3rd July 2025

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

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

Dear Essential Services Commission,

Submission: Energy Consumer Reforms Regulatory Impact Statement

We welcome the opportunity to provide our submission with support from Westjustice, to the Essential Services Commission (**ESC**) in response to their consultation on the Energy Retail Code of Practice (**ERCoP**) Regulatory Impact Statement (**RIS**).

Consumer Action Law Centre (**Consumer Action**) strongly supports the proposed reforms outlined by the ESC in the RIS. We consider that these reforms will provide significant relief to Victorian consumers experiencing payment difficulty, vulnerability and/or barriers to engaging with the complex energy market, both by addressing unfair prices for consumers stuck on legacy offers and protecting consumers from paying unnecessarily high prices for energy.

In this submission we provide insights from our frontline work assisting Victorians on the National Debt Helpline (**NDH**), to provide context regarding people's experiences navigating energy affordability and growing debt. We also highlight issues regarding retailers' current practices in engaging with Victorian consumers to highlight the risk that the proposed disconnection threshold is not high enough to protect consumers not yet receiving payment difficulty assistance from the risk of disconnection. Lastly, although outside of the scope of this process, we have included a section on further opportunities for structural reform that we believe will improve protections, reduce unreasonable prices and lower energy bills.

In support of this submission, we attach our submission to the Australian Energy Regulator's (**AER**) draft decision of the minimum disconnection amount. We include this submission with the aim of supporting an integrated and complementary approach across jurisdictions, ensuring strong protections for all Australian energy consumers.

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

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.

TABLE OF CONTENTS

Response to consultation general questions

Question 1. Are there any additional costs and benefits that we should consider for the proposed reforms?

We support the ESC's multi-criteria analysis (**MCA**) approach used in the RIS, particularly with regard to vulnerable consumers. We consider that this methodology provides a strong basis for an equitable approach that recognises that savings on energy bills is critical for consumers experiencing vulnerability and payment difficulty[1].

We are confident the proposed reforms will provide significant relief to consumers who are paying unnecessarily high energy prices. However, there remains a pervasive issue that some low-income households are unable to afford the ongoing cost of energy supply. Ultimately, based on our frontline observations, structural reform is needed to ensure that all Victorians can access the energy services they need to lead a healthy life. This could take the form of a social tariff, and warrants investigation. We discuss our insights and opportunities for reform to address the seemingly intractable issue of energy poverty in the last section of this submission.

Question 2. Are there any additional implementation requirements we should consider for this package of reforms and each individual reform?

We acknowledge that these reforms will provide significant relief for Victorian consumers, yet we note that they will rely on retailers' implementation of their reformed obligations. In line with ensuring retailers are implementing these reforms, we support the proposed implementation approach set out in chapter 13 of the RIS, in that the ESC's stated priority areas of compliance with the new obligations will be assessing both significant harm and widespread risk to consumers[2]. In this submission, we highlight our concern of the threat of disconnection being used as an engagement tool; and its use to push people into unsustainable payment plans. These customers would likely be some of the thousands of people[3] identified in the RIS who should be receiving an automatic switch to the best offer. We hold the view that until the reforms are in place, it will be of increasing importance that retailers increase their focus on their obligations under the Payment Difficulty Framework (**PDF**). We further submit that it would be good practice for retailers to provide more transparent data in their reporting of their new obligations to the ESC, to support the monitoring of these reforms, in addition to the self-reporting obligations already in place.

Question 3. Do you have any feedback on the proposed implementation timeframes for the proposed reforms?

We note that consumers experiencing payment difficulty or vulnerability would greatly benefit from the proposed reforms and would benefit from these reforms being introduced sooner than the proposed timeframe. This said, we acknowledge some retailers' views shared with the ESC, that these reforms may take time for some retailers to implement. Further, we note that there are additional opportunities to provide strengthened protections for consumers experiencing vulnerability through the ERCoP Stage 2 reforms consultation process. For these reasons, we support the proposed timeframe and submit that proposed reforms for ERCoP Stage 2 should be aligned where possible with the second tranche of Stage 1 reforms (that is, to come into effect by July 2026).

This would enable consumers to have clear, accessible and simple information about all changes to the ERCoP as they are relevant to them; and further assist financial counselling and consumer organisations to provide accurate and timely information to our clients to this end.

Question 4. Are there any further considerations required for how each reform will interact with one another?

We submit that the proposed reforms broadly complement each other and provide a strong framework for consumers to be prevented from paying higher prices for their energy. This said, in response to question 7, we

[1] Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, pp.49-50 & pp.53-54
[2] Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, p.167
[3] The ESC estimates that retailers would switch up to 75,000 electricity and 60,000 gas customers to their best offer under the automatic switch reform proposed in the RIS. Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, p.3

discuss our concerns regarding the interaction between the automatic switch to best offer for people experiencing payment difficulty, and how this proposed reform relates to the new minimum disconnection threshold amount.

Question 5. If your preferred option differs from that identified in the MCA, could you please explain why?

We support the preferred options outlined in the RIS, with the exception of the proposed thresholds (Reform topics 8 and 9). We outline our preferred options for these reforms, and our reasons in response to questions 6 and 7.

Automatic best offer for customers experiencing payment difficulty

We strongly support the proposed automatic switch to the best offer for customers experiencing payment difficulty and hold the view that this reform will provide significant relief to Victorian consumers who need it most. There is a persistent cohort of low-income households who are experiencing invisible hardship, commonly foregoing other essential expenses to meet energy costs[4]. In the eight years that Consumer Action has been reporting insights drawn from Victorians contacting the NDH experiencing energy hardship through our *Energy Assistance Report* (2017-present), we have consistently found a disproportionate representation of people receiving Centrelink incomes[5] who have accrued significant arrears in their gas and electricity accounts. As identified in the RIS, some low-income households are going without food or medications in order to meet the cost of essential items[6] and avoid accruing arrears. Similarly, we have found that Victorians contacting the NDH are resorting to credit or Buy Now Pay Later (**BNPL**) products to cover their energy costs[7].

