

EXECUTIVE SUMMARY

INTRODUCTION

This revised draft decision is a direct response to stakeholder concerns about possible unintended consequences of our first draft decision (October 2016) which contained a high level of detail and prescription. After further consultation with stakeholders, the Commission decided to shift its focus from prescription and process, to outcomes — that is, ensuring customers in payment difficulty receive timely and meaningful assistance that supports them lower their energy costs and manage their arrears.

FINDINGS OF THE HARDSHIP INQUIRY

In 2013-14, nearly 60,000 Victorians were disconnected for not paying their energy bills. This was the highest number ever recorded in this state. In 2013-14, wrongful disconnections also peaked at 9,032 cases representing a 252 per cent increase in the five years since 2009-10.

In response, the Victorian Government directed the Commission to conduct an inquiry examining how retailers assist customers facing payment difficulties and whether the regulatory framework was effective at ensuring customers receive effective assistance to avoid disconnection. The terms of reference issued by the Government reinforced the legislative expectation that disconnection of customers in payment difficulty should be a measure of last resort.

Our final inquiry report in February 2016 found:

- customers in payment difficulty often use more energy than other customers
- existing hardship programs were generally ineffective at preventing customers from accumulating further debt
- by the time help is offered, it is often too late to assist customers to manage their debt
- some retailers offer more help than others but customers cannot count on a consistent or minimum standard of assistance.

On the basis of our findings through the inquiry, it became apparent that customers anticipating or in payment difficulty have not been gaining equitable access to predictable, consistent and effective assistance, therefore, disconnection has not been a measure of last resort.

In January 2016, the Government amended the energy industry legislation, giving the Commission the specific objective of “promot[ing] protections for customers, including in relation to assisting customers who are facing payment difficulties.” During 2016, the Commission worked with key stakeholders to design a new regulatory framework to address the shortcomings uncovered in the inquiry.

The data indicate that retailers are admitting higher numbers of customers into their hardship programs. As the regulatory framework restricts retailers from disconnecting customers in hardship programs, this may partly explain the observed decrease in disconnections since 2014-15.

Over the same period, however, total arrears have continued to increase. This is not, in itself, necessarily a reflection of the assistance that retailers are providing. Total arrears are influenced by numerous factors beyond the control of retailers, including economic forces and customer choices. However, it is an indication that the reasons for our earlier concern about customer arrears has not gone away.

EVOLUTION OF THE COMMISSION’S APPROACH

Our initial draft decision, released for comment in October 2016, was highly detailed in the way it sought to standardise the assistance customers in payment difficulty could expect to receive. Feedback on the first draft indicated general concern that the proposed new framework was overly prescriptive and may have unintended consequences including stifling innovation, loss of flexibility for retailers to deal with individual customers’ circumstances and disempowering customers when working with their retailers on how best to address their payment difficulty.

As a result, the Commission resolved to develop a second draft decision proposing a framework based on:

- streamlining retailers’ obligations to focus on outcomes for customers, not process
- supporting engagement between retailers and customers
- setting minimum standards of assistance customers should expect from their retailers
- requiring retailers to take a customer’s circumstances into account when making assistance available (so avoiding a ‘cookie cutter’ approach to assistance)

- retaining hardship policies and giving retailers discretion over how they assist their customers in payment difficulty.

OUR NEW PROPOSAL

The proposal in this second draft decision is simpler than our first proposal. Rather than having up to seven layers of tiered assistance that treat a customer's payment difficulty quite mechanically, the new proposal has three types of assistance built around the different ways in which customers and retailers interact.

Whereas our first proposal sought to regulate exactly how and when customers received different types of assistance, the revised proposal provides retailers with much greater scope to work with customers on identifying the most appropriate course of action (provided they meet the minimum standards). The proposed framework also recognises that if retailers are given this discretion, then they must be expected to use it responsibly. That responsibility must be accompanied by accountability. Therefore, the proposed framework clearly holds retailers to account for the way in which they exercise the discretions afforded them. The Commission will use its enforcement powers if necessary to reinforce retailers' accountability.

Importantly, the new framework is centred on customers and customer outcomes — and not, retailers and regulatory compliance. Assistance is framed as a customer entitlement. Customers in payment difficulty are entitled to receive assistance. Retailers do not get to choose whether or not they offer it to customers.

HOW OUR NEW PROPOSAL WORKS

The new proposal establishes an entitlement for customers anticipating or in payment difficulty to three different types of assistance.

1. Standard Assistance

This form of assistance is available to all customers. Customers do not need to be in arrears in order to access this assistance. It involves retailers making at least three different payment options readily available to customers. For example, this might include the customer making regular payments of a fixed amount, a payment extension or payments made in advance.

The aim of standard assistance is to encourage customers to take early action to avoid getting into debt.

