

# Payment difficulty framework

Final decision

10 October 2017

**An appropriate citation for this paper is:**

Essential Services Commission 2017, *Payment difficulty framework: Final decision*, 10 October

**Copyright notice**

© Essential Services Commission 2017



This work, *Payment difficulty framework*, is licensed under a Creative Commons Attribution 4.0 licence [[creativecommons.org/licenses/by/4.0/](https://creativecommons.org/licenses/by/4.0/)]. You are free to re-use the work under that licence, on the condition that you credit the Essential Services Commission as author, indicate if changes were made and comply with the other licence terms.

The licence does not apply to any brand logo, images or photographs within the publication.

## Chairperson's introduction

Early last year, we concluded an extensive inquiry into the hardship practices of electricity and gas retailers operating in Victoria. The inquiry found the provisions of the current Energy Retail Code (version 11) establish only broad obligations for how retailers are required to assist customers experiencing difficulty paying their energy bills. Likewise, the rules around how customer assistance is offered are open-ended. This provides retailers with broad discretion over how they support customers in payment difficulty. Not surprisingly, our inquiry found that customer outcomes were highly varied, inconsistent and unpredictable. Too often, assistance was only made available when the customer had already accumulated significant levels of debt — by which time the customer had little hope of extricating themselves from their predicament. Invariably, disconnection followed.

These findings emerged despite the legislation requiring that customers be given equitable access to assistance and that disconnection should only be a measure of last resort. Following consideration of our report, the government requested the commission review the Energy Retail Code to ensure it supported these legislative objectives more effectively. In addition, from 1 January 2016 the commission was given a new statutory objective: to “*promote protections for customers, including assisting customers who are facing payment difficulty.*”

For most of 2016, we consulted on the development of a new payment difficulty framework. During this time, stakeholders raised many matters they considered the framework needed to address. In response, we drafted code amendments that sought to: make clear the forms of assistance to be provided. We proposed rules that outlined how and when different forms of assistance were to be made available, and we outlined clear outcomes that customers could expect if they were facing payment difficulty. We released our draft decision in October 2016.

Our proposal was roundly criticised. The proposal was seen as too rigid and very costly to implement. While it was certainly not our intention, the proposed code was perceived as potentially creating a ‘conveyor belt to disconnection’. At that point, we acknowledged the need to rethink our approach. Commissioners and staff met with stakeholders as we reflected deeply on how else we might approach the task before us.

In May 2017, we released a new draft decision that replaced the earlier proposal. Our new proposal took a very different approach from our earlier attempt. We took as our starting proposition that payment difficulty was too complex and too varied to be addressed through highly prescriptive regulation. Because each customer's situation is unique, the framework needed to allow for assistance to be designed in a way that best meets each customer's circumstances. We needed to shift from a rules-based approach to one that was focused on positive results for customers.

Compared to our earlier proposal, our new draft decision established a clear and simple framework of customer entitlements to assistance. The intricate hierarchy of assistance arrangements in our first draft decision was removed. Likewise, we greatly simplified the customer outcomes envisaged by the framework by abandoning our earlier multi-tiered approach. And perhaps most importantly, we removed the layers of rules that had complicated our first proposal.

The new framework was vastly simpler. Rather than rely on a set of rules from the regulator about how to assist customers, retailers would be expected to judge how to deliver meaningful and timely assistance in light of a customer's circumstances. Retailers would be held accountable for how they exercised that judgement. Alternatively stated, our simplified framework sought to focus retailers' attention on what mattered, namely, customer outcomes. We wanted retailers to focus on customers, not just processes.

Of course, successful outcomes cannot be guaranteed by retailers acting alone. The framework therefore anticipates customers working with their retailers to repay their arrears and lower their energy costs. This principle of *shared responsibility* featured prominently in our hardship inquiry.

Since May, we have worked with stakeholders through numerous forums and workshops, and received written submissions on the revised draft decision. We have reflected on that feedback and amended the framework in light of the matters raised with us. This final decision reflects the outcome of those consultations.

Accompanying this final decision is a guidance note (it is only a draft for now). The guidance note is not a definitive roadmap for how retailers should comply with the code. As already noted, payment difficulty is too complex and too varied for that. Were we to try and address every possible way in which payment difficulty might manifest itself, the guidance note would become impossibly long and unmanageably complicated. That is why the entire framework ultimately relies on retailer judgement. Regulating guidance cannot be a substitute for retailer judgement. Where we consider that retailers have in good faith acted consistently with the examples of compliant conduct included in the guidance note, we will not take enforcement action. We will consult on the guidance note before finalising it later this year.

Retailers must now begin preparing for the commencement of the new framework, which will come into effect on 1 January 2019. This will include regularly reporting to the commission on their preparations. In turn, we will report publicly on retailers' readiness in our quarterly market updates. It is almost three years since we began our inquiry into retailers' hardship arrangements. It has not been an easy journey. At times, we and stakeholders tested each other's patience. There was a lot at stake. Despite these trials, all parties remained committed to finding a better way to support customers facing payment difficulty.

I am confident that our new payment difficulty framework will finally achieve the legislative objectives requiring energy customers be given equitable access to assistance and that disconnection should be a measure of last resort only. These are noble objectives. I thank everyone who has worked with the commission and our staff to see these objectives fulfilled.

Dr Ron Ben-David

**Chairperson**

# Contents

Chairperson’s introduction	iii
Executive summary	viii
Introduction	viii
Findings of the hardship inquiry	viii
Evolution of the commission’s approach	ix
The new framework	x
How the new framework works	x
Impact assessment for customers and retailers	xiii
Implementation	xiii
Guidance Note	xiv
1. Introduction	1
1.1. Role of the Essential Services Commission	1
1.2. Customer protection framework for payment difficulty	2
1.3. Purpose of the changes	3
1.4. First draft decision	3
1.5. Purpose of this report	4
1.6. Consultation on our second draft decision	4
1.7. Structure of this report	6
2. Findings of the hardship inquiry	7
2.1. Introduction	7
2.2. Context for the hardship inquiry	7
2.3. Energy hardship inquiry	9
2.4. Variability of customer experience	11
2.5. Consequences of variability	18
2.6. Defining the problem the inquiry identified	19
2.7. Developments since the hardship inquiry	21
2.8. Conclusion	25
3. Evolution of the commission’s approach	27
3.1. Introduction	27
3.2. Energy hardship inquiry	27
3.3. First draft decision	29
3.4. Second draft decision	32
3.5. Conclusion	33

4. Feedback on our second draft decision	34
4.1. Introduction	34
4.2. High level summary of stakeholder feedback	34
4.3. Framework design	35
4.4. Standards of conduct	56
4.5. Implementation	59
4.6. Conclusion	61
5. The new framework	63
5.1. Introduction	63
5.2. The payment difficulty framework	63
5.3. Changes to the Code	70
5.4. Conclusion	82
6. Impact assessment for customers and retailers	84
6.1. Introduction	84
6.2. Purpose of this chapter	84
6.3. Defining the problem and assessing solutions	86
6.4. Legal context	88
6.5. Process	90
6.6. Analysis of impacts	92
6.7. The commission’s assessment	110
7. Proposed roadmap	113
7.1. Introduction	113
7.2. Overview	113
7.3. Phase 1 – Guidance note	114
7.4. Phase 2 – Preparing for commencement of the new framework	115
7.5. Phase 3 – Commencement and operation of the new framework	117
7.6. Phase 4 – Review of the new framework	121
7.7. Next steps	122
Appendix A – Amendments to the Energy Retail Code (Part 3)	123
Appendix B – Amendments to the Energy Retail Code (consequential and related amendments)	131
Appendix C – Changes from version 11 of the Energy Retail Code	136
Appendix D – List of references	145

# Executive summary

## Introduction

This final decision on the payment difficulty framework focuses on delivering better outcomes for customers who may be struggling to pay their electricity or gas bills. This is a notable and deliberate change in emphasis from the approach of the last decade which focuses on processes, rules and compliance. This change in emphasis is achieved by establishing unambiguous customer entitlements to assistance from their energy retailer. These entitlements will empower customers to work with their retailer to design the assistance arrangements that are most appropriate in their individual circumstances. In return, retailers are obliged to act fairly and reasonably when exercising their judgement about how they can best assist customers. Retailers will be held to account for how cooperatively they work with their customers to achieve the framework's overarching objective — namely, that customers are only ever disconnected from their energy supply as a measure of last resort.

This final decision follows our earlier inquiry into the state's existing hardship arrangements, two subsequent draft decisions on how the regulatory framework might be reformed, and extensive consultation with stakeholders.

## Findings of the hardship inquiry

In 2013–14, nearly 60,000 Victorians were disconnected for not paying their energy bills. This was the highest number ever recorded in this state. In 2013–14, *wrongful* disconnections also peaked at 9,032 cases. This represented a 252 per cent increase since 2009–10.

In February 2015, the Victorian Government directed the commission to conduct an inquiry examining how retailers assist customers facing payment difficulty and whether the regulatory framework was effective at ensuring customers receive assistance to avoid disconnection. The terms of reference issued by the government reinforced the legislative expectation that the disconnection of customers in payment difficulty should be a measure of last resort.

Our final inquiry report a year later found:

- customers in payment difficulty often use more energy than other customers
- existing hardship programs were generally ineffective at preventing customers from accumulating further debt
- by the time help is offered, it is often too late to assist customers to manage their debt
- some retailers offer more help than others but customers cannot count on a consistent or equitable levels of assistance.



In light of these findings, we concluded that the disconnection of customers from their energy supply was not being pursued by retailers only as a measure of last resort.

At about the same time, amendments to the energy industry legislation came into effect. The new legislation gave the commission the specific objective of “*promot[ing] protections for customers, including in relation to assisting customers who are facing payment difficulties.*”

Interestingly, our data indicated that retailers were disconnecting fewer customers and admitting higher numbers of customers into their hardship programs during this period. These trends have now begun to reverse. Over the last twelve months, disconnection rates have steadily increased and the number of customers in retailers’ hardship programs has declined over the last two quarters. These latest findings indicate that the reasons for our earlier concerns about customers in payment difficulty have not gone away.

## **Evolution of the commission’s approach**

Our initial draft decision, released for comment in October 2016, was highly detailed in the way it sought to standardise the assistance that customers in payment difficulty could expect to receive. Feedback on the first draft from energy retailers, consumer representatives and welfare organisations reflected strong concerns about the implications of our proposal. These concerns centred on the overly prescriptive nature of our proposal. Respondents were concerned this would have unintended consequences including: a loss of flexibility for retailers when dealing with customers struggling to pay their bills, and disempowering customers who approached their retailers about their payment difficulty.

As a result, we resolved to release a second draft decision replacing the first proposal. Our second draft decision was released in May 2017 and proposed a significantly revised framework. The new proposal was based on:

- streamlining retailers’ obligations to focus them on outcomes for customers, not processes
- supporting engagement between retailers and customers
- setting minimum standards of assistance that customers could expect from their retailers, while giving retailers flexibility in how assistance is provided
- requiring retailers to consider a customer’s circumstances when making assistance available (so avoiding a ‘tick-the-box’ approach to assistance)
- retaining financial hardship policies.

While the overall design of the proposal contained in our second draft decision received broad support from stakeholders, we continued to invite feedback through written submissions, workshops and forums, to address areas of remaining ambiguity and potential unintended consequences.

The second draft decision also included our consultants' preliminary assessment of the potential impacts of the proposed framework on customers and retailers. Stakeholders were invited to provide feedback on these assessments. The feedback was used to refine the consultants' analysis, as well as our work on the design of the framework.

Our first and second draft decisions are available on our website, along with the consultants' reports, and the submissions we received on each proposal.

## **The new framework**

For a customer who is not able to pay their energy bills, whether to accumulate debt or face disconnection is an invidious decision. It is an equally invidious decision for retailers. As we found in our first draft decision, setting out to prescribe the course of action for every customer facing payment difficulty is an insurmountable task for a regulator.

Nonetheless, a strong focus on early and effective action to assist customers anticipating or facing payment difficulty is required if these invidious choices are to be avoided. The new framework is designed to ensure that customers receive timely assistance, to help them take effective action to avoid or repay arrears.

## **How the new framework works**

The new payment difficulty framework is centred on a new Part 3 in the Victorian Energy Retail Code. This new Part establishes an entitlement for customers anticipating, or in payment difficulty, to two different types of assistance measures.

### **Standard assistance**

This form of assistance is available to all customers. It involves retailers making at least three different payment options readily available to customers. Each electricity and gas retailer will be required to offer at least three out of the following four payment options:

- payments arrangements that allow customers to pay a set amount on each bill
- allow customers to pay at shorter intervals (e.g. monthly or fortnightly)
- opportunities for customers to delay payment of one missed bill to the next billing cycle
- providing customers with a 'pay in advance' option.

Being an entitlement-based framework, customers do not require their retailer's permission in order to access these standard assistance measures. Customers will gain access to standard assistance simply by asking for it. Customers do not need to be in debt to gain access to these entitlements.

The aim of standard assistance is to encourage customers to take early action to avoid getting into debt. Customers are the first to know they may have trouble paying a bill that is coming due.

Executive summary

Standard assistance will give customers some easily accessible options to manage their situation. Retailers will need to make information readily available to customers about the standard assistance measures they offer, and how that assistance can be accessed.

### Tailored assistance

This type of assistance is available to customers who are in arrears because they have been unable to pay their bill. Tailored assistance provides customers with flexible and practical options to repay any amount outstanding. Retailers are also obliged to help customers lower their ongoing energy costs. This will help make future energy bills more affordable.

The aim of tailored assistance is to enable a customer who is in arrears to pay for their on-going energy use and repay their arrears in a manageable way.

Tailored assistance consists of six entitlements. The first two entitlements address alternative payment arrangements. These include customers being entitled to:

- nominate a payment arrangement that enables them to repay arrears through regular repayments over a timeframe they can afford (but no longer than two years)
- advice from their retailer about different payment options, and how each option would help to repay arrears.

Customers will also be entitled to receive:

- advice from their retailer to help them lower their energy costs. This might include tips, or other forms of assistance, to help the customer use less energy
- assistance in accessing government and non-government support services.

Customers in more severe types of payment difficulty will be entitled to a greater level of assistance, including:

- a period of at least six months where repayment of arrears is put on hold
- practical assistance to lower the customer's energy costs. This might include:
  - placing the customer on tariffs that help lower the customer's cost of energy use
  - measures to help reduce the amount of energy the customer uses, for example, onsite or phone-based energy audits, or appliance replacement programs
  - up-to-date information to help the customer monitor their progress in managing how much energy they are using.

### Retailers are obliged to provide timely and meaningful assistance

The clause also contains a range of explicit obligations on retailers to ensure they provide assistance to customers promptly, meaningfully, and thoughtfully. Some examples include:

- [*prompt*] if a retailer fails to contact a customer after not paying a bill on time, the retailer must contact the customer within 21 business days to advise the customer of their entitlements to assistance, and to support the customer in accessing that assistance
- [*meaningful*] communication between retailers and customers, whether about their entitlements to assistance, or to warn the customer that they are at risk of disconnection, must be provided in clear and unambiguous terms (plain language)
- [*thoughtful*] in providing advice or assistance to customers, retailers must take into account the customer's individual circumstances. Retailers cannot knowingly put a customer on a payment arrangement that the customer is expected to fail, or require unrealistic action by a customer to reduce their energy use.

The aim of these obligations is to promote a culture of cooperation and collaboration between retailers and their customers. As discussed in our hardship inquiry, all evidence indicates that the best outcomes are achieved when retailers and customers work together.

### Disconnection safeguards

The Code also includes a suite of obligations on retailers to ensure disconnecting a customer for non-payment of an energy bill is only ever a measure of last resort. We have called these obligations disconnection safeguards. They do not appear under a single heading in the Code but together they represent a vital network of protections for customers in payment difficulty. The safeguards work by requiring the retailer to meet multiple conditions before proceeding to disconnect a customer for non-payment of their bill. These conditions must be met in full. The disconnection safeguards include that prior to disconnection:

- the retailer must have provided timely and unambiguous information about the customer's entitlements to assistance
- the retailer must have exercised its best endeavours to provide assistance to the customer
- the retailer must have treated the customer fairly and reasonably
- the retailer must have taken the customer's circumstances into account in making assistance available and before deciding to proceed to disconnection
- the retailer must have cooperated with the Energy and Water Ombudsman (Victoria) in resolving any relevant dispute the customer raised with the Ombudsman
- the retailer must have issued a timely reminder notice to the customer
- the retailer must have provided the customer with a clear and unambiguous disconnection warning notice
- the retailer must use its best endeavours to contact the customer after issuing a disconnection warning notice but before effecting the disconnection
- the retailer must be able to demonstrate that the customer has not taken reasonable action towards paying for their energy and repaying their arrears

- the retailer must have records evidencing compliance with all of these requirements.

In addition, we are increasing the minimum disconnection amount from \$120 (excluding GST) to \$300 (including GST). This means a retailer can no longer disconnect a customer who has arrears of any amount less than \$300. The \$300 threshold is consistent with the threshold used in other states.

If any of these conditions are not met in full, and the retailer proceeds to disconnect the customer, it is likely that the disconnection will be found to be wrongful. If a customer is disconnected wrongfully, the offending retailer is obliged to pay the customer \$500 per day of disconnection. In addition, we may serve the retailer with a \$5,000 Wrongful Disconnection Penalty Notice<sup>1</sup>.

The objective of these safeguards is to ensure that customers facing payment difficulty receive every reasonable opportunity to engage in their retailer's tailored assistance program.

## **Impact assessment for customers and retailers**

When making a regulatory decision, the commission is required to have regard to certain matters — one of which is the impact of its proposal to customers and retailers. The *Essential Services Commission Act 2001* and our *Charter of Consultation* outline how we are to go about having regard to these matters.

This final decision discusses the impact assessment of the amended Code. Our analysis is supported by two consultants' reports which are available on our website. The consultants' reports indicate that while the costs of the framework for retailers are readily identifiable, the benefits for customers are often intangible and do not lend themselves to being readily quantified. The consultants estimated that the net cost of the new framework for retailers is between \$1.21 and \$2.90 per customer per year, over ten years.

Based on this analysis, the work completed as part of the hardship inquiry, and the feedback from stakeholders on our draft decision, we have judged that the payment difficulty framework outlined in this final decision is a practical and cost effective way to meet our objective — namely, ensuring that disconnection is a measure of last resort.

## **Implementation**

In our second draft decision, we proposed a phased implementation of the framework. We believed this would be the fastest way to begin delivering the new protections to customers. Stakeholders

---

<sup>1</sup> Section 54H of the *Essential Services Commission Act 2001* provides the commission with the power to serve a wrongful disconnection penalty notice. Under 54I(2), the wrongful disconnection penalty is \$5,000.

generally did not support this model as they had concerns over customer confusion, the added complexity of upgrading systems, and the time and cost involved in training staff.

This final decision replaces this model with a consolidated implementation plan, whereby all elements of the new framework will take effect at the same time. This will see the new assistance arrangements come into force and the Code fully operational from 1 January 2019.

During 2018, we will monitor retailers' preparedness for implementing the new framework. We will report our findings in our quarterly *Victorian Energy Market Report* updates. Once the framework is in place, we will monitor retailers' compliance with their new obligations through our program of retailer audits and we will report our findings publicly. From time to time, we will also review and report on the actions retailers are taking above-and-beyond their regulatory obligations to assist customers in payment difficulty. Sometimes this is referred to as 'best practice' or 'better practice' reporting. It is a useful way of recognising and encouraging the innovative practices retailers adopt to assist their customers.

Further into the future, we plan to review the effectiveness of the new framework in meeting its stated objectives. The exact parameters of this review will be set closer to the time and following consultation with stakeholders. We anticipate this review will occur after the framework has been in operation for at least two years.

## **Guidance Note**

The new payment difficulty framework deliberately places responsibility on retailers to judge the most effective way of delivering customers' entitlements to assistance, in a way that best meets the framework's objectives. The amended Code does not provide a detailed set of rules for how this is to be achieved. Payment difficulty is too varied and too complex to be fully dealt with by any single set of rules. Instead, we will issue a guidance note under our *Energy Compliance and Enforcement Policy* to inform retailers about how we expect them to exercise their judgment when supporting customers facing payment difficulty.

This final decision is accompanied by a draft of the guidance note. We will consult with stakeholders on the content of that guidance note before finalising it later this year.

# 1. Introduction

This final decision sets out the Essential Services Commission's new framework for promoting protections for energy customers facing payment difficulty.

This introductory chapter outlines the key matters relating to the final decision, including the role of the commission and the purpose of the final decision.

## Structure of this chapter

This chapter contains the following key sections:

- Section 1.1 explains the role of the commission.
- Section 1.2 provides an overview of the existing protections for customers facing payment difficulty.
- Section 1.3 provides a high level explanation of the purpose of the changes to the current framework
- Section 1.4 explains the link between this final decision and our previous draft decisions, released in October 2016 and May 2017, respectively.
- Section 1.5 sets out the purpose of this final decision.
- Section 1.6 outlines the consultation we undertook in reaching this final decision.
- Section 1.7 provides an overview of the structure of this report.

## 1.1. Role of the Essential Services Commission

The commission is Victoria's independent economic regulator of essential services. Primary legislation passed by the Victorian Parliament sets out the objectives and expectations for the commission in the regulation of retail energy markets and energy hardship.

The *Essential Services Commission Act 2001 (Vic)* (ESC Act) sets out the commission's overarching objective to promote the long-term interests of Victorian consumers.<sup>2</sup> The commission is also guided by objectives under the *Electricity Industry Act 2000 (Vic)* and *Gas Industry Act 2001 (Vic)* to *inter alia* promote the protections for customers, including in relation to customers who are facing payment difficulty.<sup>3</sup>

---

<sup>2</sup> Section 8 *Essential Services Commission Act 2001 (Vic)*.

<sup>3</sup> Section 10(c) *Electricity Industry Act 2000 (Vic)* and section 18(c) *Gas Industry Act 2001 (Vic)*.



The legislation establishing the regulatory framework for the energy industry in Victoria assigns the commission a range of functions and powers, including the power to grant licences to energy market participants and to create codes and guidelines.

After being established in 2002,<sup>4</sup> the commission released the first version of the Energy Retail Code, of which version 11 is in force today.

## **1.2. Customer protection framework for payment difficulty**

The current regulatory framework contains provisions to assist customers experiencing payment difficulty in two ways:

- provisions addressing ‘payment difficulty’
- provisions addressing ‘hardship’.

There are also specific provisions covering processes for disconnection due to non-payment.

The current framework centres on several broad features:

- payment plans and other flexible payment options
- retailers providing information about third party support and assistance, including government funded schemes
- retailers providing assistance to the customer to reduce their energy costs, including through the provision of advice or assistance replacing appliances.

These protections are located variously in the ESC Act and relevant industry Acts,<sup>5</sup> and the Code.<sup>6</sup>

### **Need for improvements**

In 2015, we conducted a hardship inquiry to review these elements of the regulatory framework, as well as retailer practices under the auspices of the framework.<sup>7</sup> We found no evidence of

---

<sup>4</sup> The commission replaced the Office of the Regulator-General (ORG), which was established to oversee regulation of electricity and gas industries during the privatisation of the industry and accompanying establishment of markets in generation, distribution and retail segments of the industry. The legislative objective for the ORG in relation to consumers was expressed as: “to ensure that users and consumers benefit from competition and efficiency” (*Office of the Regulator-General Act 1994* (Vic), s7(1)(e)).

<sup>5</sup> *Electricity Industry Act 2000* (Vic) and *Gas Industry Act 2001* (Vic)

<sup>6</sup> A full description of the existing regulatory framework, including the authorising provisions, can be found in Essential Services Commission 2015, *Supporting Customers, Avoiding Labels. Energy, Hardship Inquiry Draft Report*, September, pp. 19-28.

<sup>7</sup> Refer Essential Services Commission 2016, *Supporting Customers, Avoiding Labels, Energy Hardship Inquiry, Final Report*, February.



widespread non-compliance with the framework, but found it was generally ineffective at preventing customers from accumulating arrears.

We also found that critical elements of the framework – those that affect whether a customer receives access to assistance, and what assistance they receive – rely too heavily on retailer discretion.<sup>8</sup> As a result, we found that energy retailer hardship programs were not preventing customers from building up large arrears or ensuring disconnection was a measure of last resort. Additionally, customers were not getting the assistance they need.

As a result, we could not be confident that disconnections were only occurring as a last resort. The commission therefore began developing a new framework to update the protections for customers facing payment difficulty.

### **1.3. Purpose of the changes**

The commission has amended the Energy Retail Code, issued under Part 2 of the *Essential Services Commission Act 2001(Vic)* that applies to, and must be complied with, by all energy retailers in accordance with their retail licences.

The overarching purpose of the changes is to respond to the commission’s statutory objective to promote protections for customers, including assisting customers facing payment difficulty. Through the hardship inquiry, we found that the outcomes for customers facing payment difficulty are highly variable and unpredictable, and include situations that could have otherwise been avoided — namely, growth in unmanaged customer arrears, disconnections that could have otherwise been avoided, or both.

The commission has therefore implemented protections that seek to address these highly variable and unpredictable outcomes by clarifying the minimum level of assistance to which a customer is entitled (including when it is expected to be provided).

### **1.4. First draft decision**

A draft decision, which set out a proposed regulatory safety net of minimum standards for customers experiencing payment difficulty, was released in October 2016.<sup>9</sup> While many stakeholders supported the objective of the proposed framework, they did not support the approach taken by the commission. On the basis of the feedback received and subsequent

---

<sup>8</sup> The commission’s findings are presented in full in chapter 2.

<sup>9</sup> Essential Services Commission 2016, *Safety Net for Victorian Energy Consumers Facing Payment Difficulty – Customer Advice Manual – Amendments to the Energy Retail Code, draft decision*, October.

engagement with stakeholders, the commission decided to produce a new draft decision, rather than proceed to a final decision.

## **1.5. Purpose of this report**

The purpose of this final decision is to set out the commission's new framework for assisting customers facing payment difficulty. Accompanying this final decision is a new version of the Code (version 12), which incorporates amendments that give effect to the new framework, and the draft guidance note.

## **1.6. Consultation on our second draft decision**

After releasing our revised draft decision in May 2017, we consulted with a wide range of stakeholders through a public forum, a series of stakeholder forums and technical workshops, as well as one-on-one meetings. We also received 22 written submissions.<sup>10</sup> The parties who made non-confidential submissions are listed below. Table 1.1 summarises the key milestones of the consultation process.

### **Parties who made public submissions to the revised draft decision issued 9 May 2017**

- AGL
- Alinta Energy
- Australian Energy Council
- Brotherhood of St Laurence
- CISVic
- Consumer Action Law Centre and Financial and Consumer Rights Council
- Council on the Ageing Victoria
- Elizabeth Clark
- Energy and Water Ombudsman (Victoria)
- EnergyAustralia
- Kildonan Uniting Care
- M2 Energy
- Momentum Energy
- Origin Energy
- People Energy
- Powershop

---

<sup>10</sup> Including one confidential submission. The remaining submissions are available on the commission website. The key issues from submissions and our broader consultation are summarised in chapter 4.

- Red Energy and LUMO Energy
- Sumo Power
- Victorian Council of Social Service
- William Morgan

**Table 1.1 Consultation on the payment difficulty framework**

Time	Consultation step
31 January	<p><b>First Stakeholder forum</b></p> <p>Full day forum focused on identifying next steps.</p>
February-March	<p><b>One-on-one meetings between ESC staff and stakeholders</b></p> <p>To clarify and better understand key issues raised during the consultation on the commission's first draft decision.</p>
24 March	<p><b>Technical workshop I – Retailer impact analysis (methodology)</b></p> <p>Consultation on the methodology for assessing the impact on retailers of the proposed framework.</p>
29 March	<p><b>Technical workshop II – Customer impact analysis (methodology)</b></p> <p>Consultation on the methodology for assessing the impact on customers of the proposed framework.</p>
9 May	<p><b>Second stakeholder forum and release of the revised draft decision</b></p> <p>Presentation of the new proposal. Submissions invited with due date: Friday 16 June 2017.</p>
29 May	<p><b>Third stakeholder forum</b></p> <p>The purpose of this forum was to provide stakeholders with the opportunity to question and comment on the proposal, to seek further guidance of the commission's intentions, and to make alternative suggestions where they have concern.</p>
31 May	<p><b>Technical workshop III – Retailer impacts (information request)</b></p> <p>Discussion and clarification of information requested by retailers in order to undertake the assessment of the anticipated impacts of the proposed framework.</p>
1 June	<p><b>Public Forum</b></p> <p>A forum to provide members of the public and other interested parties with the opportunity to hear about the proposal, ask questions and share their views.</p>
2 June	<p><b>Technical workshop IV – Process mapping</b></p> <p>Working with stakeholders to develop a shared understanding of the practical implications of the draft decision from a retailer business process perspective.</p>
16 June	<p><b>Submission period closes</b></p>

Time	Consultation step
27 June	<p><b>Technical workshop V – Customer impacts (preliminary analysis)</b></p> <p>A workshop in which stakeholders provided feedback on KMPG’s preliminary analysis of the impact on customers of the proposed framework.</p>
12 July	<p><b>Third stakeholder technical workshop – retailer impacts</b></p> <p>This workshop provided stakeholders with the opportunity to hear ACIL Allen explain its initial findings, retailers’ information and the revised cost benefit analysis findings that incorporate retailers’ information.</p>
25 July	<p><b>Fourth stakeholder forum</b></p> <p>In this forum the commission engaged with stakeholders on potential responses to those matters raised in submissions.</p>

In addition, between December 2016 and September 2017, the chairperson wrote to stakeholders on 15 occasions to inform them of the commission’s progress.

## 1.7. Structure of this report

This draft decision is divided into the following chapters:

- Chapter 1 contains the introduction.
- Chapter 2 summarises the main findings of the hardship inquiry, and explains why the existing protections for customers facing payment difficulty need to change.
- Chapter 3 explains how the commission’s approach to developing a new framework has evolved over time, including a discussion of stakeholder feedback to earlier proposals.
- Chapter 4 outlines the feedback we received on the second draft decision released in May 2017.
- Chapter 5 describes the new framework and how it is intended to operate.
- Chapter 6 contains an analysis of the impact assessment of the new framework.
- Chapter 7 sets out an implementation roadmap for the new framework.

## 2. Findings of the hardship inquiry

### 2.1. Introduction

This chapter summarises the main findings of the hardship inquiry, and explains why existing protections for customers facing payment difficulty need to change.

#### Structure of this chapter

This chapter contains the following key sections:

- Section 2.2 explains the context for the hardship inquiry, including the trends in energy disconnections that preceded the inquiry and an explanation of the social and economic significance of energy arrears and disconnections.
- Section 2.3 explains the terms of reference and key findings from the hardship inquiry.
- Section 2.4 presents the hardship inquiry's findings on the consistency of assistance that customers receive from their retailers.
- Section 2.5 sets out the hardship inquiry's findings on the effectiveness of the assistance that customers receive.
- Section 2.6 describes the limitations on the enforceability of the current framework for assisting customers facing payment difficulty.
- Section 2.7 covers developments since the conclusion of the hardship inquiry.

### 2.2. Context for the hardship inquiry

#### Trends in energy disconnections

In 2013-14, energy disconnections in Victoria spiked to a record high. In the same period, the Energy and Water Ombudsman (Victoria) reported a spike in the number of wrongful disconnection cases that it was assessing that resulted in a settlement payment. That is, disconnections that energy retailers acknowledged should not have occurred or that had occurred without the procedural requirements for disconnections being met.

These trends indicated that more people were being disconnected, and more appeared to be disconnected for the wrong reasons. This prompted concerns that the framework for supporting customers in payment difficulty may not be operating effectively. In this context, government and community confidence that disconnections were only occurring as a last resort was undermined.

## Consequences of energy arrears and disconnection

Energy is essential for social and economic participation, meaning that disconnection can have significant consequences for individuals and their families. This includes the discomfort and disruption associated with being unable to heat their home or wash their clothes, through to potentially serious health implications and psychological stress. It can also exacerbate a customer's vulnerability by making it difficult to seek employment or remain connected to support services and networks.

Similarly, when a customer falls into arrears with their energy retailer they may face a number of flow-on consequences, particularly if the arrears become unmanageable. In severe circumstances, energy retailers may sell the accrued arrears to third-party debt collectors, or pursue the arrears through debt agreements and bankruptcy. The Insolvency and Trustee Service Australia's research report, *Profile of Debtors*, credited eight per cent of all bankruptcies in Australia to utility arrears.<sup>11</sup>

As the Consumer Action Law Centre noted, bankruptcies caused by high energy arrears and arrears collection activities are concerning because bankruptcy can lead to even more severe consequences, such as house repossession and the threat of eviction:

We are increasingly seeing large national debt collection firms, having purchased energy debt, proceed with bankruptcy proceedings or property seizure following a judgment, without negotiating or considering the debtor's financial position....in the most extreme case, consumers end up homeless as a result of these debts.<sup>12</sup>

Unmanageable arrears and energy disconnections can also intersect with other key social issues and forms of vulnerability. Further, the Consumer Policy Research Centre (formerly Consumer Utilities Advocacy Centre) found that energy arrears exacerbate economic abuse (a form of family violence) and force victims of family violence to contend with 'poor credit rating, insolvency or bankruptcy, fees and penalties'.<sup>13</sup> The Victorian Royal Commission into Family Violence also noted the role of utility arrears in perpetuating economic abuse.<sup>14</sup>

---

<sup>11</sup> Insolvency and Trustee Service Australia 2012, *Profile of Debtors 2011*, March, (<https://www.afsa.gov.au/sites/g/files/net1601/f/profiles-of-debtors-2011.pdf>).

<sup>12</sup> Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 13.

<sup>13</sup> Consumer Utilities Advocacy Centre 2014, *Helping Not Hindering: Uncovering Domestic Violence & Utility Arrears*, August, p. 9.

<sup>14</sup> Victorian Royal Commission into Family Violence 2016, *Volume IV Report and Recommendations*, March, p. 93.

The severe consequences of energy arrears on customers, particularly low income and vulnerable customers are borne by both customers and society as a whole. Legal and community support services, for example, are often required to manage the fallout from high arrears and disconnection from an essential service. When a customer is disconnected from electricity, they are also prevented from meaningfully participating in society and the broader economy. This means that, while retailers may rationally respond to a customer's non-payment by disconnecting their energy supply, this can lead to sub-optimal outcomes for society as a whole.

