

19 June 2018

By email: paymentdifficulties@esc.vic.gov.auRon Ben-David
Chairperson
Essential Services Commission

Dear Ron

Payment difficulty framework amendments to the Compliance and Performance Reporting Guideline draft decision

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the payment difficulty framework amendments to the Compliance and Performance Reporting Guideline draft decision. The implementation of the payment difficulty framework in 2019 will signal a significant step forward towards making disconnection a last resort and improving outcomes for people facing payment difficulty in Victoria. It is important that the Essential Services Commission (**ESC**) and the public have access to information to monitor successes and gaps when the framework is put into practice.

We generally support the amendments to the guideline proposed in the draft decision as they appropriately reflect the significant changes from 2019. However, there are several areas where further information from retailers should be reported to improve insights into the framework's operation. We also have a list of activities that we intend to actively observe under the new framework that are not included within the proposed guideline.

Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.

Comments on the proposed amendments

As stated above we generally support the proposed amendments. There are a small number of indicators that we consider could be strengthened to gather information that may be more useful to the ESC and the public.

Reconnections within a small amount of time

Indicator references D060 and D130 gather information about the number of disconnected customers reconnecting within 7 days. The draft decision¹ states that these indicators will be modified. We note that the draft decision also states that the ESC intends to include an indicator to gather the number of residential customers whose arrears are



¹ Essential Services Commission, 2018. Payment difficulty framework amendments to the Compliance & Performance Reporting Guideline, draft decision, Page 9

sold 10 days after disconnection.² It would be useful to change D060 and D130 to align to the 10-day time line or extend the indicators to report on both a 7 and 10-day time line where the 7-day time line is easy to compare to previous reporting.

As noted by the ESC in the draft decision³ information about customer journeys following disconnection is important for identifying the effectiveness of the framework that is supposed to make disconnection a last resort. Some stakeholders have previously sighted the number of reconnections within 7 days as justification for maintaining the practice of disconnection of an essential service for non-payment in order to force customer engagement. However, Consumer Action is of the view that quantitative data on the issue may be hiding the experiences of people in severe financial hardship resorting to predatory and fringe lending to finance reconnection. The National Debt Helpline has received calls from people in this very scenario on numerous occasions. We encourage the ESC to conduct more in-depth research with people who have been disconnected and to work with consumer organisations in the future to determine the additional support or reform that needs to take place to ensure no one is disconnected from an essential service for an inability to pay.

Tailored assistance provided to those with less than \$55 of arrears

The proposed amendment to indicator reference H060 will see the ESC gather information on the amount of energy debt customers have when commencing tailored assistance. Given that the accumulation of arrears triggers the minimum entitlement to tailored assistance, and this is defined as an outstanding debt of \$55 or more,⁴ it is understandable that the ESC has set the lowest category at an amount between \$55 and \$500. However, retailers will be able to intervene early and offer a customer this assistance which consists of measures beyond providing a payment plan for arrears. For this reason, it would be informative to include an additional lower category of energy debt of \$54 or less to capture all instances where tailored assistance is accessed and instances where retailers act to provide assistance before arrears are established.

Higher amounts of arrears

Consumer Action has assisted people in situations where they were at risk of having their financial hardship severely compounded by a creditor's petition for bankruptcy. Creditors are able to petition for bankruptcy where a judgment debt is greater than the threshold of \$5,000. Because of the risk involved at this level of arrears it is important that indicators recording different debt levels extend the highest classification to arrears greater than \$5,000.

Practical assistance

The draft decision states that the ESC intends to remove several indicators that report the level and types of assistance provided by retailers which aim to better manage or lower energy use for customers in hardship. These include indicators with the references H140, H150, H160 and H170 which record details about the provision and cost allocation for energy field audits and appliances provided in hardship programs. We acknowledge that the change to payment difficulty framework would mean these specific indicators would become obsolete. However, the draft decision only proposes a replacement indicator gathering the number of customers who implemented practical assistance measures.

Information about the types of practical assistance measures that are provided, and their impact, will demonstrate whether the framework has been successful in improving the assistance given to customers in payment difficulty. Additional new indicators should replace the above mentioned, which gather information about what measures the practical assistance consists of, the amount the retailer spent to implement the assistance and how many offers of practical assistance were made compared to the amount accepted by the customer and implemented. Gathering this information will reveal more about successes or gaps that arise from the new entitlements to practical assistance and aid the ESC and public to continue to refine policy in this area.

