



18 November 2016

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

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

Dear Commissioners,

Submission on the proposed safety net for energy consumers facing payment difficulty

The Consumer Action Law Centre (**Consumer Action**) and Financial and Consumer Rights Council (**FCRC**) welcome the opportunity to comment on the Commission's proposed safety net for energy consumers facing payment difficulty. We generally support the Commission working towards improving the systems in place for Victorians experiencing difficulty in paying their energy bills.

However, the design of the safety net, with its overarching focus on preventing the accumulation of debt rather than minimising disconnections, misses an opportunity to protect the most vulnerable from the significant financial and personal costs of disconnection from an essential service. This includes those consumers who do not have capacity to pay for their energy usage and those who may disengage from managing their energy debts while experiencing crisis. In the 'safety net' there are clear pathways for these consumers to face disconnection prior to receiving sufficient opportunity to improve their circumstances, even if the factors leading to disconnection are beyond their control. It is also unclear if changes to the code will impact the role and practice of Energy and Water Ombudsman Victoria (**EWOV**) in assessing whether consumers have been wrongfully disconnected where they are in severe financial hardship.

The benefits for consumers in the safety net can only be realised by effective communication from retailers to consumers of their entitlements, through the provision of proactive support for those who experience all forms of financial difficulty (from transient to chronic) to both reduce debt and maintain connection, and through effective support for those who are disconnected due to factors beyond their control. We remain concerned how the safety net will operate in practice particularly for those vulnerable and disadvantaged consumers that are assisted by financial counsellors.

Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

About FCRC

Financial and Consumer Rights Council Inc (FCRC) is the peak body and professional association for Financial Counsellors in Victoria. FCRC actively supports Financial Counsellors by promoting the needs of those experiencing financial hardship. FCRC works with government, banking, utilities, debt collection and with many other sectors and organisations to achieve the best outcomes for vulnerable and disadvantaged Victorians.

General concerns

The safety net does not sufficiently protect those with an inability to pay or engage

Energy is an essential service necessary for health, wellbeing and social participation. For this reason any safety net or hardship framework needs to ensure that those with an inability to pay for their energy receive the appropriate support at the right time to remain connected. Under the minimum standards prescribed in the draft decision, those without the capacity to pay will be heavily reliant on the support under the 'connection support (energy costs)' element of the framework. Some of the protections offered here, including appliance replacement and other measures to reduce a consumer's energy use, will take time to assess and implement for each consumer. There is a risk that before the consumer can benefit from this support, they will lose their entitlement to the safety net when they miss a single payment. This will eventually leave these consumers in a cycle of disconnection and pay-as-you-go arrangements unless adequate intervention is taken by a third party. This group of people will bear the cost of compounded hardship where the safety net systematically fails to keep them connected to an essential service.

To improve outcomes for these consumers, we recommend:

- requiring retailers to provide some low-cost elements of 'energy costs' support (such as placing consumers on the best tariff) at the earlier 'tailored assistance' stage.
- increasing the ability of all consumers to access the 'energy costs' support in the framework by removing the minimum payment threshold and providing a longer timeframe for consumers to work with their retailer to reduce consumption. In particular, the requirement for consumers to pay two-thirds of ongoing costs appears arbitrary. A more sensible requirement would be to require more flexibility, either through a far lower percentage to capture the greatest proportion of consumers or guided by the consumer's capacity to pay wherever welfare concerns are raised.
- introducing an independent review to approve disconnection requests. This review, in making an assessment of whether disconnection is appropriate in all the circumstances, can ensure consumers in hardship have had every opportunity to get their energy costs

under control and prevent disconnections for the most vulnerable.¹ A similar option for an independent advisor in the process was raised in the Energy Hardship Inquiry Final Report.² An independent review of disconnection requests will meet a similar purpose of that proposal in absolutely ensuring disconnection is a last resort.

