



16 September 2011

By email: Phil.Waren@esc.vic.gov.au

Phil Waren
Senior Regulatory Manager (Energy)
Essential Services Commission
Level 2, 35 Spring Street
MELBOURNE VIC 3000

Dear Mr Waren

Submission to Retailers' obligations to customers - Disconnection and Reconnection Draft Decision

The Consumer Action Law Centre (**Consumer Action**) is pleased to make a submission to the Essential Services Commission's (the **Commission**) Retailers' obligations to customers - Disconnection and reconnection Draft Decision (**Draft Decision**).

Consumer Action apologises for the lateness of this submission

Draft Decision 1:

When offering an instalment plan, a retailer should act in accordance with any advice of a financial counsellor with respect to a customer in hardship, except in extraordinary circumstances, and in that case must record the extraordinary circumstances which apply in the particular case.

The Code will be amended to require that:

- If a customer offers to pay more than the amount agreed for a payment under an instalment plan, the retailer must accept this additional amount and credit the customer accordingly.
- If a customer offers to make an additional payment of some amount separate from the regular payments required under an instalment plan, the retailer must accept this additional payment and credit the customer accordingly.
- Where a customer is unable to pay the full amount of an instalment under an instalment plan and offers part payment on that occasion, the retailer must accept the part payment and may add the unpaid amount of that instalment to the amount outstanding under the plan, unless:
 - a. this payment is the third consecutive instalment to be underpaid; or
 - b. this instalment is the fifth instalment to be underpaid in any 12 month period.
- A retailer must not request a customer to make a lump sum payment prior to providing assistance to a customer in applying for a Utility Relief Grant, or as a condition for reconnection to supply.

Consumer Action supports the Commission's proposed amendments which will more suitably and flexibly address consumer needs in relation to customers being able to pay increased amounts as they are able to, or less with the revised conditions.

Further, we strongly support the increased requirement to be placed upon retailers to act in accordance with the advice of a financial counsellor. This must be accompanied by a commitment from retailers to expedite calls from financial counsellors to reduce the overall amount of time financial counsellors must commit to contacting energy retailers.

It is essential that in placing this emphasis on financial counsellors however, that it continues to be recognised that those consumers who are not represented by a financial counsellor will need to represent their own capacity to pay. This should be done in collaboration with information collected by retailers based on payment history, however if a consumer claims that they cannot sustain a payment plan as set by a retailer, that consumer's position must be given due regard.

Further, an assessment of capacity to pay must take into consideration the income and expenses of the consumer.

We regularly have consumers come to our financial counselling service, MoneyHelp, following being offered unsustainable and unreasonable payment plans that do not reflect capacity to pay and which place the consumer under undue and significant financial stress. To demonstrate this, we include those examples as provided in our submission to the Issues Paper, below.

It is essential that the Commission recognises that sums of \$100 or \$200 per week are unreasonable and unfair amounts for most consumers, but in particular are unachievable for consumers already experiencing payment difficulty. We suggest the Commission, in its ongoing audits and performance monitoring consider an assessment of the 'reasonableness' of instalment plans.

A full time carer for their disabled son, our client was receiving carer payments and family tax benefits, totalling approximately \$712 per fortnight. The client was paying \$320 rent per week and was also caring for two stepdaughters and their unemployed partner. Following receipt of an electricity bill for \$1,900, the client was placed on a payment plan with their retailer of **\$100 weekly**. The arrangement fell through as the client could not afford to pay.

Client receives total payments, including family tax benefits, of \$849 per fortnight. The client had been disconnected following receipt of an electricity bill of \$1,000 (accumulated over a two year period). The client had not made a payment for a few months due to personal circumstances. The client tried to negotiate a payment plan of \$30 per week, however the retailer declined and requested \$70 per week and an **up front payment of \$200**.

