



Helping people to stay connected

Submission to the Essential Services Commission – New draft decision on a payment difficulty framework for energy customers

June 2017

About VCOSS

The Victorian Council of Social Service (VCOSS) is the peak body of the social and community sector in Victoria. VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups, and individuals interested in social policy. In addition to supporting the sector, VCOSS represents the interests of vulnerable and disadvantaged Victorians in policy debates and advocates for the development of a sustainable, fair and equitable society.

This submission was prepared for VCOSS by Emma O'Neill.

Authorised by:

Emma King, Chief Executive Officer

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Victorian Council of Social Service

For enquiries:

Llewellyn Reynders, Policy Manager

VCOSS acknowledges the traditional owners of country and pays its respects to Elders past and present.

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Executive summary

It is increasingly tough to stay connected to power. Energy price rises are outpacing record low wage growth and inadequate income support payments. For many households on low incomes, there simply isn't enough money to keep up with power bills, especially once high housing costs are added to the mix. Reflecting these pressures, disconnection rates remain high in Victoria, with nearly 20,000 Victorians cut-off from energy supply in the last half of 2016.

Support for people in payment difficulty is therefore more important than ever. The Essential Services Commission has proposed new entitlements to help customers manage arrears and ensure disconnection is a measure of last resort. These are minimum entitlements that all energy retailers must offer their customers.

VCOSS generally supports these new rights for people struggling to pay their power bills. They will give customers the flexibility to develop affordable, realistic payment plans, change payments in response to unexpected expenses and further energy price rises, and receive advice to lower household energy costs.

However, the framework can be strengthened in some areas.

In particular, all customers receiving 'tailored assistance' (the main form of support under the framework) should be entitled to information about the energy offer that will help to minimise their energy costs. This will make arrears payments more manageable and better ensure disconnection is a measure of last resort.

Some key parts of the framework also require further development in consultation with stakeholders, especially the triggers for customer assistance (which may require a change to the proposed definition of arrears), and the use of payment arrangements that combine arrears and ongoing energy costs. It is important the framework does not lead to confusing, unmanageable payment arrangements that may cause customers to disengage and risk disconnection.

VCOSS looks forward to working with other stakeholders and the ESC to further strengthen the proposed reforms.

Recommendations

Triggers for assistance

- The ESC hold a technical workshop to discuss alternative definitions of ‘arrears’ or other triggers for assistance under the framework.

Standard assistance

- ‘Standard assistance’ be amended so that customers are entitled to general information about how to lower energy costs, and advice about the retailer’s energy offer that is most likely to minimise the person’s energy costs, based on the person’s pattern of energy use and payment history, where this is known to the retailer.
- The ESC convene a customer focus group to explore the best ways for retailers to promote standard assistance to customers, and develop guidance to retailers on best practice methods.

Tailored assistance

- The ESC convene a customer focus group to explore the best ways for retailers to promote tailored assistance to customers, particularly customers at risk of falling into arrears, and develop guidance to retailers on best practice methods.
- ‘Tailored assistance’ be amended so that all customers receiving this support are entitled to information about the energy offer most likely to minimise their energy costs, and information about concessions.
- The ESC hold a technical workshop to discuss the use of combined arrears and ongoing energy cost payments under tailored assistance and default assistance.

Protections against disconnection

- The ESC clarify in clause 111A whether a customer can only be disconnected after not taking up or failing tailored assistance, and not taking up or failing default assistance.

Background

The Victorian Council of Social Service thanks the Essential Services Commission (ESC) for the opportunity to comment on its new draft decision on a payment difficulty framework for energy customers. The latest proposed framework replaces the framework previously proposed by the ESC in October 2016, which was strongly opposed by VCOSS and its members. The community sector was particularly concerned the previous draft framework would lead to more disconnections, because it could not accommodate the severe income constraints faced by many Victorians. In a significant shift, the ESC has removed payment instalment prescriptions, strict time limits on payment plans, and the use of prepayment as a last resort measure for people in great payment difficulty. Hardship policies will also be retained.

