e.g.

* Name changed for privacy purposes.

⁶AER, [Better Bills research Final report from the Behavioural Insights Team](#), 2022, p 45.

⁷Ibid p 43.

“This Best Offer notification is required by Victorian Government / Essential Services Commission” or a covering letter notification to the bill without retailer branding.

This reframing may help to “de-risk” the best offer – where trust in retailers may be low, leveraging Commission/Victorian Government branding may help to provide confidence to consumers.

2. Automatic best offer for customers experiencing payment difficulty

EWOV supports changes that would facilitate switching a target cohort of consumers experiencing payment difficulty to the retailer's best offer

The Commission highlights the issue of customers receiving or seeking payment assistance who are on high-priced plans and are not offered a switch to their retailer's best offer.

The Commission notes that around 48% of electricity consumers and 30% of gas consumers were not on their retailers' best offer,⁸ effectively paying more than necessary for their electricity. At the same time, there was a 16% increase in electricity consumers and a 14% increase in gas consumers accessing tailored assistance for payment difficulty.⁹

In our view, proactively helping consumers in payment difficulty onto lower cost plans can help mitigate affordability challenges, address engagement barriers or other difficulties, and helps prevent debt increasing.

Energy Consumers Australia's most recent Energy Consumer Sentiment Survey found that consumers under financial pressure are more likely to have trouble accessing information to help them with energy costs.¹⁰ Consumers under financial pressure were also more likely to say they had considered switching, but had decided not to because it was confusing, time-consuming or complicated, and were likely to be less confident in their ability to make choices about energy products and services.¹¹

EWOV also observes challenges for consumers in payment difficulty who use automatic payments, such as setting up their own direct debits, bill smoothing or Centrepay. Research by the Justice and Equity Centre found that many consumers in payment difficulty prefer such arrangements. They note consumers value options to pay their energy costs in manageable amounts that can be easily adjusted, and give consumers control, compared with seeking retailer assistance.¹²

However, as illustrated in a range of case studies in this submission, this may result in consumers not regularly checking or looking closely at their bills (see Penelope on p 11, Alyssa on p 12 and Zelda on p 21). These consumers are not currently adequately protected from the consequences of being disengaged from the market, such as price increases or benefit periods ending.

⁸ ESC, *Energy Consumer Reforms – Discussion Paper*, 24 October 2024, p 15

⁹ Ibid, p 6.

¹⁰ Energy Consumers Australia, *Energy consumer sentiment survey*, June 2024, p 10.

¹¹ Ibid.

¹² Justice and Equity Centre (formerly Public Interest Advocacy Centre), *Paying to pay: Using credit products to afford energy*, June 2023.

Penelope's* story – consumer in payment difficulty paying high prices

Penelope contacted EWOV concerned about a pay on time discount (POTD) she believed was misleading. She told us she was in financial hardship, and received a higher than expected bill, which prompted her to notice the daily supply charges had increased to \$3 per day. Her plan had a POTD and she believed supply charges were high because of this. She admitted she does not regularly check the bills as she made regular payments by direct debit, and had not noticed any best offer or price increase notifications. She sought EWOV's help with assessing whether she was eligible for a refund due to the high prices and whether she could access payment difficulty assistance.

As part of our investigation, we identified that the current account balance was around \$500. The retailer told us that Penelope was on a legacy POTD plan, having signed up with them in 2011, which now attracted high rates that often exceeded the VDO. It had provided information that Penelope was not on its best rate. The retailer told us that she was not on a payment plan but had set up her own arrangement paying \$50 per fortnight towards the bills. It reported that although Penelope had previously been in contact about rates and the best offer, since the current contract was established in 2019, she had only contacted her retailer about other issues. However, it acknowledged it missed those opportunities to discuss the best offer proactively.

EWOV assessed that although Penelope's rates exceeded the VDO, the retailer was not obliged to move her onto the VDO and had met its minimum obligation to inform her about the best offer and the VDO on multiple occasions. The retailer acknowledged it had met its minimum obligations, but found instances where they could have gone beyond these to help Penelope, and offered a \$200 credit, backdated to the start of the complaint. The retailer also offered to assist Penelope to access the best offer and identify whether other payment assistance was needed. EWOV considered this fair and reasonable, and the complaint was closed with both parties agreeing with this assessment.

