

19 July 2024

Nathan Zhivov
Executive Director
Essential Services Commission
Level 8 570 Bourke Street
Melbourne 3000

Submission via online

Submission to the Essential Services Commission Issues Paper – Review of Energy Retail Code of Practice.

Dear Mr Zhivov

Energy Consumers Australia appreciates the opportunity to provide feedback on the Essential Services Commission (ESC's) Issues Paper - Review of the Energy Retail Code of Practice ("the Paper"). We represent all residential and small business energy users, and advocate for a future Australian energy system that works for, and benefits, the households and small businesses who use it, and one in which no one is left behind on the journey to net zero.

We are pleased to see the ESC reviewing the Energy Retail Code of Practice (ERCOP), to ensure that consumer protections are fit for purpose, better align with other jurisdictions and instruments, as well as respond to the Victorian commitment to move away from fossil fuel gas use in the home and in small businesses.

This comes at a critical time, as our June 2024 Energy Consumer Sentiment Survey (ECSS)¹ found that more people than ever are feeling cost of living pressures. Across all income brackets except the highest (over \$150k), more than half of households say they are either under financial pressure or managing to afford household bills but struggling to afford anything extra. For small businesses, the recent report by the Council of Small Business Organisations Australia (COSBOA) Small Steps, Bright Futures, found that 1 in 3 small businesses have experienced energy hardship in the last 12 months, which is more than the post-covid lockdown impacts.² Further, small businesses that operate within a shopping centre or embedded network are most at risk, with 62% experiencing energy hardship.

This submission provides specific recommendations in response to the Paper's questions below. More broadly, we would like to see the ESC:

- Ensure equitable protections for all households and small businesses, regardless of whether they are in an embedded network. This includes interrogating pricing and service practices for loyal or 'legacy' customers, whether they are fair, or if intervention is required.³
- Critically evaluate the application of ERCOP and hold retailers to account where they are failing to deliver good outcomes for consumers.

¹ Energy Consumers Australia, [Energy Consumer Sentiment Survey June 2024](#)

² Council of Small Business Organisations Australia, Small steps. Bright future. Supporting small businesses to net zero and beyond, February 2024. [Small Step. Bright Future](#)

³ [The ACCC Inquiry Market Report – December 2023](#) found that there is no incentive for retailers to keep prices for existing customers competitive, and as such consumers who do not engage regularly in the market experience higher prices. Energy Consumers Australia June [Energy Consumer Sentiment survey data](#) found that only around half of households and small businesses considered switching retailers or plans in the past year.



- When assessing the costs and benefits of potential changes, develop and adopt a weighting system that reflects the essentiality of energy and weighs the benefits to consumers on a higher scale than the cost to retail businesses. Energy is an essential service, so retailer implementation costs should not guide whether or what support people experiencing or at risk of payment difficulty are offered, or how retailers adequately meet their obligations.

We thank the ESC for the opportunity to provide feedback and make ourselves available for discussion and collaboration throughout the review process. For any queries, please contact Melissa McAuliffe at melissa.m@energyconsumersaustralia.com.au.

Yours sincerely

Jacqueline Crawshaw
Director, Energy Services and Markets



1. Protection for consumers experiencing vulnerabilities

Strengthening family violence protections

Q1. Are there any specific rules in the National Energy Retail Rules (NERR) that we should consider for the ERCOP?

Recommendation 1:

The ESC should look to incorporate the family violence provisions in the NERR that will improve the current ERCOP requirements. For example:

- Adding obligations for businesses that helps avoid repeated disclosures of a customers' experience of family violence. To further strengthen this, we also recommend the ESC considers retailers signing up to the One Stop One Story (OSOS) Hub as best practice. We note that currently there are a very few energy retailers signed on.
- Expanding the definition of family violence to include carers and Aboriginal and Torres Strait Islander kinship relationships. We also recommend that the ESC consider whether there are other elements of the "domestic abuse" definition the Intervention Orders (Prevention of Abuse) Act 2009 SA that should be incorporated.
- Expanding current debt management rules to apply to retailers when transferring debts to third party debt collectors.
- Amend evidence clause 155(1) to mirror that of 76I of the NERR.⁴

Recommendation 2:

The ESC should undertake a review of the following to assess whether the NERR provisions would strengthen the requirement, or whether a different approach is needed or would be more suitable:

- How the current ERCOP training requirements have been implemented and assess this against the issues being reported by advocates and EWOV. We also recommend as part of this review, considering the EWOV Empowering change provider good practice guidance, and how its insights could be incorporated.⁵
- How the current ERCOP account security measures have been implemented and consider if there are gaps in processes, or how it is being used. We also recommend considering how the Safety by Design work recently undertaken can be incorporated or draw upon.
- Consider whether the ERCOP provisions could better align or be improved by 76K⁶ of the NERR to best ensure retailers are clear on their duty to uphold safety, security and support a customer affected by family violence.

⁴ A retailer must not require an *affected customer* or a third party acting on behalf of an *affected customer* to provide any documentary evidence of *family violence* as a precondition to applying these Rules or the retailer's *family violence policy*. NERR Part 3A: Assistance for customers affected by family violence - AEMC Energy Rules

⁵ Energy and Water Ombudsman, Empowering Change Provider Good Practice Guidance, June 2024 <https://www.ewov.com.au/uploads/main/Reports/Other-reports/empowering-change-provider-good-practice-guidance.pdf>

⁶ National Energy Retail Rules 76K No breach of contract for compliance with this Part

(1) If a retailer is unable to fulfil an obligation under a customer retail contract in complying with this Part, the retailer is not in breach of the contract.

(2) If an affected customer is unable to fulfil an obligation under their customer retail contract in using their preferred method of communication with the retailer in accordance with rule 76H(2), the customer is not in breach of the contract.



Rationale:

The family violence provisions implemented into the ERCOP were groundbreaking for the energy industry, and we recognise the ESC's on-going commitment to improving the rules and guidance in this space.