VCOSS welcomes the new policy intent of the latest proposed framework, which shows greater appreciation of the financial stresses faced by people on low incomes. It gives customers flexibility to develop affordable, realistic payment plans, change payments in response to unexpected expenses and further energy price rises, and receive advice to lower household energy costs.

The new policy intent is particularly necessary in the current environment, where energy prices are outpacing record low wage growth and inadequate income support payments.¹ Victorian standing offers increased by 6-10 per cent in January 2017. Wholesale prices are forecast to rise over 2017, which will flow through to retail prices.² Other cost of living pressures, including severe housing stress among people on low incomes³ and very high household debt levels,⁴ are making it increasingly difficult to manage bill payments. The proposed framework provides an important set of entitlements in this context.

The framework is premised on customer engagement with retailers, which creates disconnection risks for people who cannot engage for reasons beyond their control, including language barriers, family violence, major health problems, and chaotic living circumstances. The framework also does not address situations where people cannot afford ongoing energy use at all. These problems need to be tackled through policy measures beyond the current ESC review, and will require coordinated action by government, the community sector and retailers.

¹ South Australian Council of Social Service, SACOSS *Cost of Living Update*: No. 30, March Quarter 2017, 2017; Australian Bureau of Statistics, Wage Price Index, March Quarter 2017, cat. no. 6345.0.

² Australian Energy Regulator, *State of the Energy Market*, May 2017, 2017, 131.

³ Councils of Social Service, *Payment adequacy: A view from those relying on social security payments*, 2015, 10; The Salvation Army, *Economic and Social Impact Survey 2017: The Hard Road*, 2017, 23.

⁴ Reserve Bank of Australia, Chart pack: household sector, 7 June 2017; Reserve Bank of Australia, *Financial Stability Review*, April 2017, 12 April 2017, 31.

Framework purpose

VCOSS welcomes the proposed purpose of Part 3 of the Energy Retail Code, which is to:

set out 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.

The previous draft purpose was very much focused on minimising debt. We welcome the new focus on ensuring disconnection is a measure of last resort, which accords with the hardship inquiry's terms of reference, the ESC's legislative obligations, and community sector concerns about Victoria's high disconnection levels.⁵

Preventing disconnection clearly involves avoiding or managing arrears, as the ESC notes in its draft decision, and we welcome the policy statement on how customers can be supported to avoid or manage their arrears, which involves providing people with:

- payment arrangements that allow them to repay outstanding amounts in a way that accords with their financial resources
- assistance to lower their energy costs by i) lowering the price of the energy they are purchasing and ii) assisting them to sustainably lower their use of energy
- access to government and non-government support services that may assist customers to address their broader financial circumstances.⁶

VCOSS also supports the express aim to assist customers *anticipating* payment difficulties. The work of VCOSS members such as Kildonan UnitingCare shows early intervention can be critical in preventing the accumulation of unmanageable debts and disconnection. To properly anticipate payment difficulties, retailers will not only have to analyse their own data collections but improve business practices, where necessary, so people can confidently approach them about likely payment difficulties and stay engaged. This requires skilled, adequately resourced customer service teams, and staff training and regulatory guidance on how to have respectful, productive conversations with vulnerable customers. This is vital to retailers' framework implementation. Unless retailers get the conversation right and encourage customer engagement, the minimum assistance standards will be far less effective. We comment on this further below, including the need for separate ESC guidance on retailer/customer communications.

⁵ Essential Services Commission, *Victorian Energy Market Report: July—December 2016 Update*, March 2017, 13; Essential Services Commission, *Victorian Energy Market Report 2015-16*, November 2016, 37.

⁶ Essential Services Commission, *Payment Difficulty Framework: New Draft Decision*, May 2017, 30-31.

