Submission to proposed amendments to the NSW Social Programs for Energy Code

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About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are marginalised and facing disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

Energy and Water Justice

Our Energy and Water Justice work improves regulation and policy so all people can access the sustainable, dependable and affordable energy and water they need. We ensure consumer protections improve equity and limit disadvantage and support communities to play a meaningful role in decision-making. We help to accelerate a transition away from fossil fuels that also improves outcomes for people. We work collaboratively with community and consumer groups across the country, and our work receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.
- Council on the Ageing (COTA NSW)

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The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation.

About the Financial Counsellors Association of NSW

The Financial Counsellors' Association of NSW Inc. (FCAN) is the peak membership body for Financial Counsellors in NSW. FCAN supports members and represents the sector to advocate for suitable regulation and products to protect the financially vulnerable and to prevent people and families from experiencing financial hardship

About St Vincent de Paul Society NSW

The St Vincent de Paul Society NSW is a lay catholic organisation whose vision is to create a more just and compassionate society. It provides a range of services designed to respond to urgent and complex need. It's assistance spans cost-of-living and emergency relief, programs for people experiencing or at risk of homelessness (including crisis accommodation), Family and Domestic Violence services, Alcohol and Other Drugs support, and assistance for social housing tenants.

About Ethnic Communities Council of NSW

The Ethnic Communities' Council of NSW (ECCNSW) is the peak body for all culturally and linguistically diverse communities in NSW. It undertakes a range of activities on behalf of its members and has maintained an energy advocacy officer who operates across the National Energy Market (NEM) for nearly two decades.

Council on the Ageing NSW

Council on the Ageing NSW is the peak member-based organisation representing older people in NSW. Through policy advocacy and research informed by community voices, we work with decision-makers to strengthen the systems and services that support ageing well in NSW.

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Recommendations

Recommendation 1

That Part 1 of the Code include an explicit statement of principle that:

'The Code is to be interpreted and applied in a manner promoting equitable access to energy social programs, minimising barriers to participation and avoiding or mitigating adverse impacts on households who are on low-incomes and / or experiencing other disadvantages.

Recommendation 2

That clause 8 be strengthened to maximise its impact for consumers, so that:

- *Retailers are required to meet their responsibilities under this clause in a manner consistent with their hardship obligations under the National Energy Retail Law and Rules.*
- *Retailers are required to offer verbal explanations of relevant programs when information requirements are triggered under clause 8.1, including through interpreters where necessary .*
- *Minimum expectations for what constitutes 'information that indicates' potential eligibility should be clarified, to promote more consistent application within and between sellers, and*
- *Retailers are required to offer assistance with accessing/ completing applications rather than limiting obligations to the provision of forms and general information.*

Recommendation 3

That requirements to report on key information-provision outcomes be added to clause 28, including:

- *The number of times clause 8 information triggers occur (including through hardship assessments);*
- *The number of consumers who receive program information following those triggers; and*
- *The number of program applications or approvals that follow retailer-provided information.*

Recommendation 4

That current arrangements in clause 26 be retained, whereby suspected fraud is referred to the Department for assessment and determination, and program payments continue until the Department has made a formal finding of fraud or ineligibility.

Recommendation 5

Amend the Code to strengthen procedural fairness around resolution of verification failures by:

- *Introducing a grace period following a failed verification check;*
- *Requiring advance notice to consumers before payments are ceased as a result of verification outcomes;*
- *Clarifying obligations to distinguish administrative issues from loss of eligibility in consumer communications; and*
- *Requiring active assistance to be provided to consumers to re-verify eligibility.*
- *Considering an option to backpay recipients for any payments not received during the period required to resolve administrative issues.*

Recommendation 6

Amend clauses 21.5 and 21.6 to to ensure consumers are required to receive the full amount of payments they should have been entitled to in circumstances where missed program payments result from retailer error, verification failure or systemic administrative issues.

