



EnergyAustralia
LIGHT THE WAY

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Ltd**
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Submitted electronically to: paymentdifficulties@esc.vic.gov.au

Dear Dr Ben-David

**Submission on the Draft Guidance Note - Payment Difficulty and Disconnection
(Version 1 October 2017)**

EnergyAustralia welcomes the opportunity to comment on the Essential Services Commission's (the Commission) Draft Guidance Note for Payment Difficulty and Disconnection for the Payment Difficulty Framework (PDF), as implemented through the Energy Retail Code (the Code).

1. Process

EA supports the concept that the PDF will set a consistent minimum standard for good industry practice to help customers manage their energy costs and remain connected to energy as an essential service. We acknowledge the Commission's collaborative approach in seeking feedback on this Guidance Note. While there is little time remaining to finalise this Guidance Note prior to the end of the year, we believe it is important that Commission take the time to consider changes to make this a workable approach that will provide adequate protection for customers.

We have extensive feedback on changes required to the Guidance Note which we outline at high level below and in detail in a separate table.

EA acknowledges that energy debt is complex, and so recommends that the PDF and the Guidance Note be monitored for effectiveness and reviewed after the first two years of operation. During this time, there will be opportunity to gather data on average debt, customer behaviour, the role of energy efficiency and usage and debt management tools. This evidence can be used to formally test assumptions within PDF about the nature of debt management and energy efficiency, and the relationship between usage and cost.

2. The Guidance Note adds complexity

In commenting on the proposed Guidance Note, EA would like to reiterate its June 2017 submission to the Commission's second Draft Decision on the PDF. EA remains concerned that the PDF together with the Guidance Note is overly complex and has diverged from some of the principles that were previously seen as important. In particular, the principle of working with customers to address and minimise their energy debts. We submit that the Guidance Note can be improved by simplification and reinstating retailer flexibility to explore approaches with customers to support them to manage and pay down energy debt. When coupled with monitoring and an evidence-based review, this approach will be more effective in targeting those most likely to benefit from assistance.

This approach will also better align the Guidance Note with the Code. At present, the Guidance Note expands on and extends the requirements in the Code. This goes beyond its purpose to assist retailers to understand the meaning and practical implications of the substantive provisions in the Code. Rather than clarifying the Code, the Guidance Note has the effect of increasing the burden for interpreting the Code. To simplify the Guidance Note, we suggest removal of clauses that restate the regulations or requirements in higher level documents within the regulatory framework. Where relevant, some clauses could be replaced with practical examples.

In some places, the interpretation of the Guidance Note and Final Decision is difficult to understand, particularly when it comes to the overlap and structure of timeframes for retailer and customer action for Tailored Assistance. Unless clarified, these timeframe issues will increase operational complexity making the experience confusing for customers, expensive for retailers and drive up costs for all consumers.

The complexity of the PDF is particularly concerning in relation to exempt entities such as those retailing to embedded network or community energy customers. While it would be prohibitively expensive for some of these entities to consider being subject to the PDF requirements, it would also be a problem if customers of these entities didn't have access to similar protections. This may also increase the regulatory arbitrage available for embedded networks accelerating their expansion. We urge the Commission to reduce the complexity of the PDF for these reasons too.

3. The Guidance Note adds excessive cost

Due to the complex and additional requirements of assistance set out under the Guidance Note, we will not be able to implement the minimum standards of the PDF, simply and through existing technology applications as we had intended. This creates the need for more staff and the loss of efficiencies that support lower costs for customers.

The Guidance Note also applies untested assumptions about customers and debt, and creates additional cost for retailers without clear evidence of likely benefits. In working through the complex assistance process, EA has identified that customer debt levels and the length of time customers are in debt are highly likely to increase. We recently

provided confidential actual data and modelled data to the Commission recently demonstrate this effect. These costs will apply across the market to all participants and will therefore put further upward pressure on retail energy prices.

The cost for retailers to implement and operate the PDF (together with this version of the Guidance Note) has been vastly underestimated by the cost-benefit analysis. Retailers were requested to provide inputs into the cost-benefit analysis conducted by ACIL Allen in late June 2017. At that stage, retailers had seen the second Draft Decision (DD2), which is substantially different to the Final Decision released in mid-October 2017. ACIL and the Commission asked retailers to itemise the costs of different elements of the PDF that were known at the time. Viewing the final Code amendments and the Guidance Note, many elements are very different and new elements have been added that were not included in the latest cost-benefit analysis.

We raised concerns at the time with the itemisation approach and the fact that it was the sole opportunity for retailers to provide quantitative inputs for the cost-benefit analysis. In our view, the updated cost-benefit analysis released with the Final Decision greatly understates the cost of version 12 of the Energy Retail Code and the Guidance Notes, in their current form. The Commission have referred on many occasions to the Guidance Notes not adding new requirements (including in the Guidance Note, see clause 1.1.2), and this is clearly not the case.

While EnergyAustralia understands the time pressure to finalise the consultation and that the Commission believes a Regulatory Impact Statement was not necessary, we do not understand why the Commission, as an economic regulator, has not ensured this reform has been properly costed before requiring full implementation. We acknowledge that some of the benefits are difficult to quantify, but that does not mean an accurate assessment of the costs is not needed or is not useful. This is especially relevant when additional costs will be passed through to all Victorian customers, or will reduce the significant amounts of time and resources that EnergyAustralia and other retailers currently spend on assisting customers in payment difficulty. The limited assessment carried out has only established that some customers will be better off under the PDF and only better off on some measures. For example, customers in payment difficulty may be assured that they will only be disconnected as a last resort, but at what impact to their level of debt, their credit status, the loss of existing assistance measures and the additional costs passed on to all Victorian customers?

We have not had time to develop a costed design for the PDF and Guidance Note at the same time as writing this submission. However, as part of our implementation of the PDF we intend to develop this business and IT system design and associated costs including the likely impact on customers.

4. Suggested improvements to the Guidance Note

EA has attached a table with comments against the clauses in the Guidance Note. Broadly, these comments fall into one of five categories:

- **Repetitive requirements** – these should be removed to reduce the size of the Guidance Note and make it more targeted. Currently there are around six pages of guidance for every page of Code amendments.
- **Clarification points** – these provide some useful clarification or example.

- **New requirements** – these should be removed or revised in line with the Code. It is predominantly these requirements that introduce new and un-costed obligations to retailers.¹
- **Unclear clauses, or clauses that conflict with the Code or other clauses** – these should be redrafted and brought in line with the Code.
- **Subjective requirements** – the Guidance Note should ideally provide clarity and certainty for retailers that the Commission and the Energy and Water Ombudsman of Victoria (EWOV) will view fairness and reasonableness in the same way. However, some clauses in the Guidance Note restate the Code without giving any further practical guidance as to how retailers can objectively comply with the Code requirements. Some other clauses extend the subjectivity of clauses in the Code, these should be removed. We believe it good regulatory practice to use the Guidance Note to support compliance with the Code. This could mean that subjective terms in the Code are better restated as Guidance Note examples.

The first two categories were discussed at the recent workshop on the Guidance Note (24 October) and should be clear from the comments in the table. We provide examples to illustrate the other three categories:

- **A new requirement is introduced in clause 9.8.5.**

This clause requires retailers to do a site visit as part of making 'best endeavours' to contact a customer in specific circumstances. A site visit is an option under the current Operating Procedure Compensation for Wrongful Disconnection issued by the Commission, but the Guidance Note mandates it. Other new requirements are introduced by 9.8.5 and associated clauses and we have outlined these in the attached table. In general, the new best endeavours requirements in the Guidance Note are disproportionate and add quite a lot more time and effort for retailers to contact customers.

- **Clause 9.2.2 conflicts with Code.**

This clause states:

"If a customer, whose bill of \$55 or more (inclusive of GST) is not yet overdue, contacts their retailer to discuss their payment options, the retailer should have a conversation with the customer about the standard assistance options available in the first instance. However, if the customer advises their retailer that the standard assistance options would not help them pay their bill according to the terms and specifications of those options, the retailer should provide tailored assistance to the customer."

This clause creates a firm obligation on retailers that conflicts with clauses 78 and 80(1) of the Code. It extends the apparent intent of the Code, so we also categorise it as a new requirement. In our interpretation, this would mean that retailers are obliged to offer Tailored Assistance before the customer is even in arrears. This means that any residential customer could call up and say that they can only pay less than their ongoing usage and access all the assistance under 79(1)(c)-(g). As PDF is a minimum standard, retailers have the discretion to go above and beyond, but we strongly believe that doing so shouldn't be mandatory.

¹ In EA's view, the following clauses of the Guidance Note add new obligations on retailers that are not contained in the Code: 2.5.3, 2.6.4, 3.5.2, 4.4.1, 4.6.11, 4.8.4, 4.9.11, 4.11.2, 4.12.6, 4.12.13, 4.12.15, 4.13.2, 4.13.3, 4.13.5, 4.14.2, 4.14.4, 9.2.2, 9.2.6, 9.8.5.

- **Subjective requirements are introduced in 3.5.9 and 3.5.10.**

Standard Assistance (Part 2) clauses are quite objective in nature and easy to understand. Nowhere in the Code amendments for PDF does the Commission introduce the subjective concept of 'fair and reasonable' in relation to Part 2. We always strive to act in a fair and reasonable way with our customers, but believe that bringing in subjective terms into the Guidance Note will drive up compliance workload for retailers, EWOV and the Commission for little overall benefit.

5. Conclusion

After reviewing the Guidance Note in detail, EnergyAustralia is very concerned that its use in practice would lead to a disproportionate to the problem the Commission identified in the Hardship Inquiry. The additional requirements, complexity and subjectivity added through the Guidance Note will be very challenging to implement within the twelve months allowed.

The changes brought in via the Guidance Note are also un-costed. EnergyAustralia is surprised and disappointed at the approach to the PDF cost-benefit analysis. The sensitivity analysis does not adequately cover the final combination of elements in the framework or the inclusion of new requirements. As we have previously noted, the costs of different elements are not additive, but are quite unpredictable as the elements often interact in a complex manner.

Therefore, we believe the costs of the current version of the PDF (using the draft version of the Guidance Note) will be considerably higher than anticipated. It is highly concerning to EnergyAustralia that such a complex and prescriptive framework must be rolled out without a proper costing and with only a limited assessment on impacts to customers and retailers. Instead of assessing the minimum regulatory response necessary to effect change, we feel the Commission has sought to add a high level of prescription (via the Guidance Note) that appears to address every known or possible shortcoming of retailers. This completely ignores that many retailers are already providing a very high level of assistance to customers.

In our interpretation, the effect of some clauses of the Guidance Note so severely limits retailer discretion that customers will have an ability never to pay for energy again with few consequences for the customer. We don't believe this is the intent of the Commission, so we seek revision of some clauses in the Guidance Note.

EnergyAustralia understands that there are high and growing numbers of customers struggling to afford to pay their bills. We have already made many improvements to assist these customers, but note that if the PDF is interpreted as it is in the Guidance Note that it will hinder us from spending the time and resources to assist those Victorian customers who need it most.

