

Draft guidance note – Payment difficulty and disconnection

Version 1

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1. Summary

1.1. Purpose and status of this document

- 1.1.1. The purpose of this guidance note is to outline for energy retail licensees (retailers), holders of energy licence exemptions and Victorian energy customers, our approach to promoting and enforcing compliance with Part 3 of the *Energy Retail Code* (the Code), and associated provisions that relate to the protection of customers anticipating or facing payment difficulty. It also outlines what the commission considers to be better practices that retailers may adopt.
- 1.1.2. This guidance note is published under section 3.2(c) of the commission's *Energy Compliance and Enforcement Policy* (Policy), and constitutes a guidance note for the purposes of clause 73(b)(iv) of the Code. It does not create any additional obligations on retailers.
- 1.1.3. Where we consider that retailers have in good faith relied on this guidance note, by acting consistently with the examples of compliant conduct included in this note, we will not take enforcement action.

1.2. About this document

- 1.2.1. This document provides guidance on the minimum standards of conduct that the commission considers are required to comply with provisions of the Code that relate to customers anticipating or facing payment difficulty.
- 1.2.2. Because every customer's circumstances are unique, this guidance note cannot be definitive of all circumstances that may arise and cannot be a substitute for a retailer's judgment applied in a particular set of circumstances.
- 1.2.3. This guidance note is not intended to be prescriptive. Retailers may decide that there are different ways to achieve compliance with the Code. Where retailers choose to take a different approach, or where they confront situations not addressed in this guidance note, compliance will be assessed in accordance with the commission's approach to the interpretation of Part 3 of the Code as set out in clause 73.
- 1.2.4. The commission will consider all matters on the basis of their individual circumstances and the guidance note is not intended to anticipate all possible issues that might come before the commission.

1.3. Structure of this document

1.3.1. This guidance note is intended to be read as a whole, in conjunction with the Code, and is divided into two parts.

1.3.2. Part A outlines the commission's expectations of retailer compliance for specific provisions of the Code (where required).

1.3.3. Part B contains overarching information and expectations of retailer compliance for Part 3 and Part 6 of the Code (where relevant).

1.3.4. This document contains the following chapters:

- **Chapter 2** outlines Division 1 and the operation of Part 3 of the Code.
- **Chapter 3** outlines Division 2 and the minimum customer entitlements for standard assistance for customers anticipating financial difficulty.
- **Chapter 4** outlines Division 3 and the minimum entitlements under tailored assistance for customers with arrears who are facing payment difficulty, and also the continuation of assistance under the Division.
- **Chapters 5 to 7** sets out the commission's expectations in relation to retailer hardship policies and programs (Division 4), customer communications (Division 5) and a number of miscellaneous matters (Division 6).
- **Chapter 8** discusses the disconnection safeguards including reminder notices, disconnection warning notices, restrictions on disconnections, and disconnecting residential customers for not paying a bill only as a last resort.
- **Chapter 9** provides information, clarification and examples regarding the commission's expectations about:
 - a) retailer-customer conversations (section 9.2)
 - b) fair and reasonable treatment of customers (section 9.3)
 - c) customer circumstances and what a retailer knows (section 9.4)
 - d) repeated late payers (section 9.5)
 - e) shared customer and retailer responsibility (section 9.6)
 - f) discreet contact (section 9.7)
 - g) meeting best endeavours obligations (section 9.8)
 - h) record keeping (section 9.9)
 - i) customer entitlements to assistance following disconnection or suspension of assistance (section 9.10).

- **Chapter 10** explains the commission’s expectations about retailer compliance with respect to how the provisions of the Part 3 and Part A of the guidance note interact with each other, including:
 - a) how Divisions 2 and 3 (standard assistance and tailored assistance) interact
 - b) how the tailored assistance clauses 79(1)(a)-(d) and 79(1)(e)-(f) interact with each other where customers alternate between being able and not being able to pay for their ongoing usage
 - c) how customers on existing hardship programs will interact with Part 3.
- **Chapter 11** outlines our approach to compliance and enforcement.

1.4. Commencement of this document

- 1.4.1. This guidance note commences on 1 January 2019 and operates in perpetuity until it is revised.

1.5. Document history

- 1.5.1. This guidance note was issued on 10 October 2017 and is based on legislation and regulations as at the date of issue.

1.6. Disclaimer

- 1.6.1. The commission has issued this guidance note to provide information to licensees to assist them in complying with the Code. The guidance note contains general information and is not a substitute for legal or other advice which may be required by the licensee. The guidance note does not and is not intended to vary, derogate from or otherwise limit the commission’s statutory powers, functions and discretions except as outlined in 1.1 above. The commission may depart from the statements contained in the guidance note where the particular circumstances are different from those described.

2. Division 1 – Operation of Part 3 of the Code

2.1. Key points

This section outlines the:

- purpose of Part 3 of the Code
- operation and interpretation of Part 3 of the Code
- application of Part 3 of the Code.

2.2. The overarching objective of Part 3 of the Code

2.2.1. Part 3 of the Code sets out two types of assistance for customers anticipating or facing payment difficulty – standard assistance and tailored assistance. The assistance is based on the ways in which we expect customers and retailers to interact. Part 3 provides retailers with flexibility to work with their customers on identifying the most appropriate assistance, provided they receive their minimum entitlements.

2.2.2. Importantly, Part 3 provides customers anticipating or facing payment difficulty with entitlements to assistance. Customers are entitled to receive the minimum standard of assistance from their retailer. Retailers cannot choose whether or not they provide assistance to customers, but they have some flexibility around how they provide that assistance.

2.3. Operation of Part 3 – Division 1

2.3.1. Division 1 sets out the overall purpose of Part 3, who it applies to, and how we will interpret its provisions when considering whether a retailer has complied with the Code in a particular case.

2.4. Purpose of Part 3 – clause 71

2.4.1. Customers anticipating or facing payment difficulty are entitled to minimum standards of advice, practical assistance and payment arrangements from their retailer – in a way that takes into account their particular circumstances. Disconnection for not paying a bill should only be pursued as a measure of last resort.

Division 1 Operation of this Part

71 Purpose

The purpose of this 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* for not paying a bill is a measure of last resort.

72 Application of this Part

This Part applies to *customers* who are *residential customers*.

73 Interpretation of this Part

The approach that the *Commission* will take to the interpretation of this Part is as follows.

- (a) clear words will be given their natural and ordinary meaning; and
- (b) if words appear to be capable of having more than one meaning, the *Commission* will have regard to the following, in the following order, in seeking to discover the intended meaning of those words:
 - (i) firstly (for Divisions 2 to 3), the objective of the Division; and
 - (ii) secondly, the purpose of this Part; and
 - (iii) thirdly, any guidelines published by the *Commission* under section 13 of the *Essential Services Commission Act 2001* (Vic); and
 - (iv) fourthly, any relevant guidance notes published by the *Commission* under its Energy Compliance and Enforcement Policy; and
 - (v) fifthly, any written information issued by the *Commission* regarding the assistance that *residential customers* might reasonably expect to be provided by their *retailer* under this Part.

2.5. Application of this Part – clause 72

- 2.5.1. The industry Acts require that financial hardship policies apply to domestic customers.¹
A domestic customer is defined as ‘a person supplied with electricity for use for

¹ Section 43(1) *Electricity Industry Act 2000* (Vic) and section 48G(1) *Gas Industry Act 2001* (Vic).

domestic purposes.² The Code refers to a residential customer as ‘a customer who purchases energy *principally* for personal, household or domestic use.’³

2.5.2. Although some energy retailers may apply their financial hardship policies to small business customers facing payment difficulty, Part 3 of the Code only applies to residential customers. It remains up to individual retailers to decide what assistance they may provide to small business customers.

2.5.3. Part 3 of the Code applies where a building is both a small business premises and a residential home, and is jointly supplied with energy (gas and/or electricity) under a standard or market retail contract.

2.6. Interpretation of this Part – clause 73

2.6.1. Because Part 3 is focused on outcomes, and customer circumstances are unique, situations will arise where the Code does not prescribe exactly what a retailer is required to do. In these situations, retailers are expected to use their judgment. Clause 73(b) aims to guide that judgement in particular cases.

2.6.2. Where words in the Code may appear to be capable of having more than one meaning when applied in a particular case, **we will assess compliance based on a purposive approach**. This means that we will adopt a meaning consistent with:

- a) first, the objective of the Division (clause 73(b)(i))
- b) second, the purpose of the Part (clause 73(b)(ii))
- c) third, taking into account any Guideline we publish (clause 73(b)(iii))
- d) fourth, any guidance notes we publish (clause 73(b)(iv))
- e) fifth, viewed from the perspective of a customer in the circumstances, as set out in any written information on the reasonable expectations of a customer (clause 73(b)(v)).

2.6.3. As outlined in our *Energy Compliance and Enforcement Policy*, the purpose of guidance notes is to provide further details of the standards of conduct we expect in particular situations.⁴ Over time, as circumstances arise, standards may also be

² Section 41 *Electricity Industry Act 2000* (Vic) and section 48E *Gas Industry Act 2001* (Vic).

³ Clause 3 *Energy Retail Code*.

⁴ Essential Services Commission 2016, *Energy Compliance and Enforcement Policy*, July, p. 4.

clarified through our findings and decisions in disconnection cases referred from the Energy and Water Ombudsman (Victoria).

- 2.6.4. Part 3 of the Code should be viewed from the perspective of a customer facing payment difficulty. This will be how we will decide whether a retailer has provided a customer with the advice and practical assistance they are entitled to receive. For example, advice to a customer will be expected to be provided at the time that the customer needs it, rather than at a time that is convenient or cheapest for the retailer to provide.
- 2.6.5. In accordance with clause 73(b)(v), any written information that has been issued through the commission's normal processes will be used as a guide to what we consider the reasonable expectations of a customer anticipating or facing payment difficulty to be when interpreting the Code.

3. Division 2 - Standard assistance

3.1. Objective of Division 2 – clause 74

- 3.1.1. Standard assistance is available to all residential customers. Customers do not need to demonstrate that they are anticipating payment difficulty or to be in arrears in order to access this assistance. It involves retailers making at least three different payment options readily available to all residential customers.
- 3.1.2. Providing customers anticipating payment difficulty with an entitlement to flexible payment options, aims to encourage customers to take early action to manage their payments and avoid getting into arrears, therefore reducing the risk of disconnection.

3.2. Application – clause 75

- 3.2.1. Standard assistance is available to all residential customers anticipating financial difficulty. Retailers have discretion to make standard assistance available to customers other than residential customers. There is nothing that stops a retailer from providing more than three of the specified standard assistance options, nor from providing other assistance that may help a customer avoid arrears and disconnection of supply.

3.3. Standard assistance – clause 76

- 3.3.1. Division 2 sets out a residential customer's entitlement to a minimum number of standard payment options.
- 3.3.2. A customer's entitlement to standard assistance does not extend to individual payment arrangements that suit each customer's unique needs.
- 3.3.3. Division 2 requires retailers to design and provide, at a minimum, three standard forms of assistance. Retailers are able to select the options that can be delivered most efficiently.
- 3.3.4. A customer is entitled to all forms of standard assistance that a retailer elects to provide, to the extent that these forms of assistance are compatible. For example, assistance that allows a customer to make equal payments over a specified period (clause 76(2)(a)) and assistance that provides customers with a shorter payment interval (clause 76(2)(b)) are fully compatible. However, extending a pay-by-date for a bill (clause 76(2)(c)) and paying for energy use in advance (clause 76(2)(d)), may not be compatible.

- 3.3.5. Standard assistance payment arrangements are not billing options. We anticipate retailers will continue to bill customers on their existing billing cycle, but this will be a matter for each retailer to determine.

Division 2 Standard Assistance

74 Objective

The objective of this Division is to give *residential customers* an entitlement to minimum standard forms of assistance, to help them avoid getting into *arrears* with their *retailer*.

75 Application of this Division

This Division applies to all *residential customers*.

76 Standard Assistance

- (1) A *retailer* must take steps to provide to its *residential customers* the forms of Standard Assistance, from those listed in subclause (2), it elects to make available to help them avoid getting into *arrears*.
- (2) Standard Assistance made available must include at least 3 of the following:
 - (a) making payments of an equal amount over a specified period;
 - (b) options for making payments at different intervals;
 - (c) extending by a specified period the *pay-by date* for a bill for at least one billing cycle in any 12 month period;
 - (d) paying for *energy* use in advance.

3.4. Steps to provide standard assistance – clause 76(1)

3.4.1. Retailers must make information about standard assistance readily available to all customers. Retailers will be expected to be proactive in communicating to customers about the assistance available, not just to customers who indicate to the retailer that they may be anticipating payment difficulty.

3.4.2. Information about how to access assistance should be provided clearly, unambiguously and in prominent locations within relevant customer communication materials.

