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

Submitted via: [www.engage.vic.gov.au](http://www.engage.vic.gov.au)

Dear Commissioners,

## **RE: Energy Retail Code of Practice review – Issue Paper**

GloBird Energy (**GloBird**) welcomes the opportunity to provide feedback on the Essential Services Commission's (**ESC**) Energy Retail Code of Practice review issue paper (**paper**).

GloBird commenced operation in 2015 and has steadily grown, currently retailing energy to over 200,000 residential and small business customers across Victoria, New South Wales, Queensland and South Australia. Our excellent value energy offerings, innovative products and a high-quality customer service are key drivers of our success in this highly competitive energy market.

We support much of the ESC's proposed changes to the Energy Retail Code of Practice (**Code**). We also believe that this review presents an opportunity to address some concerns, namely:

1. The placement of customer's arrears on hold for six months;
2. The deemed best offer threshold of \$22; and
3. Energy plans that include a tariff that continually varies in relation to the prevailing spot price of energy

In this submission, any reference made to the Code is a reference to the Energy Retail Code of Practice, Version 2, 1 October 2022

## **Placing residential customer's arrears on hold for six months rarely helped them reducing the debt in the long term**

We reiterate the feedback we provided the ESC on 20 September 2023 in response to its request for feedback on the payment difficulty framework guideline, where we expressed our concerns that placing customer's arrears on hold for six months and accepting payments less than the full cost of the customer's on-going energy use, as required under s.128(1)(g) of the Code, often results in harming the customer from ending up with much larger and unmanageable debt compared to the situation they were on when the debt was placed on hold.

On this point, we highlighted that the obligation under s.128(1)(g)(ii)<sup>1</sup> and the ESC's expectations that the retailer does not expect the retailer to accept payment arrangements for "*unreasonably small amounts that are disproportionate to the customer's arrears*" create a situation open for interpretations, especially from all those parties that may get involved in these matters, eg financial councillor, Ombudsman, ESC, the customer and retailer.

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<sup>1</sup> accepting payments less than the full cost of the customer's on-going energy use

We recognise the importance and support the provision of assistance to customers facing payment difficulty. It is important though to strike a balance between providing customers with a short-term flexibility and the future harm of accumulating debt.

We submit, such balance could be achieved by:

1. shortening the placing of debt on hold from six months to two or three months; and
2. providing clarification on the obligation under s.128(1)(g)(ii) either through changes to the Code or through a guideline. We propose such clarification to be provided as formulae or a percentage figure when applied to the customer's average monthly energy charge an amount is derived, below which a payment is considered "*unreasonably small amount that is disproportionate to the customer's arrears*".

### Deemed best offer threshold of \$22 is too low

The negative deemed best offer message (**negative message**) is triggered when the deemed best offer check result is greater than \$22<sup>2</sup>. This threshold was determined by the ESC's during Building Trust Through New Customer Entitlements in the Retail Energy Market work in 2018 on the basis that this figure represents the maximum exit fee retailers may charge its customers at that time.

During the consultation process, the ESC considered, among other things:

1. The work of its own consultant suggesting that 90% of customers would switch energy plans if the saving is at least \$50;
2. Retailers' submissions, most advocating that the threshold should be at least \$50;
3. AEMC findings in its annual review into retail energy competition in 2017 that Victorian consumers needed a saving of approximately \$336 for electricity and \$260 for gas annually to consider switching.

In its final decision, the ESC determined that the \$22 is appropriate because legislation compels the ESC to consider customers at large, including low income and vulnerable customers.

We submit that the ESC should consider reviewing this threshold as part of the Code's review.

- The threshold was set six years ago. Prices have increased since then making the threshold even less meaningful to customers. Taking the prices set in the Victorian Default Offer 2024-2025 (**VDO 2024-25**) as an example, the average electricity bill for domestic customers (4,000 kWh/year) is \$1,655<sup>3</sup>, compared to \$1,406<sup>4</sup> over the period 1 July 2019 and 31 December 2019. This is an increase of 18%, yet the threshold is kept static, representing an insignificant saving of 1.3% of the 2024-25 average electricity bill.
- We support the need to consider low income and vulnerable customers in decisions. We believe that part of such consideration is ensuring the information provided is meaningful and accurate to reduce the risk of harming customers. This is relevant to the setting of the deemed best offer threshold. If the threshold is too low, a negative message may arise due to abnormal changes in the customer's 12-month consumption preceding the time the deemed best offer check is performed<sup>5</sup>. If this

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<sup>2</sup> s.109(1)(3) of the Code

<sup>3</sup> VDO 2024-25, Table 1: Change in average annual Victorian Default Offer bills for domestic flat tariffs (nominal), p. 5

<sup>4</sup> Calculated by applying the prices for the period 1 Jul 2019 to 31 Dec. 2019 set in Schedule 1, p. 69, VDO 2024-25 to the average domestic customer consumption of 4,000 kWh/year.