Triggers for assistance

Under the proposed framework, the trigger for most assistance is being in arrears, or, in the case of ‘tailored assistance’, being at risk of arrears (specifically, where the customer has circumstances the retailer knows, or should reasonably have known, would be likely to lead to arrears). The definition of arrears is therefore very important. As currently drafted, arrears are the amounts owing “*under one or more bills that are unpaid as at the bill issue date for a subsequent bill.*” This seems to mean a person will only be in arrears if they still owe money as at the date of the next bill. For example, a person who has not paid their quarterly electricity bill will not be in arrears until approximately three months after the initial bill was issued. We appreciate the ESC has adopted this definition of arrears in order to avoid over-capture of late payers who do not in fact need assistance, and who will settle payments with only minimal retailer intervention.

Nonetheless, the current definition of arrears disadvantages people on quarterly billing cycles, and high-consumption households on monthly billing cycles, who may not receive assistance until large debts are building up. This works against the principle of early intervention advocated by VCOSS members. We acknowledge this problem can be somewhat addressed by the requirement to provide tailored assistance to people at risk of arrears. We support this requirement. However, the success of this requirement will depend on how proactively retailers identify this risk, the extent of guidance to assist retailers in interpreting this requirement, and how confident and comfortable people feel about alerting their energy retailer to looming payment difficulties.

VCOSS is keen for further discussion about alternative definitions of ‘arrears’ or other triggers for assistance, which can include consideration of the alternatives raised at the 29 May 2017 stakeholder forum held by the ESC, such as the reminder notice being the trigger for an entitlement to tailored assistance. We seek a technical workshop with other community organisations, retailers and EWOV specifically on this topic.

If the ESC does adopt the current definition in its final decision, it will need to be closely evaluated, along with the retailer requirement to assist customers at risk of arrears, to ensure their operation supports early intervention in payment difficulties.

Recommendation

The ESC hold a technical workshop to discuss alternative definitions of ‘arrears’ or other triggers for assistance under the framework.

Standard assistance

'Standard assistance' involves a range of supports that retailers must offer to all customers, regardless of whether they are in arrears or not. Retailers must offer at least three of the specified forms of assistance, which include bill smoothing, options for making payments at different intervals (e.g. fortnightly payments) and bill extensions.

VCOSS welcomes upfront supports to help people avoid getting into arrears. We also support the removal of restrictions that applied in the previous draft decision, which limited the assistance available to people who had received disconnection warning notices within the previous 12 months.

The proposed forms of assistance are focused on payment arrangements. While these are certainly welcomed, they need to be augmented by proactive strategies such as:

- general information about how to lower energy costs. We appreciate more specific and personalised advice about lowering energy costs, and practical assistance to help a person reduce energy use, should be reserved for people receiving tailored assistance
- advice about the retailer's energy offer that is most likely to minimise the person's energy costs, based on the person's pattern of energy use and payment history, where this is known to the retailer.

Recommendation

'Standard assistance' be amended so that customers are entitled to general information about how to lower energy costs, and advice about the retailer's energy offer that is most likely to minimise the person's energy costs, based on the person's pattern of energy use and payment history, where this is known to the retailer.

In relation to extended bill pay-by dates, we note the standard extension periods offered by retailers may need to distinguish between different billing cycles. We otherwise support the ESC's draft guidance on this form of assistance, which should help guard against token extension periods that do little to assist people. The draft decision notes a retailer's standard extension period would need to be consistent with the objective of helping a customer avoid arrears. Further, we welcome the ESC's guidance that in deciding whether to offer a longer extension period to an individual customer, or offer an extension for more than one bill in a 12-month period, the ESC would expect a retailer to do so consistently with the objective of assisting the customer to avoid arrears.

Further down the track, it would be helpful for the ESC to develop guidance about the ideal points in time at which information about standard assistance should be provided, and the forms this

information should take. VCOSS received differing feedback from members on this issue. Some suggested this information be provided upfront, when people sign-up to energy contracts, while others said that providing additional information at this stage would further confuse and stress people when they are already trying to understand the complicated information put to them by retailers about energy offers and contracts. This is particularly the case for people with other stresses in their lives, low literacy levels, and people from culturally and linguistically diverse backgrounds. ‘Information overload’ could make people disengage and simply accept any offer proposed to them by the retailer, eroding the requirement for explicit informed consent. With these dangers in mind, some members proposed retailers should provide information about standard assistance in a separate leaflet that would accompany bills. It was noted website information alone would be insufficient, given barriers to internet access and lower computer literacy levels among people on low incomes.⁷ VCOSS proposes the ESC convenes a customer focus group to explore the best ways of promoting information about standard assistance.

