



PAYMENT DIFFICULTY FRAMEWORK

New Draft Decision

May 2017



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CHAIRPERSON'S INTRODUCTION

It is almost three years since we commenced our inquiry into hardship arrangements in Victoria. The final report of that inquiry in February 2016 found that customers experiencing payment difficulty could not count on a consistent level of assistance from energy retailers. Government was seeking reassurance that the disconnection of customers was only being pursued by energy retailers as a measure of last resort. We could not give that assurance.

Soon after receiving our final report, the Government responded. Accepting our advice, the Government requested we amend the regulatory framework to ensure customers encountering payment difficulty could expect a consistent level of support from their energy retailers. Most of last year was spent developing a proposal for amending the Energy Retail Code (the Code). That proposal was released in October 2016. While submissions acknowledged the Commission's efforts to address the many issues that had been raised with us, they remained critical of our proposal.

At that point, we 'stopped the clock'. We needed time to better understand stakeholders' concerns and we needed time to assess the options for moving forward. Our stakeholder forum on 31 January 2017 was an important turning point for us. After that full day of discussions with stakeholders, we came to the conclusion a new approach was needed.

As a result, this revised draft decision is markedly different from our earlier proposal in its philosophical underpinnings. We now seek to maintain many of the features of the present Code while also responding to the findings of the hardship inquiry.

Nevertheless, readers familiar with our earlier draft decision will recognise some of its features in this new proposal — particularly assistance as a customer entitlement subject to minimum standards.

Now we begin an intensive period of consultation on the new draft proposal with written submissions due by 16 June 2017. We are aiming for a final decision in late July or early August. From there, we are proposing a staged implementation of the new framework with the first phase to take effect from 1 January 2018.

Dr Ron Ben-David
Chairperson

ACRONYMS

| | |
|----------------------|---|
| AER | Australian Energy Regulator |
| CALC | Consumer Action Law Centre |
| CALD | Culturally and linguistically diverse |
| CPRC (formerly CUAC) | Consumer Policy Research Centre (formerly Consumer Utilities Advocacy Centre) |
| ECCV | Ethnic Communities' Council of Victoria |
| EI Act | <i>Electricity Industry Act 2000</i> |
| ESC Act | <i>Essential Services Commission Act 2001</i> |
| EWOV | Energy and Water Ombudsman (Victoria) |
| the framework | Framework for assisting customers facing payment difficulty, consisting of the Energy Retail Code amendments, guidance material, better practice reporting, the Commission's Energy Compliance and Enforcement Policy |
| GI Act | <i>Gas Industry Act 2001</i> |
| Hardship inquiry | An inquiry undertaken by the Commission from February 2015 to February 2016 to examine the best practice of energy retailers' management of financial hardship, and identify options for improving how retailers assist customers |

| | |
|---------------------|--|
| ICT | Information and Communication Technology |
| Industry Acts | <i>Electricity Industry Act 2000 and Gas Industry Act 2001</i> |
| NPV | Net Present Value |
| Operating Procedure | Operating Procedure – Compensation for Wrongful Disconnection |
| the Code | Energy Retail Code (Version 11) |
| the Commission | Essential Services Commission of Victoria |
| URG | Utility Relief Grant |
| VCOSS | Victorian Council of Social Service |
| WDP | Wrongful disconnection payment |

EXECUTIVE SUMMARY

INTRODUCTION

This revised draft decision is a direct response to stakeholder concerns about possible unintended consequences of our first draft decision (October 2016) which contained a high level of detail and prescription. After further consultation with stakeholders, the Commission decided to shift its focus from prescription and process, to outcomes — that is, ensuring customers in payment difficulty receive timely and meaningful assistance that supports them lower their energy costs and manage their arrears.

FINDINGS OF THE HARDSHIP INQUIRY

In 2013-14, nearly 60,000 Victorians were disconnected for not paying their energy bills. This was the highest number ever recorded in this state. In 2013-14, wrongful disconnections also peaked at 9,032 cases representing a 252 per cent increase in the five years since 2009-10.

In response, the Victorian Government directed the Commission to conduct an inquiry examining how retailers assist customers facing payment difficulties and whether the regulatory framework was effective at ensuring customers receive effective assistance to avoid disconnection. The terms of reference issued by the Government reinforced the legislative expectation that disconnection of customers in payment difficulty should be a measure of last resort.

Our final inquiry report in February 2016 found:

- customers in payment difficulty often use more energy than other customers
- existing hardship programs were generally ineffective at preventing customers from accumulating further debt
- by the time help is offered, it is often too late to assist customers to manage their debt

- some retailers offer more help than others but customers cannot count on a consistent or minimum standard of assistance.

On the basis of our findings through the inquiry, it became apparent that customers anticipating or in payment difficulty have not been gaining equitable access to predictable, consistent and effective assistance, therefore, disconnection has not been a measure of last resort.

In January 2016, the Government amended the energy industry legislation, giving the Commission the specific objective of “promot[ing] protections for customers, including in relation to assisting customers who are facing payment difficulties.” During 2016, the Commission worked with key stakeholders to design a new regulatory framework to address the shortcomings uncovered in the inquiry.

The data indicate that retailers are admitting higher numbers of customers into their hardship programs. As the regulatory framework restricts retailers from disconnecting customers in hardship programs, this may partly explain the observed decrease in disconnections since 2014-15.

Over the same period, however, total arrears have continued to increase. This is not, in itself, necessarily a reflection of the assistance that retailers are providing. Total arrears are influenced by numerous factors beyond the control of retailers, including economic forces and customer choices. However, it is an indication that the reasons for our earlier concern about customer arrears has not gone away.

EVOLUTION OF THE COMMISSION’S APPROACH

Our initial draft decision, released for comment in October 2016, was highly detailed in the way it sought to standardise the assistance customers in payment difficulty could expect to receive. Feedback on the first draft indicated general concern that the proposed new framework was overly prescriptive and may have unintended consequences including stifling innovation, loss of flexibility for retailers to deal with individual customers’ circumstances and disempowering customers when working with their retailers on how best to address their payment difficulty.

As a result, the Commission resolved to develop a second draft decision proposing a framework based on:

- streamlining retailers' obligations to focus on outcomes for customers, not process
- supporting engagement between retailers and customers
- setting minimum standards of assistance customers should expect from their retailers
- requiring retailers to take a customer's circumstances into account when making assistance available (so avoiding a 'cookie cutter' approach to assistance)
- retaining hardship policies and giving retailers discretion over how they assist their customers in payment difficulty.

OUR NEW PROPOSAL

The proposal in this second draft decision is simpler than our first proposal. Rather than having up to seven layers of tiered assistance that treat a customer's payment difficulty quite mechanically, the new proposal has three types of assistance built around the different ways in which customers and retailers interact.

Whereas our first proposal sought to regulate exactly how and when customers received different types of assistance, the revised proposal provides retailers with much greater scope to work with customers on identifying the most appropriate course of action (provided they meet the minimum standards). The proposed framework also recognises that if retailers are given this discretion, then they must be expected to use it responsibly. That responsibility must be accompanied by accountability. Therefore, the proposed framework clearly holds retailers to account for the way in which they exercise the discretions afforded them. The Commission will use its enforcement powers if necessary to reinforce retailers' accountability.

Importantly, the new framework is centred on customers and customer outcomes — and not, retailers and regulatory compliance. Assistance is framed as a customer entitlement. Customers in payment difficulty are entitled to receive assistance. Retailers do not get to choose whether or not they offer it to customers.

HOW OUR NEW PROPOSAL WORKS

The new proposal establishes an entitlement for customers anticipating or in payment difficulty to three different types of assistance.

1. **Standard Assistance**

This form of assistance is available to all customers. Customers do not need to be in arrears in order to access this assistance. It involves retailers making at least three different payment options readily available to customers. For example, this might include the customer making regular payments of a fixed amount, a payment extension or payments made in advance.

The aim of standard assistance is to encourage customers to take early action to avoid getting into debt.

2. **Tailored Assistance**

This type of assistance is available to customers who are in arrears and who are working with their retailer to manage their situation. Tailored assistance provides these customers with flexible and practical help to repay any amounts outstanding and also to lower their energy costs. Customers will be entitled to a range of payment arrangements that enable them to repay their arrears through regular repayments over an agreed period of no more than two years. Customers will also receive assistance to support them lowering their energy costs and assistance in accessing government and non-government support services.

Customers in more severe types of payment difficulty will be entitled to a greater level of assistance, including a period of at least six months where repayment of their arrears is put on hold. Retailers will also be required to place the customer on tariffs that most appropriately help lower the customer's cost of energy use.

3. **Default Assistance**

This type of assistance is designed to provide assistance to customers who have not engaged, or who have ceased to engage with their retailer about their payment difficulty. Under default assistance, retailers will be obliged to make available a repayment schedule involving equal payments over a period of time three times the customer's current billing period. For example, a customer who is billed monthly, will have the opportunity to repay an unpaid account over the next three months. In making a default payment arrangement available, the retailer will be required to invite the customer to make contact in order to develop alternative arrangements under tailored assistance.

Default assistance provides unengaged or disengaged customers a last opportunity either to begin repaying their arrears or to make contact with the retailer.

This draft decision confirms the need for retailers to have financial hardship policies which outline the details of the assistance they will make available to customers in payment difficulty. These policies will need to comply with the minimum standards for the three types of assistance described above and they will need to describe what customers must do to avoid disconnection.

Under the proposed Code changes, certain conditions must be met before a customer can be disconnected from their energy supply. This includes:

- the retailer must have provided the minimum level of assistance to which the customer was entitled
- the retailer must have issued a compliant disconnection warning notice
- the retailer must have used its best endeavours to contact the customer prior to disconnection (after the relevant warning notice period is over)

But customers will also have responsibilities. Most notably, customers are expected to comply with the terms of their payment arrangements or contact the retailer to agree new assistance arrangements.

Importantly, there will be an express obligation on retailers to maintain records demonstrating they have satisfied their obligations and the customer has failed to meet the conditions of their assistance.

These requirements have been put in place to ensure that disconnection is only pursued as a measure of last resort.

COSTS AND BENEFITS FOR CUSTOMERS AND RETAILERS

When making a regulatory decision, the Commission is required to have regard to certain matters — one of which is the costs and benefits of its proposal to customers and retailers. The *Essential Services Commission Act 2001* and our *Charter of Consultation* outline how we are to go about having regard to these matters.

This draft decision provides a preliminary discussion about the costs and benefits of the amended Code that we are proposing. Our analysis is supported by two consultant reports which are available on our website.

The consultants' preliminary reports indicate that the costs and benefits of the proposed amendments are both tangible and intangible. Overall the proposed amendments are expected to result in reduced costs to obtain and deliver assistance that helps customers to avoid and manage arrears and reduce the cost of their energy use.

The Commission's preliminary judgement – based on this analysis, the work completed as part of the hardship inquiry, and the feedback from stakeholders on its first draft decision – is that the payment difficulty framework proposed in this draft decision is a practical and cost effective means of responding to the problem we are seeking to address.

IMPLEMENTATION

In order to facilitate a smooth adoption of the proposed framework, while also ensuring no unnecessary delays to customers receiving the assistance to which they will be entitled, we are suggesting that the new framework be implemented in phases. This would see the first of the new assistance arrangements come into force on 1 January 2018, with the Code fully operational six months later.

We are also proposing that customers who are already on a payment arrangement when the scheme commences (on 1 January 2018), will have their assistance 'grandfathered'. In other words, they will remain on their existing assistance

arrangements. Once the scheme is fully implemented, retailers will be able to start moving customers across (on to tailored assistance) if they are satisfied the customer will be able to repay any outstanding amounts within two years.

We will also start reporting on retailers' compliance with the new framework (as well as any enforcement action we may have had to take) from the second half of 2019. In order to encourage and celebrate the innovative actions taken by retailers to assist their customers in payment difficulty, we will report on these leading practices at regular intervals.

Under our *Energy Compliance and Enforcement Policy*, we are able to issue guidance material to assist retailers' understanding of how they are expected to comply with their regulatory obligations (in this case, the Code). This draft decision provides an initial version of that guidance and we will release a draft guidance note at the time of our final decision on the proposed Code amendments. That draft guidance note will then be subject to further consultation.

NEXT STEPS

We will now spend six weeks consulting on our draft proposal. Our schedule of stakeholder and public forums is outlined in the draft decision. Written submissions on any aspect of the draft decision are invited by 16 June 2017.

To ensure customers in payment difficulty begin receiving the assistance outlined above by the start of the new year, we are aiming at a final decision on the proposed framework by late July or early August 2017.

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1 INTRODUCTION

This draft decision sets out the Essential Services Commission's (the Commission) proposed framework for promoting protections for energy customers facing payment difficulty.

This introductory chapter outlines the key matters relating to the draft decision, including the role of the Commission and the purpose of the draft decision.

1.1.1 STRUCTURE OF THIS CHAPTER

This chapter contains eight sections:

- Section 1.2 explains the role of the Commission.
- Section 1.3 provides an overview of the existing protections for customers facing payment difficulty.
- Section 1.4 provides a high level explanation of the purpose of the proposed changes to the existing framework
- Section 1.5 explains the link between this draft decision and our previous draft decision, released in October 2016.
- Section 1.6 sets out the purpose of this draft decision.
- Section 1.7 sets out our approach to consultation on the proposal contained in this draft decision.
- Section 1.8 provides an overview of the structure of this report.

1.2 ROLE OF THE ESSENTIAL SERVICES COMMISSION

The Essential Services Commission (the Commission) is Victoria’s independent economic regulator of essential services. Primary legislation passed by the Victorian Parliament sets out the objectives and expectations for the Commission in the regulation of retail energy markets and energy hardship.

The *Essential Services Commission Act 2001 (Vic)* (ESC Act) sets out the Commission’s overarching objective to promote the long term interests of Victorian consumers.¹ The Commission is also guided by objectives under the *Electricity Industry Act 2000 (Vic)* (EI Act) and *Gas Industry Act 2001 (Vic)* (GI Act) to *inter alia* promote the protections for customers, including in relation to customers who are facing payment difficulty.²

The legislation establishing the regulatory framework for the energy industry in Victoria assigns the Commission a range of functions and powers, including the power to grant licences to energy market participants and to create codes and guidelines.

After being established in 2002,³ the Commission released the first version of the Energy Retail Code (the Code), version 11 of which is in force today.

1.3 CUSTOMER PROTECTION FRAMEWORK FOR PAYMENT DIFFICULTY

The current regulatory framework contains provisions to assist customers experiencing payment difficulty in two ways:

- provisions addressing ‘payment difficulty’, and

¹ Section 8 *Essential Services Commission Act 2000 (Vic)*.

² Section 10(c) *Electricity Industry Act 2000 (Vic)* and section 18(c) *Gas Industry Act 2001 (Vic)*.

³ The Commission replaced the Office of the Regulator-General (ORG), which was established to oversee regulation of electricity and gas industries during the privatisation of the industry and accompanying establishment of markets in generation, distribution and retail segments of the industry. The legislative objective for the ORG in relation to consumers was expressed as: “to ensure that users and consumers benefit from competition and efficiency” (*Office of the Regulator-General Act 1994 (Vic)*, s7(1)(e)).

- provisions addressing ‘hardship’.

There are also specific provisions covering processes for disconnection due to non-payment.

The current framework centres on several broad features:

- payment plans and other flexible payment options
- retailers providing information about third party support and assistance, including government funding schemes, and
- retailers providing assistance to the customer to reduce their energy costs, including through the provision of advice or assistance replacing appliances.

These protections are located variously in the ESC Act and the relevant industry Acts,⁴ and the Code.⁵

1.3.1 NEED FOR IMPROVEMENTS

In 2015, we conducted a hardship inquiry to review these elements of the regulatory framework, as well as retailer practices under the auspices of the framework.⁶ We found no evidence of widespread non-compliance with the framework, but that the framework was nonetheless generally ineffective at preventing customers from accumulating arrears.

We also found that critical elements of the framework – those that affect whether a customer receives access to assistance, and what assistance they receive – rely upon retailer discretion and so cannot be enforced.⁷ As a result, we found, energy retailer hardship programs were not preventing customers from building up large arrears or being disconnected, and that customers were not getting the assistance they need.

⁴ *Electricity Industry Act 2000 (Vic)* and *Gas Industry Act 2001 (Vic)*

⁵ A full description of the existing regulatory framework, including the authorising provisions, can be found in Essential Services Commission, *Supporting Customers, Avoiding Labels. Energy, Hardship Inquiry Draft Report*, September 2015, p19-28.

⁶ Refer Essential Services Commission, *Supporting Customers, Avoiding Labels, Energy Hardship Inquiry, Final Report*, February 2016

⁷ The Commission’s findings are presented in full in Chapter 2.

As a result, we could not be confident that disconnections were only occurring as a last resort. The Commission therefore began developing a new framework to update the protections for customers facing payment difficulty.

1.4 PURPOSE OF THE PROPOSED CHANGES

The Commission proposes to amend the Energy Retail Code, issued under Part 2 of the *Essential Services Commission Act 2001*, that applies to, and must be complied with by, all energy retailers in accordance with their retail licences, granted by the Commission.

The overarching purpose of the changes is to respond to the Commission’s statutory objective to promote protections for customers, including assisting customers facing payment difficulty, based on the findings from the hardship inquiry.

Through the hardship inquiry, we found that the outcomes for customers facing payment difficulty are currently highly variable and unpredictable, and include situations that could have otherwise been avoided — namely, growth in unmanaged customer arrears, disconnections that could have otherwise been avoided, or both.

The Commission is therefore proposing protections that seek to address these highly variable and unpredictable outcomes by clarifying the minimum level of assistance to which a customer is entitled (including when it is expected to be provided).

1.5 FIRST DRAFT DECISION

A draft decision, which set out a proposed regulatory safety net of minimum standards for customers experiencing payment difficulty, was released in October 2016.⁸ While most stakeholders supported the objective of the proposed framework, they did not support the approach taken by the Commission. On the basis of the feedback received

⁸ Essential Services Commission, *Safety Net for Victorian Energy Consumers Facing Payment difficulty – Customer Advice Manual – Amendments to the Energy Retail Code, draft decision*, October 2016

and subsequent engagement with stakeholders, the Commission elected not to proceed to a final decision and to instead produce this new draft decision.

1.6 PURPOSE OF THIS REPORT

The purpose of this revised draft decision is to set out a proposed framework for assisting customers facing payment difficulty (the framework), and proposed amendments to the Code to give effect to this framework.

We have released this new draft decision to provide an opportunity for all interested parties to provide their feedback on the design of the proposed regulatory framework, via forums, workshops and formal submissions.

1.7 CONSULTATION

Our consultation on this draft decision will occur in accordance with our *Charter of Consultation*.⁹ The purpose of the public consultation is to seek feedback from all interested parties on the proposed framework.

We are interested in receiving feedback on any aspect of the proposed framework, in particular how it will affect:

- energy consumers including, in particular, low income and vulnerable customers
- energy retailers
- dispute resolution bodies, and
- community organisations and agencies.

⁹ Essential Services Commission 2012, *Charter of Consultation and Regulatory Practice*, August.

1.7.1 FORUMS AND WORKSHOPS

To facilitate stakeholder feedback, we have scheduled an extended, six week period for submissions, and we will also hold a series of forums and workshops. Specifically, we have scheduled:

- A public forum during the consultation period
- Two stakeholder forums during the consultation period
- At least one stakeholder forum in the period following the consultation period, and
- Technical working groups during and after the submission period.

1.7.2 SUBMISSIONS

We invite submissions from interested parties, including energy licence holders and other stakeholders, on the proposed changes to the Energy Retail Code.

Submissions should be submitted preferably in electronic format by **5.00pm on 16 June 2017**. Early submissions will be welcomed.

Submissions can be emailed to: paymentdifficulties@esc.vic.gov.au

You can also send submissions by mail, marked Submissions to Payment Difficulty Framework, to:

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

The Commission's normal practice is to make all submissions publicly available on its website. Please identify clearly any confidential or commercially sensitive information that you do not wish to be disclosed publicly.

1.7.3 SCHEDULE OF CONSULTATION

Table 1.1 sets out the schedule for consultation. Final details for each of the consultation events, including times and locations, will be published on the Commission’s website.

TABLE 1.1 CONSULTATION SCHEDULE

| Time | Consultation step |
|------------------------|---|
| Tuesday 9 May | <p>Stakeholder forum</p> <p>Presentation of the new proposal.</p> <p>Submissions invited with due date: Friday 16 June</p> |
| Monday 29 May | <p>Second stakeholder forum</p> <p>The purpose of this forum is to provide stakeholders with the opportunity to question and comment on the proposal, to seek further guidance of the Commission’s intentions, and to make alternative suggestions where they have concern.</p> <p>Check the Commission website for time and venue information</p> |
| Thursday 1 June | <p>Public Forum</p> <p>This event will provide members of the public and other interested parties with the opportunity to hear about the proposal, ask questions and share their views.</p> <p>Check the Commission website for time and venue information.</p> |
| Friday 16 June | <p>Submissions period closes</p> |
| Thursday 6 July | <p>Third stakeholder forum</p> <p>The purpose of this forum is for the Commission to reflect on the matters raised in submissions and seek broad engagement on proposed responses to those concerns.</p> <p>Check the Commission website for time and venue information.</p> |
| 2-3 weeks later | <p>Fourth stakeholder forum (<i>tentative</i>)</p> <p>We will hold an additional forum in the event it is needed to address outstanding issues.</p> |
| May - August | <p>Technical workshops (as required)</p> |
| July - August | <p>Release of final decision</p> |

1.8 STRUCTURE OF THIS REPORT

This draft decision is divided into the following chapters:

- Chapter 1 contains the introduction.
- Chapter 2 summarises the main findings of the hardship inquiry, and explains why the existing protections for customers facing payment difficulty need to change.
- Chapter 3 explains how the Commission’s approach to developing a new framework has evolved over time, including a discussion of stakeholder feedback to earlier proposals.
- Chapter 4 describes the proposed new framework and how it is intended to operate.
- Chapter 5 provides guidance material to assist stakeholders interpret the draft revised Energy Retail Code.
- Chapter 6 contains a preliminary analysis of the benefits and costs of the proposed framework.
- Chapter 7 sets out an implementation roadmap for the proposed framework.
- Chapter 8 details next steps.

2 FINDINGS OF THE HARDSHIP INQUIRY

2.1 INTRODUCTION

This chapter summarises the main findings of the hardship inquiry, and explains why existing protections for customers facing payment difficulty need to change.

2.1.1 STRUCTURE OF THIS CHAPTER

This chapter contains eight sections.

- Section 2.2 explains the context for the hardship inquiry, including the trends in energy disconnections that preceded the inquiry and an explanation of the social and economic significance of energy arrears and disconnections.
- Section 2.3.1 explains the terms of reference and key findings from the hardship inquiry.
- Section 2.3 presents the hardship inquiry's findings on the consistency of assistance that customers receive from their retailers.
- Section 2.4 sets out the hardship inquiry's findings on the effectiveness of the assistance that customers receive.
- Section 2.5 describes the limitations on the enforceability of the existing framework for assisting customers facing payment difficulty.
- Section 2.6 covers developments since the conclusion of the hardship inquiry.
- Section 2.7 contains the conclusion, including an explanation of why changes to the framework are necessary.

2.2 CONTEXT FOR THE HARDSHIP INQUIRY

2.2.1 TRENDS IN ENERGY DISCONNECTIONS

In 2013-14, energy disconnections in Victoria spiked to a record high. In the same period, the Energy and Water Ombudsman Victoria (EWOV) reported a spike in the number of wrongful disconnection cases that it was assessing resulted in a settlement payment. That is, disconnections that energy retailers acknowledged should not have occurred or that had occurred without the procedural requirements for disconnections being met.

These trends indicated that more people were being disconnected, and more appeared to be disconnected for the wrong reasons, prompting concerns that the framework for supporting customers in payment difficulty may not be operating effectively. In this context, Government and community confidence that disconnections were only occurring as a last resort was undermined.

2.2.2 CONSEQUENCES OF ENERGY ARREARS AND DISCONNECTION

Energy is essential for social and economic participation, meaning that disconnection can have significant consequences for individuals and their families. This includes the discomfort and disruption associated with being unable to heat their home or wash their clothes, through to potentially serious health implications and psychological stress. It can also exacerbate a customer's vulnerability by making it difficult to seek employment or remain connected to support services and networks.

Similarly, when a customer falls into arrears with their energy company they may face a number of flow-on consequences, particularly if the arrears become unmanageable. In severe circumstances, energy retailers may sell the accrued arrears to third party debt collectors, or pursue the arrears through debt agreements and bankruptcy. The

Insolvency and Trustee Service Australia's research report, *Profile of Debtors*, credited eight per cent of all bankruptcies in Australia to utility arrears.¹⁰

As the Consumer Action and Law Centre (CALC) noted, bankruptcies caused by high energy arrears and arrears collection activities are concerning because bankruptcy can lead to even more severe consequences, such as house repossession and the threat of eviction. CALC noted that:

*We are increasingly seeing large national debt collection firms, having purchased energy debt, proceed with bankruptcy proceedings or property seizure following a judgment, without negotiating or considering the debtor's financial position....in the most extreme case, consumers end up homeless as a result of these debts.*¹¹

Unmanageable arrears and energy disconnections can also intersect with other key social issues and forms of vulnerability. Further, Consumer Utilities Advocacy Centre (CUAC) found that energy arrears exacerbate economic abuse (a form of family violence) and force victims of family violence to contend with 'poor credit rating, insolvency or bankruptcy, and fees and penalties'.¹² The Victorian Royal Commission into Family Violence also noted the role of utility arrears in perpetuating economic abuse.¹³

The severe consequences of energy arrears on customers, particularly low income and vulnerable customers, are borne by both customers and society as a whole. Legal and community support services, for example, are often required to manage the fallout from high arrears and disconnection from an essential service. When a customer is disconnected from electricity, they are also prevented from meaningfully participating in society and the broader economy. This means that, while retailers may rationally

¹⁰ Insolvency and Trustee Service Australia 2012, *Profile of Debtors 2011*, March, (<https://www.afsa.gov.au/sites/g/files/net1601/f/profiles-of-debtors-2011.pdf>).

¹¹ Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 13.

¹² Consumer Utilities Advocacy Centre 2014, *Helping Not Hindering: Uncovering Domestic Violence & Utility Arrears*, August, p. 9.

¹³ Victorian Royal Commission into Family Violence 2016, *Volume IV Report and Recommendations*, March, p. 93.

respond to a customer's non-payment by disconnecting their energy supply, this can lead to sub-optimal outcomes for society as a whole.

2.3 ENERGY HARDSHIP INQUIRY

In response to these trends, in July 2014, the then Minister for Finance, at the request of the Minister for Energy, issued the Commission with a terms of reference to inquire into the causes of disconnection. In February 2015, the new Government broadened the Commission's terms of reference directing it to inquire into the assistance offered to customers in payment difficulty. The Government sought confirmation that disconnection was a measure of last resort and that the regulatory framework was supporting this outcome.¹⁴

2.3.1 HARDSHIP INQUIRY TERMS OF REFERENCE

The terms of reference for the hardship inquiry directed the Commission to:

- Investigate the different methods used by retailers to assist customers facing difficulties paying their bills because of financial hardship.
- Review the design and efficacy of the regulatory framework that establishes obligations on retailers to provide assistance to customers experiencing financial hardship to ensure customers receive targeted and effective assistance to avoid disconnection, including:
 - the Commission's ability to monitor and enforce the framework, and
 - incentives on retailers to innovate in their pursuit of best practice.
- Consider the transparency of retailers' hardship policies, practices and procedures and how they might be improved.
- Identify cost effective options for improving how retailers assist customers in financial hardship manage their energy costs.

¹⁴ Victorian Government 2015, *Terms of Reference – Inquiry into best practice financial hardship programs of retailers*, 4 February 2015.

- Develop a benchmarking framework for the Commission to assess and report on the effectiveness of retailer policies, practices and procedures for supporting customers in financial hardship to avoid disconnection.

The hardship inquiry ran from February 2015 to February 2016. The Commission published an issues paper in April 2015¹⁵, followed by a draft report in August 2015.¹⁶ The Commission delivered its final report to the Government in February 2016.¹⁷

2.3.2 APPROACH TO THE INQUIRY

We took an empirically based approach to the inquiry with the aim of establishing a clear understanding of how hardship programs operated in practice. We engaged independent consultants (ACIL Allen Consulting) to review the retailers' actual operations and undertake primary research into how retailers were assisting customers in payment difficulty. In conducting their research, ACIL Allen visited nine Victorian retailers, who collectively serve over 90 per cent of Victorian energy customers.

We also ran a consultation program through which, with the assistance of stakeholders, we explored the many complex issues relating to hardship and payment difficulty. The consultation program provided an important opportunity for us to test and refine our understanding of the issues, as well as ideas for how the existing framework could be improved. The learning we obtained through the workshops, and submissions made during the hardship inquiry, continues to inform our approach to developing options for amending the framework.

In February 2016, we presented our final report to the Victorian Government. The report contained our findings with regard to the assistance that customers were receiving and the adequacy of the existing regulatory framework. We also set out our core vision for how the regulatory framework would need to change in order to address

¹⁵ Essential Services Commission 2015, *Inquiry into the financial hardship arrangements of energy retailers: Our approach*, March.

¹⁶ Essential Services Commission 2015, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Draft Report*, September.

¹⁷ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February.

the issues we uncovered. After considering our report, the Government asked us to press on with amending the regulatory framework.

2.3.3 SUMMARY OF KEY FINDINGS

Through the inquiry, we found that the experiences of customers facing payment difficulty varied widely. Their experience varied in terms of what assistance was provided and when it was provided, and also when it was withdrawn. The experience of any given consumer depended on which retailer they were with, and how that retailer decided to assist them. Put simply, it was not possible to predict what assistance a customer would receive if they entered payment difficulty.

This unpredictability meant that two otherwise similar customers could end up with very different experiences and very different outcomes. So while some customers were receiving excellent support, some customers were not receiving adequate assistance. Others were not receiving assistance at all. In some instances, customers were accumulating arrears to unmanageable levels before assistance was offered. As a result, arrears and disconnections were occurring that could have been avoided through better and timelier assistance from retailers.

Given these findings, it was not possible for the Commission to say that disconnections were being pursued only as a measure of 'last resort'. It was also not possible to say that the assistance offered by retailers under their hardship policies met community and Government expectations of being equitable and transparent, or of being applied consistently.¹⁸

The ultimate cause of this variability, our inquiry found, was in the design of the regulatory framework itself. The framework provides significant discretion to retailers to decide how and when to assist customers. Retailers apply this discretion in different ways.

¹⁸ Section 45(2) of the *Electricity Industry Act 2000* (Vic) and section 481 of the *Gas Industry Act 2000* (Vic) stipulates that in approving retailer hardship policies, the Commission must have regard to 'the principle that there should be equitable access to financial hardship policies and that those policies should be transparent and applied consistently.'

This meant that even while customer experiences were varied and unpredictable, retailers were nonetheless technically compliant with their obligations because those obligations were so broadly defined. In essence, the high levels of retailer discretion permitted under the framework made assistance to customers in payment difficulty unenforceable.

The following sections provide a summary of the evidence and analysis from the hardship inquiry relating to the variability of customer experience, and how deficiencies in the current framework are the ultimate cause of this variability.

2.4 VARIABILITY OF CUSTOMER EXPERIENCE

Under the current framework, when a customer is experiencing payment difficulty, retailers are required to classify customers according to whether they are:

- a hardship customer entitled to assistance under the retailer’s hardship policy, or
- a customer who may be assisted outside of the hardship program, usually with a payment plan.

The way a retailer classifies a customer facing payment difficulty is the first factor that determines the type of assistance the retailer makes available to them. The hardship inquiry found that there is significant variation in how retailers approach this classification process and therefore who is and who is not classified as a ‘hardship customer’.¹⁹

The second factor that determines the type of assistance that a customer receives is what assistance a retailer decides to offer to their customers, either through their hardship program or outside the hardship program. The inquiry found evidence of significant variation in this respect as well.

In the remainder of this section, we discuss each of these two dimensions of variability in turn.

¹⁹ The Code defines a ‘hardship customer’ as a ‘residential customer of a retailer who is identified as a customer experiencing financial payment difficulty due to hardship in accordance with the retailer’s customer hardship policy’.

2.4.1 ELIGIBILITY FOR HARDSHIP PROGRAMS

The eligibility criteria to access the retailers' hardship programs vary because the regulatory framework permits retailers to define the criteria to apply to potential hardship customers. The nine retailers whose practices we reviewed in detail for the inquiry used the presence of an 'indicator' to identify that a customer is facing payment difficulty. These 'indicators' relate to circumstances or situations retailers considered as common signs of hardship.

Retailers report these indicators include:

- a drop in income due to an illness or injury
- unemployment
- relationship breakdown or bereavement
- financial literacy challenges
- cultural or linguistic difficulties
- living on government pension or welfare
- natural disaster, and/or
- a history of late or missed payments.

We found that three retailers transfer a customer directly to the hardship program when an indicator is identified. For the remaining retailers, the existence of such indicators prompts a consideration of whether to transfer the customer to their hardship program, or whether the customer can repay their arrears on a shorter term payment plan.

Five retailers considered the customer's ability to repay the arrears in a specified time frame (typically less than 12 months) as the primary consideration before transferring a customer to the hardship program. If a customer does not appear able to repay their arrears in that time period, then they are transferred to the retailer's hardship program.

Through submissions to the inquiry, stakeholders reported that, in their experience, customers were assessed for eligibility through a range of other criteria. Kildonan Uniting Care noted, for example:

It has been Kildonan’s consistent experience that one major and one second tier energy retailer have a standard practice of refusing vulnerable customers access to their hardship programs if they do not have a health care card, even though this is not the only criteria for entry to a hardship program.²⁰

The variability of eligibility criteria between retailers mean that two customers in otherwise similar circumstances may end up being classified differently, with one entering a hardship program and the other being moved onto a payment plan.

2.4.2 ASSISTANCE OFFERED TO CUSTOMERS – INSIDE AND OUTSIDE HARDSHIP PROGRAMS

The second dimension of variability relates to the assistance that is available once a customer has been classified in one or other of the two categories of payment difficulty (hardship or non-hardship).

Table 2.1 sets out the assistance that each of the nine retailers we reviewed make available to both categories of customers facing payment difficulty.

²⁰ Kildonan Uniting Care 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, Submission to Commission issues paper, May, p. 12.

TABLE 2.1 COMPARISON OF ASSISTANCE POTENTIALLY AVAILABLE TO CUSTOMERS EXPERIENCING PAYMENT DIFFICULTY

Customers on payment plans and those in hardship programs

| Support that may be offered | To PAYMENT PLAN customers | To HARDSHIP PROGRAM customers |
|---|---------------------------|--|
| Concession check | 7 of 9 retailers | All 9 retailers |
| Utility Relief Grant | 7 of 9 retailers | All 9 retailers |
| Tariff review | 5 of 9 retailers | All 9 retailers |
| Payment deferral | All 9 retailers | None of the 9 retailers |
| Bill smoothing | 7 of 9 retailers | None of the 9 retailers |
| Payment plan | All 9 retailers | All 9 retailers |
| Incentive payments | None of the 9 retailers | Offered by 6 retailers on a case-by-case basis |
| Arrears waiver | None of the 9 retailers | Offered by 1 retailer on a case-by-case basis |
| Review method of payment (Centrepay, direct debit etc.) | All 9 retailers | All 9 retailers |
| Energy efficiency advice over the telephone | All 9 retailers | All 9 retailers |
| Energy efficiency field audit | None of the 9 retailers | 6 of the 9 retailers on a case-by-case basis |
| Equipment/appliance replacement | None of the 9 retailers | 2 of the 9 retailers on a case-by-case basis |
| Financial counselling referral | 3 of the 9 retailers | All 9 retailers |

Source: Essential Services Commission 2015, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Draft Report*, September.

The data in Table 2.1 demonstrates that the assistance available to hardship customers varies between retailers. The data also demonstrates that the assistance available to non-hardship customers varies even more so than for hardship customers.