Relevant communication materials may include contract terms and conditions (welcome packs), bills, bill inserts and notices. Information about the assistance

and how to access it should also be available from retailer websites and via contact centres.

3.5. Forms of standard assistance – clause 76(2)

Equal payments – clause 76(2)(a)

- 3.5.1. This option allows a customer to make equal payments at a standard interval determined by the retailer. For example, a retailer may provide a customer the option to pay \$50 per fortnight to cover the cost of ongoing energy usage.
- 3.5.2. If a retailer elects to provide the option of equal payments, for customers on standard retail contracts, the retailer must provide the assistance in accordance with clause 23 of the Code (bill smoothing provision).

Payment intervals – clause 76(2)(b)

- 3.5.3. This form of assistance allows a customer to select a payment interval from the standard options provided by the retailer. Retailers that provide this form of assistance are expected to provide options that enable all customers to be able to access at least one payment interval that is shorter than their usual payment cycle.
- 3.5.4. If a retailer makes monthly, fortnightly and weekly payment options available, a customer would be entitled to select any of these payment intervals.
- 3.5.5. Where payment intervals are made available to electricity customers and the customer has a remotely-read smart meter, basing the payments on actual meter reads would provide the greatest assistance to customers by helping them to manage the cost of their actual energy use.
- 3.5.6. Where a smart meter is not installed (including gas customers), payments based on a bill smoothing arrangement would be expected to provide greater benefit to customers than basing payments on estimated meter reads, which have the potential to contribute to the customer's payment difficulty.
- 3.5.7. If a customer proposes a different payment interval to the standard options provided, the retailer may agree to the proposal.

Extension of the bill pay-by date – clause 76(2)(c)

- 3.5.8. This option entitles a customer to extend the pay-by date of their bill by a standard amount specified by the retailer. A retailer may elect to provide customers the option to

extend the pay-by date of at least one bill within a twelve month period. The retailer must specify a standard extension period that is available to all customers.

- 3.5.9. If a customer seeks a longer extension period than provided as standard by the retailer, the retailer may agree to the proposal having regard to what is fair and reasonable in the circumstances.
- 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.

Payment in advance – clause 76(2)(d)

- 3.5.11. This option entitles a customer to make payments towards their account in advance. Retailers would be expected to allow customers to make regular or ad hoc equal or variable payments (i.e. not a consistent amount) towards their account.
- 3.5.12. Clause 76(2)(d) reflects the payment method available to customers under clause 32(5) of the Code.

4. Division 3 - Tailored assistance

4.1. Tailored assistance – Division 3

- 4.1.1. Division 3 sets out a residential customer's entitlement to minimum standards of flexible and practical assistance, to help them repay their arrears, pay their usage costs and lower their ongoing energy costs. It requires retailers to help a customer to establish payment arrangements the customer can manage, taking into account the customer's circumstances. It also sets out the options and entitlements for a customer who cannot pay for their ongoing energy use.
- 4.1.2. By providing customers facing payment difficulty with clear entitlements to minimum standards of flexible and practical assistance, we consider that the risk of disconnection will be reduced, and will only be pursued as a measure of last resort.

Division 3 Tailored Assistance

77 Objective

The objective of this Division is to give *residential customers* an entitlement to minimum standards of flexible and practicable assistance that makes it easier for them to pay their on-going *energy* use, repay their *arrears* and lower their *energy* costs.

78 Application of this Division

This Division applies to all *residential customers* who are in *arrears*.

4.2. Objective of Division 3 – clause 77

- 4.2.1. Tailored assistance must be made available to customers who are in arrears. Customers are entitled to payment arrangements that assist them to repay their arrears. Customers are also entitled to receive assistance to support them lowering their energy costs and to access government and non-government support services.
- 4.2.2. Customers in more severe types of payment difficulty – where they cannot afford to pay for their ongoing energy use – are entitled to additional assistance, including a period of at least six months where repayment of their arrears is put on hold while they work with their retailer to lower their ongoing usage costs. Customers are also entitled to the tariff that, based on the retailer's knowledge of the customer's energy use, payment

history and known circumstances, would be most likely to help lower the customer's cost of energy use.

- 4.2.3. Unlike standard assistance in Division 2, tailored assistance is customer specific. The assistance provided by retailers must be flexible to accommodate the needs of individual customers, and must also be practical to enable the customer to act on the advice and implement the assistance.

4.3. Application – clause 78

- 4.3.1. Tailored assistance must be provided to a customer who has not paid a bill by its pay-by date and has arrears of \$55 or more (inclusive of GST), either when:
- a) the customer contacts the retailer (clause 80(1)), or
 - b) if the customer does not contact the retailer, by the retailer contacting the customer within 21 business days after the bill pay-by date (clause 80(2)).
- 4.3.2. A retailer must also send a customer a reminder notice within 21 business days after the pay-by date of a bill (clause 109(2)).
- 4.3.3. A retailer may elect to meet these obligations in any sequence it prefers, for a particular customer or sub-set of customers. More information about providing tailored assistance and issuing reminder notices is located in sections 4.10 and 9.5 of this guidance note.
- 4.3.4. If a customer is on a pre-existing payment arrangement⁵ and misses payment/s then before a retailer can consider disconnection, it must comply with the requirements of Part 3 and Part 6 of the Code, including using its best endeavours to provide the customer with their entitlement to assistance under Division 3. The commission does not expect retailers to include the time that a customer was on the previous payment arrangement in the period of not more than two years provided under clause 79(1). For example, if the customer had a pre-existing payment arrangement for six months, this six-month period should not be counted for the purposes of a new payment arrangement under clause 79(1).

⁵ A payment arrangement established prior to the commencement of the payment difficulty framework and Energy Retail Code (version 12) on 1 January 2019.

4.4. Minimum assistance – clause 79(1)

- 4.4.1. Retailers must use their best endeavours (section 9.8 of this guidance note and clause 89(c) of the Code) to make sure customers in arrears are aware of, and provided with, their minimum entitlement to assistance in Part 3⁶.
- 4.4.2. If a customer in arrears is able to pay the on-going cost of their energy use, they may repay their arrears by entering into a payment arrangement under clause 81(3).
- 4.4.3. If a customer has a payment arrangement with separate payments for energy use and arrears under clause 81(4), and falls further into arrears by missing an energy use payment. We would expect retailer to contact the customer and discuss changing the payment arrangement to one that includes a reasonable forecast of the customer's energy use under clause 81(3). This should help avoid further accrual of arrears.
- 4.4.4. If a customer in arrears is not able to pay the on-going cost of their energy use and their repayment of arrears is on hold under clause 79(1)(f)(i) they may enter into a payment arrangement that involves payments that are less than the on-going cost of their energy use.
- 4.4.5. The retailer must ensure that the customer is aware that payments below the cost of on-going energy will be added to their arrears, and assist the customer to propose a payment arrangement which limits this increase, while they are working to assist the customer to reduce the cost of their energy use.

Type of payment difficulty

- 4.4.6. Customers in arrears, subject to clauses 80(1) and 80(2), and who can pay the cost of their ongoing usage, are entitled to the assistance set out in clause 79(1)(a)-(d). Customers who cannot pay for their ongoing *energy* use are entitled to the assistance set out in clauses 79(1)(c) - (f).

⁶ Subject to clauses 80(1) and 80(2) of the Code. However, as discussed in section 4.10 of this guidance note, a retailer may use its best endeavours and pro-actively provide assistance under Division 3 to a customer who has arrears of less than \$55 (inclusive of GST).

79 Minimum assistance

- (1) Tailored Assistance consists of the following measures:
- (a) repayment of *arrears* over not more than 2 years by payments at regular intervals of up to one month;
 - (b) advice from the *retailer* about payment options that would enable a *customer* to repay their *arrears* over not more than 2 years;
 - (c) specific advice about the likely cost of a *customer's* future *energy* use and how this cost may be lowered;
 - (d) specific advice about any government and non-government assistance (including a Utility Relief Grant and *energy* concessions) available to help a *customer* meet their *energy* costs;
 - (e) practical assistance to help a *customer* lower their *energy* costs including, but not limited to:
 - (i) the tariff that is most likely to minimise the *customer's energy* costs, based on the *retailer's* knowledge of the *customer's* pattern of *energy* use and payment history; and
 - (ii) practical assistance to help the *customer* reduce their use of *energy*, based on the *customer's* pattern of *energy* use and on the circumstances of where the *customer* lives, provided there is scope for action to be taken for that purpose; and
 - (iii) information about how the *customer* is progressing towards lowering their *energy* costs given at sufficient intervals for the *customer* to be able to adequately assess that progress;
 - (f) an initial period of at least 6 months during which:
 - (i) repayment of the *customer's* arrears is put on hold; and
 - (ii) the *customer* pays less than the full cost of their ongoing *energy* use while working to lower that cost;
 - (g) any other assistance consistent with the objective of this Division.

4.5. Payment arrangement entitlement – clause 79(1)(a)

- 4.5.1. More information about payment arrangements is located in sections 4.12, 4.14 and 9.2 of this guidance note.

4.6. Customer advice entitlement – clause 79(1)(b)-(d)

- 4.6.1. The focus of a retailer's relationship with a customer facing payment difficulty should be on helping the customer to manage the cost of their energy use. At a minimum,

retailers must provide information and advice to the customer about their payment options, likely future energy use (based on historical consumption where available) and its cost, along with timely information about government and non-government assistance that is available to the customer in their particular circumstances.

- 4.6.2. In order to encourage customers to repay their arrears as soon as practicable, retailers should provide advice that would enable customers to repay their arrears in a period of not more than two years (clause 79(1)(b)).
- 4.6.3. In accordance with clause 83, customers are expected to take reasonable action towards paying for their energy use and repaying their arrears. We expect a customer and retailer to work towards the shortest payment arrangement that the customer believes is affordable and sustainable.
- 4.6.4. What is affordable and sustainable will be different for each customer. Retailers are not expected to automatically advise the customer of an option of two years to repay their arrears (although this may be appropriate in particular circumstances).
- 4.6.5. If a customer proposes a payment arrangement that is shorter than two years, the retailer is expected to advise the customer to contact the retailer if the amount proposed proves difficult to maintain.
- 4.6.6. Customers who propose shorter payment arrangements effectively have 'time in reserve' which they are able to use in the event that they need to revise their payment arrangement (clause 81(2)).
- 4.6.7. In assisting customers to propose a payment arrangement, or propose a revised payment arrangement, we expect retailers to provide customers with concise and relevant information regarding different payment options. Most notably, customers should be given details of different 'time and payment' options. This should include examples of different dollar amounts that could be paid each month (or more frequently) and the consequential length of those arrangements (for example, in months for a monthly payment arrangement or fortnights for a fortnightly payment arrangement).
- 4.6.8. A retailer must also assist its customer with understanding their eligibility for the full suite of energy concessions available, and must apply all relevant concessions

(including retrospectively within the Department of Health and Human Services's guidelines, to the customer's account.⁷

- 4.6.9. Retrospective application of missed concessions to the customer's account should occur prior to any payment arrangement being established, wherever possible.
- 4.6.10. More information about payment arrangements is located in sections 4.12, 4.14 and 9.2 of this guidance note.

Information and referrals to government and non-government assistance

- 4.6.11. We expect a retailer to explain to a customer the nature of the government and/or non-government assistance available and offer to help the customer to make contact with the service provider through a 'warm transfer'⁸.
- 4.6.12. Government assistance includes the Utility Relief Grant Scheme, relevant energy concessions, energy efficiency programs and information, budgeting assistance, etc.
- 4.6.13. Non-government assistance may include services including in-person and telephone financial counselling, emergency relief services, family violence support services, etc.

4.7. Finding the most appropriate energy offer – clause 79(1)(e)(i)

- 4.7.1. It is not possible to guarantee that a particular tariff will in fact reduce the cost of an individual customer's energy consumption. However, at a particular point in time, taking into account a customer's pattern of energy use and payment history, the tariff that is most likely to minimise the customer's energy costs can be determined.
- 4.7.2. In advising the customer of their tariff options, the retailer should take into account any customer circumstances that are known and are likely to affect their future energy consumption, and the likelihood that payments will be made as agreed.
- 4.7.3. The retailer must consider the overall appropriateness of the offer, including the tariff design (flat or time-of-use), discounts (conditional or non-conditional), fixed-benefit

⁷ DHHS concessions guidelines generally allow concessions to be backdated for a period of 12 months. Customers may be able to make an application to DHHS for consideration of exceptional circumstances that led energy concessions not being applied for a period greater than 12 months.

⁸ A warm transfer would involve the retailer ringing the government or non-government assistance to introduce the customer to the service before transferring the customer through to the service.

periods, fixed supply charges, and whether any of these elements will result in an offer most likely to minimise the cost of ongoing energy use for the customer.

