



16 June 2017

By email: [paymentdifficulties@esc.vic.gov.au](mailto:paymentdifficulties@esc.vic.gov.au)

Dr Ron Ben-David  
Chairperson  
Essential Services Commission

Dear Ron

**Submission in response to the Payment Difficulty Framework Draft Decision**

Consumer Action and the Financial and Consumer Rights Council welcome the opportunity to comment on the Essential Services ESC Victoria's (**ESC**) new draft decision for its Payment Difficulties Framework (framework).

We acknowledge the significant work ESC has done to recast the framework so that it is more focused on customer outcomes. Overall, we consider the revised framework can achieve ESC's objective of ensuring customers are disconnected as a last resort.

We support in-principle many of the new measures ESC has proposed in the revised framework. In particular we commend:

- the onus on retailers to have regard to a customer's circumstances, and keep records to support their decisions;
- the obligation on retailers to intervene and offer assistance, rather than waiting for a customer to identify payment difficulties. We also welcome the customer's entitlement to renegotiate repayment arrangements multiple times;
- the formalisation of more intensive support and protections against disconnection, for customers who can't pay for their consumption;
- the mechanism for customers to accept a payment plan without having to talk to a retailer; and
- The retention of the ban on supply capacity control.

We also have number of concerns:

- If offers for assistance (Default and Tailored) are able to simply be twinned with retailers' existing collection notification, with little genuine attempt to engage a customer, we are concerned the disconnection process will in practice be substantively the same as it is under the current model. It will not achieve the shift to a customer-focused approach that is needed to significantly improve outcomes for customers experiencing payment problems.

- The best outcomes for customers with debt occur when there is relationship based on trust, respect, and the customer understands that the retailer is trying to assist. The framework can do more to ensure retailers apply these principles.
- Due to the significant safeguards attached to customers who can't pay for their usage, we are concerned retailers will have incentives to overlook or ignore 'flags' that trigger entitlements.
- There is no requirement for retailers to test customer-nominated repayment amounts, leading to concerns about how retailers will identify customers who are entitled to more intensive tailored assistance, if customers don't self-identify.
- The framework lacks a genuine last-line safeguard to prevent the inappropriate disconnection of customer who cannot afford their energy costs.

These issues are discussed in detail in this submission.

### **About Consumer Action**

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

### **About FCRC**

Financial and Consumer Rights Council Inc (FCRC) is the peak body and professional association for Financial Counsellors in Victoria. FCRC actively supports Victoria's 250 Financial Counsellors by promoting the needs of those experiencing financial hardship. FCRC works with government, banking, utilities, debt collection and with many other sectors and organisations to achieve the best outcomes for vulnerable and disadvantaged Victorians.

### **Purpose and scope**

The need for improvements under the regulatory framework arose from upward trends in the number of residential customers experiencing disconnection from essential energy services.

The ESC's 2015 Hardship Inquiry revealed the extent to which protections were failing to prevent people in payment difficulty from accruing debt and ultimately experiencing disconnection. The ESC concluded that there was no evidence of widespread non-compliance but that key areas of customer assistance entitlement relied on retailer discretion and therefore couldn't be enforced.

We believe that the statutory objective of the ESC to promote the protections for customers including in relation to customers who are facing payment difficulty<sup>1</sup>, together with its new

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<sup>1</sup> Section 10(c) Electricity Industry Act 2000 (Vic) and section 18(c) Gas Industry Act 2001 (Vic)

compliance and enforcement powers,<sup>2</sup> provide a firm basis for redressing the identified failures in the current framework.

In the report, the ESC initially states that its overarching purpose is to respond to its statutory objective and the findings of the Hardship Inquiry by proposing protections that seek to address the highly variable outcomes of the current framework and clarify the minimum level of assistance to which a customer is entitled.<sup>3</sup>

However, later in the report the ESC broadens the interpretation of its statutory obligations to: *'promote best practice to facilitate continuity of energy supply, and to have regard to community expectations that energy supply will not be disconnected solely because of a customer's inability to pay, and the principle that disconnection should be a last resort'*<sup>4</sup>.

The ESC settles on the following purpose for the amended code: *'to provide customers facing payment difficulty with an entitlement to a set of minimum standards of assistance, so that disconnection is a measure of last resort'*.<sup>5</sup>

We suggest that this statement provides a narrow interpretation of the ESC's obligations. It does not articulate the importance of the enforceability of the code changes to ensure that customers receive their entitlements. It also fails to take up the opportunity of encouraging best practice through definition (eg. using best endeavours), or by providing incentive-based approaches to best practice as proposed by the AER's Sustainable Payment Plans Framework (SPPF).

The ESC notes that in this decision it does not include an overall objective for the changes to Part 3 but has chosen instead to define outcome-based objectives for each of the divisions, which set out the minimum standards of assistance a customer can receive.

The new purpose of the part is to: *'Set out the minimum standards of assistance to which residential customers anticipating or facing payment difficulties are entitled, so that disconnection of a residential customer is a measure of last resort'*.<sup>6</sup>

Based on the findings of the Hardship Inquiry we are concerned that this purpose for Part 3 and lack of an overall objective does not encourage retail performance beyond the minimum standards in each of the divisions and particularly under Tailored Assistance where further incentive-based approaches may be needed to encourage best practice.

Our submission provides further comment on whether the minimum standards are likely to deliver the desired outcome for each of the divisions.

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<sup>2</sup> Section 10AA Essential Services ESC Act 2001 (Vic) (ESCA)

<sup>3</sup> Essential Services ESC 2017, Payment Difficulty Framework: Revised draft decision May, 2017, p.4

<sup>4</sup> Essential Services ESC 2017, Payment Difficulty Framework: Revised draft decision May, 2017, p 43-44

<sup>5</sup> Essential Services ESC 2017, Payment Difficulty Framework: Revised draft decision May, 2017, p 44

<sup>6</sup> Essential Services ESC 2017, Payment Difficulty Framework: Revised draft decision May, 2017, p 55

## **Compliance and Enforcement**

Despite the high number of disconnections evidenced in the ESC's hardship enquiry, it found no evidence of widespread non-compliance by retailers. Instead, it identified that retailers were technically compliant with their obligations because these were so broadly defined.

While, as stated earlier, we support the flexibility built into various parts of the new decision, we are concerned that a lack of clarity around definitions and retailer obligations could once again reduce the effectiveness of the proposed framework. Our concern is that the proposal to develop guidance and further clarify what is 'reasonable' over time will delay implementation of plain and accountable obligations and in turn, consistency of reporting, compliance and enforcement.

### **Minimum standards and guidance**

Particularly as they will be given interpretative force, the guidelines, guidance notes and written information mentioned in clause 73 will be important to ascertain the minimum standards to which customers are entitled. It is difficult to fully assess how well the framework will achieve its desired outcome in advance of reviewing this guidance material.

The emphasis of the compliance framework is on retailers demonstrating that they have acted in accordance with the objectives. However, the guidance notes may lack of clarity and could give rise to retailers taking diverse views of what is reasonable in the circumstances, resulting in variable customer outcomes as with the current code.

We would like to see more clarity in the code itself, defining the terms 'advice', 'best endeavours', 'taking circumstances into account' and what customers might 'reasonably expect'. It is currently unclear how guidance notes issued by the ESC will translate into retailer obligations.

### **Encouraging engagement through best endeavours**

One of the biggest barriers identified by retailers in preventing disconnection is a lack of customer engagement. We asked retailers at an ESC forum whether they inquired about their customers' preferred method of contact at the point of sale. They indicated that they don't do this as customers are suspicious of receiving marketing contact/calls.

Further consideration should be given to requiring retailers to maximise the potential of their initial engagement with customers to match the customer's preferred contact in the event of payment difficulty. Their best endeavours to contact the customer could be linked to customer preference.

