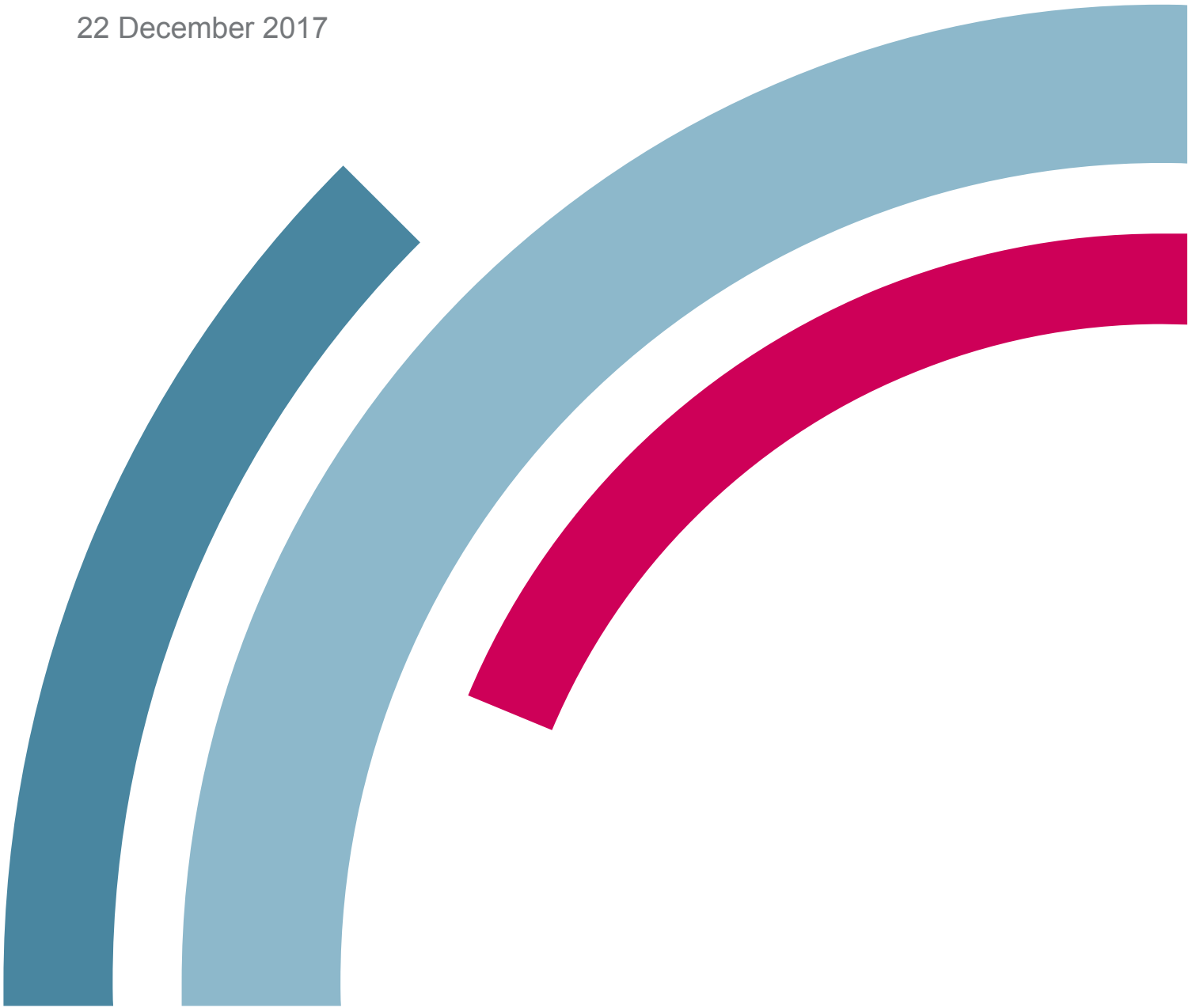




Energy Compliance and Enforcement Policy: Guidance note – Payment difficulty and disconnection

Version 1.0

22 December 2017



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This guidance note is designed to help retailers and other stakeholders with the implementation of the new payment difficulty framework which commences on 1 January 2019.

Energy retailers must comply with the obligations in the Energy Retail Code (the Code). This guidance note does not create new retailer obligations.

This document is guidance only and provides:

- our explanation of Parts 3 and 6 of the Code and their interaction with associated provisions of the Code
- our expectations of energy retailers' compliance in relation to the application of the principles, objectives and requirements of Part 3 of the Code in the delivery of assistance to residential customers
- non-exhaustive, illustrative examples of compliant and non-compliant conduct (where relevant) to help inform retailer judgement
- examples of better practice (where relevant) demonstrating how retailers may provide customers with assistance greater than that required by the Code.

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1. Introduction

The most effective outcomes for customers facing payment difficulty are achieved when communication, collaboration and cooperation exist between customers and retailers. The concept of *shared responsibility* is the hallmark of good process and outcomes in resolving payment difficulty. When retailers respond effectively to customers exercising their entitlements and customers relate to the retailers in good faith, there are strong reasons to believe that good outcomes will be achieved.

Part 3 of the Code establishes customer entitlements to different forms of assistance from their retailers. Retailers are obliged to comply with these entitlements. The Code does not, because it cannot, impose similarly enforceable obligation on energy customers. However, we emphasise our expectation that customers work with their retailer to avoid, and manage where necessary, unpaid bills. Part 3 anticipates communication, collaboration and cooperation between customers and retailers. It is not intended that the entitlements established by Part 3 be open-ended or unlimited.

While customers are entitled to assistance under Part 3 (most notably in tailored assistance) and retailers are obliged to make that assistance available to customers, these entitlements are not independent of customer reasonable and unreasonable actions (clause 83). Where a customer has not taken reasonable action to repay their arrears or pay for their ongoing energy use and a retailer has complied with its requirements in Part 3 and Part 6, the retailer may suspend assistance and proceed with the disconnection process (clause 111A).

We do not expect retailers to be required to repeatedly pursue customers who have not paid their bills or met payment arrangements into which they have entered. Likewise, we do not expect retailers to provide revised or extended payment arrangements when customers are not taking reasonable action in repaying their arrears or paying for their ongoing energy use. We expect customers to demonstrate a commitment to resolving their payment difficulty when a retailer seeks to comply with its obligations under Part 3, particularly those obligations related to revised payments arrangements or extended assistance.

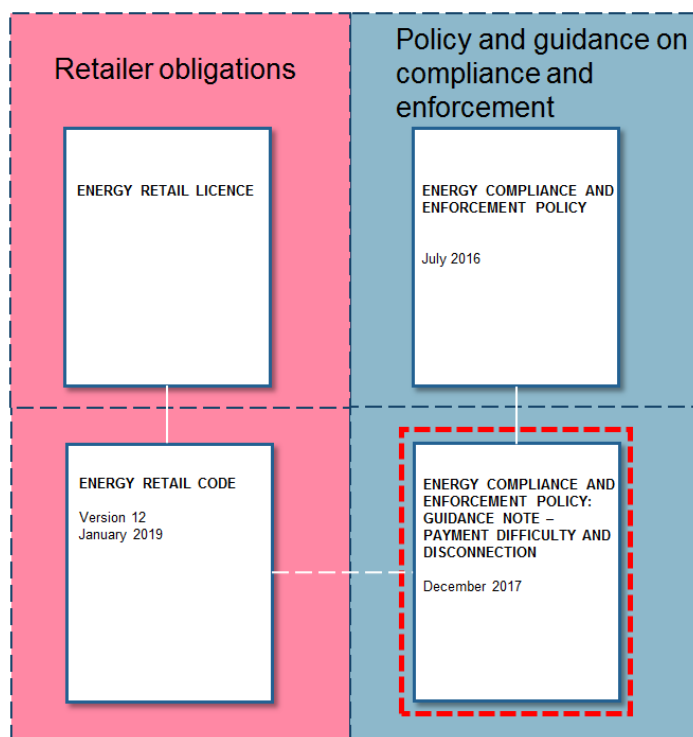
Customers should be expected (and it should be made clear to them) to contact their retailer when facing payment difficulty, particularly when a payment arrangement has been entered into and the customer requires a revised payment arrangement. We think it would be unreasonable to expect retailers to have to repeatedly pursue customers who have not paid their bills or met their payment arrangements, as required by clauses 81(6) and 82(2). While we think retailers should give customers the benefit of the doubt if they have failed to make contact, in most cases we would not expect retailers to repeatedly pursue customers when customers are not taking reasonable action.

We expect retailers to be sensitive to customers' circumstances where those circumstances are known to the retailer, and consider those circumstances when exercising judgement or discretion, as required by clause 89(a). We also expect sensitivity where there has been sufficient evidence in the comments made by a customer, from a customer's payment history or from the customer's previous engagement with their retailer, to suggest that the customer may struggle to engage proactively with their retailer. In such cases, retailers may need to take the initiative repeatedly in engaging customers in the discussions required to identify appropriate payment arrangements. We would not expect there to be many customers in this latter category but when they arise, we would expect retailers to consider alternative mechanisms to engage with customers. For example, a retailer may consider sending a written proposal for a payment arrangement under Part 3 which the customer could accept by making a payment in accordance with the proposed payment schedule.

1.1. Purpose and status of this document

- 1.1.1. The purpose of this guidance note is to outline for energy retail licensees (retailers), holders of energy licence exemptions and Victorian energy customers, our approach to promoting and enforcing compliance with Part 3 of the *Energy Retail Code* (the Code), and associated provisions that relate to the protection of customers anticipating or facing payment difficulty. It also outlines what the commission considers to be better practices that retailers may adopt.
- 1.1.2. This guidance note is published under section 3.2(c) of the commission's *Energy Compliance and Enforcement Policy* (Policy), and constitutes a guidance note for the purposes of clause 73(b)(iv) of the Code. It does not create any additional obligations on retailers.
- 1.1.3. Where we consider that retailers have in good faith relied on this guidance note, by acting consistently with 'our expectations of compliance' and the 'examples of compliant conduct' included in this note, we will not take enforcement action.
- 1.1.4. Examples of 'better practice' illustrate ways that a retailer may decide to provide a customer with assistance above the minimum requirements of the Code.
- 1.1.5. The examples in this guidance note are illustrative only and are not exhaustive.

Figure 1.1 Architecture of the new payment difficulty framework



Source: Essential Services Commission

1.2. About this document

- 1.2.1. This document provides guidance on the minimum standards of conduct that the commission considers are required to comply with provisions of the Code contained in Part 3 and Part 6.
- 1.2.2. Because every customer's circumstances are unique, the guidance note cannot be definitive of all circumstances that may arise and cannot be a substitute for a retailer's judgment applied in a particular set of circumstances.
- 1.2.3. This guidance note is not intended to be prescriptive. Retailers may decide that there are different ways to achieve compliance with the Code. Where retailers choose to take a different approach, or where they confront situations not addressed in this guidance note, compliance will be addressed in accordance with the commission's approach to the interpretation of Part 3 of the Code as set out in clause 73.
- 1.2.4. The commission will consider all matters on the basis of their individual circumstances and the guidance note is not intended to anticipate all possible issues that might come before the commission.

1.3. Structure of this document

1.3.1. This guidance note is intended to be read as a whole, in conjunction with the Code¹.

1.3.2. This document contains the following chapters:

- **Chapter 2** provides guidance on Division 1 and the operation of Part 3 of the Code.
- **Chapter 3** provides guidance on Division 2 and the minimum customer entitlements to standard assistance for customers not yet in arrears. It also describes a customer's entitlement to further assistance under Division 3 when the customer has not been able to maintain a standard assistance payment arrangement.
- **Chapter 4** provides guidance on Division 3 and the minimum entitlements under tailored assistance for customers with arrears who are facing payment difficulty, and the continuation of assistance. We also explain how certain clauses in Division 6 regarding customer circumstances (clause 89(a)), fair and reasonable treatment (clauses 89(a) and 111A(a)(v)), timely assistance (clause 89(b)), and best endeavours for providing tailored assistance (clause 89(c)) apply to, and interact with, other clauses in the Code. Additionally, there is an example of how a customer-retailer conversation may take place before and after a customer is in arrears. Lastly, we outline our expectations for compliance and better practice examples for customers who alternate between being able, and not being able, to pay for their ongoing energy usage costs.
- **Chapters 5 to 7** set out the commission's expectation in relation to retailer hardship policies and programs (Division 4), customer communications (Division 5) and a number of miscellaneous matters (Division 6).
- **Chapter 8** discusses the disconnection safeguards including reminder notices, disconnection warning notices, restrictions on disconnections, and disconnecting residential customers for not paying a bill only as a last resort, and best endeavours obligations immediately prior to disconnection.

¹ The Code is available on the commission's website: <https://www.esc.vic.gov.au/energy/regulation-legislation/codes-guidelines/codes/>

- **Chapter 9** provides guidance regarding the commission's expectations about:
 - a) record keeping, including best endeavours under clause 89(c) and 111A(iv)
 - b) customer entitlements to assistance following disconnection or suspension of assistance.
- **Chapter 10** outlines our approach to compliance and enforcement of the Code, as described in our *Energy Compliance and Enforcement Policy*.

1.4. Commencement of this document

- 1.4.1. This guidance note commences on 1 January 2019 and operates in perpetuity until it is revised.

1.5. Document history

- 1.5.1. This guidance note was issued on 22 December 2017 and is based on legislation and regulations as at the date of issue.

1.6. Disclaimer

- 1.6.1. The commission has issued this guidance note to provide information to licensees to assist them in complying with the Code. The guidance note contains general information and is not a substitute for legal or other advice which may be required by the licensee. The guidance note does not and is not intended to vary, derogate from or otherwise limit the commission's statutory powers, functions and discretion except as outlined in section 1.1. The commission may depart from the statements contained in the guidance note where the particular circumstances are different from those described.

2. Division 1 – Operation of Part 3 of the Code

2.1. Key points

This chapter outlines the:

- purpose of Part 3 of the Code
- operation and interpretation of Part 3 of the Code
- application of Part 3 of the Code.

2.2. The overarching objective of Part 3 of the Code

2.2.1. Part 3 of the Code sets out two types of assistance for residential customers anticipating or facing payment difficulty – standard assistance and tailored assistance. The assistance is based on the ways in which we expect customers and retailers to interact. Part 3 provides retailers with flexibility to work with their customers to identify the most appropriate assistance, provided they receive their minimum entitlements.

2.2.2. Importantly, Part 3 provides residential customers anticipating or facing payment difficulty with entitlements to assistance. Customers are entitled to receive the minimum standard of assistance from their retailer. Retailers cannot choose whether or not they provide assistance to customers, but they have some flexibility in how they provide that assistance.

2.3. Operation of Part 3 – Division 1

2.3.1. Division 1 sets out the overall purpose of Part 3, who it applies to, and how we will interpret its provisions when considering whether a retailer has complied with the Code in a particular case.

2.4. Purpose of Part 3 – clause 71

Outcomes for the customer

2.4.1. The causes of payment difficulty are unique to individual customers. Customers facing payment difficulty need to know what assistance is available, and have that assistance tailored to their circumstances. Customers anticipating or facing payment difficulty and receiving assistance under Part 3 should therefore expect to:

- a) fall into payment difficulty (arrears) less frequently

- b) receive timely assistance from their retailer that responds flexibly to their individual circumstances
- c) be provided with information about the cost of their energy use, and practical assistance to better manage their energy costs
- d) be able to arrange to pay for their energy use in a way that helps them manage their finances
- e) be able to propose how they will repay any arrears in a timely and sustainable way
- f) be provided with information and advice about how to access government and non-government support services
- g) be treated with respect by their energy retailer
- h) only be disconnected for non-payment of a bill as a last resort.

Division 1 Operation of this Part

71 Purpose

The purpose of this Part is to set out the minimum standards of assistance to which *residential customers* anticipating or facing payment difficulties are entitled, so that disconnection of a *residential customer* for not paying a bill is a measure of last resort.

72 Application of this Part

This Part applies to *customers* who are *residential customers*.

73 Interpretation of this Part

The approach that the *Commission* will take to the interpretation of this Part is as follows.