In cases where consumers in payment difficulty have not engaged with their retailer, EWOV observes they can be less responsive to billing notifications or retailer attempts to contact. In our view, there are key indicators retailers could use to help identify payment difficulty, such where there are low value automatic payment arrangements via Centrepay – see Alyssa's story below.

* Name changed for privacy purposes.

Alyssa's* story – automatic Centrepay payments masking price increases for consumer in payment difficulty

Alyssa contacted EWOV in April 2024 after being disconnected due to gas account arrears of almost \$2,000. She told us she was in financial hardship, living on income support and struggling to afford daily costs, and had a \$50 fortnightly automatic payment via Centrepay set up for several years. She had contacted her retailer to query why she had been disconnected despite believing she was on a payment plan. Alyssa reported that her retailer advised her that her usage was high and she would need to increase the payments to almost \$300, which she had previously advised she could not afford. Following our referral to her retailer, the gas was reconnected but Alyssa advised us she wanted EWOV to investigate the payment difficulty assistance available to her, including whether concessions had been applied and if she was eligible for a URG, and the reasons for the high bill.

As part of our investigation, the retailer confirmed Alyssa was on a \$50 per fortnight Centrepay arrangement, concessions had been applied since 2014 and she had last received URGs in September 2021, so was eligible to apply again. The retailer had sent multiple collections notices and generic information about payment difficulty support available, but the consumer had not responded to these, and told us it did not have any records of hardship indicators or capacity to pay. The retailer acknowledged that they faced challenges with engaging with this consumer, and considered EWOV's intervention a good opportunity to reset this relationship.

We also found that Alyssa had signed up with her retailer in 2014, originally on a plan with a 15% discount. A technical review found that Alyssa had been billed correctly, and that the gas rates had increased by approximately 40% from 2022 to 2024. The retailer showed us the best offer notices it had sent, which varied in showing estimated savings of between \$90 to \$430. Alyssa's consumption had decreased through 2023 to 2024, but due to the price increases, the payments were not covering ongoing usage which led to the arrears accruing.

Through EWOV's conciliation of this complaint, we explained the findings of our investigation to Alyssa, and told her the retailer offered to assist her to apply for URGs and engage with her to set up suitable payment difficulty assistance.

EWOV observes cases like Alyssa's above, where consumers are in significant arrears, but have not engaged with their retailer to access payment difficulty assistance. In this case, the consumer's energy costs had increased by 40% over 2 years, they had arrears of almost \$2,000, had been disconnected for non-payment, and although eligible, had not accessed payment difficulty assistance. Our investigation found the retailer had sent multiple notices about the best offer, generic information about payment difficulty assistance and collections notices, but none of this prompted the consumer to engage with their retailer to access the best offer or any other assistance.

Cases like these highlight the limits of relying on engagement for consumers in payment difficulty to access suitable assistance, and the additional layer of protection that switching would provide for this cohort.

* Names have been changed for privacy purposes.

2.1 Switching to an appropriate tariff

Where consumers are automatically switched to a better offer, there is a risk that consumers may be switched to a dynamic tariff which could take a range of forms (e.g. Time of Use, critical demand peak, wholesale passthrough). While cheaper compared with the existing tariff, these kinds of tariffs may not be suitable for all consumers with limited energy literacy or capacity to change their behavior.

EWOV sees benefit in the Commission establishing a reasonable protection against switching to a dynamic offer that creates unintended affordability challenges for consumers in payment difficulty.

As we noted in our submission to the Review of the Code, an obligation to act efficiently, honestly and fairly could provide a check on retailers switching consumers to inappropriate offers – including offers where a lower rate has a short expiry or where behaviour change is required to deliver a lower bill.

2.2 Possible mechanism for implementing best offer switching

EWOV considers that a mechanism to implement best offer switching is through leveraging the current approach to *deemed best offer*¹³ and expanding its application to:

- consumers on non-market contracts, including standard retail and deemed contracts, and
- require retailers to offer residential customers who are anticipating or facing payment difficulties to switch to the retailer's best offer.