We also consider that the 'pay-as-you-go' arrangements as currently framed will not provide any benefit to consumers in practice. In particular, the most at-risk consumers placed on this level of support will presumably have failed to meet the minimum payment threshold under 'energy costs' support. It is unclear how these consumers, having been unable to meet two-thirds of their ongoing energy usage costs, will then be able to meet the full cost of their usage as required under this part.

Feedback from Consumer Action's telephone financial counsellors is that the requirements for constant engagement ignore the circumstances of many people in hardship. Consumer Action's *Heat or Eat*³ report, provides case study evidence that demonstrates how people experiencing mental health issues or family violence crisis can be without the capacity to contact their retailer or commit to arrangements. The safety net's design requires contact to be made for a consumer to access further support, meaning that these at-risk consumers will inevitably 'fall through the cracks'. In this circumstance, an independent review before approval of disconnection will ensure that these people are not unfairly disadvantaged. This check is necessary given the rollout of smart meters in Victoria has enabled disconnections to take place remotely. At the very least, we recommend that the Commission develops a requirement for retailers to arrange a welfare check for a household prior to seeking disconnection.

In practice Consumer Action's financial counsellors currently refer those who do not have the capacity to pay for their energy to EWOV. Current EWOV practice operates in effect as a safety net to keep these consumers connected. We recommend that the Commission consider whether any elements of the new framework limit the ability of EWOV to continue to deliver effective support to these consumers to remain connected. In particular, we seek clarification of the framework's requirements around consumers' needing to meet current due payments prior to reconnection, and if this will prevent EWOV from continuing its current practice of requiring same day reconnections at no charge for consumers that seek EWOV's intervention.

The Commission also needs to consider the way that social policy will interact with the safety net. Utility Relief Grants are vital as a lever to counter circumstances where essential services are unaffordable for a consumer. The Commission should work with other responsible Victorian Departments to improve the Utility Relief Grant Scheme as recommended in the Rank the Energy Retailer Report⁴ so that consumers in hardship are protected from disconnection.

¹ The decision to disconnect account holders being made by an independent panel or arbiter is a recommendation from Consumer Action's *Heat or Eat* (2015) report.

² Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February 2016, 92

³ Consumer Action Law Centre 2015, *Heat Or Eat; Households should not have to decide whether they heat or eat*, August 2015

⁴ Financial and Consumer Rights Council 2016, *Rank the Energy Retailer; Victorian financial counsellors rank the financial hardship policies and practices of energy retailers*, August 2016, 7

How will consumers realise their entitlements?

Without clear communication from retailers, most consumers are unlikely to be aware of their entitlements in the safety net. The draft decision provides little guidance to retailers about how to approach discussions with consumers that raise the need for financial assistance. To be effective, the framework requires a consumer to be fully informed of all levels of assistance available. It is unclear how this overwhelming amount of information can be practically given to a consumer in an initial discussion to assist them to make an appropriate decision. Retailers also may have an incentive not to promote the assistance under 'connection support (energy costs)' as they may come at significant cost to the retailers. It is important that the framework ensures consumers are aware of their entitlement and are not misled by retailers into accepting arrangements that will put them in a worse position by delaying their access to the appropriate support.

We have identified that arrangements in some support levels of the safety net's design may exclude consumers from applying for Utility Relief Grants. Greater consideration should be taken to designing the safety net to ensure that consumers in hardship can at all stages of support access these grants to help them stay connected.

Consumer Action's financial counsellors are also concerned that they will struggle to assess what assistance a consumer is eligible for under the scheme then succinctly communicate this to a consumer within the limitation of a standard phone call session. While the appropriate advice will be to tell a consumer to contact their retailer, who should determine and deliver entitlements based on a consumer's debt position and consumption patterns, there is still a need to be able to communicate rights to a consumer. The difficulty in doing this is a potential cost on financial counsellor's time and is a concern given that FCRC's *Rank the Energy Retailer* report⁵ found that that 59% of Victorian financial counsellors surveyed spend at least 40% of their work hours dealing with energy-related issues already.