This reform will provide real relief to consumers who may be suffering from hidden hardship or are not yet receiving assistance. It provides a strong mechanism to prevent consumers experiencing payment difficulty and accrued arrears from paying higher prices.

Beneficial to the largest cohort, and promotes early engagement for assistance

From the proposed options discussed in the RIS, in our view the preferred option is simple, outcomes-based and has the greatest benefit to the largest cohort.

In our previous submission to the Energy Consumer Reforms process, we noted that consumers in payment difficulty can face barriers to accessing assistance, are often paying higher energy prices, likely require a higher usage of energy, and commonly use Centrepay or 'set and forget' payment plans[8]. This can mean they are left behind on legacy offers, accruing debt at a faster rate than if they were receiving a better offer.

The modelling conducted in the RIS calculates that consumers could receive savings of up to $730 per year for electricity and up to $1,890 for gas[9], demonstrating that this reform, if implemented, would provide significant relief to consumers struggling with arrears. This amount of money is not insignificant to families in financial hardship. We also believe that this measure strengthens the implementation of the PDF's intention to prevent consumers from accruing arrears, through early intervention, and further provides retailers the opportunity of a first step of engagement with their customers that would build further consumer trust.

Identifies and supports consumers not yet receiving assistance

Regarding eligibility, we strongly support the proposed eligibility criteria outlined in the RIS, namely that customers receiving tailored assistance, and customers in arrears for at least three months and with arrears of

[4] *Ibid* p.7
[5] Consumer Action, Submission to the AER's Review of payment difficulty protections in the NECF, July 2024, pp.5-6
[6] Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, p.50
[7] Consumer Action, Energy Assistance Report – Keeping the Lights On, June 2024, p.6; p.22 case study 'Thomas', p.26 case study 'Simone'; p.34 case study 'Lisa'
[8] Consumer Action, Submission to the Energy Consumer Reforms, November 2024
[9] Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, pp.22-23

$1,000 or more (who are not receiving tailored assistance), be automatically switched to the best offer. In support of this position, we refer to the ESC's findings highlighted in the RIS that in 2023-24 compared to the previous year, more Victorians are in higher amounts of debt, and there are a greater number of Victorians in debt not receiving assistance than those in debt receiving tailored assistance from their retailer[10]. Similarly, the Australian Energy Regulator (**AER**) has found that there is a 'persistent assistance gap', where over 750,000 households are in energy debt but are not receiving assistance from their retailer[11].

As our previous submission outlines, the assumption that consumers have the capacity, time or awareness to regularly compare and switch on energy offers (and all of their other services) is wrong, and not supported by the data outlined in the RIS[12]..Our financial counsellors on the NDH observe that people experiencing financial hardship, or vulnerability, are often less likely to be actively involved in shopping around for the best offer, despite their need and desire to reduce their energy costs. As noted in the RIS, recent findings from Anglicare's Energy Assistance Program found that out of all participants who were supported by the program to find a cheaper offer, '45% were identified as not on their retailer's best offer, with many participants being unaware of or not trusting best offer notifications'[13].

Protecting consumer choice and agency

Question 8. Are there other mechanisms we should consider in the design of the automatic best offer to protect consumer choice and agency (in addition to the proposed opt-out and post switch reversal periods)?

In our previous submission, our financial counsellors identified that the benefits of a person being switched to the best offer (realised through reduced energy costs) outweighed the requirement of seeking explicit informed consent to make the switch[14]. We continue to hold this position as our client's key priority is to reduce their energy costs. Furthermore, we consider that the proposed opt-out and post-switch reversal periods provide comprehensive protection for consumers to reverse the switch if they choose to.

In our previous submission we outlined that some consumers have chosen particular offers due to their needs for paper bills or specific payment methods and may be averse to being automatically switched due to these needs[15]. We consider that the reforms proposed under 'improving access to cheaper offers' adequately address these concerns, in that consumers can still opt for paper bills or payment methods other than direct debit, without incurring unreasonable fees, and still receive the benefits of being switched to the best offer[16]. We believe that it will be important for retailers to include clear information that consumers can still elect to receive paper bills or particular payment methods, especially in the automatic switch notice to their customers.

Consumers are often attempting to understand a complex pricing system, and can be consequently frustrated or confused as to why their current energy price is higher than other offers available. We consider that clear and accessible information stating the calculated amount saved by being switched would enhance understanding and help promote informed choice. With regard to consumer agency, we consider that multiple methods should be made available to consumers to opt out, and information on how to do so provided in the automated best offer switch notice. We submit that the proposed clauses in the draft ERCoP address this[17].

---

[10] Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, pp.32-33
[11] Australian Energy Regulator, Review of payment difficulty protections in the NECF - Findings report - May 2025, p.7
[12] The ESC has found that over 60% of Victorian gas and electricity customers were not receiving their retailer's best offer, despite the existing obligations of best offer messages. Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, p.3
[13] Essential Services Commission, Energy Consumer Reforms: Regulatory Impact Statement, 16 May 2025. p.32
[14] Consumer Action, Submission to the Energy Consumer Reforms, November 2024, p.5
[15] Consumer Action, Submission to the Energy Consumer Reforms, November 2024, p.6
[16] Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, p.73
[17] Essential Services Commission, Draft Energy Retail Code of Practice v.4, clause 132D (3) (b) Reviewing the Energy Retail Code of Practice | Essential Services Commission

Maximising benefits to customers experiencing payment difficulty and reducing implementation costs

Question 9. Could the proposed amendments for the automatic best offer be enhanced to further reduce implementation costs and maximise benefits to customers experiencing payment difficulty?