2.2.1 Applying deemed best offer to non-market retail contracts

The Commission highlights how different consumers value different aspects of an energy plan.¹⁴ The mechanism for implementing any option should take this factor into consideration by facilitating consumers to take a more informed approach to switching to the deemed best offer. This proposal aligns with the Code's current requirement that any variation to market contracts be undertaken with the explicit informed consent of the consumer.¹⁵

EWOV supports the Commission considering whether to include a prospective compliance requirement that would see a retailer required to place a consumer on rates which are no worse off than the consumer's deemed best offer at the point at which a market or standard retail contract comes to an end and the consumer rolls onto a deemed contract (if the consumer does not enter into a new contract).

¹³ Energy Retail Code of Practice, cl.108(2); a deemed best offer is a retailer's lowest cost plan applicable to a customer having regard to their annual usage history.

¹⁴ ESC, [Energy Consumer Reforms – Discussion Paper](#), 24 October 2024, p 10.

¹⁵ Energy Retail Code of Practice (Vic), clause 93.

At this point, the explicit informed consent requirements currently in effect under the Code would not be applicable, as the requirement applies from the point that a consumer rolls from a market contract to a deemed contract. While this measure would not apply to all customers, this proposal would be a key measure to limit the potential harms experienced by consumers who are disengaged over protracted periods and who may not scrutinize their energy plans when rolling off market retail contracts and onto potentially less favourable rates.

2.2.2 Inclusion of the deemed best offer to Part 6 entitlements

Part 6 of the Code currently entitles residential customers to minimum standard forms of assistance to help customers to avoid getting into arrears with their retailer¹⁶ and requires a retailer to take steps to offer standard and tailored assistance, depending on the customer's circumstances.

EWOV considers that much of the policy intent can be implemented by leveraging established principles and requirements available in the Code and familiar to industry. Clause 109 of the Code already requires retailers to carry out the deemed best offer check via a prescribed methodology. The deemed best offer check is an established and well understood requirement under the Code.

By way of example, EWOV considers that an additional requirement could be included in Part 6 of the Code to mandate retailers to, upon customer contact under clause 129 of the Code:

- complete a deemed best offer check and,
- if the customer is found not to be on the best offer, notify the customer at the time at which the deemed best offer check is completed, and
- offer to change the customer onto the best offer plan.

This proposal aligns with the Code's current requirements for customers to provide explicit informed consent as part of market retail contract variations under clause 93 of the ERCOP.

2.3 Proactive engagement with consumers to switch to the best offer

EWOV recommends the Commission consider encouraging retailers to develop mechanisms to capture indicators of payment difficulty. This could be used to identify consumers and proactively engage with consumers who could benefit from switching to the best offer, as well as other payment difficulty assistance.

The Commission's latest Energy Market Report notes that 121,000 electricity consumers each month in 2023-24 had arrears greater than \$300, but were not accessing payment assistance from their retailer, placing them at higher risk of being disconnected.¹⁷

¹⁶ The *Energy Retail Code of Practice* (Vic), clause 124(1).

¹⁷ ESC, *Victorian Energy Market Report*, September 2024, p 17

Noting this, there may be benefit in the Commission considering how retailers can proactively extend this protection to any consumer experiencing payment difficulty, rather than only consumers currently receiving payment difficulty assistance. This would ensure consumers who are not engaged with their benefit from this critical protection. This may also assist with building consumer trust and drive future positive engagement.

For example, the Australian Energy Council's "*Guidance for retailers seeking to implement best practice customer support*"¹⁸ suggests that indicators might include:

- Multiple reminder notices issued the previous six months
- Issuing a disconnection warning notice
- Incomplete bill payment or underpayment in the last three months, including where those payments are made by Centrepay
- Significant increases or decreases in usage/bills between periods
- Application of any external assistance in the past 12 months, such as URGs or energy concessions.

¹⁸ Australian Energy Council, [*Guidance for retailers seeking to implement best practice customer support*](#), June 2021.

3. Improving the application of concessions to bills

EWOV supports the Commission's proposal to require retailers to proactively check concessions for new and existing customers. EWOV suggests the Commission should also clarify that retailers should take proactive steps to contact those consumers and inform them about their potential eligibility for or issues with concessions.

