

# Changing the back-billing rules for retail energy customers

Draft decision

28 February 2020

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# Executive summary

In December 2019, the Victorian Government provided terms of reference to the commission to implement the government's commitment to reduce the allowable back-billing period for retailers from nine to four months. This draft decision sets out proposed amendments to the energy codes to implement the government's commitment.

We propose to make equivalent obligations for energy distributors and retailers to ensure customers are not back-billed for more than four months when they are not at fault.

We seek stakeholder feedback on our proposed amendments to the energy codes and ask for submissions by **27 March 2020**. We intend to publish a final decision by the end of June 2020 and require that the new allowable back-billing period take effect from 1 January 2021.

## Our draft decisions

### Draft decision 1: New back-billing rule for retailers

Retailers can only recover any amount undercharged in the four months before they notify the customer, unless the undercharging was a result of the customer's fault or unlawful act or omission.

### Draft decision 2: New back-billing rule for distributors

An electricity or gas distributor is not permitted to recover charges from a retailer if the retailer is unable to recover those charges from a customer.

### Draft decision 3: Commencement date of code amendments

The code amendments giving effect to the back-billing rule change will take effect on 1 January 2021.

## We have proposed amendments to the energy codes

To give effect to our draft decisions, we are proposing changes to three energy codes. To summarise, we are proposing to:

- Amend subclause 30(2)(a) of the Energy Retail Code to change the allowable back-billing period from nine months to four months
- Create a new clause 15A in the Electricity Distribution Code to limit the circumstances when an electricity distributor may recover charges from a retailer, to align with retailers' obligations under the Energy Retail Code

- Create a new clause 12.3 in the Gas Distribution System Code to limit the circumstances when a gas distributor may recover charges from a retailer, to align with retailers' obligations under the Energy Retail Code.

## **Timeline for implementation**

The key dates relating to this draft decision are as follow:

- 27 March 2020 — Submissions to draft decision close
- June 2020 — Final decision released
- 1 January 2021 — Code amendments come into effect.

## **How to make a submission**

We are seeking feedback on our draft decision. Submissions should be made by **5pm on 27 March 2020**.

To make a submission on this draft decision please go to Engage Victoria's website:

<https://engage.vic.gov.au/>.

Submissions can also be sent by mail to:

Submission to 'changing the back-billing rules for retail energy customers' consultation  
Essential Services Commission  
Level 37, 2 Lonsdale Street  
Melbourne, Victoria 3000

Submissions will be published on the commission's website, except for any information that is commercially sensitive or confidential. Submissions should clearly identify which information is sensitive or confidential.

# 1. Context and draft decisions

This chapter provides a brief overview of the Victorian Government's request to the commission, the current back-billing rules and our draft decisions.

## 1.1. Energy Fairness Plan commitment to reduce the allowable back-billing period to four months

In November 2018, the government announced as a part of its Energy Fairness Plan that the allowable period an energy retailer should be able to recover undercharged amounts from a customer is four months. The government considered that 'it is unfair to have to pay a bill for nine months' worth of energy when you have been undercharged by the retailer and have done nothing wrong'.<sup>1</sup>

On 17 December 2019, the government provided us with terms of reference to implement this commitment (set out in appendix A). The government asked that we vary the Energy Retail Code so that the new four-month period for which undercharged amounts may be recovered commences from 1 July 2020.

## 1.2. This change will help continue to build trust in the market

We consider the change in the allowable back-billing period is consistent with broader retail market reforms made by the commission that improve and build trust in the market. In particular, the link between billing errors, back-billing and consumer confidence in the market is demonstrated by complaint data from the Energy and Water Ombudsman (Victoria). In 2018-19, billing complaints continued to be the main reason why customers complained about their energy retailer to the ombudsman.<sup>2</sup> In the October to December 2019 quarter, the Energy and Water Ombudsman (Victoria) received 294 cases about back-billing, which was 40 per cent higher than the previous quarter.<sup>3</sup> This was largely driven by one gas retailer's systemic billing error.<sup>4</sup>

We consider customers are more likely to have a positive relationship with their energy retailer if they are not subject to significant bill shock when they are not the cause of the back-billing. We also consider this change would reduce customer bill shock due to the compressed billing recovery

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<sup>1</sup> Victorian Labor Party 2018, [Cracking down on dodgy energy retailers – Labor's energy fairness plan](#), November.