PAYMENT PLANS

For customers that are facing payment difficulty but are not in a retailer’s hardship program, the primary entitlement is a payment plan.²¹

²¹ Under clause 33 of the Code, if a customer informs their retailer they are experiencing difficulty paying their energy bill by the due date, or if the retailer identifies that this is the case, the retailer must offer a payment plan.

Even though all nine retailers offered payment plans to both hardship and non-hardship customers, the hardship inquiry found significant variability in the way in which payment plans were designed and implemented. There were differences in:

1. how retailers undertake 'capacity of pay' assessments prior to placing customers on a payment plan
2. the terms and conditions of the payment plans
3. the duration of the payment plans.

CAPACITY TO PAY ASSESSMENTS

Under the current framework, payment plans must be established having regard to a customer's 'capacity to pay'.²² However, retailers interpret this obligation differently.

Of the nine retailers in our study, five said they accept the amount a customer advises that they can afford. The remaining retailers use some form of income and expenditure tool to assess a customer's capacity to pay. As part of this process, customers may be required to provide sensitive and detailed financial information. This could include their salary and information about how they manage their household budget, such as that relating to rent, food and children's expenses.

In their submissions to the inquiry, consumer advocates noted that some retailers require upfront payments as a way for a customer to demonstrate an intention to pay. CALC raised this issue in its submission, noting retailers may require upfront payments to get access to a payment plan.²³

The Consumer Utilities Advocacy Centre (CUAC) and EWOV were also concerned about the effectiveness of capacity to pay assessments. CUAC noted:

The fact that unaffordable or unsustainable payment plans is a common feature in EWOV complaints about payment plans suggests that energy

²² Clauses 33 and 72 of the Code.

²³ Consumer Action Law Centre 2015, *Submission to the Essential Services Commission inquiry into the financial hardship arrangements of energy retailers*, Submission to Commission issues paper, May, p. 11.

*retailers are not appropriately assessing their customers' capacity to pay.*²⁴

In our 2004 paper on disconnections, we acknowledged the problems associated with assessing capacity to pay. At that time, we noted the regulations did not prescribe or set out an objective test for assessing capacity to pay. We also noted that it is unlikely such a test is feasible or desirable.²⁵ We remain of this view.

PAYMENT PLAN TERMS, CONDITIONS AND DURATION

Under the existing framework, retailers have discretion to determine the terms and conditions of payment plans. This includes the amount and frequency of instalments and consequently, the duration of the payment plan. Unsurprisingly, our study revealed considerable differences in the design and duration of payment plans between retailers.

Table 2.2 sets out the duration of payment plans for customers in a retailer's hardship program for the nine retailers we studied. One retailer had all of its customers in its hardship program on short term payment plans. This retailer also has the highest average customer arrears. Four retailers had a significant share of customers in their hardship programs on payment plans of no fixed duration. Nonetheless, customers in hardship programs are more likely to be on longer term payment plans than customers on payment plans outside hardship programs.

²⁴ Consumer Utilities Advocacy Centre 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers, Submission to Commission issues paper*, May, p. 3.

²⁵ Essential Services Commission 2004, *Disconnections and capacity to pay report on energy retailers' performance*, October, p. 4.

TABLE 2.2 DURATION OF PAYMENT PLANS FOR CUSTOMERS IN HARDSHIP PROGRAMS

Months

| Retailer | Average arrears | 0-3 | 3-6 | 6-9 | 9-12 | 12-15 | 15-18 | 18-21 | 21-24 | >24 | No fixed duration |
|------------|-----------------|------|------|------|------|-------|-------|-------|-------|-----|-------------------|
| Retailer 1 | \$1734 | 100% | | | | | | | | | |
| Retailer 2 | \$942 | | | | 90% | 3% | 3% | 2% | 1% | 2% | |
| Retailer 3 | \$670 | 69% | | | 1% | | | | | | 30% |
| Retailer 4 | \$268 | | 2% | | 7% | | 3% | | 88% | | |
| Retailer 5 | \$737 | | | | | | 21% | | 40% | | 39% |
| Retailer 6 | \$1218 | N/A | | | | | | | | | |
| Retailer 7 | \$1070 | 17% | 30% | 3% | | | | | | | 50% |
| Retailer 8 | \$1148 | 32% | 23% | 19% | 7% | 4% | 3% | 2% | 3% | 7% | |
| Retailer 9 | \$1211 | 49% | 0.5% | 0.1% | 0.1% | 0.2% | | | | | 50% |

Source: Essential Services Commission 2015, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Draft Report*, September.

Outside hardship programs, the duration of payment plans is similarly diverse, as illustrated in Table 2.3. Two retailers included in our research for the hardship inquiry had all of their customers facing payment difficulty (but outside their hardship programs) on a payment plan of a single duration. Three had a range of duration options but most of these customers had been placed on shorter term payment plans. By contrast, another two retailers also had a range of durations, but had placed most of these customers on longer term plans.

Two retailers had half of their customers facing payment difficulty (but outside their hardship programs) on payment plans that were longer than two years duration. The average arrears of customers on payment plans for each retailer differed significantly (\$1512 for one retailer and \$411 for the other). In fact, the data show no relationship between the size of customer arrears and the duration of payment plans across all retailers.

TABLE 2.3 DURATION OF PAYMENT PLANS FOR CUSTOMERS OUTSIDE HARDSHIP PROGRAMS

Months

| Retailer | Average arrears | 0-3 | 3-6 | 6-9 | 9-12 | 12-15 | 15-18 | 18-21 | 21-24 | > 24 |
|------------|-----------------|-----|-----|-----|------|-------|-------|-------|-------|------|
| Retailer 1 | N/A | | | | | 100% | | | | |
| Retailer 2 | N/A | 44% | 40% | 4% | | 4% | 4% | | | 4% |
| Retailer 3 | \$244 | 2% | 25% | | 42% | | | | | 31% |
| Retailer 4 | \$156 | 21% | 32% | 3% | 38% | | 1% | | 5% | |
| Retailer 5 | \$418 | | | | 100% | | | | | |
| Retailer 6 | N/A | | | | | | | | | |
| Retailer 7 | \$1512 | 29% | 11% | 6% | 4% | | | | | 50% |
| Retailer 8 | \$425 | 63% | 21% | 11% | 5% | <1% | | | | |
| Retailer 9 | \$411 | 46% | 3% | | 1% | | | | | 50% |

Source: Essential Services Commission 2015, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Draft Report*, September.

2.5 CONSEQUENCES OF VARIABILITY

Because the experience of customers with payment difficulty varies considerably, outcomes for those customers also varies. The hardship inquiry found that hardship programs are generally not successful in reducing the level of customer arrears (Table 2.4). In fact, customer arrears are more likely to *increase* while participating in a hardship program. For the nine retailers participating in our research, the average current arrears for customers in hardship programs was \$1074, compared with the average arrears on entry of \$947— an increase of \$127.

We identified one retailer who had been successful in helping customers reduce arrears, both in and outside hardship programs. As we noted in our inquiry report, this retailer offers all standard assistance measures to every customer that comes into its credit management cycle. It also invests time upfront so the right supports and payment plans are offered, and expects that customers will reduce their energy usage to a level that they can afford. This retailer also requires the customer to pay back their arrears as a condition of remaining in a hardship program.

By contrast, another retailer that is not successful in reducing customer arrears has very high arrears levels on entry to its hardship program compared with other retailers

and prefers to use short duration payment plans. This retailer has a lenient approach to removing customers from its hardship program and customers are only removed from the program if they refuse to engage with the retailer by not responding to multiple attempts to contact them. This retailer's customers are at risk of accumulating more arrears, with unclear prospects about how to stabilise their situation in the longer term.

TABLE 2.4 COMPARISON OF ARREARS ON ENTRY TO A PAYMENT PLAN AND CURRENT ARREARS
Average \$

| | Payment plans outside Hardship Programs | | | Hardship Programs | | |
|-----------------|---|-----------------|--------|-------------------|-----------------|--------|
| | Arrears on entry | Current arrears | Change | Arrears on entry | Current arrears | Change |
| Retailer 1 | | | | 1100 | 1734 | 634 |
| Retailer 2 | 1002 | 966 | -36 | 915 | 942 | 27 |
| Retailer 3 | 331 | 294 | -36 | 642 | 670 | 27 |
| Retailer 4 | 348 | 156 | -191 | 393 | 268 | -125 |
| Retailer 5 | 541 | 468 | -73 | 849 | 737 | -112 |
| Retailer 6 | | | | 1036 | 1218 | 182 |
| Retailer 7 | 1787 | 1512 | -275 | 967 | 1070 | 103 |
| Retailer 8 | 1053 | 425 | -628 | 1239 | 1148 | -91 |
| Retailer 9 | 687 | 411 | -277 | 1207 | 1211 | 4 |
| All 9 retailers | 620 | 414 | -206 | 947 | 1074 | 127 |

Source: Essential Services Commission 2015, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Draft Report*, September.

2.6 DEFINING THE PROBLEM THE INQUIRY IDENTIFIED

2.6.1 WHAT SHOULD BE EXPECTED FROM THE REGULATORY FRAMEWORK?

Defining the problem we identified through the hardship inquiry requires us to clarify expectations regarding the circumstances in which energy disconnections can occur, and the assistance that customers will receive from retailers. This becomes the standard against which we compared the operation of the current framework when drawing our conclusions about the meaning and significance of our findings within the inquiry.

The primary expectation, expressed by the Victorian parliament via the relevant industry Acts, is that customers will not be disconnected from their energy supply except as a 'last resort'. The Acts also set out the types of assistance that retailers must include in their hardship policies – flexible payment options, energy audits, assistance with appliance replacement, and processes for early response to payment difficulty²⁶ – as well as the matters the Commission must have regard to when approving those policies. These matters include:

- a. the essential nature of the energy supply; and
- b. community expectations that licensees will work with domestic customers to manage customers' present and future energy usage and associated financial obligations; and
- c. community expectations that the energy supply will not be disconnected solely because of a customer's inability to pay for the energy supply; and
- d. the principle that the energy supply to premises should only be disconnected as a last resort; and
- e. the principle that there should be equitable access to financial hardship policies and that those policies should be transparent and applied consistently.²⁷

In light of these considerations, the Commission's expectation is that the desired outcome of the regulatory framework is that:

Customers anticipating or in payment difficulty can obtain gain equitable access to predictable, consistent and effective assistance.

Ensuring that access to assistance is 'equitable' will mean that two otherwise identical customers are treated in the same way.

Ensuring that the assistance is 'predictable and consistent' is necessary to provide confidence in the efficacy of the regulatory framework so that customers can be assured that retailers will deliver on their obligations to make assistance available.

²⁶ Section 43C of the *Electricity Industry Act 2000* (Vic) and section 48GC of the *Gas Industry Act 2001* (Vic).

²⁷ Section 45(2) of the *Electricity Industry Act 2000* (Vic) and section 48I of the *Gas Industry Act 2000* (Vic).

Our expectation of the outcome of the regulatory framework is derived from the principles set out in the relevant industry legislation that:

- there should be equitable access to assistance
- the assistance should be transparent and applied consistently, and
- disconnection should be a last resort.

2.6.2 HOW IS THE FRAMEWORK PERFORMING?

Through the hardship inquiry, we found that the existing protections for customers facing payment difficulty are not adequate in terms of:

- what assistance is provided to customers in payment difficulty
- when that assistance is provided, and
- when that assistance is withdrawn.

As a result, outcomes for customers in payment difficult are highly variable and unpredictable and include situations that could have otherwise been avoided — namely, growth in unmanaged customer arrears, disconnections that could have otherwise been avoided, or both. Two otherwise identical customers could end up with very different experiences and very different outcomes.

Given these findings, it was not possible for the Commission to say that disconnections were being pursued only has a measure of 'last resort'. It was also not possible to say that the assistance offered by retailers under their hardship policies met community and Government expectations of being equitable and transparent, or of being applied consistently.²⁸ We therefore define the problem that we identified through the inquiry in the following way:

Customers anticipating or in payment difficulty have not been gaining equitable access to predictable, consistent and effective assistance, therefore, disconnection may not be occurring as a measure of last resort

²⁸ Section 45(2)(e) of the Electricity Industry Act 2000 stipulates that in approving retailer hardship policies, the Commission must have regard to 'the principle that there should be equitable access to financial hardship policies and that those policies should be transparent and applied consistently.'

As noted, the inquiry found that this situation was ultimately driven by the design of the regulatory framework, which provides retailers with significant discretion in how they assist customers, and by doing so renders the obligations largely unenforceable.

2.7 DEVELOPMENTS SINCE THE HARDSHIP INQUIRY

2.7.1 LEGISLATIVE CHANGES

Effective 1 January 2016, the EI Act and GI Act were amended to expand the Commission's objectives to include the promotion of protections for customers who are facing payment difficulty.²⁹

This created an additional impetus for the Commission to act on the findings of its hardship inquiry, which was completed two months later and indicated significant deficiencies in the existing framework for assisting customers facing payment difficulty. Given those findings, the legislative amendments created a statutory obligation for the Commission to seek to improve the framework.

The proposed new framework responds to this objective and builds on the findings of the hardship inquiry, which concluded that energy hardship programs were not preventing customers from accumulating large arrears or being disconnected.³⁰

2.7.2 TRENDS IN ARREARS, DISCONNECTION AND PARTICIPATION IN HARDSHIP PROGRAMS

The following sections illustrate the trends in arrears, disconnection and participation in the retailers' hardship programs since the hardship inquiry.

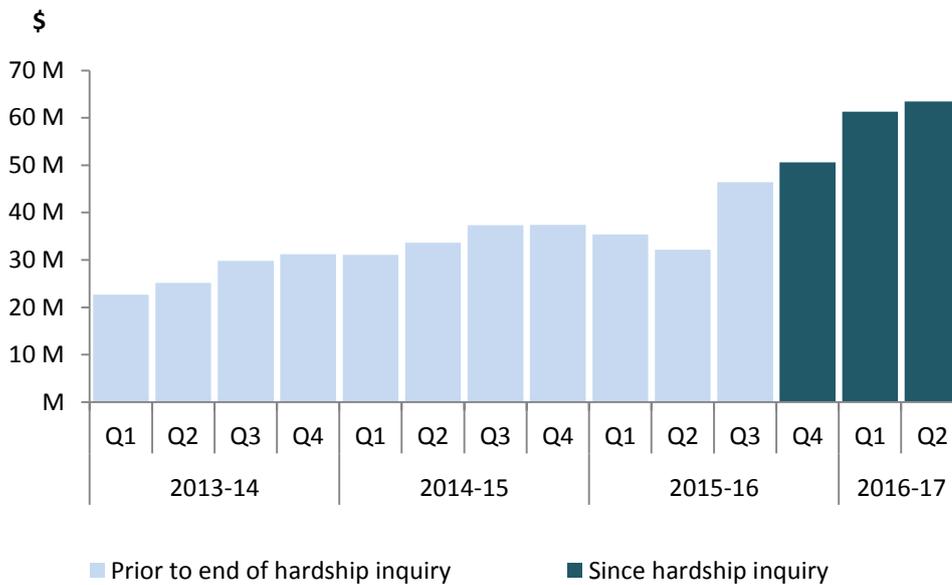
²⁹ Section 10(c) of the *Electricity Industry Act 2000* (Vic) and section 18(c) of the *Gas Industry Act 2001* (Vic).

³⁰ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 10.

ENERGY ARREARS

Total energy arrears of customers participating in retailers' hardship programs increased from \$58,957,643 at the end of June 2016 to \$63,782,227 at the end of December 2016. This is a continuation of a broad trend over the past 24 months of increasing total arrears. See Figure 2.1.

FIGURE 2.1 TOTAL ARREARS OF CUSTOMERS IN HARDSHIP PROGRAMS, 2013-14 TO 2016-17
Total energy arrears

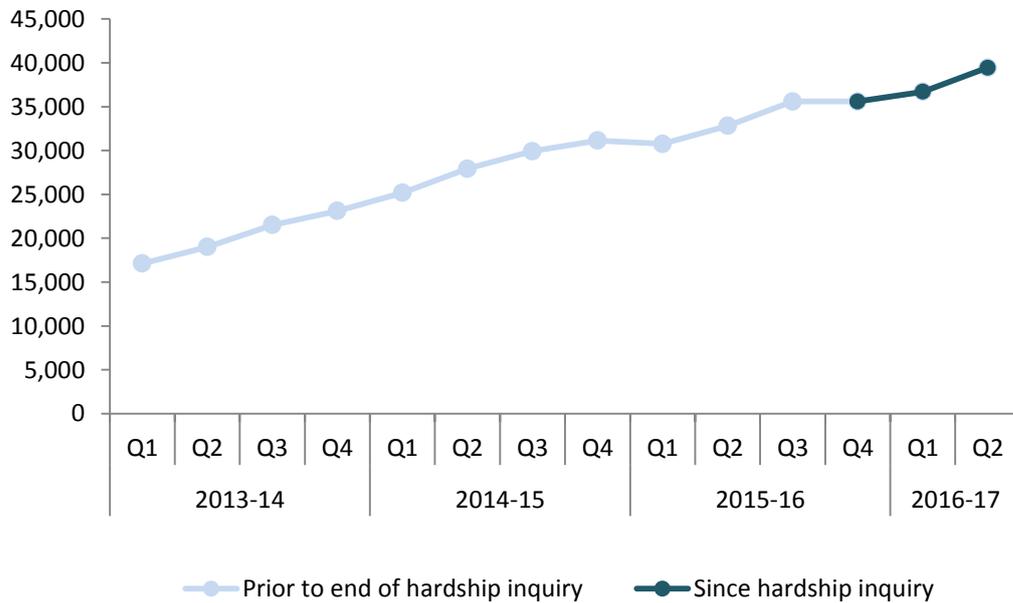


Source: Essential Services Commission, Energy Retail Performance Reports and Victorian Energy Market Reports

PARTICIPATION IN HARDSHIP PROGRAMS

Since the hardship inquiry, retailers have enrolled more customers in their hardship programs, as illustrated in Figure 2.2. This continues a broad trend of increasing participation over recent years.

FIGURE 2.2 PARTICIPATION IN HARDSHIP PROGRAMS, 2013-14 TO 2016-17
Average number of participants per quarter

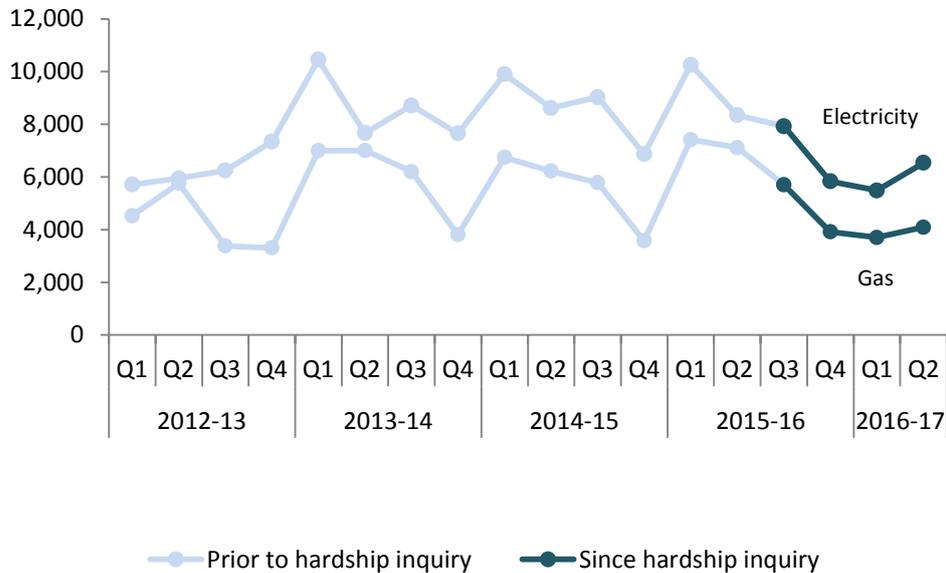


Source: Essential Services Commission, Energy Retail Performance Reports and Victorian Energy Market Reports

DISCONNECTIONS

Since the hardship inquiry, the number of customers disconnected has decreased, as illustrated in Figure 2.3. Notwithstanding, disconnections in Victoria remain at historically high levels when viewed against results reported by the Commission in earlier years.

FIGURE 2.3 DISCONNECTIONS FOR NON-PAYMENT, 2013-14 TO 2016-17
Number of customers per quarter



Source: Essential Services Commission, Energy Retail Performance Reports and Victorian Energy Market Reports

SUMMARY

The data indicates that retailers are admitting higher numbers of customers into their hardship programs. As the regulatory framework restricts retailers from disconnecting customers in hardship programs, this may partly explain the decrease in disconnections since 2014-15.³¹

Over the same period, however, total arrears have continued to increase. This is not, in itself, necessarily a reflection of the assistance that retailers are providing. Total arrears are influenced by numerous factors beyond the control of retailers, including broader economic forces and changing customer preferences. However, it is an indication that the reasons for our earlier concern about customer arrears has not gone away.

³¹ Clause 110 of the Energy Retail Code places restrictions on the disconnection of customers participating in hardship programs for not paying their energy bills. With the increasing participation of customers in hardship programs, this restriction on disconnection may have contributed to the decrease in disconnections.

Nor do these results provide insight into whether the issues around consistency of customer assistance that were discovered through the hardship inquiry have been resolved. It remains possible that two customers in similar situations to each other will receive different levels of assistance based on their retailer and how that retailer uses its discretion. The assistance customers receive remains largely a matter for the retailer to decide.

Finally, since the hardship inquiry there has been no change to the unenforceability of the framework by the Commission. This is despite the amendments to the *Essential Services Commission Act 2001* (Vic), the *Electricity Industry Act 2000* (Vic) and the *Gas Industry Act 2001* (Vic) in 1 January 2016 which created the expectation that the Commission play a more determined role in compliance and enforcement.³²

2.8 CONCLUSION

Since the hardship inquiry, retailers have enrolled more of their customers in hardship programs, and disconnection numbers have reduced somewhat from their historic highs in 2013-14. This may indicate a greater preparedness of retailers to proactively engage with their customers in payment difficulty.

However the fundamental weaknesses of the framework remain unchanged. Trends in arrears, disconnection and participation in hardship programs may shift in any given quarter. But for as long as the framework is based upon wide retailer discretion and is broadly unenforceable, the Commission (and the wider community) cannot have confidence that disconnections of customers will only occur as a last resort.

To support customers to avoid disconnection therefore involves supporting them to avoid or manage their arrears. This is achieved, at a minimum, by providing them with:

- payment arrangements that allow them to repay outstanding amounts in a way that accords with their financial resources

³² *Energy Legislation Amendment (Customer Protection) Act 2015* (Vic).

- assistance to lower their energy costs by (i) lowering the price of the energy they're purchasing, and (ii) assisting them to sustainably lower their use of energy, and
- facilitating their access to government and non-government support services that may assist customers address their broader financial circumstances.

The better an assistance measure is at helping a customer avoid or manage arrears and reduce their energy costs the more effective it will be at avoiding disconnection. Evidence shows that the sooner assistance is provided, the more effective it will be at helping the customer avoid unmanageable arrears and disconnection.

3 EVOLUTION OF THE COMMISSION'S APPROACH

3.1 INTRODUCTION

This chapter explains the evolution of the Commission's approach to reforming the framework for assisting customers facing payment difficulty.

3.1.1 STRUCTURE OF THIS CHAPTER

This chapter contains four sections:

- Section 3.2 provides some context to the Commission's first draft decision on a proposed new framework for assisting customers facing payment difficulty.
- Section 3.3 summarises a number of key themes arising from stakeholder feedback received in response to the first draft decision.
- Section 3.4 provides a brief description of the differences between the first draft decision and this revised draft decision.

3.2 FIRST DRAFT DECISION

The first draft decision was built on the work undertaken through the hardship inquiry. Based on the observation that only customers that were in arrears were disconnected, it placed a premium on assisting customers avoid accumulating arrears. It also attempted to provide high levels of regulatory certainty, and was focused on prescriptive thresholds, pathways and processes. It included detailed codification of entitlements and obligations, and strictly aligned forms of assistance with types of payment difficulty.

We received 19 submissions to the first draft decision. While most submissions supported the objective of the framework, overwhelmingly they did not support the approach we had taken. On the basis of the feedback, the Commission resolved to engage more deeply with stakeholders and, following those interactions, elected not to proceed to a final decision and to instead produce this revised draft decision.

Following feedback from stakeholders, we have adopted a different approach to this draft decision. The remainder of this chapter sets out the key feedback we received on our earlier decision as well as explaining the way in which we have attempted to respond to that feedback. Chapter 4 and 5 describe our revised proposal.

3.3 STAKEHOLDER FEEDBACK

Stakeholders provided extensive feedback through submissions and through meetings with Commission staff. The feedback covered a broad range of topics relating to both the process and the new framework we proposed. This chapter does not seek to record all elements of the feedback provided by stakeholders, but focuses on summarising the key themes of the feedback we received on the proposed framework. It is organised into the following sections:

- Operational complexity and ambiguity
- Limits on flexibility and innovation
- Unintended or negative consequences for vulnerable customers

3.3.1 OPERATIONAL COMPLEXITY AND AMBIGUITY

A large number of stakeholders said that the proposed framework was too complex, and risked causing confusion for both customers and retailers.³³ Some stakeholders

³³ Most stakeholders made a statement to this effect. For some examples, see EnergyAustralia 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p.1; Consumer Action Law Centre (CALC) & Financial and Consumer Rights Council (FCRC) (joint submission) 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p.4; VCOSS 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p.13.

noted that this issue would be particularly acute for customers from culturally and linguistically diverse (CALD) communities.³⁴ Stakeholders noted that the complexity was compounded by ambiguity around certain elements of the framework – such as what constituted a ‘minimum standard’ in particularly instances – and therefore could produce uncertain outcomes for customers.³⁵

Table 3.1 summarises the main issues raised in this context and how the revised draft decision responds to the key concerns raised by stakeholders on the complexity of the proposed framework for assisting customers facing payment difficulty.

TABLE 3.1 OPERATIONAL COMPLEXITY AND AMBIGUITY

| Issue | Stakeholder feedback | Response |
|---|--|--|
| Complexity for customers | Stakeholders considered that the framework as set out in the first draft decision was too complex, which could lead to misunderstanding and inconsistent outcomes for customers. These issues could be exacerbated for culturally and linguistically diverse communities. | To simplify the framework, we have reduced the number of elements from six to three, and also adopted an approach that is less reliant on thresholds and process. |
| Clarity over minimum standards | Some stakeholders were of the view that a number of minimum standards needed further clarification, particularly on how the Commission would determine whether a retailer exceeded those standards. For example, clarity was sought over the following areas: <ul style="list-style-type: none"> • the application of pay on-time discounts • customers receiving fortnightly Centrepay payments • disconnection and reconnection procedures • duration of assistance to customers, and • transitions from one form of assistance to another. | We have redrafted the proposed Code to be significantly clearer about how stakeholders should interpret standards included in the framework. In the interests of clarity, we have also added a new provision to the draft Code which explicitly sets out the Commission’s expectations about minimum standards. |
| Excessive and/or unclear customer communication | Stakeholders commented on the high levels of correspondence required by the first draft decision. Stakeholders commented on the lack of clarity provided in the first draft decision on communication methods. | By simplifying the framework we have reduced and streamlined the amount of correspondence that is required from a retailer to a customer in payment difficulty. |

³⁴ Ethnic Communities Council of NSW 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p. 2

³⁵ See for example Momentum Energy 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p.5.

| Issue | Stakeholder feedback | Response |
|------------------------|--|--|
| Customer advice manual | Many stakeholders commented on the complexity and length of the Customer Advice Manual that accompanied the first draft decision. There was a degree of confusion about the purpose of the document. | <p>We see value in providing customer-centred material to help customers and stakeholders understand the framework and their roles and responsibilities within it. In meetings with Commission staff, stakeholders have been generally supportive of this principle.</p> <p>Fact sheets will be produced prior to commencement of the framework. Information on the reasonable expectations of customers will be produced once the framework is fully implemented.</p> |

Source: ESC

3.3.2 LIMITS ON FLEXIBILITY AND INNOVATION

Stakeholders, particularly retailers, were critical of the level of prescriptiveness in the first draft decision, which was seen to stifle flexibility and the potential for retailers to innovate.³⁶ Stakeholders suggested that the inflexibility could disrupt existing practices that were working well, and reduce incentives for partnerships between community groups and retailers.

Community sector stakeholders also observed that the prescriptive, process focused approach had the potential to deprive customers of their agency.³⁷ This was seen to undermine the ability of customers to take control of their circumstance and move themselves out of payment difficulties.

Conversely, some stakeholders suggested that sufficient detail needed to be retained in the framework to ensure that customers have clear entitlements, and to provide unambiguous protections for customers, particularly for those experiencing severe payment difficulty and at risk of disconnection.

³⁶ This theme was common across most retailers' submissions. For example, see Powershop 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p.3; Origin Energy 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p.3.

³⁷ The importance of customer agency was a particularly emphasised during the Commission's stakeholder forum on 31 January 2017.

Table 3.2 summarises the main issues raised in this context.

TABLE 3.2 FLEXIBILITY AND INNOVATION

| Issue | Stakeholder feedback | Response |
|--|---|---|
| Prescriptiveness hindering innovation | <p>Stakeholders were of the view that the first draft decision was overly prescriptive and inflexible, and that it was therefore not sufficiently supportive of retailer innovation.</p> <p>Stakeholders singled out a number of elements of the framework which in their view were likely to limit innovation or otherwise lead to negative consequences for customers. These included:</p> <ul style="list-style-type: none"> • the requirement for automatic payment plans for customers who miss payments • the two-year maximum duration for a payment plan under tailored assistance, and the accompanying minimum standard of 25 per cent of arrears to be payable each six months • the minimum standard for customers in Connection Support to pay 66 per cent of their energy bill • the three month period stipulated for a Promise-to-Pay plan. | <p>Being focused on providing consistency of process, we recognise that the first draft decision was not geared towards providing flexibility to retailers.</p> <p>We have revised our approach in this new draft decision. The new framework is focused on outcomes for customers and minimum standards. Under the proposed framework, retailer would have more discretion about how they deliver the outcomes and meet the minimum standards.</p> <p>We believe that our new approach therefore strikes a better balance between certainty and flexibility that will allow for continued evolution and innovation in the delivery of assistance to customers.</p> |
| Prescriptiveness hindering customer agency | <p>Stakeholders commented that the first draft decision was mechanistic and in many situations therefore did not allow customers to make independent decisions about how to respond to and manage their individual circumstances. This was seen as out of step with experience that indicated that better outcomes for customers arise when they have sufficient opportunity to exercise their own agency in mitigating their payment difficulty.</p> | <p>On best practice, we have done more to emphasise the role of our proposed better practice reporting. Our roadmap in Chapter 7 proposes that we commence this reporting after the framework has been fully implemented for one year.</p> |
| Best practice | <p>A number of stakeholders suggested the framework needed to do more to recognise and encourage best practice. Stakeholders suggested guidance could be issued – in place of regulatory obligations – in areas where prescription could stifle innovation.</p> | |

Source: ESC

3.3.3 UNINTENDED OR NEGATIVE CONSEQUENCES FOR VULNERABLE CUSTOMERS

Stakeholders expressed doubts about whether the first draft decision would be effective at mitigating payment difficulty in certain circumstances, particularly for the most vulnerable customers.³⁸ They were of the view that there was insufficient consideration given to the realities of the retailers' operations and to customers facing payment difficulty. As a consequence, there were concerns that the outcomes of the framework would not be consistent with its objectives, and that the situation may worsen for customers facing payment difficulty.

Stakeholders also encouraged the Commission to consider further how the framework for assisting customers facing payment difficulty could promote engagement with, and empower, customers. Stakeholders generally felt that both retailers and customers should take responsibility for engagement.

Concern was expressed that the framework as set out in the first draft decision did not adequately assist consumers with payment difficulty who are unable to engage with their retailer.³⁹ Consumer groups in particular emphasised the need for:

- default payment plans
- deeper engagement between retailers and customers facing payment difficulty, and
- mandated obligations for retailer-initiated engagement.

Some retailers suggested that there may be limitations on mandatory engagement imposed by the *Privacy Act 1988* (Cth) and the *ACCC Debt Collecting Guideline*.⁴⁰

³⁸ This was a theme common to a number of submissions. For some examples, see VCOSS 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p.2-10; Brotherhood of St Lawrence 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p. 2; Kildonan Uniting Care 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p.1; AGL 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p.2.

³⁹ This theme appeared in a number of submissions from consumer advocates, but was emphasised in the joint submission from CUAC and FCRC. Consumer Action Law Centre (CALC) & Financial and Consumer Rights Council (FCRC) (joint submission) 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p.2-3.

⁴⁰ This point was made to us during the stakeholder forum we held on 31 January 2017.

Table 3.3 summarises the Commission’s response to these issues.

TABLE 3.3 UNINTENDED OR NEGATIVE CONSEQUENCES FOR VULNERABLE CUSTOMERS

| Issue | Stakeholder feedback | Response |
|--|---|---|
| <p>Practical considerations for customers and retailers</p> <p>Framework may worsen situation of some customers in payment difficulty by making it more likely that they would be disconnected</p> <p>Support and incentives for customer engagement</p> | <p>Stakeholders were of the view that the first draft decision did not sufficiently consider the operational reality of retailers, nor the practical needs of customers facing payment difficulty.</p> <p>Retailer submissions particularly indicated concern about having to provide assistance to customers who do not need or want it ('over capture').</p> <p>There was concern from a number of stakeholders that the first draft decision would worsen the current situation of many customers facing payment difficulty by making it more likely they would be disconnected.</p> <p>Stakeholders were strongly of the view that engagement and communication between customers and retailers was a central factor in ensuring customers obtain the assistance they need.</p> <p>Some stakeholders felt that the framework as set out in the first draft decision did not adequately assist those customers who are unable to engage with their retailer.</p> | <p>By refocusing the framework on outcomes for customers and entitlements to minimum standards of assistance, we aim to provide retailers with flexibility to take into account individual customer circumstances.</p> <p>By contrast to our first draft decision, the new proposal does not prescribe specific thresholds for payment amounts, or include particular triggers, detailed pathways for action, or how assistance should be provided.</p> <p>By providing retailers and customers with more discretion – that is, by removing the 'mechanistic' structure of the previous proposal – the new framework avoids a scenario in which customers are more likely to be disconnected when compared to the existing framework that applies today.</p> <p>We recognise that good outcomes typically require the retailer and customer to work together, and that this makes communication and engagement a key consideration. We have refashioned the proposed framework so it incentivises customers to engage with their retailers and vice versa.</p> <p>The new framework is structured around how customers and retailers interact with <i>standard assistance</i> providing for a light-handed approach where it is needed, tailored assistance accommodating more comprehensive forms of interaction, and <i>default assistance</i> addressing situations where customers do not interact with their retailer.</p> <p>To support customers who are not able to engage during a period of payment difficulty, the framework contains an item of assistance (default assistance) that provides those customers with an opportunity to take advantage of a payment plan without the need to be in contact the their retailer. We envisage this element of the framework will, in practice, only be offered to a very small percentage of customers.</p> |

Source: ESC

3.4 NEW APPROACH

In response to the feedback from stakeholders, we have opted for an alternative approach that is more focused on principles and outcomes than prescription. The new proposed framework – set out in detail in Chapter 4 and Chapter 5 – focuses on the outcome (getting assistance to customers), rather than on how that outcome is achieved. As a result, the approach has been simplified with fewer types of assistance, is less prescriptive, and provides for more flexibility and innovation by retailers to deal with the needs of their customers.