Evidence suggests approximately 14% of Victorian households who were eligible for a concession were not accessing them.¹⁹ As the Commission notes, low consumer awareness of concessions is a key challenge. In our previous submission to this Review we noted other common challenges for consumers seeking to access energy concessions, including:

- Names or addresses failing to validate with Centrelink, leading to the Victorian energy concessions not being applied
- Consumers not being aware that their concession had expired
- Difficulty transferring the concession where the consumer transfers properties or providers
- Retailers not backdating concessions, or providing incorrect advice about backdating requirements
- Process issues such as retailer system updates that lead to concession details dropping off the account.²⁰

Some of these issues are canvassed in Mikkel's story below.

The Code only requires retailers to provide consumers with specific advice about government and non-government assistance available when the consumer is already in arrears.²¹ EWOV considers there are often missed opportunities to identify that a consumer may be eligible for a concession, provide early assistance to access a concession and avoid payment difficulty. Further, there is no requirement for retailers to notify or explain concessions issues to consumers. In this context, the onus is on consumers to identify and resolve concession issues, such as ensuring concession details are correct, applied and/or backdated.

To address these issues, in our previous submission to this Review, EWOV encouraged the Commission to consider changes that would require retailers to take proactive steps to offer consumers assistance to access energy concessions, as well as consider the need for future system improvements that would facilitate automatic application of concessions.

The Commission notes that concession system upgrades to allow automation and portability are being considered elsewhere and are out of scope for this Review.

¹⁹ Victorian Council of Social Service, [The missing 14%: Why so many Victorians are missing out on energy concessions](#), May 2023, p 4.

²⁰ [EWOV Submission to the Essential Services Commission – Review of the Energy Retail Code of Practice](#), July 2024.

²¹ *Energy Retail Code of Practice 2022 (Vic)*, clause 128 (1)(d).

In the meantime, we welcome the Commission's proposal to introduce requirements for retailers to proactively seek information about customers' eligibility for concessions from the first point of contact with the consumer (i.e. at sign up) and at regular points throughout their contract, a positive step change ahead of future changes to allow for automation and portability.

Mikkel's* story – missed opportunity to assist consumer to access energy concession

Mikkel contacted EWOV dissatisfied about a missing energy concession. Mikkel reported that he attempted to contact his retailer via its app about a bill that was missing his concession, but could not reach an agent. Mikkel told us that he also tried to register his concession card details himself via the app, but it appeared to not be working. He then called the retailer to request an amended bill, but it told him the concessions could not be backdated. After Mikkel raised the complaint with EWOV, the retailer made an offer to resolve the complaint with a \$150 customer service gesture, which Mikkel declined.

As part of our investigation, the retailer acknowledged that its agent did not provide accurate information about backdating concessions nor apply the concession at this time. In light of this, the retailer offered to generate an amended bill to include the backdated concessions and applied a \$45 credit on both accounts as a customer service gesture. The consumer accepted this offer and the complaint was closed.

3.1 Defining 'proactive' in the context of concession eligibility checks

EWOV sees benefit in the Commission clearly defining its expectation of what is 'proactive' in this context.

We welcome the Commission's proposal that for new customers, proactive refers to the retailer seeking concession information from the customer via sign up communications, such as on the electronic sign-up form or by asking when on the phone.

For existing customers, the Commission is proposing to require retailers to proactively check within a certain period if their existing customers who are not receiving concessions may be eligible for one, which we welcome. The Commission should also clarify that retailers should take proactive steps to contact those consumers and inform them about their potential eligibility. We strongly support the Commission's proposal to require retailers to conduct a check and notify consumers when the retailer is aware of a customer's eligibility period being close to expiring or having expired without action by the customer, as noted in our previous submission to this Review.

As we noted on page 13, EWOV considers that a mechanism to capture indicators of payment difficulty could assist retailers in identifying and engaging with consumers who may be eligible for a concession but not receiving one.

* Name changed for privacy purposes.

Further to these scenarios, EWOV suggests the Commission consider requiring retailers to proactively conduct a concession check and provide practical assistance to access energy concessions when engaging with consumers in the following scenarios:

- Consumers who have previously had a concession on their account.
- Consumers contacting their provider about a high bill, affordability issues and/or payment difficulty assistance.

3.2 Broader changes to improve consumer awareness of, and access to, their entitlements

EWOV considers other changes are needed to increase consumer awareness of and access to their entitlements, which we noted in more detail in our previous submission to this Review.²²

As part of EWOV's regular outreach activities to a range of community-based organisations, EWOV commonly engages with consumers who are in significant financial hardship (for example, due to visa status, unemployment or insecure housing) and who had an energy issue but were not aware of, or had not engaged with, their energy provider about assistance available.