However, EWOV's Empowering Change report⁷ found that the most common and serious issues impacting victim survivor's experience with energy and water providers were:

1. Inappropriate disclosure or potential for inappropriate disclosure of information.
2. Barriers to accessing financial assistance including the Utility Relief Grant (URG) and other entitlements (further addressed under questions 9 and 10).
3. Providers failing to recognise consumers as a victim-survivor.
4. Providers seeking inappropriate information and evidence from victim-survivors.

As such, it is evident that more work needs to be done. While the adaption of the NERR provisions may provide additional protections, we consider the OSOS Hub as a best practice approach to further improve the protections and outcomes for customers affected by violence. It has proven to provide a supportive and safe pathway to services reducing repeat disclose (and re-traumatisation) and any need to provide evidence, as well as having the potential to reduce vicarious trauma for frontline workers.⁸

We note however, that without proper investigation of the training that is being implemented or what the root causes are for these issues arising (as the ERCOP should protect from all four issues EWOV reported), any improvements to the obligations may still struggle to ensure better consumer outcomes.

Q.2-3 Are there any other protections (water sector or other) that we should consider including in the RCOP?

Recommendation:

That the ESC undertakes a review of their compliance and reporting processes and considers where there are improvement opportunities.

Rationale:

Any breach of the family violence provisions has the potential to be life threatening. As indicated in the EWOV report, there is clearly evidence of likely non-compliance activities occurring in the energy sector, despite the Type 1 breach associated with family violence provisions. As a key compliance and enforcement priority of the ESC for 2024-25, work may be required to best ensure that the ESC is able to respond to actual or potential serious customer harms in a timely manner.⁹

⁷ Energy And Water Ombudsman, Empowering Change Report, June 2024

<https://www.ewov.com.au/uploads/main/Reports/Other-reports/empowering-change-report.pdf>

⁸ Thriving Communities Australia, One Stop One Story Hub, Summary Brochure

<https://thriving.org.au/files/OSOS%20Hub%20Brochure%20AUG2023.pdf>

⁹ The recent Origin Energy breach notice states Origin identified the breaches in Jan and Feb 2023, yet, the ESC states they only formed the view that there was a breach in Dec 2023. [Origin penalty notices 2024 \(debt recovery action\) | Essential Services Commission](#)



Payment Difficulty Framework

Q4. In your view what aspects of the Payment Difficulty Framework (PDF) should be revised to better support consumers experiencing vulnerability or hardship?

Recommendation 1:

That the ESC undertakes a review of how small businesses who are, or may be, having difficulty in paying their energy bills are protected and supported with the management of their energy account. From this review, the ESC should consider how the PDF can be appropriately revised and extended to small business customers. This should also include improving the quality and breadth of data reported on small business customers. ECA would be happy to work with the ESC and other small business advocates to consider what elements of the PDF might be appropriate measures for small businesses, noting their diverse energy needs and levels of agency over their energy choices.

Rationale:

1 in 5 small businesses¹⁰ are finding it difficult to pay their energy bill, yet the ERCOP does not clearly provide payment difficulty measures for small businesses, despite considering them in the same category as households. It is also unclear what protections or supports are currently being provided to small business by energy retailers. With the Business Energy Advice Program ending last year and the continuous strain on small business with current cost of living pressures,¹¹ we see this as an opportune time for the ESC to address the small business experience and the potential for improvements in regulation and compliance uplift.

Recommendation 2:

That the ESC considers as part of this broader question on the PDF, recommendations made in response to the Australian Energy Regulator's (AER) Issues Paper 'Review of payment difficulty protections in the National Energy Customer Framework'¹². Broadly, ECA's submission highlighted:

- Moving away from hardship terminology and language that may create barriers to accessing support.
- Emphasising the need for inclusive and accessible information and design, which is tested and follows recognised guidelines.¹³
- When a customer is identified as at risk of, or experiencing payment difficulty, they should be offered the full range of supports, to ensure that customers are given as much assistance as possible. For example, a discussion on the best available offer for them.
- Retailers should only offer payment plans based on an individual's capacity to pay, acknowledging that this may require a payment plan that extends beyond a two-year period.

¹⁰Council of Small Business Organisations Australia, Small steps. Bright future. Supporting small businesses to net zero and beyond, Feb 2024. [Small Step. Bright Future](#)

¹¹ Ibid

¹² ECA submission June 2024 <https://energyconsumersaustralia.com.au/wp-content/uploads/submission-doc-aer-issues-paper-review-payment-difficulty-protections-national-energy-customer-framework.pdf>

¹³ Such as web accessibility guidelines, we note we have seen some improvement on retailer websites with Energy Locals providing a translation button, and Momentum Energy have an accessibility toggle. As at June 2024



Rationale:

While the PDF is considered robust and mostly fit for purpose, we are hearing concerns from consumer and advocate groups about how the provisions are being applied and complied with, including inconsistencies and variance levels of support.¹⁴ Further detail on the above recommended improvements can be found in ECA's submission¹⁵.

Q5&6. Do you have any suggestions on how to improve the current PDF training obligations? Including whether training on customers experiencing different vulnerabilities is required.

Recommendation:

That the ESC includes further training requirements as part of the PDF. To best determine the approach and elements of the training needed the ESC should assess the compliance issues that they are seeing, as well as being reported by advocate and consumer groups. The review should also consider:

- Training designed in collaboration with consumers with lived experience and from a breadth of experiences, to help deliver the tools required to best enable empathy and care in delivery responses.
- Training that incorporates the AER Customer engagement toolkit – such as the protocols of TEXAS, CARERS, BLAKE and BRUCE.¹⁶
- Training that is an ongoing requirement and is responsive to the changing environment.

