

# Consultation summary

## Energy Retail Code of Practice Review: Issues Paper

### Introduction

The purpose of the Energy Retail Code of Practice: Issues Paper was to seek input from the public and stakeholders to understand their key concerns and identify areas for potential reform. Stakeholder feedback will help inform a Regulatory Impact Statement and the drafting of amendments to the Energy Retail Code of Practice (ERCoP).

### Consultation process

We released an Issues Paper on 6 June 2024 and invited the public and stakeholders to answer questions covering the key matters in the review of the code. The six-week consultation period closed on 19 July.

Twenty-eight stakeholders provided written submissions and twenty-six members of the public completed our survey questions. Submissions were received from thirteen retailers, seven consumer groups, three individuals, two distributors, two peak bodies and the Energy and Water Ombudsman Victoria (EWOV).

We have summarised the submissions below, highlighting the key issues raised by stakeholders. These are:

- strengthening family violence protections
- updating the Payment Difficulty Framework
- reviewing bill information requirements
- reviewing best offer requirements
- accuracy of information on the Victorian Energy Compare (VEC) website
- protections for embedded network customers
- use of preferred communication methods.

### Next steps

We are reviewing feedback received through this Issues Paper consultation process and preparing options for reform for each key area of the code. We will engage with stakeholders to further refine

potential options for reform. A Regulatory Impact Statement will be prepared to assess the impacts of potential reforms and to consult on draft amendments to the ERCoP.

## Snapshot of feedback

Most submissions supported the need for the review and its proposed scope. However, retailers stressed that any proposed changes needed to be evidence-based and assessed against potential additional costs. Some retailers also advised that changes to the code of practice could require an implementation period of at least twelve months.

Stakeholders agreed on the following points:

- The obligation to place debt on hold for six months is not functioning as intended and should be reviewed.
- Bill information requirements should not be amended to align with the Australian Energy Regulator's (AER) Better Bills Guideline.
- Embedded network customers should receive the same level of consumer protections as other customers.
- Information on Victorian Energy Compare should be accurate and easily comparable across retailers.
- Implementation and application processes for concessions and Utility Relief Grants (URGs) need to be improved.

There were differences of views among stakeholders on:

- amending family violence protections
- creating additional retailer obligations under the Payment Difficulty Framework
- reviewing best offer requirements
- clarifying definitions of terms in the code of practice.

A snapshot of stakeholders' feedback on key themes is set out below. We note that all stakeholder submissions can be found on our project page.

## Protections for consumers experiencing vulnerability

### Industry

- Retailers expressed a range of views on strengthening family violence protections by including elements from the National Energy Retail Rules (NERR) and Water Industry Standards. AGL, Energy Locals and Engie stated that the current protections are working effectively and opposed any changes in obligations. In contrast, Origin, Pacific Blue and Solstice supported changes to adopt some elements of the NERR.
- Most retailers supported the expansion of the definition of family violence. However, EnergyAustralia and Engie stated that the commission should maintain the definition from the

*Family Violence Protection Act 2008* because they consider it already includes carers and Aboriginal and Torres Strait Islander kinship relationships. They also noted that consistency with legislation is important to align with any future policy developments and legislative changes.

- Retailers had a range of views on the Payment Difficulty Framework training requirements. This included keeping current provisions, allowing more flexibility and less prescription, adding additional training requirements and focusing on capability instead of training.
- Most retailers who commented on the obligation to place debt on hold for six months stated that there were issues with its current operation. Retailers stated that a debt hold period was only a useful form of assistance for customers in temporary payment difficulty and was causing consumer harm in other instances. They argued that the debt hold period should be a discretionary form of assistance or that the debt hold period should be reduced to two–three months.
- Retailers did not support changes to existing URGs obligations in the code of practice. However, Alinta commented that the complexity of the URGs application process can make it hard for retailers to comply with the current accessibility of information requirements.
- Many retailers raised concerns about the current application process for URGs. They acknowledged that this was beyond the powers of the commission but encouraged the commission to advocate for a shorter and simpler application process with the Department of Families, Fairness and Housing.
- Most retailers did not support additional retailer obligations on energy efficiency assistance. Many were interested in the possibility of an independent, commission or government-run service or website to provide energy efficiency advice to consumers.

