

Making an Energy Retail Code of Practice

Consultation

13 September 2021

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Executive summary

As part of its Energy Fairness Plan commitments, the Victorian Government is proposing to reform the enforcement framework that the commission operates under. To align with this new framework, our existing energy codes would need to transition to be made as ‘codes of practice’.

The Bill that would give effect to these reforms if passed (the Essential Services Commission (Compliance and Enforcement Powers) Amendment Bill 2021 (Compliance and Enforcement Bill)) is currently being considered by parliament. However, we are publishing this consultation now to show stakeholders what we expect the transitional process of making an existing code into a code of practice would look like, and how the new enforcement framework will be operationalised. The matters set out in this paper are subject to what occurs in parliament. Actual timelines may differ from what we have set out in this consultation – we will endeavour to keep stakeholders updated if this is the case.

The Compliance and Enforcement Bill proposes to deem existing codes, including the Energy Retail Code, as ‘codes of practice’. However, for the provisions of those instruments to be fully enforced through the new enforcement framework, we will need to undertake a further step and review each code.

We are proposing to start by reviewing the Energy Retail Code. This process will primarily be an administrative one. We do not intend to revisit any policy intent or otherwise alter in any substantive way the obligations that licensees and exempt persons are currently required to follow. This consultation sets out key differences between the Energy Retail Code and the proposed Energy Retail Code of Practice.

We will also need to make consequential amendments to other energy codes and guidelines that currently reference the Energy Retail Code, to reflect new clause numbering. We have set these out in an annex to this consultation. We are consulting separately on proposed changes to breach reporting requirements in the Compliance and Performance Reporting Guideline.¹

Indicative timelines

The key dates relating to remaking the Energy Retail Code as a code of practice are as follows. These are indicative only and are subject to progress of the Compliance and Enforcement Bill through parliament:

- 13 September 2021 – consultation and draft Energy Retail Code of Practice released

¹ Available on our webpage: <https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-and-policies/compliance-and-performance-reporting-guideline/updated-compliance-performance-reporting-guideline>.

- 5 October 2021 – stakeholder information session
- 25 October 2021 – submissions to consultation close
- December 2021/January 2022 – final decision on new Energy Retail Code of Practice, pending legislative changes and stakeholder feedback
- Early 2022 – new Energy Retail Code of Practice takes effect.

Questions for stakeholders

We consider this consultation to be technical and administrative in nature, given we are not materially changing the existing obligations on retailers or exempt persons. We welcome stakeholder views and feedback on the following questions:

1. Can you identify any issues with implementing the proposed Energy Retail Code of Practice, that we should consider?
2. Can you identify any other changes we may need to make as a consequence of the proposed Energy Retail Code of Practice? These could include changes to the draft code of practice itself, or changes to other commission instruments (such as those set out in Annexes D-F).

How to give us your feedback

We are seeking feedback on this consultation. Submissions should be made via [Engage Victoria](#) by 5 pm on 25 October 2021.

Submissions will be published on the commission's website, except for any information that is commercially sensitive or confidential. Submissions should clearly identify which information is sensitive or confidential.

We are also open to individual calls with stakeholders to discuss specific feedback. If you have any questions or would like to arrange a meeting, please contact us at energyreform@esc.vic.gov.au.

1. Introduction

The government is strengthening the commission's enforcement powers

In November 2018, the Victorian Government announced its Energy Fairness Plan, aimed at reducing energy costs for families and increasing transparency and competition in the market. As part of the Energy Fairness Plan, the government also committed to strengthen the commission's enforcement powers. This included giving the commission clearer investigatory powers, and overhauling fines and penalties that could be faced by energy companies.²

Several government commitments in the Energy Fairness Plan have been implemented through the Energy Legislation Amendment (Energy Fairness) Act 2021 (Energy Fairness Act) which was passed through parliament on 3 August 2021 and is due to commence on 1 May 2022 (unless proclaimed earlier). The government is now also progressing reforms to the enforcement framework under which the commission operates via the Compliance and Enforcement Bill, which is currently in parliament.