Rationale:

The Consumer Action Law Centre (CALC) Energy Assistance Report identified an increase of 7% in the last year (at 19%), of all energy contacts with their financial counsellors where retailers were not provided adequate or consistent assistance available through the PDF. They also found that some callers felt coerced to agree to an unaffordable payment plan without additional assistance.¹⁷ Similarly, Uniting Care recently emphasised that call centre staff must have the appropriate training to work with customers experiencing vulnerability, as they heard across all groups a lack of empathy and knowledge shown by customer facing staff.¹⁸

We do appreciate frontline staff are unlikely social workers¹⁹. However, this does not preclude the need for frontline staff to be able to potentially identify and engage appropriately with customers experiencing vulnerabilities under a variety of circumstances. We note that in the AER's Customer engagement toolkit, the protocols provide staff with a simplified tool to assist with respectful

¹⁴ ECA submission June 2024 <https://energyconsumersaustralia.com.au/wp-content/uploads/submission-doc-aer-issues-paper-review-payment-difficulty-protections-national-energy-customer-framework.pdf> p8

¹⁵ Ibid

¹⁶ Australian Energy Regulator, Consumer Engagement Toolkit - Draft Consultation <https://www.aer.gov.au/system/files/2024-03/Consumer%20engagement%20toolkit%20-%20Draft%20for%20consultation%20-%20March%202024.pdf>

¹⁷ Consumer Action Law Centre, Energy Assistance Report 4, 2024 https://consumeraction.org.au/wp-content/uploads/2024/06/CALC034-Energy-Assistance-Report-2024-0.3-FA_WEB-ROSE-UPDATED.pdf

¹⁸ 'Uniting Care (supported by an ECA participatory grant),' Accessing payment support from energy retailers' report June 2024 spoke to energy consumers, energy workers, and financial counsellors.

¹⁹ We would welcome retailers undertaking proactive recruitment and amplifying customer support roles to attract particular skill sets and experiences.



engagement with customers, such as the BRUCE protocol that provides a framework to support customers who may experience limitations in their mental capacity.²⁰

Obligation to place debt on hold for six months

Q7&8. Are you aware of any customer who have had their debt place on hold? Did it help? How might these obligations be amended to better support customers?

We do not have sufficient visibility on this issue to respond in detail. However, we recommend that this review provide clarity on how the relevant obligations are being used and the outcomes experienced by consumers, to better inform any necessary amendments. For example:

- What are consumers and financial counsellors' experiences with the current obligations. For example, is it seen or treated as a separate obligation, or something that is simply wrapped up into an affordable payment plan?
- What is happening at the end of the 6 months? Are affordable payment plans being established to help with the debt or has the customer been expected to pay the debt in full?
- Customers who did have their debt on hold, what other support services did they receive? Did they accumulate debt in addition to what was on hold?
- Are there any cases where the debt is no longer on hold, but the customer has exited the retailers financial support program?
- After a debt on hold has been released, are there any cases where that debt has then been referred to a debt collection agency?
- Is there evidence to show that instead of placing the debt on hold, other measures such as a debt waiver would have been more appropriate?

We also recommend that this review interrogates other essential services such as banking who may have some data, particularly post COVID-19 around placing debt on hold and the consumer outcomes.²¹

Accessibility of Utility Relief Grants (URGS) information

Q9&10. Are the ERCOP URGS and concessions obligations being implemented as intended? Is any additional guidance required or changes to the provisions to support this view?

Recommendation:

That the ESC undertakes an audit of the process (end to end) to understand the potential issues and their root causes and identifying the sludge & friction to inform an appropriate response. This should include investigating the training that is provided to frontline staff and their leaders, and performance metrics such as call handling times.

Questions might include:

²⁰ It's important for frontline staff to be able to respond with empathy and care. As one energy customer noted when asked to comment on a perfect world *'When I'm having a mental health episode it can be difficult to articulate what i need. I ramble and give too much detail. Don't lose patience with me, help me.'* Uniting Care (supported by an ECA participatory grant), Accessing payment support from energy retailers report June 2024

²¹ We note in the Families in Australia Survey: Life during COVID-19 Report no. 6: Financial wellbeing and COVID 19 they found that 'among those who reported a large drop in income, one in seven had asked for a pause on their rent or mortgage payments', Nov 2020 https://aifs.gov.au/sites/default/files/publication-documents/covid-19-survey-report_6_financial_wellbeing_0.pdf



- **Training** – how do frontline staff view URGs and the application process? Do they know all the elements and when best to apply them? Are there frictions with other requirements that are stopping frontline staff from completing an application?
- **Call handling time** – is this a friction to filling out the form on the phone, and do frontline staff feel pressured or anxious about the potential call time? Is it possible to collect data on partially complete applications, or where the call has been abandoned/ where pressure has been applied for the customer to request the application via mail, and is this more prevalent in cases where English may not be the customers native language?

Rationale:

The URGS program has the potential to be both a benefit to consumers and to the retailer, yet we continue to hear of cases where consumers are not receiving the information or support, they are entitled to.²² Further, the latest ESC Market Report²³ noted that while there was an increase in URG applications from the same time last year, this increase only converted to a small increase in applications that were approved. As noted above we believe that is potentially sludge and friction in the URGS ecosystem that requires attention and further investigation (and which go hand in hand). Namely:

Call handling time –

- The ESC collect data on call handling time and wait time for customers, with the average wait time being 105 seconds, and 5.51% calls abandoned.²⁴ Retailers may also have their own performance metrics for the call centre teams. We are not aware of how long an URGS application takes to complete with the customer on the phone, and we appreciate that it may take some time to do so accurately. Therefore, having metrics that essentially go to the speed of the call is potentially causing friction for contact centre teams and frontline staff, particularly if support such as an interpreter is required.
- There is clearly a balance that needs to be met along with a customer focused strategy that ensures frontline staff are empowered to take the time they need to ensure a good consumer experience, while also maintaining good service for customers on hold. In the UK Vulnerability Commitment 2023 Report, many signatories spoke to the effectiveness of appointing a 'Vulnerability Champion' who helped enable buy-in at the leadership and board level. They would for example, create new support teams, hire additional staff, and add additional training to ensure that the retailer is delivering on their commitment to customers.²⁵ A similar commitment or approach may help to shift the performance requirements internally, and embed a more customer centric culture, where positive consumer outcomes are celebrated.²⁶