Client was due to be disconnected from gas and electricity, with bill amounts outstanding of \$2,220 on each. The client made a payment arrangement however this fell through as retailer wanted **\$100 a fortnight**,

however the client could only pay \$80 a fortnight. The client ultimately defaulted.

Client with \$5,000 gas bill, client experienced relationship breakdown and there was a violent warrant out for the arrest of client's ex partner. Retailer advised client they were in debt and said they would only accept **\$200 minimum a week** for both electricity and gas. Threat of disconnection followed.

Draft Decision 2:

Lack of customer engagement with the retailer does not lessen a retailer's obligations, particularly in matters which may lead to disconnection of energy supply.

Consumer Action strongly supports the Commission's Draft Decision.

Draft Decision 3:

An instalment plan should reflect the customer's capacity to pay. When considering a customer's capacity to pay for a proposed instalment plan, reasonable criteria for the retailer to base its assessment on include at least the following:

- Previous instalment plans
- Current usage
- History of payments
- Arrears accumulated

Draft Decision 4:

When requesting payment or part payment by lump sum, the amount of the lump sum should also reflect the customer's capacity to pay, reasonable criteria for the retailer to base its assessment on include at least the following:

- Previous instalment plans
- Current usage
- History of payments
- Arrears accumulated

We support the requirement for the retailer to assess the criteria outlined by the Commission when offering an instalment plan, requesting part payments or lump sum payment.

As discussed above, it is essential in assessing capacity to pay, that those consumers who are not represented by a financial counsellor are adequately able to represent their own capacity to pay in collaboration with that information collected by retailers. If a consumer claims that they cannot sustain a payment plan as set by a retailer, that consumer's position must be given due regard.

We reiterate our comments above that an assessment of capacity to pay must take into consideration the income and expenses of the consumer, and that this must form part of any decision around lump sums or part payment thereof.

Draft Decision 5:

For the avoidance of doubt, the Commission considers that by providing comprehensive documented evidence of unsuccessful efforts to contact the customers, retailers are more likely to be able to demonstrate compliance with their obligations under clauses 11.2, 12.1 and 13 to contact the customer. The Commission will continue to review this evidence through regulatory audits and performance monitoring.

The Code will be amended to reflect the following:

Where contact with a customer has not been established despite a retailers' best endeavours to visit the customer's premises, the retailer must make one final effort via registered mail (or similar) to encourage the customer to contact it to discuss financial assistance including instalment plans. This final letter must contain a statement confirming the retailer's intentions to negotiate a new instalment plan and providing the customer with a final opportunity to contact it to discuss the matter further and avoid possible disconnection.

As outlined in our submission to the Issues Paper we believe that the existing obligations under the Code in relation to instalment plans are fair and appropriate for retailers to comply with, and enable the retailers to demonstrate they have used best endeavours to contact a customer. We do however, support the Commission's proposed amendments on the basis that the registered letter is not the sole approach, but comprises a suite of evidence that demonstrates the retailer has in fact, used its 'best endeavours'.

Draft Decision 5:

The present obligations on retailers under clause 12 of the Code will be retained, relating to offering instalment plans to a domestic customer.

Consumer Action strongly supports the Commission's Draft Decision.

Reconnection

- Clause 15.2(b) of the Code will be amended to remove the absolute obligation on

retailers in relation to timing of reconnection.

We continue to be concerned that the Commission is proposing to amend this provision by removing the absolute obligation on retailers regarding the timing of reconnection.

We reiterate that the issue of reconnection is a sole transaction between the customer and the retailer and so the Commission, on behalf of consumers, must look to the retailer for this outcome. By removing the role of the retailer in managing this relationship, as previously noted, this exempts electricity retailers from this responsibility, in the face of all other industry who have this role - and serves to conflate the relationships that currently exist in the sector, making it more difficult for consumers to understand. The more parties involved, from a consumer's perspective, the more time and energy they must invest in identifying the party responsible for the issue, and then for rectifying any reconnection issues, and finally to resolve any disputes. Precedence for retaining the absolute obligation lies in the relationship consumers currently have with retailers as their key point of contact for issues relating to billing, disconnection and reconnection. Why would the Commission seek to confuse this?

