

25 November 2016

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



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

Dear Commissioners,

***Re: Safety net for Victorian energy consumers facing payment difficulties***

The Consumer Utilities Advocacy Centre (CUAC) appreciates the opportunity to provide a response to the Essential Service Commission's (the Commission) ongoing work to develop a framework to better support energy customers experiencing payment difficulty.

CUAC is a specialist consumer organisation established in 2002 to represent Victorian energy and water consumers in policy and regulatory processes. As Australia's only consumer organisation focused specifically on the energy and water sectors, CUAC has developed an in-depth knowledge of the interests, experiences and needs of energy and water consumers, in particular those from low income, disadvantaged and rural communities. CUAC's policy positions are informed by evidence based research.

**Process and proposed framework**

CUAC welcomed the Victorian Government's addition to the Commission's objectives, to specifically promote protections for customers including those experiencing payment difficulty. We strongly support the review to the current regulatory safety net to address the sustained and concerning level of energy disconnection evident in the Commission's performance reports in 2014 and 2015.<sup>1</sup>

We support the Commission's aim to increase clarity for consumer entitlements and early access to payment plans to help prevent the accumulation of debt. However, we are concerned with aspects of the standardised approach, to the extent that there is insufficient evidence to demonstrate that this framework will deliver better outcomes and prevent disconnections, particularly for those vulnerable and disadvantaged consumers who present with complex problems. While the safety net is based on the premise that it is a minimum standard and allows retailers the discretion to provide more assistance through flexible arrangements, we are concerned that a new emphasis on the proscribed safety net may limit flexible arrangements in place/being developed by some energy retailers. We suggest the Commission might consider further testing of the model and a more "principle" driven approach to the safety net to facilitate a degree of flexibility.

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<sup>1</sup> After a significant rise in disconnection rates in 2013-14, disconnection rates in 2014-15 remained high by recent historical standards. The ESC's 2014-15 performance report showed that 34, 418 residential electricity customers and 22,322 residential gas customers were disconnected from supply due to non-payment of an outstanding account. Essential Services Commission, *Energy Retailers Comparative Performance Report – Customer Service*, 2016, viii.

CUAC acknowledges that the affordability issues that underpin energy payment difficulty have several causes, including but not limited to government energy support programs, and that there is a need to consider the intersection of the energy safety net with the nexus of social policy. We note the Energy and Water Ombudsman Victoria (EWOV) has flagged that affordability issues are at the core of many cases in which consumers experience complicated financial circumstances, a high level of debt and where consumers demonstrate an inability to negotiate or maintain apt payment arrangements. EWOV's analysis of its own interventions to negotiate payment arrangements in 2015-2016 showed that fewer than 50 percent of customers maintained the resolution proposed by EWOV.<sup>2</sup> This is despite the EWOV's focus on negotiating payment plans that are realistic and taking into account the customer's capacity to pay. In light of the ESC's recent decision to delay its final decision beyond early December 2016, CUAC suggests that the State Government might consider the underlying causes and potential social policy solutions in conjunction with the ESC's review.

It is crucial to ensure that the safety net is "good to go" before implementation by retailers, because of its profound impact on consumer access to an essential service. It is, in our view, unlikely that further significant changes will be possible after retailers have implemented any significant system changes and retraining of staff required to be compliant with the new framework. In its current form, we consider the proposed safety net does not provide sufficient assurance that it will meet its intended objects.

CUAC recommends that the Commission give further regard to cost/benefit analysis, and evaluation through modelling, to develop a stronger evidence base for a solution prior to reaching a final decision about the framework. We also recommend the Commission consider the significant body of research on consumer behaviour to ensure effective regulatory reform.<sup>3</sup> We believe that the Commission's previous informal consultation towards this review did not adequately build on expert participant input about the practical aspects of the proposal and recommend that the Commission engage more meaningfully with stakeholders to explore the results of further analysis, the suggestions provided in the written responses of stakeholders and further approaches and suggestions.

CUAC strongly supports the Minister for Energy and Resources' initiative to establish an expert panel to monitor and report on the new arrangements to ensure they are delivering on the recommendations of the report.

## **Recommendations**

The ESC should:

- Develop a rigorous evidence base to support the framework and mechanisms of the payment difficulty safety net
- Take into consideration the existing consumer research into consumer behaviour
- Undertake a further, more considered consultation phase with stakeholders to address outstanding concerns and issues
- Ensure the new framework does not reduce consumer protections

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<sup>2</sup> Energy and Water Ombudsman Victoria, *2016 Annual Report*, 2016, 9.