4 OUR NEW PROPOSAL

4.1 INTRODUCTION

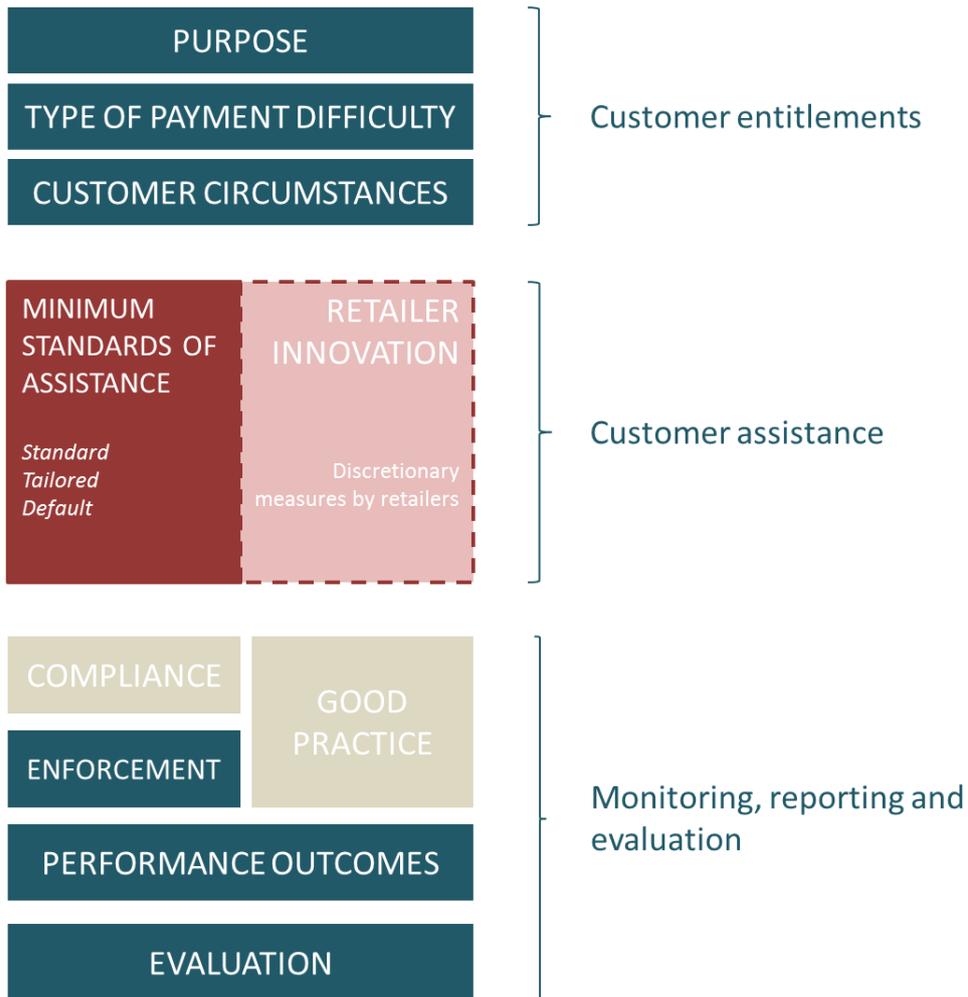
In this chapter we set out our new proposal for the Payment Difficulty Framework. The Chapter has two main sections:

- After this introduction, Section 4.2 provides an overview of our payment difficulty framework, building on the proposal set out in the hardship inquiry, and including the role of the Code in setting customers' minimum entitlements to assistance.
- Section 4.3 provides an overview of our new proposal for changes to the Code, including how the proposal seeks to address the findings of the hardship inquiry, and the major changes from our first draft decision.

4.2 PAYMENT DIFFICULTY FRAMEWORK

Our payment difficulty framework sets out the Commission’s approach to promoting protections for customers anticipating or facing payment difficulty. The framework has been updated to take into account stakeholder feedback and our new approach to setting minimum standards.

FIGURE 4.1 THE PAYMENT DIFFICULTY FRAMEWORK



Source: ESC

An overview of each element of the proposed framework is outlined below, highlighting the changes from the previous framework.

4.2.1 PURPOSE

As we said in our Draft Report of the hardship inquiry, ‘Debt or Disconnection? It is a terrible choice for customers.’⁴¹ Avoiding this terrible choice became the purpose of the framework we proposed in our first draft decision in October last year.

During our consultation on our first draft decision, some stakeholders asked for greater clarity about the purpose of the framework, in particular whether the focus should be on avoiding debt, disconnection or both.⁴²

The purpose of the framework reflected in the hardship inquiry and our first draft decision, was strongly influenced by our observation that no customer gets disconnected for non-payment if they are not in arrears.

Because being in arrears was clearly a trigger for disconnection, it seemed a natural place for us to focus our attention. Based on the evidence we collected that showed that early action to address payment difficulties is particularly effective, we prioritised prevention over treatment.

We remain of the view that debt or disconnection is an invidious decision for energy customers and retailers, and an insurmountable dilemma for regulators. We also consider that a strong focus on early and effective action is required if this invidious choice is to be avoided. Consequently, we have reflected further on the purpose of the framework.

The Commission has statutory obligations to promote best practice to facilitate continuity of energy supply,⁴³ and to have regard to community expectations that

⁴¹ Essential Services Commission, *Supporting Customers, Avoiding Labels. Energy, Hardship Inquiry Draft Report*, September 2015, p.ii.

⁴² See for example Consumer Action Law Centre 2016 and Financial and Consumer Rights Council, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p.1.

⁴³ Section 42(b) *Electricity Industry Act 2000* (Vic) and section 48F(b) *Gas Industry Act 2001* (Vic).

energy supply will not be disconnected solely because of a customer's inability to pay,⁴⁴ and the principle that disconnection should be a last resort.⁴⁵

Our statutory obligations in the industry Acts, the clear expectation of Government that disconnection should be a measure of last resort, and feedback from many stakeholders has led us to the conclusion that our intended purpose for the framework needed to be amended. We therefore propose that the purpose of the amended Code should be:

to provide customers facing payment difficulty with an entitlement to a set of minimum standards of assistance, so that disconnection is a measure of last resort.

The minimum standards of assistance we propose remain focused on helping customers to avoid and manage arrears, including by helping them manage the cost of their energy use. We also propose that retailers must be able to demonstrate that they have provided, or have used their best endeavours to provide, timely and effective assistance to a customer facing payment difficulty before disconnection is considered.

4.2.2 TYPES OF PAYMENT DIFFICULTY

Payment difficulty is caused when a customer's costs of energy (which is a function of how much energy they use, the price of that energy and any repayment of previously unpaid accounts) is not matched by the income the customer has available to meet to that expense. The availability of income will, in turn, be a function of the quantum and timing of household income and expenses.

Payment difficulty may be one-off, temporary, repeated or on-going in nature. Its nature may change with the customer's circumstances and its cause(s) may also change. We found in the hardship inquiry that the *causes* of payment difficulty are unique to each customer but the *types* of payment difficulty are not. In the final report of that inquiry

⁴⁴ Section 45(2)(c) *Electricity Industry Act 2000* (Vic) section 481(c) *Gas Industry Act 2001* (Vic).

⁴⁵ Section 45(2)(d) *Electricity Industry Act 2000* (Vic) section 481(d) *Gas Industry Act 2001* (Vic).

we identified five types of payment difficulty.⁴⁶ The most severe form of payment difficulty consisted of a customer who had energy debt and was not paying for the cost of their ongoing energy use. (That is, indebtedness to their energy retailer was increasing.)

In our first draft decision, we did not clearly differentiate between the situations where a customer's increasing arrears *may* be addressed with timely and effective assistance from their retailer, and where retailer assistance alone *may not* prevent the customer's arrears from continuing to grow.

During the consultation on our first draft decision, consumer representatives and retailers highlighted that it was not clear what, if any, assistance the proposed framework would provide to this second group of customers, and sought assurances that the circumstances of these particularly vulnerable customers would be recognised.⁴⁷

In our first draft decision we used a customer's payments as the primary way of objectively determining payment difficulty. However, we now recognise that on its own this may be insufficient to ensure that assistance is effectively tailored to a customer's needs.

We understand that customers' financial and personal circumstances will often be fluid and may be unclear, sometimes even to the customer. In addition, we expect that how a customer prioritises their energy expenses will be influenced (in some measure) by the assistance they can expect to receive from their retailer.

In other words the assistance that a customer needs will often depend on both the type of payment difficulty they are experiencing and on their other circumstances.

This has required that we rethink the way the proposed framework establishes customers' entitlements to assistance. Our first draft decision 'hardwired' assistance to

⁴⁶ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 13.

⁴⁷ See for example Victorian Council of Social Service 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p 7.

the type of payment difficulty being experienced by the customer. We now recognise that this approach may have been too rigid.

As a result, and as explained further in section 5.2, our revised proposal is no longer structured strictly along the lines of the various types of payment difficulty. Rather, it is structured around how customers and retailers actually interact. The type of payment difficulty (i.e. the nature of a customer's arrears), nonetheless remains an important determinant to help ensure that customers receive assistance that addresses their needs and circumstances.

In revising our approach, we have taken into account the AER's Sustainable Payment Plan Framework (SPPF).⁴⁸ The SPPF recognises the important distinction between customers who can pay for their on-going energy use but need more time to repay their arrears, and customers for whom paying for their energy use will be an ongoing struggle.

The SPPF provides useful guidance on how retailers should engage with customers in ongoing payment difficulty. We support and encourage retailers to follow the good practice set out in the SPPF, in particular the principles of respectful conversations. We will therefore consider monitoring and reporting on retailers' adherence to these principles.

However, assessing a customer's capacity to pay - the focus of the SPPF - does not form part of the payment difficulty framework proposed in this draft decision.

4.2.3 CUSTOMER ENTITLEMENTS

The essential character of energy supply and the consequences that arise from loss of access for customers and their households have been well documented. In recognition of the essential nature of energy, on 1 January 2016, a new statutory objective for the

⁴⁸ Australian Energy Regulator 2016, *Sustainable payment plans – A good practice framework for assessing customers' capacity to pay*, July.

Commission came into effect, 'to promote protections for customers, including in relation to assisting customers who are facing payment difficulties'.⁴⁹

Our hardship inquiry found that customers facing payment difficulty do not know what assistance is available. We also found that eligibility for assistance is at retailers' discretion along with the type of assistance a customer may receive. Not surprisingly then, the hardship inquiry found levels of assistance and outcomes for customers varied significantly.

These varied outcomes arise because retailers' regulatory obligations are broadly defined, and retailers have scope to interpret these obligations in different ways. The assistance any individual customer receives depends on which retailer they are with, and how that retailer applies its discretion in that individual customer's circumstances. As a result, two customers with identical types of payment difficulty and similar circumstances can currently end up with very different experiences and very different outcomes. It is this inconsistency, unpredictability and inequity that we believe has led to the community and government questioning whether customer disconnection is being pursued as a measure of last resort.

Under existing arrangements, customers facing payment difficulty have no clear entitlements to assistance. This is because whether they receive assistance, when they receive it and what assistance they receive, is subject to the decision of the retailer. Likewise, retailers currently decide if and when assistance is withdrawn. Furthermore, because unbounded discretions are unenforceable, retailer obligations to provide assistance are also unenforceable.

Our proposed framework is therefore based on a set of clear customer entitlements to minimum standards of assistance. These entitlements are directly enforceable. In addition, if a retailer is unable to demonstrate that it has used its best endeavours to provide the minimum standard of assistance required prior to disconnection, the disconnection will be wrongful.

⁴⁹ Section 10(c) *Electricity Industry Act 2000* (Vic) and section 18(c) *Gas Industry Act 2001* (Vic).

4.2.4 MINIMUM STANDARDS

Minimum standards provide important certainty and consistency for both customers and retailers.

Throughout the development of our first draft decision, we struggled to accommodate on-going requests from retailers in particular, for greater detail about the proposed obligations and entitlements. This led us to include a level of prescription of thresholds and pathways in our first draft decision that was ultimately unacceptable to retailers and other stakeholders.

In our new proposal, we have taken a fundamentally different approach. We have focused on the outcome, rather than precisely how that outcome is achieved. The outcomes we are seeking are:

- retailers and their customers will work together to find solutions to the payment difficulty that best meet the customer's circumstances
- customers will be empowered to better manage their energy use so that their energy costs are more manageable within the financial resources available to them
- customers will have improved knowledge of, and access to, government and non-government support services; and
- arrears will not be left unattended which, all other things being equal, leads us to expect that levels of customer debt will be lower, and certainly no higher, than they would have been in the absence of the reforms.

We have also included a minimum set of assistance that must be provided to customers by all retailers, in the interests of equitable access, transparency and consistency required by the industry Acts.⁵⁰

Our new proposal is less black and white than our original draft decision. We have not attempted to solve all possible scenarios. As a consequence retailers will need to draw on their experience and exercise their judgement about how to ensure compliance. As

⁵⁰ Section 45(2)(e) *Electricity Industry Act 2000* (Vic) and section 48(2)(e) *Gas Industry Act 2001* (Vic).

is often the case with new regulations, there will be a need to test these judgements particularly in the early stages of implementation.

In anticipation, in Chapter 5 we have provided guidance about some of the key provisions of the Code, what they are intended to achieve, and illustrated the Commission's proposed approach to promoting and enforcing compliance. It is intended that following consultation on our new proposal, this guidance would be formally issued with our final decision as a guidance note under our *Energy Compliance and Enforcement Policy*.

4.2.5 RETAILER INNOVATION

Our hardship inquiry identified a range of better industry practices that were more effective in assisting customers to address their payment difficulty. However, individual retailer practices were highly variable and it is fair to say that no individual retailer demonstrated better practice across the board.

Industry practices have continued to evolve since the completion of our Inquiry. Some of the better practices we have observed include:

- flexible payment options available to all customers
- immediate efforts to contact a customer and offer assistance following a missed payment
- training of staff to recognise signs of payment difficulty and individual circumstances that are likely to affect payment in their conversations with customers
- acceptance by the retailer of a payment amount nominated by a customer
- practical energy management advice tailored to individual customers
- partnerships with welfare organisations to assist with energy management and access to other forms of assistance
- dedicated priority phone numbers for people advising or assisting customers facing payment difficulty, and
- incentives for payment such as payment matching and debt waivers.

During consultation on our first draft decision, retailers expressed concern that the thresholds and pathways would not only limit their opportunities for innovation, but also require changes to their existing programs that would reduce their effectiveness.⁵¹ Some consumer organisations also considered that retailers programs could be disrupted by our approach. Nonetheless, consumer organisations also stressed the need to maintain clear minimum standards, particularly for customers facing the most severe payment difficulty.⁵²

While we endeavoured to allow for and encourage retailer innovation in our first draft decision, our new approach, with its focus on outcomes for customers and minimum standards, means that it is up to retailers to decide how best to achieve these outcomes and meet these standards. We believe that our new approach therefore strikes a better balance between certainty and flexibility that will allow for continued evolution and innovation in the delivery of assistance to customers.

4.2.6 COMPLIANCE AND ENFORCEMENT

On 1 January 2016, new legislation came into effect that established new compliance and enforcement functions for the Commission.⁵³ These new functions were supported by new compliance and enforcement reporting obligations⁵⁴ and enforcement powers. These enforcement powers include the ability to issue penalty notices,⁵⁵ enter into enforceable undertakings,⁵⁶ and amend licences in response to non-compliance.⁵⁷

We took the view that in the interests of transparency and accountability, we should set out how we proposed to undertake our new functions and use our new and existing powers. In July 2016, after consultation with industry and other stakeholders, we published our *Energy Compliance and Enforcement Policy* (Policy).

⁵¹ See for example Origin Energy 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty*, Submission to Commission draft decision, November, p 3.

⁵² Payment Difficulty Safety Net Forum 2017, *Gerard Brody of Consumer Action Law Centre*, January.

⁵³ Section 10AA *Essential Services Commission Act 2001* (Vic) ('ESCA').

⁵⁴ Section 54V *Essential Services Commission Act 2001* (Vic).

⁵⁵ Section 54G *Essential Services Commission Act 2001* (Vic).

⁵⁶ Section 54B *Essential Services Commission Act 2001* (Vic).

⁵⁷ Section 29A *Electricity Industry Act 2000* (Vic) and section 38A *Gas Industry Act 2001* (Vic).

As our policy highlights, how a retailer meets its obligations is a matter for that retailer. Our task is to make these obligations clear. Following consultation on our policy, we amended our proposed compliance and enforcement pathway to include what we call our ‘preliminary assessment stage’.

The purpose of preliminary assessment is to enable us to work with licensees to establish whether or not a particular form of conduct may be non-compliant. This stage is particularly important to promote constructive dialogue between us and the industry about the standards that are expected. Our policy also sets out the important role that EWOV plays in this process.

As foreshadowed in our final report of the hardship inquiry, changes to the *Operating Procedure Compensation for Wrongful Disconnection* (Operating Procedure) which guides the way in which disputes between a retailer and customer may be referred to the Commission, will be required to implement the new payment difficulty framework.⁵⁸

In consultation on our first draft decision, a range of stakeholders sought clarification about the status and future role of the Operating Procedure. We propose to repeal the Operating Procedure and replace it with Guidance Notes under our policy. Details of the proposed changes are set out section 5.10.

Changes are also needed to the arrangements for how we work with EWOV to take into account EWOV’s new statutory powers to refer systemic issues to the Commission for investigation, and the Commission’s new compliance and enforcement functions and powers. These changes are also described further in section 5.10.

4.2.7 GOOD PRACTICE, PERFORMANCE AND EVALUATION

A good regulatory framework has the capacity to be flexible and allow for learning from experience. In section 4.2.5 we have set out how we have attempted to provide flexibility and to allow for innovation in our new proposal.

⁵⁸ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 107.

It is clear to us that some of the factors that influence the effectiveness of the assistance that retailers provide to customers are not suited to regulation. These include, for example, the overall culture and attitude of the retailer towards customers facing payment difficulty and the skills, experience and training of staff, and innovative ways of communicating with and providing valuable information to customers. In recognition of the fact that these factors are nonetheless important but not amenable to regulation, we propose a formal approach to promoting good practice through monitoring and reporting on performance.

In order to commence the formal process of monitoring and reporting on performance, as required by the legislation, on 30 June 2016, we published our *Interim Compliance and Performance Reporting Guideline* (CPRG). This included some new and updated indicators of performance in relation to programs for assisting customers facing payment difficulty.

One of the reasons that we published an interim guideline, was in recognition that the indicators would need to be reviewed following the finalisation of our work on a new payment difficulties framework. In Chapter 7 we therefore set out our initial thinking on the indicators that may be required to monitor and evaluate performance.

In November 2016, we published the first annual Victorian Energy Market Report (VEMR) in accordance with new legislation.⁵⁹ In addition to reporting on compliance with the new payment difficulties framework, in future reports and quarterly updates we propose to highlight the practices of retailers in assisting customers facing payment difficulty that we consider best-in-class.

In addition to the need to monitor and report on retailer compliance and performance, there is a need to evaluate the effectiveness of the new payment difficulties framework as a whole. We therefore propose to review the operation of the new framework in two years.

⁵⁹ Section 54V *Essential Services Commission Act 2001* (Vic).

4.3 CHANGES TO THE CODE

The Code sets out the minimum standards of conduct by retailers for their interactions with customers, including minimum terms and conditions that must be included in customer contracts.

The Code applies to, and must be complied with, by all retailers in accordance with their retail licence granted by the Commission. As explained in 4.2.6 above, we promote and enforce compliance with the Code using our powers in the *Essential Services Commission Act 2001*, in accordance with our *Energy Compliance and Enforcement Policy*.

Our hardship inquiry concluded that the regulatory framework required change to establish entitlements to minimum standards of assistance for customers facing payment difficulty, and to ensure that these standards are enforceable. This section provides an overview of the changes to the Code we are proposing to make in the new draft decision, in light of retailer and other stakeholder feedback on our first draft decision.

4.3.1 OVERVIEW OF PROPOSED CODE CHANGES

We propose to substitute a new Part 3 of the Code which includes what we consider to be the minimum standards of assistance that customers facing payment difficulty in Victoria should be entitled to receive from their retailer.

Our substitute Part 3 of the Code is designed to provide customers facing payment difficulty with the opportunity to work with their energy retailer to:

- avoid getting into arrears
- repay any arrears in a manageable way
- lower their on-going energy costs, and
- gain access to other forms of assistance to help meet energy payments.

Part 3 works by providing customers anticipating or facing payment difficulty with a set of minimum entitlements to assistance. The assistance available depends on, and is proportionate to, the type of payment difficulty.

Importantly, our new proposal for Part 3 does not represent a complete replacement of the current provisions. It maintains or amends a range of existing provisions such as those that relate to financial hardship policies, debt and payment methods and the prohibition on the use of supply capacity control for credit management purposes.

We propose to make compliance with Part 3 of the Code a precondition for disconnection of a customer. A new clause 111A is therefore proposed that requires that disconnection of a customer is a last resort, and sets out what that would entail.

A series of amendments to other sections of the Code are required to remove or amend clauses that are inconsistent with our new proposed Part 3. Some additional protections for customers are also proposed in relation to debt collection.

The full proposal for Part 3 of the Code is set out in Appendix B. Changes to other parts of the Code are set out in Appendix C. Detailed explanation and our proposed approach to interpretation of the new provisions of the Code is provided in Chapter 5.

4.3.2 OVERVIEW OF THE NEW PART 3

Unlike our first draft decision, our new proposal for Part 3 of the Code does not completely replace all of the current Part 3. As outlined above, our new proposal incorporates a range of the existing provisions.

Customers' entitlements to a minimum standard of assistance need to be clear and broadly consistent across all retailers. Our new Part 3 is structured around the way retailers and customers interact, with defined minimum standards of assistance that must be provided depending on the type of payment difficulty a customer is facing.

Division 1 sets out the purpose of the part and how it should be interpreted. The minimum standards of assistance that we propose that a Victorian energy customer facing payment difficulty should expect to receive, are set out in Divisions 2, 3 and 4. Disconnection is not permitted while a customer is receiving assistance under this part.

DIVISION 1: PURPOSE

In our first draft decision, we described the purpose of Part 3 as merely to set out the entitlements of customers facing payment difficulties to assistance from their retailer.

This purpose was supported by the objective which was focused on avoiding and paying arrears in a manageable way. In light of stakeholder feedback, we consider that our proposed purpose for Part 3 was insufficient. In particular we believe that it is important that retailers, customers and other stakeholders are clear about what the assistance aims to achieve.

The new purpose of the 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 is a measure of last resort.

In order to ensure clarity of purpose, and unlike our first draft decision, we have not included objectives for Part 3 as a whole. Instead we have defined outcome based objectives for each of the divisions that set out the minimum standards of assistance that a customer must receive.

DIVISION 2: STANDARD ASSISTANCE

In our hardship inquiry, we recognised that the first person to know that they may encounter payment difficulty is the customer. Standard assistance enables a customer anticipating payment difficulty, or possible payment difficulty to take action to avoid getting into arrears. We consider it essential that this can occur without risk to the customer, in particular by ensuring access to assistance without the stigma associated with a label of 'hardship' that we found in the hardship inquiry.⁶⁰

In order to help customers avoid getting into arrears, we are proposing that each energy retailer must offer a number of standard forms of payment assistance to help customers manage their energy bills. Customers may self-select from the assistance their retailer elects to offer.

A summary of the forms of standard assistance is provided in Table 4.1. Detail of the assistance is provided in Chapter 5.

⁶⁰ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 45-49.

TABLE 4.1 STANDARD ASSISTANCE
Summary of forms of assistance

Proposed forms of assistance from retailers to which customers would be entitled under standard assistance

A minimum of three of:

- Pay an equal amount over a specified period.
- Pay once a month or once every fortnight rather than every quarter.
- Defer paying one bill for a specified period for at least one billing cycle over a 12 month period.
- Pay for energy use in advance, rather than in arrears.
- Pay for anticipated arrears over a period that is three times longer than the customer’s billing period.

Plus

- Make general information readily available on standard assistance and on how to access it, by having it easily accessible on retailer’s website or sending it by email or other electronic means.
- Make general information readily available on how to lower energy costs, by having it easily accessible on retailer’s website or sending it by email or other electronic means.
- Make general information available on government or non-government assistance that may be available to help with meeting energy costs, by having it easily accessible on retailer’s website or sending it by email or other electronic means.

While standard assistance is similar in intention to early action in our first draft decision there are a number of important changes.

Our first draft decision could have been interpreted as requiring retailers to provide individualised payment arrangements — for example, each customer would determine the frequency of their payments as of right. This was not our intention. Our revised proposal makes clear that the retailer must provide at least three standard forms of assistance that are available to all customers as of right. For example, a retailer may choose to make weekly payments a standard form of assistance it makes available to any customer who requests it.

Our earlier draft decision also provided an exhaustive set of payment arrangements that retailers were required to provide. Our consultations highlighted that, while many retailers already provided these or similar forms of assistance, retailers differed in the mix of measures they made available. In order to provide greater flexibility that accommodates retailers’ mix of practices while still providing customers with an entitlement to a minimum standard of assistance, we have: (i) proposed that retailers

be required to make available three out of the five assistance measures we've identified; and (ii) we have described the standard assistance measures in high-level terms only.

One form of standard assistance that is included in our new draft decision is the option to provide customers with the opportunity to 'pay for energy use in advance, rather than in arrears'. The inclusion of this form of assistance was added following the stakeholder forum (on 31 January 2017) when stakeholders made clear that voluntary advance payment arrangements were beneficial to many customers. Indeed, a number of retailers have indicated they already provide this facility. Under the new framework, other retailers can similarly elect to offer such payment arrangements. Alternatively, they may choose to provide other forms of standard assistance.

We consider that our approach to standard assistance will provide retailers with sufficient flexibility and avoid undue costs, while providing customers with a minimum entitlement to readily available assistance measures that will help them avoid becoming indebted to their energy retailer. Importantly, standard assistance will not require detailed and ongoing engagement between customers and their retailer.

DIVISION 3: TAILORED ASSISTANCE

Despite adopting the same title, tailored assistance in this draft decision is markedly different from the package of assistance by the same name proposed in our first draft decision. Tailored assistance is now a broad set of assistance that is specified only in high-level terms. We have dispensed with our previous tiered and prescriptive approach to assistance - referred to as: *Connection Support*, *Promise to Pay*, *Energy Costs* and *Pay as You Go* in our first draft decision.

Whereas standard assistance requires only minimal communication between retailers and customers, tailored assistance involves customers and retailers actively working together. Importantly, tailored assistance requires retailers to take into account a customer's circumstances that may require a more involved set of interactions to assist the customer to avoid disconnection successfully. Tailored assistance is the 'work horse' of our new proposal.

As mentioned in section 4.2.2, the new framework is designed to reflect and encourage active communication and dialogue between retailers and customers, rather than

strictly focusing on the type of payment difficulty. The need to promote these interactions was a very strong theme to emerge during our stakeholder forum earlier this year. In this draft decision, active communication between a customer facing payment difficulty and their energy retailer is required to obtain and retain assistance.

The non-prescriptive nature of this version of tailored assistance, its focus on outcomes for the customer, and its requirement for retailers to take into account customer circumstances, means that retailers will retain responsibility for ensuring customers receive the assistance they need. This maintains the philosophy of the scheme defined in v11 of the Code; however, retailer's absolute discretion will be constrained by customers' entitlement to minimum standards of assistance.

With discretion comes responsibility, and with responsibility comes the need for accountability. The following discussion provides an overview of the minimum standards, retailer discretions, responsibilities and accountabilities involved in delivering tailored assistance to customers.

The minimum assistance specified in the Code must be provided to all customers who are entitled to that assistance. Importantly, this assistance can be supplemented by the retailer but cannot be substituted. Further interpretation and guidance regarding tailored assistance is provided in section 5.4.

Minimum standards

In the hardship inquiry, we found that the assistance that customers facing payment difficulty need is more time to pay, help to reduce the cost of their energy consumption and access to other forms of government and non-government support.⁶¹ As we outlined above, tailored assistance sets out the minimum standards for each of these forms of assistance. A major change from our first draft decision is the need for a retailer to take the customer's circumstances into account when offering and providing assistance.

⁶¹ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 74-76.

Time to pay

Customers facing difficulty are entitled to repay their arrears over a period of up to two years. However, they may pay sooner if they are able to do so.

If a customer's arrears are stable because they are paying for the cost of their on-going energy consumption, tailored assistance is focused on the retailer and customer working together to enable the customer to repay their arrears in a manageable way. The retailer is required to provide the customer with information about their arrears, the cost of their on-going energy use, and repayment options to suit the customer's individual circumstances.

Since only the customer can decide what are manageable payments for them, retailers are required to provide advice on payment options, however customers make the payment proposal. A retailer must accept a payment proposal if it will result in the arrears being repaid within two years or less.

Because a retailer must accept a payment proposal if it can reasonably be expected to assist the customer's arrears to be repaid, disconnection will be unlikely, and will only be pursued as a measure of last resort.

Reducing energy cost

If a customer's arrears are growing because they are not paying for the full cost of their on-going energy consumption, tailored assistance is focused on helping the customer reduce the cost of their energy use. This assistance is also available to customers who advise their retailer that their circumstance means they run the risk that their arrears will increase.

In these circumstances, the retailer must put repayment of arrears on hold and allow a customer an initial period of six months during which they may pay below the full cost of their energy consumption.

During this time the retailer is required to provide practical assistance with the customer's energy tariff, energy use and management to help reduce the cost of their energy consumption.

In our hardship inquiry we found that in practice, customers receive little practical assistance to better manage their energy use.⁶² Retailers, other stakeholders and our own research have also shown that customer's facing payment difficulties also typically use more energy than customers in similar households.⁶³

In our Victorian Energy Market Report (VEMR) published in November 2016, we found that a very small percentage of customers in retailer hardship programs had in fact received the energy use assistance required to be made available by retailers in their hardship policies by the relevant industry acts.⁶⁴

TABLE 4.2 ENERGY USE ASSISTANCE PROVIDED BY RETAILERS 2013 – 2016.

| Assistance | 2013-14 | | 2014-15 | | 2015-16 | |
|---|---------|-----|---------|-----|---------|-----|
| | No. | % | No. | % | No. | % |
| Energy field audits provided at no cost | 449 | 2.2 | 178 | 0.6 | 497 | 1.5 |
| Appliances provided (large) | 1123 | 5.6 | 336 | 1.2 | 245 | 0.7 |
| Appliances provided (small) | 4 | 0.0 | 82 | 0.3 | 19 | 0.1 |

Source: ESC VEMR 2016

We therefore consider that providing practical assistance to help customers reduce their energy use remains an important element of tailored assistance. However, we accept that a customer's capacity to reduce their energy use is affected by many factors, including the type of housing they live in.

Retailers are therefore not required to provide assistance if the retailer reasonably believes that there is no scope for practical action. The absence of scope for practical

⁶² Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 21, 25-27.

⁶³ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 25.

⁶⁴ Sections 43C(b) – (c) *Electricity Industry Act 2000* (Vic) and sections 48GC (a) – (c) *Gas Industry Act 2001* (Vic).

action to reduce energy use is a circumstance that retailers should take into account when considering the other elements of tailored assistance. We will monitor and report on what other forms of assistance are provided to customers in these circumstances.

Access to other assistance

If after taking all practical steps available to help reduce a customer's energy costs, a customer's income does not enable them to pay for their reasonable energy use, reducing arrears can then only be achieved through access to other forms of assistance.

Retailers are required to provide on-going advice about any government and non-government assistance, including Utility Relief Grants that may be available and other forms of Government and non-government assistance that they may be available. This would also include assistance delivered through partnerships between the retailer and non-government organisations.

Flexibility

Through our consultation on our first draft decision, it was highlighted that reducing energy costs may take time.⁶⁵ Where further time is required, repayment of the customer's arrears may be suspended for a further period and practical assistance extended.

Each customer facing payment difficulty has different circumstances. Requiring retailers to provide flexible assistance that takes these circumstances into account, should make it easier for customers to manage their energy costs and ultimately to repay their arrears.

Summary of Tailored Assistance

A summary of the forms of assistance available under tailored assistance is provided in Table 4.3. Further detail is provided in Chapter 5.

⁶⁵ Energy Water Ombudsman (Victoria) 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p. 11.

TABLE 4.3 TAILORED ASSISTANCE
Summary of forms of assistance

Proposed forms of assistance from retailers to which customers would be entitled under tailored assistance

- Customer proposes payments that will pay off arrears over a period of up to two years, at intervals of up to a month.
- Retailer must accept proposal if arrears paid off within a two year period, and provide written schedule of payments.
- A revised proposal for payments can be put forward by the customer at any time.
- Retailer must accept revised proposal if arrears paid off within the originally specified two year period, and provide written schedule of payments.
- Provide specific advice about lowering energy costs.
- Provide specific advice about any government or non-government assistance that may be available to help with meeting energy costs.
- For an initial period of 6 months, repayment of arrears on hold and customer pays less than the full cost of their on-going energy use while working to lower that cost. The initial 6 month period may be extended.
- For customers that cannot pay the full cost of on-going energy use, the retailer must offer:
 - the tariff that is most likely to minimise the customer’s energy costs
 - a suite of practical assistance to help the customer reduce their use of energy
 - information about how the customer is progressing towards lowering their energy costs.
- If at any time a retailer forms a reasonable belief that a customer is not meeting their responsibilities to implement any practical assistance provided by the retailer, the retailer must use its best endeavours to contact the customer and work with them to identify an implementation timeframe.
- If a payment is not paid by the due date, the retailer must use its best endeavours to contact the customer to discuss a revised payment proposal.
- Make information readily available on tailored assistance by having it easily accessible on retailer’s website or sending it by email or other electronic means.

DIVISION 4: DEFAULT ASSISTANCE

One of the significant challenges identified during the hardship inquiry and then raised again during our consultation over the past year has been the case of customers in payment difficulty who ‘fall through the cracks’. For any number of reasons, these are customers whose payment difficulty is not addressed early and so their arrears often continue to grow with each billing cycle. The hardship inquiry identified cases where customers had accumulated outstanding amounts in the many thousands of dollars — an indebted position from which they were never likely to recover.

In our first draft decision, we sought to develop a mechanism that helped customers and retailers avoid falling into such situations. We proposed a measure, called,

immediate assistance, that would see customers immediately placed on a prescribed payment plan as soon as they missed a single payment.

Our proposal was strongly opposed by retailers, consumer peak bodies and welfare organisations. Concerns raised with the proposal included:

- loss of customer agency (that is, customers' ability to have a say on how they and the retailer could best address their payment difficulty)
- loss of opportunity for retailers to work with their customers in a less prescribed manner, and
- 'over-capture' whereby customers would have been placed on the proposed payment plan when they were simply late in paying their energy bill.

Nonetheless, stakeholders generally agreed measures were needed to help avoid situations where a customer could 'fall through the cracks' and begin accumulating onerous levels of debt.

In this draft decision we have taken a different approach. We are now proposing that default assistance should be extended to customers as a measure of last resort (as opposed to immediate assistance which was a measure of first resort). Where a retailer has used their best endeavours to discuss their entitlement to tailored assistance⁶⁶ but the customer has not responded, the retailer will be obliged to offer the customer default assistance.

Retailers would be required to make an offer (in writing) for repayment of arrears in equal monthly instalments over a period that is three times the length of their billing period. The retailer is also obliged to offer to work with the customer to develop a suitable assistance package under tailored assistance. At this point, the customer will have three choices:

- contact the retailer and explore assistance available under tailored assistance
- contact the retailer to accept the default assistance payment arrangement, or

⁶⁶ Tailored assistance involves the customer responding to their retailer by nominating the amount they are able to pay under that form of assistance.

- pay the first instalment of the default assistance payment plan which will be deemed as acceptance of the offer (without any need to contact the retailer).

Where a customer fails to pursue one of these options, the retailer may issue a Disconnection Warning Notice (in accordance with the relevant provisions).

A summary of the forms of assistance available under default assistance is provided in Table 4.4. Further explanatory information on default assistance is provided in section 5.5.

TABLE 4.4 DEFAULT ASSISTANCE
Summary of forms of assistance

Proposed forms of assistance from retailers to which customers would be entitled under Default Assistance

- Default payment arrangement – pay arrears by equal monthly instalments over a period that is 3 times the length of the billing period.
- Retailer must provide schedule of instalments.