Increasingly consumers, and particularly low-income and vulnerable consumers, rely on mobile phones as primary means of communication. We consider that retailers should have to offer SMS contact as an option as a preferred contact method.

### Customer understanding has a role to play in ensuring compliance

Helping customers and community assistance agencies to understand what they can expect from the new framework is fundamental in order to encourage trust and confidence in these standards. To this end we strongly support the proposal under clause 73(b)(v). The provision of written information regarding assistance residential customers might reasonable expect will be helpful to ensure that they can engage confidently with retailers. In the event of a potential contravention, customers will also be able to use this information to assist making complaints to EWOV or with assistance agencies. We encourage the ESC to consult with a range of consumer and welfare agencies in the preparation of simple English (and translated materials).

We strongly support the obligation pursuant to clause 82 for retailers to take account of individual customers' known circumstances when considering payment proposals. The proposed guidance which requires retailers to maintain records will assist compliance and auditing of this minimum standard, however we note that there are likely difficulties in establishing a reporting framework for this requirement. On the other hand, the written offer requirements for Default Assistance under clause 85(2) is a clear and measurable obligation.

### Financial hardship policies

We welcome the ESC's decision to require retailers to review and resubmit financial hardship policies to include the obligations in clause 87 and the inclusion of Part 3 in the audit process.

### Wrongful Disconnections Payments and EWOV

We welcome the ESC's intention to rethink the referral process of disputed wrongful disconnection payment matters to the ESC for interpretation and urge it to reconsider the Operating Procedure Compensation for Wrongful Disconnection and the ESC's Memorandum of Understanding with Energy and Water Ombudsman Victoria (EWOV).

The reconsideration should be undertaken with a view to developing a process that is effective at resolving systemic issues as well as individual disputes. In particular, EWOV should have binding powers to award a Wrongful Disconnection Payment (WDP) where they determine it is appropriate. Such changes require careful review and the representation from key stakeholders including appropriate consideration of the input of consumer representatives.

It is our view that while the issuing of compensation has benefited some individual consumers, the process has failed to deter systemic breaches. An unintended consequence is that it has also complicated, confused and diminished the objects and powers of the Ombudsman.

The Ombudsman's powers as set out in its Constitution and Charter provide sufficient facility to determine an individual matter which cannot be resolved, having regard to the law and what is fair and reasonable in the circumstances.

Failing a resolution of a matter between the customer and retailer or distribution business, the Ombudsman has powers to make a binding decision of up to \$20,000. The focus of the Ombudsman is not on determining technical breaches (although this can assist a resolution)

and the referral of individual wrongful disconnection payment cases to the ESC under 2.4 of Energy and Compliance and Enforcement Policy diminishes that power.

The referral of systemic issues from EWOV to the ESC for consideration and possible action under the Energy Compliance and Enforcement Policy is, however, of major importance and should be retained.

The focus on individual breach decisions may have diverted the ESC's attention from systemic breaches (bearing in mind the ESC's view that a lack of regulatory clarity resulted in technical compliance). We would prefer that the focus of this implementation of hardship inquiry findings into a framework to protect people with payment difficulties is directed to the Energy Compliance and Enforcement Policy itself rather than Guidance Notes.

EWOV should publish a position statement for their referral of systemic issues so that consumers and their representatives have a transparent understanding of how issues will be escalated. From January 2016, systemic issues that EWOV refers to the ESC are also provided to the Minister, and report must be provided by ESC about how it proposes to address the systemic issue.<sup>7</sup> We are unaware of any systemic issues referred to the ESC pursuant to this requirement since these powers were implemented.

To ensure good outcomes for consumers the ESC should consider the appropriate benchmarks to trigger action by the ESC for non-compliance. This may include:

- the seriousness of a matter and detriment suffered by an individual consumer or group of consumers
- potential breaches by individual retailers indicating a failure to comply with parts of the Code
- potential breaches by retailers generally requiring further action under the policy, the issuing of further guidelines or a review of the policy

#### Encouraging better practice through monitoring and compliance

The ESC has indicated that some factors that influence the effectiveness of payment difficulty assistance are not suited to regulation.

The Australian Energy Regulator has approached this problem by developing the Sustainable Payment Plans Framework (SPPF) with industry, consumer groups and financial counsellors. This includes a set of principles that attempt to identify good practice in approaching customers and assessing capacity to pay.

We note that while the AER's SPPF is voluntary and not a compliance obligation, the AER lists those retailers that have agreed to the principles, allowing customers to use this as a consideration in exercising choice and providing an incentive for retailer best practice. Under the SPPF the AER can also remove a retailer's name from the list.

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<sup>7</sup> s54X, Essential Services Commission Act 2001

We encourage the ESC to consider further ways in which this incentive-based approach could be incorporated into its monitoring, compliance and public reporting by reporting on standards of conduct under the new framework including through Guidance Notes.

Requiring all retailers to report annually on their performance against the principles identified in Guidance notes would provide an incentive based approach.

The ESC states it will consider monitoring and reporting on retailer's adherence to the SPPF principles. We strongly support the development of metrics to do this, and publishing these this would provide valuable additional transparency about retailers' performance.

#### Implementation of performance monitoring and reporting

We note that reporting of compliance of retailer performance with the new framework is planned for inclusion in the ESC's Victorian Energy Market Report (**VENR**) in November 2019 and that the ESC's first annual review of practice appears to begin just prior to this release. We consider that an early assessment of how consumers are faring under the new framework is important and suggest that public transparency could be assisted by the ESC issuing quarterly reports on retailer performance under the new framework (as early as practicable).

The Final Interim Compliance and Performance Reporting Guideline (**CPRG**) (2016) requires the ESC to report annually but update the data quarterly before the end of the next quarter. Implementing quarterly reporting would allow more immediate transparency on retailer performance in this crucial area, provide an incentive for compliance and allow for informed public participation in the review of better practice process.

#### Data collection and reporting

We support the development of consistent and appropriate data reporting obligations and acknowledge that the level of flexibility in the framework will make the establishment of reporting indicators a complex technical exercise. The ESC proposes (pg 75) that it will establish a technical working group to revise the CPRG. Our view is that this working group should include consumer stakeholder representation.

#### Independent Panel

In March 2016, the Minister for Energy, Environment and Climate Change announced that following the commencement of the ESC's new framework that an independent panel would be set up to ensure that the new arrangements are delivering on the recommendations of the Inquiry into Hardship.<sup>8</sup> We continue to support the implementation of this panel including a balanced representation of stakeholder views includes consumer representation.

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<sup>8</sup> Minister for Energy, Environment and Climate Change, "More Help For Victorians Struggling With Power Bills," Premier Of Victoria, <http://www.premier.vic.gov.au/more-help-for-victorians-struggling-with-power-bills/>

## Communication

Ensuring that customer information is simple, accessible, timely, and accurate, increases the likelihood that those customers who fall into payment difficulty will feel more confident in contacting retailers—which is currently a significant barrier to engagement.

Much more can be done by retailers to increase their understanding of the diversity of their customer base and their communication needs. Simplicity of messaging and the use of visual communication can significantly increase the likelihood of customer engagement.

We have had strong feedback from Victorian financial counsellors about the need to improve information provision and communication in order to increase customer confidence and engagement. This should take into account literacy levels, language needs, print and hearing needs of the general community as well as the specific barriers that some members of the community experience because of low-income and lack of access to or the costs of telecommunications.

Matching communications with needs can be as simple as talking about customer preferences. We consider that principles around communication and successful approaches (similar to the AER's SPPF) developed with input from stakeholders could significantly increase the likelihood of customer engagement on payment difficulty.

Financial counsellors have advised that many customers see themselves as 'in the wrong' if they are in payment difficulty and do not understand their rights to payment assistance. Minimum standard information and notification will therefore play a crucial role in successful customer outcomes under the translation.

