

Essential Services Commission  
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MELBOURNE VIC 3000

Lodged online: <https://engage.vic.gov.au/supporting-energy-customers-through-coronavirus-pandemic>

14 July 2020

### Supporting energy customers through the coronavirus pandemic

The Australian Energy Council (the '**AEC**') welcomes the opportunity to make a submission to the Essential Services Commission (the '**ESC**') on its *Supporting energy customers through the coronavirus pandemic Draft Decision* (the '**Draft Decision**').

The AEC is the industry body representing 22 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

2020 has been a year of unprecedented challenges for Victorian energy consumers – both residential and business. Energy retailers have not been immune to these challenges, and have had to adapt quickly and effectively to provide their customers with the support they need, in a time of crisis. The AEC remains concerned that the pressures being placed on energy retailers by Governments and regulators such as the ESC is hampering their ability to support their customers.

The AEC considers the efforts made by energy retailers to support their customers to date has been exemplary. Data published by the ESC and the Australian Energy Regulator has proven that retailers have managed more calls, set up more payment plans, and assisted a broader range of customers than the retail frameworks accounted for. This is particularly pertinent in Victoria, where after 3 years of review, the ESC determined in 2018 that business customers should not be entitled to payment support from their energy retailer.

Despite this, energy retailers have ensured that payment support has been available to all customers, including small business customers, throughout the COVID-19 pandemic. Very few disconnections have been undertaken in recent months, despite increasing customer debts across a greater scope of customers.

The AEC strongly agrees with the ESC that all customers should receive support from their energy retailer during this period of crisis, but, absent any evidence of market failure, and given the significant incentives for retailers to support their customers to pay their debts, cannot support unnecessary interventions in the market at this time.

## **Draft Decision 1: Supporting customers to complete and lodge utility relief grant applications**

The AEC strongly believes that the Utility Relief Grants Scheme (URGS) is not delivering for Victorian energy consumers.

The URGS process has been riddled with errors and inefficiencies over a number of years, and requires fundamental reform to ensure it is optimised to deliver positive consumer outcomes. In January 2020, the AEC wrote to the Minister for Disability, Ageing and Carers in January 2020 highlighting unacceptable delays of up to 6 months in responding to URGS applications within the Department of Health and Human Services (DHHS). Following that letter, the AEC understands the DHHS has taken steps to reduce that backlog, and in recent months have cancelled all applications that were more than 90 days old. Neither of these approaches did anything to resolve the systematic issues affecting the URGS.

The URGS clearly requires reform, and the AEC is committed to assisting the Government and the ESC in developing processes and procedures that work in the best interests of Victorian energy consumers. However, we consider that placing ongoing obligations on energy retailers to complete the form on behalf of customers will increase costs in the sector, and will do little to better optimise the process that led to the negative customer outcomes in the first place.

When considering regulatory reform, the AEC contends there are a number of key steps that must be undertaken. First there must be a proven need for reform, identified by evidence that there is a particular consumer harm that needs to be resolved. Secondly, it is incumbent on a rule maker to seek to achieve its objective in the lowest cost manner, while placing any additional burden on the party best able to mitigate its costs.

In this instance, the AEC considers that the source of the customer detriment is the processes and procedures of DHHS in implementing the URGS. If these processes had been developed in a manner that focused on positive consumer outcomes, the ESC would not be proposing these reforms at this time.

The AEC is comfortable with a crisis recommendation to require energy retailers to assist residential customers experiencing payment difficulties with Utility Relief Grant (URGS) applications for the next 6 months. However, we oppose an ongoing obligation on energy retailers, without a corresponding commitment from the Government to ensure the URGS is as streamlined and effective as possible to ensure retailers and customers are able to meet the requirements of the scheme in the lowest cost manner.

In the interim period, absent any increased administrative allowance from DHHS, the AEC expect the ESC will consider the additional costs to retailers in assisting customers in accessing the URGS when undertaking its assessment of the Victorian Default Offer for the first half of 2021.