DIVISION 5: FINANCIAL HARDSHIP POLICIES

In our original draft decision, we assumed financial hardship policies would become redundant if we codified customers’ entitlements to assistance. This approach raised significant concerns among our stakeholders.⁶⁷

In our hardship inquiry, we noted that a reason for retaining the term ‘hardship’ is that it can have a broad definition that applies to a range of customer circumstances.⁶⁸ For the reasons outlined in the previous section, we recognise the importance of taking into account all of the customer’s circumstances.

⁶⁷ This included concerns from some retailers about ambiguities arising from the ongoing existence of references to hardship policies in the relevant industry Acts. See for example Simply Energy 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty*, November, p 4 and Alinta Energy 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty*, November, p 5.

⁶⁸ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 47.

We remain strongly of the view that labelling customers as ‘in hardship’ is wrong both in principle and in practice. In our hardship inquiry, we drew attention to the negative effects of these practices.⁶⁹

After reflecting on the feedback on our first draft decision, we now consider that financial hardship policies can and should continue to play an important role in the regulatory framework.

In this draft decision, we propose to maintain financial hardship policies underpinned by customer entitlements to minimum standards of assistance as defined by the Code. In other words, whether to provide assistance to a customer facing payment difficulty, and the minimum standards of assistance that must be provided will no longer be at a retailer’s discretion.

The new Part 3 contains a number of the provisions regarding financial hardship policies that are, for all intents and purposes, the same as those in the current Energy Retail Code (v.11). Other provisions have been removed because they are now better managed through the guidance material that we will be issuing with our final decision (see Chapter 5). Where provisions in the current code (v.11) merely restate legislative obligations, we have tended to remove them in order to streamline the regulatory framework.

DIVISION 6: MISCELLANEOUS

This division includes a number of provisions, most of which are carried over from the current code (v.11), for example: the treatment of debt, the restriction on the use of supply capacity control products and payment arrangement by Centrepay.

We are also proposing to include new provisions that among other things:

- cover retailers’ obligations to work cooperatively with government and non-government support services, and the Energy and Water Ombudsman (Victoria)
- reaffirm that retailers can provide assistance in addition to the minimum standards described above, and

⁶⁹ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 45-49.

- outlines the limited circumstances in which a retailer must object to the transfer of a customer to another retailer.

These miscellaneous provisions are described in further detail in section 5.8.

4.3.3 OTHER AMENDMENTS TO THE CODE

Appendix C contains a number of additional amendments to the Code. Most of these amendments are simply consequential amendments that follow from the payment difficulty arrangements in the proposed new Part 3. There are, however, two important provisions worth highlighting. These relate to the issuing of reminder notices and the proceeding with disconnection.

REMINDER NOTICES

Most of the provisions to reminder notices are largely unchanged. However, in keeping with the objective of the new payment difficulty framework, we are proposing that retailers cannot issue a reminder notice until they have used their best endeavours to provide customers with the assistance to which they are entitled. In other words, retailers' primary obligation will be to make the new assistance arrangements work well. Where this is successful, reminder notices should not be necessary.

The role of reminder notices is discussed in section 5.9 as well as the dilemma we faced in framing the appropriate role for reminder notices in the overall payment difficulty framework.

PROCEEDING WITH DISCONNECTION

The proposed code amendments include a new clause (111A) which defines how disconnection will be a measure of last resort as required by section 45(2) of the *Electricity Industry Act 2000 (Vic)* and section 48I(2) of the *Gas Industry Act 2001 (Vic)*. Before a retailer can lawfully proceed to the disconnection of a customer's energy supply, the retailer must use its best endeavours to provide the customer with the assistance to which they are entitled under Part 3. Conversely, customers must exercise their entitlements if they are to avoid disconnection.

Unlike our first draft decision, this draft decision proposes providing retailers with a much broader discretion in how they work with customers to tailor assistance to the

customers' individual needs. Given this discretion, this new clause makes clear that the onus will lie with retailers to demonstrate that they have acted in accordance with the objectives of the new Part 3.

4.4 CONCLUSION

This chapter provides an overview of the Commission's new proposed Code amendments. It differs markedly from our first draft decision. The new proposal:

- focuses on the outcomes — namely, getting advice and assistance to customers to ensure that disconnection is a last resort — rather than how these outcomes are achieved
- is structured around how customers and retailers interact with *Standard Assistance* providing for a light-handed approach where it is needed, *Tailored Assistance* accommodating more comprehensive forms of interaction, and *Default Assistance* addressing situations where customers do not interact with their retailer
- provides retailers with flexibility to deal with the circumstances at hand while providing agency to customers in shaping the assistance they receive, and
- maintains financial hardship policies as the back bone for delivering assistance to customers facing payment difficulty and the primary vehicle for ensuring that assistance is subject to minimum standards.

Our original draft decision was premised on a detailed codification of entitlements and obligations. As a result, we considered there was no immediate need for the Commission to release further explanatory material in support of the draft Code. This created a lack of clarity about the Commission's intentions and led to considerable uncertainty among our stakeholders.

Our new proposal will see us issue guidance material under our *Energy Compliance and Enforcement Policy* (published in July last year). Chapter 5 includes information that will form the basis of a Guidance Note that we will publish with our final decision. It provides further detail on the proposed provisions and describes how the Commission will interpret the Code and the standard of conduct that will be required in order to be in compliance with the Code.

5 INTERPRETING OUR PROPOSAL

5.1 INTRODUCTION

As outlined in Chapter 4, our new proposal is focused on outcomes and minimum standards of assistance for customers anticipating or facing payment difficulty. Our proposed changes to the Code do not include prescriptive detail seeking to address each and every customer circumstance.

Nevertheless, the structure and content of the Code has been heavily influenced by practical examples of different circumstances facing both customers and retailers. These have been drawn from our own research for the hardship inquiry, and through information and case studies provided by retailers and other stakeholders.

Because the Code applies to, and must be complied with by all retailers in accordance with their retail licences, the wording of the Code necessarily has legal character. It is not primarily a document for customers. Other material will be produced for that purpose once the Code is settled.

This Chapter seeks to provide guidance to retailers and other stakeholders on the changes to the Code that we propose. It follows the structure of our new proposal for Part 3 of the Code, and other proposed Code amendments. After setting out the key provisions, each section includes:

- An explanation of the role of each Division and the intention of its key provisions, including how these respond to the findings of the hardship inquiry and stakeholder feedback on our first draft decision.
- Guidance about how we would assess compliance with some of the key minimum standards, where we think retailers and stakeholders may seek further clarification, including how we would approach some typical customer scenarios.

The chapter concludes with a section on our proposed changes to the way in which referrals from EWOV would be handled.

5.2 OPERATION OF PART 3 – DIVISION 1

Division 1 sets out the overall purpose of Part 3, to whom it applies, and how we propose to interpret it when considering retailer compliance in particular circumstances.

The proposed framework provides customers anticipating or facing payment difficulty with clear entitlements to minimum standards of advice, practical assistance and payment arrangements from their retailer – in a way that takes into account a customer’s particular circumstances. Under these circumstances, we consider that disconnection will only be pursued as a measure of 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* 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 to 4), 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* anticipating or facing payment difficulties might reasonably expect to be offered by their *retailer* under this Part.

5.2.1 PURPOSE – CLAUSE 71

In our first draft decision we took the view that by focusing on avoiding and repaying arrears, customers would ‘*continue to be supplied with energy as an essential service wherever possible*’.⁷⁰

As we acknowledged in Chapter 4, this view was heavily criticised by retailers and consumer advocates, on the grounds that it did not adequately recognise customers whose circumstances mean that retailer assistance alone, may not enable them to pay for their on-going energy use.

Therefore, in contrast to our approach in both the hardship inquiry and first draft decision, our new proposed purpose focuses on ensuring that disconnection of a residential customer ***is in fact a last resort***.

5.2.2 APPLICATION OF THIS PART – CLAUSE 72

The industry Acts require that financial hardship policies apply to domestic customers.⁷¹ A domestic customer is defined as ‘a person supplied with electricity for

⁷⁰ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 60 and clause 71(c) of our draft amended Code.

⁷¹ Section 43(1) *Electricity Industry Act 2000* (Vic) and section 48G(1) *Gas Industry Act 2001* (Vic).

use for domestic purposes'.⁷² The Code refers to a residential customer as 'a customer who purchases energy *principally* for personal, household or domestic use'.⁷³

We are aware that some energy retailers indicate in their financial hardship policies that they may provide assistance to small business customers⁷⁴ facing payment difficulty. Whether assistance is in fact extended to a small business customer can depend on whether that customer meets criteria determined by the retailer.⁷⁵

The hardship inquiry was limited by its terms of reference to residential customers.⁷⁶ We have therefore taken the view that Part 3 of the Code should apply only to residential customers. It would remain up to individual retailers to decide what assistance they may provide to small business customers.

GUIDANCE

We are aware of a class of buildings that are both a small business premises and a residential home, which may be jointly supplied with energy (gas and/or electricity) under a standard or market contract. In these circumstances we intend that Part 3 of the Code would apply to customers who live in such premises.

5.2.3 INTERPRETATION OF THIS PART – CLAUSE 73

Our focus on outcomes for customers and entitlements to minimum standards of assistance aims to provide retailers with flexibility to take into account individual customer circumstances. In comparison to our first draft decision, our new proposal does not prescribe specific thresholds for payment amounts, or include particular triggers, detailed pathways for action, or how assistance should be provided.

⁷² Section 41 *Electricity Industry Act 2000* (Vic) and section 48E *Gas Industry Act 2001* (Vic).

⁷³ Clause 3 Energy Retail Code.

⁷⁴ Domestic and small business customers are defined by Orders in Council to include aggregate consumption of electricity of less than 40MWh per year, or gas of no more than 1000 GJ per year.

⁷⁵ See for example clause 4.1 Origin Energy 2014, *Hardship Policy Power On Program*, August, (<https://www.originenergy.com.au/content/dam/origin/residential/docs/your-account/hardship-policy.pdf>).

⁷⁶ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 115.

The minimum standards of assistance are also described generally. This aims to enable the retailer and the customer to work together to identify the specific advice and practical assistance that is most likely to be effective in the circumstances.

A consequence of providing this flexibility will be that the wording of some of the minimum standards may need interpretation in particular circumstances. Examples include what constitutes ‘advice’, ‘best endeavours’, and ‘taking circumstances into account’.

In the interest of transparency, we want to be clear that where words in the Code may appear to be capable of having more than one meaning, **we will adopt a purposive approach**. This means that we will adopt a meaning consistent with firstly the objective of the Division (clause 73(b)(i)), secondly the purpose of the Part (clause 73(b)(ii)), thirdly taking into account any Guideline we publish (clause 73(b)(iii)), fourthly any Guidance Notes we publish (clause 73(b)(iv)), and finally 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)). Such an approach was also adopted in our first draft decision.

Because every customer’s circumstances are unique, we expect situations to arise where in particular cases it may not be completely clear what a retailer is required to do. It is in these situations that clause 73(b) would apply. In practice we will encourage retailers in the first instance to ask us to clarify the standard of assistance that we expect to be provided.

As outlined in our *Energy Compliance and Enforcement Policy*, we will consider publishing guidance notes where we consider there is a need to provide further details of the standards we expect.⁷⁷ Over time, as more complex circumstances arise, standards may also be clarified through referrals from EWOV. Further information about referrals from EWOV are set out in section 5.10.

Our first draft decision was accompanied by a customer advice manual, written from a customer’s perspective that set out what we considered to be the reasonable

⁷⁷ Essential Services Commission 2016, *Energy Compliance and Enforcement Policy*, July, p. 4.

expectations of customers facing payment difficulty to advice and assistance from their retailer.

In submissions on our first draft decision, three of the larger retailers opposed the inclusion of written advice issued to residential customers by the Commission as relevant to interpretation of the Code. The retailers submitted that advice to customers should be best practice not regulatory,⁷⁸ that customer advice might change quickly and differ from the Code risking confusion in obligations,⁷⁹ and that a Commission decision to issue guidance under Section 13 of the ESC Act is not subject to mandatory consultation.⁸⁰

We have considered these views carefully. We believe that viewing Part 3 of the Code from the perspective of a customer facing payment difficulty is critical to avoid narrow legal interpretations that result in a customer not receiving the advice and practical assistance they need, and should reasonably expect. For example, advice to a customer will be expected to be provided at the time that the customer needs it, rather than at a time that is convenient or cheapest for the retailer to provide.

We also believe that in the interest of transparency we should set out what we consider the reasonable expectations of a customer to be. A decision to issue any such written information would be subject to the Commission's normal decision making processes, having regard to the matters set of in the ESC Act and in accordance with our Charter of Consultation.

Consequently, in clause 73(b)(iv) we propose to retain the capacity to use any written information that has been issued through the Commission's normal processes, as a guide to what we consider the reasonable expectations of a customer anticipating or facing payment difficulty to be when interpreting the Code.

⁷⁸ AGL 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p. 7.

⁷⁹ EnergyAustralia 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p. 18.

⁸⁰ Red Energy and Lumo Energy 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p. 6.

We received general support for providing information for customers about changes to the assistance for customers anticipating or facing payment difficulty,⁸¹ to accompany the commencement of the new payment difficulty framework. Once the new framework has commenced, we envisage preparing written information for customers on what we consider to be the reasonable expectations of a customer anticipating or facing payment difficulty. Further details of the timing and process for consulting on the customer information is provided in Chapter 7.

5.3 STANDARD ASSISTANCE – DIVISION 2

Division 2 sets out a residential customer's entitlement to a minimum number of standard payment options, to assist in managing their energy payments and avoid arrears.

By providing customers anticipating payment difficulty with an entitlement to payment options, customers will be encouraged to take early action to manage their payments and avoid getting into arrears, therefore avoiding any risk of disconnection.

| | |
|-------------------|--|
| Division 2 | Standard assistance |
| 74 | Objective |
| | The objective of this Division is to give <i>residential customers</i> an entitlement to minimum standard forms of assistance, to help them avoid getting into <i>arrears</i> with their <i>retailer</i> . |
| 75 | Application of this Division |
| | This Division applies to all <i>residential customers</i> . |
| 76 | Standard assistance |
| (1) | A <i>retailer</i> must take steps to offer its <i>residential customers</i> the forms of |

⁸¹ See for example AGL 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty*, *Submission to Commission draft decision*, November, p. 1.

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;
 - (e) paying any anticipated *arrears* over a period that is 3 times the length of the *customer's* billing period.

5.3.1 OBJECTIVE – CLAUSE 74

In our draft report on the hardship inquiry, we highlighted the benefits of providing early assistance to customers at risk of payment difficulty.⁸²

In our final report we found that the regulatory framework needs reform to encourage and assist customers to self-identify and manage their payment difficulty as early as possible.⁸³

In submissions to our first draft decision, retailers and other stakeholders expressed general support for the objective of providing customers with assistance to take early action to avoid arrears. However, concerns were expressed about implementation.⁸⁴

⁸² Essential Services Commission, *Supporting Customers, Avoiding Labels. Energy, Hardship Inquiry Draft Report*, September 2015, p. 75.

⁸³ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 35.

⁸⁴ See for example EnergyAustralia 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p. 18.

5.3.2 APPLICATION – CLAUSE 75

In our hardship inquiry we found that from time to time, many Victorians will experience difficulty in paying on time or in full for the energy they consume.⁸⁵ Based on evidence from our hardship inquiry about assistance already provided by retailers,⁸⁶ and submissions on our first draft decision,⁸⁷ we consider that flexible payment options should be made widely available, to assist all customers to manage their payments and avoid getting into arrears.

Standard assistance would therefore be available to all customers.

5.3.3 STANDARD ASSISTANCE – CLAUSE 76

As we outlined in section 4.3.2 above, a customer's entitlement to standard assistance does not entail individual payment arrangements that suit each and every customer's unique needs.

In developing our new draft decision we considered in particular the complexity and cost of the system changes needed to accommodate unique payment arrangements for individual customers. We also took into account the wide variation in capability of the existing systems of different retailers.

Our new draft decision would therefore require retailers to design and offer, at a minimum, three standard forms of assistance that all of their customers can access. Retailers would be able to select the options that can be delivered most efficiently, given existing system capabilities.

⁸⁵ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 11.

⁸⁶ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 21.

⁸⁷ See for example Consumer Utilities Advocacy Centre 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p. 6.

Our hardship inquiry and information subsequently provided to us by retailers indicate that many already provide some forms of assistance that may already be compliant with our proposal.

Standard 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.

In taking up standard assistance there is no requirement for a customer to demonstrate that they are anticipating payment difficulty in order to access these options. We have assumed that by and large, customers will only take up these options when they consider they need help to avoid getting into arrears. We therefore consider that any barrier to assistance at this stage is likely to deter customers from taking action to manage their energy payments and avoid arrears.

In providing standard assistance, there is nothing that stops a retailer from offering more than three of the specified options, nor from providing other assistance that may help a customer to avoid arrears.

FORMS OF STANDARD ASSISTANCE

Equal payments – clause 76(2)(a)

In our hardship inquiry we recognised that unexpectedly high bills, or ‘bill shock’, can be a source of payment difficulty.⁸⁸ We also accepted the advice of both retailers and consumer advocates that allowing a customer to even out their payments across a year, based on the likely cost of their future energy use, can help them avoid getting into arrears.

This option would allow a customer to make equal payments at a standard frequency determined by the retailer.

Payments intervals – clause 76(2)(b)

⁸⁸ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 12.

Based on evidence collected during the hardship inquiry and subsequent information provided by customer advocates and retailers, we consider that where a customer makes smaller more frequent payments towards the cost of their energy use, they are less likely to fall into arrears.

This option would allow a customer to select a payment interval from a number of standard options offered by the retailer.

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

In the development and consultation for our first draft decision, a number of retailers advised that a simple way to address a customer's short term payment difficulty is to offer a customer an extension to the pay by date for the bill. We are aware that a number of retailers already provide this type of assistance.

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

Payment in advance – clause 76(2)(d)

As outlined in Chapter 4, at our forum in January 2017, stakeholders indicated that for some customers paying for their energy use in advance may help them avoid getting into arrears.

This option would allow a customer to choose to move to payment in advance.

Payment of anticipated arrears – clause 76(2)(e)

As we have previously highlighted, the first person who knows that they may get into arrears is the customer. This option would allow a customer who knows or who is concerned that they are going to fall into arrears to pro-actively select a standard payment option that would enable them to avoid falling into arrears. The standard payment option is the same one that retailers are required to offer under default assistance.

GUIDANCE

Customer entitlements

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. For example, assistance that allows a customer to make equal payments over a specified period (clause 76(2)(a)) and assistance that provides customers with a shorter payment interval (clause 76(2)(b)) are fully compatible. However, extending a pay-by-date for a bill (clause 76(2)(c)) and paying for energy use in advance (clause 76(2)(d)), may not be.

Equal payments – clause 76(2)(a)

If a retailer elects to provide the option of equal payments, for customers on Standard Retail Contracts, the retailer must provide the assistance in accordance with clause 23 of the Code.

Payments intervals – clause 76(2)(b)

A retailer may elect to make options available for making payments at different intervals - clause 76(2)(b). In order to comply, the retailer may for example decide to make payment options of monthly, fortnightly or weekly payments. All of its customers would then be entitled to select any of these three payment options, based on what an individual customer considers will help them the most. At an absolute minimum, we would expect all customers to be able to access at least one option that differs from their usual payment cycle.

If an individual customer proposes a different payment interval to the standard options offered, the retailer would have absolute discretion to agree to any proposal, but the customer would have no entitlement to such an arrangement.

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

A retailer may elect to offer customers the option to extend the pay by date of at least one bill within a twelve month period – clause 76(2)(c). In order to comply, the retailer would need to specify a standard extension period available to all customers.

In deciding whether the standard extension period offered by a retailer was consistent with the objective of helping the customer to avoid arrears, we would decide whether the standard extension period provided customers with material assistance, taking into account factors such as reminder notice and disconnection warning notice periods.

If a customer seeks a longer extension period than offered as standard by the retailer, the retailer would have absolute discretion to agree to any proposal, but the customer would have no entitlement to a longer period.

If a customer seeks a standard extension for more than one bill in a twelve month period, the retailer would have absolute discretion to agree to provide that extension, but the customer would have no entitlement to an extension for a second bill.

However, in both of these instances where a retailer is asked to use its discretion, we would expect the retailer to do so consistently with the objective of assisting the customer to avoid arrears.

5.4 TAILORED ASSISTANCE – DIVISION 3

Division 3 sets out a residential customer's entitlement to minimum standards of flexible and practical assistance, to help them repay their arrears and lower their energy costs. It requires retailers to help a customer to establish energy payments they can manage taking into account the customer's circumstances. It also sets out the options for a customer who does not make their energy payments.

By providing customers facing payment difficulty with clear entitlements to minimum standards of flexible and practical assistance to repay their arrears and lower their energy costs in a manageable way, we consider that the risk of disconnection will be reduced, and will only be pursued as a measure of last resort.

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 repay their *arrears* and lower their *energy* costs.

78 Application of this Division

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

(2) It also applies to any *residential customer* whose circumstances the *retailer* knows, or should reasonably have known, would be likely to lead to the *customer* being in *arrears*.

5.4.1 OBJECTIVE – CLAUSE 77

As we found in our hardship inquiry, diverse individual circumstances can create a situation where people cannot pay their energy bills.⁸⁹ We also found that discussions between a customer and their retailers are an essential part of the process of tailoring assistance to the customer's needs.⁹⁰ We have recognised these findings in the objective of this Division which gives customers an entitlement to minimum standards of flexible and practicable assistance.

Unlike standard assistance in Division 1, tailored assistance is customer specific. The assistance provided by retailers must be flexible to accommodate the needs of individual customers, and must also be practical to enable the customer to act on the advice and implement the assistance.

The objective makes it clear that any assistance provided must in fact make it easier for an individual customer to repay their arrears and lower their energy costs.

5.4.2 APPLICATION – CLAUSE 78

A strong theme of retailer submissions to our first draft decision was concern about having to provide assistance to customers who do not need or want it. Retailers presented evidence that a high percentage of customers pay after the due date of the bill and that significant numbers pay after the due date of the reminder notice. Concern

⁸⁹ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 11.

⁹⁰ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 49.

was expressed by retailers that they would be required to provide unnecessary assistance to these customers.⁹¹

We therefore need to strike a balance between the need for certainty about when a customer's entitlement to tailored assistance commences and the need to minimise the risk of over-capture.

Retailers also provided us with information about what they do to encourage customers to pay their bill after the bill due date is missed, including using text messaging, email and phone calls. We note that a number of retailers segment their customers based on the risk of non-payment. Customers may be divided into many different segments defined by each retailer that are then used to determine the methods that are used to encourage payment.

We have considered a range of options for when a customer's entitlement to tailored assistance should commence, such as the bill due date, the date of issue of a reminder notice, a fixed number of days after the bill due date and the date of issue of a disconnection warning notice. We have concluded that none of these are capable of striking an appropriate balance.

During the hardship inquiry we adopted a plain language definition of 'debt' to describe money owed to a retailer. However, in our first draft decision, we recognised that because the term 'debt' has a precise accounting and legal meaning there was a risk of confusion if it was used in relation to payment difficulty. We therefore used the term 'arrears', once again adopting a plain language definition of money owed to a retailer.

In our new draft decision we have decided that in the interests of clarity and certainty, the term 'arrears' should be defined for the purposes of Part 3. In doing so we believe that this enables arrears to be used to establish a clear basis for a customer's entitlement to tailored assistance.

Given the evidence about when customers pay their bills, we have formed the view that a customer should only be defined as having 'arrears' for the purpose of Part 3, if they

⁹¹ See for example Origin Energy 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty*, *Submission to Commission draft decision*, November, p. 4-5.

haven't paid a bill by the date that the next bill is due to be issued. The frequency with which a customer receives a bill is determined by their contract with the retailer. We note that the billing frequency specified in a standard retail contract can be varied with customer consent.⁹²

Adopting this definition of arrears as the basis for a customer's entitlement to assistance, allows retailers a significant period of time to obtain payment before they are obliged to provide assistance. We are however concerned that on its own this could result in significant delay in access to assistance for customers in need. We therefore believe that in the event that a retailer knows or should reasonably have known that a customer is likely to be in arrears by the date of their next bill, tailored assistance must be made available sooner.

GUIDANCE

Customer in arrears – clause 78(1)

If a retailer is advised by a customer that they will not in fact be able to pay a bill by the issue date of the next bill, the customer is entitled to tailored assistance. The retailer should advise the customer of the assistance available.

Customer likely to be in arrears – clause 78(2)

If, based on a customer's payment history, taking into account what a retailer knows or ought reasonably to have known about the customer's circumstances, it is likely that a customer will be in arrears at the date of issue of the next bill, the customer is entitled to tailored assistance. The retailer should contact the customer to advise them of the assistance available.

For example, a retailer who has segmented a particular customer into a higher risk category would be taken to have known that it is likely that a customer will be in arrears at the date of issue of the next bill.

⁹² Clause 24(2) Energy Retail Code.

5.4.3 MINIMUM ASSISTANCE – CLAUSE 79(1)

As outlined in Chapter 4, we consider that customers facing payment difficulty need to be aware of, and be provided with, assistance that includes at a minimum a number of particular measures. Having regard to the industry Acts, the findings of our hardship inquiry, current industry practice and submissions on our first draft decision, we have set out what we consider to be the minimum assistance that should be available to customers facing payment difficulty, depending on their circumstances.

79 Minimum assistance

- (1) Tailored assistance consists of the following measures:
 - (a) repayment of *arrears* over a period of up to 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* within 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 and timely advice about any government and non-government assistance (including a Utility Relief Grant) 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 their pattern of *energy* use and payment history;
 - (ii) practical assistance to help the *customer* reduce their use of *energy*, based on the *retailer's* knowledge of their pattern of use and of the circumstances of where they live, unless the *retailer* knows, or reasonably believes, that there is no scope for action to be taken for that purpose;
 - (iii) information about how the *customer* is progressing towards lowering their *energy* costs given at sufficient intervals for the *customer* to be able adequately to 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.

DURATION OF ASSISTANCE – CLAUSE 79(1)(a)

During our hardship inquiry, many stakeholders highlighted the fact that making regular payments at shorter intervals was an effective way of helping customer to repay arrears.⁹³ We also consider that providing flexibility in the timeframe over which arrears are repaid, is likely to assist customers to manage their arrears.

In consultation on our first draft decision, there were concerns about whether a total of two years to repay would be sufficient to enable customers who have accrued very significant arrears.⁹⁴

We recognise that under the current hardship framework, some customers have accrued very significant arrears that could not reasonably be expected to be repaid within two years. However, we consider that these existing hardship customers can be effectively assisted through transition arrangements. Our preliminary thinking on options and our proposal for transition to a new framework are set out in Chapter 7.

Our proposed framework should not result in such un-managed and un-manageable arrears in the future.

We also recognise that customers who have previously not been in arrears, can quickly accrue significant arrears if their circumstances change suddenly, through for example illness or unemployment. We have attempted to address this through the tiered approach to assistance that is outlined below, including the opportunities to revise and extend the assistance.

⁹³ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p.78.

⁹⁴ See for example Consumer Action Law Centre 2016 and Financial and Consumer Rights Council, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p.8.

CUSTOMER ADVICE – CLAUSE 79(1)(b)-(d)

Consistent with the view we expressed in the hardship inquiry, we consider that the focus of a retailer’s relationship with a customer facing payment difficulty should be on helping the customer to manage the cost of their energy use, rather than financial risk and credit management.⁹⁵ This is also consistent with retailer advice that they are best placed to provide expert advice to customers on energy use.

Because of their access to information systems and data, a retailer is likely to have more knowledge about the customer’s energy use and its cost than the customer facing payment difficulty. We therefore consider that at a minimum, retailers should provide information and advice to the customer about their payment options, likely future energy use and its cost, along with timely information about government and non-government assistance that is available to the customer in their particular circumstances. This advice is essential to ensure that, as a number of stakeholders have highlighted, a customer’s agency in dealing with their payment difficulty is maintained and supported by the regulatory framework.⁹⁶

In determining the scope of the minimum assistance required, we have had particular regard to information provided to us by a number of retailers about investments that they have made or are making in their existing programs, along with the commitment by a significant number of Victorian retailers to the AER’s Sustainable Payment Plan Framework.

PRACTICAL ASSISTANCE – CLAUSE 79(1)(e)

Tariff assistance – clause 79(1)(e)(i)

In our research for the hardship inquiry, we found that a tariff review was already an element of assistance provided by all retailers that were surveyed.⁹⁷ We recognise that

⁹⁵ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p. 48.

⁹⁶ Payment Difficulty Safety Net Forum 2017, *Gavin Dufty of St Vincent de Paul Society Victoria*, January.

⁹⁷ Essential Services Commission 2015, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Draft Report*, September, p. 46.

it is not possible to guarantee that a particular tariff will in fact reduce the cost of an individual customer's energy consumption.

However, after discussions with retailers following our first draft decision, we are of the view that at a particular point in time, taking into account a customer's past pattern of energy use and payment history, the tariff that is most likely to minimise the *customer's energy costs* can be objectively determined.

In advising the customer of their tariff options, the retailer must take into account any customer circumstances likely to affect their future energy consumption and the likelihood that payments will be made as agreed.

Assistance to reduce energy use – clause 79(1)(e)(ii)

Throughout the hardship inquiry, there was strong support from consumer advocates in particular, for a strengthening of retailers' obligations to assist customers to reduce their use of energy. We found that in practice, customers receive little practical assistance to better manage their energy use.⁹⁸

The hardship inquiry canvassed a range of ways in which better assistance could be provided.⁹⁹ However, after further consultation in the development of our first draft decision we came to the view that the options proposed in the hardship inquiry could be too complex and costly, both to deliver and administer.

In our first draft decision we therefore proposed that retailers should work with customers to develop and implement a broader based energy management plan. With our movement to a more flexible and outcome based approach, our new draft decision does not prescribe how the assistance should be provided. However, retailers must be able to show that the assistance provided was capable of making a meaningful reduction in a customer's energy use in their circumstances.

⁹⁸ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p.25. Final Hardship Inquiry Report p. 25.

⁹⁹ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p.87.

We have recognised that some customers facing payment difficulty may have limited capacity to reduce their energy use, due to for example the poor energy performance of some public and private rental accommodation. However, retailers would have to show that they know or reasonably believe that there was no scope for action in a particular case.

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

If a customer is to be successful in taking action to reduce their energy cost, they need to be supported with information that informs them about their progress.

In our first draft decision we prescribed in detail how a retailer should provide such information. This was regarded by many retailers as too prescriptive and costly.¹⁰⁰ Consistent with our focus on outcomes for the customer, in this draft decision we propose that retailers should decide what information to provide, and when, as long as it is fit for the purpose of enabling a customer to assess the progress of their actions to reduce their energy costs.

SUSPENSION OF REPAYMENT OF ARREARS – CLAUSE 79(1)(f)

As outlined in our hardship inquiry, when a customer cannot pay for their on-going use of energy, we consider that suspending repayment of arrears for a period of time enables their payment difficulty to be broken down into more manageable steps.¹⁰¹ A suspension of arrears enables the retailer and the customer to focus on working together to reduce the cost of the customer's energy consumption, and assist the customer to access other forms of assistance that may be available.

In submissions on our draft decision there was support for customers in these circumstances to be allowed to pay less than the cost of their consumption for a temporary period, while the customer and retailer work together to identify ways for the

¹⁰⁰ See for example EnergyAustralia 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p. 18.

¹⁰¹ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p.25. Final Hardship Inquiry Report p. 90.

customer to reduce their use to a more affordable level.¹⁰² We note that this is already current practice for some retailers.¹⁰³

5.4.4 ENTITLEMENT TO ASSISTANCE – CLAUSES 79(2)-79(5)

A key finding of our hardship inquiry was that a customer's entitlements to assistance when they are facing payment difficulty are not clear.¹⁰⁴ In our draft decision we sought to make these entitlements clear through the structure of assistance, strictly aligning types of payment difficulty with the forms of assistance. As outlined in Chapter 4, stakeholders were highly critical of this approach due to its lack of flexibility and the risk of over-capture.

We also recognise the need to ensure that retailers are not obliged to provide assistance to customers who neither need nor want it. We therefore consider that in the interest of proportionate and efficient regulation, a customer's entitlement to assistance should respond to the type of payment difficulty faced by the customer, taking into account their particular circumstances.

Clauses 79(2) - (4) of Part 3 set out our proposed approach to making it clear which of the forms of minimum assistance should be provided and in what circumstances.

79 Minimum assistance (customer entitlements to 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

¹⁰² AGL 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p. 16.

¹⁰³ See for example Red Energy and Lumo Energy 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p. 10.

¹⁰⁴ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February pages ii, 10, 17-21.

subclause (1)(c) to (f) if:

- (a) they inform their *retailer*, or their *retailer* is informed by another person on their behalf, that they cannot pay the full cost of their on-going *energy* use; or
 - (b) their *retailer* knows, or reasonably believes, that they cannot pay that full cost.
- (4) The assistance mentioned in subclause (1)(f) is extendable for a further period or periods if the *retailer* has reason to believe that 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).

TYPE OF PAYMENT DIFFICULTY

All customers facing payment difficulty are entitled to the assistance set out in clause 79(1)(a)-(d). Customers who cannot pay for their on-going energy use are also entitled to the additional assistance set out in clauses 79(1)(d) to (f).

CUSTOMERS ENTITLEMENTS – CLAUSES 79(2)-(3)

In our hardship inquiry, one of the key findings was that customers were not readily able to find out what assistance they were entitled to receive from their retailer under their financial hardship policies. In our first draft decision we set out what customers should expect to receive depending on their type of payment difficulty.

In submissions to the first draft decision, consumer advocates argued that some of the assistance such as tariff review,¹⁰⁵ and assistance to reduce energy consumption should be made available at an earlier stage in a customer's payment difficulty.¹⁰⁶

¹⁰⁵ Consumer Action Law Centre and Financial and Consumer Rights Council 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty*, Submission to Commission draft decision, November, p. 2,6.

¹⁰⁶ See for example Victorian Council of Social Service 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty*, Submission to Commission draft decision, November, p. 12.

We recognise that customers who are in arrears but still able to pay for their on-going energy use may benefit from such additional assistance. We consider that if a retailer has reason to believe that a customer is at risk of increasing arrears, they should provide this additional assistance. However, we consider that the cost of providing such assistance to all customers in arrears would result in significant over-capture and come at an unacceptable cost to energy consumers more broadly.

Customers in arrears and paying for their ongoing energy use - Clause 79(2)

A customer who is in arrears and paying for their ongoing energy use is entitled to the assistance set out in clause 79(1)(a)-(d).

Customers in arrears and not paying for their ongoing energy use - Clause 79(3)

As we highlighted in our hardship inquiry the severity of a customer's payment difficulty is materially greater if they cannot pay for their on-going energy use. It is generally accepted that the nature and level of assistance that these customers require is more substantial.¹⁰⁷

A customer who is in arrears but not paying for their ongoing energy use is also entitled to the assistance set out in clause 79(1)(d)-(f).

EXTENSION OF ASSISTANCE – CLAUSE 79(4)

We recognise that for many customers reducing energy use is challenging. In consultation on our first draft decision, a range of stakeholders encouraged us to look at how we could allow customers more time to bring their energy use down and access other forms of government and non-government support and assistance.¹⁰⁸

In response, we have made the timeframe for some of the minimum assistance extendable, if the retailer has reason to believe that the extension would assist the

¹⁰⁷ Australian Energy Regulator 2016, *Sustainable payment plans – A good practice framework for assessing customers' capacity to pay*, July, p. 3.

¹⁰⁸ See for example Consumer Action Law Centre and Financial and Consumer Rights Council 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p. 3 and Victorian Council of Social Service 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p. 4.

customer to continue to lower the cost of their *energy* use. As this discretion lies with the retailer, so too does the obligation to maintain records that support their decision.

At the end of any extended period(s), the customer is entitled to repay their arrears over a period of up to two years, as the assistance set out in clause 79(1)(a)-(d) then apply.

