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Dear Commissioners

ESC Energy Retail Code of Practice Review

EnergyAustralia is one of Australia's largest energy companies with around 2.4 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory, of which around 22k customers are supported under our hardship program (EnergyAssist). EnergyAustralia owns, contracts, and operates a diversified energy generation portfolio that includes coal, gas, battery storage, demand response, solar, and wind assets. Combined, these assets comprise 4,500MW of generation capacity.

EnergyAustralia welcomes the opportunity to comment on the ESC's review into the Energy Retail Code of Practice (*the Review*).

Generally, EnergyAustralia is open to changes to the Energy Retail Code of Practice (ERCoP) where they deliver real benefits to customers. Equally however, we are cognisant that implementing the changes, especially where they involve changes to our billing system, will involve material cost that will be likely be passed onto our entire customer base, raising energy costs for our customers at a time when the cost-of-living crisis is acute. This places a strong onus on the ESC to only proceed with changes where there is strong evidence of a problem to be solved, and a clear connection between the proposed change to resolving the problem. We address this specifically for each of the proposals in our submission below where relevant, along with our views on the specifics of each of the proposals.

Our other general point is that the implementation timeframe of 6 months is inadequate given the scope of changes proposed. We will provide an estimate of the timeframe required, when there is greater clarity of the changes in the draft decision, but based on the Issues Paper, the changes would require at least 12 months to implement.

1. Family violence protections

<u>Avoidance of repeated disclosures of a customer's experience of family violence</u>

Comparing clause 151 of the ERCoP, and rule 76C of the National Energy Retail Rules (Rules), there does not appear to be material differences, so we seek clarity on the specifics of the ESC's proposed changes.

Expanding the definition of family violence to include carers and kinship relationships

On expanding the definition of family violence to include carers and Aboriginal and Torres Strait Islander kinship relationships, we support the intent of this change to ensure that the family violence protections cover affected customers impacted by violence from non-traditional family relationships. However, we consider that the current definition already covers these new relationships sufficiently. Specifically, the definition of *family violence* refers to an existing definition in the *Family Violence Protection Act 2008.* This definition has regard to the circumstances of the relationship including:

- "the cultural recognition of the relationship as being like family…"[1]
- "the provision of any responsibility or care…"[2]

We also recommend that the ESC continue to define the term family violence by reference to the *Family Violence Protection Act* to ensure that it maintains consistency with the latest policy developments and legislative changes regarding family violence.

Ensuring the disclosure of family violence does not adversely impact their supply of energy

If the intent of this proposal is to ensure that affected customers are not discriminated against in recommending plans or servicing a customer, then we fully support this position.

Disclosing affected customer information when required by law

We ask the ESCV to replicate section 76G(2) of the Rules. This provides that a Retailer can disclose affected customer information without the consent of the affected customer, where the retailer is required to by law or by lawful requirement of any governmental body etc. This is an appropriate and important exception which should be recognised in the ERCOP to ensure that Retailers are not exposed to potential enforcement action for breaching the ERCOP where they are meeting legal obligations under other legislation.

2. Payment Difficulty Framework

EnergyAustralia is largely supportive of the proposed changes to the Payment Difficulty Framework (PDF). We can see benefit in increased training requirements to improve customer outcomes when accessing assistance under the PDF, and we agree with the removal of the 6-month debt hold requirements. However, we are less supportive of the need for changes to the Utility Relief Grant Scheme (URGS), and in prescribing requirements for energy efficiency obligations.

Training requirements

We have processes in place to ensure that any customer identifying as requiring assistance is provided assistance under our vulnerable customer program, EnergyAssist, and this includes training of all staff that may have contact with a customer. We support the consideration that increased training requirements within the PDF could achieve better outcomes for customers of any retailer, but would urge the ESC to consider the merits of guidelines or ESC-assisted training may be more targeted than prescriptive requirements in the ERCoP; as changes to the Code would impose work on all retailers, instead of those not providing suitable services.

[1] Section 8 (3)(d)
[2] Section 8 (3)(d)

Obligation to place debt on hold for six-months

We support the removal of this obligation, as we believe this obligation being offered as an option to all customers results, *in most cases*, with customers being in a worse position at the end of the debt hold due to the accumulation of debt. We request that the PDF allow for retailer discretion in being able to offer this payment option, where it is warranted.