<sup>3</sup> See for example CUAC's research into family violence into family violence where we explored with consumer advocates, what constitutes best practice to assist this particular vulnerable group: Consumer Utilities Advocacy Centre Ltd., *Helping Not Hindering: Uncovering Domestic Violence & Utility Debt*, Melbourne 2014, 37-38

## **Matters for consideration**

### ***Understanding the impact of regulation on consumer behaviour: an independent research base***

Understanding and considering consumer comprehension and behaviour in response to design options for the safety net would help test the assumptions we make as consumer advocates, retailers and regulators. The safety net is designed to assist consumers with different needs in navigating payment options and energy management at various stages of the transaction process with retailers. We know that consumers struggle with understanding and problem solving, given the complexity of the energy market, contracts, bills, payment options and the ways that they may be able to influence energy costs. It is of fundamental importance that the regulatory strategy aligns to the extent possible with the actual understanding and likely positive interactions with the framework.

Recent research by Harrison, Paul, Hill, Laura, and Gray, Charles (2016) points to the advantages of testing regulatory design and assumptions in a like industry. The research examined through empirical research the consumer comprehension of telecommunications agreements, not by asking consumers whether they understood their agreements but by applying a knowledge test. The research sheds light on the capacity of consumers to solve everyday problems within the context of complex contracts. The research identifies that design and engagement should take account of factors such as simplicity (messaging), timing (when is a consumer likely to engage), comprehension, attention to the amount of information provided, language, format and structure of information, the socio- demographic of those being communicated with, financial literacy etc. These factors impact significantly on actual understanding.

Based on the research findings the researchers recommend:

*'...a need for expert independent research to provide an evidence base when introducing or reviewing customer information obligations, to reduce the risk of inaccurate presumptions about consumer behavior informing regulatory obligations.'*

### ***Pathways to payment options should be transparent for all consumers***

Retailers consistently express that the biggest barrier to successfully assisting customers in payment difficulty is non-contact by the customer. CUAC suggests that a key component to a successful safety net is ensuring that **all** customers have ease of access to simple and effective information on payment and energy management options, particularly when they experience payment difficulty. We agree that in the first instance it is positive to have those options available without the stigma of being identified as "in hardship". We recommend that the safety net require that **all** customers are informed about payment options and ways to safely reduce energy consumption.

We support the proposed introduction of the Commissions' Customer Advice Manual as part of that communication and believe that it could be enhanced by further simplification and format (availability in languages, large print etc).

### ***Energy management should go hand in hand with addressing payment difficult: early intervention***

Effective energy management is essential to supporting customers experiencing payment difficulty. To improve affordability we suggest that management of energy should be addressed earlier in the process.

Consumers who understand the relationship between their payments and their ongoing energy use and who are supported to understand the ways they can effectively reduce their consumption are more likely to be engaged and feel in control of their situation and to potentially stabilise arrears. (We note the limitations facing private and public tenants to influence energy inefficient housing and appliances and support additional assistance for these consumers.)

A lack of effective energy management information and support has left a significant gap in the current support provided by retailers. It is a reasonable expectation that retailers provide meaningful energy information and support to customers experiencing payment difficulty. However, it is unclear how the new payment difficulty framework will increase the obligations on retailers to provide tailored, accurate energy information to their customers.

We welcome the requirement for retailers to draw a clear link between the cost of ongoing energy consumption and the amount of the payment plan. However, we believe the safety net would be improved by requiring energy management support earlier in the framework thus giving householders every opportunity to reduce their energy consumption to an affordable level by eliminating unnecessary (wasted) energy use.

### ***Considering the specific needs of vulnerable and disadvantaged consumers in navigating the safety net***

Transparent access to payment plans for all consumers (without needing to meet hardship requirements) is likely to both reduce the severity of payment difficulty and encourage consumer engagement with retailers. However, CUAC's experience arising from research and the operation of an energy literacy program for vulnerable and disadvantaged consumers reinforces the need for a targeted and more flexible approach for vulnerable and disadvantaged consumers with specific and/or additional needs to ensure that they can access the safety net.