- 4.7.4. We would not expect a tariff option that includes pay-on-time discounts to be offered, if failure to pay on time would result in a higher cost to the customer than an undiscounted offer.
- 4.7.5. A retailer is expected to analyse a customer's historical data (including interval meter data where available) to assist in finding the tariff offer that is most likely to reduce the cost of their energy costs.
- 4.7.6. A retailer must apply a change in tariff in line with any other relevant obligations in the Code, including those under clauses 16, 46 and 46A for market retail contract customers, and clause 36 for standard retail contract customers.
- 4.7.7. The commission is aware that some retailers only provide one gas tariff offer per distribution area. Therefore, in these instances, retailers are expected to advise customers of the limited offer/s available.

4.8. Practical assistance, suspension of arrears & other assistance – clauses 79(1)(e)(ii)-(g)

- 4.8.1. We do not prescribe how the practical assistance to lower energy costs should be provided by retailers. However, a retailer must be able to demonstrate that the assistance provided was capable of making a meaningful reduction in a customer's energy use in their circumstances.
- 4.8.2. We recognise that some customers facing payment difficulty may have limited capacity to reduce their energy use, for example, due to the poor energy performance of some accommodation, or a medical condition that requires particular levels of heating or cooling. However, in order to comply, retailers must have a meaningful conversation with the customer to ascertain what practical assistance can or cannot be implemented. If a retailer believes that there is no scope for action, it must be able to demonstrate why there was no scope for action in a particular case.
- 4.8.3. When working with a customer to reduce their energy use, retailers should ensure that they do not promote reductions in energy use to a level that may put the health and wellbeing of a customer or their household at risk.

4.8.4. The following contains a non-exhaustive list of the practical assistance measures that retailers may consider providing one or more of to customers receiving assistance under clause 79(1)(e)(ii):

- a) An in-home energy audit.
- b) An over-the-phone energy audit.
- c) Provision of energy saving devices such as draught stoppers (commonly known as 'door snakes'), thermostats, high-efficiency light globes, and stand-by power controllers.
- d) Provision of water saving devices that can also save on energy used to heat water, such as low-flow shower heads, thermostat controls and time switches.
- e) Appliance replacement for household items such as heaters, air conditioning, hot water services, fridges, dishwashers, etc.
- f) Insulation for roofs, floors, and walls.

4.8.5. Retailers may advise customers of any government and non-government assistance that may be available, including energy efficiency programs, to complement practical assistance the retailer provides. We do not consider that a retailer has met its obligations to provide customers with practical assistance if the only steps it has taken is to refer a customer to a government-funded program and provided no other practical assistance to lower energy costs.

Information on progress – clause 79(1)(e)(iii)

4.8.6. If a customer is to be successful in taking action to reduce their energy costs, they need to be supported with information that informs them about their progress.

4.8.7. A retailer may decide what information to provide, and when, but we expect that the information is fit for the purpose of enabling a customer to objectively assess the progress of their actions to reduce their energy costs. For example, this may include a retailer providing the customer with comparative information about the amount of kWh or MJ used in a billing period and the cost of that energy compared with a previous billing period.

Suspension of repayment of arrears – clause 79(1)(f)

4.8.8. The suspension of arrears provides a customer with time to implement a retailer's assistance to lower their energy costs to a level they can afford on an ongoing basis and to begin repaying their arrears. We expect the retailer and customer to focus on working together to reduce the cost of the customer's energy consumption, and a

retailer to assist the customer with accessing other forms of assistance that may be available.

- 4.8.9. A retailer must, at a minimum, provide customers with an initial six-month period where the repayment of their arrears is on hold. This period may be extended under clause 79(4), which is discussed below.

Other assistance – clause 79(1)(g)

- 4.8.10. Retailers may provide customers, and in fact are encouraged to provide customers, additional assistance to complement their minimum entitlements under Division 3.

4.9. Entitlement to minimum assistance – clauses 79(2)-79(5)

- 4.9.1. Clause 79(2)–(5) make it clear to retailers which of the forms of minimum assistance must be provided to customers and in what circumstances.

79 Minimum assistance

- (2) A *customer* is entitled, at the very least, to the assistance mentioned in subclause (1)(a) to (d), while continuing to pay the full cost of their ongoing *energy* use.
- (3) A *customer* is entitled, at the very least, to the assistance mentioned in subclause (1)(c) to (f) if they cannot pay the full cost of their ongoing *energy* use.
- (4) The *retailer* may extend the assistance mentioned in subclause (1)(f) for a further period or periods if the extension would assist the *customer* to continue to lower the cost of their *energy* use.
- (5) A *customer* who has exercised an entitlement to the assistance mentioned in subclause (1)(f) may, at the end of the period during which that assistance is provided (including that period as extended under subclause (4)), exercise an entitlement mentioned in subclause (2).

Customers in arrears and who can pay for their ongoing energy use - clause 79(2)

- 4.9.2. A customer who is in arrears and can pay for their ongoing energy use is, at a minimum, entitled to the assistance set out in clause 79(1)(a)-(d).

Customers in arrears and who cannot pay for their ongoing energy use - clause 79(3)

- 4.9.3. A customer who is in arrears and not able to pay for their ongoing energy use is, at a minimum, entitled to the assistance set out in clause 79(1)(c)-(f).

Customers who may not be able to consistently pay ongoing usage costs – interaction of clauses 79(2) and 79(3)

- 4.9.4. Clauses 79(2) and 79(3) establish minimum entitlements available to customers in the two specific circumstances defined.
- 4.9.5. Whether a customer can pay for their on-going energy use is a matter of judgement, both for the customer and the retailer. We expect the retailer to help the customer to understand the cost of their current energy use and to accept what the customer tells them about whether they can or cannot pay for their on-going energy use.
- 4.9.6. However, we expect situations will arise in which a customer is able or largely able to pay for their forecast usage and arrears under clause 79(2), but may anticipate or demonstrate an occasional inability to make a payment. Whether a customer in this situation is entitled to the assistance provided under clause 79(3) is also a matter of judgement. We expect the retailer to exercise that judgement having regard to the objective of tailored assistance.
- 4.9.7. If over a period of time a customer's arrears are increasing, we would expect the assistance available under clause 79(3) to be provided to help lower their ongoing energy costs.
- 4.9.8. Refer to section 10.2 of this guidance note for more information.

Extending assistance under clause 79(1)(f) – clause 79(4)

- 4.9.9. A retailer may extend the arrears on hold period if the retailer believes that the extension would assist the customer to continue to lower the cost of their energy use. As this discretion lies with the retailer, so too does the obligation to maintain records that support their decision to extend or not extend the assistance.
- 4.9.10. When deciding whether to extend an arrears on-hold period, a retailer should have consideration of the customer's circumstances, including:
- a) the quantum of their arrears (including for another energy account with the retailer)
 - b) their ongoing usage costs (including for another energy account with the retailer)
 - c) the level of previous assistance provided (or not provided) by the retailer
 - d) the timeliness of previous support provided and whether any delay in providing assistance has contributed to a customer's payment difficulty
 - e) the level of engagement by the customer with previous support provided
 - f) adherence to payment arrangements and their efforts to reduce ongoing energy costs where there is scope to do so
 - g) any other relevant customer circumstance.

4.9.11. If a customer is making demonstrable progress in reducing the cost of their energy use and making regular payments towards that energy use, but is still only able to pay below the cost of that energy use, a retailer is expected to provide the customer with an extension to the period of time during which the customer's repayment of arrears is on hold.

Customer entitlement to further assistance after end of assistance under clause 79(1)(f) – clause 79(5)

4.9.12. A retailer must provide a customer, who has successfully reduced the cost of their usage to a level they can afford to pay on an ongoing basis, with assistance under clause 79(2). The repayment period for the arrears under clause 79(2) (no more than two years) cannot include the period of time when the customer's arrears were on hold.

4.9.13. For example, a customer who had their arrears on hold for six months and has reduced their usage costs to an affordable level, has the entitlement to propose a payment arrangement to repay their arrears over a period of no more than two years under clause 79(2).

4.9.14. A retailer may also accept a repayment period longer than two years under clause 81(4). We would expect a retailer to provide an extension if the customer has successfully reduced their energy consumption to an affordable level, but in doing so has accrued arrears that if required to be paid back within two years would once again see the customer facing payment difficulty.

4.10. Information about assistance available – clause 80(1)-(2)

4.10.1 Clause 80 outlines our expectations about retailers providing timely information to customers about their entitlement to assistance under Division 3.

80 Information about assistance available

- (1) *A residential customer* who has not paid a bill by its *pay-by date* and who contacts the *retailer* is entitled to be given by the *retailer* information about the assistance to which the *customer* is entitled under this Division and how to access it.
- (2) *A residential customer* who has not paid a bill by its *pay-by date* and who has arrears of more than \$55 (inclusive of GST) is entitled to be contacted by the *retailer*, within 21 business days after that *pay-by-date*, and given information about the assistance to which the *customer* is entitled under this Division and how to access it.

- (3) The *retailer* must allow the *customer* no less than 6 business days to consider the information given under sub-clause (1) or (2), request further information, and put forward a payment proposal under clause 81.
- (4) Nothing in this clause limits clause 86.

Clause 80(1)

4.10.2 Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

Clause 80(2)

- 4.10.3 We expect retailers to wait at least one business day, and no longer than 21 business days, after the pay-by date of an unpaid bill where the customer has arrears of \$55 (inclusive of GST) or more, before commencing its best endeavours efforts to provide a customer with their entitlements under Division 3.
- 4.10.4 If a customer's total arrears are less than \$55 (inclusive of GST), a retailer is not obliged to contact the customer to provide the assistance in Division 3. However, a retailer has discretion to provide the assistance and may contact a customer to do so.
- 4.10.5 Retailers have discretion regarding the sequence of providing the assistance under Division 3 and sending the reminder notice (clause 109(2)) to a customer or sub-set of customers.
- 4.10.6 A retailer is expected to give a customer clear and unambiguous information about the assistance available in plain language, including the form of that assistance and the steps both the retailer and customer must take to implement the assistance.
- 4.10.7 We expect retailers to provide clear information to customers about how to contact the retailer to revise a payment arrangement or advise the retailer of a late or partial payment, or for any other purpose.
- 4.10.8 A retailer is expected to advise of the potential consequences if the customer fails to:
- a) make payments according to the payment schedule
 - b) maintain contact (for example, when the customer is going to miss a payment)
 - c) respond to the retailer's attempts to contact them.
- 4.10.9 Retailers should also advise customers how they treat partial and late payments (and what constitutes a late payment), in relation to payment arrangements.

4.10.10 Refer to section 9.2 for more information about tailored assistance conversations.

4.11. Time for customers to consider assistance – clause 80(3)

4.11.1 A retailer must provide a customer with a reasonable opportunity to consider the assistance available under Division 3, develop a payment proposal under clause 81, and request further information where required. Clause 80(3) requires a retailer to provide a customer with no less than six business days for customers to consider information in clauses 80(1)-(2), which aligns with the minimum reminder notice period (clause 108).

4.11.2 A retailer may provide a customer with a period longer than 6 business days but would be expected to remain in contact with the customer during this extension.

4.11.3 A retailer must advise a customer of their entitlement to a minimum of six business days to consider the assistance.

4.11.4 Refer to section 9.2 for more information about tailored assistance conversations.

Unsuccessful contact for best endeavours

4.11.5. If a retailer cannot successfully contact a customer by telephone, the retailer must provide information about the assistance under Division 3 via registered post to meet its best endeavours obligations.

4.11.6. Refer to section 9.8 of this guidance note for more information.

Successful contact for best endeavours

4.11.7. If a retailer does successfully contact the customer by telephone, the retailer must still provide the customer with written information about their entitlement to assistance.

4.11.8. Refer to section 9.8 of this guidance note for more information.

Counting the six-business day period

4.11.9. The provision of assistance is considered to be received by a customer when either:

- a) The retailer provides the customer with the information about their entitlement to assistance over the telephone and has a voice recording of the conversation; or

- b) If the retailer posts the information to the customer, according to the ordinary course of post (clause 87(3) and section 6.2 of this guidance note)⁹.

Customer refusal of assistance

- 4.11.10. If a customer declines a retailer's provision of assistance under Division 3, the retailer must clearly document the conversation and refusal of assistance. The retailer is also expected to send written information to the customer about their entitlement to assistance under Division 3 and retain these records. If the customer seeks to access their entitlement to assistance at a later date (assuming the customer is still in arrears for \$55 (inclusive of GST) or more), the retailer must provide the assistance to the customer as outlined in Division 3.

4.12. Payment arrangements – clause 81

Application of clause 81 – clause 81(1)

- 4.12.1. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

Retailer acceptance of payment proposals – clause 81(2)

- 4.12.2. We expect retailers to accept payment arrangements that are fair and reasonable having regard to the customer's circumstances. This is addressed in further in 4.14.8.
- 4.12.3. Additionally, we do not expect retailers to accept payment arrangements for amounts that are incompatible with the retailer's payment methods¹⁰.

