

14 July 2020

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

By web portal: <https://engage.vic.gov.au/supporting-energy-customers-through-coronavirus-pandemic>

Dear Ms Symons,

Re: Draft Decision – Supporting energy customers through the coronavirus pandemic

Thank you for the opportunity to comment on the Essential Services Commission's (ESC) *Draft Decision – Supporting energy customers through the coronavirus pandemic (Draft Decision)*.

The Energy and Water Ombudsman (Victoria) (EWOV) is an industry-based external dispute resolution scheme that helps Victorian energy and water customers by receiving, investigating and resolving complaints about their company. Under EWOV's Charter, we resolve complaints on a 'fair and reasonable' basis and aim to reduce the occurrence of complaints¹. We are guided by the principles in the Commonwealth Government's Benchmarks for Industry-based Customer Dispute Resolution². It is in this context that our comments are made.

EWOV has been closely tracking case numbers and issue trends since mid-March, when the coronavirus pandemic first began to impact Victoria. Throughout the COVID-19 period our call numbers have been low, but have been trending up since late May. We expect complaint numbers will continue to rise throughout July and August as financial hardship in the community worsens, and lockdown bills as well as early winter bills begin to arrive. September, October and to a lesser extent November have all been busy months over the past two years due to seasonal factors and we anticipate that trend will continue, exacerbated by increased residential energy usage due to pandemic lockdowns.

To date, the low complaint numbers received by us reflect a combination of the effective income support measures introduced by the Federal Government through the JobSeeker and JobKeeper programs, the compassionate approach that retailers have taken since the onset of the pandemic, and the efficacy of the Payment Difficulty Framework (PDF) in managing financial hardship. Despite the immense pressure on small business that COVID-19 represents, we are not registering higher than usual

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

² See EWOV's website: <https://www.ewov.com.au/about/who-we-are/our-principles>

complaints from small business customers – in fact small business customers represent approximately 10% of cases for the 2019/20 Financial Year, a proportion which is commensurate with previous years. It's notable that this proportion had held steady over a period where overall case numbers have been low.

As the Draft Decision states, it is clear that retailers have worked effectively with small business customers to manage financial difficulty, despite there being no strict requirement to do so under the Energy Retail Code (ERC). Just as retailers have voluntarily chosen not to disconnect residential customers, so to have they voluntarily chosen to work with small business customers in providing flexible payment options that are not strictly required under the ERC.

The response of energy retailers to the pandemic so far should be commended, and the degree of goodwill they have shown is greatly appreciated. At the same time, we are conscious that this approach is not financially sustainable and cannot continue indefinitely. We are now clearly approaching a time when energy retailers will need to pursue payment more actively. Furthermore, this activity will be occurring despite ongoing, and possibly worsening, financial hardship throughout the community. In that context, the proposals made by the ESC in the Draft Decision represent an attempt to temporarily require retailers to, at least in part, continue applying the compassionate approach they have voluntarily taken to date. This is a responsible, timely and sensible step for the regulator to take, and is consistent with the ESC's statutory obligations under the *Essential Services Commission Act 2001*, section 10 of the *Electricity Industry Act 2000* and section 18 of the *Gas Industry Act 2001*.

The measures that the ESC have proposed in this Draft Decision in relation to residential customers are additional to the existing PDF, which will continue to play the central role in supporting residential customers in financial difficulty. They are moderate and sensible proposals which complement the existing framework, and are very much in line with well-established objectives. On that basis, we are supportive of those proposals.

By contrast, the measures proposed in relation to small business customers seek to create a new, temporary framework of support for small business customers in financial hardship – where no such framework currently exists, at least in a formal sense. There is a legitimate question as to the “essentiality” of energy supply to small business customers as opposed to residential customers, and there is the risk that too much support may unnecessarily protect small businesses from insolvency, and unreasonably shift the cost of that protection onto energy retailers.