Crediting back

The automatic switch to a best offer reform outlines that retailers would have to switch their customer after ten days of the customer being in arrears of over $1,000[18]. We believe there is an opportunity for retailers to better support consumers experiencing payment difficulty, who may have been receiving a high-priced offer over a significant period of time, by crediting back the difference in amounts paid over what that person would have paid if they were on the best offer. We provide this recommendation as an opportunity to enhance the automatic switch reform, where the customer meets these circumstances.

Through our analysis of Victorians contacting the NDH in energy hardship, we have found an increase from 2019-2023 of people with large energy debts over $3,000. It is likely that for these clients, they have been stuck on a high price offer for an extended period of time, and they have not had their retailer provide them assistance to switch to the best offer. In these cases, retailers could apply a credited difference to the accrued debt, based on an averaged calculation of the best offer over the period of those years (for example, over a three- or five-year contract). This calculated amount would be deducted from the customers' debt. This measure could be included in tailored assistance and would maximise benefits for consumers experiencing payment difficulty.

By reducing the debt, it would make it easier for the consumer to repay the arrears over a sustained period of time, and could have additional system-wide benefits for retailers (and in turn, all customers) in addressing bad debt, potentially reducing retailers' implementation costs associated with bad debt over time.

RECOMMENDATION 1. For the ESC to include a 'crediting back' measure as part of tailored assistance, where retailers can calculate the difference between the customers' standing offer and best offer over the period of their energy contract, to then reduce the customers' energy debt by the calculated amount.

Question 10. Do you have any feedback on the proposed process and implementation timeframes for the automatic best offer?

We support the proposed timeframes outlined in the process for the automatic best offer switch. The proposed timeframes outlined in the Draft ERCoP state that a retailer must carry out a *deemed best offer check* no later than 10 business days from the date a customer becomes eligible[19]. If the result of this check is positive, the retailer must provide notice of intention to switch within 5 business days after the check[20]. Customers will be provided at least 10 business days to opt out of the switch. Additional to the opt out, customers will also be provided a right of

[18] Essential Services Commission, Draft Energy Retail Code of Practice v.4, clause 132B [Reviewing the Energy Retail Code of Practice | Essential Services Commission]
[19] Essential Services Commission, Draft Energy Retail Code of Practice, v.4, clause 132C [Reviewing the Energy Retail Code of Practice | Essential Services Commission]
[20] Essential Services Commission, Draft Energy Retail Code of Practice, v.4, clause 132D [Reviewing the Energy Retail Code of Practice | Essential Services Commission]

reversal, to be exercised from the date of the new offer being in effect, and up to at least five business days from the date they receive their first bill[21].

We note that the proposed timeframes complement the existing 10 day cooling off period for unsolicited consumer agreements in the Australian Consumer Law (**ACL**)[22], which would likely assist with consumer awareness and understanding. We support the timeframe for consumers to opt out after receiving their first monthly bill, as this would provide Victorians the ability to make an informed decision about the benefits (or drawbacks) from having been switched, due to being able to review the differences in their most recent bill. Improving access to cheaper offers

We strongly support the proposed reform to provide fair and competitively priced offers to all small customers. We share the view outlined in the RIS that as energy is an essential service, consumers should have the same access to competitively priced energy offers, without restrictions on payment or billing types[23].

As noted in the RIS, the need for paper billing or particular payment methods are more often required by consumers who are more likely to be experiencing vulnerability, including the elderly, First Nations peoples and culturally and linguistically diverse Victorians[24]. Concerningly, the ESC has assessed that customers who require paper billing or particular payment methods are on offers costing them between $164 - $398 more per year compared to the Victorian Default Offer[25].

With regard to implementation costs, we don't support retailers charging for paper bills and alternative payment methods for the reasons set out below. We acknowledge the restrictions on these implementation costs via the proposed obligation that costs being limited to the reasonable and related costs incurred by the retailer[26] as some limited protection. However, we hold similar concerns to those of our consumer stakeholder colleagues[27] that the definition of reasonable may be tested by some retailers, especially as the RIS suggests that enforcement of the rules would be on a case-by-case basis[28].

Although outside of the scope this consultation, we note our boarder concerns about charges for paper bills and direct debit more generally. Under the principles of essentiality and equity, we believe it reasonable to restrict conditional fees or discounts related to payment methods or billing types. These conditions are not aspects of accessing an essential service that consumers are choosing out of preference, rather they are conditions people require to engage in the energy market.

It would be useful to have clear data on the numbers of people requiring paper bills. We note that the cohort this affects is likely quite small and declining, but the need for these methods of payment and billing to these cohorts is significant enough to necessitate reform. Retailers providing essential services to vulnerable cohorts should wear the cost of accessible payment methods and bills. Further, direct debit serves as a benefit to retailers to reliably recoup their service charges without spending on follow up communications and collections. None of this should be passed on to consumers, especially not vulnerable cohorts.

