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Submitted by email: paymentdifficulties@esc.vic.gov.au

Payment Difficulties Framework Guidance Note.

Thank you for the opportunity to provide a submission in response to the Payment Difficulties Framework Guidance Note.

Momentum Energy is a 100% Australian-owned and operated energy retailer. We pride ourselves on competitive pricing, innovation and outstanding customer service. We retail electricity in Victoria, New South Wales, South Australia, Queensland, the ACT, and on the Bass Strait Islands. We offer competitive rates to both residential and business customers along with a range of innovative energy products and services. We also retail natural gas to Victorian customers.

Momentum Energy is owned by Hydro Tasmania, Australia's largest producer of renewable energy.

Although the guidance note is certainly a comprehensive document, Momentum does not believe that it meets its retailer requirements. We are pleased that consumer representatives indicated at the recent workshop that it meets their needs, however, it is not a document which can be readily used to develop a framework for compliance with the Code. We believe that this could be addressed through some changes to the format, and articulate our preferred approach below.

Energy retailers are familiar with a number of different regulatory approaches and are used to dealing with a range of regulators. While we have been relatively comfortable with the ESC's approach to the Energy Retail Code to date, throughout the development of the Payment Difficulties Framework the ESC has expressed a desire to take a new approach to regulation. If the ESC is to adopt this approach (which we believe to be sensible at this point in time as to diverge from it may require substantial amendment to the Energy Retail Code V12) we urge them to consider an approach in line with that taken by the Australian Security and Investments Commission (ASIC).

The ASIC approach is more straightforward and economical as it seeks to provide guidance only where it is necessary rather than restating almost the entire primary instruments. In order to provide maximum value, we urge the ESC to amend the guidance note to focus only on areas which are not immediately clear from the words in the Code, or where it

considers that specific information on the ESC's enforcement approach is required. Ideally these would be illustrated by examples.

Reductions to the overall length of the Guidance Note would increase its usability. These could be reduced relatively simply by removing duplication and restatement of obligations which do not require any additional explanation.

Momentum is conscious of the difficult gestation of the Payment Difficulties Framework and have no desire to cause further delays. However, given the ESC's stated plans (echoed by a Thwaites review recommendation) to modernise the Energy Retail Code at some point in the future, we consider it crucial that this first foray into a new approach to regulation is finalised correctly and sets the precedent for the foreshadowed rewrite. We do not believe that it would serve consumers or retailers well to have a future "modernised" Code which required a 70 page guidance note to accompany each Part.

We are further concerned that the Guidance Note contains additional obligations which retailers must comply with. Rather than simplifying compliance, this approach complicates matters by splitting obligations and requiring users to look in more than one place for guidance. We note that the ESC has committed that the Guidance Note should not contain obligations, however we do not believe that this commitment has been met in the current iteration of the Guidance note. Given the acrimony which surrounded the cost benefit process in the lead up to the of the ESC's final decision, we feel strongly that any additional obligations which were not anticipated prior to the release of the Final Decision must not be included lest they impact what we consider to be a fairly marginal benefits case. Examples of such provisions are outlined later in this submission.

While we have no intent to re-prosecute arguments surrounding the adequacy of the cost/benefit analysis, inserting additional obligations in a code which can seemingly be changed without any formal process imposes the risk of regulatory creep on retailers. In an environment where the cost of regulation in Victoria is already higher than other NEM jurisdictions¹, we do not believe that this is appropriate while Governments, retailers and consumers are otherwise working to lower energy costs.

Further to the additional costs imposed in some instances, we believe that capturing all obligations in the one document will aid retailers in developing compliance systems. Creating additional obligations (or in some cases, sub-obligations) which cannot be neatly captured in the systems and frameworks that ensure appropriate accountabilities are assigned within businesses increases the risk of non-compliance, which will ultimately lead to poor customer outcomes.

Ensuring that all the obligations are maintained in the Code will provide greater clarity for all users, consumers and retailers. A guidance note which a reader can refer to if particular provisions are unclear is helpful, but any user should be able to have a complete set of obligations at their fingertips in the one document. This is of importance in ensuring that consumers (or those acting on their behalf) have a clear view of their rights under the Code.

¹ ACCC Interim Report on Retail Electricity Markets Page 73.

We feel that this is particularly the case with the Best Endeavours provisions. The consultation process to this point foreshadowed that Best Endeavours would be clearly articulated and we believe that the guidance is largely in line with expectations (with the exception highlighted in the table below). Given that these are obligations, we believe that they should be contained in the Code. We understand that reopening the Code at this point may cause unnecessary delays, so if this change cannot be accommodated at this time, we offer this suggestion to guide future regulatory reform.

In addition to these general comments, Momentum has identified a number of clauses which are unclear, may lead to inconsistencies with the Energy Retail Code or are in other ways problematic. These are also outlined these below.