At the same time, it is clear that retailers have so far been prepared to provide support to small business customers beyond what is strictly required and it is to be hoped that in the face of a once in a generation economic downturn, retailers will continue to make efforts to ensure that small business customers are afforded some flexibility in meeting their energy costs. In that context, it is not at all unreasonable for the ESC to seek to codify the support that small business customers can expect to receive, rather than rely wholly on the ongoing goodwill of energy retailers.

Ultimately, the question of the Draft Decision is not whether energy retailers should be temporarily required to provide a minimum level of support to small business customers. Given the extraordinary circumstances that Victoria currently finds itself in, it would be unthinkable for them not to be required to provide some sort of support. The question is, *how much* support should they be required to provide, and how clearly and rigidly should those requirements be expressed given that doing so creates a regulatory compliance obligation for retailers.

In considering this question, EWOV is of the view that the underlying principles of the PDF should guide the ESC's decision - namely the principles of early intervention and of constructive retailer-customer dialogue. Ultimately, (and despite the manner in which it is too often applied), the PDF was not intended as a "tick-the-box" compliance framework, but was specifically and expressly designed to encourage positive retailer-customer dialogue to arrive at the most suitable arrangement for the customer, in their own particular circumstances.³ The PDF was always intended as an inherently flexible framework, and calls on retailers and customers to actively engage. Requiring that flexibility and engagement from retailers, on a temporary basis, will be critical for small business customers in the months ahead. At the same time, it need not be accompanied by an overly rigid list of specifically required support measures.

Finally, while we have no direct involvement with the network relief support package our understanding is that network and retailer businesses are working constructively together to fine tune the package for the months ahead, acknowledging that the current settings have reportedly left some customers without the support originally intended. Provided those voluntary discussions remain constructive, there is no need for the ESC to intervene in the package through regulation. We do acknowledge the importance of the measure, particularly as it reduces the unusually high level of financial risk that retailers are currently being required to carry. We also note that those discussions are occurring in light of the rule change proposed by the AER which will apply to other parts of the NEM and is currently being considered by the AEMC (and of which all parties are fully aware).

Our further comments are set out below.

³ Essential Services Commission 2017, *Payment difficulty framework: Final Decision*, 10 October. p. 39. Available at: <https://www.esc.vic.gov.au/sites/default/files/documents/payment-difficulty-framework-final-decision-20171009.pdf>

DRAFT DECISIONS

Supporting Residential Customers

Draft Decision 1 – Supporting customers to complete and lodge utility relief grant

Retailers are required to support residential customers in completing utility relief grant application forms, including by submitting forms online on behalf of the customer where possible and the customer consents. We propose that this will be an ongoing requirement.

In our March 2020 *Affordability Report* we focused on the utility relief grant scheme (**URGS**) and found that between July and December 2019, 35% of our payment difficulty cases involving an account holder in arrears also featured a delayed URGS payment.⁴ This statistic alone is an indictment of a scheme specifically designed to assist vulnerable consumers who have fallen into arrears with their utility bills.

While the recent administrative failures of the utility relief grant scheme are well documented, it is heartening that in recent times the Department of Health and Human Services (**DHHS**) have drastically reduced their backlog and URGS payments have been flowing far more freely to those who need them. This is positive not only for vulnerable customers in financial and emotional distress, but also for the energy and water retailers who actually receive the payment and therefore reduce their liabilities. On that basis, we see real benefit in requiring retailers to assist customers to complete and lodge URGS application forms. Yarra Valley Water and Momentum Energy already do this and have shown that it is administratively achievable and financially feasible. Further, we are confident that retailers assisting customers with URGS applications will ultimately lead to fruitful discussions with DHHS, which over time will enable both parties to arrive at the most efficiently designed URGS process, and resolve any ongoing issues with the DHHS web portal.

We do not believe it is unreasonable to expect retailers to have a direct relationship with their customer, and to assist them in the manner envisaged by this Draft Decision. In fact, we believe it is perfectly aligned with the principles underlying the PDF and on that basis we support the Draft Decision and are pleased that it has been proposed to apply on an ongoing basis.

