

19 July 2024

Essential Services Commission  
Level 8, 570 Bourke Street,  
Melbourne, Victoria 3000

To Whom It May Concern

## **Energy Retail Code of Practice Review**

Energy Locals Pty Ltd (ACN 606 408 879) (**Energy Locals**) welcomes the opportunity to provide a submission to the Essential Services Commission (**ESC**) in relation to the Energy Retail Code of Practice (**Code**) review Issues Paper (**Issues Paper**).

Energy Locals is an authorised electricity and gas retailer that supports customers directly as well as via partnerships with newcomers to the energy retail sector, such as RACV, Indigo Power, Cooperative Power, Tesla, and others. A retail gas offer is in the process of being launched.

In this submission, we have outlined our position on key areas for potential improvement for each of the four review themes in the Issues Paper, and our support for alignment with the National Energy Retail Rules (**NERR**).

We also expect that we will have more detailed input once the draft code of practice and the Regulatory Impact Statement is circulated.

### **1. Comments on assessment criteria.**

We agree with the proposed assessment criteria, and fully support the aim of promoting the long-term interests of Victorian energy consumers. We also agree that any change must be targeted, fit for purpose and proportionate to the issue being addressed. It is crucial to balance the costs and benefits of proposed changes between retailers and consumers.

With regard to concerns whether the proposed changes will have unjustified effects on the price of energy, the ESC will need to give consideration to the implementation costs that retailers may incur for any Code change. Ensuring compliance with new Code requirements does require significant resource allocation and often upgrades to retailers' internal systems. Any costs associated with upgrading systems or training staff ultimately need to be covered, and they usually end up being transferred to customers.

Given that Energy Locals, like most other retailers, operates in NERR states, we do support alignment with the National Energy Customer Framework. Variances in rules between States and Territories increase costs to customers through greater system and process complexity. We urge the ESC to carefully consider any nuances or deviations from the national framework as even minor differences can be challenging to implement in the complex billing systems used across the industry, and this can directly lead to increased difficulties in maintaining full compliance with shifting rules.

## 2. Protections for consumers experiencing vulnerability

### a. Strengthening family violence

Energy Locals agrees with the ESC's suggestion that the NERR provisions for family violence have not been in place long enough to assess whether specific obligations under the NERR could lead to stronger protections for Victorian consumers. We also consider that Victoria's family violence protections have been working effectively.

However, there is one rule from the NERR that we would support being introduced to the Code. We would support an introduction of a clause similar to rule 76K<sup>1</sup> of the NERR which provides that there is "no breach of contract for compliance" with Part 3A (Assistance for customers affected by family violence) of the NERR.

We also support the proposal to expand the definition of family violence to include carers and Aboriginal and Torres Strait Islander kinship relationships. We recognise that 'family violence' can be broader than intimate partner violence so we welcome the proposal to expand the definition to include other family dynamics.

### b. Payment Difficulty Framework – training requirements

Energy Locals would support the introduction of payment difficulty training, however, a key administrative burden for staff training is the development of training resources. We would welcome guidance material from the ESC to ensure that the training is appropriate and to reduce the burden on retailers. If the ESC offered a training module or provided detailed guidance, as the ACCC did when introducing new restrictions on how discounts could be marketed, this would make the delivery of training more cost effective and efficient and would improve consistency across retailers.

An area where guidance would be particularly useful is clarification on when payment assistance can end, and when a retailer no longer needs to offer a customer assistance. On some occasions we note that customers can take advantage of the Payment Difficulty Framework (PDF). Clearer guidelines about removal/re-entry and what other options retailers can offer if payment assistance is not working would be welcomed. We note that the NERR's new proposed version has clearer guidelines around this, and we support alignment.

### c. Obligation to place debt on hold for six months

From our experience, placing a customer's debt on hold for six months does not benefit the customer in the long run. We also consider that applying a one size fits all approach is not effective. Where a customer is experiencing payment difficulty, repayment arrangements need to be customer specific. Pausing a customer's debt is really only effective where the customer is facing a temporary situation, like losing employment.