This submission discusses how good communication practices, that are non-judgemental, de-stigmatise financial difficulty and emphasise the retailers' willingness to assist, will increase the likelihood of customer making contact to discuss payment difficulty.

While we support the requirements for information being readily available on retailer websites and in printable form (clause 88(1)), retailers should not be able to fulfil these requirements through website communication only for the reasons outlined above.

Financial counsellors raised concern about the nature of information that may be provided about non-government assistance under clause 88(1)(d) and have suggested that this should also be subject to consultation and guidance. Despite significant penetration of electronic communication, some customers (often elderly customers) will only be able to access information by mail. Under 88 clause (3) as currently worded, these customers have no rights to general information.

Financial counsellors also raised that retailers should have an obligation to discuss customer entitlements to URGs and concessions before they make a decision about a regular payment amount (payment proposal).

The requirements in clauses 89(3) and 89(4) are good measures, however, we note that Australia Post timeframes for mail delivery have now been altered and it may be necessary to



provide specific guidance about the requirements of express post delivery for certain information beyond disconnection warning notices.

Under clause 89(5), retailers are prevented from imposing a charge for written communications under the payment difficulty part of the Energy Retail Code. Financial counsellors have suggested that when a retailer is communicating with a customer in connection with payment difficulty, that all retailers should be required to provide a call back service instead of customers being placed on hold. This will reduce customers being excluded due to communications costs.

We support the changes to clauses 109(2) and 110(1A) clarifying the purpose of reminder and disconnection warning notices. However, we are concerned that mixed messages to a customer about payment reminders/disconnection warnings together with payment difficulty information may not encourage customer engagement and recommend that this is another area of communication that could benefit from further guidance. For non-engaged customers this form of notification may not reduce the likelihood of disconnection.

It is unclear what the compliance consequences are for retailers who cannot provide evidentiary records to support their decisions under these obligations.

### **Standard assistance**

Feedback from Victorian financial counsellors is that flexibility of billing helps customers manage their budgets and stay on top of arrears.

We welcome the principle underpinning Standard Assistance that all retailers should have a range of flexible payment options for any customer who anticipates payment difficulty, and we consider the five forms of Standard Assistance can all be effective in assisting customers to manage their bills and avoid accruing debts.

The certainty provided by negotiated payment amounts by way of fixed 'all you can eat' offers or different types of bill smoothing are valuable to many people with energy debt issues.

### **Monthly billing**

Quarterly billing is inherently unsuitable for a range of customers. These include customers receiving government support payments, and those with otherwise on low, fixed or irregular incomes.

National Debt Helpline financial counsellors gave feedback that Newstart recipients, in particular, rarely have the capacity to set aside funds and budget three months ahead as all income inevitably has to be spent on immediate living costs. In essence, setting such a customer up on quarterly billing creates a likelihood they will accrue debt.

More frequent billing, on the other hand, makes it easier for customers to accurately budget ahead of time and reduces the risk of bill shock. The resulting risk of escalation of payment difficulties is lower as the customer will build up less outstanding amounts for usage, and

customers are more likely to call their retailer to discuss payment difficulties (as smaller amounts are less of a barrier to engagement).

Our view is that all retailers should be required to offer monthly billing as a standard assistance option.

#### *Default monthly billing*

We urge the ESC to use the development of the framework as an opportunity to begin to shift industry away from the legacy practice of quarterly billing as the industry standard.

At a minimum, retailers should be required to place customers who they reasonably believe to be at higher risk of experiencing payment difficulties—including concession customers, those using Centrepay or receiving a government allowance—on monthly billing arrangements as a default, with the option of quarterly billing if desired (recognising this is still some people's preference).

More broadly, we recommend the retail code should be amended to make monthly billing the default for all new energy customers, with quarterly billing an opt-in option for those who prefer it. While we note this practice involved costs for retailers in the past, the rollout of smart meters should make this obligation simple to implement, and will assist more people manage their bills and receive intervention under the framework before they accumulate large arrears.

#### Fit-for-purpose energy contracts

While the framework does not explicitly deal with the sign-up stage of the customer/retailer relationship, we highlight that interactions at this point are directly relevant to the ESC's objectives of reducing energy customer indebtedness and disconnection rates.

Ensuring customers are set up appropriately from the beginning of their contract—meaning they are receiving available entitlements, are not being billed quarterly (unless they explicitly request it), and are not on an unsuitable offer for their circumstances—will prevent many customers experiencing debt issues in the first instance.

The framework's concept of 'reasonable knowledge' is highly relevant at the sign-up stage. While new customers' payment history obviously will not be available, retailers should make sure that customers entitled to concessions are informed of this at sign-up, or whenever interaction enables the retailer to check a customer's eligibility. An additional reasonable step for a retailer to take to understand whether an offer is suitable is assessing any of their previous consumption data that is available.

Being aware a customer is entitled to a concession clearly constitutes 'reasonable knowledge' that quarterly billing and offers with pay on time discounts are likely not be suitable for them.

Pay on time discounts are nothing more than late payment penalties in disguise, and in effect add hundreds of dollars to the annual bill of a customer who can't pay their bills by the due date.

While we do not suggest retailers should bar access to pay on time discount offers for these customers, the ESC needs to consider how the retail code and framework should address the unfair and disproportionate impact of these deals on vulnerable customers and acknowledge their impact on bills.

Our organisations believe that these type of discounts should be prohibited and we will continue to advocate for that.

In the context of the framework, retailers should be obligated to quantify the amounts customers stand to lose on these offers as part of the initial discussion and disclosure.

By ensuring new customers are on a fit-for-purpose contracts and that concession entitlements are realised from sign-up, retailers can save their customers, community groups, government support agencies and themselves the significant costs generated by issues caused by accruing debts that could have been avoided.

### Communication about Standard Assistance

The effectiveness of the Standard Assistance options in enabling customers to avoid a debt issue escalating will depend on how well, and when, retailers promote the options.

The current proposed provision to require retailers to make information ‘easily accessible on the retailer’s website’ (c88(3)) is likely to be interpreted by some retailers as having the same prominence as current payment and hardship assistance information.

Such information is often buried several ‘clicks’ away from the front page, making them inaccessible for customers with lower literacy, CALD backgrounds, without access to the internet or without the ability to utilise the internet.

Guidance should inform retailers that they need to clearly promote these options in plain English wherever they interact with potential customers or customers who are not yet facing payment difficulty.

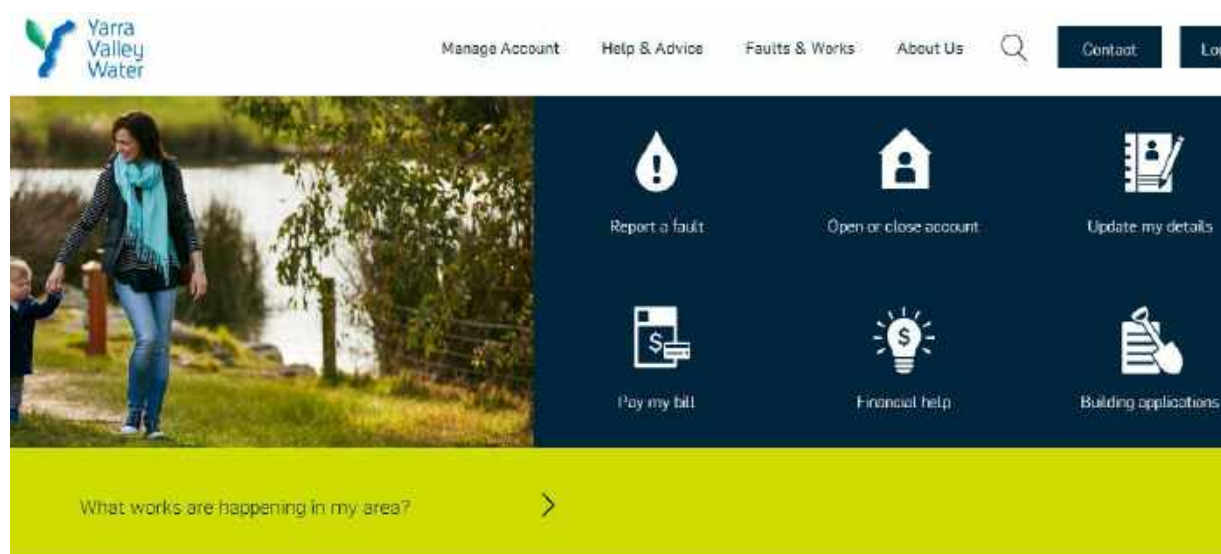
Good practice in relation ‘easily accessible’ to would include a buttons ‘above the fold’ on a retailers home page, such as on Yarra Valley Water’s [home page](https://www.yvw.com.au/node/home) (see Figure 1).<sup>9</sup>