Draft Decision 2 – Extending tariff check entitlement to all customers receiving tailored assistance

Retailers are required to conduct a tariff check for all residential customers receiving tailored assistance, not just those who cannot afford the ongoing cost of their energy. We propose that this is a temporary requirement that would be in effect for six months from commencement of the rules for retailers.

⁴ Energy and Water Ombudsman Victoria, *Affordability Report*, March 2020 p.5. Available at: <https://www.ewov.com.au/reports/affordability-report/202003>

Again, this Draft Decision is aligned with the underlying principles of the PDF and on that basis we support it. In current circumstances, it should not be necessary for a customer to be at the point of being unable to afford their ongoing usage before a retailer conducts a tariff check on their behalf and proposes a cheaper alternative tariff, if one is available. This is a sensible measure to take in the midst of a severe economic downturn in which large numbers of customers will find themselves in extreme financial difficulty, many for the first time.

Arguably, in an ideal world, a proactive retailer engaging constructively with their customer to foster a sustainable customer-retailer relationship would already be conducting tariff checks at an earlier stage, and would not need to be required to do so by this Draft Decision. Certainly, there is nothing in the PDF to prevent retailers from currently choosing to do that - and any retailer that does so would be modelling best practice behaviour.

During consultation some retailer representatives have argued that this Draft Decision is unnecessary given the existence of the Best Offer Notice requirement, which already acts as a tariff check and is required to appear regularly on bills (every three months for electricity, and every four months for gas). With respect, we do not believe that the Best Offer Notice requirement renders this Draft Decision unnecessary, as we are not convinced that the Best Offer Notice requirement always serves as an effective prompt for customers to take action

Our own limited data suggests that, at least on its introduction, some customers were confused by Best Offer Notices, or did not trust retailers enough to believe what they were saying.⁵ Further, there are obvious limitations to Best Offer Notices for customers with limited literacy. This is reflected in the experience of customers we speak to through our outreach activities. Even for customers that are confident and highly literate, there is a tangible difference between receiving a Best Offer Notice on a bill and having a conversation with a retailer representative advising of an alternative tariff. In our view, the two modes of communication do not cancel each other out, but in fact support each other to make it more likely that the message being conveyed will actually be received and acted upon.

In current circumstances there are obvious benefits to this approach, particularly in relation to gas where expensive standing offers are still active, and are likely to impact heavily on customers who are currently legally required to spend more time at home and are therefore incurring much higher than usual winter heating costs.

While we understand and support this Draft Decision as a temporary six-month measure, if introduced the ESC could monitor its impact with a view to potentially making it an ongoing requirement, if it proves to be effective. Certainly, this will be worth considering when reviewing the PDF.

⁵ Energy and Water Ombudsman Victoria, *Early Impact of the VDO and Best Offer*, November 2019, p. 5. Available at: https://www.ewov.com.au/files/early_impact_of_the_vdo_and_best_offer_final.pdf

Supporting Small Business Customers

Draft Decision 3 – Payment flexibility for small business anticipating financial stress

Small businesses will have a minimum entitlement to assistance that helps them avoid getting into arrears with their energy retailer. We propose that this is a temporary requirement that would be in effect for six months from commencement of the rules for retailers.

As previously noted, we did not receive a higher than normal number of cases from small business customers during the 2019/20 financial year, despite the onset of the COVID-19 pandemic in Victoria in mid-March. This correlates with the ESC's observation in the Draft Decision that retailers have been actively and effectively working with small business customers to provide support despite there being no requirement to do so under the ERC.

We do note that while case volumes have been low, that is not to say that we have received no cases at all – and certainly there have been instances where if the Draft Decision had been in place the customer may have been treated differently by their retailer. While not common or systemic, it is not unheard of for retailers to take an inflexible approach to their dealings with small business customers, and to refuse to negotiate reasonable payment plans.

