



Listen Assist Resolve

30 January 2013

Mr Ian Primrose
Senior Regulatory Manager
Essential Services Commission
Level 37
2 Lonsdale Street
Melbourne VIC 3000

By email: energy.submissions@esc.vic.gov.au

Dear Mr Primrose,

Re: The Essential Services Commission (ESC)'s Harmonisation of Energy Retail Codes and Guidelines with the National Energy Customer Framework (NECF) (Consultation Paper)

Thank you for the opportunity to provide comment on the Essential Services Commission (ESC)'s Harmonisation of Energy Retail Codes and Guidelines with the National Energy Customer Framework (NECF) (Consultation Paper).

The Energy and Water Ombudsman (Victoria) (EWOV) Limited is an industry-based external dispute resolution scheme providing alternative dispute resolution services to Victorian energy and water consumers by receiving, investigating and facilitating the resolution of complaints. In making this submission, we provide comments based on our experience of Victorian energy customer issues.

EWOV supports the ESC's decision to harmonise the Victorian regulatory Codes and Guidelines with the NECF, as long as it provides the same level or a higher standard of consumer protection, with minimal interruptions and minimal confusion, that currently exist for Victorian energy consumers. Specifically, EWOV welcomes the following inclusions:

- Wrongful Disconnection Payment (WDP).
- The prohibition of late payment fees.
- The prohibition of pre-paid meters.

However, EWOV believes that there are some inconsistencies between the protections currently provided in the Victorian regulations and those outlined in the draft Energy Retail Code (Version 11) (draft ERC) as outlined below.

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Terms and Conditions

EWOV notes that the *Electricity and Gas Industry Acts*¹ state that the ERC in its entirety, constitutes the terms and conditions for both standard and market contracts. This is inconsistent with the way that the draft ERC is worded². Under the draft ERC, not all provisions apply to both types of contracts, with certain provisions only applying where it is specifically stated in the draft ERC. Therefore, it is unclear whether the draft ERC can remove a term and condition for either a standard or market contract, or whether all contract terms would still apply regardless of the draft ERC.

EWOV believes that this inconsistency should be addressed either by changing the draft ERC to apply to both standard and market contracts or by amending conditions 6.3 and 7.3 of the standard licences.

Definitions

EWOV's Name

EWOV notes that under Part 1, Division 1 - Definitions of the draft ERC, EWOV's name is not correctly listed. In the draft version EWOV's name is written as Energy and Water Ombudsman Victoria. It should be listed as Energy and Water Ombudsman (Victoria) Limited.

EWOV requests that this error be corrected.

Explicit Informed Consent

EWOV notes that under the definitions section of the draft ERC³, the definition of explicit informed consent does not include a section about competency, which is currently included in Victorian legislation. Under current legislation the definition of competency requires that a customer "be capable of understanding issues, forming views based on reasoned judgment and communicating their decision" along with having the legal authority to make decisions on behalf of another (as appropriate)⁴. It also states that minors are generally not considered competent to provide consent to a contract.

EWOV also notes that there is no longer an obligation for energy retailers, or the *retailer's marketing representative*, to explain in plain English" all matters relevant to the consent of the customer, including each specific purpose and use of the consent"⁵.

¹ Section 36(1) (b) of the Electricity Industry Act and Section 43 of the Gas Industry Act for market contracts and section 42 of the Gas Industry Act and section 35 of the Electricity Industry Act for standard contracts.

² Clause 15.2 of the draft Energy Retail Code (Version 11).

³ Clause 3C of the definitions section of the draft Energy Retail Code (Version 11).

⁴ Clause 8 of the Code of Conduct for Marketing Retail Energy.

⁵ Clause 34 of the Energy Retail Code (Version 10).

EWOV believes that this is a significant drop in crucial consumer protections for vulnerable energy consumers, which would allow market contracts to be entered into without adequate understanding of what has been agreed to.

EWOV requests that the draft ERC be amended so that current consent requirements are continued and there is no loss of customer protections.

The ESC

The draft ERC does not define the word 'Commission'. In the current ERC "Commission means the Essential Services Commission under the *Essential Services Commission Act 2001*"⁶.

EWOV recommends that a definition of 'Commission' be included, so that it is clear that this refers to the Essential Services Commission.