- (a) clear words will be given their natural and ordinary meaning; and
- (b) if words appear to be capable of having more than one meaning, the *Commission* will have regard to the following, in the following order, in seeking to discover the intended meaning of those words:
 - (i) firstly (for Divisions 2 and 3), the objective of the Division; and
 - (ii) secondly, the purpose of this Part; and
 - (iii) thirdly, any guidelines published by the *Commission* under section 13 of the *Essential Services Commission Act 2001* (Vic); and
 - (iv) fourthly, any relevant guidance notes published by the *Commission* under its Energy Compliance and Enforcement Policy; and
 - (v) fifthly, any written information issued by the *Commission* regarding the assistance that *residential customers* might reasonably expect to be provided by their *retailer* under this Part.

2.5. Application of Part 3 – clause 72

- 2.5.1. The industry Acts require that financial hardship policies apply to domestic customers.² A domestic customer is defined as ‘a person supplied with electricity for use for domestic purposes.’³ The Code refers to a residential customer as ‘a customer who purchases energy *principally* for personal, household or domestic use’.⁴
- 2.5.2. Although some energy retailers may apply their financial hardship policies to small business customers facing payment difficulty, Part 3 of the Code only applies to residential customers. It remains up to individual retailers to decide what assistance they may provide to small business customers.
- 2.5.3. Part 3 of the Code applies where a building is both a small business premises and a residential home, and is jointly supplied with energy (gas and/or electricity supplied through the same NMI or MIRN) under a standard or market retail contract, where the retailer is aware that the customer themselves also lives at the property.
- 2.5.4. Retailers are not required to provide assistance under Part 3, as described in 2.5.3 above, if the account is held in a business name.

2.6. Interpretation of this Part – clause 73

Our explanation of the Code

- 2.6.1. Because Part 3 is focused on outcomes, and customer circumstances are unique, situations will arise where the Code does not prescribe exactly what a retailer is required to do. In these situations, retailers are expected to use their judgement. Clause 73(b) aims to guide that judgement in particular cases.
- 2.6.2. Where words in the Code may appear to be capable of having more than one meaning when applied in a particular case, **we will assess compliance based on a purposive approach**. This means that we will adopt a meaning consistent with:
- a) first, the objective of the Division (clause 73(b)(i))
 - b) second, the purpose of the Part (clause 73(b)(ii))
 - c) third, taking into account any Guideline we publish (clause 73(b)(iii))

² Section 43(1) *Electricity Industry Act 2000* (Vic) and section 48G(1) *Gas Industry Act 2001* (Vic).

³ Section 41 *Electricity Industry Act 2000* (Vic) and section 48E *Gas Industry Act 2001* (Vic).

⁴ Clause 3 *Energy Retail Code*.

- d) fourth, any guidance notes we publish (clause 73(b)(iv))
- e) fifth, viewed from the perspective of a customer in the circumstances, as set out in any written information on the reasonable expectations of a customer (clause 73(b)(v)).

2.6.3. As outlined in our *Energy Compliance and Enforcement Policy*, the purpose of guidance notes is to provide further details on the standards of conduct we expect in particular situations.⁵ Over time, as circumstances arise, standards may also be clarified through our findings and decisions in disconnection cases referred from the Energy and Water Ombudsman (Victoria).

Our expectations of compliance

2.6.4. Part 3 of the Code should be viewed from the perspective of a customer facing payment difficulty. This will be how we will decide whether a retailer has provided a customer with the advice and practical assistance they are entitled to receive. For example, advice to a customer is expected to be provided at the time that the customer needs it, rather than at a time that it is convenient or cheapest for the retailer to provide, as described in clause 89(b).

2.6.5. In accordance with clause 73(b)(v), any written information that has been issued through the commission's normal processes will be used as a guide to what we consider the reasonable expectations of a customer anticipating or facing payment difficulty to be when interpreting the Code.

⁵ Essential Services Commission 2016, *Energy Compliance and Enforcement Policy*, July, p.4.

3. Division 2 – Standard assistance

Overview

This chapter provides an overview of our expectations about standard assistance for customers who are not yet in arrears. It also outlines examples of compliance in providing this form of assistance to customers and provides examples of what a retailer is expected to do should a customer not be able to maintain a standard assistance payment arrangement.

3.1. Objective and application of Division 2 – clauses 74 and 75

Division 2 Standard assistance

74 Objective

The objective of this Division is to give *residential customers* an entitlement to minimum standard forms of assistance, to help them avoid getting into arrears with their *retailer*.

75 Application of this Division

This Division applies to all *residential customers*.

Our explanation of the Code

- 3.1.1. Standard assistance is available to all residential customers who are not yet in arrears of \$55 or more (including GST).
- 3.1.2. Providing all residential customers with an entitlement to flexible payment options, aims to encourage customers to take early action to manage their payments and avoid getting into arrears, therefore reducing the risk of disconnection.

Better practice

- 3.1.3. Retailers have discretion to make standard assistance available to customers other than residential customers.
- 3.1.4. Retailers may provide more than three of the specified standard assistance options or other assistance that may help a customer avoid arrears and disconnection of supply.

3.2. Standard assistance – clause 76

76 Standard assistance

- (1) A *retailer* must take steps to provide to its *residential customers* the forms of standard assistance, from those listed in subclause (2), it elects to make available to help them avoid getting into arrears.
- (2) Standard assistance made available must include at least 3 of the following:
 - (a) making payments of an equal amount over a specified period;
 - (b) options for making payments at different intervals;
 - (c) extending by a specified period the *pay-by date* for a bill for at least one billing cycle in any 12 month period;
 - (d) paying for *energy* use in advance.

Our explanation of the Code

- 3.2.1. A customer's entitlement to standard assistance does not extend to individual payment arrangements that suit each customer's unique needs.
- 3.2.2. Division 2 requires retailers to design and provide, at a minimum, three standard forms of assistance. Retailers are able to select the options that can be delivered most efficiently.
- 3.2.3. Standard assistance payment arrangements are not billing options. We anticipate retailers will continue to bill customers on their existing billing cycle, but this will be a matter for each retailer to determine.

Our expectation of compliance

- 3.2.4. A customer is entitled to all forms of standard assistance that a retailer elects to provide, to the extent that these forms of assistance are compatible and are able to be combined into a single payment arrangement for the customer. For example, assistance that allows a customer to make equal payment over a specified period (clause 76(2)(a)) and assistance that provides the customer with a shorter payment interval (clause 76(2)(b)) should be fully compatible in most instances. However, extending the pay-by-date for a bill (clause 76(2)(c)) and paying for energy use in advance (clause 76(2)(d)), may not be compatible.

3.3. Steps to provide standard assistance – clause 76(1)

Our expectations of compliance

- 3.3.1. Retailers must make information about standard assistance readily available to all residential customers. Retailers are expected to be proactive in communicating information about the assistance available under Division 2 to all residential customers.
- 3.3.2. Information about how to access assistance must be provided clearly and appropriately having regard to its nature, in plain language and legibly, as required by clauses 76(1), 86 and 87 of the Code.

Example of compliant conduct

- 3.3.3. Relevant communication methods may include contract terms and conditions (welcome packs), bills, bill inserts and notices. Information about the assistance and how to access it should also be available from easily accessible locations on retailer websites and via retailer contact centres when customers ask for payment assistance before the pay-by date of their bill has passed.

Better practice

- 3.3.4. We consider it better practice for a retailer to have information about payment assistance, including the forms of standard assistance, within one or two clicks of the retailer's website homepage. For example, Yarra Valley Water's website homepage includes a link to 'financial help' in a prominent location that can be readily accessed by customers seeking assistance with paying their bills.⁶
- 3.3.5. A retailer may also choose to provide residential customers with telephone and website self-service options, such as bill payment extensions that a customer can activate without the need to speak with a retailer's representative. Some Victorian water corporations offer this service to customers.

3.4. Forms of standard assistance – clause 76(2)

Equal payments – clause 76(2)(a)

- 3.4.1. This option allows a customer to make equal payments at a standard interval determined by the retailer. For example, a retailer may provide a customer the option to pay \$50 per fortnight to cover the cost of ongoing energy usage. Another example is

⁶ Information accessed on Yarra Valley Water's website on 4 December 2017: <https://www.yvw.com.au/>

where a retailer provides a customer with monthly payments of \$150 over a three-month period to pay a quarterly electricity bill of \$450.

Standard Retail Contract customers

- 3.4.2. If a retailer elects to provide the option of equal payments for a period of 12 months or longer, for customers on standard retail contracts, the retailer must provide the assistance consistent with the minimum requirements of clause 23 of the Code (bill smoothing provision). However, this does not apply to equal payment arrangements under clause 76(2)(a) for payment arrangement periods less than 12 months.
- 3.4.3. Clause 23 of the Code and section 3.4.2 above, do not apply to Market Retail Contract customers.

Payment intervals – clause 76(2)(b)

- 3.4.4. This form of assistance allows a customer to select a payment interval from the standard options provided by the retailer. Retailers that provide this form of assistance are expected to provide options that enable all residential customers to be able to access at least one payment interval that is shorter than their usual payment cycle.

Our expectation of compliance

- 3.4.5. If a retailer makes monthly, fortnightly and weekly payment options available, the retailer must advise the customer of these options and the customer is entitled to select any of the payment intervals made available.

Better practice

- 3.4.6. Where monthly payment intervals are made available to an electricity customer and the customer has a remotely-read smart meter, basing the payments on monthly actual meter read bills would provide the greatest assistance to the customer by helping them to manage the cost of their actual energy use on a more frequent basis than quarterly billing. We do not expect retailers to bill customers at weekly or fortnightly intervals.
- 3.4.7. If a customer proposes a different payment interval to the standard options provided, the retailer may agree to the proposal.

Extension of the bill pay-by date – clause 76(2)(c)

Our explanation of the Code

- 3.4.8. This option entitles a customer to extend the pay-by date of their bill by a standard amount specified by the retailer.

Our expectation of compliance

- 3.4.9. A retailer must provide a customer with the option to extend the pay-by date of at least one bill within a twelve month period. The retailer must specify a standard extension period that is available to all customers.

Better practice

- 3.4.10. If a customer seeks a longer extension period than provided as standard by the retailer, the retailer may agree to the proposal.
- 3.4.11. If a customer seeks a standard extension for more than one bill in a 12-month period, the retailer may agree to provide that extension.

Payment in advance – clause 76(2)(d)

- 3.4.12. This option entitles a customer to make payments towards their account in advance. Retailers are expected to allow customers to make regular or ad hoc, equal or variable, payments (i.e. not a consistent amount) towards their account.
- 3.4.13. Clause 76(2)(d) reflects the payment method available to customers under clause 32(5) of the Code. Clause 32(5) applies to ‘small customers’ – that is, all customers who use less than 40MWh per annum for electricity and 1,000GJ for gas.

3.5. Interaction between standard assistance and tailored assistance

Equal payments and tailored assistance

- 3.5.1. If the customer has an equal payments arrangement (clause 76(2)(a)) and misses an instalment, and has arrears of more than \$55 (inclusive of GST), the retailer must contact the customer within 21 business days after the pay-by date (clause 80(2)) to provide them with their entitlement to tailored assistance.

Payment intervals and tailored assistance

- 3.5.2. If the retailer has provided the customer with options to pay at different intervals (clause 76(2)(b)), such as monthly, and the customer does not pay the agreed instalment and has arrears of \$55 or more (inclusive of GST), then the retailer must contact the customer within 21 business days after the pay-by date (clause 80(2)) to provide them with their entitlement to tailored assistance.

Extended pay-by date and tailored assistance

- 3.5.3. If the retailer has provided the customer with a payment extension (clause 76(2)(c)) and the customer does not pay by the agreed (extended) pay-by date, then the retailer must contact the customer within 21 business days after the pay-by date of the bill (clause 80(2)) to provide them with their entitlement to tailored assistance if their arrears are \$55 or more (inclusive of GST).

Payment in advance, arrears and tailored assistance

- 3.5.4. If a customer has a payment in advance arrangement (clause 76(2)(d)) and has an outstanding balance at the time their next bill is issued, retailers are not required to contact the customer to provide tailored assistance so long as the customer maintains the payment arrangement and is projected to owe less than \$55 (inclusive of GST) at the time the next bill is issued. However, if the customer's payments in advance were not covering the cost of ongoing bills and the account balance reached \$55 or more (inclusive of GST) of arrears, then the retailer must contact the customer within 21 business days after the pay-by date of the bill (clause 80(2)) to provide them with their entitlement to tailored assistance.

Customer who does not maintain a standard assistance payment arrangement

- 3.5.5. If the customer does not maintain a standard assistance payment arrangement, they will be in arrears and therefore the retailer cannot proceed with the disconnection process until it has fulfilled its obligations under the Code to provide the customer with tailored assistance under Part 3 within 21 business days after the pay-by date of the bill (clause 80(2)).
- 3.5.6. If the customer rectifies a missed payment arrangement instalment (for example, pays a few days late) and is no longer in arrears, then a retailer is not obligated to contact the customer to provide tailored assistance under clause 80(2).

4. Tailored assistance (Division 3) and associated obligations under Division 6

Overview

- This chapter explains our expectations of retailer conduct in providing customers with their minimum entitlements under Part 3, including the interactions between Division 3 and Division 6, specifically using best endeavours to provide timely assistance as required by clauses 89(b)-(c). It also assists the reader with understanding how these obligations intersect with other retailer requirements under Division 6 in providing tailored assistance. Specifically, that retailers need to have regard to known customer circumstances, and act fairly and reasonably having regard to those circumstances, as required by clause 89(a) of the Code.
- We also provide guidance about customer-retailer conversations and the Code clauses relating to tailored assistance, including our expectations of compliant conduct and examples of better practice.

4.1. Objective and application of tailored assistance – Division 3

Division 3 Tailored assistance

77 Objective

The objective of this Division is to give *residential customers* an entitlement to minimum standards of flexible and practicable assistance that makes it easier for them to pay for their on-going *energy* use, repay their arrears and lower their *energy* costs.

78 Application of this Division

This Division applies to all *residential customers* who are in arrears.

Our expectations of compliance

- 4.1.1. Tailored assistance must be made available to customers who are in arrears of \$55 or more (including GST), consistent with the requirements of clause 80. Customers are entitled to payment arrangements that assist them to repay their arrears and pay for their ongoing usage costs (clause 79(2)). Customers are also entitled to receive

assistance to support them lowering their energy costs and to access government and non-government support services.

- 4.1.2. Customers in more severe types of payment difficulty – where they cannot afford to pay for their ongoing energy use – are entitled to additional assistance, including a period of at least six months where repayment of their arrears is put on hold while they work with their retailer to lower their ongoing usage costs. Customers are also entitled to an energy offer and tariff that, based on the retailer’s knowledge of the customer’s energy use, payment history and known circumstances, would be most likely to help lower the cost of the customer’s ongoing energy use (clause 79(3)).
- 4.1.3. A customer’s minimum entitlements in, and the objectives of, Division 3 reduce the risk of a customer having their energy supply disconnected for not paying a bill.

4.2. Fair and reasonable treatment – clauses 89(a) and 111A(a)(v)

Division 6 Miscellaneous

89 Retailer obligations

A retailer must:

- (a) in any dealing with a *residential customer* under, or in connection with, Division 3 take into account all of the circumstances of the *customer* of which they are aware and, having regard to those circumstances, act fairly and reasonably; and

111A Residential customer only to be disconnected as a last resort for non-payment

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

- (a) the *retailer*:
- (v) has at all times acted fairly and reasonably in relation to the *customer*; and

Our explanation of the Code

- 4.2.1 Electricity and gas customers expect to be treated fairly when they are interacting with their retailer and retailers are obligated to do so under the Code. This is even more important when a customer is in arrears and needing to discuss their payment difficulty with their energy retailer.

Tailored assistance (Division 3) and associated obligations under Division 6

Our expectations of compliance

- 4.2.2 Based on the requirements in Part 3, in deciding what is fair and reasonable in a particular set of circumstances, the commission will have regard to a customer's circumstances (clause 89(a)), a customer's reasonable (or unreasonable) actions (clause 83), and will also consider whether a retailer acted consistently with the objectives of Part 3 in relation to its requirements under clause 89 as a whole.
- 4.2.3 Victorian legislators have also held strong and longstanding expectations about how they expect energy retailers to treat their customers facing or anticipating payment difficulty. The relevant Acts make clear that customers should be supported consistently and equitably. And to put the matter beyond doubt, the legislation states expressly that disconnection of customer from their energy supply should be a measure of "last resort".⁷
- 4.2.4 In other words, the community and legislators want to see energy retailers acting fairly and reasonably towards their customers, particularly when assisting them to resolve their payment difficulty and maintain supply of an essential service.

