EnergyAustralia
LIGHT THE WAY

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EnergyAustralia Pty Ltd
ABN 99 086 014 968

Level 19
Two Melbourne Quarter
697 Collins Street
Docklands Victoria 3008

Phone +61 3 8628 1000
Facsimile +61 3 8628 1050

enq@energyaustralia.com.au
energyaustralia.com.au

Essential Services Commission
Level 8, 570 Bourke Street, Melbourne Victoria 3000
Lodged online: **Engage Victoria**

ESC Energy Consumer Reforms – Discussion paper – PUBLIC VERSION

EnergyAustralia is one of Australia's largest energy companies with around 2.4 million electricity and gas accounts across eastern Australia. We also own, operate and contract a diversified energy generation portfolio across Australia, including coal, gas, battery storage, demand response, wind and solar assets, with control of over 5,000MW of generation capacity.

EnergyAustralia welcomes the opportunity to make this submission to the Essential Services Commission (ESC) Discussion paper on the Energy Consumer Reforms (reforms). We recognise the importance of these reforms in ensuring accessibility in the energy market, especially for vulnerable customers. Overall, we support initiatives that empower consumers to make informed decisions (reforms 3 and 5) and provide retailer flexibility to streamline the switching process for customers (reform 2). These reforms present an opportunity to improve consumer engagement, build trust in the energy market and deliver better customer outcomes. With thoughtful implementation, they can help achieve the ESC's goals while balancing affordability for all consumers.

Our focus relates to the first proposed reform: automatic best offer for customers experiencing payment difficulty. While the objective of supporting customers in payment difficulty is essential, we encourage enhancing the success of the existing framework before exploring options that introduce changes and costs beyond the current scope. Cost of living and high energy bills are critical issues for our customers and the ESC should make efforts to keep costs and prices as low as possible.

The current consumer framework appears to work well for the majority of customers

The ESC Discussion paper highlights that some Victorian customers receiving tailored assistance remain on high-priced plans and are not proactively switched to their retailer's best offer. Consumer advocates have raised concerns that:

- *retailers are not consistently checking that customers are on lower-cost plans*
- *there are instances where retailers finalise payment arrangements without first offering tariff checks or reductions.*[1]

These concerns reflect anecdotal case experiences. Quantitative state data from the ESC's analysis suggests the scale of the problem is quite limited:

> *… most customers receiving assistance pay prices below the Victorian Default Offer (VDO). But a small minority of these customers are estimated to be paying prices above the VDO, and some well above it.*[2]

Overall, it is encouraging that most customers receiving assistance are paying prices below the VDO's 'fair' and 'equitable' price. This demonstrates the consumer Payment Difficulty Framework is working well. As cost-of-living pressures remain a concern both domestically and globally, it is reassuring that **the majority of Victorian energy customers experiencing financial strain are receiving better than a fair and equitable deal**. Unfortunately, there are not many essential sectors in the economy that can say this – for example, housing, banking, fuel, transport and groceries. Even though 'energy bills are often a lower priority for most households after rent or mortgage, food, transport, and education',[3] energy appears to be one of the few essential services that provides comprehensive protections that support customers in accessing a fair and equitable option.

Is there a compelling case for reform? Based on the ESC analysis**:** 1.13% of electricity customers and 1.21% of gas customers receiving tailored assistance cannot pay for ongoing usage.[4] Case examples from consumer advocates suggest that some customers receiving assistance may be on higher-priced plans because retailers may not consistently check that customers are on lower-cost offers. This implies that within this small group of customers, some may already be benefitting from being on lower rates, while others may not be. It follows that **the fraction of electricity and gas customers** receiving tailored assistance who cannot pay for ongoing usage and **could benefit from a better offer may be even smaller than the approximate 1% cited in the ESC analysis.**

While the objective of supporting customers in payment difficulty is essential, regulatory changes need to ensure that the costs introduced to all consumers through any new requirements do not outweigh the benefits. We support efforts to protect the very small group of customers that would benefit most, but the three initial options in the discussion paper for automatically moving customers receiving assistance to the 'best offer' introduces risks and costs. The preferred solution

1 ESC, *Energy Consumer Reforms Discussion paper*, October 2024, p7.
2 ESC, *Energy Consumer Reforms Discussion paper*, October 2024, p7; Analysis based on a sample of ACCC billing data for Victorian residential customers between October and December 2023.
3 Essential Services Commission and Honeycomb, Energy Market Insights: Research report, July 2021, p. 7
4 ESC, *Energy Consumer Reforms Discussion paper*, October 2024, p17.

should be proportionate to the scale of the issue and avoid imposing unnecessary costs on the broader customer base.

