

AMENDMENTS TO THE ENERGY RETAIL CODE: PAYMENT DIFFICULTIES

OCTOBER 2017

Amendments made by the Essential Services Commission on
10 October 2017

1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on 1 January 2019.

2 Part 3 substituted

For Part 3 substitute:

“Part 3 Assistance for residential customers anticipating or facing payment difficulties

Division 1 Operation of this Part

71 Purpose

The purpose of this Part is to set out the minimum standards of assistance to which *residential customers* anticipating or facing payment difficulties are entitled, so that disconnection of a *residential customer* for not paying a bill is a measure of last resort.

72 Application of this Part

This Part applies to *customers* who are *residential customers*.

73 Interpretation of this Part

The approach that the *Commission* will take to the interpretation of this Part is as follows.

- (a) clear words will be given their natural and ordinary meaning; and

- (b) if words appear to be capable of having more than one meaning, the *Commission* will have regard to the following, in the following order, in seeking to discover the intended meaning of those words:
- (i) firstly (for Divisions 2 and 3), the objective of the Division; and
 - (ii) secondly, the purpose of this Part; and
 - (iii) thirdly, any guidelines published by the *Commission* under section 13 of the *Essential Services Commission Act 2001* (Vic); and
 - (iv) fourthly, any relevant guidance notes published by the *Commission* under its Energy Compliance and Enforcement Policy; and
 - (v) fifthly, any written information issued by the *Commission* regarding the assistance that *residential customers* might reasonably expect to be provided by their *retailer* under this Part.

Division 2 Standard assistance

74 Objective

The objective of this Division is to give *residential customers* an entitlement to minimum standard forms of assistance, to help them avoid getting into arrears with their *retailer*.

75 Application of this Division

This Division applies to all *residential customers*.

76 Standard assistance

- (1) A *retailer* must take steps to provide to its *residential customers* the forms of standard assistance, from those listed in subclause (2), it elects to make available to help them avoid getting into arrears.
- (2) Standard assistance made available must include at least 3 of the following:
 - (a) making payments of an equal amount over a specified period;
 - (b) options for making payments at different intervals;
 - (c) extending by a specified period the *pay-by date* for a bill for at least one billing cycle in any 12 month period;
 - (d) paying for *energy* use in advance.

Division 3 Tailored assistance

77 Objective

The objective of this Division is to give *residential customers* an entitlement to minimum standards of flexible and practicable assistance that makes it easier for

them to pay for their on-going *energy* use, repay their arrears and lower their *energy* costs.

78 Application of this Division

This Division applies to all *residential customers* who are in arrears.

79 Minimum assistance

- (1) Tailored assistance consists of the following measures:
 - (a) repayment of arrears over not more than 2 years by payments at regular intervals of up to one month;
 - (b) advice from the *retailer* about payment options that would enable a *customer* to repay their arrears over not more than 2 years;
 - (c) specific advice about the likely cost of a *customer's* future *energy* use and how this cost may be lowered;
 - (d) specific advice about any government and non-government assistance (including Utility Relief Grants and *energy* concessions) available to help a *customer* meet their *energy* costs;
 - (e) practical assistance to help a *customer* lower their *energy* costs including, but not limited to:
 - (i) the tariff that is most likely to minimise the *customer's* *energy* costs, based on the *retailer's* knowledge of the *customer's* pattern of *energy* use and payment history; and
 - (ii) practical assistance to help the *customer* reduce their use of *energy*, based on the *customer's* pattern of *energy* use and on the circumstances of where the *customer* lives, provided there is scope for action to be taken for that purpose; and
 - (iii) information about how the *customer* is progressing towards lowering their *energy* costs given at sufficient intervals for the *customer* to be able to adequately assess that progress;
 - (f) an initial period of at least 6 months during which:
 - (i) repayment of the *customer's* arrears is put on hold; and
 - (ii) the *customer* pays less than the full cost of their on-going *energy* use while working to lower that cost;
 - (g) any other assistance consistent with the objective of this Division.
- (2) A *customer* is entitled, at the very least, to the assistance mentioned in subclause (1)(a) to (d), while continuing to pay the full cost of their on-going *energy* use.
- (3) A *customer* is entitled, at the very least, to the assistance mentioned in subclause (1)(c) to (f) if they cannot pay the full cost of their on-going *energy* use.
- (4) The *retailer* may extend the assistance mentioned in subclause (1)(f) for a further

period or periods if the extension would assist the *customer* to continue to lower the cost of their *energy* use.

- (5) A *customer* who has exercised an entitlement to the assistance mentioned in subclause (1)(f) may, at the end of the period during which that assistance is provided (including that period as extended under subclause (4)), exercise an entitlement mentioned in subclause (2).