<sup>2</sup> Energy and Water Ombudsman (Victoria) 2019, [2019 Annual report](#), October.

<sup>3</sup> Energy and Water Ombudsman (Victoria) 2020, Res Online: 1 October 2019 to 31 December 2019, February, p. 5.

<sup>4</sup> Energy and Water Ombudsman (Victoria) 2020, Res Online: 1 October 2019 to 31 December 2019, February, p. 5.

period and would deliver more accurate bills as energy companies are likely to be incentivised to develop and maintain compliant billing systems due to the reduced recovery period limit.

### **1.3. The current framework for back-billing**

The Energy Retail Code sets out the time period for which energy retailers can recover an undercharged amount. Currently, an energy retailer may recover up to a nine-month period from its customer, if the undercharging had occurred for nine months or more and was not the customer's fault (for example, because the customer denied the retailer meter access) or caused by an unlawful act or omission of the customer.<sup>5</sup>

For distribution businesses, the Victorian electricity and gas distribution codes do not currently provide explicit restrictions on the length of time that distributors can back-bill retailers for undercharged, or not charged, network charges. Our understanding is that back-billing arrangements between retailers and distributors are set out in use-of system agreements between these parties.

### **1.4. We commenced consultation on the change in December 2019**

As part of our broader reforms in the retail energy market, in December 2019, we published a draft decision ensuring energy contracts are clear and fair.<sup>6</sup> As part of that draft decision, we commenced our consultation with retailers and consumer organisations on amendments to the Energy Retail Code to change the allowable back-billing period.<sup>7</sup>

In January 2020, we received submissions from retailers and consumer organisations on our draft decision.<sup>8</sup> The key concern raised by retailers was that without equivalent obligations on distribution businesses, retailers may be required to pay distribution businesses for undercharged amounts that they cannot then recover from their customers.<sup>9</sup> Several retailers proposed that the

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<sup>5</sup> Energy Retail Code, Clause 30(2)(a).

<sup>6</sup> Essential Services Commission 2019, Ensuring energy contracts are clear and fair: Draft decision, 10 December

<sup>7</sup> Essential Services Commission 2019, Ensuring energy contracts are clear and fair: Draft decision, 10 December, pp. 53-54

<sup>8</sup> Submissions are available at: <https://www.esc.vic.gov.au/electricity-and-gas/inquiries-studies-and-reviews/electricity-and-gas-retail-markets-review-implementation-2018/ensuring-contracts-are-clear-and-fair-2019>

<sup>9</sup> 1<sup>st</sup> Energy, Amaysim, Australian Energy Council, Lumo Energy & Red Energy, Origin Energy, Simply Energy, Tango Energy, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' draft decision, January 2020.

commission replicate requirements in the National Electricity Rules and National Gas Rules that apply in other jurisdictions.<sup>10</sup>

## **1.5. We have made draft decisions on the back-billing rule change**

To give effect to the government’s commitment to reduce back-billing to four months, we consider that the Energy Retail Code must be amended so that retailers are restricted to four months of back-billing instead of nine months of back-billing. This obligation also applies to exempt persons in the categories specified in clause 30(6) of the Energy Retail Code.<sup>11</sup> We do not propose to change the undercharging provisions of the Energy Retail Code for situations where back-billing occurs due to a customer’s fault or unlawful act or omission.

### **Draft decision 1: New back-billing rule for retailers**

Retailers may only recover any amount undercharged in the four months before they notify the customer, unless the undercharging was a result of the customer’s fault or unlawful act or omission.