As part of these reforms, it is proposed that the commission's existing energy codes will transition to be made as 'codes of practice' under the Essential Services Commission Act 2001 (ESC Act). This would mean the codes will become subordinate instruments, rather than being conditions of a licence or conditions of an exemption.

This transition is anticipated to occur in two phases:

1. If the Compliance and Enforcement Bill is passed, the commission's codes will be deemed to be codes of practice from the commencement of the legislation.³
2. The commission will then need to re-examine each deemed instrument and identify provisions to be specified as civil penalty requirements, so as to enable enforcement of the obligations through the new framework as set out in the Compliance and Enforcement Bill. The first code we plan to examine in this way is the Energy Retail Code.

To provide stakeholders with greater clarity on what the process of remaking the Energy Retail Code into a code of practice will involve, we are consulting on the making of the Energy Retail Code of Practice in advance of the Compliance and Enforcement Bill passing parliament. This is

² Victorian Labor Party, [Cracking down on dodgy energy retailers – Labor's energy fairness plan](#), November 2018.

³ These codes are the Code of Conduct for Marketing Retail Energy, Electricity Customer Metering Code, Electricity Customer Transfer Code, Electricity Distribution Code, Electricity System Code, Energy Retail Code, Gas Distribution System Code and Public Lighting Code.

intended to assist stakeholders in understanding how the new enforcement framework will be operationalised. The matters set out in this paper are subject to what occurs in parliament. Actual timelines may differ from what we have set out in this consultation – we will endeavour to keep stakeholders updated if this is the case.

Our approach to remaking energy codes as codes of practice

If the Compliance and Enforcement Bill is passed, we will be remaking our gas and electricity codes as codes of practice over the next few years. We are proposing to commence that process with the remaking of the Energy Retail Code.

This paper outlines the approach we intend to take to remaking the Energy Retail Code of Practice. Some of our other codes have not been reviewed for a number of years, and a different approach may need to be taken to the remaking of those instruments.

The process of remaking the Energy Retail Code as a code of practice will primarily be an administrative one. We do not intend to revisit any policy intent or otherwise alter in any substantive way the obligations that licensees and exempt persons are currently required to follow. Instead, we will be looking to streamline obligations where there is duplication between instruments, update any outdated references (such as to bodies or instruments that no longer exist), and otherwise tidy up instruments to make them easier to navigate and understand.

After an initial transition period⁴, where we will review our codes and remake them to reflect their status as codes of practice made under the ESC Act, it is proposed these instruments will be subject to the requirements of the Subordinate Legislation Act 1994 for the making and scrutiny of legislative instruments.

Overview of this document and annexes

This consultation document summarises the key proposed changes between the Energy Retail Code and draft Energy Retail Code of Practice (chapter 2), and how we are proposing to consolidate marketing code provisions into the Energy Retail Code of Practice (chapter 3). Chapter 4 outlines implementation considerations, and chapter 5 sets out next steps including questions we are particularly seeking stakeholder feedback on.

Accompanying this consultation are annexes containing our detailed proposals:

- **Annex A** is the draft Energy Retail Code of Practice.

⁴ This transition period is proposed to end on 31 December 2025.

- **Annex B** is a table identifying how provisions of the draft Energy Retail Code of Practice match up against existing provisions of the Energy Retail Code, with a brief summary of the amendments.
- **Annex C** is a table showing our assessment of existing provisions in the marketing code and which we are proposing to bring over to the Energy Retail Code of Practice.
- **Annex D** summarises the consequential amendments we expect to make to other codes and guidelines to update references to the Energy Retail Code.
- **Annexes E and F** set out consequential amendments we will need to make to the Electricity Distribution Code of Practice and Gas Distribution System Code of Practice respectively, to reflect Energy Fairness Act changes to life support provisions.

2. The new Energy Retail Code of Practice

The draft Energy Retail Code of Practice (see Annex A) is largely the same as the existing Energy Retail Code. There are a few key differences, discussed in the following sections.

Structure of the Energy Retail Code of Practice

We have restructured the code to follow the customer journey more closely, as shown in the table below. While rules around payment difficulty support, family violence and life support equipment apply throughout the customer journey, we have included these as individual Parts to minimise drafting changes as a result of this transition and to highlight the importance of these protections.