In line with this thinking, we note the Australian Energy Market Commission (**AEMC**) decision to protect vulnerable consumers by restricting retail fees for these cohorts.[29] While supportive of this decision, we consider that this may

---

[21] Essential Services Commission, Draft Energy Retail Code of Practice, v.4, clause 132C, 132D, 132E, 132F Reviewing the Energy Retail Code of Practice | Essential Services Commission

[22] Sections 76 & 82 of the Australian Consumer Law (ACL) in the *Australian Competition and Consumer Act 2010 (Cth)*, Schedule 2 Competition and Consumer Act 2010 - Federal Register of Legislation

[23] Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, p.86

[24] *ibid*

[25] Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, p.91

[26] 'A retailer would be able to charge a conditional fee or to offer a conditional discount related to payment conditions. However, all conditional fees or discounts would be limited to the reasonable costs incurred by the retailer resulting from the customer's failure to satisfy a payment condition' Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, p.85

be challenging to implement due to requiring identification of vulnerable consumers across the entire customer base if it is to be applied accurately, and may rely on consumers self-reporting, therefore retaining the onus on customers. For these reasons, we submit that these fees should be restricted for all customers. We acknowledge that this would require legislative reform, and for these reasons, we recommend that DEECA consider banning fees associated with paper billing and payment methods for energy services through the Electricity and Gas Industry Acts[30].

RECOMMENDATION 2. For DEECA to recommend banning fees associated with paper billing and payment methods for electricity and gas contracts in Victoria, through the Electricity & Gas Industry Acts

Improving the ability to switch to the best offer

We support the proposed reform to improve the ability for customers to switch to their retailers' best offer. We believe that this reform will provide greater accessibility for consumers to switch, greater opportunity to reduce their energy costs, and promotes enhanced consumer choice and agency regarding their energy plans.

Energy hardship is high and widespread. In 2024, a higher proportion of Victorians contacting the NDH were receiving their primary income from employment (33%), rather than Centrelink (29%). This was the first time this trend had presented since 2019, and illustrates the depth of the current cost of living crisis, wherein a growing proportion of people in paid employment are falling into debt. We believe it is therefore crucial that the method to access a cheaper energy offer is made as simple and effective as possible for consumers who are attempting to reduce their energy costs.

Assessment metrics for the effectiveness of the reform

Question 11. What metrics do you think could help assess the effectiveness of the process to switch to the best offer?

We believe that retailers reporting on the number of their customers receiving the best offer per month, and the number of customers who have chosen to switch each month would provide the evidence required to assess the effectiveness of the reform over time. This data could be published in standard form on the ESC's website for transparency, accountability and consistency.

We propose that this data would be further complemented by retailers reporting additional metrics such as the average phone-call time for calls to switch to a best offer, and website click rates for best offer switch information, in order to assess the ease of switching and consumer engagement with best offer messaging.

As the RIS identifies, in the last financial year, the ESC found over 60% of customers were not on their retailers' best offer. We further support the ESC conducting a review each year of the proportion of electricity and gas customers who are receiving their retailers' best offer to monitor the effectiveness of the proposed reform, with the expectation that the proportion of consumers not receiving the best offer reduces each year.

Protections for customers paying higher prices

We strongly support the proposed reform for retailers to be required to conduct an annual price review for its customers and ensure that customers on a contract of four years or more are paying a reasonable price.

We have found through our casework on the NDH that some clients, particularly mortgagors and older-aged Victorians, have remained on the same plan with their retailer for a number of years, or have opted to 'set and forget' their energy plan due to competing stressors in their lives. For these clients, this proposed reform will provide effective and meaningful support, in significantly reduced energy costs, without the onus being placed on them to expend their time and limited resources to shop around.

From a principles-based lens, a customer who has stayed on a long-term contract should receive greater benefits from their loyalty to that retailer, rather than being subject to higher prices. We believe this reform gives effect to this principle and provides a strong protection for consumers on longer contracts with their retailer.

Reasonable benchmark for gas

Question 13. What would you consider to be a suitable benchmark to determine a reasonable price for gas?

We support the proposed clauses in the Draft ERCoP regarding a reasonable price for electricity, particularly in that it includes having regard to the lowest-cost, generally available plan for a new customer; the median price paid by customers of the retailer; and the value of benefits available to the customer under their contract such as a discount, rebate or credit (including a conditional discount)[31]. We support this definition to be included as a suitable benchmark to determine a reasonable price for gas, provided that the lowest amount in the benchmarking exercise would be considered the reasonable price. We submit that this definition of reasonable price meets the intention of addressing the 'loyalty tax' discussed in the consultation paper.

We hold this view as customers who have remained with their retailer for four years or more should be receiving equivalent (if not greater) benefits to those of new customers. It follows that it is reasonable that long-term customers are provided the same price as new customers of the same retailer. We believe this meets the intention of the proposed clause that long-term or 'loyal' customers should not be unfairly disadvantaged in relation to the price they are paying, compared to that of other customers of their retailer[32].

Improving the application of concessions on bills

We support the proposed minimum obligations in the RIS for when retailers must request their customers' concession eligibility. We hold the view that there should be as few barriers as possible to customers in receiving their concession entitlements and eligibility should be one of the first checks a retailer makes when communicating with their customer.

As identified in the RIS, there remains a persistent gap of eligible consumers not receiving their concession entitlement, demonstrating a clear need for mandating minimum points in time when retailers are required to check eligibility for concessions. This proposed reform would complement other proposed obligations for retailers, for example, when conducting a regular tariff check, or including information regarding concession eligibility as part of the automatic switch notification. We support retailers building the concession eligibility check into the touchpoints outlined in other new obligations.

A concession check is also an opportunity for engagement, through which retailers that could build trust with their customers. Concession checks would also provide an opportunity for retailers to contact Health Care Card (**HCC**) holders every two years to facilitate a discussion about any support that may be required, for example an application for a Utility Relief Grant (**URG**). Considering retailers have provided feedback that they are incentivised to ask their customers, and are conducting these checks, we don't expect that there will be higher costs associated with implementation of this reform (although in our financial counselling work, we do observe failures by retailers

[31] Essential Services Commission, Draft Energy Retail Code of Practice v.4, clause 121B (4) Reviewing the Energy Retail Code of Practice | Essential Services Commission

to offer URGs to eligible customers)[33]. Further, retailers stated incentive to do these checks should result in a higher success rate.