Better practice

- 4.2.5 We consider the principles in the Australian Energy Regulator's *Sustainable Payment Plan Framework*, such as showing "respect" and "empathy" towards customers in or anticipating payment difficulty, to be better practice and useful for energy retailers in their interactions with customers.⁸

4.3. Customer circumstances – clauses 89(a) and 111A(a)(i)

Outcomes for the customer

- 4.3.1 Because every customer's circumstances are unique, this guidance note cannot be definitive of all circumstances that may arise and cannot be a substitute for a retailer's judgment in a particular set of circumstances. However, we expect retailers to consider the objectives of Part 3 when exercising judgement in providing flexible and practical assistance that makes it easier for a customer to:
- a) pay for their ongoing energy use
 - b) repay their arrears

⁷ Clause 36(1)(A) *Electricity Industry Act 2000* (Vic) and clause 43(1)(A) of the *Gas Industry Act 2001* (Vic)

⁸ Page 2, the Australian Energy Regulator's Sustainable Payment Plan Framework, available at: <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/aer-sustainable-payment-plans-framework>

- c) lower their energy costs
- d) maintain an energy connection by ensuring that disconnection for non-payment of a bill is a measure of last resort.

Our expectation of compliance

4.3.2 In relation to providing the customer with their entitlements to assistance under Part 3, a retailer must consider and have regard to a customer's circumstances that it is aware of (at a particular point in time), including but not limited to:

- a) The customer's payment history and amount of arrears with their retailer (not with other retailers), including for another energy account (if applicable).
- b) Any information that the customer has volunteered in conversations between the retailer and the customer (whether initiated by the customer or the retailer).
- c) A customer's preferred contact method/s and time of day.
- d) Any relevant information the retailer collects through discussions and questions.⁹

While retailers cannot undertake a capacity to pay assessment in accordance with the requirements of clause 91 (section 7.8 of this guidance note), should a customer offer or volunteer information about their capacity to pay to the retailer, the retailer is expected to record such information. To be clear, clause 91 restricts a retailer from requiring a customer to provide personal or financial information to the retailer as a condition for receiving the minimum assistance set out in Part 3.

4.3.3 We expect retailers to handle any sensitive customer information, such as health information, in line with the requirements of relevant privacy laws.¹⁰

4.3.4 In providing assistance to customers under Division 3 and considering disconnection under Part 6, a retailer must have regard to any customer circumstances that it is aware of (at a particular point in time), including but not limited to:

- a) Family violence.
- b) Family and/or relationship breakdown.
- c) A customer who has a representative or advocate acting on their behalf.
- d) Death or serious medical condition of a spouse or immediate family member.
- e) Disability/care provider.

⁹ Subject to clause 91 of the Code – restriction on conditions.

¹⁰ Privacy obligations for personal information, including sensitive information, are found in the *Privacy Act 1988* and in the Australian Privacy Principles.

- f) Whether the customer has no or limited English skills.
- g) Whether the customer has access to electronic communication channels such as email or the internet.
- h) Serious illness or medical condition (including mental health) that impacts a customer's ability to engage or communicate with their retailer (e.g. having sight or hearing impairment).
- i) Loss of employment or regular source of income.
- j) Variable income such as seasonal or casual work.
- k) Recipient of government assistance (Centrelink payments, particularly Newstart).
- l) Concession card holder.
- m) Unexpected and essential cost of living expenses (urgent house repairs, car repairs, medical expenses, schooling or child care expenses, etc.).
- n) Debt on another energy account/s with the same retailer.
- o) Acute financial or personal hardship.
- p) Being temporarily uncontactable (e.g. due to hospitalisation or disconnected telephone (including mobile) or internet services).
- q) Low literacy and/or numeracy, or lack of confidence in speaking to service providers (often necessitating a role for community service providers).

4.3.5 It is critical to note that this list is not exhaustive and some customer circumstances not listed here will still need to be considered by retailers where they are known to them.

4.3.6 The commission does not necessarily expect retailers to consider one of the above circumstances in isolation. We expect retailers to look at a customer's circumstances holistically, including their payment history, amount of arrears, ability or inability to pay ongoing usage, whether the retailer has provided an appliance replacement or energy audit at a cost to the customer (and thereby increased the customer's level of arrears), etc. However, a retailer may need to place a greater weight on a particular customer circumstance, such as sudden loss of employment or a serious and ongoing medical condition. These circumstances should inform all retailer decisions in relation to the whole of Part 3 and Part 6 of the Code, particularly in relation to deciding:

- a) whether to accept a payment arrangement that provides for payment of different amounts at different intervals (clause 81(4)(a))
- b) whether to extend assistance, including providing a payment arrangement that is longer than 2 years (clause 81(4)(b)) or an additional period of time where the customer's arrears are on hold (clause 79(4))

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- c) whether to accept a payment arrangement that provides for separate payments for arrears and ongoing energy use (clause 81(4)(c))
- d) whether to continue to provide assistance (clause 83)
- e) whether to provide the customer with one or both of practical assistance elements under tailored assistance (clause 79(1)(e)-(f)) when they are not clearly entitled to it (i.e. the customer can only just meet their ongoing energy costs)
- f) how to fulfill its best endeavours obligations (clause 89(c)) and provide assistance in a timely way (clause 89(b))
- g) whether it has acted fairly and reasonably in its dealings with a customer, having regard to the customer's circumstances (clauses 89(a) and 111A(a)(v))
- h) whether to disconnect a customer's energy supply as a last resort (clause 111A).

4.3.7 Retailers must maintain sufficient and appropriate records of how they took an individual customer's known circumstances into account, as required by clause 111A(d). This would involve the retailer showing how the assistance provided changed in light of these circumstances. Whether the change in assistance provided would be regarded as having adequately taken the customer's known circumstances into account, would be assessed by whether the assistance was capable of meeting the objectives of Part 3 in supporting the customer to repay their arrears, pay their ongoing usage (where applicable), lower their energy costs, and ensure disconnection for non-payment of a bill is only pursued as a measure of last resort.

Non-English speaking and sensory impaired customers

4.3.8 Where a retailer knows or discovers that the customer is non-English speaking or sensory impaired, it is expected to be flexible and adaptive in determining the best way in which to engage. The strategies listed below may be appropriate depending upon the circumstances of the customer. A retailer may:

- a) engage through an employee who speaks the preferred language of the customer
- b) engage through a family member, friend or other person with legal capacity nominated by the customer
- c) engage with a financial counsellor or community services worker nominated by the customer

- d) provide free use of the Translating and Interpreting Service¹¹
- e) provide free use of the National Relay Service for sensory impaired customers.

Evidence of customer circumstances

4.3.9 When providing assistance to customers under Division 3, we expect retailers to take information provided by customers on face value and not require evidence or substantiation of a customer's circumstances, unless the retailer has, and can evidence, a firm basis to suggest otherwise.

4.4. Contacting customers to provide assistance – Part 3 and ACCC/ASIC Debt collection guideline

Our expectations of compliance

4.4.1 Retailers should be discreet in making contact with customers and have regard to known customer circumstances (clause 89(a)). Retailers must provide customers, who may be struggling to pay a bill (clause 80) or maintain a payment arrangement (clauses 81(6) and 82(2)), with timely assistance (clauses 89(b)-(c)).

4.4.2 When contacting customers, we expect retailers to comply with the requirements of the *Debt collection guideline: for collectors and creditors* – jointly published by the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC), particularly the provisions about the 'making contact with a debtor' (section 1), contacts (section 3), privacy (section 8), and 'conduct towards the debtor and third parties' (sections 17 and 18).¹² From here in, we refer to this document as the ACCC/ASIC Debt collection guideline.

¹¹ Similar to the requirement in clause 25(1)(w) regarding the contents of bills.

¹² The ACCC/ASIC Debt collection guideline is available here: <https://www.accc.gov.au/publications/debt-collection-guideline-for-collectors-creditors>

4.5. Providing tailored assistance in a timely manner – clause 89(b)-(c)

Division 6 Miscellaneous

89 Retailer obligations

A retailer must:

- (b) 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; and
- (c) in a timely manner provide, or use its best endeavours to provide, a *residential customer* who is entitled to receive assistance under this Part with that assistance; and

Our expectations of compliance

4.5.1 Retailers are expected to exercise their judgement and use the information available and known to them at a particular point in time about an individual customer – including known customer circumstances as required by clause 89(a) – when fulfilling their obligations to use their best endeavours to contact customers and provide them with timely assistance (clause 89(b) under Division 3, including but not limited to:

- a) providing tailored assistance within 21 business days of a missed bill pay-by date (clause 80(2))
- b) revising a payment arrangement under tailored assistance in a timely manner (clause 89(b)) when a customer does not make a payment according to the payment schedule (clauses 81(6) and 82(2))
- c) establishing a new implementation timeframe for practical assistance in a timely manner (clause 89(b)) where the retailer knows that the customer has not taken steps to implement the practical assistance, as agreed between customer and retailer, and documented by the retailer (clause 82(3)).¹³

4.5.2 With respect to 4.5.1(b)-(c), we expect a retailer to contact the customer in a timely manner once it becomes aware that the customer has not made payments according to the payment arrangement, or has not taken steps to implement practical assistance (for

¹³ For example, in a situation where the customer does not participate in an arranged and scheduled energy audit.

example, a retailer is expected to contact a customer in a timely manner following a missed energy efficiency appointment).

- 4.5.3 The test of whether or not a retailer has fulfilled its obligation to contact a customer in a ‘timely manner’, as required by clause 89(b), would include whether or not the retailer’s actions made it easier for the customer to avoid getting further into arrears and pay for their ongoing energy costs, consistent with the objectives of Part 3.

Examples of compliant conduct

Preferred contact methods

- 4.5.4 Retailers should attempt to contact customers via their preferred contact method/s, if they are known to the retailer. If the customer prefers telephone contact and the retailer knows the customer’s preferred time of day for contact, then the retailer should also rely on this information for the first contact attempt.
- 4.5.5 If a retailer does not know, does not have a sufficient record of a customer’s preferred contact method, or has not been able to successfully contact the customer via their preferred contact method, then the retailer is expected to make at least one contact via different methods, to provide tailored assistance.

Electronic communications

- 4.5.6 Retailers may use electronic communications, including but not limited to email and text message (SMS), to fulfil their best endeavours obligations.

Record keeping

- 4.5.7 Retailers must have sufficient records of their best endeavours efforts to provide a customer with their entitlements to assistance under Division 3, and also in relation to a customer’s preferred contact method if the retailer relies on this to fulfil its obligations. This is a requirement of clause 111A(d).
- 4.5.8 More information about our expectations for record keeping, including relating to best endeavours for providing tailored assistance and immediately prior to disconnection is located in section 9.1 of this document.

ACCC/ASIC Debt collection guideline

- 4.5.9 The commission understands that retailers need to balance their obligations under the Code to use their best endeavours and their obligations under the ACCC/ASIC Debt collection guideline. The commission expects a retailer to comply with the ACCC/ASIC

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Debt collection guideline. We do not expect a retailer¹⁴ to be non-compliant with the guideline, such as contacting the customer outside of the frequency, timing or method limits and restrictions, in order to fulfil its best endeavours obligations under the Code. For example, the commission would not expect a retailer to contact a customer more than 3 times per week or 10 times in one month as noted in the ACCC/ASIC Debt collection guideline.¹⁵

Examples of non-compliant conduct

4.5.10 The following examples illustrate retailer actions that we consider do not constitute best endeavours:

Timely contact

- a) Contacting a customer more than 21 business days after the pay-by date of their bill (clause 80(2)).
- b) Not attempting to contact a customer in a timely manner (clause 89(b)) following a missed payment (clauses 81(6) and 82(2)), having regard to the objectives of Part 3.
- c) Not attempting to contact a customer in a timely manner (clause 89(b)), having regard to the objectives of Part 3, once the retailer is aware that the customer has not taken steps to implement practical assistance (clause 82(3)).

Contact and preferred method

- d) Not leaving messages on telephone answering or message services.
- e) Leaving a message with a person under the age of 18 years.
- f) Leaving a message with an adult who does not have legal capacity.
- g) Repeatedly calling a disconnected phone number or a phone number without a voicemail facility and not attempting any other contact.
- h) Email communication that is sent to an inactive email address, where the email is not successfully delivered and the retailer receives notification of the delivery failure.
- i) If a retailer knows the customer's preferred contact method and has sufficient record of it, but does not attempt to contact the customer by their preferred method.
- j) If the retailer fails to successfully identify if it is speaking with the customer.

¹⁴ Or a retailer's credit collection agent.

¹⁵ As noted in section 5(c) on page 13 of the guideline.

Sufficient records

- k) If a retailer does not have sufficient records (clause 111A(d)), including content, times, dates, and specific details of their attempts to comply with clause 89(c), the retailer cannot proceed to compliantly disconnect a customer under clause 111A.
- l) Failing to keep sufficient records of contact attempts, including all electronic communications that are specific to the contact or attempted contact with a particular customer, as required by clause 111A(d). Text message and email templates will generally not form sufficient substantiation of contact, successful or otherwise, unless it can be proven which particular template correspondence (including its contents) was sent to a customer at a particular point in time and the dispatch date and time of the correspondence.
- m) If written communications are not expressed in plain language, legible or presented clearly having regard to its nature, as required by clause 87.

Better practice

4.5.11 If a retailer is to attempt telephone contact with a customer, we consider it better practice for the retailer to send a text message to the customer just prior to making the telephone call, to notify the customer that they are contacting them to provide assistance and discuss payment arrangement options.

4.6. Customer-retailer conversation

4.6.1 We encourage retailers to have respectful conversations with their customers about payment difficulty and the assistance they are entitled to under Divisions 2 and 3. For Part 3, a retailer must have regard to a customer's circumstances and information they volunteer (clause 89(a)).

Customer not yet in arrears – Division 2

Our expectation of compliance

4.6.2 If a customer, whose bill of \$55 or more (inclusive of GST) is not yet overdue, contacts their retailer to discuss their payment options, the retailer should have a conversation with the customer about the standard assistance options available in the first instance, consistent with clause 76.

Better practice

4.6.3 If the customer advises their retailer that the standard assistance options would not help them pay their bill according to the terms and specifications of those options, we consider it

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better practice for the retailer to provide tailored assistance (clause 79) to the customer during that contact. In any event, within 21 business days of the customer being in arrears of \$55 or more (inclusive of GST), the retailer is obligated to use its best endeavours (clause 89(c)) to provide tailored assistance consistent with the requirements of clause 80(2).

Customer in arrears – Division 3

Our expectations of compliance

- 4.6.4 A retailer should inform the customer that it needs to provide practical and flexible assistance (clause 77) that takes into account a customer's circumstances (clause 89(a)).
- 4.6.5 Whilst we do not prescribe the words a retailer should use, we do consider it prudent for a retailer to ask the customer, for example, 'is there any reason, or anything we should be aware of, regarding why you have not been able to make a payment towards your energy bill?' to help elicit relevant information the customer is comfortable to share. We consider that a retailer who knows relevant information about its customer will be better placed to deliver more effective and efficient assistance under Division 3 to that particular customer.
- 4.6.6 Asking a customer a similar question, to that described above, when contacting the customer about a missed payment under clauses 81(6) and 82(2), and in situations when the customer is not implementing practical assistance (clause 82(3)), will also help the retailer keep relevant and current customer circumstances up-to-date and recorded on its systems.
- 4.6.7 If a customer, whose bill of \$55 or more (inclusive of GST) is overdue, and either the customer contacts the retailer (clause 80(1)) or the retailer contacts the customer as required by clause 80(2), a retailer may discuss the standard assistance options available if the customer explicitly states that they are just seeking a payment extension, for example. If the customer believes that standard assistance measure would assist them in paying their bill, a retailer may activate that form of assistance. However, the payment arrangement must be provided to the customer as a form of tailored assistance (clause 79(1)(a)) without all of the additional measures under clauses 79(1)(b)-(d).
- 4.6.8 As a safeguard for customers in arrears, a customer does not waive their entitlement to tailored assistance. Additionally, the retailer is still expected to inform the customer of their entitlement to tailored assistance measures available under clauses 79(1) in the event that the customer is unable to maintain the payment arrangement.

