

26 July 2024

By email only: energyreform@esc.vic.gov.au

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

Dear Essential Services Commission,

Submission to the Energy Retail Code of Practice review

We welcome the opportunity to provide our submission to the Essential Services Commission's (ESC) review of the Energy Retail Code of Practice (**the Code**).

In this submission, where relevant, we have provided the same recommendations as in our submission to the Australian Energy Regulator (AER) review of the National Energy Customer Framework (NECF). We submit these with the aim of supporting an integrated and complementary approach across jurisdictions, towards strong protections for energy consumers.

We attach our submission to the [AER's Review of the NECF](#), and our [Energy Assistance Report 4th Edition](#) as a part of this submission. Recommendations in this submission are drawn from our findings and recommendations in these reports, as well as our general casework insights.

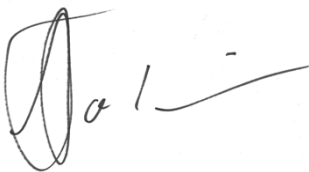
A summary of recommendations is available at **Appendix A**.

We welcome the opportunity to discuss our submission further.

Please contact Policy Officer **Eirene Tsolidis Noyce** at **Consumer Action Law Centre** on 03 9670 5088 or at eirene@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE



Stephanie Tonkin | Chief Executive Officer

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About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

Data provided in this submission

The data provided in this submission is drawn from Victorian contacts to the National Debt Helpline (**NDH**), as recorded by Consumer Action's financial counsellors. This data has been published in the four editions of the *Energy Assistance Report* from 2019 to 2024. In this submission, we have integrated data from all four reports to provide a longitudinal study of the Victorian consumer experience and trends in energy hardship since the introduction of the Payment Difficulty Framework (**PDF**).

The data covers a six-year period, spanning 2017 to 2023, albeit with a gap in 2021 where limited capacity at the time prevented us undertaking analysis of data for that year. Since the first edition in 2019, these reports have provided insights into energy affordability for Victorian households, changes in the profile of who requires hardship assistance, and the implementation and impact of the PDF in Victoria.

Changes to methodology over time

Over the six-year period encompassed by our reports, there have been changes to the methodology. In the first two reports we sampled a proportion of energy-related contacts to our financial counsellors (selecting two days of calls from each month), compared with the last two reports where all energy contacts were captured in our analysis.

While the approach to sampling differs, the majority of data points remained largely consistent throughout the six years, allowing for analysis over the six-year period. For example, much of the demographic data has been consistently collected from each caller over the entire period, including callers' income and household types. The dollar amount of energy debt has also remained a consistent measurement, allowing us to track the maximum, average and minimum debts callers have provided during their phone appointment. Lastly, call notes identify when a caller has not been provided information about the Utility Relief Grant (**URG**) scheme by their retailer, and when a caller has been disconnected, or received a threat of disconnection.

Data sample information is provided in **Appendix B**.

1. Protections for consumers experiencing vulnerability

1.1. Strengthening Family Violence protections

Question 1. Are there any specific rules in the National Energy Retail Rules (NERR) that we should consider including in the code of practice that would strengthen family violence protections for Victorian customers?

Question 2. Are there any family violence protections in the water sector we should replicate in the code of practice?

Question 3. Are there any other protections we should consider including in the code of practice to further support consumers affected by family violence?

In our most recent *Energy Assistance Report 'Keeping the Lights On'* (published in June 2024) we have found 12% of all energy contacts reported being affected by family violence in the 2023 calendar year. When compared with energy contacts facing other types of vulnerabilities, we found that people affected by family violence were 28% more likely to experience their retailer not identifying their vulnerability. Further, there is a strong correlation with people affected by family violence being pursued for energy debts, and more likely to report feeling harassed by their retailer or third-party representative as part of debt collection¹.

We support the ESC's ongoing priority to support consumers experiencing vulnerability, including those affected by family and domestic violence.

We provide the following considerations in several key areas to strengthen existing protections in the Code.

1.1.1. Equitable, inclusive and integrated design and delivery of services for consumers experiencing vulnerability

We strongly support the ESC's enduring priority in supporting consumers affected by vulnerability, including through their *Getting to Fair*² strategy. Similarly, we commend the ESC's recently announced *Safety By Design* partnership³ to support energy and water consumers experiencing family violence, as part of the continued development of an expanded understanding of consumer vulnerability that includes consumers affected by family violence. This expanded definition can assist in inclusive service design, and assist the sector in having a broader understanding, and implementing stronger supports for people affected by family violence.

Our recent reports' findings show the need for the ESC to further investigate how retailer practices – including over standard customer service lines – lead to widespread failures to identify and assist customers experiencing vulnerability. In our most recent Energy Assistance Report, we recommend that the ESC should consider adopting the International Standard on Consumer Vulnerability for the Design and Delivery of Inclusive Services as part of the Code. We consider that the integration of this standard into the Code would benefit people affected by family violence by improving their access to assistance through better service design and a higher bar for retailers to comply with, as well as improving outcomes for consumers experiencing vulnerabilities more broadly.

¹ Consumer Action Law Centre, *Energy Assistance Report 4th Edition – Keeping the Lights On*, June 2024

² Essential Services Commission, [Regulating with consumer vulnerability in mind | Essential Services Commission](#)

³ Essential Services Commission, [Safety by Design partnership to support energy and water consumers experiencing family violence | Essential Services Commission](#) May 2024

RECOMMENDATION 1. For the ESC to consider the International Standard on Consumer Vulnerability for the design and delivery of inclusive services (soon to be adapted for Australia) as part of the Energy Retail Code review, with a view to increasing compliance measures for retailers found in breach of protections for vulnerable consumers, and deterrence of these practices more broadly.

1.1.2. Identification of Family Violence

Our findings

As part of the current Code protections, retailers are obligated to provide a secure process to avoid repeat disclosure by customers, including through 'providing a method for readily identifying the account of an *affected customer*'⁴. There is a further requirement that this secure process provides for 'effective ongoing engagement' with the affected person.

Despite these obligations, we have found that people contacting the NDH affected by family violence were 28% more likely to have their retailer fail to identify their vulnerability, when compared to energy contacts with other types of vulnerability⁵. Further, many clients reported having to repeat their circumstances to their retailer when asking for assistance⁶.

Other sector examples

The Water Industry Standard:

Our financial counsellors positively report on examples from the financial services and water sector, where the business has assigned a single point of contact from a specialised family violence hardship team. In these cases, the person affected by family violence is less at risk of repeat disclosure and is able to work with the business in progressing the assistance they require.

While the Code does provide a general protection as outlined above, the clearer, more specific requirement and model in the Water Industry Standard has proven effective. We recommend the ESC adopts the clearer and specific requirement of the protection found in the Water Industry Standard requirement for businesses to:

*'provide a process that avoids customers having to repeat disclosure of their family violence, and provides for continuity of service'*⁷.

We recommend that this protection be understood in two ways. Firstly, in the provision of continued customer service (single contact point), as part of providing ongoing engagement. Secondly, in the provision of continuity of energy services, ensuring that people affected by family violence will not face disconnection from an essential service.

The MARAM Framework:

We refer to the Multi-Agency Risk Assessment and Management Framework (**MARAM Framework**)⁸ as the leading source for definitions of family violence, with reference to the Issues Paper's considerations in strengthening these definitions for Aboriginal and Torres Strait Islander communities.

⁴ Essential Services Commission, Energy Retail Code of Practice, v.3, October 2024, clause 151 (1)

⁵ Consumer Action Law Centre, *Energy Assistance Report 4th Edition – Keeping the Lights On* June 2024

⁶ *ibid*

⁷ Essential Services Commission, Water Industry Standard v. 3, clause 11.1 (a) (vi), author's emphasis added

⁸ State Government of Victoria, *Multi Agency Risk Assessment and Management Framework (MARAM) Principles* [Framework Principles | vic.gov.au](https://www.vic.gov.au/framework-principles) (www.vic.gov.au) and [Definitions | vic.gov.au](https://www.vic.gov.au/definitions) (www.vic.gov.au)

The MARAM framework outlines requirements for certain sectors such as health, education, social and community services regarding family violence identification, assessment, reporting and support. The Framework identifies that for certain sectors and service providers, there is a likelihood of first disclosure to these services by someone affected by family violence. We hold the view that energy retailers, alongside other essential services providers are also a likely point for first disclosure by someone affected by family violence. For these reasons, we believe it to be imperative that essential services incorporate the principles, definitions and service delivery (where relevant) from the MARAM framework.

Shared understanding of family violence

The MARAM framework outlines four Pillars to establishing a system-wide approach. Pillar 1 outlines the system-wide shared understanding of family violence⁹. This shared understanding across sectors is aimed at establishing an effective, integrated service response.