## **Draft decision 2: Extending tariff check entitlement to all customers receiving tailored assistance**

The AEC agrees with the ESC that customers experiencing payment difficulty at this time should be assisted by their retailer to get on the cheapest energy deal for their household. That being said, the ESC has not presented any evidence in the Draft Decision that customers are currently not responding to the steps retailers are taking to offer their customers the cheapest deal.

Each and every customer experiencing payment difficulty will be receiving best offer notifications on their energy bills. These customers are also more likely to be in close contact with their energy retailer, and thus are likely to already be discussing ways to lower energy costs with their retailer. Given the presence of the best offer bill notification, and the ongoing engagement with energy retailers (who have taken great steps to simplify their offers in recent years), the AEC does not see a need to increase costs on retailers at this time to perform an additional tariff check.

However, the AEC accept that in a time of crisis, retailers should be encouraging their customers unable to afford their bills to enter into the cheapest offer for their circumstances. As such, we are comfortable with an obligation being placed on retailers for 6 months to offer each customer their best offer at the time of entering that customer into a Tailored Assistance payment plan. This approach would deliver the objective of the ESC at the lowest cost.

We do not consider there is evidence that warrants retailers to make proactive calls to all customers currently on Tailored Assistance to offer the customer the best offer. A proactive contact obligation would take resources away from already stressed contact centres, and likely decrease the ability of retailers to meet the needs of customers seeking payment assistance.

### **Draft decision 3 and 4: Payment flexibility for small businesses anticipating financial stress and those that miss a pay-by-date**

As noted above, the AEC commends the efforts of energy retailers to assist small business customers pay their energy bills during the COVID pandemic. These efforts have been assisted by the fact that retailers and small businesses have shared objectives when it comes to managing the costs of doing business. Both parties are benefited by the customer repaying their energy debts in the shortest possible time frame, while ensuring the business remains viable into the future.

Given these voluntary efforts, the AEC considers that there is a very high burden for the ESC to ensure that any additional obligations imposed on energy retailers (some six months after the start of the pandemic) will deliver benefits over and above their costs.

It is also critical to note that energy retailers, as do all creditors, have responsibilities to mitigate risks of small business customers trading whilst insolvent. To date, the voluntary efforts by retailers have balanced the need to provide small business customers payment flexibility, without enabling insolvent trading.

The AEC do not consider that Draft Decisions 3 and 4 meet the burden necessary to justify regulatory change. While retailers are largely providing support that achieves the objectives sought in Draft Decision 3, they might not be providing that support in the manner described in the newly drafted Schedule 11. In effect, implementing these new regulatory obligations will deliver no additional customer benefit, but will increase costs. While we support the intent of the ESC to require retailers to assist small business customers during the pandemic, we do not support the manner in which it has sought to impose that obligation on energy businesses.

Draft Decision 4 seems to arise from a theoretical concern that retailers who have assisted small business customers to date, will not continue to provide assistance in the future. The AEC does not consider this concern is valid – retailers are financially incentivised to work with their small business customers to repay their debts in a mutually beneficial manner.

To mitigate this risk, the ESC intends to require retailers to allow all small businesses an unfettered entitlement to a 24 month period to repay their outstanding debts. At the very least, this seems an expensive method to achieve the shared objectives of retailers and small businesses. These costs will need to be factored into the 2021 VDO calculation.

#### *A more tailored approach*

The experiences facing small business customers during the pandemic differ greatly depending on their location, industry, and operating structure. Some small businesses will require short term support – akin to the standard assistance measures, while others may require longer term payment assistance.

The Payment Difficulties Framework is not directly translatable from residential to small business consumers, and as such, the AEC considers attempting to ‘fit’ small business customers into a highly specialised residential assistance framework would be inefficient. In particular, small business customers are unlikely to be discretely ‘in financial stress’ and then later ‘in arrears’. It seems difficult to envisage a business *in stress* at this time that has not yet missed the payment of a single energy bill. In the current drafting of Schedule 11, these small business customers would only be entitled to a tailored assistance payment plan.

