



8 October 2015

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

By email: energyhardshippreview@esc.vic.gov.au

Dear Sir/Madam

Re: *Energy Hardship Inquiry Draft Report*

Thank you for the opportunity to comment on the Essential Services Commission's (ESC) *Inquiry into the Financial Hardship Arrangements of Energy Retailers – Draft Report*.

As an industry-based external dispute resolution scheme, the Energy and Water Ombudsman (Victoria) (EWOV) provides alternative dispute resolution services to Victorian energy and water customers by receiving, investigating and facilitating the resolution of complaints. Our comments in this submission are based on our complaint handling experience.

The Commission's Draft Report proposes major change to the regulatory framework surrounding payment difficulties, financial hardship and disconnection. Based on the quantity and nature of the complaints EWOV handles, as outlined in our earlier submission to this inquiry, we agree with the Commission's assessment that the existing framework is not working well. We support the broad direction of the Commission's proposed framework and, in particular, welcome its emphasis on early intervention and improved energy consumption management assistance.

Notwithstanding this in-principle support, we note that while the Commission's *Draft Report* outlines the proposed framework, its appropriateness and effectiveness in practice will hinge on the detail of the changes, yet to be decided, and on how these changes are implemented. The proposed framework lacks detail in a number of areas. Crucially, the guidelines that flow from the inquiry will need to be comprehensive, clearly expressed and unambiguous. The proposed approach also presents issues that still need to be worked through, with potential revisions to the framework. Several such issues are identified in our detailed comments on each component of the proposed framework, below.

Early Action Option

We support the proposed introduction of an Early Action Option that is initiated by customers and to which they are automatically entitled. It will be important that codes and guidelines support the Commission's clear intention that customers are told about the Early Action Option and able to access it readily.

Payment Plans One and Two

We broadly support the Commission's proposal to further codify obligations on retailers to offer two payment plans to customers. Some issues for further consideration and/or clarification include the implications of billing cycle changes; eligibility for and access to Payment Plans One and Two, and the staging of assistance.

Eligibility and access

Under the Commission's proposal, customers who miss a payment are entitled to automatic placement on Payment Plan One if they are a concession cardholder, previous hardship program participant, or if they contact the retailer to advise they are experiencing payment difficulty.

Experience with the current framework suggests that customers advising their retailer of payment difficulty sometimes do not receive the support that they are entitled to. In *A Closer Look at Affordability*, our 2015 research paper on EWOV affordability cases, we noted that "sometimes... contact centre staff do not make referrals to their company's hardship team or specialists, despite indications of payment difficulties", and described customers' experience of retailers imposing barriers to entry to hardship programs, such as requiring that the customer first see a financial counsellor.¹

The disincentives for retailers to offer straightforward access to Payment Plans One and Two in the proposed framework are less than those currently discouraging easy hardship program access. Nevertheless, current experience highlights potential problems with access to support based on self-identification. The Commission may need to further specify in its codes and guidelines what types of customer communications retailers must take as disclosure of payment difficulty, as well as any obligations on retailers to elicit this information. Such clarification would help ensure the Commission's stated goal of consistency in approach and application by retailers and equitable access to Payment Plans for customers. In the implementation phase, retailers' contact centre staff training will be critical to ensuring that customers who advise of payment difficulty are given easy access to Payment Plan One.

¹ See p. 11.

Billing cycles

We support the proposal that quarterly billed customers on Payment Plan One be offered the option of switching to a monthly billing cycle. Presumably, the Commission intends that the repayment period be equal to twice the length of the original billing cycle – i.e. that a customer switching to a monthly billing cycle still has six (rather than two months) to repay a quarter’s arrears. We suggest that the Commission provide clarity on this issue in its codes and guidelines.

Staging

The components of the proposed framework are presented as linear in the *Draft Report*, although we understand that this is not necessarily the Commission’s intention. The staging of each element of support – and whether and how the regulatory framework can encourage or require that some customers receive a higher level of support before first going through lower support levels as debt accumulates – is a matter for further consideration.

With regard specifically to Payment Plans One and Two, for example, in some circumstances it will be appropriate for customers to be placed directly on Payment Plan Two when payment difficulty first occurs – for example, where a customer on a low, fixed income receives a particularly high bill. Similarly, in some cases it will be appropriate for customers to be offered an Active Assistance Plan before going through Payment Plans One and Two.

For a customer who misses both an initial quarterly bill and the first Payment Plan One payment, up to 6 months debt may have accrued. This accumulation of debt means that although repayments under Payment Plan Two are capped at consumption plus 20% of arrears, Payment Plan 2 amounts are not substantially less than Payment Plan One amounts – as illustrated with the example of a customer with average quarterly bills of \$390 in the table below. If Payment Plan One payments are unaffordable a customer, in other words, Payment Plan 2 amounts may be similarly problematic, even if a pay on time discount is applied. Moving directly from the initial missed payment to Payment Plan 2, on the other hand, may be manageable.