To ensure customers are not back-billed for more than four months when they are not at fault, we consider that new obligations should also be placed on Victorian energy distributors in the Electricity Distribution Code and Gas Distribution System Code. This would allow both retailers and distributors to recover up to four months of previously undercharged, or not charged, amounts. This change would also ensure that retailers are not invoiced by distributors for past undercharged network charges beyond four months that the retailer cannot then recover from the customer.

### **Draft decision 2: New back-billing rule for distributors**

An electricity or gas distributor is not permitted to recover charges from a retailer if the retailer is unable to recover those charges from a customer.

In the following chapter, we outline the amendments we are proposing to make to the energy codes to implement our draft decisions.

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<sup>10</sup> AGL, Amaysim, Australian Energy Council, EnergyAustralia, Lumo Energy & Red Energy, Origin Energy and Simply Energy, submissions to the Essential Services Commission ‘ensuring energy contracts are clear and fair’ draft decision, January 2020.

<sup>11</sup> In Victoria, some energy sellers do not require a licence – the majority of exempt sellers are people who supply electricity in an embedded network. Embedded networks may include apartment buildings, caravan parks, retirement villages, shopping centres and rooming houses.



## 2. Amending the energy codes

In Victoria, energy retailers and distributors are required to comply with the energy codes as a condition of their licence.<sup>12</sup>

This chapter introduces proposed amendments to the Energy Retail Code to give effect to the new allowable back-billing period of four months for customers. This chapter also introduces proposed obligations on energy distributors through the Electricity Distribution Code and Gas Distribution System Code that would ensure that a distributor may only invoice a retailer for an amount that the retailer is permitted to recover from the customer under the back-billing rules.

### 2.1. Summary of amendments

To give effect to the government's commitment to reduce the allowable back-billing period to four months, we are proposing changes to several energy codes. To summarise, we are proposing to:

- Amend subclause 30(2)(a) of the Energy Retail Code to change the allowable back-billing period from nine months to four months
- Create a new clause 15A in the Electricity Distribution Code to limit the circumstances when an electricity distributor may recover charges from a retailer, to align with retailers' obligations under the Energy Retail Code.
- Create a new clause 12.3 in the Gas Distribution System Code to limit the circumstances when a gas distributor may recover charges from a retailer, to align with retailers' obligations under the Energy Retail Code.

The draft code amendments are provided in appendixes B, C and D.

We consider that our proposed amendments would reduce customer bill shock due to the compressed billing recovery period. Retailers and distributors may also be incentivised to deliver customers with more accurate bills in response to the new recovery period limit.

### 2.2. Amendments to the Energy Retail Code

Our proposed amendments to the Energy Retail Code changes the allowable back-billing period for retailers from nine to four months. We consider that this would meet the policy intent of

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<sup>12</sup> The licence conditions requiring retailers and distributors to comply with the energy codes are made under section 20(2) of the Electricity Industry Act 2000 and section 28(2) of the Gas Industry Act 2001.

ensuring that retailers cannot recover more than four months of undercharged, or not charged, amounts from customers.<sup>13</sup>

### **2.3. Amendments to the Electricity Distribution Code**

Our proposed amendments to the Electricity Distribution Code is to insert a clause based on an equivalent clause in the National Electricity Rules (NER). The purpose of clause 6B.A3.1 in the NER is to ensure that an electricity distributor is not permitted to recover network charges from a retailer if the retailer is unable to recover those charges from the customer. Currently, clause 6B.A3.1 of the NER does not apply in Victoria.

We consider that including a clause similar to clause 6B.A3.1 of the NER in Victoria would meet the policy intent of ensuring that customers are not back-billed for more than four months when they have done nothing wrong. To do this, we propose to insert a new clause 15A in the Electricity Distribution Code. The new clause would prohibit distributors from back-billing a retailer when the retailer cannot back-bill the customer for that amount.

### **2.4. Amendments to the Gas Distribution System Code**

Our proposed amendments to the Gas Distribution System Code is to insert a clause based on an equivalent clause in the National Gas Rules (NGR). The purpose of clause 508 in the NGR is to ensure that a gas distributor is not permitted to recover network charges from a retailer if the retailer is unable to recover those charges from the customer. Currently, clause 508 of the NGR does not apply in Victoria.