The shared understanding is drawn from the definition of family violence, including the definition for Aboriginal and Torres Strait Islander communities. These definitions are found in the overarching ten Principles of the Framework¹⁰.

The MARAM framework adopted the Aboriginal definition of family violence developed by the Victorian Indigenous Family Violence Task Force. This is defined as:

*'an issue focused around a wide range of physical, emotional, sexual, social, spiritual, cultural, psychological and economic abuses that occur within families, intimate relationships, extended families, kinship networks and communities.'*¹¹

The definition also acknowledges the spiritual and cultural perpetration of violence by non-Aboriginal people against Aboriginal partners which manifests as exclusion or isolation from Aboriginal culture and/or community.

If the essential services sector adopted the MARAM definitions, this would provide commensurable benefit to consumers affected by family violence, in being able to trust that retailer's staff and service delivery have comprehensive understanding of the wide-reaching causes, methods and impacts of family violence. Importantly, affected consumers would benefit from retailers understanding that assisting affected consumers necessitates supporting and implementing victim-survivor led decision-making, including foundationally in the access to energy as an essential service.

In addition to the benefits to consumers, there are essential service sector-wide benefits. The shared understanding of family violence within the essential services sector would enable better cross-sector integration and uplift the energy sector's understanding in alignment with sectors already integrated in the MARAM framework.

MARAM Framework application to energy sector

Adopting the comprehensive definition from MARAM is the starting point for retailers to take the broadest, most inclusive and effective approach to supporting their customers affected by family violence. This creates the grounding for retailers to build effective training, principles and approaches to customer vulnerability, and will allow retailers to connect into other parts of the family violence ecosystem.

⁹ State Government of Victoria, *Family Violence Multi Agency Risk Assessment and Management Framework*, [Part C: Pillars | vic.gov.au \(www.vic.gov.au\)](http://www.vic.gov.au)

¹⁰ Ibid, Principles [Framework Principles | vic.gov.au \(www.vic.gov.au\)](http://www.vic.gov.au) and Definitions [| vic.gov.au \(www.vic.gov.au\)](http://www.vic.gov.au)

¹¹ Victorian Indigenous Family Violence Task Force, State of Victoria, *Strong Culture, Strong Peoples, Strong Families – 10 year plan*, October 2008 <https://www.vacca.org/content/Document/Strong-culture-10-Year-plan-Oct08-2nd-edition.pdf>

By adopting the MARAM framework definitions and principles of family violence, the energy sector could apply certain practices in their service delivery to consumers affected by family violence.

. For example, principle 4 outlines:

'The agency, dignity and intrinsic empowerment of victim survivors must be respected by partnering with them as active decision-making participants in risk assessment and management, including being supported to access and participate in justice processes that enable fair and just outcomes'¹²

In taking this example and applying it to the energy sector, the Code and supporting guidelines could outline that service delivery will ensure that people affected by family violence are understood as active decision-making participants who will be supported to action processes by their retailer that enable continued access to their essential service. For example, in ensuring that affected consumers are provided protection against disconnection as an absolute entitlement. Further, in retailers implementing necessary account changes, debt waivers or removing contact details as required and requested by the affected consumer.

We note the important difference between community sector and retailer sector in their involvement and responsibilities concerning family violence. The community sector is best placed to provide certain roles such as safety planning and risk management support due to their professional specialisation in family violence support services. This said, we believe that drawing from the definitions provided would be an important step in strengthening understanding and identification of family violence in the energy retail sector, as it would provide the stronger framework for affected consumers to be supported in their decision making regarding their access to energy and receive support to action changes to accounts by their retailer.

We submit that the ESC considers drawing from the definitions of family violence (including the Aboriginal definition) as found in the MARAM framework, with a view to strengthening retailers' standard identification and training requirements for family violence.

RECOMMENDATION 2. For the ESC to consider adopting the MARAM Framework's definitions of Family Violence, with a view to strengthening retailer requirements of identification, training and ensuring access to energy as an essential service for family violence affected consumers.

1.1.3. Application of assistance

Our findings

Callers to the Victorian NDH in energy hardship have reported being confused or unaware of assistance available to them from energy retailers, including in cases where the caller was affected by family violence¹³. We found retailers have been inconsistent with their provision of assistance measures, and in some cases have refused assistance where a consumer had disclosed family violence and was eligible for assistance¹⁴.

These findings indicate two potential issues of retailers applying assistance. Firstly, that retailers' customer service staff are not being provided adequate family violence training as required in the Code¹⁵, and/or the staff are not

¹² State Government of Victoria, MARAM [Framework Principles | vic.gov.au \(www.vic.gov.au\)](https://www.vic.gov.au), principle 4

¹³ Consumer Action Law Centre, *Energy Assistance Report 4th Edition – Keeping the Lights On*, June 2024, pp.32-34

¹⁴ *ibid*

¹⁵ Essential Services Commission, Energy Retail Code of Practice, clause 149 (2) outlines for family violence training to address family violence's nature and consequences, application of policy, identification, and effective, appropriate engagement with affected consumers

adhering to their obligations once vulnerabilities are disclosed by the affected person. Concerningly, we have found instances where affected people have disclosed to their retailer, yet have not been provided appropriate or effective engagement, demonstrating potential failures even when retailers' identification obligations have not been met¹⁶.

NERR provisions

The NERR includes a provision that a retailer's family violence policy must set out how the retailer will identify, assist and apply protections to affected customers.

The NERR aligns closely with the Victorian Code, however strengthening some of the required elements of a family violence policy may support businesses operating in Victoria to apply assistance measures in more cases. The NERR outlines that a retailer must

'have a family violence policy that sets out how the retailer will identify and assist affected customers, including how the retailer will apply each of the affected customer protections'¹⁷

Requiring retailers to specify types of assistance within their published family violence policy would help affected people understand what is available to them, could prevent people being provided incorrect or misleading information, and would make it easier to identify cases of non-compliance where a retailer fails to provide the assistance outlined in their policy.

RECOMMENDATION 3. Include the provision from the NERR that requires a retailer's family violence policy to set out how the retailer will apply protections and specify types of assistance available.

1.1.4. Debt management rules

Our findings

Over the years we have been tracking energy hardship, we have found a significant increase in both the number of Victorians in energy debt, and the amount of debt, demonstrated in our Energy Assistance Report. In the 2023 calendar year, electricity and gas debts over \$3,000 have doubled since the previous year. This may indicate that retailers are not meeting their obligations to proactively contact their customers before taking further action to encourage payment.

In our most recent report, we found that people affected by family violence were also 13% more likely to have a closed account energy debt, and 5% more likely to feel harassed or experience aggressive debt enforcement practices by their retailer, or third-party debt collector¹⁸.

Our recent findings indicate that retailers are not consistently or adequately meeting their obligations to provide standard or tailored assistance for their customers^{19,20}. This failure may result in customers in arrears having their debt assigned or sold to debt collectors before they have been engaged in assistance.

¹⁶ Consumer Action Law Centre, *Energy Assistance Report 4th Edition – Keeping the Lights On*, June 2024, section 5.2, p.34

¹⁷ National Energy Retail Rules, section 76A (a)

¹⁸ Consumer Action Law Centre, *Energy Assistance Report 4th Edition*

¹⁹ Energy and Water Ombudsman Victoria [Missing the Mark Report | EWOV](#), December 2020, p23; *"The lack of a cohesive application of all PDF entitlements seems to indicate that the customised dialogue envisaged by the Code has not occurred between the customer and the retailer, or if it has, the retailer has not provided all the information that it should."*

²⁰ Consumer Action Law Centre, *Energy Assistance Report 4th Edition* Section 3.3 Breaches of the Payment difficulty framework pp.20-22

As detailed in our recent Energy Assistance Report, retailers and their representatives may be engaging in unfair or unreasonable debt collection practices and not in accordance with debt collection guidelines, in cases where the customer has or has not been in receipt of tailored assistance²¹.

Water Industry

The Water Industry Standard requires businesses to:

(d) specify and implement an approach to debt management and recovery where a customer is affected by family violence, including, but not limited to:

- (1) the recovery of debt from customers with joint accounts; and*
- (2) the circumstances in which debt will be suspended or waived²²;*

We support the inclusion of these protections within the Code, as part of strengthening consumer protections in relation to debt management practices, for people affected by family violence.

NERR Protections

The NERR outlines specific retailer requirements relating to debt management for people affected by family violence, including that retailers:

- ***Must – before transferring debt to a third-party debt collector - take into account the potential impact of debt recovery action at that time; and whether other persons are jointly or severally responsible for the energy usage that resulted in accumulation of those arrears; and***
- ***are not prevented from waiving, suspending or repurchasing the debt of an affected customer***
- ***must waive any fee payable under a customer retail contract with an affected customer for late payment of a bill²³***

1.1.5. Protection from Disconnection

We strongly encourage the strengthening of protections from disconnection for vulnerable consumers, including those affected by family violence. We refer to the United Nations and EU Directive, which provides protections from disconnection as part of a holistic approach to addressing energy poverty.

