



10 August 2018

By email: exemptionregister@esc.vic.gov.au

Jordan Tasker
Project Lead
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

Dear Mr Tasker

**Energy Retail Code obligations for exempt sellers under the General Exemption Order 2017:
Draft Decision**

The Consumer Action Law Centre (**Consumer Action**) and Victorian Council of Social Service (**VCOSS**) welcome the opportunity to comment on the Energy Retail Code obligations for exempt sellers under the General Exemption Order 2017 Draft Decision (**Draft Decision**).

Embedded networks have presented serious difficulties for energy consumers for far too long, and the General Exemption Order 2017 is a significant and extremely positive step forward in beginning to address those difficulties.

In determining which elements of the Energy Retail Code (**retail code**) should apply to exempt sellers, we are pleased that the Commission has adopted the key principle that:

the new exemptions framework should provide customers of exempt sellers with a comparable level of protections and services as those afforded to customers of licensed retailers¹

We urge the Commission not to be overly cautious in imposing obligations on exempt sellers. All consumers deserve comparable consumer protections regardless of where they buy their energy—not least in relation to key substantive protections around billing, hardship and disconnection. Such consumer protections are vital for households in embedded networks given that many households in these arrangements are captive customers.

Over the years, Consumer Action has seen dozens of examples of poor practice by embedded network businesses, including excessive connection and/or re-connection fees, inflexible or non-existent payment plans, inappropriate disconnections and inappropriate debt collection practices. Over-arching all of these, of course, has been the lack of a fair or straightforward means to resolve the consumer's issues—we cannot over-state the importance of bringing these businesses into the jurisdiction of the Energy and Water Ombudsman of Victoria (**EWOV**).

While most of the issues concerning us are covered by sections of the retail code that the ESC has proposed will apply to embedded networks through this draft decision, we do have some outstanding

¹ Essential Services Commission, *Energy Retail Code obligations for exempt sellers under the General Exemption Order 2017: Draft Decision*, p. 8.

concerns. Not least of these is the decision not to apply elements of practical assistance, the most significant of those being a six month hold on arrears as provided by clause 79(1)(f) of the amended retail code.

Further, and as raised during the recent stakeholder forum, we are keen to see an effective communications strategy attached to the new obligations for exempt sellers. While the new regulatory framework is an extremely positive development, it will count for little if embedded network businesses remain unaware of it, or unprepared to adopt it. Clear and effective communication aligned with proactive enforcement will be necessary to ensure that consumers receive the full benefit of this reform.

Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.

About VCOSS

VCOSS is the peak body of the social and community sector in Victoria. VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups and individuals interested in social policy. In addition to supporting the sector, VCOSS represents the interests of vulnerable and disadvantaged Victorians in policy debates and advocates for the development of a sustainable, fair and equitable society.

Comparable protections for all Victorians with serious payment difficulties

Energy is an essential service, households need energy for health, wellbeing and social participation. Consumer Action's *Heat or Eat* report² and the KPMG report informing the ESC's Payment Difficulty Framework³ have demonstrated the significant detriment to individuals and discussed the cost to society where insufficient or badly implemented consumer protections see people disconnected when unable to pay. It is absolutely essential that households in embedded networks have the same protections as those who access energy through a licensed retailer.

Six-month hold on arrears

The Draft Decision proposal that households in embedded networks should not be eligible to a six month hold on arrears when they are unable to afford their ongoing usage, while their neighbors who access energy through a licensed retailer are entitled to that protection is unacceptable. This proposition contradicts the key principle of providing a comparable level of consumer protection.

As mentioned earlier, strong consumer protections are vital to households in embedded networks as many are captive customers who are at risk of being forced into impossible financial situations. Consumers in such circumstances do not have the luxury of switching. For instance, an exempt seller could cause or compound payment difficulty by charging monopoly pricing at higher rates than licensed retailer's offers available in their area. The embedded network operator may also have a perceived or

² Consumer Action Law Centre (2015). *Heat Or Eat; Households should not be forced to decide whether they heat or eat.*

³ KPMG (2017). *Payment Difficulty Framework; Assessment of Customer Impacts; Report for the Essential Services Commission of Victoria.*

real 'upper-hand' in resolving disputes related to energy in situations where the provider is also the household's landlord. It is important that in such disputes a household has an entitlement to assistance that will give them confidence in raising an issue and a genuine likelihood of arriving at a fair outcome when in payment difficulty. It is also important to recognise that some of the most marginalised and impoverished people live in households with embedded networks such as caravan and residential parks. This protection in the Payment Difficulty Framework was included to assist such people throughout Victoria.