EWOV considers low consumer awareness of, and barriers to, accessing entitlements can be effectively addressed when retailers take proactive steps to engage with consumers. For example, in response to one of our recent investigations, a retailer launched two initiatives to improve consumer awareness of URGs and streamline application processes. The first was a dedicated URGs website. The second was sending proactive URGs specific communication to likely eligible consumers. Both the webpage and the proactive communication included a direct number to the retailer's Energy Assistance team where applications could be made over the phone. The retailer reported to us that in the month after introducing these measures, the number of URGs requests it received increased by 225%.

The Australian Energy Council's "*Guidance for retailers seeking to implement best practice customer support*"²³ acknowledges information asymmetry that exists in the energy sector, and the role of retailers in using data to identify and proactively offer assistance, and to increase consumer awareness of assistance options. The guidance notes that retailer best practice could involve retailers developing mechanisms to capture and utilise indicators of payment difficulty, such as multiple payment reminder notices or incomplete bill payments within a certain period.

This guidance, and the recent ASIC Report "*Hardship, hard to get help*"²⁴ also highlighted the benefits of tailoring communication based on the consumer's circumstances. For example, tailoring communication based on whether it was the consumer's first time engaging with their retailer about payment difficulty, whether they had previously received assistance for payment difficulty, whether the consumer was experiencing additional challenges or based on any specific or critical needs of the consumer.

²² [EWOV Submission to the Essential Services Commission – Review of the Energy Retail Code of Practice](#), July 2024.

²³ Australian Energy Council, [Guidance for retailers seeking to implement best practice customer support](#), June 2021.

²⁴ Australian Securities and Investments Commission, [Hardship, hard to get help: Findings and actions to support customers in financial hardship](#), May 2024, p 41 – 60.

EWOV encourages the Commission to consider broader changes to improve consumer awareness of, and access, to their entitlements. This includes:

- Expanding clause 13 of the Code to require more frequent, proactive and tailored means of communicating payment difficulty assistance to improve consumer awareness of their entitlements.
- Prescribing that retailers must take proactive steps to identify and contact consumers who are likely eligible for URGs and inform them about their potential eligibility.

4. Extending protections for customers on legacy contracts

EWOV supports the proposal to remove the grandfathering arrangements in its 'Ensuring contracts are clear and fair' reforms.

EWOV welcomed the changes introduced in 2020 under the 'Ensuring contracts are clear and fair' (the 'clear and fair') reforms. We noted that limiting pay on time discounts (POTD), via a maximum cap on POTD set by the Commission annually, would create more certainty for consumers around their actual energy costs and lead to less complaints.

The discussion paper notes ACCC analysis that found that despite these reforms, there are a significant number of customers who remain on plans with large conditional discounts and high underlying prices.²⁵ Our case insights support this analysis – of a sample of 25 cases from 2024 where consumers raised a complaint about a POTD, 11 included a POTD higher than the current maximum POTD. In many of these cases, consumers not paying by the due date exposed them to high costs and payment difficulty.

For example, Zelda's story below illustrates enduring impacts for consumers on a contract entered into before the 'clear and fair' reforms were introduced. In this case, a high POTD masked underlying high prices and caused consumer confusion. The benefit period also ended during the course of the contract, contributing to the consumer's payment difficulty and debt accrual with their provider.

²⁵ Australian Competition and Consumer Commission, *Inquiry into the National Electricity Market: December 2023 Report*, 1 December 2023, p. 39.

Zelda's* story – POTD masking high prices

Zelda had been experiencing payment difficulty and receiving higher than expected bills, which prompted her to look at them closely. Although she had previously believed she was on a great deal, receiving a 40% pay on time discount, when she looked closely at the bills, she now believed she was being overcharged for both gas and electricity over a few years. She contacted her retailer to request a billing history and seek a refund for the amount she believed she was overcharged. Zelda's retailer then offered her a \$200 credit for both accounts. Not satisfied with this resolution, Zelda contacted EWOV to look into both the rates she had been charged and whether payment difficulty assistance should have been offered.

