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Submitted electronically: Engage Victoria

Dear Commissioners

Energy Retail Code of Practice Review (Stage 1) – Energy Consumer Reforms

EnergyAustralia is one of Australia's largest energy companies with around 2.4 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory, of which over 57k customers are supported under our hardship program (EnergyAssist). 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 comment on the ESC's review into the Energy Retail Code of Practice (ERCoP) Stage 1 Energy Consumer Reforms (the *Draft Decision*). We share the ESC's commitment to improving outcomes for customers – particularly those experiencing payment difficulty – and are pleased that a recent report found that of the energy retailers examined, EnergyAustralia was the leading energy retailer on the east coast in supporting customers facing payment difficulty.[1] This reported finding is particularly encouraging as EnergyAustralia had the highest proportion of electricity customers owing at least $300, more than twice the market average in both 2022–23 and 2023–24. In 2023–24, its proportion was more than double that of the next highest retailer.[2]

Our submission is informed by our direct experience implementing the ESC's current Energy Retail code of Practice, engaging with thousands of customers across Victoria, and operating one of the largest and most diverse customer portfolios in the market.

Retailers are key enablers of the energy transition and provide tailored customer assistance

The role of retailers continues to evolve – and we believe this review presents an opportunity to reflect on that. Retailers are not merely billing agents passing through supply chain costs to earn a margin. We are key enablers of the energy transition, providers of tailored customer assistance (as evidenced by the recent report by Financial Counselling Australia), and frontline partners in helping to deliver social policy to customers such as the National Energy Bill Relief and energy concessions. To fulfil any of these roles

[1] Financial Counselling Australia, *2025_Rank-the-Energy-Retailer_Report.pdf*, p 9.
[2] Energy Services Commission, *RPT - Victorian Energy Market Report - Annual 2024.pdf*, p6.

effectively, the Energy Retail Code of Practice must support flexibility, investment, and innovation in energy-specific products.

We support innovation that delivers real customer value through energy-specific innovations like smart software that moves energy usage coupled with smart battery investments. However, current dynamics in Victoria and proposed changes in the Draft Decision risk stifling this. Convenience-based bundling appears viable for large players (for example bundling internet or streaming services with energy) - but we observe energy-specific product innovation, which relies on greater regulatory flexibility, appears limited in the market. If regulators, governments and policymakers expect retailers to drive customer value and competition as well as help enable the energy transition, they must ask:

- Whether retailers can sustainably compete below the Victorian Default Offer? If so, which retailers?
- Who is positioned to innovate in a heavily regulated environment to help achieve Victoria and Australia's climate goals?

Recent public commentary has highlighted the growing challenges for smaller energy retailers in light of broader regulatory change. While the ESC is focused on addressing specific customer harms in Victoria, it should also reflect on the **cumulative** impact of change in the broader energy retail market. Without this lens, there is a real risk of weakening competitive dynamics in Victoria to the detriment of Victorian consumers and undermining climate goals we all seek to achieve.

Current pressures and cumulative regulatory risk on pricing flexibility and cost recovery

Retailers are expected to absorb rising supply chain costs, innovate, and deliver climate-aligned solutions—all while navigating increasing restrictions on how and when they can price, communicate, and recover costs. There appears to be a growing expectation that retailers should simply become "smarter" in how we price, manage risk, and engage customers—rather than rely on post-benefit pricing structures or flexible tariffs. While we are innovating in these areas, the reality is that we operate in an increasingly restrictive environment that makes full risk management and cost recovery extremely challenging.

Network and wholesale costs make up the majority of a customer's bill.[3] While retailers can offer more cost-reflective pricing where customers agree and value this, regulation often limits our ability to respond to dynamic network pricing in ways that support timely cost recovery. This is particularly challenging when retailers are expected to absorb the risk of increasingly complex network tariffs – without the same flexibility to recover these costs in retail prices. These constraints reduce our ability to offer energy-specific innovative products to customers. To deliver value and support the energy transition, retailers need regulatory frameworks that enable flexibility, protect customers and make room for innovation – not restrict it.

Further compounding the challenge of recovering costs in a timely and flexible way, pricing flexibility is constrained by:

- Annual DMO/VDO decisions, which appear more politicised, as well as methodologically variable;
- Strict limits on when and how retailers can reprice;
- Opaque approval processes that discourage innovation.

[3] ACCC, *Inquiry into the National Electricity Market report - December 2024* - December 2024, p66.

In this environment, it is becoming increasingly difficult to offer sustainable competitive pricing. Retailers also face additional compliance risks from growing layers of prescriptive rules on communications, switching windows, and consent processes. The proposed Draft Decision will only add to this burden and increase the operational risk of inadvertent breaches.

Growing risk that retailers cannot deliver on transition expectations

Recent DMO and VDO decisions appear to shift more risk onto retailers, especially as network costs rise — a trend that is likely to accelerate with the energy transition. We have previously questioned whether retailers can absorb these risks **and** still invest in new products, **and** maintain viable retail operations in a highly constrained environment. As we face a wave of retail market reforms—including this Draft Decision—we again urge regulators to carefully consider the balance of cost, risk, and outcome.

Short-term affordability measures can come with unintended trade-offs:

- Reduced ability to invest in customer energy resources (CER),
- Diminished small retailer viability and competition,
- Less customer choice and incentive to shop around, diminishing the value of switching reforms.

Retailers are essential to delivering CER and decarbonisation

Retailers are already supporting the roll-out of CER technologies—batteries, solar, flexible loads—and increasingly managing complex customer portfolios. Policy signals such as expanding the Small-scale Renewable Energy Scheme (SRES) to include batteries[4] further embed retailers in the transition.