80 Information about assistance available

- (1) A *residential customer* who has not paid a bill by its *pay-by date* and who contacts the *retailer* is entitled to be given by the *retailer* information about the assistance to which the *customer* is entitled under this Division and how to access it.
- (2) A *residential customer* who has not paid a bill by its *pay-by date* and who has arrears of more than \$55 (inclusive of GST) is entitled to be contacted by the *retailer*, within 21 business days after that *pay-by-date*, and given information about the assistance to which the *customer* is entitled under this Division and how to access it.
- (3) The *retailer* must allow the *customer* no less than 6 business days to consider the information given under subclause (1) or (2), request further information, and put forward a payment proposal under clause 81.
- (4) Nothing in this clause limits clause 86.

81 Payment arrangements

- (1) This clause applies to a *residential customer* whose repayment of arrears is not on hold under clause 79(1)(f)(i).
- (2) The *retailer* must accept a payment proposal or revised proposal put forward under this clause by the *residential customer* that complies with subclause (3).
- (3) A payment proposal or revised proposal complies with this subclause if it:
 - (a) provides for the making of payments of equal amounts at regular intervals of up to one month; and
 - (b) would result in the *residential customer's* arrears being fully paid in no more than 2 years after the first payment; and
 - (c) provides for payments for *energy* use being made together with payments to reduce arrears; and
 - (d) is based on a reasonable forecast of the *customer's energy* use over the next 12 months.
- (4) However, the *retailer* may accept a payment proposal or revised proposal that does any or all of the following:
 - (a) provides for payments of different amounts at different intervals;
 - (b) would result in the arrears being fully paid by a date later than 2 years after the first payment;

- (c) provides for payments for *energy* use being made separately from payments for arrears.
- (5) On accepting a payment proposal or a revised proposal, the *retailer* must give the *customer* a written schedule of payments showing:
 - (a) the total number of payments to be made to pay the arrears; and
 - (b) the period over which the payments are to be made; and
 - (c) the date by which each payment must be made; and
 - (d) the amount of each payment.
- (6) If a *residential customer* receiving assistance under this Division fails to make a payment by the date on which it was payable, the *retailer* must contact the *customer* to discuss their putting forward a revised proposal under this clause.

82 Non-payment of amounts towards on-going energy use

- (1) This clause applies to a *residential customer* whose repayment of arrears is on hold under clause 79(1)(f)(i).
- (2) If the *residential customer* fails to make a payment towards the cost of their on-going *energy* use by the date on which it was payable, the *retailer* must contact the *customer* to discuss varying the amount payable, or the frequency of those payments, or both, to give the *customer* more time to lower their *energy* costs.
- (3) If a *customer* is not meeting their responsibility to implement practical assistance referred to in clause 79(1)(e)(ii) provided by the *retailer*, the *retailer* must contact the *customer* and work with them to identify an implementation timeframe, consistent with the objective of this Division.
- (4) The *retailer* may add any amount unpaid for *energy* use to the *customer's* arrears.

83 Continued provision of assistance

A *retailer* is required to continue to provide assistance under this Division to a *residential customer* unless:

- (a) after the *retailer* has complied with clause 81(6), the *customer* has refused or failed to take reasonable action towards paying for their on-going *energy* use and repaying their arrears; or
- (b) after the *retailer* has complied with clause 82(2), the *customer* has refused or failed to take reasonable action towards making payments towards the cost of their on-going *energy* use; or
- (c) the *customer* is not facing payment difficulties.

Division 4 Financial Hardship Policies

84 Approval of financial hardship policies

A *retailer* must prepare a financial hardship policy, and submit it to the *Commission* for approval, as mentioned in section 43(1) of the *Electricity Industry Act* or section 48G(1) of the *Gas Industry Act*.

85 Content of financial hardship policies

A financial hardship policy must include:

- (a) the matters set out in section 43C of the *Electricity Industry Act* or section 48GC of the *Gas Industry Act*; and
- (b) the entitlements to minimum assistance set out in Division 3 of this Part; and
- (c) any matters covered by guidelines or guidance notes published by the Commission in relation to those entitlements.

Division 5 Communications

86 Provision of information to customers

- (1) A *retailer* must ensure that its financial hardship policy is easily accessible on its website in a readily printable form.
- (2) A *retailer* must send a copy of its financial hardship policy to any *residential customer* who requests to be sent a copy.
- (3) A *retailer* must ensure that information is readily available to *residential customers* about:
 - (a) the financial hardship policy of the *retailer*; and
 - (b) the assistance available under Division 2 or 3 and how to access that assistance; and
 - (c) approaches to lowering *energy* costs; and
 - (d) government and non-government assistance (including Utility Relief Grants and *energy* concessions) that may be available to help with meeting *energy* costs.
- (4) Without limiting the means by which information may be made readily available, information is readily available for the purposes of subclause (3) if:
 - (a) it is easily accessible on the *retailer's* website in a readily printable form; or
 - (b) it is sent to any *residential customer* who requests to be sent that information.