As part of our investigation, EWOV noted that Zelda had missed the pay-by date several times. Our review of the contact notes also showed Zelda had contacted the provider on separate occasions and stated she was in financial hardship, she had debt with Centrelink, and had unforeseen medical costs and bills she was struggling to manage. She asked for assistance, including explicitly requesting payment extensions. The retailer told us it had provided the payment extensions Zelda had requested, but did not proactively offer any other payment difficulty assistance.

The retailer also told us the consumer had signed up to a plan in 2018, and although the benefit period ended in 2020, the contract was ongoing and did not require explicit consent to renew the plan. The retailer had sent Zelda a notice that the benefit period was ending and to contact the retailer if she wanted to switch to the VDO, but Zelda had not responded to this and continued to be billed at the same rate. EWOV's technical review found that billed usage was correct, but the Zelda's rate was exceptionally high, even with pay on time discounts applied. Zelda was effectively paying double the VDO. EWOV also found that while the provider had included the best offer notice on bills, a best offer check was never discussed with Zelda despite the multiple contacts about payment difficulty.

Following our investigation, the retailer offered to re-bill the electricity account based on the VDO rates from when the initial benefit period ended, amounting to over \$1,800, applied to the account as a credit. The retailer also offered \$650 credits for both the gas and electricity accounts, recognising missed opportunities to provide URGs, and \$200 goodwill credits given Zelda's experience with the retailer. The retailer also offered to place Zelda on the best offer for both gas and electricity. Zelda accepted this offer and the complaint was closed.

4.1 Ensure retailers communicate the impact of their own pricing

EWOV receives complaints from consumers who are dissatisfied when a POTD they expected was missing. In 2021 and 2022, EWOV experienced an increase in such complaints as the 'clear and fair' reforms led to changes in consumers' plans. These cases indicate consumers perceive large POTD to be of benefit, masking the real costs of their energy supply and the potential benefits of other entitlements, such as the ability to switch to the best offer, as illustrated in Jeff's story on p 8.

* Name changed for privacy purposes.

These issues further highlight the need for the Commission to consider actions to improve consumer awareness of the best offer and promote consumer trust and confidence to engage in the market, as previously discussed on p 7. In our view, retailers are responsible for communicating the need for change from inflated POTD to comparably simpler prices, as well as the impact on consumers' bills.

4.2 Changes to conditional discounts and fees

EWOV has limited case insights involving consumer dissatisfaction about other conditional discounts or fees as the primary issue. However, we note some case insights involving consumers facing issues with direct debits, including cases where consumers reported:

- They had been advised a better offer was conditional on the consumer paying via direct debit.
- They had received communications they perceived to be “forcing” them onto direct debit to continue receiving discounts.

Research by the Australian Communications Consumer Action Network (ACCAN) and the Justice and Equity Centre found that a third of telecommunications consumers experienced some form of payment issue in the past two years. Consumers also wanted options that would not impose additional financial costs on them for using them.²⁶ In light of this, ACCAN recommended telecommunications providers offer consumer choice in payment methods, offer free methods of paying in addition to direct debit, and stop imposing charges or late fees for late payments caused by delayed processing.

In this context, EWOV supports changes that would limit or prohibit conditional discounts and conditional fees. EWOV also considers that an obligation for retailers to act efficiently, honestly and fairly could operate to exclude conditional discounts which required unreasonable or onerous performance of criteria by consumers.

²⁶ Australian Communications Consumer Action Network, '[Direct Debit in Telecommunications](#)', April 2023.

5. Improving awareness of independent dispute resolution services

EWOV supports introducing new requirements to increase consumers' awareness of independent and external dispute resolution (EDR).

The Commission notes recent analysis by Energy Consumers Australia and Uniting that indicate consumers are not familiar with EWOV or know how to find information about EWOV and our role.²⁷ Whilst EWOV is continuing to take steps to advance accessibility and awareness of EWOV, we see significant benefit in broader changes to improve consumer awareness.