To deliver on these ambitions, we need a regulatory framework like the ERCoP to enable—not hinder—investment and innovation. That means:

- Recognising the commercial and operational pressures retailers face;
- Providing flexibility to price and recover costs sustainably;
- Minimising unnecessary compliance complexity;
- Supporting regulatory stability so businesses can plan with confidence.

Without these settings, the ability of retailers to scale CER solutions and enable electrification at pace is at serious risk.

Unintended consequences of the Draft Decision

While we support the underlying policy intent of the ESC's Draft Decision in protecting customers, several aspects of the Draft Decision if left unchanged – could undermine its goals. For example:

- **Customer confusion and reduced trust:** Rigid implementation of automatic switching, a strict reading on what constitutes a "simple and accessible" switching process, and excessive notification obligations may lead to poor customer experiences and further erode trust in energy retail services.

[4] Joint Media Release, Prime Minister of Australia and Minister for Climate Change and Energy, Labor to Deliver One Million Energy Bill Busting Batteries, 6 April 2025.

- **Increased operational burden and compliance costs:** Onerous obligations — for example around verifying eligibility for automatic switching — without sufficient flexibility or lead time may introduce unnecessary process complexity, increase the risk of unintentional breaches, and raise compliance costs that ultimately flow through to customers.

- **Reduced energy innovation and market competition:** Mandating postal communication for all energy offers, while well-intended, risks discouraging new product development (including CER and VPP offers), limiting retailer offering and competitiveness in Victoria's energy market.

Implementation and timing concerns

The Draft Decision proposes significant changes to pricing, customer communications, and retailer processes. Given the scale and complexity of these reforms, we have serious concerns about the feasibility of implementation within the proposed timeframes.

With the ESC's final decision expected in August or September 2025, and key obligations proposed to commence from **1 January 2026 and 1 July 2026**, there is insufficient lead time for retailers to properly scope, design, and implement the required system changes and staff training. A start date of 1 January 2026 is particularly unworkable.

With the final decision expected August/September 2025, we strongly recommend the ESC:

- **Push out the commencement to at least from 1 July 2026 and 1 January 2027**, providing more sufficient time for system development, process design, testing, and staff training.
- **Publish early guidance** on key provisions—particularly where obligations are principles-based or open to interpretation—to reduce uncertainty and implementation risk.

Providing adequate lead time and clarity will be essential to support an orderly rollout, avoid customer confusion, and ensure that retailers can meet both the letter and intent of the reforms.

Next steps and future engagement

We recommend targeted refinements to the Draft Decision to help ensure obligations are proportionate, practical to implement, and aligned with positive customer outcomes. Our full submission and recommendations on each reform are set out in the **Attachment**. This submission focuses on Stage 1. We reserve further detailed comments – particularly regarding issues on best offer obligations – for Stage 2.

We thank the ESC for the opportunity to engage and look forward to working together to deliver better outcomes for all Victorian customers.

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

Yours sincerely,
Maria Ducusin
Regulatory Affairs Lead

ATTACHMENT

1. Automatic best offer switching for customers in Payment Difficulty

Overall, we support the intent of the proposed reform to automatically switch customers in payment difficulty onto the best offer. Our comments focus on the practical implementation challenges and suggest adjustments to the drafting to ensure workability.

The ESC's preferred approach is to extend eligibility to:

a) Customers receiving tailored assistance; and
b) Customers who have been in arrears for at least three months and owe $1,000 or more (Option AA.2).

We understand the intent is to protect customers who are financially vulnerable but have not engaged with their retailer. While we support this goal in principle, we have significant concerns about introducing the second cohort under threshold b). In our view, this can add unnecessary complexity and risks undermining the effectiveness of existing hardship and tailored assistance pathways.

We consider there is already a clear, structured pathways for customers in payment difficulty to access support through tailored assistance. Customers who genuinely need help can and do access the program- which is already integrated into retailer systems and processes.

By contrast, threshold b) introduces a new, untested definition that can be difficult to monitor and implement. It is unclear at this stage whether the benefits of the proposal will be outweighed by the complexity.

1.1 We encourage testing this approach before mandating the extended cohort in threshold b)

We consider it worthwhile testing whether this extended cohort in threshold b) is needed before mandating it. For example, we may examine how many customers meet this threshold and test the customer journey by checking:

- If they pay their bill and go on paying, the issue resolves itself
- If they do end up receiving tailored assistance, then the existing framework is already capturing them.
- If neither occurs, we can examine whether switching would have helped.

This data-led approach could allow for more targeted reforms, grounded in evidence of customer outcomes. If the evidence supports the need for change, this option could be adopted in future reviews of the Energy Retail Code of practice.

In considering other ways to target this cohort of customers that cannot afford to pay but not on tailored assistance, we do not consider concessions are a good proxy for financial vulnerability based on our experience implementing the National Energy Bill Relief. We recognise the need to balance simplicity, complexity and trying to achieve the intent – and understand the reasoning for the ESC's 'line in the sand' reflected in b) to achieve its intent. That said, we have concerns about the following aspects of the proposed implementation, which we discuss in turn:

- **operational complexity**, including the need to dynamically monitor eligibility and build new system capabilities
- **complexity of the switching and reversal mechanics**
- **customer communication challenges** and the impact on the customer experience
- **uncertainty on how new switching requirements interact with existing provisions.**

1.2 Operational complexity and timing

Customers receiving tailored assistance are relatively easy to identify, as they are already flagged and tracked within retailer systems. We expect this to be the case across the industry. By contrast, the proposed extension to customers who have been in arrears for three months and owe $1,000 or more introduces a more fluid and less visible cohort—making it significantly more difficult to monitor and manage eligibility in practice.

