

Customer M and Origin Energy – decision and reasons

Application of section 40B of the Electricity Industry Act 2000 – compensation
for wrongful disconnection

7 October 2020

An appropriate citation for this paper is:

Essential Services Commission 2020, Customer M and Origin Energy – decision and reasons: Application of section 40B of the Electricity Industry Act 2000 – compensation for wrongful disconnection, 7 October

Copyright notice

© Essential Services Commission, 2020



This work, Customer M and Origin Energy – decision and reasons, is licensed under a Creative Commons Attribution 4.0 licence [creativecommons.org/licenses/by/4.0]. You are free to re-use the work under that licence, on the condition that you credit the Essential Services Commission as author, indicate if changes were made and comply with the other licence terms.

The licence does not apply to any brand logo, images or photographs within the publication.

Contents

Referral from the ombudsman	1
Issues for decision	2
Relevant facts	3
Relevant obligations	8
Legislative requirement to pay compensation for wrongful disconnections	8
Obligation to provide information about assistance under Part 3	8
Licence conditions regarding the code	10
Contract term to disconnect in accordance with the code	10
Submissions	11
The ombudsman’s submissions	11
Origin Energy’s submissions	11
Customer’s submissions	12
Decision	13
Reasons	14
Clear and unambiguous information about the assistance available under Part 3	14
Best endeavours to provide information	15
Enforcement	18
Other observations	19
Retailer discretion to provide assistance information in a reminder notice	19
Framing the assistance available as an entitlement	19
Is a different level of information required at each stage?	20
Distinguishing between electronic and hard copy communications	20

Referral from the ombudsman

1. On 27 February 2020, the Energy and Water Ombudsman (Victoria) referred this matter to the commission for decision. The matter arises from a complaint made to the ombudsman by a residential customer, Customer M.
2. The referral concerns the application of section 40B of the Electricity Industry Act 2000 (the Act) to a disconnection by Origin Energy Electricity Limited (ACN 071 052 287) of Customer M's electricity supply at the relevant premises. Specifically, the ombudsman seeks the commission's clarification whether Origin Energy complied with its obligations to provide information about the customer's entitlement to assistance under Part 3 of the Energy Retail Code (the code) prior to disconnecting Customer M.
3. Customer M's electricity supply to the premises was disconnected by Origin Energy as a result of non-payment of bills from 10:09am on 27 February 2019 to 7:35am on 28 February 2019 – a period of 21 hours and 26 minutes.

Issues for decision

4. The ombudsman has raised three questions for decision by the commission. All three questions are concerned with whether Origin Energy complied with its obligations to provide information about the customer's entitlement to assistance under Part 3 of the code.
5. The first question is whether the information in Origin Energy's reminder notice and accompanying payment assistance brochure satisfied the requirement to provide clear and unambiguous information about the assistance available under Part 3, in accordance with clauses 89(1)(b) and 80(2) of the code.
6. The second question is whether the information in Origin Energy's disconnection warning notice satisfied the requirement to provide clear and unambiguous advice about the assistance available under Part 3, in accordance with clause 110(2)(ba)(ii) of the code.
7. The third question is whether Origin Energy complied with its obligation to use its best endeavours to contact the customer in relation to the matter and, in so doing, provided clear and unambiguous information about the assistance available under Part 3, in accordance with clause 111A(1)(a)(iv).
8. If the commission finds Origin Energy complied with these requirements, then the disconnection was not wrongful and no further issues arise.
9. If the commission finds that Origin Energy has not complied in relation to any of the three questions, then the issue arises of whether compensation is payable to the customer in accordance with section 40B of the Act.

Relevant facts

10. The commission analysed the ombudsman's request for a decision and sought additional submissions from Customer M and Origin Energy. Having assessed the matter and the submissions, the commission makes the factual findings set out below.
11. On 28 July 2017, Customer M established an electricity account with Origin for the premises. Customer M's preferred method to receive all communications was post.
12. On 12 October 2018, Origin Energy issued an electricity bill to Customer M for \$1,838.36 (including \$1,523.99 overdue) payable by 3 January 2019. The bill was not paid by the due date and caused the disconnection process to commence.
13. On 20 December 2018, Origin Energy issued a reminder notice to Customer M for \$1,838.36. Relevantly for the purposes of this matter, the second page of the reminder notice contained the following in relation to the assistance available under Part 3 of the code:

We're here to help

If you're having trouble paying, you're entitled to a range of assistance options - outlined in the included brochure. You can also find more information about these options at originenergy.com.au/paymentassistance or if you'd like to talk these over, give us a call on 13 24 61...

