

Customer B and Red Energy – Decision and reasons

**Application of section 48A of the Gas Industry Act 2001 (Vic) –
Compensation for wrongful disconnection**

6 November 2019

Commissioners:

Ms Kate Symons, Chairperson,
Mr Sitesh Bhojani, Commissioner, and
Mr Simon Corden, Commissioner.

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The complaint

1. In the matter of a referral for decision by the Energy and Water Ombudsman (Victoria) (the ombudsman) to the Essential Services Commission (the commission) of a complaint by *(name redacted)* (Customer B).
2. The complaint is about the application of section 48A of the Gas Industry Act 2001 (Vic) (the Act) to a disconnection by Red Energy Pty Ltd (Red Energy) of the gas supply to Customer B's premises at *(address redacted)* (the premises). The gas supply to the premises was disconnected from 9:25am on 21 February 2018 to 22 May 2018 at 2:35pm, a period of 90 days, 5 hours and 10 minutes. However, the referral also states that the gas supply to the premises was disconnected multiple times between 21 February 2018 and 22 May 2018 after possible unauthorised self-reconnections of the gas supply during this period.

Issues for decision

3. The issue for decision by the commission about the complaint is whether Red Energy has breached a condition of its gas retail licence regarding an obligation to make a prescribed payment to Customer B in circumstances where:
 - (a) Red Energy disconnected the gas supply to Customer B's premises, and
 - (b) Red Energy failed to comply with the terms and conditions of its contract with Customer B specifying the circumstances in which the gas supply to those premises may be disconnected.
2. If so, then under section 48A(3) of the Act, Red Energy was obliged to make the prescribed payment to Customer B as soon as practicable after the gas supply was reconnected to Customer B's premises.
3. In order to make a decision in this case, the commission must consider the following issues:
 - (a) Was Red Energy required to comply with the Energy Retail Code (version 11a) (the code) as a condition of its contract with Customer B?
 - (b) If so, was Red Energy required under clause 111(2) of the code to offer two payment plans to Customer B in the previous 12 months before Red Energy arranged for the disconnection of the gas supply to Customer B's premises?
 - (c) If so, did Red Energy meet the standard required under clause 111(2) of the code to offer two payment plans to Customer B in the previous 12 months before Red Energy arranged for the disconnection of the gas supply to Customer B's premises?
 - (d) If not, is compensation payable to Customer B under section 48A of the Act?
 - (e) If so, what is the amount of compensation payable to Customer B in the circumstances of this case?

Submissions

Customer B's submissions

4. The ombudsman's referral set out Customer B's statement about the matter. Customer B stated that:
 - (a) Customer B's first gas bill from Red Energy was higher than expected.
 - (b) Customer B's second gas bill was also high, so he requested that the meter be checked.
 - (c) Red Energy advised Customer B that there was no issue with the meter but did not provide him with a copy of the report.
 - (d) Customer B did not make payments as he was disputing the usage.
 - (e) The gas supply was disconnected to Customer B's premises on approximately 10 May 2018 (The ombudsman stated that Customer B contacted the ombudsman about the disconnection that occurred in May 2018. The ombudsman stated that its investigation established that this disconnection followed an unauthorised reconnection and that the original disconnection for non-payment occurred in February 2018).
 - (f) Customer B was away from the premises for four weeks from 4 May 2018. When he returned, he contacted Red Energy on 19 May 2018 and was advised that he had been using gas illegally.
5. The commission attempted to contact Customer B by email, mail and telephone to invite Customer B to provide any information and documents to which he considered the commission should have regard in relation to the referral. However, all attempts to contact Customer B were unsuccessful:
 - (a) The commission made enquiries with the property manager of Customer B's premises, who confirmed that Customer B had moved premises. The property manager did not provide a forwarding address for Customer B to the commission.
 - (b) The commission also made enquiries with Customer B's former employer, who confirmed that Customer B's telephone number had changed. Customer B's former employer did not have Customer B's current contact details.
6. The commission confirmed with the ombudsman that there were no other contact details for Customer B available.
7. Customer B did not make any submissions to the commission.

Red Energy's submissions

8. The commission made enquiries with Red Energy. Red Energy provided further information and made submissions for the commission's consideration with its response.

Red Energy made submissions about its compliance with the code

9. Red Energy submitted that, while it had initially conceded that it had failed to meet the standard required under clause 111(2) of the code in relation to the disconnection, on further review it considered that it had not failed to meet the standard under this provision of the code. Red Energy therefore considered that it was not required to make a payment of a prescribed amount to Customer B.
10. Red Energy considered that it was not required to offer two payment plans to Customer B within 12 months prior to arranging for the disconnection of the gas supply to Customer B's premises. Red Energy submitted that Customer B had confirmed to Red Energy in phone calls on 18 July 2017 and 15 January 2018 that he was not experiencing payment difficulties and refused assistance in regard to payment of his gas account. Red Energy also submitted that Customer B had confirmed that he was not experiencing any payment difficulties on 13 March 2018, after the disconnection of the gas supply to Customer B's premises on 21 February 2018.
11. Red Energy made submissions to the effect that even if it was required to offer two payment plans to Customer B within 12 months prior to arranging for the disconnection under clause 111(2) of the code, it did meet this required standard. Red Energy submitted that on 30 January 2018, Red Energy offered a payment plan of \$242 per week to Customer B in regard to Customer B's arrears and ongoing gas consumption. Red Energy submitted that Customer B rejected this offer and Red Energy made a second offer of a payment plan of \$948 per week. Red Energy submitted that Customer B rejected this second offer and made a third offer of a payment plan of \$169 per week. Red Energy submitted that Customer B also rejected this third offer.

