

Gerard Brody  
Commissioner and Chairperson  
Essential Services Commission  
Level 8, 570 Bourke Street  
Melbourne VIC 3000

12 May 2025

Dear Mr Brody,

**REGULATORY IMPACT STATEMENT FOR THE ENERGY RETAIL CODE OF PRACTICE  
(ENERGY CONSUMER REFORMS) AMENDMENT 2025**

I would like to thank your staff at the Essential Services Commission (the Commission) for working with the team at Better Regulation Victoria on the preparation of the Regulatory Impact Statement (RIS) for the Energy Retail Code of Practice (Energy Consumer Reforms) Amendment 2025 (the proposed Amendments).

The Commissioner for Better Regulation is required to provide independent advice on the adequacy of RISs in accordance with the Subordinate Legislation Act 1994 Guidelines (the Guidelines). However, as the office of the Commissioner for Better Regulation is currently vacant, the Secretary to the Department of Treasury and Finance (or their delegate) is responsible for providing independent advice on the adequacy of RISs, in accordance with the Guidelines. The Secretary has delegated this responsibility to me in my capacity as Deputy Secretary, Economic Division.

A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received on 12 May 2025 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

## Background and problems

The Victorian Government recognises that energy, including electricity and gas, is an essential service for Victorians. The regulatory framework for the electricity and gas industry is mostly provided for by the *Electricity Industry Act 2000* and the *Gas Industry Act 2001*.

The *Essential Services Commission Act 2001* (the Act) establishes the Essential Services Commission as Victoria's independent energy regulator. In addition to giving the Commission powers to administer licences and enforce the industry's compliance with legislative and regulatory requirements, the Act enables the Commission to make codes of practice and guidelines which set additional rules for energy retailers.

The Energy Retail Code of Practice (the Code) sets out consumer protections and rules that electricity and gas retailers must adhere to when selling energy to customers. This includes requirements related to billing, payment difficulty support, dispute resolution, contents of bills, best offer messages, life support equipment and disconnections.

In the RIS, the Commission outlines that many Victorians are paying more for their energy than they could be, which is placing increasing pressure on the cost of living. The Commission cites data from 2023-24 showing that 69 per cent of electricity customers and 62 per cent of gas customers could save money on their energy bills by moving to their retailer's best offer.

More specifically, the Commission outlines its concerns that certain customers are paying more for their energy than needed:

- customers who are experiencing payment difficulty or are in arrears, and are not on their retailer's best offer,
- customers who are unable to access cheaper plans from their retailer because these plans require e-billing and/or payment by direct debit,
- customers who find it difficult to switch to a better offer due to finding their retailer's switching process complex and time-consuming,
- customers on older contracts are likely to be paying higher prices than customers on newer contracts (commonly referred to as a 'loyalty penalty'), and
- customers who are eligible for concessions but are not receiving them.

The Commission also outlines several other specific problems related to consumer protections that it intends to address through these reforms:

- large conditional fees and 'pay-on-time' discounts for legacy contracts (contracts entered into before 1 July 2020), which can cause high prices and price shocks if customers fail to meet these conditions, and
- lack of awareness of the independent dispute resolution services offered by the Electricity and Water Ombudsman of Victoria (EWOV).

The Commission is proposing amendments to the Code that aim to help households pay less for energy and enhance protections for energy consumers. These amendments follow an agreement of the Energy and Climate Change Ministerial Council (composed of Commonwealth and State energy ministers) to progress a package of consumer reforms to the National Energy Retail Rules (NERR). As the NERR has limited application in Victoria, amendments to the Code are needed to implement these reforms in Victoria.

### **Options and option analysis**

In the RIS, the Commission analyses options to address the identified problems across seven reform areas:

1. automatic best offer for customers experiencing payment difficulty,
2. improving access to cheaper offers,
3. improving the ability to switch to the best offer,
4. protections for customers on older contracts paying higher prices,
5. improving the application of concessions on bills,
6. extending protections for customers on legacy contracts, and
7. improving awareness of dispute resolution services.