Generally, a more effective way for customers to reduce their debt is to agree on a manageable payment plan that enables them to clear their debt and manage ongoing usage, along with referrals to financial counsellors (although this requires the customer to accept this course of action, which many don't).

Similarly, encouraging customers to reduce consumption and thereby reduce bills is likely to be of greater benefit to the customer. For some customers, freezing a debt disincentivises them from making change and may actually result in them getting even further in arrears

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<sup>1</sup> National Electricity Retail Rule, available at [energy-rules.aemc.gov.au/nerr/current/76K](http://energy-rules.aemc.gov.au/nerr/current/76K)

after the six-month pause. On many occasions, the customer's time in hardship may be extended. As outlined in the Issues Paper *'many customers who receive payment difficulty support are part of households that consume more energy from the grid than other households.'*<sup>2</sup>

**d. Accessibility of Utility Relief Grants (URGS) information**

Energy Locals would see a significant benefit to the URGS process if we were able to proactively offer customers the chance to complete the URGS application independently via the webform. The current requirements in the Code to provide 'practical assistance'<sup>3</sup> to customers to complete an application for URGS is burdensome for smaller retailers. Given we have a small hardship team, completing the application during the call substantially increases our call handling time and reduces our accessibility to other customers. Similarly, it is not always possible to assist a customer over the phone. The application requires supporting evidence which the customer needs to provide (e.g. bank statements, payslips, receipts) which they are often unable to immediately access.

Given the significant uptake of URGS in 2023, the scheme plays an important part in alleviating cost pressures for customers.<sup>4</sup> Accordingly, we wanted to take this opportunity to comment that an increase to the grant amounts and eligibility periods for URGS would assist. The amount has been at \$650 every two years for some time now and this is quickly exhausted due to the increases in wholesale prices since 2022, along with the interminable creep in network tariffs and the unhinged escalation in Victorian Energy Efficiency Certificate costs following the ESC's ban on certain activities which drove certificate creation.

We do acknowledge that increasing the URGS amount is not a decision that sits with the ESC given that it is administered by the Victorian Government and the Department of Families, Fairness and Housing. However, we expect that the ESC has strong influence over the Government's decision in this area and hope that feedback from us and most likely other retailers will support this argument – should the ESC choose to take it up. We note that SA (EEPS) and NSW (EAPA) have recently increased the amount of government funding.

**e. Assistance and information on energy efficiency**

Energy Locals opposes additional (or more prescriptive) obligations on providing energy efficiency advice being added to the Code as this is likely to create a large burden on retailers. In considering any new obligations, the ESC must consider the appropriate allocation of responsibility. The burden for promoting energy efficiency should not sit with retailers.

In our view, and as suggested in the Issues Paper, the ESC should link retailers with existing energy efficiency programs. In the Issues Paper, the ESC mentions a Residential Efficiency Scorecard which eligible residential customers can use to obtain a discount or rebate to assess the energy efficiency of their home. This is a useful resource which retailers should be provided with, particularly when assessing whether hardship customers would benefit from being referred to the Victorian Energy Upgrade program.

To the extent that retailers remain responsible for the provision of energy efficiency advice, we recommend that the ESC provide further guidance and clarification on the extent of

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<sup>2</sup> Essential Services Commission, *Victorian Energy Market Report: March 2024*, 26 March 2024, p. 6.

<sup>3</sup> Section 128(1)(e) of the Energy Retail Code of Practice.

<sup>4</sup> Essential Services Commission 2024, *Energy Retail Code of Practice review: Issues Paper*, 6 June 2024, page 30.

guidance and assistance that must be given to customers. There are sections of the PDF which are ambiguous and where further guidance would be beneficial. The ESC Guidelines could go further to clarify expectations and to facilitate the provision of information by retailers as well as how we can support customers with appliance replacement programs.

### 3. Supporting the choices of energy consumers

#### a. Bill information requirements

We support the objectives of reducing complexity for small customers in understanding their energy bills and providing greater accessibility of key information, however we urge the ESC to exercise caution when progressing potential amendments. Any change to billing requirements will have implications on retailer systems.

