

16 June 2017



Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

Payment Difficulty Framework

Sumo Power welcomes the opportunity to respond to the Essential Services Commission's Payment Difficulty Framework: Revised Draft Decision, May 2017.

Sumo Power is supportive of measures that provide assistance to customers facing payment difficulties, and which ensure that disconnection of a residential customer is only ever a last resort option.

While the revised draft decision is an improvement on the first draft decision, Sumo Power is not convinced that the proposed new framework improves the assistance currently afforded to customers to such an extent as to justify its costs of implementation.

In addition, certain core elements of the proposed framework still need further consideration, including:

- the triggers for customer entitlement to minimum assistance (the definition of 'arrears' and the assessment of whether a customer is experiencing payment difficulties)
- the scope of minimum assistance (for instance, serious practical issues with implementing payment plans for arrears only, and the potentially excessive length of payment plans – up to 24 months – particularly where arrears might be relatively small)
- how and when minimum assistance entitlements are communicated to customers
- the appropriate balance between customer and retailer discretion in setting the terms of any payment plan, and changing or extending a payment plan (arguably, the draft decision gives the customer too much discretion to dictate payment plan terms)

I attach some detailed comments on specific provisions in the proposed new Part 3 of the Code. If consideration of these or other matters lead to further changes to the proposed framework (as we submit they should), we would expect an opportunity to comment on a further revised draft.

Some elements of the current draft decision will require significant system development (as detailed in the attachment), which will come at considerable cost and will take time to implement. It is very unlikely that these changes could be implemented in time for a 1 January 2018 start. To avoid uncertainty and confusion, the new framework should be implemented in a 'big bang' approach rather than introducing some elements ahead of others. This should mean a start date no earlier than 1 July 2018.

We would be happy to discuss our position on the revised draft decision with the Commission.

Yours faithfully

A handwritten signature in blue ink, appearing to read "Alex Fleming".

Alex Fleming
GM – Legal, Regulatory & Compliance

ESC's Payment Difficulty Framework – New Draft Decision – Sumo Power comments

Clause ref	Comment
<p>Division 3 – Tailored assistance</p>	
<p>78 Application of this Division</p>	<p>Tailored assistance is stated to apply to all residential customers who are in 'arrears'. 'Arrears' is defined by reference to a 'residential customer facing payment difficulties who is receiving assistance under Part 3', and means the sum of amounts payable that remain unpaid as at the bill issue date for a subsequent bill. This presents a number of issues:</p> <ul style="list-style-type: none"> • The concept of 'payment difficulties' is undefined. If the intention of defining the concept of 'arrears' is to avoid an objective assessment of whether a customer is or isn't experiencing payment difficulty, then the words 'facing payment difficulties' should be removed from its definition. • If the concept of 'arrears' is defined only to arise once the customer is receiving payment assistance under Part 3, then it cannot be a trigger for application of tailored assistance. For 'arrears' to act as a trigger for assistance under Division 3, then its definition should not be limited to a residential customer 'who is receiving assistance under Part 3'. • Unless the retailer 'knows, or should reasonably have known' that the customer's circumstances would be likely to lead to the customer being in arrears (see further on this below), the definition of 'arrears' works such that the minimum assistance measures only apply when the customer receives a subsequent bill. This has different impacts depending on the billing cycle, and this differing impact doesn't seem justified. For instance, a quarterly billed customer who has shown no signs of experiencing payment difficulties may be disconnected for non-payment without being entitled to tailored assistance, whereas this could not be the case for monthly-billed customers, who would typically receive a disconnection warning notice no earlier than after the next bill is issued. An alternative definition of 'arrears' (being the trigger for entitlement to minimum assistance under Division 3) might be where the customer has not paid an amount owing by the date required in a reminder notice, and where that amount exceeds a minimum amount (say, \$300). • It would be helpful to have guidance on when a retailer should reasonably know that a customer's circumstances would be likely to lead to arrears. If the customer has not spoken with the retailer, what information must the retailer take into account? The amount of information available to a retailer will depend on how long the consumer has been a customer of that retailer, and the nature of interactions between the customer and retailer. It would also be expected that different retailers rely on different systems and information when assessing a customer's circumstances and capacity to pay.