The AEC strongly recommends the ESC take a more principled, outcome based approach to imposing regulation at this time. As noted above, retailers have been assisting small business customers since March, and there is a significant risk that changing the regulatory framework in October will result in increased compliance costs, for little customer benefit. That being said, the AEC accept that there is a slight possibility that without any regulatory obligations, some retailers may opt not to assist their customers in future.

To balance these objectives, the AEC would support the ESC setting an entitlement to *business customer support* for small businesses unable to pay their energy bills as they fall due during the COVID period. Effectively, the AEC considers that the ESC could require energy retailers to provide flexible and tailored support to small businesses, in a manner that suits their varying needs, provided it meets the objective of assisting small business customers to repay their arrears. A tailored and flexible approach would also ensure retailers are able to ensure that any assistance provided does not enable that business to trade while insolvent. Imposing an ‘entitlement’ to a mandated level of assistance risks this outcome.

The AEC proposes that the ESC require retailers to take steps to provide support to their small business customers to mitigate ongoing debts. The manner in which that support is provided need not be regulated, but rather, retailers should be empowered to work with their small business customers to find tailored solutions that meet their individual requirements. The AEC includes with this submission a marked up version of Schedule 11 as an example of a more preferable approach to drafting these obligations.

### *Costs and benefits*

While there will clearly be costs to retailers to providing additional assistance to small business customers, the ESC should seek to impose these obligations in the lowest cost manner, while enabling the outcome sought. Given retailers will have been supporting their customers for 6 months prior to the implementation of the Draft Decision, it is likely that any new prescriptive regulation will require retailers to develop new processes and procedures to comply with that regulation, even if it does not deliver any practical benefit to the customers they are already supporting. In the worst scenario, retailers might be unable to continue offering the support they have been providing to customers, so as to implement the regulated solution. This would be an unacceptable outcome.

Instead, providing retailers with flexibility to provide assistance that meets the objective will ensure that no additional implementation costs are incurred where retailers are currently providing appropriate assistance, while still ensuring that customers with retailers who are not providing assistance are able to get it.

### **Conclusion**

Retailers are currently operating in an increasingly challenging environment, and absent any evidence of market failure, imposing any additional burdens on retailers at this time should be considered with great caution. The ESC should consider if there are lighter touch approaches that would deliver the outcomes sought at a lower cost, so as to benefit those experiencing payment difficulty without increasing the costs to all other customers, including those on the VDO.

The AEC looks forward to future opportunities to work with the ESC on any proposed regulatory reforms to assist customers during the COVID period. For any questions about our submission please contact me by email at [ben.barnes@energycouncil.com.au](mailto:ben.barnes@energycouncil.com.au) or on (03) 9205 3115.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'B. Barnes', written in a cursive style.

Ben Barnes  
**General Manager, Retail Policy**

# Appendix A: Draft Energy Retail Code amendments

## **DRAFT AMENDMENTS TO THE ENERGY RETAIL CODE: Temporary assistance for small business customers anticipating or facing payment difficulties as a result of the Covid-19 pandemic**

**June 2020**

### **Amendments made by the Essential Services Commission on DD/MM/YYYY**

#### **1 Nature and commencement of this instrument**

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on 1 October 2020.

#### **2 Table of amendments**

**(1) In clause 3 (definitions), insert:**

***Covid-19 end date*** means 1 April 2021, or a *later Covid-19 end date* (if any).

***Covid-19 period*** means the period commencing on 1 October 2020 and ending on the day prior to the *Covid-19 end date*.

***later Covid-19 end date*** means a date to which the *Covid-19 end date* may be postponed pursuant to a statement published by the Commission under clause 95(4).