If you require any further information, please contact me

Yours sincerely

Melinda Green

Industry Regulation Leader

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Operation of the PDF	Division 1	Chapter 2	
Classification of residential customers	72	2.5.1. The industry Acts require that financial hardship policies apply to domestic customers.1 A domestic customer is defined as “a person supplied with electricity for use for domestic purposes. “ The Code refers to a residential customer as “a customer who purchases energy principally for personal, household or domestic use. “	Clarification point noted.
	72	2.5.2. Although some energy retailers may apply their financial hardship policies to small business customers facing payment difficulty, Part 3 of the Code only applies to residential customers. It remains up to individual retailers to decide what assistance they may provide to small business customers.	Suggest removing. We cannot extend Hardship to business customers as this goes against the ASIC requirements around customers trading in a solvent manner.
	72	2.5.3. Part 3 of the Code applies where a building is both a small business premises and a residential home, and is jointly supplied with energy (gas and/or electricity) under a standard or market retail contract.	<p>There are several problems with this clause and it should be removed.</p> <ul style="list-style-type: none"> - It isn't consistent with the interpretation in the Code, which states a domestic customer is “a customer who purchases energy principally for personal, household or domestic use.“. This clause allows a domestic customer to be one who purchases some energy for personal or domestic use, but may principally use energy for business use. Therefore, it brings in a new obligation on retailers. - The customer selects a residential or business plan suitable for their situation when they enter a new offer with a retailer. This clause in the guidance note could be interpreted to require retailers to not be able to rely on this plan selection but have to ask all Victorian business customers in arrears if they have anyone using the premises for domestic use. Asking the question is operationally onerous and would be difficult for the customer or retailer to prove. <p>If this clause is kept, it should refer to the plan selection that the customer makes when first signing up to the retailer – whether this is a business or residential plan or whether they chose to provide their ABN/ACN or other indicator that the premise is a business premise.</p>
	73	2.6.1. Because Part 3 is focused on outcomes, and customer circumstances are unique, situations will arise where the Code does not prescribe exactly what a retailer is required to do. In these situations, retailers are expected to use their judgment. Clause 73(b) aims to guide that judgement in particular cases.	This gives no additional information, so we suggest deleting it. Examples may be useful instead.
	73	2.6.2. Where words in the Code may appear to be capable of having more than one meaning when applied in a particular case, we will assess compliance based on a purposive approach. This means that we will adopt a meaning consistent with: a) first, the objective of the Division (clause 73(b)(i)) b) second, the purpose of the Part (clause 73(b)(ii)) c) third, taking into account any Guideline we publish (clause 73(b)(iii)) d) fourth, any guidance notes we publish (clause 73(b)(iv)) e) fifth, viewed from the perspective of a customer in the circumstances, as set out in any written information on the reasonable expectations of a customer (clause 73(b)(v)).	The Guidance Note – should not be referred to in compliance proceedings if the provisions of the Code can be interpreted as they are, or by reference to the purpose of the Part, or by reference to a Guideline. This clause in the Guidance Note is only repeating ERC clause 73 and (apart from clarifying the point above) doesn't need to be repeated.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
	73	2.6.3. As outlined in our Energy Compliance and Enforcement Policy, the purpose of guidance notes is to provide further details of the standards of conduct we expect in particular situations.4 Over time, as circumstances arise, standards may also be clarified through our findings and decisions in disconnection cases referred from the Energy and Water Ombudsman (Victoria).	This is repetitive of the Policy itself and can be removed.
	73	2.6.4. Part 3 of the Code should be viewed from the perspective of a customer facing payment difficulty. This will be how we will decide whether a retailer has provided a customer with the advice and practical assistance they are entitled to receive. For example, advice to a customer 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.	This doesn't follow from anything written in the Code and we see it as a new requirement. It is also a very subjective requirement. There is a great deal of information to be discussed and supplied to customers, especially when setting up TA and providing assistance required under TA. It's highly likely in many cases that the customer will be overwhelmed with information or not be able to stay on the call long enough to receive all the information or assistance at once, even though they will certainly be seen to be in need of this information or assistance. The PDF represents a large increase in the requirements on retailers to provide information to customers at regular intervals. These new clauses may already be sufficient to achieve the outcomes the Commission seeks. We suggest leaving this very subjective clause out of the Guidance Note and adding this type of later if issues arise in this area.
	73	2.6.5. In accordance with clause 73(b)(v), any written information that has been issued through the commission's normal processes will be used as a guide to what we consider the reasonable expectations of a customer anticipating or facing payment difficulty to be when interpreting the Code.	This is repetitive of the specified interpretation provision and can be removed.
Standard Assistance	Division 2	Chapter 3	
	74	3.1.1. Standard assistance is available to all residential customers. Customers do not need to demonstrate that they are anticipating payment difficulty or to be in arrears in order to access this assistance. It involves retailers making at least three different payment options readily available to all residential customers.	We are not clear on the interpretation of the Code with respect to clauses 74, 75 and 76(1). Clause 75 states that Division 2 applies to all residential customers (as does this clause in the Guidance Note). However, clauses 74 and 76(1) in the Code anticipate that the assistance in Division 2 to help customers from getting into arrears with their retailer. This would mean that the customer is not already in arrears (or possibly only in arrears <\$55 inc. GST). EA is concerned if the assistance in Division 2 (SA) must be applied at the same time as assistance in Division 3 (TA) as it would enormously complicate the IT build to have to offer a standard payment extension or advanced payment ability into TA. We request that the Commission revise clause 3.1.1 to state that Division 2 does not need to apply to customers receiving assistance under Division 3.
	74	3.1.2. Providing customers anticipating payment difficulty with an entitlement to flexible payment options, aims to encourage customers to take early action to manage their payments and avoid getting into arrears, therefore reducing the risk of disconnection.	This is repetitive of the purpose of the Code and as a matter of good regulatory drafting should be removed.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
	75	3.2.1. Standard assistance is available to all residential customers anticipating financial difficulty. Retailers have discretion to make standard assistance available to customers other than residential customers. There is nothing that stops a retailer from providing more than three of the specified standard assistance options, nor from providing other assistance that may help a customer avoid arrears and disconnection of supply.	This is inherent in the proper drafting and interpretation of the Code – there is no express prohibition. Therefore, it is repetitive and can be removed.
	76	3.3.1. Division 2 sets out a residential customer's entitlement to a minimum number of standard payment options.	This appears to repeat other provisions. Suggest deleting.
	76	3.3.2. A customer's entitlement to standard assistance does not extend to individual payment arrangements that suit each customer's unique needs.	Clarification point noted.
	76(2)(a)-(d)	3.3.3. Division 2 requires retailers to design and provide, at a minimum, three standard forms of assistance. Retailers are able to select the options that can be delivered most efficiently.	This appears to repeat other provisions. Suggest removing.
Compatibility of SA options	76(2)(a)-(d)	3.3.4. A customer is entitled to all forms of standard assistance that a retailer elects to provide, to the extent that these forms of assistance are compatible. 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 compatible.	This clause is confusing and the implications are unclear. It seems to mean that SA options can be combined. If it were to mean that if a retailer offers equal payments over a specified period and shorter interval payments together (being compatible) must also offer both types of plan separately, then that would be problematic. Offering a shorter payment interval and not offering equal payments at the same time would effectively mean the retailer would need to provide weekly or fortnightly billing and this is an entirely different prospect and would need to be separately allowed for in systems and processes. The part of clause 3.3.4 that creates the confusion is "A customer is entitled to all forms of SA that a retailer elects to provide".
	76(2)(a)-(d)	3.3.5. Standard assistance payment arrangements are not billing options. We anticipate retailers will continue to bill customers on their existing billing cycle, but this will be a matter for each retailer to determine.	Clarification point noted, but doesn't appear to be necessary.
Proactive comms about SA	76 86	3.4.1. Retailers must make information about standard assistance readily available to all customers. Retailers will be expected to be proactive in communicating to customers about the assistance available, not just to customers who indicate to the retailer that they may be anticipating payment difficulty.	This appears to repeat other provisions (particularly ERC clause 86). Suggest deleting.
	76	3.4.2. Information about how to access assistance should be provided clearly, unambiguously and in prominent locations within relevant customer communication materials. Relevant communication materials may include contract terms and conditions (welcome packs), bills, bill inserts and notices. Information about the assistance and how to access it should also be available from retailer websites and via contact centres.	Clarification point noted, but doesn't appear to be necessary.
Equal payments	76(2)(a)	3.5.1. This option allows a customer to make equal payments at a standard interval determined by the retailer. For example, a retailer may provide a customer the option to pay \$50 per fortnight to cover the cost of ongoing energy usage.	This appears to repeat other provisions. Suggest deleting.
	76(2)(a)	3.5.2. 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 (bill smoothing provision).	EA notes that this was not contemplated previously, it is a new requirement. Not all payment plans would have previously required compliance with the bill smoothing requirements.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Payment intervals	76(2)(b)	3.5.3. This form of assistance allows a customer to select a payment interval from the standard options provided by the retailer. Retailers that provide this form of assistance are expected to provide options that enable all customers to be able to access at least one payment interval that is shorter than their usual payment cycle.	Clarification point noted.
	76(2)(b)	3.5.4. If a retailer makes monthly, fortnightly and weekly payment options available, a customer would be entitled to select any of these payment intervals.	Clarification point noted.
	76(2)(b)	3.5.5. Where payment intervals are made available to electricity customers and the customer has a remotely-read smart meter, basing the payments on actual meter reads would provide the greatest assistance to customers by helping them to manage the cost of their actual energy use.	EA submits that the intent of this provision should be made clearer – that smoothed payments will provide sufficient certainty to customers to avoid bill shock if managed effectively. Before confirming the interpretation with the Commission, we believed this meant we would need to be able to create frequent bills based on actual usage data (e.g. actual weekly and fortnightly billing), which would have been considerable additional expense and effort to provide and would mean customers would need to pay a different amount each period.
	76(2)(b)	3.5.6. Where a smart meter is not installed (including gas customers), payments based on a bill smoothing arrangement would be expected to provide greater benefit to customers than basing payments on estimated meter reads, which have the potential to contribute to the customer's payment difficulty.	Clarification point noted, but is not necessary.
	76(2)(b)	3.5.7. If a customer proposes a different payment interval to the standard options provided, the retailer may agree to the proposal.	Clarification point noted, but is not necessary.
Extension of the bill pay-by date (SA option)	76(2)(c)	3.5.8. This option entitles a customer to extend the pay-by date of their bill by a standard amount specified by the retailer. A retailer may elect to provide customers the option to extend the pay-by date of at least one bill within a twelve month period. The retailer must specify a standard extension period that is available to all customers.	Clarification point noted.
	76(2)(c)	3.5.9. If a customer seeks a longer extension period than provided as standard by the retailer, the retailer may agree to the proposal having regard to what is fair and reasonable in the circumstances.	EA submits that it is unnecessary to import a standard of 'fair and reasonable' into the Guidance Note when this is not included in Division 2 of the Code. This introduces subjectivity into the application of this part of the Code. We would prefer that examples are used rather than the addition of new terms that broaden the meaning of the Code.
	76(2)(c)	3.5.10. If a customer seeks a standard extension for more than one bill in a 12-month period, the retailer may agree to provide that extension having regard to what is fair and reasonable in the circumstances.	EA submits that it is unnecessary to import a standard of 'fair and reasonable' into the Guidance Note when this is not included in Division 2 of the Code. This introduces subjectivity into the application of this part of the Code. We would prefer that examples are used rather than the addition of new terms that broaden the meaning of the Code.
Payment in advance	76(2)(d)	3.5.11. This option entitles a customer to make payments towards their account in advance. Retailers would be expected to allow customers to make regular or ad hoc equal or variable payments (i.e. not a consistent amount) towards their account.	Clarification point noted.
	76(2)(d)	3.5.12. Clause 76(2)(d) reflects the payment method available to customers under clause 32(5) of the Code.	This does not appear to add anything to interpretation of the Code, which is not ambiguous, suggest removing.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Tailored assistance	Division 3	Chapter 4	
Tailored Assistance	-	4.1.1. Division 3 sets out a residential customer's entitlement to minimum standards of flexible and practical assistance, to help them repay their arrears, pay their usage costs and lower their ongoing energy costs. It requires retailers to help a customer to establish payment arrangements the customer can manage, taking into account the customer's circumstances. It also sets out the options and entitlements for a customer who cannot pay for their ongoing energy use.	This appears to repeat other provisions. Suggest removing.
	-	4.1.2. By providing customers facing payment difficulty with clear entitlements to minimum standards of flexible and practical assistance, we consider that the risk of disconnection will be reduced, and will only be pursued as a measure of last resort.	This appears to repeat other provisions. Suggest removing.
	77	4.2.1. Tailored assistance must be made available to customers who are in arrears. Customers are entitled to payment arrangements that assist them to repay their arrears. Customers are also entitled to receive assistance to support them lowering their energy costs and to access government and non-government support services.	This appears to repeat other provisions. Suggest removing.
	77	4.2.2. Customers in more severe types of payment difficulty – where they cannot afford to pay for their ongoing energy use – are entitled to additional assistance, including a period of at least six months where repayment of their arrears is put on hold while they work with their retailer to lower their ongoing usage costs. Customers are also entitled to the tariff that, based on the retailer's knowledge of the customer's energy use, payment history and known circumstances, would be most likely to help lower the customer's cost of energy use.	This appears to repeat other provisions. Suggest removing.
	77	4.2.3. Unlike standard assistance in Division 2, 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.	Clarification noted, but is unnecessary.
TA doesn't have to be offered if arrears <\$55	78	4.3.1. Tailored assistance must be provided to a customer who has not paid a bill by its pay by date and has arrears of \$55 or more (inclusive of GST), either when: a) the customer contacts the retailer (80(1)), or b) if the customer does not contact the retailer, by the retailer contacting the customer within 21 business days after the bill pay-by date (80(2)).	EA submits that 'contact' between the retailer and the customer will be difficult to monitor and should be further clarified in the Guidance Note. Only the direct channels to the retailer will be set up to understand that a customer is in arrears and be able to practically and reliably capture information about the customer's payment difficulty. For example, a third party such as an energy efficiency auditor, embedded network operator or meter service provider may be confused for the customer's retailer, but it would be extremely difficult to have these parties assist in the delivery of the PDF. Our communication material on the PDF will direct customers in need of assistance or receiving PDF assistance to a direct channel of EA to avoid any confusion for the customer. We would like the definition of contact for the purposes of PDF to be restricted to these direct channels.
	78 109(2)	4.3.2. A retailer must also send a customer a reminder notice within 21 business days after the pay-by date of a bill (clause 109(2)).	This appears to repeat other provisions. Suggest removing.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
	78	4.3.3. A retailer may elect to meet these obligations in any sequence it prefers, for a particular customer or sub-set of customers. More information about providing tailored assistance and issuing reminder notices is located in sections 4.10 and 9.5 of this guidance note.	Clarification point noted.