Publishing of Standing Offer Tariffs

Under the draft ERC⁷, an energy retailer is not obliged to publish Standing Offer Tariffs in the Government Gazette, a current regulatory requirement⁸. Without this public record it is more difficult for customers and EWOV to confirm applicable tariffs.

EWOV recommends that the draft ERC be amended to include an obligation on retailers to publish Standing Offer Tariffs in the Government Gazette.

Customer Retail Contracts

EWOV received 32,593 cases in the 2011-12 financial year about billing issues, a 29% increase from the 2010-11 financial year. It is by virtue of our case handling experience in this area that we offer the following comments.

Best Endeavours

Retailers are currently under an obligation to use best endeavours to read a meter as frequently as necessary to bill the customer and in any event at least once a year⁹. While a similar requirement is included in the draft ERC¹⁰, 'best endeavours' is not defined.

The current ERC states "best endeavours in relation to a person, means the person must act in good faith and do what is reasonably necessary in the circumstances"¹¹. Without this, or even a more specific definition, there will be a lack of clarity about what constitutes best endeavours for energy retailers, particularly about the need to read energy meters. EWOV notes that it has

⁶ Clause 34 of the Energy Retail Code (Version 10).

⁷ Clause 15A of the draft Energy Retail Code (Version 11).

⁸ Clause 35(1)(a) of the Electricity Industry Act and 42(1)(a) of the Gas Industry Act.

⁹ Clause 5.1 of the Energy Retail Code (Version 10).

¹⁰ Clause 20 of the draft Energy Retail Code (Version 11).

¹¹ Clause 34 of the Energy Retail Code (Version 10).

previously written to the ESC seeking greater clarity around the 'best endeavours' requirements.

Recently, EWOV investigated a series of complaints where several retailers attempted to recover up to five years of undercharged consumption, resulting in backbills to customers of up to \$16,000.00 due to access issues. In most of these cases access had not been denied. However, there were varying interpretations of whether the retailers had met 'best endeavour' obligations. Due to EWOV's involvement, most backbills have been reissued to cover only nine or 12 months of the original billing period.

EWOV suggests that the same definition of 'best endeavours' be included in the draft ERC to prevent confusion about the minimum requirements of an energy retailer to read a customer's meter.

Apportionment

EWOV notes that the current ERC requirements about payment allocation applies to all contracts¹². This contrasts with the draft ERC in which payment allocation only applies to standard retail contracts¹³. The result of this is a lessening of Victorian market contract customers' existing protections.

Payments should be prioritised for the primary purpose of paying for the sale and supply of energy - without this clause applying for market contracts, payments may be apportioned to other goods or services. This may in turn result in customers being threatened with, or actually disconnected, for non-payment of an energy bill because the payment is applied to another good/service offered by the energy retailer.

EWOV recommends that the draft ERC be amended so it applies to market contracts in the same manner as standard contracts.

Merchant Fees

Currently, the recovery of merchant fees is only permitted under market contracts¹⁴. EWOV notes that under the draft ERC¹⁵ it applies to both market and standard retail contracts. This results in a lessening of Victorian standing offer customers' existing protections, because under the draft ERC it is possible for them to be charged merchant fees.

EWOV recommends the deletion of merchant fees requirement for standard contracts from the draft ERC.

¹² Clause 4.6(b) of the Energy Retail Code (Version 10).

¹³ Clause 27(1) and clause 27(3) of the draft Energy Retail Code (Version 11).

¹⁴ Clause 7.5(b) of the Energy Retail Code (Version 10).

¹⁵ Clause 35B(1) of the draft Energy Retail Code (Version 11).

Equal Time to Pay

Under the current ERC¹⁶, retailers are required to offer customers **at least** equal time to pay amounts being recovered, with a provision also that some customers may need extended time to pay. This same requirement does not exist in the draft ERC¹⁷ where customers are limited to a maximum of 12 months to repay a backbill. This does not factor in individual circumstances that, in EWOV's experience, can require extended payment plans to be negotiated to assist customers with managing unexpected high bills.