The Commission conducts a multi-criteria analysis (MCA) for each of these options areas, using the following criteria and weightings:

- effectiveness (in terms of helping households pay less for energy and enhancing consumer protections) – 50 per cent,
- cost to industry – 40 per cent,<sup>1</sup> and
- cost to government – 10 per cent.

Alongside these seven reforms that are analysed through an MCA, the Commission also proposes changes to two thresholds which are set out in the Code:

1. increasing the threshold at which customers receive a 'best offer' message on bills to where potential annual savings are above \$50 (from \$22), and
2. increasing the debt threshold at which retailers can disconnect a customer to \$500 (from \$300).

The Commission explains that these threshold increases are not expected to impose a significant burden, because:

- the raising of the threshold will only slightly reduce the number of customers that receive a best offer message, and that these customers would be unlikely to switch to the best offer (due to low savings), and

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<sup>1</sup> The Commission notes that some costs to industry may be passed on to consumers through higher energy prices, however it does not attempt to quantify the extent of the pass through.

- existing data suggests that retailers rarely disconnect customers who are below \$500 in arrears.

#### Automatic best offer for customers experiencing payment difficulty

The Commission considers two sets of options related to automatically switching households who are experiencing payment difficulty to the best offer.

The Commission first considers the following **eligibility options** to determine which customers would be eligible for the automatic best offer reform:

1. **Option AA.1:** eligibility for customers receiving tailored assistance,<sup>2</sup> and
2. **Option AA.2:** eligibility for customers receiving tailored assistance, and customers with arrears of \$1,000 or more who have been in debt for at least three months.

The Commission estimates that Option AA.1 would result in 60,000 electricity and 52,000 gas customers being eligible for the automatic best offer reform, with Option AA.2 extending eligibility to a further 14,500 electricity and 8,500 gas customers. The annual financial transfer from energy retailers to consumers is estimated at \$23 million for Option AA.1 and \$28 million for Option AA.2.

The Commission identifies Option AA.2 as its preferred eligibility option. It explains that the additional cohort that would become eligible under Option AA.2 would consist of many vulnerable customers who are in debt but are not receiving assistance from their retailer. The Commission acknowledges that Option AA.2 would result in higher costs to industry, in the form of foregone revenue and additional costs to identify eligible customers.

The Commission then considers the following **implementation options**:

1. **Option A.1:** requiring retailers to automatically switch eligible customers to the best offer,
2. **Option A.2:** requiring retailers to reduce tariffs on eligible customers' existing plans to align with their best offer, and
3. **Option A.3:** requiring retailers to credit the difference in price between an eligible customer's current plan and their best offer.

Options A.1 and A.2 would exempt retailers from needing a customer's explicit informed consent to switch or alter their plan. The Commission explains that the additional safeguards of an opt-out and post-switch reversal period will help ensure that customers can remain on or switch back to their existing plan or tariff if they do not want to be switched.

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<sup>2</sup> Retailers must reach out and offer tailored assistance to customers who are in over \$55 of arrears and have missed a bill payment.

The Commission explains that the automatic nature of all implementation options will help ensure that all customers experiencing payment difficulty are on (or paying equivalent to) the cheapest plan available to them, regardless of whether they have engaged with their retailer.

The Commission identifies Option A.1 (automatic switching) as its preferred implementation option. It explains that Option A.1 is preferred because:

- switching a customer to the best offer is likely to provide more enduring financial savings to customers compared to reducing tariffs or offering credits, as savings will persist until the end of the contract or a yearly tariff increase, and
- reducing tariffs (Option A.2) or crediting the difference between a customer's current plan and the best offer (Option A.3) may be more complex for retailers to implement, potentially requiring costly IT system upgrades.

#### Improving access to cheaper offers

The Commission considers the following options to address the issue of customers not being able to access plans that require e-billing and/or payment by direct debit:

1. **Option B.1:** requiring retailers to offer paper billing and alternative payment methods to direct debit on all new plans (with no further protections), and
2. **Option B.2:** as per Option B.1, plus limiting fees and discounts related to payment conditions to 'reasonable costs.'