Part	Description
Part 1	Preliminary Contains definitions and introductory provisions
Part 2	Retailers' general obligations Includes the explicit informed consent provision and obligations that were previously contained elsewhere in the code and referred to as "other" or "miscellaneous" obligations.
Part 3	Customer retail contracts Includes the provisions that are current in Part 2 Division 1 (Standard Retail Contracts) and Part 2, Division 2 (Market Retail Contracts).
Part 4	Retailers' pre-contract and marketing obligations Includes all the existing pre-contract obligations that are presently in: Part 2, Divisions 2A and 3 (standing offer tariffs and customer retail contracts – pre contractual procedures and obligations to apply), Part 2 Division 10 (energy marketing), and Part 2A, Divisions 2 and 5 (clear advice and energy fact sheets).
Part 5	Rights and obligations once a contract is entered into Includes the remainder of obligations from current Part 3, Divisions 4-7 and Part 2A, Divisions 3 and 4.
Part 6	Assistance for residential customers anticipating or facing payment difficulties This Part replicates existing Part 3 of the Energy Retail Code.
Part 7	Assistance for customers affected by family violence This Part replicates existing Part 3A of the Energy Retail Code.
Part 8	Life support equipment The Energy Fairness Act amends the Electricity Industry Act 2000 and Gas Industry Act 2001 to include obligations on retailers in relation to registration of life support customers and arrangement of disconnection that are similar to existing provisions of the Energy Retail Code. There are provisions in relation to life support that will remain in the Energy Retail Code of Practice and these will be found in new Part 8.
Part 9	Termination Includes provisions located in various parts of the current Energy Retail Code that deal with the termination of standard retail contracts, market retail contracts and exempt

person arrangements (termination of deemed contracts is located in Part 4 due to its interaction with other deemed contract provisions).

Part 10	Disconnection of premises The Energy Fairness Act amends the Electricity Industry Act 2000 and Gas Industry Act 2001 to include obligations on retailers in relation to arrangement of disconnection are similar to existing provisions of the Energy Retail Code. There are provisions in relation to disconnection that will remain in the Energy Retail Code of Practice and these will be found in new Part 10.
Schedules 1-7	Schedule 1 specifies provisions of the Energy Retail Code of Practice that are civil penalty requirements for the purpose of the new enforcement framework proposed by the Compliance and Enforcement Bill. Schedules 2-7 replicate existing schedules to the Energy Retail Code.

Each Part has a ‘simplified outline’ at the start to summarise the contents of that Part for ease of navigation. Where the existing Energy Retail Code has objective or purpose clauses throughout, these have been streamlined so there is just one objective or purpose clause at the start of a Part in the code of practice.

Life support and disconnection provisions

The Energy Fairness Act amends the Electricity Industry Act 2000 and Gas Industry Act 2001 to include obligations on retailers in relation to registering life support customers and arranging disconnection that are similar to existing provisions of the Energy Retail Code. We are therefore proposing to exclude these provisions from the Energy Retail Code of Practice to avoid duplication. The Energy Retail Code of Practice will continue to contain some existing obligations relating to life support and disconnection where:

- these are not addressed by the Energy Fairness Act, or
- the Energy Fairness Act says that those matters will be addressed by an ‘applicable code’ (i.e. the Energy Retail Code of Practice).

Life support provisions

Provisions that deal with steps a retailer must take when advised of a person needing life support equipment will be contained in the Electricity Industry Act 2000 and Gas Industry Act 2001 (once the Energy Fairness Act commences)⁵, so we have not included these provisions in the draft Energy Retail Code of Practice. The remaining life support provisions are in Part 8 of the draft Energy Retail Code of Practice.

⁵ Division 5C, Part 2 of the Electricity Industry Act 2000 and Division 4AA, Part 3 of the Gas Industry Act 2001.

The provisions in Part 8 include matters that the Energy Fairness Act says will be addressed in an applicable code, such as the information to be given by a retailer to a customer when advised that a life support resident resides, or is intending to reside at the premises. These obligations are not materially changed from existing obligations in the Energy Retail Code.