	<ul style="list-style-type: none"> It should be noted that the application of tailored assistance to any customer who is in 'arrears' will lead to some over-capture – customers who are not in payment difficulty will be entitled to assistance. This is the case notwithstanding clause 91(c), which entitles a retailer to discontinue assistance if the retailer becomes aware that the customer is not anticipating or facing payment difficulties. The onus on a retailer to establish that a customer is not experiencing payment difficulty would be too difficult for it to exercise this right. A consequence of this is that retailers will likely to be required to carry more debt, a cost that will need to be passed on to all customers.
<p>79 Minimum assistance</p>	<p>As drafted, Division 3 does not require a retailer to contact a customer pro-actively to offer the minimum assistance in section 79. This would seem to make sense, given that default assistance has been introduced for this purpose, ie. to protect a customer who otherwise does not engage or who has disengaged, and also given that a retailer must use best endeavours to contact a customer before disconnection in all cases. However, discussions at the second stakeholder forum seemed to be based on an assumption that retailers would use best endeavours to contact customers to offer minimum assistance where they are entitled to it.</p> <p>The draft code changes are silent on the extent to which the retailer must 'promote' the available assistance measures when dealing with a customer who is entitled to them. It would seem appropriate that retailers explain the availability of minimum assistance measures, including the availability of a payment plan, in or with the reminder notice, or when discussing payment of arrears with a customer.</p>
<p>79(1)(a)</p>	<p>As drafted, any customer in arrears is entitled to repay the arrears over a period of up to 2 years. 2 years is a very long time. It may be appropriate for customers experiencing serious payment difficulty or those with a large debt, but is not appropriate for customers experiencing temporary payment difficulty, or where the amount of arrears is small. E.g. a customer with arrears from a single monthly bill of around \$120 could demand a monthly payment plan of \$5 / month.</p> <p>As above, a partial solution to this might be to define 'arrears' (and therefore eligibility for minimum assistance) to those with an amount owing that exceeds a minimum amount.</p> <p>A further solution might be to reduce the minimum entitlement to a shorter period (say, 6 months), with an obligation on the retailer to consider a payment plan of up to 24 months where appropriate, taking into account the amount of arrears and any information the customer provides about their ability to pay.</p> <p>As drafted, the minimum entitlement is for a payment plan that provides for repayment of arrears. Sumo Power shared its concerns with an arrears-only payment plan in response to the first draft decision. An arrears-only payment plan would:</p> <ul style="list-style-type: none"> be very confusing to customers – it is assumed that the customer would continue to receive invoices for ongoing consumption and be required to pay on the due dates for those invoices, while separately meeting payments under a payment plan. Payments will fall due on different cycles, for different amounts, and sometimes at overlapping intervals. Further complication may arise if the customer misses a payment owing under a