The Commission explains that both options would ensure that customers are not restricted from accessing cheaper plans with their retailer because of direct debit or e-billing restrictions. The Commission notes that this is likely to benefit more vulnerable consumers, including elderly, First Nations and culturally and linguistically diverse consumers, who may be unable to access plans that currently have these restrictions.

The Commission identifies Option B.2 as its preferred option, as the limit on conditional fees and discounts will ensure that customers will not pay unreasonably more for paper billing or payment by alternative methods. The Commission expects the costs to industry of Option B.2 to be relatively small. It notes that the proposed reform would only impact the seven energy retailers currently offering restricted plans, and that retailers would be able to recoup the costs of paper billing or payment by alternative methods through (capped) conditional fees or discounts.

#### Improving the ability to switch to the best offer

The Commission considers the following options to make it easier and simpler for all customers to switch energy plans to the best offer:

1. **Option C.1:** outcomes-based with no minimum standards, requiring retailers to ensure that processes for switching small customers to the best offer are effective (i.e., simple and accessible)
2. **Option C.2:** outcomes-based with minimum standards, requiring retailers to:
  - ensure that switching processes are effective (as per Option C.1)
  - provide clear information on their website about how a customer can switch to their best offer
  - enable customers to switch to the best offer on their website and by phone
  - provide a simple and accessible process for a customer to compare their current plan to other plans available, including the best offer.
3. **Option C.3:** prescriptive approach, requiring retailers to meet specific requirements relating to website design, online switching forms, plan comparison platforms and maximum phone wait times.

The Commission identifies Option C.2 as its preferred option. It considers that Option C.2 will ensure that all retailers meet certain baseline standards for effective switching processes, while providing retailers with a degree of flexibility as to how they design their switching processes. The Commission also explains that Option C.2 would be easier to enforce than a purely outcomes-based approach (Option C.1), without placing significant costs on industry to comply with more prescriptive rules (Option C.3).

#### Protections for customers on older contracts paying higher prices

The Commission considers three options to address the problem of customers on older contracts paying significantly higher prices for their energy. The three options would all mandate retailers to ensure that customers on older contracts (defined as four years or older) pay a 'reasonable price' for their energy, but differ in terms of how a 'reasonable price' would be defined in the Code:

1. **Option D.1:** no definition of 'reasonable price'
2. **Option D.2:** a flexible definition of 'reasonable price,' with reference to the following prescribed factors:
  - the lowest cost plan generally available to new customers
  - the median price paid by customers of the retailer
  - the retailer's standing offer (which is the Victorian Default Offer (VDO) for electricity plans)
  - the value of any additional benefits received by the customer
  - any other matter specified in a guideline issued by the Commission.
3. **Option D.3:** a prescriptive definition of 'reasonable price' as:
  - at or below the VDO for electricity plans
  - at or below the retailer's standing offer price or median price for gas plans.

All options would exempt retailers from the requirement to receive explicit informed consent to switch a customer paying above a 'reasonable price' to a cheaper plan, with similar opt-out and post-switch reversal protections as the automatic best offer reforms.

The Commission identifies Option D.2 as its preferred option. It explains that a flexible definition will facilitate greater compliance, and consequently more customers being switched to cheaper plans, than enabling retailers to determine what a 'reasonable price' is themselves, as would occur under Option D.1. While Option D.3 would likely result in more customers being switched to cheaper plans, the Commission argues that this option's more prescriptive nature may result in customers who pay higher prices due to non-energy benefits of their plan (such as bundled subscription services) being switched.

To conservatively estimate the potential scale of the impact of Option D.2, the Commission models the impact of switching all customers to the VDO who are paying between 25 or 50 per cent above the VDO on electricity contracts that are four years or older. It estimates that Option D.2 would affect between 27,000 and 53,000 electricity customers a year, with annual average savings between \$82 and \$551 per customer. Cumulatively, this would result in annual savings to consumers, or annual foregone revenue for retailers, ranging between \$10.1 million to \$12.2 million.

The Commission outlines that it is unable to conduct a similar quantitative analysis to determine the impact of this reform on the gas industry, as there is no VDO for gas. It expects that the impacts on the gas market will be relatively smaller given that there are fewer gas customers and the absence of a regulated standing offer for gas.

