

Appendix B – Energy Retail Code

AMENDMENTS TO THE ENERGY RETAIL CODE: FAMILY VIOLENCE SUPPORT AND ASSISTANCE

21 May 2019

Amendments made by the Essential Services Commission on 21 May 2019

1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on 1 January 2020.

2 Table of amendments

- (1) Insert the following definition in clause 3 after *additional retail charge*:

affected customer means any *customer*, including a former *customer*, who is or was a *small customer* and who may be affected by *family violence*;

- (2) Insert the following definition in clause 3 after *exempt person arrangement*:

family violence has the meaning given in section 5 of the *Family Violence Protection Act 2008* (Vic);

- (3) In clause 40 after subclause (7) insert new subclause (7A):

(7A) In considering whether to require a *customer* who is an *affected customer* to pay a *security deposit* the *retailer* must take into account the particular circumstances of that *customer*.

- (4) In subclause 40(10) after “clause” insert “, other than subclause (7A),”.

- (5) In subclause 89(1) before paragraph (a) insert new paragraph (aa):

(aa) in any dealing with an *affected customer* who is receiving, or is entitled to receive, assistance pursuant to Part 3A (Assistance for customers affected by family violence), take into account the particular circumstances of that *affected customer*; and

- (6) In paragraph 89(1)(f) delete “, including customers who may be affected by *family violence*” and insert “.”

- (7) In subparagraph 111(1)(f) delete “.” and insert “; and”.

- (8) In subclause 111(1) after paragraph (f) insert new paragraph (g):

- (g) where the *customer* is an *affected customer*, the *retailer* has taken into account the particular circumstances of that *customer*.
- (9) In subclause 111(6) after “clause” insert “, other than paragraph (1)(g),”.
- (10) In subclause 111A(1) after subparagraph 111A(1)(a)(v) insert new subparagraph
 - (vi) has, where the *customer* is an *affected customer*, taken into account the particular circumstances of that *customer*; and
- (11) In subclause 111A(2) after “clause” insert “, other than subparagraph (1)(a)(vi),”.
- (12) Insert new Part 3A after clause 106.

Part 3A Assistance for customers affected by family violence

Division 1 – Operation of this Part

106A Requirement

A *retailer* is required to perform its obligations under this Part in a way that promotes the purpose of this Part.

106B Purpose

The purpose of this Part is to promote protections for *affected customers*.

106C Interpretation of this Part

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

- (1) clear words will be given their natural and ordinary meaning; and
- (2) where this Part appears 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 the Part:
 - (a) first, the objective of the relevant Division(s);
 - (b) secondly, the purpose of this Part;
 - (c) thirdly, any guidelines published by the *Commission* under section 13 of the *Essential Services Commission Act 2001* (Vic);
 - (d) fourthly, any relevant guidance notes published by the *Commission* under its Energy Compliance and Enforcement Policy; and
 - (e) fifthly, any written information issued by the *Commission* regarding an *affected customer's* entitlement to supporting measures under this Part.

Division 2 - Providing family violence assistance—minimum standards

106D Requirement

A *retailer* is required to perform its obligations under this Division in a way that promotes the objective of this Division.

106E Objective

The objective of this Division is to give *affected customers* an entitlement to safe, supportive and flexible assistance from a *retailer* when managing their personal and financial security.

106F Training

- (1) A *retailer* must ensure that training is provided to any person (including employees, agents and contractors) acting on its behalf who:
 - (a) may engage with *affected customers* by any means of communication; or
 - (b) is a manager of a person identified in paragraph (a); or
 - (c) is responsible for systems and processes that guide interactions with *customers*.
- (2) For the purposes of subclause (1), a *retailer* must ensure that the training provided addresses:
 - (a) the nature and consequences of *family violence*; and
 - (b) the application of the retailer's *family violence* policy; and
 - (c) how to identify *affected customers*; and
 - (d) how to engage appropriately and effectively with *affected customers*.

106G Account security

- (1) Notwithstanding any other requirement in this Code, a *retailer* must not disclose or provide access to confidential information about an *affected customer* to any other person without the consent of the *affected customer*.
- (2) In this clause, the term “confidential information” refers to any information that may be used to identify or locate an *affected customer*, including information about their whereabouts, contact details, or financial or personal circumstances.
- (3) In this clause, the term “any other person” includes a person who is or has been a joint account holder with an *affected customer*.
- (4) To identify a safe method of communication with an *affected customer*, a *retailer* must:

- (a) take reasonable steps to elicit the *affected customer's* preferred method of communication; and
 - (b) offer alternative methods of communication if the *affected customer's* preferred method of communication identified in paragraph (a) is not practicable.
- (5) An *affected customer's* entitlement for communications to be in accordance with the method of communication identified pursuant to subclause (4) takes precedence over any other *customer* entitlement or *retailer* requirement in this Code to communicate with or provide information to a *customer* in a particular way.
- (6) A *retailer* must keep a record of arrangements reached pursuant to subclause (4).

106H Customer service

A *retailer* must provide for a secure process designed to avoid the need for an *affected customer* to repeatedly disclose or refer to their experience of *family violence* by:

- (a) providing a method for readily identifying the account of a *customer* who has been identified as an *affected customer*; and
- (b) providing for effective ongoing engagement with an *affected customer*.

106I Debt management

- (1) Before taking action to recover arrears from an *affected customer*, a *retailer* must take into account:
- (a) the potential impact of debt recovery action at that time on the *affected customer*; and
 - (b) whether other persons are jointly or severally responsible for the *energy* usage that resulted in the accumulation of those arrears.
- (2) Nothing in this Part prevents a *retailer* from waiving, suspending or repurchasing the debt of an *affected customer*.

106J Family violence as a potential cause of payment difficulty

A *retailer* must recognise *family violence* as a potential cause of payment difficulty.

106K External support

- (1) A *retailer* must provide an *affected customer* with information about the availability of one or more external *family violence* support services at a time and in a manner that is safe, respectful and appropriate given the *affected customer's* circumstances.
- (2) A *retailer* must publish on its website and keep up to date a list of one or more external *family violence* support services.

106L Evidence

- (1) A *retailer* may only seek documentary evidence of *family violence* when considering debt management and recovery under clause 106I, or restrictions on *de-energisation* in Part 6.
- (2) Any documentary evidence sought in accordance with subclause (1) must be limited to that which is reasonably required by the *retailer* for the purposes of considering debt management and recovery under clause 106I, or restrictions on *de-energisation* in Part 6.

106M Assistance beyond the minimum standards

Nothing in this part prevents a *retailer* from providing assistance to *affected customers* in addition to the minimum standards set out in this Part.

Division 3 – Family violence policies

106N Family violence policy

A *retailer* must have a *family violence* policy that addresses this Part.

106O Family violence policy to be accessible

A *retailer* must ensure that its *family violence* policy is easily accessible on its website in a readily printable form.

106P Family violence policy to be reviewed

A *retailer* must review its *family violence* policy no less than once every two years.

Division 4 – Compliance and reporting

106Q Compliance

- (1) A *retailer* must maintain records that are sufficient to evidence its compliance with this Part.
- (2) The *retailer* must ensure that the records required to be maintained pursuant to subclause (1) are retained:

- (a) for at least 2 years; or
- (b) for as long as the *customer* continues to receive assistance under this Part; or
- (c) where a *customer* has, within the periods referred to in paragraph (a) or (b) above, made a complaint or referred a dispute to the *energy ombudsman* in relation to the provision of *family violence* assistance by the *retailer*—for the period the complaint or dispute remains unresolved, whichever is the longer period.