Missed payments on TA (legacy debt customers)	78	4.3.4. If a customer is on a pre-existing payment arrangement (set up prior to 1 Jan 2019) and misses payment/s then before a retailer can consider disconnection, it must comply with the requirements of Part 3 and Part 6 of the Code, including using its best endeavours to provide the customer with their entitlement to assistance under Division 3. The commission does not expect retailers to include the time that a customer was on the previous payment arrangement in the period of not more than two years provided under clause 79(1). For example, if the customer had a pre-existing payment arrangement for six months, this six-month period should not be counted for the purposes of a new payment arrangement under clause 79(1).	Legacy debt: EA suggests that this clause should be extended to make it more appropriate for the customer situations that are likely to arise. For example, it would be reasonable for the clause to apply as written if the customer only agreed to a payment plan in the 3 months prior to 1-Jan-19. However, if the customer has been on a pre-existing plan for 3 months or more and has not been disconnected for non-payment (or was not in the process for this to occur), then it would be reasonable to <u>offer</u> assistance under Division 3 that is most like the plan that the customer is currently on. If the customer chose to take up the offer they could contact the retailer to discuss assistance under 79(1)(b)- (g) depending on whether the customer was on a plan that covered their ongoing usage or not. We propose that the start date of such a plan would be the start date of their original plan prior to 1-Jan-19 if they began that plan more than 3 months earlier. It should also not We note that January and the following months is a prime time for customers to fail to make payments as their usage is often higher than at other times of the year. We believe the proposed amendments to this clause will allow retailers to minimise an influx of calls to revise payment plans for customer that are otherwise working well for that customer. The customer would not be disadvantaged as the assistance under PDF would be offered to them to take up if they wished.
Minimum assistance	79(1) 89(c)	4.4.1. Retailers must use their best endeavours (section 9.8 of this guidance note and clause 89(c) of the Code) to make sure customers in arrears are aware of, and provided with, their minimum entitlement to assistance in Part 36.	Section 9.8 of the Guidance Note requires a retailer to make steps to contact the customer over 21 business days including by registered post or a personal visit if the customers cannot be contacted by phone. This is an unreasonably long timeframe and amount of effort to sign a customer up to a payment plan that we will be communicating in writing to the customer through this stage. This requirement is new as it was not envisaged that best endeavours to provide assistance would require retailers to go to these lengths. We suggest that best endeavours for situations other than for disconnection for non-payment be left to its English language meaning. If it must be defined, then it should be a shorter timeframe and phone contact only.
TA1 compliant payment plan	79(1) 81(3)	4.4.2. If a customer in arrears is able to pay the on-going cost of their energy use, they may repay their arrears by entering into a payment arrangement under clause 81(3).	This appears to repeat other provisions. Suggest removing.
	79(1) 81(3) 81(4)	4.4.3. If a customer has a payment arrangement with separate payments for energy use and arrears under clause 81(4), and falls further into arrears by missing an energy use payment. We would expect retailer to contact the customer and discuss changing the payment arrangement to one that includes a reasonable forecast of the customer's energy use under clause 81(3). This should help avoid further accrual of arrears.	Clarification noted.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
TA2 compliant payment plan	79(1)	4.4.4. If a customer in arrears is not able to pay the on-going cost of their energy use and their repayment of arrears is on hold under clause 79(1)(f)(i) they may enter into a payment arrangement that involves payments that are less than the on-going cost of their energy use.	Unlike for TA1 (79(1)(a)-(d), there is nothing in the Code that says TA2 requires a payment plan of set payment amounts being agreed with the customer to a more frequent cycle than their current bill cycle. EA submits that the Guidance Note, at least, should require this. It should also require that those payments are met or that the customer must contact their retailer to revise the plan or otherwise may be at risk of losing their energy supply. As it currently stands, there is no obligation on the customer to pay any more than a token amount of any bill (say \$1 – based on 82(2) and 83(b)). Requiring customers to pay a regular, smoothed amount below the level of their ongoing usage will help the customer reduce the size of their debt.
	79(1)	4.4.5. The retailer must ensure that the customer is aware that payments below the cost of on-going energy will be added to their arrears, and assist the customer to propose a payment arrangement which limits this increase, while they are working to assist the customer to reduce the cost of their energy use.	Clarification noted, however as noted above, there is no explicit requirement for customers on TA2 to have a particular payment arrangement set up.
Type of assistance applicable to TA1 or TA2	79(1)	4.4.6. Customers in arrears, subject to clauses 80(1) and 80(2), and who can pay the cost of their ongoing usage, are entitled to the assistance set out in clause 79(1)(a)-(d). Customers who cannot pay for their ongoing energy use are entitled to the assistance set out in clauses 79(1)(c) - (f).	This appears to repeat other provisions. Suggest removing.
Payment arrangement entitlement	79(1)(a)	4.5.1. More information about payment arrangements is located in sections 4.12, 4.14 and 9.2 of this guidance note.	This appears to repeat other provisions. Suggest removing.
Customer advice entitlement	79(1)(b)-(d)	4.6.1. 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. At a minimum, retailers must provide information and advice to the customer about their payment options, likely future energy use (based on historical consumption where available) and its cost, along with timely information about government and non-government assistance that is available to the customer in their particular circumstances.	This duplicates the Code. Suggest removing.
	79(1)(b)-(d)	4.6.2. In order to encourage customers to repay their arrears as soon as practicable, retailers should provide advice that would enable customers to repay their arrears in a period of not more than two years (clause 79(1)(b)).	This appears to repeat other provisions. Suggest deleting.
	79(1)(b)-(d)	4.6.3. In accordance with clause 83, customers are expected to take reasonable action towards paying for their energy use and repaying their arrears. We expect a customer and retailer to work towards the shortest payment arrangement that the customer believes is affordable and sustainable.	This appears to repeat other provisions. Suggest deleting.
	79(1)(b)-(d)	4.6.4. What is affordable and sustainable will be different for each customer. Retailers are not expected to automatically advise the customer of an option of two years to repay their arrears (although this may be appropriate in particular circumstances).	Clarification noted.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
	79(1)(b)-(d)	4.6.5. If a customer proposes a payment arrangement that is shorter than two years, the retailer is expected to advise the customer to contact the retailer if the amount proposed proves difficult to maintain.	Clarification noted.
	79(1)(b)-(d)	4.6.6. Customers who propose shorter payment arrangements effectively have 'time in reserve' which they are able to use in the event that they need to revise their payment arrangement (clause 81(2)).	Clarification noted.
	79(1)(b)-(d)	4.6.7. In assisting customers to propose a payment arrangement, or propose a revised payment arrangement, we expect retailers to provide customers with concise and relevant information regarding different payment options. Most notably, customers should be given details of different 'time and payment' options. This should include examples of different dollar amounts that could be paid each month (or more frequently) and the consequential length of those arrangements (for example, in months for a monthly payment arrangement or fortnights for a fortnightly payment arrangement).	Clarification noted.
	79(1)(d)	4.6.8. A retailer must also assist its customer with understanding their eligibility for the full suite of energy concessions available, and must apply all relevant concessions (including retrospectively within the Department of Health and Human Services's guidelines, to the customer's account. ⁷	Clarification noted.
	79(1)(d)	4.6.9. Retrospective application of missed concessions to the customer's account should occur prior to any payment arrangement being established, wherever possible.	Clarification noted.
	79(1)(d)	4.6.10. More information about payment arrangements is located in sections 4.12, 4.14 and 9.2 of this guidance note.	This appears to repeat other provisions. Suggest removing.
TA1 & TA2 Referrals to government and non-government assistance - warm transfer	79(1)(d)	4.6.11. We expect a retailer to explain to a customer the nature of the government and/or nongovernment assistance available and offer to help the customer to make contact with the service provider through a „warm transfer“ ⁸ .	This is a new requirement that will expand the cost estimates for the Code – to mitigate, remove or redraft to allow retailer flexibility to ensure customer can access the assistance. While retailers may often provide this, we don't think it's useful to note this in the Guidance Note as a firm expectation for the following reasons: <ul style="list-style-type: none"> - Many agencies do not appear to be set up to receive the volumes of transferred calls that would need to be received from retailers - Some customers may be referred to several agencies and can only be transferred to one agency per call (as it would be difficult if not impossible to have them transferred back). - Some agencies have online portals or other methods of contact that we assist customers with. Therefore, we ask that a warm transfer is noted as a possible option, but is not listed as a firm expectation as it is currently.
	79(1)(d)	4.6.12. Government assistance includes the Utility Relief Grant Scheme, relevant energy concessions, energy efficiency programs and information, budgeting assistance, etc.	Clarification point noted.
	79(1)(d)	4.6.13. Non-government assistance may include services including in-person and telephone financial counselling, emergency relief services, family violence support services, etc.	Clarification point noted.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Best offer	79(1)(e)(i)	4.7.1. It is not possible to guarantee that a particular tariff will in fact reduce the cost of an individual customer's energy consumption. However, at a particular point in time, taking into account a customer's pattern of energy use and payment history, the tariff that is most likely to minimise the customer's energy costs can be determined.	Clarification point noted.
	79(1)(e)(i)	4.7.2. In advising the customer of their tariff options, the retailer should take into account any customer circumstances that are known and are likely to affect their future energy consumption, and the likelihood that payments will be made as agreed.	Clarification point noted.
	79(1)(e)(i)	4.7.3. The retailer must consider the overall appropriateness of the offer, including the tariff design (flat or time-of-use), discounts (conditional or non-conditional), fixed-benefit periods, fixed supply charges, and whether any of these elements will result in an offer most likely to minimise the cost of ongoing energy use for the customer.	Clarification point noted.
	79(1)(e)(i)	4.7.4. We would not expect a tariff option that includes pay-on-time discounts to be offered, if failure to pay on time would result in a higher cost to the customer than an undiscounted offer.	Clarification point noted.
	79(1)(e)(i)	4.7.5. A retailer is expected to analyse a customer's historical data (including interval meter data where available) to assist in finding the tariff offer that is most likely to reduce the cost of their energy costs.	Clarification point noted.
	79(1)(e)(i)	4.7.6. A retailer must apply a change in tariff in line with any other relevant obligations in the Code, including those under clauses 16, 46 and 46A for market retail contract customers, and clause 36 for standard retail contract customers.	Reiterating an existing requirement – unnecessary and can be deleted.
	79(1)(e)(i)	4.7.7. The commission is aware that some retailers only provide one gas tariff offer per distribution area. Therefore, in these instances, retailers are expected to advise customers of the limited offer/s available.	It seems unnecessary for retailers to specifically note this to the customer if the other steps are taken and the customer is assured they have been offered the best plan for their circumstances.
TA2 - Practical assistance to reduce usage	79(1)(e)(ii)-(g)	4.8.1. We do not prescribe how the practical assistance to lower energy costs should be provided by retailers. However, a retailer must be able to demonstrate that the assistance provided was capable of making a meaningful reduction in a customer's energy use in their circumstances.	Practical assistance to lower energy costs is not the same as reducing a customer's energy use. If a retailer determines the customer already has low usage, and no assistance could be expected to bring it lower, then they don't have to provide assistance if they can substantiate why. Retailers should not need to do expensive onsite audits or insulation/appliance replacements for customers unless a grant or landlord funding can be obtained.
	79(1)(e)(ii)-(g)	4.8.2. We recognise that some customers facing payment difficulty may have limited capacity to reduce their energy use, for example, due to the poor energy performance of some accommodation, or a medical condition that requires particular levels of heating or cooling. However, in order to comply, retailers must have a meaningful conversation with the customer to ascertain what practical assistance can or cannot be implemented. If a retailer believes that there is no scope for action, it must be able to demonstrate why there was no scope for action in a particular case.	Clarification point noted.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
	79(1)(e)(ii)-(g)	4.8.3. When working with a customer to reduce their energy use, retailers should ensure that they do not promote reductions in energy use to a level that may put the health and wellbeing of a customer or their household at risk.	Clarification point noted.
	79(1)(e)(ii)-(g)	4.8.4. The following contains a non-exhaustive list of the practical assistance measures that retailers may consider providing one or more of to customers receiving assistance under clause 79(1)(e)(ii): a) An in-home energy audit. b) An over-the-phone energy audit. c) Provision of energy saving devices such as draught stoppers (commonly known as „door snakes“), thermostats, high-efficiency light globes, and stand-by power controllers. d) Provision of water saving devices that can also save on energy used to heat water, such as low-flow shower heads, thermostat controls and time switches. e) Appliance replacement for household items such as heaters, air conditioning, hot water services, fridges, dishwashers, etc. f) Insulation for roofs, floors, and walls.	The proposed assistance goes beyond what is appropriate to deliver to customers through retail energy regulation and is a new requirement that was not costed by ACIL Allen. Energy saving devices, water saving devices and insulation for roofs, floors and walls are housing energy efficiency measure that should be addressed through planning, building and housing policy. Retailers may in isolated cases supply items covered by points (d)-(f), however these are high cost items that in some cases are costly to install and as such should not be referred to in any minimum standard as it creates an expectation that this is reasonable for retailers to keep working down the list to keep helping customers who can't make use of, have already made use of the earlier items; or choose not to take up those earlier options. We suggest that (d)-(f) are deleted. We also note that in-home energy audits are only usually cost-effective for high energy use customers and may result in a recommendation to alter fixtures such as (d)-(f) which neither the customer, retailer or landlord (if applicable) may wish to fund. If this outcome is likely, EA may choose not to carry out an in-home audit. EA has very good practices in this area and is always seeking to improve. However, we strongly believe that providing the greatest assistance to customers who will benefit most and who are making consistent payments towards meeting some of their ongoing use is the best way to keep costs down for all customers.
	79(1)(e)(ii)-(g)	4.8.5. Retailers may advise customers of any government and non-government assistance that may be available, including energy efficiency programs, to complement practical assistance the retailer provides. We do not consider that a retailer has met its obligations to provide customers with practical assistance if the only steps it has taken is to refer a customer to a government-funded program and provided no other practical assistance to lower energy costs.	EA submits that this provision should be note that in some cases there may be no further appropriate or reasonable action that can be taken by the customer or retailer to lower the customers usage. If the justification for this conclusion is recorded, then it should be seen as compliant.
Information on progress	79(1)(e)(iii)	4.8.6. If a customer is to be successful in taking action to reduce their energy costs, they need to be supported with information that informs them about their progress.	Clarification point noted.
	79(1)(e)(iii)	4.8.7. A retailer may decide what information to provide, and when, but we expect that the information is fit for the purpose of enabling a customer to objectively assess the progress of their actions to reduce their energy costs. For example, this may include a retailer providing the customer with comparative information about the amount of kWh or MJ used in a billing period and the cost of that energy compared with a previous billing period.	Clarification point noted, but not necessary.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
TA2 - Suspension of repayment of arrears	79(1)(f)	4.8.8. The suspension of arrears provides a customer with time to implement a retailer's assistance to lower their energy costs to a level they can afford on an ongoing basis and to begin repaying their arrears. We expect the retailer and customer to focus on working together to reduce the cost of the customer's energy consumption, and a retailer to assist the customer with accessing other forms of assistance that may be available.	Clarification point noted.
Extension of 6 month debt on hold for TA2	79(4)	4.8.9. A retailer must, at a minimum, provide customers with an initial six-month period where the repayment of their arrears is on hold. This period may be extended under clause 79(4), which is discussed below.	Clarification point noted.
TA2 - Other assistance	79(1)(g)	4.8.10. Retailers may provide customers, and in fact are encouraged to provide customers, additional assistance to complement their minimum entitlements under Division 3.	It is clear that retailers may go beyond the minimum level of assistance. This point is unnecessary. Suggest removing.