Training –

- CALC's Energy Assistance report found that in many instances financial counsellors were the first person to inform a client about URGS, which was often when the client was already in significant energy debt. CALC notes that this common occurrence not only puts strain on the

²² Consumer Action Law Centre, Energy Assistance Report 4, 2024 https://consumeraction.org.au/wp-content/uploads/2024/06/CALC034-Energy-Assistance-Report-2024-0.3-FA_WEB-ROSE-UPDATED.pdf
Energy And Water Ombudsman, Empowering Change Report, June 2024

<https://www.ewov.com.au/uploads/main/Reports/Other-reports/empowering-change-report.pdf>

²³ [Victorian Energy Market Report | Essential Services Commission](#)

²⁴ [Energy market dashboard | Essential Services Commission](#)

²⁵ [2023 Vulnerability Commitment Good Practice report - Energy UK \(energy-uk.org.uk\)](#)

²⁶ As one energy customer noted as part of the Uniting Care, Accessing payment support from energy retailers report 'Energy Australia completed the URGS form for me. It made such a difference.' Uniting Care (supported by an ECA participatory grant) 2024



community sector but can also negatively impact a person's anxiety and stress (if their debt could have otherwise been managed).²⁷

- At a case level, EWOV reported a case where a person who was affected by family violence was not offered URGS because they did not meet 'all the eligibility criteria'²⁸. However, if a person is affected by family violence, they do not need to meet other eligibility criteria's such as being a concession card holder. They do, however, need to provide evidence as part of the application, which may cause friction for the agent who knows best practice is not to ask for evidence.

Training on URGS (and more broadly concessions) that encapsulates empowerment, purpose, and regulatory obligations may go some way to alleviating friction for frontline staff. Having detailed case sessions such as looking at the family violence case reported by EWOV will help staff to test their own knowledge, while also understanding what the best steps are to take in these circumstances in a safe and non-pressured environment.

Assistance and information on energy efficiency

Q11&12. Should the ERCOP introduce more prescriptive obligations on how energy efficiency advice should be delivered? Are there any non-prescriptive alternatives?

Recommendation:

That the ESC considers two tracks for energy efficiency advice. One should help form part of current PDF obligations, and the other support more general information and understanding of energy efficiency and its benefits.

1. As part of the PDF requirements, a clear and simple referral pathway is in many instances a preferred course of action. As part of this, we recommend that the ESC investigate additional servicing options such as through Solar Victoria or the SEC to assist with load. The ESC should also work with organisations who are already receiving referrals from retailers, such as Uniting Care, to understand current state, and what is required for a robust future state. This should be coupled with the already on foot discussions noted in the Paper with retailers on how to integrate the Victorian Energy Upgrades program.
2. More broadly, the ESC should consider what best practice information on energy efficiency from a retailer looks like, and provide either guidance material, knowledge sharing workshops, or something like an energy efficiency score card on retailers. For example, in California the 'Utility Energy Efficiency Scorecard' assesses 53 of the largest U.S electric utilities on their programs to save energy, and in 2023 they expanded this to energy equity and community co-design.²⁹

²⁷ Consumer Action Law Centre, Energy Assistance Report 4, 2024 https://consumeraction.org.au/wp-content/uploads/2024/06/CALC034-Energy-Assistance-Report-2024-0.3-FA_WEB-ROSE-UPDATED.pdf

²⁸ Energy And Water Ombudsman, Empowering Change Report, June 2024

<https://www.ewov.com.au/uploads/main/Reports/Other-reports/empowering-change-report.pdf>

²⁹ [The Utility Energy Efficiency Scorecard | ACEEE](#) The 2023 report notes the importance robust energy savings targets and regulatory support to achieving those targets as a key mechanism for states that score well.



Rationale:

Energy efficient information can and should be for every Victorian household and small business. The International Energy Agency states energy efficiency is the “‘first fuel’ in clean energy transitions, enabling quick and cost effective CO₂ mitigation options, the potential for lower energy bills and strengthening energy security”.³⁰

The Victorian State of Sustainability Report (2023) found that over one third of Victorians are living in homes with poor to extremely poor thermal quality, and that on average 18% of respondents reported having to leave their home because it was too hot to stay in.³¹ A thermally comfortable home can reduce health risks, improve general wellbeing, as well as lower energy consumption (and bills) and therefore lower emissions.³²

PDF requirements and a Referral pathway:

- For people who may be more vulnerable, careful consideration is required when thinking about energy efficiency information or obligations on retailers and frontline staff. There is a risk that information on energy efficiency is provided that has unintended consequences, such as rationing or feelings of disempowerment and anxiety.
- For example, in the UK to support the roll out of smart meters, consumers were able to get an in-home management device for free. While many reported the usefulness of this device, it was also found that for older people, there was an increase in stress and anxiety (potentially leading to rationing) because of the device tracking their use and calculating the cost.³³
- Referring customers to experts in this field in most instances is the best practice response. However, there may be cases where retailers may be best placed to investigate, for example if there looks to be a leak with a hot water system. Therefore, training and an ability to provide sound judgement will be required.

More generally, there are many examples overseas that the ESC may like to draw upon when considering energy efficiency messaging and information. For example, on Hydro Quebec’s website their homepage hero message is ‘*Running your pool can account for up to 70% of your summer bill.*’³⁴ While energy efficiency is much more than just turning gauges up or down, the prominence of Hydro Quebec message demonstrates the important role of energy efficiency, especially if you compare this to Victorian retailers and the location of their energy efficiency information (if any), or what their homepages lead with.