Red Energy made submissions about the calculation of a prescribed amount

12. Red Energy submitted that if the commission advised that Red Energy was required to make a payment of a prescribed amount to Customer B, then such amount should be limited.
13. Red Energy submitted that if a customer unilaterally reconnects the gas supply to their premises, then the prescribed amount should be calculated up to the point in time when this reconnection is completed. Red Energy submitted that the actual read data it received from the gas distributor Australian Gas Networks (Vic) Pty Ltd (AGN) as of 1 March 2018 indicated that gas had continued to be consumed at Customer B's premises despite the disconnection of the gas supply on 21 February 2018. Red Energy alleged that Customer B had completed

a ‘...unilateral reconnection of the gas supply...’ to his premises ‘...in spite of having gas meter plugs attached...’ to the gas meter.

14. Red Energy submitted that ‘due to the nature of how gas meter read data is received, the date and time of the supply being reconnected by Customer B... cannot be conclusively determined.’ Red Energy submitted that the commission should consider whether Customer B’s historical average daily consumption at the premises can be used to determine the approximate date and time of Customer B reconnecting the gas supply to his premises.
15. Red Energy submitted that it is not required to make payments of a prescribed amount to Customer B in regard to Red Energy arranging for the disconnection of the gas supply to Customer B’s premises on 7 March 2018 and 7 May 2018. Red Energy submitted that it arranged for each of these disconnections after receiving further actual read data from AGN on 13 March 2018 and 3 May 2018 that indicated, in Red Energy’s opinion, that Customer B was continuing to consume gas at the premises despite the disconnection of the gas supply on 21 February 2018.
16. Red Energy considered that the commission ‘...should exercise care...’ in providing advice ‘...which may condone an unauthorised, potentially unqualified individual tampering, altering and/or interfering with a meter or associated equipment’, particularly with regard to ‘...the undeniable safety implication of doing so.’
17. Red Energy also submitted that the commission should take into consideration the contractual obligations of customers under the terms and conditions of contracts with energy retailers against tampering or interfering with gas meters.

Relevant facts

18. The commission considered the ombudsman's referral and Red Energy's submissions. The commission also made enquiries with AGN and the property manager of Customer B's premises. The relevant facts are set out below.

Red Energy commenced supplying gas to Customer B's premises

19. On 7 April 2017, Customer B entered a retail contract for Red Energy to supply gas to his premises.
20. On 18 April 2017, Red Energy sent a letter to Customer B with the terms and conditions of Customer B's retail contract with Red Energy.
21. On 28 April 2017, Red Energy entered a debit of \$13.20 on Customer B's gas account in relation to an opening read of the gas meter at Customer B's premises.
22. On 8 May 2017, Red Energy issued a bill to Customer B in relation to the gas supply to his premises for \$251.69. The bill was in relation to gas supplied to Customer B's premises from 12 April 2017 until 5 May 2017. The balance of Customer B's gas account was accordingly \$264.89.
23. On 6 July 2017, Red Energy issued a bill to Customer B in relation to the gas supply to his premises for \$1,313.94. The bill was in relation to gas supplied to Customer B's premises from 6 May 2017 until 4 July 2017. The balance of Customer B's gas account was accordingly \$1,578.83.
24. On 18 July 2017, at 4:10pm, Red Energy called Customer B about his gas account. During the call:
- (a) Red Energy stated that it had not received any payment in relation to Customer B's gas account. Customer B stated that he was unsure whether he had made any such payment.
 - (b) Red Energy asked whether Customer B about his usage of heating appliances at his premises given the high amount of gas consumption recorded on the bill after an actual meter reading. Customer B stated that he rarely turned the heater on at his premises. Red Energy suggested for Customer B to check the actual meter reading on his gas bill against the reading on his gas meter. Red Energy also suggested for Customer B to check his heater and hot water system for leaks.
 - (c) Red Energy asked Customer B if there was '...any sort of financial difficulty?' Although Customer B replied 'no', he also stated 'I might need some assistance with this next

bill.' Red Energy asked Customer B to call Red Energy by 19 July 2017 to confirm whether he required a payment arrangement or whether he had made the payment.

Customer B requested a meter investigation

25. On 18 July 2017, at 5:15pm, Customer B called Red Energy about his gas account. During the call:
- (a) Customer B requested Red Energy to check the gas meter at his premises and alleged that the meter was potentially faulty. Red Energy again suggested that Customer B check his heater for gas leaks. Customer B insisted that Red Energy arrange a meter investigation for faults.
 - (b) Red Energy advised Customer B of the fees involved with a meter investigation and that it would raise a meter investigation.

