

13 October 2014 ~~April 2012~~
Our reference: C/14/8542



OPERATING PROCEDURE COMPENSATION FOR WRONGFUL DISCONNECTION

TABLE OF CONTENTS

1. BACKGROUND	1
1.1 Purpose.....	1
1.2 Legislative intent and context	1
1.3 Scope.....	1
1.4 Commencement.....	2
1.5 Copies.....	2
2. CIRCUMSTANCES GIVING RISE TO <i>WRONGFUL DISCONNECTION</i> <i>COMPENSATION OBLIGATIONS</i>.....	2
2.1 Interpretative guidance unnecessary.....	2
2.2 Interpretative guidance necessary.....	2
2.3 Disconnection by a retailer	2
3. INTERPRETATION OF ENERGY RETAIL CODE.....	3
3.1 Interpretative guidance for particular clauses	3
3.2 Standards of proof.....	3
4. ENQUIRIES AND COMPLAINTS HANDLING BY COMMISSION	3
4.1 General principle	3
4.2 Recording.....	3
5. ENQUIRIES AND COMPLAINTS HANDLING BY RETAILERS.....	3
5.1 General principle	3
5.2 Referral to Commission for advice.....	3
5.3 Advice on customer’s rights.....	4
6. ENQUIRIES AND COMPLAINTS HANDLING BY EWOV.....	4
6.1 General principle	4
6.2 Enquiries	4
6.3 Complaints	4
6.4 Referral to Commission for advice.....	4

6.5 Referral to Commission where dispute unresolved.....	4
7. COMMISSION DECISION.....	5
7.1 Jurisdiction	5
7.2 Procedure.....	5
7.3 Notification of decision.....	5
7.4 Response to decision	5
8. ENFORCEMENT ORDERS.....	5
9. REPORTING.....	6
9.1 Report by retailers to the Commission.....	6
9.2 Report by EWOV to the Commission	6
9.3 Reporting by the Commission.....	6
10. AUDITING OF RETAILERS' RESPONSE TO ENQUIRIES AND COMPLAINTS.....	6
10.1 Normal regulatory practice.....	7
11. INTERPRETATION	7
APPENDIX A – INTERPRETATION OF ENERGY RETAIL CODE	8
APPENDIX B - PROOF OF DESPATCH OF NOTICES, PHONE CONTACT AND VISITS	15 14
APPENDIX C - FLOW CHART – ERC 11.2(1) 72(1)(a)(i)	16 15
APPENDIX D – SAMPLE CALL CENTRE SCRIPTS Error! Bookmark not defined.	16

OPERATING PROCEDURE COMPENSATION FOR WRONGFUL DISCONNECTION

1. BACKGROUND

1.1 Purpose

This operating procedure has been issued by the Essential Services Commission (the Commission) to assist retailers and the Energy and Water Ombudsman (Victoria) (EWOV) to satisfy the **wrongful disconnection compensation obligations** and to give customers greater assurance about the satisfaction of such obligations. Specifically, this document:

- (a) gives guidance to assist in the interpretation of the Energy Retail Code in order to discern more precisely the **wrongful disconnection compensation obligations**¹;
- (b) sets out the Commission's view of the appropriate minimum procedures for the handling by retailers and EWOV of relevant enquiries and complaints; and
- (c) pursuant to section 13 of the *Essential Services Commission Act 2001*, states the Commission's proposed procedures for decisions concerning relevant breaches of retail licence conditions and the enforcement of **wrongful disconnection compensation obligations**.

This document is a guide only. Where any inconsistency between the law and ~~the Guideline~~ [this operating procedure](#) exists, the law prevails.

1.2 Legislative intent and context

The Commission understands the intention in enacting the **wrongful disconnection compensation obligations** was to provide a simple mechanism to compensate small retail customers for the disruption to households and small businesses arising from disconnection which is unfair because a retailer has procured disconnection in breach of its Energy Retail Code obligations. Parliament was also concerned to strengthen retailer compliance with the Code.

The Energy Retail Code is essentially procedural, so it protects customers by seeking to ensure that a proper process is followed for proposed disconnections and that claims of financial incapacity and other hardship are taken into account by retailers. The Commission is particularly concerned that this [operating](#) procedure assists in discerning instances of wrongful disconnection causing material disruption, damage or hardship.

This [operating](#) procedure and the practices it promotes in Appendix A should be regarded as corporate behaviour minimums and not necessarily best practice. Retailers should strive to attain best practice in their handling of disconnections and maintain existing practices where they are more favourable to customers than those in this [operating](#) procedure.

Nothing in this document should affect existing practice in relation to improper or disputed disconnections by distributors.

1.3 Scope

¹ The Commission may consider amendments to the Code in light of the experience with this [operating](#) procedure.

