



15 June 2017

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

By email: paymentdifficulties@esc.vic.gov.au

Dear Sir/Madam

Re: ESC's Payment Difficulty Framework - New Draft Decision

Thank you for the opportunity to comment on the Essential Services Commission's (ESC) *Payment Difficulty Framework - New Draft Decision* (the proposed framework).

The Energy and Water Ombudsman (Victoria) (EWOV) is an industry-based external dispute resolution scheme that helps Victorian energy or water customers by receiving, investigating and resolving complaints about their company. Under EWOV's Charter¹, EWOV resolves complaints on a 'fair and reasonable' basis and is guided by the principles in the Commonwealth Government's *Benchmarks for Industry-based Customer Dispute Resolution*².

In the context of our dispute resolution role, EWOV welcomes the retailer minimum standards within the Draft Decision. In our casework, we often find that the hardship support provided to customers is inconsistent across retailers³. Greater consistency in the base support that a retailer must provide to a customer in payment difficulty will, over time, lead to a more effective complaint resolution process and better customer service experience. However, there are important aspects of these minimum standards that EWOV believe need to be clarified in the ESC's foreshadowed Guidance Notes. Therefore our submission aims to highlight some areas of the proposed framework that might lack clarity.

'Best endeavours to contact'

The phrase 'best endeavours to contact' is used in several clauses of the proposed Code when describing the effort a retailer must undertake to contact and engage with a customer. In particular, it is used as the customer contact standard for Tailored Assistance in Division 3 of the proposed Code (clauses 80(3), 81(2) and 81(3)) and a requirement after the

¹ See Clause 5.1 of EWOV's Charter <https://www.ewov.com.au/files/ewov-charter.pdf>

² See <https://www.ewov.com.au/about/who-we-are/our-principles>

³ See pages 15-22 - <https://www.ewov.com.au/publications/a-closer-look-at-affordability/201503>





issue of the disconnection warning notice to the customer (clause 111A(a)(iv)). ‘Best endeavours’ is therefore a condition that retailers must twice meet before a customer can be disconnected from their energy supply. Because of this, we believe that the ESC should issue clear and comprehensive Guidance Notes so retailers can precisely understand this obligation and EWOV can effectively assess a retailer’s compliance with the *Energy Retail Code* prior to disconnecting a customer.

The quality of the endeavour is particularly important where a customer may be unengaged with their retailer - despite payment problems. We recognise the difficulty in developing a definition for ‘best endeavours to contact’ as it can limit, rather than clarify what is expected of retailers. However, by using the word ‘best’ (rather than other words such as ‘reasonable’) EWOV believes that the ESC purposefully drafted a high standard of effort that retailers should take to contact and engage with their customers. In EWOV’s assessments of retailer compliance with the *Energy Retail Code* prior to disconnecting a customer, we found that, while their attempts could be interpreted as reasonable, some retailers did do their ‘best’ to contact the customer. For example some retailers:

- failed to contact a customer within the month prior to the disconnection - that is, the last contact or attempted contact was more than 30 days before the disconnection (WDP/2016/686)
- persistently called a telephone number that did not have a voicemail facility and yet did not send a letter or SMS to the customer instead (WDP/2016/1035)
- called or sent an SMS to an old telephone number or disconnected telephone number (WDP/2016/570)
- failed to keep a record of the registered post letters sent to the customer (WDP/2016/994).

Further, we also understand that under the proposed framework, the ‘best endeavours’ standard would dictate the length of time for which a retailer would try to contact the customer to offer Tailored Assistance. This is a new ‘best endeavours’ requirement, not in the current Version 11 of the Code. Under the existing framework, ‘best endeavours’ is interpreted in Appendix A 2(i) of the *Operating Procedure Compensation for Wrongful Disconnection*⁴ to mean “over a 2-3 day period and not more than a month prior to the disconnection”. We suggest the ESC consider whether this short period is now an appropriate length of time during which retailers should attempt to provide Tailored Assistance under the proposed new framework.

EWOV believes this time frame should be a balance between both the reasonable time needed to attempt to effectively engage a customer and the retailer’s entitlement to

⁴ See <http://www.esc.vic.gov.au/document/energy/30346-operating-procedure-compensation-for-wrongful-disconnection-2/>





payment of an overdue account. From experience, we understand and appreciate the complexity in maintaining engagement with customers to assist them through their payment difficulty.

In the absence of a Guidance Note, under the proposed framework a retailer could choose to have a ‘best endeavours’ period of offering Tailored Assistance of only a single day. We believe that such a short period would be unreasonable and unrealistic, resulting in the processing of unengaged customers quickly towards disconnection.

EWOV therefore seeks clarity on this point through an ESC Guidance Note that sets out the time period within which a retailer must make its ‘best endeavours’ to offer Tailored Assistance to a customer. It would also be helpful if the Guidance Note set out what best endeavour efforts might look like in practice and in particular customer circumstances. Or what efforts the ESC considers would not meet the standard of ‘best endeavours’.