(The commission requested Red Energy to provide a copy of all telephone call recordings in relation to the disconnection of the gas supply to Customer B's premises. Red Energy only provided contact notes in relation to this call and did not provide a copy of this call recording to the commission).

26. On 31 August 2017, Customer B called Red Energy to follow up the meter investigation as he had not received any contact from Red Energy about the investigation. Red Energy asked Customer B whether he had checked for any leaks with the gas ducted heating at his premises. Customer B stated that he was taking action to check for leaks, however he considered that Red Energy should first complete the meter investigation. Red Energy attempted to transfer the call. However, Customer B terminated the call.
27. On 13 September 2017, Customer B called Red Energy about his gas account. During the call:
- (a) Customer B stated that he had received an SMS text message from Red Energy about an overdue account (The commission requested Red Energy to provide a copy of all correspondence it had sent to Customer B in relation to the disconnection of the gas supply to Customer B's premises. Red Energy did not provide a copy of this message to the commission). Red Energy stated that the SMS text message was about Customer B's gas account and that the balance overdue was \$2,495.47. Red Energy stated that it had not received any payments from Customer B in relation to the gas account.
 - (b) Customer B asked Red Energy whether it had arranged the meter investigation. Red Energy apologised and stated that it would raise the investigation for the next available

date. Red Energy stated that it would advise Customer B if the investigation had been successfully raised and advise Customer B of the result of the investigation.

28. On 15 September 2017, Red Energy raised a service order with AGN for the meter investigation.
29. On 30 October 2017, Red Energy issued a bill to Customer B in relation to the gas supply to his premises for \$3,336.79. Red Energy stated in the bill that the due date for payment of the bill was 17 November 2017. Red Energy also stated in the bill that the balance brought forward of \$2,495.47 was 'overdue – please pay immediately'.

Red Energy informed Customer B of the meter investigation results

30. On 13 November 2017, Customer B called Red Energy about his gas account. During the call:
 - (a) Red Energy offered a payment arrangement to Customer B in relation to his gas account, although it did not provide any further details about such arrangement.
 - (b) Customer B stated that he was following up on the meter investigation. Red Energy stated that AGN had completed a meter investigation on 9 November 2017 and that AGN had found no fault with the gas meter. Customer B requested a copy of the meter investigation report. Red Energy agreed to provide this to Customer B. Customer B stated that he disputed the results of the meter investigation and alleged 'no one's touched the meter, no one's inspected the meter.'
 - (c) Red Energy suggested that Customer B arrange for a plumber to check the appliances at his premises. Customer B stated that he had already arranged for his appliances to be tested and 'the appliances were fine'. Customer B stated that the person who had checked the appliances also checked the meter and identified that the meter appeared to be damaged.
31. On 18 November 2017, Red Energy issued a reminder notice to Customer B for \$2,495.47 in relation to the bill it sent to Customer B on 30 October 2017.

Red Energy made enquiries with AGN about the meter investigation

32. On 22 November 2017, Red Energy sent an email to AGN to confirm whether the meter investigation was completed and request a copy of the investigation report.
33. On 23 November 2017, AGN sent an email to Red Energy about the meter investigation. AGN stated 'fitter attend and only pressure tested the meter but did not follow the proper... procedure & change meter.' AGN stated that Red Energy could raise a further service order

with AGN and then it would arrange for a contractor to attend Customer B's premises and '...change the meter to send off for testing as per... procedure.'

34. On 24 November 2017, at 9:39am, Red Energy raised a further service order with AGN for a meter investigation.

Red Energy proceeded with debt collection activity in relation to Customer B's gas account

35. On 9 December 2017, Red Energy issued a disconnection warning notice to Customer B in the amount of \$3,336.79. Red Energy stated in the notice 'unless this account is paid by 19 DEC 2017, or you contact us and we agree to an alternative payment arrangement, further action will be taken which will result in the disconnection... of your gas supply.'
36. On 8 January 2018, Red Energy sent an SMS text message to Customer B's mobile phone to request him to contact Red Energy. Red Energy stated 'your Energy supply is at risk of disconnection.'
37. On 15 January 2018, Red Energy called Customer B about his gas account. During the call:
- (a) Red Energy stated that it had still not received any payment from Customer B in relation to the gas account. Customer B stated that he was waiting for the results of the meter investigation and that 'I'm not going to pay for something I haven't used.' Red Energy stated that although the investigation was still on foot, it required Customer B to pay for the daily supply charge. Customer B stated that he was willing to pay the daily supply charge if Red Energy informed Customer B of the exact amount of this charge.
 - (b) Red Energy apologised for failing to follow up the meter investigation. Red Energy stated that once the investigation was completed, Customer B was required to pay the balance of his gas account or else risk disconnection.
 - (c) Customer B stated that he had to terminate the call, however Red Energy agreed to call Customer B back later that day.
38. On 22 January 2018, Red Energy called Customer B about his gas account. Red Energy advised Customer B that it had received the further meter investigation results which confirmed that there was no fault with the gas meter. Red Energy advised Customer B that he was required to pay the balance of his gas account. Customer B requested for Red Energy to offer a payment plan to him, however he stated that he was busy and needed to end the call. Red Energy requested Customer B to call back at another time (The commission requested Red Energy to provide a copy of all telephone call recordings in relation to the disconnection of the gas supply to Customer B's premises. Red Energy only

provided contact notes in relation to this call and did not provide a copy of this call recording to the commission).