In our previous submission we also outlined an additional opportunity for retailers to conduct a retrospective application of a concession, in cases where their customer has not been receiving their concession entitlement, and may have accrued arrears[34]. Under payment difficulty assistance, retailers could calculate the reduction of the customer's arrears, and credit the difference if the concession had been applied for those years. We support this measure being included in payment difficulty framework guidance and support its inclusion in the ERCoP as part of the stage 2 reforms.

Extending protections for customers on legacy contracts

We strongly support the proposed reforms that all conditional fees and discounts related to a payment condition would be limited to the reasonable costs incurred by the retailer, resulting from the customer's failure to satisfy a payment condition[35]. We support these reforms as we hold the view that they implement the principle of ensuring energy contracts are clear and fair. It has been shown through the Australian Competition and Consumer Commission (**ACCC**) Inquiry into the National Electricity Market that energy contracts can be opaque and involve complex pricing and product branding[36]. We believe that these issues in contracts can erode consumer confidence and trust in the energy market.

We support these proposed reforms for customers on legacy contracts, which should provide support to consumers not willing or able to engage in the market. Importantly, these reforms will protect consumers who require particular contracts for accessibility needs.

Improving awareness of independent dispute resolution services

We strongly support the inclusion of the Energy and Water Ombudsman of Victoria (**EWOV**) information on consumers' bills. Information about external dispute resolution (**EDR**) is an integral entitlement for all consumers to be aware of their right to external, free and independent mechanisms for redress across sectors, and energy services should be no exception.

This reform will also align with other Australian energy jurisdictions, and its introduction will mean that Victorian consumers will be provided the same information about the EDR body for energy in Victoria, as consumers are provided in other Australian states and territories. As the RIS identifies, some retailers are already providing this information in customers' bills, which should lead to harmonisation across States.

Increasing best offer and debt disconnection thresholds

It is our view that the best offer threshold should remain at the current level of $22, and the disconnection threshold should be increased above $500 for the reasons below.

Best offer check threshold

Question 6. Do you agree with increasing the threshold for the best offer check results from $22 to $50? If not, what amount would be more appropriate, and why?

We support retaining the threshold for best offer check at $22, and share the views provided by financial counsellors that the value of savings is relative to people's incomes, as outlined in the submission provided by

[33] Consumer Action, Energy Assistance Report – Keeping the Lights On, June 2024, p.21
[34] Consumer Action, submission to the Energy Consumer Reforms consultation, July 2024, p.10
[35] Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, p.138
[36] Australian Competition and Consumer Commission, Inquiry into the National Electricity Market report - December 2024, p.35

Financial Counselling Victoria (**FCVic**). This consideration regarding the value of savings is shared in the RIS regarding the ESC's MCA approach[37].

Considering the increases to electricity prices, and increases to arrears noted in the RIS, we hold the view that early, proactive intervention by retailers is critical to ensuring people can access support in a timely manner. Retaining the best offer check threshold ensures that there is early opportunity for consumers to switch to a better offer, potentially preventing them from paying unnecessarily higher prices, or accruing arrears.

RECOMMENDATION 3. For the ESC to retain the threshold for best offer check at $22

Disconnection threshold

Question 7. Do you agree with increasing the minimum disconnection amount to $500?

We support increasing the minimum disconnection amount, however it is our view that $500 is too low to capture average energy costs. We submit that a disconnection threshold amount must be considerably higher than an average quarterly bill and the average debt for all households, if it is to meet the principles of disconnection being the last resort, particularly in the case of an essential service.

Threats of disconnection are increasing

Through our casework on the Victorian NDH, we have seen a significant trend of retailers using the threat of disconnection to pressure people into agreeing to unaffordable payment plans[38]. The ESC has found that the number of disconnection warning notices issued in 2023-24 had increased significantly when compared to 2022-23. On average, each month 21,182 electricity and 18,578 gas customers were issued a disconnection notice in 2023-24, representing an increase of 16% for electricity and 23% for gas compared to 2022–23[39].

Many people contacting the NDH report being signed up to an unaffordable payment plan by their retailer, under the threat of disconnection if they don't agree to the high repayment amount[40]. Victorians contacting the NDH often tell us they are unable to afford the ongoing payment amount under the payment plan, which causes them to fall out of payment difficulty assistance. Consumers in this situation must then contact their retailer to initiate the process of being included in a payment assistance program again.

The ESC reported that in 2023-24, more Victorian consumers were unable to meet their payment plan due to financial stress, and there were higher numbers of consumers at risk of disconnection for non-payment [41]. The AER has reported similar issues across NEM jurisdictions, with on average 60% of payment plans being cancelled due to non-payment since 2019-20[42].

Disconnection is being used as an engagement tool

The AER identifies that disconnection is being relied upon as an engagement tool by retailers[43]. This does not meet the intention of disconnection as a last resort, and places additional costs onto consumers who are more likely to be experiencing hardship and/or vulnerability. We hold the view that if the disconnection threshold amount were

---

[37] Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, p.8
[38] Consumer Action, Energy Assistance Report – Keeping the Lights On, June 2024, p.25
[39] Essential Services Commission, *Victorian Energy Market Report 2023-24* November 2024, p.7
[40] Consumer Action, Energy Assistance Report – Keeping the Lights On June 2024, pp.23-24
[41] Essential Services Commission, Victorian Energy Market Report 2023-24 Annual, p.4
[42] Australian Energy Regulator, AER Review of payment difficulty protections in the NECF - Findings report - May 2025, p.11
[43] *Ibid* p.12

to be increased, this would help prevent consumers from agreeing to a payment plan they can't afford, which in turn would enable them to meet ongoing sustainable payments and, importantly, not fall out of hardship programs.