As part of their Sustainable Development Goals, the United Nations has outlined a framework that identifies universal access to energy services²⁴, including ensuring the necessary supply of energy for vulnerable and energy poor customers²⁵. This is in part through creating a shared definition and identification of people experiencing energy poverty.

To comprehensively prevent disconnection from energy supply for vulnerable cohorts of people, a few measures could be implemented. Firstly, the recognition of a 'customer class' who are more likely to experience energy poverty. This could be integrated with the ESC's existing definition of consumers affected by vulnerability. This category of consumers could be prioritised through payment assistance schemes, including information and support to transition to energy efficient resources (such as those found through the VEU); and provided additional protection from debt recovery and disconnection.

²¹ Ibid Section 3.3 Disconnections p.26; Debt collection pp.28-29; Section 4.2 People impacted by family violence pp.35-37

²² Essential Services Commission, Water Industry Standard v. 3, clause 11.1 (a) (iv) (d) (1) & (2)

²³ National Energy Retail Rules, clause 76F (1), (2), (3) . Author's own emphasis added, to demonstrate additional sections of the NERR

²⁴ United Nations [The Sustainable Development Goals Report 2023.pdf \(un.org\)](https://www.un.org/sustainabledevelopment/energy/) Goal 7

²⁵ [EU Directive 2019/0444](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L0444) outlines protections for all Member States including ensuring the necessary supply of energy for vulnerable and energy poor customers, investment in energy efficiency and disconnection safeguards. Articles 27, 28 and 29

In financial services, there has been broadly successful processes developed where a consumer's profile and accounts have been flagged when family violence has been identified. This provides better assurance that the consumer is less likely to be at risk of repeat disclosure, and additional security protections are automated on their account services including customer service lines. In the energy sector, this could be extended to include a "do not disconnect" flag on their account, as part of additional security protections.

Similarly for people receiving a Disability or Aged pension, or those in long-term low incomes, the requirement to re-apply their concession entitlement could be prevented by retaining a categorisation on the account. This could provide consumers in these circumstances with an option to be placed on the lowest rate tariff and have government assistance measures applied.

We note that there are systems in place for registered life support customers to avoid disconnection, however we propose that a 'constantly connected' customer class would not require the registration or obligated communication as found in registered life support customers, due to the safety and privacy risks this could expose to people affected by family violence.

Our recommendations

We recommend the ESC considers including the above protections from the Water Industry Standard and NERR within the Code. Further, our report identified concerning debt collection practices against people affected by family violence. We affirm our report's recommendations including the requirement for third party debt collectors to be required to consult with the retailer to identify if the debtor is vulnerable. In these cases, the matter should be referred back to the retailer. Secondly, that retailers should regularly audit their compliance with debt collection guidelines, and provide regular and comprehensive reporting to the ESC and in identified systemic cases, to the ACCC²⁶.

RECOMMENDATION 4. For the ESC and AER to consider and develop indicia of energy poverty, integrated with the existing framework and definitions of consumers experiencing vulnerability

RECOMMENDATION 5. For the ESC and AER to consider and develop a category of consumers who are required to be 'constantly connected', which includes people experiencing vulnerability

RECOMMENDATION 6. Include the provision found in the Water Industry Standard requiring retailers to specify and implement an approach to debt management that includes the circumstances in which a debt will be waived

RECOMMENDATION 7. Include the provision found in the NERR to require retailers to take into account impacts of debt recovery action, and joint and several responsibility of energy usage resulting in arrears before transferring debt to a third party debt collector

RECOMMENDATION 8. Include the requirement found in the NERR for retailers to waive any fees payable for late payment of a bill

RECOMMENDATION 9. For retailers to regularly audit their compliance with debt collection guidelines and provide regular compliance reporting to the ESC and in identified systemic cases, to the ACCC.

²⁶ Consumer Action Law Centre, *Energy Assistance Report 4th Edition* June 2024, 'Debt collection' p.20, and Energy Assistance Reports 2019; 2021, 2023, accessible at [Reports - Consumer Action Law Centre](#)

1.2. Payment Difficulty Framework

Question 4. *In your view, what aspects of the code of practice (if any) related to the Payment Difficulty Framework should be revised to better support consumers experiencing vulnerability or hardship?*

We continue to support the intention of the PDF and protections it contains, and reaffirm that it has had measurable success in outlining broad entitlements to assistance, and reducing the number of consumers disconnected from their energy supply.

This said, we have found through our six years of Energy Assistance Reports, that the implementation of the PDF by retailers has been inconsistent, and often results in consumers being pressured to agree to an unaffordable payment plan as a first step of assistance²⁷.

Table 1 outlines a non-exhaustive list of standard, tailored and additional assistance measures. Some of the measures are included in the PDF as required by retailers to communicate and some others are additional measures, such as payment matching and debt waivers that have been supported by consumers, and their advocates.

This table provides an example of how these measures could be ordered, investigated and applied by retailers. If utilised by retailers, it can serve as a clear way to both check with the consumer requiring assistance, and report that compliance with obligations for assistance have been met. We submit that this should be enacted as a minimum standard of assistance, and supported through guidelines and retailer training requirements.

We note that we refer to investigation as a crucial aspect of this proposed list, to acknowledge that certain assistance measures may be less relevant or appropriate depending on the consumers' circumstances and needs. This said, the provision of the checklist could help to ensure that these measures are comprehensively investigated.

²⁷ Consumer Action Law Centre, *Energy Assistance Report 4th Edition* June 2024

Table 1: PDF ²⁸ assistance options			
Assistance method	Eligible	Consent received	Applied
Concession			
Concession – retrospective			
Utility Relief Grant			
Tariff reduction – Best Offer			
Tariff reduction – Default Offer			
Energy Efficiency – Appliance check			
Energy Efficiency – VEU Program			
Payment arrangement – ongoing usage			
Payment matching			
Pay On Time discount			
Payment arrangement - revised ²⁹			
Debt waiver			
Payment hold (3 – 6 month)			

*Note: the measure of reducing energy usage has been removed from this table and replaced with appliance check and access to VEU program. This is discussed further in 'energy efficiency' section.

1.2.1. Inconsistent application of assistance

In the fourth edition of our report, we found that 10% of all energy contacts to the NDH in 2023 had an unaffordable payment plan; 22% of contacts were not provided or assisted with URGs, and some consumers were threatened with disconnection if they didn't agree to meet an unaffordable payment arrangement³⁰.

As noted in section 1.1.4 of this submission, we found that people contacting the NDH who had disclosed vulnerabilities to their retailer were more likely to experience barriers in accessing assistance from their retailer than those who didn't disclose vulnerabilities. This was particularly prominent for people affected by family violence.

Part 6 of the Code outlines the minimum standards of assistance retailers are obligated to provide. The list of options begins with payment arrangements³¹. As identified in the case study below, consumers can be placed into further financial hardship in cases where retailers confirm payment arrangements without investigating and confirming other assistance measures, such as concessions, URGs, tariff checks and payment matching programs.

²⁸ Essential Services Commission, *Energy Retail Code of Practice* v. 3, Part 6

²⁹ Essential Services Commission, *Energy Retail Code of Practice* v. 3, Part 6

³⁰ *ibid*

³¹ Essential Services Commission, *Energy Retail Code of Practice* clause 125 (2) (a) and clause 128 (1) (a)

As outlined in Table 1, we suggest that a number of preliminary measures should be taken by retailers before engaging with the consumer regarding a payment arrangement. This would more adequately address any measures such as concessions, government grants and tariff checks before requiring the consumer to commit to a payment amount.

We refer to the recommendations provided to the AER in our submission to the NECF review³², and recommend that the ESC revise the PDF by requiring retailers to offer the range of assistance options including applying concessions, URGs and Tariff reductions before engaging with the consumer regarding a payment arrangement. Reordering the list of assistance, and requiring the retailer to ensure that these measures have been investigated first with the consumer and in cases of eligibility, applied, would increase the likelihood that all assistance options are being offered and applied before payment arrangements are entered into.

The Code could be strengthened by including the provision that retailers are obligated to provide information on lower tariffs and government assistance before confirming a payment plan with a person experiencing payment difficulty.

RECOMMENDATION 10. Include in the Code a requirement for retailers to provide information and confirm where applicable, tariff checks and government assistance measures including concessions and Utility Relief Grants before confirming a payment plan with the person experiencing payment difficulty.