### **2.3. Energy hardship inquiry**

In February 2015, the Victorian government issued the commission with terms of reference directing it to inquire into the assistance offered to customers in payment difficulty. The government sought confirmation that disconnection was a measure of last resort and that the regulatory framework was supporting this outcome.<sup>15</sup>

#### **Hardship inquiry terms of reference**

The terms of reference for the hardship inquiry directed the commission to:

- Investigate the different methods used by retailers to assist customers facing difficulties paying their bills because of financial hardship.
- Review the design and efficacy of the regulatory framework that establishes obligations on retailers to provide assistance to customers experiencing financial hardship to ensure customers receive targeted and effective assistance to avoid disconnection, including:
  - the commission's ability to monitor and enforce the framework
  - incentives on retailers to innovate in their pursuit of better practice.
- Consider the transparency of retailers' hardship policies, practices and procedures and how they might be improved.
- Identify cost-effective options for improving how retailers assist customers in financial hardship to manage their energy costs.
- Develop a benchmarking framework for the commission to assess and report on the effectiveness of retailer policies, practices and procedures for supporting customers in financial hardship to avoid disconnection.

---

<sup>15</sup> Victorian Government 2015, Terms of Reference – Inquiry into best practice financial hardship programs of retailers, 4 February 2015.

The hardship inquiry ran from February 2015 to February 2016. The commission published an issues paper in April 2015<sup>16</sup>, followed by a draft report in August 2015.<sup>17</sup> The commission delivered its final report to the government in February 2016.<sup>18</sup>

### Approach to the inquiry

We took an empirically based approach to the inquiry with the aim of establishing a clear understanding of how hardship programs operated in practice. We engaged independent consultants (ACIL Allen Consulting) to review the retailers' actual operations and undertake primary research into how retailers were assisting customers in payment difficulty. In conducting their research, ACIL Allen visited nine Victorian retailers, who collectively serve over 90 per cent of Victorian energy customers.

We also ran a consultation program through which, with the assistance of stakeholders, we explored the many complex issues relating to hardship and payment difficulty. The consultation program provided an important opportunity for us to test and refine our understanding of the issues, as well as ideas for how the current framework could be improved. The workshops and submissions helped us to develop options for amending the framework.

In February 2016, we presented our final report to the Victorian Government. The report contained our findings with regard to the assistance that customers were receiving and the adequacy of the current regulatory framework. We also set out our core vision for how the regulatory framework would need to change in order to address the issues we uncovered. After considering our report, the government asked us to work on amending the regulatory framework.

### Summary of key findings

Through the inquiry, we found that the experiences of customers facing payment difficulty varied widely. Their experience differed in terms of what assistance was provided, when it was provided, and also when it was withdrawn. The experience of any given customer depended on which retailer they were with, and how that retailer decided to assist them. Put simply, it was not possible to predict what assistance a customer would receive if they experienced payment difficulty.

This unpredictability meant that two otherwise similar customers could end up with very different experiences and very different outcomes. So while some customers were receiving excellent

---

<sup>16</sup> Essential Services Commission 2015, *Inquiry into the financial hardship arrangements of energy retailers: Our approach*, March.

<sup>17</sup> Essential Services Commission 2015, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Draft Report*, September.

<sup>18</sup> Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February.



support, some customers were not receiving adequate assistance. Others were not receiving any assistance at all. In some instances, customers were accumulating arrears to unmanageable levels before assistance was offered. As a result, arrears and disconnections were occurring that could have been avoided through better and timelier assistance from retailers.

Given these findings, it was not possible for the commission to say that disconnections were being pursued only as a measure of 'last resort'. It was also not possible to say that the assistance offered by retailers under their hardship policies met community and government expectations of being equitable and transparent, or of being applied consistently.<sup>19</sup>

The ultimate cause of this variability, our inquiry found, was in the design of the regulatory framework itself. The framework provides significant discretion for retailers to decide how and when to assist customers. Retailers apply this discretion in different ways.

This meant that even while customer experiences were varied and unpredictable, retailers were nonetheless technically compliant with their obligations because those obligations were so broadly defined. In essence, the high levels of retailer discretion permitted under the framework made assistance to customers in payment difficulty unenforceable.

## **2.4. Variability of customer experience**

Under the previous framework, when a customer was experiencing payment difficulty, retailers were required to classify customers according to whether they were:

- a hardship customer entitled to assistance under the retailer's hardship policy, or
- a customer who may be assisted outside of the hardship program, usually with a payment plan.

The way a retailer classified a customer facing payment difficulty was the first factor that determined the type of assistance the retailer made available to them. The hardship inquiry found that there was significant variation in how retailers approach this classification process and therefore who is and who is not classified as a 'hardship customer'.<sup>20</sup>

The second factor that determined the type of assistance that a customer received was what assistance a retailer decided to offer to their customers, either through their hardship program or outside the hardship program. The inquiry found evidence of significant variation in this respect as well.

---

<sup>19</sup> Section 45(2) of the *Electricity Industry Act 2000* (Vic) and section 48I of the *Gas Industry Act 2000* (Vic) stipulates that in approving retailer hardship policies, the commission must have regard to 'the principle that there should be equitable access to financial hardship policies and that those policies should be transparent and applied consistently.'

<sup>20</sup> The Code defines a 'hardship customer' as a 'residential customer of a retailer who is identified as a customer experiencing financial payment difficulty due to hardship in accordance with the retailer's customer hardship policy'.

## Eligibility for hardship programs

The eligibility criteria to access the retailers' hardship programs vary because the regulatory framework permits retailers to define the criteria to apply to potential hardship customers. The nine retailers whose practices we reviewed in detail for the inquiry used the presence of 'indicators' to identify that a customer was facing payment difficulty. These 'indicators' relate to circumstances or situations retailers considered as common signs of hardship.

Retailers reported that these indicators include:

- a drop in income due to an illness or injury
- unemployment
- relationship breakdown or bereavement
- financial literacy challenges
- cultural or linguistic difficulties
- living on government pension or welfare
- natural disaster
- a history of late or missed payments.

We found that three retailers transferred a customer directly to the hardship program when an indicator was identified. For the remaining retailers, the existence of such indicators prompted a consideration of whether to transfer the customer to their hardship program, or whether the customer could repay their arrears on a shorter term payment plan.

Five retailers considered the customer's ability to repay the arrears in a specified time frame (typically less than 12 months) as the primary consideration before transferring a customer to the hardship program. If a customer did not appear able to repay their arrears in that time period, then they were transferred to the retailer's hardship program.

Through submissions to the inquiry, stakeholders reported that, in their experience, customers were assessed for eligibility through a range of other criteria. Kildonan Uniting Care noted, for example:

*It has been Kildonan's consistent experience that one major and one second tier energy retailer have a standard practice of refusing vulnerable customers access to their hardship*

programs if they do not have a health care card, even though this is not the only criteria for entry to a hardship program.<sup>21</sup>

The variability of eligibility criteria between retailers mean that two customers in otherwise similar circumstances may end up being classified differently, with one entering a hardship program and the other being moved onto a payment plan.

### **Assistance offered to customers – inside and outside hardship programs**

The second dimension of variability relates to the assistance that is available once a customer has been classified in one of the two categories of payment difficulty (hardship or non-hardship).

Table 2.1 sets out the assistance that each of the nine retailers we reviewed made available to both categories of customers facing payment difficulty.

---

<sup>21</sup> Kildonan Uniting Care 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, *Submission to Commission issues paper*, May, p. 12.

**Table 2.1 Comparison of assistance potentially available to customers experiencing payment difficulty**

Customers on payment plans and those in hardship programs

Support that may be offered	To payment plan customers	To hardship program customers
Concession check	7 of 9 retailers	All 9 retailers
Utility Relief Grant	7 of 9 retailers	All 9 retailers
Tariff review	5 of 9 retailers	All 9 retailers
Payment deferral	All 9 retailers	None of the 9 retailers
Bill smoothing	7 of 9 retailers	None of the 9 retailers
Payment plan	All 9 retailers	All 9 retailers
Incentive payments	None of the 9 retailers	Offered by 6 retailers on a case-by-case basis
Arrears waiver	None of the 9 retailers	Offered by 1 retailer on a case-by-case basis
Review method of payment (Centrepay, direct debit etc.)	All 9 retailers	All 9 retailers
Energy efficiency advice over the telephone	All 9 retailers	All 9 retailers
Energy efficiency field audit	None of the 9 retailers	6 of the 9 retailers on a case-by-case basis
Equipment/appliance replacement	None of the 9 retailers	2 of the 9 retailers on a case-by-case basis
Financial counselling referral	3 of the 9 retailers	All 9 retailers

Source: Essential Services Commission 2015, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Draft Report*, September.

The data in Table 2.1 demonstrates that the assistance available to hardship customers varied between retailers. The data also demonstrates that the assistance available to non-hardship customers varied even more so than for hardship customers.

## Payment plans

For customers who were facing payment difficulty but were not in a retailer's hardship program, the primary entitlement was a payment plan.<sup>22</sup>

Even though all nine retailers offered payment plans to both hardship and non-hardship customers, the hardship inquiry found significant variability in the way in which payment plans were designed and implemented. There were differences in:

- how retailers undertake 'capacity to pay' assessments prior to placing customers on a payment plan
- the terms and conditions of the payment plans
- the duration of the payment plans.

## Capacity to pay assessments

Under the previous framework, payment plans were established having regard to a customer's 'capacity to pay'.<sup>23</sup> However, retailers interpreted this obligation differently.

Of the nine retailers in our study, five said they accepted the amount a customer advised that they can afford. The remaining retailers used some form of income and expenditure tool to assess a customer's capacity to pay. As part of this process, customers may have been required to provide sensitive and detailed financial information. This could include their salary and information about how they manage their household budget, such as that relating to rent, food and children's expenses.

In their submissions to the inquiry, consumer groups noted that some retailers require upfront payments as a way for a customer to demonstrate an intention to pay. The Consumer Action Law Centre raised this issue in its submission, noting retailers may require upfront payments to get access to a payment plan.<sup>24</sup>

The Consumer Policy Research Centre (formerly Consumer Utilities Advocacy Centre) and the Energy and Water Ombudsman (Victoria) were also concerned about the effectiveness of capacity to pay assessments. The Consumer Policy Research Centre noted:

---

<sup>22</sup> Under clause 33 of version 11 of the Code, if a customer informs their retailer they are experiencing difficulty paying their energy bill by the due date, or if the retailer identifies that this is the case, the retailer must offer a payment plan.

<sup>23</sup> Clauses 33 and 72 of the Energy Retail Code.

<sup>24</sup> Consumer Action Law Centre 2015, *Submission to the Essential Services Commission inquiry into the financial hardship arrangements of energy retailers*, Submission to Commission issues paper, May, p. 11.

The fact that unaffordable or unsustainable payment plans is a common feature in Energy and Water Ombudsman (Victoria) complaints about payment plans suggests that energy retailers are not appropriately assessing their customers' capacity to pay.<sup>25</sup>

In our 2004 paper on disconnections, we acknowledged the problems associated with assessing capacity to pay. At that time, we noted the regulations did not prescribe or set out an objective test for assessing capacity to pay. We also noted that it is unlikely such a test is feasible or desirable.<sup>26</sup> We remain of this view.

### **Payment plan terms, conditions and duration**

Under the current framework, retailers have discretion to determine the terms and conditions of payment plans. This discretion relates to the amount and frequency of instalments and consequently, the duration of the payment plan. Unsurprisingly, our study revealed considerable differences in the design and duration of payment plans between retailers.

Table 2.2 sets out the duration of payment plans for customers in retailers' hardship programs for the nine retailers we studied. One retailer had all of its customers in its hardship program on short-term payment plans. This retailer also has the highest average customer arrears. Four retailers had a significant share of customers in their hardship programs on payment plans of no fixed duration. Nonetheless, customers in hardship programs are more likely to be on longer-term payment plans than customers on payment plans outside hardship programs.

---

<sup>25</sup> Consumer Utilities Advocacy Centre 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers, Submission to Commission issues paper*, May, p. 3.

<sup>26</sup> Essential Services Commission 2004, *Disconnections and capacity to pay report on energy retailers' performance*, October, p. 4.

**Table 2.2 Duration of payment plans for customers in hardship programs**

Months

Retailer	Average arrears	0-3	3-6	6-9	9-12	12-15	15-18	18-21	21-24	>24	No fixed duration
Retailer 1	\$1734	100%									
Retailer 2	\$942				90%	3%	3%	2%	1%	2%	
Retailer 3	\$670	69%			1%						30%
Retailer 4	\$268		2%		7%		3%		88%		
Retailer 5	\$737						21%		40%		39%
Retailer 6	\$1218	N/A									
Retailer 7	\$1070	17%	30%	3%							50%
Retailer 8	\$1148	32%	23%	19%	7%	4%	3%	2%	3%	7%	
Retailer 9	\$1211	49%	0.5%	0.1%	0.1%	0.2%					50%

Source: Essential Services Commission 2015, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Draft Report, September.*

Outside hardship programs, the duration of payment plans was similarly diverse, as illustrated in Table 2.3. Two retailers included in our research for the hardship inquiry had all of their customers facing payment difficulty (but outside their hardship programs) on a payment plan of a single duration. Three had a range of duration options but most of these customers had been placed on shorter term payment plans. By contrast, another two retailers also had a range of durations, but had placed most of these customers on longer term plans.

Two retailers had half of their customers facing payment difficulty (but outside their hardship programs) on payment plans that were longer than two years duration. The average arrears of customers on payment plans for each retailer differed significantly (\$1512 for one retailer and \$411 for the other). In fact, the data showed no relationship between the size of customer arrears and the duration of payment plans across all retailers.

**Table 2.3 Duration of payment plans for customers outside hardship programs**

Months

Retailer	Average arrears	0-3	3-6	6-9	9-12	12-15	15-18	18-21	21-24	> 24
Retailer 1	N/A					100%				
Retailer 2	N/A	44%	40%	4%		4%	4%			4%
Retailer 3	\$244	2%	25%		42%					31%
Retailer 4	\$156	21%	32%	3%	38%		1%		5%	
Retailer 5	\$418				100%					
Retailer 6	N/A									
Retailer 7	\$1512	29%	11%	6%	4%					50%
Retailer 8	\$425	63%	21%	11%	5%	<1%				
Retailer 9	\$411	46%	3%		1%					50%

Source: Essential Services Commission 2015, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Draft Report, September.*

## 2.5. Consequences of variability

Because the experience of customers with payment difficulty varied considerably, outcomes for those customers also varied. The hardship inquiry found that hardship programs were generally not successful in reducing the level of customer arrears (Table 2.4). In fact, customer arrears were more likely to *increase* while participating in a hardship program. For the nine retailers participating in our research, the average current arrears for customers in hardship programs was \$1074, compared with the average arrears on entry of \$947— an increase of \$127.

We identified one retailer that had been successful in helping customers reduce arrears, both in and outside hardship programs. As we noted in our inquiry report, this retailer offered all standard assistance measures to every customer that came into its credit management cycle. It also invested time upfront so the right supports and payment plans were offered, and expected that customers would reduce their energy usage to a level that they can afford. This retailer also required the customer to pay back their arrears as a condition of remaining in a hardship program.

By contrast, another retailer that was not successful in reducing customer arrears had very high arrears levels on entry to its hardship program compared with other retailers and preferred to use short duration payment plans. This retailer had a lenient approach to removing customers from its hardship program and customers were only removed from the program if they refused to engage with the retailer by not responding to multiple attempts to contact them. This retailer’s customers



were at risk of accumulating more arrears, with unclear prospects about how to stabilise their situation in the longer term.

**Table 2.4 Comparison of arrears on entry to a payment plan and current arrears**

Average \$

	Payment plans outside hardship programs			Hardship programs		
	Arrears on entry	Current arrears	Change	Arrears on entry	Current arrears	Change
Retailer 1				1100	1734	634
Retailer 2	1002	966	-36	915	942	27
Retailer 3	331	294	-36	642	670	27
Retailer 4	348	156	-191	393	268	-125
Retailer 5	541	468	-73	849	737	-112
Retailer 6				1036	1218	182
Retailer 7	1787	1512	-275	967	1070	103
Retailer 8	1053	425	-628	1239	1148	-91
Retailer 9	687	411	-277	1207	1211	4
<b>All 9 retailers</b>	<b>620</b>	<b>414</b>	<b>-206</b>	<b>947</b>	<b>1074</b>	<b>127</b>

Source: Essential Services Commission 2015, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Draft Report*, September.

## 2.6. Defining the problem the inquiry identified

### What should be expected from the regulatory framework?

Defining the problem we identified through the hardship inquiry required us to clarify expectations regarding the circumstances in which energy disconnections can occur, and the assistance that customers will receive from retailers. This became the standard against which we compared the operation of the previous framework when drawing our conclusions about the meaning and significance of our findings within the inquiry.

The primary expectation, expressed by the Victorian Parliament via the relevant industry Acts, is that customers will not be disconnected from their energy supply except as a 'last resort'. The Acts also set out the types of assistance that retailers must include in their hardship policies – flexible payment options, energy audits, assistance with appliance replacement, and processes for early

response to payment difficulty<sup>27</sup> – as well as the matters the commission must have regard to when approving those policies. These matters include:

- the essential nature of the energy supply
- community expectations that licensees will work with domestic customers to manage the customers' present and future energy usage and associated financial obligations
- community expectations that the energy supply will not be disconnected solely because of a customer's inability to pay for the energy supply
- the principle that the energy supply to premises should only be disconnected as a last resort
- the principle that there should be equitable access to financial hardship policies and that those policies should be transparent and applied consistently.<sup>28</sup>

In light of these considerations, the commission's expectation towards the desired outcome of the regulatory framework is that:

Customers anticipating or in payment difficulty can obtain equitable access to predictable, consistent and effective assistance.

Ensuring that access to assistance is 'equitable' means that two otherwise identical customers are treated in the same way.

Ensuring that the assistance is 'predictable and consistent' is necessary to provide confidence in the efficacy of the regulatory framework so that customers can be assured that retailers will deliver on their obligations to make assistance available.

Our expectation of the outcome of the regulatory framework is derived from the principles set out in the relevant industry legislation that:

- there should be equitable access to assistance
- the assistance should be transparent and applied consistently
- disconnection should be a last resort.

### How is the framework performing?

Through the hardship inquiry, we found that the previous protections for customers facing payment difficulty contained in the Code were not adequate in terms of:

- what assistance was provided to customers in payment difficulty

---

<sup>27</sup> Section 43C of the *Electricity Industry Act 2000* (Vic) and section 48GC of the *Gas Industry Act 2001* (Vic).

<sup>28</sup> Section 45(2) of the *Electricity Industry Act 2000* (Vic) and section 48I of the *Gas Industry Act 2001* (Vic).

- when that assistance was provided
- when that assistance was withdrawn.

As a result, outcomes for customers in payment difficulty were highly variable and unpredictable and included situations that could have otherwise been avoided — namely, growth in unmanaged customer arrears, disconnections that could have otherwise been avoided, or both. Two otherwise identical customers could end up with very different experiences and very different outcomes.

Given these findings, it was not possible for the commission to say that disconnections were being pursued only as a measure of ‘last resort’. It was also not possible to say that the assistance offered by retailers under their hardship policies met community and government expectations of being equitable and transparent, or of being applied consistently.<sup>29</sup> We therefore define the problem that we identified through the inquiry in the following way:

Customers anticipating or in payment difficulty have not been gaining equitable access to predictable, consistent and effective assistance. Therefore, disconnection may not have been occurring as a measure of last resort.

As noted, the inquiry found that this situation was ultimately driven by the design of the regulatory framework, which provided retailers with significant discretion in how they assisted customers, and by doing so rendered the obligations largely unenforceable.

## 2.7. Developments since the hardship inquiry

### Legislative changes

Effective 1 January 2016, the *Electricity Industry Act 2000* (Vic) and *Gas Industry Act 2001* (Vic) were amended to expand the commission’s objectives to include the promotion of protections for customers who are facing payment difficulty.<sup>30</sup>

This created an additional impetus for the commission to act on the findings of its hardship inquiry, which was completed two months later and indicated significant deficiencies in the current framework for assisting customers facing payment difficulty. Given those findings, the legislative amendments created a statutory obligation for the commission to seek to improve the framework.

---

<sup>29</sup> Section 45(2)(e) of the *Electricity Industry Act 2000* (Vic) stipulates that in approving retailer hardship policies, the commission must have regard to ‘the principle that there should be equitable access to financial hardship policies and that those policies should be transparent and applied consistently.’

<sup>30</sup> Section 10(c) of the *Electricity Industry Act 2000* (Vic) and section 18(c) of the *Gas Industry Act 2001* (Vic).

The new framework responds to this objective and builds on the findings of the hardship inquiry, which concluded that energy hardship programs were not preventing customers from accumulating large arrears or being disconnected.<sup>31</sup>

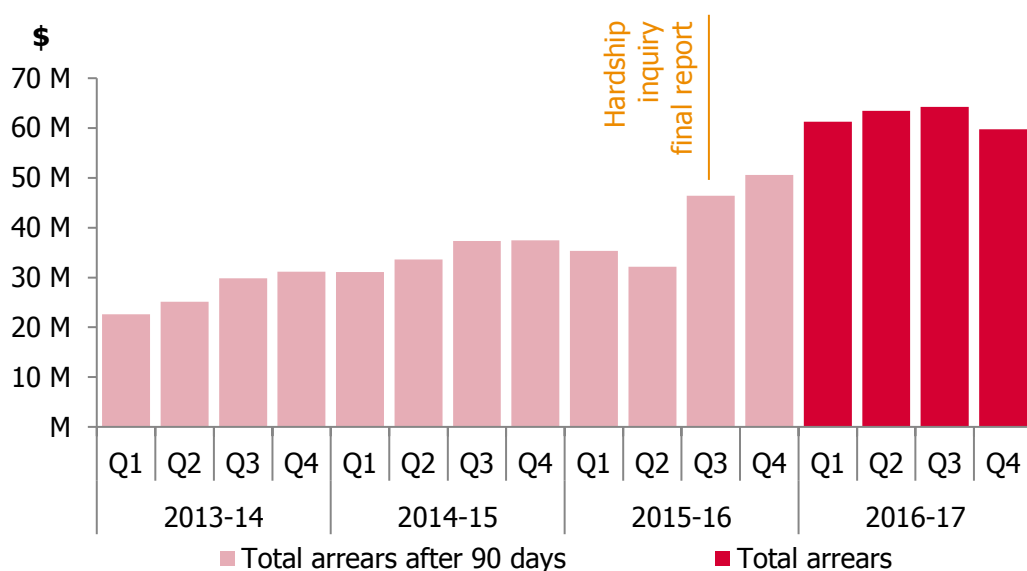
### Trends in arrears, disconnection and participation in hardship programs

The following sections illustrate the trends in arrears, disconnection and participation in the retailers' hardship programs since the hardship inquiry.

#### Energy arrears

Total energy arrears of customers participating in retailers' hardship programs remain high at \$59.7 million at the end of June 2017. These high debts levels follow a broad trend over the previous three years of increasing total arrears (from \$22.6 million at 31 July 2013 and rising to \$49.3 million at 30 June 2016).

**Figure 2.1 Total arrears of customers in hardship programs 2013-14 to 2016-17**



Source: Essential Services Commission, Energy Retail Performance Reports and Victorian Energy Market Reports

Note: the definition of arrears was adjusted from 1 July 2016, to better reflect the arrears of customers. Prior to 1 July 2016 arrears was defined as the amount of customer debt outstanding over 90 days. From 1 July 2016 arrears was re-defined to be the customer debt outstanding for any time past the due date of an energy bill. This redefinition of arrears accounts for some portion of the increase between the 2015-16 Q4 and 2016-17 Q1 reporting periods.

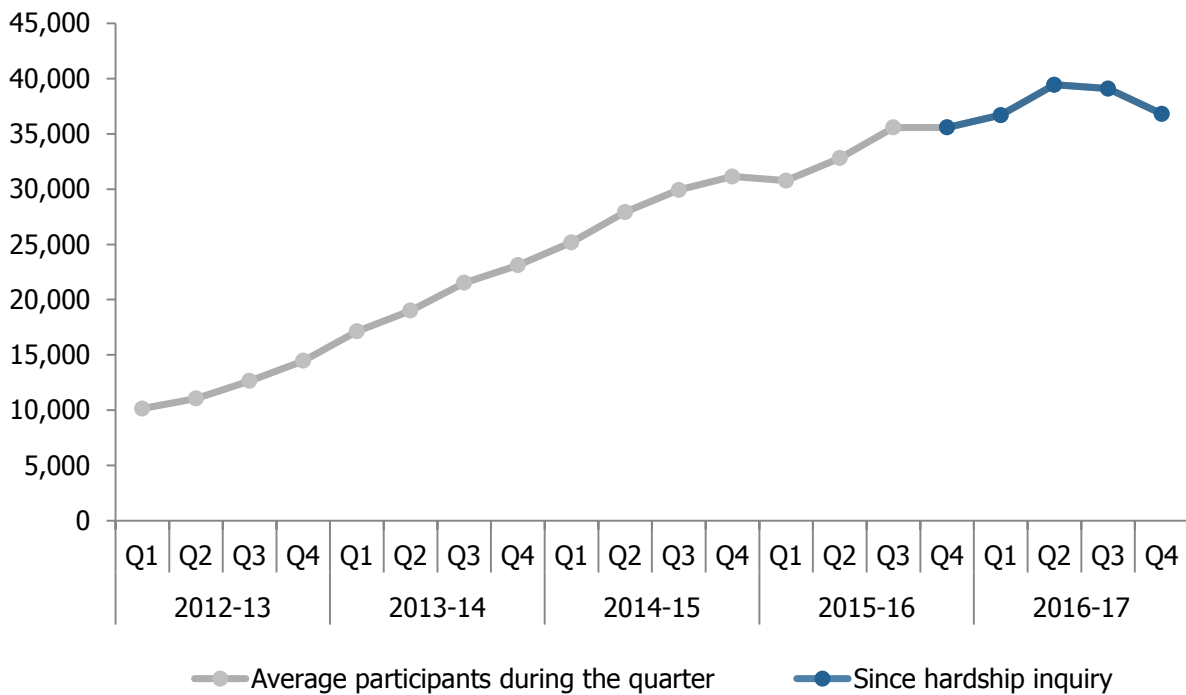
<sup>31</sup> Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 10.

## Participation in hardship programs

Since the hardship inquiry, retailers have enrolled more customers in their hardship programs, as illustrated in Figure 2.2. This continues a broad trend of increasing participation over recent years.

**Figure 2.2 Participation in hardship programs, 2013-14 to 2016-17**

Average number of participants per quarter



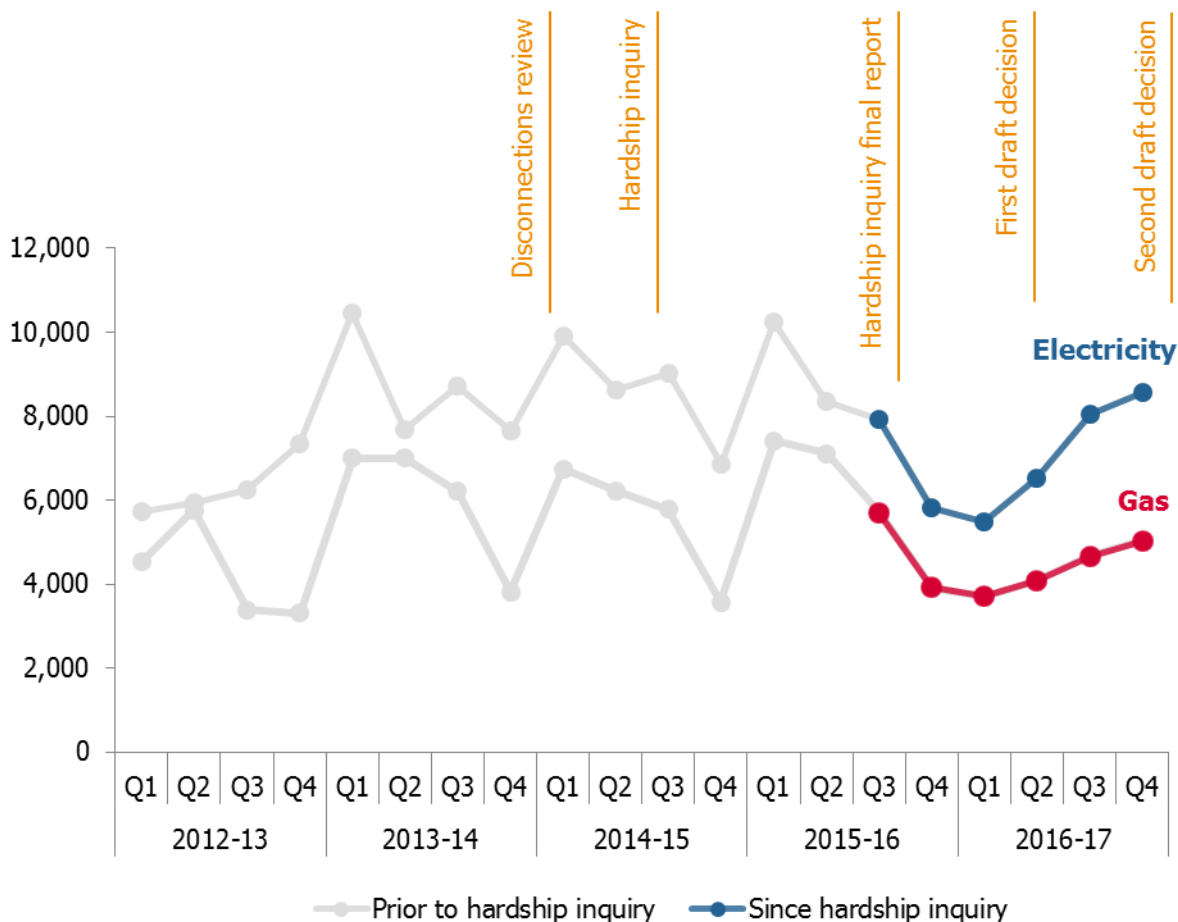
Source: Essential Services Commission, Energy Retail Performance Reports and Victorian Energy Market Reports

## Disconnections

Since the hardship inquiry, the number of customers disconnected yearly has decreased, as illustrated in figure 2.3. Notwithstanding, disconnections in Victoria remain at high levels when viewed against results reported by the commission in earlier years. Disconnections also appear to be increasing in 2016-17.

**Figure 2.3 Disconnections for non-payment, 2013-14 to 2016-17**

Number of customers per quarter



Source: Essential Services Commission, Energy Retail Performance Reports and Victorian Energy Market Reports

### Summary

The data indicates that retailers are admitting higher numbers of customers into their hardship programs. As the regulatory framework restricts retailers from disconnecting customers in hardship programs, this may partly explain the decrease in disconnections since 2014-15.<sup>32</sup> Interestingly, the rate of disconnections declined during and immediately after our hardship inquiry. We note that disconnections have now risen for three consecutive quarters since the low point in July-September 2016.

<sup>32</sup> Clause 110 of the Code places restrictions on the disconnection of customers participating in hardship programs for not paying their energy bills. With the increasing participation of customers in hardship programs, this restriction on disconnection may have contributed to the decrease in disconnections.

Nevertheless, high levels of total arrears have maintained in the same period. This is not necessarily a reflection of the assistance that retailers are providing. Total arrears are influenced by numerous factors beyond the control of retailers, including broader economic forces and changing customer preferences. However, it is an indication that the reasons for our earlier concern about customer arrears have not gone away.

Nor do these results provide insight into whether the issues around consistency of customer assistance that were discovered through the hardship inquiry have been resolved. It remains possible that two customers in similar situations to each other will receive different levels of assistance based on their retailer and how that retailer uses its discretion. The assistance customers receive remains largely a matter for the retailer to decide.

Finally, since the hardship inquiry there has been no change to the unenforceability of the framework by the commission. This is despite the amendments to the *Essential Services Commission Act 2001* (Vic), the *Electricity Industry Act 2000* (Vic) and the *Gas Industry Act 2001* (Vic) in 1 January 2016, which created the expectation that the commission play a more determined role in compliance and enforcement.<sup>33</sup>

## 2.8. Conclusion

Since the hardship inquiry, retailers have enrolled more of their customers in hardship programs, and disconnection numbers have declined from 2013–14. The decline in disconnections has now reversed and is approaching earlier historic highs.

However, the fundamental weaknesses of the framework remain unchanged. Trends in arrears, disconnection and participation in hardship programs may shift in any given quarter. As long as the framework is based upon retailer discretion and is broadly unenforceable, the commission (and the wider community) cannot have confidence that disconnections of customers will only occur as a last resort.

To support customers in avoiding disconnection, and or achieving management of their arrears at minimum, providing them with:

- payment arrangements that allow customers to repay outstanding amounts in a way that accords with their financial resources
- assistance to lower their energy costs by (i) lowering the price of the energy they're purchasing, and (ii) assisting them to sustainably lower their energy use

---

<sup>33</sup> *Energy Legislation Amendment (Customer Protection) Act 2015* (Vic).

- facilitating their access to government and non-government support services that may assist customers address their broader financial circumstances.

The better an assistance measure is at helping a customer avoid or manage arrears and reduce their energy costs the more effective it will be at avoiding disconnection. Evidence shows that the sooner assistance is provided; the more effective it will be at helping the customer avoid unmanageable arrears and disconnection.

We remain no more confident today than we were at the outset of this project that customers are only being disconnected as a measure of last resort.



## 3. Evolution of the commission's approach

### 3.1. Introduction

This chapter explains the evolution of the commission's approach to reforming the framework for assisting customers facing payment difficulty.

#### Structure of this chapter

This chapter contains the following key sections:

- Section 3.2 sets out the principles of good regulatory practice utilised to develop the new framework
- Section 3.3 sets out the approach we took when developing our first draft decision.
- Section 3.4 outlines the way our approach evolved for our second draft decision.

#### Summary

Our approach has unfolded in three main phases:

- the conduct and completion of the energy hardship inquiry
- the release of the first draft decision to put in place a regulatory framework to implement the proposals in the energy hardship final inquiry report
- the analysis and consultation, including preparation of a second draft decision, that has taken place since release of the first draft decision culminating in the final decision outlined in this report.

### 3.2. Energy hardship inquiry

To respond to the findings of the hardship inquiry, the commission recommended a regulatory framework to the government as set out below. The commission was conscious that any proposed changes to the regulatory framework must meet principles of good regulatory practice, identified as:

#### Principle 1 - Effectiveness

An effective regulatory framework produces outcomes that are consistent with those being sought.

#### Principle 2 - Flexibility

A regulatory framework supports flexibility by focusing on the desired outcomes and allowing regulated entities to adopt varying and innovative approaches to meeting their legal obligations.

### Principle 3 - Consistency

Regulation should have predictable and identifiable outcomes for regulated entities and consumers.

### Principle 4 - Efficiency and proportionality

In an efficient regulatory framework, retailers are able to assist customers in financial hardship in a way that is consistent with their legal obligations, such that the net cost of compliance is proportionate to the net benefit produced.

### Principle 5 - Transparency and clarity

A transparent regulatory framework ensures the obligations; decisions and actions of participants are clearly communicated, readily accessible, relevant, complete and understandable.

Transparency requires clarity about the regulatory obligations imposed by regulators and the consequences of non-compliance.

### Principle 6 - Accountability

The flexibility given to retailers to work with customers to ensure minimum entitlements are received comes with the expectation that this discretion is to be used responsibly. This responsibility is accompanied by accountability. Retailers are accountable for the way in which they exercise the discretions afforded to them.