Certainly, in the Paper, the ESC recognises the importance of energy efficiency in helping Victorian’s achieve targets set for a clean energy future by 2050. The ESC should consider reviewing:

- how retailers currently provide energy efficient information, both on their websites and more broadly in call center scripts, for example a customer calling about a high bill might benefit from an energy efficiency discussion (noting the earlier commentary on judgement and approach with customers who may be more vulnerable)
- the level of understanding of what energy efficiency means and can deliver, and

³⁰ International Energy Agency, website <https://www.iea.org/energy-system/energy-efficiency-and-demand/energy-efficiency>

³¹ The Victorian Sustainability report 2023 [State of Sustainability Report 2023](#)

³² The Victorian Sustainability report 2023 [State of Sustainability Report 2023](#) - notes that *improving the performance of our housing is one of the key ways Victorians can contribute to reducing carbon emissions.*

³³ Christopher J. Brown, Nils Markusson, The responses of older adults to smart energy monitors, Energy Policy, Volume 130, 2019, Pg 218-226, <https://doi.org/10.1016/j.enpol.2019.03.063>.

³⁴ Hydro Quebec, website <https://www.hydroquebec.com/residentiel/>, accessed June 2024



- the role the ESC should take in this space, to help formulate the path forward. Here, the ESC may like to draw on international approaches. For example, Ireland legislated a redesign of the Energy Efficiency Obligation Scheme (EEOS) that places a legal requirement on larger energy companies to help their customers save energy.³⁵

The ESC has undertaken knowledge sharing workshops recently, and previously held workshops to discuss and share best practice approaches across PDF obligations. These kinds of non-prescriptive learning environments may also work well here, particularly if they include tailored sessions for customer service, affordability teams and senior leadership.

2. Supporting the choices of energy consumers

Supporting customers who want to disconnect from gas

Q13-16. Is there a need to improve processes and information for a customer who wants to disconnect from or abolish their gas connection? What are your views on the proposed amendments? Is there anything else that may strengthen protections for consumers?

Recommendation:

That retailers provide simple and accessible information on their website (and included in frontline training) around moving away from gas. This should include:

- The difference between abolishment and disconnection, and reasons why you might do either. This could also include a video or comic style fact sheet that helps to articulate the difference and rationale.³⁶
- The availability of interpreter and other services to support accessibility of information. This should be a requirement, not a best effort approach.
- General information on “what to do if you want your gas connection abolished” and “what to expect”, that outlines the process, timelines, any actual or potential costs, roles and responsibilities (customer, distributor, retailer) and where to go for help etc. This should incorporate the timeframe requirement as proposed by the ESC.

The ESC should also map end-to-end the customer journey through the abolishment process, and identify any gaps that may remain, or where guidance or regulatory obligations may be required. This could include where else consumers may go for information, such as Solar Victoria’s website and ensure consistent and easily accessible information is equally available.

Rationale:

The Gas Distribution Code of Practice (GDCOP) final decision noted that the ERCOP was the more appropriate place to address obligations on information on gas connections and abolishment,

³⁵ Department of Environment Climate and Communications (Ireland) New legislation introduced for the energy efficiency obligation scheme 2022 <https://www.gov.ie/en/press-release/e5331-new-legislation-introduced-for-the-energy-efficiency-obligation-scheme/> This redesign was in response to the amendment to the EU Energy Efficiency Directive that sets amongst other things recognises energy efficiency as a ‘first fuel.’ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2018.328.01.0210.01.ENG

³⁶ For example, Bank West produces visual style Terms and Conditions for their Easy Transactions product schedule. <https://www.bankwest.com.au/about-us/media-centre/news/pictures-make-a-thousand-words-in-visual-style-australia-first>



including access to interpreter services, due to the relationship retailers have with customers compared to that of the gas distributor.³⁷ We agree this is the appropriate place, and emphasise that it is time to make these amendments.

Regarding time frame and other obligations that may be required, we note anecdotal experiences of consumers, that indicate that the current process is bumpy and results in suboptimal consumer outcomes. For example, one person on the My Efficiency Electric Home Facebook page expressed their frustration after they had initiated an abolishment of their gas meter in February but the meter status did not change until June, which meant they were charged for supply up until that point, with the retailer stating that this was out of their control - offering a goodwill credit of \$50.³⁸ This story indicates that there may be issues with processes or compliance that need addressing as part of the ERCOP review, and in consultation with gas distributors.

Bill information requirements

Q17-19. Should the ERCOP align with the Better Bills Guideline? Should the bill include EWOV details? And should there be prescription around bill communication requirements?

Recommendation 1:

That EWOV's details are included on the bill. For all other Better Billing Guideline changes, we recommend that the ESC first work with the AER to understand the impact of the Better Billing Guideline has had, before committing to any additional amendments to the ERCOP content of bill requirements.

Recommendation 2:

That the ESC considers the role of the bill (to a consumer), what this looks like for more innovative products and services, and where the regulatory sandbox might be used to test new concepts. This should include what on the bill is driving the complexity. For example, is it layout, terminology, or is it the tariff structures themselves?

Recommendation 3:

To address billing communication, that best offer guidance demonstrates what is considered a bill summary and what is email only for the purpose of providing the bill as a PDF attachment. If the guideline is not sufficient, we recommend that further requirements within the ERCOP be considered.

Rationale:

In September 2023, only 51% of Victorian residential customers were receiving the best offer price for their electricity.³⁹ Ensuring that a customer can easily see the best offer message is one important element and should have robust regulatory and enforcement measures to ensure its success.

³⁷ ESC Gas Distribution Code of Practice Final Determination <https://www.esc.vic.gov.au/sites/default/files/documents/FDP%20-%20Gas%20Distribution%20Code%20of%20Practice%20review%20-%20FINAL.pdf>

³⁸ My Efficient Electric Home (Facebook group). Comment published June 2024.

³⁹ Consumer Action Law Centre, Energy Assistance Report 4, 2024 https://consumeraction.org.au/wp-content/uploads/2024/06/CALC034-Energy-Assistance-Report-2024-0.3-FA_WEB-ROSE-UPDATED.pdf



Including EWOV's details on the bill, should be a non-contentious change (if not already on bills), and while it may be logical to align jurisdictions and mirror the rest of the Better Billing Guideline differences, it is unclear if that will solve the complexity of the energy bill.