Entitlement to minimum assistance	79(2)-79(5)	4.9.1. Clause 79(2)-(5) make it clear to retailers which of the forms of minimum assistance must be provided to customers and in what circumstances.	Clarification point noted.
TA1 Definition	79(2)	4.9.2. A customer who is in arrears and can pay for their ongoing energy use is, at a minimum, entitled to the assistance set out in clause 79(1)(a)-(d).	This appears to repeat other provisions. Suggest deleting.
TA2 Definition	79(3)	4.9.3. A customer who is in arrears and not able to pay for their ongoing energy use is, at a minimum, entitled to the assistance set out in clause 79(1)(c)-(f).	This appears to repeat other provisions. Suggest deleting.
	79(2) 79(3)	4.9.4. Clauses 79(2) and 79(3) establish minimum entitlements available to customers in the two specific circumstances defined.	This appears to repeat other provisions. Suggest deleting.
	79(2) 79(3)	4.9.5. Whether a customer can pay for their on-going energy use is a matter of judgement, both for the customer and the retailer. We expect the retailer to help the customer to understand the cost of their current energy use and to accept what the customer tells them about whether they can or cannot pay for their on-going energy use.	Clarification point noted.
Inconsistent payers (TA1 <->TA2)	79(2) 79(3)	4.9.6. However, we expect situations will arise in which a customer is able or largely able to pay for their forecast usage and arrears under clause 79(2), but may anticipate or demonstrate an occasional inability to make a payment. Whether a customer in this situation is entitled to the assistance provided under clause 79(3) is also a matter of judgement. We expect the retailer to exercise that judgement having regard to the objective of tailored assistance.	EA is not clear on the point of this clarification. Customers on TA1 (79(1)(a)-(d)) will be receiving information about contacting their retailer if they are having difficulty or are anticipating having difficulty in paying and this will outline that additional assistance is available and that they may call their retailer to revise their payment plan. In addition, the retailer has to follow up customers who are not paying regularly and have the same sort of discussion about additional assistance. The customer is entitled to assistance under 79(3) if they say they can't manage to pay their ongoing use plus arrears over a two year period. What other judgement call is necessary from retailers here? This seems to introduce unnecessary subjectivity. If there is nothing additional, then we suggest deleting it.
	79(2) 79(3)	4.9.7. If over a period of time a customer's arrears are increasing, we would expect the assistance available under clause 79(3) to be provided to help lower their ongoing energy costs.	See points above for clause 4.9.6. This clause should also be deleted.
	79(2) 79(3)	4.9.8. Refer to section 10.2 of this guidance note for more information. Extending assistance under clause 79(1)(f) – clause 79(4)	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
TA2 extensions	79(1)(f) - 79(4)	4.9.9. A retailer may extend the arrears on hold period if the retailer believes that the extension would assist the customer to continue to lower the cost of their energy use. As this discretion lies with the retailer, so too does the obligation to maintain records that support their decision to extend or not extend the assistance.	This appears to repeat other provisions. Suggest deleting.
	79(1)(f) - 79(4)	4.9.10. When deciding whether to extend an arrears on-hold period, a retailer should have consideration of the customer's circumstances, including: <ul style="list-style-type: none"> a) the quantum of their arrears (including for another energy account with the retailer) b) their ongoing usage costs (including for another energy account with the retailer) c) the level of previous assistance provided (or not provided) by the retailer d) the timeliness of previous support provided and whether any delay in providing assistance has contributed to a customer's payment difficulty e) the level of engagement by the customer with previous support provided f) adherence to payment arrangements and their efforts to reduce ongoing energy costs where there is scope to do so g) any other relevant customer circumstance. 	Clarification point noted.
	79(1)(f) - 79(4)	4.9.11. If a customer is making demonstrable progress in reducing the cost of their energy use and making regular payments towards that energy use, but is still only able to pay below the cost of that energy use, a retailer is expected to provide the customer with an extension to the period of time during which the customer's repayment of arrears is on hold.	This clause is not clear and it appears to be a new requirement that is not allowed for in the Code. What happens if the customer has stopped reducing their usage or has reached the limit of possible energy reductions, but still can't afford their ongoing use? Should a retailer be obliged to continue to allow a customer to pay below the level of their ongoing usage indefinitely (thereby allowing their debt to grow indefinitely)? This TA2 payment plan is based on the customer's assessment of what they can afford; a retailer cannot compel a customer to pay more than this amount. There is also no incentive for the customer to seek to alter this arrangement - if they can pay below the level of usage indefinitely, then they would not have to every clear their debt as long as they didn't change retailer. The issue of extensions and exit points as been made in earlier drafts of the PDF. We urge the Commission to close this loop hole by establishing a maximum length of time that a retailer must allow a customer to be on TA2. Retailers may always use their discretion to go beyond this maximum period, but could limit the debt for customers who are only prompted to face up to their debts under a threat of disconnection.
Customer entitlement to further assistance after end of assistance	79(1)(f) - 79(5)	4.9.12. A retailer must provide a customer, who has successfully reduced the cost of their usage to a level they can afford to pay on an ongoing basis, with assistance under clause 79(2). The repayment period for the arrears under clause 79(2) (no more than two years) cannot include the period of time when the customer's arrears were on hold.	Clarification point noted.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
	79(1)(f) – 79(5)	4.9.13. For example, a customer who had their arrears on hold for six months and has reduced their usage costs to an affordable level, has the entitlement to propose a payment arrangement to repay their arrears over a period of no more than two years under clause 79(2).	Clarification point noted.
	81(4)	4.9.14. A retailer may also accept a repayment period longer than two years under clause 81(4). We would expect a retailer to provide an extension if the customer has successfully reduced their energy consumption to an affordable level, but in doing so has accrued arrears that if required to be paid back within two years would once again see the customer facing payment difficulty.	Clarification point noted.
Information about assistance available	80(1)	4.10.2 Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.	Clarification point noted.
TA must be offered to customers within 21 business days	80(2)	4.10.3 We expect retailers to wait at least one business day, and no longer than 21 business days, after the pay-by date of an unpaid bill where the customer has arrears of \$55 (inclusive of GST) or more, before commencing its best endeavours efforts to provide a customer with their entitlements under Division 3.	Clarification point noted. We also reiterate the points made for clause 4.4.1.
Minimum \$ threshold for TA	80(2)	4.10.4 If a customer's total arrears are less than \$55 (inclusive of GST), a retailer is not obliged to contact the customer to provide the assistance in Division 3. However, a retailer has discretion to provide the assistance and may contact a customer to do so.	Clarification point noted.
Reminder notice timing	80(2) 109(2)	4.10.5 Retailers have discretion regarding the sequence of providing the assistance under Division 3 and sending the reminder notice (clause 109(2)) to a customer or sub-set of customers.	Clarification point noted.
Clear information to customers	80(2)	4.10.6 A retailer is expected to give a customer clear and unambiguous information about the assistance available in plain language, including the form of that assistance and the steps both the retailer and customer must take to implement the assistance.	This appears to repeat other provisions. Suggest deleting.
Clear information to customers	80(2)	4.10.7 We expect retailers to provide clear information to customers about how to contact the retailer to revise a payment arrangement or advise the retailer of a late or partial payment, or for any other purpose.	This appears to repeat other provisions. Suggest deleting.
Clear information to customers	80(2)	4.10.8 A retailer is expected to advise of the potential consequences if the customer fails to: <ul style="list-style-type: none"> a) make payments according to the payment schedule b) maintain contact (for example, when the customer is going to miss a payment) c) respond to the retailer's attempts to contact them. 	This appears to repeat other provisions. Suggest deleting.
Clear information to customers	80(2)	4.10.9 Retailers should also advise customers how they treat partial and late payments (and what constitutes a late payment), in relation to payment arrangements.	This appears to repeat other provisions. Suggest deleting.
	-	4.10.10 Refer to section 9.2 for more information about tailored assistance conversations.	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
6 business days for customers to consider assistance	80(3) 81 108	4.11.1 A retailer must provide a customer with a reasonable opportunity to consider the assistance available under Division 3, develop a payment proposal under clause 81, and request further information where required. Clause 80(3) requires a retailer to provide a customer with no less than six business days for customers to consider information in clauses 80(1)-(2), which aligns with the minimum reminder notice period (clause 108).	This appears to repeat other provisions. Suggest deleting.
	80(3)	4.11.2 A retailer may provide a customer with a period longer than 6 business days but would be expected to remain in contact with the customer during this extension.	The first part of this repeats other provisions. The second part that refers to the retailer being expected to remain in contact with the customer is a new requirement and is quite impractical. It may have taken the retailer up to 21 business days to get in contact with the customer to offer TA. The retailer can attempt to call the customer during the extension period, but 'remaining in contact' requires that the customer receives this contact. In all, we suggest this clause is unnecessary and can be deleted.
	80(3)	4.11.3 A retailer must advise a customer of their entitlement to a minimum of six business days to consider the assistance.	Clarification point noted.
	80(3)	4.11.4 Refer to section 9.2 for more information about tailored assistance conversations.	This appears to repeat other provisions. Suggest deleting.
Non-contact by phone	-	4.11.5. If a retailer cannot successfully contact a customer by telephone, the retailer must provide information about the assistance under Division 3 via registered post to meet its best endeavours obligations.	This appears to repeat other provisions. Suggest deleting.
	-	4.11.6. Refer to section 9.8 of this guidance note for more information.	This appears to repeat other provisions. Suggest deleting.
Successful contact for best endeavours	80(3)	4.11.7. If a retailer does successfully contact the customer by telephone, the retailer must still provide the customer with written information about their entitlement to assistance.	This appears to repeat other provisions. Suggest deleting.
	-	4.11.8. Refer to section 9.8 of this guidance note for more information.	This appears to repeat other provisions. Suggest deleting.
Counting the 6 business day period	80(3)	4.11.9. The provision of assistance is considered to be received by a customer when either: a) The retailer provides the customer with the information about their entitlement to assistance over the telephone and has a voice recording of the conversation; or b) If the retailer posts the information to the customer, according to the ordinary course of post (clause 87(3) and section 6.2 of this guidance note).9	Clarification point noted.
Customer refusal of assistance	80(1)-(4)	4.11.10. If a customer declines a retailer's provision of assistance under Division 3, the retailer must clearly document the conversation and refusal of assistance. The retailer is also expected to send written information to the customer about their entitlement to assistance under Division 3 and retain these records. If the customer seeks to access their entitlement to assistance at a later date (assuming the customer is still in arrears for \$55 (inclusive of GST) or more), the retailer must provide the assistance to the customer as outlined in Division 3.	This appears to repeat other provisions. Suggest deleting.
Setting up payment arrangements	81(1)	4.12.1. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Retailer acceptance of payment proposals	81(2)	4.12.2. We expect retailers to accept payment arrangements that are fair and reasonable having regard to the customer's circumstances. This is addressed in further in 4.14.8.	This appears to repeat other provisions. Suggest deleting.
	81(2)	4.12.3. Additionally, we do not expect retailers to accept payment arrangements for amounts that are incompatible with the retailer's payment methods.	Clarification point noted.
Minimum specifications for payment arrangements	81(3)	4.12.4. A retailer must accept a customer's payment proposal or revised payment proposal that comprises equal payments at regular intervals of up to one month, which would result in the arrears being repaid in no more than two years, and includes a reasonable forecast of the customer's energy use over the next 12 months. ¹¹	This appears to repeat other provisions. Suggest deleting.
	81(3)	4.12.5. For example, a customer with \$500 of arrears and who is using \$150 per month, could propose a payment arrangement of \$200 per month to repay their arrears in 10 months and cover the cost of their ongoing usage. In this scenario, a retailer must accept the customer's proposed payment arrangement.	Clarification point noted.
Requirement to reassess payment plans annually	81(3)	4.12.6. If a customer's payment arrangement exceeds 12 months, then every 12 months the retailer must re-assess the reasonable forecast cost of the customer's ongoing use (based on their historical use) and provide this information to the customer so that they can propose a revised payment arrangement if required.	This is a new requirement. Reviews should be left to the retailer's or customer's discretion. Customers and retailers are likely to be calling each other through the course of a plan if it is too high or too low. Customers will have been provided information asking them to contact their retailer if they are struggling to meet their payments. Adding an additional requirement for annual reviews is excessive and of limited use. We suggest this clause it deleted.
Retailer discretion about payment arrangements	81(4)	4.12.7. A retailer has discretion about whether or not to accept a payment arrangement that includes any or all of the following: a) Payment of different amounts at different intervals. For example, \$100 in May, \$500 in July, \$500 in September. b) Payment arrangements that result in the arrears being repaid in a period longer than two years after the first payment. c) Payments for ongoing energy usage being made separately from payments towards the arrears.	Clarification point noted.
	81(4)	4.12.8. When a retailer is deciding whether to accept a customer's payment proposal under clause 81(4), the retailer should consider a customer's circumstances, including: a) the quantum of their arrears (including another energy account with the retailer) b) their ongoing energy costs (including another energy account with the retailer) c) the level of previous assistance provided (or not provided) by the retailer d) the timeliness of previous support provided and whether any delay in providing assistance has contributed to the customer's payment difficulty e) the level of engagement by the customer with previous support provided f) partial payments for previous payment arrangement/s g) any relevant customer circumstance.	Clarification point noted.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
	81(4)	4.12.9. As noted in section 4.6 of this guidance note, we encourage retailers to have a conversation with their customers about the payment options that will pay down their arrears efficiently and sustainably.	This appears to repeat other provisions. Suggest deleting.
	81(4)	4.12.10. As noted in section 4.4, if a retailer provides a customer with a payment arrangement that separates usage and arrears (clause 81(4)(c)), and the customer falls further into arrears with a subsequent bill, the retailer should contact the customer to discuss whether the customer needs to change their payment arrangement to one that is consistent with clause 81(3).	Clarification point noted.
Written schedule	81(5)	4.12.11. A retailer must provide a customer with a written record of the payment arrangement, including the number of payments, the amount of each payment, the period the payment arrangement covers, and the due date for each payment.	This appears to repeat other provisions. Suggest deleting.
	81(5)	4.12.12. Retailers should also provide customers with options for making the payments on the written payment schedule.	Clarification point noted.
Failure to pay	81(6)	4.12.13. Retailers must use their best endeavours (see section 9.8 of this guidance note) to discuss a revised payment arrangement with a customer who does not make a scheduled payment. If after the retailer uses its best endeavours, the customer does not put forward a revised payment arrangement, the retailer may issue the customer with a disconnection warning notice (providing a reminder notice had already been issued and the reminder notice period had lapsed).	<p>Section 9.8 of the Guidance Note requires a retailer to make steps to contact the customer over 21 business days including by registered post or a personal visit if the customers cannot be contacted by phone. This is an unreasonably long timeframe and amount of effort to contact a customer who has opted in to a payment plan that we will have communicated through a written payment schedule. We see this as a new requirement on retailers.</p> <p>Two situations may arise here:</p> <ul style="list-style-type: none"> - The customer may have recently opted in to the payment plan through a best endeavours approach (4.4.1), therefore it should not be necessary to use best endeavours so soon after. - The customer may have been paying successfully for some time since they opted in to the payment plan, so have maintained this indirect contact with their retailer. It therefore also seems excessive to have to follow up these customers with the best endeavours approach under 9.8.5. <p>We suggest that best endeavours for situations other than for disconnection for non-payment be left to its English language meaning. If it must be defined, then it should be a shorter timeframe and phone contact only. Registered post is very costly to use, and we urge the Commission to limit the use of this to the most severe cases only.</p>