Retailer’s customer service staff should also be required to discuss these options when signing up a new customer, giving people the option to get on an offer that is fit-for-purpose for their circumstances.

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<sup>9</sup> See: <https://www.yvw.com.au/node/home>

Figure 1 – Yarra Valley Water homepage



## Tailored assistance

We strongly support the framework's focus on early intervention by retailers for customers who are experiencing payment difficulties. In our experience, early retailer assistance greatly improves the outcomes for these customers.

Consumer Action has extensively highlighted the impacts of extreme debt and disconnection for low-income and vulnerable customers over many years, through reports such as Consumer Action's 2015 report *Heat or Eat* report<sup>10</sup>, based on the experiences of callers to the National Debt Helpline (NDH).

These issues are ongoing. Victorian financial counsellors routinely assist families and individuals who have accrued debts of several thousand dollars, meaning there is little prospect of them repaying it.

### **Case study 1**

*'Lee' called the NDH with energy debt of over \$8000. It was the first time he had been referred to a Financial Counsellor who identified other issues contributing to the debt.*

*He was also unsure whether he had received assistance under a hardship program at all while this debt accrued. Even after Utility Relief Grants on both gas and electricity 'Lee' would still be left with a debt of \$7000 which continued to grow.*

<sup>10</sup> See: <http://consumeraction.org.au/wp-content/uploads/2015/08/Heat-or-Eat-Consumer-Action-Law-Centre.pdf>

### **Case study 2**

*'Maria' lives in a household with eight other family members, including children. She called NDH with a debt of more than \$11,000.*

*While she was making payments of \$100 a fortnight, she was struggling to keep up with these as the household's only income was government support payments.*

*The family home was at risk if the retailer took legal action over the debt. The situation caused 'Maria' a lot of stress and was likely contributing to issues arising from mental health.*

Appropriate early intervention means assistance is offered while arrears are lower, and customer anxiety is lower. Repayment arrangements will tend to be more manageable, and customers are more likely to engage. However, the benefits of early intervention need to be balanced against the risk of expedited disconnections.

We strongly support the principle that assistance is a clear entitlement that is not subject to retailer discretion.

We also are concerned that there are many customers with existing debts over \$5000 as is the case in both case studies above. It is important that the ESC considers what will happen to these customers as the framework is implemented. We encourage the Commission to investigate debt waivers as these work well in other industries. We discuss debt waivers for people in severe financial circumstances later in this submission.

### **Trigger for Tailored Assistance**

We agree with retailers' proposal from the consultation that the reminder notice is a useful objective trigger for early intervention for customers with arrears.

However, as highlighted at the technical workshop on pathway maps that was run by the ESC, a reminder notice as the sole invitation for a customer to engage and receive their Tailored Assistance entitlements would do little to change the current disconnection track timeline and disconnection outcome for many customers. This risk is heightened if Disconnection Warning Notices are combined with or issued simultaneously to Default Assistance offer, as the ESC envisages.

We are concerned that under this scenario, retailers will have incentives to meet their obligations via pro forma methods, and view them as 'boxes to tick' on the fastest possible route to issuing a Disconnection Warning Notice.

Some retailers have argued that the ESC's proposal creates the risk that customers on quarterly billing will accumulate nearly six months of usage before Default Assistance is triggered, making it less likely a customer will make contact with to discuss repayment arrangements.

In our view, the best balance of risks between too-late intervention (when debt is high) and a business-as-usual disconnection track will occur if customers receive an offer of assistance at the reminder notice stage, while retaining 'reasonable knowledge/likely arrears' as the formal trigger for Tailored Assistance.

In our view 'reasonable knowledge/likely arrears' is a low threshold that, given the number of factors all retailers know about a customer from their account history or other volunteered information, places a welcome onus on retailers to be aware of their customers' circumstances and act in their interests.

This requirement (along with clause 82's obligation for retailers to 'reasonably know' about a customer's circumstances), has the potential to make the framework for dealing with people experiencing payment difficulties customer-focused, rather than the process driven.

#### Reminder notice offer of assistance

Every communication will contribute to customers' perception of their retailer, and information that conveys the principles of respect, non-judgement, trust and empathy will increase the likelihood of contact.

A more effective form of intervention at the Reminder Notice stage than the basic information proposed in the framework would be for ESC to develop a standard set of simple information to be sent with every reminder notice. This would provide a summary of assistance retailers have to provide, payment options, and information about interpreter services and financial counselling, and the National Debt Helpline number.

This information should be developed in conjunction with consumer groups and user experience experts using best practice language and behavioural economics insights. Government branding will decrease the likelihood customers will dismiss it as marketing, but co-branding with retailers could be considered as a way of increasing retailer ownership.

#### Retailers' best efforts to offer Tailored Assistance

While we believe Tailored assistance can be effective in assisting customers, we emphasise the framework's success ultimately depends on its ability to facilitate ongoing engagement between customers and retailers.

Tailored Assistance provides a potentially effective architecture for this engagement. We assume that it is in retailers' interests to want to facilitate engagement in all possible cases, but its goal will be undermined if retailers view it as a necessary hurdle to clear on the path to disconnection rather than a genuine opportunity to assist.

#### Method of contact

At sign-up, customers should be asked for primary and secondary preferred contact methods, and best efforts should include at least two attempts should be made to contact. All retailers

should have the capability of offer SMS communication as an option for customers who prefer it.

### Communication with customers

Throughout the framework consultation process, a number of retailers highlighted the issue of customer disengagement, including some customers' apparent unwillingness to make contact with their retailer to discuss debt repayment options. We have noted earlier that customers have a range of reasons for not engaging.

Financial counsellor feedback is that the quality of communication with customers is critical. If customers feel like they don't have agency, and are perceived by their retailer as merely a debt-collection target, they will be less likely to make contact with a retailer they owe money to. Conversely, there is wide agreement that relationships based on empathy and respect, create a more effective foundation for constructive ongoing engagement. We note that several retailers have explicitly agreed with this principle by committing to the AER's *Sustainable Payment Plans Framework*.<sup>11</sup>

Given that a Tailored Assistance offer will often be the first time a retailer makes contact with a customer, it will be important that the language used is respectful, non-judgemental and conveys a willingness to assist, if it is to be an effective prompt for customers to engage with their retailer.

We consider the framework should require that all communications related to offers of assistance (whether TA or DA), to follow good practice principles and language, including:

- Non-judgemental, non-stigmatising language—make it clear that the primary purpose of the communication is to offer assistance—for example:
  - 'payment difficulties can happen to anyone'
  - 'if you're experiencing payment difficulties we can help'
  - 'We have a range of options to help you manage your bills'
- The contact number for the National Debt Helpline
- Highlight the availability of free translation services and contact details

We consider that TA communication (in whatever form) should include a number of mandatory statements to make it separate from bill communication, and a genuine offer of assistance.

