

PAYMENT DIFFICULTY FRAMEWORK

Stakeholder forum

29 May 2017

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THE TASK AHEAD

Good morning and welcome to this, the third forum in this series of consultations on our proposal for a new payment difficulty framework. As you would be aware, there will be at least one, and possibly two more such gatherings in the weeks ahead. We may even schedule a third or fourth if the need arises. In addition, later this week, we are hosting a public forum to expose our proposal and the accompanying analysis to public scrutiny. As you know James has also organized a number of workshops to deal with customer scenarios and our benefits-cost work.

And just so that there's no misunderstanding, let me emphasise that none of this replaces the opportunity for you to make written submissions, which are due by 16 June. Of course, we would welcome early submissions if you are in a position to do so.

The objective of our first stakeholder forum on 31 January was to give us the opportunity to hear directly from you about your concerns with our original proposal. The second forum on 9 May reversed that focus. On that day, we presented to you our revised proposal, having done our best to address the issues you had raised with us in January.

The objective of today's forum is different again.

As I wrote to you the week-before-last, we want to use today's forum to bring together the most knowledgeable 'heads' in and around the retail energy sector, to help us identify options for responding to the concerns you have raised with us over the last week or two.

Some of you may have heard me say over the years that no-one has a monopoly on good ideas. Therefore, today we want to hear how you —people who know the concerns of consumers and the inner workings of retailers' businesses — we want to hear from you how you would resolve the matters you have identified with the proposal we released three weeks ago.

Obviously we can't deal with everything today, however, I'll hand over to James and David in a moment to explain how we are dealing with all those matters that you have raised so far.

But for today, we're looking to facilitate a discussion that helps us identify practical and realistic options for moving forward.

It is always possible to come up with very elaborate solutions to difficult problems. It can be very appealing to look for solutions that are very elegant in their intricacy; solutions that seek to deal with every combination and permutation of the problem we're looking to solve — in this case, the innumerable circumstances characterising a customer's payment difficulty or their interactions with their retailer.

As I said on 9 May, the lessons of our first proposal was that a very elegant solution may not necessarily pass the tests of being practical and realistic; and that's why, after our first forum back in January, we committed to looking for a simpler solution. As I said three weeks ago: In the revised draft decision we sought the simplest solution possible, but no simpler.

I would ask that you keep that principle at the forefront of your deliberations today. We've got to keep it simple. If we don't, we will quickly be back on the slippery slope that led to our first draft proposal. And...for the avoidance of any doubt...we're not going back there.

As simple as possible, but no simpler.

It is also important that we do not lose sight of what we are trying to achieve, namely, that the community can be confident that when a residential customer is disconnected, that disconnection occurred only as a measure of last resort. Note what I did not say. I did not say, that the community should be confident that the disconnection *probably* occurred as a measure of last resort. No. The expectation is that disconnection is only ever pursued as a measure of last resort.

This is not an expectation we just conjured by ourselves. It sat at the heart of the terms of reference for our hardship inquiry and it resides within the Electricity Industry Act and the Gas Industry Act — and it has sat there for many years, and many governments and parliaments.

Disconnection as a measure of last resort only, is a longstanding community expectation. It is our challenge, today, to find a way to provide the community with an assurance that we (us *and* you) are committed to obliging that expectation.

The energy industry acts also establish an expectation of equitable access to assistance. As you know, our hardship inquiry showed that the assistance customers receive varies enormously. For customers, this means the assistance they can expect to receive is a matter of pot luck. What they are offered, when they are offered it, and when that offer is withdrawn, is completely at the discretion of the retailer. It is no wonder, then, that outcomes for customers can be as varied as our hardship inquiry found.

We were very careful to recognise in our inquiry reports that this dispersion of outcomes was not a matter of regulatory non-compliance by energy retailers. Rather, the source of this failure to provide equitable access to assistance was found to originate in the Energy Retail Code itself.

In the revised draft decision we released three weeks ago, we provided a working definition for the notion of “equitable access”. In that report, we defined equitable access as requiring that two otherwise identical customers should expect the same minimum level of assistance from their energy retailer. In other words, assistance should not depend on when it is sought; nor should it depend on the retailer from whom it is sought; nor should it depend on the

type of energy being purchased. Nor should it depend on some elusive notion such as ‘capacity to pay’.