Consumer Action's financial counsellors also expressed a concern that too much rigidity in the scheme, with hard limits on access to protections, may de-personalise the service that consumers in hardship receive. In particular, the counsellors advised additional complexity about how to access certain entitlements may lead many in crisis to disengage. They stated that in their experience many frontline energy retail customer service staff are unsympathetic and uncooperative to disadvantaged consumers.

The draft decision does not address how current hardship teams will interact with the safety net requirements. The work of these departments has had many benefits for people experiencing hardship, which was underscored in the *Rank the Energy Retailer* report regarding overall improvements in communication and accessibility of hardship teams.⁶ While we agree that removing retailers' need to make qualitative assessments about someone's hardship and instead entitling all consumers to assistance is positive, we recommend that retailers keep their hardship policies and hardship teams and use the skillset of employees in this area to assist those who need help. It would be a concern if payment difficulty support was provided by staff whose main

⁵ Financial and Consumer Rights Council 2016, *Rank the Energy Retailer; Victorian financial counsellors rank the financial hardship policies and practices of energy retailers*, August 2016, 16

⁶ Consumer Action Law Centre 2015, *Heat Or Eat; Households should not have to decide whether they heat or eat*, August 2015

focus was 'credit' or 'collections'. When the scheme is implemented, those already registered with hardship teams should be entitled to continue with their arrangements or adopt newly introduced minimum standards depending on which will be most beneficial to the consumer. We also think that, for the most vulnerable and disadvantaged, who will eventually be disconnected due to factors beyond their control, only an experienced hardship team will have the skills to assist them remain connected to their essential energy services.

Specifically on the disconnection warning notices themselves, we agree they are an important part of the process to keep consumers connected to their energy supply. The Commission should prescribe specific content for the warning notices that apply at each stage of the process, with clear information about all additional assistance available to a consumer, and encouragement to take steps to remain connected. We would be pleased to discuss further with you the content of these notices.

The Commission should collect and publicise data about safety net outcomes

The Commission should require compulsory reporting from retailers to enable ongoing evaluation of the outcomes of the safety net framework. Reporting should include the number of consumers who access each level of support, the number that exit the scheme having successfully paid their arrears and their pathway through the various arrangements. Critically, it should also document the number of disconnections for non-payment and what pathway those disconnected took out of the safety net. For transparency, the data gathered by the Commission should be made publicly available for analysis to inform on the effectiveness of the framework.

We strongly support the Minister for Energy's announcement⁷ that she will establish an expert panel to monitor and report on the new arrangements to ensure they are delivering on the recommendations of the report. We believe that the safety net should address a process for incorporating changes recommended by such a panel.

The benefits of the Safety Net are for a specific group of consumers

We support the implementation of a requirement that retailers accept payment plans for arrears that meet minimum thresholds. Access to payment arrangements without a consumer having to reveal personal circumstances will improve the likelihood of consumers forming payment plans. Consumers seeking access to these plans will no longer have to negotiate with retailers, will not be able to be coerced into making payments above the minimum standard and will therefore be more likely to form payment plans that they know they can manage. The ability for consumers to proactively go online and arrange bill smoothing, a payment delay of a month or a change in billing regularity is also a good measure. It is important that consumers are made aware of their entitlement to access this support as they choose, instead of calling their energy retailer to negotiate. However we reiterate that these requirements will not adequately assist the group of consumers in the most need of a safety net and who cannot afford the minimum amounts, or who are disengaged for other reasons, such as family violence.