### **Consumer groups and ombudsman**

- Most consumer groups encouraged the commission to incorporate additional family violence protections from the NERR (avoid repeated disclosures, expanded definition of family violence, debt management and account security requirements) into the ERCoP.
- Consumer Action Law Centre (CALC) suggested that the commission consider including the International Standard on Consumer Vulnerability for the design and delivery of inclusive services (ISO 22458) in the code of practice to improve the access to and quality of assistance offered to consumers experiencing vulnerability.
- CALC also encouraged the Commission to consider the application of the Multi-Agency Risk Assessment and Management (MARAM) Framework to defining family violence and identification and training requirements for retailers. The MARAM framework is currently in operation in certain sectors (e.g. health, education, social and community services) to help with family violence identification, assessment, reporting and support.
- Consumer groups commented that the current Payment Difficulty Framework provisions offered good protection to consumers experiencing vulnerability. However, retailers have been inconsistent in successfully implementing these provisions. They stated that more needs to be

done to ensure compliance with current provisions and further consumer benefits will come from strengthening existing protections.

- Energy Consumers Australia (ECA) suggested the commission consider whether payment difficulty support measures could be extended to small business customers.
- Most consumer groups supported strengthening Payment Difficulty Framework training requirements. ECA and Financial Counsellors Victoria (FCVic) emphasised the importance of collaboration with experts and consumers with lived experience in designing training materials.
- Consumer groups stated that more retailer communication and action was required during the debt hold period to help customers in arrears.
- CALC and the Victorian Council of Social Services (VCOSS) argued that energy efficiency advice provided by retailers should not include reduction of energy usage because restricted or low use can have severe health consequences.
- FcVic, ECA and CALC supported stronger enforcement and regulatory intervention to prevent disconnections of customers experiencing vulnerability.
- FcVic proposed several additional measures to prevent customer disconnections. One of these was that retailers should be required to apply to the EWOV for permission to disconnect a consumer.
- ECA suggested that the commission could draw on overseas approaches to disconnection prevention. The UK has a Vulnerability Commitment which requires signatories to agree to never knowingly disconnecting a vulnerable customer at any time of the year when they meet certain conditions such as households with occupants who are children, the elderly, and those who are experiencing ill-health, disability or severe financial insecurity. Catalonia also has a disconnections protection program which requires social services to approve a disconnection before it can occur.
- CALC suggested that the commission create and recognise a class of customers including those experiencing vulnerability who are required to be 'constantly connected' and provide them with extra protection from debt recovery and disconnection.

## **Pricing and contract protections**

### **Industry**

- Retailers did not support changes to bill frequency obligations with many stating that there was no clear justification, and it would result in significant system and operational costs.
- There was some support for alignment of the best offer and bill frequency obligations but only if exemptions were made for cases where bills are delayed for reasons beyond the retailers control.
- Overall, retailers did not support the changing of definitions to terms in the ERCoP. Many retailers noted such changes could be burdensome. Most retailers suggested that if there was a

change in terminology, there should be consistency in terms across instruments and jurisdictions such as with the industry Acts and with the NERR.

- Most retailers were supportive of prohibiting the use of the term 'standard offer' to refer to market offers at the same price as the Victorian Default Offer (VDO). However, the AEC stated changes to this term may create more customer confusion.
- Energy Locals and Engie agreed that the term 'pay-by date' is confusing. Some retailers suggested that terminology should align with other jurisdictions. Origin, AGL and Alinta did not see the definition of 'pay-by date' as problematic.
- Most retailers did not support clarifying the term 'arrange a disconnection', stating that the current language aligns well with other regulatory instruments (Victorian legislation and the NERR).
- Most retailers did not support including 'additional retail charges' in market retail contracts or exempt person arrangements. Some retailers said they already display these charges on their website. Alinta claimed that these were unique services that most consumers would not be exposed to and requiring these to be defined in contracts would create unnecessary complexity.
- Most retailers were supportive of removing the requirement to publish changes of tariffs and charges in newspapers.

### Consumer groups and ombudsman

- EWOV supported aligning bill frequency obligations with best offer obligations citing that late bills were a consistent driver of their complaints.
- ECA and EWOV agreed that there should be a distinction between 'standard offers' and 'market offers'. They both noted that consumers found it difficult to distinguish whether standard or market retail contract terms applied to their contract and that this clarification would reduce confusion. EWOV agreed that this term was confusing and argued that 'standard offers' should only be used to describe standard retail contracts which offer both the VDO or a gas standard offer, with the standard retail contract model terms and conditions.
- EWOV supported improvements to the definition of the term 'pay-by date'. They stated it would help them determine a retailer's compliance with their complaints and disconnection obligations.
- CALC and ECA supported a clarification to the terms around disconnection. They also advocated for retailers to reduce misleading and ambiguous communication around disconnection, suggesting limiting instances where retailers could raise disconnections to avoid wrongful disconnections.
- ECA noted that if the requirement to publish changes of tariffs and charges in newspapers was removed, the commission should consider alternative measures, such as a notice by the commission which is more 'public service announcement' in nature.