81 Payment arrangements

- (1) This clause applies to a *residential customer* whose repayment of arrears is not on hold under clause 79(1)(f)(i).
- (2) The *retailer* must accept a payment proposal or revised proposal put forward under this clause by the *residential customer* that complies with subclause (3).
- (3) A payment proposal or revised proposal complies with this subclause if it:

⁹ The six-business day period may start to be counted from the next business day after the provision of assistance is deemed to have been received according to clause 87(3).

¹⁰ For example, we are aware that some bank, BPay, credit card, post office, and other transactions have minimum payment amounts for each transaction.

- (a) provides for the making of payments of equal amounts at regular intervals of up to one month; and
 - (b) would result in the *residential customer's* arrears being fully paid in no more than 2 years after the first payment; and
 - (c) provides for payments for *energy* use being made together with payments to reduce arrears; and
 - (d) is based on a reasonable forecast of the *customer's energy* use over the next 12 months.
- (4) However, the *retailer* may accept a payment proposal or revised proposal that does any or all of the following:
- (a) provides for payments of different amounts at different intervals;
 - (b) would result in the arrears being fully paid by a date later than 2 years after the first payment;
 - (c) provides for payments for *energy* use being made separately from payments for arrears.
- (5) On accepting a payment proposal or a revised proposal, the *retailer* must give the *customer* a written schedule of payments showing:
- (a) the total number of payments to be made to pay the arrears; and
 - (b) the period over which the payments are to be made; and
 - (c) the date by which each payment must be made; and
 - (d) the amount of each payment.
- (6) If a *residential customer* receiving assistance under this Division fails to make a payment by the date on which it was payable, the *retailer* must contact the *customer* to discuss their putting forward a revised proposal under this clause.

Minimum specifications for payment arrangements – clause 81(3)

- 4.12.4. A retailer must accept a customer's payment proposal or revised payment proposal that comprises equal payments at regular intervals of up to one month, which would result in the arrears being repaid in no more than two years, and includes a reasonable forecast of the customer's energy use over the next 12 months¹¹.
- 4.12.5. For example, a customer with \$500 of arrears and who is using \$150 per month, could propose a payment arrangement of \$200 per month to repay their arrears in 10 months

¹¹ Retailers are responsible for estimating a customer's consumption over the agreed period of the payment arrangement nominated by the customer (up to 12 months), based on the customer's historical usage data and any other relevant information.

and cover the cost of their ongoing usage. In this scenario, a retailer must accept the customer's proposed payment arrangement.

- 4.12.6. If a customer's payment arrangement exceeds 12 months, then every 12 months the retailer must re-assess the reasonable forecast cost of the customer's ongoing use (based on their historical use) and provide this information to the customer so that they can propose a revised payment arrangement if required.

Retailer discretion about payment arrangements – clause 81(4)

- 4.12.7. A retailer has discretion about whether or not to accept a payment arrangement that includes any or all of the following:
- a) Payment of different amounts at different intervals. For example, \$100 in May, \$500 in July, \$500 in September.
 - b) Payment arrangements that result in the arrears being repaid in a period longer than two years after the first payment.
 - c) Payments for ongoing energy usage being made separately from payments towards the arrears.
- 4.12.8. When a retailer is deciding whether to accept a customer's payment proposal under clause 81(4), the retailer should consider a customer's circumstances, including:
- a) the quantum of their arrears (including another energy account with the retailer)
 - b) their ongoing energy costs (including another energy account with the retailer)
 - c) the level of previous assistance provided (or not provided) by the retailer
 - d) the timeliness of previous support provided and whether any delay in providing assistance has contributed to the customer's payment difficulty
 - e) the level of engagement by the customer with previous support provided
 - f) partial payments for previous payment arrangement/s
 - g) any relevant customer circumstance.
- 4.12.9. As noted in section 4.6 of this guidance note, we encourage retailers to have a conversation with their customers about the payment options that will pay down their arrears efficiently and sustainably.
- 4.12.10. As noted in section 4.4, if a retailer provides a customer with a payment arrangement that separates usage and arrears (clause 81(4)(c)), and the customer falls further into arrears with a subsequent bill, the retailer should contact the customer to discuss whether the customer needs to change their payment arrangement to one that is consistent with clause 81(3).

Written schedule – clause 81(5)

- 4.12.11. A retailer must provide a customer with a written record of the payment arrangement, including the number of payments, the amount of each payment, the period the payment arrangement covers, and the due date for each payment.
- 4.12.12. Retailers should also provide customers with options for making the payments on the written payment schedule.

Failure to pay – clause 81(6)

- 4.12.13. Retailers must use their best endeavours (see section 9.8 of this guidance note) to discuss a revised payment arrangement with a customer who does not make a scheduled payment. If after the retailer uses its best endeavours, the customer does not put forward a revised payment arrangement, the retailer may issue the customer with a disconnection warning notice (providing a reminder notice had already been issued and the reminder notice period had lapsed).
- 4.12.14. If a customer puts forward a revised payment arrangement that includes payments that do not cover the likely cost of their ongoing energy use, the customer is entitled to have their arrears put on hold and to receive practical assistance to reduce their energy costs under clause 79(1)(e)-(f). However, as discussed in sections 4.9.4 to 4.9.6 of this guidance note, for customers largely able to meet their ongoing usage costs, judgement is required regarding whether a customer should receive assistance under clause 79(1)(e) to help lower their ongoing usage costs without the arrears being placed on hold under clause 79(1)(f). This judgement should be exercised having regard to the objective of Division 3.
- 4.12.15. Customers seeking to alter their payment arrangements should not be made to feel that they are imposing on their retailer. Nor should it be necessary for customers to feel they need to contact their retailer to deal with small deviations from their agreed payment arrangements. We expect retailers to demonstrate flexibility and understanding in accommodating small under and over-payments, and late payments, against agreed payment arrangements. In return, we expect customers to be respectful of the flexibility provided to them by their retailers.

4.13. Non-payment of cost of ongoing energy use – clause 82

Application – clause 82(1)

- 4.13.1. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

Division 3 – Tailored assistance

82 Non-payment of amounts towards ongoing energy use

- (1) This clause applies to a *residential customer* whose repayment of arrears is on hold under clause 79(1)(f)(i).
- (2) If the *residential customer* fails to make a payment towards the cost of their on-going *energy* use by the date on which it was payable, the *retailer* must contact the *customer* to discuss varying the amount payable, or the frequency of those payments, or both, to give the *customer* more time to lower their *energy* costs.
- (3) If a *customer* is not meeting their responsibility to implement practical assistance referred to in clause 79(1)(e)(ii) provided by the *retailer*, the *retailer* must contact the *customer* and work with them to identify an implementation timeframe, consistent with the objective of this Division.
- (4) The *retailer* may add any amount unpaid for *energy* use to the *customer's* arrears.

Non-payment of ongoing usage and contact requirement – clause 82(2)

4.13.2. If a customer, who is paying below the cost of their energy use, does not make a scheduled payment, we expect the retailer to take prompt action to contact the customer to discuss putting forward a revised payment arrangement. If after the retailer has used its best endeavours, the customer does not put forward a revised payment proposal, the retailer may issue the customer with a disconnection warning notice (providing a reminder notice had already been issued and the reminder notice period had lapsed).

Customer responsibility to implement practical assistance – clause 82(3)

4.13.3. We expect retailers to keep sufficient records of the steps agreed with the customer to lower their energy usage, in line with clause 111A(d). For example, if the retailer arranged for the customer to have an energy audit completed at the customer's premises, the retailer would be expected to record the date, time and other particulars of the energy audit. We also expect the retailer to record details of the practical assistance that a customer has implemented. These records could then be relied upon by the retailer in the future to demonstrate whether a customer was or was not implementing the practical assistance provided by the retailer, as outlined in clause 82(3).

4.13.4. Customers are entitled to a minimum of six months to implement measures to lower their energy costs, while their arrears are also on hold.

4.13.5. If the customer is within the initial six-month period, a retailer cannot suspend practical assistance if the customer fails to implement measures to lower energy costs. Instead,

a retailer is expected to contact the customer to discuss a revised implementation timeframe consistent with the objectives of Division 3.

- 4.13.6. If the customer is outside of the initial six-month period, and has failed to implement the practical assistance, the retailer must contact the customer under this clause, but the assistance under clause 79(1)(f) may be suspended at that point if the customer refuses or fails to put forward a reasonable implementation timeframe, taking into account their circumstances.

Adding unpaid bills to a customer's arrears – clause 82(4)

- 4.13.7. While a customer is receiving assistance under clause 79(1)(e)-(f), retailers may add a customer's unpaid bills, or residual amounts of bills, to their arrears.
- 4.13.8. Retailers must clearly explain to customers at the commencement of assistance under clauses 79(1)(e)-(f) how their ongoing bills and unpaid amounts, residual or otherwise, will be treated (i.e. added to their arrears). Additionally, retailers must explain that adding unpaid amounts will result in the customer's arrears being larger at the end of the on-hold period than when the customer first had their arrears placed on hold.

4.14. Continued provision of assistance – clause 83

- 4.14.1. In complying with its obligations under Part 3, a retailer must consider a customer's particular circumstances, and act fairly and reasonably (Chapter 9 of this guidance note). As with the exercise of any judgement, the commission expects a retailer to be able to demonstrate clearly that it has considered the customer's particular circumstances when deciding whether or not to continue providing assistance to a customer under clause 83.
- 4.14.2. As outlined in sections 4.9, 4.12 and 4.13, we expect a retailer to provide some flexibility with respect to a customer making partial or late payments. The retailer must also comply with clauses 81(6) and 82(2). Additionally, we expect the retailer to work with its customer to find ways to implement sustainable payment arrangements where the customer can make consistent and affordable payments.

83 Continued provision of assistance

A *retailer* is required to continue to provide assistance under this Division to a *residential customer* unless:

- (a) after the *retailer* has complied with clause 81(6), the *customer* has refused or failed to take reasonable action towards paying for their on-going *energy* use and repaying their arrears; or
- (b) after the *retailer* has complied with clause 82(2), the *customer* has refused or failed to take reasonable action towards making payments towards the cost of their on-going *energy* use; or
- (c) the *customer* is not facing payment difficulties.

Customer failure or refusal to pay for ongoing use or arrears

4.14.3. Particular circumstances that retailers may consider when deciding whether or not it is reasonable to suspend assistance until such a time where the customer re-engages and/or cooperates with the assistance provided by the retailer are outlined below.

Reasonable customer action

4.14.4. Reasonable customer action includes, but is not limited to:

- a) Making occasional partial payments, for example, paying \$80 instead of \$100.
- b) Making a payment (partial or full) a few business days late.
- c) Agreeing to pay an amount in good faith to their retailer by a certain date.
- d) Proposing a payment arrangement that allows for the efficient repayment of arrears and is affordable and sustainable for the customer.

4.14.5. To be clear, the commission would not consider it reasonable for a retailer to suspend assistance under clause 83 due to a customer making occasional partial payments, or marginally late payments.

4.14.6. If payments are consistently under the required amount, we expect a retailer to contact the customer to discuss revising the payment arrangement amounts and/or frequency so that it can be maintained in a sustainable and affordable manner.

Unreasonable customer action

4.14.7. Unreasonable customer action includes, but is not limited to, consistently and consecutively:

- a) Establishing payment arrangements or revised payment arrangements and not making any of the required payments.

- b) Not responding to their retailer's attempts to contact them to provide assistance under Division 3.

4.14.8. We also consider it unreasonable for a customer with a relatively low level of arrears when compared to the cost of their energy use, to propose a payment arrangement that would use their entitlement of two years (e.g. paying \$5 per month) in the absence of customer circumstances that support repayment over the full period. To be clear, we expect that some customers will be in circumstances¹² that would warrant the full period. Alternatively stated, we consider it reasonable for a customer's payment proposal to be proportionate to the amount of their arrears, while taking into account their circumstances and what they can afford to pay.

Customer not facing payment difficulty – clause 83(c)

- 4.14.9. If a retailer becomes aware that a customer is not facing payment difficulty, it is not required to continue to provide assistance under Division 3.
- 4.14.10. If a retailer suspends assistance, the onus is on the retailer to show that a customer was not facing payment difficulty.

Notification of suspended assistance

- 4.14.11. If a retailer suspends assistance under clause 83, it is expected to notify the customer in writing (in line with the requirements of Division 5 of Part 3) that the customer's assistance has been suspended. The correspondence must include details of what action the customer needs to take to avoid disconnection of supply and any further entitlements to assistance the customer may have under Division 3. This notification may be included with the disconnection warning notice (provided the reminder notice has already been sent and the reminder notice period had lapsed)

¹² Refer to section 9.4 of this guidance note for more information about customer circumstances.

5. Division 4 – Financial hardship policies

5.1. Approval of financial hardship policies – clause 84

Division 4 Financial Hardship Policies

84 Approval of financial hardship policies

A retailer must prepare a financial hardship policy, and submit it to the Commission for approval, as mentioned in section 43(1) of the *Electricity Industry Act* or section 48G(1) of the *Gas Industry Act*.