The Energy Fairness Act does not address obligations that deemed exempt persons have in relation to the life support framework. We have therefore retained existing obligations on deemed exempt persons in the draft Energy Retail Code of Practice. These obligations are also not materially changed from existing obligations for deemed exempt persons in the Energy Retail Code.

Disconnection provisions

Provisions relating to the basis on which a customer may be disconnected will be contained in the Electricity Industry Act 2000 and Gas Industry Act 2001 (once the Energy Fairness Act commences)⁶, so we have removed these from the draft Energy Retail Code of Practice.

Remaining disconnection provisions are in Part 10 of the draft Energy Retail Code of Practice.

We note some changes in terminology relating to disconnections following the Energy Fairness Act:

- The Electricity Industry Act 2000 and Gas Industry Act 2001 will make a clear distinction between a 'reminder notice' (reminding a customer that payment of a bill is required) and an 'intention to disconnect notice' (which is sent in other circumstances where a customer is potentially on a pathway to disconnection, for example failure to provide acceptable identification). Both types of notice will always be required to be followed up by a disconnection warning notice.
- The Electricity Industry Act 2000 and Gas Industry Act 2001 also now refer to an 'access request notice' (a notice requesting access to a meter).

While these are changes in terminology, they do not reflect a change in practice. Retailers are already required to send customers a notice of intention to potentially disconnect a customer or a reminder, prior to a disconnection warning notice. Retailers are also already required to send a customer a notice requesting access to a meter, prior to arranging for disconnection on the basis that access to a meter has been denied. The draft Energy Retail Code of Practice reflects this new terminology.

⁶ Division 5C, Part 2 of the Electricity Industry Act 2000 and Division 4AA, Part 3 of the Gas Industry Act 2001.

Besides these changes in terminology, there are no material changes to disconnection obligations on retailers and exempt persons.

The Energy Fairness Act does not address obligations that deemed exempt persons have in relation to disconnection. We have therefore retained existing obligations on deemed exempt persons in the draft Energy Retail Code of Practice. These obligations are also not materially changed from existing obligations for deemed exempt persons in the Energy Retail Code.

Civil penalty requirements

Schedule 1 of the draft Energy Retail Code of Practice designates various provisions of the proposed Energy Retail Code of Practice as being ‘civil penalty requirements’ for the purpose of the Essential Services Commission Act 2001. Designation of a provision as a civil penalty requirement simply means that contraventions of that provision can be enforced through the new enforcement framework that is proposed to be established by the Compliance and Enforcement Bill.⁷

Accordingly, we are proposing to specify the majority of provisions in the Energy Retail Code of Practice as civil penalty requirements (as set out in Schedule 1 of the draft code) given that, if a provision in the Energy Retail Code of Practice imposes an obligation, it should be enforceable.

Our approach to compliance and enforcement is set out in our compliance and enforcement policy.⁸ We will be updating this policy in light of the new enforcement framework.

We note that provisions designated as civil penalty requirements will automatically attract the default penalty notice amount. For energy licensees this is 200 penalty units⁹, and for other body corporates, which may include exempt persons, this is 120 penalty units.¹⁰ Civil penalty requirements may also be the subject of a civil penalty order by a court up to a default amount, which in the case of body corporates (including energy licences) is 1200 penalty units. These default amounts for civil penalties and penalty notices may give way to other amounts prescribed in regulations. Any prescribing of different penalty amounts will be a separate process that the

⁷ The proposed new enforcement framework establishes the same toolkit that is commonly available to most modern regulators. It includes the potential for infringement notices, enforceable undertakings and civil litigation. Remedies available as part of civil litigation will include monetary penalties, as well as compliance orders, injunctions, enforceable undertakings, and adverse costs orders.

⁸ Our approach to compliance and enforcement is set out in our [Energy Compliance and Enforcement Policy](#).

⁹ A penalty unit is set by the Treasurer and currently equates to \$181.74 (S233, 20 May 2021).

¹⁰ New section 54U, proposed to be inserted by s 8, Essential Services Commission (Compliance and Enforcement Powers) Amendment Bill 2021.

Department of Environment, Land, Water and Planning will undertake once the Energy Retail Code of Practice has been made.