<sup>5</sup> S.109(1) of the Code requires the calculation of the deemed best offer check result to be based on the customer's consumption over the 12-month preceding the date the deemed best offer message is issued.

happens, the negative message may present the customer with incorrect and potentially misleading information, that if acted upon, the customer may end up worse off. Consider for example a customer on a tariff comprising a low fixed supply charge and high variable rate(s). If during the past 12-month the customer's consumption changes due to unusual events<sup>6</sup>, the customer may receive a negative message advising the customer to switch to another tariff comprising a high fixed supply charge and low variable rates(s). If acted upon, this switching may harm the customer for having to pay a higher charge than what would have been the case had the customer remained on the previous tariff. Such situation could even be worse if the unusual event was caused by a failure of an appliance that uses one type of fuel (eg gas) and as a result the customer uses temporarily another appliance that uses a different type of fuel (eg electricity). In this case the customer may receive two negative messages, one for each fuel type and if acted upon the harm from paying higher charges will be even higher than if the negative message relates to one fuel type. Setting an appropriate level to the threshold will minimise this risk.

- A meaningful negative message has more weighting than multiple unmeaningful negative messages. There is a risk that if customers get numerous negative messages based on insignificant savings, they may perceive these negative messages to be meaningless and may not pay attention to negative messages with meaningful savings.

## Energy plans that include a tariff that continually varies in relation to the prevailing spot price of energy should be treated differently from other plans

In this section we introduce two terms:

1. **Common plan** – an energy plan that is not wholesale plan.
2. **Wholesale plan** – an energy plan that includes a tariff that continually varies in relation to the prevailing spot price of energy.

Under s.117(1) of the Code, a wholesale plan is considered an exempt market retail contract.

The Code contains many provisions related to exempt market retail contracts. We submit that as part of the Code's review, the ESC should address the following matters.

### Wholesale plans should be classified as restricted plans

The terms "generally available plan" and "restricted plan" are defined in the Code.

A plan is either generally available or restricted.

A plan is generally available plan if it is not restricted plan

A plan is defined as restricted plan if it meets the following two criteria:

1. **criteria 1** - it is specifically targeted to an exclusive individual or group; and
2. **criteria 2** - it is tailored to specific circumstances of that customer and their needs

The Code includes examples of plans that are restricted plans but wholesale plans are not included in those examples.

s. 116(1)(a) of the Code recognises that wholesale plans are innovative products. Innovative products, as is the case with wholesale plans, can vary in complexity and are typically not actively marketed, but instead discussed and negotiated with individual customers.

The definition of restricted plan (**definition**) may suggest that wholesale plans are generally available plans but one could form the view that those plans satisfy criteria 1 since they only target those individuals with

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<sup>6</sup> Unusual events include, failure of an appliance for a period of time, customer was away, etc..

some level of risk appetite, although those individual or group cannot be identified. However, this reasoning alone is not sufficient to classify wholesale plans as restricted plans because the assessment must also consider the second criteria (criteria 2) that has a different level of subjectivity and contradiction because it refers to the term “*that customer*” and exclude the term “*group*” referred to in criteria 1. This exclusion may suggest that a wholesale plan targeting a group of customers may not be classified as restricted plan unless the plan offers different features from which customers can choose the feature that satisfies their needs. Imposing such restrictions on wholesale plans may defeat the purpose of supporting innovation.

Classifying wholesale plans as generally available plans creates further complications, including potential harm to customers, refer to next sections.

We submit that the ESC should classify wholesale plans as restricted plans.

### **Wholesale plans, if classified as generally available plans, should be excluded from the deemed best offer check calculation**

s.108 of the Code requires retailers to identify the relevant deemed best offer for each customer.

s.109(1) of the Code sets the formulae “A – B”, the retailer must use in carrying out the calculation of the deemed best offer check.