Our October Energy Consumer Behaviour Survey identified that 36% of households are unsure what tariff structure they are on.⁴⁰ This rises to 48% for those under financial pressure and 44% for renters. We consider it likely that this is because of the terminology or complexity of the pricing structure, rather than the layout. In New Zealand, social retailer Nau Mai Rā have taken a different approach to billing, with no fixed charges.⁴¹ While we are not suggesting this is the solution (or the only solution), it is an example of 'simplifying the bill', that includes changing fundamentals about how the bill is calculated.⁴²

Clarifying best offer obligations

Q20-22: Do you support our proposal for addressing accessibility and availability of best offers? and are you aware of any other issues with the best offer obligations that this review could consider?

Recommendation:

We agree with the ESC and their proposal to clarify:

- What is considered a restricted plan. The ESC may like to consider whether more transparency is required in terms of how many customers are on a restricted plan and the plans that are being classified as restricted.
- Discounts for bundled gas and electricity plans do not apply to the deemed best offers.

We also recommend the ESC consider whether additional protections are required for loyalty customers, who are subject to pricing regimes that mean they end up on higher prices than new customers but effectively still on the same plan, and additionally, the implications to the best offer message.⁴³

Rationale:

Our ECSS June data found that roughly only 35% of Australians are confident that the energy market is working in their long-term interests⁴⁴. The purpose of the best offer calculation and messaging is to help provide clear and timely information that supports customers to engage confidently in the energy market. While reviewing the mechanics of the best offer obligations (and how and when they appear or are calculated) is welcomed, there appears further issues in the market that need addressing that are coupled with the best offer, and again adding to distrust, and complexity. This was recently

⁴⁰ Energy Consumers Australia, Energy Consumer Behaviour survey October 2023
<https://energyconsumersaustralia.com.au/publications/surveys-energy-consumer-sentiment-behaviour>

⁴¹ Concept consulting 'social retailing phase one' <https://www.mbie.govt.nz/dmsdocument/26418-social-retailing-phase-1-problem-definition-and-long-list-of-options-pdf>

⁴² The Issues Paper itself refers to an ESC 2002 report that also found billing structures across plan types (amongst other things) can contribute to complexity and the ability to easily compare across plan types. Essential Services Commission, [Consumers experience research report](#), 2020

⁴³ A Kollmorgen, 'Are you paying more than other customers for the same plan?' 24/07/24
<https://www.choice.com.au/shopping/shopping-for-services/utilities/articles/confusing-energy-pricing-tactics>

⁴⁴ Energy Consumers Australia, June, Energy Consumer Sentiment Survey
<https://energyconsumersaustralia.com.au/publications/surveys-energy-consumer-sentiment-behaviour>



outlined in a Choice article that also calls on government to introduce new fairness laws that ban practices that for example penalise loyal customers.⁴⁵

Accuracy of information on Victorian Energy Compare website

Q.23-24 Do you support the need to review relevant definitions in the ERCOP or is this better managed through the Fact Sheet Guidelines? Are there any issues with prescribing a timeframe for removal of outdated information from VEC?

Recommendation 1:

We support consistency and clarity of definitions within the Fact Sheet Guidelines and ERCOP, if it best ensures good consumer outcomes. Additionally, we recommend that the ESC hold retailers to account if they are in breach of the Guidelines and misleading customers or providing 'misinformation.'

Recommendation 2:

That the ESC undertakes an audit of VEC along with retailer plan information to test both compliance and whether VEC is delivering for residential and small business consumers. This audit should include assessing for the future, and what might be required for a 'truly comparative experience'. Further, we note the Paper states that VEC supports translation to different languages. As part of the audit the ESC should test this feature, along with the potential for an accessibility toggle to best support consumers effective market engagement.

Rationale:

The ACCC market report found that there are savings to be made if consumers look to switch plans (with their current retailer and/or to a different provider).⁴⁶ However, as the Paper notes there is complexity in doing so, this may only increase with advancements in products and services that cater for, for example batteries, flexible demand and electric vehicles being offered in the market.⁴⁷ If the VEC is to be a tool that cuts through the complexity, making it easier for consumers to navigate offers and understand what plan may best suit their needs, significant modification may be required to be fit for purpose. Additionally on investigation, while we were able to easily change languages to view frequently asked questions and view a step-by-step guide on how to get to the plan page, we were unable to locate how to switch languages when reading plan information or fact sheets

We also note the current user journey for small businesses is different to residential, requiring a business to have been at the premise for 12 months, and provide a NMI or data information. We appreciate there may be good reasons for requiring this additional information, but we think time should be spent working through if there is an appropriate work-around, particularly to the timeframe barrier.

⁴⁵ A Kollmorgen, 'Are you paying more than other customers for the same plan?' 24/07/24 <https://www.choice.com.au/shopping/shopping-for-services/utilities/articles/confusing-energy-pricing-tactics>

⁴⁶ ACCC Inquiry into the National Electricity Market - June 2024 report ([acc.gov.au](https://www.accc.gov.au)) p3

⁴⁷ the Paper recognises already the potential difficulty customers experience when trying to compare plans with solar (p50) which has been in the market now for quite some time.



3. Pricing and contract protections

Bill frequency obligations (Q25-26)

We do not have substantive comments, however, note any change in alignment should ensure there are no adverse outcomes for consumers, and looks to improve the overall customer experience. To this end, the ESC may like to take a broader perspective and consider whether the billing frequency conditions should be amended to for example, setting monthly billing as a default measure (and then considering how this interacts with the best offer notification obligations).

Clarifying unclear definitions: Standard offers

Q27. What benefits do you see in limiting when a retailer can use the language of standard offers for advertising'

Recommendation:

That a consumer should be able to easily identify (if they want to) whether standard or market contract terms and conditions apply to them and the plan they are on or looking at signing up to.