Other changes to streamline the Energy Retail Code of Practice

Greenhouse gas disclosure on electricity customer's bills

Clause 35A of the Energy Retail Code mandates certain information that must be included in a small customer's bill concerning greenhouse gas emissions. This clause mirrors what is contained in Guideline 13, which applies to customers that are not small customers. To avoid unnecessary duplication, clause 64 of the draft Energy Retail Code of Practice proposes to require compliance with an amended version of Guideline 13 which will be reissued as applying to all customers. This means the obligation will be set out in a single instrument.

Utility Relief Grant applications guideline

We are proposing to transfer existing obligations in the 'supporting Utility Relief Grant applications' guideline to the Energy Retail Code of Practice by including them as part of 'tailored assistance' obligations (see clause 128(1)(e)). The obligations are not materially different to the obligations that took effect from 1 October 2020, but we consider placing them in Part 6 of the draft Energy Retail Code of Practice alongside other assistance will help ensure the assistance is provided and made known to customers.

Internet publication of Victorian default offer tariffs and standing offer tariffs for gas

Clause 15A of the Energy Retail Code appears as clause 24 in the draft Energy Retail Code of Practice. Clause 15A(1)(a) of the Energy Retail Code requires a retailer to publish on its internet site details of its standing offers in the manner set out in Schedule 4. However, clause 15A(3) provides that this is satisfied by publication of an energy fact sheet (where content and form is different to Schedule 4). In the draft Energy Retail Code of Practice we have clarified that what a retailer is required to publish on its website is the energy fact sheet (the form and content of which is generated by the Victorian Energy Compare website). This change also removes Schedule 4 from the existing Energy Retail Code.

Terminology changes

In the draft Energy Retail Code of Practice we have changed some terminology to improve consistency of terms used throughout the instrument, including:

- **Victorian default offers/standing offers.** The Energy Retail Code refers to the Victorian default offer and standing offers when this may mean the same offer. In the draft Energy Retail Code of Practice, standing offers for electricity are consistently referred to as Victorian default offers and standing offers for gas are consistently referred to as standing offers.

- **Disconnection/connection vs de-energisation/re-energisation.** The Energy Retail Code uses both the paired terms disconnection/connection and de-energisation/re-energisation interchangeably. The terminology has been updated in the draft Energy Retail Code of Practice to refer solely to disconnection/re-connection for consistency.

Technical amendments to the model terms and conditions for standard retail contracts

We are proposing two technical amendments to the model terms and conditions for standard retail contracts (as set out in Schedule 2 of the draft Energy Retail Code of Practice):

- An amendment to clause 8.2(b) to acknowledge that variations to the Victorian default offer/standing offer may be varied more often than once every six months if the variation is required by law. Clause 8.2(b) says that retailers will not vary standing offer prices more often than once every six months. This does not take into account that variations may be necessary to comply with orders or price determinations as provided for in section 35(3AB) of the Electricity Industry Act and section 3AC of the Gas Industry Act.
- An amendment to clause 4.2(a)(iv) to align with a minor change made to the equivalent model terms and conditions in the national framework by the Australian Energy Market Commission in December 2019.¹¹ This amendment clarifies how the contract ends in circumstances where a customer moves from the losing retailer's standard or market retail contract to the new retailer's standard contract.

We are also proposing to remove references to the National Energy Retail Law and the Rules in the model terms and conditions for standard retail contracts. These references were originally included as it was intended that the National Energy Customer Framework would be adopted in Victoria. As this is not planned, we have removed the text implying that this change is imminent. However, we have retained the references to the National Energy Retail Rules and provided that this should be read as a reference to the Energy Retail Code of Practice and Victorian energy legislation. This will enable retailers who operate across jurisdictions to continue to use the one form of model terms and conditions, with explanations as required to indicate variation across jurisdictions.

¹¹ AEMC, [National Electricity Amendment \(reducing customers' switching times\) rule 2019 – rule determination](#), December 2019.