The requirement to conduct a best offer check within 10 business days of a customer becoming eligible is challenging due to the volatile nature of arrears balances. Our understanding is that retailers will need to identify when a customer has been in arrears for three months *and* owes at least $1,000—criteria that can change daily. While the rules do not explicitly require daily checks, retailers must still demonstrate they identified and acted on eligibility within the 10-business-day window.

For example, if we perform checks every Thursday and apply logic to identify accounts that became eligible within the prior 10 business days, we believe that would meet the obligation. However, we must still timestamp the point of eligibility (e.g. "became eligible on 1 April"), not the date of the check itself. This creates a strong need to monitor accounts on a near-daily basis and build automated detection systems, adding material operational complexity and new system costs. We wish to keep costs as low as possible for our customers and so encourage these new automatic switching checks to align with existing bill checks and avoid the need for daily-monitoring and new system costs for automation.

Further, this form of ongoing monitoring could result in customers repeatedly crossing the eligibility threshold—falling into and out of arrears—triggering multiple switching and reversal cycles. Such a cycle increases administrative burden, creates confusion for customers, and risks undermining trust in retailer communications.

Given this, we expect the operational burden to be material—both in terms of the technical build required and the volume of triggered customer communication.

We strongly recommend the ESC consider:

1. **Removing the 10-business day requirement to check customer eligibility as it does not appear workable, as set out in the example above.** This appears achievable by making the following revision:

   132C Deemed best offer check for automatic best offer

   (1) A *retailer* must carry out a *deemed best offer check* for the purposes of this Division:

~~(a) no later than 10 *business days* from the date a *residential customer* becomes an *eligible customer*; and~~ [Detele]

(b) at least once every six months for electricity and once every eight months for gas following the date the *residential customer* becomes an *eligible customer*,

for as long as a *residential customer* remains an *eligible customer*.

2. **Limiting automatic switching to customers receiving tailored assistance**, where appropriate flags and systems are already in place. This will require changes to clause 132B to cover only *tailored assistance* customers (see below suggested revision). With this target group checking eligibility within the 10 business days still does not appear practicable. We believe this option would materially reduce operational cost and complexity while still protecting the most vulnerable customers experiencing genuine financial hardship.

132B Eligibility

(1) A *retailer* must comply with the requirements in this Division when a *residential customer* who is in arrears is an *eligible customer*.

(2) In this Division:

eligible customer means a *residential customer who*:

~~(a) has contacted the *retailer* and~~[Delete] is receiving *tailored assistance*; ~~or~~

~~(b) has not contacted the *retailer* to request assistance and:~~

~~(i) has been in arrears for three months or more; and~~

~~(ii) has accumulated arrears that are equal to or more than the amounts per fuel specified in a guideline published under section 13 of the *Essential Services Commission Act 2001*, or under subclause (3).~~

~~(3) If an amount has not been published in a guideline in accordance with subclause (2)(b)(ii), the accumulated arrears amounts for the purposes of that subclause is $1,000 for electricity and $1,000 for gas.~~ ~~[Delete]~~

3. **Alternative to the ESC's preferred option – If the ESC chooses to extend eligibility beyond customers receiving tailored assistance, we recommend increasing the arrears threshold from three to at least four months and aligning the frequency of best offer checks with the existing tailored assistance review cycles (i.e. at least every six months).**

Aligning the frequency in this way helps keep implementation costs low, as it leverages existing billing and customer support review processes already embedded in retailer systems. It avoids the need for retailers to build and maintain new monitoring processes and ensures the reform can be delivered efficiently.

Even under this approach, we do not consider the 10-business-day requirement workable. We consider the minimum arrears period of four months is more appropriate, as three months may simply reflect one missed bill or billing cycle—without giving the customer sufficient opportunity to

engage with their retailer and access support. A four-month threshold better balances the intent of the reform with the need to preserve and complement existing customer support processes.

Further, we suggest that **once a customer is identified as eligible under the six-month check**, retailers should be provided with **10 business days to transition that customer onto the deemed best offer**. This would allow for practical implementation while ensuring customers benefit from the protection in a timely and orderly manner.

This option appears to be achieved by amending the drafting of clause 132C and clause 132B below (see suggested revision below).

We believe this will strike a better balance between achieving the intended protection to an extended customer group beyond tailored assistance and operational feasibility in implementation without imposing additional material cost.

132C Deemed best offer check for automatic best offer

A *retailer* must carry out a *deemed best offer check* for the purposes of this Division:

~~(a) no later than 10 *business days* from the date a *residential customer* becomes an *eligible customer*; and~~ [Detele]

(b) at least once every six months for electricity and once every eight months for gas following the date the *residential customer* becomes an *eligible customer*,

for as long as a *residential customer* remains an *eligible customer*.

132B Eligibility

A *retailer* must comply with the requirements in this Division when a *residential customer* who is in arrears is an *eligible customer*.

In this Division:

eligible customer means a *residential customer who*:

~~has contacted the *retailer* and~~[Delete] is receiving *tailored assistance*; or

has not contacted the *retailer* to request assistance and:

has been in arrears for ~~three~~ four months or more; and

has accumulated arrears that are equal to or more than the amounts per fuel specified in a guideline published under section 13 of the *Essential Services Commission Act 2001*, or under subclause (3).