If the backbill is the result of an act or omission by the customer, the draft ERC also requires that the customer request a payment plan from their retailer. This payment plan will also be limited to a maximum of 12 months - regardless of the period that the undercharging covers. This change in drafting could result in the following difficulties for customers:

- A customer for whom backbilling has been limited to nine or 12 months, but requires an extended payment plan (longer than equal time to pay), will only have access to a maximum of a 12 months payment plan.
- A customer, who by act or omission, can be backbilled for a period longer than 12 months, will also only have access to a payment plan which is set at a maximum of 12 months. This is regardless of their capacity to pay or the timeframe of the backbill.

EWOV believes that these planned amendments in the draft ERC constitute a substantial loss of customer protections.

EWOV recommends that the draft ERC be amended so that customers have at least equal time to pay when they enter into affordable and appropriate payment plans with their energy retailer.

Basis for a Bill

EWOV notes that the draft ERC¹⁸ requirements for the basis of the bill are not the same for electricity and gas. The draft ERC provides two identical methods of basing an electricity and gas bill:

- Metering data provided by a responsible person.
- Any other method agreed.

However, it also provides a further two methods for basing a gas bill:

- Estimation of consumption.
- An actual reading obtained at the property by a 'responsible person'.

It is unclear whether the different requirements, on which to base a gas or electricity bill, are the result of an error or omission.

¹⁶ Clause 6.2 (d) of the Energy Retail Code (Version 10).

¹⁷ Clause 21(4) and 30(2)(B) of the draft Energy Retail Code (Version 11).

¹⁸ Clause 20(1) of the draft Energy Retail Code (Version 11).

EWOV also notes that the draft ERC¹⁹ stipulates how a bill should be calculated if there is no meter at a premises. EWOV believes that this clause is unclear about the circumstances when this would occur. For example, would this apply when a site has multiple dwellings but with only one main meter and no individual check metering available?

EWOV believes that the ESC should consider including the same requirements for basing both electricity and gas bills in the draft ERC. EWOV also requests that the ESC provide further clarification about what billing requirements apply when a property has no meter.

Greenhouse Gas Disclosure

In the draft ERC²⁰, definitions that assist the reader to understand the requirements for greenhouse gas disclosure on a customer's electricity bills are outlined at the end of the clause.

EWOV believes that to better assist the reader to understand definitions such as co-efficient, DPI, SV and green power, these terms should be explained at the start of the clause rather than at the end.

EWOV recommends that for the benefit of the reader, greenhouse gas disclosure definitions be moved to the start of the clause rather than at the end.

Billing Disputes - Meter Testing

EWOV believes that an oversight may have occurred in the drafting of the draft ERC about when a customer will be charged for a meter test. The draft ERC advises that if a "meter or metering data is found to be faulty or incorrect , the customer must pay the cost of the test"²¹.

Currently, customers are not required to pay for a meter test when the meter is found faulty, and are only required to pay for a test when the meter is found to be working within Australian Standards²². EWOV believes that this change will result in customers paying to prove that the distributor's assets are not working correctly, contrary to current requirements.

EWOV suggests that the draft ERC should be amended so that a customer is not required to pay for a meter test where the meter is found to be faulty or incorrect.

Additional Retail Charges

The draft ERC²³ advises that if an additional retail charge is applicable to the customer, it must be calculated in accordance with clause 30 of the draft ERC. However, clause 30 relates to undercharging.

¹⁹ Clause 20(3) of the draft Energy Retail Code (Version 11).

²⁰ Clause 25A(8) of the Energy Retail Code (Version 11).

²¹ Clause 29(c) of the Energy Retail Code (Version 11).

²² Clause 8.1(a) of the Energy Retail Code (Version 10).

²³ Clause 35A(3) of the draft Energy Retail Code (Version 11).

EWOV believes the clause should be corrected to state "clause 35A of this Code" not "clause 30 of this Code".

Shortened Collection Cycle

In the draft ERC, a shortened collection cycle can be applied to an energy account if two consecutive reminder or disconnection warning notices have been issued²⁴. However, under the current provisions, a shortened collection cycle is only applicable if three consecutive reminder notices have been issued²⁵. This means that customers can be placed onto a shortened collection cycle more easily, which reduces the notification required and payment period prior to disconnection. EWOV believes that this clause should be amended to retain current protections for customers.

EWOV believes that the draft ERC should be amended to maintain customer protections for shortened collection cycles.