3. Consolidating marketing code provisions

We are proposing to consolidate key provisions from the Code of Conduct for Marketing Retail Energy (marketing code) into the new Energy Retail Code of Practice. We consider it makes sense to address the marketing code as we are remaking the Energy Retail Code as a code of practice for two key reasons:

- The Energy Fairness Act changes relate to marketing, so we are already considering whether existing marketing provisions are inconsistent with the government's policy intent and need to be removed to avoid confusion. Existing provisions are located both in the Energy Retail Code and in the marketing code.
- The marketing code has not been reviewed in over 10 years and many of the provisions are now duplicated in the Energy Retail Code and other instruments (such as the Australian Consumer Law). The Compliance and Enforcement Bill will require us to conduct an administrative review of the marketing code in the next few years with a view to remaking it as a Code of Practice. We therefore think it is timely to do that review now, to streamline the consultation process and minimise the burden on stakeholders from consulting.

We intend to only conduct an administrative review at this stage, to consider whether provisions can be removed on account of duplicating obligations found elsewhere, or otherwise be consolidated into the Energy Retail Code of Practice. We are not revisiting the underlying policy intent of existing obligations, or proposing changes that would weaken or materially alter consumer protections relating to marketing practices.

Review of marketing code provisions

We have mapped out provisions in the marketing code against equivalent requirements already in the Energy Retail Code or other instruments such as the Australian Consumer Law (see Annex C). Based on this assessment, we consider the majority of provisions in the marketing code largely replicate obligations that are found elsewhere (primarily in the Energy Retail Code).

There are a small number of marketing code provisions that we do not think are adequately covered by other instruments. We are therefore proposing to insert these existing obligations into the proposed Energy Retail Code of Practice (some in a slightly amended form to reflect the transition to a new instrument), and then repeal the marketing code.

We consider this approach will provide clarity to all stakeholders on our expectations relating to marketing conduct while maintaining the strong customer protections that are currently in effect.

Below we summarise the obligations we are proposing to consolidate into the Energy Retail Code of Practice, followed by those we consider are adequately covered by other provisions. Annex C

sets out our mapping of provisions in more detail. We welcome stakeholder feedback on these proposals.

Retailers are already required to comply with the marketing code as a condition of their licence. This proposed consolidation of the marketing code into the Energy Retail Code of Practice would not create new obligations on licensed retailers. It would, however, impose new obligations for exempt sellers who are currently not required to comply with the marketing code. However, we note that exempt sellers already have to comply with other marketing requirements in the Energy Retail Code, and we are only proposing to include a limited number of additional obligations in the Energy Retail Code of Practice by consolidating the marketing code. We therefore consider it is preferable to impose these limited new requirements, rather than have different rules for exempt sellers.

Marketing code obligations we are proposing to consolidate into the Energy Retail Code of Practice

Subject	Notes
Training	<p>We are proposing to retain the existing obligation on a retailer at clause 1 of the marketing code to provide training to persons engaged in energy marketing activity, but we have updated and reduced the content requirement of this training.</p> <p>This obligation is proposed to become clauses 53 and 54 of the Energy Retail Code of Practice.</p>
Contact with customers	<p>We are proposing to retain the existing obligation on retailers at clauses 2.1 and 2.2 of the marketing code to provide certain information when undertaking personal and telephone contact in relation to marketing activity. The Energy Fairness Act has banned cold calling and door-to-door sales for residential customers, however, this obligation continues to have relevance insofar as that activity may continue for small business customers.</p> <p>This obligation is proposed to become clause 50 of the Energy Retail Code of Practice.</p>
Visit records/ telephone records	<p>We are proposing to retain the existing obligation on retailers at clauses 2.4 and 2.5 of the marketing code to keep certain records in relation to personal and telephone contact in relation to energy marketing activity.</p> <p>This obligation is proposed to be combined with the existing record keeping obligation in the Energy Retail Code, and become clause 54 of the Energy Retail Code of Practice.</p>
Pre-contractual	<p>We are proposing to retain one specific element of the obligation at clause 3.3 of the</p>

information	<p>marketing code, relating to providing information to a customer about whether a marketing associate will receive any commission or fee paid by a retailer by reason of the customer entering into the contract. This obligation is proposed to become clause 47(1)(f) of the Energy Retail Code of Practice.</p> <p>We consider that the other elements of the marketing code relating to pre-contractual information are covered by clause 70H in the Energy Retail Code (which is proposed to become clause 38 of the Energy Retail Code of Practice).</p>
Sales to minors and “authorised” consumers	<p>We are proposing to retain the obligation on retailers at clause 4.3 of the marketing code to take reasonable steps to ensure it enters into a customer retail contract with persons who have the authority to enter into that contract.</p> <p>This obligation is proposed to become clause 31 of the draft Energy Retail Code of Practice.</p>