Exercising judgement between TA1 and TA2	81(6)	4.12.14. If a customer puts forward a revised payment arrangement that includes payments that do not cover the likely cost of their ongoing energy use, the customer is entitled to have their arrears put on hold and to receive practical assistance to reduce their energy costs under clause 79(1)(e)-(f). However, as discussed in sections 4.9.4 to 4.9.6 of this guidance note, for customers largely able to meet their ongoing usage costs, judgement is required regarding whether a customer should receive assistance under clause 79(1)(e) to help lower their ongoing usage costs without the arrears being placed on hold under clause 79(1)(f). This judgement should be exercised having regard to the objective of Division 3.	This is a complex and subjective requirement. EA submits that this clause be deleted and an example provided instead.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Flexibility around payment plan payments	81(6)	4.12.15. Customers seeking to alter their payment arrangements should not be made to feel that they are imposing on their retailer. Nor should it be necessary for customers to feel they need to contact their retailer to deal with small deviations from their agreed payment arrangements. We expect retailers to demonstrate flexibility and understanding in accommodating small under and over-payments, and late payments, against agreed payment arrangements. In return, we expect customers to be respectful of the flexibility provided to them by their retailers.	This is a new requirement. While retailers may often do this, including this clause into the Guidance Note makes it a firm obligation for retailers. This is a complex requirement to build into IT systems or processes. i.e. IT systems would have to be configured differently for customers on the PDF to allow for a specific threshold of underpayment and late payment before flagging the payment is late. Alternatively, all underpayments or late payments for PDF customers could be flagged for manual follow up. The people reviewing would have to assess and determine if the late or underpayments were reasonable or not. These and any other solutions we can think of are all costly to build or operate as a minimum standard. We understand the Commission wants TA to be tailored to customers, however, tailoring to too great a degree will add a great deal of cost. Given that the customer will be choosing the amount they will pay on their TA plan and can revise this at any time, we suggest that this element can be left to retailer discretion without there being a significant detrimental effect on customers.
Non-payment of cost of ongoing energy use – clause	82(1)	4.13.1. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.	This appears to repeat other provisions. Suggest deleting.
Non-payment of ongoing usage and contact requirement	82(2)	4.13.2. If a customer, who is paying below the cost of their energy use, does not make a scheduled payment, we expect the retailer to take prompt action to contact the customer to discuss putting forward a revised payment arrangement. If after the retailer has used its best endeavours, the customer does not put forward a revised payment proposal, the retailer may issue the customer with a disconnection warning notice (providing a reminder notice had already been issued and the reminder notice period had lapsed).	As noted earlier (clause 4.4.4), there is no explicit requirement in the Code or Guidance Note for TA2 to be set up as a regular schedule of set payments. In addition, for the reasons outlined for 4.12.13, we think it is excessive to use the best endeavours definition outlined in 9.8.5 for these customers. We suggest that best endeavours for situations other than for disconnection for non-payment be left to its English language meaning. If it must be defined, then it should be a shorter timeframe and phone contact only.
Customer responsibility to implement practical assistance	82(3)	4.13.3. We expect retailers to keep sufficient records of the steps agreed with the customer to lower their energy usage, in line with clause 111A(d). For example, if the retailer arranged for the customer to have an energy audit completed at the customer's premises, the retailer would be expected to record the date, time and other particulars of the energy audit. We also expect the retailer to record details of the practical assistance that a customer has implemented. These records could then be relied upon by the retailer in the future to demonstrate whether a customer was or was not implementing the practical assistance provided by the retailer, as outlined in clause 82(3).	This includes a new requirement – that is, to record the details of what energy reduction activities a customer has implemented. This will require a retailer to follow up with the customer about behavioural or physical measures put in place to reduce usage. We don't mind capturing this information if we are in discussions with the customer, but we don't see the need for us to be obliged to follow up. We believe this clause could be deleted and left up to retailer's discretion.
	82(3)	4.13.4. Customers are entitled to a minimum of six months to implement measures to lower their energy costs, while their arrears are also on hold.	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
	82(3)	4.13.5. If the customer is within the initial six-month period, a retailer cannot suspend practical assistance if the customer fails to implement measures to lower energy costs. Instead, a retailer is expected to contact the customer to discuss a revised implementation timeframe consistent with the objectives of Division 3.	This is a new requirement. EA notes the obligation to not suspend assistance based on customer inaction to lower energy usage in the first six-month period of TA. However, with energy usage being highly seasonal and can change based on lifestyle changes, it will often be difficult for a retailer to know if a customer has tried to reduce usage or has been successful in reducing usage. Placing an additional requirement on retailers to chase up customers who are paying their instalments, but don't appear to be reducing usage within a six month period is impractical and excessive. The customer and retailer will be in contact at the end of the six-month period or earlier if either one has concerns about the arrangement. Therefore, we suggest this this clause is removed.
	82(3)	4.13.6. If the customer is outside of the initial six-month period, and has failed to implement the practical assistance, the retailer must contact the customer under this clause, but the assistance under clause 79(1)(f) may be suspended at that point if the customer refuses or fails to put forward a reasonable implementation timeframe, taking into account their circumstances.	Clarification point noted.
Adding unpaid bills to a customer's arrears	82(4)	4.13.7. While a customer is receiving assistance under clause 79(1)(e)-(f), retailers may add a customer's unpaid bills, or residual amounts of bills, to their arrears.	Clarification point noted.
	82(4)	4.13.8. Retailers must clearly explain to customers at the commencement of assistance under clauses 79(1)(e)-(f) how their ongoing bills and unpaid amounts, residual or otherwise, will be treated (i.e. added to their arrears). Additionally, retailers must explain that adding unpaid amounts will result in the customer's arrears being larger at the end of the on-hold period than when the customer first had their arrears placed on hold.	Clarification point noted.
Continued provision of assistance	83	4.14.1. In complying with its obligations under Part 3, a retailer must consider a customer's particular circumstances, and act fairly and reasonably (Chapter 9 of this guidance note). As with the exercise of any judgement, the commission expects a retailer to be able to demonstrate clearly that it has considered the customer's particular circumstances when deciding whether or not to continue providing assistance to a customer under clause 83.	This appears to repeat other provisions. Suggest deleting.
Flexibility with partial or late payments	83 81(6) 82(2)	4.14.2. As outlined in sections 4.9, 4.12 and 4.13, we expect a retailer to provide some flexibility with respect to a customer making partial or late payments. The retailer must also comply with clauses 81(6) and 82(2). Additionally, we expect the retailer to work with its customer to find ways to implement sustainable payment arrangements where the customer can make consistent and affordable payments.	This appears to repeat other provisions, particularly 4.12.15, which is a new requirement. Suggest deleting.
Customer failure or refusal to pay for ongoing use or arrears	83	4.14.3. Particular circumstances that retailers may consider when deciding whether or not it is reasonable to suspend assistance until such a time where the customer re-engages and/or cooperates with the assistance provided by the retailer are outlined below.	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Reasonable customer action	83	4.14.4. Reasonable customer action includes, but is not limited to: a) Making occasional partial payments, for example, paying \$80 instead of \$100. b) Making a payment (partial or full) a few business days late. c) Agreeing to pay an amount in good faith to their retailer by a certain date. d) Proposing a payment arrangement that allows for the efficient repayment of arrears and is affordable and sustainable for the customer.	While EA is supportive of examples being included in the Guidance Note, but examples (a) and (b) touch on the same topic as 4.12.15 which is a new requirement. These should be removed. Example (c) is also problematic as it creates an expectation that retailers are obliged to accept promises to pay from customers to be seen to be reasonable. While retailers may often do this, the wording of (c) creates unnecessary subjectivity. Would the retailer need to provide the length of extension that the customer requests? Does a retailer have to allow extensions more than once a year? What about if the customer has been difficult to contact and the retailer has only been able to make contact late in the 21 business day period, and then the customer asks for an extension? Example (d) is appropriate as is.
	83	4.14.5. To be clear, the commission would not consider it reasonable for a retailer to suspend assistance under clause 83 due to a customer making occasional partial payments, or marginally late payments.	This appears to repeat other provisions. Suggest deleting.
	83	4.14.6. If payments are consistently under the required amount, we expect a retailer to contact the customer to discuss revising the payment arrangement amounts and/or frequency so that it can be maintained in a sustainable and affordable manner.	This appears to repeat other provisions. Suggest deleting.
Unreasonable customer action	83	4.14.7. Unreasonable customer action includes, but is not limited to, consistently and consecutively: a) Establishing payment arrangements or revised payment arrangements and not making any of the required payments. b) Not responding to their retailer's attempts to contact them to provide assistance under Division 3.	Clarification point noted.
	83	4.14.8. We also consider it unreasonable for a customer with a relatively low level of arrears when compared to the cost of their energy use, to propose a payment arrangement that would use their entitlement of two years (e.g. paying \$5 per month) in the absence of customer circumstances that support repayment over the full period. To be clear, we expect that some customers will be in circumstances ¹² that would warrant the full period. Alternatively stated, we consider it reasonable for a customer's payment proposal to be proportionate to the amount of their arrears, while taking into account their circumstances and what they can afford to pay.	Clarification point noted.
Customer not facing payment difficulty	83(c)	4.14.9. If a retailer becomes aware that a customer is not facing payment difficulty, it is not required to continue to provide assistance under Division 3.	Clarification point noted.
	83(c)	4.14.10. If a retailer suspends assistance, the onus is on the retailer to show that a customer was not facing payment difficulty. Notification of suspended assistance	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
	83(c)	4.14.11. If a retailer suspends assistance under clause 83, it is expected to notify the customer in writing (in line with the requirements of Division 5 of Part 3) that the customer's assistance has been suspended. The correspondence must include details of what action the customer needs to take to avoid disconnection of supply and any further entitlements to assistance the customer may have under Division 3. This notification may be included with the disconnection warning notice (provided the reminder notice has already been sent and the reminder notice period had lapsed)	Clarification point noted
Financial hardship policies	Division 4	Chapter 5	
Approval of financial hardship policies	84 85	5.1.1. Clause 84 reflects the legislative obligation on retailers to prepare and submit a financial hardship policy to the commission for approval. ¹³ Retailers must review and where necessary make variations to their existing policies, ¹⁴ to include the content set out in clause 85.	This appears to repeat other provisions. Suggest deleting.
Link to EIA and GIA	-	5.1.2. Where amendments are necessary, retailers must submit their amended policies to us for approval in accordance with section 43B of the Electricity Industry Act 2000 (Vic) and section 48GB of the Gas Industry Act 2001 (Vic). We will audit compliance with Part 3 as part of our audit process.	This appears to repeat other provisions. Suggest deleting.
Content of financial hardship policies	85(a)	5.2.1. A retailer's financial hardship policy must include, in plain language, the matters set out in the relevant sections of the industry Acts.	This appears to repeat other provisions. Suggest deleting.
Minimum Entitlements to Assistance	85(b)	5.2.2. A retailer's financial hardship policy must include, in plain language, the nature and form of assistance it will provide to customers facing payment difficulty that complies with Division 3 of Part 3 of the Code.	This appears to repeat other provisions. Suggest deleting.
Matters Covered by Guidelines or Guidance Notes	85(c)	5.2.3. A retailer's financial hardship policy is required to include, in plain language, how the retailer's programs of assistance address matters set out in any guidelines published by the commission under section 13 of the Essential Services Commission Act.	This appears to repeat other provisions. Suggest deleting.
	85(c)	5.2.4. A retailer's financial hardship policy is required to include how the retailer's programs of assistance address matters set out in any guidance notes issued under our Energy Compliance and Enforcement Policy.	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Other matters to be covered in FHPs	-	<p>5.2.5. In addition to the matters covered in clauses 85(a) and (b), financial hardship policies must:</p> <p>a) provide details of the minimum assistance and other options that are available to customers facing payment difficulty</p> <p>b) 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</p> <p>c) provide details of:</p> <p>i. how and in what circumstances the retailer will make field audits of electricity or gas usage available to customers facing payment difficulty</p> <p>ii. in what circumstances the field audits will be available at partial or no cost to the customers facing payment difficulty, and</p> <p>iii. 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.</p> <p>d) 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</p> <p>e) provide for the referral of customer facing payment difficulty to other support agencies and schemes where appropriate</p> <p>f) set out the process retailers will follow to advise customers 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</p> <p>g) 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 difficulty and in providing assistance</p> <p>h) be transparent, accessible and communicate to customers facing payment difficulty, financial counsellors and community assistance agencies.</p>	EA submits that c) and d) are unreasonably prescriptive and should be removed as a minimum requirement.
Customer communications	Division 5	Chapter 6	
Provision of information to customers	86	6.1.1. The provision of information to customers anticipating or facing payment difficulty about the assistance under Part 3 will assist them with managing and paying for their energy use, repaying arrears, and will help ensure that disconnection is a last resort.	This appears to repeat other provisions. Suggest deleting.
Written communications	87 88	6.2.1. Retailers must provide customers with written information in plain language, and in a form that draws the customer's attention to any assistance that is available, or actions that they need to take to avoid disconnection.	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Plain language, legibility and clarity	87(1)	6.2.2. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.	This appears to repeat other provisions. Suggest deleting.
Recording EIC	87(2)	6.2.3. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.	This appears to repeat other provisions. Suggest deleting.
TA written communications	87(3)-(4)	6.2.4. Retailers have discretion about the postage delivery method they use to send customers written communications connected with Part 3 (clause 87(3)).	Clarification point noted
	87(3)-(4)	6.2.5. With respect to both clauses 87(3) and (4), the commission will consider post to have been received by a customer according to the ordinary course of post provisions of the Interpretation of Legislation Act 1984. 15	This appears to repeat other provisions. Suggest deleting.
	87(3)-(4)	6.2.6. In order to expedite the delivery of written communications sent under clauses 87(3)- (4), retailers can use Australia Post's priority letter service with either the registered post or standard post, respectively.	This appears to repeat other provisions. Suggest deleting.
No charge for written communication	87(5)	6.2.7. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.	This appears to repeat other provisions. Suggest deleting.
Miscellaneous obligations	Division 6	Chapter 7	
Customer circumstances	89(a)	7.1.1. The commission's expectations about compliance with a retailer's obligations in relation to clause 89(a) are outlined in section 9.4 of this guidance note.	This appears to repeat other provisions. Suggest deleting.
Providing information in a timely manner	89(b)	7.2.1. The commission's expectations about compliance with clause 89(b) are outlined in sections 4.10 and 4.11 of this guidance note.	This appears to repeat other provisions. Suggest deleting.
Best endeavours	89(c)	7.3.1. The commission's expectations about compliance with clause 89(c) are outlined in sections 4.10, 4.11 and 9.8 of this guidance note.	This appears to repeat other provisions. Suggest deleting.
Info about assistance from govt or community service providers	89(d)	7.4.1. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.	This appears to repeat other provisions. Suggest deleting.
Working cooperatively	89(e)	7.5.1. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.	This appears to repeat other provisions. Suggest deleting.
Compliance with guidelines	89(f)	7.6.1. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.	This appears to repeat other provisions. Suggest deleting.
Assistance beyond minimum standards	90	7.7.1. This clause intends to put it beyond doubt that retailers may provide assistance in addition to the minimum assistance required by Part 3 of the Code. Any such assistance must be additional to, not a substitute for, the minimum assistance	Clarification point noted