Important information

- Annual Electricity Concession: The Victorian Government Annual Electricity Concession is available all year for customers holding an eligible concession or pension card.
- Payment assistance: To arrange a payment extension, special payment or instalment plan or obtain information about the Utility Relief Grant Scheme, call us on 13 24 61.

14. A brochure entitled 'Origin's payment assistance options' was also included with the reminder notice. The brochure contained the following more detailed information about the customer's assistance options available under Part 3 of the code:

Having trouble paying your bill?

If you're a Victorian residential customer facing financial difficulty, we offer a range of assistance options to help you pay your bills. So, have a read through this brochure, and let us know within six business days if you'd like to take up one of these options.

Some ways we can help

We can give you advice about:

- payment plans that can incorporate both your current debt and your ongoing energy usage for up to two years
- the likely cost of your future energy use and how you can reduce this over time

- other assistance available through the government that can help you meet your energy costs (such as Utility Relief Grants and concession rebates)
- practical assistance to help you lower your energy costs, including
 - recommendations on the right plan for your circumstances - taking into account your usage history (if available), plus
 - energy efficiency tips to help lower your usage, and how best to monitor and keep track of your energy usage - for example using My Account, our online portal.

Setting up a payment plan

To help you manage your ongoing usage costs and any debt you owe, you're entitled to set up payment arrangements:

- of equal amounts over regular periods such as weekly, fortnightly or monthly payments
- that incorporate the arrears owing on your account so your debt is fully paid within two years of your first payment
- that provide for payments covering both usage and arrears
- that are based on a reasonable forecast of your energy usage over the next 12 months.

Once you've set up or revised a payment plan, we'll send you a schedule of payments showing:

- the total number of payments you need to make to finish paying off the arrears on your account
- the period of time over which your payments are to be made
- the amount and due date of each payment.

If you don't make a payment by its due date, we'll get in contact with you about options to revise your payment plan or how else we can help you get back on track.

Need something more?

If you can't pay the full cost of your ongoing energy usage, we can put your debt on hold so you don't need to make any payments on it for six months. We can also let you pay less than your ongoing usage - while you find ways to use less energy. After this six month period, we'll review your progress and continue to work with you to pay your ongoing bills and help reduce your costs.

Home energy advice

You may be eligible for a free energy efficiency consultation - either in your home or over the phone, whichever is easier for you. You can get advice that's specifically tailored to the way you use energy in your home - from the sort of appliances you use to the layout of your home, helping you identify ways to lower your energy bills.

Government programs & concessions

If you meet certain criteria, you might be able to access government grant programs. These provide a range of financial assistance to people having difficulty paying their energy accounts. You can find details about this assistance on the Department of Health and Human Services (DHHS) website - <https://services.dhhs.vic.gov.au/concessions-and-benefits>.

Financial counselling

We can help refer you to a free accredited financial counsellor in your area.

Get in touch

The sooner we can talk to any of our customers having trouble paying their energy bills, the better. So, if you need help, give us a call on **13 24 61**.

For more information or to download a copy of the Victorian Hardship Policy, head to originenergy.com.au/paymentassistance

15. On 26 December 2018, Origin Energy sent a letter to Customer M which stated:

There's assistance available if you're having trouble paying

We've noticed that you haven't paid your overdue electricity bill, it was due on 30 October 2017.

Did you know that you're entitled to a range of payment assistance options designed to help you get back on top of paying your electricity bills? We can also provide home energy advice to help you reduce your ongoing costs, connect you with independent financial counselling or let you know about any government concessions and grants you may be eligible for.

Head to originenergy.com.au/paymentassistance for more information about these options - or if you'd prefer to talk them over, call us on the number below.

Any questions?

Give us a call on 13 24 61 - we'll be happy to help.

16. On 4 January 2019, Origin Energy issued a disconnection warning notice to Customer M for \$1,838.36. The disconnection warning notice contained the following in relation to the assistance available under Part 3 of the code:

Having trouble paying?

You're entitled to a range of payment assistance options designed to help you get back on top of paying your electricity bills and avoid disconnection. We can also provide home energy advice to help you reduce your ongoing costs, connect you with independent financial counselling or let you know about any government concessions and grants you may be eligible for.

