

10 November 2021

Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

Via: [Engage Victoria](#)

Dear Ms Symons,

Re: The Essential Services Commission's Our Approach: Payment Difficulty Framework Review (PDF Review)

Thank you for the opportunity to comment on the Essential Services Commission's (ESC) *Our Approach: Payment Difficulty Framework Review (PDF Review)*.

The Energy and Water Ombudsman (Victoria) (EWOV) is an industry-based external dispute resolution scheme that helps Victorian energy or water customers by receiving, investigating and resolving complaints about their company. Under EWOV's Charter, we resolve complaints on a 'fair and reasonable' basis and aim to reduce the occurrence of complaints¹. We are guided by the principles in the Commonwealth Government's Benchmarks for Industry-based Customer Dispute Resolution². It is in this context that our comments are made.

The Review of the Payment Difficulty Framework (PDF) aligns with the inclusion of a commitment at the time of its establishment, to undertake a review to determine how it is working in practice. Overall, we support the proposed process and timing of the review while acknowledging that businesses have had limited opportunity to deliver the PDF in a 'business as usual' environment, given the move to accommodate/respond to the impacts of COVID-19 and multiple lockdown periods which reduced the reliance on disconnection and debt collection activity.

Regardless, and since the implementation of the PDF, energy retailers have been required to take a more proactive and tailored approach to customers struggling to meet their energy costs. The PDF utilises early intervention and flexible, customised approaches to customer circumstances as tools to achieve sustainable, ongoing energy affordability. Above all, the PDF encourages open and honest dialogue between customers and energy retailers. Throughout the development of the PDF, the notion that energy

¹ See Clause 5.1 of EWOV's Charter: <https://www.ewov.com.au/files/ewov-charter.pdf>

² See EWOV's website: <https://www.ewov.com.au/about/who-we-are/our-principles>

disconnection should be a last resort was a key principle – and it is fair to say that as a result of the PDF, disconnections reduced dramatically (albeit from very high levels³). Period of lockdown over 2020 and 2021 reduced disconnection volumes further.

As the external dispute resolution body operating in the Victorian retail market, EWOV has been intimately engaged in the operation of the PDF. Many of the customers who contact us - particularly in relation to credit related complaints - are entitled to PDF related assistance under the Energy Retail Code.

Payment Difficulty Framework - Impact

Overall, our data clearly shows that complaints, and particularly credit related complaints, have reduced significantly since the PDF was introduced. We have also seen customer debt levels fall, another sign that the PDF has had a positive effect across the market.

That said, our observations as outlined in *Missing the Mark* which we released in December 2020, provided a clear indication that even without the intrusions of Covid-19, businesses overall were still struggling to deliver against the PDF and the outcomes intended. In addition, despite the positive trends, we are highly conscious that consumers (and particularly, consumers experiencing vulnerability) do continue to experience difficulties with the retail energy market.

For example, our outreach activities have identified that there is a need for customers to be proactively offered their entitlements and for barriers to accessing these to be removed. It is not uncommon to see vulnerable consumers presenting with high levels of energy debt and on high tariff energy plans, yet not having been offered a Utility Relief Grants Scheme (URGS) payment, an affordable payment plan or a tariff review. If the PDF was being properly applied in all circumstances, such cases would not be presenting.

Our further comments are set out below.

1. How would you like to be engaged throughout the review?

EWOV will be very pleased to engage with the ESC throughout the review through a range of fora. We will contribute to submissions such as this one and will participate in regulatory consultations sessions.

In addition we will work with the ESC to provide supporting data and case studies in line with the terms of our Memorandum of Understanding.

³ The PDF was a response to the ESC's 2015 hardship inquiry, which culminated with the March 2016 release of *'Supporting Customers, Avoiding Labels. Energy Hardship Enquiry Final Report.'*(2016):

<https://www.esc.vic.gov.au/sites/default/files/documents/Energy-Hardship-Inquiry-Final-Report-February-2016-1.pdf>. The hardship inquiry itself was prompted by very high disconnection numbers, which reached crisis levels in 2013-14 (58,503 customers had been disconnected for non-payment of bills, the highest number ever for any financial year).