Incorporation of the Operating Procedure Compensation for Wrongful Disconnection

In section 5.10 of the Draft Decision, the ESC proposes to migrate the standards of conduct within the *Operating Procedure Compensation for Wrongful Disconnection*⁵ into the new *Energy Retail Code* and new Guidance Notes (Payment Difficulty and Disconnections). EWOV is working with the ESC to ensure that all relevant clauses are properly transitioned into the new framework.

As outlined earlier, these changes will create new areas for EWOV in interpreting a retailer’s conduct for the purposes of compliance with the *Energy Retail Code* prior to disconnecting a customer. We expect that Guidance Notes will help simplify these areas so that there is sufficient clarity and certainty, for both retailers and EWOV, in making our assessments. We also welcome the ESC’s commitment to a simpler EWOV referral process for clarifying the intent of clauses in the new *Energy Retail Code*.

The “steps” to offer Standard Assistance

EWOV seeks greater clarity from the ESC around the clause 76(1) Standard Assistance payment options. It reads:

76 (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.

⁵ See <http://www.esc.vic.gov.au/document/energy/30346-operating-procedure-compensation-for-wrongful-disconnection-2/>





We enquire what the “steps to offer” will entail in practice. The steps could involve retailers actively putting information about the various Standard Assistance payment options on their customer communications materials, such as bills, notices or website. Or the steps could be less proactive. For example, a retailer could wait for a customer to contact them with a payment issue, before communicating the available payment options.

EWOV finds that in practice it can be a challenging experience for customers to make first contact about their payment difficulties. This view is supported by the findings of the ESC’s *Energy Hardship Inquiry Final Report - Supporting Customers, Avoiding Labels (February 2016)* which recommended the development of customer ‘self-service’ options to manage any anticipated payment problems⁶. The ESC hoped that this would encourage customers to self-identify and manage their payment difficulty.

Customers also tell us about their difficulty getting through to their retailer by telephone or being left on hold for too long, and when they do get through, not being able to speak to the right person to help them. We are also sometimes told by customers that retailer contact staff would not listen or understand their payment concerns, and show a lack of empathy⁷.

EWOV believes that the proposed framework should encourage retailers to make early contact and give proactive support to customers having payment difficulties. We also believe that early engagement by retailers helps to mitigate the future accrual of customer debt and reduces unnecessary expenses on debt recovery⁸.

Accordingly, we think it would be useful if the “steps to offer... standard assistance” could be clarified in the ESC’s Guidance Note - Payment Difficulty so that retailers can understand what it means in practice.

The level of “practical assistance” to help customers reduce energy

EWOV believes that an effective way to reduce a customer’s bill is to work directly with them to understand and manage their home energy use. As highlighted by the ESC, the current level of retailer energy management support to customers is low⁹. This analysis is supported by EWOV’s case experience, where we find that retailer over-the-phone energy efficiency advice and retailer home energy audits are rare. EWOV therefore welcomes the return of an energy management provision into the new version of the Code (after being removed in Version 11) to encourage retailer and customer collaboration towards reducing

⁶ See pages 51 and 66-78 - <http://www.esc.vic.gov.au/document/energy/30396-energy-hardship-inquiry-final-report/>

⁷ See page 11 - <https://www.ewov.com.au/publications/a-closer-look-at-affordability/201503>

⁸ See page 11 - <https://www.ewov.com.au/publications/a-closer-look-at-affordability/201503>

⁹ See page 60, <http://www.esc.vic.gov.au/document/energy/53789-payment-difficulty-framework-new-draft-decision/>





household energy use. In pages 9 and 10 of EWOV's submission to the previous ESC Draft Decision¹⁰, we provide detail about how we undertake home energy audits, including examples of customer outcomes.

Supporting customers to reduce their energy use is dealt with in Clause 79 (1)(e)(ii) of the Tailored Assistance support, which reads:

79 (1)(e)(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.

To help retailers provide support to customers, EWOV believes that Clause 79 (1)(e)(ii) would benefit from a clear Guidance Note about the meaning of 'practical assistance' to help retailers understand how to deliver adequate and effective methods of energy management support. We would also welcome the ESC's view on what it considers to be insufficient practical assistance – possibly with examples, if relevant. Such clarity would also help EWOV in its assessments of retailer compliance with the *Energy Retail Code* prior to disconnecting a customer.

EWOV is also concerned about the phrase in Clause 79 (1)(e)(ii) "...unless the retailer knows, or reasonably believes, that there is no scope for action to be taken for that purpose." We agree that the quality and circumstances of a customer's housing can prevent the further reduction of their energy use. However, we believe that this is something that can only reasonably be determined on an individual basis and only after some meaningful conversation with the customer. For example, it would be unreasonable to apply this characterisation to a group of customers, such as Office of Housing residences with old heating appliances. We think that retailers should make an assessment on an individual basis and in collaboration with the customer. We therefore believe that a clear Guidance Note is needed to help retailers understand the efforts they should make in assessing a customer's ability to reduce their energy use. Further, some clarity about how a retailer should demonstrate its decision would maintain accountability and help EWOV assess retailer compliance with the *Energy Retail Code* prior to disconnecting a customer.