Accessibility of Utility Relief Grants (URGS) information

In contrast to the Commission's observations that there might still be barriers to URGS, or insufficient help provided by Retailers, our data shows that the changes to the URGS application process following the Commission's *Supporting Customers Through the Pandemic* reforms have been a great success.

EnergyAustralia has seen successful URGS applications doubling since the retailer assistance requirements were implemented (37% to 80% success rate). This is a successful outcome for both customers and retailers who both have the benefit of less outstanding debt. In view of this, it is unclear why there needs to be any changes to the URGS process.

Ultimately, the imperative of retailers seeking to support customers, and manage and minimise outstanding debt, is significant motivation to ensure that customers are aware of their URGS entitlements. In EnergyAustralia's view it is not a lack of information from the retailer or a lack of retailer effort that is causing customers to not receive their URGS entitlements. Rather, and as advised in our submission to the ESC's pandemic reforms[3], the Department of Health and Human Services (DHHS) portal and application form are the main problem. We suggest the ESC work with the DHHS to identify what questions and criteria are the common hurdles for successful applications and consider if there are changes that can be made at this level to improve the success rate.

Assistance and information on energy efficiency

EnergyAustralia appreciates that energy efficiency knowledge and upgrades are crucial to minimising the ongoing costs of energy, and that this advice should be provided to customers experiencing payment difficulty. However, we do not believe this should necessarily be imposed upon retailers, primarily as the information and advice is reliant on an in-depth understanding of the customer's premises/appliances/usage patterns.

While we have some knowledge of this information, the upskilling required and expected call handling times to effectively provide this service will be a significant impost on retailers.

Referrals to the VEU directly are not suitable for most PDF customers, as the site is not user friendly, there is limited information provided, and it is mainly a referral to all accredited VEU providers, without any rating or preference of provider information.

EnergyAustralia believes this advice would be better provided by an accredited or suitable trained organisation, and we suggest the ESC consider what organisation may be best suited to handle these referrals, e.g. this could be referral to a community organisation, a VEU accredited organisation, or an initiative established by the Victorian Government for this specific purpose.

[3] Supporting Customers through the Pandemic - EnergyAustralia submission

3. Disconnecting from gas

We anticipate that Retailers have implemented processes around gas abolishment, given that customers are seeking gas abolishment now. The Commission should survey existing processes. This will inform whether the Commission needs to regulate gas abolishment under the ERCoP, and what best and common practice in the industry is. We set out EnergyAustralia's process below.

At a high level, EnergyAustralia's gas abolishment process is customer-focussed and involves the following:

- Where an account holder or other party (landlord) orders a gas abolishment, EnergyAustralia clearly discloses the charges for gas abolishment and seeks the consent of the customer before proceeding. This communication can occur over the phone or via email. We proceed to close the gas account and issue the final bill before gas abolishment occurs.

- Where a non-account holder has ordered the gas abolishment, we seek to contact the account holder to inform them, close the account and final bill. We will generally not proceed, unless contact is made. Where there is no contact, we carefully follow a process in accordance with applicable legal requirements.

- EnergyAustralia does not charge any additional retail charges for gas abolishment, other than an effective pass-through of distributor fees.

- EnergyAustralia will generally issue a gas abolishment order to the distributor as soon as practicable. If the Commission were to impose a timeframe requirement in which this should occur, we recommend a best endeavours obligation to mirror the distributor's obligation, and also the timeframe should clearly start from when the process of consent and contacting the account holder is complete, as this can be protracted.

4. Energy Bill Information requirements

We acknowledge the desire to produce energy bills that suit customer needs, and appreciate the ESC's consideration of a range of options to achieve this. Ultimately, we believe the best outcome would be to require the pertinent information (established based on customer preference) and then leave the format and presentation up to the energy retailer.

The AER's Billing Guideline has created a 'consistent' bill between retailers, and they are currently conducting research into whether this has improved understanding by customers. EnergyAustralia recommends delaying any decision to adopt the Billing Guideline until this research is completed. We can appreciate the benefits of a consistent bill across all jurisdictions, and as such we have proactively implemented the Billing Guideline requirements in Victoria. However, we harbour reservations in Victoria mandating the Billing Guideline, because it will create inefficiencies as Victoria then needs to mirror future changes to the Guideline, along with Victoria then deciding to make individual changes. If the ESC wants to progress with aligning the billing requirements to the AER Billing Guideline, we request that the regulation is amended to ensure that changes to the ERCoP are not required every time a Billing Guideline update is made.