Example quarterly payments under Payment Plans One and Two

Quarter	Accumulated debt	Quarterly consumption	Debt repayment	Total payment due
1	-	\$390	-	\$390
2	\$390	\$390	\$195 (50%)	\$585
3	\$780	\$390	\$156 (20%)	\$546

Active Assistance Plan

EWOV broadly supports the Commission's proposed Active Assistance Plan requirements. We note that implementation and the detailed content of the ESC's related codes and guidelines will be absolutely critical to the effectiveness of these plans.

Tailored payment plans and capacity to pay

A key component of the Active Assistance Plan is a 'tailored payment plan', which is to see the customer's debt fully repaid by the end of the plan. The *Draft Report* does not detail how this payment plan is to be negotiated or any other requirements that these agreements between retailers and many of the most vulnerable customers must satisfy. A remaining ambiguity in the proposed framework, therefore, is how payment plans are to be negotiated in Active Assistance Plans (and Reconnection Plans).

We understand that the Commission is proposing to remove the current regulatory obligation on retailers to consider the customer's capacity to pay in the negotiation of payment plans, and we understand the rationale underlying this proposal. Particularly in the early stages of payment difficulty, the more straightforward and uniform payment plan obligations set out in the proposed framework are likely to increase the accessibility of payment plans for customers while benefiting retailers through more streamlined administration.

Whether or not the regulatory framework places obligations on retailers regarding assessment of capacity to pay, however, the issue itself remains intrinsic to payment difficulty and hardship issues. A customer's capacity to pay places an unavoidable ceiling on both the level of consumption they can afford and whether and how quickly they can repay debt. As such, what a customer can afford to pay will remain a consideration for EWOV as we work to facilitate fair, reasonable and sustainable resolutions, acceptable to both parties, in complaints about payment difficulties, hardship and disconnection.

In resolving such complaints, facilitating an appropriate payment plan agreement is often a major component of EWOV's work. As reported in our last *Quarterly EWOV Affordability Report*, for example, a payment plan or extension was part of the resolution in 67% percent of conciliated "payment difficulties" cases and 66% percent of conciliated disconnection cases in the April–June 2015 quarter.² In negotiating these payment plans, EWOV conciliators consider the customer's current usage, the level of arrears, and what they can afford to pay. It is difficult to see how any payment plan that the customer simply cannot afford could meet EWOV's objective of a fair and reasonable resolution.

More broadly, while a requirement upon retailers to assess capacity to pay may not be the best way for the issue to be addressed within the regulatory framework, our complaint data does

² See the *Quarterly EWOV Affordability Report*, 1 April 2015 to 30 June 2015, p. 7 & 12.

highlight the need for the Commission to consider other ways in which the regulatory framework might be designed to discourage unreasonable, unaffordable and unsustainable payment plans at the Active Assistance Plan stage.

Our case data highlights the difficulties that customers can experience when negotiating payment plan instalment amounts, even with the existing regulatory requirements regarding assessment of capacity to pay. The negotiation of payment plan instalment amounts is consistently the biggest contributor to EWOV's 'payment difficulties' complaint category; payment plan instalment issues also figure as a secondary issue in many of the disconnection cases we handle. Not uncommonly, customers contact us because they are struggling to negotiate an affordable payment plan: the retailer may have rejected the customer's proposal or asked for unaffordable instalments. In payment plan instalment cases, there is often a dramatic disparity between the amount the customer says they can afford and that requested by the retailer. For example, our analysis of a sample of such cases for our September 2014 edition of EWOV's *Quarterly Affordability Report* found that companies were seeking payments up to four times higher than what the customer said they could pay.³

There does appear to be a need for some mechanism within the regulatory framework that prevents or, at a minimum, discourages these practices. The *Draft Report* notes that customers on Active Assistance Plans will have the opportunity for "a period of payment below their cost of their current energy use" and notes that payment plans will need to be of long enough duration to allow the customer to repay their debt after reducing energy costs. Whether and how these entitlements are to be incorporated in codes and guidelines as positive requirements on retailers is a matter that the Commission will need to consider in the next stage of this inquiry.

Energy efficiency advice

As noted in our introductory comments, EWOV strongly supports the increased emphasis on energy consumption management assistance in the proposed framework. In payment difficulties and hardship cases involving high consumption, EWOV conciliators (and a technical expert) often discuss the customer's energy consumption patterns in an effort to help the customer identify changes that will reduce consumption. Although we sometimes visit the customer's home, these discussions usually occur over the phone. Our experience is that this type of over-the-phone energy consumption advice can be an effective and crucial piece of support. However, the person providing this advice must have the knowledge and skill to elicit the right information from the customer and provide useful, accurate advice. For example, in one recent hardship case, a customer had accrued \$3,600 in arrears, in large part due to a very old waterbed which was consuming a substantial amount of electricity. Skillful over-the-phone

³ See the *Quarterly EWOV Affordability Report*, 1 July 2014 to 30 September 2014.

questioning from EWOV's conciliator identified the high-consumption appliance, which the retailer then offered to replace as part of the resolution of the case. While over-the-phone advice can be sufficient, however, there are cases where an onsite visit is a more appropriate way of determining ways for a customer to reduce their energy consumption.