GUIDANCE

Extension of on-hold period - clause 79(4)

If a customer is making progress in reducing the cost of their energy consumption, but are still only able to pay below the cost of that energy use, the retailer would be expected to provide the customer with an extension to the period of time during which the customer's repayment of arrears is put on hold.

However 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 well-being of a customer at risk. It is not intended that customer's lives should be adversely affected.

5.4.5 PAYMENT ARRANGEMENTS – CLAUSE 80

Another key finding of our hardship inquiry was that payment arrangements required by retailers were often unmanageable.¹⁰⁹ Some retailers also seek increased levels of repayment from customers that can make what was previously a manageable repayment, unsustainable. We consider that the person who is best placed to decide what constitutes a manageable payment is the customer. Our proposed approach is therefore to empower customers to make payment proposals to their retailer that they consider that they can manage under clause 79. A retailer would be required to accept a payment proposal that would result in the arrears being repaid within 2 years.

¹⁰⁹ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p.25. Final Hardship Inquiry Report p. 24.

80 Payment arrangements

- (1) The *retailer* must accept a payment proposal or revised proposal put forward by a *residential customer* if it would result in their *arrears* being fully paid within 2 years after the first payment or any longer period that the *retailer* should reasonably consider necessary on taking into account the circumstances of the *customer* as required by clause 82.
- (2) On accepting a payment proposal or a revised proposal, the *retailer* must give the *customer* a written schedule of payments showing the date by which each payment must be made.
- (3) If a *residential customer* receiving assistance under this Division fails to make a payment towards their *arrears* by the date on which it was payable, the *retailer* must use its best endeavours to contact the *customer* to discuss their putting forward a revised payment proposal under this clause.

Payment proposals – clause 80(1)

Currently, customers facing payment difficulty must be offered a payment plan by their retailer.¹¹⁰ Although currently retailers may discuss payment amounts with a customer, the amount payable is ultimately determined by the retailer. In our hardship inquiry, we found that as a consequence, some customers are placed on payment plans where the instalment amount is unmanageable.

During consultation on our first draft decision, the importance of customer agency in the process to manage payment difficulty was highlighted.¹¹¹ We have therefore empowered customers to make a payment proposal(s) under clause 80, which the retailer must accept if it would result in their arrears being fully paid within two years. Retailers would also be expected to provide a longer repayment period if it was reasonably necessary to take into account the customer's circumstances.

In consultation on our first draft decision it was suggested that a retailer's priority when working with a customer facing payment difficulty is to establish a pattern of regular

¹¹⁰ Clause 33(1)(b) Energy Retail Code.

¹¹¹ Payment Difficulty Safety Net Forum 2017, *Gavin Dufty of St Vincent de Paul Society Victoria*, January.

repayments, rather than maximising the amount repaid in any given period. Some retailers supported a repayment period of up to two years on the grounds that it provided flexibility.¹¹²

In order to encourage customers to repay their arrears as soon as practicable, advice on payment options that would enable customers to repay their arrears sooner must be provided (clause 79(1)(b)).

In response to feedback on our first draft decision about the need for flexibility in payment frequency,¹¹³ in our new draft decision we have allowed for any payment period of one month or less. We believe that this will enable in particular, fortnightly payments that align with the timing of income for many customers.

Written schedule – clause 80(2)

In a number of the wrongful disconnection cases that are referred to us by EWOV we have found that there has been a lack of clarity in notices to customers about the amount that a customer is required to pay, and by when, in order to avoid disconnection.¹¹⁴

Furthermore, because we anticipate that retailers will continue to issue bills in accordance with their contract with the customer, we consider that it will be very important that the customer receives a written record of the payments that they must make consistent with their payment proposal.

Failure to pay – clause 80(3)

During consultation on our first draft decision, a number of retailers advised that one of their key challenges was in dealing with customers in arrears who may be in active

¹¹² Origin Energy 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty*, *Submission to Commission draft decision*, November, p. 5 and Red Energy and Lumo Energy 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty*, *Submission to Commission draft decision*, November, p. 9.

¹¹³ See for example Australian Energy Council 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty*, *Submission to Commission draft decision*, November, p. 6.

¹¹⁴ See for example *AGL v Customer R*, and *Click Energy v Customer S*.

communication with the retailer, but are not prepared to discuss steps to manage their arrears.

We expect retailers to use their best endeavours to discuss with any customer who does not make a scheduled payment, putting forward a revised payment proposal. However, if after using their best endeavours the customer does not put forward a revised payment proposal, the retailer is then entitled, after taking into account the customer's particular circumstances, to consider issuing the customer with a disconnection warning notice.

GUIDANCE

Repayment period – clause 80(1)

If as a result of their individual circumstances a customer makes a payment proposal that would result in repayment of arrears over a period that is longer than two years, the retailer would be expected to accept that proposal if doing so would assist the customer to make regular repayments.

Alternatively, a retailer may consider providing additional assistance to the customer consistent with clause 79(1)(d) to (g).

Revised payment proposal – clauses 80(1)-(2)

If a customer puts forward a revised payment proposal that involves payments that do not cover the cost of their likely energy use over the course of the payment arrangement, the customer is entitled to have their arrears put on hold and to receive practical assistance to reduce their energy costs.

5.4.6 NON PAYMENT OF COST OF ENERGY USE – CLAUSE 81

Many retailers have advised us that customers who are actively working with them to manage their arrears and reduce their energy costs do not get disconnected. However, retailers have also sought clarity about their obligations in a situation where a customer is either not making payments towards their on-going energy use, or not meeting their responsibility to implement practical assistance to reduce their energy costs.

In such cases, as outlined in section 5.4.7, a retailer would be required to take into account the customer's circumstances when deciding how to respond. We consider that this is a particularly important protection for vulnerable customers.

81 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 use its best endeavours to 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 at any time a *retailer* has reason to believe that 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 use its best endeavours to 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 on-going energy use – clause 81(1)-(2)

As we highlighted in our hardship inquiry, the un-managed accrual of arrears can lead to significant legal and social consequences for the customer.¹¹⁵ It may also have an impact on the cost of energy for other consumers as a result of the additional cost to retailers.¹¹⁶

We are therefore concerned to ensure that any period during which a customer is not paying for the full cost of their on-going energy consumption is kept to the minimum necessary to assist the customer.

¹¹⁵ Essential Services Commission 2015, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Draft Report*, September 2015, p. 58.

¹¹⁶ Essential Services Commission 2015, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Draft Report*, September 2015, p. 59.

Consumer advocates in particular have nonetheless stressed the need for flexibility to provide customers in the most severe payment difficulty with more time to manage their arrears.¹¹⁷

In the event that a customer, who is paying below the cost of their energy use, does not make a scheduled payment, we expect that the retailer take prompt action to contact the customer to discuss putting forward a revised payment proposal. However, if after using their best endeavours the customer does not put forward a revised payment proposal, the retailer is then entitled, after taking into account the customer's particular circumstances, to consider issuing the customer with a disconnection warning notice.

Customer responsibility to implement practical assistance – clause 81(3)

As outlined in our hardship inquiry, one of the key principles underpinning our proposed payment difficulty framework is shared responsibility. Customers are expected to cooperate with their retailer's efforts to provide them with assistance.

One of the particular circumstances that a retailer may take into account, is whether in fact the customer is meeting their responsibility to implement the practical assistance offered by the retailer to reduce their energy costs. The onus would be on a retailer to show that the customer was not meeting their responsibility, taking into account the customer's circumstances at the time

5.4.7 CUSTOMER CIRCUMSTANCES – CLAUSE 82

As discussed in Chapter 4, the causes of payment difficulty are unique to each individual. In submissions to our first draft decision, retailers and other stakeholders highlighted a range of circumstances that can lead to on-going payment difficulty.

In our hardship inquiry and first draft decision we took the view that these circumstances were, by necessity, the domain of wider social policy. In response to the feedback we received, in our new draft decision we have expressly recognised this type of payment difficulty, and required retailers to take these circumstances into

¹¹⁷ See for example Victorian Council of Social Service 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty*, *Submission to Commission draft decision*, November.

account when providing assistance. In doing so we consider that this means that disconnection of vulnerable customers should not occur, provided the customer has entered into a suitable payment arrangement.

82 Customer circumstances

In providing assistance to a *residential customer* in accordance with clause 79, and considering a payment proposal or revised proposal put forward by that *customer* under clause 80 or 81, a *retailer* must take into account all of the circumstances of the *customer* that are known, or should reasonably have been known, by the *retailer*.

We remain of the view that ultimately customers who cannot afford their reasonable energy use need assistance beyond what can be provided through our regulation of energy retailers. However, we recognise that in the short to medium term there is a need to enable these customers to maintain access to energy as an essential service, in order to avoid the risk of social and economic isolation,¹¹⁸ and other risks to health and wellbeing.

GUIDANCE

Taking circumstances into account – clause 82

A retailer would be required to maintain records of how they took an individual customer's known circumstances into account when providing assistance and considering a payment proposal or revised payment proposal. This would involve the retailer showing how the assistance provided changed in light of these circumstances. Whether the change in the 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 allowing the customer to repay their arrears and lower their energy costs.

¹¹⁸ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p.25. Final Hardship Inquiry Report p. 3.

5.5 DEFAULT ASSISTANCE – CLAUSE 83

Default assistance is a measure of last resort for customers who have not responded to their retailer's best endeavours to provide the assistance to which they are entitled.

By providing a mechanism for a customer to accept an offer of assistance to manage their arrears without having to contact their retailer, we consider that some customers may be able to avoid the risk of disconnection.

Division 4 Default assistance

83 Objective

The objective of this Division is to give *residential customers* an entitlement to default assistance to repay their *arrears* over a fixed period.

84 Application of this Division

This Division applies to *residential customers* who are in *arrears* and have not put forward a payment proposal, or a revised proposal under clause 80 or 81, or have ceased to receive assistance under Division 3.

85 Default assistance

- (1) A *retailer* must make an offer in writing to a *residential customer* for payment of their *arrears* by equal monthly payments over a period that is 3 times the length of their current billing period.

Example:

The number of monthly payments would be:

- (a) 3 if the *customer* is on monthly billing; or
 - (b) 6 if the *customer* is on bi-monthly billing; or
 - (c) 9 if the *customer* is on quarterly billing.
- (2) On making an offer under subclause (1), the *retailer* must give the *customer* a written schedule of monthly payments showing the date by which each payment must be made.
- (3) The first payment must be made by the date specified in the offer, which must not be earlier than one month after the payment date of the relevant bill, and no earlier than 2 weeks after the offer is made.
- (4) A customer who makes the first payment as mentioned in subclause (3) is to be taken to have accepted the offer if they have not previously expressly done so.

OBJECTIVE AND APPLICATION – CLAUSES 83 AND 84

As explained in Chapter 4, we consider that a customer who is in arrears but for some reason cannot or does not contact their retailer to arrange for tailored assistance, should be provided with a measure of last resort to avoid disconnection. The use of default assistance received some support following our first draft decision.¹¹⁹

Therefore we propose that where a retailer has used their best endeavours to discuss their entitlement to tailored assistance, but the customer has not responded,¹²⁰ retailers would be required to make a written offer of default assistance.

The entitlement to default assistance would arise

- either in the event that a retailer has used their best endeavours to contact a customer in arrears to offer tailored assistance but the customer has not responded, or
- if a customer receiving tailored assistance does not make a payment and does not respond to the retailers' best endeavours to assist the customer to make a revised payment proposal.

FORM OF OFFER – CLAUSE 85(1)

In our first draft decision we proposed a form of default assistance that involved providing the customer with an opportunity to pay their arrears in equal monthly instalments over a period that is 3 times the length of their billing period.

As we outlined in Chapter 4, this offer of default assistance was seen as a measure of first rather than last resort, and was strongly opposed on the basis of retailers being required to provide assistance to customers who neither want nor need it. It was also opposed by some stakeholders on the grounds that it was considered to take away a customer's agency.

¹¹⁹ Consumer Action Law Centre and Financial and Consumer Rights Council 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p. 6.

¹²⁰ *Tailored Assistance* involves the customer responding to their retailer by nominating the amount they are able to pay under that form of assistance.

By making it clear that the assistance is a measure of last resort, and only needs to be provided after a retailer has used their best endeavours to provide tailored assistance, we consider that we have limited the assistance to those customers who most need it because they are in immediate risk of disconnection.

We consider that the form of offer that was proposed in our first draft decision, i.e. a repayment period that is three times the length of the customer's billing period, is suitable for this purpose.

We recognise that default assistance may require payments that are greater than that available as a minimum under tailored assistance. However, once a customer receiving tailored assistance does not make a required payment and does not make a revised payment proposal, the alternative would be to allow the retailer to issue a disconnection warning notice. We have taken the view that default assistance provides one further measure of last resort to assist a customer in these circumstances to avoid disconnection.

OFFER IN WRITING – CLAUSE 85(2)

The offer must be in writing and contain the information set out in the guidance below.

FIRST PAYMENT – CLAUSE 85(3)

Consumer advocates have highlighted that there may be a range of circumstances that affect a customer's ability to respond to efforts by their retailer to contact them. They have also highlighted that customers in these circumstances require time to be able to respond to any proposal. It is proposed that a customer who is offered default assistance is given a month from the due date of the bill or two weeks from the offer, whichever is the later to make the first payment.

ACCEPTANCE OF OFFER – CLAUSE 85(4)

During our hardship inquiry we found some evidence that assistance that could be accepted by a customer without having to contact their retailer was attractive to some customers facing payment difficulty. Since it is only customers in arrears who have not made a payment proposal to their retailer who are entitled to default assistance, we consider that a mechanism that empowers the customer to accept the offer by making a payment in accordance with the offer to be appropriate.

The customer may therefore accept the offer by communicating their acceptance to their retailer or by making the first payment required under the offer.

GUIDANCE

Written offer – clause 85(2)

In addition to setting out the terms of the offer in accordance with clause 85(1) the written offer must advise the customer of their options to:

1. Contact the retailer to discuss tailored assistance; or
2. Contact the retailer to accept default assistance; or
3. Make the first payment in accordance with the offer which will be deemed to be acceptance of the offer by the customer.

The offer must also make it clear that if a customer does not accept the offer by the date of the first payment, or contact the retailer to discuss tailored assistance, the retailer may issue a Disconnection Warning Notice (in accordance with the relevant provisions).

5.6 FINANCIAL HARDSHIP POLICIES

As we acknowledged in Chapter 4, in response to feedback from stakeholders we have reconsidered the role of financial hardship policies in the payment difficulty framework. We now consider that financial hardship policies, underpinned by customer entitlements to minimum standards of assistance, can and should continue as part of the framework.

Division 5 Financial Hardship Policies

86 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.

87 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, and to default assistance set out in Division 4, of this Part; and
- (c) any matters covered by guidelines or guidance notes published by the Commission in relation to those entitlements.

5.6.1 APPROVAL OF FINANCIAL HARDSHIP POLICIES – CLAUSE 86

This clause reflects the legislative obligation on retailers to prepare and submit a financial hardship policy to us for approval.¹²¹

Following our first draft decision, many stakeholders sought clarification about whether retailers would be required to review, vary and submit their amended financial hardship policies for approval.¹²²

After our final decision, we will expect retailers to review and where necessary make variations to their existing policies,¹²³ to include the content set out in clause 87.

Where significant amendments are necessary we would also expect that these amended policies will be submitted to us for approval. We will audit compliance with Part 3 as part of our audit process.

Further details of the proposed process and timeframe for the audit of amended retailer policies, is set out in Chapter 7.

¹²¹ Section 43 *Electricity Industry Act 2000* (Vic) and section 48G *Gas Industry Act 2001* (Vic).

¹²² See for example Australian Energy Council 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p. 8.

¹²³ In accordance with section 43A *Electricity Industry Act 2000* (Vic) and *Gas Industry Act 2001* (Vic).

5.6.2 CONTENT OF FINANCIAL HARDSHIP POLICIES – CLAUSE 87

MATTERS SET OUT IN INDUSTRY ACTS – CLAUSE 87(A)

Consistent with clause 71A(1) of Version 11 of the Code, a retailer's financial hardship policy must include the matters set out in the relevant sections of the industry Acts.

MINIMUM ENTITLEMENTS TO ASSISTANCE – CLAUSE 87(B)

In order to ensure that customers facing payment difficulty are entitled to a minimum standard of assistance, a retailer's financial hardship policy must include the assistance set out in Divisions 3 and 4 of this Part.

MATTERS COVERED BY GUIDANCE – CLAUSE 87(C)

Retailer financial hardship policies would be required to include matters set out in any Guidance Notes issued under our *Energy Compliance and Enforcement Policy*.

It is proposed that, consistent with clause 71B(2) of Version 11 of the Code, and in addition to the matters covered in clauses 87(a) and (b) of this Part, financial hardship policies would be expected to:

- provide details of the minimum assistance and other options that are available to customers facing payment difficulty.
- provide details of how customers facing payment difficulty will be assisted to obtain access to the assistance and participate in any other option offered to them.
- provide details of:
 - how and in what circumstances the retailer will make field audits of electricity or gas usage available to customers facing payment difficulty
 - in what circumstances the field audits will be available at partial or no cost to the customers facing payment difficulty
 - and
 - how agreement to partially fund a field audit will be obtained and how the benefits of the expenditure by a customer facing payment difficulty will be demonstrated.

- provide details of how and in what circumstances the retailer will provide assistance to customer facing payment difficulty to replace electrical and gas appliances, including whether the retailer will sell or supply the appliances itself or nominate a third party to do so.
- provide for the referral of customer facing payment difficulty to other support agencies and schemes where appropriate;
- set out the process retailers will follow to advise customer facing payment difficulty of their rights and obligations in respect of the minimum assistance available under the Part 3 of the Code, and any other options that may be available.
- require the retailer's staff to be made aware of the policy and require all staff involved in the administration of the payment difficulty framework to have the necessary skills to sensitively engage with customers facing payment difficulty about their payment difficulties and in offering assistance.
- be transparent, accessible and communicate to customers facing payment difficulty, financial counsellors and community assistance agencies.

Only matters from clause 71B(2) of Version 11 of the Code that are not addressed as part of the minimum standards in our new proposal have been included in this guidance material.

5.7 COMMUNICATIONS

5.7.1 GENERAL INFORMATION – CLAUSE 88

Providing customers facing payment difficulty with general information about their entitlement to assistance from their retailer, ways of reducing energy cost, and other forms of government and non-government assistance will help ensure that a customer is able access the assistance that will ensure that disconnection is a last resort.

Division 6 Communications

88 Provision of general information to customers

- (1) A *retailer* must ensure that general information is readily available to *residential customers* about:
 - (a) the assistance available under Division 2, 3 or 4 and how to access that assistance; and
 - (b) the financial hardship policy of the *retailer*; and
 - (c) approaches to lowering *energy* costs; and
 - (d) government and non-government assistance (including a Utility Relief Grant) that may be available to help with meeting *energy* costs.
- (2) A *retailer* must ensure that information under subclause (1) is made available in such a way that a *residential customer* accessing information relating to the assistance available under a particular Division can readily access information relating to the assistance available:
 - (a) under each other Division under which assistance is available; and
 - (b) under the *retailer's* financial hardship policy.
- (3) Without limiting the means by which information may be made readily available, information is readily available for the purposes of subclause (1) if:
 - (a) it is easily accessible on the *retailer's* website in a readily printable form; or
 - (b) it is sent by email or other electronic means to any *residential customer* who, in the course of telephone contact with the *retailer* (irrespective of who initiated the contact) requests or consents to receiving information from the *retailer* electronically.

5.7.2 WRITTEN COMMUNICATIONS – CLAUSES 89-90

Providing customers facing payment difficulty 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, will help ensure that disconnection is a last resort.

89 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) If delivery in the ordinary course of post would not ensure that the written communication is received in a timely manner having regard to its nature, the *retailer* must make other appropriate arrangements to ensure its timely delivery.
- (4) Without limiting subclause (3), if the written communication is a *disconnection warning notice* or otherwise relates to *de-energisation or disconnection* of the *customer's* premises, the *retailer* must take steps to ensure that the communication is delivered within 24 hours after it is sent.
- (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.

90 Effect of this Division

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

5.8 MISCELLANEOUS – DIVISION 7

Ensuring that the assistance provided by retailers to customers facing payment difficulty is delivered in a coordinated way with other forms of government and non-government assistance, is a critical element of ensuring that disconnection of a customer is in fact a last resort.

Division 7

Miscellaneous

91 Retailer obligations

At all times while a *residential customer* is receiving assistance under this Part, the *retailer*:

- (a) must work cooperatively with any government or non-government service, including the Energy and Water Ombudsman (Victoria), that the *retailer* knows is providing support to the *customer* to ensure that the assistance being provided by the *retailer* complements, and is provided in a coordinated way with, that support; and
- (b) must, in relation to any *customer*, comply with any guideline published by the *Commission* relating to *customers* in particular payment difficulty, including *customers* who may be subject to family violence, if the *retailer* knows or ought reasonably to have known that the guideline was relevant to the *customer*; and
- (c) is not required to continue to provide assistance under this Part if the *retailer* becomes aware that the *customer* is not anticipating or facing payment difficulties.

5.8.1 RETAILER OBLIGATIONS – CLAUSE 91

WORKING COOPERATIVELY – CLAUSE 91(A)

The assistance retailers provide to customers facing payment difficulty is part of Victoria's overall social policy framework. In our hardship inquiry we found that customer payment difficulties are often related to wider social issues. We also found that the regulation of energy payment difficulty complements a range of existing social policies and programs.¹²⁴

When a customer does not pay their energy bill, they are in breach of their contract with their retailer. This means that a practical financial problem can quickly become a

¹²⁴ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p.25. Final Hardship Inquiry Report p. 36.

legal problem. As the Productivity Commission recently found disadvantaged Australians are more susceptible to, and less equipped to deal with, legal disputes.¹²⁵

Victorian legislation recognises that energy customers may require assistance to resolve disputes with energy companies, and therefore energy retailers and distributors must enter a dispute resolution scheme that we approve.¹²⁶ The scheme we have approved is operated by EWOV.

EWOV plays an important role in assisting customers facing payment difficulty. In particular EWOV assists customers who have been disconnected to get reconnected, and establish arrangements to resolve their payment difficulty with their retailer. A retailer's cooperation with EWOV is therefore essential to help ensure that customers retain access to energy as an essential service and help resolve their payment difficulty.

COMPLIANCE WITH GUIDELINES – CLAUSE 91(B)

Family Violence

In March 2016, the Royal Commission into Family Violence (the Royal Commission) made 227 recommendations aimed at improving the community's response to the scale and risks of family violence.

The Royal Commission highlighted that family violence includes a broad range of behaviour that is not limited to physical violence. It found that many parties have a role to play, including essential service providers, in addressing family violence.

Utilities deliver essential services that are critical for daily life. The Royal Commission found that because of the critical function these services play, perpetrators frequently use control over them as a form of family violence called economic abuse, including by:

- insisting an account is in a victim's name and refusing to contribute to the cost
- putting a service in the sole name of the victim without their knowledge or consent

¹²⁵ Productivity Commission 2014, Access to Justice Arrangements – Productivity Commission Inquiry Report Overview, September, p. 2.

¹²⁶ Section 28 *Electricity Industry Act 2000* (Vic) and section 32 *Gas Industry Act 2001* (Vic).

- holding an account jointly and refusing to contribute to the cost
- holding the account in their own name and not paying bills, resulting in disconnection, and
- holding the account in their own name and threatening to have the service cut off or having it cut off when they leave the family home.

The Royal Commission found that these actions can result in family violence victims facing financial difficulties and the loss of access to essential household services.

Noting the role of the Commission as the economic regulator of Victoria’s energy industry, the Royal Commission recommended that we amend the Energy Retail Code to help address these issues.¹²⁷

The Victorian Government has committed to implementing all recommendations of the Royal Commission.

Building on work undertaken by the Commission with the water sector, during the second half of 2017,¹²⁸ we propose to consult with energy retailers and other stakeholders to develop a guideline to be issued under Section 13 of the ESC Act, that will set out how retailers are expected to contribute to Victoria’s efforts to address family violence.

NO PAYMENT DIFFICULTY – CLAUSE 91(C)

In our hardship inquiry, we acknowledged that some customers attempt to obtain assistance from their retailer when they are not in fact facing payment difficulty.¹²⁹ In our first draft decision, a range of the measures included in our proposal were included to address retailer concerns about customers who are ‘gaming’ the system, namely, those who have the financial resources to pay but choose not to do so. However, at

¹²⁷ Victorian Royal Commission into Family Violence 2016, *Summary and recommendations*, March, p. 75.

¹²⁸ Essential Services Commission 2017 *Amendments to water customer service codes – New requirements for family violence policies*, *Final Decision*, April.

¹²⁹ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p.25. *Final Hardship Inquiry Report* p. 47.

the forum we held in January this year, many stakeholders strongly encouraged us not to design a scheme to avoid gaming. We have taken this feedback on board.

Nonetheless, we remain of the view that if a retailer is or becomes aware that a customer is not in fact anticipating or facing payment difficulty, they should not be obliged to provide assistance. The onus to show that a customer is not in fact anticipating or facing payment difficulty would be on the retailer, if they were to refuse or withdraw assistance under Part 3.

5.8.2 ASSISTANCE BEYOND MINIMUM STANDARDS – CLAUSE 92

Minimising barriers to accessing assistance for customers facing payment difficulty will empower them to manage their payment difficulty, helping to ensure that disconnection is a last resort.

92 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.

In responding to our first draft decision, retailers perceived significant barriers to providing additional assistance beyond the minimum standards.¹³⁰ We believe that by moving to a set of outcomes underpinned by minimum standards in our new proposal, we have ensured that there are no such impediments.

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

¹³⁰ See for example AGL 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p. 6.

5.8.3 RESTRICTION ON CONDITIONS – CLAUSE 93

Customers control the information that they choose to provide to the retailer about their personal and financial circumstances. Ensuring that customers can be confident that they will not be required to provide personal or financial information to their retailer as a condition of receiving the minimum assistance to which they are entitled, reduces current barriers to access. Making access to assistance easier will help ensure that disconnection is a last resort.

93 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.

As outlined in section 5.4.7, we propose to require retailers to take into account the customer's circumstances when providing assistance. However, clause 93 aims to make 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 the Code.

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

Importantly, this clause does not prevent a retailer offering to arrange for a customer to receive assistance through a financial counsellor or other service provider. However the retailer cannot require the customer to provide them with evidence of their financial circumstances. Similarly, a retailer cannot require the customer to provide them with information about their personal circumstances

5.8.4 DEBT – CLAUSE 94

94 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 unless compliance 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 is a condition of the sale or disposal.

(4) Waiver of debt

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

This clause is based on the existing clause 72A in Version 11 of the Code, updated to reflect the proposed amendments to Part 3.

5.8.5 SUPPLY CAPACITY CONTROL – CLAUSE 95

95 Supply capacity control product

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

This clause has been maintained from Version 11 of the Code.

5.8.6 RESTRICTION ON TRANSFER – CLAUSE 96

When a customer is in arrears and is entitled to assistance to lower the cost of their energy consumption, providing an incentive on both the retailer and the customer to work together to address the payment difficulty will help ensure that disconnection is a last resort.

96 Restriction on transfer to another retailer

Without limiting clause 57, a *retailer* who receives a request for the transfer under the relevant *Retail Market Procedures* of a *residential customer* of the *retailer* whose repayment of *arrears* is on hold under clause 79(1)(f)(i) must in accordance with the *Retail Market Procedures*:

- (a) object to the transfer; or
- (b) if the *retailer* only becomes aware of the request after the time for objecting has passed, immediately seek to have the transfer reversed.
- (a)

In our hardship inquiry we set out our findings in relation to customers who accrue debts with multiple retailers, and our reasons for introducing a restriction on the transfer of customers while they are working with their retailer to address their payment difficulty.¹³¹

In response to our first draft decision some stakeholders called for the restriction on transfer to be widened,¹³² while others argued that it interfered with competition and the ability of a customer to find a better deal with another retailer.¹³³

We note that a number of retailers now routinely carry out credit checks prior to entering into a contract with a new customer. We also note that most of the cheapest deals in the market depend on the customer's capacity to pay on time,¹³⁴ and that customers in severe payment difficulty are the least likely to be able to retain these discounts.

Furthermore, our proposal to introduce an obligation on retailers to offer customers in the most severe payment difficulty the tariff that is most likely to minimise their energy costs, clause 79(e)(i), means that it is unlikely that a customer in these circumstances will be readily able to obtain a significantly better deal in the market.

We therefore remain of the view that if a customer has an agreement in place with a retailer that allows them to make payments below their on-going cost of energy use while both parties work together to reduce the cost of that energy use, the retailer should be obliged to oppose the transfer of the customer to another retailer.

¹³¹ Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February, p.25. Final Hardship Inquiry Report p. 55.

¹³² See for example Energy and Water Ombudsman (Victoria) 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p. 11,12.

¹³³ See for example Momentum Energy 2016, *Submission to the Essential Services Commission Safety Net for Victorian Energy Consumers Facing Financial Difficulty, Submission to Commission draft decision*, November, p. 3.

¹³⁴ Essential Services Commission 2016, *Victorian Energy Market Report 2015-16*, November.

5.8.7 PAYMENT BY CENTREPAY – CLAUSE 96

This clause is based on the existing clause 74 in Version 11 of the Code, updated to reflect the proposed amendments to Part 3. The original clause 74 has been updated to reflect the terminology of the payment difficulties framework.

97 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*.

5.9 OTHER CODE AMENDMENTS

We propose to make a range of amendments to other parts of the Code in order to ensure consistency with the revised Part 3. Because Part 3 brings together all forms of minimum assistance for customers anticipating or facing payment difficulty, other sections of the Code that currently deal with aspects of payment difficulty, such as section 33, would be repealed. Some changes are also required to definitions, reminder notices and de-energisation for non-payment to align with Part 3. A new section 111A sets out the circumstances by which customers facing payment difficulty can be disconnected as a last resort.

5.9.1 DEFINITION OF ARREARS

In our hardship inquiry, we referred to money owed by customers to their retailer as debt. However, as outlined in section 5.4.2 retailers pointed out the term ‘debt’ has a precise accounting and legal meaning that if used in the Code could be confusing.

Furthermore, throughout the hardship inquiry, and in consultation on the design of the scheme included in our first draft decision, retailers sought a precise definition of when a payment was ‘missed,’ in order to establish when a customer became entitled to a particular form of assistance.

After considering a wide range of options for defining a missed payment, and taking into account the feedback from retailers about the diverse ways in which they encourage customers to pay their bills after the due date, we concluded that there was no practical way to define a missed payment. Instead we have defined arrears for the purposes of Part of the Code.

“*arrears*, in relation to a *residential customer* facing payment difficulties who is receiving assistance under Part 3, means the sum of any amounts payable by the *customer* under one or more bills that are unpaid as at the *bill issue date* for a subsequent bill;”.

Importantly, as set out in clause 78, a customer would be entitled to tailored assistance either when they are in arrears, or the retailer knows or ought to have known that the customer is likely to be in arrears.

5.9.2 REMINDER NOTICES – CLAUSE 109

By issuing a reminder notice in a timely manner, a customer is made aware that they need to make a payment to their retailer. This empowers the customer to take prompt action, including obtaining assistance with any payment difficulty, to avoid the risk of disconnection.

109 Reminder notices—retailer

- (1) A *reminder notice* is:
 - (a) for a *residential customer*, a written notice with the heading ‘Reminder Notice’ prominently displayed on it issued by a *retailer* to the *customer* to remind the *customer* that payment of a bill is required; and
 - (b) for any other *small customer*, a notice issued by a *retailer* to the *customer* after the *pay-by-date* for a bill to remind the *customer* that payment is required.
- (2) The purpose of a *reminder notice* to a *residential customer* is to remind the *customer* of their obligation to pay the bill and to give them clear and unambiguous information about the assistance to which they are entitled if they are facing payment difficulties.
- (3) A *retailer* must not issue a *reminder notice* to a *residential customer* who has put forward a payment proposal or revised proposal in accordance with clause 80 or 81 that the *retailer* is required to accept under clause 80(1) unless the *residential customer* has failed to make a payment by the date on which it was payable under the proposal or revised proposal.
- (4) A *reminder notice* must:
 - (a) state the date of its issue; and
 - (b) state the date on which the *reminder notice period* ends; and
 - (c) state that payment of the bill is required to be made before the end of the *reminder notice period*; and
 - (d) in the case of a *residential customer*, give information expressed

in plain language about the assistance available under Part 3 to help *customers* facing payment difficulties and how to access that assistance; and

- (e) give details of how to contact the *retailer* in connection with a complaint or dispute.”.

In their original conception, reminder notices were intended as a first resort measure to spur customers to pay their unpaid accounts or contact their retailer. Since the Code was harmonised with the NERR, the intended role of reminder notices has become unclear.

While some retailers continue to use reminder notices as a ‘first port of call’ when a pay-by-date has been missed, other retailers have tended to defer issuing them until they have pursued other means for engaging the customer. In these instances, rather than being a first resort measure, reminder notices have become a second-to-last resort measure (that is, a necessary step before issuing a disconnection warning notice).

During our consultations, consumer groups expressed concerns that under the second scenario, reminder notices were no longer fulfilling their intended purpose. These concerns centred on the observation that under such circumstances, some customers were receiving reminder notices very late, by which time their arrears had continued to grow making repayment more difficult. We have sympathy with these concerns and agree that reminder notices continue to be an important consumer protection that should be provided in a timely and beneficial manner.

We explored many different options that could ensure that reminder notices continue to fulfil their purpose. For example, we considered requiring a reminder notice to be issued within a specified number of days following the bill pay-by-date, specifying a maximum length for the reminder notice period, and regulating the length of time between the end of the reminder notice period and the issue of a disconnection warning notice. However, given the wide variety in retailers’ business practices, no option seemed readily implementable.

Instead, and given the important protection intended by reminder notices, we have reinforced the role and content of a reminder notice in the Code, and will monitor their use among other efforts at communicating with customers. If we find that reminder notices are not being used as primarily intended, we will reconsider whether to require that they are issued within a regulated timeframe.

5.9.3 DISCONNECTION AS A LAST RESORT – CLAUSES 111 AND 111A

DE-ENERGISING FOR NOT PAYING BILL – CLAUSE 111

This clause has been amended to ensure that customers entitled to assistance under Part 3 of the Code are afforded the protection provided by clause 111A.

DISCONNECTION AS A LAST RESORT – CLAUSE 111A

111A Residential customer facing payment difficulties only to be disconnected as a last resort

A retailer may only arrange de-energisation of the premises of a residential customer facing payment difficulties if:

- (a) *the retailer:*
 - (i) has provided, or used their best endeavours to provide, the *customer* with the assistance that they are entitled to receive under Part 3; and
 - (ii) has issued a *reminder notice* to the *customer*; and
 - (iii) has issued a *disconnection warning notice* to the *customer*; 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
- (b) *the customer:*
 - (i) while receiving tailored assistance under clause 79, has failed to make a payment by the date on which it was payable, has not put forward a revised payment proposal and does not have an entitlement mentioned in clause 79(3); 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 revised payment proposal; or
- (iii) while receiving default assistance under Division 4, has neither complied with the terms of that assistance nor contacted the *retailer* to exercise an option for tailored assistance under Division 3; and
 - (c) the *customer* has refused or failed to take any 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).

This clause provides the backstop for the payment difficulty framework. It defines the circumstances in which a retailer may disconnect a customer as a last resort. Three sets of conditions must be met.

Firstly the retailer must have met all of its obligations under Part 3 to provide the minimum assistance to which a customer is entitled. The retailer must also have issued a compliant disconnection warning notice, and, after the disconnection warning notice period is over, used their best endeavours to contact the customer prior to disconnection.

Secondly, the customer receiving assistance must have failed to meet the conditions of that assistance, and not sought to vary that assistance if they were unable to meet those conditions. The customer must also have failed to seek additional assistance, or, failed to meet the conditions of that additional assistance and not sought to vary that assistance if they were unable to meet those conditions. Finally the customer must also have failed to take reasonable action to remedy these failures.

