

ENFORCEABLE UNDERTAKING

ESSENTIAL SERVICES COMMISSION ACT 2001 (VIC)

Undertaking to the Essential Services Commission given for the purposes of section 54ZD of the *Essential Services Commission Act 2001* (Vic)

by

EnergyAustralia Pty Limited (ABN 99 086 014 968)

Person giving this Undertaking

This Undertaking is given by EnergyAustralia Pty Limited of Level 19, Two Melbourne Quarter, 697 Collins Street, Docklands VIC 3008 (**EnergyAustralia**) to the Essential Services Commission (**Commission**) for the purposes of section 54ZD of the Essential Services Commission Act (**ESCA**).

The Commission's concerns

The Commission considers that EnergyAustralia did not comply with clause 16(4) and 57(1) of the Energy Retail Code¹ on several occasions. Specifically, the Commission considers that EnergyAustralia failed to obtain adequate explicit informed consent (**EIC**) in relation to a number of electricity and gas small customers who entered into market retail contracts between 12 June 2020 and 31 January 2022 by failing to disclose matters relevant to the contract when contacting those customers.

Admissions and resolution

1. In order to resolve the Commission's concerns, EnergyAustralia:
 - (a) has taken steps to remediate the situation of customers affected by the alleged conduct, including by:
 - (i) contacting, or attempting to contact, affected customers to inform them about the error; and
 - (ii) offering affected customers the opportunity to cancel their contract and accept a new plan and, in doing so, disclose information relevant to entering into a new market retail contract with EnergyAustralia and obtaining the customer's EIC.
 - (b) admits that the alleged conduct was likely to have contravened clause 16(4), 57(1) or 64 of the Energy Retail Code; and
 - (c) undertakes to review and improve policies, systems and procedures relating to the obtaining of EIC pursuant to clause 26(4) and 113(1) of the Energy Retail Code of Practice by implementing the Compliance Improvement Action Plan (containing the actions set out in **Annexure A**).

¹ When the Energy Retail Code of Practice was remade with effect from 1 March 2022, these obligations were renumbered to clause 26(4) and 113(1) respectively.

Commencement and Term of Undertaking

2. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by EnergyAustralia; and
 - (b) the Undertaking so executed is accepted by the Commission, being the **Commencement Date**.
3. On and from the Commencement Date, EnergyAustralia undertakes to assume the obligations in Annexure A below.
4. This Undertaking remains in effect for 24 months from the Commencement Date.

Acknowledgements and Publication of Undertaking

5. EnergyAustralia acknowledges that:
 - (a) the Commission may make this Undertaking publicly available by publishing it on its website;
 - (b) the Commission may from time to time, make public reference to this Undertaking including in news media statements and in Commission publications; and
 - (c) this Undertaking in no way limits the rights and remedies available to any other person arising from the alleged conduct.
6. EnergyAustralia acknowledges it must pay all of its own costs in relation to this Undertaking (including but not limited to the development and implementation of the Compliance Improvement Action Plan).

Executed as an Undertaking

Executed for and on behalf of **ENERGYAUSTRALIA PTY LIMITED** ABN 99 086 014 968 in accordance with section 127 of the Corporations Act 2001:



Signature of director

Mark Brownfield

Name of director

23 June 2022

Date



Signature of ~~director~~/secretary

EVELYN HARRIS

Name of director/secretary

24 jUNE 2022

Date

Accepted by the Essential Services Commission pursuant to section 54ZD of the Essential Services Commission Act.



Name Kate Symons
Chairperson

Date 11 August 2022

Annexure A. Compliance Improvement Action Plan

EnergyAustralia undertakes to implement the Compliance Improvement Action Plan by undertaking the actions set out in this Annexure.

Training

1. EnergyAustralia will review and improve its training program by ensuring that:
 - (a) training about EIC requirements of the Energy Retail Code of Practice is provided, as part of their induction, to new employees, contractors and sales agents (including third-party agents) whose duties involve obtaining EIC under clause 26(4) and 113(1) of the Energy Retail Code of Practice, or who have responsibility for managing staff with such duties; and
 - (b) in addition to EnergyAustralia's existing annual compliance training, EnergyAustralia will conduct regular (at least biannual) supplementary training about the EIC requirements of the Energy Retail Code of Practice for employees, contractors, sales agents (including third-party agents) whose duties directly relate to obtaining EIC under clause 26(4) and 113(1) of the Energy Retail Code of Practice, or who have responsibility for managing staff with such duties.
2. The training referred to in clause 1(a) and 1(b) will be developed and reviewed annually by either a legal practitioner, or compliance professional, with expertise in Victoria's energy laws.
3. The supplementary training provided under clause 1(b) will:
 - (a) begin within 3 months from the Commencement Date;
 - (b) be informed by analysis of the root cause of any previous non-compliance; and
 - (c) be designed pragmatically having regard to the actual systems and tools used by employees, contractors and sales agents during interactions with small customers or potential customers.
4. EnergyAustralia will maintain a record of the training provided under clause 1(a) and 1(b) of attendees, the content of the training, and the dates the training was completed.

