



Submission to the Essential Services
Commission
Payment Difficulty Framework

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1st Contact

Kate Wheller
Executive Officer
Community Information & Support Victoria
03 9672 2001
kate@cisvic.org.au

2nd Contact

Minh Nguyen
Advocacy & Research Manager
Community Information & Support Victoria
03 9672 2004
minh@cisvic.org.au

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Capacity to submit

Community Information & Support Victoria (CISVic) is the peak body representing 60 community-based, not-for-profit agencies that provide local community information and support services. Its member agencies are staffed by over 320 paid staff and more than 3000 volunteers.

Our local services assist people experiencing personal and financial difficulties by providing information, referral and support services including Emergency Relief (ER), financial counselling and financial literacy. Our agencies provide free services to an average of 300,000 people every year.

We direct people who need help to local centres for services.

Helping those most in need Our main work is with the vulnerable and disadvantaged, including those on welfare payments, single parents, newly arrived, refugees, those with mental health issues, drug and alcohol issues and those experiencing family violence and family breakdown.

Emergency relief Many of our agencies provide emergency relief, both financial and practical, by providing food, food vouchers, travel cards, petrol vouchers, assistance with household bills, rent, pharmaceutical supplies and telephone bills.

One voice for many We liaise with all tiers of government and other peak bodies, conduct training and undertake sound, evidence-based research. We are grateful to the State and Federal Governments for their funding support for core and special projects.

Cooperation and connectedness We have also increasingly strengthened contact and cooperation with a range of peer organisations. This is a vital interface for not just CISVic and its members but also for the community support sector, exploring more effective use of resources, skills and funding conduits. This has included partnerships to deliver important training to volunteers and community workers.

We also participate in several state & federal government groups including a State Ministerial Advisory Council and Federal Consultative Committee and other relevant peak body advisory groups, including VCOSS (Victorian Council of Social Services), the ultimate state community peak body.

CISVic agencies are embedded in their communities.

The CISVic membership service model is place-based and holistic in working with its communities and clients. The provision of supported services by CISVic member agencies is primarily directed at vulnerable and disadvantaged families and individuals who fall through service gaps. As generalist services providing a range of free, confidential and supported services, we connect vulnerable people and families to vital services and their communities.

Collectively, the CISVic ER Consortium of twenty-nine (29) agencies, is the second largest Federal Government funded provider of ER services in Victoria. In total, forty-five (45) CISVic agencies deliver ER across forty-eight (48) sites from a combination of government, philanthropic and donated funds. Our engagement with the community, local service providers and stakeholders is built on a strong local presence, place-based focus to problem identification and solution, and draws upon and enhances local social capital.

Submission

Community Information & Support Victoria (CISVic) welcomes the opportunity to respond to the Commission's Payment Difficulty Framework New Draft Decision (May 2017). We commend the Commission's proposed framework that is built around customer-retailer interaction, that enshrines minimum standards of assistance, and ensures that disconnection is a measure of last resort. We consider the Commission's approach to a regulatory framework that is flexible, outcomes based and incentivizes active customer-retailer engagement as positive steps towards substantive and practical outcomes for vulnerable consumers.

We particularly support the inclusion of practical assistance to lower energy costs, the facilitation of access to government and non-government supports, and Centrepay provisions as practical measures that could enhance vulnerable consumer control over their circumstances. We agree with the framework's strong focus on early and effective action, and mechanisms that encourages quality and ongoing interactions between customers and retailers. We welcome reference in the draft decision to the AER's Sustainable Payment Plan Framework (SPPF)¹ and recognition of the principles of respectful conversations, as we believe that this will be central to effectiveness of the proposed framework. We also support the inclusion of clause 111A setting out requirements to be met prior to disconnection, and which clearly reinforces that disconnections are measures of last resort. Similarly, we support the inclusion of purpose provisions for reminder and disconnection warning notices. In particular, we support the requirement for 'clear, unambiguous' information about assistance to entitlements [clause 109(2)] and advice about what customers need to do to avoid disconnection [clause 110(1A)].

While there is much to commend with regard to the proposed framework, we nevertheless make the following submission to highlight aspects of the framework that could benefit from clarity; and consequently strengthened to ensure they achieve the higher level outcomes identified in the new draft decision.