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- 4.6.9 As an additional safeguard, if a customer fails to maintain a payment arrangement as described above, and has arrears of \$55 or more (inclusive of GST), then the retailer is obligated to use its best endeavours (clause 89(c)) to contact the customer within 21 business days and provide them with their entitlement to assistance under Division 3, as required by clause 80(2).
- 4.6.10 Once a retailer begins discussing tailored assistance with the customer, we expect a retailer to provide information and advice to a customer (clause 79(1)(a)-(d)) that will assist them with:
- a) repaying their arrears in a period of not more than two years
 - b) paying for their ongoing usage costs
 - c) lowering their ongoing energy costs.
- 4.6.11 We do not expect a retailer to accept payment arrangements for unreasonably small amounts that are disproportionate to the customer's arrears, in the absence of circumstances that warrant doing so. We would expect a retailer in this situation to refer the customer to a financial counselling service in line with the requirements of clause 79(1)(d).

Better practice

- 4.6.12 We encourage retailers to provide information and advice to customers that will assist them with repaying their arrears as efficiently and sustainably as possible so to avoid using all their two-year payment arrangement entitlement in the first instance. This will allow 'time in reserve' in case the customer faces worsening payment difficulty in the future and needs to revise their payment arrangement. If a customer's payment arrangement proposal is, for example, 16 months long, a retailer may advise the customer of their remaining entitlement of up to 8 months extra time to repay their arrears, if required. This will encourage customers who may experience further payment difficulty or a change in circumstances to proactively contact their retailer to discuss revising their payment arrangement.

4.7. Customers with legacy debt and on existing hardship programs (prior to 1 January 2019) – clause 78

- 4.7.1 If a customer is carrying any legacy debt at the time the new entitlements under Division 3 take effect, a retailer will need to take this circumstance into account and act fairly and reasonably (clause 89(a)) to ensure that the customer is not disadvantaged when transitioning to the new framework (i.e. no customer should be worse off). We also expect that retailers have regard to individual circumstances, including the quantum of the

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customer's arrears that would require the provision of extended periods for customers to repay their arrears and/or lower their energy costs.

- 4.7.2 If a customer is on a pre-existing payment arrangement¹⁶ and misses payment/s that results in the cancellation of the payment arrangement, then before a retailer can consider disconnection, it must comply with the requirements of Part 3 and Part 6 of the Code, including using its best endeavours (clause 89(c)) to provide the customer with their entitlement to assistance under Division 3 in a timely manner (clause 89(b)).
- 4.7.3 The commission does not expect a retailer to include the time that a customer was on the previous payment arrangement in the period of not more than two years provided under clause 79(1), unless the retailer has sufficient records (clause 111A(d)) to demonstrate that it had provided the customer with assistance consistent with at least the minimum requirements of Division 3. In this situation, the retailer can only backdate the assistance under Division 3 from the date it provided assistance to the customer that was compliant with Division 3, and in any event this cannot be prior to 10 October 2017 when the commission published its payment difficulty framework final decision and version 12 of the Code.
- 4.7.4 If a retailer had not provided assistance to a customer consistent with Division 3, and as described above, then it cannot include any previous assistance provided to a customer from 1 January 2019. For example, if the customer had a pre-existing payment arrangement for six months prior to 1 January 2019, that six-month period cannot be counted for the purposes of a payment arrangement under Division 3.

¹⁶ A payment arrangement established prior to the commencement of the payment difficulty framework and Energy Retail Code (version 12) on 1 January 2019.

4.8. Minimum assistance – clause 79(1)

79 Minimum assistance

- (1) Tailored assistance consists of the following measures:
 - (a) repayment of arrears over not more than 2 years by payments at regular intervals of up to one month;
 - (b) advice from the *retailer* about payment options that would enable a *customer* to repay their arrears over not more than 2 years;
 - (c) specific advice about the likely cost of a *customer's* future *energy* use and how this cost may be lowered;
 - (d) specific advice about any government and non-government assistance (including Utility Relief Grants and *energy* concessions) available to help a *customer* meet their *energy* costs;
 - (e) practical assistance to help a *customer* lower their *energy* costs including, but not limited to:
 - (i) the tariff that is most likely to minimise the *customer's* *energy* costs, based on the *retailer's* knowledge of the *customer's* pattern of *energy* use and payment history; and
 - (ii) practical assistance to help the *customer* reduce their use of *energy*, based on the *customer's* pattern of *energy* use and on the circumstances of where the *customer* lives, provided there is scope for action to be taken for that purpose; and
 - (iii) information about how the *customer* is progressing towards lowering their *energy* costs given at sufficient intervals for the *customer* to be able to adequately assess that progress;
 - (f) an initial period of at least 6 months during which:
 - (i) repayment of the *customer's* arrears is put on hold; and
 - (ii) the *customer* pays less than the full cost of their on-going *energy* use while working to lower that cost;
 - (g) any other assistance consistent with the objective of this Division.

Type of payment difficulty

Our expectations of compliance

- 4.8.1 Customers in arrears, subject to clauses 80(1)-(2), and who can pay the cost of their ongoing usage, are entitled to the assistance set out in clause 79(1)(a)-(d).
- 4.8.2 Customers who cannot pay for their ongoing energy use are entitled to the assistance set out in clauses 79(1)(c)-(f).

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4.8.3 If a customer in arrears is not able to pay the ongoing cost of their energy use and their repayment of arrears is on hold under clause 79(1)(f)(i), they may enter into a payment arrangement that involves payments that are less than the ongoing cost of their energy use. We would expect retailers to offer customers regular payments intervals, for example fortnightly payments, to encourage customers into a regular payment frequency.

4.9. Customer advice entitlement – clause 79(1)(b)-(d)

Outcomes for the customer

4.9.1 The focus of a retailer's relationship with a customer in arrears should be on helping the customer to lower the cost of their energy use, pay for their ongoing energy use and repay their arrears. At a minimum, retailers must provide information and advice to the customer about their payment options, likely future energy use (based on historical consumption where available) and its cost, along with timely information about government and non-government assistance that is available to the customer in their particular circumstances.

Our expectations of compliance

4.9.2 In order to encourage customers to repay their arrears as soon as practicable, retailers should provide advice that would enable customers to repay their arrears in a period of not more than two years (clause 79(1)(b)).

4.9.3 In assisting customers to propose a payment arrangement, or propose a revised payment arrangement, we expect retailers to provide customers with concise and relevant information regarding different payment options. Most notably, customers should be given details of different 'time and payment' options. This should include examples of different dollar amounts that could be paid each month (or more frequently) and the consequential length of those arrangements (for example, in months for a monthly payment arrangement or fortnights for a fortnightly payment arrangement), as required by clause 79(1)(b).

4.9.4 In accordance with clause 83, customers are expected to take reasonable action towards paying their energy use and repaying their arrears. We expect a customer and retailer to work towards the shortest payment arrangement period that the customer believes is affordable and sustainable.

4.9.5 What is affordable and sustainable will be different for each customer, depending on their circumstances, to which a retailer must have regard in providing tailored assistance (clause 89(a)). Retailers are not expected to automatically advise the customer of an option of two years to repay their arrears (although this may be appropriate in particular circumstances).

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- 4.9.6 Customers who propose payment arrangements of less than two years effectively have ‘time in reserve’, which they are able to use in the event that they need to revise their payment arrangement (clause 81(2)).
- 4.9.7 A retailer must also assist its customer with understanding their eligibility for the full suite of energy concessions available (clause 79(1)(d)), and is expected to apply all relevant concessions (including retrospectively within the Department of Health and Human Services’ guidelines), to the customer’s account.¹⁷
- 4.9.8 Retrospective application of missed concessions to the customer’s account should occur prior to any payment arrangement being established, wherever possible.

Better practice

- 4.9.9 If a customer proposes a payment arrangement that is shorter than two years, we consider it better practice for a retailer to advise the customer to contact the retailer if the amount proposed proves difficult to maintain. In any event, if the customer does miss a payment, the retailer is required to use its best endeavours (clause 89(c)) to contact the customer in a timely manner (clause 89(b)) and discuss a revised payment plan (clauses 81(6) and 82(2)).

Information and referrals to government and non-government assistance – clause 79(1)(d)

Outcomes for the customer

- 4.9.10 If a retailer complies with clause 79(1)(b)-(b) of the Code, we would expect the outcomes to be that a customer is aware of, and provided with access to, the assistance which would help them to repay their arrears, pay for their ongoing usage costs, and lower their usage, in a timely manner (clause 89(b)).

Our explanation of the Code

- 4.9.11 Examples of government assistance include, but are not limited to, the Utility Relief Grant Scheme (URGS), relevant energy concessions, energy efficiency programs and information, budgeting assistance, etc.

¹⁷ DHHS concessions guidelines generally allow concessions to be backdated for a period of 12 months. Customers may be able to make an application to DHHS for consideration of exceptional circumstances that led energy concessions not being applied for a period greater than 12 months. More information about energy concessions is available at: <https://services.dhhs.vic.gov.au/energy>.

- 4.9.12 Examples of non-government assistance may include, but are not limited to, services including in-person and telephone financial counselling, emergency relief services, family violence support services, etc.
- 4.9.13 Information provided and referrals made are expected to be done so in a manner that takes into account what the retailer knows about the customer, e.g. family violence, vision impairment, etc. (clause 89(a)).

Our expectations of compliance

- 4.9.14 We expect a retailer to provide a particular customer, having regard to their circumstances (clause 89(a)), with unambiguous information (clause 89(b)) in sufficient detail to enable the customer (clause 79(1)(d)) to understand how the assistance will help them repay their arrears, pay for ongoing energy use and lower their energy costs (objective of Division 3 and clause 86(3)).

Examples of compliant conduct

- 4.9.15 We would consider a retailer to be compliant if:
- a) It explains to a customer the nature of the government and/or non-government assistance available. This would include providing the customer with the details of the assistance, including contact information, so the customer can easily access it.
 - b) It provides information about government and non-government assistance to a customer at the time of providing tailored assistance or discussing revised tailored assistance.
 - c) The specific advice includes information for the customer about their potential eligibility for an URGS application and payment.
- 4.9.16 We do not expect retailers to track and automatically advise customers of their eligibility for URGS. Rather, retailers are expected to check (or re-check) a customer's URGS eligibility and inform the customer of this when in contact with them when providing or revising tailored assistance.

Example of non-compliant conduct

- 4.9.17 We would consider a retailer to be non-compliant if, when in discussion with the customer about their tailored assistance, the retailer fails to provide specific advice (i.e. check and advise the customer of their current or potential eligibility) for the URGS, unless that advice has already been provided in a timely way (clause 89(b)).
- 4.9.18 Not providing advice about URGS in 'a timely way' as required by clause 89(b) would include a situation where the customer has previously had URGS applied to their account, is eligible for URGS again and the retailer fails to check and inform the customer about

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their eligibility, and/or fails to assist the customer to access this assistance during a subsequent contact about tailored assistance.

Better practice

- 4.9.19 We consider it better practice for a retailer to offer to transfer the customer through to the government or non-government assistance.
- 4.9.20 If a retailer is referring a customer to a service, for example, the National Debt Helpline¹⁸, we consider it better practice for the retailer to advise the customer whether the service is:
- independent of the retailer
 - government funded
 - confidential.

4.10. Finding the most appropriate energy offer – clause 79(1)(e)(i)

Our explanation of the Code

4.10.1 It is not possible to guarantee that a particular energy offer and tariff will in fact reduce the cost of an individual customer's energy consumption. However, at a particular point in time, taking into account a customer's pattern of energy use and payment history, an energy retailer should be able to objectively determine the energy offer and tariff that are most likely to minimise the customer's ongoing energy costs.

Our expectations of compliance

- 4.10.2 In advising the customer of their energy offer and tariff options, the retailer should take into account any customer circumstances that are known and are likely to affect their future energy consumption (clause 89(a)), and the likelihood that payments will be made as agreed based on the retailer's knowledge of the customer's payment history.
- 4.10.3 The retailer must consider the overall appropriateness of the offer, including the tariff design (flat or time-of-use), discounts (conditional or non-conditional), fixed-benefit periods, fixed supply charges, and whether any of these elements will result in an offer most likely to minimise the cost of ongoing energy use for the customer.
- 4.10.4 We would not consider it compliant for an energy offer that includes conditional pay-on-time discounts to be offered by a retailer to a customer, if failure to pay on time would result in a higher cost to the customer than an undiscounted offer.

¹⁸ The National Debt Helpline's website was accessed on 4 December 2017: <http://www.ndh.org.au/>

- 4.10.5 A retailer is expected to analyse a customer's historical data (including electricity interval meter data, where available) to assist in finding the energy offer and tariff that is most likely to reduce their energy costs.
- 4.10.6 A retailer must apply a change in tariff in line with any other relevant obligations in the Code, including those under clauses 16, 46 and 46A for market retail contract customers, and clause 36 for standard retail contract customers.
- 4.10.7 The commission is aware that some retailers only provide one gas offer per distribution area. Therefore, in these instances, retailers are expected to record this on the customer's account for record keeping purposes (clause 111A(d)).

4.11. Practical assistance, suspension of arrears and other assistance – clauses 79(1)(e)(ii)-(g)

Practical assistance – clause 79(1)(e)(i)-(ii)

Our expectations of compliance

- 4.11.1 We do not prescribe how the practical assistance to lower energy costs should be provided to customers by retailers. However, a retailer must be able to demonstrate through its record keeping (clause 111A(d)) that the assistance provided was capable of making a meaningful reduction in a customer's energy use in their circumstances.
- 4.11.2 However, we recognise that some customers facing payment difficulty may have limited capacity to reduce their energy use in a meaningful way, for example, due to the poor energy performance of some accommodation, or a medical condition that requires particular levels of heating or cooling. However, in order to comply with clause 79(1)(e), at a minimum a retailer is expected to have a conversation with the customer to ascertain what practical assistance **can or cannot** be implemented and keep records of this discussion, as required by clause 111A(d). If a retailer believes that there is no scope for action, it must be able to demonstrate why there was no scope for action in a particular case.
- 4.11.3 We also recognise that energy price increases and other unforeseen customer circumstances may reduce or negate the effect of a customer's and retailer's efforts to reduce the cost of ongoing energy usage.
- 4.11.4 When working with a customer to reduce their energy use, retailers should ensure that they do not promote reductions in energy use to a level that may put the health and wellbeing of a customer or people in their household at risk.

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4.11.5 The following contains a non-exhaustive list of the practical assistance measures that retailers **may** consider providing one or more of to customers receiving assistance under clause 79(1)(e)(ii):

- a) An in-home energy audit.
- b) An over-the-phone energy audit.
- c) For electricity customers, advice about how to access the customer's interval meter data from either the retailer's or the distributor's internet self-service facility (where available). This may also include analysis of the customer's interval meter data to identify appliances and/or times of day where the customer is using noticeably more electricity and the provision of advice to the customer about where there may be opportunities to save energy.
- d) Provision of energy saving devices such as draught stoppers (commonly known as 'door snakes'), thermostats, high-efficiency light globes, and stand-by power controllers.
- e) For electricity customers, an in-home energy display or energy monitor, including advice on how to connect it to the customer's smart meter and understand the information the in-home display provides.
- f) Provision of water saving devices that can also save on energy used to heat water, such as low-flow shower heads, thermostats/thermometers, water temperature control devices, time switches and timers.
- g) Appliance replacement for household items such as heaters, air conditioning, hot water services, fridges, dishwashers, etc.
- h) Installation of renewable energy technology, such as solar PV panels and/or battery storage.
- i) Insulation for roofs, floors, and walls.

Better practice

4.11.6 Retailers are encouraged to advise customers of any government and non-government assistance that may be available, including energy efficiency programs, to complement practical assistance the retailer provides.

Example of non-compliant conduct

4.11.7 We do not consider that a retailer has met its obligations to provide customers with practical assistance if the only step it has taken is to refer a customer to a government-funded program and has provided no other practical assistance to lower energy costs (where there is scope for the customer to lower energy costs by way of assistance from the energy retailer).

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Information on progress – clause 79(1)(e)(iii)

Our expectations of compliance

4.11.8 A retailer may decide what information to provide, and when, about a customer's progress to lower their energy costs, but we expect that the information is fit for the purpose of enabling a customer to objectively assess the progress of their actions to reduce their energy costs. For example, this may include a retailer providing the customer with comparative information about the amount of energy units (kWh or MJ) used in a billing period and the cost of that energy compared with previous billing periods.