The meaning of 'specific and timely advice'

EWOV believes that effective advice to customers about the assistance available at other organisations is a key element of the Tailored Support entitlement. When a retailer effectively refers a customer to a support agency (such as a financial counsellor or family violence services) it helps to enable that customer to deal with issues affecting their broader

¹⁰ See pages 9-10 - <https://www.ewov.com.au/files/ewov-comments-on-safety-net-for-victorian-energy-consumers-facing-payment-difficulties.pdf>





circumstances. In an energy retail context, this can empower customers to better manage their energy use and household bills, and foster an engaged relationship with their retailer. An example of addressing customers' wider circumstances is the recent development in the water sector around implementing policies to support and protect customers experiencing family violence¹¹.

Under the proposed clause 79(1)(d) Tailored Assistance consists of:

79(1)(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.

In our assessments of retailer compliance with the *Energy Retail Code* prior to disconnecting a customer we sometimes find that information about the Utility Relief Grant was not given to customers in payment difficulty. We therefore welcome the words "specific and timely advice", which we believe makes it clear to retailers about the standard and timing of their advice and to customers about their entitlement.

However, we anticipate that questions about timeliness and specificity will be discussion points during our assessments. While not seeking exact timeframes on the delivery of advice or prescription around the quality of advice, we think it would be helpful if the ESC offered some direction in its Payment Difficulty Guidance Note about the sufficiency of this support measure and how it would operate in practice.

The transition of customers with high debt levels

Under section 7.3.2 of the Draft Decision, customers on a retailer's current hardship program who remain in payment difficulty should not be transitioned to the new framework until "the customer and their retailer form a shared view that outstanding arrears can be paid off within two years."

EWOV commonly assists customers with high levels of existing arrears. EWOV disconnection and payment difficulties Investigations¹² closed between 1 January 2017 and 31 May 2017 show residential customers contacted us with mean average arrears of \$2,708 (and median average arrears of \$1,692). With arrears at this level, coupled with entrenched payment problems, it would be difficult for many customers to pay off arrears within two years.

¹¹ See <http://www.esc.vic.gov.au/document/water/53784-moving-towards-better-practice-implementing-family-violence-policies-victorian-water-sector-may-2017/>

¹² All EWOV Investigations with Credit > Disconnection and Credit > Payment Difficulties as the main EWOV issue category





An unintended consequence of this provision might be that some customers remain for some time on an 'old' hardship program with a lower standard of support, rather than quickly transitioning across to the new framework. On the other hand, we expect that retailers will not want the cost and inefficiency of concurrently operating two hardship 'programs' in tandem with each other. This is a clear incentive to efficiently move all customers into a single system. EWOV wonders whether this consequence might mean that retailers look to innovative ways to help existing hardship customers pay their arrears, such as payment incentive plans and debt waivers, which we sometimes see in our casework.

The reminder notice timeframe

Clause 109(1) in the proposed new Code reads:

109(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.

As the action in sub-clause 109(1)(a) is not explicitly anchored to a timeframe, we enquire whether the wording of this clause creates the unintended consequence that a reminder notice could be sent before the due date of the associated bill? Accordingly, should sub-clause 109(1)(a) include the words 'after the pay-by-date' like sub-clause 109(1)(b)?

KPMG's preliminary analysis of impact on EWOV

Section 6.6.5 of the Draft Decision sets out KPMG's preliminary analysis of the impact over time of the proposed framework on EWOV. It correctly identified that EWOV's costs are mainly affected by the volume and complexity of the cases we receive. KPMG suggests that impacts on EWOV will vary over time – with an increase in case work after implementation of the framework, which will then reduce over the medium term. In a broad sense, we accept this analysis.

Yet a cautionary note should be made. There is a risk that inadequate management of the transition to the proposed framework could compound the case impact on EWOV and the associated costs. We hope that any case increases to EWOV will be minimised through a smooth transition of retailer systems and processes, so that customers are not affected by systems issues that could have been avoided. Previously, some Victorian customers were impacted by energy retailer system changes that were implemented to transition from Version 10A to Version 11 of the Energy Retail Code. For example, EWOV has investigated





potential systemic issues where retailer reminder notices did not provide a long enough timeframe, possibly leading to supply disconnections.

We trust that these comments are useful. Should you require further information or have any queries, please contact Justin Stokes, Senior Research and Communications Advisor on

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cynthia Gebert'.

Cynthia Gebert
Energy and Water Ombudsman (Victoria)