If an amount has not been published in a guideline in accordance with subclause (2)(b)(ii), the accumulated arrears amounts for the purposes of that subclause is $1,000 for electricity and $1,000 for gas.

1.3 Switching and reversal mechanics

The Draft Decision allows customers to reverse a switch, which could be done repeatedly. For example, a customer may opt out of the switch or revert to their previous plan after switching, only to re-trigger the

process if they again meet the eligibility threshold. This could create a loop where a customer opts out → requalifies → is re-switched → reverses again—potentially causing unnecessary confusion and cost.

The issue is further complicated when the customer's original plan is over four years old and may itself be subject to separate switching obligations under the proposed 4-year legacy contract rules. Without clear boundaries and rules for reversal and eligibility resets, retailers may face system and process complexity with limited benefit to customers.

We recognise the intent behind allowing reversals – to preserve customer agency and avoid customer dissatisfaction. However, if the best offer is genuinely in the customer's best interest and switching is being mandated on that basis, we question whether a broad, unconstrained right to reverse is the right approach.

There is a risk that customers may seek to reverse switches even where it is not in their long-term interest, creating implementation complexity for retailers. On the other hand, removing reversal rights altogether may lead to dissatisfaction and increase complaint volumes directed at retailers, especially as the customer did not explicitly consent to the switch.

There does not appear to be a simple 'fix'. To help balance trade-offs we recommend the ESC consider:

1. **Clarifying reversal outcomes** If a customer exercises a reversal, retailers may return the customer to a simpler plan (e.g. the standing offer), rather than the original plan—particularly where that plan would otherwise require switching to the older plan under Clause 121.

2. **Clarifying how clauses 132 and 121 interact**. While dual eligibility may be rare, any edge cases should be clearly addressed to avoid overlapping obligations. The rules could explicitly state that fulfilling one obligation (e.g. switching a customer to the deemed best offer under Clause 132) satisfies the requirement to ensure a reasonable price under Clause 121.

1.4 Customer communications and best offer switching

The proposed process presents several communication challenges that risk undermining customer understanding and the overall effectiveness of the reform:

- The best offer plan included in the customer's switch notice may differ from the plan the customer is ultimately switched to, due to interim changes in pricing or expiry of discounts.

- Customers may receive multiple overlapping communications—such as plan renewal notices, best offer switch notices, and reversal notifications—which can create confusion and reduce engagement.

We strongly recommend the ESC:

1. **Allow flexibility for retailers to streamline communications under the Code**.
   For example, retailers should be permitted to issue a single, comprehensive switch notice that clearly sets out the key terms of the new plan and the customer's reversal rights. To avoid

duplication and ensure practical implementation, this notice should not be treated as a price change or benefit change notice under the Code. We consider this approach would support a more cohesive customer experience by reducing the volume and complexity of communications.

2. **Confirm that a separate notice is not required**
   Where a customer receives a switch notice that outlines the relevant plan terms and pricing, this should be sufficient. An automatic switch should not trigger an additional requirement to issue a separate price change or benefit change notice.

1.5 Clarifying interactions with existing code provisions

To support practical implementation, it is critical that the ESC understand and clarify how the new automatic switching obligations interact with existing provisions of the Code. When customers are automatically switched to a new market retail contract, it is important to clarify which existing obligations still apply, and which do not.

There is a risk that retailers will be subject to overlapping or duplicative obligations, increasing compliance risk and customer confusion.

While we note that the ESC has expressly stated that EIC is not required for automatic switches to a new market retail contract, it is unclear whether this principle has been consistently applied across all other potentially relevant clauses. For example, the following existing provisions could interact with the new switching obligations:

- **Clause 100 – Retailer notice of end of fixed-term retail contract (MRC and EPA):**
  Where a customer has been on a fixed-term contract for more than four years and is switched under Clause 121, it is unclear whether the contract is considered "terminated," and therefore whether a notice under Clause 100 would be required. **We recommend the ESC clarify that this notice is not required in such scenarios.**

- **Clause 106 – Minimum standards for notice of price or benefit change (SRC and MRC):**
  If a customer is switched under Clause 121 or Clause 132 to a new MRC, **we request confirmation that this is not considered a price change under Clause 106 and therefore does not require a separate notice**. The same applies to Clause 107 regarding changes to feed-in tariffs.

- **Clause 97 – Cooling-off period:**
  We request clarification on whether a cooling-off period applies to automatic switches under Clauses 121 and 132. While our view is that it likely does not, given the automatic nature of the switch, clear guidance would provide confidence and consistency across the industry.

Similar issues also arise in the context of automatic switching for customers in payment difficulty under Clause 132. In these circumstances, the customer is moved to a new MRC without a traditional sign-up process, and any attempt to layer additional obligations—such as benefit change notices or cooling-off disclosures—risks undermining the customer experience and increasing administrative complexity.

We strongly recommend the ESC:

- **Review and clarify which existing Code obligations continue to apply**. This will ensure the Code operates as intended and that retailers can implement the reforms with clarity and confidence.

1.6 Drafting feedback on automatic switching requirements

Clause 132B:

> A *retailer* must comply with the requirements in this Division when a *residential customer* who is in arrears is an *eligible customer*.
>
> In this Division:
>
> ***eligible customer*** means a *residential customer who*:
>
> has contacted the *retailer* and is receiving *tailored assistance*; or

We consider the phrase *'has contacted the retailer and is receiving tailored assistance'* under clause 132B(2) to be unclear. The reference to a customer who "has contacted the retailer" is unbounded in time and could be interpreted broadly to include any previous interaction, regardless of timing.

