



**WRONGFUL DISCONNECTION PAYMENT DISPUTE**

**VICTORIA ELECTRICITY AND THE COMPLAINANT**

**STATEMENT OF REASONS**

**JUNE 2007**

## **Introduction**

Section 48A of the *Gas Industry Act 2001* places a licence condition on retailers that requires them to compensate a customer if the retailer disconnects the customer's supply and does not comply with the terms and conditions of the customer's contract that specify the circumstances in which the supply may be disconnected. The retailer must compensate the customer for each day that the customer's supply is disconnected.

Clause 6.5 of the Commission's Operating Procedure – Compensation for Wrongful Disconnection (OP) requires that where the Energy and Water Ombudsman Victoria (EWOV) is unable to resolve a claim for the wrongful disconnection compensation payment with the agreement of the retailer and the customer, EWOV must refer the claim to the Commission for a decision in accordance with clause 7 of the OP.

## **Background**

EWOV requested that the Commission make a formal decision as to whether Victoria Electricity has complied with its retail licence in relation to a dispute between The Complainant and Victoria Electricity regarding a wrongful disconnection compensation payment.

The Complainant transferred to Victoria Electricity towards the end of 2005. However, The Complainant did not make any payments to Victoria Electricity, due to some confusion over which retailer was supplying their gas.

Victoria Electricity sent reminder notices and disconnection notices to The Complainant from March 2006 and on 4 September 2006, also sent The Complainant a hardship letter and phone card.

On 15 September 2006, The Complainant contacted Victoria Electricity in response to a disconnection letter. At the time, The Complainant advised that Centrepay had continued to make direct debit payments of \$50.00 per fortnight on their behalf to his previous provider (AGL) which had resulted in a credit balance accruing of over \$360.00. The Complainant advised Victoria Electricity that they would contact AGL to request a refund and upon its receipt, would pay this money to Victoria Electricity.

On 12 October 2006, The Complainant agreed to a fortnightly payment plan by direct debit for the amount of \$60.00, beginning on 26 October 2006. This arrangement was reconfirmed on 17 November 2006. Victoria Electricity records indicate that no payment was made under this arrangement.

On 4 December 2007, Victoria Electricity conducted a site visit to discuss the outstanding arrears on the account. Following the site visit, The Complainant called Victoria Electricity and advised they had not received any invoices or the necessary paperwork for the direct debit. Victoria Electricity advised them the paper work would be sent out again. Victoria Electricity also advised The Complainant they would be required to pay the total outstanding amount of \$723.61, because they had failed to adhere to the payment plans and was advised that a scheduled disconnection would go ahead if the total outstanding amount was not paid.

On 7 December 2006, The Complainant contacted Victoria Electricity and stated that they still had not received the direct debit forms. Victoria Electricity advised The Complainant to take this up with Australia Post. Victoria Electricity then advised The Complainant they were required to pay the full outstanding amount by 8 December 2006.

The property was disconnected on 13 December 2006 for non-payment of arrears of \$836.10. On 21 December 2006, The Complainant's financial counsellor contacted EWOV on their behalf. Victoria Electricity advised The Complainant's financial counsellor that it was not prepared to reconnect the gas supply until The Complainant made an upfront payment.

It should also be noted that due to circumstances beyond Victoria Electricity's control, the proposed \$360.00 payment was not received. The Complainant confirmed with Victoria Electricity that they had received the refund from AGL, but both The Complainant and The Complainant's mother subsequently advised Victoria Electricity that the refund had been stolen.

## **Issues**

For the disconnection to be wrongful, the retailer must have breached the terms and conditions of the contract that set out the circumstances under which a customer's supply may be disconnected.

### *Terms and Conditions Relating to Disconnection*

The terms and conditions of the contract between Victoria Electricity and The Complainant are set out in the Energy Retail Code (ERC). Clause 13.2 states that a retailer must not disconnect a domestic customer if the failure to pay the retailer's bill occurs through lack of sufficient income of the customer until the retailer has complied with clause 11.2 of the ERC.

### *Best Endeavours to Contact a Customer with Insufficient Income*

Clause 13.2 of the ERC requires that prior to disconnecting a customer the retailer must use its best endeavours to contact a customer where the failure to pay a bill occurs through lack of sufficient income.

The Commission considers that Victoria Electricity has demonstrated that it has complied with Clause 13.2 of the Energy Retail Code in that it has made the required number of attempts to contact The Complainant to discuss the outstanding arrears immediately prior to the disconnection of their service.

### *Assessment and Assistance to Customers in Financial Difficulty*

Clause 11.2 of the ERC requires a retailer to assess, in a timely manner, the customer's capacity to pay (clause 11.2(1)). In addition, a retailer is required to offer the customer an instalment plan and provide advice on the Utility Relief Grant Scheme (URGS), energy efficiency and the availability of financial counsellors (clause 11.2(4)).