### Framework for the final report

In developing the framework outlined in the final report of the hardship inquiry, we outlined the criteria for an effective framework as:

- aligned incentives between retailer and customer
- assistance to customers proportionate to their payment difficulty
- customer engagement with retailers
- innovation by retailers
- clarity for all stakeholders about obligations upon retailers and the standard of assistance that customers could expect
- enforceability of retailer obligations.

The commission came to the view that an effective framework needed to include:

- self-service options for customers to manage their energy payments and avoid getting into debt in the first place
- immediate assistance once a customer missed a payment

Evolution of the commission's approach

- assistance tailored to the customer's situation
- support to a customer to remain connected even when debt is increasing.

In March 2016, the government accepted the recommendations and findings of the final inquiry report and directed the commission to work on implementation.

### **3.3. First draft decision**

Following six months of consultation and detailed work, the commission produced a draft decision in October 2016 (hereafter referred to as the 'first draft decision'). Beyond the outline of the commission's proposal in the inquiry report, the first draft decision also contained:

- draft changes to the Code to give certainty and specificity to the regulatory rules giving effect to the framework
- a draft of a customer assistance manual.

The new framework set out in the first draft decision was described as a safety net that:

- established customer entitlements, and pathways, to different forms of assistance
- outlined minimum standards for each pathway (i.e. for communication, payment plans, other assistance)
- set out a mandatory default action in circumstances where there is no engagement between the customer and their retailer
- provided enforceable obligations for retailers with strictly defined pathways to disconnection.

The first draft decision was built on the work undertaken through the hardship inquiry. It was released in October 2016. Based on the observation that only customers that were in arrears were disconnected, it placed a premium on assisting customers to avoid accumulating arrears. It also attempted to provide high levels of regulatory certainty, and was focused on prescriptive thresholds, pathways and processes. It included detailed codification of entitlements and obligations, and strictly aligned forms of assistance with types of payment difficulty.

We received 19 submissions to the first draft decision. While many submissions supported the objective of the new framework, overwhelmingly they did not support the approach we had taken. On the basis of the feedback, the commission resolved to engage more deeply with stakeholders and, following those interactions, elected not to instead produce a revised draft decision rather than proceeding to a final decision.

#### **Stakeholder feedback on the first draft decision**

Stakeholders provided extensive feedback through submissions and through meetings with commission staff. The feedback covered a broad range of topics relating to both the process and the new framework we had proposed. This chapter does not seek to record all elements of the

feedback provided by stakeholders, but focuses on summarising the key themes of the feedback we received on the first proposed framework. It is organised into the following sections:

- operational complexity and ambiguity
- limits on flexibility and innovation
- unintended or negative consequences for vulnerable customers.

### Operational complexity and ambiguity

A large number of stakeholders said that the proposed framework was too complex, and risked causing confusion for both customers and retailers.<sup>34</sup> Some stakeholders noted that this issue would be particularly acute for customers from culturally and linguistically diverse communities.<sup>35</sup> Stakeholders noted that the complexity was compounded by ambiguity around certain elements of the proposed framework – such as what constituted a ‘minimum standard’ in particular instances – and therefore could produce uncertain outcomes for customers.<sup>36</sup>

### Limits on flexibility and innovation

Stakeholders, particularly retailers, were critical of the level of prescriptiveness in the first draft decision, which was seen to stifle flexibility and the potential for retailers to innovate.<sup>37</sup>

Stakeholders suggested that the inflexibility could disrupt existing practices that were working well, and reduce incentives for partnerships between community groups and retailers.

Community sector stakeholders also observed that the prescriptive, process-focused approach of the first draft decision had the potential to deprive customers of their agency.<sup>38</sup> This was seen to

---

<sup>34</sup> Most stakeholders made a statement to this effect. For some examples, see EnergyAustralia 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November, p.1; Consumer Action Law Centre & Financial and Consumer Rights Council (joint submission) 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November, p.4; Victorian Council of Social Service 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November, p.13.

<sup>35</sup> Ethnic Communities Council of NSW 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November, p. 2

<sup>36</sup> See for example Momentum Energy 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November, p.5.

<sup>37</sup> This theme was common across most retailers’ submissions. For example, see Powershop 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November, p.3; Origin Energy 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November, p.3.

<sup>38</sup> The importance of customer agency was particularly emphasised during the commission’s stakeholder forum on 31 January 2017.

undermine the ability of customers to take control of their circumstance and move themselves out of payment difficulty.

Conversely, some stakeholders suggested that sufficient detail needed to be retained in the framework to ensure that customers have clear entitlements, and to provide unambiguous protections for customers, particularly for those experiencing severe payment difficulty and at risk of disconnection.

### **Unintended or negative consequences for vulnerable customers**

Stakeholders expressed doubts about whether the first draft decision would be effective at mitigating payment difficulty in certain circumstances, particularly for the most vulnerable customers.<sup>39</sup> They were of the view that there was insufficient consideration given to the realities of the retailers' operations and to customers facing payment difficulty. As a consequence, there were concerns that the outcomes of the proposed framework would not be consistent with its objectives, and that the situation may worsen for customers facing payment difficulty.

Stakeholders also encouraged the commission to consider further how the new framework for assisting customers facing payment difficulty could promote engagement with, and empower, customers. Stakeholders generally felt that both retailers and customers should take responsibility for engagement.

Concern was expressed that the new framework as set out in the first draft decision did not adequately assist consumers with payment difficulty that are unable to engage with their retailer.<sup>40</sup> Consumer groups in particular emphasised the need for:

- default payment plans
- deeper engagement between retailers and customers facing payment difficulty
- mandated obligations for retailer-initiated engagement.

---

<sup>39</sup> This was a theme common to a number of submissions. For some examples, see Victorian Council of Social Service 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November, p.2-10; Brotherhood of St Laurence 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November, p. 2; Kildonan Uniting Care 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November, p.1; AGL 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November, p.2.

<sup>40</sup> This theme appeared in a number of submissions from consumer groups, but was emphasised in the joint submission from the Consumer Action Law Centre and Financial and Consumer Rights Council. Consumer Action Law Centre & Financial and Consumer Rights Council (joint submission) 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November, p.2-3.

Some retailers suggested that there may be limitations on mandatory engagement imposed by the *Privacy Act 1988* (Cth) and the *Australian Competition and Consumer Commission Debt Collecting Guideline*.<sup>41</sup>

### Challenges associated with developing the draft decision

While the principles guiding decisions and determination remain the same, some set in legislation, some drawn from regulatory theory and practice, the trade-offs between competing dimensions of good outcomes inevitably require the regulator to exercise judgement. Two trade-offs illustrate the challenges for the commission in this exercise:

- regulatory prescription versus business innovation: the tension here is that the more highly prescribed the regulatory rules, the more regulated businesses will have to direct resources – not simply funding but also scarce specialised skills – into regulatory compliance and away from development of innovative solutions
- regulatory prescription versus complexity for participants in market transactions: both retailers and consumer and community organisations pointed out the demands that would be made on training employees and volunteers to enable customers to exercise the entitlements to assistance proposed under the safety net.

In February 2017, the commission decided to put the first draft decision to one side and to develop and release a second draft decision.

### 3.4. Second draft decision

The second draft decision was released on 9 May 2017 for consultation ahead of the commission's final decision. The second draft decision was released with draft changes for the Code, but a second attempt at developing a customer assistance manual was not attempted until the design of the new framework was settled. The second draft decision aimed at:

- simplifying the regulatory design with a focus on outcomes rather than how the outcome is achieved
- building on the experience of retailers' interactions with their customers
- providing additional safeguards against disconnection for customers.

The commission requested submissions on the acceptability and cost of the proposed regulatory framework.

---

<sup>41</sup> This point was made to us during the stakeholder forum we held on 31 January 2017.

We conducted extensive consultation on the second draft decision. In addition to receiving written submissions, we engaged with stakeholders through forums, technical workshops, and one-on-one meetings. Chapter 1 lists the key milestones of the consultation process and the parties who made non-confidential submissions. Stakeholder responses to the second draft decision are detailed in chapter 4.

### **3.5. Conclusion**

Our approach to reforming the framework for assisting customers facing payment difficulty has evolved significantly throughout this process. This shift in approach reflects our response to feedback from stakeholders received in written submission and during technical workshops, forums and one-on-one meetings.

While our first draft decision was highly prescriptive in an attempt to standardise the assistance that customers in payment difficulty were entitled to receive, the second draft decision sought to adopt a more outcomes-based approach. Stakeholder feedback described concerns about operational complexity, limited flexibility and unintended consequences for vulnerable customers of the initial decision. The second draft decision moved away from 'tick the box' compliance and focused on making retailers accountable for the exercise of judgement needed on a case-by-case basis.

## 4. Feedback on our second draft decision

### 4.1. Introduction

This chapter sets out the feedback stakeholders provided to our second draft decision, as well as a description of how we have responded to that feedback in the final design of the new framework.

#### Structure of this chapter

This chapter contains the following key sections:

- Section 4.2 provides a high level summary of the stakeholder feedback we received on the second draft decision.
- Section 4.3 outlines stakeholder views on the framework design and how we have responded to this feedback.
- Section 4.4 describes stakeholder questions and comments about retailer standards of conduct and how we have addressed these concerns.
- Section 4.5 covers stakeholder feedback on questions of implementation, and how we have sought to accommodate this feedback in the final implementation plan.

### 4.2. High level summary of stakeholder feedback

In keeping with the evolution of our approach, our draft decision of May 2017 proposed a new framework that established minimum standards while retaining a degree of retailer judgement. Broadly speaking, stakeholders supported the new direction the commission had taken.

AGL commended the commission on the new decision:

The decision is a significant improvement compared to the first draft decision with much of the prescription that led to unintended and negative consequences removed.<sup>42</sup>

The Victorian Council of Social Service also stated its support:

We welcome the new focus on ensuring disconnection is a measure of last resort, which accords with the hardship inquiry's terms of reference, the ESC's legislative obligations, and community sector concerns about Victoria's high disconnection levels. Preventing disconnection clearly involves avoiding or managing arrears, as the ESC notes in its draft

---

<sup>42</sup> AGL 2017, Submission to the Essential Services Commission 2017, *Payment Difficulty Framework: Revised draft decision*, Submission to commission consultation paper, June, p. 1.



decision, and we welcome the policy statement on how customers can be supported to avoid or manage their arrears ...<sup>43</sup>

The Consumer Action Law Centre and Financial and Consumer Rights Council also voiced support for one of the fundamental principles of the new framework – customer entitlement:

We strongly support the principle that assistance is a clear entitlement that is not subject to retailer discretion.<sup>44</sup>

More broadly, feedback on the proposed framework fell into three categories:

- framework design – scope of customer entitlements, efficiency and effectiveness, technical and operational considerations
- standards of conduct
- implementation timelines.

This chapter summarises the feedback we received and explains how we have responded to the feedback in the framework.

### **4.3. Framework design**

Feedback on the design of the new proposed framework released in May 2017 fell into three main categories:

- scope of customer entitlements
- efficiency and effectiveness of entitlements
- technical and operational considerations.

The first category of feedback primarily concerned the form and extent of assistance to which customers should be entitled. The second category related to instances where stakeholders raised elements of the new framework's design that they considered may not deliver the commission's objectives in a cost effective manner. The final category contained feedback and questions on operational matters, including the potential for some design features to lead to unintended consequences.

---

<sup>43</sup> Victorian Council of Social Service 2017, *Submission to the Essential Services Commission 2017, Payment Difficulty Framework: Revised draft decision, Submission to commission consultation paper*, June, p. 5.

<sup>44</sup> Consumer Action Law Centre and Financial and Consumer Rights Council 2017, *Submission to the Essential Services Commission 2017, Payment Difficulty Framework: Revised draft decision, Submission to commission consultation paper*, June, p. 13.

### 4.3.1. Scope of customer entitlements

#### Second draft decision

The framework in our second draft decision proposed a range of new entitlements for customers facing or anticipating payment difficulty. The central feature of the proposed framework was a bundle of entitlements we named tailored assistance. Tailored assistance was designed to assist customers to get themselves out of arrears using flexible repayment arrangements. For customers unable to pay for their ongoing energy use, tailored assistance included additional protections such as an entitlement to practical assistance. Such practical assistance could take the form of help to find the tariff most likely to reduce the cost of energy use for that customer, or help to lower energy use by using energy efficiency measures or new, more efficient appliances.

Tailored assistance had two further attributes that are important to its overall functionality:

- It was designed to empower customers in their dealings with their retailer by allowing them to nominate the amount of their repayments (within some limits).
- Assistance delivered under this mechanism was designed to be adapted, or 'tailored', to a customer's individual needs.

The entitlements contained within tailored assistance could be organised into a number of different categories relating to different dimensions of assistance, such as the length of repayment arrangements to which a customer is entitled, or the number of times a customer is entitled to modify those arrangements over time.

#### Stakeholder feedback

Stakeholders broadly supported the mechanism of tailored assistance. Some stakeholders proposed changes to individual elements within the overall mechanism. The key feedback on the scope of customer entitlements related to:

- the entitlement of a customer to repay their arrears over a period up to two years
- the entitlement of a customer to seek to extend their repayment period beyond two years
- the extent to which a customer is entitled to propose the design of their repayment arrangements
- the potential for an unintended consequence whereby a customer could be provided assistance indefinitely even though it was not required.<sup>45</sup>

Each of these matters is discussed in turn. Our responses are also discussed below.

---

<sup>45</sup> This issue was referred to in some stakeholder submissions as the issue of 'loops'.

## Repayment of arrears over two years

Some retailers, such as EnergyAustralia, argued that the customer's entitlement to repay their arrears over two years was too long. It argued that this period was excessive for customers with low levels of arrears, and would require retailers to carry customer arrears for longer than is reasonable.

## Entitlement to seek to extend a repayment period beyond two years

Most retailers supported the principle of flexibility that allowed for repayment arrangements to be extended in certain situations to account for special customer circumstances. However, there was general concern from retailers that the rules they must follow when deciding whether to grant such an extension meant, in practical terms, that an extension was likely to be given in almost all circumstances. They questioned whether this was an appropriate setting.

## Customer entitlement to propose the design of their repayment arrangements

Retailers said that, when considered in the context of a customer's entitlement to nominate the amount of their repayments, features related to the design of repayment arrangements would allow customers to establish arrangements that were costly and difficult for the retailer to manage. For example, retailers were concerned about customers nominating payment plans in which the amount to be repaid varied each month, or in which the majority of payments were scheduled towards the end of the repayment period.<sup>46</sup>

Consumer groups, on the other hand, strongly supported the proposed entitlements and the flexibility that allowed customers to change or extend their repayment arrangements in response to changing personal circumstances.

It was noted that this flexibility was even more important in the context of the increasing casualisation of the workforce, and rising energy prices. Some consumer groups argued that we should go further and extend some forms of practical assistance – such as the assistance to help a customer lower their energy costs – to all customers on tailored assistance, as opposed to just those who cannot afford their ongoing use. However we formed the view following consultation that this measure was appropriately restricted in Part 3 to customers with the highest level of need.

---

<sup>46</sup> In some retailer submissions this was referred to as a 'balloon' payment plan, in the sense that the payment balloons out towards the end of the repayment period.

## Potential for indefinite assistance for customers

Finally, retailers were concerned the entitlements could lead to situations where a customer cycles through assistance indefinitely even if they did not require assistance. A particular concern was whether this might be possible for a customer who was not dealing with the retailer in good faith.

The Australian Energy Council stated:

Retailers support the general principle that a customer knows their own payment capabilities the best, and certainly better than the commission's previously prescribed range of plans. This is why we argued for flexibility for retailers to arrange plans with customers to meet customer needs. However, the pendulum has shifted too far toward customers being able to draw out payments indefinitely...<sup>47</sup>

The key times when this concern may become tangible are:

- when a customer misses a payment for arrears under their repayment arrangement, or
- when a customer misses a payment for usage during a period in which their arrears are on hold.

In both these instances, the new framework requires the retailer to contact the customer and, respectively:

- discuss putting forward a revised payment proposal, or
- work with the customer to identify a timeline to implement energy cost reduction measures.

The specific circumstance of greatest concern to retailers was one in which the customer responded to this retailer contact by establishing a new assistance arrangement, but then soon after began to default on that arrangement, thus obliging the retailer to contact them again to establish a new arrangement.

Repeated a small number of times, such a circumstance may be inconvenient for the retailer but could be justified on the basis of a customer's high level of need. Repeated indefinitely, it held the potential to establish an indefinite loop in which the customer perpetually avoided repaying their arrears.<sup>48</sup>

Retailers requested the commission to introduce a mechanism to preclude this from happening. For example, by specifying the number of payments that could be missed, or payment plans cancelled, before a customer lost their entitlement to further payment plans (for a defined period).

---

<sup>47</sup> Australian Energy Council 2017, *Submission to the Essential Services Commission 2017, Payment Difficulty Framework: Revised draft decision, Submission to commission consultation paper*, June, p.4.

<sup>48</sup> Or in the case of their usage payments where arrears was parked, their usage.

## How we have responded to stakeholder feedback

We have carefully worked with stakeholders to ensure we adequately understand the issues and we have tested a range of potential alternatives through our forums and workshops.

### Shared responsibility

Most effective outcomes for customers facing payment difficulty are achieved when communication, collaboration and cooperation exist between customers and retailers. The concept of shared responsibility is the hallmark of good process and outcomes in resolving payment difficulty. When retailers respond effectively to customers exercising their entitlements and customers interact with the retailers in good faith, there are strong reasons to believe that good outcomes will be achieved.

The concept of shared responsibility informs the feedback set out below and underpins the final decision more broadly.

### Entitlement to two years in which to repay arrears

We recognise the concern expressed by retailers but consider this risk to be mitigated by other elements within the final design of the framework. It is not our expectation that all customers who receive assistance under tailored assistance would establish payment arrangements that extend for two years.

Under the final design of the framework, a customer's entitlement to assistance is activated once they have missed a bill.<sup>49</sup> However, the new framework is designed to encourage retailer-customer engagement – in other words, a conversation – in which the most suitable outcome for that customer is discussed and established. We consider it appropriate and reasonable that during those conversations retailers would discuss the timeframe for repayment of arrears. This could include extending the pay-by-date for the bill if the retailer has made that option available under standard assistance, as well as the assistance to which the customer is entitled under tailored assistance. Given the potential for genuine dialogue between the retailer and customer in this setting, we do not consider it realistic to assume that all, or even a majority of, customers will take up their entitlement to a payment arrangement that is two years in length. Feedback from consumer groups indicates customers are keen to discharge debt as quickly as their financial resources will allow.

On that basis, we have retained the customer's entitlement of no more than two years over which to repay their arrears.

---

<sup>49</sup> Assuming their arrears exceeds \$55 (inclusive of GST).

## **Entitlement to extend a repayment period beyond two years**

Following further discussions and workshops with stakeholders, we accept the need to modify the settings relating to the circumstances in which a retailer may accept a customer's request to extend a repayment arrangement beyond two years. In keeping with the broad philosophy of the new framework, we have therefore adjusted this setting to clarify that a retailer may extend the arrangement beyond two years if it believes it is fair and reasonable to do so, taking account of the customer's circumstances. Conversely, the retailer may decline the extension if it considers it would be unfair or unreasonable in the circumstances.

## **Consequences of highly flexible payment arrangement designs**

The flexibility in the framework that allows a customer to propose and then revise their payment arrangements is central to the design and intent of the new framework. Placing a degree of control in the hands of customers is important to ensure payment arrangements are appropriate and sustainable. We accept that flexibility comes at a cost to retailer systems, and where that flexibility is less consequential to customer outcomes, we see merit in reducing that flexibility.

## **Unintended consequence of indefinite assistance for customers**

Some stakeholders invited us to resolve this problem by imposing hard limits on customer entitlements, such as the number of times a customer could miss a payment or have a cancelled payment plan. We sought further stakeholder input on this proposal through a stakeholder forum. While hard limits have the virtue of simplicity and clarity, they are unavoidably arbitrary. Hard limits come at the cost of flexibility, and will inevitably mean that some customers who should receive ongoing assistance – when considered from the standpoint of the fair and reasonable treatment that we are seeking to encourage – may find themselves cut off from assistance because the arbitrary threshold has been reached. Conversely, the threshold may inadvertently protect a customer who is gaming the entitlements, and therefore is undeserving of ongoing assistance, simply because the threshold has not been reached.

Although some entitlements can be codified with hard limits, we formed the view that missed payments do not fit this category (just as we formed the view that 'extensions' to the two year repayment period was also not amendable to hard limits). As a result, we have responded to stakeholder feedback on this matter in a manner consistent with the guiding principle of the new framework – that is, we have sought to place the obligation on retailers to assess what is a fair and reasonable course of action in the circumstances.

We recognise the case for allowing a retailer to stop providing assistance if a customer is not genuinely engaging with their repayment arrangements. If a customer repeatedly misses payments and then contacts the retailer to seek a new payment arrangement that exceeds the two year repayment period it could, depending on the circumstances, be fair and reasonable to conclude

that the customer is not taking reasonable action towards paying for their energy use and repaying their arrears. In such circumstances we consider that a retailer should not be required to continue to provide assistance to that customer.

This modifies the position we put in the second draft decision where retailers were required to contact customers who missed multiple payments an unlimited number of times. The new position makes it easier for retailers to not extend the customer's repayment arrangement following missed payments – by making it clearer in the Code when they are entitled to not do so. However, retailers who do so and eventually disconnect a customer will be required to evidence how they formed the view that this was a fair reasonable decision in the circumstances.

### **Summary of modifications to the scope of customer entitlements**

Table 4.1 below sets out the main elements of tailored assistance and outlines the settings for each element as at the second draft decision, and shows where we have modified the settings in the final decision in response to stakeholder feedback. For context, the table also shows the settings that existed under version 11 of the Code.

**Table 4.1 – Entitlements under tailored assistance, key elements**

Element	ERC version 11	Second Draft Decision	Final Decision
Information about repayment options	If a customer is provided a payment plan by their retailer, the retailer must advise them of the duration of the payment plan, including length of time to pay off arrears, and the amount of each instalment. If the customer is paying in advance, the retailer must set out the basis for calculation of instalments.(Clause 72(2))	<p>Retailer must provide advice to the customer about repayment options that would enable the customer to repay the arrears within 2 years.</p> <p>Retailer must provide the customer with specific advice about:</p> <ul style="list-style-type: none"> <li>• the likely cost of the customer’s future energy, and</li> <li>• how this cost may be lowered.</li> </ul> <p>Additionally, on accepting a payment proposal (or a revised proposal) the retailer must give the customer a written schedule of payments showing the due date and amount for each payment.</p>	No change from second draft decision (Clauses 79 and 81(5)).
Length	The retailer specifies the length of the payment plan having regard to the customer’s capacity to pay (based on the retailer’s assessment), expected energy use and level of arrears (Clause 72(1)(a)).	<p>Customer is entitled to a repayment arrangement for the arrears of up to two years in length.</p> <p>A retailer can grant a period longer than two years ‘if it reasonably considers it necessary on taking into account the circumstances of the customer’.</p>	<p>Customer is entitled to a repayment arrangement for the arrears of up to two years in length (no change from draft decision) (Clause 79).</p> <p>A retailer may accept a payment proposal or revised proposal that would result in the arrears being fully paid within a longer period, or with different amounts at different intervals (Clause 81(4)).</p>
Design	The retailer may separate usage and arrears or combine them.	Usage and arrears separated. Payment intervals up to one month.	Payment arrangements can consist of payments for energy use and arrears

Feedback on our second draft decision



Element	ERC version 11	Second Draft Decision	Final Decision
			(Clause 81(3)(c) but a retailer may accept an arrangement that separates payments for energy use from payments for arrears (Clause 81(4)(c)). Payment intervals up to one month (no change from draft decision) (Clause 81(3)(a)). Payments may be equal amounts unless the retailer and customer agree to an alternative design while having regard to the customer's circumstances (Clause 81(4)).
Changes	The Code is silent on whether a customer, having entered into a payment plan, is entitled to have such a plan revised.	Customer is entitled to change their repayment arrangement (subject to the design restrictions above) as long as their arrears is paid off within the original two year period (Clause 81(1)).	No change from the second draft decision.
Extending beyond two years	No specific entitlements. For hardship customers, retailers must offer fair and reasonable payment options with fair and reasonable instalment intervals that accommodate the particular circumstances of hardship customers and to monitor the hardship customer's payments, including the accumulation of debt (Clause 71B (2)(f)).	Customers can request to extend their repayment period beyond the original two years. Retailers may accept an extension to the original two year period if it would result in the arrears being fully repaid within the longer period and the retailer reasonably considers it necessary while taking the customer's circumstances into account.	Customers can request to extend their repayment period beyond the original two years. A retailer may accept a payment proposal or revised proposal that would result in the arrears being fully paid within a longer period, while taking into account the circumstances of the customer and acting fairly and reasonably (Clause 81(4)).
Practical assistance	None for customers not covered by a retailer's Hardship Policy. Hardship customers receive advice from	If a customer cannot afford their ongoing energy use, the retailers must offer practical assistance to help lower their	No change from the second draft decision.

Feedback on our second draft decision

Element	ERC version 11	Second Draft Decision	Final Decision
	<p>their retailer on the ‘most appropriate tariff’ and the retailer must facilitate its application (Clause 71B(1)(o)).</p> <p>When a retailer identifies a customer for its hardship policy (Clause 71B (2)(b)), the assistance the customer receives is a matter of retailer discretion (Clause 71B(1)).</p>	<p>energy costs including:</p> <p>Tariff most likely to minimise the customer’s energy cost (based on retailer’s knowledge of pattern of energy use and payment history) (Clause 79(1)(e)(i)).</p> <p>Practical assistance to help the customer reduce their energy use (Clause 79(1)(e)(ii)).</p> <p>Information about how the customer is progressing towards lowering their energy costs at sufficient intervals to be able to adequately assess that progress (Clause 79(1)(e)(iii)).</p> <p>An initial period of at least 6 months during which the customer’s arrears is put on hold and they pay less than the full cost of their use (Clause 79(1)(f)).</p> <p>A customer is entitled to all these forms of assistance if they cannot pay the full cost of their ongoing energy usage (Clause 79(3)).</p>	
Missed payments within a repayment arrangement	<p>If a customer misses a payment on a plan, the retailer may cancel the plan. The customer may contact the retailer for another plan if they have not had two plans cancelled in the previous 12 months. (Clause 33) If a customer voluntarily contacts their retailer <i>before</i> missing a payment on a plan to request a variation, the retailer may agree or not agree, but cannot record any agreed variation as a</p>	<p>If a customer misses a payment, the retailer must use its best endeavours to contact the customer to discuss putting forward a revised payment proposal. There is no limit to the number of times this can occur, as long as on each occasion the customer proposes a new repayment arrangement that repays the arrears within the original two year period.</p>	<p>If a customer misses a payment, the retailer must contact the customer to discuss their putting forward a revised payment proposal (Clause 81(6)). There is no limit to the number of times this can occur, as long as on each occasion the customer proposes a new repayment arrangement that repays the arrears within the original two year period. A retailer can withdraw assistance under</p>

Feedback on our second draft decision

Element	ERC version 11	Second Draft Decision	Final Decision
	'cancellation due to non-payment' – but the Code is silent on this possibility.		Division 3 if a customer has failed or refused to take any reasonable action towards paying for their arrears and ongoing usage (Clause 83).
Missed payments when arrears is on hold	Not applicable	If a customer misses a payment, the retailer must use its best endeavours to contact the customer to discuss varying the amount payable, or the frequency of those payments, or both, to give the customer more time to lower their energy costs (Clause 81(2)).	If a customer misses a payment, the retailer must contact the customer to discuss varying the amount payable, or the frequency of those payments, or both, to give the customer more time to lower their energy costs (Clause 82(2)).

Feedback on our second draft decision

### 4.3.2. Efficiency and effectiveness

Stakeholders raised a number of issues related to whether specific design elements and mechanisms within the framework would deliver their intended outcomes as efficiently and effectively as potential alternatives. This feedback was concentrated on two design features:

- the proposed mechanism for activating retailer obligations to make tailored assistance available to a customer
- the proposed mechanism for improving the access to entitlements for customers who do not engage with their retailer (referred to in the draft decision as default assistance).

Each of these mechanisms is discussed in turn.

#### **Mechanism to activate retailer obligations to make a customer aware of their entitlements under tailored assistance**

##### **Second draft decision**

The new framework contains a number of customer entitlements. Some of these entitlements are supported by obligations on retailers to act in certain ways – for instance, to use their best endeavours to make a customer aware of their entitlements under tailored assistance.

In defining the way in which these retailer obligations are activated, we sought to ensure the customer had access to, and is made aware of, their entitlements at the point at which those entitlements are of most use for the customer. We sought to balance this obligation against the implications for retailers (e.g. ‘over-capture’, meaning large numbers of customers who don’t need or want assistance are captured by the new framework).

In our draft decision, we proposed a mechanism for activating the retailer’s obligation to offer tailored assistance that involved a new and specific definition of ‘arrears’. Under this drafting, a customer would have had an entitlement to tailored assistance if they had not paid for their bill at the point when the next bill was issued.

##### **Stakeholder feedback on our second draft decision**

While this mechanism effectively guarded against over-capture, stakeholders noted that, when considered in the context of the overall design of the new framework, it may lead to:

- customers who do not engage being disconnected with higher levels of debt than under version 11 of the Code. This is because these customers would remain connected for longer under the proposed framework, and therefore have used more energy by the time they were disconnected (this issue was particularly pronounced for customers on bi-monthly or quarterly billing cycles)

- customers on different billing cycles would be entitled to assistance at different times, raising questions of equity
- potential confusion for retailers and customers, due to operational complexity.

Alinta Energy expressed concerns in these terms:

...two separate concurrent credit terms (one for ongoing usage and another for the payment plan) have a number of unintended consequences, namely:

- Customer confusion and complexity associated with having two con-current debts and applicable pay-by dates,
- A significant increase to the complexity in Alinta’s systems and processes to service these types of customers in relation to maintaining concurrent debt levels and credit terms,
- A significant increase to the complexity associated with maintaining records, running balances, within our IT platforms to manage appropriately.<sup>50</sup>

### How we have responded to stakeholder feedback

In response to this feedback, we worked with stakeholders to identify an alternative approach, based on a business day count deadline. This model is based on requiring the retailer to provide to a customer who has missed a bill and owes in excess of \$55<sup>51</sup>, timely, clear and unambiguous advice on the customer entitlements to tailored assistance. Timelines would be achieved by defining the number of business days within which the retailer is required to make contact and provide information about the assistance available. We also noted in our discussions with stakeholders that a similar deadline could be considered in relation to the issuing of a reminder notice.

Throughout our discussions with stakeholders, we sought views on the most appropriate number of business days, and also identified a number of refinements that could be made to the basic model of a business day deadline.

---

<sup>50</sup> Alinta Energy 2017, *Submission to the Essential Services Commission 2017, Payment Difficulty Framework: Revised draft decision, Submission to Commission consultation paper*, June, p. 6.

<sup>51</sup> That is, the amount of money outstanding on the customer’s overdue bill is in excess of \$55 (inclusive of GST). This is to prevent retailers being obliged to contact customers who owe only a small amount.

Having considered stakeholder input, we formed the view that the mechanism for activating a retailer's obligation to provide a customer with information about their entitlement to tailored assistance should be a business day count mechanism with the following features and conditions:

- a conditional deadline of 21 business days after the due date of the bill
- the conditional deadline will also apply to the provision of regulated reminder notices, and
- the retailer may not issue a disconnection warning notice unless six business days have elapsed since both the issuing of the reminder notice and the provision of information about tailored assistance to the customer, whichever is later.

In setting out this mechanism, we also provide the following clarifications in response to stakeholder questions:

- Providing the information about tailored assistance and the issuing of the reminder notice may be made sequentially in any order, or simultaneously.
- A retailer must give a customer information about their entitlements and how to access it. The retailer must then allow the customer at least six business days to consider the information and put forward a payment proposal.
- The retailer need not wait the full 21 days before proceeding to issue a disconnection warning notice (which is the next step in the collection cycle), as long as they have issued both the reminder notice and provided the information about tailored assistance, and the customer has made no attempt to respond within six business days via payments or contact with the retailer and six business days have elapsed since the later of the two events.

### **Mechanism for improving the access to entitlements for customers who do not engage with their retailer (default assistance)**

#### **Second draft decision**

In our second draft decision, we proposed a mechanism we termed 'default assistance'. Default assistance was developed to provide a 'backstop' form of assistance for customers who are not engaging with their retailer.

The mechanism we developed had three elements:

- a requirement for the retailer to make written contact with the customer (this written contact could be separate to, or coupled with, the disconnection warning notice. It could also be linked to the final best endeavours attempt to contact the customer prior to disconnection)
- a requirement that the content of that contact include a prescribed payment plan based on their current billing arrangements

- a means of accessing the assistance without communicating directly with the retailer.<sup>52</sup>

### Stakeholder feedback on our draft decision

Stakeholders broadly supported the notion of a ‘backstop’ for non-engaged customers. However, they were either equivocally supportive or opposed to the mechanism we proposed. Retailers, in particular, questioned whether it would produce the desired results.

AGL sought removal of default assistance:

AGL believes the default assistance provisions will generate higher costs to industry without any commensurate consumer benefits with respect to accruing and managing arrears. Further, the default payment is unlikely to satisfy the commission’s objective of providing a mechanism for a non-engaged customer to accept an offer of assistance to manage their arrears without having to contact their retailer.<sup>53</sup>

EnergyAustralia outlined its view:

Fundamentally, we see little benefit to these customers in granting them the ability to passively accept an automated payment plan (as would be the case under default assistance). This will allow debt to accumulate and prevent a retailer from offering support that reflects their circumstances.<sup>54</sup>

The Consumer Action Law Centre and Financial and Consumer Rights Council drew on their experience assisting customers in severe financial difficulty to emphasise how a backstop assistance measure would be important to customers with high levels of need:

National Debt Helpline financial counsellors provided feedback that a significant portion of customers who would receive default assistance offers are likely to be those experiencing the most severe ongoing financial difficulties, language issues, have complex personal circumstances, or a combination of these issues.<sup>55</sup>

---

<sup>52</sup> Under the proposal contained in our draft decision, the customer was deemed to have accepted the proposed payment plan if they made the first payment by the due date, as set out in the payment schedule.

<sup>53</sup> AGL 2017, *Submission to the Essential Services Commission 2017, Payment Difficulty Framework: Revised draft decision, Submission to Commission consultation paper*, June, p. 4.

<sup>54</sup> EnergyAustralia 2017, *Submission to the Essential Services Commission 2017, Payment Difficulty Framework: Revised draft decision, Submission to Commission consultation paper*, June, p. 8.

<sup>55</sup> Consumer Action Law Centre and Financial and Consumer Rights Council 2017, *Submission to the Essential Services Commission 2017, Payment Difficulty Framework: Revised draft decision, Submission to Commission consultation paper*, June, p. 23.