This [operating](#) procedure is to apply in respect of circumstances covered by section 40B of the *Electricity Industry Act 2000* or section 48A of the *Gas Industry Act 2001*. The customers to whom it refers are “relevant customers” within the meaning of the *relevant provisions*, broadly speaking customers with an annual energy consumption of up to 160 MWh of electricity or up to 10,000 GJ of gas.

1.4 Commencement

This [operating](#) procedure is to apply to all claims for compensation made by customers, where the initial claim was made after 1 July 2006, arising out of a disconnection of electricity or gas on or after the commencement of the *Energy Legislation (Amendment) Act 2004* on 8 December 2004.²

1.5 Wrongful disconnection payments capped

The *Energy Legislation Amendment (Bushfire Mitigation and Other Matters) Act 2011* amended the *Electricity Industry Act 2000* and *Gas Industry Act 2001* to cap wrongful disconnection payments to \$3500 if the customer does not notify the retailer of the disconnection within 14 days after the disconnection. This amendment came into effect 1 January 2012.

1.6 Copies

Each retailer must publish a copy of this [operating](#) procedure on its website and make a copy available on request by a customer. The Commission and EWOV will also publish this [operating](#) procedure in the same manner as other regulatory instruments.

2. CIRCUMSTANCES GIVING RISE TO *WRONGFUL DISCONNECTION COMPENSATION OBLIGATIONS*

2.1 Interpretative guidance unnecessary

If a retailer disconnects a customer and any of the circumstances listed in section 1 of Appendix A applies, the retailer must pay compensation in accordance with the *relevant provision* and this [operating](#) procedure. The list in Appendix A does not purport to be exhaustive of the circumstances giving rise to *wrongful disconnection compensation obligations*.

2.2 Interpretative guidance necessary

If a retailer disconnects a customer and any of the circumstances listed in the first column of section 2 (but not section 1) of Appendix A appears or is alleged by the customer to apply, the retailer or the Commission (as applicable) must consider the circumstances in light of clause 3 of this [operating](#) procedure and determine whether a *wrongful disconnection compensation obligation* exists. If so determined, the retailer must pay compensation in accordance with the *relevant provision* and this [operating](#) procedure. The list in Appendix A does not purport to be exhaustive of the circumstances giving rise to *wrongful disconnection compensation obligations*.

2.3 Disconnection by a retailer

~~Consistent with clause 36.1 of the Energy Retail Code, a~~ reference in the *relevant provisions* or this [operating](#) procedure to a disconnection by a retailer means a disconnection procured by a retailer. Accordingly:

² For avoidance of doubt, the Interim Operating Procedure – Compensation for Wrongful Disconnection is to be considered in relation to claims made before 1 July 2006.

- (a) if a disconnection performed by a distributor occurs where the distributor is acting strictly on the retailer's instructions, the retailer has "disconnected" the customer.
- (b) if a disconnection performed by a distributor occurs not in accordance with the instruction to disconnect given by the retailer, the retailer has not disconnected the customer.

3. INTERPRETATION OF ENERGY RETAIL CODE

3.1 Interpretative guidance for particular clauses

In assessing the meaning of certain provisions in clauses ~~11.2, 13.1 or 13.233(1)~~, [111](#), [112](#), [113](#) and [116](#) of the Energy Retail Code (and equivalent provisions of retailers' terms and conditions of supply which reflect the code), regard must be had to the applicable interpretative guidance in the second column of Appendix A. The guidance given there is not a formal supplement to the Code to be applied in abstract without full regard to the circumstances, nor is it exhaustive (see clauses 5.2 and 6.4).

3.2 Standards of proof

Where a clause of the Energy Retail Code or the applicable interpretative guidance in Appendix A refers to requirements to give notices or similar documents to a customer or to make contact by telephone, or in person, it will be necessary for a retailer to establish such requirements have been met by demonstrating the matters set out in Appendix B.

4. ENQUIRIES AND COMPLAINTS HANDLING BY COMMISSION

4.1 General principle

The Commission will refer any enquiries or complaints received from a customer directly to the retailer concerned³ or, if the retailer has dealt with a complaint, to EWOV. The Commission will give brief particulars to the retailer or EWOV (as the case may be) of the contact made by the customer.

4.2 Recording

The Commission will keep a record of brief particulars of each complaint received and to whom it has been referred.

5. ENQUIRIES AND COMPLAINTS HANDLING BY RETAILERS

5.1 General principle

A retailer must handle a complaint by a customer in accordance with the relevant Australian Standard on Complaints Handling or the "Benchmark for Industry Based Customer Dispute Resolution Schemes" published by the Department of Industry, Tourism and Resources (Cwth).

5.2 Referral to Commission for advice

A retailer may seek guidance from the Commission on any questions of interpretation of the Energy Retail Code. The Commission will send a copy to EWOV and each retailer, and will publish details of all guidance provided in its annual compliance report.

³ The referral will be to a retailer's "higher level contact" (within the meaning given to those terms by EWOV).