Refundable Advances (Security Deposits)

Under the draft ERC, the provision about the circumstances under which a retailer can require a security deposit²⁶ from a customer is significantly different to the current ERC and would result in a lessening of Victorian customers' existing protections. The current ERC requires that the debt owed must be over \$120 before a security deposit can be charged, whereas the draft ERC only states that money be owed in order for a security deposit to be charged.

The current ERC also states that a security deposit can only be charged if the retailer determines the customer has an unsatisfactory credit rating "having regard only to any relevant default"²⁷. Whereas the draft ERC states that a retailer can charge a security deposit if the retailer "reasonably considers that the customer has an unsatisfactory credit history"²⁸. EWOV believes that this difference in wording could mean that retailers charge customers in more circumstances and as a result of defaults that are not relevant.

The draft ERC²⁹ also alters the protections for standard retail and market retail customers regarding security deposits. The draft ERC requires retailers to comply with the same requirements for market and standard contract customers when considering under which circumstances a security deposit can be charged. However, market customers do not have any protections around the amount of the security deposit, nor any formal arrangements in place about the retailer returning the security deposit. As such, market customers may find they are charged significantly higher security deposits and have longer or unreasonable periods to wait for its return.

²⁴ Clause 34 of the draft Energy Retail Code (Version 10).

²⁵ Clause 9.1(b) of the Energy Retail Code.

²⁶ Clause 40 of the draft Energy Retail Code (Version 11).

²⁷ Clause 8.1(a) and 8.1(b) of the Energy Retail Code (Version 10).

²⁸ Clause 40(d) of the draft Energy Retail Code (Version 11).

²⁹ Division 6, clauses 39 to 45 of the draft Energy Retail Code (Version 11).

EWOV believes that the draft ERC should be amended to reinstate the current protections about when an energy retailer can require a security deposit from a customer. Additionally, given that the obligation to pay a security deposit applies for both standard and market customers, EWOV believes that the same protections should apply in both circumstances.

Marketing

EWOV received 1,962 marketing related cases during the 2011-12 financial year and it is through managing these cases that we offer the following comments.

No Contact List

Current energy consumer protections allow customers to request not to be contacted by marketers via any marketing medium - phone, e-marketing, in person or by post. However, in the draft ERC³⁰, a customer can only request not to be contacted in person or by mail. Additionally, the draft ERC requires that the no-contact list is maintained for only two years.

EWOV considers it an important consumer right to be able to choose not to receive unwanted marketing. Additionally, by maintaining the no-contact list for only two years, the onus will be on customers to resubscribe, opening up the possibility of receiving unwanted marketing at a later date.

EWOV strongly believes that draft ERC should be updated to include a no contact list for all marketing mediums, which is currently provided under the current ERC. It is also necessary for no-contact lists to be maintained unless otherwise requested by consumers.

Records

Marketing visits and phone records maintained by retailers currently require specific details to be recorded, including the date and time the marketing occurred, and the details of the specific marketer. EWOV notes that the draft ERC does not require this level of detail to be recorded. By not doing so, this will impact investigations by energy retailers, EWOV, the ESC and Energy Assured Limited, into customer complaints about marketing conduct. In particular, it will be more difficult to confirm which marketer was involved in a complaint because key details of the visit will not be recorded.

EWOV recommends that energy retailer obligations to maintain marketing records be included in the draft ERC.

³⁰ Clause 65 of the draft Energy Retail Code (Version 11).

Required Information

Prior to a contract being established, an energy retailer is currently obligated to confirm the following contractual information³¹:

- Type and frequency of bills.
- Tariffs and price inclusive of GST.
- The full name, address and phone number of the retailer.
- That the customer could be part of an audit procedure.
- That the marketer may receive a fee/commission from the retailer if the customer enters into a contract.

Without requiring that this specific information be provided, prospective customers may be unaware of important contract information prior to entering into an agreement.

Under the draft ERC, this information does not need to be provided as a part of a standing offer or if a customer is entering into a market contract³². EWOV also notes that the 'required information' clause in the draft ERC³³ is inserted after clauses that references this term³⁴. EWOV recommends for the benefit of the reader, that this information be moved to the start of the clause rather than at the end.