## Supporting the choices of energy consumers

### Industry

- For supporting customers who want to disconnect from gas, retailers and the AEC expressed reluctance for broad, detailed or prescriptive change. They either preferred no change, general information or simple guidance.
- Engie considered that obligations on abolishment in the ERCoP should be complementary to those obligations in Gas Distribution Code of Practice.
- AusNet and retailers had different views on the allocation of responsibility for provision of information requirements between distributors and retailers regarding customers seeking to disconnect or abolish gas connections. AusNet preferred these requirements being placed on retailers while noting it could provide materials for the right course of action. Retailers noted that the disconnection process is owned and delivered by distributors and their disconnection processes and timeframes are reliant on distributors.
- AusNet expressed concerns about the safety risks of dormant gas connections when customers choose disconnection instead of abolishment when electrifying their homes. They supported further provision of information requirements to reduce this risk.
- Most industry stakeholders were not supportive of aligning bill information requirements with the AER's Better Bills Guideline. Their central argument was that there was insufficient evidence that the guideline had led to better consumer outcomes, noting that they had received positive feedback on bills in Victoria. Many retailers stated that Victoria should wait for a post-implementation review before adopting elements of the Better Bills Guideline.
- Industry stakeholders also questioned how subsequent changes to the guideline or code of practice would be addressed and noted potential implementation impacts. Some retailers and the AEC noted that alignment to those more prescriptive rules would result in additional costs to retailers, and that those costs would be passed on to customers. There were also concerns that any alignment across jurisdictions would be temporary.
- Other retailers (AGL and Shell) considered that alignment and harmonisation between bill requirements in the ERCoP and the AER's Better Bills Guideline were occurring naturally without the need for further regulatory change.
- Some retailers either did not support the inclusion of EWOV contact details on bills (Alinta) or did not support these details being on the first page (EnergyAustralia, Engie, AEC, Red and Lumo) due to the possibility of circumventing the normal dispute resolution process of engaging with retailers first.
- Some industry stakeholders did not support new requirements on billing communications noting impacts on innovation and responsiveness to consumer needs or feedback (AGL, Origin), increasing prescription or extending billing regulation beyond physical billing (Engie, AEC, Origin) and costs (Shell).

- Some retailers asked for greater clarity on defining ‘restricted plans’, in relation to clarifying best offer obligations. Additionally, some retailers sought greater clarity on more innovative offers that varied based on the electricity wholesale spot price and compliance with best offer obligations (Flow Power and GloBird). Some retailers noted that excluding bundling of electricity and gas offers from best offer calculations was their current practice.
- Certain retailers supported standardising definitions (of ‘discount’, ‘incentive’, ‘one-off rebate’, ‘sign up credit’) to improve accuracy of comparisons between retailers on VEC and address misleading behaviour and gaming of the ranking logic of VEC.
- Some retailers explained that certain factors outside their control affected timeframes for removing unavailable offers from the VEC website. This included the functionality of the portal, the time VEC takes to update their website and updates to the Victorian Retailer User Manual.
- Alinta supported the need for prescribed requirements for bill communications and noted that strategies could be implemented to minimise negative impacts. These include clarity and conciseness, involvement of customers and retailer customer service agents in the design process, gradual phasing of requirements, additional support and resources.

### Consumer groups and ombudsman

- Alan Pears stated that retailers are the logical contact point for information on gas abolishments and ECA noted that due to the relationship between customers and retailers, the ERCoP is the appropriate place to address these provision of information requirements.
- Consumer groups and EWOV supported clear, simple and accessible information on gas abolishment, and clarification of the process including timelines and costs. Both EWOV and ECA noted limitations in the current process and customer experience. They noted the lack of information or clarity about costs, processes and timelines and delays due to communication between retailers and distributors. They also supported measures for culturally and linguistically diverse customers, access to information in other languages and interpreter services.
- EWOV and consumer groups were supportive of including EWOV contact details on bills. EWOV noted advantages in customer awareness of the relevant ombudsman shown through the implementation of this information in the AER’s Better Bills Guideline.
- There was some support for prescription of billing communications such as summaries in emails (EWOV and CALC). ECA preferred guidance, with the caveat that if guidance is insufficient then code of practice requirements should be considered.

## General updates and other issues/reforms

### Industry

- Retailers stated that embedded network customers should receive the same level of protections as other customers, regardless of whether retailers or exempt sellers operated the embedded

network. There was also support for considering how to extend family violence protections to embedded network customers.