85 Content of financial hardship policies

A financial hardship policy must include:

- (a) the matters set out in section 43C of the *Electricity Industry Act* or section 48GC of the *Gas Industry Act*; and
- (b) the entitlements to minimum assistance set out in Division 3 of this Part; and
- (c) any matters covered by guidelines or guidance notes published by the Commission in relation to those entitlements.

5.1.1. Clause 84 reflects the legislative obligation on retailers to prepare and submit a financial hardship policy to the commission for approval.¹³ Retailers must review and where necessary make variations to their existing policies,¹⁴ to include the content set out in clause 85.

5.1.2. Where amendments are necessary, retailers must submit their amended policies to us for approval in accordance with section 43B of the *Electricity Industry Act 2000* (Vic) and section 48GB of the *Gas Industry Act 2001* (Vic). We will audit compliance with Part 3 as part of our audit process.

¹³ Section 43 *Electricity Industry Act 2000* (Vic) and section 48G *Gas Industry Act 2001* (Vic).

¹⁴ In accordance with section 43B *Electricity Industry Act 2000* (Vic) and section 48GB of the *Gas Industry Act 2001* (Vic).

5.2. Content of financial hardship policies – clause 85

Matters Set Out in Industry Acts – clause 85(a)

5.2.1. A retailer's financial hardship policy must include, in plain language, the matters set out in the relevant sections of the industry Acts.

Minimum Entitlements to Assistance – clause 85(b)

5.2.2. A retailer's financial hardship policy must include, in plain language, the nature and form of assistance it will provide to customers facing payment difficulty that complies with Division 3 of Part 3 of the Code.

Matters Covered by Guidelines or Guidance Notes – clause 85(c)

5.2.3. A retailer's financial hardship policy is required to include, in plain language, how the retailer's programs of assistance address matters set out in any guidelines published by the commission under section 13 of the *Essential Services Commission Act*.

5.2.4. A retailer's financial hardship policy is required to include how the retailer's programs of assistance address matters set out in any guidance notes issued under our *Energy Compliance and Enforcement Policy*.

5.2.5. In addition to the matters covered in clauses 85(a) and (b), financial hardship policies must:

- a) provide details of the minimum assistance and other options that are available to customers facing payment difficulty
- b) provide details of how customers facing payment difficulty will be assisted to obtain access to the assistance and participate in any other option offered to them
- c) provide details of:
 - i. how and in what circumstances the retailer will make field audits of electricity or gas usage available to customers facing payment difficulty
 - ii. in what circumstances the field audits will be available at partial or no cost to the customers facing payment difficulty, and
 - iii. how agreement to partially fund a field audit will be obtained and how the benefits of the expenditure by a customer facing payment difficulty will be demonstrated.
- d) provide details of how and in what circumstances the retailer will provide assistance to customer facing payment difficulty to replace electrical and gas appliances, including whether the retailer will sell or supply the appliances itself or nominate a third party to do so
- e) provide for the referral of customer facing payment difficulty to other support agencies and schemes where appropriate

- f) set out the process retailers will follow to advise customers facing payment difficulty of their rights and obligations in respect of the minimum assistance available under the Part 3 of the Code, and any other options that may be available
- g) require the retailer's staff to be made aware of the policy and require all staff involved in the administration of the payment difficulty framework to have the necessary skills to sensitively engage with customers facing payment difficulty about their payment difficulty and in providing assistance
- h) be transparent, accessible and communicate to customers facing payment difficulty, financial counsellors and community assistance agencies.

6. Division 5 – Customer communications

6.1. Provision of information to customers – clause 86

- 6.1.1. The provision of information to customers anticipating or facing payment difficulty about the assistance under Part 3 will assist them with managing and paying for their energy use, repaying arrears, and will help ensure that disconnection is a last resort.

Division 5 Communications

86 Provision of information to customers

- (1) *A retailer* must ensure that its financial hardship policy is easily accessible on its website in a readily printable form.
- (2) *A retailer* must send a copy of its financial hardship policy to any *residential customer* who requests to be sent a copy.
- (3) *A retailer* must ensure that information is readily available to *residential customers* about:
 - (a) the financial hardship policy of the *retailer*; and
 - (b) the assistance available under Division 2 or 3 and how to access that assistance; and
 - (c) approaches to lowering *energy* costs; and
 - (d) government and non-government assistance (including Utility Relief Grants and *energy* concessions) that may be available to help with meeting *energy* costs.
- (4) Without limiting the means by which information may be made readily available, information is readily available for the purposes of subclause (3) if:
 - (a) it is easily accessible on the *retailer's* website in a readily printable form; or
 - (b) it is sent to any *residential customer* who requests to be sent that information.

Note: Clause 87(2) states how information is required to be sent to a *residential customer*.

6.2. Written communications – clauses 87-88

- 6.2.1. Retailers must provide customers with written information in plain language, and in a form that draws the customer's attention to any assistance that is available, or actions that they need to take to avoid disconnection.

87 Written communications

- (1) Any written communication by a *retailer* to a *residential customer* under, or in connection with, this Part must be:
 - (a) expressed in plain language; and
 - (b) legible; and
 - (c) presented clearly and appropriately having regard to its nature.
- (2) Despite clause 3F, a *retailer* must give or send by post to a *residential customer* any written communication required or permitted to be given or sent under, or in connection with, this Part unless the *customer* has given explicit informed consent to receiving it in another way.
- (3) Information sent by post to a *residential customer* must be taken to be delivered at the time at which it would be delivered in the ordinary course of post.
- (4) Information sent by registered post to a *residential customer* must be taken to be delivered at the time at which it would ordinarily be delivered by registered post.
- (5) A *retailer* must not impose a charge on a *residential customer* for any written communication given or sent to the *customer* (whether by post or otherwise) under, or in connection with, this Part.

88 Effect of this Division

Nothing in this Division limits clause 56 or any other provision of this Code about providing information to *residential customers*.

Plain language, legibility and clarity – clause 87(1)

- 6.2.2. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

Recording explicit informed consent – clause 87(2)

- 6.2.3. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

Part 3 written communications – clauses 87(3)-(4)

- 6.2.4. Retailers have discretion about the postage delivery method they use to send customers written communications connected with Part 3 (clause 87(3)).
- 6.2.5. With respect to both clauses 87(3) and (4), the commission will consider post to have been received by a customer according to the ordinary course of post provisions of the *Interpretation of Legislation Act 1984*.¹⁵
- 6.2.6. In order to expedite the delivery of written communications sent under clauses 87(3)-(4), retailers can use Australia Post's priority letter service with either the registered post or standard post, respectively.

No charge for written communication – clause 87(5)

- 6.2.7. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

Effect of this Division – clause 88

Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

¹⁵ Section 49 of the *Interpretation of Legislation Act 1984* (Vic)

7. Division 6 – Miscellaneous retailer obligations

Division 6 Miscellaneous

89 Retailer obligations

A *retailer* must:

- (a) in any dealing with a *residential customer* under, or in connection with, Division 3 take into account all of the circumstances of the *customer* of which they are aware and, having regard to those circumstances, act fairly and reasonably; and
- (b) at all times when it is relevant to do so, including on being contacted by a *residential customer*, give the *customer* in a timely manner clear and unambiguous information about the assistance available under this Part; and
- (c) in a timely manner provide, or use its best endeavours to provide, a *residential customer* who is entitled to receive assistance under this Part with that assistance; and
- (d) give a *residential customer* who is receiving, or is entitled to receive, assistance under this Part clear information about how to access other assistance provided by government or community service providers for which the *customer* is or may be eligible; and
- (e) work cooperatively with any government or non-government service, including the Energy and Water Ombudsman (Victoria), providing support to a *residential customer* who is receiving assistance under this Part to ensure that the assistance being provided by the *retailer* complements, and is provided in a coordinated way with, that support; and
- (f) in relation to a *residential customer* who is receiving, or is entitled to receive, assistance under this Part, comply with any relevant guideline published by the *Commission* relating to *customers* in particular payment difficulty, including *customers* who may be affected by *family violence*.

7.1. Customer circumstances – clause 89(a)

- 7.1.1. The commission's expectations about compliance with a retailer's obligations in relation to clause 89(a) are outlined in section 9.4 of this guidance note.

7.2. Providing information in a timely manner – clause 89(b)

7.2.1. The commission's expectations about compliance with clause 89(b) are outlined in sections 4.10 and 4.11 of this guidance note.

7.3. Providing or using best endeavours to provide assistance – clause 89(c)

7.3.1. The commission's expectations about compliance with clause 89(c) are outlined in sections 4.10, 4.11 and 9.8 of this guidance note.

7.4. Providing information about assistance from government and community service providers – clause 89(d)

7.4.1. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

7.5. Working cooperatively – clause 89(e)

7.5.1. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

7.6. Compliance with guidelines – clause 89(f)

7.6.1. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

7.7. Assistance beyond minimum standards – clause 90

7.7.1. This clause intends to put it beyond doubt that retailers may provide assistance in addition to the minimum assistance required by Part 3 of the Code. Any such assistance must be additional to, not a substitute for, the minimum assistance

90 Assistance beyond the minimum standards

Nothing in this Part prevents a *retailer* from providing to *residential customers*, who are anticipating or facing payment difficulties, assistance in addition to the minimum standards set out in this Part.

Assistance beyond minimum standards in Division 2

- 7.7.2. A retailer may, for example, provide a customer who is anticipating payment difficulty, and perhaps who is about to be issued with a bill, the assistance under Division 3 even though the customer is not yet in arrears and the customer is only entitled to Division 2 assistance.

Assistance beyond minimum standards in Division 3

- 7.7.3. A retailer may, for example, in addition to the minimum assistance a customer is entitled to under Division 3, provide a customer with an incentive payment arrangement (where each payment or number of payments is matched by the retailer), or with a partial or full debt waiver.

7.8. Restriction on conditions – clause 91

- 7.8.1. Clause 91 makes it clear that a customer cannot be required to provide personal or financial information to the retailer as a condition of receiving the minimum assistance set out in Part 3.

91 Restriction on conditions

A *retailer* must not impose any condition on the provision of assistance under this Part (whether in accordance with the minimum standards set out in this Part or in addition to them) that requires the *customer* to provide personal or financial information or to waive any entitlement under this Part.

- 7.8.2. A retailer may ask a customer about any factors that are likely to affect their energy consumption in relation to providing advice and practical assistance under clause 79(1)(e).
- 7.8.3. A retailer cannot request that a customer seeks assistance from a financial counsellor or provides financial information as a condition to accessing assistance under Part 3.

Division 6 – Miscellaneous retailer obligations

- 7.8.4. This clause does not prevent a retailer offering to arrange for a customer to receive assistance through a financial counsellor or other community service provider. However, the retailer cannot require the customer to provide them with evidence of their financial circumstances in return for making these arrangements or the outcome of the assistance received.
- 7.8.5. This clause does not prohibit a retailer from asking its customer questions that help the retailer maximise and enhance the effective delivery of the assistance under Part 3, in line with the principles of respectful conversations and themes discussed in Chapter 9 of this guidance note. However, it does prohibit making provision of that information a condition to access assistance under Part 3. Therefore, if a customer declines to answer a retailer's questions, the retailer must still provide the customer with their entitlement to assistance under Part 3.
- 7.8.6. Personal information does not include information necessary to enable the retailer to verify the customer's identity.
- 7.8.7. A retailer may also ask a customer for information needed to:
- a) assist the customer with completing an application for the Utility Relief Grant Scheme
 - b) assist with applying concessions to the customer's account
 - c) assist with a referral to government and non-government support (where the customer has consented to the referral).

7.9. Debt – clause 92

- 7.9.1. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

92 Debt

(1) Restriction on debt recovery

A *retailer* must not commence or continue with proceedings for the recovery of *arrears* from a *residential customer* who is receiving assistance under this Part.

(2) Restriction on sale of debt

A *retailer* must not sell or otherwise dispose of the debt of a *residential customer* who is in *arrears*:

- (a) at any time while the *customer* is receiving assistance under this Part; or
- (b) within 10 business days after the *customer* has been disconnected from their *energy* supply under clause 111A.

(3) Guideline to be complied with on sale of debt to third party

A *retailer* must not sell or otherwise dispose of the debt of a *residential customer* to a third party other than in accordance with the guideline “*Debt collection guideline: for collectors and creditors*” jointly published by the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission.

(4) Waiver of debt

Nothing in this Part prevents a *retailer* from waiving any fee, charge or amount of *arrears* for a *residential customer*.

7.10. Supply capacity control product – clause 93

- 7.10.1. Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

93 Supply capacity control product

A retailer must not offer a supply capacity control product to a residential customer for any credit management purpose.

7.11. Payment by Centrepay – clause 94

7.11.1 Where the commission believes that a particular provision of the Code can be read on its plain meaning, we provide no further comment in this guidance note.