2. What have you observed about the experience of customers in payment difficulty in the last 2-3 years?

We refer the ESC to the findings outlined in our report *Missing the Mark*, released in December 2020 which outlines our observations on the effectiveness of the PDF over the [REDACTED] report covers.

Rather than repeat those findings here, we will summarise and update key data points (recognising that the ESC may already be accessing those from our recently released Annual Report).

As above, we recognise that the PDF undeniably had a powerful downward impact on disconnections. Given that disconnections are very clearly framed as a measure of last resort by the PDF, this provided a strong indication that the broader intent of the PDF has been met. This is particularly the case if we look at the drop in disconnection/restriction cases from prior to its implementation (3,437 disconnection/restriction cases in 2017/18) which was met with a 29% reduction in the year immediately following. Disconnection (and water restriction) cases in the most recent financial year, represent saw a total of 676 cases – a significant drop from pre PDF periods..

Our broader observations in relation to a customer's experience of payment difficulty and vulnerability over the past two years have been captured in our weekly/fortnightly data briefings which the ESC received, as well as our public reports including Reflect, EWOV NEWS and our Annual Report.

The insights in this data and publications continues to highlight a patchwork application of the PDF, further complicated by the changing circumstances nearly all businesses [REDACTED] to accommodate throughout the pandemic.

Key observations also align with those identified in *Missing the Mark* including:

- High levels of customer debt at the time of disconnection/debt collection
- Inconsistent application of the Utility Relief Grant [REDACTED]
- Inconsistent application of concessions [REDACTED]

In the time since the report, and at times when retailers could engage in disconnection activity, we also found:

- Disconnections occurring when customers are engaging [REDACTED]
- Debt waivers with conditions, such as customers having to move to new retailers

On the occasions we could engage in face to face outreach activities, the range and complexity of issues customers face often presented themselves as barriers to accessing their PDF entitlements. This included customer vulnerability and system and process issues within the businesses which were unable or unwilling to apply flexibility to meet the diverse needs of a diverse customer base [REDACTED]. An example is naming conventions (some customers having single names only or customers requiring gender neutral

labels). In this circumstance, customer records at retailers do not align with those on concession cards, resulting in unpayable concessions.

We have also seen a very clear trend in the experience of Aboriginal and Torres Strait Islander Peoples who's experience of disconnections was disproportionately higher than the [REDACTED] population, but which normalised over the period of lockdowns when disconnections were largely restricted, only to return to pre lockdown levels once lockdowns ended.

We would be happy to provide broader insights into EWOV data through the course of the review.

3. We have access to existing data, customer insights, and publicly available case-studies relating to the framework. Is there any other data, insights or research we should also consider?

As above, we consider there is considerable information that the ESC has gained from EWOV over the past few years, which creates a good understanding of the impact of the PDF on the customer experience. One other key area of data which we think is critical to this review, is that of retailer conduct in relation to those experiencing family violence. EWOV has received a number of complaints raised by customers who have experienced family violence and not received the support required of energy retailers.

Through our systemic issue reports and compliance referrals we consider there is further opportunity to explore insights with you. As an example, and relevant to the PDF, (also as previously shared with the ESC) the following were raised in the 2020/2021 financial year. [REDACTED]

- Disconnection notices missing information about reconnection SI/2019/16
- Customer referred to financial counselling without other assistance SI/2020/18
- Non-compliant disconnection notices SI/2019/2
- Payment plan letters missing pay-by dates SI/2020/20
- Forms showing incorrect concession eligibility dates SI/2021/24 [REDACTED]
- Misplaced concession paperwork SI/2021/36

Approach questions

Overall, we are comfortable with the proposed approach and the questions listed below. In a few examples we have provided our insights and are happy to explore these further as the PDF Review progresses.

- ***How are the entitlements under the framework communicated to customers (from a single retailer, and across the sector)? From your experience, are the ways they are communicated clear and consistent?*** [REDACTED]

In terms of useful insights to this question and to the PDF Review itself, it will be important to remember that as the PDF is an entitlements framework, underpinning that should be the expectation that regardless of how it is communicated, the entitlements must be provided (and not dependant on a customer knowing what those entitlements are).