We can understand the desire to increase the identification of the Energy and Water Ombudsman Victoria's (EWOV) contact information, to ensure that customers who are unaware of the scheme can become aware of it. However, we are concerned that placing this information on a bill will drive contacts to EWOV before a

complaint is lodged with the Retailer first. Each time an energy retailer's customer makes contact with EWOV there is a cost incurred, regardless of whether the customer has complained to the retailer first. Any cost of unnecessary referrals will increase the costs to serve of retailers and will likely be passed on to customers. The ESC should consider this possible impact of presenting EWOV information on the first page of a bill. We ask the ESC to work with retailers and EWOV on alternative means to providing this information, in a way that does not deter the customer's initial complaint to their energy retailer.

We agree that the best offer information should be readily available at all common customer interactions including their energy bill, whether that be via email, physical bill, or web/app energy retailer platform. However, improving the prominence of best offer information might not resolve concerns around the perceived low uptake of best offers. i.e. Customers may not be responding because of other reasons, such as a lack of interest or the best offer message not reaching a value threshold to elicit a response. We believe that further regulatory requirements on best offer information on bills, should not be adopted unless there is a clear connection that it will result in better uptake of the best offer. We request the ESC to consider conducting research into why customers are not actioning a best offer notification before regulating any change to where this information is.

5. Communicating and fulfilling best offer obligations

Availability of best offers

EnergyAustralia is not aware of customer concerns around best offers being unavailable when a customer contacts us seeking the best offer. We urge the Commission to quantify the evidence that points to an issue and to consider whether the issue is material. We also ask the Commission to understand the details of any complaint – for example, the length of time between the customer viewing the best offer message and requesting it.

Reviewing the definition of 'Restricted Plans'

EnergyAustralia does not treat 'invitation only' plans as Restricted Plans so that they are excluded from the plans that can be the customer's best offer. Broadly, we understand that the intent is that Restricted Plans are plans which are offered to a customer because the customer has a particular attribute. To provide more clarity to industry, we suggest that the Commission could add examples of what are *not* Restricted Plans.

Deemed best offers must be determined without including discounts for bundled plans

EnergyAustralia is applying the best offer calculation in line with the Commission's intent, to exclude offers with discounts for bundling electricity and gas.

Best offer terms and conditions are long and confusing

We are not aware of any complaints around best offer language being confusing or verbose. If the ESC were to introduce any obligations, we encourage a principles-based obligation to use plain language, rather than prescriptive language or verbatim requirements. This would address any perceived concerns while allowing sufficient flexibility for call centre agents to tailor their language to an individual customer.

Annual usage consumption calculation

EnergyAustralia has not experienced any issues with the annual usage consumption calculation, either through a lack of clarity around how to calculate it, or from customer complaints.

Providing accurate information to Vic Energy Compare

EnergyAustralia welcomes further clarification from the ESC to address Retailers "gaming" the ranking logic on Vic Energy Compare. This has happened in the past, where retailers enter upfront and one-off credits as discounts. This means that Vic Energy Compare takes that one off credit into account when ranking offers, thereby boosting that plan's ranking. We consider this contradicts the intent behind the ranking and is potentially misleading to customers.

Timeframe for removal of offers off Vic Energy Compare

EnergyAustralia removes discontinued offers as soon as practicable, and well within 48 hours. We are not aware of any customer complaints resulting from delays due to Retailers in this process. However, after we submit the change to Vic Energy Compare we are not privy to how long Vic Energy Compare takes to update its website. If there is evidence of a problem from customer complaints, we ask the Commission to investigate the timeframes at Vic Energy Compare's end, as this could be the root cause of any issues.

Failure to honour an offer type displayed on Victorian Energy Compare

EnergyAustralia is not aware of any customer complaints relating to a customer seeking an offer they have been presented on Vic Energy Compare and not being able to switch to that offer. We note that on face value, the issue might be complicated by different offer channels.