More broadly, we recommend considering how market offers are packaged and whether there needs to be an overhaul in how these products are designed. For example, should the question actually be 'should VDO pricing only be used for standard offers? We note that there are offers in the market that appear to be the retailers basic offer, however, are priced just above the VDO which may be a less confusing approach.⁴⁸

Rationale:

According to our data, many Australians struggle to find information that is useful to them, and that there is low trust in the energy industry to act in consumers long term interests.⁴⁹ Despite this, many products being offered by retailers are highly complex and difficult to comprehend.

If retailers are to use VDO pricing for a basic offer there plenty of options in how to package and market the plan without unnecessarily complicating things for consumers. For example, we note that some retailers use words like 'basic or no frills.'

Alternatively, the French retailer EDF on their landing page allows a consumer to discover:

- "Our market-priced electricity offers, specially adapted to your needs", or
- "Our regulated sale tariff for electricity".⁵⁰

Clarifying unclear definitions: Pay-by-date (Q29-31)

⁴⁸ For example, Momentum Energy's 'Nothing Fancy' offer is 3% less than the VDO.
<https://www.momentumenergy.com.au/energy-plans?postcode=3000>

⁴⁹ ECA Blog, The recipe to empower consumers- how to run a successful energy information campaign,
<https://energyconsumersaustralia.com.au/news/the-recipe-to-empower-consumers-how-to-run-a-successful-energy-information-campaign>

⁵⁰ EDF website <https://particulier.edf.fr/en/home.html> accessed July 2024



We do not have substantive comments on this question, however, recommend that the ESC engage with relevant stakeholders to understand the customer journey, including what might be the 'right time' for the information on assistance to be best received,⁵¹ and whether a definition clarification will easily deliver on this, or whether an alternate path is required.

Clarifying unclear definitions: Arrange a disconnection

Q32-33. Could the term 'arrange a disconnection be clarified? Are there other options to clarify in the ERCOP around service order cancellation?

Recommendation:

That the ESC, alongside reviewing clarification needs, should issue guidance that outlines the expectation, and the duty retailers have to their customers, particularly those who are experiencing payment difficulty and more vulnerable. In addition to this, the family violence provisions include a clause that enables retailers to act in the safety of a customer affected by family violence and outside other ERCOP obligations if necessary to do so.⁵² The ESC may like to consider whether a similar clause is required here to empower and embed further, the expectations on retailers, as well as ensure the compliance and enforcement measures are robust.

More broadly, we think attention should be given to the number of reconnections that do occur within seven days of a disconnection, and whether additional or new measures are required to avoid disconnection as a blunt tool to force customer engagement.

Rationale:

It has been made abundantly clear to retailers that disconnection is truly a last resort measure and is an enduring compliance and enforcement priority for the ESC.⁵³ Despite this, CALC has reported an increasing number of instances where disconnections have occurred where the customer was unable to pay. They note that such unacceptable breaches continue five years into the PDF, demonstrating a need for stronger enforcement and regulatory intervention.⁵⁴

It is evident, that there are entrenched issues operationally or culturally that need investigation and intervention.

To draw on some approaches to disconnection overseas:

⁵¹ The Insight Centre 'Evidence base to support the development of an effective communications campaign for energy consumers' report 2023 <https://energyconsumersaustralia.com.au/wp-content/uploads/Energy-Information-Campaign.pdf>

⁵² Energy Retailer Code of Practice under c150 also National Energy Retail Rules 76K(1) If a retailer is unable to fulfil an obligation under a customer retail contract in complying with this Part, the retailer is not in breach of the contract

⁵³ "Electricity is an essential service. In Victoria, energy retailers must provide payment assistance to customers facing or anticipating bill stress. This includes treating disconnection of customers for non-payment as the absolute last resort. Retailers must have robust systems that reliably provide customers with payment assistance, including timely application of approved credits and grants, and meet the strict rules that apply for disconnections," Commissioner Symons. <https://www.esc.vic.gov.au/media-centre/agl-pays-73968-penalties-allegedly-wrongfully-disconnecting-customer-experiencing-payment-difficulty>

⁵⁴ Consumer Action Law Centre, Energy Assistance Report 4, 2024 https://consumeraction.org.au/wp-content/uploads/2024/06/CALC034-Energy-Assistance-Report-2024-0.3-FA_WEB-ROSE-UPDATED.pdf



- Signatories of the UK Vulnerability Commitment agree to “Never knowingly disconnect a vulnerable customer at any time of year, where the household has children under the age of 6 (or under the age of 16 during the Winter Moratorium) or where for reasons of age, health, disability, or severe financial insecurity, that customer is unable to safeguard their welfare or the personal welfare of other members of the household.”⁵⁵
- In Catalonia they have had a disconnection protections program in place since 2015, that first requires a report by social services confirming whether the household has been identified as vulnerable, and if so, the disconnection cannot occur.⁵⁶

Disclosure of additional retail charges in terms and conditions (Q34-36)

We do not have substantive comments to these questions, however, note the work currently being undertaken as part of the Consumer Reform Package and recommend that the ESC considers where this sits within potential changes to fees and charges.

Requirement to publish changes to tariffs and charges in newspapers (Q38)

We do not have a strong view on this issue, however, note that if notices are removed from newspapers, the ESC may like to consider alternative measures, such as a notice by the ESC which is more ‘public service announcement’ in nature.

General code of practice updates and other changes

Protections for embedded network customers

Q39-42 – What are the costs and benefits of extending ERCOP protections to embedded network customers such as bill change alerts and family violence provisions.

Recommendation:

While we focus on those protections queried in the Paper, we do not consider this an exhaustive list of required changes. We recommend that any protection measure within ERCOP should be equally considered for household and small business embedded network customers, and if relevant investigate how they might best be applied.

With respect to family violence provisions, these should be extended, and we do not think it is appropriate for implementation costs to be weighted here.