Note: Clause 87(2) states how information is required to be sent to a *residential customer*.

87 Written communications

- (1) Any written communication by a *retailer* to a *residential customer* under, or in connection with, this Part must be:
 - (a) expressed in plain language; and
 - (b) legible; and
 - (c) presented clearly and appropriately having regard to its nature.
- (2) Despite clause 3F, a *retailer* must give or send by post to a *residential customer* any written communication required or permitted to be given or sent under, or in connection with, this Part unless the *customer* has given explicit informed consent to receiving it in another way.
- (3) Information sent by post to a *residential customer* must be taken to be delivered at the time at which it would be delivered in the ordinary course of post.
- (4) Information sent by registered post to a *residential customer* must be taken to be delivered at the time at which it would ordinarily be delivered by registered post.
- (5) A *retailer* must not impose a charge on a *residential customer* for any written communication given or sent to the *customer* (whether by post or otherwise) under, or in connection with, this Part.

88 Effect of this Division

Nothing in this Division limits clause 56 or any other provision of this Code about providing information to *residential customers*.

Division 6 Miscellaneous

89 Retailer obligations

A *retailer* must:

- (a) in any dealing with a *residential customer* under, or in connection with, Division 3 take into account all of the circumstances of the *customer* of which they are aware and, having regard to those circumstances, act fairly and reasonably; and
- (b) at all times when it is relevant to do so, including on being contacted by a *residential customer*, give the *customer* in a timely manner clear and unambiguous information about the assistance available under this Part; and
- (c) in a timely manner provide, or use its best endeavours to provide, a *residential customer* who is entitled to receive assistance under this Part with that assistance; and
- (d) give a *residential customer* who is receiving, or is entitled to receive, assistance under this Part clear information about how to access other assistance provided by government or community service providers for which the *customer* is or may be eligible; and
- (e) work cooperatively with any government or non-government service, including

the Energy and Water Ombudsman (Victoria), providing support to a *residential customer* who is receiving assistance under this Part to ensure that the assistance being provided by the *retailer* complements, and is provided in a coordinated way with, that support; and

- (f) in relation to a *residential customer* who is receiving, or is entitled to receive, assistance under this Part, comply with any relevant guideline published by the *Commission* relating to *customers* in particular payment difficulty, including *customers* who may be affected by *family violence*.

90 Assistance beyond the minimum standards

Nothing in this Part prevents a *retailer* from providing to *residential customers*, who are anticipating or facing payment difficulties, assistance in addition to the minimum standards set out in this Part.

91 Restriction on conditions

A *retailer* must not impose any condition on the provision of assistance under this Part (whether in accordance with the minimum standards set out in this Part or in addition to them) that requires the *customer* to provide personal or financial information or to waive any entitlement under this Part.

92 Debt

(1) Restriction on debt recovery

A *retailer* must not commence or continue with proceedings for the recovery of *arrears* from a *residential customer* who is receiving assistance under this Part.

(2) Restriction on sale of debt

A *retailer* must not sell or otherwise dispose of the debt of a *residential customer* who is in arrears:

- (a) at any time while the *customer* is receiving assistance under this Part; or
- (b) within 10 business days after the *customer* has been disconnected from their *energy* supply under clause 111A.

(3) Guideline to be complied with on sale of debt to third party

A *retailer* must not sell or otherwise dispose of the debt of a *residential customer* to a third party other than in accordance with the guideline “*Debt collection guideline: for collectors and creditors*” jointly published by the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission.

(4) Waiver of debt

Nothing in this Part prevents a *retailer* from waiving any fee, charge or amount of arrears for a *residential customer*.

93 Supply capacity control product

A *retailer* must not offer a *supply capacity control product* to a *residential customer* for any credit management purpose.