Suspension of repayment of arrears – clause 79(1)(f)

Outcomes for the customer

4.11.9 The suspension of arrears provides a customer with time to implement a retailer's assistance to lower their energy costs to a level they can afford on an ongoing basis and to begin repaying their arrears. We expect the retailer and customer to focus on working together to reduce the cost of the customer's energy consumption, and a retailer to assist the customer with accessing other forms of assistance that may be available.

Our expectations of compliance

4.11.10 A retailer must, at a minimum, provide customers with an initial six-month period where the repayment of their arrears is on hold. This period may be extended under clause 79(4), which is discussed below.

4.11.11 Consistent with the objective of Division 3, we expect that a retailer informs a customer that payments below the cost of ongoing energy will be added to their arrears, and assist the customer to propose a payment arrangement which limits this increase in arrears, while they are working to assist the customer to reduce the cost of their ongoing energy use.

Other assistance – clause 79(1)(g)

4.11.12 Retailers may provide customers, and in fact are encouraged to provide customers, with additional assistance to complement their minimum entitlements under Division 3.

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4.12. Entitlement to minimum assistance – clause 79(2)-79(5)

79 Minimum assistance

- (2) A *customer* is entitled, at the very least, to the assistance mentioned in subclause (1)(a) to (d), while continuing to pay the full cost of their on-going *energy* use.
- (3) A *customer* is entitled, at the very least, to the assistance mentioned in subclause (1)(c) to (f) if they cannot pay the full cost of their on-going *energy* use.
- (4) The *retailer* may extend the assistance mentioned in subclause (1)(f) for a further period or periods if the extension would assist the *customer* to continue to lower the cost of their *energy* use.
- (5) A *customer* who has exercised an entitlement to the assistance mentioned in subclause (1)(f) may, at the end of the period during which that assistance is provided (including that period as extended under subclause (4)), exercise an entitlement mentioned in subclause (2).

Our explanation of the Code and expectations of compliance

4.12.1 Clause 79(2)-(5) make it clear to retailers which of the forms of minimum assistance must be provided to customers and in what circumstances.

Customers in arrears and who can pay for their ongoing energy use – clause 79(2)

4.12.2 A customer who is in arrears and can pay for their ongoing energy use is, at a minimum, entitled to the assistance set out in clause 79(1)(a)-(d).

Customers in arrears and who cannot pay for their ongoing energy use – clause 79(3)

4.12.3 A customer who is in arrears and not able to pay for their ongoing energy use is, at a minimum, entitled to the assistance set out in clause 79(1)(c)-(f).

Better practice

4.12.4 Retailers may elect to provide a customer receiving tailored assistance, particularly those who cannot pay for their ongoing usage costs, with a case manager or support from a specialised team that assists customers with more complex payment difficulty.

Customers who may not be able to consistently pay ongoing usage costs – interaction of clauses 79(2) and 79(3)

Our expectations of compliance

4.12.5 Clauses 79(2) and 79(3) establish minimum entitlements available to customers in the two specific circumstances defined.

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- 4.12.6 Whether a customer can pay for their ongoing energy use is a matter of judgement, both for the customer and the retailer. We expect the retailer to help the customer to understand the cost of their current energy use and to accept what the customer tells it about whether they can pay for their ongoing energy use.
- 4.12.7 However, we expect situations will arise in which a customer is able or largely able to pay for their forecast usage and arrears under clause 79(2), but may anticipate or demonstrate an occasional inability to make a payment. Whether a customer in this situation is entitled to the assistance provided under clause 79(3) is also a matter of judgement for a retailer. We expect the retailer to exercise that judgement having regard to the objectives of tailored assistance (clause 77) and the customer's circumstances (clause 89(a)).
- 4.12.8 If a customer has a payment arrangement under their entitlement in clause 79(2) and misses payments, the retailer must contact the customer in a timely manner (clause 89(b)) to revise the payment arrangement (clause 81(6)). If the revised payment arrangement will result in the customer repaying their arrears in a period of less than two years (from the date of the first payment under the original payment arrangement), then the customer will still only be entitled to assistance under clause 79(2).
- 4.12.9 If the customer's revised payment arrangement will result in customer paying below the cost of their energy use then the retailer must provide the customer with assistance under clause 79(3).

Better practice

- 4.12.10 If the customer's proposed revised payment arrangement is for a period longer than two years, the retailer may consider providing a payment period greater than two years or may provide practical assistance to help the customer lower their ongoing energy costs.
- 4.12.11 If over a period of time a customer's arrears are increasing, a retailer may offer the customer practical assistance to help lower their ongoing energy costs to a point where the customer can sustainably make payments that meet the cost of their ongoing energy usage.

Extending assistance under clause 79(1)(f) – clause 79(4)

Our expectations of compliance

- 4.12.12 When deciding whether to extend an arrears on-hold period under clause 79(4), a retailer should have consideration of the customer's circumstances (clause 89(a)), including but not limited to:
- a) the quantum of their arrears (including for another energy account with the retailer)

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- b) their ongoing usage costs (including for another energy account with the retailer)
- c) the level of previous assistance provided (or not provided) by the retailer
- d) the timeliness of previous support provided and whether any delay in providing assistance has contributed to the customer's payment difficulty
- e) the level of engagement by the customer with previous support provided
- f) adherence to payment arrangements and their efforts to reduce ongoing energy costs where there is scope to do so
- g) any other relevant customer circumstance.

4.12.13 As the discretion to extend assistance under clause 79(4) lies with the retailer, so too does the obligation to maintain records that support its decision to extend or not extend the assistance (clause 111A(d)).

Better practice

4.12.14 A retailer may extend the arrears on hold period if the retailer believes that the extension would assist the customer to continue to lower the cost of their energy use.

4.12.15 If a customer is making demonstrable progress in reducing the cost of their energy use and making regular payments toward that energy use (in line with reasonable customer action under clause 83), but is still only able to pay below the cost of that energy use, a retailer may provide the customer with an extension to the period of time during which the customer's repayment of arrears is on hold. 'Demonstrable progress', as noted above, is a matter for retailer judgement in the customer's particular circumstances. A consideration for a retailer may be the customer's ability to further reduce their ongoing energy usage. A marginal reduction, for example, 10kWh per month, may not constitute 'demonstrable progress' as the reduction would only represent a few dollars saved per month.

4.12.16 A retailer may also consider providing a customer in this situation with a debt waiver/s and/or incentive payment arrangements where the retailer matches some or all of the customer's regular payments. This could help the customer by preventing the accrual of unmanageable arrears and worsening payment difficulty.

Customer entitlement to further assistance after end of assistance under clause 79(1)(f) – clause 79(5)

Our expectations of compliance

4.12.17 A retailer must provide a customer, who has successfully reduced the cost of their usage to a level they can afford to pay on an ongoing basis, with assistance under clause 79(2), as required by clause 79(5). The repayment period for the arrears under clause

79(2) (no more than two years) cannot include the period of time when the customer was receiving assistance under clause 79(3).

4.12.18 For example, a customer who had their arrears on hold for six months, and had reduced their usage costs to an affordable level, has the entitlement under clause 79(5) to propose a payment arrangement to repay their arrears over a period of no more than two years under clause 79(2).

Better practice

4.12.19 A retailer may also accept a repayment period longer than two years (clause 81(4)), particularly if the customer has successfully reduced their energy consumption to an affordable level, but in doing so had accrued arrears that if required to be paid back within two years would once again see the customer facing payment difficulty.

4.13. Information about assistance available – clause 80(1)-(2)

80 Information about assistance available

- (1) A *residential customer* who has not paid a bill by its *pay-by date* and who contacts the *retailer* is entitled to be given by the *retailer* information about the assistance to which the *customer* is entitled under this Division and how to access it.
- (2) A *residential customer* who has not paid a bill by its *pay-by date* and who has arrears of more than \$55 (inclusive of GST) is entitled to be contacted by the *retailer*, within 21 business days after that *pay-by-date*, and given information about the assistance to which the *customer* is entitled under this Division and how to access it.
- (3) The *retailer* must allow the *customer* no less than 6 business days to consider the information given under subclause (1) or (2), request further information, and put forward a payment proposal under clause 81.
- (4) Nothing in this clause limits clause 86.

Clause 80(1)

4.13.1 Tailored assistance must be provided to a customer who has not paid a bill by its pay-by date and has arrears of \$55 or more (inclusive of GST) when the customer directly contacts the retailer through its call centre, website or email customer service channels.

Clause 80(2)

Our expectations of compliance

4.13.2 We expect retailers to wait at least one business day, and no longer than 21 business days, after the pay-by date of an unpaid bill where the customer has arrears of \$55 (inclusive of

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GST) or more, before commencing its best endeavours efforts to provide a customer with their entitlements under Division 3. If a customer's total arrears are less than \$55 (inclusive of GST), a retailer is not required to contact the customer to provide the assistance in Division 3. However, a retailer has discretion to provide the assistance and may contact a customer to do so.

4.13.3 Retailers have discretion regarding the sequence of providing the assistance under Division 3 and sending the reminder notice (clause 109(2)) to a particular customer or sub-set of customers.

4.13.4 When sending the customer information about tailored assistance in writing, a retailer must do so in a way that clearly and unambiguously gives information about the assistance available in plain language, including the form of that assistance and the steps both the retailer and customer must take to implement the assistance, as required by clauses 89(b), 86 and 87.

Better practice

4.13.5 A retailer may elect to provide written information about tailored assistance that is separate from a reminder notice.

4.13.6 A retailer may provide clear information to the customer about how to contact the retailer to revise a payment arrangement or advise the retailer of a late or partial payment, or for any other purpose.

4.13.7 In order to encourage proactive customer contact – at the commencement of providing tailored assistance – in the event of worsening payment difficulty, a retailer may advise a customer to contact it if the customer cannot:

- a) make payments according to the payment schedule (including partial or late payments)
- b) maintain contact for a period of time (for example, due to a change in the customer's circumstances such as being hospitalised).

4.14. Time for customers to consider assistance – clause 80(3)

Our expectations of compliance

4.14.1 Clauses 80(3) and 89(b) require a retailer to advise a customer of, and provide a customer with, no less than six business days for the customer to consider information in Division 3, which aligns with the minimum reminder notice period (clause 108).

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Unsuccessful contact for best endeavours

4.14.2 If a retailer cannot successfully contact a customer by telephone or other means, the retailer must still provide written information to the customer about the assistance under Division 3 to meet its best endeavours obligations.

Better practice

4.14.3 A retailer may provide a customer with a period longer than six business days to allow the customer more time to contact the retailer regarding tailored assistance. A retailer may consider providing this in situations where the customer has particularly complex payment difficulty or is not sure what they can afford to pay and needs to seek assistance from a financial counsellor.

Successful contact for best endeavours

4.14.4 If a retailer does successfully contact the customer by telephone, the retailer may still need to provide the customer with written information about their entitlement to assistance, depending on how comprehensive the discussion with the customer was.

Counting the six-business day period

4.14.5 The provision of assistance is considered to be received by a customer when either:

- a) The retailer provides the customer with the information about their entitlement to assistance over the telephone and has sufficient records (clause 111A(d)) of the conversation; or
- b) If the retailer posts the information to the customer, according to the ordinary course of post (clause 87(3))¹⁹; or
- c) the retailer has successfully sent the customer the information electronically.

Customer refusal of assistance

4.14.6 If a customer declines a retailer's provision of assistance under Division 3, the retailer must clearly document the conversation, and/or retain the call recording, and refusal of assistance, as required by clause 111A(d). The retailer is still expected to provide information (electronically or otherwise) to the customer about their entitlement to assistance under Division 3 and retain these records. If the customer seeks to access their

¹⁹ The six-business day period starts to be counted from the next business day after the provision of assistance is deemed to have been received according to clause 87(3).

entitlement to assistance at a later date (assuming the customer is still in arrears for \$55 (inclusive of GST) or more), the retailer must provide the assistance to the customer as outlined in Division 3.

4.15. Payment arrangements – clause 81

81 Payment arrangements

- (1) This clause applies to a *residential customer* whose repayment of arrears is not on hold under clause 79(1)(f)(i).
- (2) The *retailer* must accept a payment proposal or revised proposal put forward under this clause by the *residential customer* that complies with subclause (3).
- (3) A payment proposal or revised proposal complies with this subclause if it:
 - (a) provides for the making of payments of equal amounts at regular intervals of up to one month; and
 - (b) would result in the *residential customer's* arrears being fully paid in no more than 2 years after the first payment; and
 - (c) provides for payments for *energy* use being made together with payments to reduce arrears; and
 - (d) is based on a reasonable forecast of the *customer's energy* use over the next 12 months.
- (4) However, the *retailer* may accept a payment proposal or revised proposal that does any or all of the following:
 - (a) provides for payments of different amounts at different intervals;
 - (b) would result in the arrears being fully paid by a date later than 2 years after the first payment;
 - (c) provides for payments for *energy* use being made separately from payments for arrears.
- (5) On accepting a payment proposal or a revised proposal, the *retailer* must give the *customer* a written schedule of payments showing:
 - (a) the total number of payments to be made to pay the arrears; and
 - (b) the period over which the payments are to be made; and
 - (c) the date by which each payment must be made; and
 - (d) the amount of each payment.
- (6) If a *residential customer* receiving assistance under this Division fails to make a payment by the date on which it was payable, the *retailer* must contact the *customer* to discuss their putting forward a revised proposal under this clause.

Application of clause 81 – clause 81(1)

4.15.1 Although this clause does not apply to customers receiving assistance under clause 79(3) who have their arrears on hold, we expect retailers to discuss various payment arrangement options with these customers, including more frequent payments, such as fortnightly payments that may align with fortnightly income. We consider that this will assist both the customer and retailer to avoid an accrual of arrears to an unmanageable level.

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Retailer acceptance of payment proposals – clause 81(2)

Our expectation of compliance

4.15.2 We expect retailers to accept payment arrangements that are fair and reasonable having regards to the customer's circumstances (clause 89(a)).

4.15.3 Additionally, we do not expect retailers to accept payment arrangements for amounts that are incompatible with the retailer's payment methods.²⁰

Minimum specifications for payment arrangements – clause 81(3)

Our expectations of compliance

4.15.4 A retailer must accept a customer's payment proposal or revised payment proposal that comprises equal payments at regular intervals of up to one month, which would result in the arrears being repaid in no more than two years, and includes a reasonable forecast of the customer's energy use over the next 12 months.²¹

4.15.5 For example, a customer with \$500 of arrears and who is using \$150 of energy per month, could propose a payment arrangement of \$200 per month to repay their arrears in 10 months and cover the cost of their ongoing usage. In this scenario, a retailer must accept the customer's proposed payment arrangement. The customer would still have 14 months 'time in reserve' if they needed to revise their payment arrangement.

4.15.6 Retailers must also have regard to the objective of Part 3 with respect to payment arrangements that include a reasonable forecast of the customer's usage. In this instance, that is to assist the customer to repay their arrears and pay their ongoing usage costs in a period of not more than two years.

4.15.7 If a customer's payment arrangement exceeds 12 months, then at a minimum, once every 12 months, the retailer must re-assess the reasonable forecast cost of the customer's ongoing use (based on their historical use, where available). A retailer may also elect to conduct reviews more frequently. If the retailer's review finds that the customer's payments are not going to result in the customer repaying their arrears in the timeframe when tailored assistance was activated (due to either increasing or decreasing ongoing energy usage

²⁰ For example, we are aware that some bank, BPay, credit card, Australia Post, and other transactions have minimum payment amounts for each transaction.

²¹ Retailers are responsible for estimating a customer's consumption over the agreed period of the payment arrangement nominated by the customer (up to 12 months), based on the customer's historical usage data and any other relevant information.

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costs), then the retailer must use its best endeavours (clause 89(c)) to contact the customer in a timely manner (clause 89(b)) and provide this specific advice to the customer (clause 79(1)(d)) so that they can propose a revised payment arrangement, consistent with clause 81(3).

4.15.8 For example, if the retailer's reasonable forecast of usage was \$150 per month at the beginning of the customer's 20-month payment arrangement under clause 81(3), at the end of the 12th month, the retailer must review the customer's previous 12 months of usage and payments to re-forecast for the next 12 months of worth of usage costs. If this review finds that the customer is paying above their ongoing usage costs (e.g. due to implementing measures to reduce energy use) or is not paying enough (e.g. due to energy price increases or energy use), then the retailer must contact the customer to discuss a revised payment arrangement, consistent with clause 89(b).