### Assistance/disconnection pathways for non-communicating customers

Provided offers of assistance and disconnection track communication are separated, we consider the 'base case' pathway for receiving assistance and disconnection, set out by ESC, provide a reasonable balance of early intervention, additional opportunities for assistance in an effort to avoid the risk of a tick-box disconnection process.

Our view of the process's key interventions would look like the following:

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<sup>11</sup> See: <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/aer-sustainable-payment-plans-framework>

<b>Bill issued</b>	
<b>Reminder Notice</b>	<ul style="list-style-type: none"> <li>• The reminder notice would be required to be delivered to the customer within two weeks of a missed payment due date.</li> <li>• RN includes best practice customer assistance information</li> </ul>
<b>(Non-payment following RN)</b>	
<b>Tailored Assistance</b>	<ul style="list-style-type: none"> <li>• The retailer forms a view about whether a customer is likely to be in arrears by the next bill issue date</li> <li>• Retailer makes its best endeavours to contact the customer at this point. This includes: <ul style="list-style-type: none"> <li>○ contacting the customer via primary and a secondary preferred method, with at least two attempts to contact for each method over two weeks</li> </ul> </li> </ul>
<b>(No response to TA offer)</b>	
<b>Default Assistance offer</b>	<ul style="list-style-type: none"> <li>• DA triggered with customers in arrears</li> <li>• DA communication uses 'best practice' language to provide information about financial counselling, interpreters</li> </ul>
<b>Disconnection Warning Notice</b>	<ul style="list-style-type: none"> <li>• DWN issued at least one week after DA notice</li> </ul>
<b>Pre-disconnection best endeavours</b>	<ul style="list-style-type: none"> <li>• Retailer makes multiple efforts to contact customer using their preferred contact methods</li> <li>• Connections Victoria/community agency retained by retailer conducts home visit if retailer reasonably believes the customer may be in payment difficulty</li> </ul>

### Customer-nominated repayment proposals

Customers' entitlement under the revised framework to nominate a repayment amount is preferable to retailers dictating repayment amounts, which are more likely to be unaffordable and unsustainable.

Our financial counsellors and EWOV's recent affordability report highlight that unaffordable and unsustainable payment plans are an endemic issue in the energy sector, and a direct cause of spiralling debt for many customers.

However, there a range of reasons that customers will not always nominate an affordable amount, and we are concerned that the framework's provisions that retailers be required to accept customer-nominated repayments, will not fully address this issue.

The AER's 2015 review of retailer hardship policies<sup>12</sup> and ESC's Hardship Inquiry Final Report<sup>13</sup> have described the inherent power imbalance between customers and retailers when discussing debt repayments, with customers often agreeing to unaffordable amounts because they think it is what the retailer wants to hear. There are also many circumstances when a customer doesn't know what they can afford, or over-estimates what they can afford.

<sup>12</sup> See: <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/aer-sustainable-payment-plans-framework>

<sup>13</sup> See pages 22-24: <http://www.esc.vic.gov.au/document/energy/30396-energy-hardship-inquiry-final-report/>



We support the principles of the AER's SPPF, which emphasises that the best chance of arriving at a sustainable repayment amount is through a conversation about what a customer can afford to repay, taking into account their ongoing usage and other circumstances.

The SPPF highlights that testing whether a customer's nominated amount is affordable does not have to involve asking invasive questions or establishing a customer's income and expenditure. It can be simply tested through questions such as 'will you be able to regularly afford these repayments when you take into account your other expenses'.

While ESC has resolved not to include a capacity to pay assessment in the framework, we consider the framework needs to include guidance about how these conversations should occur. This guidance would incorporate good practice principles already being used in the sector.

We recognise the risk of a customer committing to an unaffordable amount is reduced through the customers' ability to revise payment plans. We welcome this as a key safeguard, and a critical mechanism that can 'change the game'.

However, requiring retailers to test affordability would increase the likelihood of many customers not needing to do this.

A requirement to test affordability would help address other critical gaps in the framework, of establishing whether a customer:

- can afford their ongoing usage (and therefore entitled to the higher level of Tailored Assistance) when they or their representative does not
- who can nominally afford their usage is entitled to repay arrears over a period longer than two years.

The flexibility for a payment proposal to be over a longer period if necessary due to a customer's circumstances is a welcome extension of this principle that the ESC has identified as necessary since the hardship inquiry.

### Customer circumstances

Conversations that occur at the Tailored Assistance stage are likely to elicit a range of information that customers volunteer about their personal circumstances, which will be relevant to a retailer's obligation to take into account a customer's circumstances (clause 82).

This may include information about unemployment, illness or injury, and housing status. The retailer should record all such information as it will be material in any future understanding of 'customer circumstances'.

### Referrals to financial counsellors

Energy retailers, as a principle, are obliged under the retail code to provide assistance to customers repaying debt, or where appropriate, additional support through their retailer hardship programs.

Assisting customers experiencing payment difficulties to negotiate sustainable and affordable arrangements to repay debt should be routine.

Consumer Action has previously highlighted that retailer staff transfer a significant number of customers to financial counsellors who should have been assisted by retailers in the first instance, in effect outsourcing a basic customer service.

Financial counsellors are a critical support for many customers for whom energy debt is one component of a more severe financial difficulties or complex personal or financial circumstances, and there are many circumstances when it is appropriate for retailers to transfer customers to financial counsellors to receive this assistance.

However, financial counselling resources are extremely limited in Victoria (and elsewhere), and over-referral of customers limits their ability to assist other people who need it.

The framework should clarify the circumstances when a customer should be legitimately referred to a financial counsellor, including when:

- they don't know how much they can afford;
- they can't agree on a repayment amount with a retailer;
- it is clear the customer has complicated personal or financial circumstances, including significant other debts.

This guidance should additionally address other practices of concern reported by financial counsellors that impact their ability to effectively assist customers, including:

- customer service staff not adequately explaining the role of financial counsellors, or why they are being transferred to the NDH;
- Transferring customers with an ultimatum to get assistance or face disconnection. (We note clause 93 would prohibit retailers placing conditions on a customer's entitlements if that customer does not speak to a financial counsellor.)

These practices make it difficult for a counsellor to build rapport with the customer and effectively assist them.

### Revising payment proposals

We support the principle that repayment arrangements can be revised multiple times without the limitations of these triggering the first payment plan/second payment plan/failure paradigm of the current hardship framework as a key protection for customers.

The National Debt Helpline's financial counsellors routinely see cases where a retailer has put a customer onto an unrealistic payment plan in which the customer is overcommitted.

The cycle of debt escalation in these circumstances is predictable: the customer 'fail' two of these payment plans and be removed from hardship programs, and face disconnection. This is often despite the customer having actively engaged with their retailer and having clearly stated what they can afford, only to be told they must pay their entire outstanding amount or be disconnected.

As we have noted, there are a range of circumstances where customers won't immediately know what they can afford, and that arriving at a sustainable amount requires some trial and error. The provision for customers to be able to revise payment amounts as needed provides welcome flexibility for this to be achieved.

We note these benefits will depend on customers clearly understanding this entitlement at the time they agree to a repayment arrangement and recommend this form part of the initial Tailored Assistance conversation between retailers and customers.

We disagree with the suggestion made by some retailers during consultation following this draft proposal that there should be a limit on the number of times a customer can change a payment proposal in a set time period. This would essentially re-establish part of the business-as-usual framework that hasn't been successful in keeping debt at reasonable levels or preventing.

In contrast, flexibility will benefit retailers, by removing some of the stigma and anxiety of arrears renegotiation, and increasing the likelihood of customers remaining engaged with their retailer.