Consumers in these circumstances may find it difficult to interact with a largely standardised approach. These consumers are less likely to engage successfully because they:

- do not have access to computers, the internet or website information<sup>4</sup>
- have low literacy/financial literacy, health/mental health circumstances requiring information that is targeted to them
- may need additional assistance in understanding how various options may work for them, and therefore need direct phone advice/support

### ***Risks in reducing consumer protections***

In our view, reducing consumer protections creates the risk of increased consumer detriment and increased disconnections. The Commission's 2014-15 Comparative Performance Report records the number of Victorian consumers successfully exiting a hardship program after successful completion fell from 18.3 percent in 2012-2013 to 11.8 percent in 2014-2015.<sup>5</sup> However, it is worth considering that success of hardship programs in other jurisdictions has also been meagre. According to the AER's 2015-2016 retailer performance report, "only four electricity retailers and one gas retailer had a success rate greater than

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<sup>4</sup> There were 1.3 million Australian households without internet access at home in 2014-15 according to ABS 2016, *Household Use of Information Technology 2014-15*, Cat.No. 8146.0.

<sup>5</sup> Essential Services Commission, *Energy Retailers Comparative Performance Report – Customer Service*, May 2016, 28.

10 per 100 hardship customers”, none of which was one of the big three retailers.<sup>6</sup> Additionally, the AER report states that the number of consumers exiting a hardship program due to exclusion fell from 57 percent in 2014-2015 to 48 percent in 2015-2016.<sup>7</sup> By comparison, the Commission reports the number of Victorian consumers being excluded from a hardship program due to non-compliance fell from 26.2 percent in 2012-2013 to 22 percent in 2014-2015. While any differences in methodology in the two reports may prevent a direct comparison, these statistics suggest that introducing a framework with lower consumer protections than currently exists in Victoria is likely to cause further disconnections and harm to consumers.

### ***Empowering consumers to shrink bills through choice of retailer***

CUAC supports the Commission’s objective to empower consumers within the framework. Our energy literacy program, however is built on the assumption that targeted assistance is necessary to help vulnerable and disadvantaged consumers access the benefits available through choice, energy management and exercising their rights to concessions and government assistance programs. CUAC’s program, entitled *Taking control of your energy*, encourages consumers to build their understanding, take control of their energy use and shrink bills.

An integral part of this program has been to increase the support available to these consumers to overcome what we consider to be the considerable barriers to their effective use of retailer choice. This has included hands on assistance to assess these offers using the Victorian Energy Compare independent comparison website.

Research indicates that Victorian consumers can save ‘up to \$610 - \$830 per annum (depending on their network area) by switching from the worst standing offer to the best market offer’.<sup>8</sup> These potential savings can substantially impact future payment difficulty and affordability for these customers. We suggest that further consideration needs to be given to examining the role of choice in the framework and whether it is in the best interests of consumers to be locked into long term payment arrangements.

Despite the intention of the proposed safety net to empower consumers, we believe that because of the nature of the issues experienced by vulnerable and disadvantaged consumers, this group may ultimately become disempowered by the standardisation of the proposed model, particularly when they require additional assistance to negotiate the system.

***The framework should require clear, simple, transparent information to assist consumers to easily navigate their rights and obligations under the safety net including:***

#### ***Online information***

Retailers should be required to place information on the home page of their websites that:

- outlines payment difficulty payment options and energy management advice
- provides customer service advice and connection pathways to specialist teams

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<sup>6</sup>Snowy Hydro now has a sizable share of the market as the owner of Lumo and Red Energy. Lumo reported 11 percent successful hardship program exits while Red Energy report 9 percent successful hardship program exits.  
<sup>7</sup> Australian Energy Regulator, *Annual Report on the Performance of the Retail Energy Market 2015-2016*, 2016, 40

<sup>8</sup> St Vincent de Paul and Alvis Consulting Pty Ltd, *Victorian Energy Prices January 2016: An Update report on the Victorian Tariff-Tracking project*, 2016, 4.

- a link to the ESC's Customer Advice Manual
- home energy management advice (including video room by room audit) and/or links to government approved energy efficiency advice
- information or links to information regarding concessions and energy assistance programs

### ***Reminder notices/SMS reminders/disconnection warnings***

Retailers should be required to provide SMS communications for key transactions including:

- reminder notices /disconnection warnings
- payment plan obligations
- messages about payment options
- contact numbers for assistance

### ***Customer service: phone options/specialised teams***

Retailers should be required to have information available to consumers on direct contact assistance phone numbers/teams

## **Design of the Framework**

### ***Early action***

We support the introduction of standard payment 'opt in' options for all consumers as an integral part of the safety net. However, we note that it is not clear whether all consumers will have access to this option on signing with a retailer offer or whether there is a safety net trigger (payment difficulty).