5.3 Advice on customer's rights

When a retailer responds to a customer's complaint, the retailer must inform the customer:

- (a) that the customer has a right to raise the complaint to a higher level within the retailer's management structure; and
- (b) if, after raising the complaint to a higher level the customer is still not satisfied with the retailer's response, the customer has a right to refer the complaint to EWOV or other relevant external dispute resolution body. That information must be given in writing and include details on how to contact EWOV.

6. ENQUIRIES AND COMPLAINTS HANDLING BY EWOV

6.1 General principle

The Commission expects that EWOV will handle enquiries and complaints about alleged wrongful disconnection in accordance with EWOV's usual procedures, except to the extent otherwise provided below.⁴

6.2 Enquiries

EWOV should refer all wrongful disconnection enquiries to a retailer's "higher level contact" (within the meaning given to those terms by EWOV). The retailer must ensure that the customer is contacted in accordance with EWOV's case handling procedures for discussion of the matter.

6.3 Complaints

EWOV should handle all wrongful disconnection complaints (including unresolved enquiries) as "level 1 complaints" (within the meaning given to that term by EWOV). As such, EWOV will require the retailer to reconnect the customer in accordance with EWOV's current procedure for disconnection complaints, pending the outcome of EWOV's investigation. EWOV will endeavour to resolve complaints to the satisfaction of both parties⁵.

6.4 Referral to Commission for advice

Consistent with clause 6.4 of the EWOV Charter, EWOV should seek guidance from the Commission on any questions of interpretation of the Energy Retail Code or retailers' terms and conditions of supply. The Commission will send a copy to each retailer and publish details of guidance provided in its annual Compliance Report.

6.5 Referral to Commission where dispute unresolved

Where EWOV is unable to resolve a claim for the wrongful disconnection compensation payment with the agreement of the parties, EWOV must refer the claim to the Commission for a decision in accordance with clause 7 of this [operating](#) procedure.

Before making such a referral EWOV must fully investigate the complaint and on making the referral must give the Commission and each party a written report setting out all relevant information which may assist the Commission to make its decision and any other available information about any potential or actual breach of a regulatory obligation by the retailer.

⁴ This means those arrangements as agreed between EWOV and the retailers from time-to-time.

⁵ Consistent with the usual application of EWOV's normal case-handling procedures, EWOV's ability to do so quickly and efficiently will be assisted by the retailer promptly returning all completed documentation required by EWOV.

A referral to the Commission under this clause does not authorise or require the Commission to review EWOV's complaint handling or dispute resolution process or deliberations and does not prevent EWOV dealing immediately with aspects of a customer's complaint other than the question of a **wrongful disconnection compensation obligation**.

7. COMMISSION DECISION

7.1 Jurisdiction

The Commission may investigate and make a decision on an alleged breach of the retail licence condition constituted by a **relevant provision** upon referral by EWOV or of its own motion.

7.2 Procedure

The Commission (or a single Commissioner as delegate of the Commission) will:

- (a) consider any applicable written report by EWOV;
- (b) allow each of the customer and the retailer to make a written submission and to meet with the Commission to make representations;
- (c) appoint a staff member to further investigate the allegation and report to the Commission;
- (d) generally conduct its proceedings in a way which is fair to the retailer and the customer;
- (e) with the co-operation of the parties, make a decision on an alleged breach within 20 business days, unless the matter is unusually complex; and
- (f) take into account the advice of expert advisors (comprising persons experienced in consumer affairs and law) if it requires the advice of advisors in the particular case.

The Commission does not anticipate customers or retailers requiring legal representation (but would consider a request to do so in unusually complicated matters).

7.3 Notification of decision

The Commission will immediately advise EWOV, the customer and the retailer in writing of its decision under clause 7 of this [operating](#) procedure, and will seek confirmation by the retailer that it will promptly rectify any contravention of the licence condition. The Commission will publish on its website a copy of its decision.

7.4 Response to decision

The Commission will give the retailer 5 business days after receipt of its communication in clause 7.3 in which to confirm that it has rectified any contravention or will rectify any contravention with details of when and how it will rectify the contravention.

8. ENFORCEMENT ORDERS

Without limiting the Commission's powers under section 53 of the *Essential Services Commission Act 2001*, the Commission will serve a provisional order requiring a retailer to satisfy its **wrongful disconnection compensation obligation** if the retailer does not promptly give the Commission the confirmation which the Commission seeks under clause 7.4 of this [operating](#) procedure, or if the retailer does not fulfil its commitment to rectify the breach, the Commission may use the powers available to it under sections 53 and 54 of the

Essential Services Commission Act 2001 to ensure that **wrongful disconnection compensation obligations** are met.