⁷ Minister for Energy, Environment and Climate Change, "More Help For Victorians Struggling With Power Bills," Premier Of Victoria, <http://www.premier.vic.gov.au/more-help-for-victorians-struggling-with-power-bills/>

Specific queries and suggested revisions to the framework

Early Action

As stated above, the arrangements consumers are able to access online before payment is likely to be of benefit to a group of consumers. All consumers should also be entitled to 'opt in' online for their retailer to contact them and arrange the best tariff for the household based on their historical meter data as retailers are required to under the 'energy costs' arrangements in the current draft. This would also assist more consumers to realise the benefits of the Victorian smart meter roll out. They should also be informed of their potential entitlements to Utility Relief Grants or other concessions when 'opting in' at this stage and be put in contact with appropriate support agencies. The ability to reduce costs early in this way will reduce debts accumulating in the first place.

Immediate Assistance

We support the inclusion of an automatic payment plan in the framework that captures consumers who do not contact their energy retailer after missing a payment. The plans will give those who need more time to pay easy access to support without the immediate risk of disconnection. As described above, we support the introduction of a mechanism to assess the welfare of people who have failed to engage after missing a payment under this level of support before disconnection occurs.

Tailored Assistance

Consumers should be entitled to earlier access to a number of forms of assistance under the framework. In particular, they should be placed on the most cost effective tariff, be referred to a support agency and get access to personalised advice on reducing their energy usage if on a 'tailored assistance' payment plan. Extending these entitlements to all consumers on payment plans rather than just those at the 'connection support (energy costs)' stage can reduce accrued debt and reduce the risk of disconnection.

The wording of clause 82(5) currently restricts a consumer from asking for an adjustment to their payment plan more than once within a six month period. It should not be a breach of the code for a consumer to request an adjustment to their payment plan where their situation has changed twice within a six month period and they are proactively engaged with their retailer.

Clause 84(4) in the revised code requires a retailer to inform a consumer of measures such as the Utility Relief Grant and concessions after they have agreed to a 'tailored assistance' payment plan. The Commission should revise this clause to require retailers to inform consumers of these potential entitlements from the outset, and at every engagement point where they transition from one part of the code to another. This will enable consumers to take them into account when deciding on a regular payment amount. We also recommend that the Commission work with the departments that administer these grants and concessions to make them more effective at preventing debt accumulation and disconnection for those who cannot afford their energy.

The Commission has also not carried forward the entitlement for consumers on *tailored assistance* payment plans for automatic access to pay-on-time discounts that was previously included. We view the current practice of retailers in linking nearly all discounts from the base energy offer to

on-time payments is, in effect, an unfair penalty for those unable to make a payment on time and amplifies the financial hardship faced by these consumers. We encourage the Commission to consider whether this benefit should apply to consumers at the connection support level of the framework. We would also recommend that the ability for retailers to apply these unfair charges is explored in further work outside the payment difficulties framework.

Connection Support

As discussed above we believe that consumers should be placed on the best tariff available and be eligible for a range of assistance prescribed under this part of the framework wherever they have contacted their retailer to arrange a payment plan or to defer a payment. The requirement of a retailer to put consumers in contact with appropriate support agencies should also extend to any circumstance where a residential consumer is seeking to make a change to a payment arrangement. This will assist people before they reach a point where they cannot afford their usage and start to accrue energy debt.

The intended operation of this part is also unclear. Clause 102 states that a retailer is not obliged to offer this level of support for a continuous period exceeding two years. However, the minimum support for consumers under this part will already fall away well before this period of time has elapsed. We consider that this level of support should be provided on an ongoing basis where a consumer remains engaged but is still unable to afford their energy. A household in this situation should instead receive stronger support.

Promise to Pay

Retailers must be required to inform a consumer of their other entitlements under the safety net prior to forming an agreement to delay payment up to three months under the 'Promise to Pay' arrangements. Under cl 86(2), this information is currently only required to be provided in writing after an agreement is formed. The entitlements for consumers under *energy costs* arrangements will be more expensive for retailers to provide and there may be a business incentive that consumers do not readily access these. If a consumer is fully informed of their entitlements they may be less likely to accept a delay in payment and instead opt to reduce consumption and the associated costs under the energy costs arrangements, thus reducing the risk of disconnection for non-payment. It is also unclear whether a consumer that has a 'promise to pay' arrangement qualifies for a Utility Relief Grant on the outstanding debt itself.

