

18 May 2022

John Hamill
Chief Executive Officer
Essential Services Commission
Level 8, 570 Bourke Street
Melbourne Victoria 3000

Submitted via: [Engage Victoria](#)

Dear John

AusNet appreciates the opportunity to engage with the Essential Services Commission (**Commission**) and comment on the proposed changes to the Electricity Distribution Code of Practice (**EDCoP**) and Electricity Distribution Licences (**EDLs**). We appreciate the engagement to date and the time the Commission has spent discussing the changes with industry.

The making of the EDCoP is an important reform to streamline the electricity distribution enforcement framework and make obligations more coherent and customer friendly. We are strongly supportive of the Commission's proposal to repeal various historic guidelines that have largely become redundant and to make the remaining obligations more user-friendly. We also acknowledge that the reform does not intend to introduce any major policy choices.

We welcome many of the proposed changes to the EDCoP and associated EDL. We also acknowledge the considerable effort the Commission has invested in updating these documents. Although we agree with many of the changes proposed, we do have concerns with some of the proposed obligations and with some elements of the licence drafting as set out in this submission. Additionally, there are sub-optimal regulatory arrangements proposed that lack certainty and have potential to result in more disputes and higher administration costs for all parties.

Extending the lead time for written communications sent by post

Our most material concern is the change in EDCoP clause 2.3 and EDL clauses 2.3(ii) to increase the amount of time that any notice sent by post is deemed to be received by the customer to 7 business days after the date of posting. This change is likely to have a significant impact on our business operations.

Most notably, the proposed change represents a 4-business day increase in the lead time required to notify our life support customers of planned outages. This will in turn impact our operations- driving significant cost increases and disruption for customers. We note that we have

expressed our concerns to ESC staff in a meeting prior to submission – these concerns are repeated below for completeness:

- High priority maintenance will need to be delayed longer than is currently the case in order to accommodate the longer notice period. Such works may include bushfire mitigation works. This could increase network risk including reliability and safety risk and slow distributors' response times when such risks are identified.
- Extend connection times for new residential estates. Typically, works that require an outage require 2 weeks to schedule contractor resources, plant and materials and, in addition, nearly 2 weeks to notify customers. The 4-business day increase would increase our overall lead time from 4 weeks to 5 weeks.

In addition, weather forecasts two weeks in advance are substantially less accurate than weather forecasts one week in advance increasing the likelihood of supply interruption cancellations due to inclement weather and severe storms. This will result in further delays to the works set out above.

Additionally, the minimum 7-business day lead time would mean that we could not use the postal service to comply with obligations to provide written communications to life support residents in accordance with EDCoP 12.2.1(c). This clause requires us to notify the customer within 5 business days of becoming aware of their life support equipment and our posted notifications if sent on the same day would be deemed to be received in 7-business days. It would also impact our obligations to provide cancellation and rescheduling notices more than 5 business days before the scheduled start date in hard copy.

We understand the change to 7 business days was made to align with the Evidence Act 2008. We consider the costs of this alignment far outweigh the benefits. We also note that the Energy Retail Code of Practice does not include a similar 7-business day obligation.

We appreciate that the Commission has acknowledged our concerns about this change during discussions. We recommend amending the proposed changes to the EDCoP clause 2.3 and EDL clause 2.3(ii) to 4 business days for regular mail and 2 business days for priority mail. This aligns with Australia Post's delivery times of up to 2 business days for priority mail and 2-4 business days for regular mail.¹

Longer term we encourage the Commission to make further reforms to expand the use of electronic communications for all customers that have provided electronic communication details on the presumption they opt in. Currently, providing notice via an electronic communication is not permitted where a customer has not provided consent to receive electronic communications. We note that many of our regional customers do not have mail delivered directly to their address but rely on PO boxes. This erodes the benefit of the requirement to provide written notifications. We recognise that this change would be a significant policy change and is outside of the scope of our current EDCoP review.

Issues with other areas of the code

We are also concerned about other areas of the proposed EDCoP and EDL as summarised below. These issues are explained in more detail in the table on the next page and in respect to the EDL in the attached marked-up version.

¹ <https://auspost.com.au/business/shipping/domestic-shipping/delivery-speeds-and-coverage>