Feedback on our second draft decision

In addition to stakeholder feedback, we received advice on the likely impact of the design of this mechanism from ACIL Allen – along with all mechanisms within the proposed framework – as part of its independent analysis of the likely impact to retailers of the new framework.<sup>56</sup> ACIL Allen found that the proposed design of the default assistance mechanism would lead to a disproportionate cost increase for retailers, which would be borne by other customers to the extent retailers recovered this cost through their general tariffs. Specifically, they estimated default assistance may represent approximately 42 per cent of the upfront system costs of the proposed framework, while only being utilised by a very small percentage of customers.

The commission has a statutory responsibility to have regard to impacts associated with the new framework.<sup>57</sup> Given the costliness of the mechanism, it was not clear that the mechanism proposed in the draft decision was the most efficient and effective means of achieving the desired outcome. Further details on the anticipated impacts of the final framework are contained in chapter 6.

### How we have responded to stakeholder feedback: disconnection safeguards

We continue to see value in having a ‘backstop’ for non-engaged customers, even if this is a small percentage of customers overall. Although a small group, these customers may be those with the highest level of need.

Following engagement with stakeholders, we have responded to the concerns identified with removing default assistance by implementing a range of measures we refer to as disconnection safeguards. These safeguards include some measures contemplated in our draft decision but also new measures that have emerged through our stakeholder consultation process.

The new disconnection safeguards are comprised primarily of obligations on retailers to contact customers at important junctures and provide them with clear and unambiguous information about the help that is available from both the retailers and community service providers. These obligations are set out in chapter 5.

This mechanism ensures customers who do not engage with their retailer will have two new ways to receive information about the help that is available. By requiring retailers to include information about third party service providers, it also ensures customers have an avenue to seek assistance that does not include communicating directly with their retailer.

---

<sup>56</sup> See chapter 6 for a full analysis. Consultant reports accompanying this final decision, including the report from ACIL Allen, are available on the commission’s website.

<sup>57</sup> The *Essential Services Commission Act 2001* and our *Charter of Consultation and Regulatory Practice* outline how we are to have regard to these matters.



Disconnection safeguards largely deliver the intended outcomes – providing additional opportunities for non-engaged customers to identify and take up assistance, and an avenue for them to seek help without contacting their retailer – by utilising and adapting existing points of contact between retailers and customers. This approach will deliver the intended outcome at significantly less cost than the design contained in our draft decision.

We are also proposing to do more work to support the ongoing refinement and development of the framework. We view this work as necessary to better understand why some customers do not engage, and how non-engagement relates to payment difficulty. This work would include:

- a project to better understand the phenomenon of non-engagement by energy customers, to inform future revisions of the new framework, and
- pilots or trials to reach customers who are not engaging with their retailer.<sup>58</sup>

#### **4.3.3. Technical and operational considerations**

In their responses to the draft decision, stakeholders raised a number of issues about the technical and operational implications of the new framework. This included the potential of the new framework to lead to unintended consequences such as:

- dealing with payments for usage while repaying arrears
- restricting transfers of customers in some circumstances
- postal delivery times
- application of clause 111A
- minimum disconnection amount.

#### **Payments for usage while arrears are being repaid**

Under version 11 of the Code, when establishing a payment plan for either a hardship customer or a non-hardship customer, the retailer is required to “include an offer for the customer to pay for their energy consumption in advance *or* in arrears by instalment payments” (emphasis added). Version 11 of the Code therefore allows a retailer to propose payment plans that are either separated or combined. Both retailers and community groups have advised us that customers typically prefer payment plans that are combined (forecast), and this is the most common form of plan in the market.

---

<sup>58</sup> The concept of trials was suggested by retailers during our forum series.

## Second draft decision

In our second draft decision, we proposed moving away from past practice and requiring the basic repayment arrangement to be one in which arrears and usage were separated. We did this in the belief that it would provide clarity for customers about their financial position at any given point in time. We were also reluctant to prescribe a specific payment arrangement.

### Feedback on our second draft decision

Retailers and consumer groups did not support the change proposed in the second draft decision. They suggested that it may cause confusion for customers, who may receive separate communication from their retailer about their usage and arrears, leaving them unclear on their financial position. Retailers also said that this approach would lead to significantly higher system costs.

EnergyAustralia voiced its strong support for smoothed payment plans that combine arrears and future usage:

Split of use and arrears - that split usage and arrears is confusing for customers and against the current understanding of both retailers and customers on what a payment plan is. It will result in customers receiving multiple communications for concurrent bills and assistance arrangements as additional bills come into arrears. We strongly prefer to set up a smoothed payment amount that covers estimated future usage and arrears repayment. Our current plans work this way and we have found them to be very effective for customers. Any alteration will require significant system change.<sup>59</sup>

### How we have responded to stakeholder feedback

On the basis of this feedback, we have decided to ensure that the Code allows retailers to combine the payments for on-going energy use with repayments of arrears. However, this will not be mandatory, and retailers will also be able to be flexible in individual cases. Our expectation is that the majority of payment arrangements will be combined.

---

<sup>59</sup> EnergyAustralia 2017, *Submission to the Essential Services Commission 2017, Payment Difficulty Framework: Revised draft decision, Submission to Commission consultation paper*, June, p. 12.

Retailers are encouraged to work with customers to establish arrangements that best suit the customer's needs. In some circumstances this may involve separating usage and arrears – such as following the resolution of a dispute at the Energy and Water Ombudsman (Victoria). There may also be scenarios in which alternative arrangements may be preferred by both the retailer and customer. The Code allows a retailer to accept a proposal with payment of different intervals and, or with different payments. By this decision, the commission is ensuring flexibility in the formation of payment arrangements in regards to both design and structure to allow for a number of scenarios.

## Postal delivery times

### Second draft decision

In our draft decision, we proposed that retailers should take steps to ensure that key written communications, such as disconnection warning notices, are delivered within 24 hours of being sent.

### Stakeholder feedback

Stakeholders noted that this may not be possible in some circumstances, given that Australia Post could not guarantee next business day delivery in all areas of Victoria.

### How we have responded to stakeholder feedback

We recognise the practical limitations of the approach proposed in our draft decision, so we have adopted an alternative approach based on the 'service by post' provisions of the *Interpretation of Legislation Act 1984* (Vic).

For the purposes of the timing associated with regulated notices – such as the reminder notice period and disconnection warning notice period – the relevant period is deemed to begin on the day the letter would be delivered in the ordinary course of post. Where Australia Post specifies a range, the relevant day is the upper day of the range.

Retailers will be free to select whichever form of postal delivery they see fit. But in all cases, the regulated period – such as the reminder notice period – would not commence until the letter would have been delivered under the normal course of that form of Australia Post service.

To expedite the delivery of mail to customers, retailers can elect to use Australia Post's Priority Letter Service for either regular post or Registered Post, but the commission is not mandating use of priority or registered post for all written communications.

## Restriction on customer transfer in certain circumstances

### Second draft decision

In our draft decision we proposed that when a customer is receiving the highest level of assistance – that is, when their arrears is on hold and they are receiving practical assistance to lower their energy costs – they would not be permitted to transfer to another retailer.

The purpose of this mechanism was to prevent customers from avoiding their arrears, and instead requiring them to work with their retailer to remedy the situation. We also considered that this situation would strengthen the incentives for retailers to engage with the customer to help resolve their payment difficulty.

### Stakeholder feedback

Retailers were generally unsupportive of this mechanism. In making their objections, they cited the restriction of customer choice and also noted a number of technical matters that would need to be resolved in order to implement it. These technical changes included modifications to a number of commission and Australian Energy Market Operator (AEMO) codes and procedures. Generally speaking, customer groups were also not enthusiastic in their support of this mechanism, with some noting that it may prevent customers from accessing a better deal with another retailer.

### How we have responded to stakeholder feedback

We have conducted additional analysis of the consequential changes required to implement this mechanism, particularly as they relate to AEMO procedures. Given this practical impediment, and taking into account stakeholder feedback on the mechanism itself, we have decided not to include this mechanism in the new framework. We will however keep under review the number of customers on assistance under Part 3 of the Code who choose to transfer retailers.

## Application of clause 111A

### Second draft decision

Clause 111A of the new code was intended to specify the circumstances under which a retailer may disconnect a residential customer.

### Stakeholder feedback

Stakeholders pointed out that the wording of clause 111A included a reference to the clause applying to customers who are 'facing payment difficulty', and that this created confusion about whether the clause applied to all customers or just a subsection.

## How we have responded to stakeholder feedback

To clarify the application of the clause, we have removed the reference to ‘facing payment difficulty’ in order to make it clear that the clause applies to all residential customers. The revised clause 111A also includes directly or indirectly (by reference to Part 3), the additional disconnection safeguards.

### Minimum disconnection amount

#### Second draft decision

In our draft decision, we did not contemplate making a change to the minimum disconnection amount.

#### Stakeholder feedback

The minimum disconnection amount in Victoria is currently \$120 (excluding GST). Within the national framework, the equivalent measure is set at \$300 (including GST). Through submissions, multiple stakeholders called for us to align the Victorian minimum disconnection amount with the national framework.

Stakeholders noted that the Australian Energy Regulator had recently reviewed this amount and concluded it was appropriate to contemporary circumstances, and that the Victorian amount had not been reviewed for some time.

These calls were mostly in the context of the proposed trigger for tailored assistance, a trigger we have changed in this final decision following stakeholder consultation, and for default assistance, a mechanism we have now replaced.

AGL noted in its submission:

Currently, in Victoria the minimum disconnection threshold is set at \$120 (pre GST) whereas the AER sets the threshold at \$300 for jurisdictions sign up to NECF. As the AER recently (March 2017) completed a review of the threshold and found that \$300 strikes a good balance between consumer protection and retailer obligation to disconnect for non-payment, AGL would support the commission increasing the Victorian threshold to align with the NERR \$300 threshold.<sup>60</sup>

Origin referred to the recent review by the AER and expressed its support for raising the minimum disconnection threshold:

---

<sup>60</sup> AGL 2017, *Submission to the Essential Services Commission 2017, Payment Difficulty Framework: Revised draft decision, Submission to Commission consultation paper*, June, p. 10.

At present, clause 116(1)(g) sets the disconnection amount at \$120 (\$132 including GST). Origin believes that it makes sense for the amount in Victoria to be adjusted to match the National Energy Customer Framework (NECF) amount of \$300 per fuel (GST inclusive). This was recently reviewed by the AER and found to be a sum that balances maintaining supply with avoiding unnecessary debt accrual.<sup>61</sup>

### How we have responded to stakeholder feedback

Importantly, retailer support for raising the minimum disconnection amount was expressed in the context of ongoing consultation on the design of specific mechanisms within the new framework, rather than at large.<sup>62</sup> The commission had not proposed this change when setting out its draft decision. Consequently, we were reluctant to make this change without consulting on it specifically.

To test stakeholder views, the Chairperson wrote to stakeholders on 21 August 2017, requesting feedback on the proposal to align the Victorian minimum disconnection amount with the national framework. In light of stakeholder feedback, we will proceed to increase the Victorian minimum disconnection amount so that it aligns with the corresponding threshold in the National Energy Retail Rules. The new minimum disconnection amount will take effect from 1 July 2018.

## 4.4. Standards of conduct

### Second draft decision

In our draft decision we intentionally set out to develop a new framework that created an opportunity for the retailer to make decisions about how best to deliver the outcomes and minimum standards set out in the new framework. This discretion applies in three contexts:

- when a retailer attempts to contact a customer
- when a retailer attempts to provide assistance to a customer
- when a retailer is taking the customer's circumstances into account while deciding how and when to assist the customer.

In keeping with the precepts of outcomes-based regulation, this opportunity for retailer judgement was created so that retailers can adjust their assistance to best meet a customer's needs in light of their individual circumstances. We viewed this approach as preferable rather than seeking to codify

---

<sup>61</sup> Origin 2017, *Submission to the Essential Services Commission 2017, Payment Difficulty Framework: Revised draft decision, Submission to Commission consultation paper*, June, p. 6.

<sup>62</sup> During one stakeholder forum, it was suggested that the minimum disconnection threshold could be used to construct a trigger for certain retailer obligations. This idea was not pursued due to a superior method being identified subsequently.

rules that would apply to every conceivable circumstance. This would require a detailed and lengthy Code, which would be inflexible, and still likely not cover all circumstances that would be encountered in its real-world application.

### Stakeholder feedback

Consumer groups supported the flexibility that this model allowed, but sought reassurance that sufficient guidance would be developed to ensure that this flexibility was used to the benefit of consumers.

The Consumer Action Law Centre and Financial and Consumer Rights Council raised their concern about how retailers would comply with obligations that are undefined:

... the guidance notes may lack clarity and could give rise to retailers taking diverse views of what is reasonable in the circumstances, resulting in variable customer outcomes as with the current code. We would like to see more clarity in the code itself, defining the terms 'advice', 'best endeavours', 'taking circumstances into account' and what customers might 'reasonably expect'. It is currently unclear how guidance notes issued by the ESC will translate into retailer obligations.<sup>63</sup>

Retailers also supported the general principle of flexibility, but were focused on gaining as much clarity as possible about the commission's compliance requirements, across a range of scenarios. Retailers were particularly focused on the implications of various phrases within the Code that related to judgments they would be required to make on the basis of their knowledge of the customer.

The Energy and Water Ombudsman (Victoria) also raised its concern about the need for clear guidance:

Best endeavours is...a condition that retailers must twice meet before a customer can be disconnected from their energy supply. Because of this, we believe that the ESC should issue clear and comprehensive guidance notes so retailers can precisely understand this obligation and Energy and Water Ombudsman (Victoria) can effectively assess a retailer's compliance with the Energy Retail Code prior to disconnecting a customer. In Energy and Water Ombudsman (Victoria)'s assessments of retailer compliance with the Energy Retail

---

<sup>63</sup> Consumer Action Law Centre and Financial and Consumer Rights Council 2017, *Submission to the Essential Services Commission 2017, Payment Difficulty Framework: Revised draft decision, Submission to Commission consultation paper*, June, p. 4.

Code prior to disconnecting a customer, we found that, while their attempts could be interpreted as reasonable, some retailers did not do their 'best' to contact the customer.<sup>64</sup>

EnergyAustralia expressed its concerns about the need for guidance notes:

The commission has suggested consumers will be provided information on what is to be considered the reasonable expectations of customers anticipating or facing payment difficulties. We fully support the commission developing guidance material for consumers and consumer groups to understand what their rights are under the new framework, however this is something that should be explained to all stakeholders ahead of the final decision as it can fundamentally shift retailers' obligations.<sup>65</sup>

### How we have responded to stakeholder feedback

We note retailers' concerns about sections of the Code that relate to the exercise of their judgement, particularly where those clauses relate to the retailer's knowledge of customer circumstances. We remain committed to ensuring retailers actively consider any information they may possess that is relevant to understanding a customer's needs. However, we recognise having multiple similar provisions relating to active consideration of this information could lead to confusion and ambiguity about the Code's intentions. We have therefore streamlined all provisions that apply to retailer judgement in decision-making.

We also appreciate the concerns of both consumer groups and retailers about the practical implications of greater flexibility, and the role of retailer judgement in this context. We acknowledge that the new framework is more outcomes-based than the current framework, and that this will inevitably lead to a realignment of conventions and practices, some of which have been longstanding.

However, the commission's focus is on establishing a more outcomes-based framework and, at the same time, establishing the supporting architecture for such a framework.

Central to that, the supporting architecture is our guidance note, which will assist retailers, customers and their advocates to understand what the commission considers reasonable in a range of scenarios, and an insight into how the commission is likely to think about such questions in future. To be clear, the guidance note will not provide a tick-box outline for compliance with the

---

<sup>64</sup> Energy and Water Ombudsman (Victoria) 2017, *Submission to the Essential Services Commission 2017, Payment Difficulty Framework: Revised draft decision, Submission to Commission consultation paper*, June, p. 2.

<sup>65</sup> EnergyAustralia 2017, *Submission to the Essential Services Commission 2017, Payment Difficulty Framework: Revised draft decision, Submission to Commission consultation paper*, June, p. 10.



Code. Doing so would defeat the purpose of the Code in establishing an outcomes-based regulatory framework.

The Code will leave space in which the actions of retailers and customers are not codified. Our guidance note will narrow that space. Eventually, the Energy and Water Ombudsman (Victoria) decisions and commission decisions will narrow it further. It is our view that this approach is the best one for dealing with a complex issue such as payment difficulty.

We have released our draft guidance note for consultation along with this final decision and invite feedback from stakeholders on how it may need to be refined ahead of finalisation later this year.

## **4.5. Implementation**

Feedback on the pathway to implementation of a new framework related to two matters:

- model of implementation
- timing of implementation.

### **Model of implementation**

#### **Second draft Decision**

In our draft decision, we canvassed two broad models of implementation, namely:

- Phased implementation – different elements of the new framework take effect at different points in time, or
- Consolidated implementation – all elements of the new framework take effect at the same time.

In our draft decision, we favoured the phased implementation model on the basis that it would provide the fastest means of delivering at least some new protections to Victorian energy customers.

In our stakeholder forum of 25 July 2017, we also explored the question of additional means by which the commission could ensure the implementation of the new framework occurred smoothly. This included allowing an overlap period – for instance, three months – in which both the existing and new regulatory frameworks operated concurrently. Alternatively, we explored allowing retailers who identify that they are not able to comply with the new framework at the point it commences to submit implementation plans setting out their pathway to compliance.

#### **Stakeholder feedback**

Stakeholders did not support the phased model of implementation. Both retailers and consumer groups raised concerns about the potential for this model to cause confusion for customers, who may not feel clear about the protections to which customers are entitled to at a given point in time

Feedback on our second draft decision

during the implementation period. Similarly, consumer groups preferred a consolidated model on the basis that it would make training frontline staff easier and more efficient. Retailers commented that a consolidated model was simpler and easier to implement within their businesses, in terms of both system upgrades and staff training.

### How we have responded to stakeholder feedback

In light of the unanimous stakeholder preference in favour of a consolidated commencement, we have decided the entire framework will come into effect on a single day.

This is discussed further in chapter 7.

### Timing of implementation

#### Second draft decision

In our draft decision we set out a two phase implementation in which the first phase commenced in January 2018 and the second phase commenced in July 2018.

#### Stakeholder feedback

Retailers expressed concerns that this program would be undeliverable because they would have insufficient time from the commission's final decision to update their systems and processes. This issue was compounded by the Australian Energy Market Commission's forthcoming Power of Choice reforms, which have absorbed significant resources across the industry.<sup>66</sup> Some retailers also argued that they would not be in a position to finalise their system upgrade projects until the commission had issued a finalised guidance note to accompany the new framework.

### How we have responded to stakeholder feedback

In recognition of the fact that retailers will be required to make system changes and business process changes to implement the payment difficulty framework during a period in which they have already committed significant resources to prepare for the commencement of the power of choice reforms, we have set the commencement date for the new framework as 1 January 2019. This allows almost 15 months from the final decision, and around 12 months from the anticipated finalisation date of the associated guidance. These timeframes are in line with the lead time requested by retailers.

Further details are provided in chapter 7.

---

<sup>66</sup> Significant reforms to the National Electricity Market are underway following the provision of recommendations by the Australian Energy Market Commission in their power of choice review – Australian Energy Market Commission 2012, *Power of choice review – giving consumers options in the way they use electricity, Final report*, November.

## 4.6. Conclusion

Throughout the consultation process, we have worked with stakeholders to identify and resolve their concerns with the new framework. Where this process has resulted in changes to the framework that was set out in the draft decision, these changes are listed below.

### New framework design

#### Scope of customer entitlements

- We modified the basic design of repayment arrangements to make them simpler to implement and less confusing for customers. For example, there are greater requirements on retailers to provide timely, accurate and unambiguous information to customers on their entitlements to assistance, over and above the usual reminder and disconnection warning notices.
- We clarified the rules around when a customer can extend their repayment arrangement beyond two years, to make it clear that a retailer can decide not to grant the extension if they consider it unreasonable to do so in the circumstances.
- We mitigated the risk of indefinite assistance by amending the Code, to make it clear that if a retailer can demonstrate that a customer is refusing or failing to take reasonable actions towards paying for their ongoing energy and repaying their arrears, the retailer may consider beginning the disconnection process.

#### Efficiency and effectiveness

- We replaced the mechanism that activates a customer's entitlements (and a retailer's obligation to advise the customer of their entitlements) with a new mechanism based on a 21 business day deadline.
- We replaced the mechanism for reaching non-engaged customers (default assistance) with additional disconnection safeguards. A customer must be advised of their entitlement to assistance initially when they miss a bill and then after the issue of a disconnection warning notice. We will undertake an additional study into customers who do not engage with their retailers to inform any future revisions to the framework.

#### Technical and operational considerations

- We retained the basic approach for managing payments for usage while repaying arrears that applies to the current framework. We removed the restriction on customer transfer that applied to customers who have their repayment of arrears put on hold.
- We modified the rules around delivery times for regulated notices to ensure they remain fit for purpose regardless of the postal delivery option (ordinary post, Registered Post or Priority Letter Service) a retailer chooses.
- We reworded clause 111A to clarify that it applies to all residential customers.

Feedback on our second draft decision

## Standards of conduct

- We streamlined provisions relating to retailer discretion – such as those referencing retailer knowledge, best endeavours, and reasonableness – to make complying with those provisions clearer and simpler.

## Implementation

- We adopted a consolidated implementation model – all entitlements will commence on the same day.

We set the commencement date as 1 January 2019 to ensure retailers have sufficient time to prepare for implementation.

## 5. The new framework

### 5.1. Introduction

In this chapter we set out the new payment difficulty framework that will apply to all residential customers from 1 January 2019.

This chapter contains the following key sections:

- Section 5.2 provides an overview of the new framework.
- Section 5.3 outlines the changes to version 11 of the Code which give effect to the new framework.

Version 12 of the Code is set out in appendices A and B.

### 5.2. The payment difficulty framework

The new payment difficulty framework establishes the protections the commission considers are necessary to assist Victorian residential customers anticipating or facing payment difficulty, to avoid or repay arrears, and ensure that disconnection for non-payment of a bill is a last resort. The framework has been designed to respond to the findings of our hardship inquiry which found that:

- customers need assistance that varies with the type of payment difficulty they are facing
- labelling customers as 'hardship customers' is a barrier to accessing assistance
- customers do not know what assistance is available
- eligibility for assistance is very largely at retailers' discretion
- not all customers facing payment difficulty receive assistance
- the assistance provided varies widely between retailers
- some retailers have better practices than others
- assistance provided is often too little too late
- manageable payment arrangements provide the greatest assistance to customers
- retailer hardship programs are not preventing debt escalation
- there is no widespread non-compliance with hardship policies and procedures
- current hardship policies are unenforceable because they afford absolute retailer discretion.

In summary, the inquiry found that retailers are following the rules set out in the current Code, but the current rules do not prevent customers from accumulating significant debt. As a consequence, the current rules do not ensure that disconnection for not paying a bill is a measure of last resort.

The inquiry proposed a new approach to addressing payment difficulty based on customer entitlements to assistance tailored to their needs. The Victorian Government accepted the findings of the inquiry and requested that the commission work with stakeholders on the design of a new framework for customers facing payment difficulty.

Following the government's response to the inquiry we worked with stakeholders on a new framework. Our first draft was released in November 2016. It closely followed the proposal set out in the hardship inquiry, but was widely criticised for being too structured, prescriptive, and inflexible, and that it would not ensure that disconnection would be a last resort.

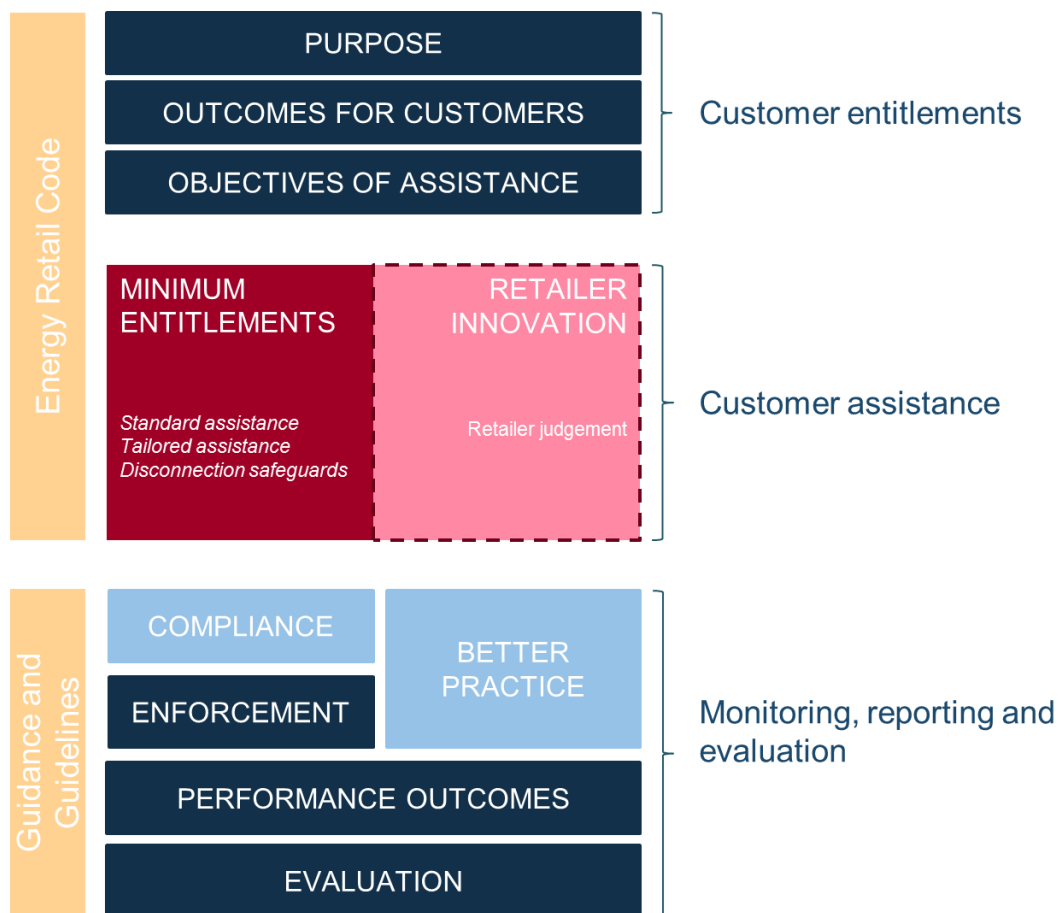
In January 2017 we started work on a simplified framework focused on outcomes for customers. The revised framework retained customer entitlements to assistance while providing flexibility for retailers in how they work with customers to achieve the outcomes. Prescriptive types of assistance and pathways were replaced with broader obligations on retailers to use their judgement to provide customers with assistance based on customer need. A second draft on the new framework was released in May 2017.

There was general acceptance by retailers and other stakeholders of the redesigned framework. However, as outlined in chapter 4, there were a number of concerns from retailers and other stakeholders about particular details of the framework design.

The framework set out in this final decision has been revised from the proposal contained in our second draft decision to take into account the stakeholder feedback.

Figure 5.1 illustrates the key elements of the new framework. An explanation of each element of the new framework is provided below.

**Figure 5.1 The payment difficulty framework**



Source: ESC

### 5.2.1. Purpose of the framework

The essential character of energy supply and the consequences that arise from loss of access for customers and their households have been well documented.

For a customer who is not able to pay their energy bills, whether to accumulate debt or face disconnection is an invidious decision. It is an equally invidious decision for retailers. And, as we found in our first draft decision, setting out to prescribe the course of action for every customer facing payment difficulty is an insurmountable task for a regulator.

Nonetheless, a strong focus on early and effective action to assist customers anticipating or facing payment difficulty is required if these invidious choices are to be avoided. The new framework is designed to ensure that customers receive timely assistance to take effective action to avoid and repay arrears.

The new framework

The commission has a statutory objective to promote protections for customers, including assisting customers who are facing payment difficulty.<sup>67</sup> We also have statutory obligations to promote better practice to facilitate continuity of energy supply,<sup>68</sup> to have regard to community and legislative expectations that energy supply will not be disconnected solely because of a customer's inability to pay,<sup>69</sup> and to the principle that disconnection should be a last resort.<sup>70</sup>

In keeping with these statutory obligations, and the clear expectation that disconnection should be a measure of last resort, the purpose of the new framework is:

to provide customers facing payment difficulty with a set of minimum entitlements to assistance to avoid or repay arrears, and ensure that disconnection for non-payment of a bill is a measure of last resort.

Under the new framework, a retailer may only consider disconnecting a customer for non-payment of a bill if they have provided the customer with the assistance to which they are entitled and have met all of their obligations to the customer under the Code.

### 5.2.2. Outcomes for customers

The causes of payment difficulty are unique to individual customers.<sup>71</sup> Customers facing payment difficulty need to know what assistance is available, and have that assistance tailored to their circumstances. Customers anticipating or facing payment difficulty should therefore expect to:

- receive timely assistance from their retailer that responds flexibly to their individual circumstances
- be provided with information about the cost of their energy use, and practical assistance to better manage their energy costs
- be able to arrange to pay for their energy use in a way that helps them manage their finances
- be able to propose how they will repay any arrears in a timely and sustainable way
- be provided with information and advice about how to access government and non-government support services, and
- be treated with respect by their energy retailer.

---

<sup>67</sup> Section 10(c) *Electricity Industry Act 2000* (Vic) and section 18(c) *Gas Industry Act 2001* (Vic).

<sup>68</sup> Section 42(b) *Electricity Industry Act 2000* (Vic) and section 48F(b) *Gas Industry Act 2001* (Vic).

<sup>69</sup> Section 45(2)(c) *Electricity Industry Act 2000* (Vic) section 48I(c) *Gas Industry Act 2001* (Vic).

<sup>70</sup> Section 45(2)(d) *Electricity Industry Act 2000* (Vic) section 48I(d) *Gas Industry Act 2001* (Vic).

<sup>71</sup> Essential Services Commission 2016, *Supporting Customers, Avoiding Labels, Energy Hardship Inquiry, Final Report*, February p. 36.



The Australian Energy Regulator's Sustainable Payment Plan Framework<sup>72</sup> sets out some useful principles to guide the conduct of respectful conversations with customers.

Customers should not expect to have to provide personal and financial information to their retailer in order to receive assistance.

### 5.2.3. Objectives of assistance

In order to guide retailers in providing assistance to customers, the new framework has three objectives:

- to help customers to avoid getting into arrears with their retailer
- to make it easier for customers to pay for their on-going energy use, repay their arrears and lower their energy costs
- to ensure that residential customers are only disconnected for non-payment of a bill as a last resort.

These objectives have been incorporated into Part 3 and clause 111A of version 12 of the Code. An overview of how the Code has been amended to give effect to the new framework is outlined in section 5.3 below.

### 5.2.4. Minimum entitlements

The new framework provides residential customers with minimum entitlements to assistance from their retailer when they are facing payment difficulty.

Minimum entitlements provide certainty and consistency for both customers and retailers. The minimum entitlements, along with a number of specific retailer obligations, are set out in the Code and should result in:

- retailers and their customers working together to find solutions that best meet the customers' circumstances
- customers being empowered to better manage their energy use so that their energy costs are more manageable within the financial resources available to them
- customers having improved knowledge of, and access to, government and non-government support services
- arrears not left unattended and lower levels of customer debt than would otherwise be the case.

---

<sup>72</sup> Australian Energy Regulator 2016, *Sustainable payment plans – A good practice framework for assessing customers' capacity to pay*, July.

Together, the customer entitlements and retailer obligations set out in the Code should mean that customers will be afforded equitable access to assistance, and transparency and consistency in the assistance they receive. Retailers are both able and encouraged to provide assistance beyond the minimum entitlements set out in the Code.

#### 5.2.5. Retailer innovation

By setting minimum entitlements to assistance, and not prescribing how retailers should provide that assistance, the new framework accommodates retailer innovation.

The hardship inquiry identified a range of better industry practices that were more effective in assisting customers to address their payment difficulty.

Industry practices have continued to evolve since the completion of the Inquiry. Some of the better practices we have observed include:

- flexible payment options available to all customers
- immediate efforts to contact a customer and provide assistance following a missed payment
- training of staff to recognise signs of payment difficulty and individual circumstances that are likely to affect payment in their conversations with customers
- acceptance by the retailer of a payment amount nominated by a customer
- practical energy management advice tailored to individual customers
- partnerships with welfare organisations to assist with energy management and access to other forms of assistance
- dedicated priority phone numbers for people advising or assisting customers facing payment difficulty
- incentives for payment such as payment matching and debt waivers.

The design of the framework strikes a balance between certainty and flexibility in order to allow for continued evolution and innovation by retailers in the delivery of assistance to customers.

#### 5.2.6. Monitoring and enforcing compliance

On 1 January 2016, new legislation came into effect that established new compliance and enforcement functions for the commission.<sup>73</sup> These new functions were supported by new compliance and enforcement reporting obligations<sup>74</sup> and enforcement powers. These enforcement

---

<sup>73</sup> Section 10AA *Essential Services Commission Act 2001* (Vic).

<sup>74</sup> Section 54V *Essential Services Commission Act 2001* (Vic).

powers include the ability to issue penalty notices,<sup>75</sup> enter into enforceable undertakings,<sup>76</sup> and amend licences in response to non-compliance.<sup>77</sup>

We have set out how we will undertake our new functions and use our new and existing powers in our *Energy Compliance and Enforcement Policy*. Our policy highlights that how a retailer meets its obligations, is a matter for that retailer. This will involve judgement by retailers in individual cases.

In order to assist retailers to exercise this judgement, we will publish guidance notes under the policy, to explain how the commission will assess compliance with the new framework and exercise its discretion in the use of its enforcement powers. The guidance notes will also provide examples of what the commission considers to be compliant and non-compliant conduct.

Where we consider a retailer has in good faith relied on examples of compliant conduct included in the guidance note, we will not take enforcement action.

Our policy also aims to promote constructive dialogue with the industry about the standards of conduct that are expected, and sets out the important role that the Energy and Water Ombudsman (Victoria) plays in this process.

Prior to the commencement of the new framework, we will repeal the *Operating Procedure Compensation for Wrongful Disconnection*, which currently guides the way in which disputes between a retailer and customer may be referred to the commission by the Energy and Water Ombudsman (Victoria). How we propose to replace the operating procedure is set out in chapter 7.

We will also make changes to how we work with the Energy and Water Ombudsman (Victoria) to take into account new statutory powers to refer systemic issues to the commission for investigation, and the commission's new compliance and enforcement functions and powers. How we propose to make these changes is also described in chapter 7.

### 5.2.7. Reporting better practice, performance and evaluation

Some of the factors that influence the effectiveness of the assistance that retailers provide to customers are not suited to regulation. These include, for example, the overall culture and attitude of the retailer towards customers facing payment difficulty and the skills, experience and training of staff, and innovative ways of communicating with and providing valuable information to customers.