Recommendation 7

That clauses 12.2 and 33 of the Code be amended to strengthen consumer protections by requiring retailers to:

- *Clearly and explicitly explain, the consequences of refusing or withdrawing consent before accepting such a decision;*
- *Offer alternative verification options before refusing an application or ceasing payments; and*
- *Provide reasonable assistance to ensure consent is informed and understood.*

Recommendation 8

That clause 43.1 be amended to replace the word 'consider' with an obligation, such as 'must offer' or 'must provide', so people awaiting assessment for EAPA are guaranteed access to additional assistance.

Recommendation 9

That the Code clarify that affordable payment plans must be genuinely affordable, having regard to a person's income, essential living costs, and circumstances, and must not be based on repayment assumptions that are unlikely to be sustainable or likely to result in unacceptable impacts on the household.

Recommendation 10

That the Code clarify that eligibility for EAPA is an indicator of payment difficulty and should trigger eligibility for support under a retailer's hardship policy.

1. Introduction

The Justice and Equity Centre (JEC), Financial Counsellors Association of NSW (FCAN) , Ethnic Communities Council NSW (ECC), St Vincents de Paul Society NSW (SVDP NSW) and Council on the Ageing (COTA NSW) welcome the opportunity to respond to the proposed amendments to the NSW Social Programs for Energy (SPE) Code (the Code). The Code is the critical platform for implementing NSW government support for energy affordability and fairness. It plays a vital role in determining whether people on low incomes and/or experiencing other forms of disadvantage can equitably and affordably access energy through timely, reliable and ongoing energy bill assistance. The form of the code is a critical determinant of whether those supports operate effectively and equitably in practice. Information provision, verification, consent and cessation decisions can significantly affect whether people actually receive - and are able to retain - support during periods of financial stress. In this context the structure of the code and its language have material impacts on its capacity to deliver on its intent.

While the NSW Department of Climate Change, Energy, the Environment and Water's (DCCEEW) decision to delay consolidation of rebates has changed the immediate reform context, the proposed v8.4 amendments present an important opportunity to continue to iterate the Code, improve its consistency and the effectiveness of the consumer protections it offers.

Our organisations supports a number of the proposed changes in v8.4, particularly those expanding information provision and strengthening requirements around Energy Accounts Payment assistance (EAPA) and protections during EAPA assessment periods.

However, we strongly disagree with changes relating to suspicion of fraud and detail extensive issues with the proposed approach. We also consider further targeted amendments are necessary elsewhere to ensure the Code delivers its intended outcomes in practice and does not inadvertently create new barriers in access to, or continuity of assistance.

This submission focuses on four interrelated areas where improvements are needed:

- Embedding an explicit equity principle in the Code's purpose and interpretation to guide the exercise of discretion and the application of procedural requirements;
- Strengthening information provision obligations so they are meaningful, accessible and aligned with hardship frameworks, rather than narrowly procedural;
- Improving procedural fairness and strengthening safeguards in fraud, verification and consent frameworks to ensure administrative complexity or system error is not treated as consumer fault, with consequences for the consumer;
- Improving alignment between EAPA and retailer hardship programs so that people experiencing crisis are supported through coordinated, mandatory assistance rather than discretionary measures.

Addressing these issues would align with the stated intent of ongoing reforms and significantly improve outcomes for consumers, reducing the risk of unintended harms while better realising the purpose of NSW's energy social programs.

2. Embed an equity principle into the Code

While the Code contains provisions intended to support access to energy bill supports, it is largely framed as an operational and administrative instrument, with limited explicit recognition of its overarching objectives and key principles which are required to achieve them. This is critical in relation to equity, where the circumstances of households who are more likely to experience barriers to accessing assistance (and intended outcomes) need to be recognised.

Part 1 sets out the purpose and interpretation of the Code but does not articulate any overarching principle that should guide implementation of the Code – for instance to ensure it minimises barriers, promotes equity of access to support, or accounts for disadvantage and vulnerability NSW households experience. As a result, where discretion exists or obligations are framed procedurally, there is a risk that provisions are applied narrowly or inconsistently, with insufficient regard to the real-world circumstances of eligible households and how they are impacted.