- The proposed GSL exemption process lacks clarity. We are concerned that the proposed change to EDCoP 14.5.5 does not provide certainty that a distributor's view that an event excuses it from the obligation to pay GSLs is shared by the Commission. Our experience has been that, despite the exemptions in the current EDCoP appearing to be clear cut, this is not always the case. If a distributor's interpretation of when an event excuses it from the obligation to pay will not to be routinely assessed and a decision communicated by the Commission, there should be a period of time from lodgement (i.e. 6 months) after which the exemption is deemed to be final and cannot be revisited. Without this finality, the proposed approach erodes regulatory certainty and increases our revenue risk profile.
- Changes to the connection clauses 3.3.2, 3.5.2 and the and the definition of connection request proposed materially process alter the connection process away from the National Electricity Rules (**NER**) chapter 5A. Concerningly, these changes require construction of unelectrified connection assets on a "build now, provide paperwork and pay later" basis.
- Proposed drafting of tender obligations to "call for tenders for any construction works" do not align with best practice, whereby applicants can – "at the click of button" – instruct us to send a request to a number of accredited contractors to perform the contestable works, undertake designs and/or manage a tender. In most cases, applicants engaging a service provider for contestable works engage an accredited project manager to undertake tendering. The proposed requirements will not allow for the situation of the applicant's project manager, rather than AusNet, managing a tender process.
- The proposed licence variation mechanism in EDL clause 4 does not robustly set out the criteria and process the Commission will apply and follow when it proposes to vary a licence. We understand there is presently further work being undertaken in conjunction with the Energy Retail Code of Practice review regarding the variation process. It is our expectation that the final EDL variation process will include provision for establishing the criteria and reasons for a licence variation, even if an urgent change is required.
- The deletion of the 'best endeavours' standard from several clauses in the EDCoP is problematic. Importantly, the proposed amendment that would require us to access premises at times mutually agreed with the customer (EDCoP clause 7.3.4) may jeopardise the safety of our staff when attending certain premises at a mutually agreed time e.g. locations with illegal electricity connections. Our comments on the EDCoP in the attached document identify other clauses where we consider it appropriate to reinstate the 'best endeavours' standard.
- The proposed changes to harmonic limit requirements that can apply to customers and the criteria for applying (EDCoP clauses 20.5.4 and 21.7.3) refer to multiple Australian Standards and therefore lack clarity. We suggest referring to the most relevant specific Australian Standard (AS 61000.3.6) and maintaining the current arrangements that the causer of harmonic issues remains responsible for their electrical installation.
- The rationale for determining which obligations within the proposed EDCoP are specified as civil penalties is unclear and, in our view, warrants a more nuanced approach. In a number of cases, we consider there are more practical alternatives for ensuring compliance with the EDCoP. For example, specifying the obligations that govern our commercial billing arrangements with retailers and market customers (EDCoP clause 8.8.1 and 8.8.2) as civil penalty provisions risks involving the Commission in legal disputes which are best resolved by the parties themselves.

Attached is a marked-up version of both the proposed EDCoP and EDL highlighting specific issues of concern and proposing some drafting suggestions for the Commission's consideration. We request the Commission consider these suggestions in progressing this review.

We welcome further engagement on this important reform to establish even more streamlined and customer focused obligations. If you have any queries on our submission, please do not hesitate to contact Justin Betlehem on [REDACTED]

Yours sincerely

A handwritten signature in black ink that reads "C. Eddy". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Charlotte Eddy
General Manager Regulatory Strategy and Policy

Appendix A: Response to issues other areas of the proposed EDCoP identified

REFERENCES

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EDCoP clause 3.3.2, 3.4.1 and the definition of connection request

The proposed changes would require a distributor to energise any non-market customer in response to nothing more than a request from the customer. It makes no provision for the customer to be charged for the energisation, nor does it permit the distributor to decline to energise a customer whose supply address does not meet the distributor's technical or safety requirements.

AusNet is materially concerned about the practical impact of this clause 3.3. Compliance with clause 3.3.2 will result in unfunded connections and place obligations on to build premise connection assets to electrical installations that do not meet our technical and safety requirement, even if the electrical installations are not energised. Also, the proposed definition of connection request includes a preliminary enquiry as a connection request, however a preliminary enquiry does not start the connection process; rather, it is a request by the customer for information about the process.

AusNet encourages the ESC to reconsider its amendments to clause 3.3 and revert to the language of the current EDCoP clause.

In addition, it is unclear what the rationale is for specifying this clause as a civil penalty requirement.

EDCoP clause 3.5.2

The proposed process by clause 3.5.2 does not reflect the process distributors follow when a connection application under Chapter 5A is incomplete. NER Clause 5A.D.3(d) permits the distributor to require the customer to complete and resubmit the application, which allows the DNSP to verify that the conditions for connection have now been met. Under this clause 3.5, there is no mechanism to allow the distributor to check the customer's compliance.

As currently drafted, the 10 business day timeframe commences from the date the reason for not accepting the connection request is removed or eliminated. As noted above, the distributor is unlikely to have any visibility of this, therefore it is more appropriate the timeframe commence from the date the distributor verifies that the impediment has been removed. Alternately, AusNet submits that no specific timeframe be specified but that the distributor be required to comply with its connection obligations as soon as reasonably practicable.

In any event, AusNet considers that making this clause a civil penalty requirement is unnecessary because the timeframes for responding to a connection application are specified in NER 5A.D.3(f).

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EDCoP clause 5.2.1

The tender obligations in proposed clause 5.2.1 consolidates in Guideline 14 clause 4.2.1 and our current EDL clause 11.7 that require the distributor to call for tender unless agreed otherwise. We agree, in principle, that customers should be given the option of contestability to augment the network in connection with offers. However, in practice, we have an online web portal that allows applicants to choose any number of suitably skilled, accredited contractors for construction, project management (including tendering activities) and design. Accordingly, we consider the obligation that DBs "must call for tenders for any construction works" does not reflect the range of contestable options and best practice, when applicants can "at the click of button" request us to perform the works or send a request to more than two accredited contractors to perform the works and/or manage a tender.