94 Payment by Centrepay (SRC and MRC)

- (1) This clause applies where a *residential customer* requests a *retailer* to permit payment by using Centrepay as a payment option (see clause 32).
- (2) If the *residential customer* is applying for or on a *standard retail contract*, the *retailer* must allow the *customer* to use Centrepay as a payment option.
- (3) If the *residential customer* is on a *market retail contract* and Centrepay is available as a payment option under that contract, the *retailer* must allow the *customer* to use Centrepay as a payment option.
- (4) If the *residential customer* is on a *market retail contract* and Centrepay is not available as a payment option under that contract, the *retailer* must undertake a review of the *market retail contract*.
- (5) If, as a result of a review, an alternative *customer retail contract* is considered to be more appropriate, the *retailer* must transfer the *customer* to that alternative contract, where the *retailer* has obtained the *customer's* explicit informed consent.
- (6) Any alternative *customer retail contract* offered to a *residential customer* must make Centrepay available as a payment option.
- (7) If, as a result of the review, there is no alternative *customer retail contract* considered to be more appropriate, the *retailer* must make Centrepay available as a payment option under the *residential customer's* existing *market retail contract*.
- (8) The *retailer* must not charge the *residential customer* for the review, for any transfer to an alternative *customer retail contract* or any early termination charge or other penalty for the early termination of the *customer's* previous *customer retail contract*.

8. Disconnection safeguards – Parts 3 and 6 of the Code

8.1. Disconnection safeguards

- 8.1.1. Before a retailer can disconnect a residential customer's energy supply under clause 111A, the retailer must have complied with a range of obligations including providing, or using its best endeavours to provide, the assistance under Division 3 at multiple stages during its interactions and communications with the customer (clause 89). We have called these various obligations 'disconnection safeguards'.
- 8.1.2. The disconnection safeguards are located in a number of clauses throughout the Code. These provisions ensure that retailers must provide customers with timely, relevant and unambiguous information and assistance to help avoid disconnection. This information includes:
- a) entitlements to assistance under Part 3
 - b) assistance that may be available from community service providers and other non-government services
 - c) the availability of government assistance including grants and concessions.
- 8.1.3. The disconnection safeguards also include restrictions where disconnections are prohibited (clauses 111, 111A and 116), including the minimum disconnection amount where the customer must have arrears of at least \$300 (inclusive of GST).
- 8.1.4. The other disconnection safeguards are located in the Code and are summarised in the *Essential Services Commission 2017, Payment difficulty framework, Final decision, October* in table 5.3.
- 8.1.5. The remainder of this chapter contains the relevant disconnection safeguard provisions of the Code that are not discussed elsewhere in this guidance note.

Disconnection warning notices – clause 110

- 8.1.6. Where the commission believes that a particular provision can be read on its plain meaning, we provide no further comment in this guidance note

110 Disconnection warning notices

(1) Nature of disconnection warning notices

A *disconnection warning notice* is a notice issued by a *retailer* to warn a *customer* that the *customer's* premises will or may be de-energised.

(1A) Purpose of disconnection warning notices

The purpose of a *disconnection warning notice* is to give the *customer* clear and unambiguous advice about what the *customer* needs to do to avoid being disconnected from their *energy* supply.

(2) Particulars to be included in disconnection warning notices

A *disconnection warning notice* must:

- (a) state the date of its issue; and
- (b) state the matter giving rise to the potential *de-energisation* of the *customer's* premises; and
- (ba) if the customer is a *residential customer* who is entitled to receive assistance under Part 3:
 - (i) give an explanation in plain language of the notice and of why it is being issued; and
 - (ii) give the *customer* clear and unambiguous advice about what the *customer* needs to do to avoid being disconnected from their *energy* supply, including any entitlement that they may have to further assistance under Part 3; and
 - (iii) if the *customer* is or may be eligible for other assistance provided by government or community service providers, give the *customer* clear information about how to access that assistance; and
- (c) where the notice has been issued for not paying a bill:
 - (i) state the date on which the *disconnection warning period* ends; and
 - (ii) state that payment of the bill must be made during the *disconnection warning period*; and
- (d) for matters other than not paying a bill—allow a period of not fewer than 5 *business days* after the date of issue for the *customer* to rectify the matter before *de-energisation* will or may occur; and
- (e) inform the *customer* of applicable *re-energisation* procedures and (if applicable) that a charge will be imposed for *re-energisation*; and
- (f) include details of the existence and operation of the *energy ombudsman*, including contact details; and
- (g) include details of the telephone number of the *retailer* for payment assistance enquiries; and
- (h) for a *customer* with a *smart meter*, state that *de-energisation* could occur remotely.

De-Energisation for not paying a bill – clause 111

8.1.7. Clause 111 only applies to small customers who use less than 40MWh per annum, who are **not** residential customers.

Disconnection safeguards – Part 3 and 6 of the Code

Disconnection as a last resort – clause 111A

- 8.1.8. This clause provides the mechanisms by which customers can be assured that disconnection for not paying a bill should be a last resort. Three sets of conditions must be met.

111A Residential customer only to be disconnected as a last resort for non-payment

A retailer may only arrange de-energisation of the premises of a residential customer for not paying a bill if:

- (a) *the retailer:*
 - (i) has complied with all of the *retailer's* obligations to the *customer* under clause 89; and
 - (ii) has issued a *reminder notice* to the *customer* that complies with clause 109; and
 - (iii) has issued a *disconnection warning notice* to the *customer* that complies with clause 110; and
 - (iv) has, after the issue of the *disconnection warning notice*, used its best endeavours to contact the *customer* in relation to the matter and, in so doing, provided clear and unambiguous information about the assistance available under Part 3; and
 - (v) has at all times acted fairly and reasonably in relation to the *customer*; and
- (b) *the customer:*
 - (i) while receiving tailored assistance under clause 79(1)(a), has failed to make a payment by the date on which it was payable, has not put forward a revised payment proposal under clause 81 and does not have an entitlement to the assistance mentioned in clause 79(1)(f); or
 - (ii) has exercised an entitlement to the assistance mentioned in clause 79(1)(f) and has failed to make a payment by the date on which it was payable and has not put forward a proposal to vary the amount payable or the frequency of payments; and
- (c) the *customer* has refused or failed to take reasonable action towards remedying the matter; and
- (d) the *retailer* has records that are sufficient to evidence the matters mentioned in paragraphs (a), (b) and (c).

- 8.1.9. First, the retailer must have met all of its obligations under Part 3 including using its best endeavours to provide the minimum assistance to which a customer is entitled, including using its best endeavours to revise a payment arrangement where required. The retailer must also have issued a compliant reminder notice, compliant disconnection warning notice, and, after the disconnection warning period has lapsed, used its best endeavours to contact the customer and provide them with unambiguous information about the assistance available under Part 3 and from government and community service providers, prior to disconnection.
- 8.1.10. Second, the customer receiving assistance must have failed to meet the conditions of that assistance (clause 83), and not sought to vary that assistance if they were unable to meet those conditions (clauses 81(3) and 82(2)). The customer must also have failed to seek additional assistance, or failed to meet the conditions of that additional assistance and not sought to vary that assistance if they were unable to meet those conditions. Additionally, the customer must also have failed or refused to take reasonable action to remedy any non-payment.
- 8.1.11. Third, a retailer must be able to demonstrate through its record keeping that it has met its obligations to use its best endeavours to contact the customer and provide assistance, issued a compliant reminder notice, disconnection warning notice, and acted fairly and reasonably while taking into account of all customer circumstances known to the retailer, as outlined in clauses 89(a) and 111A of the Code and sections 9.3 and 9.4 of this guidance note. It must also be able to provide records to show how the customer failed to meet the conditions of that assistance and how it complied with the commission's expectations in this guidance note.
- 8.1.12. If a customer is disconnected and the requirements of clause 111A have not been satisfied, the customer will not have been disconnected as a last resort.
- 8.1.13. Through the conditions of retailer licences, standard retail contracts and market retail contracts must either comply with, or not be inconsistent with, the Code including clause 111A. If a retailer disconnects a customer and fails to comply with the terms and conditions of the customer's contract specifying the circumstances in which the supply of energy may be disconnected, the customer will have been wrongfully disconnected.¹⁶

¹⁶ Section 40B(1) *Electricity Industry Act 2000* (Vic) and section 48A(1) *Gas Industry Act 2001* (Vic).

Restrictions on de-energisation

- 8.1.14. The minimum disconnection amount in clause 116(1)(g) has been amended from \$120 (exclusive of GST) to \$300 (inclusive of GST) of arrears to align with the minimum amount under the National Energy Retail Rules, as applied in other jurisdictions.

116 When retailer must not arrange de-energisation

(1) Restrictions on de-energisation

Despite any other provisions of this Division but subject to subclauses (2), (3) and (4), a *retailer* must not arrange for the *de-energisation* of a *customer's* premises to occur:

- (a) where the premises are registered under Part 7 as having *life support equipment*; or
- (b) where the *customer* has made a complaint, directly related to the reason for the proposed *de-energisation*, to the *retailer* under the *retailer's* standard complaints and dispute resolution procedures, and the complaint remains unresolved; or
- (c) where the *customer* has made a complaint, directly related to the reason for the proposed *de-energisation*, to the *energy ombudsman*, and the complaint remains unresolved; or
- (d) where the *customer* is a *residential customer* who is receiving assistance under Part 3 and is adhering to the terms of that assistance; or
- (e) where the *customer* informs the *retailer*, or the *retailer* is otherwise aware, that the *customer* has formally applied for assistance to an organisation responsible for a rebate, concession or relief available under any government funded *energy* charge rebate, concession or relief scheme and a decision on the application has not been made; or
- (f) on the ground that the *customer* has failed to pay an amount on a bill that relates to goods and services other than for the sale of *energy*; or
- (g) for non-payment of a bill where the total amount of the *customer's* arrears is less than \$300 (inclusive of GST); or
- (h) [Not used]
- (i) during a protected period.

8.2. Disconnection by a retailer

- 8.2.1. A reference in the Code or this guidance note to a disconnection by a retailer means a disconnection procured by a retailer. Accordingly:

- a) If a disconnection performed by a distributor occurs where the distributor is acting on the retailer's instructions, the retailer is deemed to have disconnected the customer.

- b) If a disconnection performed by a distributor occurs not in accordance with the instruction to disconnect given by the retailer, the retailer has not disconnected the customer.

9. Guidance for other retailer obligations under Part 3

9.1. Key points

This section outlines the commission's expectations of energy retailers in complying with their obligations under Part 3 of the Code:

- an effective and respectful Tailored Assistance conversation
- fair and reasonable treatment of energy customers
- taking customer circumstances into account
- repeated late payers
- shared retailer and customer responsibility
- discreet contact
- best endeavours to engage with customers facing payment difficulty
- record keeping
- payment for reconnection
- customer entitlements following disconnection or suspension of assistance.

9.2. Tailored assistance conversation – Division 3

9.2.1. We expect retailers to have respectful conversations with their customers about payment difficulty and the assistance they are entitled to under Part 3, having regard to their circumstances and information they volunteer.

Customer not yet in arrears

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

Customer in arrears

9.2.3. If a customer, whose bill of \$55 or more (inclusive of GST) is overdue, and either the customer contacts the retailer (clause 80(1)) or the retailer contacts the customer as required by clause 80(2), a retailer may discuss the standard assistance options available in the first instance. The retailer is expected to ask if those options would

Guidance for other retailer obligations under Part 3

assist the customer in paying their bill. If the customer believes that standard assistance would assist them in paying their bill, a retailer may activate that form of assistance. As a safeguard for customers in arrears, the retailer is still expected to inform the customer of their entitlement to tailored assistance in the event that the customer is unable to maintain the standard assistance payment arrangement.

- 9.2.4. As an additional safeguard, as discussed in section 10.1 of this guidance note, if a customer fails to maintain a standard assistance payment arrangement, and has arrears of \$55 or more (inclusive of GST), then the retailer is obligated to use its best endeavours to contact the customer and provide them with their entitlement to assistance under Division 3.
- 9.2.5. Should a customer need to activate their entitlement to tailored assistance at a later date, the retailer must not include any time a customer spent on a standard assistance payment arrangement in the tailored assistance payment arrangement under clauses 79 and 81.
- 9.2.6. If a customer believes that the standard assistance payment arrangements would not assist them with paying their bill, then their retailer is expected to provide tailored assistance under Division 3.
- 9.2.7. Once a retailer begins discussing tailored assistance with the customer, as outlined in sections 4.6 – 4.10 of this guidance note, we expect a retailer to provide information and advice to a customer that will assist them with:
- a) repaying their arrears in a period of not more than two years
 - b) paying for their ongoing usage costs
 - c) reducing their energy costs.
- 9.2.8. We encourage retailers to provide information and advice to customers that will assist them with repaying their arrears as efficiently and sustainably as possible so to avoid using all their two-year payment arrangement entitlement in the first instance. This will allow ‘time in reserve’ in case the customer faces worsening payment difficulty in the future and needs to revise their payment arrangement.
- 9.2.9. As discussed in sections 4.12 and 4.14 of this guidance note, we do not expect a retailer to accept payment arrangements for unreasonably small amounts that are disproportionate to the customer’s arrears, in the absence of circumstances that warrant doing so.
- 9.2.10. Refer to sections 4.9 and 4.12 for more information about customers who may fluctuate between being able to pay and not for their usage costs.