A cost-effective way that avoids costs for all users lies within the existing framework

As the ESC rightly recognised in its discussion paper:

> *We would need to balance the potential cost impacts on retailers and the broader energy market with targeting a group of customers that would benefit the most.*[5]

The Payment Difficulty Framework within the current rules already requires retailers to provide tailored assistance, including advising customers on the most suitable tariff to minimise costs.[6] The current framework appears to be working well– with most customers receiving assistance paying prices *below the VDO,* as mentioned. By enhancing compliance and awareness efforts under the existing Payment Difficulty Framework, the ESC can effectively address gaps and ensure that vulnerable customers receive tailored support, aligning with the reform's objective to protect those most in need. The ESC has already prioritised this issue as a compliance focus for 2024-25,[7] and we support leveraging this approach to help address this concern in a cost-effective way.

We believe this measure, which focuses on upholding the protection from the existing framework, can achieve the same goals sought by the ESC, to:

- place customers receiving payment difficulty assistance on the best price their retailer can offer, and
- improve consumer confidence to engage with their retailer when facing payment difficulty.[8]

Addressing the concern within the existing framework should be considered as the preferred alternative as it appears proportionate to the scale of the concern. The three initial options considered in the discussion paper are well-intended and appear beneficial at face value but introduce risk and costs borne by all customers.

Our full submission is detailed in the **Attachment**.

If you have any questions in relation to this submission, please contact me ([redacted] or [redacted]

Yours sincerely,
Maria Ducusin
Regulatory Affairs Lead

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5 ESC, *Energy Consumer Reforms Discussion paper*, October 2024, p12.
6 ESC, *Energy Retail code of Practice*, clause 120(1)(a).
7 Our energy compliance and enforcement priorities | Essential Services Commission.
8 ESC, *Energy Consumer Reforms Discussion paper*, October 2024, p8.

Reform 1: Automatic best offer for customers experiencing payment difficulty

We have discussed our views on the case for change and consider that greater efforts to ensure effective practice of the existing Payment Difficulty Framework can help address the issue and ensure customers receiving assistance are on the best price their retailer can offer.

We encourage the ESC to consider this approach as the preferred alternative pathway to the three initial options proposed in the discussion paper. This seems more proportionate to the scale of the issue but also minimises risks, avoids duplicative expenses to achieve the same goals and ensures that resources are focussed on supporting the energy transition to be at the least cost for all users.

With all this in mind, should the ESC still decide against this preferred alternative approach and pursue one of the methods of automatic switching in the discussion paper, we consider **the most practicable option out of the 3 methods is option 3: automatic switching to the best offer.**

Targeted approach to automatic switching

As discussed, only a very small group of customers receiving assistance who cannot pay their ongoing usage could benefit from switching to a better offer (likely less than the estimated 1% of energy customers). The coverage of option 3 should therefore be targeted to focus on customers receiving tailored assistance under the Payment Difficulty Framework. We do not support broad regulatory changes for automatic switching for customers outside of this targeted group. Broad changes that undermine the competitive dynamics of the market and diminish the value of shopping around for new offers can risk discouraging customers from engaging with the market.

Further, we do not consider it beneficial – nor easier - to separate the customers receiving tailored assistance for automated switching by those who can and cannot pay ongoing costs.

To minimise the cost and burden of introducing automated switching to the deemed best offer to this targeted group we suggest:

- The frequency of automated switching should align with the usual timeframe in which retailers update their customer portfolio (e.g., retailers often update plans and prices for existing customers following updates to the Victorian Default Offer or Default Market Offer) and occur no more than 6 monthly. This streamlines the administrative process and aligns the timing with the preparation of required customer communications.

- The deemed best offer should be based at a point in time assessment determined by the retailer. Providing this flexibility allows retailers to implement automated switching in a manner that is operationally efficient and minimally disruptive.
- The date of assessment for the customers that will be covered by automated switching should be at a point in time determined by the retailer. This will help simplify the administrative and operational burden for the retailer and avoid any retrospective measures which can be time and resource intensive to implement.