Red Energy made offers of payment plans to Customer B

39. On 30 January 2018, Red Energy called Customer B. During this call:
- (a) Red Energy asked Customer B if he required ‘...any help to pay...’ his gas account and if he required a payment plan. Customer B stated that he did need a payment plan.
 - (b) Red Energy stated that it could offer a payment plan of \$242 per week for Customer B to pay his current account balance and future bills. Customer B stated that he only wanted to pay his current account balance, not future bills.
 - (c) Red Energy stated that for Customer B to clear his current account balance before the next meter reading, Customer B would be required to pay according to a payment plan of \$948 per week. Customer B did not accept this offer.
 - (d) Red Energy stated that it could offer an ongoing payment plan of \$169 per week to clear Customer B’s current account balance as well as future bills. Customer B queried how the payment plan would account for future bills. Red Energy explained that the payment plan was based on past meter readings. Customer B did not accept this offer and referred to the past issues with the meter readings.
 - (e) Customer B queried the meter investigation and whether the gas meter had been replaced by AGN as part of the investigation. Red Energy stated that it believed AGN had replaced the meter. Customer B stated that he had arranged for a gas technician to check the appliances at his premises for leaks, and that the technician had found no such leaks. Customer B also stated that the gas technician had identified a leak through the gas meter by unplugging the system and pressurising the meter. Customer B requested a copy of the investigation results.
 - (f) Red Energy attempted to transfer the call, however the telephone call dropped out and terminated.

Red Energy arranged for the disconnection

40. On 12 February 2018, Red Energy raised a service order for the disconnection of the gas supply to occur on 21 February 2018.
41. On 21 February 2018, at 9:25am, the gas supply to Customer B’s premises was disconnected. The outstanding balance of Customer B’s gas account was \$3,791.68.

42. On 7 March 2018, Red Energy received notification that gas consumption was occurring at the premises. Red Energy raised another service order for the disconnection of the gas supply to Customer B's premises.
43. On 13 March 2018, at 10:05am, the gas supply to Customer B's premises was disconnected.
44. On 19 March 2018, Customer B called Red Energy in relation to the disconnection of the electricity supply to Customer B's premises. During the call:
 - (a) Red Energy advised that the gas supply to Customer B's premises had been disconnected due to illegal consumption. However, Customer B stated that 'the gas is still going.'
 - (b) Red Energy asked Customer B whether he had made a complaint to the ombudsman about his gas account. Customer B stated that he had made such a complaint. Red Energy stated that Customer B was required to follow up his complaint with the ombudsman or otherwise the gas supply to Customer B's premises may be disconnected at the street.
45. On 7 May 2018, Red Energy received notification that gas consumption was occurring at the premises. Red Energy raised another service order for the disconnection of the gas supply to Customer B's premises on 9 May 2018. However, this service order was for disconnection at the street.
46. On 9 May 2018, at 10:51am, the gas supply to Customer B's premises was disconnected at the street.
47. On 19 May 2018, Customer B called Red Energy and notified it that the gas supply to his premises had been disconnected. Red Energy advised Customer B to seek reconnection via another retailer.

Red Energy arranged for the reconnection

48. On 21 May 2018, Red Energy arranged for the reconnection of the gas supply to Customer B's premises following Customer B's complaint to the ombudsman.
49. On 22 May 2018, at 2:35pm, the gas supply to Customer B's premises was reconnected at the street.

Relevant obligations

50. In this matter, the relevant obligations arise from the Act, the Gas Safety Act 1997 (Vic) (the Gas Safety Act), Red Energy's contract with Customer B (the contract), Red Energy's gas retail licence and the code.
51. The relevant obligations from the Act are:
- (a) Section 48A(1) of the Act provides that it is a condition of a gas retail licensee's licence that the licensee must make a payment of the prescribed amount to a relevant customer if the licensee disconnects the gas supply to the premises of that customer and fails to comply with the terms and conditions of its contract specifying the circumstances in which the gas supply to those premises may be disconnected (the statutory licence condition).
 - (b) Section 48A(1A) of the Act provides that if the relevant customer did not notify the licensee of the disconnection within 14 days after the disconnection, the maximum payment under a condition under subsection (1) is the prescribed capped amount.
 - (c) Section 48A(3) of the Act requires the licensee to make any payment under subsection (1) as soon as practicable after the gas supply was reconnected to the premises of the relevant customer.
 - (d) Section 48A(5) of the Act provides that the prescribed amount was \$500 for each whole day that the gas supply was disconnected and a pro rata amount for any part day, and that the prescribed capped amount was \$3,500.
 - (e) Section 152(1)(c) of the Act prohibits a person from interfering in any way with a meter or preventing a meter from properly registering the quantity of gas supplied.
 - (f) Section 152(1)(d) of the Act prohibits a person from fraudulently taking gas of a gas company.
 - (g) Section 152(3) of the Act provides that a gas company may discontinue the gas supply to any person who has committed an offence under subsection (1) of the Act despite any contract previously existing.
52. The relevant obligations from the Gas Safety Act are:
- (a) Section 79D(1) of the Gas Safety Act prohibits a person from knowingly, recklessly or negligently breaking, injuring, opening or tampering with any pipeline, gas installation or meter assembly.