1.2.2. Payment arrangements

The Code outlines a provision for the repayment of arrears over not more than two years, and retailer advice about payment options that would enable a customer to repay arrears over not more than two years³³. Further provisions are provided in addition to tailored assistance, for a payment arrangement or revised payment arrangement that results in the arrears being fully paid by a date later than two years after the first payment³⁴.

We note that it is crucial that consumers are provided flexible and tailored support, particularly with regard to payment arrangements, yet affirm that this must be provided whilst assuring that an arrangement remains affordable and stable for a consumer, without them suffering from further financial strain or hardship in order to meet the arrangement.

With these considerations in mind, we submit that the Code include provisions for retailers to be required to calculate payment arrangements with regard to benchmark income and expenses, to assess whether the payment arrangement is fair and reasonable, and accounts for the financial position of the person requiring assistance.

RECOMMENDATION 11. To include a provision in the Code to require retailers to calculate payment arrangements with regard to benchmark income and expenditures, and consumers' average fortnightly income.

³² Consumer Action Law Centre, *Affording Energy – Submission to the review of payment difficulty protections in the National Energy Customer Framework*, July 2024

³³ Essential Services Commission, *Energy Retail Code of Practice* clause 128 (1) (a) (b)

³⁴ Essential Services Commission, *Energy Retail Code of Practice* clause 130 (4)

Case Study 1 – Anthony

Anthony is a retired pensioner receiving the age pension, living alone in a private rental. A few years ago his wife passed away, and he has been handling the associated costs, as well as the ongoing trauma of her passing. Anthony recently suffered a stroke, where he had been hospitalised for approximately six months. While he was in hospital, he offered a family friend to live in the house, however this person refused to help pay for household costs while they lived there.

After being discharged from hospital, Anthony called his energy retailer to seek assistance with his energy bills. Due to the stroke, Anthony is unable to use a computer, and has had to communicate only via phone calls since. His retailer told him they wanted \$5,000 up front in order to stop legal action against him for his energy debt. He stated to his financial counsellor that he didn't want any trouble, and he felt intimidated and that he needed to pay. His retailer didn't offer any other assistance, other than stating to go to another supplier if he didn't pay the bill.

The retailer asked Anthony to pay \$1,000 a month, despite Anthony having told them he was struggling financially. The retailer told him he was unable to access the Utility Relief Grant until after he had paid lump sum payments. Anthony told his financial counsellor that his retailer didn't discuss hardship options, or assess why his bills were so high, and had told him he didn't qualify for hardship assistance.

After his phone call with his retailer, Anthony accessed all the savings in his bank account and made one lump sum payment of \$1,500 towards the total energy debt. The following week, he made a second lump sum payment of \$1,000. With no savings remaining, Anthony was reliant on his age pension of approximately \$800 per fortnight. He said that after paying his rent and other expenses he was left with no money for over four weeks and was left unable to buy food.

Shortly afterwards, the retailer placed Anthony on a payment plan of \$50 per fortnight for both his gas and electricity. Anthony does not recall agreeing to this and advised the retailer this is more than he can afford. Anthony faced multiple direct debt dishonours due to this payment arrangement. Anthony advised the retailer that an amount of \$20 - \$25 per fortnight for each is more affordable for him.

When Anthony contacted the National Debt Helpline, he advised his financial counsellor that despite having no other debts, he was considering selling his car to pay for his energy bills. Anthony stated to the financial counsellor that the retailer "has taken all I have".

How did the National Debt Helpline assist?

Anthony's financial counsellor offered to contact the retailer to request a waiver of the remaining debt and refund of the \$2500 he had paid from his savings.

The financial counsellor has been communicating with the retailer on Anthony's behalf, and has confirmed Anthony's concessions have been applied, thus accessing a better offer price for his energy, and an affordable payment plan of \$50 per month as part of a hardship assistance program.

The financial counsellor is continuing to work with Anthony to advocate for the refund and the remaining debt to be waived.

*name changed

1.3. Training requirements

Question 5. Do you have any suggestions about how to improve the current Payment Difficulty Framework training obligations established in the code of practice?

The checklist outlined in Table 1 above could form a comprehensive tool used by retailers to check assistance available with the consumer, provide a consistent reporting mechanism to ensure standards of assistance obligations have been met, and monitor the use and implementation of additional assistance.

Research regarding the use of checklists in service delivery, training and compliance has consistently found positive outcomes, including strengthened compliance with guidelines, improvements to human factors, reducing the incidences of adverse events³⁵ and lowering the risk of important but small steps being overlooked³⁶.

The use of a checklist of assistance measures could be beneficial to the training, implementation and reporting of assistance found in the PDF. This would allow for deeper and more accurate monitoring of the assistance framework and identify specific areas where further training or development is needed.

We submit Table 1 as an example schedule that could be included in the Code and PDF Guideline for retailers to adopt, as part of their training and implementation of the PDF.

More broadly, the following suggestions that could strengthen training and implementation of payment assistance, including

- Investigation and compliance of retailers' early intervention practices
- Payment matching and debt waivers should be proactively and publicly communicated as part of an arrangement offered by retailers for people who cannot meet ongoing usage costs
- Regulatory guidelines should include guidance regarding additional assistance measures including payment matching and the provision for the full or partial waiving of debt³⁷
- Provisions for payment plans to be an affordable and sustainable option and are proportionate to the consumer's income. If the outstanding debt is not paid off within a two-year period, retailers should provide reasonable grounds as to why the remaining debt should not be waived.

³⁵ Thomassen Ø, Storesund A, Søfteland E, Brattebø G. [The effects of safety checklists in medicine: a systematic review - PubMed \(nih.gov\)](#) Acta Anaesthesiol Scand. 2014 Jan;58(1):5-18. doi: 10.1111/aas.12207. Epub 2013 Oct 10. PMID: 24116973. & van Maarseveen OEC, Ham WHW, van de Ven NLM, Saris TFF, Leenen LPH. [Effects of the application of a checklist during trauma resuscitations on ATLS adherence, team performance, and patient-related outcomes: a systematic review - PMC \(nih.gov\)](#). Eur J Trauma Emerg Surg. 2020 Feb;46(1):65-72. doi: 10.1007/s00068-019-01181-7. Epub 2019 Aug 7. PMID: 31392359; PMCID: PMC7026213.

³⁶ State of Victoria Department of Premier & Cabinet, *Applying Behavioural Insights in Victoria: An Update*, July 2019 [BI Update Report SOFT \(www.vic.gov.au\)](#) ISBN 978-1-925789-20-1

³⁷ Essential Services Commission, Energy Retail Code of Practice v.3, October 2024, Clause 144 (4); Clause 152 (2)

Question 6. *Do you consider that retailers should be required to train their staff to assist customers experiencing different vulnerability or hardship issues (beyond the current obligation to train staff on family violence matters)? If so, what are the costs and benefits of imposing these additional training requirements?*

Our frontline evidence supports the statement in the Issues Paper that a growing number of Victorians are struggling to afford their energy costs³⁸. There are substantial risks to consumers if assistance is not provided to address energy hardship, including insurmountable energy debt, lack of adequate living standards (particularly with regard to rental properties) and associated health risks.

People contacting the NDH have reported severe stress and anxiety regarding debt collection, and major financial decisions such as selling their home in order to address their energy debt³⁹. These cases demonstrate that the risks to consumers are substantial if retailers are not adequately trained in engaging and assisting consumers.

The benefits of requiring retailers to have comprehensive training on vulnerability and hardship would be significant--supporting consumers to access their entitlements to adequate assistance, that takes their vulnerability into account. We therefore support the strengthening of training requirements to be expanded to include training on the risks associated with energy hardship, including additional barriers faced by vulnerable consumers. We support the development of these training requirements as an expansion on existing obligations as found in the Code regarding training to adequately respond and support people affected by family violence⁴⁰.

RECOMMENDATION 12. For the Code to include minimum training requirements for retailers' relevant employees in responding to consumers facing vulnerabilities, payment difficulty and financial hardship, including the use of assistance checklists as best practice.

³⁸ Essential Services Commission *Energy Retail Code of Practice Review Issues Paper*, May 2024, p.24

³⁹ Consumer Action Law Centre, *Affording Energy – Submission to the AER Review of the NECF* July 2024, p.21

⁴⁰ Energy Retail Code of Practice, clause 149

1.4. Obligation to place debt on hold for six months

Question 7. Are you aware of any customers who have had their debt placed on hold? If so, has the hold helped them reduce their debt in the long term

Question 8. How might this obligation be amended to better support customers experiencing significant payment difficulties?

