



# VCOSS response

## Draft guidance note: payment difficulty and disconnection

November 2017

### Introduction

VCOSS welcomes the draft guidance note on payment difficulty and disconnection prepared by the Essential Services Commission. For the most part, it contains an appropriate level of detail and will help community advocates advise people about their entitlements under a principles- and outcomes-based payment difficulty framework. It will better allow people to self-advocate and develop sustainable payment arrangements that prevent the accumulation of large, unmanageable debts. The guidance note should assist advocates, EWOV and the ESC to hold retailers to account under the payment difficulty framework.

We appreciate the guidance note is a 'live' document, and look forward to the addition of further guidance once the framework begins operation, including case studies and insights from EWOV investigations and ESC enforcement action.

We comment below on particular aspects of the guidance note.

### Standard Assistance

The draft note provides inconsistent guidance on the application of Standard Assistance. Clause 3.1.1 states Standard Assistance is available to all residential customers, and customers do not need to demonstrate they are anticipating payment difficulty or to be in arrears to access this assistance. However, clause 3.2.1 states Standard Assistance is available to all customers anticipating financial difficulty.

On our reading of Division 2, Standard Assistance is available to all customers, not just those who are anticipating payment difficulty or are in arrears. If that is correct, the guidance note should be amended at clauses 1.3.4 and 3.2.1 for clarity.

As clause 3.4.2 indicates, it is important retailers clearly communicate the availability of Standard Assistance. VCOSS/RMIT research shows vulnerable households can have little knowledge of hardship program availability or earlier forms of assistance such as manageable payment intervals (especially fortnightly or monthly payments), bill smoothing, and short-term payment deferral.<sup>1</sup> Given the importance of these measures in making payments sustainable and preventing arrears, the guidance note could provide examples of good practice communications. For example, Yarra Valley Water bills include a prominent insert with information about customer assistance, and their website provides easy 'one click' links from the home page to information about payment options and financial help.

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<sup>1</sup> Victorian Council of Social Service, *Power Struggles: Everyday Battles to Stay Connected*, August 2017.

## Tailored Assistance

### Availability of Tailored Assistance

The guidance note states Tailored Assistance must be provided to a customer who has not paid a bill by its pay-by-date (i.e. is in arrears) and has arrears of \$55 or more, either when the customer contacts the retailer or by the retailer contacting the customer (clause 4.3.1).

Where a customer is **not yet in arrears**, the guidance note states the retailer should have a conversation with the customer about Standard Assistance options in the first instance. If the customer advises that the Standard Assistance options would not help them, the retailer should provide Tailored Assistance (clause 9.2.2).

Even where a customer **is in arrears**, the guidance note states the retailer may discuss the Standard Assistance options in the first instance (clause 9.2.3).

If a customer contacts their retailer to advise that payment is going to be a problem—whether they are in arrears or not—we would expect the retailer to support these proactive communications and offer Tailored Assistance, especially where the customer's circumstances indicate that Standard Assistance may not be suitable on its own. This includes where a person has a history of payment difficulty, is dealing with an unexpectedly large bill or recent price increase, or is facing financial hardship (for example, due to unemployment). An offer of Standard Assistance in the first instance without upfront information about Tailored Assistance (as clauses 9.2.2 and 9.2.3 suggest) could lead to the customer accepting a lesser form of assistance when more intensive assistance might be required. It is important the guidance note encourages early intervention and use of the most appropriate forms of assistance from the outset of customer contact.

### Payment arrangements

Clauses 4.6.2 to 4.6.7 provide guidance about the advice retailers should offer about payment options, including that:

- a customer and retailer should work towards the shortest payment arrangement the customer believes is affordable and sustainable
- retailers are not expected to automatically advise the customer of the option of two years to repay arrears, though this may be appropriate in particular circumstances
- customers who propose a payment arrangement that is shorter than two years effectively have 'time in reserve' if they need to revise their payment arrangement.

This guidance may disadvantage customers with high arrears and other household debts, and lead to unsustainable payment arrangements. ESC data shows that 40 per cent of hardship customers who enter into payment plans have arrears over \$1000, and more than a third of hardship customers with payment plans are on those plans for one to two years.<sup>2</sup> In 2016-17, the average arrears in EWOV residential credit complaints was \$2521.<sup>3</sup> Following likely price increases in 2018, we expect average arrears will be even higher once the framework begins operation in January 2019. Customers taking up Tailored Assistance should therefore be informed at the outset that a maximum two-year payment period is

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<sup>2</sup> Essential Services Commission, *Victorian Energy Market Update 2016-17*, Issue 2—January to March 2017, 30 June 2017, 3.

<sup>3</sup> Energy and Water Ombudsman Victoria, *EWOV 2017 Annual Report*, 28.

available, but encouraged to enter the shortest payment period that is affordable in their circumstances and proportionate to the arrears owed. It should not be within retailers' discretion to advise about the option of a two-year payment period, given this is a minimum assistance measure.

### **Practical assistance**

We welcome the guidance about the types of practical assistance retailers could offer to customers receiving the higher level of Tailored Assistance; that is, below-cost energy payments and arrears placed on hold (clause 4.8.4). We suggest the guidance note further state that a customer facing this degree of financial hardship should not be required to pay (in full or in part) for practical assistance such as in-home audits or appliance replacement.