Recommendation

The ESC convene a customer focus group to explore the best ways for retailers to promote standard assistance to customers, and develop guidance to retailers on best practice methods.

⁷ In 2010-11, only 55 per cent of households in the lowest income quintile had internet access: Australian Bureau of Statistics, Household Use of Information Technology, Australia, 2010-11, cat. no. 8146.0.

Tailored assistance

'Tailored assistance' is the main support for people in arrears, or at risk of arrears (that is, where the customer has circumstances the retailer knows, or should reasonably have known, would be likely to lead to arrears). VCOSS welcomes the customer entitlements under tailored assistance, which should help people to develop affordable payment plans in the face of rising energy prices and other cost of living stresses, particularly housing costs.

Under tailored assistance, people will be able to pay off their arrears over two years, or a longer period where the retailer reasonably considers this necessary taking into account the customer's circumstances. People will also be entitled to advice from their retailer about:

- payment options enabling them to repay their arrears within two years
- the likely cost of their future energy use and how this cost may be lowered
- government and non-government assistance available to help people meet their energy costs.

People will be able to revise their payment arrangements if necessary. In advising a customer about payment options, and considering customers' payment proposals or revised proposals, retailers will have to take into account the customer's circumstances, where these are known, or should reasonably have been known, by the retailer.

Additional assistance will be available to people who cannot pay the full cost of ongoing energy use. People will be able to put their arrears on hold for at least six months and over this time pay less than the full cost of ongoing energy use. This assistance can be extended beyond six months if the retailer has reason to believe the extension would help a person to continue to lower their energy costs. People who cannot pay the full cost of ongoing energy use will also be entitled to:

- advice about the energy tariff most likely to minimise their energy costs, based on the retailer's knowledge of their pattern of energy use and payment history
- practical assistance to help a person reduce their energy use
- information about how a customer is progressing towards lowering their energy costs.

VCOSS supports this assistance for customers who cannot pay the full costs of energy use.

Availability of tailored assistance

VCOSS welcomes support for people at risk of arrears, which will require retailers to intervene and offer assistance when they are on notice about risk factors, helping to prevent accumulation of large and potentially unmanageable debts. However, because the success of these supports will

depend to some extent on a customer informing a retailer about their circumstances, we reiterate the need for regulatory guidance on retailer/customer conversations, and retailer investment in staff resources and training, to encourage people to contact their retailers at an early stage and inform them of their circumstances.

The ESC has clarified in the draft guidance that if a retailer is advised by a customer that they will not be able to pay a bill by the issue date of the next bill, the customer is entitled to tailored assistance. Retailers will need to communicate this entitlement very clearly to customers, particularly people on quarterly billing cycles who will not technically fall into arrears until approximately three months after the initial bill is issued.

It would be helpful for the ESC to eventually provide guidance about preferable ways of promoting tailored assistance, especially to people at risk of falling into arrears, informed by a customer focus group. VCOSS members would also welcome clear guidance about this entitlement, especially those members providing community information, financial counselling and emergency relief services.

Recommendation

The ESC convene a customer focus group to explore the best ways for retailers to promote tailored assistance to customers, particularly customers at risk of falling into arrears, and develop guidance to retailers on best practice methods.

Assistance to lower energy costs and help resolve financial problems

VCOSS is pleased to see less differentiation between the supports offered to people paying off arrears, and those who are struggling with energy costs and need to pay below full cost for ongoing energy use. However, we consider all customers receiving tailored assistance should be entitled to information about the tariff most likely to minimise their energy costs. We also suggest the use of the word ‘tariff’ be replaced with ‘energy offer’ or other suitable terminology, because the total offer needs to be assessed to determine whether it likely provides better value for a particular customer, rather than just the tariff alone.