The below case study illustrates this point:

Omair* (Case reference 2020/6680 - Electricity - Assisted Referral)

Received 12 May 2020

Small business - Imminent disconnection

Due to COVID-19, Omair has been running his restaurant offering take-away only, which accounts for only 25% of his business. As such, he cannot afford his most recent monthly electricity bill of \$1,290.62.

Omair asked his retailer for a payment plan, but as they only offered a two-month plan in which he would pay \$645.32 on the due date, and then a second payment with the remaining balance, this was insufficient.

Omair has made smaller payments where possible and has requested payment assistance again, only to be advised by his retailer that they are not in a position to offer a payment plan. He has since received disconnection warnings.

** Name has been changed for de-identification purposes.*

Draft Decision 3 envisages a temporary six-month requirement to offer support akin to 'standard assistance' under the PDF, to apply to small business customers. This would entail requiring retailers to offer the below options in the event that a small business customer contacts them seeking payment flexibility:

- Making payments of an equal amount over a specified period
- Options for making payments at different intervals
- Extending by a specified period the pay-by date for at least one bill in a 12-month billing cycle

As the Draft Decision notes, these are moderate proposals which do not require the retailer to carry large amounts of debt on behalf of the small business customer, for any great length of time. In many cases they are likely already being applied, but as the case study above shows there are occasional instances where small business customers are not receiving this support – and there is currently no requirement for retailers to provide it.

In the context of an extreme economic downturn, we support the Draft Decision on the temporary basis on which it is proposed. It is reasonable that a minimum safety net of entitlements should be placed under small business customers at this time, and those proposed by Draft Decision 3 do not place an undue burden on retailers. It is hoped that in many instances the assistance provided already exceeds that which Draft Decision 3 would require, and that Draft Decision 3 therefore will operate as a true minimum level of assistance which any small business customer can be confident they will receive regardless of which retailer they happen to be contracted with.

Draft Decision 4 – Payment assistance for small businesses that miss a pay-by-date

Small businesses will have a minimum entitlement to assistance that makes it easier for them to pay for the on-going energy use, repay their arrears and lower their energy costs. We propose that this is a temporary requirement that would be in effect for six months from commencement of the rules for retailers.

Draft Decision 4 contemplates requiring support loosely akin to ‘tailored assistance’ under the PDF to be provided to small business customers in arrears, and the requirement would apply for a six month period. Under the terms proposed by the Draft Decision, this would include payment plans of up to two years, and a tariff check to ensure that the small business customer is on their most affordable tariff, based on their usage.

Draft Decision 4 is an altogether more significant impost on retailers and creates a greater administrative burden than Draft Decision 3. As has been raised in consultation, two years is a significant period of time to expect retailers to carry debt – especially when the customer is a small business customer, not a residential customer dependent on their energy or water supply for health and social participation. It has also been raised that ultimately, if a small business cannot pay its bills then mechanisms exist for that business to be declared insolvent, and it is unreasonable to expect suppliers to offer excessively generous payment terms to forestall that insolvency. When these factors are weighed together, Draft Decision does appear to be overly onerous, and imposes an unnecessarily high compliance burden on retailers.

For the reasons raised above, we do not support Draft Decision 4 on the terms on which it has been proposed. We do, however, support requiring retailers to provide some level of support to small business customers that have missed a pay-by date and fallen into arrears.

It is not unreasonable that the retailer should be required to conduct a tariff check at that stage, as they would be for residential customers under Draft Decision 2 above. Further, it is not unreasonable that retailers be required to offer some form of payment plan – at least in the terms contemplated under Draft Decision 3 above, in the event that a small business customer has missed a bill. In terms of a time period by which a small business customer should be expected to repay arrears, two years is excessive - but a lesser period of three or six months would be more reasonable.