9. REPORTING

9.1 Report by retailers to the Commission

Retailers must report to the Commission within 20 business days of the end of each calendar quarter:

- All instances where wrongful disconnections have been detected and compensation has been paid, together with the reasons for the wrongful disconnections;
- Enquiries, including those referred by EWOV and the ESC to be identified separately, and complaints received directly about disconnections and the decisions made, identifying:
 - The numbers where wrongful disconnections occurred, including reasons for wrongful disconnections, and the amount of compensation paid;
 - The numbers where wrongful disconnections did not occur.

9.2 Report by EWOV to the Commission

EWOV must report to the Commission within 10 business days of the end of each month:

- The total number of actual disconnection cases received;
- The number of actual disconnection cases received as enquiries and referred to a Higher Level Contact;
- The number of actual disconnection cases received as Level 1 Complaints for investigation;
- The number per retailer;
- The number of each case type per retailer (“Enquiry RHL” or “Received as Level 1 Complaints”);
- The number of actual disconnection cases where wrongful disconnection compensation was paid by the retailer (before a decision by the Commission); and
- If requested by the Commission, the EWOV case reference number.

9.3 Reporting by the Commission

The Commission will record and publish:

- Guidance given to EWOV under clause 6.4 of this [operating](#) procedure, not identifying customer details;
- Decisions made under clause 7 of this [operating](#) procedure; and
- Information received from retailers in accordance with clause 9.1.

10. AUDITING OF RETAILERS’ RESPONSE TO ENQUIRIES AND COMPLAINTS

10.1 Normal regulatory practice

The Commission will audit each retailer's compliance with its **wrongful disconnection compensation obligations** generally and the reports received under clause 9.1 in particular as part of the Commission's normal regulatory audit program. The Commission may also conduct other such audits on an ad hoc basis if the Commission believes the audit is warranted, in which case it would take place in accordance with the Commission's usual procedures for a regulatory audit.

11. INTERPRETATION

Terms defined in the **relevant provisions** or in the Energy Retail Code will have the same meanings when used in this [operating](#) procedure. Also:

Commission means the Essential Services Commission under the [Essential Services Commission Act 2001](#);

Energy Retail Code means the code of that name determined by the Commission under the [Electricity Industry Act 2000](#) and the [Gas Industry Act 2001](#);

EWOV means the Energy and Water Ombudsman (Victoria) Limited;

EWOV Charter means the charter published on EWOV's website (<http://www.ewov.com.au/about-us/charter>) as amended from time to time;

relevant provision means section 40B of the *Electricity Industry Act 2000* or section 48A of the *Gas Industry Act 2001*;

wrongful disconnection compensation obligation means an obligation on a retailer to make a payment to a customer under a ***relevant provision***.

Formatted: Left

Formatted: Font: Italic

Formatted: Font: Italic

Formatted: Font: Not Bold, Not Italic

Formatted: Font: Not Bold

Formatted: Font: Not Bold, Not Italic

Formatted: Font: Not Bold, Not Italic

APPENDIX A – INTERPRETATION OF ENERGY RETAIL CODE

Note that this list does not purport to be exhaustive of the circumstances giving rise to wrongful disconnection compensation obligations

WRONGFUL DISCONNECTION CIRCUMSTANCES	CODE INTERPRETATIVE GUIDANCE
<p>1. Compensation must be paid if disconnection occurs in the following circumstances:</p> <ul style="list-style-type: none"> (a) unpaid bill relates to a different supply address than the supply address disconnected (ERC 43.4111(1)). (b) unpaid bill was from first instalment payment plan with that retailer (ERC 43.4(a)111(2)). (c) insufficient time elapsed before reminder notice (ERC 43.4111(1) and 108). (d) delivery or content of reminder notice not in accordance with stated requirements (ERC 43.4(b)111(1) and 109). (e) insufficient time elapsed before disconnection warning (ERC 43.4(b)111(1) and 108). (f) delivery or content of disconnection warning not in accordance with stated requirements (ERC 43.4(b)111(1) and 110). (g) customer has given reasonable assurance of willingness agreed to an offer to pay the bill in instalments and not yet dishonoured failed to adhere to an instalment arrangements assurance or payment plan (ERC 43.4(4)111(1)(b)). (h) customer's meter inaccessible for less than 3 consecutive meter readings (ERC 43.3113(1)). (i) customer's meter inaccessible but retailer not complied with required communications (ERC 43.3113(1)). (j) acceptable identification or refundable advance security deposit sought and actually given (ERC 43.4112). 	<p>No interpretation required.</p>