For instance, there could be a potential perceived issue where the offer that the customer sees, is only available through a third party e.g. iSelect. The customer might contact EnergyAustralia for that offer, where EA never directly sold the offer or has withdrawn that offer but the third party has been slow to withdraw it. In this case, the customer can still access the offer through the third party, so we do not consider there is a failure to honour the offer.

6. Pricing and Contract protections

Extending the bill frequency obligation to Market Retail Contracts

EnergyAustralia does not support changes to mandate the bill frequency for Market Retail Contracts. The Standing Retail Contract offers the mandatory billing frequency of three months as a fall-back regulated offer. In this context of a fall-back, the Retailer and a customer should be able to agree to different products in a competitive market under a market offer, including different billing frequency.

We also note that Retailers already have strong incentives to bill on a three-month frequency:

- There are limits on a Retailer's ability to recover undercharged amounts to four months before the customer is notified of the undercharging. Retailers therefore have the incentive to bill a customer frequently, accurately, and within 4 months to be able to notify and recover undercharged amounts in accordance with requirements.

- It reduces bill shock for customers by decreasing the size of their bill.

- It reduces risk for Retailers in minimising debt.

Aligning the frequency of best offers and bills to assist Retailers

We appreciate the Commission's efforts to clarify the billing frequency and best offer frequency, however, in practice we do not consider there are significant issues around inconsistency with the two obligations. Instead, changing the obligations now could inadvertently introduce ambiguity and fail to reflect exceptions.

In summary, EnergyAustralia understands the obligations and potential issues are:

- Retailers must have the best offer message on every bill or bill summary (clause 110(a))
- *For standard retail contracts, electricity and gas bills* must be issued at least once every three months, but a customer can agree to another billing cycle by providing explicit informed consent (clause 62)
- The obligation to provide the best offer message on a bill or bill summary must occur:
    - At least once every three months for electricity, and once every four months for gas. This best offer message timing is:
        - consistent with the bill frequency obligations that apply to standard retail contracts for electricity, both are three months
        - The only issue is where complying with four months for best offer *for gas*, is not compliant with the three months' billing frequency for *gas standard retail contracts.* The four months in the best offer message frequency obligation for gas could be changed to three months (clause 110(1)(b)). However, Retailers are familiar with the current provisions, and this does not cause significant confusion or concern. We see no pressing need to change the ERCOP on this issue.
        - We are concerned if changes are made, they could require extra compliance cost to interpret, and inadvertently fail to reflect subtle exceptions. These exceptions are:
            - Best offer message does not need to be at least once every 3 or 4 months for *market retail contracts for both electricity and gas*, where another billing cycle has been agreed (clause 110(1)(c). It can be longer.
            - Best offer message frequency (and billing frequency) does not need to be at least once every 3 or 4 months for *standard retail contracts for electricity and gas, where another billing cycle has been agreed* (clause 110(1)(c), clause 62(2))).

If the Commission decides to change the ERCOP, the above exceptions need to be clearly maintained. We are also open to clear exemptions on best offer messaging to recognise cases where bills are delayed for issues beyond retailer control.

7. Clarifying unclear terms

Clarifying when standard offer can be used

The Commission's problem statement appears to be that customers are potentially misled where a Retailer uses the term standing offer, to advertise market offers that are priced at the VDO level. We support changes to the ERCOP to prohibit this practice to address any potential customer confusion.

Clarifying "pay-by date" and extending the pay by date for payment plans

We do not have issue with the lack of definition around "pay-by-date", as we interpret it according to its plain or common sense meaning i.e. the date a customer needs to pay by.

We seek clarity on the Commission's question around whether the pay-by-date should be extended when a retail customer has entered into a payment arrangement:

- Where the pay-by date is extended for a bill under Standard Assistance (clause 125(2)(c)), we implement this pay extension in practice, after we have agreed to it with the customer verbally. We have had no issues with customers not understanding the new extended date. There is no need to re-issue the bill with the new pay-by date, this would involve significant costs.

- With regard to Tailored Assistance, the payment proposals under clause 130 would prevail over any pay-by-date on customer's bills so we do not see any related concerns.