Thirdly, a retailer must be able to demonstrate through its record keeping that it has met its obligations to provide assistance, issued a compliant reminder notice, disconnection warning notice, and used its best endeavours to contact the customer. It must also be able to provide records to show that the customer failed to meet the conditions of that assistance.

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.

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.¹³⁵

5.10 REFERRALS FROM THE OMBUDSMAN

Under a long standing agreement with EWOV,¹³⁶ a disconnection dispute between a retailer and customer that is not able to be resolved by EWOV may be referred to us. Disputes arise when the parties differ in their understanding of the Code's intentions.

This process for dealing with disputed matters supports the low cost, dispute resolution services provided by EWOV. In one form or another, the Commission has played a role in interpreting 'grey' areas of the Code for many years.

On receiving a referral we invite the retailer to respond and to make submissions about the matter. We may also request further information from the retailer and in unusual cases may seek information from the customer or third parties. Since June 2016, these steps have been set out in our *Compliance and Enforcement Policy* (the Policy).

As we highlighted in the hardship inquiry, the Code currently affords retailers discretion over whether a customer is entitled to assistance, and what assistance to provide. Consequently, our role in resolving disputed interpretation of the Code has been largely limited to procedural matters.

The changes we are proposing to Part 3 of the Code retain significant discretions for retailers. Those discretions will be underpinned by the minimum standards discussed

¹³⁵ Section 40B(1) *Electricity Industry Act 2000* (Vic) and section 48A(1) *Gas Industry Act 2001* (Vic).

¹³⁶ Essential Services Commission 2012, *Operating Procedure Compensation for Wrongful Disconnection*, April.

above. These standards are defined broadly in order to provide flexibility to retailers for how they achieve the expected outcomes.

As the new framework comes into operation, we expect new areas of 'grey' to emerge. So there will be an ongoing need for the Commission to clarify the Code's intentions. The process for seeking that clarification needs to be made as simple as possible. This means that it may not be appropriate for us to consider penalty notices where a dispute is referred to us primarily for the purpose of clarification, particularly in the early stages of the new framework.¹³⁷

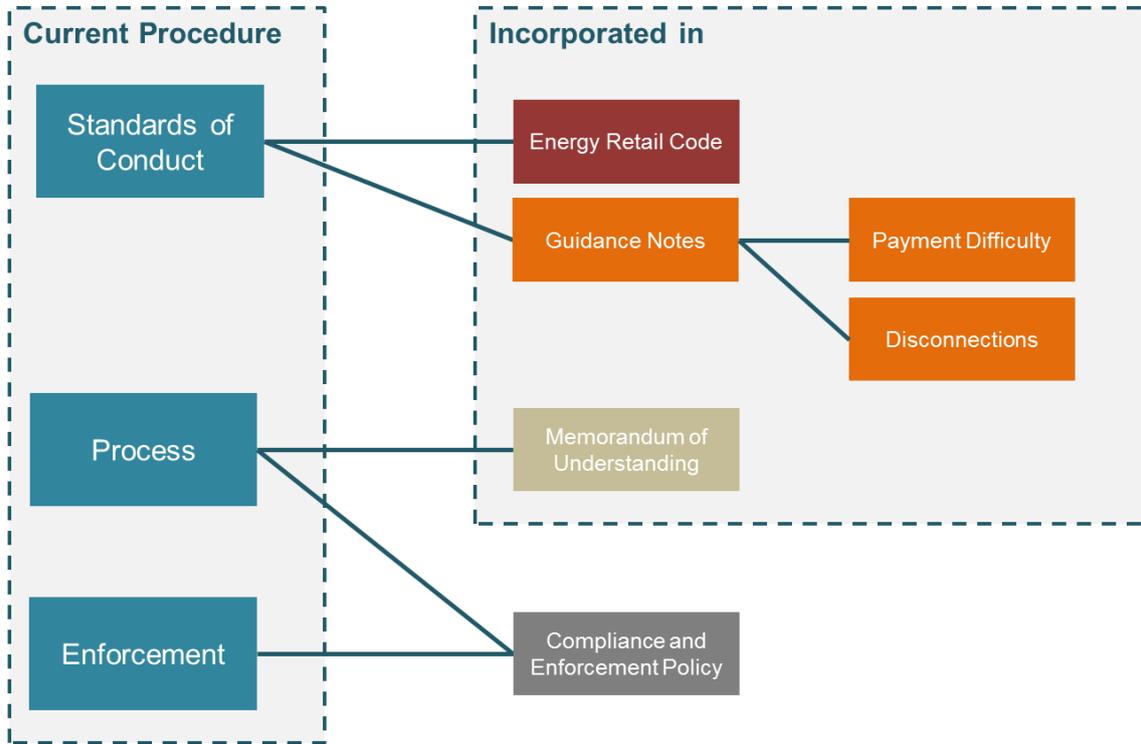
We believe this necessitates a rethink about how EWOV refers disputed matters to the Commission for interpretation. We have already indicated that we are considering the repeal the *Operating Procedure Compensation for Wrongful Disconnection* (the Operating Procedure). It is an instrument of its day and it does not sit comfortably under our new *Energy Compliance and Enforcement Policy*. We expect we will also need to re-examine our Memorandum of Understanding (MOU) with EWOV.

As outlined in Chapter 4, following consultation on our new draft decision, we propose to develop a Guidance Note to outline how we will interpret Part 3 of the Code in areas we consider necessary. We will publish a draft Guidance Note with our final decision. This will be subject to further consultation and finalisation prior to the commencement of the new Framework.

Figure 5.1 sets out how we propose to repeal the Operating Procedure.

¹³⁷ The Commission would nonetheless reserve its right to issue a penalty notice in the event that a breach of the new Part 3 was found to be deliberate, negligent or repeated.

FIGURE 5.1 PROPOSED APPROACH TO REPEAL OF THE OPERATING PROCEDURE



Legend

- Captured in new obligations in the Code or refers to obligations that are not included in the proposed Code
- Will be captured by revisions to the MOU between ESC & EWOV
- Will be captured in two new guidance notes to be published by the Commission
- Has already been superseded by the Commission's *Energy Compliance and Enforcement Policy June 2016*

Source: ESC

We propose that the existing standards of conduct contained within the current operating procedure are incorporated into the Code and new guidance notes. Our proposed treatments of the key standards of conduct are outlined in Table 5.1.

TABLE 5.1 PROPOSED TREATMENTS OF KEY STANDARDS OF CONDUCT

| Standard of conduct | Clause of operating procedure | Proposed approach under the new framework |
|---|-------------------------------------|--|
| Distributor standards | 2.3 | Maintain in new Guidance Note - Disconnection |
| Standards of evidence (communications) | 3.2 Appendix B | Addressed in clause on disconnection as a last resort 111A(d) |
| Best endeavours to contact prior to disconnection | Appendix A 2(b) | Retain in new Guidance Note - Disconnection |
| Reasonable action towards settling a debt | Appendix A 2(d) | Address in new Guidance Note – Payment Difficulty |
| Retailer knowledge of payment difficulty | Appendix A 2(f) | Proposed obligation to take circumstances into account clause 82 |
| Customer capacity to pay | Appendix A 2(a) & (c) Appendix C | No obligation under new framework |
| Call centre transcripts | Appendix D | Retailer discretion under new framework |

Source: ESC

Some of the processes set out in the operating procedure have already been superseded by our *Energy Compliance and Enforcement Policy*. We will also work with EWOV to review our existing memorandum of understanding with them to set out how we propose that referrals will be made in the future. The approach to enforcement contemplated in the operating procedure has also been superseded by our *Energy Compliance and Enforcement Policy*.

As is the case now, we would consult with retailers and other stakeholders on any new arrangements, and we would publish the outcomes of our deliberations in order to inform industry more broadly about our expectations.

6 COSTS AND BENEFITS FOR CUSTOMERS AND RETAILERS

6.1 INTRODUCTION

The chapter contains the Commission’s preliminary analysis of the first round impacts that we anticipate the proposed payment difficulty framework will have on customers, particularly those having difficulty paying their bills, and on retailers.

The chapter reiterates the problem that the proposed payment difficulty framework seeks to address, and describes a range of impacts that we consider are expected result from the implementation of the framework. Some of these impacts have been subject to preliminary quantitative assessment, while other more intangible impacts have been described in qualitative terms.

The Commission’s preliminary judgement – based on this analysis, the work completed as part of the hardship inquiry, and the feedback from stakeholders on our first draft decision – is that the payment difficulty framework proposed in this draft decision is a practical and cost effective means of responding to the problem we are seeking to address.

The assumptions and analysis underlying the estimates have been set out in two consultant reports, which are available on the Commission’s website. We now seek input from stakeholders to assist us in refining these estimates in preparation for the final analysis of the proposal’s impacts, which will accompany our final decision.

6.1.1 STRUCTURE OF THIS CHAPTER

This chapter contains five sections. After this introduction,

- Section 6.2 explains why this chapter is necessary

- Section 6.3 defines the problem we are seeking to resolve and our approach to assessing solutions
- Section 6.4 sets out the legal context to the analysis
- Section 6.5 describes the process we have followed in preparing this preliminary analysis
- Section 6.6 contains a detailed explanation of the analysis that underpins our preliminary analysis, and
- Section 6.7 contains our preliminary analysis of the impacts on retailers and on customers of the changes we have proposed.

6.2 PURPOSE OF THIS CHAPTER

Business Cases, Cost-Benefit Analysis, Regulatory Impact Statements and Legislative Impact Assessments all seek to impose a discipline on government agencies to ensure they approach change systematically and methodically. Agencies must articulate the ‘destination’ they have in mind and their reasons why this destination is important. They must also assess the *status quo* and identify whether or not it is consistent with the ‘destination’. This represents ‘problem definition’ and precedes the identification and assessment of possible solutions.

The Essential Services Commission is subject to this discipline.

As a modern piece of legislation, the *Essential Services Commission Act 2001* (the ESC Act) embodies this discipline, and directs us in the development and amendment of the regulatory frameworks that we administer.

The new payment difficulty framework will be given effect via amendments to the Energy Retail Code (the Code), as described in chapters 4 and 5. The Code applies to and must be complied with by all retailers in accordance with their retail licenses.

In amending the Code, the Commission is guided by its overarching objective, enshrined in section 8 of the ESC Act, to promote the long term interests of Victorian consumers.

The Commission is also guided by our objectives under the *Electricity Industry Act 2000* and *Gas Industry Act 2001* to *inter alia* promote protections for customers, including in relation to assisting customers who are facing payment difficulties.¹³⁸

In seeking to achieve these objectives, the Commission must also have regard to the matters set out in section 8A of the ESC Act, to the extent they are relevant in any particular case, in this case when considering amendments to the Code.

The ESC Act also directs us in relation to the processes we use. Section 14(1) of the ESC Act also obliges the Commission to develop and publish a *Charter of Consultation and Regulatory Practice* including guidelines relating to processes for making determinations and other regulatory decisions and conducting inquiries.¹³⁹

Together, these requirements impose the discipline on the Commission referred to at the start of this section. That is, in proposing a new payment difficulty framework, the Commission must:

- identify the desired outcome ('the destination') and provide its reasons
- identify the gap between the *status quo* and the 'destination' (that is, 'problem definition')
- identify the different options available to it for solving the 'problem'
- assess the relative merits of the options

And, it must expose its consideration of these matters to external scrutiny. At a minimum, it must publish a draft decision and call for, and consider, submissions ahead of making a final (and binding) decision. Of course, as an administrative decision maker our decisions are also open to challenge through appeal. Together, these mechanisms serve as an essential 'check and balance' on the performance of our functions and exercise of our powers.

Stakeholder and public consultation are central to the Commission's decision making processes. This scrutiny ensures that when we are proposing changes to our

¹³⁸ Section 10(c) *Electricity Industry Act 2000* (Vic) and section 18(c) *Gas Industry Act 2001* (Vic).

¹³⁹ *Charter of Consultation and Regulatory Practice*, (<http://www.esc.vic.gov.au/publications/6490-charter-of-consultation/>) (accessed 20 April 2017).

regulatory frameworks, our assessments are grounded in the available evidence and our assumptions and judgements are supported by clear and defensible reasoning. Where interested parties put forward new ideas, evidence and arguments that demonstrably challenge our own findings and assumptions, we amend our proposals accordingly. Box 6.1 further explores why stakeholder and public consultation is so important to our decision making processes.

The discipline imposed by the ESC Act ensures that the Commission performs its functions and exercises its power consistently with the principles for developing good regulation. How these principles and processes have been implemented during the course of this review is discussed in the following section.

BOX 6.1 THE IMPORTANCE OF EXTERNAL CONSULTATION IN REGULATORY DECISION MAKING

As noted in the text, once a problem has been defined and possible solutions identified, those options must be assessed for their merits. This assessment will entail matters that lend themselves to quantitative analysis while other matters can only be considered qualitatively (that is, in descriptive terms). Quantitative assessments will usually be dependent on the assumptions made when undertaking that analysis, while qualitative assessments are unavoidably a mix of objective, subjective and speculative judgements made during the assessment process. In turn, considering how much weight to attach to each element in these assessments is a matter of judgment in itself. There is no escaping the role of judgement.

It is unlikely that there is ever an objectively correct set of assumptions or judgements that can be made when assessing the case for change. Assumptions and judgements are typically matters whose appropriateness lies in the eyes of the beholder. It is for this reason that quantitative and qualitative assessments, and their assumptions and judgements, benefit from being exposed to broader scrutiny — such as through the Commission’s demonstrated commitment to open and transparent decision making, and stakeholder and public consultation.

External scrutiny allows other parties to test and contest the evidence and assumptions, judgements and arguments that support our proposals. Through this

process we are challenged to improve the way we make the case for change, or we must change the case we are making — as has occurred in this revised draft decision on the payment difficulty framework.

As discussed in section 6.3, in producing the proposal in this draft decision, the Commission has not treated policy development, impact assessment and external consultation as sequence of mutually exclusive steps. Instead, we have sought to engage with stakeholders and develop our proposal in a dynamic and iterative manner. This revised proposal is evidence of that approach.

6.3 DEFINING THE PROBLEM AND ASSESSING SOLUTIONS

The previous section described the four stages that guide the development of good regulation, namely: identifying the ‘destination’, ‘problem definition’, options for solving the ‘problem’, and an assessment of the merits of these options.

We have iteratively followed these steps since we commenced our work on payment difficulty in July 2014.

DESTINATION

It was during our hardship inquiry that we identified the desired ‘destination’ for customers in payment difficulty (see chapters 2 and 3) and we defined the problem requiring a solution. In hindsight, we recognise we could have gone further to clearly articulate both the destination and the problem. As we set out in chapter 2, for the purposes of this chapter and the draft decision, the ‘destination’ can be expressed in the following terms:

Customers anticipating or in payment difficulty can obtain gain equitable access to predictable, consistent and effective assistance.

Ensuring that access to assistance is ‘equitable’ will mean that two otherwise identical customers will be treated in the same way.

Ensuring that the assistance is 'predictable and consistent' will enhance confidence in the efficacy of the regulatory framework so that customers can be assured that retailers will deliver on their obligations to make assistance available.

PROBLEM DEFINITION

Customers anticipating or in payment difficulty have not been gaining equitable access to predictable, consistent and effective assistance, therefore, disconnection may not be occurring as a measure of last resort.

Our definition of the problem responds to the principles set out in the legislation that:

- there should be equitable access to assistance
- the assistance should be transparent and applied consistently and
- disconnection should be a last resort.

An inability to provide assurance that disconnection was in fact a last resort was the central finding of the Commission's hardship inquiry in 2014-2015 as summarised in chapter 2 of this draft decision. That work went on to define the overarching features of the interventions required to provide predictable, consistent and effective assistance customers.

OPTIONS IDENTIFICATION AND ASSESSMENT

During the latter stages of our hardship inquiry, and during our consultations since February 2016 (when the Government accepted the findings of the hardship inquiry and requested the Commission develop a new regulatory framework), the Commission has been exploring options for solving this 'problem' and assessing the merits of these options. Ideas were proposed, tested with stakeholders and either accepted, modified or rejected on the basis of the feedback received.

While it may not have been framed in these terms, our consultation process represented 'impact assessment in real time'. Rather than treating policy development, impact assessment and consultation as three mechanical and sequential steps in the regulatory process, we sought to bring them together in a more integrated way.

The proposal in this draft decision represents the outcome to date of that integrated approach. It represents the best proposal we have been able to identify that addresses

the problem defined above. Importantly, the framework proposed in this draft report has been informed by the ‘real time impact assessment’ undertaken over the last year through which we eliminated various other proposals (most notably, the proposal in our first draft decision).

Because the inquiry identified the root causes of the problem as lying in the design of the Code itself, our options for remediating the problems identified in the inquiry necessarily took the Code as the starting point. Looking beyond the Code for solutions would only have become necessary once it had become obvious that reforms to the Code would, by themselves, be insufficient to address the issues the inquiry identified.

Following lengthy process of examining different options for amending the Code, it is our view that the framework we have set out in this proposal will address the problem identified in the hardship inquiry. As a result, it has not been necessary to explore options for responding to these issues that require the establishment of new, or alternative regulatory instruments. Furthermore, it is not open to the Commission to explore policy interventions that lie beyond its statutory remit.

In the following section, we consider the legal context in which our assessment takes place — including the statutory requirement that the Commission have regard to the benefits and costs of regulation. The rest of the chapter then presents our approach to identifying these benefits and costs, and we provide some preliminary findings.

6.4 LEGAL CONTEXT

The new payment difficulty framework will be given effect via amendments to the Code.

As already noted, in amending the Code the Commission is guided by its overarching objective, enshrined in section 8 of the ESC Act, to promote the long term interests of Victorian consumers.

In pursuing these objectives, through amending the Code, the Commission must have regard to certain matters set out in section 8A of the ESC Act (see Box 6.2), to the extent they are relevant in any given case.

Subsections 8A(1)(a) and 8A(1)(c) seek to address structural features of a market that determine its overall competitiveness and efficiency. As we noted during our hardship inquiry, left to its own devices, the retail energy market is likely to result in a level of disconnections that is socially sub-optimal. To the extent that energy retailers' discretion to disconnect a customer is fettered by the Code, it might be argued that the market is operating less 'efficiently' than might otherwise be the case. However, the obligation on retailers to assist their customers originates in legislation and reflects a policy decision taken long ago in the interests of vulnerable customers and the community as a whole.

The findings of the hardship inquiry and the government's subsequent acceptance of those findings, suggests that a revised Code will better reflect the legislative intention that the disconnection of customers for non-payment is only pursued by retailers as a measure of last resort.

In the case of the proposed amendment to the Code, we consider subsection 8A(1)(b) largely overlaps with how we have regard to the matters addressed in subsection 8A(1)(e) which is discussed below.

Subsection (1)(d) does not appear to be a relevant consideration for the proposal in this draft decision.

As discussed in the previous section, having regard to the benefit and costs of regulation, as required by subsection (1)(e), has been central in our consultations with stakeholders to date and has guided the development of the proposal contained in this draft decision. The Commission is now preparing a more specific assessment of the impacts of its proposal with the assistance of ACIL Allen Consulting and KPMG. Our preliminary assessment is discussed in the remainder of this chapter and the consultants' preliminary reports are available on our website.

Subsection (1)(f) has guided our consideration of the design of the framework. We have sought to minimise variations from the National Energy Retail Rules, though we recognise that the inclusion of customer entitlements to minimum standards represents a 'floor' on the open-ended discretion allowed retailers in the national rules. We believe these minimum standards are a necessary and unavoidable part of responding to the 'problem definition' discussed in section 6.3.

As noted in chapter 4, the approach proposed in this draft decision has taken into account consistency with the AER's Sustainable Payment Plan Framework (SPPF).¹⁴⁰ Under our proposal, the SPPF will provide useful guidance on how retailers should engage with customers in ongoing payment difficulty. In the earlier chapter, we encouraged retailers to adopt the principles of good customer engagement outlined in the SPPF.

Section 8A(2) ensures the Commission has had regard to the relevant objectives of the industry Acts, namely, that it 'promote protections for customers, including in relation to assisting customers who are facing payment difficulty'.¹⁴¹

BOX 6.2 ESSENTIAL SERVICES COMMISSION ACT 2001 - SECT 8A

Matters which the Commission must have regard to

(1) In seeking to achieve the objective specified in section 8, the Commission must have regard to the following matters to the extent that they are relevant in any particular case—

- (a) efficiency in the industry and incentives for long term investment;
- (b) the financial viability of the industry;
- (c) the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries;
- (d) the relevant health, safety, environmental and social legislation applying to the industry;
- (e) the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for—
 - (i) consumers and users of products or services (including low income and vulnerable consumers);

¹⁴⁰ Australian Energy Regulator 2016, *Sustainable payment plans – A good practice framework for assessing customers' capacity to pay*, July.

¹⁴¹ Section 10(c) *Electricity Industry Act 2000* (Vic) and section *Gas Industry Act 2001* (Vic).

- (ii) regulated entities;
- (f) consistency in regulation between States and on a national basis;
- (g) any matters specified in the empowering instrument.

(2) Without derogating from section 8 or subsection (1), the Commission must also when performing its functions and exercising its powers in relation to a regulated industry do so in a manner that the Commission considers best achieves any objectives specified in the empowering instrument.

6.5 PROCESS

To assist us in undertaking the analysis, we engaged the services of ACIL Allen Consulting and KPMG, with the former assisting with the analysis of the impacts on retailers and the latter assisting with an analysis of the impacts for customers. We note, however, that retailer impacts are (ultimately) felt by customers as retailers can be expected to pass through the costs they experience via the tariffs they charge customers – at least to the extent that their costs of assisting customers is no higher than their competitors.

Both consultancy services had relevant experience that made them well placed to provide support to the Commission in this exercise. In late 2016, KPMG produced a report for Energy Consumers Australia (ECA) that quantified the costs to customers and industry associated with disconnecting customers from their energy supply. ACIL Allen was engaged by the Commission during its hardship inquiry to undertake primary research into retailer hardship practices. This research involved in depth field-based analysis of the operations of nine Victorian retailers.

Preliminary reports from ACIL Allen and KPMG have been released in conjunction with this draft decision. Each of the consultant report is accompanied by a schedule setting out the additional information that would be most useful to them.¹⁴² Stakeholders are

¹⁴² If you would like assistance interpreting the information request, please feel free to contact the Commission in the first instance and we can facilitate your contact with the consultants. To ensure the consultants can take advantage of

urged to provide this additional information to the consultants, clearly marking any information that is provided in confidence.

6.5.1 APPROACH

The consultants have developed preliminary methods based on the data and information that is presently available to them, informed by best practice guidelines, including the Victorian Department of Treasury and Finance (DTF) guide to regulation and associated toolkits.¹⁴³ The assumptions that underpin both consultants' work have been aligned to ensure consistency.

To aid the development of their methods, the consultants ran workshops with stakeholders. The workshops provided an early opportunity for stakeholders to provide feedback and input into the method development process. The methods will be refined, as required, on the basis of feedback and information provided by stakeholders via the consultation process, following release of this draft decision.

6.5.2 PRELIMINARY ANALYSIS

The analysis, presented in this draft decision and the accompanying consultant material, is a preliminary analysis only. It represents the consultants' independent analysis of the anticipated impacts of the payment difficulty framework set out in this draft decision, on the basis of the information available at the time. It will be updated and refined prior to the finalisation of the payment difficulty framework in light of new information submitted by stakeholders.

Analysis undertaken by the consultants during the preliminary phase has, in keeping with section 8A(e) of the ESC Act, informed our consideration of the design of the draft framework.

the information you provide, we request that you endeavour to provide the information in the format requested in the schedules.

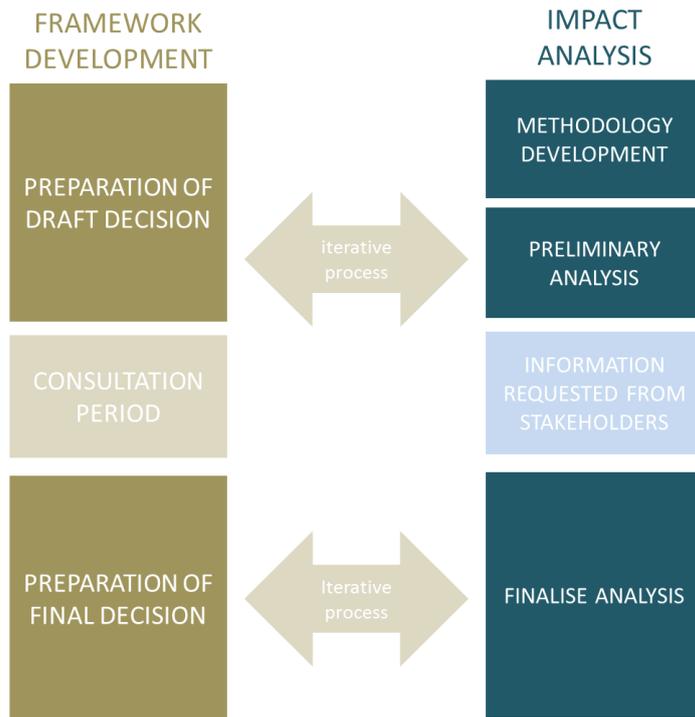
¹⁴³ Department of Treasury and Finance 2014, *Victorian Guide to Regulation, Toolkit 2: Cost-benefit analysis*, July.

6.5.3 FINAL ANALYSIS

Following the conclusion of the consultation process, ACIL Allen and KPMG will refine their methodology. In parallel, during and following the consultation process, we will be making refinements to the proposed payment difficulty framework on the basis of stakeholder feedback. During this period, our work will therefore be integrated, on an iterative basis, with the analysis being conducted by the consultants. We will take the consultant’s analysis into account in reaching our final decision on the design and implementation of the framework.

Figure 6.1 sets out the process described above and how it relates to the development of the framework itself.

FIGURE 6.1 PROCESS FOR UNDERTAKING IMPACT ANALYSIS



Source: ESC

6.6 PRELIMINARY ANALYSIS OF IMPACTS

This section contains our preliminary analysis, drawing on the advice of independent consultants, of the impact of the proposed payment difficulty framework. With regard to some impacts – for instance those relating to the cost of impacts on retailer business and ICT systems – we have sought to identify a dollar figure. Other, more intangible, impacts have been described in qualitative terms. The consultant’s draft reports are available on the Commission website.

6.6.1 HIGH LEVEL OUTCOMES

At the highest level, we expect that introducing clear minimum standards the framework will ensure that assistance for customers facing or experience payment difficulty will be predictable, meaningful, provided equitably to all customers. Consequently, we expect that customers will only be disconnected from their energy supply as a measure of last resort.

In a practical sense, we expect that the design of the framework will result in

- retailers and their customers being more incentivised to work together to find solutions that best meet the customer’s circumstances
- customers facing payment difficulty being empowered to better manage their energy use so that their energy costs are more manageable
- customers facing payment difficulty having improved knowledge of, and access to, government and non-government support services, and
- arrears not being left unattended.

DISCONNECTION AS A LAST RESORT

The precise impact of the proposed framework on arrears and disconnections is uncertain. Both are influenced by a range of factors beyond the framework itself, including broader economic forces and changing customer preferences. While it is not possible to predict with certainty the impact that the new framework will have on arrears and disconnection, the Commission nonetheless expects both will be reduced relative to what would have occurred in the absence of the changes.

Customers who are in arrears because of genuine payment difficulty and who are prepared to work with their retailer, should find the level of their arrears managed earlier and more effectively than under the present scheme. For this group of customers, we anticipate arrears will be, on average, lower than they otherwise would have been under the present framework. This conclusion is based on prima facie reasoning. Because the accumulation of arrears will be affected by so many factors beyond the framework, and because those factors can (and do) change, very broad assumptions are required when attempting to estimate what will happen under the new framework and what would have happened under the old framework.

Because customers will have access to meaningful assistance on a transparent and equitable basis, we anticipate that this will improve community and government confidence that disconnections are only occurring as a measure of last resort.

RATIONALE

Our expectation of these high level outcomes is based on our analysis of the current framework and our assumptions about how our proposed framework will improve on it.

As we set out in Chapter 2, the assistance currently available to customers in payment difficulty is inconsistent because retailers' regulatory obligations are broadly defined, and retailers have scope to interpret these obligations in different ways. The assistance any individual customer receives depends on which retailer they are with, and how that retailer applies its discretion in that individual customer's case.

Our hardship inquiry highlights the very wide range of customer outcomes that arise as a result of this broad discretion. Two otherwise identical customers can currently end up with very different experiences and very different outcomes. It is this inconsistency, unpredictability and inequity that we believe has led to the community and government questioning whether customer disconnection is being pursued as a measure of last resort.

Our proposal will ensure that the assistance available to customers cannot fall below a minimum level — for all customers, with all retailers. It standardises the 'floor' below which assistance cannot drop. We have set this minimum based on the evidence that customers benefit from *timely* and *effective* assistance. The assistance that is provided

to customers under the new framework will be more consistent, more predictable, and more equitably provided, than the assistance currently provided to customers.

Compliance with the new minimum standards will affect each retailer in different ways. To varying extents, retailers already provide assistance that meets our proposed minimum standards. Indeed, the minimum standards have been informed by existing practices of at least some retailers. In some places, there will be gaps that need to be filled in the retailers assistance arrangements; but we expect in many instances, changes are more likely to require ‘tweaks’ rather than wholesale replacement of existing arrangements.

The proposed minimum standards will not prevent retailers who already provide assistance above the new minimum standard to continue doing so. Indeed, we are encouraged by our discussions with retailers who have indicated their desire to keep providing high levels of customer assistance.

Importantly, the new proposed minimum standards establish obligations that must be met, not just matched. In other words, while retailers will have discretion over the mechanisms by which they satisfy customers’ entitlement to assistance, they will not have discretion to substitute a customer’s entitlement to assistance (as defined by the Code) for another form of assistance. Doing so would once again open the door to customer outcomes that were inconsistent, unpredictable and inequitable. In all likelihood, it would also require the Commission to play an authorisation role of each retailer’s assistance policies, practices and programs. Neither we nor the industry are likely to welcome such an interventionist (and costly) role for the Commission.

In the following sections we set out some methodological considerations, before examining at the impact on customers and retailers, respectively.

6.6.2 WEIGHING THE BENEFITS AND COSTS

In assessing the costs and benefits to retailers and consumers, we have found the implementation costs and benefits for retailers to be more amenable to being identified and estimated (subject to further consultation) in quantitative terms. The benefits the new framework will produce for customers in payment difficulty are typically less amenable to quantification. There are numerous reasons for this

limitation. For example, it is often difficult to precisely describe, let alone quantify, 'human impacts' such as the benefit from reduced stress. Other benefits might be identifiable, but there is no readily available measure that can be used to express that benefit in monetary terms. In other instances, problems of measurement arise because the counterfactual case is unobservable or indeterminate. As a result, customer impacts -- unlike retailer impacts -- are difficult to reduce to a single dollar figure or series of dollar figures.

We therefore have not attempted treat the two sets of findings (from ACIL Allen and KPMG) as directly equivalent metrics. This means the two sets of estimates cannot be treated additively. It would be inappropriate to subtract one set of findings from the other in order to reduce all findings into a single figure on which the decision rested to proceed with the proposed framework. Rather, each set of findings must be considered on their own merits -- and ultimately, the weight to be placed on each set of findings is a matter of judgement.

ACIL Allen has produced a single preliminary estimate of the impact on retailers associated with the upfront and operating cost impact associated with the framework. In the quantitative element of their work, KPMG have produced cost estimates in a range, which reflects the higher degree of uncertainty associated with impacts that are less amendable to quantification.

It is important to note that some impacts can result in a benefit to one group – either customers or retailers – and losses to the other. For instance, when retailers assist customers to move to a more appropriate tariff, this can result in a benefit to the customer in the form of lower electricity bills. However, this may come at a cost to retailers in the form of lower revenues. This cost may not be a directly equivalent to the benefit, however it is nonetheless necessary to consider both sides of the impact. We also note that some portion of the cost impacts experienced by retailers will ultimately be borne by customers as retailers pass a portion of these costs through to their customers in the form of higher electricity tariffs. Where a benefit to one group may come at the expense of another, we have highlighted this in our analysis.

To establish a baseline for their assessments, the consultants have used the existing framework as the counterfactual scenario to underpin their analysis. In other words, the baseline scenario to against which they have measured the impact of the new framework is a continuation of the status quo.

BOX 6.3 MEANING OF BASE CASE AND BASELINE IN THIS CONTEXT

Both consultants are using a 'base case' in the course of their modelling. The base case refers to a future scenario in which the new framework is applied. They have both, independently, done sensitivity analyses around this base case involving changes to various assumptions to test the impact on key parameters, including arrears, thus producing a number of other scenarios. This can be contrasted to the 'baseline', which represents the status quo against which the consultants are measuring the impacts of the proposed changes.

The analysis by the consultants was limited to 'first round' impacts, that is, they only sought to identify and estimate the impacts directly affecting retailers and their customers in payment difficulty. We have not attempted to model the final incidence of these impacts due to the very large number of assumptions that would require. For example, we have not tried to model the extent to which costs or benefits for retailers from the new framework will be passed on to shareholders as opposed to which will be passed on to the general customer base. Likewise, we have not attempted to model how better management of customers in payment difficulty will benefit society as a whole (including through its impact on government programs and fiscal outlays).

6.6.3 IMPACT ON CUSTOMERS

In their preliminary analysis, KPMG has identified a range of potential impacts to customers of the new framework. It has divided those impacts into those that can be quantified and those that require qualitative analysis. KPMG has proceeded to produce preliminary quantifications of the impacts in the first category, presenting their findings in Net Present Value (NPV) terms. It then undertook general analysis of impacts in the second category.

Because there is a degree of uncertainty about the impacts of the framework – as is the case in any modelling exercise – KPMG have modelled three scenarios – a base

case scenario, as well two other scenarios in which the benefits are lower and higher, respectively, than the base case.¹⁴⁴ See Box 6.3 for an explanation of ‘base case’ in this context.

Table 6.1 sets out the potential impacts identified by KPMG, along with the treatment it applied to each potential impact based on whether or not it was possible to undertake a quantitative analysis with currently available data.

TABLE 6.1 PRELIMINARY IDENTIFICATION OF CUSTOMER IMPACTS
By category of impact

| Impact | Treatment in analysis |
|--|-----------------------|
| Changes to financial position of customers | |
| Greater awareness of government or non-government assistance available | Qualitative |
| Potential reduction in energy costs through energy efficiency measures | Quantitative |
| Potential reduction in energy costs through switching tariff | Quantitative |
| More assistance sooner in any payment difficulty situation | Qualitative |
| Changes to participation costs for customers | Quantitative |
| Changes to customer credit ratings | Qualitative |
| General community impacts | |
| Changes in customer attitudes to the energy industry (including retailers) | Qualitative |
| Changes in customer well-being | Qualitative |

Source: KPMG

CHANGES TO PARTICIPATION COSTS FOR CUSTOMERS

Searching for information about assistance (search costs) and interacting with retailers takes time for customers.¹⁴⁵ Although the new framework will require customers to devote time to engaging with their retailer, and potentially support services, in order to receive assistance, we anticipate that the overall time commitment will be lower than under the current framework.

¹⁴⁴ See KPMG 2017, *Payment Difficulties Framework, Assessment of Customer Impacts, Preliminary Paper*, May, p3-4.

¹⁴⁵ A form of transaction cost.

KPMG has made estimates of the time commitment required of customers seeking assistance today and compared it to anticipated time commitment for customers operating under the proposed framework.¹⁴⁶ This time is used as the basis to estimate the costs of participating in the framework.

Although the new framework is designed to incentivise customers to engage their retailer in order to manage their payment difficulty, KPMG has estimated that overall participation costs will decrease under the proposed framework. This is because the new framework removes time-consuming 'capacity to pay' assessments which retailers currently conduct when making decisions about the form of assistance to offer them. It is also because, by making customer entitlements clearer and more accessible, KPMG has assumed average search costs will reduce.