WRONGFUL DISCONNECTION CIRCUMSTANCES	CODE INTERPRETATIVE GUIDANCE
<p>(k) disconnection sooner than a customer requested (ERC 13.5118).</p> <p>(l) documentary evidence of retailer's assessment of capacity to pay (where required) not given (ERC 11.2(2)).⁶</p> <p>(m) failure to provide (where required) information on concessions, energy efficiency and financial counselling (ERC 11.2(4)33(3)).⁷</p> <p>(n) customer's debt was less than \$120 (exclusive of GST) the 'minimum disconnection amount', as defined in the confidential version of the Commission's Credit Assessment Guidelines (ERC 14(a)116(1)(g)).</p> <p>(o) customer has made a complaint directly related to the non-payment of the bill to either the retailer or EWOV or another external dispute resolution body and the complaint remains unresolved (ERC 14(a)116(1)(b) and (c)).</p> <p>(p) customer has formally applied for a Utility Relief Grant and a decision on the application has not yet been made (ERC 14(a)116(e)).</p> <p>(q) the only charge the customer has not paid is a charge that relates to goods and services other than not for the supply of sale of energy (ERC 14(a)116(1)(f)).</p> <p>(r) the customer's supply address is registered as ahaving life support machine supply address Equipment (electricity) or medical exemption supply address (gas) (ERC 14(b)116(1)(a)).</p> <p>(s) disconnection (not requested by the customer) occurs outside of the hours allowed for under the ERC during a protected period (ERC 14(e)116(1)(i)).</p> <p>(t) the retailer procures the disconnection of the wrong address (i.e., gives the distributor the wrong address). (Note that this applies only when a contractual relationship exists between the retailer and the</p>	

⁶ There is no obligation in the ERC version 11 that is equivalent to clause 11.2(2) of the ERC version 10a which requires a retailer to make available to a customer on request documentary evidence of a retailer's assessment of a customer's capacity to pay in a timely manner.

⁷ Clause 33(3) of ERC v11 replaces clause 11.2(4) of ERC v10a. There is no obligation in the ERC v11 for retailers to provide customers experiencing payment difficulties with telephone information about energy efficiency and financial counselling.

Formatted: English (Australia)

Formatted: English (Australia)

WRONGFUL DISCONNECTION CIRCUMSTANCES	CODE INTERPRETATIVE GUIDANCE
customer).	
<p>2. Compensation may be appropriate if disconnection occurred in the following circumstances (which must be considered in light of the full circumstances):</p>	
<p>(a) disconnection occurs where the retailer has not considered whether the customer is experiencing repeated payment difficulties in paying the bills or requires payment assistance and does not take steps to assess the customer’s capacity to pay (ERC 11.2(b)33(1) and 72(1)).</p>	<p>In determining whether a customer is experiencing repeated difficulties in paying their bills or requires payment assistance, a retailer should have regard to all circumstances, including whether the customer has received a number of disconnection notices, whether the customer has had a number of failed payment plans, a series of URGs referrals and/or a number of dishonoured cheques.</p>
<p>(b) no response or inadequate response to customer enquiry on financial assistance following disconnection warning (ERC 44-2111(1)(e)).</p>	<p>Appendix B may be relevant.</p>
<p>(c) customer asserts that retailer has taken too long to assess customer’s capacity to pay (i.e. not timely) (ERC 11.2(1)).⁸</p>	<p>A retailer will have made a timely assessment of a customer’s capacity to pay if it has done so and advised the customer accordingly within 5 business days of a requirement to do so, or if it has sought an assessment by an independent financial counsellor or further information directly from the customer, within 5 business days of receipt of the counsellor’s report or customer’s information.</p>
<p>(c)(c) customer asserts that retailer has not <u>adequately</u> assessed information provided to the retailer by the customer’s concerning their capacity to pay (ERC 11.2(1)72(1)(a)(i)).⁹</p>	<p>A retailer will have assessed information provided by a customer about a customer’s capacity to pay if it is able to substantiate its procedures and actions by providing a copy of:</p> <ul style="list-style-type: none"> ▪ its applicable documented general assessment procedures, including applicable hardship policies and procedures; and ▪ the assessment in respect of the particular customer (screen or systems-based workings are adequate).
<p>(e) customer asserts that retailer “inadequately” assessed capacity to pay in endeavouring to make the assessment without advice from an independent</p>	<p>In order to adequately assess the capacity to pay of a domestic customer without</p>

Formatted: Font color: Auto

Formatted: Indent: Left: 0.63 cm

Formatted: Bullets and Numbering

Formatted Table

Formatted: Bullets and Numbering

Formatted: Indent: Left: 0.63 cm

Formatted: Bullets and Numbering

⁸ There is no obligation in the ERC version 11 that is equivalent to clause 11.2(1) of the ERC version 10 which requires a retailer to assess a customer’s capacity to pay in a timely manner.

Formatted: Font: 8 pt

Formatted: Font: 8 pt

⁹ There is no obligation in the ERC version 11 that is equivalent to clause 11.2(1) of the ERC version 10 which requires a retailer to assess information provided to the retailer by the customer concerning the customer’s capacity to pay. The drafting has been amended to refer to the obligation for a retailer to adequately assess a customer’s capacity to pay.