It will be important that, in the codes and guidelines flowing from this inquiry, the Commission elaborates further on its expectations of the energy consumption assistance that retailers are required to offer at each stage of the framework.

Reconnection Plan

Broadly, EWOV is in favour of an approach to reconnection which allows customers to reconnect without a large upfront payment, while also prompting re-engagement and assistance to limit the accumulation of further debt. However, this component of the Commission's proposal is comparatively lacking in specificity and clarity; it is therefore difficult for us to offer detailed comment. EWOV does have some concerns about our potential role as "registered third party" in the Commission's proposal.

Eligibility

The Commission has proposed that Reconnection Plans be made available to customers who have been disconnected after missing a payment on an Active Assistance Plan. This suggests that customers who are disconnected after missing a Payment Plan Two payment (and subsequently failing to engage with the retailer to negotiate an Active Assistance Plan) would not be eligible for a Reconnection Plan. It may be appropriate, however, for these customers to have access to a Reconnection Plan.

Four week requirement

The Commission states in the *Draft Report* that the customer "will only be able to maintain their reconnection for four weeks if they enter into a reconnection plan."⁴ This seems to suggest that Reconnection Plans are for a maximum duration of four weeks, after which the customer is to have reduced their consumption to an affordable level, and transitioned back to an Active Assistance Plan. If this is the Commission's intended meaning, EWOV recommends that this timeframe be lengthened. Our casework experience shows that the process of educating a customer about their energy use, agreeing to and implementing changes can take significantly longer than four weeks, especially if appliance replacement or drastic changes to consumption patterns are required.

Third party assistance

Under the proposed framework, any Reconnection Plan that involves the use of supply capacity

⁴ Page 110.

control or prepayment requires that a third party assists the customer in negotiation of the plan. The Commission has suggested that this role be filled by EWOV and other bodies, such as a community organisations, registered by the Commission.

We understand the Commission's rationale for third-party involvement in the negotiation of Reconnection Plans, particularly given the risks inherent in supply capacity control and prepayment. Unlike consumer groups and community workers such as financial counsellors, however, EWOV is not a customer advocate. Independence is crucial to our effectiveness as an external dispute resolution scheme, and as such, we would prefer that EWOV either takes on this role as the sole third party or remains separate from this process.

Supply capacity control and prepayment

Further, at this stage, with very little detail about how supply capacity control and prepayment might be used, we are unable to comment on when, if ever, we might view these measures as appropriate and in line with our objective of reaching fair and reasonable complaint outcomes.

Customers unable to reduce consumption to affordable levels

The Commission's proposed framework is geared towards limiting the accumulation of customer debt and bringing the consumption of high-usage customers into line with their capacity to pay for energy. These are appropriate objectives and achievable for the majority of customers. However, the regulatory framework may also need to take into account the small group of customers who are unable to reduce their consumption to affordable levels.

Public housing tenants provide an illustrative example. In 2014/15, public housing tenants accounted for 3.2% of total EWOV cases. But these customers were greatly overrepresented in affordability-related complaint categories: 53% of public housing tenant complaints were about a credit, as compared to just 27% of EWOV complaints overall. This group of customers has been disproportionately likely to approach EWOV about supply disconnection, accounting for between 10% and 16% of disconnection cases over the past two years. Public housing tenants are typically on very low, fixed incomes. They may be in housing that is thermally inefficient or in need of repair, with heating or other appliances that use large amounts of energy and that the tenant has little or no ability to change. For some of these customers, usage is likely to remain greater than what they can afford, even with assistance to change energy use behaviours.

Although they make up only a very small group, people who require large amounts of energy because of medical conditions are another example of a customer group of which some individuals may simply never be able to afford to pay for their consumption. The Commission needs to consider what outcomes these customers would experience within the proposed new framework.

Disconnection/non-engagement pathway

The proposed framework includes two separate pathways: a "non-engagement" pathway that leads to disconnection for non-payment, and an "engagement" pathway in which disconnection may only occur after missed payments and, at the Early Action Option and Payment Plan One and Two stages, customer failure to engage with their retailer. The *Draft Report* suggests that for customers that do engage, the retailer may disconnect the customer in compliance with existing *Energy Retail Code* requirements. It will be important to clarify what specific customer actions or inactions at each stage of the framework trigger reversion to the disconnection pathway.

Transition

As the Commission is aware, there will be substantial legacy issues to address in the transition to any new framework, including the critical issue of large legacy debts already accumulated at the time of transition. The assistance offered to customers participating in hardship programs at transition is an important and related issue. It would seem appropriate that these customer enter an Active Assistance Plan (or Reconnection Plan) directly, rather than progressing through the earlier stages.

We hope the comments in this submission are helpful. Any queries can be addressed to Justin Stokes, Senior Research and Communications Advisor, on (03) 8672 4272 or at justin.stokes@ewov.com.au.

EWOV is also interested in participating in the Commissions's technical working groups. In particular, our work and expertise are relevant to the Payment Plan Guidelines, Compensation for Wrongful Disconnection and transitional issues working groups.

Yours sincerely



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