Communication with customers

CISVic agrees in principle with the new framework's approach to assistance for customers in payment difficulty. Our trained volunteers provide information and support, and sometimes advocacy on behalf of clients experiencing payment difficulty. The provision of timely information, action to avoid - and early intervention to manage - arrears is crucial for effective self-advocacy and/or support by trained volunteers. Empowering customers and their helpers to engage in a respectful conversation about payment difficulty is key to effective outcomes under the framework. We therefore propose the following points for consideration to further strengthen customer empowerment to initiate - and engage in - constructive, respectful conversations with their retailers.

Flexible payment arrangements

We agree in principle with the flexibility afforded to retailers and customers to engage in conversations around payment arrangements, with the view to ensuring that solutions put forward are indeed a result of parties working respectfully together. Our experience with vulnerable consumers is that sudden life events, changed circumstances and the revolving door of financial insecurity disproportionately impact people living in poverty and disadvantage. The flexibility encapsulated within this new framework will help vulnerable customers better adjust to

¹ Australian Energy Regulator 2016, *Sustainable payment plans – A good practice framework for assessing customers' capacity to pay*, July 2016.

changed circumstances, and determine a payment strategy that best suits their circumstance – and ultimately increase the likelihood of resolving payment difficulty problems. We submit that as long as a customer continues to engage with their retailer, and continue to meet their payment obligations, there should be no set limit on the number of times payment proposals can be put forward. This is a crucial protection for vulnerable customers, acknowledging that there are broader economic and social forces that impact on how and why customers fall into arrears. Additionally, where customers repeatedly negotiate lower payments, we submit that this could be an indication to retailers that customers may benefit from more intensive support around reducing energy use or access to support services. Thus, it is through these interactions, actions and behaviours that trust is engendered and relevant information is exchanged. We submit that guidance on how identification and/or knowledge of these behaviours can form part of what retailers know 'or should reasonably have known' of customers' circumstances will lead to enhanced efficacy of the framework [clause 82]. Combined with the restriction on retailers to require customers to provide personal or financial information as a condition for assistance [clause 93], we believe that flexible payment arrangements can avoid the pitfalls of inconsistencies in outcomes under the current framework.

Best endeavours to provide assistance - respectful conversations

Engagement and communication with customers is the cornerstone for effectiveness under this proposed framework. Consequently, how communication occurs and the quality of the conversation is crucial to ongoing engagement with customers. There are critical junctures within the framework in which the quality of the conversation and information provision ensures meaningful engagement. While the framework places a restriction on the requirement to provide personal and financial information as a condition of assistance [clause 93], we submit that the Commission also considers providing guidance about the kind of non-judgmental conversation that demonstrates a genuine offer to assist, respectful communication about options and supports, and provided in plain language. Such language should be consistently utilised in verbal and written communication, and at various points of contact. Customers need to be adequately empowered to make informed decisions; to not feel judged when these conversations occur. This engenders trust, setting the foundation for meaningful, constructive engagement.

Guidance for how respectful conversations could be anchored in communications that invite contact and throughout subsequent customer-retailer conversations. Additionally, such guidance could be effective in assisting the Commission to determine what 'best endeavours to provide, the customer with the assistance that they are entitled to receive under Part 3' looks like [clause 111A(a)(i)]. We point to the Energy Comparator Code of Conduct (ECCC)², and the SPPF principles of respectful conversation for examples of principles that engender trust and respect between customers and retailers. We note that the Commission indicates in the new draft decision that it would consider monitoring and reporting on retailers' adherence to the SPPF principles. We therefore urge the Commission to consider incorporating these principles into the guidance to determine whether retailers have met requirements under clause 111A(a)(i).

Written offer - default assistance

Clause 85(2) sets out what a retailer will be required to communicate to customers in their offer of default assistance. As an assistance measure of last resort, customers at this stage of arrears are at immediate risk of disconnection. We submit that general information as outlined under clause 88, at a minimum, should be included in guidance on the written offer. Providing information about available assistance, options and support, in language that reflects respectful

² Energy Comparator Code of Conduct, August 2015, https://www.cuac.org.au/images/ECCC/Energy_Comparator_Code_of_Conduct_self-enforced_August_2015_Final.pdf, accessed 13 June 2017.

conversations could be effective in engaging vulnerable customers. Additionally, vulnerable customers experiencing barriers to digital access (compounded by high energy costs) may never otherwise be informed about the range of assistance from their retailers. Providing information at this last measure stage could add extra impetus for vulnerable customers (who may feel they have nowhere else to turn to to resolve their payment difficulty) to engage with retailers.