**(2) After subclause 79(2), insert:**

(2A) During the *Covid-19 period*, a *residential customer* is also entitled, at the very least, to the assistance mentioned in subclause (1)(e)(i), while continuing to pay the full cost of their on-going *energy* use.

**(3) In Part 3, clauses 79, 80, 81, 82, 83, 86, 89, 91 and 92, for the word  
“customer” wherever appearing, substitute:**

*Residential customer*.

**(4) Delete clauses 95 – 106 [Not used] from Part 3, Division 6.**

- (5) After Part 3 (Assistance for residential customers anticipating or facing payment difficulties) insert:

## Part 3AA Temporary assistance for business customers anticipating or facing payment difficulties as a result of the Covid-19 pandemic

### 95 Application of Schedule 11

- (1) Schedule 11 applies to *customers* who are *business customers*:
- (a) to whom *energy* is sold for premises by a *retailer*, or
  - (b) who proposes to purchase *energy* for premises from a *retailer*.
- (2) Schedule 11 will commence on 1 October 2020.
- (3) Subject to subclause (7), Schedule 11 will cease to have effect on the *Covid-19 end date*.
- (4) Prior to the *Covid-19 end date*, if the Commission ~~it~~ considers that it is appropriate for the small business ~~assistance hardship protections~~ in Schedule 11 to continue in force beyond the *Covid-19 end date*, the Commission must consult with *retailers* and interested stakeholders on:
- (a) the extension timeframe;
  - (b) the costs of postponing the *Covid-19 end date*;
  - (c) the benefits of postponing the *Covid-19 end date*;
- taking into account submissions and any other data the Commission has available, the Commission must ~~may~~ publish a statement that the *Covid-19 end date* will be postponed to a date not later than 6 months after the current *Covid-19 end date* (the ***later Covid-19 end date***).
- ~~(5) The Commission may publish more than one statement under clause 96(4).~~
- (6) The Commission must publish any statement under clause 96(4) on its website, with a prominent link from the webpage from which the current version of this Code may be accessed.
- (7) On and from the *Covid-19 end date*:
- (a) Divisions 2 and 4 of Schedule 11 will continue to apply in respect of a *business customer* to whom standard assistance was first provided under clause 4 of Schedule 11 during the *Covid-19 period*; and
  - (b) Divisions 3 and 4 of Schedule 11 will continue to apply in respect of a *business customer* who became entitled, during the *Covid-19 period*, to be given information about tailored assistance under clause 8(1) or (2) of Schedule 11.

- (6) After Schedule 10, insert:

## Schedule 11 Temporary assistance for business customers

# anticipating or facing payment difficulties as a result of the Covid-19 pandemic

## Division 1 Operation of this Schedule

### 1 Purpose

The purpose of Schedule 11 is to set out available temporary ~~minimum standards of~~ assistance measures to which *business customers* anticipating or facing payment difficulties as a result of the Covid-19 pandemic ~~are entitled~~.

## Division 2 ~~Standard Business assistance measures~~

### 2 Objective

The objective of this Division is to provide *retailers* flexibility to provide assistance to its *business customers* an entitlement to minimum standard forms of assistance, during the *Covid-19 period*, to help them avoid getting into arrears with their *retailer*.

### 3 ~~Standard Business assistance~~

- (1) A *retailer* must take steps to provide to its *business customers* ~~the forms of standard~~ assistance, from those listed in subclause (2), it elects to make available to help them avoid getting into arrears.
- (2) ~~Standard~~ Assistance made available to *business customers* may ~~must~~ include any of the following:

  - (a) making payments of an equal amount over a specified period;
  - (b) options for making payments at different intervals; or and
  - (c) extending by a specified period the *pay-by date* for a bill for at least one billing cycle in any 12 month period; or
  - (d) provide practical advice to help a *business customer* lower their *energy costs* including, for example, energy efficiency advice or offering the *business customer* the *best offer* to minimise the *business customer's energy costs*;
  - (e) establishing a mutually acceptable payment plan that:
    - (i) makes it easier for them to pay for their on-going *energy* use, repay their arrears and lower their *energy costs*;
    - (ii) is based on a reasonable forecast of the *business customer's energy* use;
    - (iii) would result in the *business customer's* arrears being fully paid in at least 6 months after the first payment;



(iv) provides for payments for on-going energy use being made together with payments to reduce arrears;

(f) any other assistance agreed between the business customer and the retailer consistent with the objective of Schedule 11.