By lowering ongoing energy costs, people will be able to better manage arrears payments. This is particularly important in the current environment, as energy price rises take effect over 2017 and may make otherwise manageable payments unmanageable. The exclusion of ‘best tariff’ advice for people in arrears is inconsistent with the proposed purpose of Part 3 of the Code, which is to ensure disconnection is a measure of last resort. Disconnection cannot be a measure of last resort if the retailer has not provided advice about the energy offer most likely to minimise a person’s energy costs, and at least given the customer a chance to better manage arrears payments in this way. This advice could be the difference between meeting arrears payments and being disconnected. Over the past 12-18 months, a typical customer switching from an electricity

standing offer to the best market offer with the same retailer could save up to \$676 per year in Victoria, much more than customers in New South Wales (\$381), South Australia (\$332), Queensland (\$256) and the Australian Capital Territory (\$204).⁸ If ‘best tariff’ advice is not available to everyone under tailored assistance, it should at least be offered to people receiving default assistance, as a basic ‘lifeline’ support to people at this stage.

VCOSS particularly welcomes the requirement for retailers to base their tariff advice on the customer’s pattern of energy use and payment history, where this is known to the retailer. Given the most expensive energy offers in 2015-16 were conditional discount (generally pay-on-time) market offers where the conditions were not complied with (i.e. people did not/could not pay on time),⁹ it is important customers receiving tailored assistance are given advice about other energy offers if their payment history shows they are never, or only rarely, paying on time and being penalised for this.

We also support the requirement for specific and timely advice about any government or non-government assistance available to help a customer meet their energy costs, though the framework should specify this includes concessions, along with the Utility Relief Grant.

Recommendation

‘Tailored assistance’ be amended so that all customers receiving this support are entitled to information about the energy offer most likely to minimise their energy costs, and information about concessions.

Payment arrangements

The framework allows a productive conversation between a customer and their retailer about payment arrangements. While the retailer must accept a payment proposal put forward by a customer if it results in arrears being fully paid within two years (or longer at the retailer’s discretion), the retailer also has to advise the customer about payment options that would enable payment within two years. This should help steer customers away from ‘balloon’ payments (whereby the majority of the arrears are not paid until month 20 of 24 or later), and guide customers towards a plan that does not extend beyond two years.

We acknowledge the framework permits balloon payments. These payments may benefit some customers in very specific circumstances (e.g. where people know they will receive a certain amount of money at a future date and can pay most of the arrears at that point), but are likely to create risks of non-payment and disconnection for other customers when the bulk of arrears payments is pushed off into the future and ultimately cannot be settled. However, we are unclear about the extent of balloon payment risk, and caution that any preclusion of balloon payments

⁸ Australian Energy Regulator, *State of the Energy Market, May 2017*, 2017, 147.

⁹ Essential Services Commission, *Victorian Energy Market Report 2015-16*, November 2016, 19.

should not impair people's fair entitlements under the framework. For example, we would not support the addition of a reasonableness test in clause 80(1), where this would allow retailers to assess the reasonableness of a payment proposal and reject it if deemed unreasonable. While a reasonableness test may prevent balloon payments being made by a minority of customers, it would disempower the majority of customers in their dealings with retailers and create a risk of unaffordable payment plans being imposed on people. Any measure to deal with balloon payments should be proportionate to the risk of this problem.

VCOSS welcomes a two-year period for paying arrears, with capacity to extend beyond two years where the retailer reasonably considers this necessary on taking into account the customer's circumstances. As previously submitted, this flexibility is needed to accommodate circumstances like sudden job loss, extended periods of unemployment, major health problems and other circumstances. This flexibility is also necessary because retailers are able to increase prices under an energy contract, which may make arrears payments more difficult.

Stakeholders seem to have different views about whether retailers have a discretion to extend arrears payments beyond two years. We consider the draft framework provides this discretion, but note the draft guidance states a retailer would be expected to accept a proposal that went beyond two years if doing so would assist the customer to make regular repayments, which seems to be broader than what is in the Code. Clarification about how the ESC intends this discretion will operate is needed.

