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We welcome the opportunity to provide this input.

# VCOSS Submission to the Energy Retail Code of Practice review – Energy and Climate Change Ministerial Council reforms

## Executive Summary

The Victorian Council of Social Service (VCOSS) welcomes the proposed energy retail code of practice reforms put forward by the Essential Services Commission (ESC) in response to requests by the Energy and Climate Change Ministerial Council. This submission provides feedback on specific reform proposals in the ESC's *Energy Consumer Reforms Discussion Paper* (the Discussion Paper).

Household energy is an essential service that Victorians on low incomes struggle to afford, and because of high energy costs, many are accruing unmanageable amounts of debt. The average energy arrears for customers who cannot pay for their ongoing usage when entering tailored assistance from their retailer is currently \$1,145 for electricity, and \$1,003 for gas.<sup>1</sup> VCOSS understands from our members that cases of debts above \$10,000 are often observed by energy support services. Consumer Action Law Centre recorded a debt of \$34,102 for one energy contact to the National Debt Helpline in 2023.<sup>2</sup>

These impacts are compounded by retailer practice. Community sector consumer advocates observe that retailers often fail to deliver adequate assistance to customers in payment difficulty. A primary concern raised by VCOSS members is that retailers do not adequately support people onto cheaper energy offers or check for and apply eligible concessions.

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<sup>1</sup> Average for Q4 FY2023-24, see: Essential Services Commission (n.d.) [Energy market Dashboard](#), accessed: 26/11/24.

<sup>2</sup> Consumer Action Law Centre (2024) [Energy Assistance Report 4<sup>th</sup> Edition](#), p5.

In this context, VCOSS welcomes the ESC's proposed reform objectives for this phase of the Energy Retail Code of Practice (ERCOP) review. We are particularly pleased that the ESC has heard advocates' calls to consider ways to require retailers to lower the ongoing cost of energy for households struggling with bills, and to explore options for automating some elements of this process.

Our submission has been written with input and support from VCOSS member organisations in the community sector, and from other energy consumer advocates.

## Summary of recommendations

### *Automatically applying best offers for customers experiencing payment difficulty*

1. Require reduced tariffs for customers experiencing payment difficulty, to match the deemed best offer for their usage.
2. Assure consumer agency by:
  - a. Enabling customers to opt-out of the change within a 10-day cooling-off period.
  - b. Ensuring the notification to consumers is understandable and accessible by co-designing communication materials with consumers and consumer advocates.

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

3. The ESC should create outcomes-based requirements to compel retailers to improve customers' options to switch to the best available offer for their usage.
4. This should include a baseline set of minimum requirements for providing adequate communications to digitally excluded consumers, and those facing language barriers.

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

5. Require retailers to proactively check for concessions eligibility:
  - a. When new customers sign up, or existing customers switch plans; and
  - b. In existing points of contact, as with best offer requirements; and
  - c. When a retailer is aware a customer has become eligible for a concession, or their current eligibility is about to expire; and
  - d. Both before and while a customer is experiencing payment difficulty.
6. VCOSS urges the ESC to include requirements for automatically applying eligible concessions to energy bills in future rounds of reform.

### *Extending protections for customers on legacy contracts*

7. Extend the cap on conditional pay on time discounts to contracts entered into before 1 July 2020.
8. Tackle the poverty premium by prohibiting conditional discounts and conditional fees which discriminate between payment methods.

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

9. Require that all retailers include contact details for EWOV on energy bills.
10. The contact details of other support services such as the National Debt Helpline and Energy Assistance Program could also be included on bills.

## Automatically applying best offers for customers experiencing payment difficulty

VCOSS strongly supports measures to move customers experiencing payment difficulty – especially those who are unable to pay their ongoing usage – onto more affordable offers.

While many households receiving assistance are paying below the Victorian Default Offer (VDO), it is relevant to note that the VDO tends to sit at the top of the range of prices in the market. A customer can be paying below the VDO but still not be getting the best available offer.

Frontline community services providing energy assistance consistently tell us that retailers do not do enough to get customers who are struggling onto their best available offer.

The fact that even a small minority of customers in payment difficulty are paying well above the VDO<sup>3</sup> is evidence of this.

VCOSS recommends reducing tariffs for customers experiencing payment difficulty to match the deemed best offer for their usage. This would balance the need to provide the lowest available rate to a customer experiencing payment difficulty, while maintaining customer agency through the provision of any offer-specific conditions of the customer's existing plan that they may wish to retain.

The ESC's Discussion Paper noted that this option may face implementation challenges if the best offer has a different tariff structure (for example, flat rate rather than time of use) to the existing energy plan. VCOSS suggests that this can be addressed by retailers given their access to comprehensive data on customer energy usage, time of day usage, and more.