Retailer discretion about payment arrangements – clause 81(4)

Our explanation of the Code

4.15.9 A retailer has discretion about whether or not to accept a payment arrangement that includes any or all of the following:

- a) Payment of different amounts at different intervals. For example, \$100 in May, \$500 in July, \$500 in September.
- b) Payment arrangements that result in the arrears being repaid in a period longer than two years after the first payment.
- c) Payments for ongoing energy usage being made separately from payments towards the arrears.

Our expectations of compliance

4.15.10 When a retailer is deciding whether to accept a customer's payment proposal under clause 81(4), the retailer should consider a customer's circumstances, including but not limited to:

- a) the quantum of their arrears (including another energy account with the retailer)
- b) their ongoing energy costs (including another energy account with the retailer)
- c) the level of previous assistance provided (or not provided) by the retailer
- d) the timeliness of previous support provided and whether any delay in providing assistance has contributed to the customer's payment difficulty
- e) the level of engagement by the customer with previous support provided
- f) partial payments for previous payment arrangement/s
- g) any relevant customer circumstance.

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Better practice

4.15.11 If a customer has a payment arrangement with separate payment for energy use and arrears under clause 81(4), and falls further into arrears by missing an energy use payment, the retailer may contact the customer and discuss changing the payment arrangement to one that includes a reasonable forecast of the customer's energy use under clause 81(3). This would help avoid further accrual of arrears. A retailer should also consider the customer's circumstances as required by clause 89(a) and if the customer requires a payment arrangement that extends beyond two years (clause 81(4)).

Written schedule – clause 81(5)

Our expectations of compliance

4.15.12 A retailer must provide a customer with a written record of the payment arrangement consistent with the requirements of clause 87. Retailers should also provide customers with their options for making the payments on the written payment schedule.

Failure to pay – clause 81(6)

Our expectations of compliance

4.15.13 Retailers must use their best endeavours (clause 89(c)) to discuss a revised payment arrangement with a customer who does not make a scheduled payment, in a timely way (clause 89(b)). If after the retailer uses its best endeavours, the customer does not put forward a revised payment arrangement and take reasonable action to pay, the retailer may consider suspending assistance under clause 83. The retailer may then issue the customer with a disconnection warning notice (providing a reminder notice had already been issued and the reminder notice period had lapsed), consistent with clause 110.

4.15.14 If a customer puts forward a revised payment arrangement that includes payments that do not cover the likely cost of their ongoing energy use, the customer is entitled to have their arrears put on hold and to receive practical assistance to reduce their energy costs under clause 79(3). However, as discussed in section 4.12 of this guidance note, for customers largely able to meet their ongoing usage costs, judgement is required regarding whether a customer should receive assistance under clause 79(1)(e) or 79(1)(f) to help them lower their energy costs. This judgement should be exercised having regard to the objective of Part 3 and a customer's circumstances (clause 89(a)). For example, a customer with variable income (e.g. casual or seasonal work) who has difficulty paying regularly or on time may need further assistance such as a tariff that will lower their costs so they can meet the cost of their energy use.

Tailored assistance (Division 3) and associated obligations under Division 6

4.15.15 As discussed in section 4.17, we expect retailers to allow some flexibility for occasional underpayments and late payments. Retailers can decide when to contact customers under clauses 89(b)-(c) to revise payment plans, as long as it is completed in a timely way. A retailer's knowledge of the customer and their payment history best places the retailer to use its judgement about when to contact a particular customer.

4.16. Non-payment of cost of ongoing energy use – clause 82

Application – clause 82(1)

4.16.1 Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

82 Non-payment of amounts towards on-going energy use

- (1) This clause applies to a *residential customer* whose repayment of arrears is on hold under clause 79(1)(f)(i).
- (2) If the *residential customer* fails to make a payment towards the cost of their on-going *energy* use by the date on which it was payable, the *retailer* must contact the *customer* to discuss varying the amount payable, or the frequency of those payments, or both, to give the *customer* more time to lower their *energy* costs.
- (3) If a *customer* is not meeting their responsibility to implement practical assistance referred to in clause 79(1)(e)(ii) provided by the *retailer*, the *retailer* must contact the *customer* and work with them to identify an implementation timeframe, consistent with the objective of this Division.
- (4) The *retailer* may add any amount unpaid for *energy* use to the *customer's* arrears.

Non-payment of ongoing usage and contact requirement – clause 82(2)

Our explanation of the Code and expectations of compliance

4.16.2 If a customer, who is paying below the cost of their energy use, does not make a scheduled payment, we expect the retailer to contact the customer in a timely manner (clause 89(b)) to discuss putting forward a revised payment arrangement. If after the retailer has used its best endeavours, the customer does not put forward a revised payment proposal or take reasonable action to pay (clause 83), the retailer may suspend assistance and issue the customer with a disconnection warning notice (providing a reminder notice had already been issued and the reminder notice period had lapsed), consistent with clauses 110 and 111A.

Tailored assistance (Division 3) and associated obligations under Division 6

Customer responsibility to implement practical assistance – clause 82(3)

Our expectations of compliance

- 4.16.3 We expect retailers to keep sufficient records of the steps agreed with the customer to lower their energy usage, as required by clause 111A(d). For example, if the retailer arranged for the customer to have an energy audit completed at the customer's premises, the retailer would be expected to record the date, time and other particulars of the energy audit. We also expect the retailer to record details known to the retailer about the practical assistance that a customer has implemented, for example, an appliance that the retailer has replaced. These records could then be relied upon by the retailer in the future to demonstrate whether a customer was or was not implementing the practical assistance provided by the retailer, as outlined in clause 82(3).
- 4.16.4 Customers are entitled to a minimum of six months to implement measures to lower their energy costs, while their arrears are also on hold.
- 4.16.5 If the customer is within the initial six-month period, a retailer cannot suspend practical assistance if the customer fails to implement measures to lower energy costs. Instead, a retailer must contact the customer in a timely manner (clause 89(b)) to discuss a revised implementation timeframe (clause 82(3)), consistent with the objectives of Division 3.
- 4.16.6 If, at the end of the initial six-month period, the customer has not implemented the practical assistance provided by their retailer, the retailer must contact the customer under this clause, but the assistance under clause 79(1)(f) may be suspended at that point. However, the retailer is still obligated to take the customer's circumstances into account (clause 89(a)) when deciding whether or not to extend the assistance under clause 79(1)(f).

Adding unpaid bills to a customer's arrears – clause 82(4)

Our expectations of compliance

- 4.16.7 While a customer is receiving assistance under clause 79(1)(e)-(f), retailers may add a customer's unpaid bills, or residual amounts of bills, to their arrears.
- 4.16.8 Retailers are expected to advise customers at the commencement of assistance under clauses 79(1)(e)-(f) how their ongoing bills and unpaid amounts, residual or otherwise, will be treated (i.e. added to their arrears), in line with the specific advice requirements regarding the ongoing cost of usage in clause 79(1)(c). Additionally, retailers are expected to explain that adding unpaid amounts will result in the customer's arrears being larger at the end of the on-hold period than when the customer first had their arrears placed on hold.

Tailored assistance (Division 3) and associated obligations under Division 6

4.17. Continued provision of assistance – clause 83

83 Continued provision of assistance

A *retailer* is required to continue to provide assistance under this Division to a *residential customer* unless:

- (a) after the *retailer* has complied with clause 81(6), the *customer* has refused or failed to take reasonable action towards paying for their on-going *energy* use and repaying their arrears; or
- (b) after the *retailer* has complied with clause 82(2), the *customer* has refused or failed to take reasonable action towards making payments towards the cost of their on-going *energy* use; or
- (c) the *customer* is not facing payment difficulties.

Our expectations of compliance

Missed payments

4.17.1 The commission acknowledges that any retailer decision to suspend assistance to a customer is a difficult one. Retailers are required to provide continued assistance to a customer unless the customer has refused or failed to take reasonable action towards paying for their ongoing energy use and repaying their arrears, or if the customer is not facing payment difficulty (clause 83).

4.17.2 Retailers need to use their judgement about what constitutes ‘reasonable action’ by a customer. By definition, a customer facing payment difficulty has an increased risk of missing payments, making late payments or making payments less than the scheduled amount. Therefore, this guidance note makes it clear that the commission considers that failure to make individual payments, and occasionally underpaying or paying late, would not justify suspending assistance.

4.17.3 However, the Code is clear that reasonable action must be taken by the customer to address their payment difficulty. This guidance also makes it clear that repeated consecutive failures to make payments proposed by the customer may, absent other circumstances, justify suspending assistance, as discussed below.

4.17.4 In complying with its obligations under Part 3, a retailer must consider a customer’s particular circumstances, and act fairly and reasonably (clause 89(a)). As with the exercise of any judgement, the commission expects a retailer to be able to demonstrate clearly that it has considered the customer’s particular circumstances when deciding whether or not to continue providing assistance to a customer under clause 83, as required by clause 111A(d).

Tailored assistance (Division 3) and associated obligations under Division 6

Customer failure or refusal to pay for ongoing use or arrears

4.17.5 Particular circumstances that retailers may consider when deciding whether or not it is reasonable to suspend assistance until such a time when the customer takes reasonable action, in relation to the assistance provided by the retailer, are outlined below.

Reasonable customer action

4.17.6 Reasonable customer action includes, but is not limited to:

- a) Making occasional partial payments, for example only, paying \$80 instead of \$100.
- b) Making a payment a few business days late.
- c) Occasionally missing an individual payment.
- d) Agreeing to pay an amount to their retailer by a reasonable date.
- e) Proposing a payment arrangement that allows for the efficient repayment of arrears and is affordable and sustainable for the customer.
- f) Paying the incorrect account, for example, making a payment towards an electricity account instead of the gas account (with the same retailer).

4.17.7 To be clear, the commission would not consider it reasonable for a retailer to suspend assistance under clause 83 due to a customer occasionally making partial payments, marginally late payments, or missing an individual payment. In these instances, we expect a retailer to contact the customer in a timely manner (clause 89(b)) and discuss a revised payment arrangement that would make it easier for the customer to make timely payments in full (clause 77).

Unreasonable customer action

4.17.8 Unreasonable customer action includes, but is not limited to, **consistently and consecutively**:

- a) Establishing payment arrangements or revised payment arrangements and not making any of the required payments.
- b) Not responding to their retailer's attempts to contact them to provide assistance under Division 3, having regard to known customer circumstances as required by clause 89(a).
- c) Not agreeing to make regular payments towards the cost of their energy usage while their arrears are on hold under clause 79(3).

4.17.9 We also consider it unreasonable for a customer with a relatively low level of arrears when compared to the cost of their energy use, to propose a payment arrangement that would

Tailored assistance (Division 3) and associated obligations under Division 6

use their entitlement of two years (e.g. paying \$5 per month) in the absence of customer circumstances that support repayment over the full period. To be clear, we expect that some customers will be in circumstances²² that would warrant the full period. Alternatively stated, we consider it reasonable for a customer's payment proposal to be proportionate to the amount of their arrears, while taking into account their circumstances and what they can afford to pay.

Customers not facing payment difficulty – clause 83(c)

4.17.10 If a retailer becomes aware that a customer is not facing payment difficulty, and has clear evidence of this, it is not required to continue to provide assistance under Division 3.

4.17.11 If a retailer suspends assistance, the onus is on the retailer to show that a customer was not facing payment difficulty.

Notification of suspended assistance

4.17.12 If a retailer suspends assistance under clause 83, it is expected to notify the customer in writing (in line with the requirements of Division 5) that the customer's assistance has been suspended.

4.17.13 This notification may be included with the disconnection warning notice (provided the reminder notice has already been sent and the reminder notice period had lapsed). The correspondence must include details of what action the customer needs to take to avoid disconnection of supply, any further entitlements to assistance the customer may have under Division 3, and any other government and non-government assistance that may be available, as required by clause 110 of the Code. Retailers also need to comply with the requirements of clause 87 so that any written communication is expressed in plain language, is legible and is presented clearly and appropriately having regard to its nature.

Better practice

4.17.14 A retailer may consider sending the customer a notification of the suspended assistance that is separate to a disconnection warning notice so that the information is not 'lost' in what may be a large amount of other information on a disconnection warning notice.

²² Refer to section 4.3 of this guidance note for more information about customer circumstances.

5. Division 4 – Financial hardship policies

5.1. Approval of financial hardship policies – clause 84

Division 4 Financial Hardship Policies

84 Approval of financial hardship policies

A *retailer* must prepare a financial hardship policy, and submit it to the *Commission* for approval, as mentioned in section 43(1) of the *Electricity Industry Act* or section 48G(1) of the *Gas Industry Act*.

85 Content of financial hardship policies

A financial hardship policy must include:

- (a) the matters set out in section 43C of the *Electricity Industry Act* or section 48GC of the *Gas Industry Act*; and
- (b) the entitlements to minimum assistance set out in Division 3 of this Part; and
- (c) any matters covered by guidelines or guidance notes published by the Commission in relation to those entitlements.

5.1.1 Clause 84 reflects the legislative obligation on retailers to prepare and submit a financial hardship policy to the commission for approval.²³ Retailers must review and, where necessary, make variations to their existing policies²⁴ to include the content set out in clause 85.

5.1.2 Where amendments are necessary, retailers must submit their amended policies to us for approval in accordance with section 43B of the *Electricity Industry Act 2000* (Vic) and section 48GB of the *Gas Industry Act 2001* (Vic). We will audit compliance with Part 3 as part of our audit program.

²³ Section 43 *Electricity Industry Act 2000* (Vic) and section 48G *Gas Industry Act 2001* (Vic).

²⁴ In accordance with section 43B *Electricity Industry Act 2000* (Vic) and section 48GB of the *Gas Industry Act 2001* (Vic).

5.2. Content of financial hardship policies – clause 85

Matters Set Out in Industry Acts – clause 85(a)

5.2.1 A retailer's financial hardship policy must include, in plain language, the matters set out in the relevant sections of the industry Acts.

Minimum Entitlements to Assistance – clause 85(b)

5.2.2 A retailer's financial hardship policy must include, in plain language, the nature and form of assistance it will provide to customers in arrears (clause 80) that complies with Division 3 of Part 3 of the Code.

Matters Covered by Guidelines or Guidance Notes – clause 85(c)

5.2.3 A retailer's financial hardship policy is required to include, in plain language, how the retailer's programs of assistance address matters set out in any guidelines published by the commission under section 13 of the *Essential Services Commission Act*.

5.2.4 A retailer's financial hardship policy is required to include how the retailer's programs of assistance address matters set out in any guidance notes issued under our *Energy Compliance and Enforcement Policy*.

6. Division 5 – Customer communications

6.1. Provision of information to customers – clause 86

6.1.1 The provision of information to customers anticipating or facing payment difficulty, about the assistance under Part 3, will assist them with managing and paying for their energy use, repaying arrears, and will help ensure that disconnection is a last resort.

Division 5 Communications

86 Provision of information to customers

- (1) A *retailer* must ensure that its financial hardship policy is easily accessible on its website in a readily printable form.
- (2) A *retailer* must send a copy of its financial hardship policy to any *residential customer* who requests to be sent a copy.
- (3) A *retailer* must ensure that information is readily available to *residential customers* about:
 - (a) the financial hardship policy of the *retailer*; and
 - (b) the assistance available under Division 2 or 3 and how to access that assistance; and
 - (c) approaches to lowering *energy* costs; and
 - (d) government and non-government assistance (including Utility Relief Grants and *energy* concessions) that may be available to help with meeting *energy* costs.
- (4) Without limiting the means by which information may be made readily available, information is readily available for the purposes of subclause (3) if:
 - (a) it is easily accessible on the *retailer's* website in a readily printable form; or
 - (b) it is sent to any *residential customer* who requests to be sent that information.

Note: Clause 87(2) states how information is required to be sent to a *residential customer*.

6.2. Written communications – clauses 87-88

6.2.1 Retailers must provide customers with written information in plain language, and in a form that draws the customer's attention to any assistance that is available, or actions that they need to take to avoid disconnection.