EWOV suggests that 'required information' currently obligated by the ERC be included into the draft ERC, to ensure consumers are aware of important information prior to signing a contract. EWOV also suggests that this clause be provided earlier in the energy marketing section of the draft ERC to assist the reader to understand other clauses that reference 'required information'.

Requirements for and Timing of Disclosure to Small Customers

Customers are provided with a copy of their contract within two business days under current provisions³⁵. Under the draft ERC, the retailer must also provide their customers with required information before the contract is entered into, or as soon as practicable, after the formation of the contract³⁶. EWOV also notes that this clause is only applicable to market contract customers, not to customers on standard contracts. This change may result in a delay in this information being provided to consumers, contrary to current practice. It also does not provide any timeframes for retailers to provide such information to standard contract customers. Without requiring that customers be provided with a copy of their contract, they may be unaware of important information prior to an agreement.

³¹ Clause 3.3 of the Code of Conduct for Marketing Retail Energy in Victoria.

³² Clause 64 of the draft Energy Retail Code (Version 11).

³³ Clause 64 of the draft Energy Retail Code (Version 11).

³⁴ Clause 62 of the draft Energy Retail Code (Version 11).

³⁵ Clause 3.5 of the Code of Conduct for Marketing Retail Energy in Victoria.

³⁶ Clause 62 of the draft Energy Retail Code (Version 11).

EWOV believes that required information should:

- be provided before the formation of a contract, so that a customer can understand the terms and conditions before agreeing
- include the same timeframes as currently provided, rather than 'as soon as practicable'
- apply to all contract types (standing and market).

Customer Hardship

During the 2011-12 financial year, EWOV received 6,094 cases where affordability and payment difficulties were an issue (either as a primary or associated issue), with the overwhelming majority of these cases about energy. This is nearly a 4% growth from the 2010-11 financial year, and a 48% growth from the 2009-10 financial year. These figures strongly suggests that payment difficulties are affecting more Victorian energy consumers.

Payment Difficulties

Under the draft ERC, a retailer is not required to proactively assess if a customer is experiencing payment difficulties. This is in stark contrast to current requirements under the ERC³⁷, in which, if a retailer believes that a customer is experiencing payment difficulties, it is required to proactively offer that customer a payment plan, even if two plans have not been complied with in the previous 12 months (as long as the customer provides reasonable assurance to pay)³⁸. However, under the draft ERC, once the customer fails two payment plans, a retailer's obligation to offer further payment plans stops³⁹.

In the draft ERC, a retailer is also not required to provide a payment plan to a hardship customer (or a customer that self-identifies as experiencing payment difficulties) if the customer has been convicted of an offence involving illegal use of energy (in the previous 2 years)⁴⁰. This clause prevents:

- a customer who has already re-paid any outstanding debts that were accrued from the illegal usage, from receiving a payment plan for a new debt
- a payment plan being established for arrears at a different property, that was not identified as having illegal usage, if the account is in the same customer's name.

As such, EWOV believes that these changes will result in a dilution of protections to Victorian consumers requiring payment assistance, or who are in hardship, if they have already been provided with payment assistance.

EWOV recommends that the draft ERC be amended to include the same proactive requirements around hardship identification and payment plan offers so that current protections for Victoria energy customers are retained.

³⁷ Clause 11.2(b) of the Energy Retail Code (Version 10).

³⁸ Clause 11.2(b) of the Energy Retail Code (Version 10).

³⁹ Clause 33(1) and 72 of the draft Energy Retail Code (Version 11).

⁴⁰ Clause 33(2) (b) of the draft Energy Retail Code (Version 11).

Termination of a Deemed Contract

The timeframes under which a deemed contract can be terminated are the same under the current ERC and the draft ERC⁴¹. However, neither codes offer the same timeframe as outlined under the Electricity and Gas Industry Acts⁴².

The Acts state that without a market or standing contract being established, a deemed electricity contract terminates after 180 days have lapsed and that a deemed gas contract terminates after 120 days have lapsed.

Both the current and draft ERC clauses advise that the contract terminates after two bills have been issued. In EWOV's case handling experience, deemed contract customers do not often receive bills - instead they are sent letters from the energy retailer requesting contact to establish the account and to warn of pending disconnection.

EWOV suggests the ESC consider re-wording this section so that it is consistent with the Electricity and Gas Industry Acts and current retailer practice.