Energy Costs

We welcome the introduction of minimum requirements for all retailers to assist consumers in reducing their energy consumption. We also support a mechanism for household energy efficiency improvements to be made available without the need for upfront contributions from a consumer. These costs being added to consumers' arrears give the consumers access where they would usually be unable to do so without expensive finance arrangements. However it is important that additional protections are put in place in the code to ensure that retailers cannot exploit this requirement by inflating the costs of the items beyond a reasonable market price.

Our financial counsellors identified that a redesign of the 'energy costs' arrangements could enable the safety net to capture and assist more consumers with an inability to pay. To achieve this we

recommend that assistance to consumers under the 'energy costs' arrangements be extended to a minimum of six months, and ongoing for those who remain engaged with their retailer and have shown a commitment to reducing their energy usage. This will give consumers time to see the benefits of the arrangements, and avoid disconnection if they are unable to significantly reduce costs to a manageable level due to factors beyond their control. For example, consumers in rental housing are unable to authorise modifications to their home that may achieve significant gains in energy efficiency. This change also recognises that there is a substantial proportion of consumers in current hardship programs who have received assistance in excess of two years and are still unable to cover their ongoing energy usage costs. The framework in its current form may put these consumers at greater risk of disconnection. Consumer Action and FCRC along with other organisations are campaigning for minimum energy efficiency standards in Victorian rental properties to assist in achieving better financial and living outcomes for these people.

Providing more flexibility in the minimum payment amount required under 'energy costs', either through a far lower percentage to capture the greatest proportion of consumers or guided by the consumer's capacity to pay wherever welfare concerns are raised, will mean less Victorians are at risk of exclusion from the safety net. Consumer Action's financial counsellors commented that when speaking to people whose sole incomes are from a government allowance, they often find this is insufficient to cover rent and utility costs, let alone food and transport. A different approach for the same outcome could be the adoption of our recommendation in *Heat or Eat* of a capped maximum fortnightly utilities amount that can be charged of a recipient of government allowances⁸.

The draft decision refers to a demonstration of reduced overall consumption as evidence that a consumer is engaged in the 'connection support' process and therefore eligible for continued assistance. This should not be relied upon exclusively, as many variables that affect consumption (such as seasonality or a change in household composition) may hinder such a demonstration where a consumer is making genuine efforts to reduce usage. Consumers in these circumstances should not face the risk of disconnection or forced onto pay-as-you-go arrangements (that will likely only delay disconnection) that will prevent them from receiving further assistance.

We support clause 105 of the draft amendments to the code that prevents a transfer while a consumer is receiving 'energy costs' assistance. The prevention of transfers in these circumstances may avoid a consumer from being subject to debt collection which often compounds hardship. Consumers often present to legal and financial practices with issues relating to debt collection.

Pay-as-you-go

We do not support the inclusion of the 'pay-as-you-go' arrangements as set out in the draft safety net. These arrangements appear to provide no benefit for consumers most at risk of disconnection. It is unclear how a consumer who is placed on a *pay-as-you-go* arrangement, having failed to meet the 66% ongoing usage payment threshold for 'energy costs' support, is expected to meet the full cost of their ongoing usage to avoid disconnection. In practice, this arrangement is likely to simply facilitate disconnection of these consumers.

⁸ Consumer Action Law Centre 2015, *Heat Or Eat; Households should not have to decide whether they heat or eat*, August 2015, 46

The framework also only offers a way for the amount that a consumer pays fortnightly to increase and no way for it to reduce in circumstances where consumers manage to keep up with the fortnightly payments or reduce their usage. This may cause a consumer to face disconnection even where they have managed to decrease their costs.

