



16 November 2016

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

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

Dear Sir/Madam

**Re: Safety Net for Victorian Energy Consumers Facing Payment Difficulties**

Thank you for the opportunity to comment on the Essential Services Commission's (ESC) *Safety Net for Victorian Energy Consumers Facing Payment Difficulties* (the proposed framework).

The Energy and Water Ombudsman (Victoria) (EWOV) is an industry-based external dispute resolution scheme that helps Victorian energy or water customers by receiving, investigating and resolving complaints about their company. Under EWOV's Charter<sup>1</sup>, EWOV resolves complaints on a 'fair and reasonable' basis and is guided by the principles in the Commonwealth Government's *Benchmarks for Industry-based Customer Dispute Resolution*<sup>2</sup>. In the context of our role, the *Energy Retail Code* (Code) amendments to implement the proposed framework set a minimum standard for energy retailers to meet. However, we recognise that there is scope for retailers to aim for best industry practice in their service to customers. Equally, we acknowledge the responsibility of customers to maintain engagement with their retailer in order to benefit from this service.

We broadly support the ESC's proposed framework and, in particular, welcome its emphasis on early engagement and energy management assistance. The purpose of this submission is to highlight some areas of the proposed framework that may lack clarity or may not achieve the purported safety net objectives of the framework. These comments are based on our extensive complaint handling experience.

**EWOV supports the framework's objective of early customer engagement**

EWOV welcomes the Immediate Assistance and Tailored Assistance support elements of the proposed framework, which we think will help retailers to engage with customers and raise awareness of the retailer support available to them - particularly payment plans. Our case

<sup>1</sup> See Clause 5.1 of EWOV's Charter <https://www.ewov.com.au/files/ewov-charter.pdf>

<sup>2</sup> See <https://www.ewov.com.au/about/who-we-are/our-principles>





research suggests that when retailers and customers communicate early and effectively about payment difficulties, it can help customers adjust their circumstances to minimise the accrual of account arrears.

In March 2015, due to the growing interest in energy and water affordability, EWOV released a research paper titled *A closer look at Affordability - an Ombudsman's perspective on energy and water hardship in Victoria*<sup>3</sup>. This research critically examined the reasons behind the increasing EWOV affordability-related case numbers and found that there were five areas where companies could do more to assist customers. One of those was a greater emphasis on communications focused towards early customer engagement. The paper made the following observation:

*"In the context of affordability, we sometimes find that contact centre staff do not make referrals to their company's hardship team or specialists, despite indications of payment difficulties. The practice is to wait for the customer to self-identify as being in need by asking their company for support. We believe that by avoiding early engagement and supporting customers having payment difficulties, energy retailers are contributing to future problems for themselves and their customers. Customers will accrue larger debts which may affect a company's cash-flow and generate unnecessary expenses on debt recovery."*<sup>4</sup>

It is pleasing for EWOV that the proposed framework attempts to address this issue through the default payment plan of Immediate Assistance and, where there is customer engagement, the Tailored Assistance payment plan.

### **EWOV details**

We believe that there is an opportunity to include more information about EWOV in the Customer Advice Manual and on customer notices. This will clarify EWOV's service and the free and independent role we play in dispute resolution.

In 2012/13, EWOV undertook a six-month state-wide 'road show' to 167 community organisations across Victoria and met with about over 800 community workers. It was evident from this experience that some community workers were either unaware of our service or confused about our independent and impartial role. We think that having more complete EWOV details on the first page of the proposed Customer Advice Manual, to include the words 'free and independent' and by listing of our phone number, will raise awareness of the role played by EWOV with community organisations and help with any misconception that we are consumer advocates or a branch of government.

<sup>3</sup> See <https://www.ewov.com.au/publications/a-closer-look-at-affordability/201503>

<sup>4</sup> See page 11, [https://www.ewov.com.au/files/a-closer-look-at-affordability\\_0.pdf](https://www.ewov.com.au/files/a-closer-look-at-affordability_0.pdf)





We also noted that the Customer Advice Manual lists our name without the word ‘Victoria’ in brackets. It should read ‘Energy and Water Ombudsman (Victoria)’.

Under clause 110 (2)(f) of the current version of the *Energy Retail Code* retailers must provide EWOV’s contact details on all disconnection warning notices. This is an important and well-timed notification to customers who are facing imminent disconnection and remains unchanged by the proposed framework.