Marketing code obligations we are proposing to not retain

Subject	Rationale for not retaining
No contact lists	<p>We consider that the Energy Retail Code (clauses 65 and 66, which are proposed to become clauses 51 and 52 of the Energy Retail Code of Practice) provides the consumer protections set out in this provision.</p> <p>We also note that the Energy Fairness Act curtails the extent to which cold calling and door-to-door sales can occur.</p>
Clear language	We consider that the Energy Retail Code (clauses 60B and 70H, which are proposed to become clauses 43 and 38 of the Energy Retail Code of Practice) and Australian Consumer Law provide the customer protections set out in these provisions.
Conduct	We consider that the Australian Consumer Law provides the customer protections set out in this provision.
Cooling-off	We consider that the Energy Retail Code (clause 47, which is proposed to become clause 97 of the Energy Retail Code of Practice) and Australian Consumer Law provide the consumer protections set out in this provision.
Contract information	We consider that the Energy Retail Code (clause 64, which is proposed to become clause 47 of the Energy Retail Code of Practice) provides the consumer protections set out in this provision.

Electronic commerce information	We consider that the Energy Retail Code (clause 63, which is proposed to become clause 46 of the Energy Retail Code of Practice) provides the consumer protections set out in this provision.
Off retailer business premises contracts	This clause is out of date. This provision obligated retailers to comply with Part 4 of the <i>Fair Trading Act 1999</i> that deals with off-business-premises sales. This Part was repealed in 2010 and the matters are instead regulated by the Australian Consumer Law.
Consumer transfer	We consider that the Energy Retail Code (clauses 57-59, which are proposed to become clauses 113-115 of the Energy Retail Code of Practice) already provides the consumer protections set out in this provision.
Contract terms	This clause is out of date and inconsistent with the current Energy Retail Code (since 2015 there are no longer terms or conditions in the Energy Retail Code marked with an asterisk which this clause refers to). We also consider that other clauses in the Energy Retail Code cover requirements for consent in relation to entry and variation of contracts.
Commencement of retail service	We consider that the Energy Retail Code (clause 64(1)(b), which is proposed to become clause 47(1)(b) of the Energy Retail Code of Practice) already provides the consumer protections set out in this provision.
Marketing and consumer information	We consider that the consumer protections set out in this provision are addressed by the Australian Consumer Law, Energy Fairness Act provisions, licence conditions and privacy legislation.
Dispute resolution	We consider that the Energy Retail Code (clauses 50, 56, 59A and 64, which are proposed to become clauses 102, 13, 14 and 47 of the Energy Retail Code of Practice) already provides the consumer protections set out in this provision.

4. Implementation considerations

Consequential amendments to other codes and guidelines

A number of our other instruments include cross-references to the Energy Retail Code, or provide guidance on how we expect retailers to comply with provisions in the code. We have conducted a review of these instruments and identified where we consider updates will be required. Annex D contains a table summarising these proposed changes.

As with the other changes proposed in this consultation, these consequential amendments are purely administrative in nature, to ensure our other instruments still work in tandem with the new Energy Retail Code of Practice. We are not intending to make changes to the nature of obligations or our expectations about how retailers comply with them.

We welcome stakeholder feedback on whether there are other instruments or references to the Energy Retail Code that we should update at this time.

Amendments to the distribution codes

One particular update we draw to your attention are the proposed amendments to the life support provisions in the Electricity Distribution Code of Practice and Gas System Distribution Code of Practice, as set out in Annexes E and F.

As outlined earlier in this paper, the Energy Fairness Act amends the Electricity Industry Act 2000 and Gas Industry Act 2001 to include obligations on retailers relating to registering life support customers. These obligations are similar to existing provisions in the Energy Retail Code. While the Energy Fairness Act amendments do not directly relate to distributors, it is important that life support obligations requiring a flow of information between retailers, distributors and exempt persons are consistent between all parties.