Disconnection

An increasing number of Victorian consumers contact EWOV about being disconnected from their energy supply. Between the 2010-11 and 2011-12 financial years, EWOV experienced a 34.5% increase in disconnection cases. Many of these cases may also include issues relating to the reconnection of supply, and about the payment difficulties a customer is experiencing.

Minimum Disconnection Amount

The current disconnection threshold in Victoria is \$120, exclusive of GST. However, the disconnection threshold under the draft ERC has not been increased to align with the NECF figure of \$300, inclusive of GST. Given the draft ERC seeks to harmonise the new instrument where appropriate with the national requirements under the NECF⁴³, EWOV believes that the disconnection threshold should be increased. If not amended, Victorian customers could be disconnected with lower arrears outstanding than customers in other Australian states where the NECF has been implemented.

The increase of the minimum disconnection amount to \$300 was made by the Australian Energy Regulator during the NECF consultation phase. It was aimed to prevent the disconnection of supply solely because of an inability to pay energy bills. In its decision to

⁴¹ Clause 70(A) of the draft Energy Retail Code (Version 11) and Clause 24.4 of the Energy Retail Code (Version 10).

⁴² Clause 39(7) of the Electricity Industry Act 2000 Section 46(7) of the Gas Industry Act 2001.

⁴³ ESC's Consultation Paper: Harmonisation Of Energy Retail Codes And Guidelines With The National Energy Customer Framework (page 1).

increase this threshold, the AER noted that the current Victorian figure of \$120 (exclusive GST) was too low given it was last reviewed for its appropriateness in 2008⁴⁴.

EWOV recommends that the draft ERC should be amended to increase the minimum disconnection amount to \$300 inclusive of GST.

De-energisation for not Paying a Bill:

EWOV notes that under the draft ERC:

- a retailer is not required to proactively assess if a customer is experiencing payment difficulties prior to disconnection⁴⁵
- the wording is unclear regarding retailer obligation to offer two payment plans prior to disconnection⁴⁶.

As such, EWOV believes that these changes will result in a dilution of protections for Victorian consumers requiring payment assistance or when they are experiencing hardship.

The current ERC provisions clearly advise that a retailer is required to offer a payment plan "unless the customer has in the previous 12 months failed to comply with two instalment plans and does not provide a reasonable assurance" that they are willing to meet payment obligations under a further instalment plan⁴⁷.

EWOV also believes that clearer wording in this circumstance would ensure that Victorian consumers better understand their rights and responsibilities and that those who require payment assistance, or who are in hardship, are better placed to receive the required assistance from energy retailers they require.

EWOV believes that the draft ERC should be amended to reinstate the current protections regarding a retailer's obligation to proactively assess if a customer is experiencing payment difficulties. EWOV also suggests that the ESC consider revising this section for greater clarity.

De-energisation of Dual Fuel Accounts

EWOV notes that the draft ERC appears not to stipulate the information required on a disconnection warning notice for a dual fuel account⁴⁸. Under the current ERC, a disconnection warning notice must contain a statement advising that the retailer may disconnect the gas supply and then subsequently disconnect the electricity supply (22 business days after the date of receipt of the disconnection warning notice)⁴⁹. EWOV also notes that the draft ERC requires

⁴⁴ AER approval letter, April 2012, page 5.

<http://www.aer.gov.au/sites/default/files/AER%20approval%20of%20minimum%20disconnection%20amount.pdf>

⁴⁵ Clause 111 (2) of the draft Energy Retail Code (Version 11).

⁴⁶ Clause 111 (2) (a-c) of the draft Energy Retail Code (Version 11).

⁴⁷ Clause 11.2 (3) of the Energy Retail Code (Version 10).

⁴⁸ Clause 117 (4) of the draft Energy Retail Code (Version 11).

⁴⁹ Clause 13.1 (c) (A) & (B) of the Energy Retail Code (Version 10).

that retailers do not disconnect a customer earlier than 22 business days after the date that the gas supply was disconnected. This is a longer timeframe than what is currently required under the current ERC.

While this change results in a longer timeframe prior to disconnection, customers would not be provided with the same level of notification, and may not realise their electricity can be disconnected after the gas supply. EWOV believes that this is a lessening of customer protections.