Guidance for other retailer obligations under Part 3

9.3. Fair and reasonable treatment – clause 89(a)

- 9.3.1. Electricity and gas customers expect to be treated with courtesy when they are interacting with their retailer. This is even more important when a customer is facing payment difficulty and needing to discuss that difficulty with their energy retailer.
- 9.3.2. Customers anticipating or facing difficulty in paying their energy bills want their energy retailers to be considerate and to treat them courteously. They don't want to feel that they are at the mercy of their retailer or being made to feel that they must approach the retailer with 'cap in hand'. In its *Sustainable Payment Plan Framework*, the Australian Energy Regulator refers to these expectations as retailers showing "respect" and "empathy" towards customers in or anticipating payment difficulty.¹⁷
- 9.3.3. Victorian legislators have also held strong and longstanding expectations about how they expect energy retailers to treat their customers facing or anticipating payment difficulty. The relevant Acts make clear that customers should be supported consistently and equitably. And to put the matter beyond doubt, the legislation states expressly that disconnection of customer from their energy supply should be a measure of "last resort".¹⁸
- 9.3.4. In other words, the community and legislators want to see energy retailers acting fairly and in good faith towards their customers.

9.4. Customer circumstances – clause 89(a)

- 9.4.1. Because every customer's circumstances are unique, this guidance note cannot be definitive of all circumstances that may arise and cannot be a substitute for a retailer's judgment in a particular set of circumstances.
- 9.4.2. In relation to providing the customer with their entitlements to assistance under Part 3 and treating energy customers fairly and reasonably, retailers must consider and have regard to a customer's circumstances that are known to it, including but not limited to:
- a) The customer's payment history and amount of arrears with their retailer (not with other retailers), including for another energy account (if applicable).

¹⁷ Page 2, the Australian Energy Regulator's *Sustainable Payment Plan Framework*, available at: <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/aer-sustainable-payment-plans-framework>

¹⁸ Page 52 of the *Electricity Industry Act 2000* (Vic), available at: http://www.austlii.edu.au/au/legis/vic/consol_act/eia2000261.pdf and page 50 of the *Gas Industry Act 2001* (Vic), available at: http://www.austlii.edu.au/au/legis/vic/consol_act/gia2001167.pdf

- b) Any information that the customer has volunteered in conversations between the retailer and the customer (whether initiated by the customer or the retailer).
- c) A customer's preferred contact method and time of day.
- d) Any relevant information the retailer collects through discussions and questions¹⁹. While retailers cannot undertake a capacity to pay assessment in accordance with the requirements of clause 91, should a customer offer or volunteer information about their capacity to pay to the retailer, the retailer is expected to record such information. To be clear, clause 91 restricts a retailer from requiring a customer to provide personal or financial information to the retailer as a condition for receiving the minimum assistance set out in Part 3.

9.4.3. We expect retailers to handle any sensitive customer information, such as health information, in line with the requirements of relevant privacy laws.²⁰

9.4.4. Retailers should have regard to the following customer circumstances when providing assistance under Part 3 and considering disconnection under Part 6. It is critical to note that this list is not exhaustive and some customer circumstances not listed here will still need to be considered by retailers where they are known to them:

- a) Family violence.
- b) Family and/or relationship breakdown.
- c) A customer who has a representative or advocate acting on their behalf.
- d) Death of a spouse or immediate family member.
- e) Disability/care provider.
- f) Whether the customer has no or limited English skills.
- g) Whether the customer has access to electronic communication channels such as email and the internet.
- h) Serious illness or medical condition (including mental health) that impacts a customer's ability to engage or communicate with their retailer (e.g. having a sight or hearing impairment).
- i) Loss of employment or regular source of income.
- j) Recipient of government assistance (Centrelink payments, particularly Newstart).

¹⁹ Subject to clause 91 of the Code – restriction on conditions which is located in section 7.8 of this guidance note.

²⁰ Privacy obligations for personal information, including sensitive information, are found in the *Privacy Act 1988* and in the Australian Privacy Principles.

- k) Concession card holder.
- l) Unexpected and essential cost of living expenses (urgent house repairs, car repairs, medical expenses, schooling or child care expenses etc.).
- m) Debt on other relevant energy account/s with the same retailer.
- n) Acute financial or personal hardship.
- o) Being temporarily uncontactable (e.g. due to hospitalisation or disconnected telephone services).
- p) Low literacy and/or numeracy, or lack of confidence in speaking to service providers (often necessitating a role for community service providers).

9.4.5. The commission does not necessarily expect retailers to consider one of the above indicators in isolation when taking a customer's circumstances into account. We expect retailers to look at a customer's circumstances holistically, including their payment history, amount of arrears, ability or inability to pay ongoing usage, etc. However, a retailer may need to place a greater weight on a particular customer circumstance, such as the sudden loss of employment or a serious and ongoing medical condition. These circumstances should inform retailers' decision making in relation to the whole of Parts 3 and 6, particularly in relation to deciding:

- a) whether to accept a payment arrangement that provides for payment of different amounts at different intervals (clause 81(4)(a))
- b) whether to extend assistance, including providing a payment arrangement that is longer than 2 years (clause 81(4)(b)) or an additional period of time where the customer's arrears are on hold (clause 79(4))
- c) whether to accept a payment arrangement that provides for separate payments for arrears and ongoing energy use (clause 81(4)(c))
- d) whether to continue to provide assistance (clause 83)
- e) whether to provide the customer with one or both of practical assistance elements under tailored assistance (clause 79(1)(e)-(f)) when they are not clearly entitled to it (i.e. can just meet the cost of their energy costs)
- f) whether to disconnect a customer's energy supply as a last resort (clause 111A)
- g) how to fulfil its best endeavours obligations (clause 89(c))
- h) whether it has acted fairly and reasonably in its dealings with a customer, having regard to the customer's circumstances (clause 89(a)).

9.4.6. Retailers must maintain sufficient and appropriate records of how they took an individual customer's known circumstances into account. This would involve the retailer

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showing how the assistance provided changed in light of these circumstances. Whether the change in the assistance provided would be regarded as having adequately taken the customer's known circumstances into account, would be assessed by whether the assistance was capable of supporting the customer to repay their arrears, pay their ongoing usage (where applicable), lower their energy costs, and avoid disconnection.

Non-English speaking and sensory impaired customers

- 9.4.7. Where a retailer knows or discovers that the customer is non-English speaking or sensory impaired, it is expected to be flexible and adaptive in determining the best way in which to engage. The strategies listed below may be appropriate depending upon the circumstances of the customer. A retailer may:
- a) engage through an employee who speaks the preferred language of the customer
 - b) engage with a family member or friend nominated by the customer
 - c) engage with a financial counsellor or community services worker nominated by the customer
 - d) provide the free use of the Translating and Interpreting Service²¹
 - e) provide the free use of the National Relay Service for sensory impaired customers.

Evidence of customer circumstances

- 9.4.8. We expect retailers to take information provided by customers on face value and not require evidence or substantiation of a customer's circumstances, unless the retailer has and can evidence a firm basis to suggest otherwise.

9.5. Repeated late payers – Part 3

- 9.5.1. There are some energy customers for whom only receipt of a final disconnection warning notice will serve as a prompt to pay their energy bills. There may be many reasons why this is the case. Some customers are repeated late payers and only pay when the threat of disconnection is imminent. Other customers will pay at the 'last minute' because of the constant juggling of their obligations within their limited financial resources. These customers may not be experiencing or anticipating immediate

²¹ Similar to the requirement in clause 25(1)(w) regarding the contents of bills.

payment difficulty as envisaged by Part 3 of the Code, but retailers should assume that they are at on-going risk of payment difficulty.

- 9.5.2. We expect retailers to give customers the 'benefit of the doubt' when they consistently pay late and to consider whether there are other signs that these customers are facing payment difficulty and requiring assistance under Part 3 of the Code.
- 9.5.3. Where a customer has a demonstrable (and verifiable) record of only paying their accounts when the threat of disconnection is imminent, retailers may choose to issue a reminder notice before contacting the customer under clause 80. Doing so, however, does not extinguish the retailer's obligations – irrespective of whether the customer does or does not make contact with the retailer.
- 9.5.4. We encourage retailers to think innovatively about how they manage, support and communicate with these customers. Division 5 establishes minimum requirements for communicating with customers.

9.6. Shared responsibility – Part 3

- 9.6.1. Most effective outcomes for customers facing payment difficulty are achieved when communication, collaboration and cooperation exist between customers and retailers. The concept of *shared responsibility* is the hallmark of good process and outcomes in resolving payment difficulty. When retailers respond effectively to customers exercising their entitlements and customers relate to the retailers in good faith, there are strong reasons to believe that good outcomes will be achieved.
- 9.6.2. Part 3 of the Code establishes customer entitlements to different forms of assistance from their retailers. Retailers are obliged to comply with these entitlements. The Code does not, because it cannot, impose similarly enforceable obligations on energy customers. However, we emphasise our expectation that customers work with their retailer to avoid, and manage where necessary, unpaid bills. Part 3 anticipates communication, collaboration and cooperation between customers and retailers. It is not intended that the entitlements established by Part 3 be open-ended or unlimited.
- 9.6.3. While customers are entitled to assistance under Part 3 (most notably in tailored assistance) and retailers are obliged to make that assistance available to customers, these entitlements are not independent of customer actions.
- 9.6.4. We do not expect retailers to be required to repeatedly pursue customers who have not paid their bills or met payment arrangements into which they have entered. Likewise,

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we do not expect retailers to provide revised or extended payment arrangements when customers are not demonstrating good faith in their interactions with their retailer. We expect customers to demonstrate a commitment to resolving their payment difficulty when a retailer seeks to comply with its obligations under Part 3, particularly those obligations related to revised payment arrangements or extended assistance.

- 9.6.5. Customers should be expected (and it should be made clear to them) to contact their retailer when facing payment difficulty, particularly when a payment arrangement has been entered into and the customer requires a revised payment arrangement. We think it would be unreasonable to expect retailers to have to repeatedly pursue customers who have not paid their bills or met their payment arrangements. While we think retailers should give customers the benefit of the doubt if they have failed to make contact, in most cases we would not expect retailers to pursue customers when they are not cooperating with their retailer.
- 9.6.6. We expect retailers to be sensitive to customers' circumstances where they are known to the retailer, and consider these circumstances when exercising judgement or discretion. We also expect sensitivity where there has been sufficient evidence in the comments made by a customer, from a customer's payment history, or from the customer's history in engaging with their retailer, to suggest that the customer may struggle to engage proactively with their retailer. In such cases, retailers may need to take the initiative repeatedly in engaging customers in the discussions required to identify appropriate payment arrangements. We would not expect there to be many customers in this latter category but when they arise, we would expect retailers to consider alternative mechanisms to engage with the customer. For example, the retailer may consider sending a written proposal for a payment arrangement under Part 3 which the customer could accept by making a payment in accordance with the proposed payment schedule.

9.7. Discreet contact – Part 3

- 9.7.1. Retailers should be discreet in making contact with customers. A customer should not feel harassed by contact from their retailer but nor should they feel neglected by their retailer in the event of ongoing payment difficulty. Retailers should be attentive to customers who may be struggling to maintain a payment arrangement and they should make contact in a sensitive and timely manner.

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9.8. Our expectations for best endeavours – clauses 89 and 111A

- 9.8.1. Retailers must use the information available to them, including known customer circumstances, when fulfilling their obligations to use their best endeavours to contact customers and provide them with assistance under Division 3, including:
- a) to provide tailored assistance (clauses 80(2) and 89(c))
 - b) to revise a payment arrangement under tailored assistance when a customer does not make a payment according to the payment schedule (clauses 81(6) and 82(2))
 - c) to establish a new implementation timeframe for practical assistance where the retailer knows that the customer has not taken steps to implement the practical assistance, as agreed between customer and retailer, and documented by the retailer (clause 82(3))
 - d) following issuing a disconnection warning notice and prior to disconnection (clause 111A(a)(iv)).
- 9.8.2. Retailers should attempt to contact customers via their preferred contact method/s, if they are known to the retailer, in addition to using the contact methods outlined in section 9.8.5, below.
- 9.8.3. Retailers must use multiple contact methods when one method is unsuccessful (as described below).
- 9.8.4. The commission understands that retailers need to balance their obligations under the Code to use their best endeavours and their obligations under the *Debt collection guideline: for collectors and creditors* (the guideline) – jointly published by the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission. The commission expects retailers to comply with the guideline and does not expect a retailer²² to be non-compliant with the guideline, such as contacting the customer outside of the frequency, timing or method limits of the guideline, in order to fulfil its best endeavours obligations under the Code. We believe that retailers can fulfil and comply with both sets of requirements and obligations regarding contacting customers.
- 9.8.5. Best endeavours to contact a customer in person or by telephone requires:
- a) over a maximum 21-business-day period and not more than 20 business-days prior to the disconnection –

²² Or a retailer's credit collection agent.