#### Improving the application of concessions on bills

The Commission considers the following options to increase the proportion of eligible Victorian households having energy concessions applied to their bills:

1. **Option E.1:** principles-based requirement for retailers to request concessions eligibility information from a customer at all times considered relevant to do so.
2. **Option E.2:** principles-based requirement (as per Option E.1) and the prescriptive requirement for retailers to request concessions eligibility information when:
  - they register a new customer
  - a customer requests to change plans with the same retailer
  - a customer contacts the retailer requesting payment difficulty assistance
  - a customer is identified as affected by family violence.

Retailers would also be required to contact a customer if the retailer becomes aware that they are no longer eligible for a concession.

The Commission explains that both options would be effective in prompting more customers to access the energy concessions for which they are eligible, while imposing



some additional costs on industry. It expects these costs will be higher under Option E.2 due to the prescribed 'check points' at which retailers must check a customer's eligibility for concessions.

The Commission identifies Option E.2 as its preferred option, arguing that the mandatory minimum requirements would be less open to interpretation by retailers, and consequently more effective in increasing the amount of eligibility checks conducted.

#### Extending protections for customers on legacy contracts

The Commission considers one option to extend protections to 'legacy contracts' (contracts entered into prior to 1 July 2020):

1. **Option F.1:** extending the following protections to legacy contracts:
  - limiting conditional discounts and fees to reasonable costs; pay-on-time discounts would be subject to the cap set by the Commission
  - requiring retailers to unconditionally apply any conditional discounts that exceed the reasonable cost cap
  - requiring retailers to extend any existing contract benefits until the end of a contract period.

The Commission identifies Option F.1 as being preferred to the base case. It explains that the main impact of this option would be to ensure that customers on legacy contracts are not exposed to sudden price shocks if they fail to meet conditional fee or discount conditions, including pay-on-time conditions.

The Commission estimates that Option F.1 could result in annual savings for customers on legacy contracts up to \$2.6 million, which could be incurred as foregone revenue for industry. However, it notes that the actual impact of this reform is likely to be lower than this estimate (which is based on data from 2023), and will further reduce over time as customers on legacy contracts increasingly switch to new plans.

#### Improving awareness of dispute resolution services

The Commission considers one option to improve consumer awareness of EWOV's dispute resolution services:

1. **Option G.1:** requiring the inclusion of EWOV's phone number on the front page of bills.

The Commission identifies Option G.1 as being preferred to the base case. The Commission outlines that similar reforms in New South Wales, South Australia and Queensland were highly effective in increasing customer's engagement with independent dispute resolution services, demonstrated by significant increases in the number of complaints received by these states' ombudsmen. The Commission notes that



this option would impose a small cost on some retailers to update their bills, however, this may be partially offset by reduced litigation costs and improved industry reputation and practices.

### **Implementation and Evaluation**

The Commission expects that the final decision for the proposed Amendments will be made in August 2025. The Commission proposes a two-phase approach to the commencement of these reforms:

1. Tranche 1 – commencement on 1 January 2026:
  - improving protections for customers on older contracts paying higher prices (Option D.2),
  - improving the application of concessions on bills (Option E.2),
  - protections for customers on legacy contracts (Option F.1),
  - including EWOV's phone number on bills (Option G.1), and
  - revised best offer check and debt disconnection thresholds.
2. Tranche 2 – commencement on 1 July 2026:
  - Automatic best offer switching (Options AA.2 and A.1),
  - Improving access to cheaper offers (Option B.2), and
  - Improving the ability to switch to the best offer (Option C.2).

The Commission states that it periodically assesses the performance of the energy market and periodically reviews the code to ensure that it is fit for purpose, as a part of the Commission's continuous improvement cycle. The Commission commits to consulting on updates to the Compliance and Performance Reporting Guideline to monitor the effect of the reforms.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact Better Regulation Victoria on (03) 7005 9772.

Yours sincerely,



**Paul Donegan**

Deputy Secretary, Economic  
Department of Treasury and Finance