(3) On establishing a payment arrangement under subclause (2), the retailer must give the business customer a written schedule of payments showing:

(a) the total number of payments to be made to pay the arrears; and

(b) the period over which the payments are to be made; and

(c) the date by which each payment must be made; and

(d) the amount of each payment.

#### **4 Information to business customers about assistance available**

(1) A business customer who has not paid a bill by its pay-by date and who contacts the retailer is entitled to be given by the retailer information about the assistance to which the business customer is entitled under this Division and how to access it.

(2) A retailer may proactively contact a business 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 business customer is entitled under this Division and how to access it.

(3) The retailer must allow the business customer no less than 6 business days to consider the information given under subclause (1) ~~or (2)~~, request further information, and put forward a payment proposal under clause ~~28~~.

#### **5 Continued provision of assistance**

(1) A retailer is required to continue to provide assistance under this Division to a business customer unless:

(a) after the retailer has complied with this Division ~~clause 7(3)~~, the business customer has refused or failed to take reasonable action towards paying for their on-going energy use and repaying their arrears; or

(b) the period of the payment proposal or revised proposal accepted by the retailer under clause ~~48~~ has ended.

#### **6 Debt**

(1) **Restriction on debt recovery**

A retailer must not commence or continue with proceedings for the recovery of arrears

from a *business customer* who is receiving assistance under this Schedule.

**(2) Restriction on sale of debt**

A *retailer* must not sell or otherwise dispose of the debt of a *business customer* who is in arrears:

- (a) at any time while the *business customer* is receiving assistance under this Schedule; or
- (b) within 10 *business days* after the *business customer* has been disconnected from their *energy* supply under clause 111A.

**(3) Guideline to be complied with on sale of debt to third party**

A *retailer* must not sell or otherwise dispose of the debt of a *business customer* to a third party other than in accordance with the guideline “*Debt collection guideline: for collectors and creditors*” jointly published by the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission.

**(4) Waiver of debt**

Nothing in this Schedule prevents a *retailer* from waiving any fee, charge or amount of arrears for a *business customer*.

**7 Supply capacity control product**

A *retailer* must not offer a *supply capacity control product* to a *business customer* for any credit management purpose.

**Division 3 Tailored assistance**

**8 Objective**

The objective of this Division is to give *business customers* an entitlement to minimum standards of flexible and practicable assistance, during the *Covid-19 period*, that makes it easier for them to pay for their on-going *energy* use, repay their arrears and lower their *energy* costs.

**9 Application of this Division**

This Division applies to all *business customers* who are in arrears.

**10 Minimum assistance**

(1) Tailored assistance consists of the following measures:

- (a) repayment of arrears over not more than 2 years by payments at regular intervals

of up to one month;

- (b) ~~advice from the *retailer* about payment options that would enable a *business customer* to repay their arrears over not more than 2 years;~~
- (c) ~~practical assistance to help a *business customer* lower their energy costs including, but not limited to, the tariff that is most likely to minimise the *business customer's energy costs*, based on the *retailer's* knowledge of the *business customer's* pattern of energy use and payment history; and~~
- (d) ~~any other assistance consistent with the objective of this Division.~~