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Assistance beyond minimum standards for SA	-	7.7.2. A retailer may, for example, provide a customer who is anticipating payment difficulty, and perhaps who is about to be issued with a bill, the assistance under Division 3 even though the customer is not yet in arrears and the customer is only entitled to Division 2 assistance.	This appears to repeat other provisions. Suggest deleting.
Assistance beyond minimum standards for TA	-	7.7.3. A retailer may, for example, in addition to the minimum assistance a customer is entitled to under Division 3, provide a customer with an incentive payment arrangement (where each payment or number of payments is matched by the retailer), or with a partial or full debt waiver.	This appears to repeat other provisions. Suggest deleting.
Restriction on conditions	91	7.8.1. Clause 91 makes it clear that a customer cannot be required to provide personal or financial information to the retailer as a condition of receiving the minimum assistance set out in Part 3.	This appears to repeat other provisions. Suggest deleting.
	91 79(1)(e)	7.8.2. A retailer may ask a customer about any factors that are likely to affect their energy consumption in relation to providing advice and practical assistance under clause 79(1)(e).	This appears to repeat other provisions. Suggest deleting.
	91	7.8.3. A retailer cannot request that a customer seeks assistance from a financial counsellor or provides financial information as a condition to accessing assistance under Part 3.	This appears to repeat other provisions. Suggest deleting.
	91	7.8.4. This clause does not prevent a retailer offering to arrange for a customer to receive assistance through a financial counsellor or other community service provider. However, the retailer cannot require the customer to provide them with evidence of their financial circumstances in return for making these arrangements or the outcome of the assistance received.	This appears to repeat other provisions. Suggest deleting.
	91	7.8.5. This clause does not prohibit a retailer from asking its customer questions that help the retailer maximise and enhance the effective delivery of the assistance under Part 3, in line with the principles of respectful conversations and themes discussed in Chapter 9 of this guidance note. However, it does prohibit making provision of that information a condition to access assistance under Part 3. Therefore, if a customer declines to answer a retailer's questions, the retailer must still provide the customer with their entitlement to assistance under Part 3.	This appears to repeat other provisions. Suggest deleting. There is some info a customer would need to provide - e.g. info on factors related to energy reduction advice etc. to allow retailer's advice to be appropriate for their circumstances and to show they are cooperating. May be other examples. See 7.8.7. Suggest adding wording to this effect here too. EA also notes that it must comply with privacy legislation which would determine the extent to which information disclosed by a customer in assessing ability to pay constitutes 'personal information'.
	91	7.8.6. Personal information does not include information necessary to enable the retailer to verify the customer's identity.	This appears to repeat other provisions. Suggest deleting.
	91	7.8.7. A retailer may also ask a customer for information needed to: a) assist the customer with completing an application for the Utility Relief Grant Scheme b) assist with applying concessions to the customer's account c) assist with a referral to government and non-government support (where the customer has consented to the referral).	Clarification point noted
Debt	92	7.9.1. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Supply capacity control product	93	7.10.1. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.	This appears to repeat other provisions. Suggest deleting.
Payment by Centrepay	94	7.11.1 Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.	This appears to repeat other provisions. Suggest deleting.
Disconnection Safeguards	Parts 3 and 6	Chapter 8	
Disconnection safeguards	ERC Part 3 (PDF) ERC Part 6 (WDP) 111A	8.1.1. Before a retailer can disconnect a residential customer's energy supply under clause 111A, the retailer must have complied with a range of obligations including providing, or using its best endeavours to provide, the assistance under Division 3 at multiple stages during its interactions and communications with the customer (clause 89). We have called these various obligations „disconnection safeguards“.	This appears to repeat other provisions. Suggest deleting.
	111A	8.1.2. The disconnection safeguards are located in a number of clauses throughout the Code. These provisions ensure that retailers must provide customers with timely, relevant and unambiguous information and assistance to help avoid disconnection. This information includes: a) entitlements to assistance under Part 3 b) assistance that may be available from community service providers and other nongovernment services c) the availability of government assistance including grants and concessions.	This appears to repeat other provisions. Suggest deleting.
Minimum disconnection amount	111 111A 116	8.1.3. The disconnection safeguards also include restrictions where disconnections are prohibited (clauses 111, 111A and 116), including the minimum disconnection amount where the customer must have arrears of at least \$300 (inclusive of GST).	This appears to repeat other provisions. Suggest deleting.
Disconnection safeguards	ERC FD	8.1.4. The other disconnection safeguards are located in the Code and are summarised in the Essential Services Commission 2017, Payment difficulty framework, Final decision, October in table 5.3.	This appears to repeat other provisions. Suggest deleting.
	-	8.1.5. The remainder of this chapter contains the relevant disconnection safeguard provisions of the Code that are not discussed elsewhere in this guidance note.	This appears to repeat other provisions. Suggest deleting.
Disconnection warning notices	110	8.1.6. Where the commission believes that a particular provision can be read on its plain meaning, we provide no further comment in this guidance note.	This appears to repeat other provisions. Suggest deleting.
De-Energisation for non-payment	111	8.1.7. Clause 111 only applies to small customers who use less than 40MWh per annum, who are not residential customers.	Clarification point noted, but doesn't appear to be necessary.
Disconnection as a last resort	111A	8.1.8. This clause provides the mechanisms by which customers can be assured that disconnection for not paying a bill should be a last resort. Three sets of conditions must be met.	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
	-	8.1.9. First, the retailer must have met all of its obligations under Part 3 including using its best endeavours to provide the minimum assistance to which a customer is entitled, including using its best endeavours to revise a payment arrangement where required. The retailer must also have issued a compliant reminder notice, compliant disconnection warning notice, and, after the disconnection warning period has lapsed, used its best endeavours to contact the customer and provide them with unambiguous information about the assistance available under Part 3 and from government and community service providers, prior to disconnection.	It would be useful to have case study examples of compliant and non-compliant retailer behaviour. We also request that the wording of this clause be reviewed as it seems to suggest that the best endeavours period immediately prior to disconnection must not start until after the disconnection warning period has ended. Our interpretation from all other relevant clauses in the Code and Guidance Note is that this period can begin at the time of issue of the disconnection warning notice, which is the most practical approach.
	83 81(3) 82(2)	8.1.10. Second, the customer receiving assistance must have failed to meet the conditions of that assistance (clause 83), and not sought to vary that assistance if they were unable to meet those conditions (clauses 81(3) and 82(2)). 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. Additionally, the customer must also have failed or refused to take reasonable action to remedy any non-payment.	If kept, it would be useful to have examples of cases where the customer has not met their obligations under the PDF and that the retailer can compliantly disconnect the customer.
	89(a) 111A	8.1.11. Third, a retailer must be able to demonstrate through its record keeping that it has met its obligations to use its best endeavours to contact the customer and provide assistance, issued a compliant reminder notice, disconnection warning notice, and acted fairly and reasonably while taking into account of all customer circumstances known to the retailer, as outlined in clauses 89(a) and 111A of the Code and sections 9.3 and 9.4 of this guidance note. It must also be able to provide records to show how the customer failed to meet the conditions of that assistance and how it complied with the commission's expectations in this guidance note.	As for 8.1.9-10, it would be useful to get some examples here too.
	111A	8.1.12. If a customer is disconnected and the requirements of clause 111A have not been satisfied, the customer will not have been disconnected as a last resort.	This appears to repeat other provisions. Suggest deleting.
	111A	8.1.13. Through the conditions of retailer licences, standard retail contracts and market retail contracts must either comply with, or not be inconsistent with, the Code including clause 111A. If a retailer disconnects a customer and fails to comply with the terms and conditions of the customer's contract specifying the circumstances in which the supply of energy may be disconnected, the customer will have been wrongfully disconnected. ¹⁶	This appears to repeat other provisions. Suggest deleting.
Minimum disconnection amount	116	8.1.14. The minimum disconnection amount in clause 116(1)(g) has been amended from \$120 (exclusive of GST) to \$300 (inclusive of GST) of arrears to align with the minimum amount under the National Energy Retail Rules, as applied in other jurisdictions.	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Disconnection via a retailer	116	8.2.1. A reference in the Code or this guidance note to a disconnection by a retailer means a disconnection procured by a retailer. Accordingly: a) If a disconnection performed by a distributor occurs where the distributor is acting on the retailer's instructions, the retailer is deemed to have disconnected the customer. b) If a disconnection performed by a distributor occurs not in accordance with the instruction to disconnect given by the retailer, the retailer has not disconnected the customer.	This appears to repeat other provisions. Suggest deleting.
Guidance for other retailer PDF obligations	General	Chapter 9	
Tailored assistance conversation	Division 3	9.2.1. We expect retailers to have respectful conversations with their customers about payment difficulty and the assistance they are entitled to under Part 3, having regard to their circumstances and information they volunteer.	This appears to repeat other provisions. Suggest deleting.
Obligation to offer TA to a customer who is not in arrears	Division 2 Division 3	9.2.2. If a customer, whose bill of \$55 or more (inclusive of GST) is not yet overdue, contacts their retailer to discuss their payment options, the retailer should have a conversation with the customer about the standard assistance options available in the first instance. However, if the customer advises their retailer that the standard assistance options would not help them pay their bill according to the terms and specifications of those options, the retailer should provide tailored assistance to the customer.	This is a new requirement. This clause should be deleted as it creates a firm obligation on retailers that conflicts with clauses 78 and 80(1) of the Code. It would mean that retailers are obliged to offer TA before the customer is even in debt. This means that any Victorian residential customer could call up and say that they can only afford to pay less than their ongoing usage and access all the assistance under 79(1)(c)-(g). We note that the PDF is a minimum standard and that retailers have the discretion to go above and beyond, but we strongly believe this shouldn't be mandated.
When to start discussing TA	80(1) 80(2)	9.2.3. If a customer, whose bill of \$55 or more (inclusive of GST) is overdue, and either the customer contacts the retailer (clause 80(1)) or the retailer contacts the customer as required by clause 80(2), a retailer may discuss the standard assistance options available in the first instance. The retailer is expected to ask if those options would assist the customer in paying their bill. If the customer believes that standard assistance would assist them in paying their bill, a retailer may activate that form of assistance. As a safeguard for customers in arrears, the retailer is still expected to inform the customer of their entitlement to tailored assistance in the event that the customer is unable to maintain the standard assistance payment arrangement.	Clarification point noted.
Best endeavours to contact when customer fails SA	Division 3	9.2.4. As an additional safeguard, as discussed in section 10.1 of this guidance note, if a customer fails to maintain a standard assistance payment arrangement, and has arrears of \$55 or more (inclusive of GST), then the retailer is obligated to use its best endeavours to contact the customer and provide them with their entitlement to assistance under Division 3.	This clause is unnecessary as it's already covered by other provisions. i.e. if a customer is in debt >\$55 then the retailer is obliged to offer TA within 21 days using best endeavours. Additionally, if the SA payment is a few days late or is a slight underpayment, the retailer should be able to retain the <u>discretion</u> to not offer TA if they believe the customer will shortly catch up and be able to successfully remain on SA. Also, given that information about TA will be readily available, we believe that there is already a practical and reasonable safeguard in place under the Code. This clause 9.2.4 should be deleted.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Timing rules for TA	79 81	9.2.5. Should a customer need to activate their entitlement to tailored assistance at a later date, the retailer must not include any time a customer spent on a standard assistance payment arrangement in the tailored assistance payment arrangement under clauses 79 and 81.	Clarification point noted.
Customer must be offered TA is SA not suitable	Division 2 Division 3	9.2.6. If a customer believes that the standard assistance payment arrangements would not assist them with paying their bill, then their retailer is expected to provide tailored assistance under Division 3.	This is effectively a duplication of 9.2.2 and like 9.2.2 is a new requirement for the same reasons. It should be deleted.
Advice to customer at start of TA	Division 3	9.2.7. Once a retailer begins discussing tailored assistance with the customer, as outlined in sections 4.6 – 4.10 of this guidance note, we expect a retailer to provide information and advice to a customer that will assist them with: <ul style="list-style-type: none"> a) repaying their arrears in a period of not more than two years b) paying for their ongoing usage costs c) reducing their energy costs. 	This appears to repeat other provisions. Suggest deleting.
	Division 3	9.2.8. We encourage retailers to provide information and advice to customers that will assist them with repaying their arrears as efficiently and sustainably as possible so to avoid using all their two-year payment arrangement entitlement in the first instance. This will allow „time in reserve“ in case the customer faces worsening payment difficulty in the future and needs to revise their payment arrangement.	This appears to repeat other provisions. Suggest deleting.
Unreasonably small payment amounts	Division 3	9.2.9. As discussed in sections 4.12 and 4.14 of this guidance note, we do not expect a retailer to accept payment arrangements for unreasonably small amounts that are disproportionate to the customer’s arrears, in the absence of circumstances that warrant doing so.	Clarification point noted. A case study example of this would be useful.
	-	9.2.10. Refer to sections 4.9 and 4.12 for more information about customers who may fluctuate between being able to pay and not for their usage costs.	This appears to repeat other provisions. Suggest deleting.
Fair and reasonable treatment	89(a)	9.3.1. Electricity and gas customers expect to be treated with courtesy when they are interacting with their retailer. This is even more important when a customer is facing payment difficulty and needing to discuss that difficulty with their energy retailer.	This appears to repeat other provisions. Suggest deleting.
	89(a)	9.3.2. Customers anticipating or facing difficulty in paying their energy bills want their energy retailers to be considerate and to treat them courteously. They don’t want to feel that they are at the mercy of their retailer or being made to feel that they must approach the retailer with „cap in hand“. In its Sustainable Payment Plan Framework, the Australian Energy Regulator refers to these expectations as retailers showing “respect” and “empathy” towards customers in or anticipating payment difficulty.17	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
	89(a)	9.3.3. Victorian legislators have also held strong and longstanding expectations about how they expect energy retailers to treat their customers facing or anticipating payment difficulty. The relevant Acts make clear that customers should be supported consistently and equitably. And to put the matter beyond doubt, the legislation states expressly that disconnection of customer from their energy supply should be a measure of "last resort". ¹⁸	This appears to repeat other provisions. Suggest deleting.
	89(a)	9.3.4. In other words, the community and legislators want to see energy retailers acting fairly and in good faith towards their customers.	This appears to repeat other provisions. Suggest deleting.
Customer circumstances	89(a)	9.4.1. Because every customer's circumstances are unique, this guidance note cannot be definitive of all circumstances that may arise and cannot be a substitute for a retailer's judgment in a particular set of circumstances.	This appears to repeat other provisions. Suggest deleting.
	-	9.4.2. In relation to providing the customer with their entitlements to assistance under Part 3 and treating energy customers fairly and reasonably, retailers must consider and have regard to a customer's circumstances that are known to it, including but not limited to: <ul style="list-style-type: none"> a) The customer's payment history and amount of arrears with their retailer (not with other retailers), including for another energy account (if applicable). b) Any information that the customer has volunteered in conversations between the retailer and the customer (whether initiated by the customer or the retailer). c) A customer's preferred contact method and time of day. d) Any relevant information the retailer collects through discussions and questions.¹⁹ While retailers cannot undertake a capacity to pay assessment in accordance with the requirements of clause 91, should a customer offer or volunteer information about their capacity to pay to the retailer, the retailer is expected to record such information. To be clear, clause 91 restricts a retailer from requiring a customer to provide personal or financial information to the retailer as a condition for receiving the minimum assistance set out in Part 3. 	This repeats existing obligations for retailers. Suggest deleting.
Sensitive information handling	-	9.4.3. We expect retailers to handle any sensitive customer information, such as health information, in line with the requirements of relevant privacy laws. ²⁰	This repeats existing obligations for retailers. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
	-	<p>9.4.4. Retailers should have regard to the following customer circumstances when providing assistance under Part 3 and considering disconnection under Part 6. It is critical to note that this list is not exhaustive and some customer circumstances not listed here will still need to be considered by retailers where they are known to them:</p> <ul style="list-style-type: none"> a) Family violence. b) Family and/or relationship breakdown. c) A customer who has a representative or advocate acting on their behalf. d) Death of a spouse or immediate family member. e) Disability/care provider. f) Whether the customer has no or limited English skills. g) Whether the customer has access to electronic communication channels such as email and the internet. h) Serious illness or medical condition (including mental health) that impacts a customer's ability to engage or communicate with their retailer (e.g. having a sight or hearing impairment). i) Loss of employment or regular source of income. j) Recipient of government assistance (Centrelink payments, particularly Newstart). k) Concession card holder. l) Unexpected and essential cost of living expenses (urgent house repairs, car repairs, medical expenses, schooling or child care expenses etc.). m) Debt on other relevant energy account/s with the same retailer. n) Acute financial or personal hardship. o) Being temporarily uncontactable (e.g. due to hospitalisation or disconnected telephone services). p) Low literacy and/or numeracy, or lack of confidence in speaking to service providers (often necessitating a role for community service providers). 	<p>Clarification point noted.</p> <p>EA also notes that we will be asking customers a generic question along the lines of "is there any reason that you cannot meet the agreed payment at this time" to elicit the information outlined in this clause. We would not expect to ask personal questions or a long list of questions to ascertain these customer circumstances. Many of these circumstances may alter over time and so we would expect that the customer will provide us up-to-date information at the time of the relevant discussion. As discussed with the ESC, the other alternative to asking this question at the time is to record the information listed in this clause in a readily accessible field on the customer's account in our system. This is not ideal as it could include sensitive information that the retailer has gleaned in conversations with the customer and the customer may not know that the information is being recorded.</p>