We consider that including a clause similar to clause 508 of the NGR in Victoria would meet the policy intent of ensuring that customers are not back-billed for more than four months when they have done nothing wrong. To do this, we propose to insert a new clause 12.3 in the Gas Distribution System Code. The new clause would prohibit distributors from back-billing a retailer when the retailer cannot back-bill the customer for that amount.

### **2.5. Implementation of the new rules**

We propose to make amendments to the Energy Retail Code, Electricity Distribution Code and Gas Distribution System Code when we publish our final decision by the end of June 2020. These amendments will come into effect on 1 January 2021. Given the industry has been aware of this government commitment since November 2018, we consider that a six-month implementation

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<sup>13</sup> To avoid doubt, a reference in clause 30(2) to undercharging by a retailer includes a reference to a failure by the retailer to issue a bill (as per clause 30(3) of the Energy Retail Code).

provides retailers and distributors with sufficient time to prepare for the commencement of the new obligations.

### **Draft decision 3: Commencement date of code amendments**

The code amendments giving effect to the back-billing rule change will take effect on 1 January 2021.

## 3. Next steps

### 3.1. How to make a submission

We are seeking feedback on our draft decision. Submissions should be made by **5pm on 27 March 2020**.

To make a submission on this draft decision please go to Engage Victoria's website:

<https://engage.vic.gov.au/>.

Submissions can also be sent by mail to:

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Level 37, 2 Lonsdale Street  
Melbourne, Victoria 3000

Submissions will be published on the commission's website, except for any information that is commercially sensitive or confidential. Submissions should clearly identify which information is sensitive or confidential.

If you have any questions, please contact us on (03) 9032 1300.

Our approach to consultation is set out in our updated Stakeholder Engagement Framework.<sup>14</sup>

### 3.2. Indicative timelines

The key dates relating to this draft decision are as follows:

Date	Activity
27 March 2020	Submissions on draft decision close
June 2020	Final decision released
1 January 2021	Proposed commencement date for code amendments

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<sup>14</sup> Essential Services Commission 2018, Stakeholder engagement framework – Charter of Consultation and Regulatory Practice, June.

### **3.3. Final decision**

Once we have received and considered the submissions, we intend to make a final decision by the end of June 2020.

### **3.4. Commencement of new requirements**

We anticipate that the new rules for the allowable back-billing period will commence on 1 January 2021. This will provide industry with at least six months to prepare for the commencement of the new obligations.

Next steps

# Appendix A: Terms of reference

## Energy Fairness Plan

### Terms of Reference for the Essential Services Commission

The Essential Services Commission (the ESC) is requested to provide advice under section 10(g) of the *Essential Services Commission Act 2001* (the Act) to support the Government's commitment under its Energy Fairness Plan to reduce the period available for retailers to back-bill energy consumers.

#### **Background**

On 20 November 2018, the Government released the 'Energy Fairness Plan' which committed to a range of reforms to the energy retail market aimed at 'cutting the cost of energy for families across the state, increasing transparency and competition in the market and making sure that companies that do the wrong thing face the consequences'.

#### **Request**

The ESC is requested to implement the Government's commitment to reduce the period available for retailers to recover undercharged consumption.

Energy retailers are currently able to recover from customers an amount for a period of up to nine months when they have previously undercharged or not charged for consumption. The Victorian Government has committed to reduce this time period so that an energy retailer is only able to recover from customers an undercharged amount for a maximum period of four months from when the customer is notified of the undercharging.

In providing this advice, the ESC is required to have regard to its objectives under the Act and the *Electricity Industry Act 2000*, and other matters it deems relevant.

#### *Reporting*

In carrying out this request, the ESC will advise the Assistant Treasurer and the Minister for Energy, Environment and Climate Change about its progress and final approach.

#### *Consultation*

In carrying out this request, the ESC is required to consult publicly.