Clarifying "Arrange a disconnection"

We understand the Commission's concern relates to Retailers raising a service order (arranging a disconnection), and then a customer subsequently entering into a payment plan, and potential lack of clarity around the Retailer being expected to then cancel the service order. In this scenario, EnergyAustralia is cancelling the service order. However, we recognise that a strict interpretation of the requirement might provide a different view. We seek more clarity in the Commission's draft decision on the exact amendments and whether they are in the ERCOP or the Electricity Industry Act e.g. section 40SS.

Additional retail charges

The Commission has not provided evidence that there is a problem with customers being charged unexpected retail charges without prior adequate disclosure. We ask the Commission to obtain data on the number of complaints around additional retail charges e.g. merchant fees (as distinct from complaints about high bills). This will inform the Commission on whether there is a problem that needs to be addressed.

If the Commission's concerns are about additional retail charges regarding gas abolishment, then the Commission should focus its changes on that, we discuss gas abolishment in section 3.

We also note that there are a number of existing protections in the ERCOP that apply to additional retail charges and so it is unclear whether changes to the ERCOP are required. These existing protections appear to address the Commission's perceived problem. They are:

- To provide adequate disclosure, retailers must provide Required Information on all charges and how they may be changed, before the customer enters into the market retail contract, or as soon as

practicable after (in a written disclosure or a "welcome pack") (clause 45, 46, and 47(1)(a)). This information provides adequate disclosure of additional retail charges at the point of sale. Further a customer can exercise their cooling off period, as an additional protection.

- If there are further additional retail charges during the customer's tenure, due to a specific service, for example, a meter exchange, these charges are advised before they are charged, and consent is sought.

- For both market retail contracts and standing retail contracts, the amount of the additional retail charge must be fair and reasonable (clause 77(2)), protecting against "price gouging" on retail charges and retail charges without any basis.

- For standing retail contracts, the additional retail charge must be provided for in the *ERCOP* itself (clause 77(1)(b))

- A retailer is currently required to set out all tariffs and charges payable by a small customer in a market retail contract (clause 92(2)) and must also give notice to the customer of any variation to the charges.

In view of the above, we do not consider there is a need for the ERCOP to specify that additional retail charges must be set out in a market retail contract, as this is already provided for under clause 92(2). Further, existing Required Information provides disclosure on additional Retail Charges. We also consider any new disclosure requirements have limited value given that information might not be relevant to the customer (e.g. meter replacement charges where the customer never replaces a meter) and charges change over time such that the information will quickly become obsolete.

<u>Requirement to publish changes of tariffs and charges in newspapers</u>

We support the Commission's proposal to remove the current obligation to publish variations to tariffs and charges in a newspaper for the following reasons:

- This will align with the removal of the corresponding obligation under the legislation.

- We believe that publication of this information on Retailers' websites is a more accessible form of information in the vast majority of cases.

- We also question the number of customers that rely on newspaper notification i.e. a customer may subscribe to a print newspaper, but whether they rely on the change notification is a different question. We doubt this because Retailers do not need to publish a notification in every newspaper.

- Even if there were some customers that relied on the newspaper notification, the secondary notification in the customer's next bill will be sufficient fall-back. Further, this bill can be a posted bill which addresses online accessibility concerns.

General updates – Embedded Networks

Licensed retailers selling within embedded networks

The Commission states it is considering regulating 'retailers selling electricity within embedded networks' and amending existing provisions. Our understanding is that retailers selling electricity within embedded networks are already covered by the ERCoP, as there is no 'carve out' for them. This is a complex topic to understand and we welcome a discussion with the Commission.

Extending the family violence protections, and bill change alerts to embedded networks

We support the extension of the family violence protections to exempt businesses selling to embedded network customers, as the benefits in protecting affected customers are critical, and likely outweigh the compliance costs.

Regarding bill change alerts, we note that similar requirements already apply to embedded network businesses and question whether changes are required. Specifically, corresponding obligations already apply to embedded network exempt persons to notify customers about price changes (clause 92(3) and (4)) and benefit changes (clause 98). These requirements cover notice to embedded network customers, and where they are different from clause 106 which applies to general customers, this is likely intentional. We therefore do not consider clause 106 needs to be extended to embedded network customers/exempt persons.