Formatted: English (Australia)

Formatted: English (Australia)

WRONGFUL DISCONNECTION CIRCUMSTANCES	CODE INTERPRETATIVE GUIDANCE
<p>financial counsellor (ERC 11.2(1)).¹⁰</p>	<p>advice from an independent financial counsellor, a retailer must:</p> <ol style="list-style-type: none"> 1. Have the assessment made by its specialist credit assessors (rather than its ordinary call centre staff) in cases where each of the following applies: <ul style="list-style-type: none"> ▪ the customer's debt is less than the upper limit able to be authorised by the call centre, or the customer has had two or less failed instalment plans in the prior 12 months; ▪ the customer indicates that she/he is unable to meet the instalments under a plan proposed by usual processes of the retailer's call centre. Such a plan must allow payments at fair and reasonable intervals. 2. Have the assessment made by its specialist hardship assessors in cases where each of the following applies: <ul style="list-style-type: none"> ▪ the customer's debt is greater than the upper limit able to be authorised by the call centre and the customer has had more than two failed instalment plans in the prior 12 months; ▪ the customer indicates that they are unable to meet the instalments under a plan proposed by usual processes of the retailer's call centre or specialist credit assessors. Such a plan must allow payments at fair and reasonable intervals. 3. Be able to demonstrate that an assessment by a specialist credit assessor or specialist hardship assessor was made after the assessor: <ul style="list-style-type: none"> ▪ facilitated the receipt of as much information as the customer was prepared to provide about any change in circumstances of the customer, any short term or chronic social hardship of the customer and the amount which the customer considers he/she is able to pay; ▪ provided the customer with information regarding the Utility Relief Grant and explained the eligibility criteria. If the customer advises they meet one of the eligibility criteria, (taking into account the URGS operating procedures), provide advice and assistance to the customer to make an application;

¹⁰ There is no obligation in the ERC version 11 that is equivalent to clause 11.2(1) of the ERC version 10a which requires a retailer to assess the customer's capacity to pay by seeking advice from an independent financial counsellor. The interpretive guidance has been retained in relation to the obligation for a retailer to adequately assess a customer's capacity to pay.

WRONGFUL DISCONNECTION CIRCUMSTANCES	CODE INTERPRETATIVE GUIDANCE
	<ul style="list-style-type: none"> ▪ considered the obligations under clause 42.2<u>72(1)(a)(ii) and (iii)</u> of the Energy Retail Code for the instalment plan to cover the customer's arrears (if any) and estimated consumption during the plan; and ▪ demonstrated that the final payment plan amount is reached taking into account the above information. Such a payment plan must allow fair and reasonable payments at fair and reasonable intervals. <p>Requirements 1, 2 and 3 above are illustrated in the flow chart set out in Appendix C. Retailers may adopt different (but similar) processes to reflect different internal organisational structures which involve escalation of more difficult assessments. Such processes should be discussed with the Commission in order to establish whether they also would satisfy the requirements of ERC clause <u>72(1)(a)</u>44.2(4).</p>
<p>(f)<u>(d)</u> dispute over what is a "reasonable assurance" that whether the customer is willing to pay their bill <u>has taken reasonable action towards settling the debt</u> (ERC 43.4(4)<u>111(1)(f)</u>).</p>	<p>A r<u>R</u>reasonable assurance of willingness to pay action by a customer <u>towards settling the debt</u> requires the customer to agree to pay an amount as agreed in good faith with the retailer's specialist credit or hardship team.</p>
<p>(g)<u>(e)</u> failure to contact customer in person, or by telephone, <u>or by other electronic means</u> where shortened collection cycle applies (ERC 43.4(f)<u>111(3)(c)</u>).</p>	<ul style="list-style-type: none"> ▪ Contact in person or by telephone could require: at least one telephone call during business hours attempting to reach the customer; ▪ if a message was not able to be left in business hours with a reliable adult or on an automated message service, at least two telephone calls (attempting contact) outside business hours; ▪ for customers with a supply address in an urban area where telephone contact has not been able to be made in either business or outside business hours or the telephone number is not known to the retailer or the telephone is disconnected –the sending of a letter by registered post advising of the pending disconnection process (a visit to the premises is unnecessary unless the customer is a "customer with insufficient income"); ▪ for customers with a supply address outside an urban area where telephone contact has not been able to be made in either business or outside business hours or the telephone number is not known to the retailer or the telephone is disconnected - the sending of a letter by registered post advising of the pending disconnection process. <p>Appendix B will be relevant. "Registered post" has the meaning given to that term by Australia Post.</p>

