

ENFORCEABLE UNDERTAKING

ESSENTIAL SERVICES COMMISSION ACT 2001

Undertaking to the Essential Services Commission under section 54ZD of the *Essential Services Commission Act 2001*

by

EnergyAustralia Pty Ltd (ACN 086 014 968)

Person giving this Undertaking

1. This Undertaking is given by EnergyAustralia Pty Ltd (ACN 086 014 968) (**EnergyAustralia**) to the Essential Services Commission (**commission**), pursuant to section 54ZD of the *Essential Services Commission Act 2001* (**ESC Act**).
2. EnergyAustralia was granted a Victorian electricity retail licence on 25 October 2017 and a gas retail licence on 11 December 1997.
3. As at March 2025, EnergyAustralia had 426,415 residential electricity customers (representing a 15.3% market share) and 369,896 residential gas customers (representing 15.7% market share) in Victoria.

Background

5. The commission enforces a set of rules that energy retailers must adhere to, ensuring that Victorian consumers are treated fairly and receive transparent information regarding their energy services.
6. As the holder of an electricity and gas retail licence, EnergyAustralia must comply with the:
 - 6.1 Energy Retail Code of Practice (**ERCOP**) from 1 March 2022 onwards, and
 - 6.2 Energy Retail Code (**ERC**) from 4 December 2019 to 28 February 2022including the obligations that relate to providing information about assistance available to residential customers facing payment difficulties.
7. These clauses relevantly include:

ERCOP

- 7.1 Clause 141(1)(c) of the ERCOP, which is a civil penalty provision and provides that a retailer must: *at all times when it is relevant to do so, including on being contacted by a residential customer, give the residential customer in a timely manner clear and unambiguous information about the assistance available under this Part.*

- 7.2 Clause 141(1)(e) of the ERCOP, which is a civil penalty provision and provides that a retailer must: *give a residential customer who is receiving, or is entitled to receive, assistance under this Part clear information about how to access other assistance provided by government or community service providers for which the residential customer is or may be eligible.*
- 7.3 Clause 129(2) of the ERCOP which provides that: *A residential customer who has not paid a bill by its pay-by date and who has arrears of more than \$55 (inclusive of GST) is entitled to be contacted by the retailer, within 21 business days after that pay-by-date, and given information about the assistance to which the residential customer is entitled under this Division and how to access it.*
- 7.4 The forms of tailored assistance to which residential customers are entitled are defined in clause 128(1) of the ERCOP. This includes advice about government and non-government help available, including Utility Relief Grants and energy concessions, as well as practical assistance to help customers who may be eligible to apply for a Utility Relief Grant.

ERC

- 7.5 Clause 89(1)(b) of the ERC provides that a retailer must: *at all times when it is relevant to do so, including on being contacted by a residential customer, give the customer in a timely manner clear and unambiguous information about the assistance available under this Part.*
- 7.6 Clause 89(1)(d) of the ERC, which is a civil penalty provision and provides that a retailer must: *give a residential customer who is receiving, or is entitled to receive, assistance under this Part clear information about how to access other assistance provided by government or community service providers for which the customer is or may be eligible.*
- 7.7 Clause 80(2) of the ERC provides that: *A residential customer who has not paid a bill by its pay-by date and who has arrears of more than \$55 (inclusive of GST) is entitled to be contacted by the retailer, within 21 business days after that pay-by-date, and given information about the assistance to which the customer is entitled under this Division and how to access it.*
- 7.8 The forms of tailored assistance to which residential customers are entitled are defined in clause 79(1) of the ERC. This includes advice about government and non-government help available, including Utility Relief Grants and energy concessions, as well as practical assistance to help customers who may be eligible to apply for a Utility Relief Grant.

The commission's concerns

8. From 4 December 2019 to 9 August 2024, EnergyAustralia maintained an exception worklist (**worklist**) in its collection management system for customers who had successfully completed a payment plan but were not eligible for an automatic renewal of that payment plan.
9. The effect of being on the worklist was that all debt-related processes were suspended while customers were on the list.
10. The reason for the worklist, and suspension of all debt related processes, was because the worklist was intended to be, in effect, a “to do list” for EnergyAustralia agents to manually review to determine appropriate next steps. However, due to a breakdown in EnergyAustralia’s processes, this manual review did not take place.
11. By reason of EnergyAustralia’s failure to manually review the worklist, EnergyAustralia’s customers:
 - 11.1 did not receive information about the assistance available to them, as outlined in clause 128(1) of the ERCOP and clause 79(1) of the ERC, within the required timeframes, and
 - 11.2 remained on the worklist until they contacted EnergyAustralia or changed plans.
12. However, the above customers were not subject to EnergyAustralia’s regular debt-collection processes during this time, including that they were not disconnected for non-payment.
13. At least 6,934 residential customers were impacted by this conduct.
14. The commission acknowledges that EnergyAustralia reported this matter to the commission, in line with its obligations under the Compliance and Performance Guideline (Version 9).
15. The commission considers that, by engaging in the conduct outlined in paragraphs 8 to 13, EnergyAustralia contravened the ERCOP and ERC by failing to provide residential customers on the worklist with the payment assistance advice available under:
 - 15.1 Part 6 of the ERCOP, and
 - 15.2 Part 3 of the ERC.
16. EnergyAustralia’s conduct resulted in harm to its customers during the course of the time on the worklist as they:
 - 16.1 did not receive payment assistance information,
 - 16.2 did not receive practical assistance to apply for the Utility Relief Grant Scheme,
 - 16.3 did not receive advice regarding lowering energy costs,
 - 16.4 did not receive tailored advice about the best tariff to lower energy costs (but did continue to receive deemed best offer messages on their bills),
 - 16.5 may not have had eligible concessions applied to their accounts
 - 16.6 may have accrued greater arrears than they otherwise would have, and
 - 16.7 may have experienced stress or other harm as a result of increased debt.