For example, under clause 106, a bill change alert must state a customer may use a price comparator, and the name and web address (Vic Energy Compare). This obligation would have no value, and would be potentially misleading, if it were to apply to customers in embedded networks (even where they are supplied by licensed retailers). This is because the offers published on a comparator:

- Do not include embedded network plans, as they fall within the definition of a Restricted Plan, so a customer visiting the comparator site will never be presented with a plan that can service them.
- Are designed for non-embedded network customers and so are irrelevant to embedded network customers. Retailers presented on the comparator site might not even sell to embedded network customers.

General updates – Other

Presumed receipt of written communications

For context, we generally prefer framing obligations around the timing of notifications, in terms of when they are sent, and not when they are received (even if deemed receipt clauses are made). For example, clause 40(10) provides a retailer must send an energy fact sheet within 5 business days of a customer's request. This is clearer and more certain to comply with, as a Retailer can verify when it has sent a notice, compared to when a customer has received it, which is ultimately not easily verified. We also note that the Commission can factor in postage times, simply by adding extra days for postage, to make the date the notice must be sent earlier.

We do however acknowledge there are obligations in the Code, which reference receipt by a customer. For instance, under clause 106 bill change alerts must be given "at least five business days before the benefit change or price change will take effect", and similarly, clause 100(3). Theoretically, in these instances a presumed receipt clause could provide some clarity, however we strongly disagree with the adoption of one for the ERCoP, for all types of delivery e.g. in person, post or email.

With regard to postage, we disagree with a presumed receipt clause for the following reasons.

Firstly, current clause 139(3) provides that "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". We recommend the Commission should review any legislation that already might apply as this will inform whether a presumed receipt clause is necessary, including the model terms and conditions in the ERCoP. We do not consider a presumed receipt clause is needed. We would welcome a meeting with the Commission to discuss this more.

Secondly, the implications of a presumed receipt clause which mirrors the Electricity Distribution Code of Practice and deems a period of four business days, is very significant and should not be taken lightly.

If the ESC were to lengthen the presumed receipt, for example, from two business days to four business days, this would have major implications on Retailer ability to comply with the Bill change alert's 5 business day notice period for price changes. This requires Retailers to provide 5 business days' notice of price change before the price change takes effect.

A longer deemed postage time would mean more time is "taken" in the posting process, which then shortens the time Retailers have between: receiving the final VDO price (which is an input into best offer messaging which must be placed on the bill change alert); setting and implementing new prices after distribution network service providers change their network tariffs; and preparing the alerts for sending. This is an extensive process involving many teams across our business and external vendors like our billing provider and mailing house. Timeframes are already extremely tight and internal and external teams work weekends. Therefore, effectively removing even a day in the timeline could render Retailer's non-compliant.

If the Commission is considering a presumed receipt clause because of the other proposed change to the disconnection warning notice below, we suggest the Commission directly address that issue, rather than make changes that will impact other obligations like the bill change alert in the ERCoP.

Thirdly, we also expect that some retailers are deeming the receipt of the letter as two business days after postage, because of clause 17 of the model terms and conditions in the ERCOP. Therefore, for these retailers expanding from two to four business days, means longer "postage" time, which would shorten the time they have considerably for internal processes, creating serious risks of non-compliance and subjecting Retailers to unreasonable time pressures.

For email, the Electricity Distribution Code of Practice refers to "the time determined in accordance with the *Electronic Transactions (Victoria) Act 2000.* We ask the Commission to establish whether this legislation

would apply anyway to emails sent by Retailers, in which case referencing this legislation in the ERCOP is redundant.

Changing "after the issue of the disconnection warning notice" to "after the receipt of the disconnection warning notice"

We disagree with the change to this wording. As above, generally, we consider framing obligations in terms of when they are received by customers is less clear and less certain to comply with as a Retailer, compared to obligations that are framed in terms of when the notice is sent (even if presumed receipt clauses are made). We also note that the Commission can factor in postage times, simply by adding extra days for postage, to make the date the notice must be sent earlier.

Bulk hot water formulas

We do not have issue with the current bulk hot water formulas, and would recommend not changing them to maintain consistency and provide certainty to industry. In the absence of clear evidence of a problem, the Commission should not change these formulas as there would be a cost in changing the billing calculation logic in billing systems.

If you would like to discuss this submission, please contact Selena on [redacted] or [redacted].

Regards

Selena Liu

Regulatory Affairs Lead