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

WRONGFUL DISCONNECTION CIRCUMSTANCES	CODE INTERPRETATIVE GUIDANCE
<p>(h)(f) failure to pay bill was due to <u>the customer experiencing payment difficulties</u>lack of sufficient income, but that was not made known to retailer (ERC 43.2<u>33(1)(b)</u>).</p>	<p>A retailer must also be able to demonstrate that it has facilitated the receipt of as much useful and meaningful information as possible from the customer by sensitively asking open-ended (and not leading) questions, in the course of a sensitive, constructive dialogue. The retailer must be able to demonstrate the use of phrases from appropriate dialogue scripts (for example by notes in computer records of the discussions referring to dialogue scripts) which are consistent with the tenor of the sample dialogue in Appendix D.</p>
<p>(i)(g) for a customer with insufficient income who is either a hardship customer or a customer experiencing payment difficulties, the retailer did not use “best endeavours” to contact the customer in person or by telephone <u>or other electronic means</u> (ERC 43.2<u>111(1)(e) and 111(3)(c)</u>).</p>	<p>Best endeavours to contact in person or by telephone could require:</p> <ul style="list-style-type: none"> ▪ over a 2-3 day period and not more than a month prior to the disconnection – <ul style="list-style-type: none"> • at least one telephone call during business hours attempting to reach the customer; • if a message was not left in business hours with a reliable adult or on an automated telephone service, at least two telephone calls (attempting contact) outside business hours; ▪ for customers with a supply address in an urban area – <ul style="list-style-type: none"> • where telephone contact has not been able to be made in either business or outside business hours over a 2 – 3 day period and not more than a month prior to the disconnection, the sending of a letter by registered post advising of the pending disconnection process • where the telephone number is not known to the retailer or the telephone is disconnected – the making of at least one attempt to make contact by visit to the premises; ▪ for customers with a supply address outside an urban area where telephone contact has not been able to be made in either business or outside business hours or the telephone number is not known to the retailer or the telephone is disconnected - the sending of a letter by

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

WRONGFUL DISCONNECTION CIRCUMSTANCES	CODE INTERPRETATIVE GUIDANCE
	<p>registered post advising of the pending disconnection process.</p> <p>Urban area is defined as within 60 kilometres of the central business district.¹¹</p> <p>Appendix B will be relevant. "Registered post" has the meaning given to that term by Australia Post.</p>

¹¹ For the avoidance of doubt, urban area is defined as within 60 kilometres of the Melbourne central business district. (Footnote added 8 August 2007)

APPENDIX B - PROOF OF DESPATCH OF NOTICES, PHONE CONTACT AND VISITS

For a retailer to satisfy the Energy Retail Code requirements about despatch of documents, contact by telephone and contact in person, the retailer must be able to demonstrate the following.

The retailer needs to be able to prove the relevant matter on the balance of probabilities.

Despatch of notices

A retailer must be able to show that it has a system in place for the distribution of documents and that the procedure was followed in the particular instance. This will involve, in appropriate cases, reference to computer records that a number of documents were in a category despatched, that the document relating to the customer was included in that batch or group and the system for posting such documents. This will need to include circumstances where customers have been given notices requesting access to meters and where proof is required of the date requested by the retailer for disconnection action to be taken by the distributor. Where registered post has been used, the retailer must retain the "proof of posting" document issued by Australia Post and record the Australia Post unique identification number for the document posted.

