

Dr Ron Ben-David, Chairperson
Essential Services Commission
Level 37, 2 Lonsdale St
Melbourne VIC 3000

Dear Dr Ben-David

Submission to Payment Difficulty Framework – New Draft Decision May 2017

The Brotherhood of St Laurence welcomes the Essential Service Commission's new draft of its Payment Difficulty Framework and this opportunity to respond to it. We would like to acknowledge the hard work and wide consultation undertaken by the Commission to develop the Framework.

This submission outlines the Brotherhood's key concerns about the draft decision. We believe that, with refinement, the Framework will come to be an essential instrument for protecting Victorian energy customers. Maintaining disconnection as a last resort is commendable. In order to fully realise this objective, the Commission should strengthen the protections and assistance offered to those experiencing payment difficulties.

Include tariff checks in all forms of assistance

Customers experiencing payment difficulties should be offered the best available tariff for their needs. Yet, the present draft only mandates tariff checks for a subset of customers on tailored assistance. This is neither fair nor economically sound. The aim of standard assistance is to prevent customers from entering arrears, but none of its proposed components necessarily lower bills.¹ For customers, switching tariffs early may prevent debt accruing. For retailers, it may avert the cost of more intensive forms of assistance.

The Commission raises the possibility that lowering costs for customers experiencing payment difficulty may raise costs for others. First, an equitable and efficient market should not be dependent on the worst off paying unnecessarily high rates. Second, there is little evidence to

¹ Retailers must offer any three of the following components: equal payments over a certain period; options for making payments at different intervals; extending one bill per year's pay-by date by at least one billing cycle; paying for use in advance; or paying for anticipated arrears over a period three times the length of the customer's billing cycle.

support this idea. As the Commission has acknowledged, lowering tariffs for those experiencing payment difficulty may actually leave retailers better off in terms of revenue.²

Tariff checks support market competition. A perfectly competitive market must feature information symmetry, and current tariff patterns reflect customers' widespread lack of information.³

The onus should be on retailers to suggest a better offer, and it should be subject to a reasonableness test. Retailers will need to exercise some discretion in this task, but they should be precluded from offering plans that they know customers will not realistically meet. For example, a customer who has flagged their inability to pay on time should not be offered a pay-on-time-discount tariff.

A course of redress for the customer should also be put in place: if a retailer has not proposed a best or near-best tariff for the customer, the customer should only be obliged to pay debts accrued on the best offer.

Strengthen customer protections

We welcome the proposed suite of customer entitlements, but they require further reinforcement if they are to achieve adoption and effectiveness.

The Commission should take steps to increase customer awareness of standard assistance. Standard assistance will largely be for customers who identify themselves as needing help, but many people will be unaware of the program. Others will face barriers to self-identification, including social stigma and the financial cost of calling a retailer. Call-backs should be available in light of the prohibitive cost of outgoing mobile calls for some customers. In line with Australian Energy Regulator (AER) recommendations, bills should advise customers to contact their supplier if they are having difficulty making payments.⁴ Customers should be alerted to the existence of standard assistance on sign-up. This will increase customers' awareness of their entitlements and promote intervention before debts accumulate.

Monthly billing should be promoted with all forms of assistance. Some customers will prefer to retain quarterly billing and they should be allowed to do so. For others, monthly billing will alert customers to their spending before large debts accrue.

The definition of 'best endeavours' should be strengthened, particularly to protect customers from non-English-speaking backgrounds and those with limited access to phones or internet. As mandated by National Energy Retail Rules, retailers should be obliged to receive customer acknowledgement of phone, electronic or registered mail communications before these attempts are counted. Retailers should also perform home visits before disconnecting customers, even though this is technically unnecessary with most smart meters.

² Essential Services Commission 2017, *Payment Difficulty Framework: new draft decision*, ESC, Melbourne, p. 146.

³ For example, half of customers have not switched tariffs in the past 5 years, meaning their rates are likely to be unnecessarily high. See Australian Energy Market Commission 2016, *2016 Retail Competition Review*. AEMC.

⁴ Australian Energy Regulator 2015, *Review of Energy Retailers' Customer Hardship Policies and Practices*, AER, Melbourne, p. 10

Ensure guidance is clear

As the ESC has acknowledged, its non-prescriptive approach to devising the Framework will create significant uncertainties. To promote equity and reduce the burden on the Ombudsman, the Commission should ensure that its forthcoming guidance notes clarify its interpretation of Part 3 of the Code.

In particular, guidance should give examples of circumstances that retailers should 'take into account' (Clause 82) when considering payment plans. We suggest that these include family violence, loss of primary income, serious illness, death in the family, disability, and separation. Some retailers voluntarily consider these factors, so they should be considered reasonable.⁵ Concession status and receipt of Newstart may also be useful predictors of likely future arrears. Guidance notes should also clarify how 'knows or should reasonably have known' will be interpreted, and this should include self-identification by customers.

Redefine 'arrears'

The definition of 'arrears' is important as a trigger for tailored assistance, but its proposed meaning is not fit for purpose. Defining arrears as 'the sum of any amounts payable by the customer under one or more bills that are unpaid as at the bill issue date for a subsequent bill' will likely have two unintended consequences. The first is to allow customers to accrue potentially unmanageable debts before being eligible for assistance. The second is to create an arbitrary distinction between customers on different types of billing. A monthly customer could accumulate two months of debt before being entitled to tailored assistance, while this would take six months for a quarterly customer – often a difference of hundreds of dollars. Two potential alternative triggers are a dollar amount (possibly \$300, in line with the AER disconnection threshold) or one unpaid bill.

Please contact Damian Sullivan (e: dsullivan@bsl.org.au m: 0405 141 735) or David Bryant (e: dbryant@bsl.org.au ph: 9483 2470) for further information.

Once again, we commend ESC on the work to date and welcome the finalisation of this important piece of work.

Yours sincerely,

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⁵ AGL 2014, *Staying Connected: Hardship policy and program details*, AGL, Sydney.