We are aware that in many instances, customers are not provided their range of entitlements which suggests that the retailers are not communicating them at the time of the contact or in an accessible manner. EWOV Service Officers provide advice through inclusion of fact sheets and verbal support at the time of a complaint, to ensure customers are equipped with knowledge of their rights when they go back to the retailer. Regardless, many customers do not have the capacity to manage that level of information and rely on their entitlements simply being provided.

• ***How much do you think customers are aware of, or understand, their entitlements?***

As above, we are concerned with the underlying assumption that customers can and are able to know their entitlements. Rather than placing the onus on customers experiencing vulnerability to meet their 'responsibilities' around engagement (ie knowledge and understanding of entitlements), retailers and other service providers (including EWOV) should tailor their interactions with an emphasis on assisting, and helping the customer. Note that EWOV has implemented a program to focus on our customers with an approach 'we will find you, 'we will explain it to you' to do just that. The conversation should not be about what the customer must do – but rather about what the service provider can do to help them. While this seems a subtle shift in messaging, it changes the style and tone of the interaction significantly.

Through our outreach activities, it is very clear to us that some customers have limited understanding of their entitlements. In an outreach event earlier this year, many customers were unaware of the meaning behind 'best offer' on their bills and how to access them.

We recognise there is also sometimes an intersection between knowledge of entitlements and engagement. In these instances, both are difficult for customers who are facing multiple life challenges and experiencing significant cognitive stress. Once an immediate issue - or crisis - has been dealt with (such as disconnection), many customers simply do not have the mental or emotional 'bandwidth' to continue to engage. This applies too to knowing what their rights are and whether they have adequately received them. Through a Wrongful Disconnection Payment review we are often able to ascertain whether entitlements have been applied, though there are limited examples we can provide to the ESC over the past year due to the reduction in disconnections. Further data that is collected to reflect this may be available in the coming months as we emerge from lockdowns.

Ultimately, customers should not be blamed for 'failing' to know their entitlements. Rather, the energy sector needs to consider what it can do to improve customer trust and confidence, re-set the relationship, and facilitate delivery of its services to meet the needs of its PDF.

- ***How helpful and practical has the payment difficulty assistance provided to customers been?***

We consider that on one level, the most telling data set from this will be from the retailers themselves, in relation to customer debt levels.

From EWOV's perspective, many of the complaints we receive, relate to the non-application of the payment difficulty assistance, suggesting that possibly, those receiving it have found it helpful and practical, while those that don't, do not. Noting of course, that EWOV sees approximately 4% of all customer complaints in Victoria and we have seen a trend in our complaints where customers do not access our services during periods of lockdowns.

- ***How confident are you when advocating on behalf of someone to access support under the framework?***

This question doesn't relate to EWOV as we are not an advocacy body.

- ***Have you observed a change in customer satisfaction of their engagement with retailers about their entitlements? If so, to what extent and why?***

The reduction in EWOV's complaints suggest that customers are satisfied with their engagement with retailers about their entitlements.

This is particularly apparent in credit cases received in 2020/2021 when EWOV received 3,025 credit cases (61% electricity, 35% and gas 4% water). In electricity (and water) credit sub-issues were debt collection/credit default listing and payment difficulties, in that order. In gas, it was payment difficulties followed by debt collection/credit default listing. Against the year earlier 2019/2020, credit cases were down 35% (and down 63% from four years ago). Within this, electricity credit cases were down 33% and gas credit cases were down 37%). We recognise that case numbers were likely distorted as a result of the impact of lockdowns in response to Covid-19. As lockdowns ease and businesses return to BAU practices, we may find complaint numbers rise.

Customer stories/case studies, highlight the instances where despite falling numbers, the individual customer experience showcases existing failures in delivery of PDF entitlements. These have been provided to the ESC through regular Data Briefings and publications.

- ***Have you observed a change in customer engagement from diverse reach customers about their entitlements?***

Again, we consider this data and these insights are more suitable coming from the retailers themselves. To support effective responses to this question it would be useful to gain an understanding of how retailers define diverse and hard-to-reach customers, that they know where they are geographically and what their approach to those customer groups is. Insights gained from activities, suggest that many retailers operate on a one size fits all approach to customers.