We also request clarification about the use of combined arrears and ongoing costs payments under the framework. Combined payments can help people budget, lessen confusion, and thereby reduce the risk of disengagement. However, the current requirement to pay arrears in regular intervals of up to one month seems to preclude a person on a quarterly billing cycle from arranging a combined payment of arrears and ongoing costs. It suggests a person would have to make monthly arrears payments, and quarterly ongoing costs payments, or change to a monthly billing cycle to align arrears and ongoing cost payments. People may well be confused and stressed by separate monthly and quarterly payments, and possibly disengage. The ESC could consider allowing arrears payments on a quarterly basis, or clarifying whether its preference is for customers in payment difficulty to be on monthly billing cycles, allowing them to align arrears and ongoing costs payments. Monthly payments may be more manageable for people in payment difficulty and easier to budget for because they follow the same frequency as rent, telecommunications and other payments.

VCOSS does not have a settled position on whether tailored assistance should specifically entitle a person to a payment arrangement that combines arrears and smoothed forecast ongoing energy costs, which can provide predictability and stability in relation to payment amounts. We seek a technical workshop on this issue.

Recommendation

The ESC hold a technical workshop to discuss the use of combined arrears and ongoing energy cost payments under tailored assistance and default assistance.

Default assistance

Retailers will have to offer ‘default assistance’ to people in arrears who have not put forward a payment proposal, a revised proposal, or have stopped receiving support under tailored assistance. Under default assistance, people will be offered a standard arrears payment plan, requiring equal monthly payments over a period three times the length of their billing cycle. This means a person who pays monthly would pay off arrears over three months, and person who pays quarterly would pay off arrears over nine months.

VCOSS supports the role of default assistance as a ‘lifeline’ measure for people who have not engaged to date, or not complied with tailored assistance. We appreciate the ESC’s recognition that people sometimes do not engage, or struggle to stay engaged, for reasons beyond their control, such as family violence, major health problems, language barriers, low literacy levels or other factors.

Some VCOSS members noted that in offering default assistance, retailer communications will need to make it very clear that this ‘lifeline’ measure is available and a person will not be disconnected if they take up this assistance and make the payments required. Clear communications will be particularly necessary where a default assistance offer is combined with a disconnection warning notice. In the experience of some frontline service providers, people can give up on engaging with their retailer at this late stage, because they feel all hope is lost and there is no way to resolve their payment problems. This is another area that would benefit from eventual ESC guidance about how to best communicate assistance offers to customers, which could be informed by customer focus groups.

We also consider default assistance should include combined arrears and ongoing costs payments. As with tailored assistance, people on quarterly billing cycles will not be able to combine arrears and ongoing costs payments because of the monthly arrears payment requirement. We ask the ESC to clarify whether its preference is for customers in payment difficulty to be on monthly billing cycles, and request a technical workshop to discuss the use of combined arrears and ongoing energy cost payments under default assistance.

Protections against disconnection

Before a person can be disconnected, a retailer must have:

- provided, or used best endeavours to provide, the assistance the customer is entitled to
- issued a reminder notice
- issued a disconnection warning notice
- used its best endeavours to contact the customer after issuing a disconnection warning notice.

In addition, we understand the ESC's intent is that disconnection cannot occur unless the customer has not taken up or failed tailored assistance, *and* has not taken up or failed default assistance. This needs to be made clear in clause 111A, because at present, this clause suggests a person can be disconnected just for failing tailored assistance.

Retailers also must have records that are sufficient to evidence the steps they have taken before arranging disconnection. We welcome this proposed addition to the Code, which will bring greater accountability to retailers' actions and improve the enforceability of the Code.

Recommendation

The ESC clarify in clause 111A whether a customer can only be disconnected after not taking up or failing tailored assistance, *and* not taking up or failing default assistance.

Implementation

The ESC has proposed a staged implementation of the Code. We would prefer the reforms to be implemented as a single package, to provide clarity to customers, financial counsellors, information and emergency relief services, and others who assist people in financial difficulty. However, we are open to the proposal made at the ESC forum on 29 May 2017 to implement standard assistance in the first instance, and implement all other elements of the Code after that, as a single package.