You can find more information about these options at originenergy.com.au/paymentassistance or if you'd prefer to talk these over, by giving us a call.

Important information

- Annual Electricity Concession: The Victorian Government Annual Electricity Concession is available all year for customers holding an eligible concession or pension card.
- Payment assistance: To arrange a payment extension, special payment or instalment plan or obtain information about the Utility Relief Grant Scheme. call us on 13 24 61.

17. On 9 January, Origin Energy sent a letter to Customer M which stated:

Need help managing your bill?

We know unexpected events or expenses can sometimes make it difficult to pay bills, so we'd like to offer you a payment plan to help you stay on top of your energy bills, by making more regular payments towards your account.

Please give us a call if you'd like to talk about ways we may be able to support you with your electricity account.

Helping you stay on top

If you're finding it difficult to pay your bills, here are some things that might be able to help:

- EasiPay - a plan with smaller, regular payments instead of paying a lump sum for each bill
- Energy Plan discounts, and other offers to help reduce your bills
- Concessions, rebates or government grants you might be eligible for
- Energy efficiency advice - to help reduce your usage
- Power On, our special customer support program, and
- Connecting you with independent financial counselling.

You can find more information about your payment assistance options at originenergy.com.au/paymentassistance or by giving us a call.

We're here if you need us

If you have any questions, or you'd like to talk about how we can help you stay on track, feel free to get in touch on **1800 132 462**.

We're always happy to help.

18. On 31 January 2019, Origin Energy sent Customer M a letter offering her a new payment plan and inviting her to call Origin to set this up. The letter also stated:

We're here to help

If you're finding it hard to pay, there are things we can do to help - like letting you know about government concessions and grants, connecting you with independent financial counselling, giving you energy efficiency advice, looking at other payment arrangements or discussing our Power On program. You can find more information about your payment assistance options at originenergy.com.au/paymentassistance or by giving us a call.

19. On 4 February 2019 Origin Energy sent a letter to Customer M with content identical to the 26 December 2018 letter, except for the bill due date referred to was 29 January 2019.

20. On 14 February 2019 at 1:58pm, Origin Energy conducted a field visit to Customer M's premises, however she was not home at the time. Origin Energy left a letter under the door which stated:

You need to get in touch with us urgently about your overdue Electricity account

We've tried to contact you several times now about your overdue Electricity account, but we still haven't heard back from you.

Pay the \$1838.36 that's overdue to avoid possible disconnection

You'll find your payment options on your bill or at originenergy.com.au/paynow.

...

We're here to help

If you're having trouble paying, there are a number of options available to you. For example, if you're a residential customer, we can let you know about government concessions and grants you may be eligible for. We can also connect you with independent financial counselling or give you energy efficiency advice. We also offer a number of payment plans. To talk about these options, give us a call on 1300 138 384.

We hope to hear from you soon.

21. On 20 February 2019, Origin Energy raised a service order with the distributor for the premises to be disconnected.
22. On 27 February 2019 at 10:09am, the electricity supply to the premises was disconnected. The ombudsman contacted Origin Energy on Customer M's behalf the same day to request reconnection.
23. On 28 February 2019 at 7:35am, the electricity supply to the premises was reconnected.

Relevant obligations

24. The relevant obligations in this matter arise from the [Electricity Industry Act 2000](#), the [Energy Retail Code \(Version 11b\)](#), the [Energy Retail Code \(Version 12\)](#), [Origin Energy's electricity retail licence](#) and Origin Energy's contract with the customer.

Legislative requirement to pay compensation for wrongful disconnections

25. Section 40B(1) of the Act includes a statutory condition into electricity retail licences to make a payment of the prescribed amount to a relevant customer if the licensee fails to disconnect the customer in accordance with the terms and conditions of their contract.
26. Sections 40B(3) and (5) require payment of the prescribed amount as soon as practicable after the supply of electricity is reconnected. The prescribed amount is \$500 for each full day and a pro rata amount for each part of a day that the supply is disconnected.
27. Origin Energy holds an electricity retail licence and is therefore subject to the statutory condition contained in section 40B(1) of the Act.