## **11 — Information about assistance available**

- (4) ~~A *business customer* who has not paid a bill by its *pay-by date* and who contacts the *retailer* is entitled to be given by the *retailer* information about the assistance to which the *business customer* is entitled under this Division and how to access it.~~
- (5) ~~A *business 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 *business customer* is entitled under this Division and how to access it.~~
- (6) ~~The *retailer* must allow the *business customer* no less than 6 *business days* to consider the information given under subclause (1) or (2), request further information, and put forward a payment proposal under clause 8.~~

## **12 — Payment arrangements**

- (1) ~~The *retailer* must accept a payment proposal or revised proposal put forward under this clause by the *business customer* that complies with subclause (2).~~
- (2) ~~A payment proposal or revised proposal complies with this subclause if it:~~
  - (a) ~~provides for the making of payments of equal amounts at regular intervals of up to one month; and~~
  - (b) ~~would result in the *business customer's* arrears being fully paid in no more than 2 years after the first payment; and~~
  - (c) ~~provides for payments for energy use being made together with payments to reduce arrears; and~~
  - (d) ~~is based on a reasonable forecast of the *business customer's energy use* over the next 12 months.~~
- (3) ~~However, the *retailer* may accept a payment proposal or revised proposal that does any or all of the following:~~
  - (a) ~~provides for payments of different amounts at different intervals;~~
  - (b) ~~would result in the arrears being fully paid by a date later than 2 years after the first payment;~~

- ~~(e) provides for payments for energy use being made separately from payments for arrears.~~
- ~~(4) On accepting a payment proposal or a revised proposal, the retailer must give the business customer a written schedule of payments showing:
  - ~~(a) the total number of payments to be made to pay the arrears; and~~
  - ~~(b) the period over which the payments are to be made; and~~
  - ~~(c) the date by which each payment must be made; and~~
  - ~~(d) the amount of each payment.~~~~
- ~~(5) If a business customer receiving assistance under this Division fails to make a payment by the date on which it was payable, the retailer must contact the business customer to discuss their putting forward a revised proposal under this clause.~~

### ~~13 Continued provision of assistance~~

- ~~(2) A retailer is required to continue to provide assistance under this Division to a business customer unless:
  - ~~(a) after the retailer has complied with clause 7(3), the business customer has refused or failed to take reasonable action towards paying for their on-going energy use and repaying their arrears; or~~
  - ~~(b) the period of the payment proposal or revised proposal accepted by the retailer under clause 8 has ended.~~~~

## ~~Division 4 Miscellaneous~~

### ~~14 Assistance beyond the minimum standards~~

~~Nothing in this Schedule prevents a retailer from providing to business customers, who are anticipating or facing payment difficulties, assistance in addition to the minimum standards set out in this Schedule.~~

### ~~15 Restriction on conditions~~

~~A retailer must not impose any condition on the provision of assistance under this Schedule (whether in accordance with the minimum standards set out in this Schedule or in addition to them) that requires the business customer to provide personal or financial information or to waive any entitlement under this Schedule.~~

### ~~16 Debt~~

~~(5) — Restriction on debt recovery~~

~~A retailer must not commence or continue with proceedings for the recovery of arrears from a *business customer* who is receiving assistance under this Schedule.~~

~~(6) — Restriction on sale of debt~~

~~A retailer must not sell or otherwise dispose of the debt of a *business customer* who is in arrears:~~

~~(a) — at any time while the *business customer* is receiving assistance under this Schedule; or~~

~~(b) — within 10 *business days* after the *business customer* has been disconnected from their *energy supply* under clause 111A.~~

~~(7) — Guideline to be complied with on sale of debt to third party~~

~~A retailer must not sell or otherwise dispose of the debt of a *business customer* to a third party other than in accordance with the guideline “*Debt collection guideline: for collectors and creditors*” jointly published by the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission.~~

~~(8) — Waiver of debt~~

~~Nothing in this Schedule prevents a *retailer* from waiving any fee, charge or amount of arrears for a *business customer*.~~

~~17 — Supply capacity control product~~

~~A retailer must not offer a *supply capacity control product* to a *business customer* for any credit management purpose.~~