2. Tailored Assistance

This type of assistance is available to customers who are in arrears and who are working with their retailer to manage their situation. Tailored assistance provides these customers with flexible and practical help to repay any amounts outstanding and also to lower their energy costs. Customers will be entitled to a range of payment arrangements that enable them to repay their arrears through regular repayments over an agreed period of no more than two years. Customers will also receive assistance to support them lowering their energy costs and assistance in accessing government and non-government support services.

Customers in more severe types of payment difficulty will be entitled to a greater level of assistance, including a period of at least six months where repayment of their arrears is put on hold. Retailers will also be required to place the customer on tariffs that most appropriately help lower the customer's cost of energy use.

3. Default Assistance

This type of assistance is designed to provide assistance to customers who have not engaged, or who have ceased to engage with their retailer about their payment difficulty. Under default assistance, retailers will be obliged to make available a repayment schedule involving equal payments over a period of time three times the customer's current billing period. For example, a customer who is billed monthly, will have the opportunity to repay an unpaid account over the next three months. In making a default payment arrangement available, the retailer will be required to invite the customer to make contact in order to develop alternative arrangements under tailored assistance.

Default assistance provides unengaged or disengaged customers a last opportunity either to begin repaying their arrears or to make contact with the retailer.

This draft decision confirms the need for retailers to have financial hardship policies which outline the details of the assistance they will make available to customers in payment difficulty. These policies will need to comply with the minimum standards for the three types of assistance described above and they will need to describe what customers must do to avoid disconnection.

Under the proposed Code changes, certain conditions must be met before a customer can be disconnected from their energy supply. This includes:

- the retailer must have provided the minimum level of assistance to which the customer was entitled
- the retailer must have issued a compliant disconnection warning notice
- the retailer must have used its best endeavours to contact the customer prior to disconnection (after the relevant warning notice period is over)

But customers will also have responsibilities. Most notably, customers are expected to comply with the terms of their payment arrangements or contact the retailer to agree new assistance arrangements.

Importantly, there will be an express obligation on retailers to maintain records demonstrating they have satisfied their obligations and the customer has failed to meet the conditions of their assistance.

These requirements have been put in place to ensure that disconnection is only pursued as a measure of last resort.

COSTS AND BENEFITS FOR CUSTOMERS AND RETAILERS

When making a regulatory decision, the Commission is required to have regard to certain matters — one of which is the costs and benefits of its proposal to customers and retailers. The *Essential Services Commission Act 2001* and our *Charter of Consultation* outline how we are to go about having regard to these matters.

This draft decision provides a preliminary discussion about the costs and benefits of the amended Code that we are proposing. Our analysis is supported by two consultant reports which are available on our website.

The consultants' preliminary reports indicate that the costs and benefits of the proposed amendments are both tangible and intangible. Overall the proposed amendments are expected to result in reduced costs to obtain and deliver assistance that helps customers to avoid and manage arrears and reduce the cost of their energy use.

The Commission's preliminary judgement – based on this analysis, the work completed as part of the hardship inquiry, and the feedback from stakeholders on its first draft decision – is that the payment difficulty framework proposed in this draft decision is a practical and cost effective means of responding to the problem we are seeking to address.

IMPLEMENTATION

In order to facilitate a smooth adoption of the proposed framework, while also ensuring no unnecessary delays to customers receiving the assistance to which they will be entitled, we are suggesting that the new framework be implemented in phases. This would see the first of the new assistance arrangements come into force on 1 January 2018, with the Code fully operational six months later.

We are also proposing that customers who are already on a payment arrangement when the scheme commences (on 1 January 2018), will have their assistance 'grandfathered'. In other words, they will remain on their existing assistance arrangements. Once the scheme is fully implemented, retailers will be able to start moving customers across (on to tailored assistance) if they are satisfied the customer will be able to repay any outstanding amounts within two years.

We will also start reporting on retailers' compliance with the new framework (as well as any enforcement action we may have had to take) from the second half of 2019. In order to encourage and celebrate the innovative actions taken by retailers to assist their customers in payment difficulty, we will report on these leading practices at regular intervals.

Under our *Energy Compliance and Enforcement Policy*, we are able to issue guidance material to assist retailers' understanding of how they are expected to comply with their regulatory obligations (in this case, the Code). This draft decision provides an initial version of that guidance and we will release a draft guidance note at the time of our final decision on the proposed Code amendments. That draft guidance note will then be subject to further consultation.

NEXT STEPS

We will now spend six weeks consulting on our draft proposal. Our schedule of stakeholder and public forums is outlined in the draft decision. Written submissions on any aspect of the draft decision are invited by 16 June 2017.

To ensure customers in payment difficulty begin receiving the assistance outlined above by the start of the new year, we are aiming at a final decision on the proposed framework by late July or early August 2017.