Obligation to provide information about assistance under Part 3

28. The relevant obligations in this matter concern Parts 3 and 6 of the code which came into effect on 1 January 2019. Prior to that time, Part 3 of the code provided guidance about the content requirement of retailer hardship policies. The commission's assessment in this case is only concerned with compliance with Parts 3 and 6 of the code as they have stood since 1 January 2019.
29. Part 3 sets out the payment difficulties framework, and establishes an entitlement to minimum standards of assistance for customers anticipating or facing payment difficulties so that disconnection of a residential customer for not paying a bill is a measure of last resort. Part 6 provides a retailer's obligations for arranging de-energisation of small customer's premises.
30. Clause 111A(1) of the code provides:

A retailer may only arrange de-energisation of the premises of a residential customer for not paying a bill if:

(a) the retailer:

(i) has complied with all of the retailer's obligations to the customer under clause 89; and

- (ii) has issued a reminder notice to the customer that complies with clause 109; and
- (iii) has issued a disconnection warning notice to the customer that complies with clause 110; and
- (iv) has, after the issue of the disconnection warning notice, used its best endeavours to contact the customer in relation to the matter and, in so doing, provided clear and unambiguous information about the assistance available under Part 3; and
- (v) has at all times acted fairly and reasonably in relation to the customer.

31. Clause 111A(1)(a)(i) incorporates compliance with clause 89 as a precondition for arranging de-energisation. Clause 89 is contained in Part 3 of the code and contains a number of retailer obligations. The ombudsman has drawn particular attention to clause 89(1)(b) which provides that a retailer must:

at all times when it is relevant to do so, including on being contacted by a residential customer, give the customer in a timely manner clear and unambiguous information about the assistance available under this Part.

32. In addition to the obligation to comply with clause 89(1)(b) at all times where it is relevant, clause 111A(1) provides a foundation for three instances prior to arranging disconnection, at which retailers are required to provide customers with clear and unambiguous information (or advice) about their assistance entitlements. The code explicitly requires retailers to provide information about the assistance available under Part 3 at three specific instances as part of a disconnection process:

- a. Within 21 business days of the pay-by-date where a residential customer has not paid their bill by the pay-by-date and has arrears of more than \$55, under clause 80(2) of the code.
- b. When the retailer issues a disconnection warning notice under clause 110(2)(ba)(ii) of the code.
- c. As part of the obligation on the retailer to use its best endeavours to contact the customer in relation to the matter after issuing a disconnection warning notice, and, in so doing, provide clear and unambiguous information about the assistance available under Part 3 under clause 111A(1)(a)(iv) of the code.

33. The questions raised by the ombudsman are concerned with whether the information provided at each of these relevant points satisfied Origin Energy's obligation to provide clear and unambiguous information (or advice) about the assistance available under Part 3.

Licence conditions regarding the code

34. Clause 7.1 of Origin Energy's electricity retail licence requires it to ensure Origin Energy's contracts for the sale of electricity expressly deal with each matter which is the subject of a term or condition of the code.
35. Clause 7.3 of Origin Energy's electricity retail licence requires each term or condition of Origin Energy's contracts for the sale of electricity to be consistent with each term and condition of the code.
36. Clause 7.4 of Origin Energy's electricity retail licence requires it to comply with the terms and conditions of any contract for the sale of electricity with a relevant customer.
37. Clause 14.1 of Origin Energy's electricity retail licence requires it to comply with all applicable provisions of the code.
38. Clause 21 of Origin Energy's electricity retail licence requires it to comply with all applicable laws.

Contract term to disconnect in accordance with the code

39. Clause 16 of Origin Energy's contract with the customer specified that any disconnection was subject to 'regulatory requirements'. Clause 33 of the contract defined 'regulatory requirements' to include the Energy Retail Code for customers in Victoria.
40. In accordance with the terms of its contract with Customer M, Origin Energy was therefore required to comply with the relevant provisions of the code before disconnecting the customer and non-compliance with the code would constitute non-compliance with the terms and conditions of the contract which specify the circumstances in which the premises may be disconnected.