### **Reasonable customer action and suspending Tailored Assistance**

A retailer must continue to provide Tailored Assistance unless the customer has, after failing to make a payment, refused or failed to take reasonable action towards paying for ongoing energy use and repaying their arrears (clause 83 of the payment difficulty framework).

Clause 4.14.4 of the guidance note provides information about what constitutes 'reasonable customer action', which includes occasional partial payments and marginally late payments. We support this guidance, which will encourage ongoing customer engagement and help to avoid assistance being suspended for trivial reasons. In our view, reasonable customer action also includes:

- multiple payment variations
- good faith attempts at payment that do not initially result in successful payment, such as bounced payments, and where a payment is made to the gas account rather than the electricity account or vice versa. In these circumstances, the retailer should follow-up the failed payments with the customer rather than suspending assistance.

The guidance note could provide information on these matters.

Clause 4.14.7 of the guidance note states that 'unreasonable customer action' includes consistently and consecutively not responding to a retailer's attempts to contact the customer to provide assistance. We caution that such action may not in fact be wilful and therefore unreasonable, but caused by complex circumstances in a person's life. This clause could include express guidance to retailers to take into account any individual customer circumstances known to the retailer in determining whether an ongoing lack of response from the customer shows a failure to take reasonable action, and would justify suspending assistance. This would be consistent with clause 89(a) of the payment difficulty framework, which requires retailers to take into account all known circumstances of the customer and, having regard to those circumstances, act fairly and reasonably in all dealings with the customer.

### **Customer communications**

One of the most important features of the new framework is that Tailored Assistance will be available to all customers in arrears, not only people who manage to enter hardship programs. Given the wide availability of Tailored (and Standard) Assistance, retailers should be expressly encouraged to promote this entitlement in their customer communications.

## Disconnection safeguards

Before disconnection can occur, a customer must have failed to meet the conditions of assistance and not sought to vary that assistance, and must also have failed or refused to take reasonable action to remedy any non-payment. Clause 8.1.10 of the guidance note provides information on this condition. It would be helpful for that clause to cross-reference section 9.4 of the guidance note, to emphasise that retailers must have regard to individual customer circumstances in determining the reasonableness of customer action.

## Guidance for other retailer obligations

### Tailored Assistance conversation

For the reasons outlined above, we suggest retailers should be providing upfront information about Tailored Assistance when they are:

- contacted by a customer who is not yet in arrears but indicates payment difficulty
- dealing with a customer who is in arrears.

Information should not be provided about Tailored Assistance only after a retailer has discussed the suitability of Standard Assistance, or a customer has attempted (and possibly failed) a Standard Assistance arrangement. Tailored Assistance is a minimum entitlement for customers in arrears and customers should be clearly informed of this by their retailer as soon as possible. If the ESC agrees with this position, we request that clauses 9.2.2 and 9.2.3 be amended.

### Customer circumstances

We very much welcome the requirement for retailers to have regard to known customer circumstances in assisting a customer under the payment difficulty framework, and the guidance provided on this requirement in section 9.4 of the guidance note. For clarity, it would be useful to specify elsewhere in the guidance note where it is particularly important to take customer circumstances into account. For example, the discussion on 'reasonable customer action' (clauses 4.14.4 to 4.14.8) could cross-reference section 9.4.

We support the guidance about communicating with non-English speaking and sensory impaired customers at clause 9.4.7, but propose this guidance be termed 'Accessible and inclusive communications' (or similar), to indicate to retailers that a broad group of people may face communication barriers and require specialist communication strategies. Along with people from culturally and linguistically diverse backgrounds and people with sensory impairments, communication barriers may also be experienced by people with an intellectual disability and older people in some circumstances.

We also suggest including other communication strategies in the list at clause 9.4.7, such as:

- providing plain language materials
- providing materials in multiple formats (including accessible digital formats, and alternatives to digital formats given low levels of internet access among low-income and vulnerable households).

## Expectations for best endeavours

The ESC expects that for customers in the Melbourne metropolitan area, the retailer should attempt to make contact by visiting the customer's home when the telephone number is not known to the retailer or the telephone is disconnected (clause 9.8.5(b)). We request the ESC clarify whether this expectation relates to the use of best endeavours generally under the framework, or only after a disconnection warning notice has been issued and the retailer is using its best endeavours to contact the customer.

We would be concerned if this expectation related to best endeavours generally, as a customer may feel harassed or intimidated by several home visits where a retailer is using its best endeavours to provide Tailored Assistance, revise a payment arrangement, and to warn of potential disconnection.

The guidance on best endeavours preferences telephone and letter communications as the most effective ways of contacting people. This is understandable given levels of digital exclusion, particularly among low-income and vulnerable households and people in regional areas. However, we request the ESC continue to receive feedback on effective communication methods and update the guidance note accordingly. In some circumstances, methods such as email, SMS and private social media communications may be more effective than telephone calls or letters and should be used as part of a suite of measures.

We also suggest retailers be guided to contact any customer-nominated advocates (such as financial counsellors, community caseworkers, or friends or family) in using best endeavours to contact customers.

Retailers should also be expressly guided in section 9.8 to have regard to individual customer circumstances when attempting to contact the customer. For example, where a customer reveals they are experiencing family violence, retailers should be encouraged to ask the customer to nominate preferred communication methods and use those methods when fulfilling best endeavours obligations.