---

<sup>75</sup> Section 54G *Essential Services Commission Act 2001* (Vic).

<sup>76</sup> Section 54B *Essential Services Commission Act 2001* (Vic).

<sup>77</sup> Section 29A *Electricity Industry Act 2000* (Vic) and section 38A *Gas Industry Act 2001* (Vic).

These factors are important but not amenable to regulation. We will therefore take a formal approach to promoting good practice through monitoring and reporting on retailer performance.

In November 2016, we published the first annual *Victorian Energy Market Report* in accordance with new legislation.<sup>78</sup> In addition to reporting on compliance with the new payment difficulty framework, in future reports and quarterly updates we will highlight the better practices of retailers in assisting customers facing payment difficulty.

On 30 June 2016, we published our *Interim Compliance and Performance Reporting Guideline*, which included some new and updated indicators of performance in relation to existing hardship programs. We will now review and finalise the guideline to reflect the new framework. Our plan for finalising the guideline is described chapter 7.

In addition to monitoring and reporting on retailer compliance and performance, we will evaluate the effectiveness of the new payment difficulty framework as a whole. In consultation with retailers and other stakeholders, we will therefore undertake a formal review of the operation of the new framework at least two years after implementation.

### **5.3. Changes to the Code**

The Code sets out the obligations on retailers for their interactions with customers, including the minimum terms and conditions that must be included in customer contracts.

Under the current Code, customers facing payment difficulty have no clear entitlements to assistance. This is because whether they receive assistance, when they receive it and what assistance they receive, is subject to decisions of the retailer. Likewise, retailers currently decide if and when assistance is withdrawn. Because discretions are unenforceable, retailer obligations to provide assistance are also unenforceable.

The Code has therefore been amended to provide a set of clear customer entitlements to minimum standards of assistance. These entitlements will be directly enforceable. In addition, if a retailer is unable to demonstrate that it has provided the customer with the assistance to which they are entitled, and has not met all of their obligations under the Code, any disconnection of that customer will be wrongful.

The changes that have been made to the Code focus on outcomes, rather than specifying how these outcomes are achieved. We have not attempted to solve all possible scenarios. As a

---

<sup>78</sup> Section 54V *Essential Services Commission Act 2001* (Vic).

consequence, retailers will need to draw on their experience and exercise their judgement about how to ensure compliance.

Two sets of changes have been made to the Code to achieve these outcomes:

- a new Part 3 of the Code sets out the minimum entitlements to assistance that residential customers can expect from their retailer<sup>79</sup>
- a series of consequential and related amendments to other sections of the Code that provide protections for customers facing payment difficulty.

This section provides an overview of these changes.

### 5.3.1. The new Part 3 of the Code

The new Part 3 of the Code is structured around the way retailers and customers interact, with defined minimum standards of assistance that must be provided depending on the type of payment difficulty a customer is facing.

Part 3 of the Code has six divisions:

- Division 1 sets out the purpose, application and interpretation of the Part.
- Division 2 establishes the entitlement of all residential customers to assistance to help them avoid getting into arrears.
- Division 3 establishes the entitlement for residential customers in arrears to assistance to pay for their energy use, repay their arrears and lower their energy costs.
- Division 4 sets out the content of financial hardship policies and the requirement for their approval by the commission.
- Division 5 sets out the requirements on retailers to provide information to customers about the assistance available.
- Division 6 establishes a range of obligations on retailers including: to take customer circumstances into account when providing assistance; cooperation with related service providers; and not requiring personal or financial information to be provided as a condition of providing assistance. It also contains a number of provisions retained from version 11 of the Code.

Further details about the key elements of each division is provided below.

---

<sup>79</sup> The new Part 3 retains a number of existing provisions from Part 3 of version 11 of the Code.

## Division 1: Operation of this Part

Reflecting the purpose of the new framework, Division 1 establishes the purpose of the Part, which is to:

“...set out the minimum standards of assistance to which residential customers anticipating or facing payment difficulties are entitled, so that disconnection of a residential customer is a measure of last resort.”

It also establishes that the Part applies to all residential customers in Victoria.

The new Code is focused on outcomes and does not prescribe how retailers act in every situation. Retailers will need to exercise their judgement about how to comply with the Code taking into account individual customer circumstances.

To assist retailers in the exercise of their judgement, the division also sets out the approach that the commission will take to interpretation of Part 3. The commission will have regard to any relevant guidance notes published by the commission under its *Energy Compliance and Enforcement Policy*. A set of draft guidance notes for consultation has been published with this final decision and is expected to be finalised by the end of 2017.

## Division 2: Standard assistance

The aim of standard assistance is to enable a customer anticipating payment difficulty to avoid getting into arrears.

Based on our research for the hardship inquiry, and what retailers and other stakeholders have told us is most effective in helping customers to avoid getting into arrears, the Code requires retailers to provide all customers with at least three of the following:

- pay an equal amount over a specified period
- pay once a month or once every fortnight rather than every quarter
- defer paying one bill for a specified period for at least one billing cycle over a 12 month period
- pay for energy use in advance, rather than in arrears.

Retailers must make information readily available about these forms of assistance and how customers may access them.

Retailers must also provide all customers with general information about how to manage and lower energy costs and government and non-government assistance that may be available to customers facing payment difficulty.

A summary of standard assistance is provided in Table 5.1 below.

## Table 5.1 Standard assistance

### Summary of assistance

Standard assistance	Relevant Code clause
A customer is entitled to a minimum of three of the following:	
<ul style="list-style-type: none"> <li>• Paying an equal amount over a specified period.</li> </ul>	<ul style="list-style-type: none"> <li>• Clause 76(2)(a)</li> </ul>
<ul style="list-style-type: none"> <li>• Paying at different intervals other than the billing cycle.</li> </ul>	<ul style="list-style-type: none"> <li>• Clause 76(2)(b)</li> </ul>
<ul style="list-style-type: none"> <li>• Deferring payment of one bill for a specified period for at least one billing cycle over a 12 month period.</li> </ul>	<ul style="list-style-type: none"> <li>• Clause 76(2)(c)</li> </ul>
<ul style="list-style-type: none"> <li>• Paying for energy use in advance, rather than in arrears.</li> </ul>	<ul style="list-style-type: none"> <li>• Clause 76(2)(d)</li> </ul>
The retailer must:	
Make available its hardship policy to its residential customers.	<ul style="list-style-type: none"> <li>• Clause 86(1)</li> <li>• Clause 86(2)</li> </ul>
<ul style="list-style-type: none"> <li>• Make all information about assistance readily available to customers. This information must be on the retailer’s website in readily printable form and sent to a residential customer upon the customer’s request.</li> </ul>	<ul style="list-style-type: none"> <li>• Clause 86(4)</li> </ul>
The retailer must have information readily available about:	
<ul style="list-style-type: none"> <li>• financial hardship policy of the retailer</li> <li>• customer entitlements under standard assistance and tailored assistance how to access this assistance</li> <li>• how to lower energy costs</li> <li>• government and non-government assistance (including Utility Relief Grants and energy concessions) available to help them meet their energy costs.</li> </ul>	<ul style="list-style-type: none"> <li>• Clause 86(3)</li> </ul>

Customers should be able to access standard assistance through self-service on-line, without requiring detailed or ongoing engagement with their retailer. However, retailers will also facilitate customer access to standard assistance by phone.

The new framework

### Division 3: Tailored assistance

The aim of tailored assistance is to enable a customer who is in arrears to pay for their on-going energy use and repay their arrears in a manageable way.

Tailored assistance is based on active engagement between the retailer and the customer. Once a customer reaches arrears of more than \$55, the retailer is expected to assist the customer to establish payment arrangements that will enable the arrears to be repaid within two years.

If a bill is unpaid, retailers have up to 21 business days after the due date of the bill to contact the customer and provide information and advice about the assistance available. Customers have up to six business days after receiving the information and advice to propose a payment arrangement that they believe they can manage.

#### Payment arrangements

Importantly, tailored assistance does not require retailers to automatically give every customer two years to repay their arrears. Instead, the Code requires retailers to provide a customer in arrears with information about their current pattern of energy use and what this is likely to cost in the future, and repayment options for the customer to consider.

Once the retailer has provided the customer with this information, and advice about any government or non-government assistance that may also be available, the customer has six business days to propose a payment arrangement that suits their circumstances and will result in the arrears being repaid in not more than two years.

Payment arrangements that involve at least monthly payments of equal amounts and will result in repayment of the customer's arrears within two years will be compliant with the Code. Retailers may, after taking the customer's circumstances into account, accept payment proposals that involve payment of different amounts at different intervals. Retailers may also extend the repayment period beyond two years and accept payments for energy use separate from payments for arrears.

#### Reducing energy costs

If a customer cannot afford a payment arrangement that will cover their future energy use, the retailer must provide the customer practical assistance to reduce the cost of their energy consumption. Making use of the retailer's knowledge of the customer's pattern of energy use and payment history, three forms of practical assistance must be provided:

- the tariff that is most likely to minimise the customer's future energy costs
- assistance to help the customer reduce their energy use
- regular information about how the customer is progressing to reduce their energy costs.



Where it may assist the customer to reduce energy costs, the practical assistance must include auditing energy use and appliance replacement.<sup>80</sup>

Because it takes time and access to specialist assistance to identify and implement ways of reducing energy consumption, if the customer cannot pay for their ongoing energy use, the retailer must put the repayment of arrears on hold for an initial period of six months. However, during this time the customer must make regular payments towards the cost of their energy consumption.

### Flexibility to respond to customer circumstances

The Code takes account of the fact that in some circumstances there may be limited scope for a customer to reduce their energy use significantly.

Because a customer’s circumstances may change, tailored assistance also provides for customers to vary their payment arrangement. A customer who has scheduled to repay their arrears in less than two years may reduce the amount that they pay, provided it still results in repayment within two years.

Retailers are also provided with flexibility to respond to changes in the customer’s circumstances, including extending repayment periods, and the amount of time a customer has to reduce their energy costs.

A summary of tailored assistance is provided in Table 5.2 below.

### Table 5.2 Tailored assistance

#### Summary of assistance

Tailored assistance	Relevant Code clause
If a customer can pay for their ongoing energy costs, the customer is entitled at the very least to:	
<ul style="list-style-type: none"> <li>propose a payment arrangement that will pay off arrears over a period of not more than two years, at regular intervals of up to one month</li> <li>receive advice from their retailer about the payment options to allow them to make such a payment proposal</li> <li>receive advice from the retailer about the cost of their ongoing energy use and how the cost may be lowered</li> <li>receive advice on any government and non-government</li> </ul>	<ul style="list-style-type: none"> <li>Clause 79(1)(a)</li> <li>Clause 79(1)(b)(c)(d)</li> <li>Clause 79(2)</li> </ul>

<sup>80</sup> *Electricity Industry Act 2000 (Vic)* section 43C and *Gas Industry Act 2001 (Vic)* section 48GC.

Tailored assistance	Relevant Code clause
<p>assistance (including Utility Relief Grants and energy concessions) that are available to help a customer meet their energy costs.</p>	
<p>If a customer cannot pay for their ongoing energy use, the customer is entitled at the very least to:</p>	
<ul style="list-style-type: none"> <li>• receive advice from the retailer about the cost of their ongoing energy use and how the cost may be lowered</li> <li>• receive advice on any government and non-government assistance (including Utility Relief Grants and energy concessions) that are available to help a customer meet their energy costs. Practical assistance from the retailer to lower energy costs including (but not limited to): <ul style="list-style-type: none"> <li>– the tariff that is most likely to minimise the customer’s ongoing energy costs</li> <li>– practical assistance to help the customer reduce their use of energy based on the customer’s pattern of use and where they live</li> <li>– information about how the customer is progressing towards lowering their energy costs to enable the customer to be able to adequately assess progress.</li> </ul> </li> <li>• For an initial period of at least 6 months, repayment of arrears can be put on hold while the customer pays less than the full cost of their ongoing energy use while working to lower that cost. The initial 6 month period may be extended if the extension would assist the customer to continue to lower the cost of their energy use.</li> <li>• A retailer must contact the customer to discuss a revised payment arrangement if the customer fails to make a payment.</li> </ul>	<ul style="list-style-type: none"> <li>• Clause 79(1)(c)</li> <li>• Clause 79(1)(d)</li> <li>• Clause 79(1)(f)(i)(ii)</li> <li>• Clause 79(1)(e)</li> <li>• Clause 79(4)</li> <li>• Clause 79(5)</li> <li>• Clause 82(1)-(4)</li> </ul>
<p>The retailer must accept a payment arrangement if it meets the following criteria:</p>	
<ul style="list-style-type: none"> <li>• the customer does not have their arrears on hold under clause 79(1)(f)(i)</li> <li>• results in the customer paying off their arrears in no more than 2 years after the first payment</li> </ul>	<ul style="list-style-type: none"> <li>• Clause 81(1)</li> <li>• Clauses 81(2) and 81(3)</li> </ul>

Tailored assistance	Relevant Code clause
<ul style="list-style-type: none"> <li>provides for payments of energy use together with payments of arrears</li> <li>provides for payments of equal amounts at regular intervals of up to one month and is based on a reasonable forecast of the customer's energy costs over the next year.</li> </ul>	
A retailer may accept a payment arrangement if it meets the following criteria:	
<ul style="list-style-type: none"> <li>provides for payments of different amounts at different intervals</li> <li>would result in arrears being paid within a period longer than two years after the first payment</li> <li>provides for payments of energy use separate to arrears.</li> </ul>	<ul style="list-style-type: none"> <li>Clause 81(4)</li> </ul>
Other customer entitlements:	
<ul style="list-style-type: none"> <li>a retailer must provide a written schedule of payments</li> </ul>	<ul style="list-style-type: none"> <li>Clause 81(5)</li> </ul>
<ul style="list-style-type: none"> <li>if a customer does not make a payment by the due date, the retailer must contact the customer to discuss a revised payment proposal.</li> </ul>	<ul style="list-style-type: none"> <li>Clause 81(6)</li> </ul>
A retailer does not have to continue to respond to a customer's entitlements if:	
<ul style="list-style-type: none"> <li>the customer has refused or failed to take reasonable action towards paying for their on-going energy use and repaying their arrears after the retailer has contacted them to discuss a revised payment arrangement</li> <li>the customer has failed to take action towards paying their ongoing energy use after the retailer has contacted them to discuss a revised payment arrangement</li> <li>the customer is not facing payment difficulty.</li> </ul>	<ul style="list-style-type: none"> <li>Clause 83</li> </ul>

### Customer engagement

The entitlements established by Division 2 are not open-ended or unlimited.

While customers are entitled to assistance and retailers are obliged to make that assistance available, these entitlements are not independent of the actions of customers.

Tailored assistance involves customers and retailers actively working together. Customers are expected to take reasonable action towards paying for their energy use and repaying their arrears.

Retailers are not required to repeatedly pursue customers who have not paid their bills or met the payment arrangements they have entered. Retailers are also not required to extend payment arrangements when customers are not taking reasonable action to pay for their energy use and repay their arrears.

What constitutes reasonable action on the part of a customer will depend on circumstances. Retailers will need to exercise judgement in individual cases. The guidance note will provide some examples of what reasonable action may involve.

#### **Division 4: Financial Hardship Policies**

The Code reflects the statutory obligation on all retailers, as a condition of their energy licence, to prepare a financial hardship policy.<sup>81</sup> The contents of the financial hardship policy are set out in this Division and must include:

- the matters required by legislation
- the entitlements set out in Division 3 of the Code
- any matters covered by guidelines or guidance notes.

Part 3 of the Code constitutes a guideline for the purpose of Section 44 of the *Electricity Industry Act 2000* (Vic) and Section 44H of the *Gas Industry Act 2001* (Vic) and also constitutes terms and conditions decided by the commission for the purposes of s36(1)(a)(ii) and s36(1)(b) and s43(1)(a)(ii) and s43(1)(b) of the respective Acts.

With version 12 of the Code, retailers are also required to ensure that the content of their hardship policies is consistent with the payment difficulty framework. Customers admitted to hardship programs managed by retailers are eligible for assistance under the payment difficulty framework just the same as other residential customers.

Retailers will need to review their current policies and decide whether they need to submit a variation to, or a replacement of, their financial hardship policy to the commission for approval.<sup>82</sup>

#### **Division 5: Communications**

Effective communication between a retailer and a customer facing payment difficulty sits at the heart of the new framework.

---

<sup>81</sup> Section 43 *Electricity Industry Act 2000* (Vic) and Section 48G *Gas Industry Act 2001* (Vic).

<sup>82</sup> Section 43B *Electricity Industry Act 2000* (Vic) and Section 48GB *Gas Industry Act 2001* (Vic).

Retailers have a range of information about a customer's energy use, payment history, tariffs and ways of reducing the cost of a customer's energy consumption. This information needs to be shared with customers facing payment difficulty in a way that assists them to propose payment arrangements that are manageable, and take practical action that will enable them to resolve their payment difficulty.

Retailers must also provide information and advice to customers about government and non-government services that may also assist them, including timely information about any grants or concessions to which the customer may be entitled.

Division 5 sets out the obligations on retailers to ensure that information about the retailer's financial hardship policy and the assistance that is available under that policy is readily available.

Division 5 also sets out the requirement that written communication must be in plain language and presented in a way that enables customers to know what their choices are and what actions they need to take.

The division also specifies when information will be taken to have been delivered if it is sent by post.

### **Division 6: Other retailer obligations**

Division 6 sets out the obligation on retailers to take a customer's circumstances into account and to act fairly and reasonably in the circumstances. This will involve the retailer making judgements about what is fair and reasonable in a particular customer's circumstances. The guidance note provides examples of what the commission would consider to be fair and reasonable in some particular circumstances.

The division also requires retailers to:

- provide information and assistance to customers in a timely manner
- work cooperatively with any government or non-government service providing support to the customer, including the Energy and Water Ombudsman (Victoria)
- comply with any relevant guideline published by the commission.

The division prevents retailers from:

- requiring a customer to provide personal or financial information as a condition of receiving assistance
- commence proceedings for recovery of debt from a customer who is receiving assistance
- selling or disposing of a customer's debt to a third party if they are receiving assistance or within 10 days of disconnection
- providing a supply capacity control product to a residential customer for credit management.

The new framework

The division also maintains the Centrepay arrangements set out in version 11 of the Code.

### 5.3.2. Other Code amendments

The new payment difficulty framework set out in Part 3 interacts with a range of other provisions of the Code. These include in particular the requirements on retailers to issue reminder notices, disconnection warning notices and the provisions specifying the circumstances in which a retailer may disconnect a customer for not paying a bill. Each of these provisions has been amended to provide a series of disconnection safeguards for customers facing payment difficulty.

Changes have also been made to some definitions, and a number of consequential amendments have also been made to ensure that the new Part 3 fits properly into the existing Code.

#### Reminder notices

To ensure that a customer's arrears are not allowed to accrue without formally being brought to the customer's attention, the Code has been amended to require retailers to issue a reminder notice no later than 21 business days after the pay-by-date of a bill. The purpose and content of a reminder notice have also been specified.

#### Disconnection warning notices

The Code has been amended to make it clear that the purpose of a disconnection warning notice is to give customers clear and unambiguous advice about what the customer needs to do to avoid being disconnected. The required content of disconnection warning notices has been amended to ensure that they also contain information about:

- the customer's entitlement to assistance under Part 3
- how to access other assistance from government or community service providers.

#### Disconnection as a last resort

A new provision has been included in the Code which prevents a customer being disconnected unless:

- the retailer has complied with Part 3 of the Code; met the requirements for reminder and disconnection warning notices; and used their best endeavours to contact the customer and provide information about assistance available to the customer
- and
- the customer has failed to make a payment; has not proposed a revised payment arrangement and has refused to take reasonable action towards paying for their energy use and repaying their arrears.

The new framework

## Disconnection safeguards

Together, these amendments, along with the provisions in Part 3, provide a series of disconnection safeguards, to ensure customers facing payment difficulty are only disconnected as a last resort.

A summary of the disconnection safeguards is provided in Table 5.3 below.

**Table 5.3 Disconnection safeguards**

### Summary of safeguards

Disconnection safeguards	Relevant Code clause
Where a customer has missed a bill payment but not contacted their retailer to activate an entitlement to a tailored assistance arrangement, a retailer has an obligation to:	
<ul style="list-style-type: none"> <li>give information about assistance available and how to access it to a customer who has not paid a bill by its pay-by date and who has contacted the retailer</li> </ul>	<ul style="list-style-type: none"> <li>Clause 80(1)</li> </ul>
<ul style="list-style-type: none"> <li>contact the customer within 21 business days of a missed bill payment, to inform them of their entitlements to tailored assistance</li> </ul>	<ul style="list-style-type: none"> <li>Clauses 80(2)</li> </ul>
<ul style="list-style-type: none"> <li>Issue a reminder notice within 21 business days of a missed bill payment</li> </ul>	<ul style="list-style-type: none"> <li>Clause 111A(a)(ii)</li> <li>Clause 109</li> </ul>
<ul style="list-style-type: none"> <li>allow the customer at least 6 business days to respond to being informed of their entitlements, so that the customer has a reasonable period in which to contact their retailer</li> </ul>	<ul style="list-style-type: none"> <li>Clause 80(3)</li> </ul>
<ul style="list-style-type: none"> <li>having made contact with the customer, provide them with assistance to which they are entitled under the payment difficulty framework</li> </ul>	<ul style="list-style-type: none"> <li>Clause 79</li> <li>Clause 81</li> </ul>
<ul style="list-style-type: none"> <li>must provide information about the assistance to which the customer is entitled</li> </ul>	<p>This applies to DWNs only:</p> <ul style="list-style-type: none"> <li>Clause 80(2)</li> <li>Clause 110(2)(ba)</li> </ul>

Disconnection safeguards	Relevant Code clause
under the framework during any period the customer has to respond to a disconnection warning notice	<ul style="list-style-type: none"> <li>• Clause 111A(a)(iii)</li> </ul>
<ul style="list-style-type: none"> <li>• also include information about community support services, including the contact details of those services on a disconnection warning notice that is sent to a customer, so the customer has access to help if they are unwilling or unable to engage directly with their retailer to seek assistance.</li> </ul>	<p>This applies to DWNs only:</p> <ul style="list-style-type: none"> <li>• Clause 110(2)(ba)</li> </ul>
<p>If the customer has still not responded after the retailer has issued a disconnection warning notice, the retailer has a further obligation to use their best endeavours to:</p>	
<ul style="list-style-type: none"> <li>• contact the customer and provide the customer with clear and unambiguous information about the assistance to which the customer is entitled under Part 3 of the Code.</li> </ul>	<p>This applies to DWNs only:</p> <ul style="list-style-type: none"> <li>• Clause 110(2)(ba)</li> <li>• Clause 111A(a)(iv)</li> </ul>

Further explanatory information on the disconnection safeguards is provided in the draft guidance note accompanying this final decision.

## 5.4. Conclusion

The new payment difficulty framework has been designed to address the problems with the current framework, in particular the continued accrual of unmanageable arrears, and the inability to ensure that disconnection is a last resort.

The new framework addresses these issues by:

- defining the outcomes that are expected for customers facing payment difficulty
- setting out a series of customer entitlements to assistance, replacing the previous focus on assessing whether a customer was in hardship or not
- placing obligations on retailers to provide information and advice to customers about their options for managing their payment difficulty
- providing retailers with the flexibility to provide assistance to customers tailored to their needs and having regard to their circumstances

The new framework



- providing retailers with the flexibility to go beyond the minimum requirements based on what is fair and reasonable
- defining what a retailer must do before they can consider disconnecting a customer for not paying a bill
- making the customer entitlements to assistance and retailer obligations enforceable
- monitoring and reporting on both compliance and performance.

The new framework is given effect through a new Part 3 of the Code and amendments to other parts of the Code, in particular, the clauses relating to disconnection.

The Code cannot and does not prescribe how a retailer must assist a customer in every circumstance. Retailers must use their judgement to decide how best to achieve the expected outcomes. This flexibility also provides room for retailer innovation. An explanation of the key changes from version 11 of the Code is provided in Appendix C.

How the commission will assess and enforce compliance with the Code will be set out in guidance notes under the commission's *Energy Compliance and Enforcement Policy*. These guidance notes will not create new obligations and will evolve over time in response to how the framework is implemented in practice.

The commission will monitor and report quarterly on retailer compliance and performance in its *Victorian Energy Market Report*. The reporting framework will be set out in a revised *Compliance and Performance Reporting Guideline*. The commission plans to consult retailers and other stakeholders on both the guidance notes and the *Compliance and Performance Reporting Guideline* are set out in chapter 7.

## 6. Impact assessment for customers and retailers

### 6.1. Introduction

This chapter contains the commission's analysis of the first round impacts that we anticipate the new framework will have on customers, particularly those facing payment difficulty, and on retailers.

The chapter reiterates the problem that the proposed payment difficulty framework seeks to address, and describes a range of impacts that we consider are expected to result from the implementation of the new framework. Some of these impacts have been subject to quantitative assessment, while other more intangible impacts have been described in qualitative terms.

The commission's judgement – based on this analysis, the work completed as part of the hardship inquiry, and the feedback from stakeholders during consultation on our draft decision – is that the payment difficulty framework in this final decision is a practical and cost-effective means of responding to the problem we are seeking to address.

The assumptions and analysis underlying the estimates have been set out in two consultant reports, which are available on the commission's website.

### 6.2. Purpose of this chapter

Business cases, cost-benefit analysis, regulatory impact statements and legislative impact assessments all seek to impose a discipline on government agencies to ensure they approach change systematically and methodically. Agencies must articulate the 'destination' they have in mind and their reasons why this destination is important. They must also assess the *status quo* and identify whether or not it is consistent with the 'destination'. This represents 'problem definition' and precedes the identification and assessment of possible solutions.

The commission is subject to this discipline.

As a modern piece of legislation, the *Essential Services Commission Act 2001* embodies this discipline, and directs us in the development and amendment of the regulatory frameworks that we administer.

The new payment difficulty framework will be given effect via amendments to the Code, as described in chapters 4 and 5. The Code applies to and must be complied with by all retailers in accordance with their retail licences.

In amending the Code, the commission is guided by its overarching objective, enshrined in section 8 of the ESC Act, to promote the long term interests of Victorian consumers.

The commission is also guided by our objectives under the *Electricity Industry Act 2000* and *Gas Industry Act 2001* to promote protections for customers, including in relation to assisting customers who are facing payment difficulty.<sup>83</sup>

In seeking to achieve these objectives, the commission must also have regard to the matters set out in section 8A of the ESC Act, to the extent they are relevant in any particular case, in this circumstance when considering amendments to the Code.

The ESC Act also directs us in relation to the processes we use. Section 14(1) of the ESC Act also obliges the commission to develop and publish a *Charter of Consultation and Regulatory Practice* including guidelines relating to processes for making determinations and other regulatory decisions and conducting inquiries.<sup>84</sup>

Together, these requirements impose the discipline on the commission referred to at the start of this section. That is, in proposing a new framework, the commission must:

- identify the desired outcome ('the destination') and provide its reasons
- identify the gap between the *status quo* and the 'destination' (that is, 'problem definition')
- identify the different options available to it for solving the 'problem'
- assess the relative merits of the options.

And, it must expose its consideration of these matters to external scrutiny. At a minimum, it must publish a draft decision and call for, and consider, submissions ahead of making a final (and binding) decision. Of course, as an administrative decision maker our decisions are also open to challenge through appeal. Together, these mechanisms serve as an essential 'check and balance' on the performance of our functions and exercise of our powers.

Stakeholder and public consultation are central to the commission's decision making processes. This scrutiny ensures that when we are proposing changes to our regulatory frameworks, our assessments are grounded in the available evidence and our assumptions and judgements are supported by clear and defensible reasoning. Where interested parties put forward new ideas, evidence and arguments that demonstrably challenge our own findings and assumptions, we amend our proposals accordingly. Chapter 4 further explores why stakeholder and public consultation is so important to our decision making processes.

The discipline imposed by the ESC Act requires that the commission performs its functions and exercises its power consistently with the principles for developing good regulation. How these

---

<sup>83</sup> Section 10(c) *Electricity Industry Act 2000* (Vic) and section 18(c) *Gas Industry Act 2001* (Vic).

<sup>84</sup> Charter of Consultation and Regulatory Practice, (<http://www.esc.vic.gov.au/publications/6490-charter-of-consultation/>) (accessed 20 April 2017).

principles and processes have been implemented during the course of this review is discussed in the following section.

### **Box 6.1 The importance of external consultation in regulatory decision making**

Once a problem has been defined and possible solutions identified, those options must be assessed for their merits. This assessment will entail matters that lend themselves to quantitative analysis while other matters can only be considered qualitatively (that is, in descriptive terms). Quantitative assessments will usually depend on the assumptions made when undertaking that analysis, while qualitative assessments are unavoidably a mix of objective, subjective and speculative judgements made during the assessment process. In turn, considering how much weight to attach to each element in these assessments is a matter of judgment in itself. There is no escaping the role of judgement.

It is unlikely that there is ever an objectively correct set of assumptions or judgements that can be made when assessing the case for change. Assumptions and judgements are typically matters whose appropriateness lies in the eyes of the beholder. It is for this reason that quantitative and qualitative assessments, and their assumptions and judgements, benefit from being exposed to broader scrutiny — such as through the commission’s demonstrated commitment to open and transparent decision making, and stakeholder and public consultation.

External scrutiny allows other parties to test and contest the evidence and assumptions, judgements and arguments that support our proposals. Through this process we are challenged to improve the way we make the case for change, or we must change the case we are making — as did occur with the revised draft decision and this final decision on the payment difficulty framework.

As discussed in section 6.3, in producing the proposal in our second draft decision, the commission did not treat policy development, impact assessment and external consultation as sequence of mutually exclusive steps. Instead, we sought to engage with stakeholders and develop our proposal in a dynamic and iterative manner. This final decision is evidence of that approach.

## **6.3. Defining the problem and assessing solutions**

The previous section described the four stages that guide the development of good regulation, namely: identifying the ‘destination’, ‘problem definition’, options for solving the ‘problem’, and an assessment of the merits of these options.

We have iteratively followed these steps since we commenced our work on the payment difficulty framework in July 2014.

## Destination

It was during the hardship inquiry that we identified the desired ‘destination’ for customers in payment difficulty (see chapters 2 and 3) and we defined the problem requiring a solution. As we set out in chapter 2, for the purposes of this chapter and the final decision, the ‘destination’ can be expressed in the following terms:

Customers anticipating or in payment difficulty can obtain equitable access to predictable, consistent and effective assistance.

Ensuring that access to assistance is ‘equitable’ will mean that two otherwise identical customers will be treated in the same way.

Ensuring that the assistance is ‘predictable and consistent’ will enhance confidence in the efficacy of the regulatory framework so that customers can be assured that retailers will deliver on their obligations to make assistance available.

## Problem definition

Customers anticipating or in payment difficulty have not been gaining equitable access to predictable, consistent and effective assistance. Therefore, disconnection may not be occurring as a measure of last resort.

Our definition of the problem responds to the principles set out in the legislation that:

- there should be equitable access to assistance
- the assistance should be transparent and applied consistently
- disconnection should be a last resort.

An inability to provide assurance that disconnection was in fact a last resort was the central finding of the commission’s hardship inquiry. That work went on to define the overarching features of the interventions required to provide predictable, consistent and effective customer assistance.

## Options identification and assessment

During the latter stages of our hardship inquiry, and during our consultations since February 2016 (when the government accepted the findings of the hardship inquiry and requested the commission to develop a new regulatory framework), the commission has been exploring options for solving this ‘problem’ and assessing the merits of these options. Ideas were proposed, tested with stakeholders and either accepted, modified or rejected on the basis of the feedback received.

Rather than treating policy development, impact assessment and consultation as three mechanical and sequential steps in the regulatory process, we sought to bring them together in a more integrated way.

This final decision represents the outcome of that integrated approach. It represents the best approach we have been able to identify that addresses the problem defined previously. Importantly, the new framework in this final decision has been informed by the ‘real time impact assessment’ undertaken over the last year through which we eliminated various other proposals (most notably, the proposals in our first and second draft decisions).

Because the inquiry identified the root causes of the problem as lying in the design of the Code itself, our options for remediating the problems identified in the inquiry necessarily took the Code as the starting point. Following a lengthy examination of different options for amending the Code, it is our view that the new framework we have set out in this final decision will address the problem identified in the hardship inquiry. As a result, it has not been necessary to explore options for responding to these issues that require the establishment of new, or alternative regulatory instruments. Furthermore, it was not open to the commission to explore policy interventions that lie beyond its statutory remit. In the following section, we consider the legal context in which our assessment takes place — including the statutory requirement that the commission has with regard to the impacts of regulation. The rest of the chapter then presents our approach to identifying these impacts, and we provide our findings.

## **6.4. Legal context**

The new payment difficulty framework is given effect via amendments to the Code.

As noted, in amending the Code the commission is guided by its overarching objective, enshrined in section 8 of the ESC Act, to promote the long term interests of Victorian consumers.

In pursuing these objectives, through amending the Code, the commission must have regard to certain matters set out in section 8A of the ESC Act (see Box 6.2), to the extent they are relevant in any given case.

Subsections 8A(1)(a) and 8A(1)(c) seek to address structural features of a market that determine its overall competitiveness and efficiency. As we noted during our hardship inquiry, left to its own devices, the retail energy market is likely to result in a level of disconnections that is socially sub-optimal. To the extent that energy retailers’ discretion to disconnect a customer is fettered by the Code, it might be argued that the market is operating less ‘efficiently’ than might otherwise be the case. However, the obligation on retailers to assist their customers originates in legislation and reflects a policy decision taken long ago in the interests of vulnerable customers and the community as a whole.

The findings of the hardship inquiry and the government's subsequent acceptance of those findings, suggests that a revised Code will better reflect the legislative intention that the disconnection of customers for non-payment is only pursued by retailers as a measure of last resort.

In the case of the proposed amendment to the Code, we consider subsection 8A(1)(b) largely overlaps with how we have regard to the matters addressed in subsection 8A(1)(e), which is discussed below.

Subsection (1)(d) does not appear to be a relevant consideration for the payment difficulty framework in this final decision.

As discussed in the previous section, having regard to the benefit and costs of regulation, as required by subsection (1)(e), has been central in our consultations with stakeholders to date and has guided the development of this final decision. The commission has prepared an assessment of the impacts of its proposal with the assistance of ACIL Allen Consulting and KPMG. Our assessment is discussed in the remainder of this chapter.

Subsection (1)(f) has guided our consideration of the design of the new framework. We have sought to minimise variations from the National Energy Retail Rules, though we recognise that the inclusion of customer entitlements to minimum standards represents a 'floor' on the open-ended retailer discretion allowed in the national rules. We believe these minimum standards are a necessary and unavoidable part of responding to the 'problem definition' discussed in section 6.3.

As noted in chapter 3, our approach in this final decision has taken into account consistency with the AER's Sustainable Payment Plan Framework.<sup>85</sup> In relation to this final decision, the Sustainable Payment Plan Framework provides useful guidance on how retailers should engage with customers in ongoing payment difficulty. In the earlier chapter, we encouraged retailers to adopt the principles of good customer engagement outlined in the SPPF.