Embedding an explicit vulnerability and equity lens in the Code's purpose and interpretation – either as part of an explicit set of objectives and/or guiding principles - would provide important guidance for retailers and the Department when applying and interpreting the Code. Such a principle would help ensure that administrative processes, such as verification, consent, information provision and continuity of payment, are implemented in a way which supports equitable access to assistance for households who are on low-incomes and / or experiencing other disadvantages. It would also align the Code more clearly with broader policy objectives under NSW and national energy frameworks, which increasingly recognise vulnerability, affordability and consumer harm prevention as core considerations.

We recommend that Part 1 of the Code be amended to include an explicit statement that the Code is to be interpreted and applied in a manner which promotes equitable access to energy social programs, minimises barriers to participation and avoids adverse impacts on households who are on low-incomes and / or experiencing other disadvantages. This principle should guide the exercise of retailer discretion and the application of obligations throughout the Code, particularly in areas affecting access to, continuity of, or cessation of program payments.

Recommendation 1

That Part 1 of the Code include an explicit statement of principle that:

'The Code is to be interpreted and applied in a manner promoting equitable access to energy social programs, minimising barriers to participation and avoiding or mitigating adverse impacts on households who are on low-incomes and / or experiencing other disadvantages.

3. Information about programs

The proposed amendments to clause 8 in v8.4 of the Code are a welcome strengthening of information obligations for retailers and are likely to improve consumer access of NSW energy rebates and assistance programs. In particular, the expansion of mandatory trigger points for providing program information - such as when a consumer is being assessed under a hardship policy or where the retailer holds information suggesting potential eligibility - helps shift the Code

from a largely reactive model to a more effective proactive approach. This change has the potential to reduce deficits in take-up of rebates by consumers who are otherwise eligible but unaware of their entitlements, especially those experiencing financial stress.

However, the effectiveness of the existing requirements - and proposed additions – is potentially limited by the way the obligations are framed. For example, the requirement to provide community-language information is met through website links rather than by requiring retailers to provide accessible language, translated explanations or verbal assistance. This may offer limited practical benefit to consumers with low literacy in their first language, low digital literacy and / or limited internet access. That is, it may have least impact for those it is most intended to benefit.

In addition, while clause 8 strengthens information provision requirements, it stops short of requiring retailers to actively assist consumers to make applications or to explain eligibility criteria in a tailored way. Consumers remain reliant on retailer systems accurately identifying indicators of eligibility, creating a risk of inconsistent implementation across – and even within - retailers and missed opportunities for early intervention.

To strengthen clause 8 and maximise its impact for consumers:

- Retailers should be required to offer verbal explanations of relevant programs when information requirements are triggered under clause 8.1, including through interpreters where needed;
- Minimum expectations for what constitutes 'information that indicates' potential eligibility should be clarified, to promote more consistent application within and across sellers; and
- Retailers should be required to offer assistance with accessing / completing applications, rather than limiting obligations to the provision of forms and general information.

These enhancements would better align the information requirements with facilitating equitable access to energy bill supports for households who are on low-incomes and / or experiencing other disadvantages.

Recommendation 2

That clause 8 be strengthened to maximise its impact for consumers, so that:

- *Retailers are required to meet their responsibilities under this clause in a manner consistent with their hardship obligations under the National Energy Retail Law and Rules.*
- *Retailers are required to offer verbal explanations of relevant programs when information requirements are triggered under clause 8.1, including through interpreters where necessary .*
- *Minimum expectations for what constitutes 'information that indicates' potential eligibility should be clarified, to promote more consistent application within and between sellers, and*
- *Retailers are required to offer assistance with accessing/ completing applications rather than limiting obligations to the provision of forms and general information.*

The Code should also be amended to require monitoring and reporting on information provision outcomes, to assess whether these obligations are improving access to programs in practice. Without effective monitoring and reporting, it will be difficult for the Department to determine whether expanded information triggers, particularly those linked to hardship assessments and indicators of eligibility, are resulting in increased uptake of assistance or simply compliance with procedural requirements. This would create a risk that improvements to clause 8 remain largely technical rather than producing actual measurable benefits for consumers.