Under cl 76 (1) of the Amendments to the Energy Retail Code (AERC), it states that 'The *retailer* must make the following options readily available to a residential customer who wishes to take advantage of them.' Further clarity is needed on whether this will impact on pay on time discounts. There may be a significant trade-off for consumers who forego discounted offers that attract significant savings for a regular payment arrangement. This potential trade-off needs to be better understood.

Energy management advice should also be offered as part of early action (including online resources such as walk-through videos, links to independent energy management advice and phone advice to assist those vulnerable customers without computer/internet access).

### ***Immediate assistance***

While we appreciate the intent of placing 'non-contact' customers on automatic payment plans after missing a reminder notice pay by date, we are concerned that this may bring about considerable customer confusion and unintended consequences.

Our understanding is that a significant number of customers regularly pay after reminder notices and before disconnection notices for a range of reasons, many of which are not related to payment difficulty. This issue has been identified in consumer experience research conducted by Ernst and Young, which found that of the 22 percent of Australians who paid an electricity bill late in 2013-14, 32 percent 'forgot to pay' compared to 60 percent who were 'unable to afford payment'.<sup>9</sup> AGL have also reported that "[approximately] one third of AGL

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<sup>9</sup> Ernst & Young Australia, 'Voice of the customer is getting louder: Customer Experience Series™', *Utilities (Wave 3)*, 2014, 9. Available online at: <http://s3.documentcloud.org/documents/1312217/ernest-amp-young-utilities-survey.pdf>

customers pay their bill in full post the due date of the Reminder Notice”.<sup>10</sup> Under the proposed framework, AGL suggests that 50,000 AGL customers would be placed on a default payment plan per month despite their propensity to pay outstanding bills in full.<sup>11</sup>

It would be useful to have more complete information from retailers to assist this analysis. However, using the AGL example, it appears that placing all consumers who don't pay on time on automatic payment plans may be contrary to the wishes of a large group of those consumers and incur some detriment to them. It also raises the question of whether the added cost of establishing and monitoring payment plans - particularly for this group - would be inefficient and to no particular overall benefit.

Placing 'non-contact' customers who potentially fall into the payment difficulty category on automatic plans may also not provide the desired benefits of early intervention. It is unlikely that these customers will be further empowered or engaged with their retailers as a result and the plan may not meet their needs. There may also be some unintended consequences for some customers, where automatic payment plans do not coincide with their income dates or create an additional burden for consumers with preferred payment methods - e.g. a requirement for more frequent payments at Australia Post. Placing customers who may have inadvertently missed a payment and wish to continue with their current arrangement could also lead to significant customer enquiries and complaints.

An alternative option is to promote 'opt in' standard plans to all customers who do not pay by the due date through written, email, SMS or phone contact. While we strongly support the use of email and SMS by retailers to contact customers, additional strategies are needed for those vulnerable consumers without mobile phones or access to computers including mail and or phone contact.

Under missed payment immediate assistance, the customer is not encouraged to negotiate with their retailer – instead they are advised in the Customer Advice Manual that they can call the energy company immediately to find out **about the assistance you are entitled to receive** and/or make a payment according to the **Payment Plan sent by your energy company**. This language is not open and in our view gives the impression to the customer that they are a passive party to customer negotiations rather than empowered to come to reasonable arrangement.

CUAC recommends that further analysis and modelling be provided on this part of the framework and that further consideration is given to adapting the strategy to ensure that it meets the Commission's aims.

We also suggest that energy management advice offered as part of **immediate assistance** strategies should include resources apart from written advice and include online resources such as simple walk-through home energy audit videos and/or links to independent energy management advice as well as customer service online phone advice to assist those vulnerable customers without computer/internet access.

In the event that this change was introduced, thought would need to be given as to how such a significant change could be effectively communicated to consumers, including how it would impact their current contracted payment arrangements.

### ***Tailored assistance***

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<sup>10</sup> AGL, *Submission - ESC Draft Decision: Safety Net for Victorian Energy Consumers facing payment difficulties*, 18 November 2016, 8.

<sup>11</sup> *Ibid.*

The trigger for tailored assistance is that the customer has not paid the bill by the due date and is in arrears. We support customer access to a tailored assistance payment plan together with advice and placement on the most cost effective tariff. We repeat that effective energy advice must be a primary component of this phase of the safety net as set out above, particularly any changes in behaviour that may result from a changed tariff.

We also note that the repayment requirements including timeframes are not sufficiently flexible and don't take into account the possible changes in circumstances of the customer (in meeting the requirements of AERC cl 82, subclause (3)). Prior to proceeding to disconnection, the retailer and customer should be able to come to a tailored or flexible payment arrangement to prevent disconnection. We note our earlier statement that discount prices are of most use to those in payment difficulty and should potentially be maintained or applied to reduce costs for vulnerable consumers.