Concerns with AER Gamechanger options

The AER Gamechanger options for automated switching add a layer of complexity, particularly with the inclusion of a cooling-off period that allows customers to reverse the switch. While well-intentioned, this introduces operational challenges, as system changes must accommodate both the automation of switching and the possibility of reversals. Such complexity not only risks increasing retailer costs and costs to our customers but also complicating the customer experience.

Legal and practical challenges with Option 3

As recognised by the ESC, Option 3 would require amendments to the current Victorian regulatory framework. This raises significant legal and practical challenges including, but not limited to:

- **Explicit Informed Consent requirements**. The current Energy Retail Code of Practice mandates that retailers obtain explicit informed consent (EIC) before signing a customer up to a market retail contract (market contract).[9] Since the best offer is often tied to a market contract, automatically entering customers into a market retail contract appears inconsistent with this EIC requirement.

- **Conflicting with restrictions on changing benefits.** The Energy Retail Code of Practice mandates that any "benefit" (e.g., discount or credit) provided within a market retail contract must remain for the contract's duration.[10] Moving a customer to a different plan mid-contract may effectively terminate such benefits prematurely, leading to a potential breach of the Code. If the contract were to be terminated in accordance with the Code, the existing rules would expect that unless the customer chooses to enter into a new contract, the retailer place the customer onto its Standard Retail Contract as part of a "deemed contract".[11] This again raises the EIC issue above, if Option 3 would require retailers to transfer customers from a "deemed contract" to a market retail contract without first obtaining the customer's EIC.

9 ESC, *Energy Retail Code of Practice*, clause 26(4).
10 ESC, *Energy Retail Code of Practice*, clause 96.
11 *See, for example: ESC, Energy Retail Code of Practice, clause 33.*

If the ESC wishes to implement automated switching without EIC, the ESC will need to make significant amendments to existing regulations, including the *Energy Retail Code of Practice*, the *Electricity Industry Act*, and *the Gas Industry Act*. We expect any changes would be done by consultation with retailers and other industry participants.

Further, another practical and substantial unintended consequence of automated switching to the best offer is reducing the retailer incentive to offer innovative, longer-term products tailored to specific customer needs or preferences. For example, if a customer is on a unique plan that provides value over time (for example, bundled services, renewable energy credits, or long-term price stability), an automatic switching rule could prematurely terminate the benefit when customers face short-term payment difficulty.

Concerns with Option 1 (automating credits) and Option 2 (automatic tariff changes)

While options 1 and 2 are well-intentioned in their aim to support customers in payment difficulty, the significant operational complexity involved in automating credits and tariff adjustments, combined with the risk of increased costs being passed on to all customers, makes these options less viable and unattractive.

We agree with the ESC that:

> *Both these options would also require retailers to match the price of best offers without considering other terms and conditions which may justify cheaper prices (for example, payment methods and frequency, contract length). This would add costs to retailers that are likely to be recovered through other means or from other customers*.[12]

We also strongly agree that both these two options increase the operational complexity for retailers and present challenges for calculating the 'best offer'. One example raised by stakeholders that is not mentioned in the discussion paper relates to the problem of crediting the difference between the current plan and the best plan where a customer already has a deficit due.

On implementation, both options would require significant system changes that would increase retailer costs ultimately borne by all other customers. [**CONFIDENTIAL**:].

Reform 2: Improving the ability to switch to the best offer

We believe that improving the ability to switch to the best offer is a good opportunity to empower customers with better tools and information to facilitate engagement. We fully support lowering the barriers for customers to engage in the market and switch to the best offer within the retailer.

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12 ESC, *Energy Consumer Reforms Discussion paper,* October 2024, p9.

An outcome-based approach that provides retailers with flexibility on how to deliver this outcome is critical. Each retailer operates with unique systems and processes and is therefore best placed to streamline switching processes in a way that aligns with their business operations while delivering effective outcomes for customers.