87 Written communications

- (1) Any written communication by a *retailer* to a *residential customer* under, or in connection with, this Part must be:
 - (a) expressed in plain language; and
 - (b) legible; and
 - (c) presented clearly and appropriately having regard to its nature.
- (2) Despite clause 3F, a *retailer* must give or send by post to a *residential customer* any written communication required or permitted to be given or sent under, or in connection with, this Part unless the *customer* has given explicit informed consent to receiving it in another way.
- (3) Information sent by post to a *residential customer* must be taken to be delivered at the time at which it would be delivered in the ordinary course of post.
- (4) Information sent by registered post to a *residential customer* must be taken to be delivered at the time at which it would ordinarily be delivered by registered post.
- (5) A *retailer* must not impose a charge on a *residential customer* for any written communication given or sent to the *customer* (whether by post or otherwise) under, or in connection with, this Part.

88 Effect of this Division

Nothing in this Division limits clause 56 or any other provision of this Code about providing information to *residential customers*.

Plain language, legibility and clarity – clause 87(1)

6.2.2 Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

Recording explicit informed consent – clause 87(2)

6.2.3 Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

Part 3 written communications – clause 87(3)-(4)

- 6.2.4 Retailers have discretion regarding the postage delivery method they use to send customers written communications connected with Part 3 (clause 87(3)).
- 6.2.5 With respect to both clauses 87(3) and (4), the commission will consider post to have been received by a customer according to the ordinary course of post provisions of the *Interpretation of Legislation Act 1984*.²⁵
- 6.2.6 In order to expedite the delivery of written communications set out under clauses 87(3)-(4), retailers may use Australia Post’s priority letter service with either the registered post or standard post.

No charge for written communication – clause 87(5)

- 6.2.7 Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

Effect of this Division – clause 88

- 6.2.8 Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

²⁵ Section 49 of the *Interpretation of Legislation Act 1984* (Vic).

7. Division 6 – Miscellaneous retailer obligations

Division 6 Miscellaneous

89 Retailer obligations

A *retailer* must:

- (a) in any dealing with a *residential customer* under, or in connection with, Division 3 take into account all of the circumstances of the *customer* of which they are aware and, having regard to those circumstances, act fairly and reasonably; and
- (b) 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; and
- (c) in a timely manner provide, or use its best endeavours to provide, a *residential customer* who is entitled to receive assistance under this Part with that assistance; and
- (d) give a *residential customer* who is receiving, or is entitled to receive, assistance under this Part clear information about how to access other assistance provided by government or community service providers for which the *customer* is or may be eligible; and
- (e) work cooperatively with any government or non-government service, including the Energy and Water Ombudsman (Victoria), providing support to a *residential customer* who is receiving assistance under this Part to ensure that the assistance being provided by the *retailer* complements, and is provided in a coordinated way with, that support; and
- (f) in relation to a *residential customer* who is receiving, or is entitled to receive, assistance under this Part, comply with any relevant guideline published by the *Commission* relating to *customers* in particular payment difficulty, including *customers* who may be affected by *family violence*.

7.1. Customer circumstances – clause 89(a)

7.1.1 The commission's expectations about compliance with a retailer's obligations in relation to clause 89(a) are outlined in section 4.3 of this guidance note.

7.2. Providing information in a timely manner – clause 89(b)

7.2.1 The commission's expectations about compliance with clause 89(b) are outlined in section 4.5 of this guidance note.

7.3. Providing or using best endeavours to provide assistance – clause 89(c)

7.3.1 The commission's expectations about compliance with clause 89(c) are outlined in sections 4.5 and 9.1 of this guidance note.

7.4. Providing information about assistance from government and community service providers – clause 89(d)

7.4.1 Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

7.5. Working cooperatively – clause 89(e)

Better practice

7.5.1 In the spirit of working cooperatively with government and non-government services, we consider it better practice for retailers to have dedicated contact channels such as telephone numbers, email address and web portals, for financial counsellors and other consumer advocates to enable easy access to retailers' specialised staff.

7.6. Compliance with guidelines – clause 89(f)

7.6.1 Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

7.7. Assistance beyond minimum standards – clause 90

7.7.1 This clause intends to put it beyond doubt that retailers may provide assistance in addition to the minimum assistance required by Part 3. Any such assistance must be additional to, not a substitute for, the minimum assistance.

90 Assistance beyond the minimum standards

Nothing in this Part prevents a *retailer* from providing to *residential customers*, who are anticipating or facing payment difficulties, assistance in addition to the minimum standards set out in this Part.

Assistance beyond minimum standards in Division 2

7.7.2 A retailer may, for example, provide a customer who is anticipating payment difficulty – perhaps who is about to be issued with a bill or where the pay-by date of the bill has not yet

passed – the assistance under Division 3, even though the customer is not yet in arrears and the customer is only entitled to Division 2 assistance.

Assistance beyond minimum standards in Division 3

7.7.3 A retailer may, for example, in addition to the minimum assistance a customer is entitled to under Division 3, provide a customer with an incentive payment arrangement (where each payment or number of payments is matched by the retailer), or with a partial or full debt waiver.

7.8. Restriction on conditions – clause 91

Our explanation of the Code

7.8.1 Clause 91 makes it clear that a customer cannot be required to provide personal or financial information to the retailer as a condition of receiving the minimum assistance set out in Part 3.

91 Restriction on conditions

A retailer must not impose any condition on the provision of assistance under this Part (whether in accordance with the minimum standards set out in this Part or in addition to them) that requires the customer to provide personal or financial information or to waive any entitlement under this Part.

Our expectations of compliance

7.8.2 A retailer may ask a customer about any factors that are likely to affect their energy consumption in relation to providing advice and practical assistance under clause 79(1)(e).

7.8.3 A retailer cannot request that a customer seeks assistance from a financial counsellor or provides financial information as a condition to accessing assistance under Part 3.

7.8.4 This clause does not prevent a retailer offering to arrange for a customer to receive assistance through a financial counsellor or other community service provider. However, the retailer cannot require provision of evidence of the customer's financial circumstances in return for making these arrangements or the outcome of the assistance received.

7.8.5 This clause does not prohibit a retailer asking its customer questions that help the retailer maximise and enhance the effective delivery of the assistance under Part 3. However, it does prohibit making provision of that information a condition to access assistance under Part 3. Therefore, if a customer declines to answer a retailer's questions, the retailer must still provide the customer with their entitlement to assistance under Part 3.

7.8.6 Personal information does not include information necessary to enable the retailer to verify the customer's identity.

7.8.7 A retailer may also ask a customer for information needed to:

- a) assist the customer with completing an application for the Utility Relief Grant Scheme
- b) assist with applying concessions to the customer's account
- c) assist with a referral to government and non-government support (where the customer has consented to the referral)
- d) provide the customer with tailored practical assistance under clause 79(1)(e).

7.9. Debt – clause 92

7.9.1 Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

92 Debt

(1) Restriction on debt recovery

A *retailer* must not commence or continue with proceedings for the recovery of *arrears* from a *residential customer* who is receiving assistance under this Part.

(2) Restriction on sale of debt

A *retailer* must not sell or otherwise dispose of the debt of a *residential customer* who is in arrears:

- (a) at any time while the *customer* is receiving assistance under this Part; or
- (b) within 10 business days after the *customer* has been disconnected from their *energy* supply under clause 111A.

(3) Guideline to be complied with on sale of debt to third party

A *retailer* must not sell or otherwise dispose of the debt of a *residential customer* to a third party other than in accordance with the guideline "*Debt collection guideline: for collectors and creditors*" jointly published by the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission.

(4) Waiver of debt

Nothing in this Part prevents a *retailer* from waiving any fee, charge or amount of arrears for a *residential customer*.

7.10. Supply capacity control product – clause 93

7.10.1 Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

93 Supply capacity control product

A *retailer* must not offer a *supply capacity control product* to a *residential customer* for any credit management purpose.

7.11. Payment by Centrepay – clause 94

7.11.1 Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

94 Payment by Centrepay (SRC and MRC)

- (1) This clause applies where a *residential customer* requests a *retailer* to permit payment by using Centrepay as a payment option (see clause 32).
- (2) If the *residential customer* is applying for or on a *standard retail contract*, the *retailer* must allow the *customer* to use Centrepay as a payment option.
- (3) If the *residential customer* is on a *market retail contract* and Centrepay is available as a payment option under that contract, the *retailer* must allow the *customer* to use Centrepay as a payment option.
- (4) If the *residential customer* is on a *market retail contract* and Centrepay is not available as a payment option under that contract, the *retailer* must undertake a review of the *market retail contract*.
- (5) If, as a result of a review, an alternative *customer retail contract* is considered to be more appropriate, the *retailer* must transfer the *customer* to that alternative contract, where the *retailer* has obtained the *customer's* explicit informed consent.
- (6) Any alternative *customer retail contract* offered to a *residential customer* must make Centrepay available as a payment option.
- (7) If, as a result of the review, there is no alternative *customer retail contract* considered to be more appropriate, the *retailer* must make Centrepay available as a payment option under the *residential customer's* existing *market retail contract*.
- (8) The *retailer* must not charge the *residential customer* for the review, for any transfer to an alternative *customer retail contract* or any early termination charge or other penalty for the early termination of the *customer's* previous *customer retail contract*.

8. Disconnection safeguards – Parts 3 and 6 of the Code

8.1. Disconnection safeguards

- 8.1.1 Before a retailer can disconnect a residential customer's energy supply under clause 111A, the retailer must have complied with a range of obligations including providing in a timely way, or using its best endeavours to provide, the assistance under Part 3 at multiple stages during its interactions and communications with the customer (clause 89). We have called these various obligations 'disconnection safeguards'.
- 8.1.2 The disconnection safeguards are located in a number of clauses throughout the Code. These provisions ensure that retailers must provide customers with timely, relevant and unambiguous information and assistance to help avoid disconnection. This information includes:
- a) entitlements to assistance under Part 3
 - b) assistance that may be available from community service providers and other non-government services
 - c) the availability of government assistance including grants and concessions.
- 8.1.3 The disconnection safeguards also include restrictions where disconnections are prohibited (clauses 111, 111A and 116), including the minimum disconnection amount where the customer must have arrears of at least \$300 (inclusive of GST).
- 8.1.4 The other disconnection safeguards are located in the Code and are summarised in the *Essential Services Commission 2017, Payment difficulty framework, Final decision, October* in table 5.3.
- 8.1.5 The remainder of this chapter contains the relevant disconnection safeguard provisions of the Code that are not discussed elsewhere in this guidance note.

Disconnection warning notices – clause 110

- 8.1.6 Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

110 Disconnection warning notices

(1) Nature of disconnection warning notices

A *disconnection warning notice* is a notice issued by a *retailer* to warn a *customer* that the *customer's* premises will or may be de-energised.

(1A) Purpose of disconnection warning notices

The purpose of a *disconnection warning notice* is to give the *customer* clear and unambiguous advice about what the *customer* needs to do to avoid being disconnected from their *energy* supply.

(2) Particulars to be included in disconnection warning notices

A *disconnection warning notice* must:

- (a) state the date of its issue; and
- (b) state the matter giving rise to the potential *de-energisation* of the *customer's* premises; and
- (ba) if the *customer* is a *residential customer* who is entitled to receive assistance under Part 3:
 - (i) give an explanation in plain language of the notice and of why it is being issued; and
 - (ii) give the *customer* clear and unambiguous advice about what the *customer* needs to do to avoid being disconnected from their *energy* supply, including any entitlement that they may have to further assistance under Part 3; and
 - (iii) if the *customer* is or may be eligible for other assistance provided by government or community service providers, give the *customer* clear information about how to access that assistance; and
- (c) where the notice has been issued for not paying a bill:
 - (i) state the date on which the *disconnection warning period* ends; and
 - (ii) state that payment of the bill must be made during the *disconnection warning period*; and
- (d) for matters other than not paying a bill—allow a period of not fewer than 5 *business days* after the date of issue for the *customer* to rectify the matter before *de-energisation* will or may occur; and
- (e) inform the *customer* of applicable *re-energisation* procedures and (if applicable) that a charge will be imposed for *re-energisation*; and
- (f) include details of the existence and operation of the *energy ombudsman*, including contact details; and
- (g) include details of the telephone number of the *retailer* for payment assistance enquiries; and
- (h) for a *customer* with a *smart meter*, state that *de-energisation* could occur remotely.

De-Energisation for not paying a bill – clause 111

8.1.7 Clause 111 only applies to small customers who use less than 40MWh per annum, who are **not** residential customers.

Disconnection as a last resort – clause 111A

111A Residential customer only to be disconnected as a last resort for non-payment

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*; and
- (b) the *customer*:
 - (i) while receiving tailored assistance under clause 79(1)(a), has failed to make a payment by the date on which it was payable, has not put forward a revised payment proposal under clause 81 and does not have an entitlement to the assistance mentioned in clause 79(1)(f); or
 - (ii) has exercised an entitlement to the assistance mentioned in clause 79(1)(f) and has failed to make a payment by the date on which it was payable and has not put forward a proposal to vary the amount payable or the frequency of payments; and
- (c) the *customer* has refused or failed to take reasonable action towards remedying the matter; and
- (d) the *retailer* has records that are sufficient to evidence the matters mentioned in paragraphs (a), (b) and (c).

8.1.8 Clause 111A provides the mechanisms by which customers can be assured that disconnection for not paying a bill should only be pursued as a last resort. Three sets of conditions must be met.

Our expectations of compliant conduct

- 8.1.9 First, the retailer must have met all of its obligations under Part 3 including using its best endeavours to provide the minimum assistance to a customer, including revising tailored assistance arrangements in a timely manner (clause 89(b)), where required in the Code. The retailer must also have issued a compliant bill (i.e. with a due date as required by clause 25), compliant reminder notice (clause 109), and compliant disconnection warning notice (clause 110). Additionally, after the disconnection warning notice has been issued, a retailer must have used its best endeavours to contact the customer to provide them with unambiguous information about the assistance available under Part 3 and from government and non-government services, prior to disconnection.
- 8.1.10 Second, the customer receiving assistance must have not taken reasonable action to pay for their arrears or ongoing energy usage costs (clause 83), and not sought to vary that assistance (such as through a revised payment arrangement under clause 81) if they were unable to pay (clauses 81(6) and 82(2)). The customer must also have not sought and be waiting for the outcome of government or non-government assistance available to them (clauses 79(1)(d) and 110(2)(ba)), such as waiting for a financial counselling appointment or where an URGS application in progress.
- 8.1.11 Third, a retailer must be able to demonstrate through its record keeping (clause 111A(d)) that it has met its obligations to use its best endeavours to contact the customer and provide assistance. The retailer must have issued a compliant bill, reminder notice and disconnection warning notice, and acted fairly and reasonably while taking into account all known customer circumstances, as outlined in clauses 89 and 111A. The retailer must also be able to provide records to show how the customer failed to meet the conditions of the assistance and did not take reasonable action. Additionally, the retailer must be able show how it complied with the Parts 3 and 6 of the Code.
- 8.1.12 If a customer is disconnected and the requirements of clause 111A have not been satisfied, the customer will not have been disconnected as a last resort.
- 8.1.13 Through the conditions of retailer licences, standard retail contracts and market retail contracts must either comply with, or not be inconsistent with, the Code including clause 111A. If a retailer disconnects a customer and fails to comply with the terms and

conditions of the customer's contract specifying the circumstances in which the supply of energy may be disconnected, the customer will have been wrongfully disconnected.²⁶

Restrictions on de-energisation

8.1.14 The minimum disconnection amount in clause 116(1)(g) has been amended from \$120 (exclusive of GST) to \$300 (inclusive of GST) of arrears to align with the minimum amount under the National Energy Retail Rules, as applied in other jurisdictions.

116 When retailer must not arrange de-energisation

(1) Restrictions on de-energisation

Despite any other provisions of this Division but subject to subclauses (2), (3) and (4), a *retailer* must not arrange for the *de-energisation* of a *customer's* premises to occur:

- (a) where the premises are registered under Part 7 as having *life support equipment*; or
- (b) where the *customer* has made a complaint, directly related to the reason for the proposed *de-energisation*, to the *retailer* under the *retailer's* standard complaints and dispute resolution procedures, and the complaint remains unresolved; or
- (c) where the *customer* has made a complaint, directly related to the reason for the proposed *de-energisation*, to the *energy ombudsman*, and the complaint remains unresolved; or
- (d) where the *customer* is a *residential customer* who is receiving assistance under Part 3 and is adhering to the terms of that assistance; or
- (e) where the *customer* informs the *retailer*, or the *retailer* is otherwise aware, that the *customer* has formally applied for assistance to an organisation responsible for a rebate, concession or relief available under any government funded *energy charge rebate, concession or relief scheme* and a decision on the application has not been made; or
- (f) on the ground that the *customer* has failed to pay an amount on a bill that relates to goods and services other than for the sale of *energy*; or
- (g) for non-payment of a bill where the total amount of the *customer's* arrears is less than \$300 (inclusive of GST); or
- (h) [Not used]
- (i) during a protected period.