The term “A” refers to the “annual total cost of the plan”, defines as follows:

**“annual total cost of current plan** means the minimum possible amount payable by a *small customer* under the *customer’s current customer retail contract* excluding the value of any one-off gift or sign-up credit, calculated on the basis of the *small customer’s annual usage history* and the tariff, charges and discount rates current at, as relevant, the date a bill or *bill summary* will be issued, the date that a *price change* or *benefit change* becomes effective, or the date immediately prior to this effective date, with all discounts applied including any discount the *small customer* receives because the *small customer* buys another good or service, and including any amounts deducted, credited, or received by the *retailer* under a government funded *energy charge rebate, concession or relief scheme*”

The term “B” refers to the “annual total cost of deemed best offer”, defines as follows:

**“annual total cost of deemed best offer** means the minimum possible amount payable by the *small customer* under the *deemed best offer* excluding the value of any one-off gift or sign-up credit, calculated on the basis of the *small customer’s annual usage history* and the tariff, charges and discount rates of the deemed best offer current at, as relevant, the date a bill or summary bill will be issued or the date that a *price change* or *benefit change* becomes effective, with all discounts applied (except any discount which applies to a *customer retail contract* because the *small customer* buys another good or service) and including any amounts deducted, credited, or received by the *retailer* under a government funded *energy charge rebate, concession or relief scheme*”

Notwithstanding the impact of discounts, a key purpose of the formulae “A – B”, is to compare the cost implication from changes in prices on customer’s bill – current prices underlying “A” and deemed best offer prices underlying “B”.

Classifying wholesale plans as generally available plans will create the following issues:

The exact words prescribed in the Code for the negative message are inappropriate

s.111(4)(b) required the negative message to contain the exact words “based on your past usage, our” followed by the name of the deemed best offer plan, followed by the exact words “may cost you up to”....

This message is designed on the assumption that retailers only offer common plans, where the prices associated with the relevant tariff on both sides of the equation (A - B) are set<sup>7</sup>. This is not the case with wholesale plans, where the spot price changes every 5 minutes.

In our view, including the exact words required by the Code on negative messages would be misleading.

We submit that if the ESC determines that wholesale plans are classified as generally available plans and must be included in the deemed best offer check calculation, the provision in s.111(4)(b) must change.

#### Customer's current plan is a common plan

Where the customer's current plan is a common plan and the retailer is performing a check against a wholesale plan, the calculation of "A" does not present any issue. However, the calculating of "B" will present a few challenges and will create a situation open to interpretations, not to mention the calculation may result in a negative message that could harm the customer.

Firstly, unlike common plans where the prices associated with the relevant tariff are set, in relation to a wholesale plan, the tariff current at the issue date of the bill or the bill summary is not yet determined – spot prices change every 5 minutes, if the bill is issued say at 4.30PM the price on that date is not yet determined.

Secondly, the term "as relevant", provided in the definition of "B", is open to interpretations and may result in different retailers applying different methods to determine the tariff applicable to their wholesale plan. For example, one party may consider calculating the weighted average spot price, weighted by the relevant customer usage, is relevant, whereas another retailer may consider calculating the weighted average spot price, weighted by the Victorian wholesale market volume, is relevant. Further, one may consider the weighted average spot price calculated over the past month or quarter is relevant while another may consider the weighted average spot price calculated over the past 12 months is relevant. Accounting for spot price volatility due to unusual market events is another factor that one may consider should be considered when deciding on what constitute "as relevant".

Notwithstanding, the method chosen, the calculation is very complex and more importantly because the spot price is volatile:

1. The same customer may receive conflicting messages (negative or positive) everytime they receive a deemed best offer message. This is likely to undermine trust in policy decisions; and
2. The potential savings communicated in the negative message is likely to be incorrect and if the customer act on such a message they may end up worse off.

We submit that if the ESC determines that wholesale plans are classified as generally available plans and must be included in the deemed best offer check calculation, the ESC should consult on how the prices underlying "B" should be determined to ensure consistency.

#### Customer's current plan is a wholesale plan

Where the customer's current plan is a wholesale plan and the retailer is performing a check against another wholesale plan the issue discussed in the previous section will often result in the prices underlying "A" and "B" to be the same, making the deemed best offer check calculation irrelevant.

Further implications may arise depending on the structure of the wholesale plan. [REDACTED]

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<sup>7</sup> meaning the only variable that would impact the potential saving stated in the message is changes in the customer's energy usage.

[REDACTED]

### Wholesale plans should be exempt from being inputted into Victorian Retailer Portal

s.39(1) of the Code requires retailers to input into the Victorian Retailer Portal website **accurate** details of each current generally available plan and restricted plan. Further, s.39(2) requires the retailer to obtain from the Victorian Retailer Portal website an energy factsheet for each plan current generally available plan and restricted plan. The Code and the Energy Fact Sheet Guidelines for this matter are silent on how wholesale plans are to be inputted into the Victorian Retailer Portal website to ensure compliance with s.39(1) of the Code.