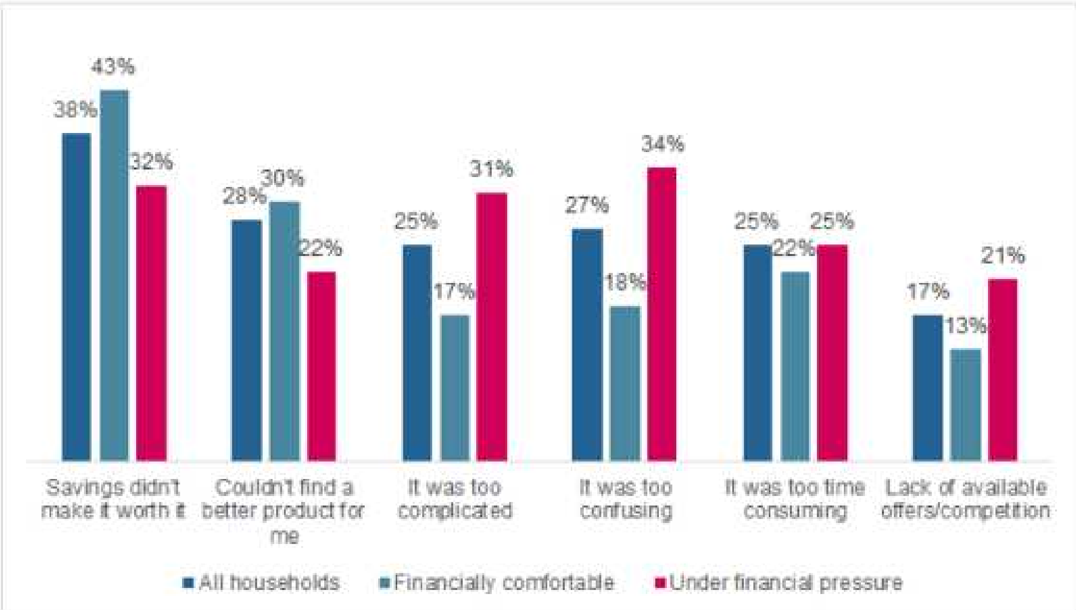
To further support this goal, we consider it worthwhile to:

1. Review the impact of current best offer messaging to identify opportunities for refinement without adding layers of complexity. The ACCC's upcoming electricity inquiry report, due December 2024, is expected to cover best offer messaging and may provide some useful insights.
2. Strengthen retail competition by avoiding regulatory changes that diminish the value of switching between retailers or stifle price diversity. Maintaining a consistent and sustainable VDO pricing approach is critical to fostering long-term competition and ensuring diverse, affordable pricing options remain available for all consumers

We caution against introducing prescriptive regulations, which risks undermining the competitive dynamics of the market and further eroding competition and the value of shopping around.

The issue at its core appears to be less about structural barriers and more about customer perceptions of value in switching. Recent ESC analysis and Figure 5 of the Discussion Paper (below) highlight that the primary reasons customers do not switch are tied to a perceived lack of value or benefit from switching. This suggests that additional regulation aimed at reducing switching friction may miss the mark, especially if the perceived value gap remains unaddressed.

Figure 5: Reasons why customers did not switch plans when they last considered changing retailers or switching to a better offer



Source: Energy Consumers Australia, Energy Consumer Sentiment Survey June 2024

The energy sector has already implemented several reforms aimed at improving customer awareness and engagement:

- **Best Offer Messaging:** Requiring clear communication of the best available offer on bills.
- **Payment Difficulty Framework:** Ensuring customers on tailored assistance receive help to make informed decisions including advice on the most suitable tariff to minimise costs.[13]
- **The Victorian Default Offer (VDO):** Providing a trusted reference point for energy prices, enhancing transparency.
- **Government comparison websites Vic Energy Compare:** as part of government initiative to help consumers compare energy offers and find better deals.

Each of these reforms were introduced at considerable cost to retailers, with the burden ultimately borne by consumers. Despite this investment, the data indicates that customer inertia persists due to value perceptions rather than access or awareness issues. If regulatory reforms focus on prescriptive measures over consumer-driven actions, customers may become less engaged with their energy choices, further eroding the competitive framework and value for the broader consumer base.

Reform 3: Improving the application of concessions on bills

We support measures that ensure customers eligible for concessions can benefit from them and believe there is an opportunity to build on the existing framework to achieve this goal. In practice, we ask for concession information during the customer sales journey and we support initiatives that require proactively asking *new customers* about concessions when they first sign-up to the retailer. This ensures concessions can be applied from the first billing cycle and minimise missed opportunities for eligible customers. This is a simple yet effective way to ensure that consumers who are eligible for an energy concession are claiming a concession and receiving the benefit on their bill.

