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

Dear Essential Services Commission,

Compliance and Performance Reporting Guideline review 2018

Powershop Australia Pty Ltd (**Powershop**) thanks the Essential Services Commission (**ESC**) for the opportunity to provide comments on the Payment Difficulty Framework (**PDF**) Compliance and Performance Reporting Guideline review 2018 (the **Guideline**) draft decision.

Draft decision: Proposed changes to performance indicators

Table 1: Response to draft decision - proposed modifications to existing performance indicators.

Ref#	Existing indicator	Modified indicator	Powershop comment
H110	Hardship program participants excluded for not complying with requirements	Residential customers no longer receiving tailored assistance due to unreasonable customer action	Feedback provided under the following 'Unreasonable customer action' heading. Powershop suggests: "Residential customers no longer receiving tailored assistance due to <i>not complying with requirements</i> ".
D050	Disconnection for non-payment	Disconnection for unreasonable customer action (residential)	Feedback provided under the following 'Unreasonable customer action' heading. Powershop suggests the following: "Disconnection for <i>non-payment</i> (residential)".
D051	Other disconnections	Other disconnections (new indicator definition)	The definition in the Guideline would benefit from further detail as to what constitutes 'other disconnections'. For example, disconnection for illegal usage or denying access to meter.
B180	Residential customers falling behind on payment	Notices delivered to residential customers related to payment difficulty	Regarding point (a) of the proposed amendment, Powershop requires further clarification around what 'Notifications of suspended assistance' are. This requirement has not been expressly stated in the Energy Retail Code and appears to be a new obligation included in the Guideline. Regarding point (b) of the proposed amendment, Powershop finds reporting the number of disconnection warning notices issued unnecessary given that this data does not provide insights on whether "the assistance provided was useful at preventing disconnection". Disconnection data demonstrates the effectiveness of the PDF.
D090	Disconnections on	Disconnections on	Clarification required: The definition in



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Ref#	Existing indicator	Modified indicator	Powershop comment
	more than one occasion	more than one occasion (new indicator definition)	the Guideline stipulates that data is to be reported separately, but only one line has been provided in the reporting template.
D100	Hardship program exists due to switching, transferring or leaving the retailer	Customers no longer receiving tailored assistance due to switching, transferring or leaving the retailer	No feedback other than feedback pertaining to ' Unreasonable customer action ' detailed below. Powershop suggests the following: "Reported separately for electricity and gas, the number of energy concession customers receiving tailored assistance that were disconnected for <i>non-payment</i> during each month in the reporting period".

Unreasonable customer action

While Powershop understands the change in language may align with the tone of the PDF, introducing ambiguous language such as 'unreasonable customer action' to industry facing guidelines is not suitable. The term 'unreasonable customer action' is not defined in the Energy Retail Code and is too vague to sufficiently categorise such important data.

Table 2: Response to draft decision - proposed additions to performance indicators

Proposed addition	Proposed definition	Powershop comment
Indicator: Disconnections of residential customers who did not receive assistance	Definition: Reported separately for electricity and gas, the number of customers whose supply was disconnected during each month within the reporting period who had, within the previous 6 months, not received assistance despite anticipating or facing payment difficulties. Note: To clarify, this includes customers who did not engage, despite anticipating or facing payment difficulties.	Clarification is required for the following line of the definition: "despite anticipating or facing payment difficulties". Powershop requires clarification as to what this wording is intending to capture. Powershop's view is that this wording introduces ambiguity and should be removed. The ESC will still capture the data it appears to be seeking (based on the name of the indicator) without this wording.
Indicator: Residential customers not receiving assistance, with aged arrears	Definition: The number of customers not receiving assistance that are in arrears as at the last calendar day of the reporting period: (a) Electricity i. over \$1000 but less than \$1500 where the arrears is more than 12 months old but less than 24 ii. over \$1000 but less than \$1500 where the arrears is more than 24 months old iii. over \$1500 but less than \$2500 where the arrears is more than 12 months old but less than 24 iv. over \$1500 but less than \$2500 where	Powershop suggests the indicator description be amended to remove the term 'aged' as this has a different meaning to each retailer depending on the relevant retailer's collection cycles.