EWOV is aware, from our outreach and media activities, of latent demand within the community, where consumers are not aware of their right to complain, right to escalate their complaint if their provider has not addressed their concern satisfactorily, or of the existence of EWOV. For example, Energy Consumers Australia's June 2024 Energy Consumer Sentiment Survey identified that 66% of consumers in Victoria were either not very familiar or not at all familiar with EWOV.²⁸ This is a 12% increase from the June 2022 Energy Consumer Sentiment Survey where 54% of consumers were either not very familiar or not at all familiar with EWOV.²⁹

When consumers do find their way to us, we are able to provide information, manage expectations, investigate and resolve a complaint and connect a consumer to other sources of support where required. At present, Victorian consumers are less aware of or able to access this assistance than consumers in other states.

5.1 Options to increase consumer awareness of external dispute resolution via consumer bills

EWOV supports the options to:

- add EWOV's phone number and website on the front page of bills
- incorporate key information about accessing EWOV in the bill transmittal.

EWOV strongly supports the Commission requiring retailers to include EWOV's details on the front page of bills to align with the same requirement that exists in other National Electricity Market states under the AER's Better Bills Guideline.

Research indicates that a significant proportion of consumers use information on bills to assist them to resolve complaints. For example, BETA's Improving Energy Bills research, which was used to inform the AER's Better Bills approach, indicates that 26% of consumers use their energy bill to find contact details to make a complaint.³⁰

²⁷ ESC, *Energy Consumer Reforms – Discussion Paper*, 24 October 2024, p 27.

²⁸ Energy Consumers Australia, *June 2024 Energy Consumer Sentiment Survey*, June 2024.

²⁹ Energy Consumers Australia, *June 2022 Energy Consumer Sentiment Survey*, June 2022.

³⁰ Behavioural Economics Team of the Australian Government, *Improving energy bills: Final Report*, 2021, p.19.

Data from other jurisdictions also indicates the impact of including the Ombudsman contact details on bills. For example, the Energy and Water Ombudsman of South Australia (EWOSA) advised EWOV that in the period of September 2023 (the period the Guideline came into effect) to June 2024 there were 1,346 instances where consumers who contacted EWOSA reported that they had heard about EWOSA through their bill or invoice. This compares to 62 consumers from the same period a year earlier.

Similarly, after EWON's contact details were included on bills, EWON identified an increase in the proportion of complaints where consumers heard about EWON through their bill or invoice. For example, in June 2023, in 4.3% of EWON's total complaints relating to authorised retailers, consumers advised EWON that they had obtained EWON's information through a bill or invoice. This number increased to 18.9% in June 2024 after EWON's details were added to bills.

EWOV data from 2023-24 indicates that:

- 9,989 (53%) contacted by phone
- 6,956 (37%) contacted by web complaint form
- 1,285 (7%) contacted by email
- 159 (0.9%) contacted by web chat.³¹

While EWOV receives the majority of complaints via phone, the proportion of consumers who contact EWOV by the website (either web complaint form or web chat) is gradually increasing each year. In 2020, 28% of complaints were received by the website. EWOV notes that the Telecommunications Industry Ombudsman reported that in 2023-24, it received 60% of its complaints via online methods.³²

Outlining both phone and website details can help to reduce friction for consumers with preferred contact methods and/or out of EWOV business hours. EWOV observes that it is standard industry practice for a retailer to provide both phone and website contact details to allow for consumer choice and preference.

In this context, EWOV supports requiring the inclusion of both EWOV's phone number and website on the front page of bills.

As we noted in our previous submission, EWOV also supports requiring the inclusion of EWOV's contact details in the body of emails with bills or invoices.

We understand that many retailers are currently sending bills to consumers with a summary and payment link in the email. This is potentially causing consumers to not consider important information that is contained in their bill – particularly where consumers sign up to direct debit arrangements. We consider this is potentially contributing to issues such as reduced visibility of best available offer. Due to the nature of the medium, we note it may be less costly for retailers to make changes to emails communicating bills than to changes to the bill themselves.

If the Commission decides to require retailers to include certain information in the transmittal of bills e.g. emails, we consider it appropriate to only require retailers to include information that is critical to consumers. This could include further information about when to contact EWOV, e.g. "If you want to raise a complaint,

³¹ EWOV, [Annual Report 2024](#), p 16.

³² Telecommunications Industry Ombudsman, [Annual Report 2023-24](#), p 84.

first contact your retailer. If your retailer cannot resolve your complaint, contact EWOV for further assistance”.

More detailed information about how and when to raise a complaint with EWOV could also be provided on retailer websites.