Section 8A(2) requires the commission has regard to the relevant objectives of the industry Acts, namely, that it 'promote protections for customers, including in relation to assisting customers who are facing payment difficulty'.<sup>86</sup>

---

<sup>85</sup> Australian Energy Regulator 2016, *Sustainable payment plans – A good practice framework for assessing customers' capacity to pay*, July.

<sup>86</sup> Section 10(c) *Electricity Industry Act 2000* (Vic) and section 18(c) *Gas Industry Act 2001* (Vic).

**Matters which the Commission must have regard to**

(1) In seeking to achieve the objective specified in section 8, the Commission must have regard to the following matters to the extent that they are relevant in any particular case –

(a) efficiency in the industry and incentives for long term investment;

(b) the financial viability of the industry;

(c) the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries;

(d) the relevant health, safety, environmental and social legislation applying to the industry;

(e) the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for –

(i) consumers and users of products or services (including low income and vulnerable consumers);

(ii) regulated entities;

(f) consistency in regulation between States and on a national basis;

(g) any matters specified in the empowering instrument.

(2) Without derogating from section 8 or subsection (1), the Commission must also when performing its functions and exercising its power in relation to a regulated industry do so in a manner that the Commission considers best achieves any objectives specified in the empowering instrument.

**6.5. Process**

To assist us in undertaking the analysis, we engaged the services of ACIL Allen Consulting and KPMG, with the former assisting with the analysis of the impacts on retailers and the latter assisting with an analysis of the impacts for customers. We note, however, that retailer impacts are (ultimately) felt by customers, as retailers can be expected to pass through the costs they experience via the tariffs they charge customers – at least to the extent that their costs of assisting customers are no higher than their competitors.

Both consultancy services had relevant experience that made them well-placed to provide support to the commission in this exercise. In late 2016, KPMG produced a report for Energy Consumers



Australia that quantified the costs to customers and industry associated with disconnecting customers from their energy supply. ACIL Allen was engaged by the commission during its hardship inquiry to undertake primary research into retailer hardship practices. This research involved in depth field-based analysis of the operations of nine Victorian retailers.

Preliminary reports from ACIL Allen and KPMG were released in conjunction with our second draft decision. Each of the consultant reports invited stakeholders to provide additional information, and the ACIL Allen report was accompanied by a detailed schedule identifying the information retailers could provide that would be most useful to it. Stakeholders were urged to provide this additional information to the consultants.

## Approach

The consultants developed preliminary methods based on the data and information that was available to them, informed by better practice guidelines, including the Victorian Department of Treasury and Finance guide to regulation and associated toolkits.<sup>87</sup> The assumptions that underpin both consultants' work were aligned, to ensure consistency.

To aid the development of their methods, the consultants ran workshops with stakeholders. The workshops provided an early opportunity for stakeholders to provide feedback and input into the method development process.

The methods were refined on the basis of feedback and information provided by stakeholders via the consultation process, following release of the draft decision. The consultants then presented the commission with their final analyses.

## Final analysis

The analysis presented in this final decision and the accompanying consultant material represents the consultants' independent analysis of the anticipated impacts of the payment difficulty framework set out in this final decision, on the basis of the information available at the time. It was updated and refined prior to the finalisation of the payment difficulty framework in light of new information submitted by stakeholders to our second draft decision.

Analysis undertaken by the consultants has, in keeping with section 8A(e) of the ESC Act, informed our consideration of the design of the new framework. Following the conclusion of the consultation process, ACIL Allen and KPMG refined their methodology and analysis. In parallel, during and following the consultation process, we made refinements to the proposed new framework on the basis of stakeholder feedback.

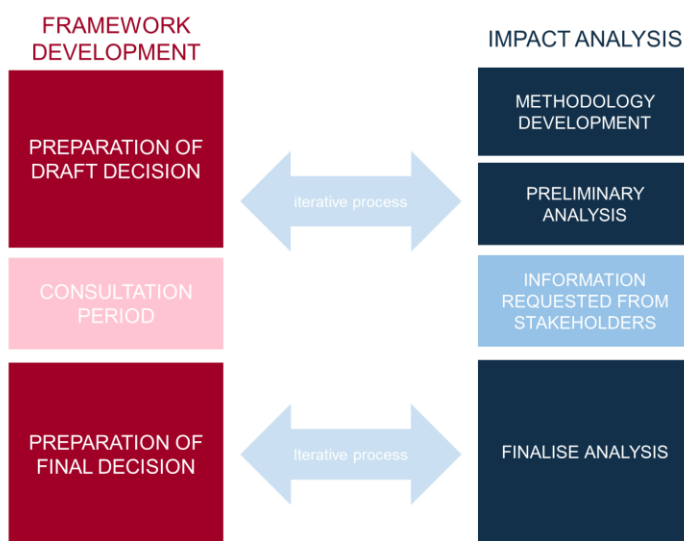
---

<sup>87</sup> Department of Treasury and Finance 2014, *Victorian Guide to Regulation, Toolkit 2: Cost-benefit analysis*, July.

During that period, our work was therefore integrated, on an iterative basis, with the analysis being conducted by the consultants. We factored the consultants’ analysis into account in reaching our final decision on the design and implementation of the new framework. Similarly, the consultants’ findings reported in this chapter reflect their estimation of the impact of the new framework in this final decision. That is, the framework incorporating changes we made to the proposal contained in our draft decision.

Figure 6.1 sets out the process described above and how it relates to the development of the framework itself.

**Figure 6.1 Process for undertaking impact analysis**



Source: ESC

## 6.6. Analysis of impacts

This section contains our analysis, drawing on the advice of independent consultants, of the impact of the proposed payment difficulty framework. With regard to some impacts – for instance those relating to the cost of impacts on retailer business and information systems – we have sought to identify a dollar figure. Other, more intangible, impacts have been described in qualitative terms.

### High level outcomes

At the highest level, we expect that introducing clear minimum standards into the new framework will ensure that assistance for customers facing or experiencing payment difficulty will be predictable, meaningful, and provided equitably to all customers. Consequently, we expect that customers will only be disconnected from their energy supply as a measure of last resort.

In a practical sense, we expect that the design of the new framework will result in:

Impact assessment for customers and retailers

- retailers and their customers having greater incentives to work together to find solutions that best meet the customer's circumstances
- customers facing payment difficulty being empowered to better manage their energy use so that their energy costs are more manageable
- customers facing payment difficulty having improved knowledge of, and access to, government and non-government support services
- arrears not being left unmanaged.

### **Disconnection as a last resort**

The precise impact of the new framework on arrears and disconnections is uncertain. Both are influenced by a range of factors beyond the framework itself, including broader economic forces and changing customer preferences. While it is not possible to predict with certainty the impact that the new framework will have on arrears and disconnection, the commission nonetheless expects both will be reduced relative to what would have occurred in the absence of the changes.

Customers who are in arrears because of genuine payment difficulty and who are prepared to work with their retailer, should find the level of their arrears managed earlier and more effectively than under the previous regulatory arrangements. For this group of customers, we anticipate arrears will be, on average, lower than they otherwise would have been under the current framework. As the accumulation of arrears will be affected by so many factors beyond the framework, and because those factors can (and do) change, very broad assumptions are required when attempting to estimate what will happen under the new framework and what would have happened under the current framework.

Because customers will have access to meaningful assistance on a transparent and equitable basis, we anticipate that this will improve community and government confidence that disconnections are only occurring as a measure of last resort.

### **Rationale**

Our expectation of these high level outcomes is based on our analysis of the current framework and our assumptions about how our new framework will improve customer outcomes.

As we set out in chapter 2, the assistance that is available currently to customers in payment difficulty is inconsistent because retailers' regulatory obligations are broadly defined, and retailers have scope to interpret these obligations in different ways. The assistance any individual customer receives depends on which retailer they are with, and how that retailer applies its discretion in that individual customer's case.

Our hardship inquiry highlighted the very wide range of customer outcomes that arise as a result of this broad discretion. Two otherwise identical customers can end up with very different experiences

and very different outcomes. It is this inconsistency, unpredictability and inequity that we believe led to the community and government questioning whether customer disconnection was being pursued as a measure of last resort.

The new framework will ensure that the assistance available to customers cannot fall below a minimum level — for all customers, with all retailers. It standardises the ‘floor’ below which assistance cannot drop. We have set this minimum based on the evidence that customers benefit from *timely* and *effective* assistance. The assistance that is provided to customers under the new framework will be more consistent, more predictable, and more equitably provided, than the assistance provided to customers under the current regulatory arrangements.

Compliance with the new minimum standards will affect each retailer in different ways. To varying extents, retailers already provide assistance that meets the new minimum standards. Indeed, the minimum standards have been informed by existing practices. In some places, there will be gaps that need to be filled by the retailers’ assistance arrangements; but we expect in many instances, changes are more likely to require ‘tweaks’ rather than wholesale replacement of existing arrangements.

The new minimum standards will not prevent retailers who already provide assistance above the new minimum standard from continuing doing so. Indeed, we were encouraged by our discussions with retailers who indicated their desire to keep providing high levels of customer assistance.

Importantly, the new proposed minimum standards establish obligations that must be met, not just matched. In other words, while retailers will have discretion over the mechanisms by which they satisfy customers’ entitlements to assistance, they will not have discretion to substitute a customer’s entitlement to assistance (as defined by the Code) for another form of assistance. Doing so would once again open the door to customer outcomes that were inconsistent, unpredictable and inequitable. In all likelihood, it would also require the commission to play an authorisation role of each retailer’s assistance policies, practices and programs under the new framework. Neither we nor the industry are likely to welcome such an interventionist (and costly) role for the commission.

In the following sections we set out some methodological considerations, before examining at the impact on customers and retailers, respectively.

## **Weighing the impacts**

In assessing the impacts to retailers and consumers, we have found the implementation impacts for retailers to be more amenable to being identified and estimated in quantitative terms. The benefits the new framework will produce for customers in payment difficulty are typically less amenable to quantification. There are numerous reasons for this limitation. For example, it is often difficult to precisely describe, let alone quantify, ‘human impacts’ such as the benefit from reduced

stress. Other benefits might be identifiable, but there is no readily available measure that can be used to express that benefit in monetary terms. In other instances, problems of measurement arise because the counterfactual case is unobservable or indeterminate. As a result, customer impacts— unlike retailer impacts — are difficult to reduce to a single dollar figure or series of dollar figures.

This problem has long been common to exercises of this nature. For example, in its 2011 work on the impacts associated with disability care and support, the Productivity Commission emphasised the importance of counting intangible goods when undertaking assessments of new policy proposals. In its explanation, the Productivity Commission referenced a 1996 paper from eminent economists, including Nobel laureate, Kenneth Arrow, which set down principles for good analysis of costs and benefits and noted that:

Not all impacts of a decision can be quantified or expressed in dollar terms. Care should be taken to ensure that quantitative factors do not dominate important qualitative factors in decision making.<sup>88</sup>

We therefore have not attempted to treat the two sets of findings (from ACIL Allen and KPMG) as directly equivalent metrics. This means the two sets of estimates cannot be treated additively. It would be inappropriate to subtract one set of findings from the other in order to reduce all findings into a single figure on which the decision rested to proceed with the new framework. Rather, each set of findings must be considered on their own merits —and ultimately, the weight to be placed on each set of findings is a matter of judgement.

ACIL Allen has produced a range to estimate the likely impact on retailers associated with the upfront and operating cost impact associated with the new framework. In the quantitative element of their work, KPMG has developed scenarios, which it does not consider to be forecasts. KPMG has adopted this approach because of difficulties in forecasting how retailers and customers will react to the framework. It considers that it is more useful to develop scenarios, which improve understanding of the framework's impacts by representing the sensitivity of the quantifiable impacts to changes in assumptions. Because these scenarios are not forecasts, they should not be compared with ACIL's estimates of the range of impacts on retailers.

It is important to note that some impacts can result in a benefit to one group – either customers or retailers – and losses to the other. For instance, when retailers assist customers to move to a more appropriate tariff, this can result in a benefit to the customer in the form of lower electricity bills. However, this may come at a cost to retailers in the form of lower revenues. This cost may not be a

---

<sup>88</sup> Quoted in Productivity Commission (2011), *Disability Care and Support*, Report no. 54, July p. 944.

directly equivalent to the benefit. However, it is nonetheless necessary to consider both sides of the impact. We also note that some portion of the cost impacts experienced by retailers will ultimately be borne by customers as retailers pass a portion of these costs through to their customers in the form of higher electricity charges. Where a benefit to one group may come at the expense of another, we have highlighted this in our analysis.

To establish a baseline for their assessments, the consultants used the current framework as the counterfactual scenario to underpin their analysis. In other words, the baseline scenario against which they have measured the impact of the new framework was a continuation of the previous status quo.

### **Box 6.3 Meaning of base case and baseline in this context**

Both consultants are using a 'base case' in the course of their modelling. The base case refers to a future scenario in which the new framework is applied. They have both, independently, done sensitivity analyses around this base case involving changes to various assumptions to test the impact on key parameters, including arrears, thus producing a number of other scenarios. This can be contrasted to the 'baseline', which represents the status quo against which the consultants are measuring the impacts of the proposed changes.

The analysis by the consultants was limited to 'first round' impacts. That is, they only sought to identify and estimate the impacts directly affecting retailers and their customers in payment difficulty. They have not attempted to model the final incidence of these impacts due to the very large number of assumptions that would require. For example, they did try to model the extent to which impacts for retailers from the new framework will be passed on to shareholders as opposed to those which will be passed on to the general customer base. Likewise, they have not attempted to model how better management of customers in payment difficulty will benefit society as a whole (including through its impact on government programs and fiscal outlays).

### **Impact on customers**

In its analysis, KPMG identified a range of potential impacts to customers of the new framework. It divided those impacts into those that can be quantified and those that require qualitative analysis. KPMG quantified the impacts in the first category, presenting their findings in Net Present Value (NPV) terms. It then undertook general analysis of impacts in the second category.

Because there is a degree of uncertainty about the impacts of the new framework – as is the case in any modelling exercise – KPMG modelled three scenarios – a base case scenario, as well two

other scenarios in which the benefits are lower and higher, respectively, than the base case.<sup>89</sup> See Box 6.3 for an explanation of ‘base case’ in this context.

Table 6.1 sets out the potential impacts identified by KPMG, along with the treatment it applied to each potential impact based on whether or not it was possible to undertake a quantitative analysis with currently available data.

**Table 6.1 Identification of customer impacts**

By category of impact

Impact	Treatment in analysis
<b>Changes to financial position of customers</b>	
Greater awareness of government or non-government assistance available	Qualitative
Potential reduction in energy costs through energy efficiency measures	Quantitative
Potential reduction in energy costs through switching tariff	Quantitative
More assistance sooner in any payment difficulty situation	Qualitative
Changes to participation costs for customers	Quantitative
Changes to customer credit ratings	Qualitative
<b>General community impacts</b>	
Changes in customer attitudes to the energy industry (including retailers)	Qualitative
Changes in customer well-being	Qualitative

Source: KPMG

### Changes to participation costs for customers

Searching for information about assistance (search costs) and interacting with retailers takes time for customers.<sup>90</sup> Although the new framework requires customers to devote time to engaging with their retailer, and potentially support services, in order to receive assistance, we anticipate that the overall time commitment will be lower than under the current framework.

KPMG made estimates of the time commitment required of customers seeking assistance under the current framework and compared it to anticipated time commitment for customers operating

<sup>89</sup> KPMG 2017, *Payment Difficulty Framework, Assessment of Customer Impacts, Final Report*, October, p.5.

<sup>90</sup> A form of transaction cost.



under the new framework.<sup>91</sup> This time is used as the basis to estimate the costs of participating in the new framework.

Although the new framework is designed to incentivise customers to engage with their retailer in order to manage their payment difficulty, KPMG has estimated that overall participation costs will decrease under the new framework. This is because the new framework removes time-consuming 'capacity to pay' assessments which retailers currently conduct when making decisions about the form of assistance to offer them. It is also because, by making customer entitlements clearer and more accessible, KPMG has assumed average search costs will reduce.

KPMG's assessment was that the value of the reduced participation costs will be between \$4.0 million and \$7.4 million in NPV terms over ten years, with a base case estimate of \$5.7 million<sup>92</sup>.

### **Potential reduction in energy costs through switching tariff**

Under tailored assistance, customers who are unable to pay for their ongoing energy use are entitled to the highest form of assistance available under the proposed framework. This includes being placed on their retailer's tariff that would most likely reduce their cost of energy.

In its modelling of this form of assistance, KPMG made various assumptions. Most notably, and simply, KPMG assumes customers pay for all their energy at the new lower tariff rather than the tariff they previously would have faced. That is, in both instances customers are fully paying for their energy. In one case they pay at a higher price, in the alternative scenario they pay at the lower price.

KPMG estimated this would lead to savings to customers on their electricity bills of between \$2.4 million and \$7.3 million in NPV terms over ten years, with a base case estimate of \$4.6 million<sup>93</sup>. It estimates equivalent savings to customers on their gas bills of \$0.5 million and \$1.4 million, with a base case estimate of \$0.9 million<sup>94</sup>.

The benefit to customers arising from tariff switching is in the class of impact, discussed above, that affects both customers and retailers. Taking KPMG's approach one step further would suggest the gain to customers would be fully offset by an equal-sized reduction in retailers' revenue. (Note, KPMG did not do this as they were modelling customer impacts only).

---

<sup>91</sup> These assumptions draw upon a common set of assumptions about retailer-customer interaction times that is used in both ACIL Allen and KPMG's assessments.

<sup>92</sup> KPMG 2017, *Payment Difficulty Framework, Assessment of Customer Impacts, Final Report*, October, p.35.

<sup>93</sup> KPMG 2017, *Payment Difficulty Framework, Assessment of Customer Impacts, Final Report*, October, p.41

<sup>94</sup> KPMG 2017, *Payment Difficulty Framework, Assessment of Customer Impacts, Final Report*, October, p.45



We have not taken this extra step in our assessment of KPMG's analysis for a number of reasons. We believe it is unclear whether it is appropriate to assume a one-to-one relationship with customer benefits when looking at the impact of this regulatory measure on retailers' revenue. For example, in the counterfactual case, some customers may have not paid their accounts in full (or at all) at the higher tariff though they may be able to do so at the lower tariff. In such circumstances, the retailer may be no worse-off (in terms of net revenue) under the new framework. Indeed, it is even conceivable that retailers will be better off. Experience in the water industry shows that lowering the cost of services to customers in severe payment difficulty can produce a more favourable financial outcome for the service provider<sup>95</sup>.

On this basis, we were not comfortable making assumptions about how retailers' net costs would be affected by the requirement to place customers in severe payment difficulty on more favourable tariffs. So while we have taken account of KPMG's modelling of the benefit for customers, we have not attempted to assess the impact on retailers, beyond noting that this benefit to customers is likely to produce a related, albeit difficult to assess, impact on retailers.

### **Potential reduction in energy costs through energy efficiency measures**

Under the new framework, retailers will in some circumstances be required to provide information, advice or other forms of assistance to customers to help them more efficiently use energy. In its analysis, KPMG estimated the potential benefits to customers who receive this form of assistance. KPMG has done this by looking at the amount of energy that customers may save when they receive this assistance, and the corresponding savings to their energy bill.<sup>96</sup>

To make this estimate, KPMG relied upon analysis undertaken during reviews of the Victorian Energy Efficiency Target. The analysis conducted for the reviews modelled reductions in energy bills for customers who participate in the Victorian Energy Efficiency Target scheme. This modelled reduction in energy bills was based upon the assumed impact of implementing various energy efficiency measures under the Victorian Energy Efficiency Target scheme. In other words, it represents the assumed average impact of undertaking an energy efficiency retrofit at Victorian residential premises.

KPMG has used this modelled reduction as a proxy for estimating the impact on customer bills of the energy efficiency assistance customers may receive under tailored assistance. KPMG has modelled the benefits to range between \$110 and \$170 per annum, with a base case assumption

---

<sup>95</sup> Boston Consulting Group (BCG) 2005, Boston Consulting Group Review of Yarra Valley Water and Kildonan Child and Family Services Partnership.

<sup>96</sup> KPMG 2017, *Payment Difficulty Framework, Assessment of Customer Impacts, Final Report*, October, pp. 41-48.

of \$140 in savings.<sup>97</sup> KPMG has estimated the total savings to customers of between \$3.1 million and \$9.3 million in NPV terms over ten years, with a base case estimate of \$6.2 million.<sup>98</sup>

Similarly to tariff switching, any benefit to customers arising through energy efficiency measures will result in an impact on retailers in the form of reduced revenue. However, just as the impact associated with tariff switching, there is unlikely to be a one-for-one relationship between the benefits to customers or the costs to retailers. For example, each unit of energy that the retailer does not sell to a customer represents a unit of energy they no longer need to procure through the wholesale energy market. Nonetheless, it is important to recognise that this benefit may come at some cost to retailers.

### Analysis of quantifiable impacts - summary

In summary, KPMG arrived at the following estimates of the value of the quantifiable customer impacts (Table 6.2).

**Table 6.2 Estimates of customer impacts**

Net Present Value (NPV, millions) (\$2017)

Impact	Low	Base case	High
Changes to participation costs for customers	\$4.0	\$5.7	\$7.4
Potential reduction in energy costs through switching tariff – electricity	\$2.4	\$4.6	\$7.3
Potential reduction in energy costs through switching tariff – gas	\$0.5	\$0.9	\$1.4
Potential reduction in energy costs through energy efficiency measures	\$3.1	\$6.2	\$9.3

Source: KPMG 2017, *Payment Difficulty Framework, Assessment of Customer Impacts, Final Report*, October, p. 12.

This assessment of the value of customer impacts does not include all the possible benefits of the new framework, for example the avoided cost of disconnections which are non-quantifiable.

### Non-quantifiable impacts

In examining the qualitative impacts of the new framework, KPMG conducted a study of the impacts of arrears and disconnections.<sup>99</sup> To the extent the new framework reduces arrears and disconnections; it can be anticipated to reduce the incidence of these impacts.

<sup>97</sup> KPMG 2017, *Payment Difficulty Framework, Assessment of Customer Impacts, Final Report*, October, p. 47

<sup>98</sup> KPMG 2017, *Payment Difficulty Framework, Assessment of Customer Impacts, Final Report*, October, p. 50.

## Health and wellbeing impacts

When a customer is disconnected – or even when a customer is experiencing the fear of disconnection – it is likely to lead to high levels of stress. Research also indicates the ‘human impact’ of these circumstances includes feelings of hopelessness, shame, and humiliation. This can exacerbate existing mental health issues, or cause new ones, leading to social and economic withdrawal by customers.<sup>100</sup>

There may also be physical health impacts. Customers without power may struggle to heat or cool their home, prepare or cook food, maintain personal hygiene, or may go without some forms of medical care (if they are reliant upon electrical medical equipment, for instance). Examples include where a customer develops respiratory issues, or other forms of illness, as a result of having their heating cut off.

Both mental and physical health impacts can be experienced by family members and dependents, in addition to the customer themselves.

## Practical impacts on daily life of affected customers

Disconnection can have a range of practical impacts on day-to-day life for the customer and their family or dependents. This may include difficulties in caring for small children or infants, additional spending on food (because of an inability to cook or store perishable food on the premises) or on items such as blankets or candles to provide heat and light. It may include an inability to bathe or wash clothes, which combined with other restrictions on managing personal hygiene, may impact a person’s job prospects, compounding their financial stress. For school aged children, there may also be disruption to learning, for instance through restrictions on their ability to do homework in the evenings. There can also be other intangible impacts on customers such as feelings of shame.<sup>101</sup>

These acute impacts will be felt by disconnected customers and their dependents. While the numbers of affected parties may be small compared to the overall customer base, the impacts for those relatively few customers can be extremely significant. Whether a dollar value can even be

---

<sup>99</sup> KPMG 2017, *Payment Difficulty Framework, Assessment of Customer Impacts, Final Report*, October, p.55. See also, Consumer Action Law Centre 2015, *Heat or Eat – Households should not be forced to decide whether they heat or eat*, August, (<http://consumeraction.org.au/wp-content/uploads/2015/08/Heat-or-Eat-Consumer-Action-Law-Centre.pdf>).

<sup>100</sup> KPMG 2017, *Payment Difficulty Framework, Assessment of Customer Impacts, Final Report*, October, p.58.

<sup>101</sup> KPMG 2017, *Payment Difficulty Framework, Assessment of Customer Impacts, Final Report*, October, pp.58-60.

attached, for assessment purposes, to the impacts felt by customers in these situations is a complex issue (see Box 6.3).

The merits of proceeding with the scheme proposed in the draft decision must be examined with reference to these intangible factors.

### **Impact of disconnections on customers**

The base case scenarios used by KPMG and ACIL Allen in their analysis do not assume a change to the number of disconnections of customers facing payment difficulty as a result of the implementation of the new framework. Disconnection numbers are affected by a large number of variables, including broader economic forces and changing customer preferences, so it was not possible to produce precise estimates of how disconnection rates may be influenced by the new framework. ACIL Allen noted:

This assumption is not a prediction or a forecast of the future rate of disconnection. ..., no change in the level of disconnection is the most conservative assumption that can be adopted for the costings. Sensitivity analyses for lower rates of disconnection would result in lower costs that discussed in the remainder of the Executive Summary<sup>102</sup>

Nonetheless, it is our view that by ensuring meaningful assistance is available to all customers, the new framework will help customers avoid disconnection and ensure it only occurs as a last resort. We expect more disconnections will be avoided under the new framework than are avoided under the current framework.

In undertaking an analysis of the impacts of the proposed framework, it therefore becomes appropriate to consider what the 'cost' of any avoided disconnections might be to the customer involved. Such an exercise goes beyond the qualitative analysis that presented above, and includes the attempt to place a dollar figure on the average loss of welfare experienced by customers who are disconnected. However, the actual costs for customers who experience disconnection will be different in each case, and is likely to vary across time (it may be higher during winter, for instance, when heating is a higher priority). Box 6.4 sets out some of the issues involved in attempting to undertake analysis of this nature.

---

<sup>102</sup> ACIL Allen 2017, *New Framework for Customers Facing Payment Difficulty, Final Report*, October, p.54

## Box 6.4 What does disconnection 'cost' a customer?

To place a dollar figure on the impact of disconnections to customers in Victoria involves attempting to identify the 'cost' to a customer of being disconnected. That is, the dollar value of the loss of welfare experienced, on average, by customers who are disconnected.

There is no metric available that expresses this value. KPMG has identified a number of proxies. However, it is not clear whether any of these proxies sufficiently reflect the value we are seeking to measure.<sup>103</sup> These proxies are:

- the daily wrongful disconnection payment that the industry Acts require a retailer to pay to a customer who they have wrongfully disconnected – currently \$500 per day.<sup>104</sup>
- the value of customer reliability (VCR) measure that is determined by the Australian Energy Market Operator, primarily to assist with asset planning – \$280 per day (electricity only)<sup>105</sup>
- the Guaranteed Service Level (GSL) payments that customers are entitled to receive from their distributors in the event of unplanned outages and other service interruptions. GSL payments for unplanned outages are set on the basis of a rate of around \$6 per hour (electricity only)<sup>106</sup>
- the cost of the electricity consumed by a customer at their premises on a given day, which KPMG estimate at approximately \$4 for the average Victorian customer.<sup>107</sup>

Developing an independent measure of customer welfare loss through disconnection would be a significant undertaking, which was not feasible within this process. However, this loss is an important element of the proposal's costs and benefits. Hence the quantitative analysis in this chapter will understate the benefits of our proposal.

---

<sup>103</sup> KPMG 2017, *Payment Difficulty Framework, Assessment of Customer Impacts, Final Report*, October, p.56.

<sup>104</sup> Section 40B *Electricity Industry Act 2000* (Vic) and section 48A *Gas Industry Act 2001* (Vic).

<sup>105</sup> AEMO 2014, *Value of Customer Reliability Final Report*, November.

<sup>106</sup> GSL payments are made to customers based on a number of tiers. For customers who experience more than 20 hours of unplanned outages in a year, the payment is \$120. For more than 30 hours, the payment is \$180, and for more than 60 hours the rate is \$360.

<sup>107</sup> Based on estimates by the Australian Energy Market Commission of the (non-regulated) standing offers and the average consumption for a representative residential customer in Victoria.

## Impact on retailers

ACIL Allen estimated the costs of implementing and operating the new framework to the nine retailers whose processes and policies they reviewed during the hardship inquiry.<sup>108</sup> It identified the obligations on retailers created by the new framework and, using their knowledge of the nine retailers' business operations; they estimated the steps and costs required for each retailer to bring their operations into compliance with the framework. ACIL Allen then extrapolated that figure to arrive at a total cost figure for all retailers operating in Victoria. This allowed it to assess the impact on retailers, which it revised on the basis of feedback and additional data provided by stakeholders via the consultation process.

ACIL Allen's analysis identified impacts on retailers in three categories:

- upfront system costs
- upfront business process costs
- changes to ongoing operating costs.

The results of the analysis can be presented in four ways:

- total cost to all retailers
- total cost to all retailers on a net present value basis
- cost to retailers per customer served
- cost to retailers per customer served, with the upfront costs amortised over the 10-year estimation period.

ACIL Allen presented its estimates in a range, which reflects the level of uncertainty associated with the final results. The results from ACIL Allen use different assumptions to test the higher and lower bounds of the likely overall cost impact of the new framework.

ACIL Allen's final analysis takes into account information provided by retailers and therefore varies from its preliminary analysis. The final analysis takes into account the following key changes to the framework between the draft and final decision:

- replacement of default assistance with additional disconnection safeguards
- more flexibility about whether payment arrangements allow for usage payments and arrears repayments to be combined or separated
- an alternative mechanism for activating a customer's entitlements to tailored assistance, and retailers' obligations to provide the assistance.

---

<sup>108</sup> ACIL Allen conducted primary research in the policies and practices of nine retailers, which collectively served over 90 per cent of Victorian customers, as part of the Commission's hardship inquiry. See chapter 2 of this report for more details.

The following sections set out the results of the analysis according to the categories listed above.

### **Total cost to all retailers**

In ACIL Allen's assessment, the new framework will result in an upfront cost of \$29 million. Substituting ACIL Allen's figures for the retailer assumptions would result in the cost of \$46 million. This cost arises as a result of changes to information and communication systems and business processes required to implement the new framework. The new framework is also expected to lead to a marginal increase in retailer operating costs, relative to the current framework, in the first two years. From the third year and beyond, on the assumption that there will be a decrease in the proportion of customers receiving assistance after two years, ACIL Allen's assessment is that the new framework will lead to lower operating costs than the current framework, causing an estimated saving of up to \$2.5 million per annum.<sup>109</sup>

The reduced operating cost is driven primarily by a reduction in the number of customers that are assumed to access assistance under tailored assistance from the third year onwards. This assumption is based on the rationale that as the new framework beds down and takes effect, fewer customers will find themselves in arrears and therefore the number of customers seeking the more time-intensive forms of retailer assistance available under tailored assistance will be lower.

Table 6.3 contains a summary of the total upfront costs and the operating costs estimated, by element of the new framework, to all retailers.

---

<sup>109</sup> ACIL Allen 2017, *New Framework for Customers Facing Payment Difficulty, Final Report*, October, p.47.

**Table 6.3 Estimated total costs to retailers associated with the proposed payment difficulty framework**

By framework element, \$2017

Level of assistance	Costs incurred by all retailers (\$2017)	
	Upfront	Annual ongoing operating cost
Set up, miscellaneous and consequential amendments	\$11,247,000 - \$4,535,000	\$128,000 - \$0
Standard assistance	\$2,880,000 - \$5,657,000	\$836,000 - \$5,509,000
Tailored assistance, arrears being repaid	\$4,853,000 - \$12,010,000	\$9,803,000 - \$5,396,000
Tailored assistance, arrears on hold	\$8,966,000 - \$11,576,000	\$5,707,000 - \$5,203,000
<b>Sub total</b>	<b>\$29,005,000 - \$46,052,000</b>	<b>\$16,473,000 - \$16,108,000</b>
Less avoided costs		(\$16,345,000) - (\$13,638,000)
<b>Total (net)</b>	<b>\$29,005,000 - \$46,052,000</b>	<b>\$128,000 - \$2,470,000</b>

Source: ACIL Allen 2017, *New Framework for Customers facing Payment Difficulty, Final Report*, October, p. vii. System costs provided to ACIL Allen by TBS Consulting. Numbers may not total due to rounding.

#### Total cost to all retailers on a net present value (NPV) basis

Expressed in net present value (NPV) terms, the anticipated impact on retailers over ten years of the upfront costs and changes to the operating costs is within the range of \$18.8 million to \$77.7 million (Table 6.4).

It is important to note that this NPV calculation is conducted at the level of the impact on all retailers. It does not account for the circumstances of individual retailers.



**Table 6.4 Net present value of estimated total costs to retailers associated with the payment difficulty framework**

By framework element, \$2017 (NPV)

Elements	Estimate
Upfront system and process costs	\$27,889,000 - \$44,281,000
<b>New framework</b>	
Ongoing operating costs – standard assistance	\$9,232,000 - \$43,292,000
Ongoing operating costs – tailored assistance	\$112,489,000 - \$83,288,000
Disconnection costs	\$3,362,000 - \$2,784,000
Bad debts	\$60,520,000 - \$68,600,000
Financing costs	\$23,961,000 - \$36,853,000
<b>Subtotal</b>	<b>\$209,563,000 - \$234,817,000</b>
<b>Current framework</b>	
Avoided costs – payment plans and hardship program	(\$128,445,000) - (\$107,172,000)
Disconnection costs	(\$3,362,000) - (\$1,188,000)
Bad debts	(\$60,520,000) - (\$60,520,000)
Financing costs <sup>a</sup>	(\$26,295,000) - (\$32,512,000)
<b>Subtotal</b>	<b>(\$218,622,000) - (\$201,391,000)</b>
<b>Total</b>	<b>\$18,831,000 - \$77,706,000</b>

Source: ACIL Allen 2017, *New Framework for Customers Facing Payment Difficulty, Final Report*, October, p.56.

System costs provided by Acil Allen by TBS Consulting. Numbers may not total due to rounding.

<sup>a</sup> The avoided financing costs associated with reduction in customer arrears is included in the NPV calculation for retailers, but the reduction in arrears itself is not included as a benefit because it merely constitutes a monetary sum to which retailers are entitled under the terms of their contract with the customer.<sup>110</sup>

The lower end of range is the assessment of a scenario with a phased decrease in the proportion of customers receiving assistance and no change in average debt. The higher end of the range is based on information submitted by retailers, which assumes no change in the proportion of customers and a 15% increase in average debt.

<sup>110</sup> ACIL Allen's analysis assumes aggregate customer arrears will reduce two years after the framework commences. This is because it is assumed that as the framework beds down, customers overall will receive more effective assistance than they do today. This is assumed to result in customers better managing their energy costs and their arrears, leading to a reduction in arrears over time. See ACIL Allen 2017, *New Framework for Customers Facing Payment Difficulty, Final Report*, October, pp.20-21.