KPMG's preliminary assessment is that the value of the reduced participation costs will be between \$2.5 million and \$6.3 million in NPV terms over ten years, with a base case estimate of \$3.9 million.¹⁴⁷

POTENTIAL REDUCTION IN ENERGY COSTS THROUGH SWITCHING TARIFF

Under tailored assistance, customers who are unable to pay for their ongoing energy use are entitled to the highest form of assistance available under the proposed framework. This includes being placed on their retailer's tariff that would most likely reduce their cost of energy.

In its modelling of this form of assistance, KPMG made various assumptions. Most notably, and simply, KPMG assumes customers pay for all their energy at the new lower tariff rather than the tariff they previously would have faced. That is, in both instances customers are fully paying for their energy. In one case they pay at a higher price, in the alternative scenario they pay at the lower price.

¹⁴⁶ These assumptions draw upon a common set of assumptions about retailer-customer interaction times that is used in both ACIL Allen and KPMG's preliminary assessments.

¹⁴⁷ See KPMG 2017, *Payment Difficulties Framework, Assessment of Customer Impacts, Preliminary Paper*, May, p10.

KPMG have estimated this would lead to savings to customers of between \$2.1 million and \$5.5 million in NPV terms over ten years, with a base case estimate of \$3.7 million.¹⁴⁸

The benefit to customers arising from tariff switching is in the class of impact, discussed above, that affects both customers and retailers. Taking KPMG's approach one step further would suggest the gain to customers would be fully offset by an equal-sized reduction in retailers' revenue. (Note, KPMG did not do this as they were modelling customer impacts only.)

We have not taken this extra step in our assessment of KPMG's analysis for a number of reasons. We believe it is unclear whether it is appropriate to assume a one-to-one relationship with customer benefits when looking at the impact of this regulatory measure on retailers' revenue. For example, in the counterfactual case, some customers may have not paid their accounts in full (or at all) at the higher tariff though they may be able to do so at the lower tariff. In such circumstances, the retailer may be no worse-off (in terms of net revenue) under the new framework. Indeed, it is even conceivable that retailers will be better off. Indeed, experience in the water industry shows that lowering the cost of services to customers in severe payment difficulty can produce a more favourable financial outcome for the service provider.¹⁴⁹

On this basis, we were not comfortable making assumptions about how retailers' net costs would be affected by the requirement to place customers in severe payment difficulty on more favourable tariffs. So while we have taken account KPMG's modelling of the benefit for customers, we have not attempted to calculate assessed the impact on retailers, beyond noting in that this benefit to customers is likely to produce a related, albeit difficult to assess, impact on retailers. We would welcome any information that would assist in refining support this modelling.

¹⁴⁸ See KPMG 2017, *Payment Difficulties Framework, Assessment of Customer Impacts, Preliminary Paper*, May, p10.

¹⁴⁹ Boston Consulting group (BCG) 2005, *Boston Consulting Group Review of Yarra Valley Water & Kildonan Child and Family Services Partnership*.

POTENTIAL REDUCTION IN ENERGY COSTS THROUGH ENERGY EFFICIENCY MEASURES

Under the proposed framework, retailers will in some circumstances be required to provide information, advice or other forms of assistance to customers to help them more efficiently use energy. In their preliminary analysis, KPMG has estimated the potential benefits to customers who receive this form of assistance. KPMG has done this by looking at the amount of energy that customers may save when they receive this assistance, and the corresponding savings to their energy bill.¹⁵⁰

To make this estimate, KPMG relied upon analysis undertaken during reviews of the Victorian Energy Efficiency Target (VEET). The analysis conducted for the reviews modelled reductions in energy bills for customers who participate in the VEET scheme. This modelled reduction in energy bills was based upon the assumed impact of implementing various energy efficiency measures under the VEET scheme. In other words, it represents the assumed average impact of undertaking an energy efficiency retrofit at a Victorian residential premises.

KPMG has used this modelled reduction as a proxy for estimating the impact on customer bills of the energy efficiency assistance customers may receive under tailored assistance. KPMG has modelled the benefits to range between \$110 and \$170 per annum, with a base case assumption of \$140 in savings.¹⁵¹ KPMG have estimated the total savings to customers of between \$2.6 million and \$8.29 million in NPV terms over ten years, with a base case estimate of \$5.5 million.¹⁵²

Similarly to tariff switching, any benefit to customers arising through energy efficiency measures will result in an impact on retailers in the form of reduced revenue. However, just as the impact associated with tariff switching, there is unlikely to be a one-for-one relationship between the benefits to customers or the costs to retailers. For example, each unit of energy that the retailer does not sell to a customer represents a unit of energy they no longer need to procure through the wholesale energy market.

¹⁵⁰ See KPMG 2017, *Payment Difficulties Framework, Assessment of Customer Impacts, Preliminary Paper*, May, p41-46.

¹⁵¹ See KPMG 2017, *Payment Difficulties Framework, Assessment of Customer Impacts, Preliminary Paper*, May, p43.

¹⁵² See KPMG 2017, *Payment Difficulties Framework, Assessment of Customer Impacts, Preliminary Paper*, May, p44.

Nonetheless, it is important to recognise that this benefit may come at some cost to retailers.

PRELIMINARY ANALYSIS OF QUANTIFIABLE IMPACTS - SUMMARY

In summary, KPMG arrived at the following preliminary estimates of the value of the quantifiable customer impacts (Table 6.2).

TABLE 6.2 PRELIMINARY ESTIMATES OF CUSTOMER IMPACTS
Net Present Value (NPV) (\$2017)

| Impact | Low | Base case | High |
|--|-------|-----------|-------|
| Changes to participation costs for customers | \$2.5 | \$3.9 | \$6.3 |
| Potential reduction in energy costs through switching tariff | \$2.1 | \$3.7 | \$5.5 |
| Potential reduction in energy costs through energy efficiency measures | \$2.8 | \$5.5 | \$8.3 |

Source: KPMG

NON-QUANTIFIABLE IMPACTS

In examining the qualitative impacts of the framework, KPMG conducted a study of the impacts of arrears and disconnections.¹⁵³ To the extent the framework reduces arrears and disconnections, it can be anticipated to reduce the incidence of these impacts.

Health and wellbeing impacts

When a customer is disconnected – or even when a customer is experiencing the fear of disconnection – it is likely to lead to high levels of stress. Research also indicates the ‘human impact’ of these circumstances includes feelings of hopelessness, shame, and humiliation. This can exacerbate existing mental health issues, or cause new ones, leading to social and economic withdrawal by customers.¹⁵⁴

¹⁵³ See KPMG 2017, *Payment Difficulties Framework, Assessment of Customer Impacts, Preliminary Paper*, May, p54-55. See also, Consumer Action Law Centre 2015, *Heat or Eat – Households should not be forced to decide whether they heat or eat*, August, (<http://consumeraction.org.au/wp-content/uploads/2015/08/Heat-or-Eat-Consumer-Action-Law-Centre.pdf>).

¹⁵⁴ See KPMG 2017, *Payment Difficulties Framework, Assessment of Customer Impacts, Preliminary Paper*, May, p54.

There may also be physical health impacts. Customers without power may struggle to heat or cool their home, prepare or cook food, maintain personal hygiene, or may go without some forms of medical care (if they are reliant upon electrical medical equipment, for instance). Examples include where a customer develops respiratory issues, or other forms of illness, as a result of having their heating cut off.

Both mental and physical health impacts can be experienced by family members and dependents, in addition to the customer themselves.

Practical impacts on daily life of affected customers

Disconnection can have a range of practical impacts on day-to-day life for the customer and their family or dependents. This may include difficulties in caring for small children or infants, additional spending on food (because of an inability to cook or store perishable food on the premises) or on items such as blankets or candles to provide heat and light. It may include an inability to bathe or wash clothes, which combined with other restrictions on managing personal hygiene, may impact a person's job prospects, compounding their financial stress. For school aged children, there may also be disruption to learning, for instance through restrictions on their ability to do homework in the evenings.¹⁵⁵

These acute impacts will be felt by disconnected customers and their dependants. While the numbers of affected parties may be very small compared to the overall customer base, the impacts for those relatively few customers can be extremely significant. Whether a dollar value can even be attached, for assessment purposes, to the impacts felt by customers in these situations is a complex issue (see Box 6.3).

The merits of proceeding with the scheme proposed in this draft decision must be examined with reference to these intangible factors.

¹⁵⁵ See KPMG 2017, *Payment Difficulties Framework, Assessment of Customer Impacts, Preliminary Paper*, May, p55.

Impact of disconnections on customers

The base case scenarios used by KPMG (and ACIL Allen) in their preliminary analysis do not assume a change to the number of disconnections of customers facing payment difficulty as a result of the implementation of the framework. Disconnection numbers are affected by a large number of variables, including broader economic forces and changing customer preferences, so it is not possible at this stage of the analysis to produce precise estimates of how disconnection rates may be influenced by the framework.¹⁵⁶

Nonetheless, it is our view that by ensuring meaningful assistance is available to all customers, the framework will help customers avoid disconnection and ensure it only occurs as a last resort. We expect more disconnections will be avoided under our proposed framework than are avoided under the existing framework.

In undertaking an analysis of the impacts of the proposed framework, it therefore becomes germane to consider what the ‘cost’ of any avoided disconnections might be to the customer involved. Such an exercise goes beyond the qualitative analysis that presented above, and includes the attempt to place a dollar figure on the average loss of welfare experienced by customers who are disconnected. However, the actual costs for customers who experience disconnection will be different in each case, and is likely to vary across time (it may be higher during winter, for instance, when heating is a higher priority). Box 6.4 sets out some of the issues involved in attempting to undertake analysis of this nature.

¹⁵⁶ ACIL Allen has nonetheless conducted sensitivity analysis to understand the impact on retailer costs of in scenarios in which the framework leads to varying reductions in the rate of disconnection, relative to what would have occurred in the absence of the new framework. For example, on the basis of their preliminary analysis, ACIL Allen’s estimate if disconnection rates attributable to payment difficulty reduce to 80% of the levels in the base case, retailers will experience a small reduction in administrative costs (\$70,000) and reduction in bad debt of \$1.4 million (\$2017). Note, the NPV of the impact of the framework on retailer presented in Section 6.6.3 does not include any benefits to retailers associated with a change in disconnection rates.

BOX 6.4 WHAT DOES DISCONNECTION 'COST' A CUSTOMER?

To place a dollar figure on the impact of disconnections to customers in Victoria involves attempting to identify the 'cost' to a customer of being disconnected. That is, the dollar value of the loss of welfare experienced, on average, by customers who are disconnected.

There is, at this stage, no metric available that expresses this value. KPMG has identified a number of proxies, however it is not clear whether any approximate the value we are seeking to measure. These proxies are:¹⁵⁷

- The daily wrongful disconnection payment that the industry Acts require a retailer to pay to a customer who they have wrongfully disconnected – currently \$500 per day,¹⁵⁸
- The value of customer reliability (VCR) measure that is determined by the Australian Energy Market Operator, primarily to assist with asset planning – \$280 per day (electricity only),¹⁵⁹ and
- The Guaranteed Service Level (GSL) payments that customers are entitled to receive from their distributors in the event of unplanned outages and other service interruptions. GSL payments for unplanned outages are set on the basis of a rate of around \$6 per hour (electricity only).¹⁶⁰
- The cost of the electricity consumed by a customer at their premises on a given day, which KPMG estimate at approximately \$4 for the average Victorian customer.¹⁶¹

¹⁵⁷ KPMG 2017, *Payment Difficulties Framework, Assessment of Customer Impacts, Preliminary Paper*, May, p.52.

¹⁵⁸ Section 40B *Electricity Industry Act 2000* (Vic) and section 48A *Gas Industry Act 2001* (Vic).

¹⁵⁹ AEMO 2014, *Value of Customer Reliability final report*, November.

¹⁶⁰ GSL payments are made to customers based on a number of tiers. For customers who experience more than 20 hours of unplanned outages in a year, the payment is \$120. For more than 30 hours, the payment is \$180, and for more than 60 hours the rate is \$360.

¹⁶¹ Based on estimates by the AEMC of the (non-regulated) standing offers and the average consumption for a representative residential customer in Victoria.

Developing an independent measure of customer welfare loss through disconnection would be a significant undertaking, and is not an exercise that is possible within the resources of the Commission as part of this process. However, this cost constitutes an important piece of the wider picture we are seeking to understand through this assessment of the proposal's costs and benefits. For as long as this cost is not included in our quantitative analysis, that analysis is likely to understate the benefits of our proposal.

Stakeholders are invited to make include in their submissions any evidence or information that may assist the Commission in identifying a value for the cost to customers of disconnection, or a proxy therefore.

6.6.4 IMPACT ON RETAILERS

ACIL Allen estimated the costs of implementing and operating the new framework to the nine retailers whose processes and policies they reviewed during the hardship inquiry.¹⁶² It identified the obligations on retailers created by the new framework and, using their knowledge of the nine retailers' business operations, they estimated the steps and costs required for each retailer to bring their operations into compliance with the framework. ACIL Allen then extrapolated that figured to arrive at a total cost figure for all retailers operating in Victoria. This allowed it to identify a preliminary assessment of the impact on retailers, which they will revise as required on the basis of feedback and additional data provided by stakeholders via the upcoming consultation process.

ACIL Allen's preliminary analysis identifies impacts on retailers in three categories:

- upfront system costs
- upfront business process costs, and
- changes to ongoing operating costs.

¹⁶² ACIL Allen conducted primary research in the policies and practices of nine retailers, which collectively served over 90 per cent of Victorian customers, as part of the Commission's hardship inquiry. See Chapter 2 of this report for more details.

The results of the preliminary analysis can be presented in a number of ways:

- total cost to all retailers
- total cost to all retailers on a net present value (NPV) basis
- cost to retailers per customer served
- cost to retailers per customer served, with the upfront costs amortised over the ten year estimation period.

The following sections set out the results of the analysis according to these categories.

TOTAL COST TO ALL RETAILERS

ACIL Allen's preliminary assessment is that the proposed framework will result in an upfront cost of \$27 million to retailers. This cost arises as a result of changes to information and communication (ICT) systems and businesses processes required to implement the framework. The new framework is also expected to lead to a marginal increase in retailer operating costs, relative to the current framework, in the first two years.¹⁶³ From the third year and beyond, ACIL Allen's preliminary assessment is that the framework will lead to lower operating costs than the current framework, causing an estimated saving of \$3.5 million per annum.¹⁶⁴

The reduced operating cost is driven primarily by a reduction in the number of customers that are assumed to access assistance under tailored assistance from the third year onwards. This assumption is based on the rationale that as the framework beds down and takes effect, fewer customers will find themselves in arrears and therefore the number of customers seeking the more time intensive forms of retailer assistance available under tailored assistance will be lower.

Table 6.3 contains a summary of the total upfront costs and the operating costs estimated, by element of the framework, to all retailers.

¹⁶³ ACIL Allen estimate an increase of annual operating cost of \$40,000 across all retailers.

¹⁶⁴ ACIL Allen 2017, *New Framework for Customers Facing Payment Difficulty, Preliminary Assessment of the Retailers' costs*, May, p.vii

TABLE 6.3 ESTIMATED TOTAL COSTS TO RETAILERS ASSOCIATED WITH THE PROPOSED PAYMENT DIFFICULTY FRAMEWORK

By framework element, \$2017

| Level of assistance | Costs incurred by all retailers (\$2017) | | |
|--|--|---|--|
| | Upfront | Annual ongoing operating cost (first 2 years) | Annual ongoing operating cost (subsequent 8 years) |
| Set up, miscellaneous and consequential amendments | \$8,215,000 | \$0 | \$0 |
| Standard assistance | \$2,880,000 | \$836,000 | \$1,746,000 |
| Tailored assistance, arrears being repaid | \$4,853,000 | \$9,803,000 | \$5,371,000 |
| Tailored assistance, arrears on hold | \$8,966,000 | \$5,707,000 | \$5,707,000 |
| Default assistance | \$2,118,000 | \$40,000 | \$40,000 |
| Sub total | \$27,032,000 | \$16,385,000 | \$12,864,000 |
| Less avoided costs | | -\$16,345,000 | -\$16,345,000 |
| TOTAL (NET) | \$27,032,000 | \$40,000 | -\$3,481,000 |

Source: ACIL Allen with system costs provided by TBS Consulting. Numbers may not total due to rounding.

TOTAL COST TO ALL RETAILERS ON A NET PRESENT VALUE (NPV) BASIS

Expressed in net present value (NPV) terms, the estimated impact on retailers over ten years of the upfront costs and changes to the operating costs is a benefit of \$2.5 million. In other words, it is assumed that the operating cost savings caused by the new framework from the third year of its implementation onwards will offset the upfront costs associated with its implementation, with all upfront costs recovered in less than ten years (Table 6.4).

It is important to note that this NPV calculation is conducted at the level of the impact on all retailers. It does not account for the circumstances of individual retailers. ACIL Allen’s analysis indicates that the upfront costs would be higher for large retailer and the ongoing operating costs would be proportionately higher for medium sized and smaller retailers.¹⁶⁵

¹⁶⁵ ACIL Allen 2017, *New Framework for Customers Facing Payment Difficulty, Preliminary Assessment of the Retailers’ costs*, May, p.29.

TABLE 6.4 NET PRESENT VALUE OF ESTIMATED TOTAL COSTS TO RETAILERS ASSOCIATED WITH THE PROPOSED PAYMENT DIFFICULTY FRAMEWORK
By framework element, \$2017 (NPV)

| Level of assistance | Cost / Benefit | NPV of costs incurred by all retailers (\$2017) |
|--|----------------|---|
| Set up, miscellaneous and consequential amendments | Cost | \$8,215,000 |
| Standard assistance | Cost | \$16,548,000 |
| Tailored assistance, arrears being repaid | Cost | \$60,780,000 |
| Tailored assistance, arrears on hold | Cost | \$59,348,000 |
| Default assistance | Cost | \$2,471,000 |
| Avoided costs | Benefit | -\$144,303,000 |
| Reduced finance costs (base case) ^a | Benefit | -\$5,511,000 |
| TOTAL RETAILER NET COST (NPV) | Benefit | -\$2,451,000 |

Source: ACIL Allen with system costs provided by TBS Consulting. Numbers may not total due to rounding.

^a The avoided financing costs associated with reduction in customer arrears is included in the NPV calculation for retailers, but the reduction in arrears itself is not included as a benefit because it merely constitutes a monetary sum to which retailers are entitled under the terms of their contract with the customer.¹⁶⁶

COST TO RETAILERS PER CUSTOMER SERVED

Presenting the results of the preliminary analysis on a per customer served basis is useful for understanding the scale of the costs. For clarity here we are referring to all Victorian customers, not just those experiencing payment difficulty. It does not necessarily imply the amount that each Victorian customer would ultimately pay as a result of the proposed framework being implemented. The costs experienced by customers will depend on a range of factors, including the extent to which their retailer's existing business practices are already aligned with the proposed payment difficulty framework, and the extent to which their retailer decides to pass through, in retail tariffs, the costs associated with complying with the new framework.

¹⁶⁶ ACIL Allen's analysis assumes aggregate customer arrears will reduce two years after the framework commences. This is because it is assumed that as the framework beds down, customers overall will receive more effective assistance than they do today. This is assumed to result in customers better managing their energy costs and their arrears, leading to a reduction in arrears over time. See ACIL Allen 2017, New Framework for Customers Facing Payment Difficulty, Preliminary Assessment of the Retailers' costs, May, p.17.

TABLE 6.5 ESTIMATED TOTAL COSTS TO RETAILERS ASSOCIATED WITH THE PROPOSED PAYMENT DIFFICULTY FRAMEWORK, PER CUSTOMER SERVED
By framework element, \$2017

| Level of assistance | Weighted average cost per customer (\$2017) | | |
|--|---|---|--|
| | Upfront | Annual ongoing operating cost (first 2 years) | Annual ongoing operating cost (subsequent 8 years) |
| Set up, miscellaneous and consequential amendments | \$3.28 | \$0.00 | \$0.00 |
| Standard assistance | \$1.15 | \$0.33 | \$0.70 |
| Tailored assistance, arrears being repaid | \$1.94 | \$3.91 | \$2.14 |
| Tailored assistance, arrears on hold | \$3.58 | \$2.28 | \$2.28 |
| Default assistance | \$0.85 | \$0.02 | \$0.02 |
| Sub total | \$10.79 | \$6.54 | \$5.13 |
| Less avoided costs | \$0.00 | -\$6.52 | -\$6.52 |
| TOTAL (NET) | \$10.79 | \$0.02 | -\$1.39 |

Source: ACIL Allen with system costs provided by TBS Consulting. Numbers may not total due to rounding.

COST TO RETAILERS PER CUSTOMER SERVED, AMORTISED

To present both the upfront and operating costs in a comparable way, ACIL Allen amortised the upfront costs over ten years. Amortised over ten years, the upfront costs are \$1.08 per customer per year. When the amortised upfront costs are added to the annual operating costs, the annual cost per customer is \$1.10 in each of the first two years and a benefit (saving) of \$0.31 per customer in each of the subsequent eight years (Table 6.6). The net benefit reported after the first two years of the scheme arises from the net savings to retailers' delivered by the scheme. That is, it is assumed that complying with the proposed scheme will eventually impose fewer costs on retailers than the present framework.

TABLE 6.6 ESTIMATED ANNUAL COST TO RETAILERS OF NEW FRAMEWORK
Per customer basis over ten years, \$2017

| Cost category | First two years | Subsequent eight years ¹⁶⁷ |
|--|-----------------|---------------------------------------|
| Upfront costs (system + process) amortised over 10 years | \$1.08 | \$1.08 |
| Operating costs | \$0.02 | -\$1.39 |
| TOTAL COSTS PER CUSTOMER | \$1.10 | -\$0.31 |

Source: ACIL Allen with system costs provided by TBS Consulting

6.6.5 IMPACT ON THE ENERGY AND WATER OMBUDSMAN VICTORIA (EWOV)

Separately, we asked KPMG to estimate the impact of the proposed framework on the Energy and Water Ombudsman Victoria (EWOV). This impact of the framework on EWOV is relevant because it is a fully industry funded dispute resolution service. Costs for the Ombudsman are therefore costs to retailers. Therefore, although this impact was modelled by KPMG it is more appropriately thought of as a retailer rather than a customer impact.

EWOV costs are affected by the volume and complexity of the cases they receive. KPMG have identified a number of ways in which the Ombudsman could be affected by the new framework. Drivers of these effects include the time and effort required to make customers aware of entitlements under the framework, particularly in its early phases, and the number of complaints that EWOV receives. It also anticipates there will be a reduction in EWOV costs associated with reviewing retailers' capacity to pay assessments.¹⁶⁸ Over the medium to long term, new framework may also reduce the number and complexity of cases that go to the Ombudsman. However, while the framework beds down, we expect there may be an increase in case load for EWOV.

This means the impact on EWOV is likely to vary over time. In their preliminary analysis, KPMG estimate an increase in costs to EWOV in each of the first five years of the modelling period, after which they estimate reductions in EWOV expenditure

¹⁶⁷ The analysis period for this exercise was ten years.

¹⁶⁸ The new framework removes the requirement for a retailer to assessment a customer's 'capacity to pay' before placing them on a payment plan.

associated with the framework. Over the ten year period, KPMG estimates the potential impact on EWOV of the new framework will range from a cost of \$4 million through to a benefit of \$0.7 million in NPV terms over ten years. KPMG estimate a base case impact of a cost to EWOV of \$1.6 million.¹⁶⁹

To avoid confusion, we have not attempted in this chapter to blend KPMG's modelling results about EWOV with ACIL Allen's modelling of the impact of the framework on retailers' system and business costs. We are, however, considering the results of KPMG's modelling of EWOV impacts within the context of our assessment of retailer impacts.¹⁷⁰

6.6.6 IMPACT ON THE ESSENTIAL SERVICES COMMISSION

We have assessed the likely change in our costs to carry out our functions, including monitoring and reporting compliance, referral of disconnection cases from EWOV and enforcement.¹⁷¹

We do not consider that there will be any material change in the cost to the Commission of monitoring and reporting on compliance. We would amend our existing Compliance and Performance Reporting Guideline (CPRG) to reflect the proposed framework. All other costs, including the cost of audit would be largely unchanged.

Over the past 12 months there has been a substantial increase in the number of disconnection cases referred to the Commission from EWOV. We envisage that the current level of referrals is likely to continue under the new framework for at least the first eighteen months of the new framework, as the standards of conduct required in particular circumstances are determined.

We do not envisage an increase in our overall costs arising from the administration of the new payment difficulty framework. While it may change some aspects of our work

¹⁶⁹ See KPMG 2017, *Payment Difficulties Framework, Assessment of Customer Impacts, Preliminary Paper*, May, px-x

¹⁷⁰ For instance, we note that if the estimated NPV of the cost to EWOV (\$1.6 million) are combined with the estimated NPV of the cost to retailers (-\$2.5 million), the two amounts are broadly equivalent, resulting in a marginal NPV benefit to retailers of \$0.2 million.

¹⁷¹ Essential Services Commission 2016, *Victorian Energy Market Report 2015-16*, November.

(for example, the data reported in our Victorian Energy Market Report), we do not expect the framework to increase our overall workload or costs. We recognise there may be a short term need for additional resources to expedite the approval of retailers' amended financial hardship policies (see section 7.2), however, we will resource that requirement through internal reprioritisation. On that basis, administering the new framework should have no impact on retailers' licence fees.

6.7 COMMISSION'S PRELIMINARY ASSESSMENT

The Commission's preliminary judgement – based on this analysis, the work completed as part of the hardship inquiry, and the feedback from stakeholders on its first draft decision – is that the Payment Difficulty Framework proposed in this draft decision is a practical and cost effective means of responding to the problem we are seeking to address.

The preliminary assessment indicates that the framework is expected to deliver benefits to customers facing payment difficulty in the form of reduced participation costs (seeking and accessing assistance). For customers who access retailer assistance to move to a more appropriate tariff or improve their energy efficiency, there is expected to be a benefit in the form of lower energy bills.¹⁷² To the extent the framework leads to lower rates of disconnection for payment difficulty than would have occurred in the absence of the changes – which we expect it will – then it will deliver the added benefit of avoiding, for those customers, the negative impacts associated disconnection. Many of these impacts are intangible and so have not been included in our quantitative analysis.

More broadly, we consider that the proposed framework delivers on the wider objective or ensuring that customers receive meaningful assistance on an equitable basis, and so ensures that disconnection is a last resort.

¹⁷² However, is important to be cautious when considering the benefits to participating customers associated with energy efficiency or tariff switching, as both of these customer benefits will be accompanied by a retailer cost (to some extent).

The preliminary analysis indicates that these benefits are likely to be delivered without undue costs being imposed on retailers. Although implementing the framework will involve upfront costs during the period in which retailers upgrade their systems and businesses processes, over the long term the proposed framework is expected to be a lower cost option than the existing framework. Over time, these savings are anticipated to offset the upfront costs. This means that the net impact of the new framework to retailers – and therefore all energy customers – may be positive.

There is also an intangible benefit that we have not sought to discuss but which we consider germane, namely, community confidence in the retail energy market.

The reputation of the retail energy market is not strong. A recent study by Energy Consumers Australia (ECA) shows that Victorian households were notably less satisfied with their electricity retailer than their internet, mobile phone, insurance, banking and water service providers.¹⁷³ Gas retailers also rated lower, but less so. There are possibly many reasons for this finding but we expect the handling of customers in payment difficulty will have contributed in some measure to these poor ratings.

Poor reputation has an adverse impact on consumer confidence in the market overall. In turn, this loss of consumer confidence can weaken the integrity of the competitive disciplines operating in the market and therefore the efficiency of the market and the ability of the market to deliver sustained benefits in the long term interests of Victorian consumers.

As noted in section 6.4, the Essential Services Commission must have regard to the efficiency of the industry and the degree of competition when exercising its powers and performing its functions (see Box 6.2). While we cannot measure the relationship between improved assistance arrangements for customers in payment difficulty and consumer confidence in the retail energy market, we nevertheless believe this is an important consideration in assessing the merits of the proposed new framework.

¹⁷³ Energy Consumers Australia 2017. Energy Consumer Sentiment Survey, September, p.60)

Having had regard to the costs and benefits discussed above, those that can be quantified and those that cannot, as well as the objectives of the ESC Act and the industry Acts, we consider the proposed framework represents an effective and reasonable response to the challenges identified in our hardship inquiry and discussed earlier in this chapter.

We acknowledge that conclusion relies on many assumptions and judgements. These are laid out for public scrutiny in the consultants' two preliminary reports which are available on our website (www.esc.vic.gov.au).

We encourage stakeholders to access the consultant reports and respond to their requests for information. This will assist the consultants refine their final assessment of the anticipated impacts of the proposal.

Final reports from both consultants will be released along with our final decision.

7 PROPOSED ROADMAP

7.1 INTRODUCTION

This chapter contains the Commission’s proposed roadmap for implementing the payment difficulty framework, from the final decision through to a review of the framework in several years’ time.

For now, we continue to assume a final decision will be possible in late July – early August.

The roadmap also encompasses options for a staged commencement of the framework, transition arrangements for legacy customers, and our proposed approach to monitoring and reporting on retailer performance once the framework is in place.

7.1.1 KEY ISSUES COVERED IN THIS CHAPTER

This chapter presents our initial thinking on how to settle a range of processes and instruments that will accompany or support the proposed framework. These include:

- commencement of customer entitlements
- transition arrangements for customers on payment plans and in hardship programs
- compliance and performance reporting under the new framework
- revision of hardship policies
- customer advice material, and
- evaluation of the framework.

7.1.2 FOUR PHASES

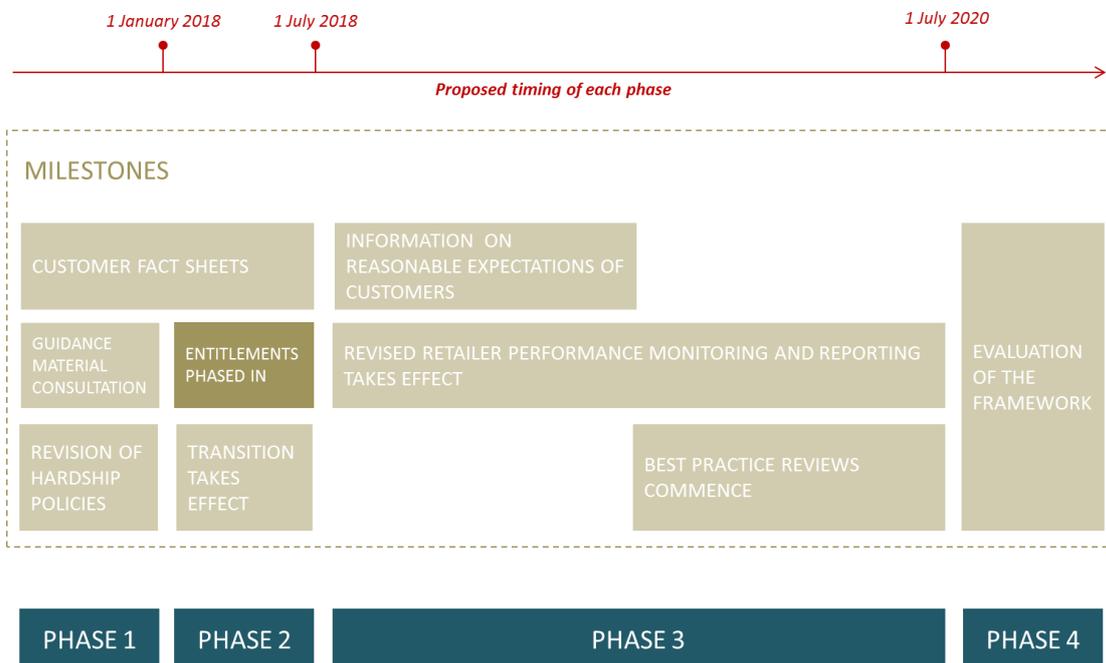
Our proposed roadmap contains four phases. The first phase encompasses the preparations for the commencement of the framework that follows the final decision. The second phase covers the period in which the new customer entitlements commence and retailer obligations take effect, which we propose occurs over a six month period starting 1 January 2018.

In the third phase, we propose commencing our retailer performance and compliance reporting requirements, as well as starting our first review of retailer better practice. During the final phase, we propose to review the effectiveness of the framework.

A consequence of amending the Energy Retailer Code is that subsequent amendments will be required to the *Essential Services Commission (Energy Industry Penalty Regime) Regulations 2016* to attach the obligations contained in the code to specific penalties. Because the making of regulations is a matter for government, we have not included the revision of these regulations within the Commission’s roadmap.

Figure 7.1 sets out the key milestones in each of the phases.

FIGURE 7.1 PROPOSED ROADMAP



Source: ESC

7.1.3 STRUCTURE OF THIS CHAPTER

This chapter is structured around the four phases. It presents the milestones we anticipate reaching during each phase.

- Section 7.2 describes the steps between the final decision and the commencement of the framework (Phase 1).
- Section 7.3 sets out options for how and when the new framework commences (Phase 2).
- Section 7.4 presents our proposed approach to monitoring and reporting on retailers' performance under the proposed framework, and the milestones for the first two years of the framework (Phase 3).
- Section 7.5 sets out our proposed approach for evaluating the effectiveness of the framework (Phase 4).

7.2 PHASE 1: FINAL DECISION TO COMMENCEMENT OF THE FRAMEWORK

Phase 1 of the roadmap applies to the period following the Commission's final decision in July-August through to the commencement of the first elements of the framework.

This phase contains two milestones:

- Preparation of customer fact sheets, and
- Revising retailers' current hardship policies, if required, to align them with the proposed framework

Figure 7.2 sets of the proposed milestones and schedule for this phase.

FIGURE 7.2 PHASE 1 MILESTONES



Source: ESC

After the Commission releases its final decision, we propose to produce customer fact sheets. The design and content of these facts sheets would be developed in consultation with stakeholders. We anticipate this consultation to commence within 1-2 months of the final decision. The fact sheets will be updated as required to account for the phased introduction of the framework.

Subject to the final form of the framework, retailers may need to revise their existing hardship policies to bring them into line with the new framework by the time the first elements of the framework take effect (which we proposed will be 1 January 2018). We propose that retailers be required to self-assess their hardship policies to ensure compliance with the new framework. Where retailers identify that significant revisions are necessary, they must resubmit their amended policies for Commission approval. The Commission will focus on the compliance of hardship policies as part of its regular audit program.

7.3 PHASE 2: COMMENCEMENT

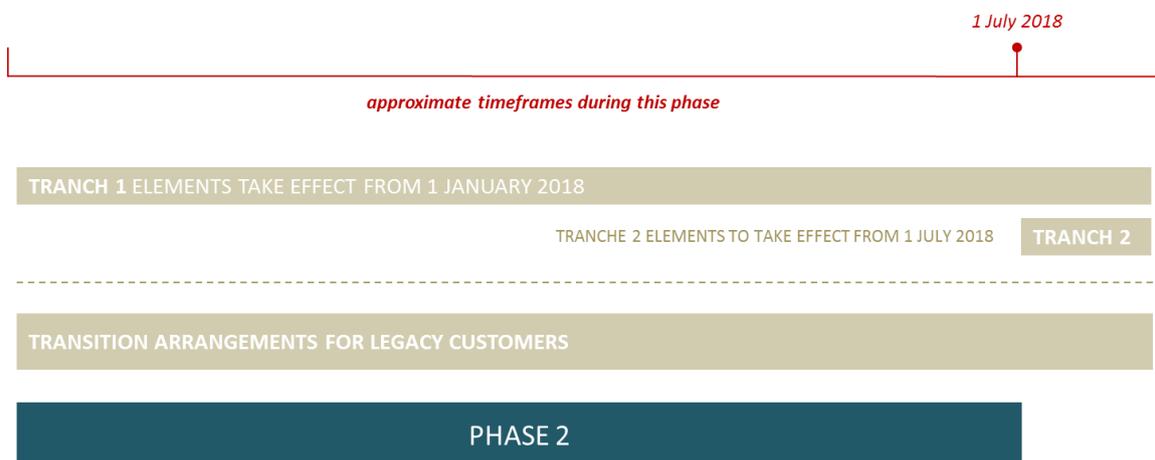
Phase 2 contains two milestones:

- phase in of the initial set of customer entitlements and retailer obligations, and

- commencement of transition arrangements for customers currently on payment plans and in hardship programs.