Where a customer repeatedly negotiates lower repayments, this will often be a clear indicator that the customer can't afford their usage—and should receive more intensive tailored assistance.

#### Placing customers on lower cost tariffs

We support the creation of a customer entitlement to be placed on the tariff that is most likely to reduce the customers energy costs (clause 79(1)(e)(i)). The entitlement to receive a lower cost tariff is useful mechanism to achieve this objective, but should be expanded.

In our view retailers, as essential service providers, have a strong obligation to ensure their customers receive a service that is suitable to their circumstances.

Applying this important intervention to customers who can't afford usage will be too late to assist many consumers avoid accumulating unnecessary debt, noting the difference in cost between a standing offer and a good market offer, can be hundreds of dollar a year for most households.<sup>14</sup>

The entitlement to be placed on a lower cost tariff should be an entitlement for any customer a retailer reasonably believes is at greater risk of experiencing payment difficulties who is receiving Tailored Assistance.

Retailer accountability for placing customers on unsuitable plans is important, and ESC should consider how this can be achieved in the framework. There may be a range of ways to do this,

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<sup>14</sup> See St Vincent dePaul's Tariff Tracker:  
[https://www.vinnies.org.au/page/Our\\_Impact/Incomes\\_Support\\_Cost\\_of\\_Living/Energy/VIC/](https://www.vinnies.org.au/page/Our_Impact/Incomes_Support_Cost_of_Living/Energy/VIC/)

but at a minimum customers who are moved onto lower cost tariffs as part of Tailored Assistance should be credited:

- the total of any missed pay-on-time discounts not received due to late payments
- the difference between what they have actually paid and what they would have paid if they were placed on the lower cost offer from the start of that contract.

#### Tailored assistance—customers who can't afford usage

Customers who have an inability to pay their ongoing usage are in the most need of protection by a framework for people facing payment difficulties. The principle that customers' energy supply should not be disconnected solely because they cannot pay is therefore a critical consideration in the payment difficulties framework.

We welcome the goal of this level of Tailored Assistance entitlement to assist these customers get to sustainably afford their usage so they can pay off their arrears.

However, as the ESC has acknowledged during consultations, it is unlikely that customers will know the 'magic words' they need to say during a conversation with retailers about their payment proposal to trigger this entitlement.

We note clause 79(3) gives customers an entitlement to this level of assistance if 'if retailer is told, knows or reasonably believes they cannot pay that full cost'.

However, we are concerned that, given the higher level of required commitment to these customers, retailers will make it as difficult for customers to access this higher level of assistance and potentially have a perverse incentive to find out as little as possible about a customers' circumstances to avoid triggering the obligations that flow from clause 82.

In our view, the threshold for a retailer to 'reasonably believe' a customer can't pay will be if they are aware or become aware of any of a wide number of factors, including:

- a customer's account history, such as whether they receive a concession, have previously applied for an URG, have previously been disconnected, have missed payments or previously received hardship assistance, a spike in consumption, and multiple revised repayment amounts.
- any information volunteered in conversation—for example, their housing status, unemployment, injury or illness. Mention of any of these things will constitute 'reasonable knowledge' a customer can't pay.

Financial counsellors highlighted that a customer on Newstart and in private rental accommodation will almost never be able to afford to pay a debt and ongoing energy usage.

Finally, it is clearly not in customers' interests to be paying less than they can afford so that debt continues to accrue indefinitely. For this reason, repayment amounts should be monitored.

### Case managers

Given that repeated contact with customers will often be necessary (for example, to discuss practical assistance measures) we recommend that the framework require retailers to assign case managers to people receiving this more intensive Tailored Assistance.

### Practical assistance

We support the principle of assisting customers to reduce their energy usage (clause 79(1)(e)(ii)). This is another area where guidance is important, but there will be a risk that some retailers will want to get away with as little as possible.

We encourage the ESC to consult community groups and consumer organisations when developing guidance on what practical assistance should involve where a customer is entitled to it.

While we welcome the ESC's move away from prescription from the previous draft decision proposal where more detail was given, there is a need to put a set of principles in place to represent practical assistance that can be flexible to customer circumstances, technological advancement and the transforming energy system.

Financial counsellors regularly assist people who are in situations where they do not control the phenomena that allow them to lower their energy usage. An example would be a tenant whose landlord will not accept modifications to their property for energy efficiency purposes. Retailers have also spoken about this issue at consultations on the proposed framework.

Consumer Action is working as part of the One Million Homes alliance to get minimum standards for energy efficiency in residential tenancies in Victoria. We are doing so in order to remove a barrier to this issue being resolved.

### *Debt waivers*

The framework's proposed amendments to the retail code recognises the challenge associated with customers who are unable to reduce their usage. It enables retailers to not have to provide assistance to help lower costs where it is not possible (clause 79(1)(e)(ii)). We recommend that in such circumstances customers need to be entitled to a waiver of arrears to stop their debt becoming increasingly unmanageable at an alarming rate.

The ESC should consult on the best way to implement a system for these debt waivers in adopting this recommendation.

Whatever the case ends up being it is of utmost importance that people in these circumstances are not disconnected from an essential service.

We also appreciate the inclusion of clause 81(3) (which requires a retailer to contact customers who are not implementing practical assistance) as it may reveal that a customer is

in a situation where they are unable to lower their energy usage. In doing so it should change a customer's pathway through the framework to a scenario where payment proposals and assistance are adjusted to reflect a customer's circumstances instead of that customer receiving a disconnection warning notice.

It is also important that the ESC's guidance in relation to practical assistance ensures retailers do not encourage customers to under consume energy as an unintended consequence. While not as visible as disconnection, under consumption can have similar consequences. Work is being undertaken in this space by Victorian consumer advocates, and evidence of under consumption is recorded in *Heat or Eat*.

### Customers who miss payments on Tailored Assistance

Retailers have raised concerns about customers accruing unmanageable debt in situations that they have framed as a 'loop' or 'hamster wheel' in tailored assistance.

We see unmanageable debts accruing as an undesirable outcome too but it is more important that an inability to pay does not result in a disconnection, especially where a customer is engaged with their retailer.

Customers who end up in these situations do so due to impossible financial positions—financial counsellors consider that debt waivers were best practice for these people. A report from Boston Consulting Group in 2005 showed there is a business case for debt waivers in these situations.<sup>15</sup>

Financial counsellors also suggest a 'super utility relief grant' of a much higher amount only available to these customers as a potential social policy response to the issue.

### **Default assistance**

Through our case work we are aware that there are multiple reasons many customers may not contact their retailer when facing payment difficulties. These include language issues, previous negative experiences with businesses, mental or other health issues, fear of judgement, embarrassment, shame, or a combination of these.

In principle, we welcome the inclusion of an option for these customers to take up a payment plan arrangement without having to make contact with a retailer.

Additionally, default assistance communications provide an extra opportunity for customers to contact, but also have the potential to be an effective prompt for customers who make contact with their retailer to discuss more tailored assistance.

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<sup>15</sup>Yarra Valley Water(2005). *Yarra Valley Water & Kidonnan Child & Family Services Case Study September 2005; Victorian Winner Large Business Prime Minister's Award For Excellence in Community Business Partnerships 2005*.

### Customers who don't communicate

As discussed under Tailored Assistance, we support the framework's trigger of 'arrears' as a reasonable trigger for retailers intervening as it balances the risk of customers accruing higher debts with the risk of a business-as-usual disconnection process.

National Debt Helpline financial counsellors provided feedback that a significant portion of customers who would receive Default Assistance offers are likely to be those experiencing the most severe ongoing financial difficulties, language issues, have complex personal circumstances, or a combination of these issues.

We are concerned that a default payment plan that spreads arrears over nine months, individual payments will seem un-affordably high for many of these customers.