In developing our approach to outreach with the Victorian community we mapped various indicators of vulnerability to identify where to target some of our activity, knowing these geographic areas is useful to understand some of those characteristics that retailers should be aware of.

• **What aspects of the framework have been working well?** [REDACTED]

Our observations over the past 18 months or so, has been that retailers have definitely shifted their approach overall to their customers. While it is unclear if this has been initiated by the PDF or not, we commend those businesses for their broader adaptability.

Again, the reduction in complaints to EWOV suggest that something is working and front end initiatives to engage with customers to find appropriate solutions appears to be effective. As observed in *Missing the Mark*, the following could be said to be working well:

- Credit related cases and particularly disconnection cases, have fallen significantly since the PDF was introduced. This was true even before the ESC placed an informal moratorium on disconnections in response to the COVID-19 pandemic. This is a major and significant achievement and should not be underestimated. [REDACTED]
- Average customer debt levels have decreased since the PDF was introduced.
- Debt reductions and waivers have increased since the PDF was introduced (It should be clarified that while debt waivers are positive, they should not be applied in lieu of PDF entitlements – but only in addition to them. More recent data suggests this is a concern). [REDACTED]

On the flipside however where we observe application of the PDF not working well, and as also identified in *Missing the Mark*:

- Large numbers of vulnerable customers continue to present to EWOV with significant arrears and their PDF entitlements unmet. There is still significant room for all the [REDACTED] market to improve compliance.
- When PDF entitlements are applied, they are sometimes ad hoc and incomplete.
- While credit and disconnection cases have fallen overall, they continue to remain prominent for some customer sub-sets (e.g. customers who identify as an Aboriginal and/or Torres Strait Islander person), which suggests that the PDF is working better for some customer groups than others. [REDACTED]
- Customer disengagement, (expressed as procedural closures at EWOV), is still very common and remains a significant challenge for the sector.
- Key PDF entitlements are being communicated through documents unlikely to be seen as personalised, or likely to prompt engagement. Examples include Best Offer Notices for tariff reviews, and PDF information being communicated on reminder notices. This blunts the intent of the PDF to provide effective early intervention. [REDACTED]

- It is not clear whether all retailer staff are aware of PDF entitlements, or whether that knowledge is concentrated within retailer hardship teams.

When retailers are able to commence disconnection and debt collection [REDACTED] are aware that those practices, both good or bad, will become more apparent.

• Have you, as a consumer representative, energy retailer, or other stakeholder, encountered any barriers or difficulties during the implementation of the framework?

The ad hoc nature of the application of PDF entitlements, as identified in *Missing the Mark*, provide some evidence to the fact that some businesses may be struggling to embed the intent of the PDF. Further to this, the systemic issues provided above may highlight where systems or processes may be lacking.

• Are there areas of the framework that you found confusing or unclear?

As above, we consider that the biggest barrier or what may be perceived as confusing or unclear may stem from interpretation of the intent of the PDF itself and the necessary shift in approach to customers to ensure its effectiveness.

• Are there other strategies or approaches retailers have considered (within or outside the framework) that can better help customers and achieve the framework's objectives? If so, what are these strategies or approaches? [REDACTED]

The evidence identified in *Missing the Mark* supports the PDF and a need to ensure customers are supported at the commencement of their financial difficulty. Relying on engagement at the time of disconnection or debt collection means the customer is already in trouble and less likely to engage effectively. Working to ensure customers reach a sustainable and affordable level of supply is critical. Within or further to the PDF, it may be necessary to include obligations such as in-home energy audits and appliance replacement initiatives, that genuinely set customers up to succeed. The funding and implementation of this will be a broader policy initiative.

• Are there other problems faced by energy customers that may not be covered by the payment difficulty framework? [REDACTED]

This is an important question as part of the PDF Review as it recognises that customers are facing and will continue to face economic uncertainty and difficulties – and that the PDF will not be able to solve all of these.

We trust these comments are useful. Should you like any further information or have any queries, please contact Janine Rayner, Head of Communications and Policy, on [REDACTED].

Yours sincerely



Cynthia Gebert
Energy and Water Ombudsman (Victoria)

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