To improve clarity, **we recommend either**:

- clarifying the purpose of the contact by adding words such as *"has contacted the retailer regarding payment difficulty and is receiving tailored assistance"*, or
- more simply, removing the phrase *"has contacted the retailer"* altogether, so the clause reads: *"is receiving tailored assistance."*

This latter approach is preferable, as customers receiving tailored assistance will necessarily have contacted the retailer. Including both phrases appears redundant and risks introducing ambiguity in interpretation.

Clause 132D(3)

> (i) information about the *residential customer's* right to be switched back to their previous plan as outlined in clause 132F, if the *residential customer* does not opt out by the date indicated under subclause (3)(d)(iii).

We query whether this is intended to be "**(3)(e)(iii)".**

Clause 132G:

Record keeping

> (1) A *retailer* must maintain records, including records of the data inputs used to perform *deemed best offer checks*, that are sufficient to evidence its compliance with this Division.
>
> (2) The *retailer* must ensure that the records required to be maintained pursuant to subclause (1) are retainer

We query whether the last word is intended to be "**retained**".

2. Improving access to cheaper offers – postal communication requirement

The ESC's preferred option in improving access to cheaper offers is:

- Requiring retailers to ensure plans are not restricted based on payment method (e.g. direct debit) or communication method (e.g. e-billing) and limiting conditional fees and discounts to reasonable costs (option B.2)

We support the underlying intent of this reform — ensuring that all customers, regardless of communication method, can access cheaper offers. However, we are concerned that a blanket requirement for all energy plans to support postal communications would inadvertently create a barrier to entry for new or digital-first retailers wanting to enter the Victorian market.

[redacted]

This risk is particularly acute given the broader market trend: while some larger retailers can pursue customer value through convenience-based bundling (e.g. energy + streaming or telco) under existing regulatory framework, customer value through energy-specific innovation such as VPPs, battery integration, and flexible pricing linked to smart software requires more regulatory flexibility, not rigidity, to succeed. Preserving flexibility in regulatory settings is vital to support the demand-side transition needed to meet Victoria's and Australia's broader climate and affordability goals.

Our specific feedback on the proposed drafting is as follows.

54A Methods of communication offered in energy plans

Any *energy* plan offered to a *small customer* by a *retailer* must offer *electronic communication* and communication by post as means by which a *retailer* will issue bills and communications to the *small customer*.

Note: A *retailer* cannot offer a plan that requires electronic bills or communications. However, a *retailer* is not prohibited from providing a *conditional discount* or charging an *additional retail charge* if the *small customer* opts into receiving electronic bills or communications.

We recommend the ESC:

1. **Refine the drafting of Clause 54A** to better accommodate digital-first retailers and avoid unintended market access barriers. One option could be to limit the postal communication requirement to **generally available offers** to exclude trial-based or energy-related innovative offers.
2. **Alternative to the option above, consider including an exemption mechanism** where retailers can demonstrate that their digital-only model supports energy-specific innovation and offers adequate consumer protections. This would ensure the regulation supports — rather than impedes — innovation aligned with affordability and decarbonisation goals.

3. **Reword the last sentence to reflect the intent allowing for cost recovery of postal charges.** Rewording could be like:

   However, a *retailer* is not prohibited from providing a *conditional discount* if the *small customer* opts into receiving electronic bills or communications, or charging an *additional retail charge* if the customer opts for communication by post only.

2.1 Best offer calculation challenges for nonstandard products

More broadly, we highlight the risk that best offer notifications may misrepresent value for nonstandard, innovative energy plans. Applying a generic algorithm to these offers may misrepresent value, confuse and undermine customer trust, and expose retailers to regulatory risk. These plans often involve value propositions that are not able to be fully reflected in the best offer calculation. [redacted]

To maintain confidence in best offer communications, we encourage the ESC to allow for flexibility in how best offer calculations apply to nonstandard and innovative product structures.

We reserve further detailed comments — particularly regarding issues on best offer obligations — for Stage 2 of this review.

3. Improving the ability to switch to the best offer

The ESC's preferred option (Option C.2) in improving the ability to switch to the best offer is:

- An outcomes-based approach requiring a retailer to have effective processes for customers to switch to the best offer, with minimum requirements for a retailer's processes (e.g. having a website and a telephone process; allowing customers to compare plans).

We support the policy intent of ensuring all customers can easily and confidently switch to the best offer. We agree with the ESC' focus on outcomes with minimum requirements, rather than rigid prescriptive requirements, or outcomes without minimum requirements (in options C.3 and C.1, respectively). This can provide flexibility for *all* retailers to implement switching solutions to meet minimum best practice in a way that suit their systems, scale, and customer segments.

We emphasise that some retailers already meet or exceed the baseline expectations – providing clear online pathways, responsive call centres, and comparative tools. In our case, based on quick testing of various customer channels (including website, live chat, and social media) existing channels appear simple and quick to use. For example, our virtual assistant on our retailer app appears to respond instantly and a Facebook chat enquiry typically responds within minutes – both channels with clear prompts and step-by-step guidance on comparing plans and switching. Further our website appears easy to navigate to compare offers. These experiences suggest that our existing channels appears to meet the "pub test" in terms of simplicity and accessibility, as discussed in the ESC retailer workshop on 12 June 2025.