5.2 Additional requirements to provide information to consumers about how and when to raise a complaint with EWOV

EWOV encourages the Commission to consider expanding clause 13(1)(c) of ERCoP, which prescribes retailer obligations to provide the contact details for the relevant energy ombudsman on its website.

This obligation could be revised to align with obligations in ASIC’s Regulatory Guide 271, including that a retailer must inform consumers of their right to complain to EWOV if and when:

- a) They are not satisfied with the retailer’s internal dispute resolution response³³
- b) The consumer’s complaint is not resolved within a set timeframe, such as 30 calendar days.³⁴

EWOV supports additional requirements for retailers to provide details about when and how consumers can refer their complaint to EWOV.

It is not solely EWOV’s responsibility to inform energy consumers of their right to have their complaint considered by EWOV as the independent and external dispute resolution service for the energy sector. A retailer must include terms and conditions in their retail contracts that inform customers they have a right to refer their complaint to EWOV when their complaint is not satisfactorily resolved by the retailer.³⁵ A retailer is also required to publish EWOV’s contact details on its website³⁶ and have complaint handling procedures that are substantially consistent with the Australian Standards for complaint handling in organisations.³⁷ The Australian Standards for complaint handling require complaint responses which include information about seeking an external review and referring the complaint to an external dispute resolution scheme.³⁸

³³ RG271 2021, clauses 271.53(b) and 271.111(a).

³⁴ Ibid, clauses 271.56, 271.111(a) and 271.66(b).

³⁵ Energy Retail Code of Practice, cl.102(1)(d) and Schedule 2 cl.19.2(b).

³⁶ Energy Retail Code of Practice, cl.13(1)(c).

³⁷ Energy Retail Code of Practice, cl. 14(1).

³⁸ Australian Standard Guidelines for complaint management in organisations (ISO 10002).

Our own data, including that obtained through consumer satisfaction surveys, show that consumers are often unaware they can refer their complaint to EWOV after their retailer has completed its own internal complaint handling process.³⁹ We have also observed broader issues relating to consumer awareness and access to external dispute resolution, including consumers reporting to EWOV that their energy retailers or distributors:

- Provided what we consider to be insufficient details about EWOV after engaging in the retailer's internal dispute resolution processes.
- Put pressure on consumers to accept an offer e.g. only making offers available for a set period.
- Actively discouraged consumers from contacting EWOV e.g. making offers contingent on consumers not escalating their complaint with EWOV. In one case, an energy distributor sent an email to a consumer stating, 'if you choose to escalate this matter to EWOV to an investigation, the offer will no longer be available due to the additional costs of the escalation'.

EWOV is concerned that many consumers are unaware of their entitlement to seek an external review where they remain dissatisfied with their retailer's complaint response. EWOV considers equitable access to EDR is instrumental to minimising and preventing consumer harm, such as in circumstances where a retailer has not appropriately understood or applied consumer protections or where a consumer is not aware of their entitlements under the Code.

EWOV also considers that access to independent and impartial EDR is essential to increasing consumer understanding, knowledge and trust of the energy sector through EWOV's process of identifying industry good practice, managing expectations and informing consumers of retailer rights, responsibilities and obligations.

EWOV supports access to and awareness of EWOV's dispute resolution services for all Victorian energy consumers so that retailers are accountable for appropriate and effective internal complaint handling and dispute resolution processes. To further support an outcomes based approach, EWOV considers that additional guidance is needed in the Code relating to retailers' internal complaint handling processes and when retailers are required to inform consumers of their entitlement to refer their complaint for external review, including when:

- the consumer is not satisfied with the retailer's internal dispute resolution response
- the consumer's complaint is not resolved within a set timeframe, such as 30 calendar days.

This would complement the proposal to include EWOV's details on bills so all Victorian energy consumers have a fair and equitable opportunity to seek and access independent and external review of their complaint should they remain dissatisfied with their retailer's internal complaint handling process and response.

³⁹ In the 2023/2024 financial year EWOV's consumer satisfaction surveys show that on average 38.63% of consumers advised EWOV that their provider did not inform them they could take their complaint back to EWOV after EWOV referred the complaint to the retailer and the retailer completed its own internal dispute resolution response. This was based on 1,597 consumer survey responses relating to all EWOV members including water, but primarily electricity retailers.