	<p>subsequent invoice, where there is the potential for multiple collections paths or further amendments to existing payment arrangements; and</p> <ul style="list-style-type: none"> • be highly complex and expensive for a retailer to implement, involving significant changes to invoices, additional customer correspondence and potentially numerous collections paths for different amounts owing by a single customer. <p>The minimum entitlement should be for a payment plan that includes allowance for both arrears (to be paid off over the payment plan period) and an estimate of ongoing usage.</p> <p>It is important both that the customer can contact the retailer to change the payment plan (either to ensure the overdue amounts are paid off more quickly, if the customer's circumstances allow it, or to ensure that instalments are made more affordable) as is currently provided for in the draft, and also that the retailer can contact the customer to change the payment plan if the estimate of future energy usage changes.</p>
79(1)(c)	<p>It would be helpful to have guidance on what is meant by 'specific advice' about the likely cost of future energy use and how this might be lowered.</p>
79(1)(e)(i)	<p>A customer in these circumstances is entitled to the 'tariff that is most likely to minimise the customer's energy costs, based on the retailer's knowledge of their pattern of energy use and payment history'.</p> <ul style="list-style-type: none"> • In the case of electricity, if this is intended to relate to tariff structures (i.e. single rate vs TOU / demand tariffs), then it should be noted that such comparisons are difficult to undertake and only the most highly-trained agents could do this analysis well. It would rely on an assessment of the customer's pattern of energy use throughout the day and week, and in some cases seasonally. Where the customer is a new customer of the retailer (<3 months), that retailer may not have enough historical usage data to make this assessment. Where the customer is on a discontinued tariff, it may not be possible to move the customer back to their previous tariff if the change turns out not to be beneficial to the customer. • It is not clear how this entitlement would apply to gas.
79(1)(e)(ii)	<p>It would be helpful to have guidance on what is meant by 'practical assistance to help the customer reduce their use of energy...'. How does 'practical assistance' differ from 'advice' (79(1)(b)) or 'specific advice' (79(1)(c))? What specifically does 'practical assistance' entail?</p>
79(1)(e)(iii)	<p>It would be helpful to have guidance on what would satisfy an entitlement to 'information about how the customer is progressing towards lowering their energy costs given at sufficient intervals for the customer to be able adequately to assess that progress'.</p> <p>The customer's bill already displays usage information. Does a monthly bill showing average usage satisfy this entitlement? Ultimately, a customer will know that their energy costs are lowering by comparing the usage/costs of progressive bills, and it is unclear what additional information might be required. If this provision requires more than this,</p>

	then compliance will involve system development and/or significant ongoing effort, with marginal – if any – benefit to the customer.
79(1)(3)	What assistance is a customer entitled to if they can pay the cost of their ongoing energy usage, but cannot afford to also pay off arrears within 2 years? Is there a gap?
79(4) / 80(1) / 82	<p>These provisions require the retailer to extend the term of payment plan assistance if the retailer reasonably considers it necessary or of assistance to the customer. It would be helpful to have guidance on:</p> <ul style="list-style-type: none"> • the circumstances in which a retailer would have reason to believe that an extension [to the 6-month arrears-only plan] would assist the customer to continue to lower the cost of their energy use. Presumably, for this to occur the customer should have established that they have been lowering their usage, and that further time would enable them to lower their usage further such that they can afford ongoing payments; • the circumstances in which a retailer should reasonably consider it is necessary to extend a regular payment plan beyond 2 years? If a customer had been making the payments under this payment plan, then there should be no reason to extend it after the 2 years has ended; • in what circumstances a retailer should reasonably know about a customer's circumstances.
80(2) / 85(2)	When confirming a payment plan in writing, there would appear to be little benefit to including the full schedule of payments, particularly where the payment plan is over a long duration of frequent payments (in which case the schedule of payments can exceed one page). The payment plan can often be stated more simply; e.g. \$50 every fortnight starting #date and ending #date.
80(3) / 81(2)	If a customer misses a payment, the retailer 'must use its best endeavours to contact the customer'. 'Best endeavours' is not defined, and it would be helpful to have guidance on what constitutes best endeavours. For instance, can best endeavours be established by sending a SMS, email, letter? Can best endeavours be satisfied by sending the reminder notice (if not already sent) or disconnection warning notice. If the retailer must call the customer after each missed payment – keeping in mind that tailored assistance would be available to many more customers than would traditionally be considered in 'hardship' – this would be a significant ongoing effort and cost.
Division 4 – Default assistance	
84 Application of this Division	Default assistance applies to residential customers who are in arrears and have not put forward a payment proposal, or a revised proposal (tailored assistance), or have ceased to receive tailored assistance. This would appear to mean that all customers will, eventually, be entitled to default assistance, whether or not they engage with the retailer, and so will therefore apply to customers who are capable of paying but choose not to pay.