EDCoP clause 7.3.4

The change from a 'best endeavours' requirement to unconditional requirements to access premises at mutually agreed times in clauses 7.3.4 may result in safety issues for our staff when attending premises with illegal connections at a mutually agreed the time.

Additionally, the definition of 'emergency' is limited because it is adopted from the Emergency Management Act, which focuses on specific and often large-scale emergencies

EDCoP clause 8.8.1 and 8.8.2

The proposed application of civil penalties to obligations that govern our commercial billing arrangements with retailers and market customers risks involving the Commission in legal disputes which are best resolved by the parties themselves. Further, the Commission's involvement is unnecessary as the parties have an economic incentive to comply, regardless of the enforcement framework, because non-conformance puts revenue collection at risk.

EDCoP 8.9.1

Proposed changes will restrict a distributors ability to recover charges in certain circumstances. Clause 70(2) of the ERCOP applies only in relation to small customers. The EDCOP must clearly state the limits of the distributor's ability to recover its charges.

EDCoP 9.3.1 and 9.4

Specifying a civil penalty provision as applying to obligations concerning the content of a deemed distribution contract is unnecessary because the Commission approves the content of each deemed distribution contract (EDCoP 9.2.1).

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EDCoP clause 11.6.1

The change from a 'best endeavours' requirement in clause 11.6.1 to restore the customer's supply as soon as possible requirements after a planned interruption does not give the same level of regard to cost prudence as the 'best endeavours' requirement.

EDCoP section 12

Use of the term "Small Customer Premises" and "Customer Premises" through the code needs to be reviewed. We suggest a review of consistency in the terminology used.

Clause	Small Customer Premises	Customer Premises
12.2. (a)	✓	
12.2. (b)	✓	
12.2.1. (c) (vi)		✓
12.2.1. (d)	✓	✓
12.2.2. (a)	✓	
12.2.2. (b)	✓	
12.2.3. (c)		✓
12.4.1. (a)		✓
12.4.1. (b)		✓
12.5.7. (a) (i) D		✓

EDCOP clause 14.5.4(d)

For the avoidance of doubt, this GSL exemption clause should cover interruptions caused by another distribution network, in addition to the shared transmission network. Due to legacy arrangements, some of AusNet's customers are connected to Essential Energy feeders. Any failure of these assets is outside of our control and AusNet should not be required to pay GSLs for these events. This is consistent with policy intent of the exemption, which is to provide an exemption for failure of a network outside of the distributor's control.

Proposed drafting change below:

supply interruptions caused by a failure of the shared transmission network **or another distribution network.**

EDCoP clause 14.5.5

We suggest a change to the proposed GSL exemption process in proposed clause 14.5.5, that is if the Commission disagrees with our

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assessment of whether we are exempt from making a GSL payment. We would like a clear timeframe for when we can have certainty that the Commission will not challenge our assessment. We propose 6 months would be a reasonable timeframe to establish that no further action would be taken in relation to an exemption notified to the Commission.

EDCOP 17.2.2

EDCoP proposed clauses 17.2.2(a) and (b), that are current clause 13.1.2(a)&(b), reduce the time to de-energise and re-energise a premises where requested by customers from next business day to within 2 hours. This change may have been proposed on the basis that all distributors offer a priority de-energisation and re-energisation services with a 2-hour guarantee. However, this is not the case. AusNet's priority service fee relates to requests on weekends and public holidays, and our requested after-hours fee comes with a same day or night commitment. There is not necessarily a 2-hour guarantee. Presently, a 2-hour commitment is only required for customers recently deenergised that request a re-energisation.

EDCoP clauses 20.5.4 and 21.7.3

We agree with the intent of the inclusion of clauses 20.5.4 and 21.7.3 to achieve harmonic compliance with REFCL harmonic levels by allowing a distributor to allocate Australian Standard technical requirements (AS 61000.3) to a customer. However, AS6100.3 has multiple harmonic requirements, and it is unclear which requirement the EDCoP intends to refer to. The proposed framework is unworkable without further detail, we suggest this should refer AS/NZS 61000.3.6.

Additionally, we question the intent of the wording "to the extent that harmonic filtering by the distributor is not feasible to achieve this outcome". Harmonic filtering equipment installed at the edge of our network is difficult to maintain. Currently, remediating customer caused harmonic issues is the responsibility of the customer. We suggest maintaining the current arrangements that the causer of harmonic issues remains responsible for filtering at their electrical installation.

EDCoP clause 24.2.3

We consider clause 24.2.3 is no longer necessary, and should be removed, given the extensive regulation imposed by the NEL and the NER (including NEL s 157 and the AER's Ring Fencing Guideline) and the anti-competitive conduct provisions in the Competition and Consumer Act 2010.
