

25 October 2021

Essential Services Commission
Level 8, 570 Bourke St
Melbourne VIC 3000

Lodged via EngageVictoria

Dear Commissioners,

Re: Making an Energy Retail Code of Practice - Consultation

Simply Energy welcomes the opportunity to provide feedback on the Essential Services Commission's (Commission) consultation on the making of an Energy Retail Code of Practice.

Simply Energy is a leading energy retailer with approximately 750,000 customer accounts across Victoria, New South Wales, South Australia, Queensland and Western Australia. As a leading retailer focused on continual growth and development, Simply Energy supports the development of effective regulation to facilitate competition and positive consumer outcomes in the market.

Simply Energy commends the Commission for preparing this early version of the Code of Practice to enable stakeholder consultation prior to the legislative amendments being made. While Simply Energy supports the administrative nature of the first iteration of the Code of Practice, we provide some specific feedback in this submission.

A fulsome review of the Energy Retail Code of Practice should occur before penalties are prescribed

Simply Energy understands that the Commission is approaching the Code of Practice as a largely administrative process. However, the current obligations in the Code of Practice should be more closely scrutinised to ensure they are fit-for-purpose as subordinate legislation that attract substantial penalties for non-compliance. While this cannot occur for the initial Code of Practice, a fulsome review of the Code of Practice should occur before the end of the initial transition period. This may also enable the Commission to implement recommendation nine of the Independent Review of the Electricity & Gas Retail Markets in Victoria, which was due to be completed almost two years ago.

Ideally, a fulsome review of the Code of Practice should occur before the Department of Environment, Land, Water and Planning (DELWP) prescribes penalty units that differ to the default amounts. It would be challenging for the Commission to undertake a fulsome review of the Code of Practice if DELWP had already prescribed penalty amounts to existing obligations. This would either constrain the Commission's ability to revisit the intent and drafting of the current obligations or require DELWP to run an additional process to prescribe penalty amounts to the redrafted Code of Practice. Both approaches are less efficient than if the Commission and DELWP could work together to coordinate these reviews.

We have concerns about the removal of some life support provisions from the Code of Practice

The Commission proposes to remove obligations that are addressed by the *Energy Legislation Amendment (Energy Fairness) Act 2021* (Energy Fairness Act) including the current clause 125(1) of

the Energy Retail Code. As the Commission would be aware, during the implementation of the Energy Fairness Act there was industry concern about the definition of 'life support customer details' and the new requirement to obtain the 'personal details of each life support resident'.

At the time, DELWP advised that the Energy Fairness Act was intended to replicate the requirements of clause 125(1) of the Energy Retail Code and would not create additional obligations. In particular, DELWP suggested that the requirement to obtain the 'personal details of each life support resident' could be satisfied by meeting the Energy Retail Code obligation (in clause 125(1)) to register the supply address of a person requiring life support equipment.

Simply Energy is concerned that removing the current clause 125(1) obligations could result in future confusion around the meaning of 'personal details of each life support resident'. Without the context of clause 125(1), it would be reasonable to assume that the term 'personal details' requires more detailed personal information than simply a supply address.

As an alternative to retaining clause 125(1) in the Code of Practice, DELWP could amend the *Electricity Industry Act 2000* and the *Gas Industry Act 2001* to make it clear that the requirement to obtain the 'personal details of each life support resident' can be satisfied by registering the supply address of a person requiring life support equipment.

The Code of Practice will require further rounds of internal review to ensure accuracy

It is a challenging task to restructure the Energy Retail Code and ensure that all cross-references are accurate. Simply Energy appreciates the large amount of work the Commission has undertaken in preparing a draft Code of Practice in advance of the Victorian Government's legislative amendments and allowing for stakeholder consultation. Although the Commission will likely review the Code of Practice several more times before it is finalised, Simply Energy has identified some issues during its review that we would like to bring to your attention:

- **Clause 61(1)** has unreadable symbols next to the clause numbers listed.
- **Clause 63(4) and 63(5)** both refer to 'subclause (1)(nn)', which does not appear to exist.
- **Clause 85(2)(d)** has a typo at the end of the clause, which says 'or o' rather than 'or'.
- **Clause 87** is referenced several times in the payment difficulty framework section of the Code, in clauses 130(1), 131(1) 131(3), when the reference should instead be to clause 128(g)(i).
- **Clause 122** uses a different numbering convention to other clauses in the Code, as the subclauses are listed as (a) and (b) instead of (1) and (2).
- **Clause 189(3)** has a typo at the end of the clause, as it refers to 'subclause Error! Reference source not found..'
- **Inconsistent italicisation throughout the Code**, for example – the defined term 'deregistration notice' is not italicised in clause 171(5)(b) but is italicised in other sections of clause 171. Another example is the defined term 'Electricity Industry Act', which is italicised many times in the Code but is not italicised in clauses 171(1), 173(1)(a), 174(a)(i), and 189(1).
- **Unnecessary use of bold text throughout the Code**, for example – clause 47 has the term 'required information' in bold and it is not clear why this is necessary. This formatting occurs in several other places in the Code, such as clause 49, clause 108, and clause 117.

Simply Energy also notes that the Commission is proposing to make a final decision on the Code of Practice in December 2021 / January 2022 and have the Code of Practice take effect shortly afterwards. Simply Energy urges the Commission to delay commencement of the Code of Practice until 1 July 2022 to provide retailers with time to update their compliance and reporting systems to reflect the change in clause numbering from the Energy Retail Code to the Code of Practice.

Concluding remarks

Simply Energy welcomes further discussion in relation to this submission. To arrange a discussion or if you have any questions please contact [REDACTED], at [REDACTED]

Yours sincerely

[REDACTED]

[REDACTED]

Simply Energy