### **Customers with pre-existing high arrears or those on retailer hardship programs**

While the proposed framework strongly promotes early customer engagement and intervention to help stop the accumulation of debt, we think that it doesn’t clearly explain how the safety net can adequately support existing customers who already have significant account arrears. Also, it would seem appropriate that customers participating in hardship programs at the transition to the new framework should enter Connection Support directly, rather than some earlier support level.

EWOV affordability-related Investigations closed in 2015/16 show that residential customers with an affordability complaint contacted EWOV with mean average arrears of \$2,464 (and median average arrears of \$1,654). From our case handling experience, it’s not uncommon for EWOV to assist customers who contact us with existing debts of between \$5,000 and \$8,000. Alarmingly, one residential customer contacted EWOV with account arrears of over \$22,000 from a single retailer.

It is our view that existing customers on hardship programs or with high debt should be transitioned to Connect Support. However, the challenge under the framework would be moving those customers paying their ongoing energy costs to a more self-reliant payment plan. Further, should these customers receive Tailored Assistance, it would likely be difficult for them to repay a quarter of their arrears in a six month period.

Also, the proposed clause 102 of the Code amendments, does not explicitly state how the continuous two year period of Connection Support will apply to existing hardship program customers with a high level of arrears. We seek clarification about whether the two year period begins at the time a customer is notified of the transition.

### **The importance of effective referrals to support organisations**

We think that making an effective referral to a community organisation or government body is a skill that requires both some knowledge of a customer’s needs and knowledge about the right form and availability of support.





We believe that retailers' staff should be trained to listen with empathy to the customer's story to identify their support need and then provide a contact phone number and online resources, such as the Australian Securities and Investments Commission's *MoneySmart*<sup>5</sup>. This website has a 'Find a financial counsellor' search function for users to find a financial counsellor nearest to them<sup>6</sup>. However, this search is limited to financial counsellors only and so doesn't list the whole range of available support, such as more personal support or government agencies.

We think the Code amendments are unclear about how retailers should make an effective referral. Under clause 90(2)(i) of the Code, a retailer should 'put the customer in contact with' a government or community service. However, the Code does not offer any guidance to retailers about how they should do this. This could be particularly difficult when a customer refuses to share their personal or financial information, as they are entitled to do under the proposed framework. This application of the framework could limit a retailer's ability to elicit the right information from a customer to help identify their support needs and provide useful, accurate advice.

Similarly, it could be difficult under 90(2)(h) of the Code amendments for a retailer to know what support is being provided to help it '*work cooperatively with any government or community service that the retailer knows is providing support to the customer*'.

### **Putting on the best tariff at the earliest reasonable opportunity**

We think that all customers with an established pattern of payment problems should be put on the best possible retail tariff as early as possible. This will help reduce their energy costs and limit a retailer's exposure to debt.

During EWOV's investigation of an affordability complaint, it is normal practice for us to ask the retailer whether the customer is on the best available tariff for their usage. As a matter of course, retailers regularly provide, and often proactively offer, better tariffs and contract terms as part of the complaint resolution. Sometimes improved contracts are also offered to customers before they contact EWOV.

We read clause 90 (3)(c)(i) of the Code amendments to require retailers to put customers on the best available tariff as part of an energy management plan under Connection Support. We believe there is merit to having this minimum entitlement earlier in the affordability conversation, such as during Tailored Assistance. This will give the customer more time to reduce the impact of their energy cost. It will also help those customers who, due to their poor credit history, are on a contract with higher tariffs and no pay-on-time discount. It's an

<sup>5</sup> See <https://www.moneysmart.gov.au/>

<sup>6</sup> See <https://www.moneysmart.gov.au/managing-your-money/managing-debts/financial-counselling/find-a-financial-counsellor>





approach that we believe would be consistent with the overriding objective of the framework to engage early with customers to mitigate the accumulation of arrears.

### **Tailored energy management can work**

EWOV's experience shows that a key measure for reducing energy expense for customers with payment difficulty is to work closely with them to help them understand how their household uses energy. The proposed framework recognises this idea as fundamental to addressing affordability. However, it could benefit both customers and retailers if some aspects of the energy management assistance were bought forward and the framework offered more guidance about how retailers could deliver tailored and effective support.