	<p>This being the case, it is important that default assistance does not unnecessarily extend the collections path (and therefore increase the amount of debt carried by the retailer) for customers who have no intention of paying until disconnection is imminent – see below possible solutions in section 85.</p> <p>The Commission has made verbal statements that a retailer has discretion when to offer default assistance, including by offering default assistance on or with the disconnection warning notice. This should be made clear in the drafting of the Code.</p> <p>As with the tailored assistance payment plan in clause 79(1)(a), the default payment plan is drafted as being for arrears only. Again, a default assistance payment plan should combine arrears with an estimate of ongoing usage.</p> <p>Further, to limit the amount by which default assistance will lengthen the collections path, the time for payment of the first instalment should be no earlier than 1 week after the offer is made (rather than 2 weeks, as currently drafted in 85(3)).</p>
	<p>Division 6 – Communications</p>
85 Default assistance	<p>The Commission has made verbal statements that a retailer has discretion when to offer default assistance, including by offering default assistance on or with the disconnection warning notice. This should be made clear in the drafting of the Code.</p> <p>As with the tailored assistance payment plan in clause 79(1)(a), the default payment plan is drafted as being for arrears only. Again, a default assistance payment plan should combine arrears with an estimate of ongoing usage.</p> <p>Further, to limit the amount by which default assistance will lengthen the collections path, the time for payment of the first instalment should be no earlier than 1 week after the offer is made (rather than 2 weeks, as currently drafted in 85(3)).</p>
89(4)	<p>The requirement to deliver a disconnection warning notice within 24 hours after it is sent could only be met by courier, which would come at considerable expense. The requirement should be for disconnection warning notices to be sent at least by priority post (or equivalent). If a time period is specified, then it should be counted in business days, not hours or calendar days.</p>
	<p>Division 7 – Miscellaneous</p>
93 Restriction on conditions	<p>The provision of a customer's personal or financial information may be necessary for the provision of some types of assistance, such as assistance preparing an URGS form. Assessment of a customer's capacity to pay will be compromised if a customer does not provide full disclosure.</p>
96 Restriction on transfer to another retailer	<p>This provision requires the retailer to object to a transfer of a customer when the customer's arrears is on hold under clause 79(1)(f)(i). Sumo Power does not support this requirement because it:</p> <ul style="list-style-type: none"> • may require changes to MSATS / CATS Procedures, which sets out specific objection codes (objection in Victoria for a prospective transfer is limited to 'certified debt'); • will become very difficult to achieve once the Power of Choice changes are implemented, which reduce the objection period to one day; • will require a retailer to make system and process development, at significant cost; and • the objection would be contrary to the interests of the customer: <ul style="list-style-type: none"> o the customer has already given EIC to transfer to the new retailer and has signed a retail contract, so the reversal would both be in contravention of the customer's wishes, and would potentially involve a breach of contract by the customer; and

	<ul style="list-style-type: none"> o by necessity, the objection would involve one retailer disclosing to the other retailer that the customer is in hardship, with obvious privacy implications.
Other amendments	
109(3) Reminder notice	It would be very difficult to implement a system solution that stops a reminder notice being issued when the customer has put forward a payment proposal or revised proposal. This proposal may have been sent by email and not yet read and actioned by the retailer. The reminder notice should only be suspended once a payment plan is in place.
110(2)(b) Disconnection warning notice	The requirement to specify, on a disconnection warning notice, the form of assistance that the customer is receiving, will involve system development and process changes, which will come at considerable expense without any apparent additional benefit to the customer.
111A(c) Disconnection	If the conditions in paragraphs (a) and (b) are satisfied, what additional condition is imposed by paragraph (c)? In other words, what additional reasonable action might a customer take towards remedying the non-payment? This paragraph appears superfluous and should be removed.