## Cost to retailers per customer served

Presenting the results of the analysis on a per customer served basis is useful for understanding the scale of the costs. For clarity here we are referring to all Victorian customers, not just those experiencing payment difficulty. It does not necessarily imply the amount that each Victorian customer would ultimately pay as a result of the new framework being implemented. The costs experienced by customers will depend on a range of factors, including the extent to which their retailer's existing business practices are already aligned with the new framework, and the extent to which their retailer decides to pass through, in retail tariffs, the costs associated with complying with the framework.

**Table 6.5 Estimated total costs to retailers associated with the proposed payment difficulty framework, per customer served**

By framework element, \$2017

Level of assistance	Costs incurred by all retailers (\$2017)	
	Upfront	Annual ongoing operating cost
Set up, miscellaneous and consequential amendments	\$4.49 - \$1.81	\$0.05 - \$0.00
Standard assistance	\$1.15 - \$2.26	\$0.33 - \$2.20
Tailored assistance, arrears being repaid	\$1.94 - \$4.79	\$3.91 - \$2.15
Tailored assistance, arrears on hold	\$3.58 - \$4.62	\$2.28 - \$2.08
<b>Sub total</b>	<b>\$11.58 - \$18.38</b>	<b>\$6.57 - \$6.43</b>
Less avoided costs		(\$6.52) - (\$5.44)
<b>Total (net)</b>	<b>\$11.58 - \$18.38</b>	<b>\$0.05 - \$0.99</b>

Source: ACIL Allen 2017, *New Framework for Customers Facing Payment Difficulty, Final Report*, October, p.vi.

System costs provided by ACIL Allen by TBS Consulting. Numbers may not total due to rounding.

## Cost to retailers per customer served, amortised

To present both the upfront and operating costs in a comparable way, ACIL Allen amortised the upfront costs over ten years. Amortised over ten years, the upfront costs are expected to be in the range of \$1.16 - \$1.84 per customer per year. When the amortised upfront costs are added to the annual operating costs, the annual cost per customer is anticipated to be in the range of \$1.21 - \$2.90 (Table 6.6).

**Table 6.6 Estimated annual cost to retailers of new framework**

Per customer, per year basis over ten years, \$2017

Cost category	Cost
Upfront costs (system and process) amortised over 10 years	\$1.16 - \$1.84
Operating costs	\$0.05 - \$1.06
Total costs per customer	\$1.21 - \$2.90

ACIL Allen 2017, *New Framework for Customers Facing Payment Difficulty, Final Report*, October, p.54.

System costs provided by ACIL Allen by TBS Consulting. Numbers may not total due to rounding.

### **Impact on the Energy and Water Ombudsman (Victoria)**

Separately, we asked KPMG to estimate the impact of the new framework on the Energy and Water Ombudsman (Victoria). This impact of the framework on the Energy and Water Ombudsman (Victoria) is relevant because it is a fully industry funded dispute resolution service. Costs for the Energy and Water Ombudsman (Victoria) are therefore costs to retailers. Therefore, although this impact was modelled by KPMG it is more appropriately thought of as a retailer impact rather than a customer impact.

The Energy and Water Ombudsman (Victoria) costs are affected by the volume and complexity of the cases it receives. KPMG has identified a number of ways in which the Energy and Water Ombudsman (Victoria) could be affected by the new framework. Drivers of these effects include the time and effort required to make customers aware of entitlements under the new framework, particularly in its early phases, and the number of complaints that the Energy and Water Ombudsman (Victoria) receives. It also anticipates there will be a reduction in the Energy and Water Ombudsman (Victoria) costs associated with reviewing retailers' capacity to pay assessments.<sup>111</sup> Over the medium to long term, the new framework may also reduce the number and complexity of cases that go to the Energy and Water Ombudsman (Victoria). However, while the new framework beds down, we expect there may be an increased caseload for the Energy and Water Ombudsman (Victoria).

This means the impact on the Energy and Water Ombudsman (Victoria) is likely to vary over time. In its analysis, KPMG estimated an increase in costs to the Energy and Water Ombudsman (Victoria) in each of the first five years of the modelling period, after which it estimated reductions in the Energy and Water Ombudsman (Victoria)'s expenditure associated with the new framework.

---

<sup>111</sup> The new framework removes the requirement for a retailer to assessment a customer's 'capacity to pay' before placing them on a payment arrangement.

Over the ten year period, KPMG estimate a base case impact of a cost to the Energy and Water Ombudsman (Victoria) of \$0.16million.<sup>112</sup>

To avoid confusion, we have not attempted in this chapter to blend KPMG's modelling results about the Energy and Water Ombudsman (Victoria) with ACIL Allen's modelling of the impact of the new framework on retailers' system and business costs.

### Impact on the commission

We have assessed the likely change in our costs to carry out our functions, including monitoring and reporting compliance, referral of disconnection cases from the Energy and Water Ombudsman (Victoria) and enforcement.

We do not consider that there will be any material change in the cost to the commission of monitoring and reporting on compliance. We would amend our existing *Compliance and Performance Reporting Guideline* to reflect the new framework. All other costs, including the cost of audit, would be largely unchanged.

Over the past 12 months, there has been a substantial increase in the number of disconnection cases referred to the commission from the Energy and Water Ombudsman (Victoria). We envisage that the current level of referrals is likely to continue under the new framework for at least the first eighteen months of the new framework, as the standards of conduct required in particular circumstances are determined.

We do not envisage an increase in our overall costs arising from the administration of the new framework. While it may change some aspects of our work (for example, the data reported in our *Victorian Energy Market Report*), we do not expect the new framework to increase our overall workload or costs. We recognise there may be a short term need for additional resources to expedite the approval of retailers' amended financial hardship policies (see section 7.4). We will resource that requirement through internal reprioritisation. On that basis, administering the new framework should have no impact on retailers' licence fees.

## 6.7. The commission's assessment

### Interpreting the results

It is important to interpret the results with regard to the scope and nature of the analyses that have been undertaken. It would be misleading, for instance, to compare KPMG's estimates of the

---

<sup>112</sup> KPMG 2017, *Payment Difficulty Framework, Assessment of Customer Impacts, Final Report*, October, p. 54

impacts of the new framework on customers, with ACIL's estimates of its impacts on retailers, to derive an estimate of the net impact. There are two main reasons for this.

While ACIL has presented a forecast range of the operating and capital costs that would be associated with the new framework, KPMG has developed scenarios, which it does not consider to be forecasts. KPMG has adopted this approach because of difficulties in forecasting how retailers and customers will react to the new framework. It considers that it is more useful to develop scenarios, which improve understanding of the new framework's impacts by representing the sensitivity of the quantifiable impacts to changes in assumptions. Because these scenarios are not forecasts, they should not be compared with ACIL's forecasts of the range of impacts on retailers.

ACIL and KPMG have not quantified impacts that would need to be factored into any attempt to measure net impacts. ACIL have included neither the revenue losses that retailers may experience, nor any benefits they may gain if the new framework encourages a more collaborative relationship with customers. KPMG have not quantified the intangible benefits that customers may secure from avoiding the stress and anxiety associated with being disconnected from gas or electricity supply, as well as other costs that disconnection may cause. These impacts are challenging to quantify because the new framework's impact on the number of disconnections is difficult to forecast, and because the impacts of disconnection will depend on individual circumstances.

### Our assessment

The commission's judgement – based on this analysis, the work completed as part of the hardship inquiry, and the feedback from stakeholders – is that the payment difficulty framework in this final decision is a practical and cost effective means of responding to the problem we are seeking to address.

The assessment indicated that the new framework is expected to deliver benefits to customers facing payment difficulty in the form of reduced participation costs (seeking and accessing assistance). For customers who access retailer assistance to move to a more appropriate tariff or improve their energy efficiency, there is expected to be a benefit in the form of lower energy bills.<sup>113</sup> To the extent the new framework leads to lower rates of disconnection for payment difficulty than would have occurred in the absence of the changes – which we expect it will – then it will deliver the added benefit of avoiding, for those customers, the negative impacts associated with disconnection. Many of these impacts are intangible and are included in our quantitative analysis.

---

<sup>113</sup> However, it is important to be cautious when considering the benefits to participating customers associated with energy efficiency or tariff switching, as both of these customer benefits will be accompanied by a retailer cost (to some extent).

More broadly, we consider that the new framework delivers on the wider objective of ensuring that customers receive meaningful assistance on an equitable basis, and so ensures that disconnection is a last resort.

Our analysis indicates that these benefits are likely to be delivered without undue costs being imposed on retailers. Implementing the new framework will involve upfront costs during the period in which retailers upgrade their systems and businesses processes, as well as some ongoing costs. There is also an intangible benefit that we have not sought to discuss, but which we consider appropriate, namely, community confidence in the retail energy market. A recent study by Energy Consumers Australia shows that Victorian households were notably less satisfied with their electricity retailer than their internet, mobile phone, insurance, banking and water service providers.<sup>114</sup> Gas retailers also rated lower, but less so. There are possibly many reasons for this finding, but we expect the handling of customers in payment difficulty will have contributed in some measure to these poor ratings.

Poor reputation has an adverse impact on consumer confidence in the market overall. In turn, this loss of consumer confidence can weaken the integrity of the competitive disciplines operating in the market and therefore the efficiency of the market and the ability of the market to deliver sustained benefits in the long term interests of Victorian consumers.

The commission must have regard to the efficiency of the industry and the degree of competition when exercising its powers and performing its functions (see section 7.4). While we cannot measure the relationship between improved assistance arrangements for customers in payment difficulty and consumer confidence in the retail energy market, we nevertheless believe this is an important consideration in assessing the merits of the new framework.

Having had regard to the impacts discussed above, those that can be quantified and those that cannot, as well as the objectives of the ESC Act and the industry Acts, we consider the new framework represents an effective and reasonable response to the challenges identified in our hardship inquiry and discussed earlier in this chapter.

We acknowledge that our conclusion relies on many assumptions and judgements. These are laid out for public scrutiny in the consultants' two reports, which are available on our website (<http://www.esc.vic.gov.au>).

During the consultation stages, we encouraged stakeholders to access the consultants' reports and respond to their requests for information. This assisted the consultants with refining their final assessment of the anticipated impacts of the proposal.

---

<sup>114</sup> Energy Consumers Australia 2017. *Energy Consumer Sentiment Survey*, September, p.60

## 7. Proposed roadmap

### 7.1. Introduction

The payment difficulty framework will take effect from 1 January 2019. From this date, all Victorian residential customers will be able to access their entitlements under the new framework.

This chapter sets out the implementation pathway for the new framework. It also outlines our approach to monitoring and reviewing the new framework after it commences.

The chapter covers the following key matters relating to this process:

- finalisation of the guidance note
- retailer progress reporting in the lead up to the new framework's commencement
- revision of retailer hardship policies
- development of customer facing material
- transition arrangements for customers on payment plans and hardship programs.

The chapter also looks ahead to the early years of the new framework, and provides information on:

- compliance and performance monitoring under the new framework
- better practice reporting
- reviewing the best means to support non-engaged customers
- evaluation of the new framework.

### 7.2. Overview

Between now and 2021, there will be four phases associated with the payment difficulty framework.

The first phase, which we aim to conclude by the end of 2017, involves finalising the guidance note that will assist retailers and the Energy and Water Ombudsman (Victoria) to interpret the sections of the Code that give effect to the new framework.

The second phase is focused on preparing for the commencement of the new framework. It includes the revision of retailer hardship policies, revision to the *Compliance and Performance Reporting Guideline*, and the development of material for customers, such as fact sheets. It will also include the development of regular reporting protocols for retailers on the progress of their implementation plans. This phase concludes with the commencement of the new framework on 1 January 2019.



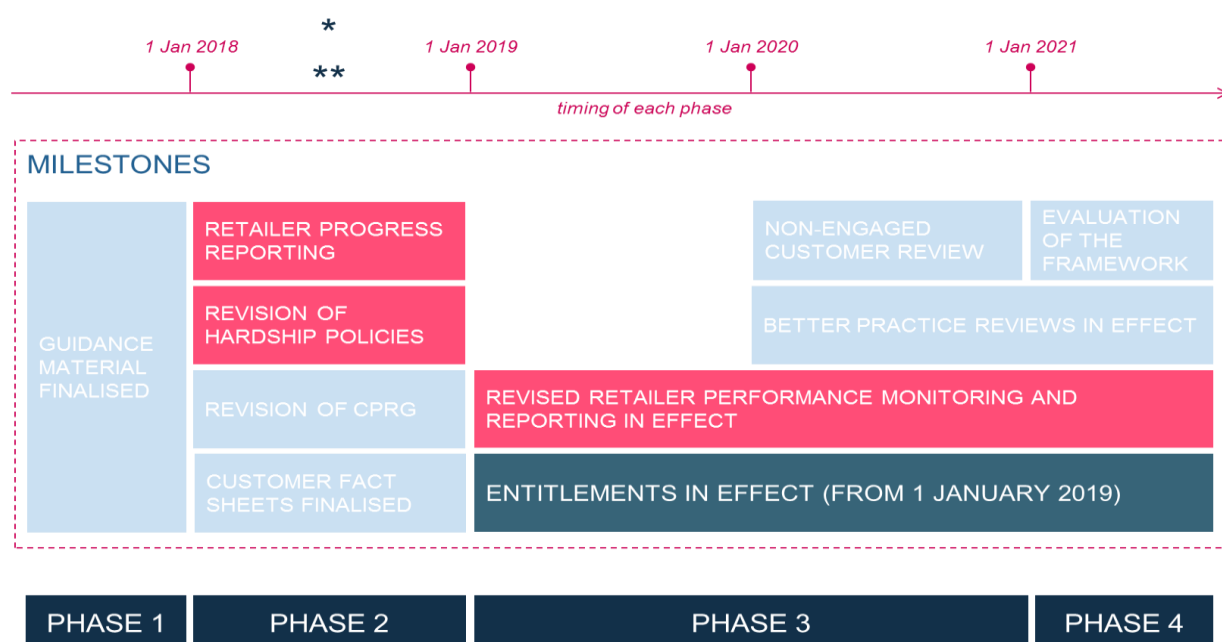
The third phase covers the commencement of the new framework, and its first two years of operation. In this period, a key milestone is the introduction of better practice reviews. The revised *Compliance and Performance Reporting Guideline* will also be in effect during this period.

The fourth phase involves a review of the operation of the new framework, which will occur after at least two years of operation.

A consequence of amending the Code is that amendments will be required to the *Essential Services Commission (Energy Industry Penalty Regime) Regulations 2016* to attach the obligations contained in the Code to specific penalties. We anticipate that this will be completed during 2018.

Figure 7.1 provides an overview of the four phases.

**Figure 7.1 Overview of key milestones to 2021**



\* Introduction of the revised disconnection threshold (1 July 2018)

\*\* Amendment of the *Essential Services Commission (Energy Industry Penalty Regime) Regulations 2016*

Source: ESC

### 7.3. Phase 1 – Guidance note

The new framework is given effect through amendments to the Code. To assist retailers to interpret their obligations under the updated Code, we will issue a guidance note.

A draft of the guidance note has been released for consultation. We will engage with stakeholders, including through a stakeholder forum, to gather the feedback required to finalise the guidance note. We anticipate completing this process and issuing the final guidance note by the end of 2017.

Proposed roadmap



## 7.4. Phase 2 – Preparing for commencement of the new framework

### Revision of retailer hardship policies

Under the *Electricity Industry Act 2000* and the *Gas Industry Act 2001*, licensed retailers are required to have financial hardship policies approved by the commission. The *Electricity Industry Act 2000* and the *Gas Industry Act 2001* allow the commission to prepare, issue and amend guidelines in relation to implementation of financial hardship policies. These rules are unchanged by the introduction of the new framework. The *Electricity Industry Act 2000* and the *Gas Industry Act 2001* specify that retailer hardship policies must include:

- flexible payment options for payment of bills
- provision for auditing a customer's energy usage
- flexible options for purchase or supply of replacement appliances
- processes for early response by both retailers and customers to payment difficulties.<sup>115</sup>

After the payment difficulty framework commences, retailer hardship policies will need to clearly set out how customers can access their entitlements under the new framework. They may also contain information about any assistance the retailer intends to provide over and above those specified in the payment difficulty framework.

Separate to the question of hardship *policies* is the matter of hardship *programs*. It is up to the retailer whether they continue to badge their assistance programs as 'hardship programs' or whether they apply another term. Under the new framework, this is an operational and commercial decision for each individual retailer. We note, however, that our hardship inquiry found 'hardship' to be an unhelpful label in communicating assistance arrangements to customers.

We do not expect retailers maintaining their hardship programs, to automatically make the elements of assistance available under the payment difficulty framework available to program participants. Retailers are free to decide whether to enrol a customer in a hardship program, a program similarly badged or to provide assistance outside of such a program. What matters is that all customers receive the assistance to which they are entitled under the payment difficulty framework. In other words, participation in hardship programs is no longer a determinative factor in what assistance a customer receives.

Prior to the new framework commencing, retailers will need to review their hardship policies to ensure that they are consistent with the new obligations. Where retailers have determined that changes to the policies are required, they will need to submit those revised policies to the

---

<sup>115</sup> Section 43C of the *Electricity Industry Act 2000* (Vic) and Section 48GC of the *Gas Industry Act 2001* (Vic)

commission for approval by 30 June 2018. We will work with retailers over the course of 2018 to ensure this process occurs in an orderly fashion.

### Development of customer facing material

To support the smooth operation of the new framework, there is a need to ensure customers understand the assistance to which they are entitled. During consultation, stakeholders have strongly supported the commission having a role in developing customer facing material that clearly sets out entitlements under the new framework.

We will work with stakeholders to develop this material, most likely in the form of fact sheets, in time for the commencement of the new framework in 2019. We expect retailers will also seek to amend their own marketing material to reflect the new framework.

### Revision of the *Compliance and Performance Reporting Guideline*

Under *Electricity Industry Act 2000* and the *Gas Industry Act 2001*, the commission is required to report on the performance of retailers and their compliance with their obligations under the regulatory framework. In accordance with this responsibility, we issue an annual report – the *Victorian Energy Market Report* – as well as updates on a quarterly basis. To produce these reports, we collect data from retailers. Retailer reporting requirements are set out in our *Compliance and Performance Reporting Guideline*.

Currently, we collect data against approximately 30 indicators that directly or indirectly relate to payment difficulty and hardship. Examples of the types of information we currently gather include:

- The number of customers on payment plans, the duration of those plans, and whether or not they cover the customer's ongoing use.
- The number of customers in hardship programs, how long they remain in the programs, and what assistance is being provided, as well as how many customers exit them. We also collect information about how many customers are denied entry to hardship programs.
- The arrears of customers on entry to hardship programs, as well as the average arrears of customers within those programs.

Because the payment difficulty framework results in changes to retailer obligations, it will be necessary to make changes to the *Compliance and Performance Reporting Guideline*. This will ensure we continue to collect data and report on the matters relevant to retailer performance and compliance.

The *Compliance and Performance Reporting Guideline* will be revised through a consultative process, most likely in the early part of 2018, to ensure retailers begin reporting on their performance under the new framework from its commencement.

## Retailer progress reporting

Following stakeholder feedback on our draft decision, we revised the commencement date of the new framework from 1 July 2018 to 1 January 2019. To ensure community confidence that retailers will be sufficiently prepared to provide customers access to their entitlements from 1 January 2019, we will require retailers to submit an implementation plan to the commission, and to provide us with regular updates on their progress towards the commencement date. The updates will cover their level of preparedness across the relevant spheres of their operations, including but not necessarily limited to:

- systems
- business processes
- customer-facing material
- staff training.

The progress reports will not be onerous, but will need to be submitted by each retailer to the commission according to the following schedule:

- Implementation plan: 28 February 2018
- Progress report 1: 14 May 2018
- Progress report 2: 13 August 2018
- Progress report 3: 15 October 2018

We will report publicly on retailer progress in our quarterly updates to the *Victorian Energy Market Report*.<sup>116</sup>

## Amendment of the *Essential Services Commission (Energy Industry Penalty Regime) Regulations 2016*

During 2018, we will work with government to amend the *Essential Services Commission (Energy Industry Penalty Regime) Regulations 2016*. The obligations contained in the Code regarding specific penalties for non-compliance will be included in the regulation.

### **7.5. Phase 3 – Commencement and operation of the new framework**

From 1 January 2019, the payment difficulty framework will take effect. From this date onwards, all Victorian customers will be entitled to assistance under the framework.

---

<sup>116</sup> Our quarterly reporting obligations sit under Sections 54V and 54W of the *Essential Services Commission Act 2001*, Section 39A of the *Electricity Industry Act 2000* and Section 47 of the *Gas Industry Act 2001*.

## Minimum disconnection threshold amount

While the new framework will be operational from 1 January 2019, the change of the minimum disconnection amount from \$120 (exclusive of GST) to \$300 (inclusive of GST) will take effect from 1 July 2018.

## Transition of customers receiving assistance under the current framework

At any point in time, most Victorian customers are not receiving assistance from their retailer. However, a small portion will be on a payment plan or receiving more substantial assistance via a retailer's hardship program.

When we made our second draft decision, we proposed that these customers should be grandfathered under the pre-existing framework<sup>117</sup> and only moved across into the new framework if the retailer and the customer shared a view that the customer's arrears could be paid off within two years from that time. We took this view primarily because the new framework does not specifically anticipate cases in which a customer has accrued a large amount of debt (largely because it is designed to prevent large debts from accumulating in the first place). We were concerned that customers with a large legacy debt could be disadvantaged if migrated quickly into the new framework.

A number of stakeholders objected to this proposal on the basis that it would produce complexity and confusion, and that grandfathered customers may miss out on assistance available under the new framework. The Energy and Water Ombudsman (Victoria), for example, advocated in favour of transitioning all customers into the new framework quickly and efficiently:

An unintended consequence of this provision might be that some customers remain for some time on an 'old' hardship program with a lower standard of support, rather than quickly transitioning across to the new framework. On the other hand, we expect that retailers will not want the cost and inefficiency of concurrently operating two hardship 'programs' in tandem with each other.<sup>118</sup>

Accordingly, we have revised our proposal so that customers with legacy debt will not be disadvantaged when they move across to the payment difficulty framework. Specifically, we have streamlined the circumstances in which a retailer would be required to provide a customer with extended periods to repay their arrears or lower their energy costs. These provisions require the

---

<sup>117</sup> By which we mean the framework that immediately precedes the PDF - that which applies under Energy Retailer Code version 11.

<sup>118</sup> Energy and Water Ombudsman (Victoria) 2017, Submission to the Essential Services Commission 2017, *Payment Difficulty Framework: Revised draft decision*, Submission to Commission consultation paper, June, p. 7.

retailer to have regard to the customer's individual circumstances when contemplating providing the customer with assistance that extends beyond the basic entitlements. If a customer is carrying legacy debt at the time the new entitlements take effect, their retailer will need to take account of this and ensure that the customer is not disadvantaged – relative to the position they would have been in if the current arrangements were maintained.

Retailers must assess each customer on their hardship program to determine whether their existing program complies with the new framework. A retailer may keep a customer on an existing hardship program, provided that the assistance aligns with the minimum entitlements. The commission will not view favourably, any action by a retailer to withdraw a customer's assistance arrangements on (or before) 1 January 2019, on the basis of the new payment difficulty framework coming into effect.

### **Better practice reviews**

Throughout the process of developing the new framework, we have been mindful of ensuring the framework does not curtail, but in fact encourages, retailer innovation. The problem of inconsistent customer outcomes that we identified in our hardship inquiry has continued to the present. However, we also recognise that some retailers have made significant improvements to the way they provide assistance. We are focused on ensuring retailers have an incentive to continue improving in this regard.

From 2020 onwards, we propose to report on retailer better practice in delivering support to customers in payment difficulty.

### **'Non-engaged customer' review**

Throughout the process of developing the new framework, we have sought to design mechanisms to support customers who do not respond to offers of assistance from their retailer, even when they are facing serious payment difficulty. In our draft decision, we proposed a mechanism to support these customers, which we termed default assistance. Following independent advice into the cost implication of the new framework, we deemed this mechanism insufficiently effective and efficient to justify the cost, particularly given it was untried and therefore its outcomes were uncertain. This analysis was consistent with stakeholder feedback on our draft decision.

AGL stated:

AGL believes the default assistance provisions will generate higher costs to industry without any commensurate consumer benefits with respect to accruing and managing arrears.

Further, the default payment is unlikely to satisfy the commission's objective of providing a

mechanism for a non-engaged customer to accept an offer of assistance to manage their arrears without having to contact their retailer...it will just delay the disconnection pathway.<sup>119</sup>

Consequently, as explained in chapter 4, we replaced this element of assistance with a suite of extra safeguards to ensure that non-engaged customers had additional opportunities to find out about their entitlements and engage with their retailer. As part of this suite of disconnection safeguards, retailers will need to provide customers with information about community support services before they can disconnect the customer. This will support customers accessing help without having to engage directly with their retailer directly.

We also committed to undertaking additional work to better understand the phenomenon of non-engaged customers, and options for providing them with effective support in the long term. Separately, or in conjunction, some retailers offered to run pilots or trials to examine the efficacy of interventions modelled on default assistance, or alternative mechanisms. We have invited stakeholders to nominate themselves to participate in this process and received a positive initial response at the stakeholder forum on 25 July 2017. Participation could take the form of becoming a host organisation for pilots or trials, or joining a project board or steering committee.

In our view, the best time to undertake such a review will be after the new framework has settled into operation, so that its impact for non-engaged customers can be observed. We therefore consider our work on this review is likely to occur in 2020.

### Information on standards of conduct

In our first draft decision, we expressed an intention to produce a separate document that outlined what we considered to be the reasonable expectations of a customer with regard to assistance from their retailer under the new framework. Based on the role that will be played by the guidance note and our intention to develop fact sheets, we no longer consider there a need for this separate document.

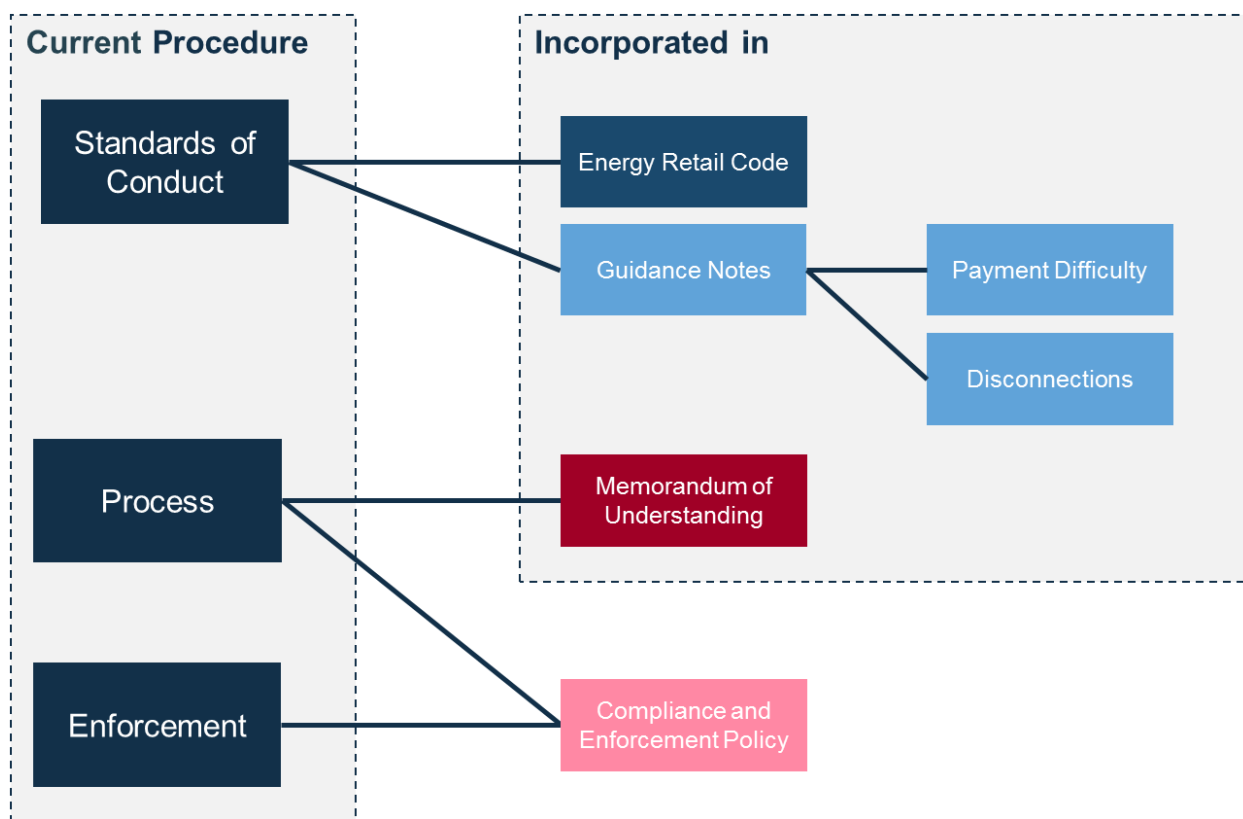
In the second draft decision we proposed that the existing standards of conduct contained within the *Operating Procedure Compensation for Wrongful Disconnection* be incorporated into the Code and the guidance note. Furthermore, while some of the processes set out in the *Operating Procedure Compensation for Wrongful Disconnection* have already been superseded by our *Energy Compliance and Enforcement Policy*, the *Operating Procedure Compensation for Wrongful Disconnection* will be repealed in its entirety on 1 January 2019. We will also need to re-examine

---

<sup>119</sup> AGL 2017, Submission to the Essential Services Commission 2017, *Payment Difficulty Framework: Revised draft decision*, Submission to Commission consultation paper, June, p. 4.

our Memorandum of Understanding with the Energy and Water Ombudsman (Victoria). Figure 7.2 outlines the treatment of the key standards of conduct under the new framework.

**Figure 7.2 Approach to repeal the operating procedure**



**Legend**

- Captured in new obligations in the Code or refers to obligations that are not included in the proposed Code
- Will be captured in two new guidance notes to be published by the commission
- Will be captured by revisions to the MOU between ESC & EWOV
- Has already been superseded by the commission's *Energy Compliance and Enforcement Policy June 2016*

Source: ESC

**7.6. Phase 4 – Review of the new framework**

We intend to review the operation of the new framework once it has been implemented for at least two years.

The operation of the new framework will be evaluated to assess the extent to which the framework’s objectives are being met, in particular:

- the extent to which disconnection of residential customers for non-payment is a last resort measure

- the extent to which the assistance provided to customers facing difficulties is consistent and accessed equitably within and across retailers
- the usefulness of the compliance and performance indicators being reported by retailers.

The parameters of this review will be settled closer to the review itself. We will consult with stakeholders on the approach that will be undertaken to evaluate the new framework.

## **7.7. Next steps**

As set out above, in moving forward towards implementation of the new framework, the commission's priorities will be:

- consulting on and then finalising the payment difficulty framework guidance note (2017)
- working with retailers to establish progress reporting arrangements (2017–18)
- working with all stakeholders on the development of customer facing material (2018).



# Appendix A – Amendments to the Energy Retail Code (Part 3)

## 1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code*.
- (2) This clause and clause 16(2) come into operation on 1 July 2018.
- (3) The remainder of this instrument comes into operation on 1 January 2019.

## 2 Part 3 substituted

For Part 3 substitute:

### “Part 3 Assistance for residential customers anticipating or facing payment difficulties

#### Division 1 Operation of this Part

##### 71 Purpose

The purpose of this Part is to set out the minimum standards of assistance to which *residential customers* anticipating or facing payment difficulties are entitled, so that disconnection of a *residential customer* for not paying a bill is a measure of last resort.

##### 72 Application of this Part

This Part applies to *customers* who are *residential customers*.

##### 73 Interpretation of this Part

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

- (a) clear words will be given their natural and ordinary meaning; and
- (b) if words appear to be capable of having more than one meaning, the *Commission* will have regard to the following, in the following order, in seeking to discover the intended meaning of those words:
  - (i) firstly (for Divisions 2 and 3), the objective of the Division; and
  - (ii) secondly, the purpose of this Part; and
  - (iii) thirdly, any guidelines published by the *Commission* under section 13 of the *Essential Services Commission Act 2001* (Vic); and
  - (iv) fourthly, any relevant guidance notes published by the *Commission* under its Energy Compliance and Enforcement Policy; and

- (v) fifthly, any written information issued by the *Commission* regarding the assistance that *residential customers* might reasonably expect to be provided by their *retailer* under this Part.

## **Division 2            Standard assistance**

### **74            Objective**

The objective of this Division is to give *residential customers* an entitlement to minimum standard forms of assistance, to help them avoid getting into arrears with their *retailer*.

### **75            Application of this Division**

This Division applies to all *residential customers*.

### **76            Standard assistance**

- (1) A *retailer* must take steps to provide to its *residential customers* the forms of standard assistance, from those listed in subclause (2), it elects to make available to help them avoid getting into arrears.
- (2) Standard assistance made available must include at least 3 of the following:
  - (a) making payments of an equal amount over a specified period;
  - (b) options for making payments at different intervals;
  - (c) extending by a specified period the *pay-by date* for a bill for at least one billing cycle in any 12 month period;
  - (d) paying for *energy* use in advance.

## **Division 3            Tailored assistance**

### **77            Objective**

The objective of this Division is to give *residential customers* an entitlement to minimum standards of flexible and practicable assistance that makes it easier for them to pay for their on-going *energy* use, repay their arrears and lower their *energy* costs.

### **78            Application of this Division**

This Division applies to all *residential customers* who are in arrears.

### **79            Minimum assistance**

- (1) Tailored assistance consists of the following measures:
  - (a) repayment of arrears over not more than 2 years by payments at regular intervals of up to one month;
  - (b) advice from the *retailer* about payment options that would enable a *customer* to repay their arrears over not more than 2 years;
  - (c) specific advice about the likely cost of a *customer's* future *energy* use and how this cost may be lowered;

- (d) specific advice about any government and non-government assistance (including Utility Relief Grants and *energy* concessions) available to help a *customer* meet their *energy* costs;
  - (e) practical assistance to help a *customer* lower their *energy* costs including, but not limited to:
    - (i) the tariff that is most likely to minimise the *customer's energy* costs, based on the *retailer's* knowledge of the *customer's* pattern of *energy* use and payment history; and
    - (ii) practical assistance to help the *customer* reduce their use of *energy*, based on the *customer's* pattern of *energy* use and on the circumstances of where the *customer* lives, provided there is scope for action to be taken for that purpose; and
    - (iii) information about how the *customer* is progressing towards lowering their *energy* costs given at sufficient intervals for the *customer* to be able to adequately assess that progress;
  - (f) an initial period of at least 6 months during which:
    - (i) repayment of the *customer's* arrears is put on hold; and
    - (ii) the *customer* pays less than the full cost of their on-going *energy* use while working to lower that cost;
  - (g) any other assistance consistent with the objective of this Division.
- (2) A *customer* is entitled, at the very least, to the assistance mentioned in subclause (1)(a) to (d), while continuing to pay the full cost of their on-going *energy* use.
  - (3) A *customer* is entitled, at the very least, to the assistance mentioned in subclause (1)(c) to (f) if they cannot pay the full cost of their on-going *energy* use.
  - (4) The *retailer* may extend the assistance mentioned in subclause (1)(f) for a further period or periods if the extension would assist the *customer* to continue to lower the cost of their *energy* use.
  - (5) A *customer* who has exercised an entitlement to the assistance mentioned in subclause (1)(f) may, at the end of the period during which that assistance is provided (including that period as extended under subclause (4)), exercise an entitlement mentioned in subclause (2).