Introducing targeted reporting on information provision outcomes would support transparency, accountability and continuous improvement. Basic data on how often information obligations are triggered, how consumers respond and whether information provision leads to applications or enrolment in programs would significantly strengthen the evidence base for future policy development. Importantly, such reporting would shift the focus from retailer activity alone, onto the effectiveness of the Code in improving access to support for households.

Recommendation 3

That requirements to report on key information-provision outcomes be added to clause 28, including:

- *The number of times clause 8 information triggers occur (including through hardship assessments);*
- *The number of consumers who receive program information following those triggers; and*
- *The number of program applications or approvals that follow retailer-provided information.*

4. Fraud, verification and consent

4.1 Fraud determination and cessation of payments

We are extremely concerned that the proposed changes in clause 26 significantly and inappropriately expand the role of retailers in identifying, responding to, and acting on suspected fraud under the Code. We strongly recommend these proposed changes not be pursued.

There is no demonstration that systemic fraud is a significant issue, or that large numbers of ineligible consumers are claiming rebates. Quite the contrary. There is a consistently identified gap between the larger number of eligible NSW households, and the number actually claiming them. This gap has very reasonably been the driver of ongoing efforts to increase take-up. The proposed measures would materially undermine and even reverse these efforts, while also inviting a potentially catastrophic range of unintended consequences.

4.1.1 The proposed changes remove procedural fairness

Under the draft v8.4, a retailer that ‘reasonably suspects’ fraud is required not merely to notify the Department, but must immediately cease program payments and is expressly relieved of any obligation to assist the consumer to rectify eligibility while that suspicion exists. This is inappropriate and removes any procedural fairness with immediate and ongoing consequences to the household.

This both poor process and represents a material and unacceptable shift from existing arrangements under which fraud matters sit more appropriately within the remit of the Department. The current arrangements allow procedural fairness – by not basing critical and material decisions on retailer suspicion alone - and appropriately balance the potential impacts on the consumer with the potential costs to the government. The proposed changes are unreasonable and introduce a series of dangerous risks to the rebate system and consumers.

4.1.1.1 Reasonable suspicion is indistinguishable from legitimate administrative issues

'Reasonable suspicion' is undefined in the Code, leaving significant discretion to retailers to interpret system mismatches, administrative delays, data-matching errors or incomplete information as potential fraud.

In practice, many people already experience irregular interactions with Services Australia systems due to concession card renewals, name or address inconsistencies, family violence, temporary housing or language barriers. These issues are common and often entirely benign.

Similarly, irregularities in retail systems and processes are often experienced by rebate recipients, leading to a range of issues with continuous access to rebates. The scope for these systemic irregularities or issues to contribute to a 'reasonable suspicion' of fraud is significant. With the rapid implementation of AI systems the compound risks to consumers are substantial.

Requiring retailers to act unilaterally on an undefined suspicion risks the likelihood of conflating administrative complexity with fraudulent intent and exposes people to the immediate loss of essential bill relief without due process, with the likely burden of proof resting with them to address the suspicions in order to restore their rebate. It is also possible – or likely – the retailer may impose further consequences – such as denying or altering their access to hardship or payment assistance given the implied seriousness of a 'fraud' suspicion. Experience with 'robodebt' has shown the serious and long-running consequences of a presumptive approach to management of payments for the same set of vulnerable people.

Importantly, placing the burden of responsibility on retailers also introduces a strong incentive for them to avoid any potential risk of a fraud they may be held responsible for, by systemically erring on the side of caution and ceasing payments where any doubt exists. This could fundamentally upend the presumptive impact from 'presumed eligible until proven otherwise' to 'presumed ineligible where any doubt exists'.