Submissions

The ombudsman's submissions

41. Through its letter of referral and accompanying memorandum, the ombudsman acknowledged that Origin Energy demonstrated compliance with clause 109 of the code, which concerns the obligations for reminder notices. The commission acknowledges that compliance with this clause is not in dispute.
42. As outlined in the issues section of this decision, the ombudsman has raised three questions for decision by the commission concerned with whether Origin Energy complied with their obligations to provide information about the customer's entitlement to assistance under Part 3 of the code.
43. In relation to the question of whether Origin Energy satisfied the requirement to contact the customer within 21 business days of the pay-by-date to provide clear and unambiguous information about the assistance available under Part 3,¹ the ombudsman submitted that Origin Energy had not substantiated that the payment assistance brochure was sent with the reminder notice. The ombudsman asserts that this may mean Origin Energy has failed to comply with clause 111A(1)(d) of the code, which requires retailers to have records sufficient to evidence compliance with the relevant clauses.
44. The ombudsman further submitted that the letters sent to Customer M on 31 January and 4 February 2019, and left under her door on 14 February 2019, did not provide clear information about how to access further assistance from government or community service providers, and therefore may not satisfy the obligation to provide clear and unambiguous advice about the assistance available under Part 3.

Origin Energy's submissions

45. The ombudsman's referral stated that Origin Energy believed that it has complied with the minimum standards of conduct required when disconnecting Customer M.
46. The commission invited Origin Energy to provide any further submissions and any information or documents it considered the commission should have regard to in making its decision.

¹ In accordance with clauses 111A(1)(a)(i), 89(1)(b) and 80(2).

Origin Energy provided written submission and documents for the commission's consideration in this matter.

47. Origin Energy provided the commission with information regarding its systems and processes for sending customer information by mail and including inserts. Based on the information provided, the commission is satisfied that the payment assistance brochure was sent with the reminder notice.
48. Origin Energy's submissions maintained that it met the requirement to provide clear and unambiguous information about the assistance available under Part 3 of the code at all relevant points.

Customer's submissions

49. The commission invited Customer M to provide submissions, however no response was received.
50. The referral provided by the ombudsman to the commission stated Customer M had informed them:

She did not receive any bills from Origin Energy and contacted it multiple times throughout 2018, to request copies of her bills².

Origin Energy advised it would investigate and call her back but this did not occur.

She was unsure of the arrears on her account.

Her electricity supply was disconnected on 27 February 2019.

² Origin Energy's contact notes do not indicate that it received contact from Customer M.

Decision

51. The commission has had regard to the submissions of the ombudsman, Origin Energy, and the customer's statement.
52. Origin Energy disconnected the electricity supply to Customer M's premises at 10:09am on 27 June 2019.
53. Origin Energy was required to comply with the code as a condition of its contract with the customer.
54. Origin Energy's reminder notice was issued on 20 December 2018, and was not subject to the provisions of the payment difficulties framework in Part 3 of the code which took effect on 1 January 2019. There was no obligation on Origin Energy to reissue a reminder notice when the amendments to the code came into effect. However, the commission considers that the information in Origin Energy's reminder notice and accompanying payment assistance brochure would have satisfied the requirements to provide clear and unambiguous information about the assistance available under Part 3, had these been in effect at the time the notice was issued.
55. However, Origin Energy's disconnection warning notice, issued on 4 January 2019, was subject to the payment difficulties framework and the amendments made to Part 6 of the code on 1 January 2019. The commission considers that Origin Energy failed to satisfy the requirement to provide clear and unambiguous advice about the assistance available under Part 3, in accordance with clause 110(2)(ba)(ii) of the code.
56. The commission considers that Origin Energy complied with its obligation to use its best endeavours to contact the customer in relation to this matter after issuing the disconnection warning notice and prior to arranging de-energisation. However, in so doing, Origin Energy again failed to provide clear and unambiguous information about the assistance available under Part 3, in accordance with clause 111A(1)(a)(iv).
57. Origin Energy therefore failed to comply with the terms and conditions of the contract with Customer M that specified the circumstances in which the electricity supply to the premises may be disconnected.
58. Accordingly, Origin Energy is required to make a payment of a prescribed amount to Customer M under the statutory licence condition in relation to the wrongful disconnection.
59. Customer M's electricity supply was disconnected for a period of 21 hours and 26 minutes. Origin Energy is therefore required to pay Customer M \$447.00.