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
When to take customers' circumstances into account	-	<p>9.4.5. The commission does not necessarily expect retailers to consider one of the above indicators in isolation when taking a customer's circumstances into account. We expect retailers to look at a customer's circumstances holistically, including their payment history, amount of arrears, ability or inability to pay ongoing usage, etc. However, a retailer may need to place a greater weight on a particular customer circumstance, such as the sudden loss of employment or a serious and ongoing medical condition. These circumstances should inform retailers' decision making in relation to the whole of Parts 3 and 6, particularly in relation to deciding:</p> <ul style="list-style-type: none"> a) whether to accept a payment arrangement that provides for payment of different amounts at different intervals (clause 81(4)(a)) b) whether to extend assistance, including providing a payment arrangement that is longer than 2 years (clause 81(4)(b)) or an additional period of time where the customer's arrears are on hold (clause 79(4)) c) whether to accept a payment arrangement that provides for separate payments for arrears and ongoing energy use (clause 81(4)(c)) d) whether to continue to provide assistance (clause 83) e) whether to provide the customer with one or both of practical assistance elements under tailored assistance (clause 79(1)(e)-(f)) when they are not clearly entitled to it (i.e. can just meet the cost of their energy costs) f) whether to disconnect a customer's energy supply as a last resort (clause 111A) g) how to fulfil its best endeavours obligations (clause 89(c)) h) whether it has acted fairly and reasonably in its dealings with a customer, having regard to the customer's circumstances (clause 89(a)). 	This repeats existing obligations for retailers. Suggest deleting.
Record keeping around customer circumstances	-	<p>9.4.6. Retailers must maintain sufficient and appropriate records of how they took an individual customer's known circumstances into account. 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 supporting the customer to repay their arrears, pay their ongoing usage (where applicable), lower their energy costs, and avoid disconnection. Non-English speaking and sensory impaired customers</p>	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Non-English speaking customers	-	9.4.7. Where a retailer knows or discovers that the customer is non-English speaking or sensory impaired, it is expected to be flexible and adaptive in determining the best way in which to engage. The strategies listed below may be appropriate depending upon the circumstances of the customer. A retailer may: <ul style="list-style-type: none"> a) engage through an employee who speaks the preferred language of the customer b) engage with a family member or friend nominated by the customer c) engage with a financial counsellor or community services worker nominated by the customer d) provide the free use of the Translating and Interpreting Service²¹ e) provide the free use of the National Relay Service for sensory impaired customers. 	This appears to repeat other provisions or specify common sense things that retailers already do. Suggest deleting.
Evidence of customer circumstances	-	9.4.8. We expect retailers to take information provided by customers on face value and not require evidence or substantiation of a customer's circumstances, unless the retailer has and can evidence a firm basis to suggest otherwise.	Clarification point noted.
Repeated late payers	-	9.5.1. There are some energy customers for whom only receipt of a final disconnection warning notice will serve as a prompt to pay their energy bills. There may be many reasons why this is the case. Some customers are repeated late payers and only pay when the threat of disconnection is imminent. Other customers will pay at the 'last minute' because of the constant juggling of their obligations within their limited financial resources. These customers may not be experiencing or anticipating immediate payment difficulty as envisaged by Part 3 of the Code, but retailers should assume that they are at on-going risk of payment difficulty.	EA disagrees with this interpretation. We understand that it is often difficult to know what is going on in a customer's life, but we feel it is only reasonable for a customer being provided assistance under the PDF to remain in contact with their retailer, or at least not be difficult or evasive when we are using our best endeavours to contact them. We suggest that retailers should only have to assume that a customer who repeatedly pays late or who only pays when disconnection is imminent is only at on-going risk of payment difficulty when that customer is either proactive in contact with their retailer or who is easy to contact via their preferred contact method and at their preferred contact times.
Benefit of the doubt	-	9.5.2. We expect retailers to give customers the 'benefit of the doubt' when they consistently pay late and to consider whether there are other signs that these customers are facing payment difficulty and requiring assistance under Part 3 of the Code.	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Customer only pays when threatened with DNP	80	9.5.3. Where a customer has a demonstrable (and verifiable) record of only paying their accounts when the threat of disconnection is imminent, retailers may choose to issue a reminder notice before contacting the customer under clause 80. Doing so, however, does not extinguish the retailer's obligations – irrespective of whether the customer does or does not make contact with the retailer.	EA does not understand this clause. If any customer not in arrears misses a bill payment, then we interpret clauses 108 and 109 as allowing us to issue a reminder notice the day after the bill pay-by-date and no later than 21 business days after the pay-by-date. If we choose to issue the reminder notice the day after the bill date has been missed, then it's most likely we won't have had time to contact the customer yet. However, unless the arrears are less than \$55, we would then concurrently be following up the customer under the 21 business day best endeavours period. So, we don't understand why an exception is made here for only being able to provide a reminder notice before contacting the customer when that customer has a history of paying only when disconnection is imminent. We also note that most of clause 109 refers to payment of a bill and not a payment instalment. Only clause 109(4) contemplates reminder notices being issued after a payment for a customer's payment proposal has been missed. We interpret that reminder notices are only to be issued in relation to missed bills.
Retailer innovation	-	9.5.4. We encourage retailers to think innovatively about how they manage, support and communicate with these customers. Division 5 establishes minimum requirements for communicating with customers.	This appears to repeat other provisions. Suggest deleting.
Shared responsibility	-	9.6.1. Most effective outcomes for customers facing payment difficulty are achieved when communication, collaboration and cooperation exist between customers and retailers. The concept of shared responsibility is the hallmark of good process and outcomes in resolving payment difficulty. When retailers respond effectively to customers exercising their entitlements and customers relate to the retailers in good faith, there are strong reasons to believe that good outcomes will be achieved.	This appears to repeat other provisions. Suggest deleting.
	-	9.6.2. Part 3 of the Code establishes customer entitlements to different forms of assistance from their retailers. Retailers are obliged to comply with these entitlements. The Code does not, because it cannot, impose similarly enforceable obligations on energy customers. However, we emphasise our expectation that customers work with their retailer to avoid, and manage where necessary, unpaid bills. Part 3 anticipates communication, collaboration and cooperation between customers and retailers. It is not intended that the entitlements established by Part 3 be open-ended or unlimited.	This appears to repeat other provisions. Suggest deleting.
	-	9.6.3. While customers are entitled to assistance under Part 3 (most notably in tailored assistance) and retailers are obliged to make that assistance available to customers, these entitlements are not independent of customer actions.	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Retailers not expected to repeatedly pursue non-payers	-	9.6.4. We do not expect retailers to be required to repeatedly pursue customers who have not paid their bills or met payment arrangements into which they have entered. Likewise, we do not expect retailers to provide revised or extended payment arrangements when customers are not demonstrating good faith in their interactions with their retailer. We expect customers to demonstrate a commitment to resolving their payment difficulty when a retailer seeks to comply with its obligations under Part 3, particularly those obligations related to revised payment arrangements or extended assistance.	Clarification point noted.
	-	9.6.5. Customers should be expected (and it should be made clear to them) to contact their retailer when facing payment difficulty, particularly when a payment arrangement has been entered into and the customer requires a revised payment arrangement. We think it would be unreasonable to expect retailers to have to repeatedly pursue customers who have not paid their bills or met their payment arrangements. While we think retailers should give customers the benefit of the doubt if they have failed to make contact, in most cases we would not expect retailers to pursue customers when they are not cooperating with their retailer.	This appears to repeat other provisions. Suggest deleting.
Sensitive treatment of customers	-	9.6.6. We expect retailers to be sensitive to customers' circumstances where they are known to the retailer, and consider these circumstances when exercising judgement or discretion. We also expect sensitivity where there has been sufficient evidence in the comments made by a customer, from a customer's payment history, or from the customer's history in engaging with their retailer, to suggest that the customer may struggle to engage proactively with their retailer. In such cases, retailers may need to take the initiative repeatedly in engaging customers in the discussions required to identify appropriate payment arrangements. We would not expect there to be many customers in this latter category but when they arise, we would expect retailers to consider alternative mechanisms to engage with the customer. For example, the retailer may consider sending a written proposal for a payment arrangement under Part 3 which the customer could accept by making a payment in accordance with the proposed payment schedule.	Clarification point noted.
Discreet contact	-	9.7.1. Retailers should be discreet in making contact with customers. A customer should not feel harassed by contact from their retailer but nor should they feel neglected by their retailer in the event of ongoing payment difficulty. Retailers should be attentive to customers who may be struggling to maintain a payment arrangement and they should make contact in a sensitive and timely manner.	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Best endeavours contact	89 111A 80(2) 81(6) 82(2)-(3)	9.8.1. Retailers must use the information available to them, including known customer circumstances, when fulfilling their obligations to use their best endeavours to contact customers and provide them with assistance under Division 3, including: a) to provide tailored assistance (clauses 80(2) and 89(c)) b) to revise a payment arrangement under tailored assistance when a customer does not make a payment according to the payment schedule (clauses 81(6) and 82(2)) c) to establish a new implementation timeframe for practical assistance where the retailer knows that the customer has not taken steps to implement the practical assistance, as agreed between customer and retailer, and documented by the retailer (clause 82(3)) d) following issuing a disconnection warning notice and prior to disconnection (clause 111A(a)(iv)).	We comment elsewhere on the requirements for best endeavours in different situations. However, we are unclear on the process associated with (b). Take for example, the situation where a customer has proposed a TA plan, but does not make a payment. In this case, must a retailer make efforts over a period up to 21 business days to contact the customer prior to issuing the disconnection warning notice (DWN)? Or can the retailer issue the DWN shortly after the payment instalment is missed and then carry out the best endeavours for up to 21 business days? That is, in some cases are the best endeavours periods for (b) and (d) the same period? We would be concerned if (b) and (d) had to be sequential as this would extend the timeframe for paying for a disengaged customer. In fact, a disengaged customer on TA2 could repeatedly make new payment arrangements under 82(2) for an indefinite period if they were also allowed to extend TA2 under 4.9.11.
	-	9.8.2. Retailers should attempt to contact customers via their preferred contact method/s, if they are known to the retailer, in addition to using the contact methods outlined in section 9.8.5, below.	This appears to repeat other provisions. Suggest deleting.
	-	9.8.3. Retailers must use multiple contact methods when one method is unsuccessful (as described below).	This appears to repeat other provisions. Suggest deleting.
ACCC and ASIC debt collection guidelines	-	9.8.4. The commission understands that retailers need to balance their obligations under the Code to use their best endeavours and their obligations under the Debt collection guideline: for collectors and creditors (the guideline) – jointly published by the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission. The commission expects retailers to comply with the guideline and does not expect a retailer ²² to be non-compliant with the guideline, such as contacting the customer outside of the frequency, timing or method limits of the guideline, in order to fulfil its best endeavours obligations under the Code. We believe that retailers can fulfil and comply with both sets of requirements and obligations regarding contacting customers.	This appears to repeat other provisions. Suggest deleting.
	-	9.8.5. Best endeavours to contact a customer in person or by telephone requires: a) over a maximum 21-business-day period and not more than 20 business-days prior to the disconnection – i. at least one telephone call between 9.00 am and 5.00 pm AEST/AEDT attempting to contact the customer; ii. if a message was not left between 9.00 am and 5.00 pm AEST/AEDT with an adult with legal capacity (An adult with legal capacity means a person aged 18 years or older who has the faculties and capabilities to record and provide a message to the customer.) or on an automated telephone service, at least two telephone calls outside 9.00 am to 5.00 pm AEST/AEDT;	In terms of best endeavours after the disconnection warning notice (DWN) has been issued, clause 9.8.5 (a)(i)-(ii) are reasonable. However, we prefer that best endeavours for providing assistance (in circumstances other than after the issue of a DWN) is limited to its English language meaning. At the very least, the timeframe for provision of best endeavours should be much shorter, for example, 10 business days. It should also only require phone calls, and registered mail only if the phone is disconnected. As registered post is very costly to use, we urge the Commission to limit its use only to the situation where the best endeavours is being made to avoid the customer being disconnected for non-payment.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
	-	9.8.5. b) for customers with a supply address in the Melbourne metropolitan area – i. where telephone contact has not been successfully made, up to a maximum period of 21 business days and not more than 20 business-days prior to the disconnection, the sending of a letter by registered post advising of the imminent disconnection and providing clear and unambiguous advice about the assistance available under Part 3 and how to access it ii. where the telephone number is not known to the retailer or the telephone is disconnected – at least one attempt to make contact by visit to the customer’s premises;	Clause 9.8.5(b)(i) is reasonable for best endeavours associated with a DWN. However, even in the DWN case, registered post should suffice if the telephone number is disconnected or unknown to the retailer. This is the current process under the Operating Procedure Compensation for Wrongful Disconnection (OPCWD). There should be no obligation for retailers to visit the customer’s premise. This is a new requirement that was not costed by ACIL Allen. We note that the current OPCWD allows for site visits, but it only states that this is an option and does not mandate these – under Wrongful Disconnection Circumstance (e) and (g). Also, the PDF also extends the current timeframe in the OPCWD from 2-3 day period to 21 business days. This increase in timeframe for disconnection will increase the debt levels for many customers. Where best endeavours are done to provide assistance and is not associated with a DWN, then 9.8.5(b)(i)-(ii) should not apply.
	-	9.8.5 c) for customers with a supply address outside the Melbourne metropolitan area where telephone contact has not been successful or the telephone number is not known to the retailer or the telephone is disconnected – the sending of a letter by registered post advising of the imminent disconnection and providing clear and unambiguous advice about the assistance available under Part 3 and how to access it.	As stated above, this process should also apply in the case that the customer site is within metropolitan Melbourne where the best endeavours is associated with a DWN.
Melbourne metropolitan area definition	-	9.8.6. Melbourne metropolitan area is defined as within 60 kilometres of the Melbourne central business district.	While this definition is acceptable in the OPCWD, it becomes problematic when it is made mandatory under the Guidance Note. Will retailers be seen to be non-compliant if the Commission or EWOV take a different view on premises close to this boundary? If this definition must be kept then some leniency around boundary cases is necessary for practical reasons.