Steps to address the commission's concerns

17. Since the commission raised its concerns following EnergyAustralia's self-report, EnergyAustralia has cooperated with the commission and has taken various steps in response, including:
- 17.1 providing customers with the required payment assistance information
 - 17.2 reversing a default notice for one customer, and
 - 17.3 committing not to raise default notices or to sell on any debt of any customers who were on the worklist.
18. Following discussions with the commission in relation to its concerns about EnergyAustralia's conduct, to resolve the commission's concerns, EnergyAustralia:
- 18.1 acknowledges the commission's view that its conduct contravened clause 141(1) of the ERCOP between 1 March 2022 and 9 August 2025 and clause 89(1) of the ERC between 4 December 2019 and 28 February 2022 by failing to provide the impacted customers with the assistance to which they were entitled under Part 6 of the ERCOP and Part 3 of the ERC; and
 - 18.2 offers this Undertaking to the commission.

Commencement of the Undertaking

19. This Undertaking comes into effect when:
- 19.1 the Undertaking is executed by EnergyAustralia, and
 - 19.2 the commission accepts the Undertaking so executed (**Commencement Date**).

UNDERTAKING

Customer identification

20. EnergyAustralia undertakes within 30 days after the Commencement Date, to provide the commission a written report (**the Identification Report**) detailing the methodology used to determine the total number of Impacted Customers¹ for the Relevant Period², and their status as either Active Accounts³ or Closed Accounts.⁴ The Identification Report must include, at a minimum:
- 20.1 the specific criteria, logic and parameters used to identify Impacted Customers
 - 20.2 any assumptions made during the identification process and the justification for those assumptions
 - 20.3 the final number of customers identified as Impacted Customers
 - 20.4 the names and contact details of the Impacted Customers, and

¹ See Glossary for definition of Impacted Customer.

² See Glossary for definition of Relevant Period.

³ See Glossary for definition of Active Accounts.

⁴ See Glossary for definition of Closed Accounts.

- 20.5 the amounts of any remediation to be provided to the Impacted Customers under paragraph 26, including the basis for the remediation.

Verification of customer identification

21. EnergyAustralia undertakes within 30 days after the Commencement Date, it will request the commission to approve:
- 21.1 the appointment of an independent auditor, and
 - 21.2 draft terms of the engagement of the independent auditor that meets the criteria in paragraphs 23 and 24 of this Undertaking.
22. If the commission approves the appointment of the independent auditor and the draft terms of engagement, EnergyAustralia undertakes to appoint the independent auditor on the terms approved by the commission within 5 business days of receiving the commission's approval (or within such longer period as may be agreed with the commission).
23. Energy Australia undertakes to request the commission to approve the appointment of an independent auditor whom EnergyAustralia reasonably believes:
- 23.1 has the necessary expertise, experience and operational capacity to perform the role contemplated by this Undertaking
 - 23.2 is independent of EnergyAustralia, its related bodies corporates and its officers, and
 - 23.3 has no actual or potential conflicts of interest at the time of appointment.
24. EnergyAustralia undertakes to ensure that the draft terms of the independent auditor's engagement provided to the commission for approval requires the independent auditor to:
- 24.1 review the methodology outlined in the Identification Report
 - 24.2 prepare a report (**the Audit Report**) that provides a definite opinion on:
 - a) whether the methodology described in the Identification Report is fit for purpose, reasonable and sufficiently comprehensive to identify the complete population of Impacted Customers, and
 - b) whether EnergyAustralia has correctly and accurately applied the methodology to determine the final number of Impacted Customers and the amounts of any remediation to be provided to the Impacted Customers under paragraph 26.
 - 24.3 provide the final, signed Audit Report to the commission no later than 60 days after the ESC approves the appointment of the auditor and terms of engagement.
25. EnergyAustralia undertakes to provide the independent auditor with reasonable assistance in connection with preparing the Audit Report.