We anticipate that the full suite of entitlements in the Payment Difficulty Framework will improve outcomes for many Victorian households in impossible financial situations once the framework is implemented in 2019.

The six-month hold on arrears gives households in impossible financial situations time to seek assistance to find sustainable solutions with assistance of community support workers such as financial counselling. Without this six-month hold such households may be disconnected, an action which compounds hardship, is inappropriately punitive for households unable to pay and is likely to lower the chances of a household ever overcoming payment difficulty in relation to their energy supply.

Further, denying embedded network households protection through clause 79(1)(f) erodes these household's protection under 111A (specifically 111A(b)(i)) which aims to ensure that residential customers are only disconnected as a last resort for non-payment. Disconnection *must* be a last resort, especially for those who find themselves in the most vulnerable positions where they are unable to afford ongoing usage for an essential service.

Recommendation: The ESC should determine that clause 79(1)(f) and 82 of the draft Energy Retail Code Version 12 is applicable to exemption holder categories VD2, VR2, VR3 and VR4.

Practical assistance measures

While some exempt sellers will not have the capacity to provide other practical assistance measures or have more than one tariff design to compare, others will. As discussed above, households in embedded networks should have comparable protections. As some exempt sellers will control the condition of the dwelling they supply energy to they may be in a better position than licensed retailers to provide practical assistance measures that reduce costs for a household to overcome payment difficulty.

The ESC must determine that all embedded network households will have an entitlement to practical assistance measures under clauses 79(1)(c), 79(1)(e) of the draft Energy Retail Code Version 12. To address the limitations of some businesses the commission should instead amend its energy compliance and enforcement policy guidance note (**guidance note**) and specify that embedded networks must record instances where they were unable to provide practical assistance measures, why this was the case and what other action was taken as an alternative (such as referrals).

Taking this approach instead of that proposed in the Draft Decision will reflect comparable protection given that the guidance note currently clarifies that in some instances licensed retailers may not implement practical assistance but they "*must be able to demonstrate why there was no scope for action in a particular case.*"⁴ All households in embedded networks should not miss out on practical assistance or tariff changes that could be provided by their exempt seller to enable the household to overcome payment difficulty because some of the diverse range of businesses operating in this space are unable to provide such assistance.

⁴ Essential Services Commission, (2017). *Energy Compliance and Enforcement Policy: Guidance note- Payment difficulty and disconnection Version 1.0*, p.35

Recommendation: The ESC should determine that clauses 79(1)(c), 79(1)(e) of the draft Energy Retail Code Version 12 are applicable to exemption holder categories VD2, VR2, VR3 and VR4. The energy compliance and enforcement policy guidance note should be amended to require these exemption holders to keep records of instances where they cannot provide such assistance and for what reasons.

Financial hardship policies

We have seen evidence of some businesses operating in the embedded network space implementing financial hardship policies. Examples include *Winconnect*⁵ and *EnergyOn*⁶ who act as agents for exempt sellers. It is reasonable for customers who are billed through these agents to perceive them as energy retailers and expect them to be held to the same standard of service. The ESC must consider whether it is able to require businesses operating in this space with appropriately large customer base to have customer hardship policies that comply with the energy retail code. Not having such a requirement may represent a wind back of protections in real terms for some households currently accessing energy through businesses with a hardship policy designed to meet the requirements of the energy retail code.⁷

Recommendation: The ESC consider whether it is able to require businesses operating in this space with appropriately large customer base to have customer hardship policies that comply with the energy retail code.

Assistance measures on billing

In the draft Energy Retail Code Version 12 clauses 25(1)(p), (v) and (w) state that the following must be included in retail bills:

(p) any amount deducted, credited or received under a government funded energy charge rebate, concession or relief scheme or under a payment plan;

(v) a separate 24 hour telephone number for fault enquiries and emergencies, the charge for which is no more than the cost of a local call, being the telephone number for the distributor and giving the name of the distributor;

*(w) contact details of interpreter services in community languages;*⁸

We can see no reason why these would not be included on bills for residential households in embedded networks as has been proposed in the draft decision.

Reductions on the bill reflecting government supports like concessions that have been applied or payment plan amounts are important to inform customers of how their energy costs have been accounted for, without this information many may become confused. Such confusion may lead to unnecessary payments or disputes.