We understand the ESC is seeking to remove friction from switching processes, to help address perceptions that switching is difficult or not worth the effort. However, in our experience, a core barrier is not that switching mechanisms are broken and too complex– it is that the *value* of switching can appear marginal to customers or appear complex. The perception that 'shopping around' results in small discounts and minimal financial gain contributes to disengagement – a challenge that cannot be solved solely by redesigning switching pathways. This points to the need for a broader review of the market – including the impacts of the VDO on competitive dynamics (as discussed in the cover pages of our submission).

3.1 Interpretation of the rule appears unworkable in practice

While we support the underlying policy intent of improving the switching process, we have significant concerns with the current drafting and how it may be interpreted and enforced in practice.

111A Processes for switching to deemed best offer

- A *retailer* must have effective processes for a *small customer* to switch to the *deemed best offer*.
- For the purpose of subclause (1), a *retailer's* processes for a *small customer* to switch to the *deemed best offer* is not effective unless it is *simple* and *accessible*.

Note: This requirement is that a *retailer's* processes be *simple* and *accessible*. However, a process that is *simple* and *accessible* may still not be an effective process (i.e. a process is not an effective process just because it is *simple* and *accessible*).

- In this clause:

  - ***simple*** means the process is easy for a *small customer* to understand and to complete in a reasonable time period.

  - ***accessible*** means the process is, so far as reasonably practical, adaptable to the needs of the *retailer's small customers* having regard to whether their access to information is impeded due to matters that include but are not limited to age, language, education, vulnerability and technical aptitude.

The drafting of clause 111A requires switching processes to be "simple and accessible," with accessibility defined by reference to barriers such as age, language, education, vulnerability, and technical aptitude. This is an ambitious and well-intentioned standard, but one that is impractical to implement uniformly – particularly across a large and diverse customer base. For retailers serving hundreds of thousands of Victorian customers, it is not feasible to create a single process that is equally simple and accessible for every individual customer — particularly where access to information is shaped by personal and subjective factors beyond the retailer's control. What is "simple" and "accessible" for a tech savvy customer may not be "simple" and "accessible" for an older customer with English as a second language.

Further the requirement creates risks for retailers that may be judged after the fact – based on whether a particular customer *felt* the process was "simple" and "accessible".

To improve workability and reduce ambiguity, **we recommend the ESC to**:

1. **Revisit the legislative drafting**. As it stands, the rule may be read as creating an unattainable compliance obligation, especially for retailers with broad and diverse customer bases.

   One option could include removing the words "having regard to whether their access to information is impeded due to matters that include but are not limited to age, language, education, vulnerability and technical aptitude" in the definition of accessible. While we support ensuring processes are usable by a wide range of customers, this clause introduces highly subjective and unbounded obligations that can make it impractical to apply or enforce.

2. **Publish clear, practical guidance** to clarify what the ESC considers to be acceptable and even non-acceptable practices under clause 111A – particularly given the issue with legislative drafting noted above. Practical guidance can help reduce ambiguity and ensure practical implementation across the sector.

   At the ESC workshop, the 'pub test' analogy was discussed — suggesting that a switching process could be considered "simple" and "accessible" if the everyday common person would agree it meets that standard. We appreciate the practical intent behind this type of test, but this does not appear to align with the more rigid interpretation of the legislative wording. This is why ESC guidance is important as it helps bridge the gap between policy intent and legal drafting. We consider this guidance should include examples, outline reasonable expectations, and acknowledge that what constitutes simple and accessible will vary and one rule to cater for every single person is not possible.

3. **Publish expectations early and provide transitional support.** We recommend that the ESC publish its expectations in advance of the legislation taking effect. This will allow retailers to assess current switching processes, make any necessary adjustments, and ensure readiness by the commencement date. This will support a smooth transition and reduce the risk of inadvertent non-compliance arising from the unbounded nature of this change.

4. Protections for customers paying higher prices

The ESC's preferred option is a:

- A principles-based approach requiring retailers to take reasonable steps to ensure customers on older contracts are paying a reasonable price, including a flexible definition of reasonable price (Option D.2).

Overall, we support the intent of ensuring customers paying higher prices are protected. We support the ESC's preferred flexible approach that allows retailers to determine the reasonable price particularly for gas retail offers and how to switch customers.

Clause 121(B)

(4) In this Division:

older customer retail contract means a *customer retail contract* that is four years or older from the commencement of the contract.

reasonable price means a *price* determined by a *retailer* having regard to:

(a) the lowest cost *generally available plan* available to new *customers* of the *retailer*;

(b) the median *price* paid by *customers* of the *retailer*;

(c) the *price* of the *Victorian default offer* or the *retailer's standing offers*;

(d) the value of benefits available to the *customer* under their *customer retail contract*, including a discount, rebate or credit (including a *conditional discount*);

(e) any other matters specified in a guideline published by the *Commission* under section 13 of the *Essential Services Commission Act 2001*.

(5) For the purpose of this clause, if the *price* that a *small customer* pays for electricity is at or below the *price* of the *Victorian default offer* then that *price* is deemed to be a *reasonable price*.

For electricity, the Victorian Default Offer (VDO) provides a benchmark deemed reasonable under the draft clause 121(B). In contrast, for gas—where there is no default price—we consider the listed factors above for determining a reasonable price to be broadly appropriate in guiding retailers' assessments. That said, we do not support a prescriptive requirement to consider all factors in every case.

To avoid ambiguity and unintended compliance risk, we recommend the ESC make clear through the drafting of the clause - that the listed factors of reasonable price are not a mandatory checklist.

One option could include using the words "or" after each factor, to better reflect the ESC's intent of a flexible definition of reasonable price.