Customer Remediation

26. For each Impacted Customer identified under the process in paragraph 20 and audited under the process in paragraph 21 to 25, EnergyAustralia undertakes:

- 26.1 within 10 business days after receiving the final, signed Audit Report, to apply a credit to the customer's energy account equal to the full value of any:
- a) annual electricity concession or winter gas concession which the Impacted Customer has not already received where a customer is, or was, eligible for a concession at any time during the Relevant Period, and
 - b) Utility Relief Grant which the Impacted Customer has not already received where a customer is, or was, eligible for EnergyAustralia's hardship program at any time during the Relevant Period
- from the date EnergyAustralia first failed to provide the impacted customer with information about tailored assistance until 24 July 2025.
- 26.2 within 10 days after receiving the final, signed Audit Report, to provide written notification to each Impacted Customer. This notification must:
- a) be sent to a customer's preferred method of communication (where applicable)
 - b) state that a credit has been applied to the customer's account as part of an undertaking with the commission
 - c) specify the amount of the credit
 - d) explain the reason for the credit and the period to which it applies, and
 - e) remind customers where to find the latest best offer message if the Impacted Customer has an Active Account.
- 26.3 for a period of 7 years from the Commencement Date, not to:
- a) list any debt defaults for the Impacted Customer's account
 - b) sell any debt connected to the Impacted Customer's account, and
 - c) refer the Impacted Customer's account to an external debt collector (but, to avoid doubt, does not prevent EnergyAustralia from seeking to recover an amount owed using a debt collector representing EnergyAustralia).
27. For each Impacted Customer identified as having a Closed Account, after completing the undertaking in paragraph 26.1, EnergyAustralia undertakes:
- 27.1 to waive all outstanding debt where the account balance is negative
 - 27.2 to pay the value of any remaining credit to the Impacted Customer where the account balance is positive, and
 - 27.3 in the event that EnergyAustralia is unable to pay the value of any remaining credit under paragraph 27.2 to the Impacted Customer, it will send the funds to the State Revenue Office of Victoria under unclaimed money processes.
28. For each Impacted Customer identified as having an Active Account, EnergyAustralia undertakes not to initiate disconnection processes for the non-payment of bills or failure to comply with the terms of any relevant payment assistance for a period of 7 years from the Commencement Date

unless it solely relates to an amount incurred by the Impacted Customer after the written notification is sent to that Impacted Customer.

Compliance with Undertaking

29. EnergyAustralia undertakes that:

- 29.1 in the event that EnergyAustralia has reason to believe that it has not complied with a requirement of this Undertaking, it will report that possible non-compliance to the commission within 5 business days, and
- 29.2 it will provide further information or particulars to the commission concerning any possible non-compliance reported to the commission within 10 business days of receiving a request by the commission.

Maintaining Records and Monitoring of Undertaking

30. EnergyAustralia undertakes to:

- 30.1 maintain records confirming any actions, steps or measures it takes pursuant to meeting the terms of this Undertaking and retaining those records for a period of at least 7 years from the Commencement Date, and
- 30.2 produce any records in relation to any actions, steps, or measures it is required to take under this Undertaking to the commission if requested within 7 years of the Commencement Date.

Acknowledgements and Publication of Undertaking

31. EnergyAustralia acknowledges that:

- 31.1 EnergyAustralia will bear all costs associated with the Undertaking
- 31.2 the commission will make this Undertaking publicly available by publishing it on its website and in its online Register of Enforcement Action
- 31.3 the commission may from time to time, make public reference to this Undertaking including in news media statements and in commission publications
- 31.4 this Undertaking in no way limits or affects any rights or remedies available to any other person arising from the conduct, and
- 31.5 the commission may publish a summary of the Auditor Report on its website, subject to providing EnergyAustralia an opportunity to comment on the summary.

Glossary

32. In this Undertaking, the following definitions apply:

- 32.1 An **Impacted Customer** means a residential customer of EnergyAustralia who was not provided with tailored assistance information as required by clause 141(1) of the ERCOP and/or clause 89(1) of the ERC at any time during the Relevant Period as a

result of being on the worklist and is, or was at any time, eligible for one or more of the following:

- a) the annual electricity concession
- b) the winter gas concession, or
- c) EnergyAustralia's hardship program.

32.2 An **Active Account** means an account of a customer who entered a standard or market retail contract with EnergyAustralia and has not ceased to obtain customer retail services from EnergyAustralia.

32.3 A **Closed Account** means an account of a customer who entered a standard or retail market contract with EnergyAustralia but has ceased to obtain customer retail services for EnergyAustralia.

32.4 The **Relevant Period** means 4 December 2019 to 9 August 2024.

Executed as an Undertaking

Executed for and on behalf of EnergyAustralia Pty Ltd (ACN 086 014 968) in accordance with section 127 of the *Corporations Act 2001*:



Signature of director

Kate Gibson

Name of director

20/10/2025

Date

Accepted by the Essential Services Commission pursuant to section 54ZD of the *Essential Services Commission Act 2001* and signed on behalf of the commission:



Gerard Brody, Chairperson

20 October 2025

Date