4.1.2 This would create serious, compounding impacts for households

The consequences of this approach are not merely technical. Social program payments under the Code are designed to address energy affordability issues and reduce energy hardship for NSW households on low-incomes. Stopping payments before fraud has been reasonably established by the Department risks causing immediate payment difficulty, bill shock and stress, particularly for households already in hardship, managing chronic illness or dependent on life support equipment. For these households, the sudden removal of rebates, even temporarily, can quickly lead to arrears, disconnection risk and reliance on credit products and / or going without essentials. This outcome is not only disproportionate to the risk being managed but experience from 'Robodebt' shows the compound human consequences can be severe and long-running,

including exacerbated stress, anxiety, health issues, mental illness, depression and in the most severe cases suicide. Given the overlap in the people likely to be impacted - between robodebt affected commonwealth payment recipients and NSW energy rebates based on the same concessions – it is reasonable to assume a similar range of potential consequences.

4.1.3 Retailers are not appropriate arbiters of government policy and programs

It is both unreasonable and fundamentally inappropriate, from a governance standpoint, to position retailers as the arbiters of fraud. Under the Code, retailers are merely delivery agents (or recipients) for government programs. Retailers are not investigatory bodies. They do not have access to the full range of information held by the Department or Commonwealth agencies, nor do they have the statutory mandate to assess intent, culpability or misuse of public funds.

Critically, they are profit-making private businesses with a responsibility to mitigate risks to themselves, risks that may be arise from potentially being held responsible for ‘allowing’ fraud. The Department, by contrast, is best placed to assess fraud allegations holistically, apply consistent criteria and ensure procedural fairness and to do so with less unintended incentive to manage risk by avoiding any doubt.

Most critically, the Department has an overarching objective to support energy affordability and protect NSW households, which underpins their approach to procedural fairness. The proposal risks fragmented and inconsistent decision-making across retailers, leading to unequal treatment of consumers depending on their energy provider as well as inviting substantial unintended consequences on vulnerable NSW households.

4.1.4 Unacceptable diminution of retail responsibility to assist

Clause 26.3 explicitly removes the requirement for retailers to assist consumers to rectify eligibility where fraud is suspected. This is an abrogation of retail responsibility which increases their incentive to assume fraud where any doubts exist, with no consequences to them for inaccurate assessments.

This is a total departure from the otherwise strong emphasis throughout the Code on assisting consumers to correct errors, update information and restore eligibility. In effect, consumers who are wrongly suspected of fraud lose both their payment and the support they need to resolve the issue, creating a chilling effect on engagement with social programs and increasing the likelihood of under-claiming among cautious or vulnerable groups. Again, the robodebt example – and its consequences for a similar cohort of people - is relevant in the dangers of placing the entire burden of rectification of errors on a vulnerable cohort.

4.1.4.1 The severe consequences of a presumptive approach to fraud

As the Robodebt experience catastrophically demonstrated, inappropriately fraud-focused compliance and enforcement approaches – such as that proposed - increase fear, stigma and disengagement among eligible recipients, reducing trust in government assistance systems and discouraging legitimate participation resulting in under-claiming. Importantly, the loss of legitimate take-up caused by heightened fraud surveillance and punitive compliance measures far exceeds any reduction in actual fraud, creating net social harm.

In effect, policies ostensibly intended to protect public funds can risk undermining the core purpose of social assistance by deterring eligible low-income and vulnerable households from accessing support to which they are lawfully entitled. Most concerningly, they risk fundamentally changing the balance of incentives for retailers resulting in widespread, serious and ongoing impacts for vulnerable NSW households.

Clause 26 represents a clear departure from the otherwise appropriately precautionary and assistance-focused approach embedded throughout the Code. It is completely counter to the overarching objective of the Code and the demonstrated intent to support people to maintain eligibility, correct errors and continue receiving assistance, rather than withdrawing support on the basis of unproven suspicion.

