

## Making an Energy Retail Code of Practice – amendments following consultation on exposure draft

On 20 December 2021 the Essential Services Commission (commission) published its final decision with respect to the Energy Retail Code of Practice. This included a final opportunity for stakeholders to review the Energy Retail Code of Practice and raise any drafting corrections of the exposure draft of the instrument before it came into effect. This feedback was to be provided by 17 January 2022.

The commission received submissions from the Australian Energy Council, AGL, Red Energy and Lumo Energy, and Shell Energy. The commission also discussed with Origin Energy its feedback on some clauses. We thank these stakeholders for taking the time to provide feedback.

### **Response to further feedback**

#### **Clauses 26A, 28A, 184 and 188**

Feedback was primarily concerned with the addition of clauses 26A, 28A and clause 188 and the requirements of clause 184.

In recognition of this feedback the commission has removed clauses 26A and 28A from the Energy Retail Code of Practice, for further consideration at a future time. However, the commission has retained clause 188. Clause 188 puts it beyond doubt that all small customers of a licensed retailer, including customers within embedded networks, are afforded protection from disconnection unless specific circumstances exist.

The Australian Energy Council and AGL raised concerns that clause 184 is more than an administrative change and imposes an obligation that would take time to operationalise. The requirement to issue an intention to disconnect notice is not a new obligation. The change is that there are now minimum requirements for that notice, as contemplated by the new definition of “intention to disconnect notice” as provided for in the Energy Legislation Amendment (Energy Fairness) Act 2021. The minimum requirements of the notice of intention to disconnect largely mirror the requirements for a reminder notice that must be issued prior to disconnection for reason of non-payment of a bill or failure to comply with terms of relevant assistance. The commission has decided to retain clause 184\*, but in response to the feedback that some retailers will require additional time to redesign existing notices will not take action under Part 7 of the Essential

Services Commission Act 2001 in respect of conduct that contravenes this clause prior to 1 July 2022.

### Minor typographical and formatting corrections

Red Energy & Lumo Energy provided a list of minor typographical, formatting and other suggested amendments. These have largely been adopted. Requested changes that were not adopted include:

- The request to remove the words “subject to clause 7” from clause 45(1), this amendment clarifies that disclosure of the matters pursuant to section 45 may not, of itself, satisfy the requirement to disclose all matters relevant to the consent of a customer as required by clause 7(1)(a).
- A request to remove the words “may be eligible” from clause 128(1)(e) and replace with “is eligible”. This has not been adopted. The obligation is to assist a customer who may be eligible, it is not for the retailer to pre-determine eligibility by only assisting customers that are eligible as the question of eligibility is determined after submission of the application to the Department of Families, Fairness and Housing. Neither must the retailer assist every customer, only those that may be eligible when regard is had to the eligibility criteria and the customer’s circumstances.
- There were suggestions to remove the term ‘and’ from some paragraphs, many of these conjunctions been retained to make it clear where sub-clauses are co-joined.

Below is a table identifying amendments to the exposure draft published on 21 December 2021 that have been made to the *Energy Retail Code of Practice – 1 March 2022*. A copy of the revised code is available on our website and will commence 1 March 2022.

Clause	Explanation
26A	In response to feedback, clause removed and consideration deferred to future time.
28A	In response to feedback, clause removed and consideration deferred to future time.
Schedule 1	<ul style="list-style-type: none"> <li>• Removal of clauses 26A, and 28A</li> <li>• Addition of clauses 16(1), 16(2), 16(3), 57(2); 59(1); 59(4); 59(6); 59(7); 59(8); 59(10); 59(11); 59(12); 59(13); 59(14); 69(3); 69(7)(b); 72(3); 84(1); 172(1);</li> <li>• Removal of clauses 84(1)(a), and 33(2)</li> </ul>

Minor amendments

- Cross-referencing in the following definitions and clauses was amended to refer to the lower sub-clause level as applicable – additional retailer charge, bill change alert, cooling off period, clause 7(2)(c). Cross referencing corrected for definition of distributor and relevant customer.
- Italics and bolding were applied or removed as required to definition of feed-in tariff agreement, termination notice, numbering to clause 67, clause 75(7), clause 82, clause 106(7)(d), clause 107(3)(e), cl 110(4)(a), 142(2), 163(1), 165.
- Typographical corrections made: definition of Gas Distribution System Code, heading to clause 65, numbering at clause 128.
- Inserted missing subclause reference in clause 59(13) and corrected subclause reference at clause 69(6).
- Amendment to clause 80 to reflect that accommodation for payments relating to the period ending 30 June 2021 are no longer required.
- Amendment to clause 72(2) to refer to residential, not small, customer for consistency with clause 146(1).
- Addition of subclause numbering to “objective” clauses and clauses 163(5) and 166(7).
- Insertion of words “or exempt distributor, as applicable” after the word “retailer” in clause 168(1)(b).
- Amendment/removal of following notes: removal of note under definition of small renewable energy generation facility, removal of duplicated note under ‘Division 5 Part 4’ heading.

In making the Energy Retail Code of Practice changes were also made to the Electricity Distribution Code (now deemed to be a Code of Practice), to reflect change made by the Energy Fairness Act 2021 to life support provisions and some minor changes to reflect the changed status of the instrument (noting a review to reflect its changed status is scheduled for this year). We also are making the following further amendments to that code. One of the changes made was to delete clause 1.3, but the deletion of the contents of clause 1.3.5, which clarifies those obligations with which an exempt distributor must comply was inadvertent. Accordingly, we are also amending the Electricity Distribution Code of Practice to correct that matter and make other minor amendments.

Clause	Explanation
1.3	Clause 1.3 amended to read as follows: <b>1.3 To whom and how this Code of Practice applies</b>

(a) This is a Code of Practice under Part 6 of the ESC Act 2001 and applies to **distributors, retailers, embedded generators** and **exempt persons**.

(b) An **exempt distributor** must comply with this Code except for clauses 2.1.2, 2.2, 3.1(c), 3.2 to 3.5 (inclusive), 4.1, 4.2.6 to 4.2.7 (inclusive), 4.9, 5.1, 5.2, 5.4.1(a), 5.4.1(b), 5.5a, 5.5.2A to 5.5.2I (inclusive), 5.6, 5A.1 to 5A.7, 6.1a to 6.4 (inclusive), 7, 9.1.1 to 9.1.6 (inclusive), 9.1.11, 9.1.12, 9.2, 9.3, 10.1.2(b) and 15. Where an **exempt distributor** is a **customer** of a **distributor**, to the extent that this Code of Practice confers any right or impose any obligation upon a **customer**.

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Delete definition of *Electricity Customer Metering Code* and insert:

**Electricity Customer Metering Code of Practice** means the code deemed to be a code of practice under section 76(1)(b) of the Essential Service Commission Act 2001.

Delete definition of Electricity System Code and insert:

**Electricity System Code of Practice** means the code deemed to be a code of practice under section 76(1)(e) of the Essential Service Commission Act 2001.

Insert the words “of Practice” after the word code in the definition of **eligible**

Insert the words “of Practice” after the word ‘codes’ and again after the word ‘code’ in the definition of metering code

Insert the words “of Practice” after the word “code” in the definition of special meter read.

Schedule 5

Delete the words “of this code” after reference to clause 4.2.7 and insert “of this Code of Practice”.

**28 January 2022**

\* In an earlier version of this notice there was an incorrect reference to clause 188, that has been corrected in this version.