Quality assurance and compliance monitoring

5. As part of its existing quality assurance program, EnergyAustralia will ensure that it conducts fortnightly quality assurance compliance checks of sales interactions involving an agent obtaining EIC from small customers in Victoria over the fortnight since the previous review (or, in the instance of the first review, the fortnight immediately preceding the date of the review) (**review period**).
6. For the purposes of clause 5, EnergyAustralia will progressively introduce improvements to the quality assurance EIC compliance checks, so that by 4 months of the Commencement Date those checks will be based on a sample:
 - (a) comprising 5% of all agent assisted electricity and gas sales to Victorian customers entering into a market retail contract over a review period; and

- (b) comprising a mix of sales completed via different agent assisted channels (e.g. calls, emails, live chat, digital assist and third party sales) that takes into consideration:
 - (i) the relative number of total sales conducted via those channels; and
 - (ii) the extent of perceived risk presented by the channel, having regard to the controls applying to the sales channel and the extent to which the quality assurance process has previously identified potential breaches in that sales channel in any previous review period.
- 7. If necessary in order to meet the quality assurance and compliance checks outlined under clause 5, EnergyAustralia will increase the size of its compliance team and/or assign additional employees or contractors to conducting these quality assurance checks in relation to EIC.

EnergyAustralia Reports to Board/Senior Management

- 8. EnergyAustralia will provide an update to a senior management committee at least every six months comprising information addressing implementation of, and compliance with, clauses 1 to 7 (inclusive) of this Compliance Improvement Action Plan.

Compliance Uplift Review and Automated Technology Solutions

- 9. Within 5 months of the Commencement Date, EnergyAustralia will appoint an independent person, being an independent compliance professional or legal practitioner with expertise in Victoria's energy laws (**Independent Reviewer**) to complete a review of EnergyAustralia's practices and proactive and detective controls used for obtaining EIC and propose recommendations for improvement to those controls and processes, including potential automated technology solutions (**Compliance Uplift Review**).
- 10. Following receipt of the Independent Reviewer's Compliance Uplift Review report, EnergyAustralia will consider the recommendations and implement improvements to its practices and controls in accordance with them, where reasonably practicable and likely to be effective.

Review of compliance with Compliance Improvement Action Plan

- 11. Within 5 months of the Commencement Date, EnergyAustralia will appoint an independent compliance professional or legal practitioner with relevant expertise (**Independent Auditor**) to complete a review of EnergyAustralia's implementation of the Compliance Improvement Action Plan (**Implementation Review**) and will notify the Commission of the nominated Independent Auditor. EnergyAustralia will instruct the Independent Auditor to complete the Implementation Review and prepare a report that identifies whether EnergyAustralia has implemented the Compliance Improvement Action Plan and the adequacy of that implementation.
- 12. EnergyAustralia must use best endeavours to ensure the Independent Auditor appointed for the Implementation Review:
 - (a) completes the Implementation Review within 90 business days of their appointment, by provision of the report referred to in paragraph 11 above to EnergyAustralia; and

- (b) has appropriate access to all, staff, records, documentation and information necessary to conduct the Implementation Review.
- 13. Within two business days of receipt of the Independent Auditor's Implementation Review report, EnergyAustralia must provide a copy of the report to the Commission.
- 14. Within 20 business days of receipt of the Independent Auditor's Implementation Review report, EnergyAustralia must provide the Commission its response to any recommendations of the Independent Auditor including proposed steps or timings for implementation as relevant. This response must be from EnergyAustralia's Chief Customer Officer unless that person is on leave at the required time, in which case it will be from his/her delegate. If EnergyAustralia does not implement any of the Independent Auditor's recommendations, it will provide the Commission with an explanation of its position.
- 15. Within three months prior to the end of the Term of the Undertaking, EnergyAustralia must provide the Commission with a report that outlines its compliance with the Undertaking and any additional measures that it has implemented to ensure compliance with respect to obtaining EIC.

Provision of documents to the Commission

- 16. EnergyAustralia must, for a period not less than 24 months following the Commencement Date, retain the following documents:
 - (a) copies of the training modules developed pursuant to clause 2;
 - (b) records of delivery and attendance at training pursuant to clause 4; and
 - (c) reports to senior management pursuant to clause 8.
- 17. If requested by the Commission in writing and with reasonable notice during the period of 24 months following the Commencement Date, EnergyAustralia must cause to be produced, and provided to the Commission, copies of the documents retained by EnergyAustralia pursuant to clause 17 of this Undertaking.