## **80 Information about assistance available**

- (1) A *residential customer* who has not paid a bill by its *pay-by date* and who contacts the *retailer* is entitled to be given by the *retailer* information about the assistance to which the *customer* is entitled under this Division and how to access it.
- (2) A *residential customer* who has not paid a bill by its *pay-by date* and who has arrears of more than \$55 (inclusive of GST) is entitled to be contacted by the *retailer*, within 21 business days after that *pay-by-date*, and given information about the assistance to which the *customer* is entitled under this Division and how to access it.
- (3) The *retailer* must allow the *customer* no less than 6 business days to consider the information given under subclause (1) or (2), request further information, and put forward a

payment proposal under clause 81.

- (4) Nothing in this clause limits clause 86.

## **81 Payment arrangements**

- (1) This clause applies to a *residential customer* whose repayment of arrears is not on hold under clause 79(1)(f)(i).
- (2) The *retailer* must accept a payment proposal or revised proposal put forward under this clause by the *residential customer* that complies with subclause (3).
- (3) A payment proposal or revised proposal complies with this subclause if it:
- (a) provides for the making of payments of equal amounts at regular intervals of up to one month; and
  - (b) would result in the *residential customer's* arrears being fully paid in no more than 2 years after the first payment; and
  - (c) provides for payments for *energy* use being made together with payments to reduce arrears; and
  - (d) is based on a reasonable forecast of the *customer's energy* use over the next 12 months.
- (4) However, the *retailer* may accept a payment proposal or revised proposal that does any or all of the following:
- (a) provides for payments of different amounts at different intervals;
  - (b) would result in the arrears being fully paid by a date later than 2 years after the first payment;
  - (c) provides for payments for *energy* use being made separately from payments for arrears.
- (5) On accepting a payment proposal or a revised proposal, the *retailer* must give the *customer* a written schedule of payments showing:
- (a) the total number of payments to be made to pay the arrears; and
  - (b) the period over which the payments are to be made; and
  - (c) the date by which each payment must be made; and
  - (d) the amount of each payment.
- (6) If a *residential customer* receiving assistance under this Division fails to make a payment by the date on which it was payable, the *retailer* must contact the *customer* to discuss their putting forward a revised proposal under this clause.

## **82 Non-payment of amounts towards on-going energy use**

- (1) This clause applies to a *residential customer* whose repayment of arrears is on hold under clause 79(1)(f)(i).
- (2) If the *residential customer* fails to make a payment towards the cost of their on-going *energy* use by the date on which it was payable, the *retailer* must contact the *customer* to discuss varying the amount payable, or the frequency of those payments, or both, to give

the *customer* more time to lower their *energy* costs.

- (3) If a *customer* is not meeting their responsibility to implement practical assistance referred to in clause 79(1)(e)(ii) provided by the *retailer*, the *retailer* must contact the *customer* and work with them to identify an implementation timeframe, consistent with the objective of this Division.
- (4) The *retailer* may add any amount unpaid for *energy* use to the *customer*'s arrears.

### **83 Continued provision of assistance**

A *retailer* is required to continue to provide assistance under this Division to a *residential customer* unless:

- (a) after the *retailer* has complied with clause 81(6), the *customer* has refused or failed to take reasonable action towards paying for their on-going *energy* use and repaying their arrears; or
- (b) after the *retailer* has complied with clause 82(2), the *customer* has refused or failed to take reasonable action towards making payments towards the cost of their on-going *energy* use; or
- (c) the *customer* is not facing payment difficulties.

## **Division 4 Financial Hardship Policies**

### **84 Approval of financial hardship policies**

A *retailer* must prepare a financial hardship policy, and submit it to the *Commission* for approval, as mentioned in section 43(1) of the *Electricity Industry Act* or section 48G(1) of the *Gas Industry Act*.

### **85 Content of financial hardship policies**

A financial hardship policy must include:

- (a) the matters set out in section 43C of the *Electricity Industry Act* or section 48GC of the *Gas Industry Act*; and
- (b) the entitlements to minimum assistance set out in Division 3 of this Part; and
- (c) any matters covered by guidelines or guidance notes published by the *Commission* in relation to those entitlements.

## **Division 5 Communications**

### **86 Provision of information to customers**

- (1) A *retailer* must ensure that its financial hardship policy is easily accessible on its website in a readily printable form.
- (2) A *retailer* must send a copy of its financial hardship policy to any *residential customer* who requests to be sent a copy.

- (3) A *retailer* must ensure that information is readily available to *residential customers* about:
  - (a) the financial hardship policy of the *retailer*; and
  - (b) the assistance available under Division 2 or 3 and how to access that assistance; and
  - (c) approaches to lowering *energy* costs; and
  - (d) government and non-government assistance (including Utility Relief Grants and *energy* concessions) that may be available to help with meeting *energy* costs.
- (4) Without limiting the means by which information may be made readily available, information is readily available for the purposes of subclause (3) if:
  - (a) it is easily accessible on the *retailer's* website in a readily printable form; or
  - (b) it is sent to any *residential customer* who requests to be sent that information.

**Note:** Clause 87(2) states how information is required to be sent to a *residential customer*.

## **87 Written communications**

- (1) Any written communication by a *retailer* to a *residential customer* under, or in connection with, this Part must be:
  - (a) expressed in plain language; and
  - (b) legible; and
  - (c) presented clearly and appropriately having regard to its nature.
- (2) Despite clause 3F, a *retailer* must give or send by post to a *residential customer* any written communication required or permitted to be given or sent under, or in connection with, this Part unless the *customer* has given explicit informed consent to receiving it in another way.
- (3) 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.
- (4) Information sent by registered post to a *residential customer* must be taken to be delivered at the time at which it would ordinarily be delivered by registered post.
- (5) A *retailer* must not impose a charge on a *residential customer* for any written communication given or sent to the *customer* (whether by post or otherwise) under, or in connection with, this Part.

## **88 Effect of this Division**

Nothing in this Division limits clause 56 or any other provision of this Code about providing information to *residential customers*.

## **Division 6 Miscellaneous**

### **89 Retailer obligations**

A *retailer* must:

- (a) in any dealing with a *residential customer* under, or in connection with, Division 3 take into account all of the circumstances of the *customer* of which they are aware and, having regard to those circumstances, act fairly and reasonably; and

- (b) at all times when it is relevant to do so, including on being contacted by a *residential customer*, give the *customer* in a timely manner clear and unambiguous information about the assistance available under this Part; and
- (c) in a timely manner provide, or use its best endeavours to provide, a *residential customer* who is entitled to receive assistance under this Part with that assistance; and
- (d) give a *residential customer* who is receiving, or is entitled to receive, assistance under this Part clear information about how to access other assistance provided by government or community service providers for which the *customer* is or may be eligible; and
- (e) work cooperatively with any government or non-government service, including the Energy and Water Ombudsman (Victoria), providing support to a *residential customer* who is receiving assistance under this Part to ensure that the assistance being provided by the *retailer* complements, and is provided in a coordinated way with, that support; and
- (f) in relation to a *residential customer* who is receiving, or is entitled to receive, assistance under this Part, comply with any relevant guideline published by the *Commission* relating to *customers* in particular payment difficulty, including *customers* who may be affected by *family violence*.

## **90 Assistance beyond the minimum standards**

Nothing in this Part prevents a *retailer* from providing to *residential customers*, who are anticipating or facing payment difficulties, assistance in addition to the minimum standards set out in this Part.

## **91 Restriction on conditions**

A *retailer* must not impose any condition on the provision of assistance under this Part (whether in accordance with the minimum standards set out in this Part or in addition to them) that requires the *customer* to provide personal or financial information or to waive any entitlement under this Part.

## **92 Debt**

### **(1) Restriction on debt recovery**

A *retailer* must not commence or continue with proceedings for the recovery of *arrears* from a *residential customer* who is receiving assistance under this Part.

### **(2) Restriction on sale of debt**

A *retailer* must not sell or otherwise dispose of the debt of a *residential customer* who is in arrears:

- (a) at any time while the *customer* is receiving assistance under this Part; or
- (b) within 10 business days after the *customer* has been disconnected from their *energy* supply under clause 111A.

### **(3) Guideline to be complied with on sale of debt to third party**

A *retailer* must not sell or otherwise dispose of the debt of a *residential customer* to a third party other than in accordance with the guideline “*Debt collection guideline: for collectors*”



*and creditors*” jointly published by the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission.

**(4) Waiver of debt**

Nothing in this Part prevents a *retailer* from waiving any fee, charge or amount of arrears for a *residential customer*.

**93 Supply capacity control product**

A *retailer* must not offer a *supply capacity control product* to a *residential customer* for any credit management purpose.

**94 Payment by Centrepay (SRC and MRC)**

- (1) This clause applies where a *residential customer* requests a *retailer* to permit payment by using Centrepay as a payment option (see clause 32).
- (2) If the *residential customer* is applying for or on a *standard retail contract*, the *retailer* must allow the *customer* to use Centrepay as a payment option.
- (3) If the *residential customer* is on a *market retail contract* and Centrepay is available as a payment option under that contract, the *retailer* must allow the *customer* to use Centrepay as a payment option.
- (4) If the *residential customer* is on a *market retail contract* and Centrepay is not available as a payment option under that contract, the *retailer* must undertake a review of the *market retail contract*.
- (5) If, as a result of a review, an alternative *customer retail contract* is considered to be more appropriate, the *retailer* must transfer the *customer* to that alternative contract, where the *retailer* has obtained the *customer*’s explicit informed consent.
- (6) Any alternative *customer retail contract* offered to a *residential customer* must make Centrepay available as a payment option.
- (7) If, as a result of the review, there is no alternative *customer retail contract* considered to be more appropriate, the *retailer* must make Centrepay available as a payment option under the *residential customer*’s existing *market retail contract*.
- (8) The *retailer* must not charge the *residential customer* for the review, for any transfer to an alternative *customer retail contract* or any early termination charge or other penalty for the early termination of the *customer*’s previous *customer retail contract*.”.



## Appendix B – Amendments to the Energy Retail Code (consequential and related amendments)

### 3 Amendment of clause 3 (definitions)

In clause 3:

- (a) omit the definition of *hardship customer*;
- (b) in paragraph (g) of the definition of *life support equipment*, for “of gas” substitute “of electricity or gas”;
- (c) for the definition of *payment plan* substitute:  
“*payment plan*, in relation to a *small customer* (other than a *residential customer* who is receiving assistance under Part 3), means a plan for the *customer* to pay a *retailer*, by periodic instalments in accordance with this Code, any amounts payable by the *customer* for the sale and supply of *energy*.”.

### 4 Amendment of clause 3B (Purpose and Application)

In clause 3B, after subclause (4) insert:

“(5) The following provisions of this Code constitute terms and conditions decided by the *Commission* for the purposes of sections 36(1)(a)(i) and (ii) and 36(1)(b) of the *Electricity Industry Act* and sections 43(1)(a)(i) and (ii) and 43(1)(b) of the *Gas Industry Act*:

- (a) the provisions in Part 3;
- (b) clauses 109, 110, 111, 111A, 116(1)(d) (read with the definitions of **disconnection warning period** and **reminder notice period** in clause 108).”.

### 5 Amendment of clause 18 (pre-contractual request to designated retailer for sale of energy (SRC))

In clause 18(7)(a), after “clause 111” insert “or 111A”.

### 6 Amendment of clause 32 (payment methods)

In clause 32(2), for “clause 74” substitute “clause 94”.

### 7 Repeal of clause 33 (payment difficulties (SRC and MRC))

Clause 33 is repealed.

### 8 Amendment of clause 34 (shortened collection cycles (SRC and MRC))

In clause 34(2)(a), for “experiencing payment difficulties” substitute “receiving assistance

under Part 3”.

## **9 Amendment of clause 40 (requirement for security deposit (SRC and MRC))**

In clause 40:

(a) in subclause (3), for paragraphs (a) and (b) substitute:

“(a) is a *residential customer* receiving assistance under Division 3 of Part 3; or”.

(b) in subclause (4) for “clause 33” substitute “Part 3”.

## **10 Amendment of clause 56 (provision of information to customers)**

Before clause 56(1)(a) insert:

“(aa) the entitlements of *customers* to assistance from the *retailer* under Part 3; and”.

## **11 Amendment of clause 108 (definitions)**

In clause 108, for the definition of *reminder notice period* substitute:

“**reminder notice period**, in relation to a *small customer*, means the period that starts on the date of issue to the *customer* of a *reminder notice* under clause 109, which must be no earlier than the next business day after the *pay-by date*, and ends no earlier than 6 *business days* after the date of issue of the *reminder notice*.”.

## **12 Clause 109 substituted**

For clause 109 substitute:

### **“109 Reminder notices—retailer**

(1) A *reminder notice* is:

(a) for a *residential customer*, a written notice with the heading ‘Reminder Notice’ prominently displayed on it issued by a *retailer* to the *customer* to remind the *customer* that payment of a bill is required; and

(b) for any other *small customer*, a notice issued by a *retailer* to the *customer* after the *pay-by-date* for a bill to remind the *customer* that payment is required.

(2) A *reminder notice* must not be issued to a *residential customer* later than 21 business days after the *pay-by date*.

(3) The purpose of a *reminder notice* to a *residential customer* is to remind the *customer* of their obligation to pay the bill.

(4) A *retailer* must not issue a *reminder notice* to a *residential customer* who has put forward a payment proposal or revised proposal in accordance with clause 81 that the *retailer* has accepted unless the *residential customer* has failed to make a payment by the date on which it was payable under the proposal or revised proposal.

(5) A *reminder notice* must:

(a) state the date of its issue; and

- (b) state the date on which the *reminder notice period* ends; and
- (c) state that payment of the bill is required to be made before the end of the *reminder notice period*; and
- (d) give details of how to contact the *retailer* in connection with a complaint or dispute.”.

### 13 Amendment of clause 110 (disconnection warning notices)

In clause 110:

- (a) after subclause (1) insert:

“(1A) **Purpose of disconnection warning notices**

The purpose of a *disconnection warning notice* is to give the *customer* clear and unambiguous advice about what the *customer* needs to do to avoid being disconnected from their *energy supply*.”;

- (b) after subclause (2)(b) insert:

“(ba) if the *customer* is a *residential customer* who is entitled to receive assistance under Part 3:

- (i) give an explanation in plain language of the notice and of why it is being issued; and
- (ii) give the *customer* clear and unambiguous advice about what the *customer* needs to do to avoid being disconnected from their *energy supply*, including any entitlement that they may have to further assistance under Part 3; and
- (iii) if the *customer* is or may be eligible for other assistance provided by government or community service providers, give the *customer* clear information about how to access that assistance; and”.

### 14 Amendment of clause 111 (de-energisation for not paying bill)

In clause 111:

- (a) in the heading to the clause after “**bill**” insert “(small customer who is not a residential customer)”;
- (b) in subclause (1) for “a *customer*’s premises” substitute “the premises of a *small customer* (other than a *residential customer*)”;
- (c) subclause (1)(b) is repealed;
- (d) in subclause (1)(e) for “, or to agree to the offer or to adhere to the *payment plan* or instalment arrangement as referred to in paragraphs (a)(ii) and (b)(ii)” substitute “or to adhere to the terms of the *payment plan* referred to in paragraph (a)(ii)”;
- (e) subclause (2) is repealed;
- (f) in subclause (3) for “a *customer*’s premises” substitute “the premises of a *small customer* (other than a *residential customer*)”;
- (g) in subclause (3)(c) for “, or to agree to the offer or to adhere to the *payment plan* or

- instalment arrangement as referred to in subclause (1)(a)(ii) and (b)(ii)” substitute “or to adhere to the terms of the *payment plan* referred to in subclause (1)(a)(ii)”;
- (h) delete the Note at the foot of the clause beginning “Further guidance” and ending “Wrongful Disconnection.”.

## 15 **Clause 111A inserted**

After clause 111 insert:

### **“111A Residential customer only to be disconnected as a last resort for non-payment**

A *retailer* may only arrange *de-energisation* of the premises of a *residential customer* for not paying a bill if:

- (a) the *retailer*:
- (i) has complied with all of the *retailer*’s obligations to the *customer* under clause 89; and
  - (ii) has issued a *reminder notice* to the *customer* that complies with clause 109; and
  - (iii) has issued a *disconnection warning notice* to the *customer* that complies with clause 110; and
  - (iv) has, after the issue of the *disconnection warning notice*, used its best endeavours to contact the *customer* in relation to the matter and, in so doing, provided clear and unambiguous information about the assistance available under Part 3; and
  - (v) has at all times acted fairly and reasonably in relation to the *customer*; and
- (b) the *customer*:
- (i) while receiving tailored assistance under clause 79(1)(a), has failed to make a payment by the date on which it was payable, has not put forward a revised payment proposal under clause 81 and does not have an entitlement to the assistance mentioned in clause 79(1)(f); or
  - (ii) has exercised an entitlement to the assistance mentioned in clause 79(1)(f) and has failed to make a payment by the date on which it was payable and has not put forward a proposal to vary the amount payable or the frequency of payments; and
- (c) the *customer* has refused or failed to take reasonable action towards remedying the matter; and
- (d) the *retailer* has records that are sufficient to evidence the matters mentioned in paragraphs (a), (b) and (c).”.

## 16 **Amendment of clause 116 (restrictions on de-energisation)**

- (1) For clause 116(1)(d) substitute:

“(d) where the *customer* is a *residential customer* who is receiving assistance under Part 3 and is adhering to the terms of that assistance; or”.

(2) For clause 116(1)(g) substitute:

“(g) for non-payment of a bill where the total amount of the *customer’s* arrears is less than \$300 (inclusive of GST); or”.

## **17 Amendment of Schedule 1, clause 10.3 (difficulties in paying)**

In Schedule 1, for clause 10.3 substitute:

### **“10.3 Difficulties in paying**

If you have difficulties paying your bill, you should contact us as soon as possible. We will provide you with information about your entitlements as a Victorian energy customer.”.

## **18 Amendment of Schedule 1, clause 14.1 (when can we arrange for disconnection?)**

In Schedule 1, for clause 14.1(a) substitute:

“(a) you do not pay your bill by the *pay-by-date* or, if you are a *residential customer* receiving assistance under Part 3 of the Energy Retail Code, you fail to make a payment or otherwise do not adhere to the terms of that assistance; or”.

# Appendix C – Changes from version 11 of the Energy Retail Code

## Part 3

Code version 11	Code version 12	Explanation
Definition of hardship customer and ability for customers to self-identify hardship	Definition and obligation for customer to self-identify hardship repealed	<p>The hardship inquiry found that the term ‘hardship customer’ was not helpful for customers facing payment difficulty in terms of labelling them, or having their eligibility for assistance assessed.</p> <p>Amendments to legislation from 1 January 2016 provided the commission with a new statutory objective to ‘promote protections for customers facing payment difficulty’.</p> <p>The new framework is focused on retailers assisting all residential customers who are facing payment difficulties through minimum entitlements to assistance under the Code, without the need for retailers to assess if customers are ‘in hardship’.</p>
Definition of life support equipment	For “of gas” substitute “of electricity and gas”	The definition of life support equipment has been expanded to include ‘any other equipment (whether fueled by electricity or gas) that a registered medical practitioner certifies is required for a person residing at the customer’s premises...’
Definition of payment plan	Definition limited to <i>small customers</i> who are not <i>residential customers</i>	<p>Residential customers are entitled to propose payment arrangements (or revised payment arrangements) that they consider are manageable, and will result in repaying their arrears in no more than two years.</p> <p>This replaces the previous practice of retailers offering payment plans to residential customers, some of which may have been unaffordable,</p>

Code version 11	Code version 12	Explanation
		unsustainable and inflexible.
CI 33 setting out obligations for retailers in relation to offering payment plans	Repealed and replaced by obligations under Part 3 Divisions 1, 2 and 3	<p>The requirement on a retailer to carry out ‘capacity to pay assessments’ has been removed.</p> <p>The hardship Inquiry found that these assessments were subjective and intrusive, and were used by some retailers as a mechanism for deciding whether to provide assistance to a customer facing payment difficulty.</p> <p>Retailers are now required to focus on assisting customers rather than assessing them, by:</p> <ul style="list-style-type: none"> <li>• identifying the type of payment difficulty the customer is facing, rather than the cause of the payment difficulty</li> <li>• providing information and advice about payment arrangement that meets the customer’s needs, and maximize the opportunity for customers to remain connected.</li> </ul>
CI 34(2)(a) limiting application of shortened collection cycles to customers not experiencing payment difficulties	Amended CI 34 to update prohibition on shortened collection cycles in line with Part 3	<p>Retailers are restricted from placing residential customers on a shortened collection cycle if they are receiving assistance under Part 3.</p> <p>Previously, a retailer decided if a customer was ‘in hardship’ and therefore there was variability regarding which customers were protected from shortened collection cycles and which customers were not.</p>
CI 40 restriction on retailers’ ability to require a security deposit from hardship customers.	Broadening restriction to cover all customers receiving assistance under Part 3	<p>Retailers are restricted from requiring security deposits from residential customers who are receiving assistance under Part 3.</p> <p>Previously, a retailer decided if a</p>

Code version 11	Code version 12	Explanation
		customer was ‘in hardship’ and therefore there was inconsistency in relation to which customers were required to pay a security deposit and which customers were not.
CI 56 commission’s expectations of provision of information to customers	Insertion of CI 56(1)(aa) to cover all Part 3 assistance	This amendment makes it clear that retailers must make information available (by publishing a summary of it on their websites) to residential customers about the assistance to which they are entitled under Part 3 of the Code.
CI 71 communication of customer hardship policy	Repealed and replaced by broader coverage of communication and provision of information obligations under new Division 5 (CI 85-88)	<p>Retailers are required to make their actual hardship policies, as approved by the commission, publically available and to send it to a customer who asks for it (assisting customers who do not have access to the internet or printing).</p> <p>Previously, retailers were only required to make information about their hardship policy available.</p> <p>In addition to their hardship policies, retailers are also required to make a broader range of information available to customers on their websites (and to send it via post when requested). This information includes:</p> <ul style="list-style-type: none"> <li>• customers’ entitlements to assistance under Part 3</li> <li>• approaches to lowering energy costs</li> <li>• government and non-government assistance that may be available to help with meeting energy costs.</li> </ul>
CI 71A approval by commission of customer hardship policy	Repealed and replaced by CI 84	This maintains the requirement for the commission to approve retailer hardship policies.



Code version 11	Code version 12	Explanation
CI 71B contents of customer hardship policy	Repealed and replaced by CI 85, which streamlines the content required in financial hardship policies	Retailer hardship policies must all contain matters set out in section 43C of the <i>Electricity Industry Act</i> or section 43GC of the <i>Gas Industry Act</i> , the entitlements to assistance under Division 3 of Part 3, and any matters covered in the commission's guidelines or guidance notes.
CI 71C approval of changes to customer hardship policies	Repealed and replaced by CI 84	Retailers are required to assess whether their current hardship policies comply with the amended Code, and where necessary, submit revised hardship policies to the commission for approval.
CI 72 payment plans	Repealed and replaced by Divisions 1,2 and 3 of Part 3 of the Code	<p>The new Part 3 provides all residential customers facing payment difficulties with an entitlement to a payment arrangement, which can be revised, up to a maximum of two years.</p> <p>This replaces the previous approach where customers needed to be assessed by the retailer as either being 'in hardship' or 'payment difficulties' in order to access a payment plan.</p>
CI 72A Debt recovery	CI 92 now with added reference to "Debt collection guideline: for collectors and creditors"	Retailers must now comply with the <i>Debt collection guideline: for collectors and creditors</i> jointly published by the Australian Competition and Consumer Commission and Australian Securities and Investments Commission.
CI 74 payment by Centrepay	CI 94 retains the existing retailer obligation to provide Centrepay options for all customers facing payment difficulty	This amendment updates the provision to reflect the changes in the new Part 3 by requiring retailers to provide Centrepay options to all customers facing payment difficulty, rather than just those a retailer assesses are 'in hardship'.
CI 75 Hardship program indicators	Repealed	The new framework provides entitlements for all customers to assistance if they are facing payment difficulty.

Code version 11	Code version 12	Explanation
		This replaces the use by some retailers of hardship indicators to determine whether to provide assistance to a customer under their hardship policy, and if so what assistance to provide.
CI 76 Waiver of debt for hardship customer	Repealed and replaced by CI 92(4)	Nothing in Part 3 prevents a retailer from waiving any fee, charge or amount of arrears for a residential customer facing payment difficulty.  Previously, this provision only applied to customers 'in hardship'.
CI 76A Supply capacity control product	Repealed and replaced by CI 93	Retains the existing prohibition on retailers from offering supply capacity control products to residential customers for credit management purposes.

## Other sections of the Code

Code version 11	Code version 12	Explanation
CI 3B purpose and application	Terms and conditions decided by the commission	<p>Part 3 and the clauses relating to reminder notices and disconnection warning notices, along with the new requirement that disconnection must only occur as a last resort, are terms and conditions decided by the commission.</p> <p>If a customer is disconnected in breach of these terms and conditions the retailer is obliged to make a Wrongful Disconnection Payment to that customer.</p>
CI 108 definition of reminder notice period	Clearer language for definition in CI 108	This amendment makes it clear when a retailer can begin counting business days for the reminder notice period and how many business days are required as an absolute minimum.
CI 109 reminder notice requirements	Amended CI 109 with new timing and information provisions, a new prohibition on issuing reminder notices, and clearer language	<p>The purpose of a reminder notice, which is to remind the customer of their obligation to pay the bill, has been added.</p> <p>A retailer must issue a reminder notice to a customer within 21 business days of the pay-by date of a bill.</p> <p>Previously, there was no obligation on retailers to issue reminder notices in any specified period of time to prompt customers to take action.</p> <p>However, retailers are prohibited from issuing reminder notices to customers who have, and or are meeting a proposed payment arrangement under CI 81 of the new framework.</p> <p>Previously retailers could issue reminder notices to customers in payment difficulty or hardship.</p>
CI 110 purpose of	Amended CI 110 to	The purpose of a disconnection

Code version 11	Code version 12	Explanation
disconnection warning notice (DWN) and specification of content	define the purpose of the notice and add new information requirements	<p>notice, to give the customer clear and unambiguous advice about what the customer needs to do to avoid disconnection, has been added.</p> <p>Retailers are required to provide new information on a disconnection warning notice, including:</p> <ul style="list-style-type: none"> <li>• the purpose of the notices</li> <li>• what action a customer must take to avoid disconnection</li> <li>• details about a customer's entitlement to further assistance under Part 3</li> <li>• how to access any assistance available</li> <li>• the assistance available from government and community service providers and how customers can access it.</li> </ul>
CI 111 de-energisation of small customers	Amended CI 111 to specify to whom it applies	<p>Amendments to CI 111 make it clear that the clause only applies to small customers other than residential customers.</p> <p>This means the clause applies to small business and residential customers not anticipating or facing payment difficulties, who use up to 40MWh per annum.</p>
CI 111A Residential customer only to be disconnected as a last resort for not paying a bill	New clause setting out the requirements of a retailer before they can consider disconnection	<p>A retailer may only arrange de-energisation of the premises of a residential customer for not paying a bill if the retailer has:</p> <ul style="list-style-type: none"> <li>• complied with all obligations to provide assistance to the customer</li> <li>• issued a compliant reminder notice;</li> </ul>

Code version 11	Code version 12	Explanation
		<ul style="list-style-type: none"> <li>• issued a compliant disconnection warning notice</li> <li>• to the customer that complies with clause 109; and</li> <li>• after the issue of the disconnection warning notice, used its best endeavours to contact the customer in relation to the matter and, in so doing, provided clear and unambiguous information about the assistance available under Part 3</li> <li>• at all times acted fairly and reasonably in relation to the customer</li> <li>• the retailer has records that are sufficient to evidence these matters</li> </ul> <p>and</p> <p>the customer:</p> <ul style="list-style-type: none"> <li>• while receiving assistance failed to make a payment by the due date</li> <li>• has not put forward a revised payment proposal</li> <li>• has refused or failed to take reasonable action towards remedying the matter.</li> </ul>
<p>CI 116(1)(g) restricting de-energisation for an outstanding bill less than \$120 (exclusive of GST)</p>	<p>Amended CI 116(1)(g)</p>	<p>This amendment harmonises the minimum disconnection amount with the \$300 (inclusive of GST) minimum under the National Energy Retail Rules (NERR).</p> <p>The AER re-assessed the amount in March 2017 following comprehensive stakeholder</p>

Code version 11	Code version 12	Explanation
		consultation.
CI 10.3 in Schedule 1	Replaced CI 10.3 in Schedule 1 with new required information	This amendment requires retailers to include new information in their standard retail contracts for customers facing payment difficulty about their entitlements to assistance under Part 3.
CI 14.1(a) When a retailer can arrange disconnection.	Alters language to reflect failure to pay or otherwise adhere to terms of assistance under the new Part 3	This amendment makes it clear that a residential customer on a standard retail contract, who is receiving assistance under Part 3, must fail to make a payment or otherwise fail to adhere to the terms of assistance under Part 3 before a retailer can disconnect their supply.

## Appendix D – List of references

ACIL Allen 2017, *New Framework for Customers Facing Payment Difficulty, Assessment of the Retailers' Costs*, October.

Australian Energy Council 2017, Submission to the Essential Services Commission 2017, *Payment Difficulty Framework: Revised draft decision, Submission to commission consultation paper*, June.

Australian Energy Market Commission 2012, *Power of choice review – giving consumers options in the way they use electricity, Final Report*, November.

AEMO 2014, *Value of Customer Reliability final report*, November.

AGL 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November.

AGL 2017, Submission to the Essential Services Commission 2017, *Payment Difficulty Framework: Revised draft decision, Submission to commission consultation paper*, June.

Alinta Energy 2017, Submission to the Essential Services Commission 2017, *Payment Difficulty Framework: Revised draft decision, Submission to commission consultation paper*, June.

Australian Energy Regulator 2016, *Sustainable payment plans – A good practice framework for assessing customers' capacity to pay*, July.

Boston Consulting Group 2005, *Boston Consulting Group Review of Yarra Valley Water & Kildonan Child and Family Services Partnership*.

Brotherhood of St Laurence 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November.

Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May.

Consumer Action Law Centre and Financial and Consumer Rights Council 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November.

Consumer Action Law Centre and Financial and Consumer Rights Council 2017, Submission to the Essential Services Commission 2017, *Payment Difficulty Framework: Revised draft decision, Submission to commission consultation paper*, June.

Consumer Utilities Advocacy Centre 2014, *Helping Not Hindering: Uncovering Domestic Violence & Utility Arrears*, August, (<https://www.cuac.org.au/research/cuac-research/345-helping-not-hindering-uncovering-domestic-violence-utility-debt/file>).

Consumer Utilities Advocacy Centre 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers, Submission to commission issues paper*, May.

Department of Treasury and Finance 2014, *Victorian Guide to Regulation, Toolkit 2: Cost-benefit analysis*, July.

*Electricity Industry Act 2000* (Vic), ([http://www.austlii.edu.au/au/legis/vic/consol\\_act/eia2000261/](http://www.austlii.edu.au/au/legis/vic/consol_act/eia2000261/)).

EnergyAustralia 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November,

EnergyAustralia 2017, *Submission to the Essential Services Commission 2017, Payment Difficulty Framework: Revised draft decision, Submission to commission consultation paper*, June.

Energy and Water Ombudsman (Victoria) 2017, *Submission to the Essential Services Commission 2017, Payment Difficulty Framework: Revised draft decision, Submission to commission consultation paper*, June.

Energy Consumers Australia 2017, *Energy Consumer Sentiment Survey*, September.

*Energy Legislation Amendment (Customer Protection) Act 2015* (Vic).

*Essential Services Commission Act 2001* (Vic), ([http://www.austlii.edu.au/au/legis/vic/consol\\_act/esca2001327/](http://www.austlii.edu.au/au/legis/vic/consol_act/esca2001327/)).

Essential Services Commission 2004, *Disconnections and capacity to pay report on energy retailers' performance*, October.

Essential Services Commission 2012, *Charter of Consultation and Regulatory Practice*, August.

Essential Services Commission 2015, *Inquiry into the financial hardship arrangements of energy retailers: Our Approach*, March.

Essential Services Commission 2015, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Draft Report*, September.

Essential Services Commission 2016, *Supporting Customers, Avoiding Labels, Energy Hardship inquiry, Final Report*, February.



Essential Services Commission 2016, *Safety Net for Victorian Energy Consumers Facing Payment Difficulties – Customer Advice Manual – Amendments to the Energy Retail Code, draft decision*, October.

Essential Services Commission 2016, *Victorian Energy Market Report 2015-16*, November.

Ethnic Communities' Council of NSW Inc. 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November.

*Gas Industry Act 2001* (Vic), ([http://www.austlii.edu.au/au/legis/vic/consol\\_act/gia2001167/](http://www.austlii.edu.au/au/legis/vic/consol_act/gia2001167/)).

Insolvency and Trustee Service Australia 2011, Profile of Debtor, (<https://www.afsa.gov.au/sites/g/files/net1601/f/profiles-of-debtors-2011.pdf>).

KPMG 2017, *Payment Difficulty Framework, Assessment of Customer Impacts*, October.

Kildonan Uniting Care 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers, Submission to commission issues paper*, May.

Kildonan Uniting Care 2016. *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November.

Momentum Energy 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November.

*Office of the Regulator-General Act 1994* (Vic).

Origin Energy 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November.

Origin Energy 2017, *Submission to the Essential Services Commission 2017, Payment Difficulty Framework: Revised draft decision, Submission to commission consultation paper*, June.

Powershop 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November.

Productivity Commission 2011, *Disability Care and Support*, Report no. 54, July.

Victorian Council of Social Service 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to commission draft decision*, November.

Victorian Council of Social Service 2017, *Submission to the Essential Services Commission 2017, Payment Difficulty Framework: Revised draft decision, Submission to commission consultation paper*, June.

Victorian Government 2015, *Terms of Reference – Inquiry into best practice financial hardship programs of retailers*, February.

Victorian Royal Commission into Family Violence 2016, *Volume IV Report and Recommendations*, March, (<http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/Final/RCFV-Vol-IV.pdf>)