GloBird sought advice from the retailer support team of DEECA on how to enter wholesale plans into Victorian Retailer Portal (**portal**) and the response we received was that the portal does not support the functionality of accepting details of wholesale plans and we should contact the ESC to seek clarification on how to reflect the pricing on factsheets. We believe, it is neither appropriate nor efficient everytime a retailer introduces a wholesale plan, the retailer must contact the ESC and seek clarification on how to enter the plan in the portal.

Given:

- that the portal does not support the functionality of accepting details of wholesale plans; and
- the complexity of wholesale plans and the concerns discussed in the previous sections, especially that depending on how wholesale plans are inputted into the portal this may lead to factsheets containing inconsistent information presented to customers

We submit that the ESC should:

1. specify that wholesale plans are excluded from the requirement stipulated in s.39(1) of the Code; and
2. In the event the ESC decides not to exclude wholesale plans from the requirement stipulated in s.39(1) of the Code:

- a. define how these plans must be entered into the Victorian Retailer Portal website to benefit small customers from receiving relevant information to allow them to compare wholesale plans; and
- b. review the Energy Fact Sheet Guidelines for this effect.

### Feedback on other questions

The table below provides feedback on some of the questions raised in the paper:

Question	Feedback
Are there other non-prescriptive alternatives to encourage better practice across retailers to connect customers with existing energy efficiency government programs (such as the Victorian Energy Upgrades program)?	We appreciate that the ESC has recognised that retailers are not best placed to provide such advice. There is already a government funded entity that is best placed to provide appropriate advice to consumers. We believe retailers' obligation should be limited to directing customers to this entity so that they receive consistent and independent advice.
Do you see a need for improving processes and information for a customer who wants to disconnect from or abolish their gas connections?	There is a benefit in ensuring customers receive standardised information about disconnection or abolishment of their gas connections.  We believe a standard leaflet produced or maintained on the Victorian Energy Compare by Victorian distributors will be very effective. Retailers will also be able to access this information when customers make enquiry.  Retailers can also use this portal to include any applicable additional fee, if any.
Do you see a need for full alignment of energy bills with the Australian Energy Regulator's Better Bills Guideline? If so, what do you think would be the key benefits?	We do not support full alignment with the Australian Energy Regulator' Better Bills Guideline. The feedback from our customers on billing information is more positive in Victoria than in the NECF jurisdictions.
Do you think the inclusion of details for the Energy and Water Ombudsman Victoria (EWOV) would be of benefit to billing information?	We do not support the inclusion of details for the Energy and Water Ombudsman Victoria (EWOV) would be of benefit to billing information. We believe the inclusion of this information may give customers the false impression that EWOV is the best option to contact when they have an issue, instead of talking to the retailer.  EWOV should be used as the last resort when a resolution between the customer and their retailer cannot be reached.
Are you aware of any other issues with best offer obligations that this review could consider?	The \$22 deemed best offer threshold is too low. Refer to the section above

Question	Feedback
Do you consider that the term 'arrange a disconnection' could be clarified? Why or why not?	Retailers do not directly control the disconnection. Their responsibility should be limited to raising and cancelling the disconnection service orders.  We note while disconnecting customers with smart meters may not be complex, the disconnection of customers with basic meter, especially gas supply, depends pretty much on the individual distributor's process and timing. Cases may arise where the cancellation of the service order would happen on the same day the distributor's staff are in the field to carry the disconnection
Are there any implications we should consider when specifying that 'additional retail charges' are charges which must be set out in a market retail contract or exempt person arrangement?	We do not object to fees being set out in a market retail contract, provided they are subject to changes from time to time.
Are there any costs or benefits we should consider in relation to a retailer providing detailed information about the type of additional retail charges a customer is required to pay?	We support the view that retailers should state what type of fees are subject to additional retail charge and the amount of additional charge applicable to each type of fee. However, the setting of the additional fee should remain as something each individual retailers can set on the basis of being fair and reasonable.
Do you agree that retailer charges for gas abolishment, beyond the \$220 distributor abolishment fee, should be specified as an 'additional retail charge'? Why or why not?	Yes. Retailers incur additional cost in the provision of the gas abolishment service. The cost varies depending on the complexity of the job. In our experience gas abolishment's are more commonly sought by property owners or property developers. The concept of socialising the cost across all customers may result in cross subsidy.  Sometimes, these complex cases are escalated to the Ombudsman and the retailer incurs unrecoverable costs, for which they are not caused by the retailer's fault.

Should you wish to discuss this submission, please contact Nabil Chemali, Regulatory & Commercial Manager, at [REDACTED]

Yours sincerely



John McCluskey  
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 GloBird Energy