We acknowledge there is an argument for basing the default plan on smoothed future consumption and arrears over 12 months (as proposed by retailers), as this is likely to be the best option for many customers. However, we are concerned that the higher amounts would deter many people from engaging.

Smaller amounts will be less daunting and will increase the likelihood of customers making contact with the retailer to discuss Tailored Assistance options. For this reason we recommend that default assistance offers be based on a customer's arrears, spread over 12 months.

### Default Assistance communication

There is a range of important information that the Default Assistance notice must provide to be an effective attempt to get vulnerable customers to make contact to negotiate affordable repayment options available under Tailored Assistance.

It can achieve the effect of a disconnection warning notice—prompting contact—by providing transparency and an offer of support, rather than the threat of disconnection. Default assistance communication should include:

- contact details for free interpreter services;
- providing the National Debt Helpline number—we note that financial regulation requires lenders to include the NDH number on consumer credit default notices;
- a description of the kind of assistance a customer can receive if they contact the retailer. This could be in a format like YVW's customer charter;<sup>16</sup>
  - *we'll work with you to come up with a repayment plan you can afford*
  - *we can also help you reduce your usage;*
- details of payment matching or debt waivers available;
- contact numbers should be for specialist staff who have received appropriate financial difficulties training, and this should be clear in the communication—customers contacting retailers at this stage should not speak to generalist customer service staff.

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<sup>16</sup> See: <https://www.yvw.com.au/about-us/customer-charter>

### Disconnection warning notice

The ESC has indicated that Default Assistance communication could be issued at the same time or combined with a Disconnection Warning Notice.

The benefits of the offer of support under Direct Assistance will be undermined if it is combined with a Disconnection Warning Notice, which inevitably has a more threatening tone, and which will deter many consumers from making contact.

For this reason, we strongly recommend that the framework prevent retailers combining Default Assistance offers and Disconnection Warning notices, and require that these be separated by at least a week.

### **Disconnection**

*Heat or Eat* outlined the often-catastrophic impact that disconnection from an essential service can have on Victorian's lives.

We welcome the ESC's recognition that the purpose of the payment difficulty framework should be to make sure disconnections are genuinely a last resort for retailers.

No-one should be disconnected for an inability to pay for an essential service and it is important that the framework guarantees preventable disconnections are minimised, rather than commonplace (as EWOV's wrongful disconnection figures show is the case).<sup>17</sup>

We welcome clause 111A(b)(i)'s prohibition on disconnections where a retailer 'reasonably believes' a customer can't pay for their ongoing usage as a key provision giving effect to this principle.

However, despite the inclusion of this provision, we consider the framework lacks a 'last gasp' protection for customers who are disengaged due to their circumstances.

### Best endeavours – final pre-disconnection intervention

A retailer's best endeavours to contact someone who is not engaging before disconnection should be more stringent than those required in other parts of the framework, due to the increased likelihood they have complex circumstances.

In our submission to the ESC's previous draft decision we highlighted our recommendation from *Heat or Eat* that the decision to disconnect someone should be taken away from retailers and be given to an independent panel who could assess if disconnection was inappropriate in a customer's circumstances.

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<sup>17</sup> In May EWOV reported that 60 per cent of all the Energy Disconnections assessed for wrongful disconnection in the January to March reporting period resulted in a WDP being paid:  
<https://www.ewov.com.au/reports/affordability-report/201705>



Since the publication of *Heat or Eat*, a number of factors have increasingly convinced Consumer Action that in-person intervention, from qualified appropriately trained welfare staff, is needed to ensure people are not disconnected solely because they can't pay.

These factors include the steadily high number of EWOV disconnection disputes resulting in a wrongful disconnection payment<sup>18</sup>, and increasing completed disconnections, as smart meters enable human interaction to be removed from the disconnection process. Our view is that, short of an outright prohibition on disconnections (as occurs in some overseas jurisdictions<sup>19</sup>), third party intervention is a critical safeguard.

Our analysis leads us to recommend the creation of a new body, which we have called Connections Victoria. We consider there may be a range of structures this body could take, and we would be happy to discuss our preliminary views with interested stakeholders.

The key features of this body would be:

- Independent of energy retailers—services could be performed by a social welfare group or a government agency, but it will be important staff aren't seen as representing retailers.
- Staff with appropriate social work or welfare qualifications would perform home pre-disconnection home visits with the aim of engaging with customers, understanding their circumstances, and linking them to appropriate support services – including, interpreter services, family violence support, welfare, financial counselling, mental health and energy efficiency services
- Binding powers to prevent a retailer disconnecting a customer, or authorise a disconnection to proceed if the grounds are established

In the short-term context of the proposed framework, the same objective could be achieved by requiring retailers to engage community agencies with appropriately trained staff to conduct pre-disconnection home visits service until the development of Connections Victoria can be progressed. This would occur in cases where a retailer reasonably believes that a customer may not be able to pay for their usage or is experiencing other financial or personal issues.

### **Case study 3**

*The NDH received a call from a woman who had returned from hospital with her three children, including her newborn baby, to find the electricity disconnected at their home.*

*She had missed previous payments due to personal problems and owed around \$9000 to their retailer.*

*The retailer was aware that the person due to give birth around this time. The retailer had also refused to provide a Utility Relief Grant.*

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<sup>18</sup> EWOV's [Affordability Report](#), May 2017 (p12) noted 60 per cent of cases resulted in WDPs to customers

<sup>19</sup> Ontario Energy Board [letter](#), 23 Feb 2017

## Definition of Payment Difficulties

While clause 111A sets out when a retailer may not disconnect a customer facing 'payment difficulties', this term is not defined elsewhere in the framework.

We are concerned this could result in inconsistency for customer experiences and risk disconnection not being a last resort for some customers as clause 111A only applies to customers in payment difficulties.

We understand a customer in payment difficulties to be a customer who does not or may not have the ability to pay an outstanding amount owed for their energy services.

We urge the ESC to clearly communicate their expectation about what customers are protected by the payment difficulties framework and consult us and other community and consumer groups if this expectation differs from our understanding.

## Family violence

We welcome the specific requirement for retailers to consider guidance that the ESC will publish in relation to family violence.

We encourage the ESC and energy retailers to consider the Economic Abuse Reference Group's (**EARG**) *Good Practice Guide* to ensure that guidance and conduct is set in a way that is most likely to assist people affected by family violence. There is a need for industry to go beyond hardship arrangements and consider the possibility of economic abuse at all stages. For example, the risk of economic abuse should be considered at the time any contract is formed. We also emphasise the EARG's recommendation for the training of all staff members.<sup>20</sup>

## Restrictions on debt sale and legal action

The retention of restrictions on debt recovery from previous proposals under clause 94 of the proposal are an important measure to protect consumers. We support these and as with the previous proposal recommend that restrictions are extended in a similar way for legal action.

We also recommend that where debt has been assigned to a third party, that third party should not take legal action without clearly informing the customer of the availability of EWOV including by virtue of a statement on court complaints. This process would align with the recommendation from the State Government's recent Access to Justice review<sup>21</sup> which promoted diversion from courts and for court documents to tell people about other dispute resolution options.

Consumer Action has seen multiple cases of vulnerable or low-income people being at risk of losing their home due to legal action taken over energy debts. Such action has an unfair outcome with disproportionate consequences for the people affected when they experience

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<sup>20</sup> See: <https://earg.org.au/good-practice-guide/>

<sup>21</sup> Department of Justice and Regulation 2016, *Access to Justice Review*, August 2016.

compounding hardship and increasingly limited options to avoid hardship compounding further.

## **Costs and Benefits**

Increasing customer engagement in managing bills and debt and reducing disconnections through an effective payment difficulty framework is likely to significantly reduce individual customer detriment and societal costs.

We note the work of consultants ACIL Allen Consulting in providing the cost impacts of the framework on retailers and KPMG's assessment of consumer's costs and benefits and provide some additional matters for consideration by the Commission.