- (b) Section 79D(2) of the Gas Safety Act provides that the prohibition in subsection (1) did not apply to any person lawfully carrying out gas work in respect of the pipeline, gas installation or meter assembly.

53. The relevant obligations from the contract are:

- (a) Clause 5.6 of the contract stated, in part:

You must not take energy illegally or tamper with or bypass your meter or associated equipment.

- (b) Clause 8.2 of the contract stated, in part:

8.2 How we can disconnect your supply

After taking certain steps as set out in the Retail Code, we may disconnect you if you:...

- you (sic) do not pay any amount due to us by the due date...

- (c) Clause 8.3 of the contract stated, in part:

Your Supply Address may be disconnected, or your energy supply interrupted, by your Distributor in certain circumstances, including:...

- if you are using energy other than in accordance with the Relevant Laws.

- (d) Clause 10.3 of the contract stated, in part:

It is your responsibility to:...

- not in any way tamper with, permit tampering with, or otherwise interfere with the meter or associated equipment...

- (e) Clause 19 of the contract stated, in part:

Retail Code means the Energy Retail Code issued by the Essential Services Commission, as amended from time to time.

54. The relevant obligation from Red Energy's gas retail licence is clause 17.1 which states, in part:

As well as complying with this licence, the Licensee must comply with all applicable provisions of:... the Energy Retail Code...

55. The relevant obligations from the code are:

(a) Clause 3 of the code which stated, in part:

In this Code—...hardship customer means a residential customer of a retailer who is identified as a customer experiencing financial payment difficulties due to hardship in accordance with the retailer’s customer hardship policy;...residential customer means a customer who purchases energy principally for personal, household or domestic use...

(b) Clause 72(2) of the code which stated, in part:

A retailer who offers a payment plan under this clause for a customer must inform the customer of:

- (a) the duration of the plan; and
- (b) the amount of each instalment payable under the plan, the frequency of instalments and the date by which each instalment must be paid, and
- (c) if the customer is in arrears—the number of instalments to pay the arrears; and
- (d) if the customer is to pay in advance—the basis on which instalments are calculated.

(c) Clause 111(2) of the code which stated, in part:

Where a customer is a hardship customer, is a residential customer who has informed the retailer in writing or by telephone that the customer is experiencing payment difficulties or the retailer otherwise believes the customer is experiencing repeated difficulties in paying the customer’s bill or requires payment assistance, a retailer must not arrange for de-energisation of the customer’s premises... unless the retailer has offered the customer 2 payment plans in the previous 12 months and:

- (a) the customer has agreed to neither of them; or
- (b) the customer has agreed to one but not the other of them but the plan to which the customer agreed has been cancelled due to non-payment by the customer, or
- (c) the customer has agreed to both of them but the plans have been cancelled due to non-payment by the customer.

(d) Clause 114 of the code which stated, in part:

(1) A retailer may make immediate arrangements for de-energisation of a customer's premises if there has been:

(a) fraudulent acquisition of energy at those premises; or

(b) intentional consumption of energy at those premises otherwise than in accordance with the energy laws.

(2) No disconnection warning notice or other notice is required for de-energisation under this clause.

Decision

56. Red Energy is required to comply with the statutory licence condition.
57. Red Energy disconnected the gas supply to Customer B's premises at 9:25am on 21 February 2018.
58. Red Energy was required to comply with the code as a condition of its contract with Customer B.
59. Red Energy was required under clause 111(2) of the code to offer two payment plans to Customer B in the previous 12 months before arranging for the disconnection of the gas supply to Customer B's premises.
60. Red Energy did not meet the standard required under clause 111(2) of the code.
61. Red Energy therefore did not comply with the terms and conditions of its contract with Customer B which specified the circumstances in which the gas supply to Customer B's premises could be disconnected.
62. However, if the gas supply to Customer B's premises was reconnected by an unauthorised third party at some time between 21 February 2018 and 22 May 2018, such reconnection was unlawful and must be disregarded for the purposes of section 48A of the Act.
63. Based on the assumption that such reconnection occurred, the consequence is that there is no relevant reconnection for the purposes of section 48A of the Act. It is therefore not possible to calculate a prescribed amount in these circumstances for the purposes of section 48A(5) of the Act, and the time for payment under section 48A(3) of the Act does not fall due.
64. Therefore, Red Energy is not required to make a payment of a prescribed amount to Customer B under the statutory licence condition in relation to the disconnection of the gas supply to Customer B's premises.

Reasons

Red Energy disconnected the gas supply to Customer B's premises

65. If the two conditions under section 48A(1) of the Act are met, then Red Energy is required to make a payment of the prescribed amount to Customer B. The first condition under section 48A(1)(a) of the Act was that Red Energy disconnected the gas supply to Customer B's premises.
66. On 21 February 2018, at 9:25am, Red Energy disconnected the gas supply to Customer B's premises.
67. Red Energy confirmed to the commission that it disconnected the gas supply to Customer B's premises.
68. The commission therefore considers that the first condition under section 48A(1)(a) of the Act that must be satisfied for Red Energy to be required to make a payment of a prescribed amount to Customer B was satisfied.