Reasons

Clear and unambiguous information about the assistance available under Part 3

60. The commission was requested to assess whether the information provided in Origin Energy's reminder notice and accompanying payment assistance brochure, and disconnection warning notice, satisfied the requirement to provide clear and unambiguous information about the assistance available under Part 3, in accordance with clause 89(1)(b) and 110(2)(ba) of the code. As noted, these clauses came into effect on 1 January 2019.
61. The intent of the provisions requiring retailers to provide customers with 'clear and unambiguous' information about their entitlements under Part 3 is to ensure customers facing payment difficulty understand their rights and that disconnection is a measure of last resort. This understanding promotes the outcome of customers contacting their retailer and arranging the assistance which best suits their circumstances.
62. In assessing the 'clear and unambiguous' information requirement, the commission had regard to the following considerations:
- a. The information must be accurate and not misleading.
 - b. The information must be expressed in plain language, legible, and presented clearly and appropriately having regard to its nature.³
 - c. The information must not have any major omissions of the assistance available under Part 3: it should clearly identify the forms of standard assistance made available by the retailer in accordance with clause 76(2), as well as the tailored assistance measures in clause 79(1) of the code.
63. The reminder notice issued on 20 December 2018 predated these requirements. Accordingly, the commission was not required to assess the notice against clauses 89(1)(b) and 80(2) of the code. However, as stated in the decision above, the commission considers that the information in Origin Energy's reminder notice and accompanying payment assistance brochure would have satisfied the requirements under Part 3, had these been in effect at the time the notice was issued.

³ Clause 87(1) of the code.

64. The commission considers that the assistance information provided by Origin Energy in its disconnection warning notice, issued on 4 January 2019, was accurate and generally expressed in plain language. However, there were material omissions in the information regarding the forms of assistance available under Part 3 of the code. Notably, the disconnection warning notice did not clearly identify:
- a. that the customer was entitled to repay the arrears over a period of up to 2 years;
 - b. that they were entitled to specific advice about the likely cost of their future energy use;
 - c. that if the customer cannot pay the full cost of their on-going usage, they are entitled to a period of at least 6 months in which the customer's arrears is put on hold while they pay less than the full cost of their on-going usage cost while they work towards lowering that cost.⁴
65. Furthermore, the disconnection warning notice did not identify what forms of standard assistance Origin Energy had made available under clause 76(2) of the code.
66. Origin Energy therefore failed to satisfy the requirement to provide clear and unambiguous advice about the assistance available under Part 3, in accordance with clause 110(2)(ba)(ii) of the code.

Best endeavours to provide information

67. The commission also assessed whether after issuing the disconnection warning notice and prior to arranging de-energisation, Origin Energy complied with their obligation to use best endeavours to contact the customer in relation to this matter and, in so doing, provided clear and unambiguous information about the assistance available under Part 3.
68. As noted in the relevant facts above, after issuing the disconnection warning notice and prior to arranging disconnection by raising the service order on 20 February 2019, Origin Energy made the following attempts to contact the customer:
- a. sent two letters to Customer M by post which noted she had not paid her overdue bill and that she was entitled to a range of assistance options;
 - b. sent one letter to Customer M by post offering a new payment plan and inviting her to call to set it up;

⁴ These options are all included as part of the minimum tailored assistance under clause 79(1) of the code.

- c. conducted one field visit to Customer M's premises, leaving a letter requesting that Customer M contact them urgently, or pay the outstanding amount to avoid disconnection.

69. Retailers are expected to exercise judgement and use the information available and known to them about an individual customer when fulfilling their obligations to use best endeavours.⁵ If known, retailers should attempt to contact customers via their preferred contact method.⁶ Origin Energy were aware Customer M's preferred contact method was post and as such the majority of communication was attempted by post. Origin Energy also made a further attempt to contact Customer M in person by conducting a field visit to her premises.

70. Origin Energy used the information available to it to contact Customer M via her preferred contact method plus an alternative method. However, in doing so, Origin Energy failed to satisfactorily provide clear and unambiguous information about the assistance available under Part 3 of the code, for the same reasons assessed above in relation to the disconnection warning notice.

71. The commission considers that Origin Energy complied with its obligation to use best endeavours to contact the customer. However, in doing so, Origin Energy failed to comply with its obligation to provide clear and unambiguous information about the assistance available under Part 3 of the code.

⁵ Energy Compliance and Enforcement Policy: Guidance note – Payment difficulty and disconnection 2017 at 8.3.3.

⁶ Ibid at 8.3.5.