Further, any concerns retailers may have over their obligations and their ability to resolve reconnection issues, as stated previously, lies between the retailer and the distributor. We question whether the expectation is for consumers to seek to engage with distributors every time the retailer / distributor relationship breaks down.

The Commission must retain the absolute obligation on retailers in the Energy Retail Code. To the extent that the retailer must rely on a distributor to deliver the outcome of reconnection, there should be sufficient obligations and incentives for distributors to comply with retailer requests to reconnect customers – including, perhaps, that the distributor reimburse a retailer where a cost or payment to a customer was their fault. Any discrepancy or confusion is unequivocally an issue that must be managed between those businesses, but could also be *enhanced* by *additional* obligations within the distribution code.

Consumers should not bear the responsibility or any detriment, for these inefficiencies.

- To maximise the likelihood that customers will benefit from the prompt reconnection service made possible by smart meters, clause 15.2(b) will be amended to oblige a retailer to request reconnection of a smart meter by a distributor within one hour of receiving a request from a customer, where the retailer reasonably believes it is safe for the reconnection to proceed.

We support the inclusion of specific provisions around smart meters in relation to reconnection. We reject this specific proposal however as it is based upon the premise that the absolute obligation on retailers is removed and therefore leaves the time frame open as to when the distributor will actually reconnect the customer. To achieve the benefits of smart meters as have been highlighted through the AMI program, expedited reconnections, subject to safety requirements, play a considerable role. The Energy Retail Code, while retaining the absolute obligation for reconnection on retailers, must ensure that consumers, within one-

two hours of contacting their retailer are reconnected. This will require further modifications to the Distribution Code, but only those necessary to ensure consumers are the ultimate beneficiaries of the remote functionality of meters.

- Retailers will be obliged to make the request to a distributor for reconnection of an accumulation meter within one hour of receiving the request from a customer.

We reiterate our comments above, and reject the foundation of these changes being based on the removal of the absolute obligation on retailers regarding reconnection. See also our comments above questioning whether it should be consumers who bear the responsibility for the existing regulatory inefficiencies.

- In the Electricity Distribution Code, the safety discretion in clause 13.1.2(c) will be explicitly applied to all of clause 13.1.2, for the avoidance of doubt. The precise wording of the amendment will be the subject of a separate consultation prior to being implemented.

We support the inclusion of safety recommendations in the Energy Retail Code and recommend further amendments to the Distribution Code to increase distributor obligations on reconnection of customers.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia.

Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly. Consumer Action has been actively involved in energy advocacy work in Victoria and nationally since the 1990s. Over this time we have provided key consumer input into important energy regulatory processes for consumers, including the current Victorian smart meter rollout and initiatives relating to improved energy price and product information disclosure following the deregulation of Victorian retail energy prices.

Since September 2009 we have also operated a new service, *MoneyHelp*, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential and independent financial advice to Victorians with changed financial circumstances due to job loss or reduction in working hours, or experiencing mortgage or rental stress as a result of the current economic climate.

Consumer Advocacy Panel grant recipient - disclaimer

This project - NEM Network coordinator and consumer advocate, is funded by the Consumer Advocacy Panel (www.advocacypanel.com.au) as part of its grants process for consumer advocacy projects and research projects for the benefit of consumers of electricity and natural gas.

The views expressed in this document do not necessarily reflect the views of the Consumer Advocacy Panel or the Australian Energy Market Commission.

Thank you again for the opportunity to comment on the Draft Decision. Should you wish to discuss this submission further, please contact me on 9670 5088 or at janine@consumeraction.org.au.

Yours sincerely

CONSUMER ACTION LAW CENTRE

A handwritten signature in cursive script that reads "Janine Rayner".

Janine Rayner
Senior Policy Officer