EWOV has a Technical Consultant who uses his expertise to carry out home energy audits for customers, including those who are having difficulty paying their bills and may not understand their household energy use. These audits are an integral tool in resolving often complicated hardship complaints. In 2015/16, EWOV carried out an energy audit in 61 affordability-related complaints – 21 over the phone and 40 in person at the customer's home. In 2015/16, we also undertook an additional 64 energy audits to investigate the possible cause of high energy use for customers who complained about receiving a higher than expected bill. We believe that in about half of these audits the high bill issue was masking the underlying cause of energy affordability for the customer – that is, the customer couldn't pay the large bill.

EWOV's energy audits are most successful when they identify an unknown appliance fault or unnecessary appliance overuse. The faulty appliance can be repaired or replaced. For example, this might be a hot water system for a landlord to fix or the Office of Housing to repair. Appliance overuse can occur when, for example, customers are unaware of the electricity that's drained from using two fridges or freezers, or the over-use of a clothes dryer. EWOV spends time to educate these customers about their appliance inefficiencies using tailored and personalised methods. We often do this by using electrical testing equipment to give practical and illustrative in-person advice at home with the customer, and follow up with calculations of the savings they can make from appliance and usage change. This personalised method makes the savings more real and achievable for the customer, so more likely to motivate and maintain change.

However, despite the completion of EWOV's energy audits, we find that there are some customers who do not have the ability to adjust their household energy use. We find that many vulnerable customers with payment problems already have a reasonable awareness about how they use energy and are relatively low energy users. The issues preventing the further reduction of energy use appear to be more structural in nature – for example, property type and quality, cost of appliance change, health conditions, or people at home most of day.





The Financial and Consumer Rights Council (FCRC)'s recent *Rank the Energy Retailer Report (August 2016)*<sup>7</sup>, which surveyed the opinions of financial counsellors, stated that:

“... clients were sometimes advised to make changes that were not within their power – such as repairing poor-quality rental housing or replacing expensive appliances. Behaviour change strategies could also be difficult for clients to implement, especially where this required cooperation from family members. Other respondents commented that clients were sometimes given incorrect energy efficiency advice.”<sup>8</sup>

EWOV thinks the proposed framework would benefit from some clearer practical guidance to help retailers understand how to deliver effective methods of energy management support. Our case research suggests that sometimes retailers have not provided customers on hardship programs with over-the-phone energy efficiency advice and rarely arrange their own home energy audits. The Code amendments are unclear about whether or how this will now change.

EWOV also believes that there would be some benefit in retailers providing a degree of energy management support at the Tailored Assistance support level. It is currently proposed as a minimum customer entitlement at the Energy Costs level. However, the earlier support is provided to customers having payment troubles, the easier it will be for them to change their usage patterns and the less likely retailers will be exposed to debt. We want to emphasise that this support should not be onerous on retailers to provide and could start as a simple awareness-raising, but responsive, telephone conversation about the main causes of high household energy consumption, together with a discussion about the best available tariff.

Also, we believe that energy management is a collaborative effort where retailers work closely with their customers. So therefore, we suggest a minor change to Clause 90(2)(f) of the Code amendments to read ‘develop an energy management plan *with* the customer...’, rather than ‘*for* the customer’.

### **Working with customers to meet the cost of their energy use can take time**

EWOV believes that in some circumstances the proposed three month period under Energy Costs where customers and retailers must work together to reduce the cost of the customer’s energy use will be too short.

<sup>7</sup> See <http://www.fcrc.org.au/wp-content/uploads/2013/04/4796-Rank-the-Energy-Retailer-Report-2016-Web21.pdf>

<sup>8</sup> See page 18 <http://www.fcrc.org.au/wp-content/uploads/2013/04/4796-Rank-the-Energy-Retailer-Report-2016-Web21.pdf>





EWOV handles many cases where customers have difficulty meeting the cost of their energy use. This creates an issue for retailers, who find that they are subsidising the cost of the customer's energy. Several options to help address this unsustainable subsidy are outlined in the proposed framework – payment plans, energy management plans, government assistance and grants, putting customers on the best tariff, appliance replacement and referrals to other agencies. Together, these support elements can succeed. However, an expectation that this success could be achieved within three months may be unrealistic. It is our experience that many customers contact us after having been on (and off) retailer hardship programs for sometimes several years. While the delivery of hardship support varies from retailer-to-retailer, we sometimes find that even with the best support and reasonable levels of customer engagement, customers feel the need to contact us. It's likely that three months would not be enough time to realise a maintainable payment arrangement for many hardship customers.