EWOV suggests that notifications to dual fuel customers warning of pending electricity disconnection be maintained in the draft ERC, and that the ESC consider the timeframe inconsistencies between the current and draft ERC.

Disconnection for Arrears Relating to Another Premises

Currently customers can only be disconnected for arrears relating to supply at their current address⁵⁰. However, the provisions of the draft ERC⁵¹ are not limited in this way and permit disconnection for arrears relating to previous sites⁵².

This change results in a lessening of customer protections because energy retailers would be able to disconnect a customer's supply for arrears at a previous address, which is currently prohibited under the ERC.

EWOV recommends that the draft ERC be amended to comply with the current provisions that prevent customers being disconnected for previous debt.

Disconnection Timeframes for a Normal Collection Cycle

EWOV has several concerns with the draft ERC about disconnection timeframes and notices.

- As shown in the table in appendix one, the notification timeframes under the draft ERC⁵³ are less than what is currently provided by four business days (from 31 to 27)⁵⁴. EWOV also notes that the current ERC prevents disconnection from occurring until after the disconnection warning notice's pay-by date has lapsed. Whereas, the draft ERC is silent on this timeframe - and therefore allows disconnection to occur earlier.
- The pay-by date for a bill only applies to standard contracts, not market agreements⁵⁵. This will mean that the pay-by date timeframe for market customers will need to be stipulated in their contract and may be substantially different to the current timeframe⁵⁶ and standard customer timeframe under the draft ERC.

⁵⁰ Clause 13.1 of the Energy Retail Code (Version 10).

⁵¹ Clause 111 of the draft Energy Retail Code (Version 11).

⁵² Clause 18(5) of the draft Energy Retail Code (Version 11).

⁵³ Clause 26 and Part 6 of the draft Energy Retail Code (Version 11).

⁵⁴ Clause 13 of the Energy Retail Code (Version 10).

⁵⁵ Clause 26 of the draft Energy Retail Code (Version 11).

⁵⁶ Clause 7.1(b) of the Energy Retail Code (Version 10).

- The wording regarding the notification timeframes is also less clear under the draft ERC than in the current version. In the current ERC, the notification timeframes all relate to the issue date of a bill (except for the disconnection date - which relates to the issue date of the disconnection warning notice). However, under the draft ERC, the timeframes are described as the reminder or disconnection notice period, e.g. a retailer has given the customer a disconnection warning notice after the expiry of the period referred to in the reminder notice.

As such, EWOV believes that the disconnection provisions in the draft ERC results in a loss of protections for Victorian energy consumers.

EWOV suggests amendments be made so that the current ERC provisions apply to disconnection timeframes and notices in the draft ERC.

Disconnection Timeframes for a Shortened Collection Cycle

EWOV notes that in the draft ERC a customer on a shortened collection cycle may receive a 'reminder or warning notice' (which is defined in that section as a reminder or disconnection warning notice⁵⁷). However, it is not clear as to the differentiation of the terms, or when the draft ERC is referring to a disconnection warning notice, reminder notice or a 'reminder or warning notice'. This could cause potential customer confusion about the notification required prior to disconnection, as the draft ERC also advises that disconnection can occur 'without further reminder or warning notice'⁵⁸.

EWOV suggests that the draft ERC be amended so it is clear when the term 'reminder or warning notice' is being used - so that customers on a shortened collection cycle still receive a disconnection warning notice.

Disconnection Timeframes for No Access

Additionally, EWOV notes that under current provisions, a retailer can disconnect a customer if they refuse to provide access⁵⁹. In order to complete a disconnection on this basis, a warning notice is required that provides nine business days to the customer in advance of this event⁶⁰. Under the draft ERC, the notification requirements appear to have increased and require the retailer to provide both an 'intention to disconnect' notice and a disconnection warning notice⁶¹. However, the period of the notice of intention is not defined for this type of disconnection, as it is for disconnection as a result of not paying a security deposit or acceptable identification⁶². Without defining the period of the notice of intention, customers

⁵⁷ Clause 34(5) of the draft Energy Retail Code (Version 11).

⁵⁸ Clause 34(iii) of the draft Energy Retail Code (Version 11).