Red Energy failed to comply with the contract terms

69. The second condition under section 48A(1)(b) of the Act was that Red Energy failed to comply with the terms and conditions of its contract with Customer B specifying the circumstances in which the gas supply to Customer B's premises may be disconnected.

Red Energy was required to comply with the code in relation to the disconnection

70. The commission obtained a copy of Red Energy's contract with Customer B from Red Energy.
71. Red Energy's contract with Customer B included terms and conditions which specified the circumstances in which the gas supply to Customer B's premises may be disconnected. Clause 8.2 of the contract stated, in part, that 'after taking certain steps as set out in the Retail Code, we may disconnect you if you:... you (sic) do not pay any amount due to us by the due date...'
72. Clause 19 of the contract stated 'Retail Code means the Energy Retail Code issued by the Essential Services Commission, as amended from time to time.'
73. The commission therefore considers that Red Energy was required to comply with the code in relation to the disconnection of the gas supply to Customer B's premises.

Red Energy was required to offer payment plans to Customer B

74. Clause 111(2) of the code relevantly provided that a retailer must not arrange for de-energisation of a customer's premises unless it has offered two payment plans to the customer in the previous 12 months in the following circumstances:
- (a) 'where a customer is a hardship customer...'
 - (b) 'where a customer... is a residential customer who has informed the retailer in writing or by telephone that the customer is experiencing payment difficulties or...'
 - (c) '...the retailer otherwise believes the customer is experiencing repeated difficulties in paying the customer's bill or requires payment assistance...'
75. Further, clause 111(2) of the code relevantly provided that a retailer must not arrange for de-energisation of a customer's premises unless:
- (a) the customer has agreed to neither of the plans,
 - (b) the customer has agreed to one but not the other of the plans and the agreed plan has been cancelled due to non-payment, or
 - (c) the customer has agreed to both plans but both have been cancelled due to non-payment.
76. Clause 111(2) of the code therefore covered a broad range of circumstances where a retailer was required to afford additional protections to a customer prior to arranging for the disconnection of the gas supply to the customer's premises.
77. If these circumstances applied in relation to the disconnection of the gas supply to Customer B's premises, then Red Energy was required to offer two payment plans to Customer B in the 12 months prior to 12 February 2018 when Red Energy arranged for the disconnection.
78. As stated above, Red Energy submitted that Customer B had confirmed to Red Energy in phone calls on 18 July 2017 and 15 January 2018 that he was not experiencing payment difficulties and refused assistance regarding payment of his gas account. On this basis, Red Energy considered that it was not required to offer two payment plans to Customer B in the 12 months prior to arranging for the disconnection of the gas supply to Customer B's premises.
79. However, the commission considers that Customer B informed Red Energy by telephone that he was experiencing payment difficulties on the following occasions:
- (a) During the telephone call on 18 July 2017, although Red Energy asked Customer B if there was '...any sort of financial difficulty?' and Customer B replied 'no', he also stated

'I might need some assistance with this next bill.' Customer B did not refuse assistance during this call as Red Energy submitted. In fact, Customer B stated that he may need some future assistance with an upcoming bill.

- (b) According to Red Energy's contact notes, during the telephone call on 22 January 2018, Customer B requested for Red Energy to offer a payment plan to him.
- (c) During the telephone call on 30 January 2018, Red Energy asked Customer B if he needed '...any help to pay...' his gas account and if he needed a payment plan. Customer B stated that he did need a payment plan.

80. Although Customer B stated that he did not need payment assistance during the telephone call on 15 January 2018, this did not vitiate Customer B's entitlement to the customer protections under clause 111(2) of the code. The requirement under clause 111(2) of the code for Red Energy to offer two payment plans to Customer B would be engaged if Customer B informed Red Energy on any given occasion that he was experiencing payment difficulties. There were at least three such occasions in this case as set out above.

81. Furthermore, the commission considers that Red Energy should have otherwise believed at the time of arranging for the disconnection of the gas supply that Customer B was experiencing repeated difficulties in paying his bill or required payment assistance. Red Energy appeared to accept that Customer B required payment assistance and proceeded to make offers of payment plans to Customer B during the telephone call on 30 January 2018. Customer B clearly stated during this telephone call that he required help and needed a payment plan.

82. The commission therefore considers that Red Energy was required to offer two payment plans to Customer B in the 12 months prior to arranging for the disconnection.

Red Energy offered payment plans to Customer B

83. The ombudsman's referral stated that Red Energy had agreed that it failed to meet the standard under clause 111(2) of the code to offer two payment plans to Customer B in the 12 months prior to arranging for the disconnection.

84. However, as stated above, Red Energy subsequently made submissions to the commission that it in fact met this standard by offering three payment plans to Customer B during the telephone call on 30 January 2018. Red Energy submitted that Customer B did not agree to any of the three payment plans. On this basis, Red Energy considered that it was entitled to arrange for the disconnection of the gas supply to Customer B's premises.