It also seems reasonable and easy to implement a 24-hour number for faults and emergencies that is simply published on billing. Households in embedded networks should expect similar service in terms of reliability and service as those elsewhere. Perhaps a clause could be added clarifying that this contact number can be the same not a separate number to those required under subclauses (t) and (u) for exempt entities if this is the ESC's concern?

⁵ Winconnect. *WINassist: Experiencing Hardship*, retrieved 1 August 2018 from:

www.winconnect.com.au/resources/uploads/2017/04/WINconnect-Hardship-Policy-.pdf

⁶ EnergyOn, (2017). *Simplifying utility Solutions in Multi-Tenant Environments; Financial Hardship & Disconnection Policy October 2017*, retrieved 1 August 2018 from:

<https://www.energyon.com.au/assets/Uploads/Energy-On-Financial-Hardship-Policy-October-17.pdf>

⁷ Ibid, p.2

⁸ Essential Services Commission, (2018). *Energy Retail Code Version 12 (draft)*, p.30

The Draft Decision proposes that clause 55 of the draft Energy Retail Code Version 12 apply to exemption categories VD2, and VR2-4. This would see households in embedded networks referred to an interpreter where necessary or appropriate. It makes sense that interpreter details are also on the bill so that households who require these services do not rely solely on a referral from their provider who they already may struggle to communicate with to access and understand important information about their essential service supply.

Recommendation: The ESC should determine that clauses 25(1)(p), 25(1)(v) and 25(1)(w) of the draft Energy Retail Code Version 12 are applicable to exemption holder categories VD2, VR2, VR3 and VR4.

Centrepay

Centrepay is a payment facility utilised by many Victorians receiving assistance payments to budget and prioritise the payment of essential services like energy. It has features desirable to many who are at risk of or already experiencing insufficient income such as no fees for defaulting. Those receiving assistance payments should have access to this service when paying for electricity wherever possible. While some smaller businesses in this space may not have the administrative capacity to utilise Centrepay, others may. The ESC should apply clause 94 of the draft Energy Retail Code Version 12 to exempt sellers servicing residential customers and add an additional clause or clarification in a guidance note that businesses must be able to demonstrate why they do not make the payment system available where this is the case. This approach would be preferable to excluding the clause as currently proposed in the Draft Decision and would reflect comparable protections. This would avoid the potential situation of all of the diverse businesses in the exempt sellers categories only adhering to minimum standards relevant to the smallest players.

Recommendation: The ESC should determine that clauses 94 of the draft Energy Retail Code Version 12 are applicable to exemption holder categories VD2, VR2, VR3 and VR4. If unable to provide the service, business must be able to demonstrate a reasonable justification.

Clarification of proposals

The Draft Decision does not give any information in relation to the decision to not apply Clause 23 to protect residential customers served by businesses with VR 3 or VR4 exemptions. Bill smoothing is a useful tool for budgeting purposes and may be available anyway if selected as one of 4 options under clause 76 (standard assistance) which is applied to these exemptions. The ESC should reconsider this exclusion or explain why bill smoothing would not be available to some residential customers in Victoria.

Communicating entitlements

As raised earlier, we are mindful of the significant communications challenge involved in applying new consumer protections to embedded networks. It is likely that embedded network businesses vary greatly in their knowledge and understanding of the energy regulatory framework and have differing degrees of capacity to engage with the consultation process. It is imperative that the new obligations are communicated broadly and thoroughly and that communications are pitched in such a way that they connect across the range of the intended audience. In addition to ensuring that businesses understand their obligations, it is also important that as many consumers as possible understand their new rights—particularly their new right of access to EWOV. Needless to say, effective enforcement is crucial. We anticipate that non-compliance will be relatively high during the early stages of implementation and we would urge the ESC to monitor this area and allocate resources towards enforcement.

Please contact Jake Lilley on 03 9670 5088 or at jake@consumeraction.org.au if you have any questions about this submission.

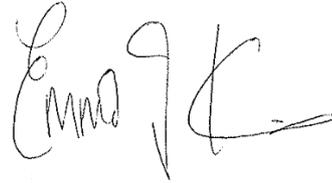
Yours Sincerely,

CONSUMER ACTION LAW CENTRE

VICTORIAN COUNCIL OF SOCIAL SERVICE

A handwritten signature in black ink that reads "Gerard Brody". The signature is written in a cursive, flowing style.

Gerard Brody
Chief Executive Officer

A handwritten signature in black ink that reads "Emma King". The signature is written in a cursive, flowing style.

Emma King
Chief Executive Officer