Ultimately, and fundamentally, it is prudent for the regulator to temporarily require retailers to proactively engage with small business customers that have fallen into arrears and to work constructively with them in an attempt to achieve a sustainable ongoing customer-retailer arrangement. As has been observed, in the vast majority of cases imposing such a requirement will do no more than codify behaviour which retailers are currently already exhibiting. Even if Draft Decision 4 is overly rigid as currently formulated, the principle behind it is correct and timely.

Finally, in the case of both Draft Decision 3 and Draft Decision 4, our hope is that retailers view the requirements as a suite of tools or principles they can use to solve difficult problems in collaboration with their customers, and not simply as a series of regulatory hoops which must be jumped through to avoid breaching compliance. Further, we hope the requirements are genuinely seen as a minimum and do not prevent retailers from offering creative and innovative forms of assistance which may not be prescribed - but which may suit the customers circumstance.

QUESTIONS FOR STAKEHOLDERS

Question 1

Are there other measures you think we should be considering to ensure consistent protections for residential customers experiencing financial stress as a result of the pandemic, either in the short or medium term? If yes, please provide details.

As the ESC have noted, the PDF is a robust and thorough framework for managing payment difficulty. Given the existence of the PDF and the additional measures already proposed in the Draft Decision, we do not believe that any other further measures are required.

Indeed, rather than imposing additional measures, it is critical that the PDF be applied properly by retailers – and that customers are as aware as possible of their entitlements under the framework. Compliance with and enforcement of the PDF, in conjunction with broad and effective communication with retailers about their ongoing obligations as well as to customers about their rights, is more important at this stage than implementing any other further measures.

Question 2

Are there other measures you think we should be considering to ensure consistent protections for small business customers experiencing financial stress as a result of the pandemic, either in the short or medium term? If yes, please provide details.

No, the Draft Decision is sufficient. Above all, it is important that retailers embrace the principles underlying the Draft Decision proposals and work constructively with small business customers to manage payment difficulties, which will inevitably increase sharply in the months ahead. It will not be constructive to create a highly specific or overly technical framework of required assistance, it is more important to ensure that retailers are nimble, flexible and responsive to customer difficulty.

Question 3

We are proposing that if a small business misses a bill pay-by-date, it will be entitled to repayment of arrears over not more than two years by payments at regular intervals of up to one month. Do you think that two years is an appropriate length of time for small business customers to be asked to pay their arrears? If not, please provide details about what alternative would be appropriate.

In our response to Draft Decision 4 above we have stated that we do believe two years is too long and places an unreasonable impost on retailers. Without further analysis it is difficult to say what would be a more appropriate period, but we have recommended that the ESC examine three or six months and consider applying a shorter required period. Again, this is a minimum and there would be nothing to prevent a retailer from adopting a longer payment plan in certain circumstances – even if they are not strictly required to do so.

Question 4

We are proposing that a temporary entitlement to payment assistance for any small business that misses a pay-by-date. Do you think it would be practical or appropriate to restrict eligibility for payment assistance to small businesses that meet a set of criteria for financial stress? If yes, please provide details about what criteria would be appropriate.

We do not believe this would be practical or appropriate. Introducing such a set of criteria creates a further administrative burden for retailers and inevitably runs the great risk of potentially excluding some small business customers that may well require support, depending on how the criteria is framed.

Such a set of criteria is not necessary, especially given the entitlement is only temporary.

Question 5

Do you think the current network relief package to retailers has worked the way it was intended? Please provide details to explain your answer.

Our understanding is that the network relief package is being discussed by retailers, Energy Networks Australia (**ENA**) and distribution businesses, and that the Australian Energy Market Commission (**AEMC**) rule change is informing those discussions. While the rule will not apply in Victoria, we are confident that the industry will arrive at an effective voluntary agreement, and that any shortcomings of the current network relief package will be addressed through that process.

We trust these comments are useful. Should you like any further information or have any queries, please contact Zac Gillam, Senior Policy and Stakeholder Engagement Officer, on (03) 8672 4285.

Yours sincerely



Cynthia Gebert
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