94 Payment by Centrepay (SRC and MRC)

- (1) This clause applies where a *residential customer* requests a *retailer* to permit payment by using Centrepay as a payment option (see clause 32).
- (2) If the *residential customer* is applying for or on a *standard retail contract*, the *retailer* must allow the *customer* to use Centrepay as a payment option.
- (3) If the *residential customer* is on a *market retail contract* and Centrepay is available as a payment option under that contract, the *retailer* must allow the *customer* to use Centrepay as a payment option.
- (4) If the *residential customer* is on a *market retail contract* and Centrepay is not available as a payment option under that contract, the *retailer* must undertake a review of the *market retail contract*.
- (5) If, as a result of a review, an alternative *customer retail contract* is considered to be more appropriate, the *retailer* must transfer the *customer* to that alternative contract, where the *retailer* has obtained the *customer's* explicit informed consent.
- (6) Any alternative *customer retail contract* offered to a *residential customer* must make Centrepay available as a payment option.
- (7) If, as a result of the review, there is no alternative *customer retail contract* considered to be more appropriate, the *retailer* must make Centrepay available as a payment option under the *residential customer's* existing *market retail contract*.
- (8) The *retailer* must not charge the *residential customer* for the review, for any transfer to an alternative *customer retail contract* or any early termination charge or other penalty for the early termination of the *customer's* previous *customer retail contract*.”.

Consequential and related amendments

3 Amendment of clause 3 (definitions)

In clause 3:

- (a) omit the definition of *hardship customer*;
- (b) in paragraph (g) of the definition of *life support equipment*, for “of gas” substitute “of electricity or gas”;
- (c) for the definition of *payment plan* substitute:
“*payment plan*, in relation to a *small customer* (other than a *residential customer* who is receiving assistance under Part 3), means a plan for the *customer* to pay a *retailer*, by periodic instalments in accordance with this Code, any amounts payable by the *customer* for the sale and supply of *energy*.”.

4 Amendment of clause 3B (Purpose and Application)

In clause 3B, after subclause (4) insert:

“(5) The following provisions of this Code constitute terms and conditions decided by the *Commission* for the purposes of sections 36(1)(a)(i) and (ii) and 36(1)(b) of the *Electricity Industry Act* and sections 43(1)(a)(i) and (ii) and 43(1)(b) of the *Gas Industry Act*:

- (a) the provisions in Part 3;
- (b) clauses 109, 110, 111, 111A, 116(1)(d) (read with the definitions of **disconnection warning period** and **reminder notice period** in clause 108).”.

5 Amendment of clause 18 (pre-contractual request to designated retailer for sale of energy (SRC))

In clause 18(7)(a), after “clause 111” insert “or 111A”.

6 Amendment of clause 32 (payment methods)

In clause 32(2), for “clause 74” substitute “clause 94”.

7 Repeal of clause 33 (payment difficulties (SRC and MRC))

Clause 33 is repealed.

8 Amendment of clause 34 (shortened collection cycles (SRC and MRC))

In clause 34(2)(a), for “experiencing payment difficulties” substitute “receiving assistance under Part 3”.

9 Amendment of clause 40 (requirement for security deposit)

(SRC and MRC)

In clause 40:

(a) in subclause (3), for paragraphs (a) and (b) substitute:

“(a) is a *residential customer* receiving assistance under Division 3 of Part 3; or”.

(b) in subclause (4) for “clause 33” substitute “Part 3”.

10 Amendment of clause 56 (provision of information to customers)

Before clause 56(1)(a) insert:

“(aa) the entitlements of *customers* to assistance from the *retailer* under Part 3; and”.

11 Amendment of clause 108 (definitions)

In clause 108, for the definition of *reminder notice period* substitute:

“**reminder notice period**, in relation to a *small customer*, means the period that starts on the date of issue to the *customer* of a *reminder notice* under clause 109, which must be no earlier than the next business day after the *pay-by date*, and ends no earlier than 6 *business days* after the date of issue of the *reminder notice*.”.

12 Clause 109 substituted

For clause 109 substitute:

“109 Reminder notices—retailer

- (1) A *reminder notice* is:
 - (a) for a *residential customer*, a written notice with the heading ‘Reminder Notice’ prominently displayed on it issued by a *retailer* to the *customer* to remind the *customer* that payment of a bill is required; and
 - (b) for any other *small customer*, a notice issued by a *retailer* to the *customer* after the *pay-by-date* for a bill to remind the *customer* that payment is required.
- (2) A *reminder notice* must not be issued to a *residential customer* later than 21 business days after the *pay-by date*.
- (3) The purpose of a *reminder notice* to a *residential customer* is to remind the *customer* of their obligation to pay the bill.
- (4) A *retailer* must not issue a *reminder notice* to a *residential customer* who has put forward a payment proposal or revised proposal in accordance with clause 81 that the *retailer* has accepted unless the *residential customer* has failed to make a payment by the date on which it was payable under the proposal or

revised proposal.

