



16 April 2019

Dr Ron Ben-David
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne
Victoria 3000

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

Dear Dr Ben-David,

RE: Energy Retail Code Changes to Support Family Violence

Origin Energy (Origin) appreciates the opportunity to respond to the Essential Services Commission's (ESC) Energy Retail Code Changes to Support Family Violence Provisions for Retailers Draft Decision.

Origin supports policies that provide customers affected by family violence with safe, supportive and flexible assistance from their energy retailer. We agree with the intent of the ESC's proposed amendments to require retailers to have a family violence policy that meets minimum standards of conduct. To ensure this objective is achieved in the most effective manner it is essential that retailers are afforded the discretion on how best to operationalise the policy objectives while also ensuring that the broader policies providing customer assistance operate consistently and complement one another.

In this regard, we consider that there are a number of sections of the Energy Retail Code (ERC) that require further clarity. We have set these out below.

Access to the PDF

The proposed changes to the ERC define *affected customer* as any customer, including a former customer, who is or was a small customer and who may be affected by family violence.

A small customer is defined in the current ERC as a domestic or small business customer under section 3 of the Electricity Industry Act or section 3 of the Gas Industry Act. That is, a person whose aggregate consumption of electricity taken from the relevant supply point has not been, or in the case of a new supply point, is not likely to be, more than 40MWh per year.

The existing ERC sets out minimum standards of assistance to which residential customers anticipating or facing payment difficulties are entitled. A residential customer is defined as a customer who purchases energy principally for personal, household or domestic use. The current payment difficulties framework (PDF) only applies to residential customers.

The proposed ERC provision 106J requires a retailer to recognise family violence as a potential cause of payment difficulty. The ESC draft code amendment consultation paper states that 'this proposal reflects the specific recommendation of the royal commission that we amend the code to make family violence an explicit criterion of access to a financial hardship program'.



We seek clarity whether it is the intent of the proposed ERC for small business customers to also access the PDF or alternatively whether it is the intent for these customers to access “a” financial hardship program which means the retailer’s family violence policy.

Origin would be concerned if the former were to apply. Small business customers accrue much larger debts much more quickly than a residential customer, imposing greater costs on a retailer which are ultimately borne by all customers. Having recently completed the systems upgrade to manage the PDF for residential customers, the cost implications of now extending this to small business customers would be considerable because it is not possible to distinguish a small business affected by family violence in a way that can be determined based on an account feature. Such cases would have to be handled as exceptions and would require significant additional training of our agents.

Confidential information

The ESC requires energy retailers to keep secure the contact information and personal details of customers affected by family violence when carrying out activities relating to customer retailer contracts and marketing integrity.

Draft clause 106G *Account Security* includes the term ‘confidential information’. This is not defined specifically but is stated (draft subclause 106G (2)) to refer to ‘information that may be used to identify an affected customer, including their whereabouts, contact details, or financial or personal circumstances’.

The Privacy Act 1998 (Privacy Act) includes the Australian Privacy Principles. The Principles have two classifications of customer information: Personal information and Sensitive information. Personal information is detail specific to that customer, such as address and telephone number. Sensitive information is a type of Personal information and could reasonably include that the customer was experiencing family violence (or any details pertaining to that customer’s safety given their family violence experience).

Retailers are already required to conform to the Privacy Act. Much of the detail outlined in draft clause 106G is reasonably aligned with expectations under the Privacy Principles. We consider that the ESC ought to adopt terminology consistent with the Privacy Act in draft clause 106G. Alignment of the terminology of the ERC with the Privacy Act would strengthen the provisions in the ERC, as it would be supported by the primary legislation. This would ensure the proper capture of the types of information to be protected, while keeping the ERC as simple as possible.

Method of Contact

The ESC considers that without additional safeguards on the part of an energy retailer, a perpetrator may use information they know about a customer, such as date of birth or a maiden name to obtain contact information about that customer, allowing them to continue to pursue them. The ESC proposes to address this by requiring that energy retailers take measures necessary to avoid disclosing the personal and financial circumstances of the customers affected by family violence, including to joint account holders. These measures include:

- eliciting the customers’ preferred method of communication;
- offering alternative options of communication if the customer’s preferred method is not practicable; and
- complying with this agreed method, including when giving effect to other parts of the code;



These provisions are consistent with how we (and we believe the majority of retailers) currently engage with our customers, and we have developed processes which support alternative methods of communication, so long as there is an option to send the customer notices as required.

However, we believe that subclause 106G (5) does not reflect discussion at the ESC's Family Violence Draft Decision release workshop on 28 March 2019; that the customer is entitled to a preferred method of communications, but that the customer cannot opt-out of all communication methods. We believe that draft subclause 106G (5) and 106G (4) do not make this clear.

For the avoidance of doubt, the ESC ought to make clear that, despite best endeavors, if the retailer cannot comply with 106G, it is permitted to provide an affected customer with a notice or communication if it can demonstrate that it has accounted for the affected customers safety.

Drafting Consistencies

The Draft decision proposes to insert into new Part 2A *Market Integrity*, directly following the heading, a note: 'The obligations in Part 2A relating to any communications with a customer are subject to the obligation on retailers in clause 106G which relates to the secure handling of information in respect of an affected customer'.

To support the operational consequence of clause 106G, we believe this note should attract its own reference clause in order to ensure that it remained a traceable item to support retailers' compliance processes.

We suggest that the obligation could be included most suitably in draft clause 70Y. This would ensure that it remained a traceable item.

Should you have any questions or wish to discuss this information further, please contact Courtney Markham on [REDACTED].

Yours sincerely

A handwritten signature in black ink, appearing to read "Sean Greenup".

Sean Greenup
Group Manager Regulatory Policy
[REDACTED]