### Changes to the financial position of customers and general community impacts

There are significant impacts of disconnection on customers, particularly for those customers on low incomes or those experiencing vulnerability or disadvantage. These may have direct and indirect financial consequences as well as non-financial outcomes. Low-income and vulnerable customers commonly lack not only financial resources but the family and friendship support networks to assist them in a financial crisis. These customers depend more heavily on customer protections for access to essential services.

The full impact of disconnection is difficult to measure, however, there are some factors that are likely to impact all customers disconnected from energy service and some that increase based on particular circumstances of customers.

For all customers there are the additional costs of both disconnection and reconnection of supply. Unlike restriction of water services, disconnection of electricity results in an immediate total lack of service—lack of refrigeration for safe food maintenance with a potential immediate consequential loss of any frozen foods and foods requiring low temperatures. A useful measure for this impact would be the average claims to distribution businesses following outages under the voltage variation compensation guideline. Without refrigeration, food costs can be assumed to rise to include packaged food or longer life food. Depending on whether the household is all electric and or both electricity and gas has been disconnected, customers may have increased costs of takeaway food purchase.

Deprivation of lighting, heating, cooling and cleaning (personal hygiene—showers and clothes washing) have implications for increased health and safety risks influenced heavily by season and temperature. The young, old and those with medical conditions will be most impacted in terms of health and safety.

Access to electricity in hot temperatures plays an essential role in reducing health impacts. It is estimated that 374 excess deaths over what would be expected occurred in the Victorian 2009 heatwave. Reportable deaths in those aged over 65 reported to the coroner's court more

than doubled.<sup>22</sup> Following the implementation Victoria's heatwave plan (which included making public facilities available for those unable to afford cooling) it is thought that the impact of the 2014 heatwave had a reduced impact with excess deaths reported at 167 (a 24 per cent increase in mortality).<sup>23</sup>

In 2015, an international study funded by the UK Medical Research Council analysed death rates due to variations in temperature across 13 countries over a 27-year period. The study included Australia, Brazil, Canada, China, Italy, Japan, South Korea, Spain, Sweden, Taiwan, UK and USA. A common finding was that extreme temperatures did not impact as much as moderately cold and warm temperatures. Australia's death rate due to cold weather, was found to be 6.5 per cent, almost double that of Sweden's (3.9 per cent).

In an article that appeared in the *Age* newspaper following the report, Professor Adrian Barnett a researcher at the Queensland University of Technology concluded that this result is almost entirely due to the poor quality of our homes in Australia, describing some of our housing as "glorified tents". With Victoria's housing stock averaging two stars or less, energy poverty compounds this impact for people in poorer standard homes. Heating and cooling largely uninsulated homes becomes more expensive and less efficient and means the poorest people have to make choices that adversely affect their health.<sup>24</sup>

The impact of disconnection on personal wellbeing is further explored in *Heat or Eat*. As part of the research, the Beyond Behaviour Research Program of RMIT University's Centre for Urban Research examined the impacts of disconnection on six Victorian households. The study found that all of the participants suffered mental health problems associated with the disconnection, from feelings of hopelessness, through to one participant having suicidal thoughts by the time she saw a financial counsellor.

*Case study 4: Sarah*

*"It's not just the physical fact of being without electricity; it's the stresses and the shame that feel quite traumatic... The second night I was so depressed I didn't even cook myself dinner."*<sup>25</sup>

In many instances the report found that these feelings were not limited to the adult parent but had an emotional impact on children. In one *Heat or Eat* case study, a participant's four-year old son stood at the fridge door crying from hunger and in another case, the daughter of a participant suffered from asthma made worse by the cold.

Apart from food, the study found that disconnection increased a range of other costs:

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<sup>22</sup> January 2009 Heatwave in Victoria: An Assessment of Health Impacts, Victorian Government Department of Human Services Melbourne, Victoria, p 1

<sup>23</sup> The health impacts of the January 2014 heatwave in Victoria, Victorian Government Department of Human Services Melbourne, Victoria, p 2

<sup>24</sup> <http://www.theage.com.au/comment/australian-houses-are-just-glorified-tents-in-winter-20150608-ghj2ox>

<sup>25</sup> Households should not be forced to decide whether they heat or eat, A report prepared by the Consumer Action Law Centre, August 2015, p 30

- taxi fares/petrol costs, trips to laundries and other people's houses to cook
- using coin operated washing machines for washing or public BBQs to cook
- using public facilities such as swimming pools to shower
- phone charges to seek assistance (agencies, retailer, EWOV)
- purchase of candles, blankets to manage absence of heating and lighting

Large consequential costs were also incurred such as replacing a fridge that would not operate following the disconnection.

### Government and non-government support

There is an extensive government and non-government funded network of support agencies to assist people in crisis. Because of the essential nature of energy, a significant amount of these resources is spent preventing and following disconnection, assisting people through direct intervention programs. These include:

- Commonwealth Financial Counselling
- National Debt Helpline
- Victorian Financial Counselling program (approximately 200 financial counsellors)
- the cost of managing the operations of the Wrongful Disconnection Payment scheme (EWOV and the Commission)
- the Utility Relief Grant Scheme
- Commonwealth Emergency relief funding

Additional costs are passed on to consumers for complaint of credit issues and disconnections through EWOV.

### The extent of assistance through Financial Counselling

The FCRC has undertaken two financial counselling surveys of energy retailer hardship practices, in 2014 and 2016. This followed concerns expressed by financial counsellors about rising disconnections, and the hardship practices of energy retailers. The 2016 survey of financial counsellors found that for 29 per cent of financial counsellors, energy related matters took up roughly half of their casework time and a further 21 per cent spent 61-80 per cent of their time on energy related casework.<sup>26</sup>

In addition, significant paid and volunteer emergency relief resources are expended in the form of direct support to pay outstanding energy bills and or to supplement household food and other expenses so that energy bills can be paid. There are over 600 agencies that deliver emergency relief across Victoria. The CISVic consortium of 30 emergency relief agencies assisted 27,329 clients in 2015-16. Of the clients seeking financial relief 39.72 per cent were seeking relief with utility/phone expenses.<sup>27</sup>

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<sup>26</sup> Rank the Energy Retailer, Victorian financial counsellors rank the financial hardship policies and practices of energy retailers, Financial and Consumer Rights Council, August 2016, p 16

<sup>27</sup> Emergency Relief Snapshot CISVic Consortium 2015-2016

### Additional Financial impacts on customers

Consumers will also benefit from:

- better upfront retailer communication on websites and in other communications material if provided with pathway information is likely to reduce the search costs for customers in trying to resolve arrears/billing issues;
- Standard Assistance and payment options will likely reduce additional financial arrears and prevent the additional costs associated with disconnection.

### Financial impacts on retailers

There are a number of measures in the framework that we believe are likely to have a positive benefit for retailers and positive changes to financial impacts. These include:

- Improved upfront customer communication and establishment of assistance pathways through website and other communication (a one stop shop approach) would likely decrease multiple call handling caused when customers aren't able to find the right customer destination for their matter.
- Standard Assistance and Tailored Assistance initiatives will likely increase the numbers of customers who engage earlier in debt management reducing outstanding debtor cycles (payment plans including monthly payments deliver income to retailers in advance of quarterly payments).
- Increased customer engagement and customer service is likely to increase customer trust and may increase customer loyalty.
- KPMG and the Commission's analysis indicates consumers paying less by switching to the best tariff under Tailored Assistance will be a cost for retailers. However, we posit that this electricity which would otherwise be unaffordable debt that is waived or sold will result in retailer savings.

Please contact Jake Lilley on 03 9670 5088 or at [jake@consumeraction.org.au](mailto:jake@consumeraction.org.au) if you have any questions about this submission.

Yours sincerely



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