We submit that the disconnection threshold amount must be set at an amount that provides stronger regulatory protections against retailers resorting to disconnection as tool for engagement.

Risk of disconnection before assistance

Recent evidence from the AER, the ESC and Energy Consumers Australia (**ECA**) has found there is a significant cohort of Australians who are not receiving assistance, who are at risk of disconnection[44]. The ESC has found in 2023-24 compared to the previous year, more Victorians are in debt and are not in assistance programs with their retailer[45]. Similarly, the AER has found that there is a 'persistent assistance gap', where over 750,000 households are in energy debt but are not receiving any assistance from their retailer[46].

Across AER and ESC jurisdictions, there is an average rounded debt of $1,300 for electricity and gas customers either receiving or not yet receiving assistance from their retailer[47]. If the disconnection amount is set at a simple dollar figure of $500, in practice, this means that someone experiencing hardship could be disconnected before receiving any assistance measures from their retailer. If disconnection is to truly be a last resort, the minimum disconnection threshold must be determined at an amount that reflects a reasonable timeframe for the retailer to have pursued all opportunities to engage the consumer into payment difficulty assistance. There must also be limits on disconnecting or threatening to disconnect without retailers first offering assistance.

Risk of disconnection for one quarterly bill

As the RIS identifies, it is common for customers to miss a pay-by date for one bill, or a higher bill over a winter period, technically placing them in arrears[48]. The AER's minimum disconnection draft decision identifies that the estimated average quarterly electricity costs for average-income households in the National Energy Market (**NEM**) regions in 2023–24 were between $457 and $550 for market offers and between $464 and $691 for standing offers[49].

Low-income households can have higher energy usage costs

There is mounting evidence that low-income households have higher energy usage costs caused by multiple factors including energy inefficient housing, and barriers to afford the upfront costs associated with transitioning to renewable energy[50]. If the disconnection threshold is set to $500, it could result in low-income households who have higher energy usage costs being more at risk of disconnection, due to the threshold amount being lower than their average usage costs for a given quarter.

Risk of disconnection before automatic switch eligibility

In order to capture people experiencing payment difficulty who may not already be accessing assistance under the PDF, the ESC has proposed a debt threshold of $1,000 for customers who would be eligible for an automatic switch to best offer[51]. This proposed reform is supported by limiting the reform to customers who have been in debt for at least three months, to account for people who may have been in debt for a short period of time. We agree with

---

44 Australian Energy Regulator, Review of payment difficulty protections in the NECF - Findings report - May 2025, p.7
45 Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, p.32
46 Australian Energy Regulator, Review of payment difficulty protections in the NECF - Findings report - May 2025 , p.7
47 The Essential Services Commission (**ESC**) has reported in 2023-24 compared to the previous year, that average energy debts have increased to $1,311 for electricity and $1,317 for gas. The AER's draft decision records an average level of debt for non-hardship customers as $1,395. Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, p.64 & Australian Energy Regulator, Review of the minimum disconnection amount Draft Decision, May 2025, p.7
48 *Ibid.* p.64
49 Australian Energy Regulator, Review of the minimum disconnection amount draft decision, May 2025, p.5
50 Melbourne Institute, Taking the Pulse of the Nation: Australians continue to face budgetary constraints in housing, food, energy and healthcare, 2023 Taking the Pulse of the Nation; 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 Effects of renting on household energy expenditure: Evidence from Australia
51 Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, p.55

the rationale provided by the ESC, in that the level of debt needs to be sufficiently high over a significant period of time to ensure that the automatic switch reform is targeting people who are experiencing payment difficulty[52]. Similarly, these considerations need to be factored into the disconnection threshold. If the threshold was to be set at $500 for disconnection, consumers could be placed at risk of disconnection for the cost of a high winter bill, or a missed quarterly bill.

<u>Disconnection as a last resort</u>

It is the intention of the PDF to provide assistance to customers experiencing payment difficulty, and prevent the accrual of arrears. It is the intention of both the AER's NECF and the ERCoP that disconnection is a last resort. It therefore follows that the disconnection threshold should be a higher amount than the debt threshold to be automatically switched to a best offer. Similarly, the preferred approach to limit the automatic switch reform to customers who are in arrears for a minimum of three months should also be reflected in the disconnection threshold amount, if it is to truly be considered a last resort option.

We share the view outlined in the RIS that there is a risk that a customer could be disconnected for non-payment before they are provided assistance. The RIS states that the risk would be minimal, based on retailers' current practices. We submit that this rationale is not in line with the evidence-based approach used for other proposed reforms. We are not supportive of reforms that retain this risk to consumers, particularly as disconnection and the threat of disconnection causes such significant harm.

Question 7a. What amount would be more appropriate and why?

For the reasons outlined above, we propose that if a disconnection threshold be retained, it should be higher than the amount proposed for an automatic switch. We agree with the methodological approach used by the ESC to calculate the average debt, and propose that the average debt threshold for disconnection be the rounded average debt at a minimum.

For Victorians contacting the NDH with energy as a top-three presenting issue, we have found that average electricity debts have increased by 27% between 2020 and 2023, with an average electricity debt of $2,048 in 2023[53]. The Essential Services Commission (**ESC**) has reported in 2023-24 compared to the previous year, that average energy debts have increased to $1,311 for electricity and $1,317 for gas[54]. The AER's draft decision records an average level of debt for non-hardship customers as $1,395[55]. These figures demonstrate that a disconnection amount of $500 is significantly below current average debt amounts.