Victoria Electricity has advised EWOV that it did not undertake an assessment of The Complainant's capacity to pay as it "did not believe that The Complainant had an

inability to pay [the] account”. While Victoria Electricity appears to have general assessment procedures, including a hardship policy in place, the customer care notes submitted as evidence of its compliance with the ERC are lacking in detail and do not support its assertion that an assessment was made of The Complainant’s capacity to pay in accordance with the provisions of the ERC.

It is therefore considered that Victoria Electricity failed to adequately assess The Complainant’s capacity to pay.

*Capacity to pay and offer of an Instalment plan*

Clause 11.2(1) of the ERC provides for the retailer to assess capacity to pay, based on whatever information the customer provides or the retailer otherwise has. Clause 12.2(a) provides that, in offering an instalment plan, a retailer must ensure that the instalment amount reflects a customer’s consumption needs and capacity to pay.

The Complainant appears to have not made any payments on the energy account since its creation in December 2005. Further, a total of twelve Reminder and Disconnection notices, and a Hardship letter were issued to The Complainant prior to the first recorded telephone contact with the customer in September 2006.

Victoria Electricity customer cares notes also indicate that in October 2006 The Complainant advised customer service staff that they would be speaking with their financial counsellor regarding the outstanding debt.

Victoria Electricity offered The Complainant an instalment plan of \$60.00 per fortnight on 12 October 2006, based on the assumption that the arrears would stand at \$363.00 once the \$360.00 refund from AGL had been applied to the account. Victoria Electricity has stated that the instalment amount of \$60.00 was “in line with what [they] had been paying [the] previous retailer (\$50.00)”.

To clear the arrears of \$363.00 would require a payment of approximately \$14.00 per fortnight for 12 months. The Complainant’s gas usage has been assessed as being approximately \$40.00 per fortnight.

It is therefore considered that the payment instalment amount of \$60.00 represented a suitable balance between The Complainant’s arrears and the ongoing consumption needs, but not The Complainant’s capacity to pay.

Therefore it is also considered that Victoria Electricity by its own admission, its failure to consider the numerous reminder notices that were sent and The Complainant’s advice regarding their proposed contact with the financial counsellor, has failed to adequately assess The Complainant’s capacity to pay.

*Advice regarding energy efficiency and an independent financial counsellor*

Clause 12.2(d) requires that in offering an instalment plan, a retailer must provide the customer with energy efficiency advice and information on the availability of an independent financial counsellor.

Victoria Electricity had advised EWOV that its bills, reminder notices, disconnection letters, hardship letters and the site visit letter all make reference to the information

requirements outlined in clause 12.2(d). Commission staff have reviewed Victoria Electricity's generic Hardship letter which does make a reference to URGS, the Capital Grants Scheme and the availability of advice regarding energy efficiency but does not provide advice regarding the availability of an independent financial counsellor.

It is therefore considered that Victoria Electricity has not provided The Complainant with the required information on the availability of an independent financial counsellor. While it is noted that The Complainant had already advised Victoria Electricity that they were consulting their financial counsellor, this does not relieve Victoria Electricity of the responsibility to comply with the ERC, specifically in this case, advising The Complainant of the availability of an independent financial counsellor.

*Offer of an additional payment plan prior to disconnection*

Clause 11.2 (3) requires retailers to offer a customer an instalment plan unless the customer has in the previous 12 months failed to comply with two instalment plans and does not provide a reasonable assurance to the retailer that the customer is willing to meet payment obligations under a further instalment plan.

Clause 13.1(a) states that a retailer may only disconnect a customer's supply if the failure to pay does not relate to an instalment under the customer's first instalment plan.

Having regard to the evidence submitted to the Commission, it is considered that Victoria Electricity has offered two separate payment plans and has therefore demonstrated compliance with the provisions of Clause 11.2(3) and Clause 13.1(a).

**Decision**

In accordance with clause 7 of the OP, the Commission has investigated the alleged breach by Victoria Electricity of its retail licence in relation to the disconnection of The Complainant. Based on its assessment of the reported facts, the Commission must conclude that Victoria Electricity has not complied with all the relevant terms and conditions of The Complainant's contract in relation to his disconnection, in that:

- The Complainant's capacity to pay was not adequately assessed; and
- The Complainant was not provided with sufficient information regarding the availability of an independent financial counsellor.

Therefore, the disconnection of The Complainant was wrongful and a compensation payment is required. The compensation payment is to apply from 8.30am on 13 December 2006 to 2.30 pm on 22 December 2007. The amount due is \$2375.00.

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R H SCOTT  
**Delegated Commissioner**

June 2007