4.1 Assessing 'reasonableness' for older contracts must account for non-standard plans

As outlined in Section 2.1 above, we are concerned that standardised best offer algorithms may misrepresent the value of non-standard, innovative energy plans. This same issue arises when applying

the new 'reasonable price' test to customers on older contracts. To ensure appropriate recognition of the value delivered by non-standard plans —the ESC could consider revising the clause below

> **A retailer may switch small customers on older contracts to cheaper energy plans**
> (1) Subject to clauses 121D to 121F, a retailer may switch a small customer on an older customer retail contract that is not paying a reasonable price to a plan that is at a reasonable price, based on the retailer's knowledge of the small customer's pattern of energy use with any adjustments for expected changes in use under a plan that is at a reasonable price, ~~and~~ payment history, and any other relevant matters.

Further, the ESC could also consider how retailers should take into account the characteristics of non-standard plans in its guidelines. This would provide practical guidance and help ensure that the assessment of reasonableness does not unintentionally devalue or disrupt innovative plan structures. Retailers do not want to switch customers to plans under which they are actually worse off, because we're bound by an oversimplistic obligation which does not fully reflect the value of the plan.

4.2 We support flexible switching processes

We support flexible switching processes that allow retailers to bring customers on older contracts onto better offers — either through:

- A lower price, or
- A switch to a cheaper plan (with appropriate opt-out or reversal protections, rather than requiring explicit informed consent (EIC)).

Retailers should have discretion in how they operationalise this obligation to reflect differences in systems, customer bases, and product architecture.

We outline our specific feedback on the drafting of the proposed amendments below.

Clause 121B

(3) If a *retailer* identifies that a *small customer* on an *older customer retailer contract* is not paying a *reasonable price* for their *energy* (whether through a review undertaken in accordance with subclause (1) or otherwise), the *retailer* must, within 30 days of identification:

We query whether the reference to 30 days in clause 121B is intended to be "**30 business days**".

Clause 121D

121D Notice of intention to switch and opt-out protections

(iv) information about the *small customer's* right to be switched back to their previous plan as outlined in clause 121F, if the *small customer* does not opt out by the date indicated under subclause (3)(d)(iii).

We query whether the last reference is intended to be "**(3)(e)(iii)"** rather than "(3)(d)(iii)".

4.3 Clarify limits to switch-back obligations for older plans

While we understand the customer protection intent behind allowing a switch-back to a previous plan, this can become unworkable where a retailer has taken steps to decommission that plan from the market.

In such cases, the ability to return a customer to their previous plan may no longer be technically feasible— particularly if the plan has been formally decommissioned and removed from billing systems. It is unclear how switching obligations will operate in practice if the customer seeks to revert to an older product that is no longer available.

To avoid compliance and implementation issues, we recommend the ESC clarify in the final drafting that:

- The right to revert applies only where the original plan is still available and supported by the retailer; and
- The obligation to switch a customer back does not override the retailer's right to retire products in accordance with their contractual terms and existing legal obligations.

This clarification would help ensure that customer protections are preserved without creating impractical obligations or unintended impacts on retailers' ability to manage product availability over time.

5. Better access to concessions

The ESC's preferred option (Option E.2) proposes a:

- Principles-based requirement for retailers to request concession eligibility information from customers at all times when it is relevant to do so and minimum requirements to request this information at specific contact points (e.g. at sign up).

We strongly support the policy intent of ensuring all eligible customers receive their entitlements. Retailers have every incentive to facilitate concession access, and we are committed to improving processes where they deliver real outcomes. However, we are concerned that the proposed drafting of **Clause 16A** introduces ambiguity, and operational burden, without a corresponding benefit to customers.

5.1 Clause 16A(1) appears vague and operationally impractical

16A Customer energy concession eligibility information

(1) A *retailer* must request *energy concession eligibility information* from a *residential customer at* all times when a *retailer* considers it relevant to do so, and always:

a) when entering into a *customer retail contract* with a *residential customer*;

b) when a *residential customer* requests a switch to a new *customer retail contract* with the *retailer*,

c) when a *residential customer* initially contacts the *retailer* requesting standard or *tailored assistance* under Part 6; and

d) subject to clause 150(5), as soon as practicable if a *residential customer* is an *affected customer*.

The phrase "at all times when a retailer considers it relevant to do so" is vague and open to subjective interpretation raising significant compliance uncertainty. It is not practical to expect our customer-facing staff or agents to get it right every time they should "consider it relevant" to ask for the information. Retailers should not be exposed to compliance risk based on a rule that is not sufficiently clear or objectively enforceable.

In our view, the specified scenarios under 16A(1)(a)–(d) appear appropriate and could be retained as an exhaustive list. Removing the broader obligation and just retaining the specific scenarios may provide necessary clarity and can reduce operational and compliance burden. We consider that retaining the phrase 'when a retailer considers it relevant to do so' within the rule can raise implementation risks due to its subjectivity and therefore prefer greater certainty in an exhaustive list.

Clause 16A(1), as currently drafted, would also be difficult to implement across online and automated switching channels. These journeys are designed to be fast, seamless, and low-friction.

5.2 Further concerns with Clause 16A(2)

Clause 16A(2):

(2) When a *retailer* becomes aware that a *residential customer* is no longer eligible for an *energy* concession the *retailer* must:

(a)contact the *residential customer* as soon as practicable to inform the *residential customer*:

(i) that they will no longer have an energy concession applied to their bills; and

(ii) how to update their *energy concession eligibility information*;

(b) if the *residential customer* does not respond to the initial contact, the *retailer* must attempt to contact the *residential customer* a second time.