Our findings

When analysing data found from Victorian calls to the NDH, we rarely speak with callers reporting they have received a debt hold for their energy account. However, it is important to note that due to the nature of financial counselling services provided at Consumer Action via the NDH, the predominant calls we receive are for initial advice and consultation, rather than ongoing casework (which represents a smaller proportion of our case files). This could be an reason we don't see many recorded instances of this measure being taken.

Rather than debt holds, through our casework we have noted more commonly that: callers have made requests to their retailer for payment extensions which have been declined; retailers are requiring payment arrangements as a first step for further assistance to be provided; and people resorting to BNPL in order to meet a payment arrangement in cases where the person has no income⁴¹. We have found retailers are more commonly arranging a payment arrangement before considering alternative assistance measures even in cases where the person is in severe hardship or very difficult life circumstances⁴².

In related findings, our fourth report recorded the largest number of energy debts in the six years of reporting. We note that the PDF outlines minimum assistance, and it provides for the opportunity for retailers to provide additional assistance above the minimum measures specified. Despite this, we have found multiple instances in our casework of people in significant energy debt and with extenuating vulnerabilities, where retailers have refused to consider payment matching or debt waivers.

This trend of growing energy debt is developing into an urgent, intractable problem that we expect will require cross-sector intervention to solve, for example through a debt amnesty or waiver program. The consumers that our financial counsellors are speaking to don't have the ability to repay their outstanding energy debt, while also being able to afford current supply charges. The energy industry needs to prioritise debt forgiveness options for consumers, and at scale. In cases where sizeable debts have accrued, it also indicates there may have been a failure of early intervention by retailers, despite there being requirements in the PDF for early assistance.

Our recommendations

We support the inclusion of the six-month hold on energy debt as a measure that can be crucial to assisting someone in financial hardship. We have found many callers contacting the NDH are experiencing significant life events including family violence, where they have been left with no income stream. In these cases, it is important that an option to hold arrears and repayments is available to them as a reprieve.

This said, we agree that there can be issues with delaying payment assistance through the use of a hold, without considering a longer-term strategy to reduce the debt, particularly as the customer still has the need for ongoing supply. To provide better support in addition to the debt hold entitlement, we recommend that further guidance

⁴¹ Consumer Action Law Centre 'Energy Assistance Report 4th Edition' July 2024, case study "Thomas" p.22; case study "John" p.24; case study "Simone" p.26

⁴² Ibid p.21

and best practice is provided to retailers regarding payment matching, full and partial debt waivers as part of a longer-term debt resolution strategy with consumers.

We therefore support retaining the debt hold as one of a mix of options available to consumers in hardship, to ensure that it is available for consumers who require immediate and urgent intervention for financial hardship or payment difficulty, and further refer to our recommendations in our *Energy Assistance Report* that provide additional solutions to addressing longer term hardship.

RECOMMENDATION 13. To retain the entitlement for consumers to hold an accrued debt for up to 6 months.

RECOMMENDATION 14. For the ESC to conduct regular audits into retailers' tailored assistance practices, with a view to taking enforcement action if breaches to retailer obligations are found.

RECOMMENDATION 15. For the ESC to provide additional information in their Guidelines regarding best practice for debt resolution that includes information about payment matching, partial and full waivers for accrued energy debt.

1.5. Accessibility of Utility Relief Grants (URGS) information

Question 9. In your experience, are retailers implementing URGs and energy concessions obligations as intended? Are there any barriers that need to be addressed, and if so, how?

Question 10. Are there any potential adjustments to the URGs and energy concessions obligations that we should consider including in the code of practice?

Our findings

The PDF outlines that retailers are required to assist consumers in accessing and applying for the URG scheme as part of minimum standards of assistance. In implementation, retailers are provided a payment upon application for the grant, and after approval from Services Australia, the retailer receives the \$650 per utility to pay arrears of the customer.

In practice, the ESC has noted there has been a steady increase in URG applications since the implementation of this requirement in 2022 which points to a level of effectiveness of the requirement⁴³. However, there remain a proportion of applications that are started but not completed, and we have found there are still many examples of Victorians not receiving information about the grant and instead being placed on unsustainable payment plans where the amount may have been reduced or wiped entirely though the URG.

As Figure 1 demonstrates, there has been a steady increase of Victorian energy contacts to the NDH experiencing energy hardship who have reported not being offered or being offered the URG incorrectly by their retailer. Alongside adding even more strain to frontline community services, these instances show that retailers are yet to comprehensively implement the requirements outlined in the PDF.

⁴³ Essential Services Commission, Victorian Energy Market Report: March 2024, 26 March 2024, p. 19.

We therefore submit that retailers can do much more to implement their obligations in the PDF in regard to the URG scheme . Even when taking into account the financial benefit received by retailers when applying for the URG and receiving the grant, we have found through our casework that these financial incentives don't appear to be working as intended, and aren't resolving energy debt for many Victorians, which suggests further reforms are required.

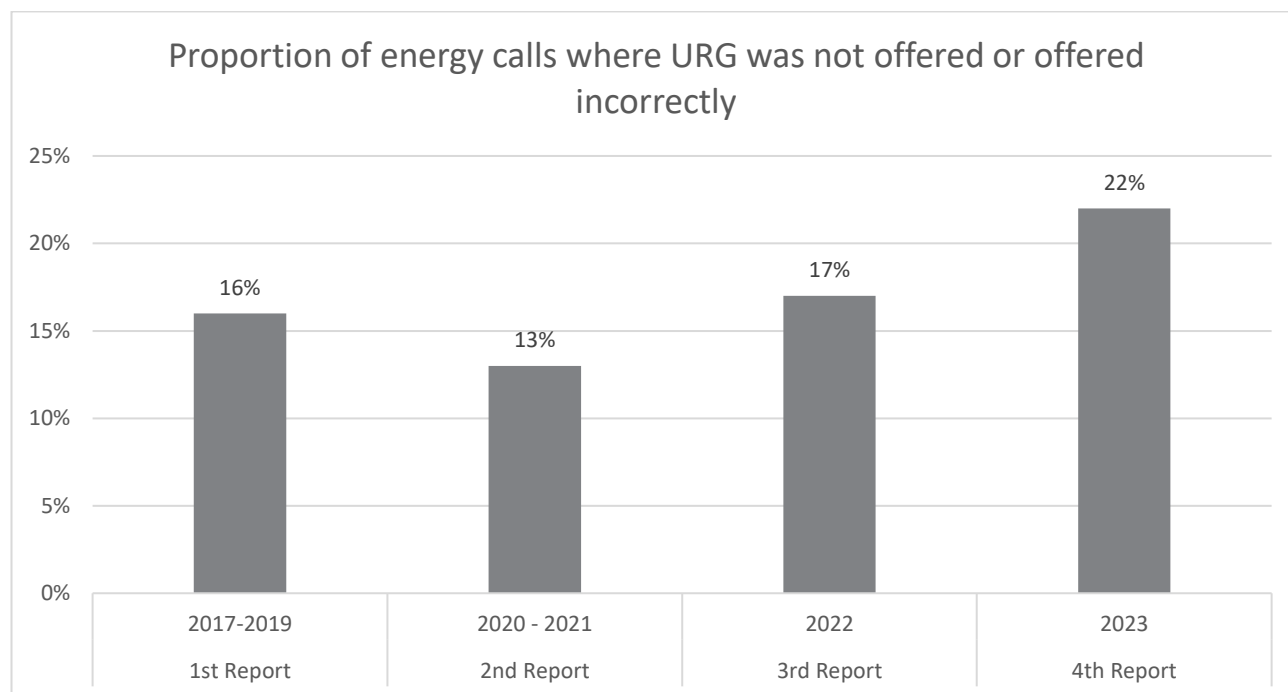


Figure 1 The proportion of Victorians contacting the NDH identified as not receiving information or assistance by their retailer for the Utility Relief Grant (URG). These records are provided from the six years of the Energy Assistance Report.

Recommendations

As identified in section 1.2 of this submission, we support the inclusion of a requirement in the Code for retailers to provide information and confirm where applicable, tariff checks and government assistance, before arranging a payment plan with a person experiencing payment difficulty. This provision would support retailers meeting their obligations to provide information and assistance of the URG before taking further steps with the consumer.

We also support an adjustment to the administrative process of the URG, in that the financial incentive provided to retailers associated with lodging the URG application form should be provided to the retailer only upon the successful confirmation of the URG being applied. We acknowledge that this may be out of scope for the ESC, however we feel it is important to note that this could have significant benefits to consumers in ensuring their entitlements to access and have the URG applied.

1.6. Assistance and information on energy efficiency

As part of our response to this section of the Issues Paper, we submit that the Code be reviewed to strengthen assistance measures regarding the principle of supporting consumers towards energy efficiency, and propose that obligations for both consumers and retailers regarding the reduction of energy usage be reformed.