To ensure that the customer is comfortable with this change, the option should be provided to opt-out of the change within a 10-day cooling-off period. To support this, there must be measures to ensure that notification to consumers is understandable and accessible - such as the provision of default Plain English wording, and easy-to-understand graphs or imagery showing the cost differences between the previous and new pricing structures.

In terms of eligibility, requirements to reduce tariffs should apply to all customers who are receiving tailored assistance. To prevent further hardship, this should encompass customers entering tailored assistance who can pay for their ongoing usage as well as those who cannot.

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<sup>3</sup> Essential Services Commission (2024) *Energy Consumer Reforms Discussion Paper*, p7.

## Improving the ability to switch to the best offer

VCOSS supports measures to improve energy customers' ability to switch to the best offer from their retailer for their usage. The energy market is complex to navigate, and many consumers simply stick with their existing plan rather than engage with the constant monitoring that is necessary to stay on the most affordable offer. This shows in the number of customers who are not getting the best value from their retailers.

As noted in the Discussion Paper, half of all residential electricity customers are not on their retailer's best offer, and 30 per cent of residential gas customers are not on their best offer.<sup>4</sup> This is a shocking state of affairs. It is unconscionable that any Victorian household is paying potentially hundreds of dollars more than they need to each year for an essential service. VCOSS regards this situation, and the constant need to revisit it in regulatory reform, as a clear failing of the retail energy market to deliver on even the simplest supposed benefits of a privatised system.

The result is that many consumers are unwittingly paying a "loyalty tax," whereby the price of their legacy offer becomes less and less competitive over time. The Australian Competition and Consumer Commission (ACCC) found that in Victoria in 2023, 41 per cent of residential customers on flat rate unconditional offers (no conditional discounts) were paying equal to or more than the Victorian Default Offer (VDO), with nine per cent paying over 25 per cent more than the VDO.<sup>5</sup>

This can lead to sudden bill shock. The Energy and Water Ombudsman Victoria (EWOV) has reported that high bill complaints have emerged as the key issue reported by customers, with three times as many cases received in the July-September 2024 quarter as the previous quarter, and 42 per cent more than the previous year.<sup>6</sup>

EWOV stated that these cases are, in part, driven by lack of awareness of best offers, challenges accessing best offers, or large conditional discounts creating confusion by masking higher underlying prices, price changes, and the benefits of switching to a better offer.<sup>7</sup>

Consequently, VCOSS strongly supports any action to improve customers' ability to switch to the best offer their retailer provides for their usage. From the ESC's options listed in the Discussion Paper, an outcomes-based approach seems preferable to a prescriptive approach. However, it will be important to have a baseline consistency across all retailers, and so we recommend establishing some minimum requirements.

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<sup>4</sup> Essential Services Commission (2024) *Energy Consumer Reforms Discussion Paper*, p15.

<sup>5</sup> See: Supplementary Table C9.6 in [Appendix C - Supplementary Excel spreadsheet with cost stack data and charts](#), from: Australian Competition and Consumer Commission (2023) [Inquiry into the National Electricity Market](#).

<sup>6</sup> Energy and Water Ombudsman Victoria (2024) [Reflect - November 2024](#), accessed: 22/11/24.

<sup>7</sup> Ibid.

In particular, we highlight the importance of minimum requirements for clear communication methods suitable for digitally excluded customers and people facing language barriers. Even for the savviest of energy consumers, there are many things about engaging with energy retailers that are challenging. These challenges can be heightened for those for whom English is a second language or those who experience digital exclusion. An approach that does not set out some minimum requirements gives rise to risks that retailers will make inadequate provision to support these cohorts.

A potential minimum requirement would be that retailers offer at least two options for switching to a best offer to meet the differing needs of individual customers, one digital and one non-digital. Requirements mandating how user-friendly these communication methods are, and requiring switching hyperlinks to also be added to communications like emails would also be welcome.

## Improving the application of concessions to bills

VCOSS supports enacting requirements for retailers to proactively check for concessions eligibility when new customers sign up, and for existing customers at all potential points of contact both before and while a customer is experiencing payment difficulty. VCOSS understands from members that a common and persistent problem is retailers not adequately checking whether a customer who is eligible for concessions is receiving them. Many customers also experience sudden increases in bills at times their concession eligibility expires.

Between seven and 22 per cent of eligible people are missing out on energy concessions, mostly due to structural barriers.<sup>8</sup>

VCOSS has previously found that a lack of awareness is the number one reason people are missing out on the energy concessions they are entitled to, and that households experiencing language and digital inclusion barriers are more likely to miss out.<sup>9</sup> Consumers also experience stigma attached to asking for help. Retailers must support customers to receive all assistance they are entitled to.