### ***Connection support***

We support customers being given advice on the best offer available to them on request, based on their usage pattern and/or where this is unavailable, estimated usage. This is available to consumers accessing the Victorian Energy Compare website in exercising their choice of retailer and should be a principle of the choice regime. This part of the framework lacks some clarity as to retailer obligations and timeframes.

We strongly support the retailer requirement under 'connection support' to put consumers in contact with support agencies.

### ***Promise to pay***

We believe that flexible payment arrangements tailored to circumstances are important to allow a consumer and their retailer to take into account individual circumstances, negotiate suitable and sustainable payment arrangements and prevent disconnections. We understand that the Commission currently anticipates that this will occur where retailers choose to adopt best practice above the minimum standards. We believe this approach is disappointing and that further exploration of these options particularly in preventing disconnection of vulnerable and disadvantaged consumers should be explored.

To the extent that a retailer **may** choose to provide connection support to consumers who promise to pay (cl 86 Subclause (1)), we are not confident that the objective of giving retailers an option to establish a payment plan on this basis is in any way useful (cl 84).

### ***Energy costs***

As previously stated, we believe that the implementation of regulatory reform in order to prevent disconnection could be greatly enhanced by broadening and bringing forward entitlement to energy management assistance for the effective operation of the safety net.

We support:

- the implementation of an energy cost payment plan (and management plan)
- arrangement of a tariff to suit energy cost (this should be based on analysis of customer use)
- proactive contact with support services
- cooperation with government and community services (we remain unclear about the extent to which this incorporates a flexible approach to the payment arrangement)
- cl 91 requiring retailers to provide customers with fortnightly information about the cost of the electricity used in comparison to their payment plan

We query that it is in the long term interests of these consumers:

- to be limited to paying 66% of their current usage
- to be limited to a three month period in which to pay off all use and arrears. (We note that under cl 96 Subclause (8) the retailer may extend a payment plan)
- to move to a pay-as-you-go (pre-payment plan if the previous plan failed).

The code is silent on customer wellbeing. We note that there is some evidence that older people, in particular, may limit energy use below their welfare needs and that this can result on their health and wellbeing. We believe that energy use information should include independent or departmental information about this.

We are therefore concerned with the wording of cl 90 Subclause (3)(c)(iii) 'assistance with taking any other measure that the *retailer* has reason to believe would make a material contribution to reducing the cost of the customer's energy use....' This may, as worded incorporate drastic measures for energy reduction or energy management not in the interests of the customer's wellbeing.

If a customer fails a fortnightly payment on an energy cost plan under cl 92, it is punitive to only be able to avoid a disconnection warning notice by exercising their entitlement to pay-as-you-go.

### ***Pay-as-you-go***

The object of cl 91 is to provide consumers who are in arrears with an entitlement to remain connected by pre-paying their energy use. This impacts on the end of the safety net where it is most likely that the causes for imminent disconnection include crisis or chronic lack of income. Setting in place a series of arrangements for additional payment is likely to be impossible.

Under cl 96 Subclause (1) if the customer has already failed the energy costs payment requirements they are unlikely to be able to facilitate pre-payment of their energy use. Under cl 92 Subclause (2) if at any time their use exceeds 10% in a fortnight of the pre-payment amount – this triggers a process towards disconnection unless they can meet the increased amount. This does not take into account those customers on fixed incomes whose fortnightly benefit cycle does not coincide with their energy payment arrangements/arrears.

It is at this point of the safety net framework that it is more likely that a flexible payment arrangement will be more successful in preventing disconnection than in escalating costs.

We suggest that the Commission should reconsider this section in light of the overall objects of the safety net to prevent disconnection. This approach does not take account of the successful approaches of some utilities in keeping customers on supply while looking to the economic viability of the business.

### ***Reconnection***

We do not support the requirement that customers are only entitled to reconnection for non-payment on the basis of a 'pay as you go arrangement'. This may well have the consequence of vulnerable and disadvantaged consumers being off supply for long periods which we believe is unacceptable. These customers should be able to access support for reasonable reconnection payment options, support and referral. We suggest that the Commission should revisit this part of the framework.

Thank you for the opportunity to provide feedback on the Commission's draft decision. If you

have any queries about this submission, please do not hesitate to contact the undersigned.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Petrina Dorrington', written in a cursive style.

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