## **Completion**

Unless otherwise determined by Government, the ESC must vary the Energy Retail Code so that the new period for which undercharged consumption may be recovered commences from 1 July 2020.

# Appendix B: Draft Energy Retail Code amendments

## Amendments to Part 2, Division 3 – Customer retail contracts

### AMENDMENTS TO THE ENERGY RETAIL CODE: UNDERCHARGING (BACK BILLING)

FEBRUARY 2020

Amendments made by the Essential Services Commission on DD/MM/YYYY

#### 1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on 1 January 2021.

#### 2 Table of amendments

- (1) In subclause 30(2)(a), omit the number “9” and substitute “4”.
- (2) In subclause 12.1(b) of Schedule 1, omit the number “9” and substitute “4”.



# Appendix C: Draft Electricity Distribution Code amendments

## AMENDMENTS TO THE ELECTRICITY DISTRIBUTION CODE: UNDERCHARGING (BACK BILLING)

FEBRUARY 2020

Amendments made by the Essential Services Commission on DD/MM/YYYY

### 1 Nature and commencement of this instrument

- (1) This instrument amends the Electricity Distribution Code.
- (2) This instrument comes into operation on 1 January 2021.

### 2 Table of amendments

#### New clause 15A—Adjustment of network charges

(1) After clause 15 insert new clause 15A:

15A.	Adjustment of network charges
15A.1.1	A <b>distributor</b> is not permitted to recover charges from a <b>retailer</b> if the <b>retailer</b> is unable to recover those charges from a <b>small customer</b> under the <i>Energy Retail Code</i> .
15A.1.2	Subject to subclause 15A.1.1, a charge that may be imposed by a <b>distributor</b> and included in a statement of charges provided to a <b>retailer</b> may be adjusted to account for any error in, or correction or substitution of:  (a) <i>metering data</i> ; or

- (b) any other amount or factor that affects the calculation of the charges that may be imposed by a **distributor**.

15A.1.3 An adjustment under subclause 15A.1.2 may be made by a **distributor** by including, in a subsequent statement of charges, the amount required to be paid by, or credited to, the **retailer** together with an explanation of the adjustment.

## Clause 19—Definitions

- (2) After the definition of **metering code** insert the following definition:

**metering data** has the meaning given to it in the **Energy Retail Code**.

- (3) After the definition of **short rural feeder** insert the following definition:

**small customer** has the meaning given to it in the **Energy Retail Code**.

# Appendix D: Draft Gas Distribution System Code amendments

## AMENDMENTS TO THE GAS DISTRIBUTION SYSTEM CODE: UNDERCHARGING (BACK BILLING)

FEBRUARY 2020

Amendments made by the Essential Services Commission on DD/MM/YYYY

### 1 Nature and commencement of this instrument

- (1) This instrument amends the Gas Distribution System Code.
- (2) This instrument comes into operation on 1 January 2021.

### 2 Table of amendments

#### New clause 12.3—Adjustment of network charges

- (1) After clause 12.2 insert new clause 12.3:

#### 12.3 Adjustment of network charges

- (a) A *Distributor* is not permitted to recover charges from a *Retailer* if the *Retailer* is unable to recover those charges from a *Small customer* under the *Energy Retail Code*.
- (b) Subject to subclause (a), a charge that may be imposed by a *Distributor* and included in a statement of charges provided to a *Retailer* may be adjusted to account for:
  - (i) differences between estimated meter readings used for the purposes of a statement and *metering data* obtained after

the issue of the statement; and

(ii) any error in, or correction or substitution of:

A. *metering data*; or

B. any other amount or factor that affects the calculation of the charges that may be imposed by a *Distributor*.

(c) An adjustment under subclause (b) may be made by a *Distributor* by including, in a subsequent statement of charges, the amount required to be paid by, or credited to, the *Retailer* together with an explanation of the adjustment.

### Clause 13.1—Glossary

(2) After the definition of ***service pipe*** insert the following definition:

***small customer*** has the meaning given to it in the ***Energy Retail Code***.