² Essential Services Commission, 2018. Payment difficulty framework amendments to the Compliance & Performance Reporting Guideline, draft decision, Page 32, this indicator specifies 10 days as this is the time in which a debt cannot be sold under the Energy Retail Code Version 12 Part 3, 92(2)(b)

³ *ibid*

⁴ Essential Services Commission, 2018. Payment difficulty framework amendments to the Compliance & Performance Reporting Guideline, draft decision, Page 18



Energy concession customers receiving assistance

The draft decision appears to amend the reporting guidelines so that the number of concession customers are only gathered in relation to reconnections (D130). The indicator with the reference H030 that previously gathered information about energy concession customers entering hardship programs is nominated for deletion. It should instead be modified to capture information about the number of energy concession customers accessing standard assistance or tailored assistance measures. This information will provide insights to the effectiveness and coverage of concession programs and may reveal an increase or decrease of those on incomes above the limits for concession eligibility needing assistance for payment difficulty when compared over reporting periods. Such information will aid development of targeted policy approaches to energy affordability issues.

Other activities that need oversight

As with many other stakeholders, Consumer Action is determined to make sure the new payment difficulty framework improves outcomes for Victorians. The following outlines areas of activities we plan to monitor once the framework is implemented. We encourage the ESC to consider extending the guidelines beyond the draft decision to capture more information on these activities or to monitor these activities through other regulatory work.

Customers denied a market retail offer from a retailer

We anticipate that some retailers may increasingly deny service to customers who they anticipate are likely to end up in payment difficulty as these customers will be entitled to new minimum entitlements that are more costly to provide. This may already be occurring as more callers to Consumer Action's phonelines have had to be given details on accessing an offer from the Financially Responsible Market Participant since the final decision on the Payment Difficulty Framework. More information about the restriction of offers may assist in policy development to achieve better outcomes in the future for groups who are excluded from the benefits of the energy retail market.

Offers to change to the best tariff under Tailored Assistance 2

Under the new framework, customers unable to afford their ongoing usage will be offered the tariff that is most likely to minimise their energy costs.⁵ We do not see any reference to this in the draft decision and consider it important that the public and regulator have information about the amount of people offered this measure, the amount of customers that accept the offer and the amount of money they save as a result. Such information would provide insight into how those in payment difficulty are faring in the competitive market and whether poor value offers are contributing to the cost of their arrears. It may also be useful to know how many turn down an offer to save as some retailers have previously informed us that they struggle to gain customers trust that tariff changes will be of benefit.

Inconsistent outcomes from those with or without assistance from community workers

We have often been informed that people in payment difficulty receive inconsistent responses from energy retailers before and after the assistance of a community worker such as a financial counsellor. The payment difficulty framework is designed to ensure all people in payment difficulty receive consistent access to their entitlements for minimum standards. Reporting around this issue would help reveal the barriers to people who self-advocate when accessing their entitlements. It is important to monitor and address these issues to ensure more people access early intervention while reducing demand on strained community services.

Experiences of those already in payment difficulty at the commencement of the payment difficulty framework

As raised in previous consultation on this topic with the ESC, we are concerned that those who have significant amounts of arrears as the framework commences in 2019 may be impacted in different ways to people facing a new payment difficulty. While the guideline supporting the payment difficulty framework instructs retailers to take such circumstances into account, we feel that these customers may sit awkwardly in a framework designed to encourage early intervention at a low level of arrears. The ESC must ensure that these customer's outcomes are actively monitored and reported to the public.



⁵ Essential Service Commission, Energy Retail Code Version 12, Part 3, Division 3, 79 (1)(e)(ii)

Enforcement action

Also, as raised in previous consultation and communications with the ESC, Consumer Action considers it pertinent that the ESC utilise the enforcement powers it has available to address instances of non-compliance with the new payment difficulty framework. A stronger enforcement approach will prevent Victorians in payment difficulty experiencing very poor outcomes in the future.

Please contact Jake Lilley on [REDACTED] if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE



Gerard Brody
Chief Executive Officer