Proactive measures that require retailers to reach out to all *existing* customers about potential eligibility for concessions are likely to be administratively burdensome, costly, and unlikely to meaningfully improve outcomes. In our view, resources should instead be targeted where they are most effective. This can include added training for front agents to ensure they understand any new proactive measures that explicitly require concession information from *new customers* during the onboarding.

While we can proactively ask customers about concessions, retailers cannot proactively and independently verify concession eligibility without access to detailed information from Services Australia or other government agencies. Sharing this information raises privacy and legal hurdles that we understand are not easily overcome.

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13 ESC, *Energy Retail code of Practice*, clause 120(1)(a).

Long-term solutions noted by the ESC as outside the scope of the current review, such as concession system upgrades to allow for automation, or automating information sharing, may also address systemic barriers to concession access.

Reform 4: Extending protections for customers on legacy contracts

We support targeted protections for the most vulnerable customers on legacy contracts, ensuring assistance reaches those who truly need it. Addressing the concerns raised in reform 1 would effectively mitigate the risks under this reform and ensure that vulnerable customers on legacy contracts are transitioned to the most suitable plans through tailored assistance, without the need for broad regulatory changes that impact all consumers.

For the same reasons highlighted under reform 2 on the risks of overregulation that can erode competition and the value of shopping around, we caution against broad regulatory change. Expanding requirements indiscriminately risks:

- undermining price diversity, leading to fewer affordable new offers for consumers. This will diminish the value of shopping around, and further erode consumer engagement with the market.
- shifting financial costs to other consumers, resulting in higher prices across the board.
- exacerbating retailer pressures and eroding competition.

ESC's approach should be guided by a balanced method that considers the long-term implications of regulation on the market. Targeting protections for vulnerable legacy contract customers appears to strike a proportionate balance, ensuring fairness without imposing unnecessary costs and unintended consequences on the broader customer base.

Prescriptive changes that increase regulatory costs or reduce competitive offers appear counterproductive, as they risk further diminishing the perceived benefits of switching. In a submission to the AER on the Default Market Offer the ACCC emphasised the importance of retail competition in delivering for consumers and protecting customers:[14]

> *A well-functioning and competitive retail electricity market will be important to support the interests of electricity consumers through the energy transition. A competitive retail market will encourage competitive pricing conduct as well as the development of new and innovative retail market products that support evolving consumer needs and wants as patterns of electricity generation and usage evolve…*
>
> *Providing sufficient incentive for competition in retail electricity markets is an important consideration for the AER to ensure that competition continues to deliver in the interests of*

[14] ACCC submission, DMO 6 draft determination *Implications of change in methodology for retail allowance in DMO6 for retail competition over the longer term*, 9 April 2024, p 1.

consumers. We consider that, where competition is workably competitive, market forces provide more effective protection to customers compared to regulation

Reform 5: Improving awareness of independent dispute resolution services.

We support adding the Ombudsman's phone number to bills as a practical and relatively cost-effective measure aimed to improve awareness of independent dispute resolution services. This approach reinforces several advantages including-

- Consistency across jurisdictions: Adding only the Ombudsman's phone number is consistent with other states, partially supporting regulatory alignment and simplicity across jurisdictions.
- Meeting the ESC's goals: Including the EWOV phone number directly on the bill addresses the ESC's aim to raise consumer awareness about dispute resolution options.
- A cost-effective interim solution: The ESC has taken a "wait-and-see" approach on broader bill format changes until the cost-benefit analysis of the AER's Better Bills reforms is completed. Limiting changes to the addition of a phone number is a practical interim solution, avoiding more complex changes to e-bills, message bodies, and other elements until further guidance is available.
- Consumer reliance on bills for complaint details: Research cited in the discussion paper indicates that 26% of customers rely on their bills for complaint-related contact details.[15] Including the EWOV phone number on the bill directly addresses this need.

This approach should address ESC's goals while keeping costs manageable and avoiding the potential increase in complaints that could come with a direct web link for making a complaint.

[15] Behavioural Economics Team of the Australian Government, Improving energy bills: Final report, October 2021, p. 19; ESC, *Energy Consumer Reforms* *Discussion paper,* October 2024, p28.