A more proactive approach from retailers would provide for better outcomes. For example, retailers checking with customers when they sign up for a new energy offer, and including messages in bills and other communications, much like current best offer requirements.

Retailers should also be required to contact a customer if they have become aware the customer has recently become eligible but not yet requested the concession or is

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<sup>8</sup> Lenne, J. (2023) [The Missing 14%: Why so many Victorians are missing out on energy concessions](#), VCOSS.

<sup>9</sup> Lenne, J. (2023) [The Missing 14%: Why so many Victorians are missing out on energy concessions](#), VCOSS, p4.

approaching the expiry date of their current eligibility. Most importantly, checking if a customer is receiving any eligible concessions should be a baseline requirement when a customer has energy arrears, or first presents as being in payment difficulty.

As with all communications, retailers must account for structural barriers to receipt and understanding, such as digital exclusion and language. Messages regarding concessions should also be presented as a neutral default, rather than something to be “claimed,” to mitigate the stigma associated with requesting assistance.

VCOSS is disappointed to learn that the automation of concessions is out of scope, as we and other consumer advocates have long argued that this is the best approach to ensuring all customers who are eligible for concessions receive them. We acknowledge that this remains a large-scale reform requiring considerations of data sharing and privacy, and cooperation between retailers, regulators, and government departments at all levels. However, we continue to advocate for the automatic application of concessions in future rounds of reform.

## Extending protections for customers on legacy contracts

VCOSS supports introducing the requirement that conditional pay-on-time discounts for all contracts, including those prior to 1 July 2020, are limited to the caps set by the ESC. Additionally, we also recommend that contract terms that discriminate between payment methods are prohibited.

As the ESC has recognised previously through the “Ensuring contracts are clear and fair” reforms, conditional discounts are essentially penalties in disguise. Any customer on a legacy offer with large conditions, such as pay on time discounts, could be subject to sudden bill shock if they do not meet those conditions. Given the high cost-of-living, this could happen to any customer at any time.

As noted in the Discussion Paper, the ACCC found that significant numbers of customers remain on legacy contracts with large conditional discounts. VCOSS support the ACCC’s call to policymakers to examine and resolve this problem.

We are pleased to see that ESC analysis indicates the number of customers on legacy contracts with large conditional discounts had declined to five per cent in 2023, down from nine per cent in 2022 and 20 per cent in 2021.<sup>10</sup> However, five per cent is still a concerning number of households who could be subject to large sudden costs due to legacy conditional discounts.

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<sup>10</sup> Essential Services Commission (2024) *Energy Consumer Reforms Discussion Paper*, p24.



As such, the grandfathering arrangements in the “Ensuring contracts are clear and fair” reforms, which limit the cap on pay on time discounts to contracts entered into after 1 July 2020, should be removed to adequately protect customers remaining on legacy plans with large pay on time discounts.

To address the “poverty premium” paid by many low-income Victorians, VCOSS further recommends that conditional discounts and conditional fees which discriminate between payment methods should be prohibited. Retailers currently end up excluding some low-income households from discounts by requiring specific payment methods to get discounted plans. For example, many older people do not use direct debit or other more technologically advanced methods of payment. People should have a right to pay bills in different ways that fit their situation.

VCOSS acknowledges that this prohibition would see some retailers allocate some of the costs of supporting different payment methods across all contracts. However, if we are to accept that all methods of payment are valid to mitigate the “poverty premium,” then this cost must be considered a normal part of supplying energy to households.

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

VCOSS strongly supports the proposed requirement to include contact details for EWOV on energy bills. In VCOSS’ view, this addition to bills would undoubtedly provide benefits to consumers by increasing the awareness of the independent dispute resolution services that are available.

While we know that some retailers already display EWOV contact details on their bills, we believe it is appropriate to make this a requirement for all retailers. Despite the benefit to consumers, many retailers are unlikely to voluntarily display this information for fear of increases in the number of complaints – thus the need for the ESC to enact this reform.

Further, as noted in the Discussion Paper, in other jurisdictions the contact details for the relevant Energy Ombudsman services are already required to be on bills, and so this rule change would bring Victoria into line with common practice.

To strengthen this practice, retailers could also be required to include contact details for the National Debt Helpline or other energy services like the Energy Assistance Program, to provide more avenues for independent support for customers experiencing payment difficulty.



VCOSS also reiterates the need to provide all required information on bills in formats that are accessible to a diverse range of people. This includes people with English as a second language, and people experiencing digital exclusion. Proactive partnering with community groups and organisations to foster warm referral pathways into support programs will also strengthen uptake.

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