Any two customers should be able to expect the same minimum level of assistance in *every* circumstance. That is why, in the revised draft decision, we repeatedly referred to assistance being provided to customers “consistently and predictably”.

That is not to say that retailers and customers shouldn’t have the room to agree on additional levels of assistance. Indeed, we have included explicit provisions to reinforce our expectation — and your expectation — that retailers will seek to innovate and provide evermore effective forms of assistance. You may recall that last time I stressed the need to recognise and celebrate these efforts.

But to be clear, innovation cannot displace the obligation for retailers to provide customers with a minimum level of assistance. As I said last time, minimum obligations must be met, not matched. They must be met strictly. They cannot be substituted for some other form of assistance. Only strict compliance with minimum standard meets the expectation that assistance will be provided equitably, consistently and predictably.

The Essential Services Commission Act, the act that governs, empowers and constrains our every action and every decision, makes clear that in promoting the long term interests of consumers we must have regard to the cost and benefits of our actions. We’ll leave the discussion of how those costs and benefits are identified and estimated to the workshops that James is organising — but for today, we need to remember that in considering options, we must be mindful of the costs of achieving the benefits being sought.

But like I said last time, some (or many) impacts cannot be objectively defined.

How can we put a value on that principle that disconnection should only be a measure of last resort or how do we value the principle that assistance should be provided equitably?

As I’ve already mentioned, these principles are not matters within our discretion to decide. They derive directly from policy and legislation. Our obligation, therefore, is to uphold those principles. The hardship inquiry

showed that we — I mean us, and I mean you — we have collectively failed to uphold those principles. That is the reason we recommended, and the government endorsed, reforming the assistance framework. Our obligation is to uphold those principles not decide whether they are worthwhile or not.

So, does that provide the Commission with a ‘blank cheque’ as far as the costs of its proposed reform are concerned? Certainly not. The ESC Act makes that very clear. But it *does* mean that deciding how to design and proceed with the reforms is, inevitably and unavoidably, a matter of judgement.

Our challenge is to exercise that judgement as openly, as carefully and as honestly as possible — and to look at what needs to be done, and to ‘bring it home’ as cost effectively as possible.

The final dimension that should guide the discussion today is the element of time. It is now over three years since we hosted the disconnection roundtable and it will soon be three years since the then-government initiated the project which eventually became our hardship inquiry. And we still have some time to go before we reach a final decision — and then, of course, it will take time for the industry to implement the new framework.

That adds up to four years. Four years.

It only took thirteen months to build the Empire State Building, and that was in 1934. It took less than four years to privatise the entire energy sector here in Victoria. And, if someone is really keen, they can produce four-and-half human beings in four years.

Yet, unless we get our skates on, we won’t have even delivered a new payment difficulty framework in that time.

That reflects badly on *all* of us; and as I have written a few times now, customers deserve better than that.

So we’re down to the business end of this project. There’s no more time for dillydallying. There’s no more time for chasing bunnies, real or imagined, down endless rabbit burrows. There’s no more time for navel-gazing in the hope of enlightenment. We must now be pragmatic.

As my favourite philosophe, Voltaire, once warned: We must not let the perfect become the enemy of the good.

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So today, as I hand over to James and David, Helga and Ivana to run the coming session, I ask you as genuinely and as generously as I can: Please put yourself in the shoes of the Commission for the next few hours.

You don't need to argue for what you or your organisation would like to see the Commission decide. I expect you will do that perfectly well in your submissions — and I assure you, we will study those submissions with greatest diligence.

But today's purpose is different.

Today provides an opportunity to explore options that you believe are achievable; options that you realistically believe the Commission might be able to adopt. So for the next few hours, put yourselves in our shoes and ask yourselves the questions that we will be asking ourselves as we approach our final decision. Those questions will broadly revolve around the matters I have just spent a few minutes outlining. That is, when identifying an option for moving forward, ask yourself...

Does the option provide:

- that every residential disconnection is a measure of last resort
- equitable access to a consistent, minimum level of assistance
- scope for innovation and preserve customer agency

Is the option:

- practical and realistic (and pragmatic where required)
- as simple as possible, but no simpler
- cost effective (in light of the benefits, impacts & outcomes)

(admittedly, I haven't discussed customer agency this morning, but it was covered in our previous forums)

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