Contact by telephone

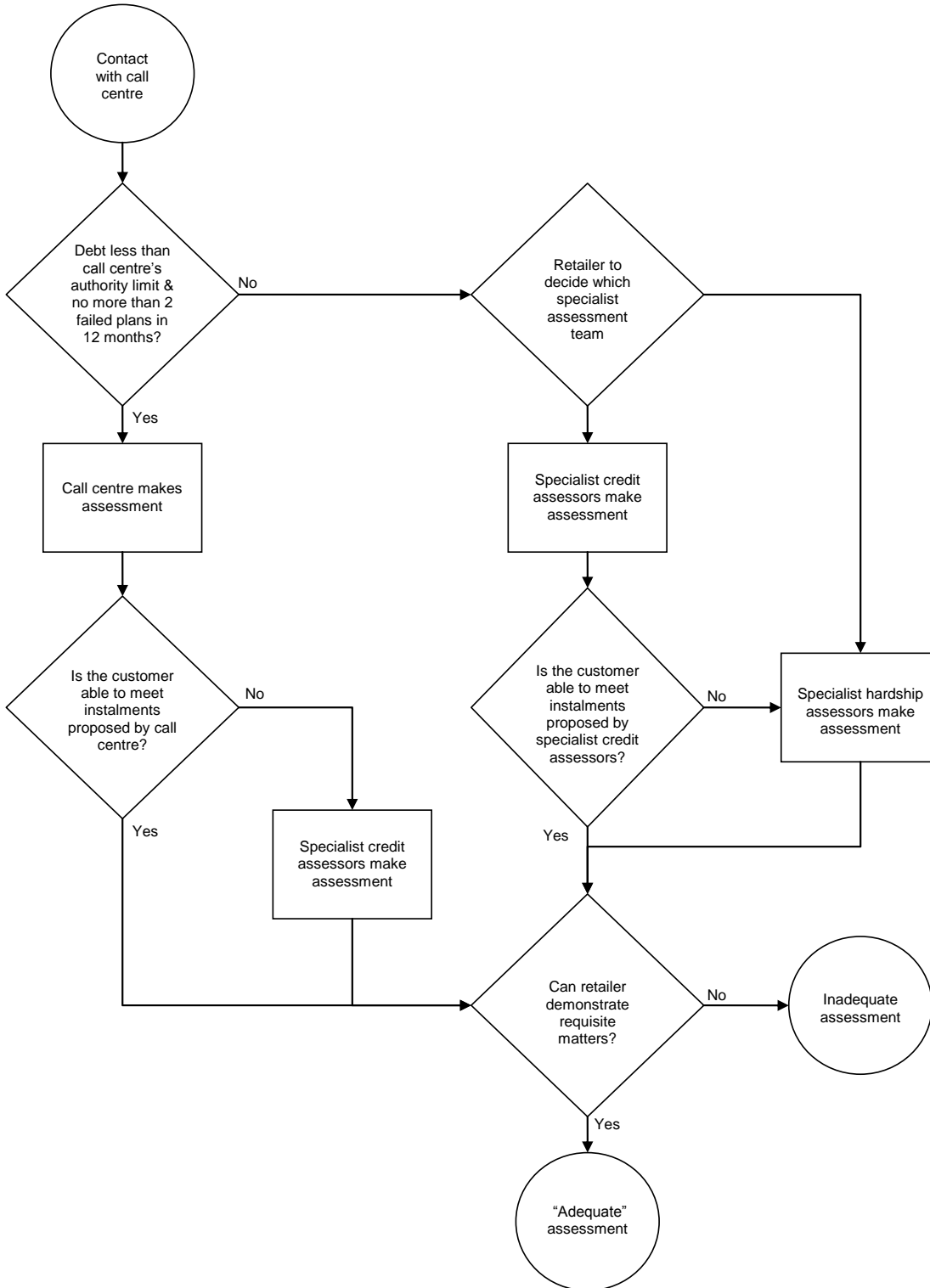
A retailer must be able to show that it has a system in place for the making and recording notes of calls, which include details of the retailer's caller, the date and time, the outcome of the call (not answered or answered), the essential details of any message left, the name of a person who took a message and details of any conversation conducted.

Contact in person

A retailer must be able to produce full particulars of any visit to a supply address or other face-to-face contact with a customer including place, date, time, details of discussion. The individual representative of the retailer who had the contact should be available to give evidence (at least for as long as she/he remains involved with the retailer).

APPENDIX C - FLOW CHART – ERC 44.2(4)72(1)(a)(i)

Has the retailer “adequately” assessed capacity to pay without advice from an independent financial counsellor? (see ERC 44.2(4)72(1)(a)(i)) Note that retailers may adopt different (but similar) processes to reflect different internal organisational structures which involve escalation of more difficult assessments.



APPENDIX D – SAMPLE CALL CENTRE SCRIPTS

The following are sample dialogue scripts to optimise the receipt of useful and meaningful information about a customer's capacity to pay (reference ERC ~~11.2(1)~~ 72(1)(a)). The Commission acknowledges the assistance of *Kildonan Child and Family Services* and *Origin Energy* in preparation of these sample scripts, which are intended as guidance only.

Scenario One - Customer Requests a Payment Arrangement

Retailer Response?

"We are happy to do that, are you aware of our different payment options so that you can best select the arrangement that suits you."

"We understand that there may be something preventing you from paying. We can offer you a structured payment plan."

"Can you tell me what is affecting your ability to pay at the moment?"

Scenario Two - A Customer asks for an Extension

Retailer Response?

"How long do you think you may need so that it would make it easier for you?"

If the response is "forever" the CSO needs to tease it out a little further:

"Forever is a long time, given the size of the bill this is what we could offer you"

Or "What can you afford to commit to that is affordable fortnightly?"

Scenario Three - A customer owes \$650 and they say they will pay \$120 per fortnight

Retailer Response?

"Are you entitled to a concession on this account; let's check because that may make it easier for you."

"Good that has reduced the account by \$52, now we need to discuss what you can contribute to the bill, remembering that you may have other bills to pay."

"Are you sure you can afford that amount?"

"If you have any difficulties keeping to this payment arrangement please call us."

Scenario Four - The customers says that the bill is wrong (it may be or it may be that they don't have the money to pay it and don't know what to say about that).

Gentle and systematic questioning and reading your screens will get the information that is required to assist the consumer:

"I am just looking at your usage history and noticed that it has gone up dramatically over the past 2 bills. Have you noticed that?"

"Do you have any idea what could have caused the bill to go up so quickly?"

"Are you happy for me to ask you some questions in relation to this?"