For the three options proposed in the Issues Paper we have outlined key considerations for the ESC below.

##### i. Option 1 – Alignment with NERR Better Bill Guidelines (BBG)

As identified by the ESC, any change to bill information will require retailers to make a number of updates to systems and processes. Costs incurred in these upgrades will ultimately be passed on to customers. We agree that the ESC needs to balance potential benefits to the customer and burden to retailer.<sup>5</sup> In this regard, it is important for the ESC to understand that retailers incurred significant costs associated with the introduction of the BBG. Given the complexities, implementation of the BBG was resource intensive for Energy Locals requiring both a dedicated internal project team and also the engagement of an external provider to update system capability.

Given the BBG has only recently been implemented, its effectiveness is difficult to measure. However, since its introduction we have seen a significant rise in customer complaints. Insights from the NSW Energy and Water Ombudsman (EWON) complaints analysis indicate that customers are confused by the new content of their bills.<sup>6</sup> In addition to customer complaints, we have also encountered difficulties with the inflexibility in the prescribed bill templates. There have been occasions where we have key messages that we would like to prominently display on a customer's bill (not marketing messages but important service or price change-related ones, for example), but we are unable to do this on the front page due to the restrictive template.

While Energy Locals is not an advocate or supporter of the adoption of a BBG-like regime in Victoria, we have aligned our processes where possible across states for operational ease. This means that we have adopted many of the BBG requirements on our bills to Victorian customers. If there is to be a change, we suggest full alignment with BBG or no change at all. Where rules slightly align but there are small nuances, it can be burdensome for retailers to implement, and the cost can very quickly exceed the incremental benefit.

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<sup>5</sup> Ibid, page 48.

<sup>6</sup> EWON Insights, available at <https://www.ewon.com.au/page/publications-and-submissions/reports/EWON-Insights/ewon-insights-jan-mar-2024>

## ii. Option 2 – Inclusion of Energy and Water Ombudsman Victoria (EWOV) details on front page of bills

While we support the requirement to include EWOV details in billing information, it is more effective for customers to initially direct complaints to us, and we do not want to detract from this.

As per section 69 of the Code, for billing disputes, where requested by a customer, retailers must conduct a review of a bill in accordance with their complaint and dispute resolution processes. Therefore, it is our responsibility to try and resolve the issue first before a customer contacts EWOV. Having an external EWOV contact on the first page of our bills, instead of our internal complaints contact details, is counterproductive to the obligation of having a compliant and dispute resolution policy in place that encourages first resolution through retailers. It will also increase costs to customers as EWOV will need to invest time creating a compliant case only to then point the customer to raise the matter with the retailer first.

In the EWON's insights report, referred above, EWON commented that the requirement for the ombudsman's phone number to be displayed on the first page of the bill has resulted in customers contacting EWON before the retailer.<sup>7</sup>

As outlined above, billing complaints are the key driver for complaints to the ombudsman. If retailers had more opportunity to resolve billing complaints before they were raised to EWOV, this would reduce the burden on EWOV meaning they can focus attention on resolution of other disputes or EWOV membership fees could be reduced.

## iii. Option 3: Addressing bill communication requirements

Any amendments to the prescribed bill requirements, will require retailers to update templates and systems, incurring costs and requiring resourcing that could be utilised to serve customers elsewhere. We therefore urge the ESC to carefully consider the need for such changes.

## b. Clarification of best offer obligations

Energy Locals does see a need for clarification on best offer obligations. We also note that compliance is burdensome for retailers, as best offer calculations are extremely complicated for billing platforms to calculate given the plethora of network tariffs and best offer messaging can cause confusion to customers. Examples of when the messaging has led to confusion include where:

- offers with pre-conditions are required to be included in the best offer calculation, meaning the resulting message may not always be a true representation of the plan; and
- there are additional requirements to obtain an offer, which means the plan is not suitable for that customer.