On informing the residential customer of how to update their energy concession eligibility information (16A(2)(ii), it is important to note that retailers do not have full visibility of the underlying reason for a customer's concession ineligibility. We typically receive limited information — such as a flag that eligibility has lapsed and for the customer to check their name or address details for example — without knowing the customer's specific circumstances driving the lapse in concession. As such, it is not appropriate for the retailer to provide *instructions* on how to update eligibility. In practice, retailer communications should continue to guide and prompt the customer to take action rather than imply we can resolve the issue on their behalf. Requiring and expecting more specificity than this introduces compliance risk and customer confusion. **We seek clarification from the ESC that the current practice in informing the customer on concession ineligibility satisfies the intent under 16A(2)(ii).**

In addition, the current letter we send to customers appears to meet the objective of notifying the customer that their eligibility has lapsed and provides sufficient information on steps needed to check and update their eligibility with Services Australia. Requiring an additional dedicated notification under clause 16A(2)(b) appears to be duplicative and unnecessarily costly, with limited additional benefit in terms of concession take-up. Requiring another customer notice will involve building functionality in our system to cater for this new letter and require the system to handle situations which are currently not designed for i.e. an inflight application with a previously open failed verification. Any increase in prompts or communications must be weighed against the uplift in concession take-up. In our experience, mandating further outreach through another letter may result in significant costs without proportionate uptake in concessions.

Further, Victoria is proposing that verification checks move from quarterly to monthly from July 1 2025. This change is expected to go through, meaning the number of times customers fail concession verification checks will increase across the year and ultimately lead to a large number of letters being sent. This will ultimately increase retailer cost and can ultimately lead to confusion about having an active card if the customer needs to keep re-applying.

We recommend the ESC:

1. Amend Clause 16A(1) to delete the open-ended "at all times when the retailer considers it relevant to do so" requirement,

2. Consider retaining only the specific scenarios listed in (a) to (d) of Clause 16A(1) so the clause reads "A retailer must request energy concession eligibility information from a residential customer:" list a) to d).
3. Encourage broader system reform. As mentioned in our previous submission, a more comprehensive solution to concession verification and application would involve integration with Services Australia or a centralised data-sharing system. We acknowledge this is beyond the scope of the ESC's current review but would encourage future coordination with relevant government bodies.
4. For the reasons set out above – particularly the move to monthly concession verifications, we recommend removing the requirement for a second contact under clause 16A(2)(b).

Further considerations and questions:

- How would these obligations interact with cases of family violence, where sensitivity and discretion are critical?
- In cases where the customer is deceased, how should retailers approach the concession eligibility process and the proposed requirement to follow-up with a second contact?

6. Extend protections to legacy contracts

The ESC's preferred option (Option F.1) proposes extending protections to all contracts (extending to contracts into before 1 July 2020).

We support the underlying policy intent – that all customers should be appropriately protected.

That said, **we recommend the ESC consider the following to support implementation and innovation:**

1. **Clarify how the four-year threshold applies when customers switch back to a previous legacy contract.** In some cases, a customer may switch away from their legacy contract—either voluntarily or through automatic switching under clause 121 or 132—and later request to return to their prior plan (e.g. following a reversal). We seek clarification on whether returning to the original legacy plan restarts the four-year timeframe, or whether the original contract date still applies. Without clear guidance, retailers may face uncertainty in determining when clause 121 obligations apply and whether repeated switching and reversals could reset the four-year clock.

2. **A targeted exemption pathway for long-term fixed-benefit energy asset products** that were intentionally designed to provide long-term value in exchange for customer commitment.

Although not currently offered in Victoria, our long-term Solar Home Bundle product (and similar long-term products) offered in NSW enables customers to access the benefits of a capital asset (such as a solar PV system or battery) in exchange for entering into a multi-year fixed-rate retail agreement, spanning 7 years. These offers are structured to deliver meaningful value over time. Customers agree to the trade-off — a fixed or less flexible tariff in exchange for an upfront benefit — with a clear understanding of the long-term commitment involved.

Retrospectively applying switching requirements or pricing constraints to these types of contracts risks:

- Disrupting the original value proposition,
- Undermining customer trust in long-term bundled offers, and
- Creating commercial and compliance risk for retailers.

A targeted transitional carve out for these offers could ensure fairness without discouraging future investment in innovative clean energy service models.

7. Improving awareness of independent dispute resolution services

The ESC's preferred option (Option G.1) proposes the inclusion of EWOV's phone number on the front page of bills.

We support the intent of improving awareness of these services but raise the following observations and implementation considerations.

- **Design and clarity considerations:** The front page of the bill is already highly condensed with essential information. Additional mandatory inclusions risk cluttering the layout, undermining bill readability and increasing design complexity.
- **Potential for higher call volumes to EWOV**: Placing the EWOV number on the front page may inadvertently lead some customers to contact EWOV before first engaging with their retailer. This could result in higher call volumes for EWOV and delay resolution of issues that may be more efficiently addressed through direct retailer contact.

Other changes proposed

- **Increasing the best offer threshold**. We are supportive of the proposal to increase the minimum potential savings for a negative best offer check from $22 per year to $50 per year.[5]
- **Increasing the minimum disconnection amount.** We support increasing the minimum debt threshold for disconnections from $300 to $500.[6] We encourage national alignment on the minimum disconnection amount so Victoria is aligned with the AER (non-Victorian states).

[5] Proposed under Clause 109(1) and (2).
[6] Proposed Clause 187(2).