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Proposed addition	Proposed definition	Powershop comment
	the arrears is more than 24 months old v. over \$2500 where the arrears is more than 12 months old but less than 24 vi. over \$2500 where the arrears is more than 24 months old. (b) Gas i. over \$1000 but less than \$1500 where the arrears is more than 12 months old but less than 24 ii. over \$1000 but less than \$1500 where the arrears is more than 24 months old iii. over \$1500 but less than \$2500 where the arrears is more than 12 months old but less than 24 iv. over \$1500 but less than \$2500 where the arrears is more than 24 months old v. over \$2500 where the arrears is more than 12 months old but less than 24 vi. over \$2500 where the arrears is more than 24 months old.	

Powershop supports the performance indicators proposed to be removed and agrees with the decision as it reduces the reporting burden.

Draft decision: Proposed changes to compliance reporting obligations

Table 3: Response to draft decision - proposed modifications to existing compliance reporting obligations

Ref#	Current obligation	Proposed amendment	Powershop comment
RB1210	Obligation: Clause 71B(2) – Minimum requirements for customer hardship policy Description: Details the minimum requirements for a customer’s hardship policy of a retailer.	Obligation: Substitute 'Clause 71B(2) – Minimum requirements for customer hardship policy' with 'Clause 85 – Content of financial hardship policies'. Description: Substitute 'Details the minimum requirements for a customer’s hardship policy of a retailer ' with 'Details the minimum requirements for a financial hardship policy of a retailer '.	Powershop does not see value in having this as a reportable breach given that hardship policies must already be approved by the ESC. If the ESC sees value in including this as a reportable breach Powershop considers this should remain a type 2 obligation.

Table 4: Response to draft decision - proposed additions to compliance reporting obligations

Current obligation	Proposed amendment	Powershop comment
Clause 76 – Standard assistance	Retailers must take steps to provide the forms of standard assistance to their retail customers.	While Powershop agrees standard assistance provides tools which may help customers avoid falling into arrears, Powershop’s view is that this clause is an information provision. Powershop considers a breach of this obligation as not critical or serious however understands that it is important that customers are aware of their rights under standard assistance.



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Current obligation	Proposed amendment	Powershop comment
		Powershop believes this obligation should not be a reportable obligation at all. If the ESC finds it appropriate that this obligation is reportable – it is better aligned with clause 86 (provision of information to customers) and should be a type 3 obligation – not a type 1 obligation.
Clause 79 – Minimum assistance	Residential customers who are in arrears are entitled to certain types of tailored assistance to make it easier to pay for their on-going energy use, repay their arrears and lower their energy costs.	<p>Powershop agrees with the ESC in that tailored assistance is a key element of the PDF, but considers a breach of this obligation as not critical but more serious than clause 76 because it is important that customers are aware of their rights under tailored assistance.</p> <p>While this clause is an information provision, Powershop agrees that this obligation is more serious and should be a type 2 rather than 3 obligation (as suggested above). However, making this a type 1 obligation is not appropriate.</p>
Clause 80 – Information about assistance available	Retailers must provide customers who have not paid a bill on time and who contact the retailer, with information regarding the tailored assistance they are entitled to. Retailers must also contact customers who do not pay a bill on time and who have more than \$55 in arrears and provide them information about the tailored assistance available to them.	Powershop's view is that this clause is an information provision. Powershop considers a breach of this obligation as not critical or serious however understands that it is important that customers are aware of the assistance that is available,. Powershop considers this a type 3 obligation, not type 1.
Clause 81 – Payment arrangements	Outlines the types of payment arrangements that a retailer must accept and may accept if a residential customer whose payments are in arrears.	Given that clause 81 encourages customers to actively participate and take control of their arrears, Powershop agrees clause 81 should be a type 1 obligation.
Clause 83 – Continued provision of assistance	Provides that a retailer must continue to provide tailored assistance to a residential customer unless the customer has refused to take reasonable action towards paying for their on-going energy use or arrears or the customer is no longer facing payment difficulties.	Powershop's view is that this reporting requirement could lead to duplication. For example, if a retailer is providing a customer assistance under clause 79(1)(a) and the retailer were to suddenly cease that assistance, the retailer would breach 79(1)(a) and 83(b) simultaneously. Powershop's view is that this should not be a reportable obligation.