In light of these limitations, comparison websites, and the government's promotion of such, are more likely to stimulate competition than the inclusion of a best offer message on a customer's bill. In fact, we query the effectiveness of best offer messaging in achieving its target to provide customers with clear, timely and easily understood information to allow them

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<sup>7</sup> Ibid.

to evaluate the ongoing suitability of the customer retail contract. We have set out some examples to support this below:

- Giving customers a ‘best offer’ based solely on one calculation set by the ESC but not giving consideration to the customer’s actual circumstances (besides usage history) may not be helpful to customers when taking effort and cost into consideration.
- While a best offer message may show that the customer can save money with their current retailer (or not), there is a statistical likelihood that an alternative retailer will have a better offer. There’s only one retailer at any time that’s the cheapest for a customer’s particular usage, after all. Therefore, we prefer the promotion of Victorian Energy Compare so that the customer can easily see all available offers.
- Beyond simply price, many customers select a particular retailer/ brand or plan for other reasons. For example, they may have loyalty to the brand or attracted by other benefits such as green credentials or quality of Australian-based customer service.

In this regard, a key area not identified in the Issues Paper but associated with a potential change to the definition of ‘restricted plan’ is the requirement to provide the *retailer’s best offer* for white label brands.

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[REDACTED]

[REDACTED]

[REDACTED]

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<sup>8</sup> Energy Locals Letter to Essential Services Commission “Application for no Action” addressed to John Harbour, Manager of Energy Compliance, dated 25 August 2023

<sup>9</sup> Essential Services Commission 2024, *Energy Retail Code of Practice review: Issues Paper*, 6 June 2024, page 61



#### **c. Accuracy of information on Victorian Energy Compare Website**

Energy Locals is likely to support the introduction of key definitions for 'discount', 'incentive', 'one-off-rebate', 'one-off credit' or 'sign-up credit' as we appreciate this will avoid ambiguity and result in more reliable information on Victorian Energy Compare (VEC). However, we reserve further comment until we have seen the draft code.

We also support clarification of the timeframes for removing outdated information from VEC as we recognise the importance of ensuring that information is accurate at all times. If the information is not reliable then it undermines the effectiveness. In this regard, to better facilitate the addition or removal of plan information we suggest that attention could be better focused on VEC process improvements rather than requiring amendments to the Code. On some occasions we have faced delays when launching a product due to the requirement for a plan to be approved by the Department of Energy, Environment and Climate Action. This approval can result in a delay which means that a retailer may have launched a product that is not yet live on VEC, despite the retailers' best efforts to coordinate such.

#### **4. Pricing and contract protections**

##### **a. Bill frequency obligations**

We do see a need for review of the Code given that that billing frequency and timeframes for best offer messages are not aligned. At this stage, we have no strong position on the best way to align these obligations, however, given the issues with best offer messages, our preference would be to reduce the best offer requirements. We are also supportive of the exemptions being granted for best offer messaging. We expect that we may have more constructive feedback on this if the ESC amends these rules in the draft code.

##### **b. Clarifying unclear definitions: 'Pay-by date' and 'arrange a disconnection'**

We would support clarification of 'pay-by date' and 'arrange a disconnection', however, if there are any associated edits we reserve our comments until we have had an opportunity to review the proposed amendments. We do, however, consider that this is an area that should align with the NERR.

##### **c. Requirement to publish changes of tariffs and charges in newspapers**

We support the removal of the obligation to publish changes to tariffs and charges in newspapers.

#### **5. General code of practice updates and other changes**

##### **a. Protections for embedded network customers**

We support the general scheduled updates to align with General Exemption Order (GEO) 2022.

Energy Locals considers that embedded network customers should be afforded the same customer protections as on-market energy customers, and therefore we support the extension of family violence protections to embedded network customers. Our position (as

outlined in other submissions)<sup>10</sup> is that all retailers should be licensed, and the seller exemption removed, although we note that such change is not within scope of this review.

**b. Use of preferred communication method**

Postal communications are a significant expense and, as outlined above, all costs are ultimately transferred to the customer. To keep consumer costs low, our preference would be the allowance of electronic communications wherever possible.