²⁶ Section 40B(1) *Electricity Industry Act 2000* (Vic) and section 48A(1) *Gas Industry Act 2001* (Vic).

8.2. Disconnection by a retailer

8.2.1 A reference in the Code or this guidance note to a disconnection by a retailer means a disconnection procured by a retailer. Accordingly:

- a) If a disconnection performed by a distributor occurs where the distributor is acting on the retailer's instructions, the retailer is deemed to have disconnected the customer.
- b) If a disconnection performed by a distributor occurs not in accordance with the instruction to disconnect given by the retailer, the retailer has not disconnected the customer.

Better practice

8.2.2 In relation to 8.2.1(b) above, the retailer should advise the customer to contact the distributor to raise a complaint about the erroneous disconnection and advise of the availability of the Energy and Water Ombudsman (Victoria).

8.3. Our expectation for best endeavours following issuing a disconnection warning notice – clause 111A(a)(iv)

Outcomes for the customer

8.3.1 If a retailer complies with clause 111A(a)(iv), we would expect a customer to be:

- a) contacted by their preferred method (if known to the retailer) or another method having regard to the customer's known circumstances; and
- b) advised of the imminent disconnection of their energy supply; and
- c) provided with clear and unambiguous information about the assistance available under Division 3; and
- d) advised how to access assistance to ensure that disconnection is only pursued as a measure of last resort.

Our explanation of the Code

8.3.2 This section of guidance relates to the commission's expectations of retailers in fulfilling their best endeavours requirements following the issuing of a compliant disconnection warning notice (clause 110) and prior to disconnection, as outlined in clause 111A(a)(iv).

Our expectations of compliance

8.3.3 Retailers are expected to exercise their judgement and use the information available and known to them at a particular point in time about an individual customer – including customer circumstances that they are aware of (clause 89(a)) – when fulfilling their

obligations to use their best endeavours to contact a customer following issuing a disconnection warning notice and prior to disconnection, as required by clause 111A(a)(iv).

8.3.4 Best endeavours prior to disconnection is designed to be 'best last efforts' to notify the customer of the imminent disconnection, provide them with clear and unambiguous information about their entitlements to assistance under Division 3 and how to access it, and inform them of the assistance that may be available from government and non-government services. This contact needs to be made in a timely manner and therefore best endeavours to contact a customer for the purposes of clause 111A(a)(iv) must be fulfilled in a period of time proximate to the actual disconnection of supply. We consider this to be at least one business day after the customer has received the disconnection warning notice via the ordinary course of post (clause 87(3)-(4)) and no more than 20 business days prior to disconnection.

Examples of compliant conduct

Preferred contact methods

8.3.5 Retailers should attempt to contact customers via their preferred contact method/s, if they are known to the retailer. If the customer prefers telephone contact and the retailer knows the customer's preferred time of day for contact, then the retailer should also rely on this information for the first best endeavours contact attempt.

8.3.6 If a retailer does not know or does not have a sufficient record of a customer's preferred contact method, or has not been able to successfully contact the customer via their preferred contact method, then the retailer is expected to attempt multiple contacts via different methods, prior to disconnection.

8.3.7 Retailers may use electronic communications, including email and text message (SMS) to fulfil their best endeavours obligations, but only if the customer has provided explicit informed consent to receiving communications via these methods. Additionally, the requirements of clause 87 apply.

Registered Post

8.3.8 If the contact attempts listed above are not successful, the retailer must issue the customer with a disconnection warning notice and information about their entitlements to assistance under Division 3 using registered post or the 'sign on delivery service' for other postal options such as express post. For the sake of clarity, express post is not the same as registered post unless the customer has to sign for receipt of the mail.

Sufficient records

8.3.9 Retailers must have sufficient records of their best endeavours efforts to contact the customer prior to disconnection and provide them with assistance under Division 3, prior to disconnection under clause 111A. This also applies to sufficient records about a customer's preferred contact method, if the retailer has relied on this to fulfil its best endeavours obligations. Sufficient record keeping is a requirement of clause 111A(d).

ACCC/ASIC Debt collection guideline

- 8.3.10 The commission understands that retailers need to balance their obligations under the Code to use their best endeavours and their obligations under the ACCC/ASIC Debt collection guideline. The commission expects a retailer to comply with the guideline. We do not expect a retailer (or a retailer's credit collection agent) to be non-compliant with the guideline, for example, contacting the customer outside of the frequency, timing or method limits and restrictions of the guideline, in order to fulfil its best endeavours obligations under the Code.
- 8.3.11 We believe that retailers can fulfil and comply with both sets of requirements and obligations regarding contacting customers. For example, the commission would not expect a retailer to contact a customer more than 3 times per week or 10 times in one month as noted in the ACCC/ASIC Debt collection guideline.²⁷

Examples of non-compliant conduct

8.3.12 The following examples illustrate retailer actions that we consider do not constitute best endeavours:

Timely contact

- a) If a customer was contacted more than 20 business days prior to the disconnection of supply, this would be considered non-compliant conduct as we would not consider it to have been completed in a 'timely manner' as required by clause 89(b).

Contacts and preferred contact method

- b) Not leaving messages on telephone answering or message services.
- c) Leaving a message with a person under the age of 18 years.
- d) Leaving a message with an adult who does not have legal capacity.

²⁷ As noted in section 5(c) on page 13 of the Guideline.

- e) Repeatedly calling a disconnected phone number or a phone number without a voicemail facility and not attempting any other contact.
- f) Email communication that is sent to an inactive email address, where the email is not successfully delivered and the retailer receives notification of the delivery failure.
- g) If a retailer knows the customer's preferred contact method and has sufficient record of it, but does not attempt to contact the customer by their preferred method.
- h) If the retailer fails to successfully identify if they are speaking with the customer.

Sufficient records

- i) If a retailer does not have sufficient records (clause 111A(d)), including content, times, dates, and specific details of their attempts to comply with clause 111A(a)(iv), the retailer cannot proceed to compliantly disconnect a customer.
- j) Failing to keep appropriate records of contact attempts, including all electronic communications that are specific to the contact or attempted contact with a particular customer. Text message and email templates will generally not form sufficient substantiation of contact, successful or otherwise, unless it can be proven which particular template correspondence (and its content) was sent to a customer at a particular point in time and the dispatch date and time of the correspondence.
- k) If written communications are not expressed in plain language, legible or presented clearly having regard to its nature, as required by clause 87.

Better practice

- 8.3.13 If a retailer is going to attempt telephone contact with a customer, we would consider it better practice for the retailer to send a text message to the customer just prior to making the telephone call, to notify the customer that they are contacting in relation to an imminent disconnection of supply and the assistance to which the customer is entitled.
- 8.3.14 If the retailer does not have any contact details for the customer, or finds that the customer's telephone number is disconnected and has no other means to contact the customer, then the retailer may consider visiting the customer's premises.

9. Guidance for other retailer obligations under Parts 3 and 6

Key points

This chapter outlines the commission's expectations of energy retailers in complying with their obligations under Part 3 of the Code:

- sufficient record keeping (clause 111A(a)(d))
- customer entitlements following disconnection (clause 111A) or suspension of assistance (clause 83).

9.1. Sufficient record keeping – 111A(d)

Our explanation of the Code

9.2.1 Clause 111A(d) requires retailers to have records that are sufficient to evidence the matters mentioned in clause 111A(a)-(c). Refer to section 8.1 for the relevant Code excerpt.

Our expectations of compliance and examples of compliant conduct

9.2.2 For a retailer to satisfy the Code requirements about dispatch of documents, contact by telephone and contact in person, the retailer must be able to demonstrate and substantiate its contacts, or attempted contacts, with a customer.

Dispatch of notices

9.2.3 A retailer must be able to either:

- a) produce an exact copy of the document or notice sent to the customer; or
- b) show that it has a system in place for the distribution of documents and that the procedure was followed in the particular instance. This will involve reference to electronic records that a number of documents in a category were dispatched, that the document relating to the customer was included in that batch and the system for posting such documents. This will need to include circumstances where proof is required of the date requested by the retailer for disconnection action to be taken by the distributor.

9.2.4 Retailers must retain the registered post “proof of posting” document (hard-copy or electronic) issued by Australia Post and record the Australia Post unique identification number.

9.2.5 Retailers must have complete and accurate records of all electronic communications, including, but not limited to, emails and text messages (SMS).

Contact by telephone

9.2.6 A retailer must be able to show that it has a system in place for making and recording notes of calls. This should include details of the retailer’s caller, the date and time, the outcome of the call (not answered, answered, left message on automated service, or left message with an adult with legal capacity), the essential details of any message left, the name of a person who took a message and details of any conversation conducted.

Contact in person

9.2.7 A retailer must be able to produce full particulars of any visit to a supply address or other face-to-face contact with a customer including place, date, time, and details of the discussion, as required by clause 111(A)(d). The individual representative of the retailer who has the contact should be available to give evidence (at least for as long as they remain employed by the retailer).

9.2. Customer entitlements following disconnection or suspension of assistance – Division 3

Our expectations of compliance

9.3.1 We expect a retailer to act fairly and reasonably, having regard to a customer’s circumstances (clause 89(a)), and discuss payment arrangement options that would assist the customer with making consistent and sustainable payments, and maintaining an energy connection, consistent with clause 81.

Suspended assistance (clause 83)

9.3.2 The Code provides for a period of assistance for customers in arrears of up to two years. The Code also anticipates that customers in arrears may need to change their payment arrangements to ensure that they remain sustainable in light of changed circumstances. If a customer has had their assistance suspended, they remain entitled to assistance provided they re-engage and start taking reasonable action to pay for their energy use and repay their arrears. We do not consider it reasonable for a retailer to include the time a customer’s

Guidance for other retailer obligations under Part 3 and 6

assistance was suspended in their minimum entitlement of up to two years to repay their arrears and pay for their ongoing energy costs.

- 9.3.3 For example, if a customer has had their assistance suspended after six months on tailored assistance, for failing to take reasonable action (clause 83), they are entitled to revise their payment arrangements by making payments in instalments over a period of up to eighteen months (the balance of the customer's entitlement to assistance) under clause 81(3). However, if the instalment amount required exceeds what a customer considers they are able to pay, a retailer has the discretion to extend the payment arrangement (clause 81(4)). In deciding whether to exercise this discretion retailers are expected to have regard to the customer's circumstances and act fairly and reasonably in light of these circumstances (clause 89(a)). Retailers must maintain records to show how they decided what was fair and reasonable in the circumstances (clause 111A(d)).

Entitlement to tailored assistance following disconnection of supply under clause 111A

- 9.3.4 All customers in arrears of \$55 or more (inclusive of GST) are entitled to assistance under the Code. A customer remains a customer of the retailer after they are disconnected and therefore the customer is entitled to continued assistance, subject to them taking reasonable action to pay for their energy use and repay their arrears. The question is then, 'what is reasonable action following disconnection?'
- 9.3.5 We consider that, absent other circumstances (clause 89(a)), it is not unreasonable for a retailer to require some form of payment as evidence of the customer's reasonable action prior to reconnection. However, this amount should be no greater than the sum of the instalments missed by the customer prior to disconnection. However, having regard to the customer's particular circumstances, retailers should consider a lower amount, including no up-front payment at all, if fair and reasonable to do so in the circumstances.
- 9.3.6 When a customer has had their assistance suspended under clause 83 and had their supply disconnected compliantly in accordance with the requirements of clause 111A, a retailer may either:
- a) discuss a revised payment arrangement with the customer under clause 81 in order to have supply reconnected and tailored assistance re-instated, or
 - b) having regard to the customer's circumstances (clause 89(a)), ask the customer to pay the missed payment arrangement instalments in order to have the supply reconnected and tailored assistance re-instated (as described above).

- 9.3.7 In both (a) and (b), for example, the customer would only be entitled to the balance of their original payment arrangement under clause 81(3). For example, if the customer had a payment arrangement for six months prior to disconnection, they would only have a minimum entitlement to propose a new payment arrangement for the balance of up to 18 months (clause 79(1)(a)-(b)). However, a retailer may exercise its discretion to provide longer payment arrangements under clause 81(4).
- 9.3.8 We do not consider it reasonable for a retailer to include the time a customer's assistance was suspended and their supply disconnected, in the customer's minimum entitlement to two years to repay their arrears and pay for their ongoing energy costs.

Example of non-compliant conduct

- 9.3.9 The commission does not consider it acceptable for a retailer to ask a customer in arrears to make a lump sum payment greater than the combined amount of the missed payments prior to disconnection, as described above, in order to:
- a) have their energy supply reconnected following disconnection for non-payment; or
 - b) access assistance under Division 3 following the disconnection of supply for non-payment.

10. Compliance and enforcement

10.1. Compliance with obligations

- 10.1.1 The provisions in Part 3 and Part 6 outline the minimum standards of conduct with which retailers are expected to comply in meeting the relevant objectives. These minimum standards are strict obligations and strict compliance is required. Retailers are expected to establish policies, procedures, practices and systems that will support full compliance with these regulatory obligations. We are not regulating the design of retailers' internal procedures, practices and systems. That is a matter solely for each retailer to determine.
- 10.1.2 Likewise, even though we are not regulating how retailers implement complementary procedures, practices and systems that seek to ensure the objectives of the regulatory framework are met, we expect retailers to have such measures in place.
- 10.1.3 Experience suggests many retailers will also draw on their direct experiences in working with customers to implement additional programs (and other measures) to support positive outcomes for those customers facing payment difficulty.

10.2. Identification of non-compliance

- 10.2.1 As outlined in section 3.2.2. of our *Energy Compliance and Enforcement Policy*, the commission identifies potential breaches via:
- a) self-reporting of breaches by retailers
 - b) the findings of compliance audits and the results of investigations
 - c) a systemic breach referred by the EWOV (under section 54X of the *Energy Amendment (Consumer Protection) Act 2015*)
 - d) a disputed energy disconnection referred by the Energy and Water Ombudsman (Victoria)
 - e) reports of potential breaches from other external stakeholders (e.g. consumer representatives, other regulatory agencies, whistle blowers, members of the public and the media).

10.3. Compliance and enforcement factors

- 10.3.1 The matters the commission may take into account when considering enforcement action under the *Energy Compliance and Enforcement Policy* are outlined in section 3.2.1 of the policy. We have included the factors in this guidance note below, for ease of reference.

10.3.2 In carrying out a preliminary assessment, and deciding how a matter should proceed through the *Compliance – Enforcement Pathway*, we assess the nature of the conduct having regard to the following *Compliance and Enforcement Factors*, to the extent that they are relevant in the particular case:

- a) the risk of harm, or actual harm, to energy customers
- b) the impact on customer confidence in Victorian energy markets
- c) whether the breach was self-identified and reported in a timely manner
- d) how and in what timeframe any customer complaints about the breach were addressed by the regulated entity
- e) whether the regulated entity has taken timely and effective steps to investigate the root cause of the breach
- f) whether the regulated entity has taken timely and effective steps to resolve the breach and prevent its reoccurrence
- g) whether the regulated entity has taken timely and effective steps to inform consumers about the breach, and offer an appropriate remedy to affected customers
- h) whether the regulated entity has put in place effective processes to review and report on the progress of remediation
- i) whether the regulated entity has responded in full and in a timely manner to our inquiries and requests for information or progress updates
- j) the compliance history of the regulated entity
- k) any other relevant matter.

Appendix A – List of references

Australian Energy Regulator 2016, *Sustainable payment plans – A good practice framework for assessing customers' capacity to pay*, July.

Electricity Industry Act 2000 (Vic), (http://www.austlii.edu.au/au/legis/vic/consol_act/eia2000261/).

Essential Services Commission 2016, *Energy Compliance and Enforcement Policy*, July.

Essential Services Commission 2017, *Energy Retail Code*, Version 12, October.

Gas Industry Act 2001 (Vic), (http://www.austlii.edu.au/au/legis/vic/consol_act/gia2001167/).

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Appendix B – Document version control

Version	Date published	Amendment
1.0	10 October 2017	Creation of draft document.
1.0	22 December 2017	Final decision and guidance note published