We support the ESC's work with retailers in identifying relevant energy efficiency schemes, programs and tools, and support these measures being strengthened through the Code and additional guidance for retailers.

1.6.1. Reducing Energy usage

The Code provisions in the PDF outline that retailers can provide

*'practical assistance to help the consumer reduce their use of energy, based on their pattern of energy use and on the circumstances where the customer lives, provided there is scope for action to be taken for that purpose.'*⁴⁴

The retailer is also entitled to provide information to the consumer about their progress towards lowering their energy costs⁴⁵, and further, to provide an extension of a payment hold if this would assist the consumer to lower the cost of their energy use⁴⁶. For consumers whose repayments have been placed on hold, the retailer is required to contact the consumer in order to identify a timeframe for the consumer to implement practical assistance to reduce their energy usage⁴⁷.

In a following section, the Code states that retailers must *not* impose any condition on the provision of assistance including requiring the customer to provide personal or financial information⁴⁸.

Our findings

1.6.2. Potential impacts on consumers of reducing energy usage

Recent research has found that 62% of Australians reported concerns about costs, and this stop them from using their air conditioner, and over 30% resort to leaving the home during extreme weather days in order to reduce energy costs⁴⁹. As indicated in Figures 2 and 3 below, we have consistently found across the six years of our *Energy Assistance Report*, that renters are the disproportionate majority of Victorians contacting the NDH experiencing energy financial difficulty. According to recent research, renters are paying higher costs for energy⁵⁰, and their home is more likely to be less energy efficient⁵¹.

Reducing energy usage can have significant impacts on people's health, particularly in energy inefficient households and as extreme temperatures increase. Victorian consumers contacting the NDH in financial hardship have faced significant health impacts including hospitalisation due to damp, inadequately ventilated or insulated homes. Further, these consumers experience significantly high energy bills, in some cases of over \$2,000 per month due to their landlord refusing to make energy efficient modifications⁵².

The recent Victorian Residential Efficiency Scorecard assessed Victorian rental properties by their thermal rating and found 85% of assessed properties had the worst possible thermal rating during hot weather, and 75% had low or very low thermal ratings during cold weather⁵³. Renters in privately rented homes are likely paying additional energy costs due to the below-minimum standard of the property and in some cases are more likely to have old or unchecked appliances and utility connections. The likelihood of faults occurring with connections, such as gas leaks or electricity faults, are also likely to be higher in these circumstances.

⁴⁴ Essential Services Commission, Energy Retail Code of Practice, v.3, October 2024, clause 129 (1) (f) (ii)

⁴⁵ Essential Services Commission, Energy Retail Code of Practice, v.3, October 2024, clause 128 (1) (f) (iii)

⁴⁶ Ibid clause 128 (4)

⁴⁷ Ibid clause 131 (3)

⁴⁸ Ibid clause 143 (1)

⁴⁹ Sweltering Cities, [Summer Survey 2022 Report \(swelteringcities.org\)](#) p.17

⁵⁰ Best, R. and Burke, P.J. (2022), Effects of renting on household energy expenditure: Evidence from Australia, CCEP Working Paper 2202, May 2022. Crawford School of Public Policy, The Australian National University.

⁵¹ Sweltering Cities [Copy of SC Summer Survey 2022 Report \(swelteringcities.org\)](#) p.17

⁵² Consumer Action Law Centre, Federation of Community Legal Centres, Financial Counselling Victoria, Westjustice and Anika Legal, [Submission to the Minimum Standards for Rental Properties and Rooming Houses proposed regulations](#), July 2024, p.3 & 5

⁵³ Department of Energy Environment and Climate Action, Minimum energy efficiency and safety standards for rental homes – Regulatory Impact Statement, May 2024, referencing the Victorian Residential Efficiency Scorecard p.14.

While we acknowledge that higher energy usage can be a consequence of an energy inefficient home, we don't support the reduction of energy usage as a method to address these underlying issues with the property, due to the health risks posed to consumers in these circumstances.

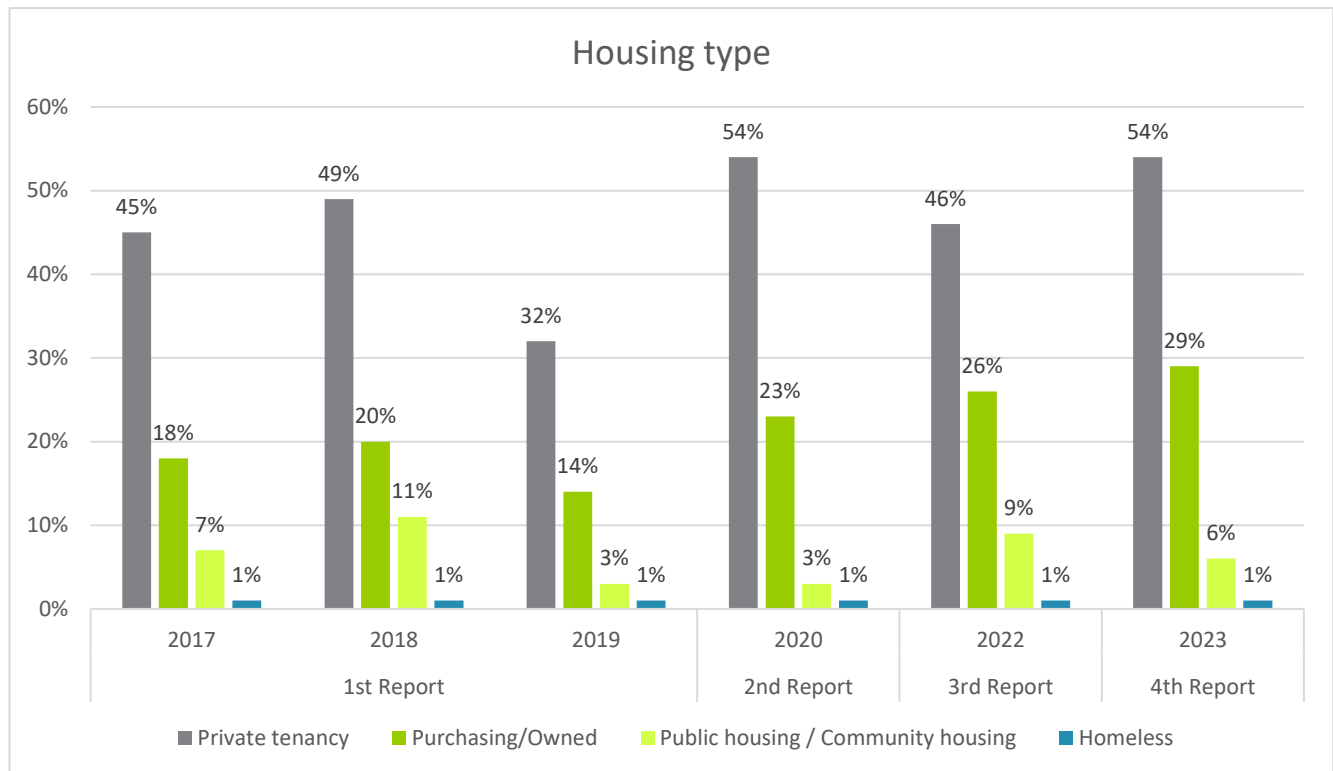


Figure 2 – Energy contacts by housing type recorded across six years of Energy Assistance Reports