We are therefore proposing to amend the life support frameworks in the Electricity Distribution Code of Practice and Gas System Distribution Code of Practice, to align the terminology used with the terminology introduced in the Energy Retail Code of Practice as a result of the Energy Fairness Act. These amendments represent only a change in terminology and do not introduce any material changes in obligations on distributors or exempt persons.

We are also proposing to amend some parts of the distribution codes of practice that are not consistent with their status as legislative instruments. For instance, interpretation clauses have been removed, as the Interpretation of Legislation Act 1984 (Vic) will apply. We have also removed provisions pertaining to variation of the instruments, as that will now occur in accordance with the Subordinate Legislation Act 1994 (Vic) and any regulations made under that Act.

We have specified a limited number of civil penalty requirements in these codes of practice. Specifically we have included provisions that are currently prescribed as “energy industry contraventions” under the existing enforcement framework set out in the Essential Services Commission Act 2001, as well as provisions in relation to the life support framework.

We will undertake a comprehensive review of the distribution codes in due course.

Industry implementation

The changes we are proposing are administrative in nature and are not intended to materially alter the nature of obligations retailers or exempt persons are required to follow. We therefore consider the impact on industry of these proposals should be minimal.

The main implementation steps we expect will be required are internal system changes for retailers to reflect the new clause numbering of obligations in the Energy Retail Code of Practice. In particular, compliance breach reporting obligations will be impacted by the transition.

We are consulting separately on proposed updates to the Compliance and Performance Reporting Guideline.¹² This consultation includes both a wider review of breach reporting requirements and consequential amendments required as a result of the new Energy Retail Code of Practice.

¹² Available on our webpage: <https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-and-policies/compliance-and-performance-reporting-guideline/updated-compliance-performance-reporting-guideline>.

5. Next steps

Questions for stakeholders

We consider this consultation to be technical and administrative in nature, given we are not materially changing the existing obligations on retailers or exempt persons. We welcome stakeholder views and feedback on the following questions:

1. Can you identify any issues with implementing the proposed Energy Retail Code of Practice, that we should consider?
2. Can you identify any other changes we may need to make as a consequence of the proposed Energy Retail Code of Practice? These could include changes to the draft code of practice itself, or changes to other commission instruments (such as those set out in Annexes D-F).

How to give us your feedback

We are seeking feedback on this consultation. Submissions should be made via [Engage Victoria](#) by 5 pm on 25 October 2021.

Submissions will be published on the commission's website, except for any information that is commercially sensitive or confidential. Submissions should clearly identify which information is sensitive or confidential.

We are also open to individual calls with stakeholders to discuss specific feedback. If you have any questions or would like to arrange a meeting, please contact us at energyreform@esc.vic.gov.au.

Our approach to consultation is set out in our updated Stakeholder Engagement Framework.¹³

Indicative timelines

Target date	Activity
13 September 2021	Consultation and draft Energy Retail Code of Practice released.
5 October 2021	Stakeholder information session.

¹³ Essential Services Commission, Stakeholder engagement framework – Charter of Consultation and Regulatory Practice, June 2018.

25 October 2021	Submissions close.
December 2021/ January 2022	Final decision on new Energy Retail Code of Practice, pending legislative changes and stakeholder feedback.
Early 2022	New Energy Retail Code of Practice takes effect.

Annexes

Accompanying this consultation are several annexes containing our detailed proposals.

Annex	Contents
A	Draft Energy Retail Code of Practice.
B	Table identifying how provisions of the draft Energy Retail Code of Practice match up against existing provisions of the Energy Retail Code, with a brief summary of the amendments.
C	Table showing our assessment of existing provisions in the marketing code and which we are proposing to bring over to the Energy Retail Code of Practice.
D	Summary of the consequential amendments we expect to make to other codes and guidelines to update existing references to the Energy Retail Code.
E	Amendments to the Electricity Distribution Code of Practice.
F	Amendments to the Gas Distribution System Code of Practice.