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Current obligation	Proposed amendment	Powershop comment
Clause 92 – Debt	Outlines the restrictions on retailers to recover or sell a residential customer's debt.	<p>Powershop's view that a catch-all type 1 obligation for clause 92 is not critical to customer outcomes and should be reviewed.</p> <p>Powershop's view is that clause 92(2)(a) has adverse impacts on customers and could be considered a type 1 breach. Clauses 92(1), (2)(b), (3) and (4) should not be reportable obligations.</p>
Clause 89 – Retailer obligations	Provides various obligations that retailers must comply with when dealing with customers or government including acting fairly, communicating clearly and unambiguously, providing assistance in a timely manner and comply with any guideline published by the Commission.	Powershop's view is that vague miscellaneous requirements should not be reportable breaches and would be better dealt with in a collaborative manner rather than a punitive compliance manner.
Clause 82 – Non-payment of amounts towards on-going energy use	Provides that a retailer must contact and work with a residential customer whose payment of arrears is on hold if the customer fails to make payments towards their ongoing energy use or if they fail to implement practical assistance.	Given that arrangements between customers and retailers can vary depending on customer needs, imposing a type 2 obligation has the potential to limit positive customer outcomes in favor of administrative compliance.
Clause 87 – Written communications	Provides that communications to customers must be expressed in plain language, legible, presented clearly and appropriately and provided free of charge. In addition, this provision sets out the requirement to send written material by post unless the customer has given explicit informed consent to another method.	Given that arrangements between customers and retailers can vary depending on customer needs, imposing a type 2 obligation has the potential to limit positive customer outcomes in favor of administrative compliance.
Clause 94 – Payment by Centrepay	Requires retailers to allow residential customers on standard retail contracts to pay with Centrepay. This clause also requires retailers to either transfer, without cost or penalty, a customer who is on a market retail contract to an alternative market retail contract which allows for payment by Centrepay or allow the market retail contract residential	Powershop considers a breach of this obligation as not critical or serious and believes customers would be better served switching to a retailer who has payment options that better suit their needs. Powershop does not see this as a reportable obligation.



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Current obligation	Proposed amendment	Powershop comment
	customer to pay by Centrepay.	

Powershop supports the proposed compliance reporting obligations to be removed and agrees with the decision as it limits the reporting burden on the industry.

Powershop questions the proposal of making a majority of the new requirements a type 1 obligation due to the inconsistency with existing obligations. For example, both clause 80 and clause 86 are information provision requirements yet clause 80 is a proposed type 1 obligation whereas clause 86 is more appropriately a type 3 obligation.

Powershop wishes to flag the unintended consequences of proposing a type 1 obligation for some of the clauses. For example, imposing a type 1 obligation for clause 76 may lead to retailers mitigating the risk of a breach by over capturing customers who might not require assistance. Given that the target market for clause 76 is already extremely broad (customers who are not in arrears - therefore any customer) there is a risk that the increased workload (due to having to monitor so many accounts) on retailer payment assistance teams could lead to them focusing on customers who may not need assistance at the expense of those customers who do need assistance.

As mentioned in a Consumer Policy Research Centre report¹, there has been a shift away from "consumer outcomes in competitive markets towards compliance". Powershop's view is that the ESC should be looking to reduce industry (retailers and the ESC) compliance and administrative tasks so that the industry can work toward delivering better customer outcomes.

Furthermore, Powershop questions whether such a compliance heavy framework is the ESC's intention. Powershop's understanding is that the intention of the PDF was to set the minimum standards retailers must adhere to, to ensure all customers are being offered a consistent form of assistance. Powershop does not believe the ESC's intent was to introduce more administrative compliance tasks, further removing resources away from customer focused.