Enforcement

72. On the basis of the information available, the commission considers that Origin Energy was in breach of a condition of its electricity retail licence under section 40B(1) of the Act and was required to make a payment of the prescribed amount of \$447.00 to Customer M as soon as practicable after the reconnection of the electricity supply to Customer M's premises on 28 February 2019.
73. There is no information available to the commission to confirm that Origin Energy has made this payment. Origin Energy may therefore have breached a condition of its electricity retail licence by failing to make the payment to Customer M as soon as practicable after the reconnection.
74. Origin Energy should rectify the breach by making the payment and advise the commission in writing when the payment has been made.
75. If Origin Energy is unable to make payment, it should inform the commission in writing within five business days of receipt of this decision and reasons.
76. If the payment is not made within five business days of Origin Energy receiving this decision and reasons, the commission may take enforcement action against Origin Energy under Part 7 of the Essential Services Commission Act 2001 (Vic) in relation to a breach of section 40B(1) of the Act.

Other observations

Retailer discretion to provide assistance information in a reminder notice

77. A residential customer who has not paid their bill by the pay-by date and who has arrears of more than \$55 is entitled to be contacted by the retailer within 21 days of the pay-by-date, and given information about the assistance to which the customer is entitled.⁷ Reminder notices must also be sent within 21 days of the pay-by date.⁸
78. Providing the information about tailored assistance and the issuing of the reminder notice may occur sequentially in any order, or simultaneously.⁹ The sequencing of this information is at the discretion of retailers.¹⁰

Framing the assistance available as an entitlement

79. When a retailer provides information about the assistance available under Part 3, it will be misleading for retailers to frame such assistance as an option which the retailer has discretion to provide or for which the customer 'may be eligible'. The assistance set out in Part 3 of the code are minimum standards of assistance to which residential customers anticipating or facing payment difficulties are entitled.¹¹
80. Retailers must therefore frame Part 3 assistance as an 'entitlement' or 'right' which the customer has, and which the retailer 'will' or 'must' offer. The commission considers that language which implies Part 3 assistance is at the discretion of, or form of kindness provided by the retailer, is misleading and non-compliant with the requirements of Part 3 of the code.

⁷ Clause 80(2) of the code.

⁸ Clause 109(2) of the code.

⁹ Essential Services Commission, Payment difficulty framework: Final decision, 2017, p 48.

¹⁰ As noted in the Energy Compliance and Enforcement Policy: Guidance note – Payment difficulty and disconnection 2017 at 4.12.3.

¹¹ Clauses 71, 74 and 77 of the code.

Is a different level of information required at each stage?

81. There are three specific points considered in this decision at which a retailer must provide a customer with information about their assistance entitlements under Parts 3 and 6:¹²
- a. Within 21 business days of the pay-by-date where a residential customer has not paid their bill by the pay-by-date and has arrears of more than \$55, under clause 80(2) of the code.
 - b. When the retailer issues a disconnection warning notice, under clause 110(2)(ba)(ii) of the code.
 - c. As part of the obligation on the retailer to use its best endeavours to contact the customer in relation to the matter after issuing a disconnection warning notice, and, in so doing, provide clear and unambiguous information about the assistance available under Part 3 under clause 111A(1)(a)(iv) of the code.
82. In addition to these three specific points, there will likely be other points in time at which a retailer opts to contact a customer with information about payment assistance. There is a discretion for retailers to determine the level of detail regarding a customer's entitlements to be presented at additional points, provided that both the objective of Part 3 and the mandatory requirements of the code are met.

Distinguishing between electronic and hard copy communications

83. Also relevant to the level of detail required in providing the relevant information will be the customer's preferred communication method.
84. Where the customer has provided explicit informed consent to receiving communications electronically,¹³ a retailer may provide summary information about the assistance in the body of an email accompanied by a web link directly to more detailed information, provided the retailer complies with the relevant requirements of the code
85. Under clause 56(1)(aa) of the code, a retailer must publish on its website a summary of the rights, entitlements and obligations of small customers including the entitlements of customers

¹² Retailers must also give the customer information about the assistance available if the customer contacts the retailer: clause 89(1)(b).

¹³ In accordance with clause 87(2) of the code.

to assistance under Part 3. Under clause 56(3) of the code, the retailer must provide a copy of this information where the customer requests it.

86. A retailer must also ensure that information is readily available to customers about standard and tailored assistance and how to access that assistance.¹⁴ Information is considered 'readily available' if it is easily accessible on the retailer's website in printable form or is sent to any residential customer who requests to be sent that information.¹⁵
87. Retailer's may wish to provide customers with web links directly to the information which they are obliged to include on their website in accordance with the above provisions.

¹⁴ Clause 86(3)(b) of the code.

¹⁵ Clause 86(4) of the code.