- i. at least one telephone call between 9.00 am and 5.00 pm AEST/AEDT attempting to contact the customer;
 - ii. if a message was not left between 9.00 am and 5.00 pm AEST/AEDT with an adult with legal capacity²³ or on an automated telephone service, at least two telephone calls outside 9.00 am to 5.00 pm AEST/AEDT;
- b) for customers with a supply address in the Melbourne metropolitan area –
 - i. where telephone contact has not been successfully made, up to a maximum period of 21 business days and not more than 20 business-days prior to the disconnection, the sending of a letter by registered post advising of the imminent disconnection and providing clear and unambiguous advice about the assistance available under Part 3 and how to access it
 - ii. where the telephone number is not known to the retailer or the telephone is disconnected – at least one attempt to make contact by visit to the customer’s premises;
- c) for customers with a supply address outside the Melbourne metropolitan area where telephone contact has not been successful or the telephone number is not known to the retailer or the telephone is disconnected – the sending of a letter by registered post advising of the imminent disconnection and providing clear and unambiguous advice about the assistance available under Part 3 and how to access it.

9.8.6. Melbourne metropolitan area is defined as within 60 kilometres of the Melbourne central business district.

9.8.7. “Registered post” has the meaning given to that term by Australia Post.

9.8.8. For the sake of clarity, express post is not the same as registered post.

9.8.9. Refer to section 6.2 of this guidance note regarding the delivery timeframes for disconnection warning notices.

9.8.10. Retailers should use additional methods of contact, such as electronic communications including SMS and email to complement – but not substitute – their best endeavours efforts to contact the customer and provide assistance under Part 3.

²³ An adult with legal capacity means a person aged 18 years or older who has the faculties and capabilities to record and provide a message to the customer.

- 9.8.11. The following examples illustrate retailer actions that **do not** constitute best endeavours:
- a) Contacting a customer more than 20 business-days prior to disconnection.
 - b) Not leaving messages on telephone answering services.
 - c) Leaving a message with a person under the age of 18 years.
 - d) Leaving a message with an adult who does not have legal capacity.
 - e) Repeatedly calling a disconnected phone number or a phone number without a voicemail facility and not attempting any other contact.
 - f) Failing to keep appropriate records of contact attempts, including all electronic communications that are specific to the contact or attempted contact with a particular customer. Text message and email templates will generally not form sufficient substantiation of contact, successful or otherwise, unless it can be proven it was sent to the customer and the date of the correspondence.
 - g) Email communication that is sent to an inactive email address, where the email is not successfully delivered.
 - h) Calling a telephone number that has a voicemail or message service facility and not leaving a message.

9.9. Record keeping

- 9.9.1. For a retailer to satisfy the Code requirements about dispatch of documents, contact by telephone and contact in person, the retailer must be able to demonstrate and substantiate its contacts, or attempted contacts, with a customer.
- 9.9.2. The retailer needs to be able to prove the relevant matter on the balance of probabilities.

Dispatch of notices

- 9.9.3. A retailer must be able to either:
- a) produce an exact copy of the document or notice sent to the customer; or
 - b) show that it has a system in place for the distribution of documents and that the procedure was followed in the particular instance. This will involve reference to electronic records that a number of documents in a category were dispatched, that the document relating to the customer was included in that batch and the system for posting such documents. This will need to include circumstances where proof is required of the date requested by the retailer for disconnection action to be taken by the distributor.

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- 9.9.4. Retailers must retain the registered post “proof of posting” document issued by Australia Post and record the Australia Post unique identification number.
- 9.9.5. Retailers must have complete and accurate records of all electronic communications, including but not limited to emails and text messages (SMS).

Contact by telephone

- 9.9.6. A retailer must be able to show that it has a system in place for making and recording notes of calls, which include details of the retailer’s caller, the date and time, the outcome of the call (not answered, answered, left message on automated service, or left message with a responsible adult), the essential details of any message left, the name of a person who took a message and details of any conversation conducted.

Contact in person

- 9.9.7. A retailer must be able to produce full particulars of any visit to a supply address or other face-to-face contact with a customer including place, date, time, and details of the discussion. The individual representative of the retailer who had the contact should be available to give evidence (at least for as long as they remain employed by the retailer).

9.10. Customer entitlements following disconnection or suspension of assistance

- 9.10.1 The commission does not consider it acceptable for a retailer to ask a customer facing payment difficulty to make a lump sum payment in order to:
- a) have their energy supply reconnected following disconnection for non-payment; or
 - b) access assistance under Division 3 following the suspension of assistance under clause 83.
- 9.10.2 We expect a retailer to consider a customer’s circumstances and discuss payment arrangement options that would assist the customer with making consistent and sustainable payments, and maintaining an energy connection.
- 9.10.3 If a customer consecutively and consistently misses payments for a payment arrangement under Division 3, and the retailer suspends assistance under clause 83 and disconnected the customer’s energy supply compliantly per clause 111A, the commission believes that it is reasonable for a customer to be able to propose a revised payment arrangement under Division 3 in order to have their energy supply reconnected. This revised payment arrangement would incorporate the time the customer had their initial payment arrangement under clause 81 from the date of their

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first payment. For example, if the customer had a payment arrangement under clause 81(3) for six months prior to disconnection, they would only have a minimum entitlement to propose a new payment arrangement of up to 18 months. However, retailers have discretion to provide longer payment arrangements under clause 81(4).

- 9.10.4 In the event that a retailer did not disconnect a customer's energy supply consistent with the requirements of the Code, the commission expects the retailer to re-instate the customer's suspended assistance under Division 3 and include the time the customer was without assistance in to the payment arrangement period. For example, if a customer was two months into a six-month payment arrangement, missed payments and was subsequently wrongfully disconnected for one month, not only must the retailer apply the applicable Wrongful Disconnection Payment to the customer's account, the retailer must not count the period that the assistance was suspended and the supply disconnected (one month), into a customer's entitlement of a payment arrangement of up to two years.
- 9.10.5 If a customer has had assistance suspended under clause 83 and re-engages with their retailer, then the customer is entitled to propose a revised payment arrangement of up to two years (not including the time elapsed from the date of the first payment on the initial payment arrangement). The revised payment arrangement must not include the period when the assistance was suspended in the customer's entitlement to a payment arrangement of up to two years.

10. Interaction of specific provisions within the new framework

10.1. Standard assistance and tailored assistance

Equal payments and tailored assistance

10.1.1 If the customer is on an equal payments payment arrangement (clause 76(2)(a)) and misses an instalment, and has arrears of more than \$55 (inclusive of GST), the retailer must contact the customer to provide them with their entitlement to tailored assistance, as required by Division 3.

Payment intervals and tailored assistance

10.1.2 If the retailer has provided the customer with options to pay at different intervals (clause 76(2)(b)), such as monthly, and the customer does not pay the agreed instalment and has arrears of more than \$55 (inclusive of GST), then the retailer must contact the customer to provide them with their entitlement to tailored assistance as required by Division 3.

Extended pay-by date and tailored assistance

10.1.3 If the retailer has provided the customer with a payment extension (clause 76(2)(c)) and the customer does not pay by the agreed (extended) pay-by date, then the retailer must contact the customer to provide them with their entitlement to tailored assistance if the arrears is greater than \$55 (inclusive of GST), as required by Division 3.

Payment in advance, arrears and tailored assistance

10.1.4 If a customer is on payment in advance (clause 76(2)(d)) and has an outstanding balance at the time their bill is issued (which becomes arrears and triggers tailored assistance), retailers are not required to contact them to provide tailored assistance so long as the customer maintains the payment arrangement and is projected to owe less than \$55 (inclusive of GST) at the time the next bill is issued. However, if the customer's payments in advance were not covering the cost of ongoing bills and the account balance reached more than \$55 (inclusive of GST) of arrears, then the retailer must contact the customer to provide them with their entitlement to tailored assistance, as required by Division 3.

Customer preference for standard assistance

10.1.5 When the customer explains their payment difficulty, the retailer may offer them options available under standard assistance, even if the customer is entitled to assistance under

Interaction of specific provisions within the new framework

Division 3. For example the customer may advise that they simply need a short-term payment extension. If this standard assistance option is available and acceptable to the customer, and that assistance would be expected to resolve the payment difficulty, the retailer does not need to provide tailored assistance to that customer, at that time. The commission expects retailers to clearly document how this payment arrangement was agreed.

Customer who does not maintain a standard assistance payment arrangement

10.1.6 If the customer does not maintain a standard assistance payment arrangement, they will be in arrears and therefore the retailer cannot proceed with the disconnection process until it has fulfilled its obligations under the Code to provide the customer with assistance under Division 3.

10.2. Interaction between clauses 79(1)(a)-(d) and 79(1)(e)-(f)

10.2.1 If a customer has a payment arrangement under their entitlement in clause 79(2) and misses payments that results in the customer appearing not to be able to afford their ongoing energy costs, the retailer must contact the customer to revise the payment arrangement (clause 81(6)). If the revised payment arrangement will result in the customer repaying their arrears in not more than two years (from the date of the first payment under the original payment arrangement), then the customer will still only be entitled to assistance under clause 79(2).

10.2.2 If the customer's revised payment arrangement will result in customer paying below the cost of their energy use then the retailer must provide the customer with assistance under clause 79(3).

10.2.3 If the customer's revised payment arrangement is for a period longer than two years, the retailer can either consider the longer period under clause 81(4) or provide assistance under clause 79(3).

10.2.4 More information about customer entitlements to assistance under clauses 79(2) and 79(3) are located in sections 4.9 and 4.12 of this guidance note.

11. Compliance and enforcement

11.1. Compliance with obligations

- 11.1.1. The provisions in Divisions 2 and 3 outline the minimum standards of conduct with which retailers are expected to comply in meeting the relevant objectives. These minimum standards are strict obligations and strict compliance is required. Retailers are expected to establish policies, procedures, practices and systems that will support full compliance with these regulatory obligations. We are not regulating the design of retailers' internal procedures, practices and systems. That is a matter solely for each retailer to determine.
- 11.1.2. Likewise, even though we are not regulating how retailers implement complementary procedures, practices and systems that seek to ensure the objectives of the regulatory framework are met, we expect retailers to have such measures in place.
- 11.1.3. Experience suggests many retailers will also draw on their direct experiences in working with customers to implement additional programs (and other measures) to support positive outcomes for those customers facing payment difficulty.

11.2. Identification of non-compliance

- 11.2.1. As outlined in section 3.2.2 of our *Compliance and Enforcement Policy*, the commission identifies potential breaches via:
- a) self-reporting of breaches by retailers
 - b) the findings of compliance audits and the results of investigations
 - c) a systemic breach referred by the Energy Water Ombudsman (Victoria) (under section 54X of the *Energy Amendment (Consumer Protection) Act 2015*)
 - d) a disputed energy disconnection referred by Energy Water Ombudsman (Victoria)
 - e) reports of potential breaches from other external stakeholders (e.g. consumer representatives, other regulatory agencies, whistle blowers, members of the public and the media).

11.3. Compliance and enforcement factors

- 11.3.1. The matters the commission may take into account when considering enforcement action under the *Energy Compliance and Enforcement Policy* are outlined in section

3.2.1 of the policy. We have included the factors in this guidance note, below, for ease of reference.

11.3.2. In carrying out a preliminary assessment, and deciding how a matter should proceed through the *Compliance – Enforcement Pathway*, we assess the nature of the conduct having regard to the following *Compliance and Enforcement Factors*, to the extent that they are relevant in the particular case:

- a) the risk of harm, or actual harm, to energy customers
- b) the impact on consumer confidence in Victorian energy markets
- c) whether the breach was self-identified and reported in a timely manner
- d) how and in what timeframe any customer complaints about the breach were addressed by the regulated entity
- e) whether the regulated entity has taken timely and effective steps to investigate the root causes of the breach
- f) whether the regulated entity has taken timely and effective steps to resolve the breach and prevent its reoccurrence
- g) whether the regulated entity has taken timely and effective steps to inform consumers about the breach, and offer an appropriate remedy to affected customers
- h) whether the regulated entity has put in place effective processes to review and report on the progress of remediation
- i) whether the regulated entity has responded in full and in a timely manner to our inquiries and requests for information or progress updates
- j) the compliance history of the regulated entity
- k) any other relevant matter.