- Both Shell and Pacific Blue expressed the need for flexibility (via exemptions) in embedded networks regulations for large multi-site business customers.
- Most retailers supported updating Schedules 5 and 6 of the ERCoP to align with the updated General Exemption Order 2022. Shell commented that they saw the changes as minor and administrative.
- Most retailers opposed extending obligations to require preferred methods of communication. The general view was that the current arrangements were appropriate and that communications requirements needed to be flexible and practical to ensure that retailers could contact customers when required.
- Most retailers did not support aligning the definition of presumed receipt of written communications and notices with the Electricity Distribution Code of Practice. Origin and Engie both commented that they did not believe a strong enough case for change had been made in the issues paper. Momentum and Solstice expressed concerns that any changes could create significant system impacts for retailers and extend certain retailer timeframes.
- Most retailers did not think changes were required to clarify timelines for compliance with certain obligations. They opposed the proposal that information about available assistance must be provided to the customer when a disconnection warning notice has been ‘received’ instead of ‘issued’. Many reasoned that such changes could have unintended consequences on retailer timeframes and the costs and complexities of those changes would outweigh any potential benefit to consumers.
- In relation to the timeframe within which a retailer must cancel direct debit arrangements when a retailer of last resort event occurs, Momentum supported replacing ‘immediately’ with ‘within one business day’. Alternatively, Energy Locals proposed using the phrase ‘as soon as reasonably practicable’.
- EnergyAustralia was the only retailer to comment on bulk hot water formulas. They suggested that no changes should be made to maintain consistency and provide certainty to industry.
- AusNet and CitiPower, Powercor and United Energy proposed the scope of the review be extended to include customer outcomes and protections during unplanned outages and obligations related to life-support customers. They stated that retailers should be required to de-register customers from the life support register in the absence of medical confirmation. AusNet suggested that the review incorporate changes being proposed under the Energy Charter’s #BetterTogether: Better Protections for Life Support Customers initiative.

### Consumer groups and ombudsman

- Consumer groups argued for a stronger focus on fair consumer outcomes rather than on processes. EWOV stated that this could be achieved by introducing an overarching obligation for retailers to act efficiently, honestly and fairly.



- Consumer groups supported strengthening protections for embedded network customers. ECA noted that many Victorians and many vulnerable customers live in embedded networks (e.g. caravan parks and retirement homes) and should have the same protections as other customers.
- EWOV stated that they have observed ongoing harms from gaps in the current consumer protection framework for embedded network customers. FCVic observed that many customers do not understand the implications of living in an embedded network.
- CALC supported extending protections to embedded network customers and noted the importance of strong family violence protections. They also proposed that any costs incurred from these changes should be shared by industry according to market share.
- Safe and Equal recommended that the commission communicate with the AER on the recent review of their regulatory framework for exempt sellers for further information on best practice on family violence and how it may apply to Victoria.
- Consumers groups supported extending the requirement for retailers to use a customer's preferred method of communication. ECA suggested that this change be accompanied by guidance on how to capture a customer's preferred method of communication and preferred time of contact.
- EWOV did not support aligning the meaning of presumed receipt of written communications and notices with the definition in the Electricity Distribution Code of Practice. Instead, they suggested a broader principle should be included in the code to ensure that retailers take reasonable steps to ensure communications and notices are received before taking actions which may result in detrimental customer outcomes.
- EWOV expressed their support for a comprehensive review of how retailers and embedded network companies supply and bill bulk hot water. They welcomed further clarification on bulk hot water provisions and formulas, billing delays and back-billing of consumers, how centralised hot water is reference on bills and how to extend protections to customers of exempt sellers offering gas-related services which are not covered by the General Exemption Order.
- Alan Pears supported the review of bulk hot water formulas, stating that current formulas were outdated and based on low efficiency electricity and gas appliances.
- EWOV considered that additional obligations on internal dispute resolution are required to supplement Australia Standard AS ISO 10002 – Guidelines for Complaint Management. They noted that the financial services sector and the consumer data right framework require internal dispute resolution procedures to be consistent with aspects of *ASIC Regulatory Guide 271*.

## Who made a submission?

Consumer groups and ombudsman	Industry	Community
Brotherhood of St. Laurence	AGL	Alan Pears (Senior Industry Fellow, RMIT)
Consumer Action Law Centre	Alinta	Anonymous
Energy Consumers Australia	AusNet	Jim Crosthwaite (Darebin Climate Action Now)
Energy And Water Ombudsman Victoria	Australian Energy Council	
Financial Counselling Victoria	CitiPower, Powercor and United Energy	
Friends of the Earth Melbourne	EnergyAustralia	
Safe and Equal	Energy Locals	
Uniting Vic/Tas	Engie	
Victorian Council of Social Services	Flow power	
	GloBird	
	Momentum	
	Origin	
	Pacific Blue	
	Red and Lumo	
	Shell	
	Solstice	