Equally we agree that the bill change alert notice should be applied. However, if it is to be effective, we note that whether the same bill change notice should be used might require further consideration.

Rationale:

The ACCC’s recent analysis on embedded networks reported Victoria has the largest number of customers in an embedded network for both residential and small business.⁵⁷, While there have been

⁵⁵ Energy UK, [The Vulnerability Commitment 2024](#).

⁵⁶ Boletín Oficial del Estado, [Ley 24/2015, de 29 de julio, de medidas urgentes para afrontar la emergencia en el ámbito de la vivienda y la pobreza energética](#) (septiembre 2015).

⁵⁷ ACCC [Inquiry into the National Electricity Market - June 2024 report \(acc.gov.au\)](#)



improvements in the framework for embedded network customers (particularly in Victoria), where possible, protections and rights should be equitable and for everyone.

The AEMC in their final determination recommended that the family violence provisions be extended to embedded networks, stating that this extension would “prevent there being an arbitrary distinction in the protections and support available to customers based on how they obtain their energy services, where they live...and provides protections and assistance to some of the most vulnerable energy customers.”⁵⁸ Making an unnecessary distinction is very concerning, given that embedded networks are often used in caravan parks and retirement homes, and many of these residents may be more vulnerable. For instance, family violence is the leading cause of homelessness for women and children⁵⁹ and it may be that housing and accommodation is sought within caravan parks. Additionally, data on elder abuse in Victoria found that psychological and family abuse was the most commonly reported forms of abuse, with 72% of advice call clients being women, mostly in their 70s.⁶⁰

Use of preferred communication method

Q43-44. When should preferred methods of communication be used?

Recommendation:

We recommend that the obligation to contact a customer via their preferred communication method be included in Part 6 (Assistance for residential customer anticipating or facing payment difficulties) and Part 10 (Disconnection of premises). We also recommend in doing so, that the ESC provide guidance on how the preferred method of communication might be captured. For example, billing preferences without it being explicit does not necessarily indicate communication preference. Additionally, the ESC may like to consider preferred method and preferred time of contact as best practice.

Rationale:

Our ECSS data finds that only 44% of households say they can clearly remember when their energy company most recently sent communications to them.⁶¹ Further, our information campaign research found that to resonate with customers, information needs to be provided in a way that is meaningful to them and their circumstances.⁶²

The industry does a lot of work on engagement strategies, however, as the above data shows, more needs to be done to best ensure information is reaching consumers. We appreciate there are external factors at play (such as scams), however, retailers should where possible, be building in responses to

⁵⁸ Australian Energy Market Commission, Family Violence Final Determination

https://www.aemc.gov.au/sites/default/files/2022-09/RRC0042%20-%20Protecting%20customers%20affected%20by%20family%20violence%20-%20Final%20Determination_clean.pdf The final determination also noted that extension of protections to embedded network customers was consistent with many views of stakeholders

⁵⁹ Safe and Equal, website <https://safeandequal.org.au/understanding-family-violence/statistics/> accessed July 2024

⁶⁰ National Aging Research Institute, Elder abuse in Victoria an analysis of 7 years of data

[https://www.nari.net.au/elder-abuse-in-victoria#:~:text=Psychological%20abuse%20\(63%25\)%20and,than%20one%20type%20of%20abuse.](https://www.nari.net.au/elder-abuse-in-victoria#:~:text=Psychological%20abuse%20(63%25)%20and,than%20one%20type%20of%20abuse.)

⁶¹ Energy Consumers Australia, Consumer Energy Sentiment Survey, June 2024

<https://energyconsumersaustralia.com.au/publications/surveys-energy-consumer-sentiment-behaviour>

⁶² The Insight Centre 'Evidence base to support the development of an effective communications campaign for energy consumers' report 2023 <https://energyconsumersaustralia.com.au/wp-content/uploads/Energy-Information-Campaign.pdf>



overcome these. For example, if a customer's preferred method is via phone, a SMS before the call will help the customer identify the call. Additionally, the SMS could also state in a few words the purpose of the call, i.e., 'we are calling just to check in and see if we can assist with anything.' This approach may help build trust and possibility reduce any anxiety over what the call might be about.

Receipt of communication and notice (Q45) – no comments at this stage.

Bulk hot water formulas (Q48) – no comments at this stage.

Clarifying timelines for compliance with certain obligations (Q46)

We have no substantive comments on this issue, however, if clarification is required as to what 'immediate' means (in the case of a direct debit cancellation in a last resort event), we recommend that 'within one business day' seems reasonable.

Consequential amendments – anything else the ESC should consider

Q49. Are there any other issues we should consider as part of this review?

Along with our recommendations made to the AER's Issue Paper (as noted earlier), we would like to see the ESC focus on the experiences of loyalty customers.

As raised under best offer obligations, the experience for loyalty customers can be vastly different to that of a new customer. The ACCC's December Inquiry into the National Electricity Market Report found that large numbers of small consumers were on plans that were equal to, or higher than, the default offers. It is clear that over time, customers who have stayed loyal to their retailer are paying higher prices than they need to. A fulsome review should include the ACCC's recommendation for policy makers to investigate how best to reduce the number of customers on legacy plans with large conditional discounts.⁶³

The work underway to consider the recent 'One Click Switch'⁶⁴ announcement also may be relevant here, and whether there is a simple method for helping to facilitate a customer easily switching to the better plan with their retailer. While work has been done to better protect customers who do not or cannot seek a better deal, there is still significant weight placed on the customer to navigate the complex, instead of addressing why it needs or is still complex.

⁶³ ACCC [Inquiry into the National Electricity Market - June 2024 report \(acc.gov.au\)](https://www.accc.gov.au)

⁶⁴ J Evans, 'The government wants to force energy retailers to give you their cheapest deal with just 'one click' May 2024 <https://www.abc.net.au/news/2024-05-19/one-click-switch-save-household-power-bills/103866638>