



**EnergyAustralia**

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Dear Ms Lawrence

## **Re: Compliance and Performance Reporting Guideline**

### **1. Introduction**

EnergyAustralia welcomes the opportunity to comment on the Essential Services Commission of Victoria's draft *Interim Compliance and Performance Reporting Guideline for Energy Retail Licence Holders*.

We are one of Australia's largest energy companies, with over 2.5 million household and business customer accounts in New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory. We also own and operate a multi-billion dollar portfolio of energy generation across Australia, including coal, gas and wind assets with control of over 4,500MW of generation in the National Electricity Market.

EnergyAustralia supports regulatory measures that contribute towards increased efficiency in the energy market and leads to better outcomes for all consumers, including vulnerable customers.

While we agree that it is vital that the Commission has visibility of key retailer indicators, we are concerned that the proposed changes to the compliance and reporting guideline:

- a) are incompatible with the changes made to align to the National Energy Customer Framework (NECF);
- b) contain duplication of reporting obligations and penalties; and
- c) require unrealistic implementation timeframes in cases where the change relies on systems enhancements (i.e. the addition of new performance indicators for payment plans).

We are however, pleased that the Commission has streamlined some of the reporting requirements, removed some unnecessary obligations and used this as an opportunity to consolidate existing reporting and compliance guidelines into a single document. In particular, EnergyAustralia welcomes:

- The inclusion of a definition of debt which recognises a move away from the traditional 90 day billing period; and
- The removal of the explicit requirement to split payment plans for customers facing payment difficulty from those who are on payment plans as a matter of convenience in indicator D020.

Based on the discussion with the Commission on 31 May, we understand that this second change means that all payment plan customers can be reported in aggregate, however we recommend that for clarity the words “who is experiencing payment difficulty” should also be deleted from the requirement.

## **2. Deviation from National Arrangements through the reintroduction of Marketing Code of Conduct**

Considerable effort and cost have already been incurred by the Commission and industry to align the Energy Retail Code (ERC) with the National Energy Retail Rules (the NERR). This work was undertaken in the pursuit of efficiency and ultimately to enable lower costs to be passed through to consumers. Any move away from these harmonised arrangements will cost industry, and ultimately consumers, money. Therefore, we do not support changes that further misalign Victoria from the National Energy Customer Framework.

We also seek clarification on why the Commission has changed its position on the Marketing Code of Conduct (MCoC). In its 2014 decision on harmonisation of the ERC with the NERR, the Commission indicated that the MCoC would be repealed. Although the repeal never eventuated, the decision to incorporate the MCoC into the reporting framework is possibly contrary to the Commission’s requirement under 8A of the ESC Act to consider consistency in regulation between States and on a national basis when making changes. The Commission has not articulated what change in circumstance has necessitated the decision to once again increase focus on the MCoC.

We also see the reintroduction of these clauses from the MCoC into the compliance breach reporting regime as duplication of breaches already provisioned in the Compliance Reporting Schedule (CRS). Table 1 illustrates the obligations in the CRS that are already covered by the MCoC obligations that are proposed to be reintroduced.

We fail to see any material benefit to consumers from reintroducing duplicate reporting of clauses from the MCoC. As consumer protections for marketing and sales behaviours are already covered in Australian Consumer Law and Division 10 of the ERC, we would like to see the Commission take the opportunity to repeal the MCoC in line with its 2014 decision.

**Table 1 –Duplicate reporting of obligation by reintroducing MCoC obligation in the CRS**

ESC Ref	Source and Clause	Brief Obligation Description	Related MCoC Obligation to be reintroduced to CRS	EA Comments why MCoC addition not needed
<b>RB0100</b>	Energy Retail Code  19(1): Responsibilities of designated retailers in response to request for sale of energy	Designated retailers must provide certain information to consumers in connection with standard retail contracts	RB0750 3.1 – Information	Already covered by reporting on RB0100
<b>New &amp; RB1370</b>	Energy Retail Code  61 to 64: Providing information to small customers  15D & 15E Other Requirements	Retailers must provide the required information to consumers in connection with market retail contracts in the prescribed form.  A price and product information statement must be understandable and in plain English	RB0730 3.1 – Information Information & Conduct  RB0750 3.2, 3.3, 3.5, 3.6 Information & Conduct	Already covered by the compliance reporting of these ERC obligations
<b>New</b>	Energy Retail Code  47: Cooling off period and right of withdrawal – market retail contracts	Retailers must include, in each market retail contract it enters into with a small customer, express provisions setting out the rights and obligations in relation to the cooling off period and right of withdrawal.	1, 4 & 8  RB0750 3.2, 3.3, 3.5, 3.6 Information & Conduct  RB0300 2.1 - 2.3 Contact with consumers  RB0750 3.1 – Information	Would be captured by the compliance reporting of this ERC obligation
<b>RB0250</b>	Energy Retail Code  57(1) – Customer Transfers	A retailer must not submit a request for the transfer of a small customer under the relevant Retail Market Procedures unless the retailer has obtained explicit informed consent from the customer to enter into the relevant customer retail contract and the retailer has a customer retail contract in place to enable the sale of energy to the customer at their premises.	RB0110 4.1 & 4.3 Explicit information Consent	Would be captured by the compliance reporting of this ERC obligation