The 'pay-as-you-go' arrangements potentially require a significant level of contact between the consumer and the retailer (for example, where the consumer's usage fluctuates). *Heat or Eat*⁹ is a useful reference to understand the situations where the individual would not be available to allocate the anticipated time for contact to maintain supply to their energy supply.

Assistance offered to consumers to reduce their usage under the 'energy costs' arrangements should also continue to apply for consumers on 'pay-as-you-go' arrangements.

Reconnection

The current EWOV same-day reconnection policy has ensured that the vast majority of those disconnected are reconnected without upfront payment when they raise a dispute with EWOV. The new framework cannot step backwards in this regard.

The requirement for consumers to be forced into 'pay-as-you-go' arrangements upon reconnection if they have been disconnected twice within a year is unacceptable. This punitive measure will force those struggling to make ends meet into a constant cycle of disconnection as opposed to support and referral. For some it may result in long term disconnection.

It is also unclear where consumers will land in the safety net when being reconnected and the support they will receive to repay debt accumulated prior to disconnection. There remains a clear risk under the proposed framework that some consumers will be disconnected due to an inability to engage with their retailer following a missed payment (for example, those facing a short-term crisis, such as being admitted to hospital or fleeing domestic violence). Consumers in these circumstances, once reconnected, should be offered the full range of available support to repay any accumulated debt.

Other areas of the proposed framework

Consumer Action's *Heat or Eat* report¹⁰ demonstrated that people in mental health crises may not open bills or other mail as a way to cope with their situation. We are therefore concerned that someone in crisis for numerous reasons will be unaware of a pending disconnection, particularly where smart meters mean disconnections can be carried out remotely. To lower the risk of consumers falling through the cracks in this way we recommend that the Commission explore the potential to amend clause 111(2)(c) to require retailers to make at least two attempts to contact a consumer via different forms of communication before disconnection (or application for disconnection where this is subject to review as per our earlier recommendation) and allowing a reasonable period for reply from the consumer given the limitations of each form of communication.

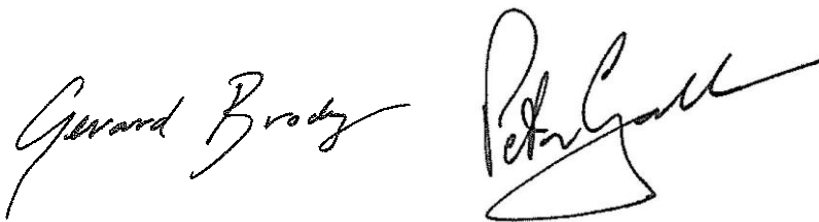
⁹ *ibid*

¹⁰ Consumer Action Law Centre 2015, *Heat Or Eat; Households should not have to decide whether they heat or eat*, August 2015

We also strongly support the proposed clause 103 in the code restricting the recovery and sale of debt, and recommend that these restrictions are extended in a similar way for legal action. Where debt is assigned to a third party, that third party should not take legal action without specifically informing the consumer of the availability of EWOV including by virtue of a statement on court complaints. This process would align with the findings of the State Government's recent Access to Justice review¹¹ which promoted diversion from courts and for court documents to tell people of other dispute resolution options.

Please contact Denise Boyd on 03 9670 5088, deniseb@consumeraction.org.au or Tom McIntosh at FCRC on 9663 2000, tmcintosh@fcrc.org.au if you have any questions about this submission.

Yours sincerely

The image shows two handwritten signatures in black ink. The signature on the left is 'Gerard Brody' and the signature on the right is 'Peter Gartlan'. Both are written in a cursive, flowing style.

Gerard Brody
Chief Executive Officer
Consumer Action Law Centre

Peter Gartlan
Executive Officer
Financial and Consumer Rights Council

¹¹ Department of Justice and Regulation 2016, *Access to Justice Review*, August 2016