We strongly disagree with the proposed change and recommend, in the strongest possible terms, the Department not proceed with the proposals, and instead retain clause 26 as it is drafted in v8.3.

Recommendation 4

That current arrangements in clause 26 be retained, whereby suspected fraud is referred to the Department for assessment and determination, and program payments continue until the Department has made a formal finding of fraud or ineligibility.

4.2 Strengthen procedural fairness around verification failures

We recommend changes to ensure payment continuity – or back payment – in circumstances where administrative issues delay or prevent verification.

The proposed Code continues to allow program payments to be ceased where a consumer fails a verification check, including in circumstances where the failure may arise from data-matching issues, delays in Services Australia systems, or minor administrative discrepancies out of the consumers control - rather than any genuine loss of eligibility. While clauses 19, 21 and 22 include requirements to notify consumers and, in some cases, assist them to rectify errors, the overall framework permits payments to stop quickly and places the practical burden on consumers to resolve verification issues while they also incur the cost of lost payments. For households who rely on rebates to manage ongoing energy costs, even short interruptions in payments can cause immediate financial hardship and stress which compounds issues theya re facing beyond energy.

This approach raises concerns about procedural fairness and presents options for improved systems to enable resolution of issues without unreasonable impact on recipients. This is particularly important for the many NSW households who are on low-incomes and / or experiencing other disadvantages and may have limited capacity to engage promptly with verification processes. Verification failures are not uncommon and are often unrelated to consumer conduct. Where payments are ceased without a grace period or clear distinction between administrative issues and true ineligibility, consumers may experience bill shock, arrears and escalating hardship, despite remaining entitled to assistance. Strengthening safeguards in the verification framework would better balance program integrity with the fundamental purpose of social programs, which is to provide stable and reliable support to those who need it.

It is recommended that the Code be amended to strengthen procedural fairness around verification failures by:

- Introducing a grace period following a failed verification check during which program payments continue while the consumer is notified and assisted to resolve the issue, unless the Department has determined that the consumer is no longer eligible.

- Requiring advance notice to consumers before payments are ceased as a result of verification outcomes, clearly explaining the reason for the failed check, the steps required to maintain eligibility and available assistance.

- Clarifying obligations to distinguish administrative issues from loss of eligibility in consumer communications, so that consumers understand whether a payment pause is due to a data issue or a substantive change in circumstances.
- Requiring active assistance to be provided to consumers to re-verify eligibility, particularly where consumers are identified as being in hardship or experiencing other disadvantages.

- Considering an option to 'backpay' recipients for any payments lost during the period required to resolve administrative issues – that is, where the loss of payment was not due to them being fundamentally ineligible.

These changes would reduce unnecessary disruption to assistance, improve consumer confidence in the administration of social programs and ensure that verification processes do not inadvertently undermine access to energy bill supports for households at risk of energy stress.

Recommendation 5

Amend the Code to strengthen procedural fairness around resolution of verification failures by:

- *Introducing a grace period following a failed verification check;*
- *Requiring advance notice to consumers before payments are ceased as a result of verification outcomes;*
- *Clarifying obligations to distinguish administrative issues from loss of eligibility in consumer communications; and*
- *Requiring active assistance to be provided to consumers to re-verify eligibility.*
- *Considering an option to backpay recipients for any payments not received during the period required to resolve administrative issues.*

4.3 Equity concerns of the 12-month back payment cap

Retailer errors or systemic issues should not result in loss of payments to recipients and provisions for back payments should ensure recipients receive all funds they are entitled to for the period of their eligibility.

The Code currently contains an explicit cap on retrospective payments which leaves eligible recipients potentially worse off where missed payments are caused by retailer error or systemic failure rather than any fault of theirs. Clause 21.5 provides that where more than 12 months of program payments have been missed, a seller is required to pay no more than the equivalent of 12 months of payments, even if the consumer was eligible throughout that period. Importantly,

this cap applies irrespective of the reason payments were missed and does not distinguish between consumer fault and circumstances where payments ceased due to retailer administrative error, verification failures or other system-level issues beyond the consumer's control.