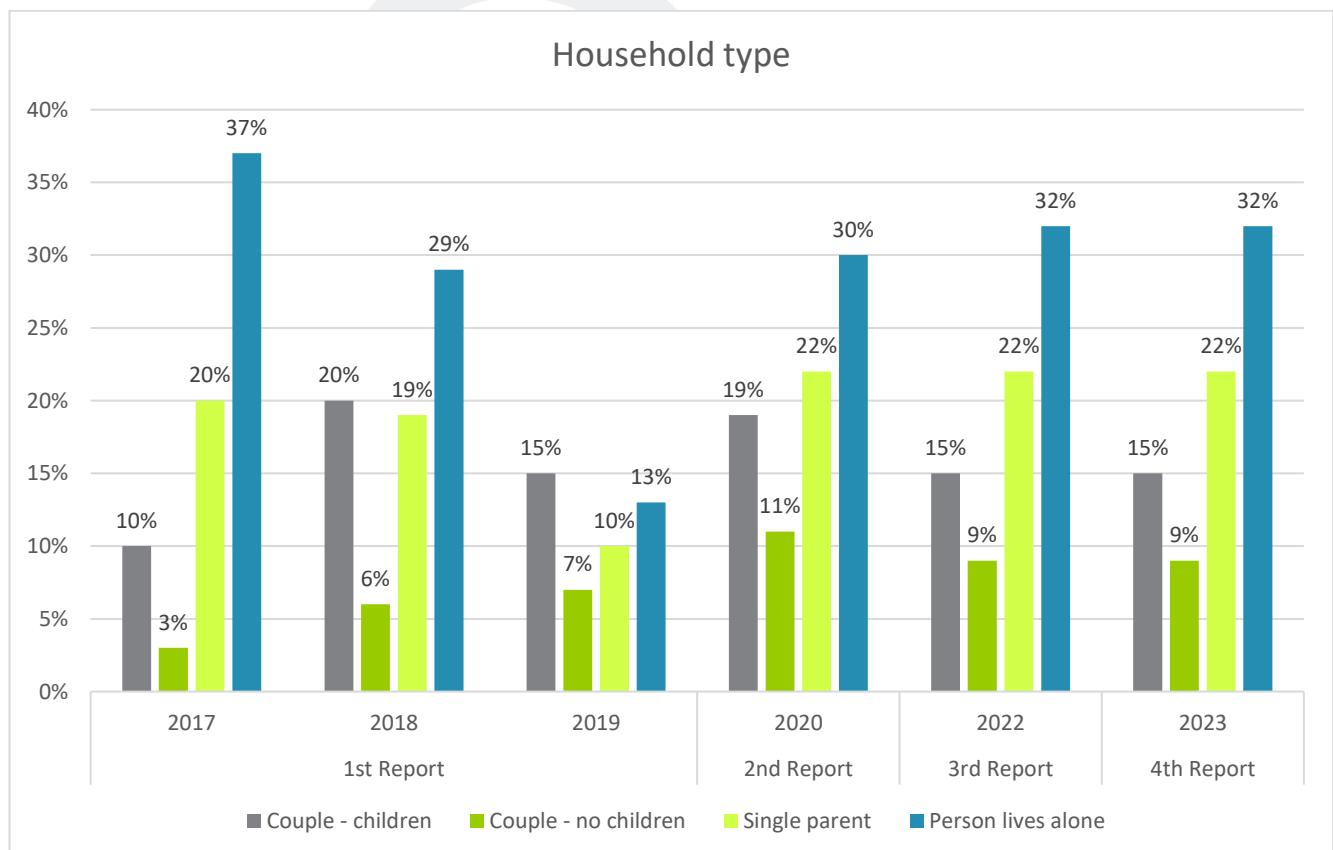


Figure 3 – Energy contacts by household type recorded across six years of Energy Assistance Reports

1.6.3. Implementation of 'reducing energy usage' obligations to consumers

Financial counsellors who have been present with clients when retailers have conducted energy audits over the phone have reported retailers making inquiries to the customer about their energy usage, including questions such as 'How often do you shower, and for how long?' and 'When do you switch your lights on, and for how long?'

In some cases witnessed by financial counsellors, retailers provided misleading information to the customer that they are required to ask these questions, and receive responses from the customer, as a condition of assistance being provided.

These examples demonstrate some clear breaches of consumer privacy, particularly if the retailer poses these questions as being required in order to access assistance.

1.6.4. Monitoring of consumers by retailers

The Code outlines requirements for retailers to provide ongoing information to the consumer about their progress in reducing their energy costs⁵⁴. Further provisions in the Code authorise retailers to remove consumers from assistance if the consumer has failed to implement practical assistance to reduce their energy usage⁵⁵.

These provisions create a situation where retailers are required to monitor the private living arrangements of the household requiring assistance, and allow for the removal of assistance if the consumer doesn't change their usage patterns. We note that the Code outlines that practical assistance can take these steps only if there is scope for action, but who decides this scope, and the potential implications of actions remain relatively unclear, particularly for consumers who are likely to be relying on the retailers' communication of this information.

We believe these provisions in the Code cause unnecessary risks to consumers privacy and rights to liveability, including in protections found in other legislation, such as the entitlement to adequate standards of living⁵⁶, and the right to peaceful and quiet enjoyment of the home⁵⁷ in cases of rental properties.

Question 11. Should the code of practice introduce more prescriptive or expanded obligations about how energy efficiency advice should be delivered? What are the costs and benefits of these changes?

Question 12. 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)?

Recommendations

In response to these questions, we support the inclusion of assistance measures that support reducing the cost of energy, and facilitate assistance to energy efficiency upgrades. We do not support the inclusion of provisions aimed at reducing the usage of energy, due to the potential consequential risks posed to consumer health or living standards, or that of their family members, or co-tenants living in the household, as identified above.

⁵⁴ Essential Services Commission, *Energy Retail Code of Practice* v. 3 October 2024, clause 128 (1) (f) (ii) & (iii)

⁵⁵ Essential Services Commission, *Energy Retail Code of Practice* v. 3 October 2024, clause 131 (3)

⁵⁶ United Nations Human Rights Office of the High Commissioner (OHCHR) [OHCHR and the right to adequate housing | OHCHR](#)

⁵⁷ *Residential Tenancies Act 1997* (Vic) section 67

Provisions regarding energy payment assistance should meet the principles required in financial hardship policies of a) the essential nature of the electricity or gas supply; and b) that financial hardship policies are of equitable access⁵⁸.

A comprehensive consumer protection framework should account for and prevent consumers going without energy, both for people avoiding usage due to cost-related concerns, and for people who face barriers making efficient upgrades due to socio-economic factors, such as renters. Instead, energy usage data held by retailers, measuring significant under or over-usage could be more positively utilised as an indicator of the energy efficiency rating of the home and the consumer needs.

Retailers could communicate to customers that they are entitled to receive tailored assistance without being asked about their energy usage; however, information and measures such as utility connection assessments, gas leak or electrical connection checks and energy efficiency programs may still be provided to the customer.

We propose that the Code would benefit from restricting the types of advice or practical assistance retailers can provide in reducing energy usage; and if not restricted, require retailers to include reference to the consumer entitlement to not provide personal or financial information if they choose not to, without precluding them from continued tailored assistance⁵⁹.

Instead of provisions of reducing energy usage, we propose that energy efficiency assistance could be integrated with usage data to provide assistance to people in energy poverty, to access energy efficiency upgrades including appliance and connection checks, as well as low to no-cost government accredited and licensed initiatives and schemes.

RECOMMENDATION 16. Amend the Code provision regarding practical assistance to reduce energy use to instead outline a requirement for retailers to provide information of, and assist in arranging government-accredited and licensed energy efficiency schemes and appliance upgrades, including the Home Energy Rating Assessments and Victorian Energy Upgrades program.

RECOMMENDATION 17. For the ESC to provide guidance for retailers to utilise energy usage data to identify significant under or over-usage with a view to providing consumers the option for an onsite assessment to check utility connection and faults, with information about options to resolve consequential additional charges in cases where these are found.

⁵⁸ Electricity Industry Act 2000 Division 6, Part 45, Section 2 (a) & (e) & Gas Industry Act 2001 Part 3 Section 481 (2) (a) & (e)

⁵⁹ Essential Services Commission, Energy Retail Code of Practice v. 3 October 2024, clause 143 (1)

2. Supporting the choices of energy consumers

2.1. Supporting customers who want to disconnect from gas

Question 13. . Do you see a need for improving processes and information for a customer who wants to disconnect from or abolish their gas connections?

Question 14. Do you have any views on our proposed provision-of-information requirements related to disconnections and abolishments?

Question 15. Do you have any views on whether there is a need for new rules on timeframes and notification requirements for abolishing gas connections?

Question 16. To strengthen protections for a customer wanting to disconnect from gas, are there any other obligations on a retailer we should consider introducing in the code of practice?

We broadly support the approaches proposed in the Issues Paper by the ESC with regards to gas disconnection and abolishment.

We recognise that there are potential risks to Culturally and Linguistically Diverse communities in the provision of information, and more broadly, to consumers, if information is not clear.

In cases where the consumer is a renter, and the account holder of the residential retail gas supply, they are not able to choose to abolish the gas connection. It is therefore imperative that both distributors and retailers notify account holder as soon as the request is made by the property owner, to ensure that the resident renters are informed about the changes to their home.

We support the requirement for clear, simple and concise information regarding gas abolishment and disconnection, and support the inclusion of information regarding associated charges, and who is liable for these charges.

In addition to the requirement for this information, we support the required inclusion of resources for additional information including relevant websites, and the EWOV contact information, in the event that a consumer requires further information or to lodge a complaint.

2.2. Bill information requirements

Question 17. 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?

Question 18. Do you think the inclusion of details for the Energy and Water Ombudsman Victoria (EWOV) would be of benefit to billing information?

Question 19. Do you support the need for prescribed requirements related to bill communications? Are there any practical implementation issues we should consider?