Based on this evidence, we believe that a disconnection threshold at a minimum, should take average debt amounts into account, to prevent the ability for disconnection processes to occur before assistance measures and payment difficulty obligations are pursued as a first step.

RECOMMENDATION 4. For the ESC to increase the disconnection amount to an amount higher than the rounded average energy debt

Question 7b. Should this amount be indexed to account for inflation or increases in energy prices?

---

[52] Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, p.64
[53] Consumer Action, Energy Assistance Report – Keeping the Lights On June 2024, p.14
[54] Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, p.64
[55] Australian Energy Regulator, Review of the minimum disconnection amount Draft Decision, May 2025, p.7

In our submission to the NECF review, we provided evidence from our frontline services that shows that new cohorts of Victorians are experiencing energy hardship for the first time, likely attributable to wages no longer meeting expenses[56]. Through our casework on the NDH, we commonly speak to consumers who are struggling with the 'money juggle' for essential expenses, often resulting in what the AER notes are attempts to avoid disconnection by foregoing other essentials such as medicine or food[57]. This issue was identified in the RIS, from recent findings from the Australian Council of Social Services (**ACOSS**)[58].

Recent real wage index modelling from Australia Institute has found that as at September 2023, real wages were as low as they were in June 2009, with analysis suggesting restoring real wages to pre-inflationary levels will take a number of years[59]. The ability for a consumer to resolve their arrears is relative to their income, and other household expenses. It follows that a threshold amount of debt should take into account average income and expenses of Australian households, to account for their ability to repay arrears over a reasonable period. To this end, we submit that the ESC should consider the Australian wage index in correlation to Consumer Price Index (**CPI**) or the Household Expenses Measurement (**HEM**) benchmark, in determining the disconnection amount.

Lastly, in order to account for inflation, increases in energy prices and their contextual relationship to wages, we submit that the disconnection amount be reviewed annually, in line with the Victorian Default Offer (**VDO**).

RECOMMENDATION 5. For the ESC to consider the electricity price index and the Consumer Price Index in their methodology for the disconnection amount

RECOMMENDATION 6. For the ESC to consider the Australian Wage Index, and the Household Expenses Measurement when determining the disconnection amount

RECOMMENDATION 7. For the ESC to review the minimum disconnection amount annually, triggered to occur in time with and in relation to the Victorian Default Offer determination.

---

[56] Consumer Action, Submission to the review of payment difficulty protections in the National Energy Customer Framework, June 2024, pp.5-6
[57] Australian Energy Regulator, Review of payment difficulty protections in the NECF – Findings report May 2025, p.12
[58] Essential Services Commission, Energy Consumer Reforms Regulatory Impact Statement, May 2025, p.50; Australian Council of Social Services, Heat in Homes Survey Report 2025
[59] Prof. Allan Fels AO, Inquiry into Price Gouging Report to the ACTU, Final Report, February 2024, p.21

Opportunities for broader reform

> 'NO CUSTOMER INCENTIVE CAN OVERCOME THE BARRIERS THAT SOME PEOPLE FACE TO PAYING THEIR ENERGY BILLS. AS A RESULT, WE CANNOT AVOID DISCONNECTION WITHOUT DIRECTLY ADDRESSING PAYMENT DIFFICULTY, CHANGING THE WAY THE MARKET WORKS, OR BOTH. GIVEN THAT THE COMMUNITY EXPECTS ALL AUSTRALIANS SHOULD HAVE ACCESS TO ENERGY, IT MAY BE TIME TO RETHINK HOW WE CAN KEEP CUSTOMERS CONNECTED TO THIS ESSENTIAL SERVICE.'

AER Review of payment difficulty protections in the NECF – Findings report
May 2025, p.4

As discussed throughout this submission, we are strongly supportive of the reforms proposed by the ESC in the RIS. However, in addition to the reforms currently under consideration, we believe there are a number of other complementary reforms that would help households pay less for energy and enhance protections for energy consumers. Although these reforms are out of scope of the current consultation, we include them here as matters that the ESC should consider as part of Stage 2 of the ERCoP reform process.

Develop a low-cost electricity price for low-income households

Energy is essential to a liveable home and dignified life, yet the cost of energy supply is becoming increasingly unaffordable for many Australians. The AER reports that energy prices have nearly tripled over the last 20 years alongside food and housing costs.[60] While we hold the position that the proposed reforms will provide significant relief to consumers who are paying unnecessarily high energy prices, there remains a pervasive issue that some low-income households are unable to afford the ongoing cost of energy. In our submission to the AER's NECF Review, we highlighted the disproportionately high cohort of Victorians contacting the NDH in energy hardship who are receiving Centrelink as their sole income source[61]. Disproportionate levels of energy hardship have continued to present among this cohort over the eight years that Consumer Action has been tracking trends in energy hardship.

While we strongly support the proposals outlined in the RIS, we submit that the development of a low-cost electricity tariff would provide a complementary solution to improve affordability for low-income Victorians in long-term energy hardship. There are a number of models internationally that can be drawn from to develop such a model, and we refer to the progressive income-based system that includes income-graduated fixed rate charges developed in California as one example[62].

RECOMMENDATION 8. For DEECA and the ESC to investigate the development of a low-cost electricity price, with progressive pricing related to income deciles.