Figure 7.3 sets of the proposed milestones and schedule for this phase.

FIGURE 7.3 PHASE 2 MILESTONES



Source: ESC

7.3.1 IMPLEMENTATION

Retailers have clearly indicated to the Commission that quick and short implementation timeframes can impose significant costs on their businesses and can prove challenging to manage. At the same time, community groups have urged us to ensure appropriate protections are in place for consumers as soon as possible.

To strike a balance between these imperatives, we support a phased commencement of customer entitlements and retailer obligations. We proposed the framework is phased in over a six month period, starting on 1 January 2018 and ending on 1 July 2018.

This phase in could be structured in several ways. We have identified at least two broad options:

- Option 1: Implement the framework one ‘package of assistance’ at a time, or

- Option 2: Require a minimum set of entitlements to be in place by 1 January 2018, with the remainder in place by 1 July 2018,

We also consider it reasonable to allow retailers to submit implementation plans if they believe they are unable to deliver particular elements of the framework by 1 July 2018. Implementation plans would provide details of how and when a retailer would come into full compliance after 1 July 2018. Where retailers were non-compliant during this period, their implementation plans would outline their mitigation strategies ensuring no detriment to customers during this time.

We discuss both options below, explaining why we prefer the second option.

OPTION 1 – BY PACKAGE OF ASSISTANCE

This option entails implementing the revised obligations in tranches that correspond to the architecture of the Code. For instance, tailored assistance might be implemented first, followed by standard assistance, followed up by default assistance.

This option could be pursued, for example, along the following schedule:

- 1 January 2018 - Tailored Assistance
- 1 April 2018 - Standard Assistance
- 1 July 2018 - Default Assistance

While this option has the merit of simplicity, our view is that it may not present a pragmatic option for retailers. Our discussions with stakeholders, and advice received from our consultants, demonstrates that different elements within a single package – tailored assistance, for example – may be more complex and time consuming to implement than other elements. On that basis, we have explored an alternative option.

OPTION 2 – BY ELEMENT OF ASSISTANCE

This option involves selecting elements from different packages of assistance to implement in each tranche. For instance, tranche 1 would contain selected elements from both standard assistance and tailored assistance, with the remaining obligations (including default assistance) taking effect at the end of the commencement period (1 July 2018).

Selecting the obligations to take effect from 1 January 2018 involves making a trade-off between the measures that would be most valuable to customers facing payment difficulty, and the cost and pragmatic implications for retailers of making those measures available. While the Commission has developed a preliminary view on the most appropriate 'starting set' of obligations, we invite stakeholders to share their views on how this trade-off might be made.

Table 7.1 provides our preliminary consideration of how this option might be implemented, and sets out the Commission's proposed starting set of obligations.

We recognise that each retailer's business operations are different, and that some retailers may face operational or system challenges implementing all elements of the framework by 1 July 2018. On that basis, we propose that retailers in this situation be entitled to present the Commission with an implementation plan that sets out how they intend to bring their operations into compliance with the proposed framework during the period after 1 July 2018 – including how they will ensure that customers are not worse off due to these delays.

TABLE 7.1 ELEMENTS OF ASSISTANCE TO BE IMPLEMENTED IN EACH TRANCHE
Proposed timing of introduction of each element

| Code ref | Proposed forms of assistance from retailers to which customers would be entitled under each level of assistance | Tranche 1 | Tranche 2 |
|---------------|---|----------------|----------------|
| Div 2 | STANDARD ASSISTANCE | | |
| 76(2) | <ul style="list-style-type: none"> Menu of five standard assistance items | 2 of 5 offered | 3 of 5 offered |
| 88 | <ul style="list-style-type: none"> Make general information readily available on standard assistance and on how to access it, by having it easily accessible on retailer’s website or sending it by email or other electronic means. | ✓ | ✓ |
| 88 | <ul style="list-style-type: none"> Make general information readily available on how to lower energy costs, by having it easily accessible on retailer’s website or sending it by email or other electronic means. | ✓ | ✓ |
| 88 | <ul style="list-style-type: none"> Make general information available on government or non-government assistance that may be available to help with meeting energy costs, by having it easily accessible on retailer’s website or sending it by email or other electronic means. | ✓ | ✓ |
| Div 3 | TAILORED ASSISTANCE | | |
| 79(1a), 80(1) | <ul style="list-style-type: none"> Customer proposes payments that will pay off arrears over a period of up to two years, at intervals of up to a month. | ✓ | ✓ |
| 80 | <ul style="list-style-type: none"> Retailer must accept proposal if arrears paid off within a two year period, and provide written schedule of payments. | ✓ | ✓ |
| 80 | <ul style="list-style-type: none"> A revised proposal for payments can be put forward by the customer at any time. | ✓ | ✓ |
| 80 | <ul style="list-style-type: none"> Retailer must accept revised proposal if arrears paid off within the originally specified two year period, and provide written schedule of payments. | ✓ | ✓ |
| 79(1)(c) | <ul style="list-style-type: none"> Provide specific advice about lowering energy costs. | | ✓ |

| Code ref | Proposed forms of assistance from retailers to which customers would be entitled under each level of assistance | Tranche 1 | Tranche 2 |
|--------------------|---|-----------|-----------|
| 79(1)(d) | <ul style="list-style-type: none"> Provide specific advice about any government or non-government assistance that may be available to help with meeting energy costs. | ✓ | ✓ |
| 79(1)(f), 79(4) | <ul style="list-style-type: none"> For an initial period of 6 months, repayment of arrears on hold and customer pays less than the full cost of their on-going energy use while working to lower that cost. The initial 6 month period may be extended. | | ✓ |
| 79(1)(e), 79(3) | <ul style="list-style-type: none"> For customers that cannot pay the full cost of on-going energy use, the retailer must offer: <ul style="list-style-type: none"> the tariff that is most likely to minimise the customer's energy costs a suite of practical assistance to help the customer reduce their use of energy information about how the customer is progressing towards lowering their energy costs. | | ✓ |
| 81(3) | <ul style="list-style-type: none"> If at any time a retailer forms a reasonable belief that a customer is not meeting their responsibilities to implement any practical assistance provided by the retailer, the retailer must use its best endeavours to contact the customer and work with them to identify an implementation timeframe. | | ✓ |
| 81(2) | <ul style="list-style-type: none"> If a payment is not made by the due date, the retailer <i>must</i> use its best endeavours to contact the customer to discuss a revised payment proposal. | ✓ | ✓ |
| Div 6, 88(1-3) | <ul style="list-style-type: none"> Make information readily available on tailored assistance by having it easily accessible on retailer's website or sending it by email or other electronic means. | ✓ | ✓ |
| Div 4 | DEFAULT ASSISTANCE | | |
| 85(1) | <ul style="list-style-type: none"> Default payment plan – pay arrears by equal monthly instalments over a period that is 3 times the length of the billing period. | | ✓ |
| 85(2) | <ul style="list-style-type: none"> Retailer must provide schedule of instalments. | | ✓ |

7.3.2 TRANSITION ARRANGEMENTS

Transition arrangements are by their nature complex and require careful consideration. The Commission's starting proposition is that customers that are receiving assistance under current arrangements would be initially grandfathered under those arrangements. That is, those customers should not be transitioned to the new framework but should instead continue to receive assistance under the existing framework until such time as:

- a. they are not in payment difficulty, or
- b. the customer and their retailer form a shared view that outstanding arrears can be paid off within two years.

This arrangement would allow customers with 'old' arrears to slot into tailored assistance under the proposed framework – but only when the minimum assistance available in tailored assistance was suitable to their circumstances.

The rationale for this view is that the new framework is designed to both help customers manage and *avoid* arrears. In other words, it places emphasis on both treatment and prevention, and the measures of assistance – such as the entitlement to pay arrears off over two years – are designed accordingly.

These measures of assistance would not necessarily prove useful to customers who enter the system having already accumulated large arrears. It simply may not be feasible for these customers to pay off these accumulated arrears within two years, as proposed in tailored assistance. The new framework is not designed to this end, and may not necessarily produce the best outcomes for customers in those circumstances.

Mindful of the need to ensure an orderly and equitable transition to the new framework over time, we propose to consult closely with stakeholders on the most appropriate transition arrangements, particularly for the most vulnerable customers.

A customer experiencing payment difficulty for the first time, or a new episode of payment difficulty, would be assisted under the new arrangements.

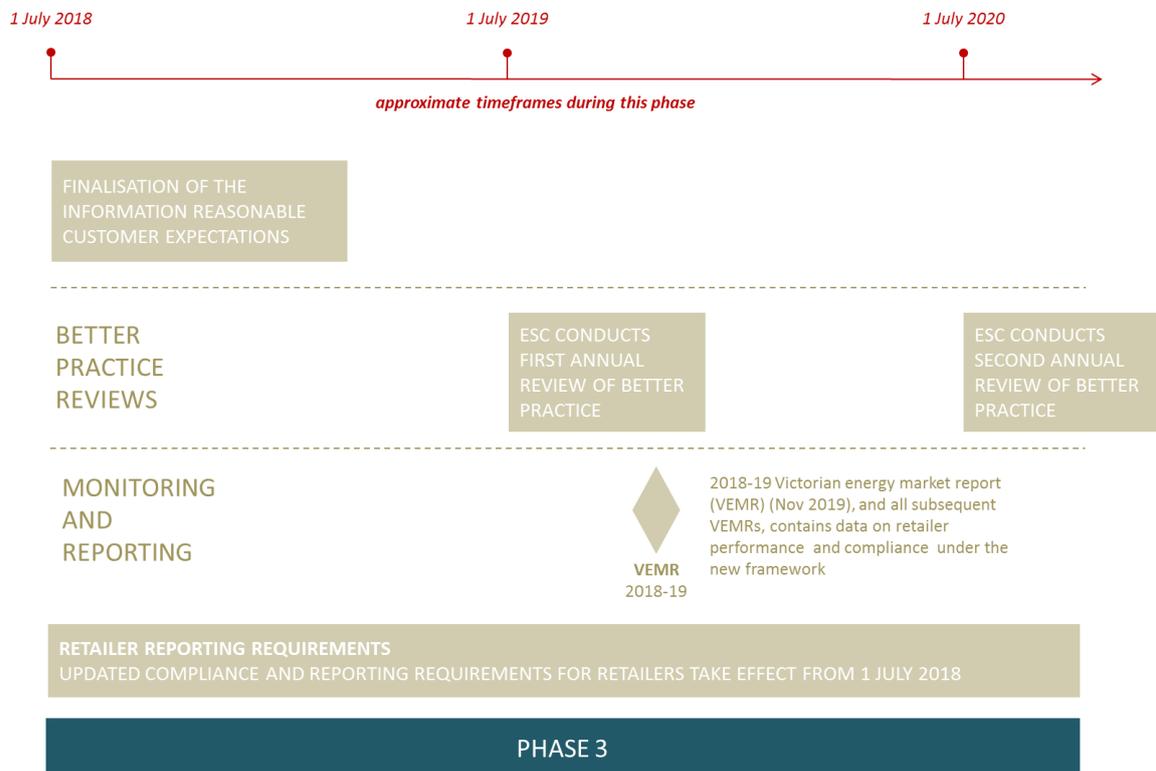
7.4 PHASE 3: PERFORMANCE MONITORING AND REPORTING

Phase 3 is a two year period, commencing 1 July 2018, which contains three milestones:

- Commencement of the Commission’s monitoring and reporting on retailer compliance and performance with the new framework,
- Commencement of the Commission’s reviews of retailer better practice in assisting customers in payment difficulty, and
- Preparation and publication of a customer advice manual.

Figure 7.4 sets of the proposed milestones and schedule for this phase.

FIGURE 7.4 PHASE 3 MILESTONES



Source: ESC

7.4.1 COMPLIANCE AND PERFORMANCE REPORT

It is the Commission's standard practice and statutory responsibility to monitor and report on the performance and compliance of licensed entities.

Once the new framework is fully implemented – which we propose will occur by 1 July 2018 – we will commence reporting retailer performance and compliance against the framework.

DATA COLLECTION

This reporting will be informed by data provided by retailers as part of their standard compliance and performance reporting. It will be important to ensure this standard reporting provides data that we can meaningfully use to track outcomes for customers as well as performance and compliance against the new framework.

Consequently, we anticipate revising the information we request from retailers under their statutory reporting obligations. This information required is set out in the Compliance and Performance Reporting Guideline (CPRG). Currently, we collect data against approximately 30 indicators that directly or indirectly relate to payment difficulty and hardship. Examples of the types of information we currently gather include:

- The number of customers on payment plans, the duration of those plans, and whether or not they cover the customer's ongoing use.
- The number of customers in hardship programs, how long they remain in the programs, and what assistance is being provided, as well as how many customers exit them. We also collect information about how many customers are denied entry to hardship programs.
- The arrears of customers on entry to hardship programs, as well as the average arrears of customers within those programs

We propose establishing a technical working group with stakeholders to support the revision of the CPRG. As examples, the following types of information may need to be introduced to the guideline:

- The number of customers on each form of assistance – standard assistance, tailored assistance and default assistance – and the specific types of assistance

they received. This could include details about the duration and terms of payment plan arrangements.

- More granular information about the arrears of customers on each form of assistance

Our initial view is that any revised reporting requirements should take effect at the same time as the commencement of the first customer entitlements – that is, from 1 January 2018. Our first complete report on the new framework would be published in November 2019. As required under section 54V of the *Essential Services Commission Act 2001*, we will also publish data in our quarterly updates after that date.

REPORTING

Because some customers will remain grandfathered on ‘old’ arrangement, we will also need to consider what date to continue to need data regarding these customers.

We will report on retailer compliance and performance via our Victorian Energy Market Report (VEMR), which is published each November. The first VEMR to contain data associated with performance and compliance under the new framework will be the 2018-19 report.

7.4.2 BETTER PRACTICE REPORTING

A key element of the wider payment difficulty framework is a commitment by the Commission to review and share observations annually about the leading practices of retailers in assisting customers in payment difficulty – particularly where these standards exceed the minimum standards outlined in the code.

We propose that these annual reviews commence after the framework has been in place for 12 months, meaning the first review would occur in the second half of 2019. One option would see us report those findings as part of the VEMR rather than in a standalone report.

7.4.3 INFORMATION ON THE REASONABLE EXPECTATIONS OF CUSTOMERS

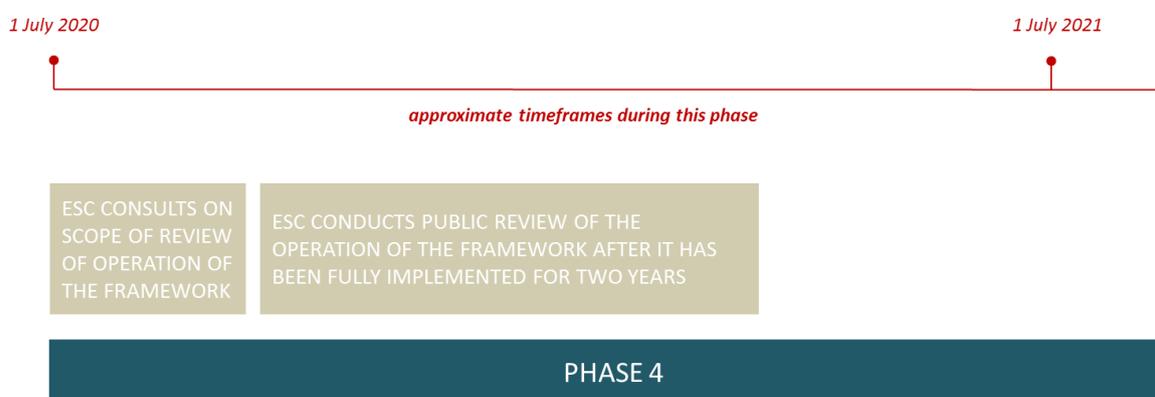
As outlined in chapter 5, we believe that in the interests of transparency we should set out what we consider the reasonable expectations of a customer to be for assistance from their retailer. Therefore, once the framework has been fully introduced (by 1 July 2018), we intend to produce this information in consultation with stakeholders. We expect the information will build on the fact sheets discussed above. In preparing the information we will, where relevant, have regard to the principles articulated in the Australian Energy Regulator’s (AER) Sustainable Payment Plan Framework (SPPF) (see section 4.2.2).

7.5 PHASE 4: EVALUATING THE FRAMEWORK

We propose to review the operation of the framework once it has been implemented for two years.

Figure 7.5 sets of the proposed milestones and schedule for this phase.

FIGURE 7.5 PHASE 4 MILESTONES



Source: ESC

The operation of the framework will be evaluated to assess the extent to which the framework's objectives are being met, in particular, the extent to which disconnection of residential customers for non-payment is a last resort measure, the extent to which the assistance provided to customers facing difficulties is consistent and accessed equitably within and across retailers, and the usefulness of the compliance and performance indicators being reported on by retailers.

The parameters of this review will not be settled until much closer to the review itself. We will consult with stakeholders in mid-2020 on the approach that will be undertaken to evaluate the framework.

8 NEXT STEPS

8.1 INTRODUCTION

This chapter sets out the next steps. Following the release of this draft decision, there are three key milestones remaining in this stage of our work.

- Consultation
- Development of guidance material
- Development of the final decision

This chapter briefly discusses each in turn.

8.2 CONSULTATION

Our consultation on this draft decision will occur in accordance with our *charter of consultation*.¹⁷⁴ The purpose of the public consultation is to seek feedback from all interested parties on the proposed framework.

We are interested in receiving feedback on any aspect of the proposed framework, in particular how it will affect:

- energy consumers including, in particular, low income and vulnerable customers
- energy retailers
- dispute resolution bodies, and
- community organisations and agencies.

¹⁷⁴ Essential Services Commission 2012, *Charter of Consultation and Regulatory Practice*, August.

8.2.1 FORUMS AND WORKSHOPS

To facilitate stakeholder feedback, we have scheduled an extended, six week period for submissions, and we will also hold a series of forums and workshops. Specifically, we have scheduled:

- A public forum during the consultation period
- Two stakeholder forums during the consultation period
- At least one stakeholder forum in the period following the consultation period, and
- Technical working groups during and after the submission period.

A schedule of forums and workshops is provided in Table 8.1. Final details for each of the consultation events, including times and locations, will be published on the Commission's website.

TABLE 8.1 CONSULTATION SCHEDULE

| Time | Consultation step |
|------------------------|--|
| Tuesday 9 May | Stakeholder forum Presentation of the new proposal. Submissions invited with due date: Friday 16 June |
| Monday 29 May | Second stakeholder forum The purpose of this forum is to provide stakeholders with the opportunity to question and comment on the proposal, to seek further guidance of the Commission's intentions, and to make alternative suggestions where they have concern. Check the Commission website for time and venue information |
| Thursday 1 June | Public Forum This event will provide members of the public and other interested parties with the opportunity to hear about the proposal, ask questions and share their views. Check the Commission website for time and venue information. |
| Friday 16 June | Submissions period closes |

| Time | Consultation step |
|------------------------|---|
| Thursday 6 July | <p>Third stakeholder forum</p> <p>The purpose of this forum is for the Commission to reflect on the matters raised in submissions and seek broad engagement on proposed responses to those concerns.</p> <p>Check the Commission website for time and venue information.</p> |
| 2-3 weeks later | <p>Fourth stakeholder forum (<i>tentative</i>)</p> <p>We will hold an additional forum in the event it is needed to address outstanding issues.</p> |
| May - August | <p>Technical workshops (as required)</p> |
| July - August | <p>Release of final decision</p> |

8.2.2 SUBMISSIONS

We invite submissions from interested parties, including energy licence holders and other stakeholders, on the proposed changes to the *Energy Retail Code*.

Submissions should be submitted preferably in electronic format by **5.00pm on 16 June 2017**. Early submissions will be welcomed.

Submissions can be emailed to paymentdifficulties@esc.vic.gov.au.

You can also send submissions by mail, marked Submissions to Payment Difficulty Framework, to:

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

The Commission's normal practice is to make all submissions publicly available on its website. Please identify clearly any confidential or commercially sensitive information that you do not wish to be disclosed publicly.

8.3 GUIDANCE MATERIAL

We have undertaken to produce guidance material to support the operation and interpretation of the new framework. The first elements of this guidance material are contained in chapter 5 of this report. We anticipate producing further guidance material in response to stakeholder feedback to our proposal as we progress towards finalisation of the new framework.

A draft of the guidance material will be released with our final decision. We will consult on that document and finalise it in time for the first phase of implementation.

8.4 FINAL DECISION

Once the Commission has received and considered the comments and input from stakeholders, it is our intention to issue a final decision with sufficient time to allow the industry to adapt to the key features of the Payment Difficulty Framework.

We are aiming towards a final decision in later July – early August, with the first phase of implementation commencing on 1 January 2018.

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APPENDIX B - DRAFT AMENDMENTS TO ENERGY RETAIL CODE (PART THREE)

This appendix was originally published with a number error the amendments relating to clause 81 and clause 97. In both instances the subclause numbering should have started at 1. A corrected version was published on 16 May 2017.

Part 3 Assistance for residential customers anticipating or facing payment difficulties

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* 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 to 4), 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* anticipating or facing payment difficulties might reasonably expect to be offered by their *retailer* under this Part.

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*.

76 Standard assistance

- (1) A *retailer* must take steps to offer 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;
 - (e) paying any anticipated *arrears* over a period that is 3 times the length of the *customer's* billing period.

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 repay their *arrears* and lower their *energy* costs.

78 Application of this Division

- (1) This Division applies to all *residential customers* who are in *arrears*.
- (2) It also applies to any *residential customer* whose circumstances the *retailer* knows, or should reasonably have known, would be likely to lead to the *customer* being in *arrears*.

79 Minimum assistance

- (1) Tailored assistance consists of the following measures:
 - (a) repayment of *arrears* over a period of up to 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* within 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 and timely advice about any government and non-government assistance (including a Utility Relief Grant) 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 their pattern of *energy* use and payment history;
 - (ii) practical assistance to help the *customer* reduce their use of *energy*, based on the *retailer's* knowledge of their pattern of use and of the circumstances of where they live, unless the *retailer* knows, or reasonably believes, that there is no scope for action to be taken for that purpose;
 - (iii) information about how the *customer* is progressing towards lowering their *energy* costs given at sufficient intervals for the *customer* to be able adequately to 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.
- (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:
 - (a) they inform their *retailer*, or their *retailer* is informed by another person on their behalf, that they cannot pay the full cost of their on-going *energy* use; or
 - (b) their *retailer* knows, or reasonably believes, that they cannot pay that full cost.
- (4) The assistance mentioned in subclause (1)(f) is extendable for a further period or periods if the *retailer* has reason to believe that 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).

80 Payment arrangements

- (1) The *retailer* must accept a payment proposal or revised proposal put forward by a *residential customer* if it would result in their *arrears* being fully paid within 2 years after the first payment or any longer period that the *retailer* should reasonably consider necessary on taking into account the circumstances of the *customer* as required by clause 82.
- (2) On accepting a payment proposal or a revised proposal, the *retailer* must give the *customer* a written schedule of payments showing the date by which each payment must be made.
- (3) If a *residential customer* receiving assistance under this Division fails to make a payment towards their *arrears* by the date on which it was payable, the *retailer* must use its best endeavours to contact the *customer* to discuss their putting forward a revised payment proposal under this clause.

81 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 use its best endeavours to 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 at any time a *retailer* has reason to believe that 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 use its best endeavours to 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*.

82 Customer circumstances

In providing assistance to a *residential customer* in accordance with clause 79, and considering a payment proposal or revised proposal put forward by that *customer* under clause 80 or 81, a *retailer* must take into account all of the circumstances of the *customer* that are known, or should reasonably have been known, by the *retailer*.

Division 4 Default assistance

83 Objective

The objective of this Division is to give *residential customers* an entitlement to default assistance to repay their *arrears* over a fixed period.

84 Application of this Division

This Division applies to *residential customers* who are in *arrears* and have not put forward a payment proposal, or a revised proposal under clause 80 or 81, or have ceased to receive assistance under Division 3.

85 Default assistance

- (1) A *retailer* must make an offer in writing to a *residential customer* for payment of their *arrears* by equal monthly payments over a period that is 3 times the length of their current billing period.

Example:

The number of monthly payments would be:

- (a) 3 if the *customer* is on monthly billing; or
 - (b) 6 if the *customer* is on bi-monthly billing; or
 - (c) 9 if the *customer* is on quarterly billing.
- (2) On making an offer under subclause (1), the *retailer* must give the *customer* a

written schedule of monthly payments showing the date by which each payment must be made.

- (3) The first payment must be made by the date specified in the offer, which must not be earlier than one month after the payment date of the relevant bill, and no earlier than 2 weeks after the offer is made.
- (4) A customer who makes the first payment as mentioned in subclause (3) is to be taken to have accepted the offer if they have not previously expressly done so.

Division 5 Financial Hardship Policies

86 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*.

87 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, and to default assistance set out in Division 4, of this Part; and
- (c) any matters covered by guidelines or guidance notes published by the Commission in relation to those entitlements.

Division 6 Communications

88 Provision of general information to customers

- (1) *A retailer* must ensure that general information is readily available to *residential customers* about:
 - (a) the assistance available under Division 2, 3 or 4 and how to access that assistance; and
 - (b) the financial hardship policy of the *retailer*; and
 - (c) approaches to lowering *energy* costs; and
 - (d) government and non-government assistance (including a Utility Relief Grant) that may be available to help with meeting *energy* costs.
- (2) *A retailer* must ensure that information under subclause (1) is made available in

such a way that a *residential customer* accessing information relating to the assistance available under a particular Division can readily access information relating to the assistance available:

- (a) under each other Division under which assistance is available; and
 - (b) under the *retailer's* financial hardship policy.
- (3) Without limiting the means by which information may be made readily available, information is readily available for the purposes of subclause (1) if:
- (a) it is easily accessible on the *retailer's* website in a readily printable form; or
 - (b) it is sent by email or other electronic means to any *residential customer* who, in the course of telephone contact with the *retailer* (irrespective of who initiated the contact) requests or consents to receiving information from the *retailer* electronically.

89 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) If delivery in the ordinary course of post would not ensure that the written communication is received in a timely manner having regard to its nature, the *retailer* must make other appropriate arrangements to ensure its timely delivery.
- (4) Without limiting subclause (3), if the written communication is a *disconnection warning notice* or otherwise relates to *de-energisation or disconnection* of the *customer's* premises, the *retailer* must take steps to ensure that the communication is delivered within 24 hours after it is sent.
- (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.

90 Effect of this Division

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

Division 7 Miscellaneous

91 Retailer obligations

At all times while a *residential customer* is receiving assistance under this Part, the *retailer*:

- (a) must work cooperatively with any government or non-government service, including the Energy and Water Ombudsman (Victoria), that the *retailer* knows is providing support to the *customer* to ensure that the assistance being provided by the *retailer* complements, and is provided in a coordinated way with, that support; and
- (b) must, in relation to any *customer*, comply with any guideline published by the *Commission* relating to *customers* in particular payment difficulty, including *customers* who may be subject to family violence, if the *retailer* knows or ought reasonably to have known that the guideline was relevant to the *customer*; and
- (c) is not required to continue to provide assistance under this Part if the *retailer* becomes aware that the *customer* is not anticipating or facing payment difficulties.

92 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.

93 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.

94 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 unless compliance 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 is a condition of the sale or disposal.

(4) Waiver of debt

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

95 Supply capacity control product

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

96 Restriction on transfer to another retailer

Without limiting clause 57, a *retailer* who receives a request for the transfer under the relevant *Retail Market Procedures* of a *residential customer* of the *retailer* whose repayment of *arrears* is on hold under clause 79(1)(f)(i) must in accordance with the *Retail Market Procedures*:

- (a) object to the transfer; or
- (b) if the *retailer* only becomes aware of the request after the time for objecting has passed, immediately seek to have the transfer reversed.

97 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*.

APPENDIX C - DRAFT AMENDMENTS TO ENERGY RETAIL CODE (CONSEQUENTIAL AMENDMENTS)

This appendix was originally published with an error in amendment C11. Amendment C11(g) originally referred subclause 1(e) when it should instead have referred to 3(c). A corrected version was published on 16 May 2017.

C1 - Amendment of clause 3 (definitions)

In clause 3:

- (a) omit the definition of *hardship customer*;
- (b) in paragraph (g) of the definition of *life support equipment*, for “of gas” substitute “of electricity or gas”;
- (c) for the definition of *payment plan* substitute:

“payment plan, in relation to a small customer (other than a residential customer anticipating or facing payment difficulties who is receiving assistance under Part 3), means a plan for the customer to pay a retailer, by periodic instalments in accordance with this Code, any amounts payable by the customer for the sale and supply of energy;”

- (d) insert the following definition:

“arrears, in relation to a residential customer facing payment difficulties who is receiving assistance under Part 3, means the sum of any amounts payable by the customer under one or more bills that are unpaid as at the bill issue date for a subsequent bill;”

C2 - Amendment of clause 18 (pre-contractual request to designated retailer for sale of energy (SRC))

In clause 18(7)(a), after “clause 111” insert “or 111A”.

C3 - Amendment of clause 32 (payment methods)

In clause 32(2), for “clause 74” substitute “clause 97”.

C4 – Repeal of clause 33 (payment difficulties (SRC and MRC))

Clause 33 is repealed.

C5 - Amendment of clause 34 (shortened collection cycles (SRC and MRC))

In clause 34:

(a) after subclause (1) insert:

“(1A) A retailer may place a *residential customer* facing payment difficulties on a shortened collection cycle in accordance with Part 3.”;

(b) in subclause (2)(a), for “experiencing” substitute “facing”;

(c) after subclause (4) insert:

“(1A) Subclauses (3) and (4) do not apply to a *residential customer* facing payment difficulties placed on a shortened collection cycle in accordance with Part 3.”.

C6 - Amendment of clause 40 (requirement for security deposit (SRC and MRC))

For clause 40(3)(a) and (b) substitute:

“(a) is a *residential customer* receiving assistance under Division 3 or 4 of Part 3; or”.

C7 - Amendment of clause 56 (provision of information to customers)

Before clause 56(1)(a) insert:

“(aa) the entitlements of *customers* anticipating or facing payment difficulties to assistance from the *retailer*; and”.

C8 – Amendment of clause 108 (definitions)

In clause 108, for the definition of *reminder notice period* substitute:

“*reminder notice period*:

(a) in relation to a *residential customer*, means the period that starts on the date of issue to the *customer* of a *reminder notice* under clause 109 and ends 6 *business days* after the date of issue of the *reminder notice*; and

- (b) in relation to any other *small customer*, means the period that starts on the date of issue to the *customer* of a *reminder notice* under clause 109, which must be no earlier than the next business day after the *pay-by date*, and ends no earlier than 6 *business days* after the date of issue of the *reminder notice*.”.

C9 - Clause 109 substituted

For clause 109 substitute:

110 Reminder notices—retailer

- (5) A *reminder notice* is:
 - (c) for a *residential customer*, a written notice with the heading ‘Reminder Notice’ prominently displayed on it issued by a *retailer* to the *customer* to remind the *customer* that payment of a bill is required; and
 - (d) for any other *small customer*, a notice issued by a *retailer* to the *customer* after the *pay-by-date* for a bill to remind the *customer* that payment is required.
- (6) The purpose of a *reminder notice* to a *residential customer* is to remind the *customer* of their obligation to pay the bill and to give them clear and unambiguous information about the assistance to which they are entitled if they are facing payment difficulties.
- (7) A *retailer* must not issue a *reminder notice* to a *residential customer* who has put forward a payment proposal or revised proposal in accordance with clause 80 or 81 that the *retailer* is required to accept under clause 80(1) unless the *residential customer* has failed to make a payment by the date on which it was payable under the proposal or revised proposal.
- (8) A reminder notice must:
 - (f) state the date of its issue; and
 - (g) state the date on which the *reminder notice period* ends; and
 - (h) state that payment of the bill is required to be made before the end of the *reminder notice period*; and
 - (i) in the case of a *residential customer*, give information expressed in plain language about the assistance available under Part 3 to help *customers* facing payment difficulties and how to access that assistance; and
 - (j) give details of how to contact the *retailer* in connection with a complaint or dispute.”.

C10 – Amendment of clause 110 (disconnection warning notices)

In clause 110:

- (a) after subclause (1) insert:

“(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.”;

- (b) after subclause (2)(b) insert:

“(ba) if the customer is a *residential customer* facing payment difficulties who is receiving assistance under Part 3:

- (i) state the form of assistance that the *customer* is receiving; and
- (ii) give an explanation in plain language of the notice and of why it is being issued; and
- (iii) 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”.

C11 – Amendment of clause 111 (de-energisation for not paying bill)

In clause 111:

- (a) in the heading to the clause after “**bill**” insert “(small customer who is not a residential customer facing payment difficulties)”;
- (b) in subclause (1) for “a *customer*’s premises” substitute “the premises of a *small customer* (other than a *residential customer* facing payment difficulties who is receiving assistance under Part 3)”;
- (c) subclause (1)(b) is repealed;
- (d) in subclause (1)(e) for “, or to agree to the offer or to adhere to the *payment plan* or instalment arrangement as referred to in paragraphs (a)(ii) and (b)(ii)” substitute “or to adhere to the *payment plan* referred to in paragraph (a)(ii)”;
- (e) subclause (2) is repealed;
- (f) in subclause (3) for “a *customer*’s premises” substitute “the premises of a *small customer* (other than a *residential customer* facing payment difficulties who is receiving assistance under Part 3)”;
- (g) in subclause (3)(c) for “, or to agree to the offer or to adhere to the *payment plan* or instalment arrangement as referred to in subclause

(1)(a)(ii) and (b)(ii)” substitute “or to adhere to the *payment plan* referred to in subclause (1)(a)(ii)”;

- (h) delete the Note at the foot of the clause beginning “Further guidance” and ending “Wrongful Disconnection.”.

C12 – Clause 111A inserted

After clause 111 insert:

“111A Residential customer facing payment difficulties only to be disconnected as a last resort

A retailer may only arrange *de-energisation* of the premises of a *residential customer* facing payment difficulties if:

- (a) the *retailer*:
- (i) has provided, or used their best endeavours to provide, the *customer* with the assistance that they are entitled to receive under Part 3; and
 - (ii) has issued a *reminder notice* to the *customer*; and
 - (iii) has issued a *disconnection warning notice* to the *customer*; 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
- (b) the *customer*:
- (i) while receiving tailored assistance under clause 79, has failed to make a payment by the date on which it was payable, has not put forward a revised payment proposal and does not have an entitlement mentioned in clause 79(3); 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 revised payment proposal; or
 - (iii) while receiving default assistance under Division 4, has neither complied with the terms of that assistance nor contacted the *retailer* to exercise an option for tailored assistance under Division 3; and
- (c) the *customer* has refused or failed to take any 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).

C13 – Amendment of clause 116 (restrictions on de-energisation)

For clause 116(1)(d) substitute:

“(d) where the customer is a *residential customer* facing payment difficulties who is receiving assistance under Part 3 and is complying with the terms of that assistance; or”.

C14 – Amendment of Schedule 1, clause 10.3 (difficulties in paying)

In Schedule 1, for clause 10.3 substitute:

“10.3 Difficulties in paying

If you have difficulties paying your bill, you should contact us as soon as possible. We will provide you with information about your entitlements as a Victorian energy customer.”.

C15 - Amendment of Schedule 1, clause 14.1 (when can we arrange for disconnection?)

In Schedule 1, for clause 14.1(a) substitute:

“(a) you do not pay your bill by the *pay-by-date* or, if you are a *residential customer* receiving assistance under Part 3 of the Energy Retail Code, you fail to make a payment or otherwise do not comply with the terms of that assistance; or”.