Powershop's view is that the ESC has the opportunity to make amendments to the current reporting regime and bring requirements more in-line with ministerial expectations². In particular to:

- Make improvements to reduce the cost impact on regulated businesses (small businesses in particular). For the reasons detailed throughout this submission the proposed changes to the Guideline would significantly increase the costs of compliance for regulated businesses.
- Work with other regulators to promote regulatory coherence and capability development. The process heavy PDF and complementary reporting Guideline introduces further incoherence between the AER and ESC expectations at the customers expense. Where the AER has taken a customer focused principles based approach that allows retailers to tailor assistance to the customer needs, the ESC has adopted a rigid and compliance heavy framework.
- Improve the efficiency of business service delivery by streamlining review processes, data requirements and processes, and improving e-capability. For the reasons detailed throughout this submission, the proposed changes to the Guideline adds further strain to business service delivery and imposes an unnecessary reporting burden on retailer's payment assistance teams – making these teams more administration teams as opposed to customer centric

¹ Five preconditions of effective consumer engagement – a conceptual framework, Product information, consumer choice and market engagement by Lauren Solomon & Ben Martin-Hobbs

² <https://www.esc.vic.gov.au/about-us/how-we-regulate/ministerial-statement-expectations>



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assistance teams.

While the Guideline remains under review, Powershop suggests changing the following clauses from reportable obligations to not reportable. This will ensure that reportable obligations are tied to customer outcomes as opposed to administrative compliance tasks.

Table 5: Existing compliance reporting obligations to be removed to improve focus customer outcomes over compliance.

Type	Obligation	Reason for removal
Type 1	Retail Code: Clause 110(2)(f) – Energy Ombudsman Victoria	Not critical to customer experience.
	Retail Code: Clause 57(1) – Customer transfers	Intent of reportable obligation is met with clause 16(4) – Pre-contractual duty of retailers – explicit informed consent.
	Retail Code: Clause 3D(1) and (2) – Record of explicit informed consent	Customer protections are imposed given that a contract is void should a retailer not have record of explicit informed consent. Therefore this is administrative.
	Retail Code: Clause 65(2) and (5) – No contact lists	Administrative and not critical to customer experience.
	Retail Code: Clause 68 – Record keeping	Administrative and not critical to customer experience.
	Retail Code: Clause 24(1) – Frequency of bills	Does not enable customer choice as to when they would like to receive a bill.
	Marketing Code: Clause 3.2, 3.5 and 3.6 Information & Conduct	Duplication with Energy Retail Code requirements.
Type 2	Retail Code: Clause 25A – Greenhouse Gas Disclosure on electricity customers' bills	As this is an optional bill inclusion for retailers it should not be reportable.
	Retail Code: Clauses 15D to 15F - Other requirements	Not critical to customer experience.
	Retail Code: Clause 85 – Content of financial hardship policies	Policies must be reviewed by the ESC so this is unnecessary.
	Retail Code: Clause 89 – Retailer obligations	Not critical to customer experience.
	Marketing Code: Clause 2.1 – 2.3 – Contact with consumers.	Not critical to customer experience.
Type 3	Retail Code: Clause 63(1) – Form of disclosure	Administrative and not critical to customer experience.
	Retail Code: Clause 20A - Bulk hot water charging	Administrative and not critical to customer experience.
	Retail Code: Clauses 25(2) and 27(1) - Apportionment	Administrative and not critical to customer experience.
	Retail Code: Clause 56 – Provision of information to customers	Administrative and not critical to customer experience.
	Marketing Code: Clause 1 – Marketing representatives	Administrative and not critical to customer experience.



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As a general observation, Powershop suggests that retail license breaches be dealt with outside of the reporting framework.

If you have any queries or would like to discuss any aspect of this submission please do not hesitate to contact me.

Yours sincerely,



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Powershop Australia Pty Ltd