This concern is compounded by clause 21.6, which applies where a seller fails to make a program payment for a reason not authorised by the Code, including retailer error. While clause 21.6.1 requires the seller to pay missed payments to the customer, clause 21.6.2 limits the seller's entitlement to reimbursement from the Department to payments that would have been payable in the preceding 12 months. While support the intent and principle of this clause – that retailers should be financially responsible for the cost of their errors beyond this period - In practice, this creates a strong financial disincentive for retailers to backpay beyond 12 months even where they are responsible for the error. This is because it is easier for them to limit their payment to the recipient without likely consequence, than make unrecoverable payments. . This may effectively entrench the cap imposed by clause 21.5. Taken together, these provisions risk permanently depriving consumers on low incomes of substantial amounts of assistance to which they were lawfully entitled, solely because errors were not identified or corrected within a 12-month period..

We recommend the Department amend clauses 21.5 and 21.6 to ensure consumers are required to receive the full amount of payments they should have been entitled to in circumstances where missed program payments result from retailer error, verification failure or systemic administrative issues. We support the Department implementing this in a manner which asserts retail responsibility to make the payments in full, while placing reasonable limits on retailer capacity to recover these costs from the Government.

This would ensure that households on low income and / or experiencing disadvantage are not permanently deprived of lawful entitlements due to errors beyond their control. This would better align the Code with principles of fairness, accountability and consumer protection.

Recommendation 6

Amend clauses 21.5 and 21.6 to to ensure consumers are required to receive the full amount of payments they should have been entitled to in circumstances where missed program payments result from retailer error, verification failure or systemic administrative issues.

4.4 Protections where consent is withdrawn or unclear

Consumer consent provisions should be strengthened to enable and protect genuine consumer consent.

Clauses 12.2 and 33 make a consumer's consent to ongoing verification checks and information sharing a condition of approval and continued access to program payments. This makes consent a 'binary' choice – that is, either consent to everything required on an open ended basis, or forfeit any eligibility for payments.

Consent is a fundamental safeguard, particularly for vulnerable people, but it must be free and meaningful, and have practical measures for withdrawal. The drafting of the Code does not adequately address situations where consent is withdrawn, unclear or not fully understood by the

consumer. In practice, consumers may withdraw or fail to provide consent due to language barriers, low literacy, cognitive impairment, mistrust of data-sharing or misunderstanding the consequences. Under the current framework, loss or absence of consent can result in refusal of an application or cessation of payments even where the consumer otherwise meets all eligibility criteria this makes consent an unnecessarily 'binary' issue with disproportionate consequences for consumers.

In any case, the current approach risks the consent framework operating as a procedural barrier to access rather than a genuine protection of consumer choice. For households who are on low-incomes and / or experiencing other disadvantages, the consequences of losing access to rebates due to consent issues can be immediate and severe. The Code does not currently require retailers to ensure that consent is informed and understood, nor does it require retailers to offer alternative pathways to maintain eligibility, such as assisted verification or time-limited continuation of payments while consent issues are resolved – or even time limited consent. Without clearer safeguards, the consent requirements risk contributing to under-take-up and avoidable loss of assistance.

Clauses 12.2 and 33 should be amended to strengthen consumer protections by requiring retailers to:

- Clearly and explicitly explain, in plain language, the consequences of refusing or withdrawing consent before accepting such a decision;
- Offer alternative verification options (such as provision of confirmation from Services Australia or the Department of Veterans' Affairs) before refusing an application or ceasing payments; and
- Provide reasonable assistance, including interpreter support where required, to ensure consent is informed and understood.

Additionally the Department may consider options to enable time-limited consent – with accompanying information to ensure consumers understand the implications of this – to enable payment eligibility and the required verifications for a time-limited period.

These changes would preserve the role of consent while ensuring it does not operate as an unintended barrier to access and would better support equitable delivery of energy assistance for households.