⁵⁹ Clause 13.3 of the Energy Retail Code (Version 10).

⁶⁰ This is seven business days plus an additional two days to allow for receipt.

⁶¹ Clause 113 of the draft Energy Retail Code (Version 11).

⁶² Clause 112 of the draft Energy Retail Code (Version 11).

could be disconnected after fewer days have lapsed than what is currently provided for in the ERC.

EWOV sees this as a significant loss in customer protections - without a defined timeframe, customers who do not provide access could be disconnected after a minimum of five business days have lapsed.

EWOV recommends that the notice of intention period be defined with a timeframe that maintains at least the same disconnection period as is currently provided for in the ERC.

Disconnection Timeframes for Move-In/Carry Over (Deemed Contracts)

Currently, a customer on a deemed contract is provided with 12 business days before disconnection can occur⁶³. Under the draft ERC, this timeframe is shortened by two business days⁶⁴. By shortening this timeframe, Victorian energy consumers protections are significantly reduced.

EWOV believes that this timeframe change should be amended so that the same period is provided to 'move-in or carry over' customers.

Disconnection Allowed Where Illegal Use

Under the draft ERC, only a life support restriction applies to prevent disconnection at properties where there has been fraudulent or illegal usage⁶⁵. This means that a retailer can disconnect a customer even if there is a current and open EWOV complaint. This is contrary to current EWOV operational policy and practice, where disconnection is prohibited while EWOV investigates an issue.

If disconnection is not prohibited while an EWOV investigation is underway, the Ombudsman's role is significantly undermined. Allowing disconnection during the course of an open investigation is contrary to the underlying principles of Alternative Dispute Resolution and prevents negotiation from occurring on an even field - as customers may agree to unreasonable outcomes so that supply is restored.

EWOV strongly believes that disconnection should not be allowed to occur during an open EWOV investigation and that this needs to be amended in the draft ERC.

⁶³ Clause 13.4(a) of the Energy Retail Code (Version 10).

⁶⁴ Clause 115 and 110(2)(d) of the draft Energy Retail Code (Version 11).

⁶⁵ Clause 116(4) of the draft Energy Retail Code (Version 11).

Life Support

Information About Customers on Life Support from Retailer to Distributor

Currently, an energy retailer is required to check the validity of its life support records annually⁶⁶. Under the draft ERC, no such requirement exists⁶⁷. The retailer is also required to 'as soon as practicable' notify a distributor that a customer's address is affected by a fault (if the customer notifies the retailer)⁶⁸.

EWOV is concerned that without the requirement for retailers to periodically confirm their life support records are correct, a customer who requires life support may be disconnected from supply. If a customer is required to contact the distributor and notify it of a fault, a life support customer may be further impacted by supply issues instead of the retailer implementing its business-to-business processes and notifying the distributor. This may increase the risk that properties with life support could be disconnected in error, or experience faults to supply for longer periods of time.

EWOV recommends that the current ERC requirements be included in the draft ERC so that retailers are required to periodically confirm their life support records are correct and notify a distributor that a customer's property (with registered life support) is experiencing a fault.

We trust the above comments are helpful. Should you require further information or have any queries, please contact Belinda Crivelli, Senior Research and Communications Advisor, on (03) 8672 4460 or at Belinda.Crivelli@ewov.com.au.

Yours sincerely



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⁶⁶ Clause 26.7(b) of the Energy Retail Code (Version 10).

⁶⁷ Clause 124(b) of the draft Energy Retail Code (Version 11).

⁶⁸ Clause 26.7(c) of the Energy Retail Code (Version 10).

APPENDIX ONE: Disconnection for non-payment – ordinary billing cycle

	Version 10 ERC	Version 10 ERC	Version 11 ERC - NECF	Version 11 ERC - NECF
Bill/Notice dates	Timeframe (business days from bill issue date)	Total business days from bill issue date	Timeframe (business days from bill issue date)	Total business days from bill issue date
Bill pay-by-date	12	12	13	13
Reminder notice issue date	+ 2	14	+ 1	14
Reminder notice pay-by-date	+ 6	20	+ 6	20
Disconnection notice issue date	+2	22	+ 1	21
Disconnection notice pay-by- date	+ 6	28	+ 6	27
Disconnection allowed	+ 3	31	Silent	27