<b>ESC Ref</b>	<b>Source and Clause</b>	<b>Brief Obligation Description</b>	<b>Related MCoC Obligation to be reintroduced to CRS</b>	<b>EA Comments why MCoC addition not needed</b>
<b>RB0050</b>	Retail Licence  Compliance with Law	Must comply with applicable laws	RB0120 6- Marketing and consumer information  RB0730 1- Marketing Representatives	Breach reporting of these MCoC obligations would be reported via this current obligation in the CRS which covers requirements specified the in Privacy Act and ACL.
<b>RB0310</b>	Energy Retail Code  Dispute Resolution Procedures	Retailer must develop... make available...dispute handling procedures. Must be in line with Australian standards.	RB0310 7 – Dispute Resolution Procedures	Breach reporting of this obligation covers the intent specified as per clause 7 of the MCoC
<b>RB0300</b>	Energy Retail Code  No Contact lists and no canvassing or advertising signs	Requirements to keep 'No Contact List' and observe them	RB0740 2.4 & 2.5 - Contact with consumers	Would be captured by the compliance reporting of this ERC obligation

### 3. Proposed Changes to Performance Indicators

EnergyAustralia has concerns with the timing issues that these changes will impose on retailers, both in terms of implementation, and the ongoing requirements around submission of regular reports. These issues are discussed in detail below.

#### Implementation Issues

The Commission's approach to this issue fails to consider the impacts of regulatory decisions on industry, and consequently consumers. The constraints and requirements that regulatory changes impose on retailers should occur before decisions are made. In addition to increasing costs, the expectation that industry can implement system and process changes under such timeframes leads to a rushed approach that compromises the integrity and intent of the regulatory changes.

Setting up reporting on additional performance indicators may be not as simple as it may appear. The Commission's approach appears to assume that:

- a) Current customer billing systems and processes already contain required data in a manner that is easily extracted – the main concern we have is that some key data (e.g. debt levels, payment amounts) change frequently and this makes the timing of running and verifying the report data critical. For example indicator B180, Residential customer with payment plans where the terms of the plan do not cover ongoing use, which will require assessment of the relationship between the plan and any changes to the customer's consumption;
- b) No changes are needed to existing systems to capture the required data – this is particularly the case where point-in-time data needs to be captured for reporting to be carried out, reconciled or audited at a later date. For example indicator D22, Instalment plans covering use, which will require data to be extracted and compared with historical data to determine a trend; and
- c) The required changes are easily interpreted into workable requirements for IT and business teams to implement with immediate effect.

Our understanding is that the reporting requirements will be finalised in late June 2016 and will be effective from 1<sup>st</sup> July 2016, with the first reports due to be provided to the Commission at the end of October 2016. For reports that apply to events or changes in key metrics that occur within the quarterly reporting period (e.g. points a) and b) above), we would need the data to be captured by our systems from the start of the reporting period – that is 1<sup>st</sup> July 2016. Other reports may be able to be implemented just prior to the date that we need to compile the reports to submit to the Commission – that is late October 2016. In the first case, the timeframe is impossible, in the second scenario it will still be incredibly difficult for us to be able to build, deploy and test these reports between late June and late October 2016.

We believe a number of the proposed new performance indicators will be difficult to implement for the reasons listed above. EnergyAustralia's system architects have advised that some of the reporting requirements, particularly those relating to the Payment Difficulties framework, are unlikely to be available in the timeframes set out by the Commission. The following indicators are of specific concern:

**Table 2 – Performance Indicators implementation considerations**

ESC Ref	Indicator	Summary of Requirements	Implementation considerations
<b>B180</b>	Residential customer falling behind on payment	The number of disconnection notices issued where the customer has no pre-existing debt	<p><b>Timing constraint</b></p> <p>EnergyAustralia will require further time determine how (or if) we can to differentiate between existing and new customers where the notice was issued in respect of a debt which occurred prior to the commencement of the guideline.</p>
<b>D21</b>	Instalment payment plans not covering use	Residential customer with payment plans where the terms of the plan do not cover ongoing use	<p><b>Interpretation clarity required &amp; timing constraint</b></p> <p>Very difficult to capture and track as Hardship customers can be on bespoke arrangements. Require clarity on what this indicator will cover.</p> <p>A change like this may require a process (and system) change to be able to indicate payment plans that meet this condition.</p>
<b>D22</b>	Instalment Plans covering use	Residential customer with payment plans covering ongoing use. Split over customers meeting the terms and those not meeting the terms of the plan	<p><b>Timing constraint</b></p> <p>Requires new reporting logic to capture and extract this data at monthly intervals</p> <ul style="list-style-type: none"> <li>A) Plans covering ongoing use</li> <li>B) Customers meeting the terms of the plan</li> <li>C) Customers not meeting terms compared with remaining debt which remains steady</li> <li>D) Customer is not meeting the terms of the plan and the debt reduces</li> </ul> <p>This indicator assumes that at monthly intervals, the data needs to be extracted, stored and compared with the current debt and historical trending of the debt. A change of this nature is extremely complicated and subject to questions of accuracy if not correctly implemented.</p> <p>There is also the consideration of the handling and storage of the raw data that supports the data request for the performance indicator. Once extracted from customer systems, it would need to be stored (and potentially retrieved for auditing purposes) to reflect the point in time data.</p> <p>Given the varied data streams (e.g. Current Debt, History Debt, Payment History) reports and files like this require, further consideration of the IT resources and processes to manage this, need to be identified, costed and implemented.</p>
<b>D23</b>	Duration of Instalment Payment Plans	<p>Numbers of customers on instalment plans with a duration of:</p> <ul style="list-style-type: none"> <li>• 6months</li> <li>• 6 to 12 months,</li> <li>• 12 to 24 months</li> <li>• More than 24 months</li> </ul>	<p><b>Interpretation clarity required</b></p> <p>We require clarification on what is meant by "duration". For example, does it refer to:</p> <ul style="list-style-type: none"> <li>• How long the plan was set up for?</li> <li>• How long the customer has been on the plan?</li> <li>• Is a recalculation of the payment amount counted as a new plan?</li> </ul> <p>Depending on how systems are designed a recalculation could be counted as a 'new plan'. This would alter the results of customers reported on in this indicator and provide the Commission varied results for customers reported on this indicator).</p>
<b>D24</b>	Debt on entry to instalment payment plans	<p>The debt (outstanding over 90 days) for customers entering a payment plans</p> <ul style="list-style-type: none"> <li>• Less than \$300</li> <li>• \$300 to \$1000</li> <li>• Over \$100</li> </ul>	<p><b>Timing constraint</b></p> <p>An indicator like this requires the identification and capturing of many specific data requirements.</p> <p>Time to scope and create the logic to report on this is needed.</p>

Retail systems, including the mechanisms used to report the data, are complex, and in the case for EnergyAustralia, have been designed with existing regulatory requirements in mind. As such, IT change processes and governance controls are needed to ensure our systems and the customer data they contain are subject to a rigorous change approval process.

### Changes to Reporting Timeframes

The second timing issue which occurs is the impact to retailer reporting calendars. We acknowledge that the Commission has statutory reporting timeframes under recent amendments to the Electricity Industry Act; however, we have concerns that these timeframes will place unachievable obligations on retailers in terms of the submission of regular reports. Where retailers previously reported biannually, two months after the end of the reporting period, the proposed guideline requires quarterly reporting with a one month lead time. Such changes will have impacts on reporting processes and disregard the impact on retailers' reporting commitments in other jurisdictions.

#### 4. Conclusion

We are surprised that the Commission was not in a position to discuss the recent legislative changes with Government and make a reasonable provision for the operational requirements of the entities that they regulate. EnergyAustralia will provide any additional information the Commission requires to understand any of the interpretation or implementation issues raised. We aim to put suitable arrangements in place to provide alternative data sets to assist the Commission where necessary.

We acknowledge the importance of establishing a baseline to measure the success of the new hardship framework however the draft decision on the guideline does require further consideration to ensure that:

- there is not unnecessary duplication of reporting (e.g. MCoC);
- changes to performance indicators are universally understood;
- the indicator provides a mechanism that is useful in monitoring and measuring the new framework; and
- appropriate time is provided to implement the required changes.

If you have any questions on this submission, please contact Joe Kremzer .

Regards

**Joe Kremzer**

Industry Regulation Lead