Recommendation 7

That clauses 12.2 and 33 of the Code be amended to strengthen consumer protections by requiring retailers to:

- *Clearly and explicitly explain, the consequences of refusing or withdrawing consent before accepting such a decision;*
- *Offer alternative verification options before refusing an application or ceasing payments; and*
- *Provide reasonable assistance to ensure consent is informed and understood.*

5. Energy Accounts Payment Assistance

5.1 Welcome amendments

We welcome the additions at clauses 43.1 and 43.2, which clarify that a consumer awaiting assessment for EAPA should also receive further assistance from their retailer, and that an 'affordable payment plan' must take the consumer's circumstances into account. These changes acknowledge that EAPA is not a standalone response, but part of a broader framework of assistance for people experiencing payment difficulty.

We also welcome the inclusion of clause 44.2, which requires that a seller must not initiate any disconnection-related activities for consumers awaiting an EAPA assessment. Research conducted as part of our *Powerless* project has shown that significant harm can arise from the threat of disconnection, not only from disconnection itself. Protections during the EAPA assessment period are therefore an important safeguard.

We further support the addition of clause 46.5, requiring sellers to inform consumers that they will need to provide a copy of their most recent bill as part of the EAPA assessment process. This addition has the potential to reduce delays and improve coordination between retailers, consumers and EAPA providers.

5.2 Moving from discretion to obligation

Clause 43.1 currently provides that a seller must 'consider offering additional assistance' to a person who is eligible for, or awaiting assessment for, EAPA. This phrasing is unnecessarily ambiguous and discretionary, given the circumstances in which EAPA is engaged – or even considered.

A person referred to EAPA, or assessed as eligible, is, by definition, financially disadvantaged and experiencing difficulty paying their energy bill – at least to the degree they may be eligible for EAPA (even if they are not eventually successful in receiving EAPA for some reason). This is not ambiguous. In these circumstances, the Code should require assistance given that someone in these circumstances is demonstrably in need of assistance regardless of whether they meet the 'relatively narrower' criteria for EAPA eligibility. It should not be left to the seller's discretion. Where additional assistance cant take many forms, including those which impose relatively little burden on the retailer, this is a reasonable improvement.

Replacing 'consider offering' with an obligation would:

- Improve consistency in practice across retailers;
- Better reflect the intent of the provision; and
- Align more closely with the national energy hardship framework, which treats payment difficulty as a trigger for assistance rather than optional support.

Recommendation 8

That clause 43.1 be amended to replace the word 'consider' with an obligation, such as 'must offer' or 'must provide', so people awaiting assessment for EAPA are guaranteed access to additional assistance.

Clause 43.2 appropriately emphasises that affordable payment plans must take into account a person's circumstances. However, this principle could be reinforced by aligning more explicitly with the national energy hardship framework.

In practice, and as recorded in our *Powerless* research, many payment plans continue to be offered that do not reflect a person's income, expenses and circumstances, and are therefore unsustainable.

Recommendation 9

That the Code clarify that affordable payment plans must be genuinely affordable, having regard to a person's income, essential living costs, and circumstances, and must not be based on repayment assumptions that are unlikely to be sustainable or likely to result in unacceptable impacts on the household.

Further, in most, if not all cases, a consumer eligible for EAPA should also be automatically eligible to be in the retailer's hardship program, not merely given assistance. After ongoing reforms EAPA the assessment for eligibility is substantially more robust than most retail assessments for hardship. As such eligibility for EAPA is a reasonable and effective proxy for 'hardship'. To better reflect this and align with the National Energy Retail Law and Rules, the Code should make clear that eligibility for EAPA constitutes evidence that a person is experiencing payment difficulty and should be supported under a retailer's hardship program.

Recommendation 10

That the Code clarify that eligibility for EAPA is an indicator of payment difficulty and should trigger eligibility for support under a retailer's hardship policy.

6 Continued engagement

Our organisations welcome the opportunity to discuss these matters further with the AEMC and other interested stakeholders. Please contact Thea Bray at the JEC