Predictable and consistent

Our reading of the new draft decision is that the flexible approach adopted in Part 3 is one that is available to both customers and retailers, as it seeks to incentivize constructive, respectful conversations around payment difficulties. We note too that the goal (or 'the destination') of the framework is for 'equitable access to predictable, consistent and effective assistance'. We also appreciate that following implementation of Part 3, 'grey' areas may emerge and further clarification will be required over time. Therefore, as a starting point, we would make the following observations about potential areas of interpretive contention, and raise issues for further consideration by the Commission. We submit that by setting out principles that gives clarity to concepts and practices, the Commission will aid in more effective, consistent outcomes for vulnerable customers.

Definition of 'arrears'

The proposed definition of 'arrears' is of amounts payable but remains to be unpaid as at 'the bills issue date for a subsequent bill'. For quarterly bills, this could result in a high bill before assistance may be offered. Efficacy of this measure will therefore depend on the requirement for retailers who know or should 'reasonably have known' customer circumstances that would likely lead to the customer being in arrears. Such a situation may arise from the customer directly telling the retailer that they will likely be in arrears by the next bill, or the retailer may have access to information such as payment history and/or customer segmentation that points to the likelihood of customers being in arrears. Failing these two situations, it would be problematic for retailers to predict or know of customers who are 'off the radar' (those experiencing sudden life events for example). For these customers, arrears can quickly escalate to unmanageable levels. We urge the Commission to therefore consider a further conversation with stakeholders around the definition of 'arrears' (or modified definition and/or triggers for quarterly bills) to ensure that the principles of early intervention are applied consistently for customers across the different billing cycles.

Alternatively as a preventive measure, we submit that the Commission consider requiring retailers to offer monthly billing to customers they know or reasonably believe are likely to be in payment difficulty. This may also ensure that arrears, if they occur, can be manageable.

Best endeavours to contact

This requirement relates to attempts by the retailer to contact the customer who is receiving tailored assistance, and who may be disengaging at some point of the assistance period. However, there is little in the guide as to what 'best endeavours to contact' entails. We urge the Commission to provide some guidance about expectations around best endeavours to contact. We are concerned that this requirement may be interpreted narrowly, and fail to take into account the varied circumstances of vulnerable customers. For example, customers whose changed circumstances mean they can no longer afford internet access, or can't afford to pay for phone use. Additionally, customers may have previously relied on friends/family members to interpret bills and communications for them, but have temporarily lost that resource. While these circumstances may be unavoidable and beyond the control of retailers to address, it demonstrates that best endeavours to contact cannot be narrowly defined, or reduced to a narrow set of actions based on retailer resources and resourcefulness. Guidance from the

Commission could at the minimum achieve consistency in expectations around behaviours and actions by retailers. Alternatively, we urge the Commission to consider a further conversation with stakeholders to arrive at a set of principles or expectations that could guide retailer behaviour and actions.

Reasonably know and/or believe

Division 3 makes several references to reasonableness of knowledge and/or belief on the part of the retailer. A contextual reading of the Division indicates that the underlying assumption is that when retailers and customers actively work together, the retailer would at some point be in a position to form a reasonable belief and/or knowledge of the customer's circumstance. Consequently, a retailer may form a reasonable belief (or knowledge) that there is no scope for action to reduce a customer's energy use [clause 79(e)(ii)]; or that the customer cannot pay the full cost of their on-going energy use [clause 79(3)(b)]. While knowledge may be formed from the retailer being told, how a reasonable belief is formed is a little more problematic. How presumptive could this belief be? What is the basis on which a belief would be deemed reasonable? What factors have been taken into account, and how is consistency determined across retailers with varying resources and resourcefulness? To ensure that we achieve the framework's destination of 'predictable, consistent and effective assistance' we urge the Commission to consider a further conversation with stakeholders around principles and key considerations that must be met when retailers form a reasonable belief under Division 3.

Definition of payment difficulty

We note that there is no definition of payment difficulty in the framework. On a plain English reading, we would understand payment difficulty to be where a customer has difficulty paying their bill when it falls due. We suggest that the best judge of payment difficulty are the customers themselves. We therefore submit that a definition of payment difficulty should adhere to a plain English understanding of the concept, and should be a subjective and identified by the customer. This avoids capacity to pay conversations and reinforces customer agency and empowerment. We believe the proposed framework is sufficiently robust and focused to ensure that entitlements are not open to abuse. We also believe that a sufficiently competitive market will better meet the needs of customers who are not in payment difficulties, compared to entitlements available under the proposed framework.