[60] Australian Energy Regulator, Review of payment difficulty protections in the NECF - Issues paper - May 2024 (aer.gov.au) p.8
[61] Consumer Action, Submission to the AER's Review of payment difficulty protections in the NECF, July 2024, pp.5-6
[62] State of California, Public Utilities Commission, DECISION ADDRESSING ASSEMBLY BILL 205 REQUIREMENTS FOR ELECTRIC UTILITIES, March 27, 2024 528422138.PDF

Establish a constantly connected customer class

Under the principles of essentiality, we hold the view that no one should be disconnected from an essential service due to an inability to afford usage costs.

As noted earlier in this submission, we propose that the ESC considers the significant harm that disconnection and the threat of disconnection can cause people, particularly those experiencing disadvantage or vulnerability, and account for this by setting a disconnection amount that provides appropriate friction and disincentive for retailers to resort to this measure.

In addition to considering these impacts, we re-affirm our recommendation for the AER and ESC to establish a 'constantly connected' customer class, which includes people more likely to experience disadvantage or people experiencing vulnerability, to ensure that people experiencing hardship remain connected to their energy supply[63].

RECOMMENDATION 9. For the ESC to establish a 'constantly connected customer class' that includes people experiencing disadvantage or vulnerability

Access to energy is essential to health and wellbeing

We submit that under the principle of 'essentiality', access to energy must be upheld, particularly for people experiencing disadvantage such as low-income households. As the AER's NECF Review Findings report outlines, there is an expectation among the community that as an essential service, all Australians should have access to energy[64]. In order to give effect to the principle of essentiality, we consider that the minimum disconnection threshold must support the objective of upholding access to an essential service, regardless of someone's income.

In our submission to the NECF Review and the Energy Retail Code of Practice Review, we proposed the AER and the ESC consider banning disconnections for non-payment, using guidance developed during the coronavirus pandemic, that would require an assessment as to whether the disconnection would endanger the health and safety of a person. We again make that recommendation here for the ESC to consider as part of Stage 2 of the ERCoP reform process.

RECOMMENDATION 10. For the ESC and DEECA to consider banning disconnections for non-payment as part of a protections framework that upholds the principle of essentiality of energy; and its relationship to people's health, safety and wellbeing.

Establish a positive consumer duty

A general consumer duty would provide simple, impactful principles-based regulation for the energy sector. In our submission to DEECA's Consumer Energy Resources review and DCCEEW's Better Energy Customer Experiences (**BECE**) consultation[65], we proposed principles that should be included in a positive consumer duty. In addition to

[63] Consumer Action, Submission to the review of payment difficulty protections in the National Energy Customer Framework, June 2024, p.12; & Consumer Action, Submission to The Energy Retail Code of Practice review - June 2024, p.10
[64] Australian Energy Regulator, Review of payment difficulty protections in the NECF – Findings report, May 2025, p.4
[65] Consumer Action, Submission to the Better Energy Customer Experiences consultation, June 2025

the principle of essentiality discussed above, we included the principles of 'efficient, honest and fair', adopted from the UK Financial Conduct Authority[66]. We recommend that the ESC explore establishing a positive consumer duty for energy, to ensure that retailers and service providers uphold the essentiality of energy, and act efficiently, honestly and fairly in their interactions with customers. As an example, when considering disconnection in line with these principles, we submit that it should never be efficient, honest or fair for a retailer to disconnect someone experiencing payment difficulty from an essential service, nor would it meet the intention of expressing the essentiality of energy.

RECOMMENDATION 11. For the ESC to establish a positive consumer duty for energy resource, retail and service providers that includes the obligation to act with regard to the essentiality of energy, and act efficiently, honestly and fairly in all aspects of their relationship with consumers, with particular regard to disconnecting consumers from essential services such as energy.

[66] Consumer Action, submission to the Better Energy Customer Experiences consultation, May 2025, p.4 & pp.7-8; & Consumer Action, Submission to the Consumer Energy Resources review, February 2025, pp.13-15

APPENDIX A - SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1. For the ESC to include a 'crediting back' measure as part of tailored assistance, where retailers can calculate the difference between the customers' standing offer and best offer over the period of their energy contract, to then reduce the customers' energy debt by the calculated amount.

RECOMMENDATION 2. For DEECA to recommend banning fees associated with paper billing and payment methods for electricity and gas contracts in Victoria, through the Electricity & Gas Industry Acts

RECOMMENDATION 3. For the ESC to retain the threshold for best offer check at $22

RECOMMENDATION 4. For the ESC to increase the disconnection amount to an amount higher than the rounded average energy debt

RECOMMENDATION 5. For the ESC to consider the electricity price index and the Consumer Price Index in their methodology for the disconnection amount

RECOMMENDATION 6. For the ESC to consider the Australian Wage Index, and the Household Expenses Measurement when determining the disconnection amount

RECOMMENDATION 7. For the ESC to review the minimum disconnection amount annually, triggered to occur in time with and in relation to the Victorian Default Offer determination.

RECOMMENDATION 8. For DEECA and the ESC to investigate the development of a low-cost electricity price, with progressive pricing related to income deciles.

RECOMMENDATION 9. For the ESC to establish a 'constantly connected customer class' that includes people experiencing disadvantage or vulnerability

RECOMMENDATION 10. For the ESC and DEECA to consider banning disconnections for non-payment as part of a protections framework that upholds the principle of essentiality of energy; and its relationship to people's health, safety and wellbeing.

RECOMMENDATION 11. For the ESC to establish a positive consumer duty for energy resource, retail and service providers that includes the obligation to act with regard to the essentiality of energy, and act efficiently, honestly and fairly in all aspects of their relationship with consumers, with particular regard to disconnecting consumers from essential services such as energy.

We welcome the opportunity to discuss our submission further.

Please contact Senior 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

Caitlin Caruana | Acting Chief Executive Officer
Westjustice