- (5) A reminder notice must:
- (a) state the date of its issue; and
 - (b) state the date on which the *reminder notice period* ends; and
 - (c) state that payment of the bill is required to be made before the end of the *reminder notice period*; and
 - (d) give details of how to contact the *retailer* in connection with a complaint or dispute.”.

13 Amendment of clause 110 (disconnection warning notices)

In clause 110:

- (a) after subclause (1) insert:
- “(1A) **Purpose of disconnection warning notices**
- The purpose of a *disconnection warning notice* is to give the *customer* clear and unambiguous advice about what the *customer* needs to do to avoid being disconnected from their *energy* supply.”;
- (b) after subclause (2)(b) insert:
- “(ba) if the *customer* is a *residential customer* who is entitled to receive assistance under Part 3:
- (i) give an explanation in plain language of the notice and of why it is being issued; and
 - (ii) give the *customer* clear and unambiguous advice about what the *customer* needs to do to avoid being disconnected from their *energy* supply, including any entitlement that they may have to further assistance under Part 3; and
 - (iii) if the *customer* is or may be eligible for other assistance provided by government or community service providers, give the *customer* clear information about how to access that assistance; and”.

14 Amendment of clause 111 (de-energisation for not paying bill)

In clause 111:

- (a) in the heading to the clause after “**bill**” insert “(small customer who is not a residential customer)”;
- (b) in subclause (1) for “a *customer*’s premises” substitute “the premises of a *small customer* (other than a *residential customer*)”;
- (c) subclause (1)(b) is repealed;
- (d) in subclause (1)(e) for “, or to agree to the offer or to adhere to the *payment*

plan or instalment arrangement as referred to in paragraphs (a)(ii) and (b)(ii)” substitute “or to adhere to the terms of the *payment plan* referred to in paragraph (a)(ii)”;

- (e) subclause (2) is repealed;
- (f) in subclause (3) for “a *customer’s* premises” substitute “the premises of a *small customer* (other than a *residential customer*)”;
- (g) in subclause (3)(c) for “, or to agree to the offer or to adhere to the *payment plan* or instalment arrangement as referred to in subclause (1)(a)(ii) and (b)(ii)” substitute “or to adhere to the terms of the *payment plan* referred to in subclause (1)(a)(ii)”;
- (h) delete the Note at the foot of the clause beginning “Further guidance” and ending “Wrongful Disconnection.”.

15 **Clause 111A inserted**

After clause 111 insert:

“111A Residential customer only to be disconnected as a last resort for non-payment

A retailer may only arrange *de-energisation* of the premises of a *residential customer* for not paying a bill if:

- (a) the *retailer*:
 - (i) has complied with all of the *retailer’s* obligations to the *customer* under clause 89; and
 - (ii) has issued a *reminder notice* to the *customer* that complies with clause 109; and
 - (iii) has issued a *disconnection warning notice* to the *customer* that complies with clause 110; and
 - (iv) has, after the issue of the *disconnection warning notice*, used its best endeavours to contact the *customer* in relation to the matter and, in so doing, provided clear and unambiguous information about the assistance available under Part 3; and
 - (v) has at all times acted fairly and reasonably in relation to the *customer*; and
- (b) the *customer*:
 - (i) while receiving tailored assistance under clause 79(1)(a), has failed to make a payment by the date on which it was payable, has not put forward a revised payment proposal under clause 81 and does not have an entitlement to the assistance mentioned in clause 79(1)(f); or
 - (ii) has exercised an entitlement to the assistance mentioned in clause

79(1)(f) and has failed to make a payment by the date on which it was payable and has not put forward a proposal to vary the amount payable or the frequency of payments; and

- (c) the *customer* has refused or failed to take reasonable action towards remedying the matter; and
- (d) the *retailer* has records that are sufficient to evidence the matters mentioned in paragraphs (a), (b) and (c).”.

16 Amendment of clause 116 (restrictions on de-energisation)

(1) For clause 116(1)(d) substitute:

“(d) where the *customer* is a *residential customer* who is receiving assistance under Part 3 and is adhering to the terms of that assistance; or”.

17 Amendment of Schedule 1, clause 10.3 (difficulties in paying)

In Schedule 1, for clause 10.3 substitute:

“10.3 Difficulties in paying

If you have difficulties paying your bill, you should contact us as soon as possible. We will provide you with information about your entitlements as a Victorian energy customer.”.

18 Amendment of Schedule 1, clause 14.1 (when can we arrange for disconnection?)

In Schedule 1, for clause 14.1(a) substitute:

“(a) you do not pay your bill by the *pay-by-date* or, if you are a *residential customer* receiving assistance under Part 3 of the Energy Retail Code, you fail to make a payment or otherwise do not adhere to the terms of that assistance; or”.