While the nature of EWOV's relationship with customers is quite different from a retailer's relationship, on average in 2015/16, it took 43 days (and a median average of 35 days) to close an EWOV affordability-related Investigation. We only have a short term and temporary relationship with customers to help them and their retailer to 'get back on track' to work together on a plan for future sustainable payments and support. An EWOV resolution can be viewed as a new beginning, where the ongoing customer relationship passes solely to the retailer and their long-term work continues.

The FCRC's *Rank the Energy Retailer Report (August 2016)*, stated that:

*"Many retailers, financial counsellors reported, want matters resolved within three to six months, a timeframe that is simply not realistic for many clients. Retailers' short-term focus means that clients often have to re-apply for assistance – a process that is stressful for clients and burdensome for financial counsellors."*<sup>9</sup>

### **The removal of the restriction on switching for Pay-As-You-Go customers**

EWOV welcomes the rationale behind restricting retailer switching for customers who are receiving the Energy Costs form of Connection Support. However, we think the proposed framework is unclear about why this rationale should not equally apply to those customers on Pay-As-You-Go support, who would likely have more entrenched payment problems.

In handling affordability and hardship complaints, we find that sometimes customers contact EWOV with debts owing to more than one retailer, making it more difficult to reach a sustainable resolution. This made us aware of the risk that after a mutually agreed EWOV

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<sup>9</sup> See page 13 <http://www.fcrc.org.au/wp-content/uploads/2013/04/4796-Rank-the-Energy-Retailer-Report-2016-Web21.pdf>





resolution, customers could switch retailer and potentially return to EWOV later on. This led us to consider the sustainability of our resolution outcomes. It's in the interests of both customers and retailers that conciliated payment plans are realistic and maintained.

Accordingly, in 2016 we undertook internal research into the sustainability of EWOV-resolved payment plans by analysing a sample of 215 EWOV energy affordability Investigations closed in 2015. We found that, irrespective of whether the customer maintained the payment plan, 25% of the sample customers decided to switch retailer after the EWOV resolution. Often these customers had large account arrears, yet the transfers were not blocked. It was unclear from our research whether customers were aware of the potential impact of switching retailers before their arrears are paid, particularly the limited payment assistance they could access on their closed account.

EWOV believes that by restricting the ability for Pay-As-You-Go customers to switch retailers for a limited period of time it will give retailers the opportunity to work with the customer to achieve a payment arrangement that can be sustainable and maintained.

### **Some clarity needed about the operation of payment plans**

In reading the Code amendments, we thought there were some amendments around payment plans which were unclear or imprecise.

Under the Tailored Assistance support option, Clause 82(2)(b) of the Code amendments states that a retailer when providing assistance must *'advise the customer of the average cost of their monthly energy use over the previous 12 months'*. This requirement can be difficult for retailers to meet when the energy usage data is not available, such as when a customer has moved house or is a new customer.

In providing support to a person receiving Energy Costs Connection Support, Clause 91 of the Code amendments states that a retailer must *'at the end of each fortnight, inform a residential customer on a payment plan... of the cost of the electricity they used during that fortnight and how that cost compares to their fortnightly payment under the plan'*. The clause does not outline the delivery method of his information to the customer - be it by phone, SMS, email, post or otherwise. Each delivery method has its own drawbacks, such as the time taken to receive the information, internet access issues or the inconvenience of making and receiving regular phone calls. One option is to send the fortnightly report using a communication method of the customer's choice, from a list of methods provided by the retailer.

Clause 98(1) of the Code amendments uses the phrase *'best endeavours'* when setting out the effort that a retailer must take to provide a payment plan promptly to a customer. This phrase has been used in Victorian energy regulation to represent different sets of service







standards, such as the 'best endeavours' to contact a customer experiencing payment difficulties before disconnecting their supply, or the efforts that should be made to take a meter reading. Accordingly, we enquire as to whether there should be some clarity in the Code amendments about what 'best endeavours' means in this new context.

We trust that these comments are useful. Should you require further information or have any queries, please contact Justin Stokes, Senior Research and Communications Advisor on (03) 8672 4272.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cynthia Gebert'.

**Cynthia Gebert**  
**Energy and Water Ombudsman (Victoria)**