**c. Receipt of communications and notices**

We would support a clarification on timeframes for presumed receipt of communications to reduce ambiguity and promote consistent interpretation and would support alignment with 'presumed receipt' under the Electricity Distribution Code of Practice. This aligns with our current practice. When considering whether a customer has received communications, we follow the service provisions in the *Interpretation of Legislation Act 1984* and the timelines set out in clause 17(b) of our Standard Retail Contract, as prescribed by the Code. We do, however, provide longer for postal communications as 'two business days' is not in line with communicated delivery speeds for Australia Post which may be 3-5 business days for a letter.<sup>11</sup>

**d. Clarifying timelines for compliance with certain obligations**

We agree with the ESC that the use of the word 'immediately' in the context of cancelling a direct debit arrangement is ambiguous and poses a compliance challenge for retailers to implement this obligation in practice. While we would support clarification, one business day may still be an ambitious timeframe to cancel the direct debit arrangement and notify both the small customer and the financial institution. While we would use our best endeavours to do this within one day, it may be more practical to amend 'immediately' to 'as soon as reasonably practicable'.

We understand the policy intent behind amending section 187(1)(a)(ii) of the Code so that the retailer's obligation to provide advice the customer is *after receipt* of the notice, rather than *when issued*. However, it is imperative that timeframes for receipt be clarified otherwise it will be difficult for retailers to fulfil their obligations.

We consider that the required process for disconnection for non-payment by the customer is an area where we would support alignment with rule 111 of the NERR.

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<sup>10</sup> Energy Locals has made a number of submissions to regulatory bodies on the importance of embedded network customers receiving the same customer protections as on-market customers. These submissions include:

Submission to the Australian Energy Regulator on review of the exemptions framework dated 19 February 2024 available at <https://www.aer.gov.au/system/files/2024-03/Energy%20Locals%20-%20Submission%20-%20Review%20of%20the%20exemptions%20framework%20for%20embedded%20networks.pdf>

Submission to the Essential Services Commission dated 6 August 2021 on the "Embedded Network Review – Draft Recommendations Report"

<sup>11</sup> <https://auspost.com.au/business/shipping/delivery-speeds-and-coverage>



## 6. Summary of Energy Locals position

In summary, Energy Locals key feedback on the Issues Paper, is as follows:

- We support expanded definitions for family violence protections to encompass diverse familial relationships.
- If training obligations are added for the PDF, we would recommend that the ESC assist with guidance material. We also see a need for clearer guidelines on cessation of payment assistance. In alleviating customer debt, we consider the obligation to pause debt for six-months to be ineffective.
- If the ESC is amending obligations for retailer assistance to Utility Relief Grants, a key improvement to the Code would be enabling the customer to complete the application online to ease administrative burden.
- We support streamlined approaches for delivering energy efficiency advice to customers, but this must be balanced against imposing additional regulatory burdens on retailers.
- Any amendments to billing information requirements must be carefully considered to minimise operational costs and systems improvements.
- For best offer messaging, a retailer should not need to compare across white-label brands as this causes confusion and undermines potential benefits of best offer messages. We support exemptions for best offer messaging, for both white label brands and for delays in issuing bills.
- At this stage, we do not see many areas of improvement to billing and pricing obligations but may have additional feedback once the ESC has shared the draft code.
- We support amendments to ensure that embedded network customers receive the same customer protections.

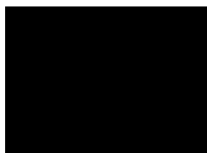
In general, we reiterate the importance of balancing consumer benefits with operational burden costs incurred by retailers. Where possible we encourage alignment with NERR to minimise regulatory discrepancies.

Energy Locals would like to take this opportunity to thank the ESC for the opportunity to consult on the review of the Energy Retail Code.

We also look forward to future engagement when the draft code of practice is circulated. We expect that we will have more detailed input once we can review the draft code of practice and the Regulatory Impact Statement.

We are very happy to discuss any aspect of this submission with the ESC team.

Yours faithfully,



**Adrian Merrick**  
Chief Executive Officer  
Energy Locals Pty Ltd