Clause #	Detail	Issue
4.6.11	<i>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’.</i>	While this is not stated as a ‘must’ scenario, it is made clear that it is a clear expectation of the ESC and it could be reasonably inferred that failure to make a warm transfer would be deemed non-compliant. Momentum and other retailers provided information to ACIL Allen on average handling time however, the idea that consultant would be required to stay on the line while a customer is transferred to another party was not anticipated and consequently was not included in the cost benefit analysis. This clause should be removed.
3.5.5	<i>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.</i>	We are concerned that this statement makes an assertion that customers will be better with payments which vary from one period to the next (in contradiction of other provisions which suggest smoothed payments would be beneficial). We believe that this provision may also conflict with 3.3.5 which states that <i>Standard assistance payment arrangements are not billing options</i> . It is difficult to establish how a customer could be made aware of their payment obligations under 3.5.5 without a bill being issued.
3.5.9 and 3.5.10	<i>3.5.9. If a customer seeks a longer extension period than provided as standard by the retailer, the retailer</i>	We consider that the words “having regard to what is fair and reasonable in the circumstances” should be removed from

	<p><i>may agree to the proposal having regard to what is fair and reasonable in the circumstance.</i></p> <p><i>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.</i></p>	<p>these clauses. The principle that retailers may, at their discretion, offer support above the minimum standard is well known, and in these two instances, additional support can be objectively assessed. Including the ‘fair and reasonable’ qualifier actually adds uncertainty which is likely to discourage retailers from offering this discretionary assistance.</p> <p>It is unclear to Momentum how offering additional assistance could be unfair or unreasonable however if the ESC can envisage such circumstances, retailers may be hesitant to exercise their discretion for fear of being found to have acted improperly.</p>
8.1.10	<p><i>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.</i></p>	<p>This clause suggests that a retailer is unable to progress toward disconnecting a customer if that customer has sought additional assistance. It is clear from the Energy Retail Code, and earlier sections of this guidance note, that additional assistance is at the retailer’s discretion. 8.1.10 effectively removes the retailer’s discretion in this regard as the act of requesting additional assistance removes the retailer’s ability to disconnect.</p>
4.2.2.	<p><i>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</i></p>	<p>While it becomes apparent through further reading of the Guidance Note that ‘tariff’ is used to mean a particular offer or product, we believe that it would be clearer, and perhaps more correct to use different terminology (such as offer or product).</p> <p>We believe this is consistent with industry practice, where tariff is often used to describe the structure of the distributor</p>

	<p><i>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.</i></p>	<p>charges assigned to the customer. In addition, the Electricity Supply Act, although, refers to tariffs and terms and conditions as the distinct elements of the overall offering, which appears the intention of the ESC in its references to tariff.</p>
4.8.1.	<p><i>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.</i></p>	<p>If a customer is receiving assistance under this provision, it is because they are unable to afford to pay for their ongoing energy consumption. Although the phrase ‘meaningful reduction’ could be defined in any number of ways, in this context of this Part of the Code, a reduction can only be meaningful if it reduces the customer’s consumption to a level which they can afford. While this is obviously the ideal scenario, the fact remains that there are a number of customers whose income after key outgoings such as rent and food have been covered, will not be able to afford to pay their energy bills. We presume that the ESC would not find that a retailer has breached the Energy Retail Code where they were unable to provide assistance to reduce a customer’s consumption to virtually nothing. Therefore, a more concrete definition of ‘meaningful reduction’ is required or the phrase is virtually meaningless.</p>
9.8.1.	<p><i>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:</i></p> <ul style="list-style-type: none"> <i>a) to provide tailored assistance (clauses 80(2) and 89(c))</i> <i>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))</i> <i>c) to establish a new implementation</i> 	<p>9.8.1 as drafted indicates that best endeavours to contact the customer are uniform regardless of the nature of the contact. We believe that it would be more appropriate to graduate what is regarded as best endeavours based on the nature of the attempted contact. Specifically, we do not believe that a visit to customer’s premises is required under 9.8.1(a), (b) or (c) as doing so would introduce significant cost, for little additional benefit as the customer who could not otherwise be contacted would still be entitled to the ultimate safeguard of a site visit prior to disconnection (subject to being within the</p>

<i>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).</i>	60km radius).
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Summary

We appreciate the ESC's efforts to clarify customer entitlements and retailer obligations in light of the Payment Difficulty Framework's protracted evolution. However, we believe that the Guidance Note would be more effective as a more compact document which is used to provide explanations only where uncertainty exists in the Code. While it would have been preferable for the ESC to refine its new approach to regulation prior to embarking on a significant reform on this nature, we consider it crucial that the Guidance Note for Part 3 of the Energy Retail Code be as effective as possible in meeting its stated purpose as it will presumably set the tone for future regulatory processes.

We also consider it vital that the ESC remove any inconsistencies and additional obligations which the guidance note raises as these will undermine the operation of the Payment Difficulty Framework and lead to poor consumer outcomes and additional cost.

Momentum is happy to continue to work closely with the ESC to finalise the Guidance Note in timely manner.

If you require any further information with regard to these issues, please contact me on (03) 8651 3565 or email joe.kremzer@momentum.com.au.

Yours sincerely

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