We support the alignment of Victorian energy bill requirements with the AER and Western Australian jurisdictions. The key benefits of these rule changes for Victorians are in accessing clear information about the EWOV. We have found that information provided by retailers regarding payment assistance can be unclear or inconsistent, and we support the inclusion of the EWOV in order to best assist consumers in accessing clear information about their entitlements both to payment assistance and avenues for independent redress and resolution.

We support amendments to the requirements of bill communication due to the considerations identified in the Issues Paper regarding email billing. The prescription of bill communication requirements would help prevent inconsistencies or unequal access to information due to the consumers’ communication preferences.

2.3. Clarifying unclear definitions: Arrange a disconnection

Question 32. Do you consider that the term ‘arrange a disconnection’ could be clarified? Why or why not?

Question 33. Are there other options to clarify in the code of practice that a service order for disconnection must be cancelled when a customer seeks payment assistance or is receiving payment assistance and is complying with the relevant terms? What are the costs and benefits of those options?

We agree that the terms “arrange a disconnection” could be clarified further to ensure that consumers are provided clear and unambiguous information about a potential disconnection. This said, we submit that further amendments must be considered in order to comprehensively address the risks posed to consumers regarding unclear information about their risk of disconnection.

Contacts to the NDH have reported that their retailers have communicated they are at risk of imminent disconnection *if* payment plans aren’t agreed to, as identified in the case study below⁶⁰. We have also identified examples of retailers sending SMS communications to customers about imminent disconnection, without providing assistance options. In some cases, the SMS used does not provide a contact number, or information about assistance⁶¹.

⁶⁰ Consumer Action Law Centre, *Energy Assistance Report 4th Edition* June 2024, pp.22-23

⁶¹ Consumer Action Law Centre, *Energy Assistance Report 4th Edition* June 2024, p.27 & Case study – Sharon* p.40;

Case study: Amal

Amal* is a single mum with three children living at home. Amal speaks Arabic and requires an interpreter for all phone calls. Her sole income source is a Centrelink Carer's payment of \$1,500 per fortnight. Amal is in no other debt, but had been struggling to afford the payment plan for her utilities. She had been attempting to meet fortnightly payments of over \$150 (10% of her income) but couldn't maintain them. She had contacted her retailer for support, and the retailer referred her to the NDH.

Amal stated she had agreed to increase her payments to \$150 after the retailer threatened to disconnect her. She hoped agreeing to the increase would prevent this from happening.

Amal stated that she believed she had applied for URGs in the past but couldn't remember how long ago that was.

How did the NDH help?

The financial counsellor assisting Amal provided her with information about the PDF, including her rights to agree to a payment plan that is affordable for her, and her entitlement to access the URG.

Due to the ongoing issues Amal was experiencing with the retailer, she requested ongoing assistance from a local financial counsellor to negotiate with the retailer and was provided with a warm referral to her local financial counselling service.

*name changed

The proposed changes do not account for the types of potentially coercive, misleading or ambiguous types of communication that we have identified in our casework, described above. We propose that additional limits to the instances where disconnection can be raised by the retailer if not provided in the correct form, would help to reduce instances of customers being provided with unclear or ambiguous information about disconnection.

Further, as identified in our *Energy Assistance Report*, we recommend that the entitlement of wrongful disconnection payments be expanded to include instances where the retailer has been found wrongfully communicating a consumers' risk of disconnection where retailers' have not met their obligations to provide payment assistance.

With regard to the timelines of service orders identified in the Issues Paper, we support the ESC's proposed change to require retailers cancel service orders when a consumer seeks or is in receipt of payment assistance. The consideration of integrating the disconnection and payment assistance timelines would further assist in ensuring that both consumers and retailers are adequately informed of their entitlements and obligations.

3. General code of practice updates and other changes

3.1. Protections for embedded network customers

Question 39. What are the costs and benefits of increasing protections to embedded network customers that buy electricity from retailers?

Question 40. What are the costs and benefits of extending family violence protections to embedded network customers?

Question 41. What are the costs and benefits of extending bill change alert obligations to embedded network customers?

We support the ESC's proposed reforms to ensure that consumers in embedded networks receive the same entitlements and protections. Importantly, we strongly support the inclusion of these consumers in family violence protections.

We believe that consumers in an embedded network should receive the same entitlements and protections as all other consumers, especially when taking into account that these consumers are placed in an embedded network due to their housing circumstances, rather than their active choice to join an embedded network.

In response to cost considerations, we submit that these costs should be shared by industry, according to market share. The costs of extending consumer protections to cohorts who are entitled to them should not adversely affect consumers.

3.2. Use of preferred communication method

Question 42. In your view, when must preferred methods of customer communication be used?

Question 43. Are there any costs or benefits that would arise from always requiring the use of preferred methods of communication with small customers?

We support the provisions in Part 7 of the Code, as they consider the needs of consumers affected by family violence. We support the view that consumers preferences in communication should be upheld as much as possible, considering that each person's needs will differ greatly with regard to accessibility.

We support the inclusion of preferred methods of communication for consumers, considering the variety of consumers' needs.

APPENDIX A - SUMMARY OF RECOMMENDATIONS

- RECOMMENDATION 1.** For the ESC to consider the International Standard on Consumer Vulnerability for the design and delivery of inclusive services (soon to be adapted for Australia) as part of the Energy Retail Code review, with a view to increasing compliance measures for retailers found in breach of protections for vulnerable consumers, and deterrence of these practices more broadly.
- RECOMMENDATION 2.** For the ESC to consider adopting the MARAM Framework's definitions of Family Violence, with a view to strengthening retailer requirements of identification, training and ensuring access to energy as an essential service for family violence affected consumers.
- RECOMMENDATION 3.** Include the provision from the NERR that requires a retailer's family violence policy to set out how the retailer will apply protections and specify types of assistance available.
- RECOMMENDATION 4.** For the ESC and AER to consider and develop indicia of energy poverty, integrated with the existing framework and definitions of consumers experiencing vulnerability
- RECOMMENDATION 5.** For the ESC and AER to consider and develop a category of consumers who are required to be 'constantly connected', which includes people experiencing vulnerability
- RECOMMENDATION 6.** Include the provision found in the Water Industry Standard requiring retailers to specify and implement an approach to debt management that includes the circumstances in which a debt will be waived
- RECOMMENDATION 7.** Include the provision found in the NERR to require retailers to take into account impacts of debt recovery action, and joint and several responsibility of energy usage resulting in arrears before transferring debt to a third party debt collector
- RECOMMENDATION 8.** Include the requirement found in the NERR for retailers to waive any fees payable for late payment of a bill
- RECOMMENDATION 9.** For retailers to regularly audit their compliance with debt collection guidelines and provide regular compliance reporting to the ESC and in identified systemic cases, to the ACCC.
- RECOMMENDATION 10.** Include in the Code a requirement for retailers to provide information and confirm where applicable, tariff checks and government assistance measures including concessions and Utility Relief Grants before confirming a payment plan with the person experiencing payment difficulty.
- RECOMMENDATION 11.** To include a provision in the Code to require retailers to calculate payment arrangements with regard to benchmark income and expenditures, and consumers' average fortnightly income.
- RECOMMENDATION 12.** For the Code to include minimum training requirements for retailers' relevant employees in responding to consumers facing vulnerabilities, payment difficulty and financial hardship, including the use of assistance checklists as best practice.
- RECOMMENDATION 13.** To retain the entitlement for consumers to hold an accrued debt for up to 6 months.
- RECOMMENDATION 14.** For the ESC to conduct regular audits into retailers' tailored assistance practices, with a view to taking enforcement action if breaches to retailer obligations are found.

RECOMMENDATION 15. For the ESC to provide additional information in their Guidelines regarding best practice for debt resolution that includes information about payment matching, partial and full waivers for accrued energy debt.

RECOMMENDATION 16. Amend the Code provision regarding practical assistance to reduce energy use to instead outline a requirement for retailers to provide information of, and assist in arranging government-accredited and licensed energy efficiency schemes and appliance upgrades, including the Home Energy Rating Assessments and Victorian Energy Upgrades program.

RECOMMENDATION 17. For the ESC to provide guidance for retailers to utilise energy usage data to identify significant under or over-usage with a view to providing consumers the option for an onsite assessment to check utility connection and faults, with information about options to resolve consequential additional charges in cases where these are found.

APPENDIX B – Data sample

Six Year Data Sample

	1st Report			2nd Report	3rd Report	4th Report	
	2017-2023	2017	2018	2019	2019-2020	2022	2023
		1/07/2017	-	31/05/2019	1/07/2019-31/12/2020	1 Jan-31 Dec	1 Jan- 31 Dec
No. of total Contacts		583	1166	507	808	6494	7087
No. of Energy Contacts*		94	107	56	133	697	846
% of total contacts		18%	11%	14%	16%	11%	12%