Post	-	9.8.7. “Registered post” has the meaning given to that term by Australia Post.	This appears to repeat other provisions. Suggest deleting.
Post	-	9.8.8. For the sake of clarity, express post is not the same as registered post.	This appears to repeat other provisions. Suggest deleting.
DWNs	-	9.8.9. Refer to section 6.2 of this guidance note regarding the delivery timeframes for disconnection warning notices.	This appears to repeat other provisions. Suggest deleting.
Additional contact methods	-	9.8.10. Retailers should use additional methods of contact, such as electronic communications including SMS and email to complement – but not substitute – their best endeavours efforts to contact the customer and provide assistance under Part 3.	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Examples of non-best endeavours	-	<p>9.8.11. The following examples illustrate retailer actions that do not constitute best endeavours:</p> <ul style="list-style-type: none"> a) Contacting a customer more than 20 business-days prior to disconnection. b) Not leaving messages on telephone answering services. c) Leaving a message with a person under the age of 18 years. d) Leaving a message with an adult who does not have legal capacity. e) Repeatedly calling a disconnected phone number or a phone number without a voicemail facility and not attempting any other contact. f) Failing to keep appropriate records of contact attempts, including all electronic communications that are specific to the contact or attempted contact with a particular customer. Text message and email templates will generally not form sufficient substantiation of contact, successful or otherwise, unless it can be proven it was sent to the customer and the date of the correspondence. g) Email communication that is sent to an inactive email address, where the email is not successfully delivered. h) Calling a telephone number that has a voicemail or message service facility and not leaving a message. 	EA notes that not all inactive email addresses send notifications that there was no delivery. Suggest this is changed to specify that a notification was received by the retailer to indicate that the email wasn't successfully delivered.
Record keeping	-	<p>9.9.1. For a retailer to satisfy the Code requirements about dispatch of documents, contact by telephone and contact in person, the retailer must be able to demonstrate and substantiate its contacts, or attempted contacts, with a customer.</p>	This appears to repeat other provisions. Suggest deleting.
Balance of probabilities proof	-	<p>9.9.2. The retailer needs to be able to prove the relevant matter on the balance of probabilities.</p>	The term 'balance of probabilities' is a legal term but the Commission has outlined that the Guidance Note is a non-legally binding document. Therefore, we believe it is unnecessary to include here.
Dispatch of notices	-	<p>9.9.3. A retailer must be able to either:</p> <ul style="list-style-type: none"> a) produce an exact copy of the document or notice sent to the customer; or b) show that it has a system in place for the distribution of documents and that the procedure was followed in the particular instance. <p>This will involve reference to electronic records that a number of documents in a category were dispatched, that the document relating to the customer was included in that batch and the system for posting such documents. This will need to include circumstances where proof is required of the date requested by the retailer for disconnection action to be taken by the distributor.</p>	Clarification point noted.
Proof of letters sent	-	<p>9.9.4. Retailers must retain the registered post "proof of posting" document issued by Australia Post and record the Australia Post unique identification number.</p>	Clarification point noted. However, it may be that there are other electronic means of proving that registered post documents have been delivered by Australia Post. So, these methods (current or future) should be allowable too.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Proof of electronic comms	-	9.9.5. Retailers must have complete and accurate records of all electronic communications, including but not limited to emails and text messages (SMS).	Clarification point noted.
Contact by telephone	-	9.9.6. A retailer must be able to show that it has a system in place for making and recording notes of calls, which include details of the retailer's caller, the date and time, the outcome of the call (not answered, answered, left message on automated service, or left message with a responsible adult), the essential details of any message left, the name of a person who took a message and details of any conversation conducted.	Clarification point noted.
Contact in person	-	9.9.7. A retailer must be able to produce full particulars of any visit to a supply address or other face-to-face contact with a customer including place, date, time, and details of the discussion. The individual representative of the retailer who had the contact should be available to give evidence (at least for as long as they remain employed by the retailer).	EA submits that site visits should not be a mandatory requirement as part of the PDF as outlined under clause 9.8.5. If we did carry out a site visit we believe it would be reasonable to retain records of this visit. We don't think it reasonable that the individual representative should be expected to provide evidence for as long as they remain with the retailer. A person may make repeated visits to the same site, or be with the retailer for many years. It would likely be difficult for them to remember the specific details. The other records of the site visit should be sufficient and more reliable, so we suggest the last sentence of this clause is deleted.
Customer entitlements following disconnection or suspension of assistance	83	9.10.1 The commission does not consider it acceptable for a retailer to ask a customer facing payment difficulty to make a lump sum payment in order to: a) have their energy supply reconnected following disconnection for non-payment; or b) access assistance under Division 3 following the suspension of assistance under clause 83.	EA accepts that large lump sums would be difficult for the customer to pay. However, as outlined by previous versions of the PDF, we think that it is acceptable as a minimum standard that the customer pays the missed payment instalments that were due or became due during the time they were disconnected or suspended. Some time is often lost in being disconnected or suspended and for a customer on TA2, this will mean an increase in their debt. If a new payment proposal is set up at the point of reconnection or end of the suspension, then it will take perhaps a month for the first payment to become due. Therefore, requiring payment of the plan amount helps to limit the customer's debt somewhat.
	-	9.10.2 We expect a retailer to consider a customer's circumstances and discuss payment arrangement options that would assist the customer with making consistent and sustainable payments, and maintaining an energy connection.	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
New payment period term after DNP or suspension	81 111A	9.10.3 If a customer consecutively and consistently misses payments for a payment arrangement under Division 3, and the retailer suspends assistance under clause 83 and disconnected the customer's energy supply compliantly per clause 111A, the Commission believes that it is reasonable for a customer to be able to propose a revised payment arrangement under Division 3 in order to have their energy supply reconnected. This revised payment arrangement would incorporate the time the customer had their initial payment arrangement under clause 81 from the date of their first payment. For example, if the customer had a payment arrangement under clause 81(3) for six months prior to disconnection, they would only have a minimum entitlement to propose a new payment arrangement of up to 18 months. However, retailers have discretion to provide longer payment arrangements under clause 81(4).	Clarification point noted.
New payment period term after Wrongful Disconnection	-	9.10.4 In the event that a retailer did not disconnect a customer's energy supply consistent with the requirements of the Code, the Commission expects the retailer to re-instate the customer's suspended assistance under Division 3 and include the time the customer was without assistance in to the payment arrangement period. For example, if a customer was two months into a six-month payment arrangement, missed payments and was subsequently wrongfully disconnected for one month, not only must the retailer apply the applicable Wrongful Disconnection Payment to the customer's account, the retailer must not count the period that the assistance was suspended and the supply disconnected (one month), into a customer's entitlement of a payment arrangement of up to two years.	Clarification point noted.
	83	9.10.5 If a customer has had assistance suspended under clause 83 and re-engages with their retailer, then the customer is entitled to propose a revised payment arrangement of up to two years (not including the time elapsed from the date of the first payment on the initial payment arrangement). The revised payment arrangement must not include the period when the assistance was suspended in the customer's entitlement to a payment arrangement of up to two years.	EA isn't clear on this clause and requests it be redrafted. An example may also help.
Interaction of specific PDF provisions	General	Chapter 10	
SA equal payments to TA	76(2)(a)	10.1.1 If the customer is on an equal payments payment arrangement (clause 76(2)(a)) and misses an instalment, and has arrears of more than \$55 (inclusive of GST), the retailer must contact the customer to provide them with their entitlement to tailored assistance, as required by Division 3.	This appears to repeat other provisions. Suggest deleting.
SA payment intervals to TA	76(2)(b)	10.1.2 If the retailer has provided the customer with options to pay at different intervals (clause 76(2)(b)), such as monthly, and the customer does not pay the agreed instalment and has arrears of more than \$55 (inclusive of GST), then the retailer must contact the customer to provide them with their entitlement to tailored assistance as required by Division 3.	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
Extended pay-by date to TA	76(2)(c)	10.1.3 If the retailer has provided the customer with a payment extension (clause 76(2)(c)) and the customer does not pay by the agreed (extended) pay-by date, then the retailer must contact the customer to provide them with their entitlement to tailored assistance if the arrears is greater than \$55 (inclusive of GST), as required by Division 3.	This appears to repeat other provisions. Suggest deleting.
Payment in advance, arrears to TA	76(2)(d)	10.1.4 If a customer is on payment in advance (clause 76(2)(d)) and has an outstanding balance at the time their bill is issued (which becomes arrears and triggers tailored assistance), retailers are not required to contact them to provide tailored assistance so long as the customer maintains the payment arrangement and is projected to owe less than \$55 (inclusive of GST) at the time the next bill is issued. However, if the customer's payments in advance were not covering the cost of ongoing bills and the account balance reached more than \$55 (inclusive of GST) of arrears, then the retailer must contact the customer to provide them with their entitlement to tailored assistance, as required by Division 3.	This appears to repeat other provisions. Suggest deleting.
Customer preference for SA	Division 2 Division 3	10.1.5 When the customer explains their payment difficulty, the retailer may offer them options available under standard assistance, even if the customer is entitled to assistance under Division 3. For example, the customer may advise that they simply need a short-term payment extension. If this standard assistance option is available and acceptable to the customer, and that assistance would be expected to resolve the payment difficulty, the retailer does not need to provide tailored assistance to that customer, at that time. The commission expects retailers to clearly document how this payment arrangement was agreed.	Clarification point noted.
Customer fails SA move to TA	Division 2 Division 3	10.1.6 If the customer does not maintain a standard assistance payment arrangement, they will be in arrears and therefore the retailer cannot proceed with the disconnection process until it has fulfilled its obligations under the Code to provide the customer with assistance under Division 3.	This appears to repeat other provisions. Suggest deleting.
Interaction between TA clauses	79(1)(a)-(d) 79(1)(e)-(f) 79(2) 81(6)	10.2.1 If a customer has a payment arrangement under their entitlement in clause 79(2) and misses payments that results in the customer appearing not to be able to afford their ongoing energy costs, the retailer must contact the customer to revise the payment arrangement (clause 81(6)). If the revised payment arrangement will result in the customer repaying their arrears in not more than two years (from the date of the first payment under the original payment arrangement), then the customer will still only be entitled to assistance under clause 79(2).	This appears to repeat other provisions. Suggest deleting.
TA1 to TA2	79(3)	10.2.2 If the customer's revised payment arrangement will result in customer paying below the cost of their energy use then the retailer must provide the customer with assistance under clause 79(3).	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
	79(3) 81(4)	10.2.3 If the customer's revised payment arrangement is for a period longer than two years, the retailer can either consider the longer period under clause 81(4) or provide assistance under clause 79(3).	This appears to repeat other provisions. Suggest deleting.
General	-	10.2.4 More information about customer entitlements to assistance under clauses 79(2) and 79(3) are located in sections 4.9 and 4.12 of this guidance note.	This appears to repeat other provisions. Suggest deleting.
Compliance and enforcement	General	Chapter 11	
Compliance with obligations	Division 2 Division 3	11.1.1. The provisions in Divisions 2 and 3 outline the minimum standards of conduct with which retailers are expected to comply in meeting the relevant objectives. These minimum standards are strict obligations and strict compliance is required. Retailers are expected to establish policies, procedures, practices and systems that will support full compliance with these regulatory obligations. We are not regulating the design of retailers' internal procedures, practices and systems. That is a matter solely for each retailer to determine.	This appears to repeat other provisions. Suggest deleting.
	-	11.1.2. Likewise, even though we are not regulating how retailers implement complementary procedures, practices and systems that seek to ensure the objectives of the regulatory framework are met, we expect retailers to have such measures in place.	This appears to repeat other provisions. Suggest deleting.
	-	11.1.3. Experience suggests many retailers will also draw on their direct experiences in working with customers to implement additional programs (and other measures) to support positive outcomes for those customers facing payment difficulty.	This appears to repeat other provisions. Suggest deleting.
Identification of non-compliance	-	11.2.1. As outlined in section 3.2.2 of our Compliance and Enforcement Policy, the commission identifies potential breaches via: <ul style="list-style-type: none"> a) self-reporting of breaches by retailers b) the findings of compliance audits and the results of investigations c) a systemic breach referred by the Energy Water Ombudsman (Victoria) (under section 54X of the Energy Amendment (Consumer Protection) Act 2015) d) a disputed energy disconnection referred by Energy Water Ombudsman (Victoria) e) reports of potential breaches from other external stakeholders (e.g. consumer representatives, other regulatory agencies, whistle blowers, members of the public and the media). 	This appears to repeat other provisions. Suggest deleting.
Compliance and enforcement factors	-	11.3.1. The matters the commission may take into account when considering enforcement action under the Energy Compliance and Enforcement Policy are outlined in section 3.2.1 of the policy. We have included the factors in this guidance note, below, for ease of reference.	This appears to repeat other provisions. Suggest deleting.

Topic	ERC clause	PDF Guidance Note Clause (Draft Oct-17)	EA comments
	-	<p>11.3.2. In carrying out a preliminary assessment, and deciding how a matter should proceed through the Compliance – Enforcement Pathway, we assess the nature of the conduct having regard to the following Compliance and Enforcement Factors, to the extent that they are relevant in the particular case:</p> <ul style="list-style-type: none"> a) the risk of harm, or actual harm, to energy customers b) the impact on consumer confidence in Victorian energy markets c) whether the breach was self-identified and reported in a timely manner d) how and in what timeframe any customer complaints about the breach were addressed by the regulated entity e) whether the regulated entity has taken timely and effective steps to investigate the root causes of the breach f) whether the regulated entity has taken timely and effective steps to resolve the breach and prevent its reoccurrence g) whether the regulated entity has taken timely and effective steps to inform consumers about the breach, and offer an appropriate remedy to affected customers h) whether the regulated entity has put in place effective processes to review and report on the progress of remediation i) whether the regulated entity has responded in full and in a timely manner to our inquiries and requests for information or progress updates j) the compliance history of the regulated entity k) any other relevant matter. 	Clarification point noted.