85. Clause 72(2) of the code relevantly provided that a retailer who offers a payment plan must inform the customer of each of the following in relation to that payment plan:

- (a) the duration of the plan,
 - (b) the amount of each instalment payable under the plan, the frequency of instalments and the date by which each instalment must be paid,
 - (c) if the customer is in arrears, the number of instalments to pay the arrears, and
 - (d) if the customer is to pay in advance, the basis on which instalments are calculated.
86. If a retailer fails to inform a customer of the information under clause 72(2) of the code when offering the payment plan, then the commission considers that such offer of a payment plan is invalid and must be disregarded for the purposes of clause 111(2) of the code.
87. During the telephone call on 30 January 2018:
- (a) Red Energy offered a payment plan to Customer B of \$242 per week for Customer B's arrears and ongoing gas consumption. However, Customer B did not agree to the payment plan.
 - (b) Red Energy then offered a payment plan to Customer B of \$948 per week, solely for Customer B to pay off the arrears in relation to his gas account before the next meter reading. However, Customer B did not agree to the payment plan.
 - (c) Red Energy then offered a payment plan of \$169 per week for Customer B's arrears and ongoing gas consumption. However, Customer B did not agree to the payment plan.
88. There is no information available to the commission to confirm that Red Energy made any other offers of payment plans to Customer B at any other time.

Red Energy failed to comply with clause 72(2) of the code

89. The commission considers that Red Energy did not inform Customer B of the required information under clause 72(2) of the code when offering the payment plans to Customer B during the telephone call on 30 January 2018. In particular:
- (a) In relation to Red Energy's offer to Customer B of a payment plan of \$242 per week, Red Energy did not inform Customer B of the duration of the plan or the number of instalments required to pay the arrears alone.
 - (b) In relation to Red Energy's offer to Customer B of a payment plan of \$948 per week, Red Energy did not inform Customer B of the duration of the plan and the number of instalments for Customer B to pay his arrears other than the reference that payments would be required until the next meter reading. Red Energy did not inform Customer B when the next meter reading would occur.

- (c) In relation to Red Energy's offer to Customer B of a payment plan of \$169 per week, Red Energy did not inform Customer B of the duration of the number of instalments required to pay the arrears alone. Further, Customer B had already rejected the first plan on the basis that he only wanted a payment plan to clear his arrears and not to include future bills, however Red Energy's third offer was made again on that basis.
90. The commission considers that Customer B was entitled to be informed of all of the required information under clause 72(2) of the code in relation to each of the payment plans that Red Energy offered to Customer B. It was open to Red Energy to read out this information to Customer B during the telephone call or to ask Customer B to withhold his response until it had provided him with this information.
91. Given the seriousness of disconnection, the commission considers that a prudent approach for Red Energy would have been to confirm its offers in writing in a manner that complied with clause 72 of the code. However, there is no information available to the commission that confirms any contact attempts by Red Energy to Customer B between the telephone call on 30 January 2018 and 12 February 2018 when Red Energy raised the service order for disconnection.
92. The commission therefore considers that Red Energy did not comply with clause 111(2) of the code in relation to the disconnection of the gas supply to Customer B's premises. The commission further considers that Red Energy did not comply with the terms and conditions of its contract with Customer B specifying the circumstances in which the gas supply to Customer B's premises may be disconnected.
93. The commission therefore considers that the second condition under section 48A(1)(b) of the Act that must be satisfied for Red Energy to be required to make a payment of a prescribed amount to Customer B was satisfied.

An unlawful reconnection would have implications for a payment of a prescribed amount

94. The ombudsman stated in the referral that Red Energy alleges that the gas supply to Customer B's premises was reconnected by an unauthorised third party at some time between 21 February 2018 and 22 May 2018. Red Energy made submissions to the commission to the same effect.
95. The ombudsman stated in the referral that after the initial disconnection on 21 February 2018, Red Energy received notifications that gas consumption was occurring at the premises. Red Energy submitted that these notifications were actual meter reads by AGN which indicated that Customer B was continuing to consume gas at the premises despite the

initial disconnection. The ombudsman stated in the referral that Red Energy arranged for two further disconnections of the gas supply to Customer B's premises after receiving these notifications.

96. On the basis of the information available to it, the commission considers that it is unclear whether the gas supply was reconnected to Customer B's premises at any time between 21 February 2018 and 22 May 2018. The referral does not state whether any such reconnection actually occurred.
97. The commission considers that even if the actual meter reads indicated continued gas consumption at Customer B's premises, this did not necessarily confirm whether the gas supply to Customer B's premises had been reconnected. For example, the actual meter reads may have been inaccurate or the initial disconnection on 21 February 2018 may not have been effective in stopping the flow of gas to Customer B's premises. The commission made enquiries with the property manager of the premises who informed the commission that the subsequent tenant of the premises had also reported high gas bills and raised a meter investigation with their retailer. This may indicate that there was an issue with the gas distribution infrastructure at the premises which resulted in the meter reads showing gas consumption. However, Red Energy submitted that the meter installation had been checked earlier at the request of Customer B and this confirmed there was no meter fault. Accordingly, any cause of high gas usage may have been on the customer side of the meter.
98. Red Energy and AGN each provided evidence to the commission indicating that, at the time of the initial disconnection on 21 February 2018, AGN had apparently attached a lock to the gas meter at Customer B's premises. On the basis of this information, the commission considers that a lock was attached at the time of the disconnection and this lock would have had to have been removed in order for the gas supply to the premises to be reconnected.
99. The following reasons apply based on the assumption that the gas supply to Customer B's premises was reconnected by an unauthorised third party at some time between 21 February 2018 and 22 May 2018.

Unauthorised self-reconnection is unlawful

100. The commission considers that any such reconnection would have been unlawful.
101. Section 152 of the Act prohibits a person from interfering in any way with a gas meter or fraudulently taking gas of a gas company. If a person reconnected the gas supply to Customer B's premises at some time between 21 February 2018 and 22 May 2018, then that person would have contravened section 152 of the Act by interfering with the gas meter at Customer B's premises or by fraudulently taking gas from Red Energy or AGN.

102. Further, section 79D of the Gas Safety Act prohibited a person from knowingly, recklessly or negligently breaking, injuring, opening or tampering with any pipeline, gas installation or meter assembly, unless that person was lawfully carrying out gas work, gas installation or meter assembly. If a person reconnected the gas supply to Customer B's premises between 21 February 2018 and 22 May 2018, then that person would have contravened section 79D of the Gas Safety Act by knowingly, recklessly or negligently breaking, injuring, opening or tampering with the pipeline, gas installation or meter assembly at Customer B's premises. The person may not have been lawfully carrying out gas work, gas installation or meter assembly.

An unlawful reconnection must be disregarded for the purposes of section 48A of the Act

103. Any unauthorised or unlawful reconnection of the gas supply between 21 February 2018 and 22 May 2018 must be disregarded for the purposes of section 48A of the Act.
104. Section 48A of the Act provides that the calculation of the prescribed payment and obligation to make the payment is based upon the disconnection and reconnection of the gas supply to the premises. Neither the term 'disconnection' nor the term 'reconnection' is defined by the Act.
105. The commission considers that a reconnection in the case of gas supply necessarily involves the opening of a connection in order to allow the flow of gas through the supply point. Such reconnection must occur in a lawful manner. That is because section 152 of the Act and section 79D of the Gas Safety Act prohibit any unauthorised actions that may result in the reconnection of the gas supply to the premises.
106. The commission considers that section 48A of the Act does not anticipate a form of reconnection that would be contrary to section 152 of the same Act. The commission therefore considers that any unlawful reconnection must be disregarded for the purposes of section 48A of the Act.

Unauthorised self-reconnection renders section 48A inapplicable

107. The unauthorised reconnections between 21 February 2018 and 22 May 2018 have the effect that the prescribed amount for the purposes of section 48A of the Act cannot be calculated.
108. Section 48A(5) of the Act provides that the prescribed amount is to be calculated according to the period of time that the gas supply to the premises is disconnected. The prescribed amount is to be calculated up until the time of the reconnection. The prescribed period may then be subject to a cap if the customer did not contact the retailer in respect of the disconnection within 14 days.

109. The consequence of the unauthorised self-reconnections is that there is no relevant reconnection for the purposes of section 48A of the Act. It is not possible to calculate a prescribed amount in these circumstances for the purposes of section 48A(5) of the Act, and the time for payment under section 48A(3) of the Act does not fall due.
110. The reconnection on 22 May 2018, after Customer B contacted the ombudsman, followed the lawful disconnection on 9 May 2018. There is no relevant nexus between the disconnection on 21 February 2018 and the reconnection on 22 May 2018.

Subsequent disconnections must be considered separate disconnections

111. The commission considers that each of the disconnections on 13 March 2018 and 9 May 2018 are separate disconnections for the purposes of section 48A of the Act. They were not a measure to give effect to the disconnection on 21 February 2018.
112. Red Energy was entitled in each instance to discontinue the gas supply to Customer B's premises under section 152(3) of the Act. Red Energy may have also been entitled to make immediate arrangements for the disconnection of the gas supply to Customer B's premises without notice to Customer B under clause 114 of the code.

Red Energy is not required to make a payment of a prescribed amount

113. For the above reasons, the commission considers that Red Energy was not required under the statutory licence condition to make a payment of a prescribed amount to Customer B in relation to the disconnection of the gas supply to his premises on 21 February 2018.
114. The commission has made its decision accordingly.

Other observations

Any self-reconnections may have been unlawful

115. If the gas supply to Customer B's premises was reconnected by an unauthorised third party at some time between 21 February 2018 and 22 May 2018, then this raises serious concerns in relation to gas safety. Such an action may have posed serious safety risks to the third party, Customer B and the community. Moreover, such an action may have constituted a criminal offence under section 152 of the Act and section 79D of the Gas Safety Act.
116. Energy Safe Victoria is responsible for the safety and technical regulation of gas and pipelines in Victoria. The commission has written to Energy Safe Victoria to bring this matter to its attention.

Clause 111(2) of the code no longer applies

117. The commission also notes that clause 111(2) of the code no longer applies as of 1 January 2019 when version 12 of the code came into effect. This version introduced amendments to the code to implement the payment difficulty framework.