JUNE 2024

Submission

Review of payment difficulty protections in the National Energy Customer Framework

Submission by
Compliance Quarter

Status
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Dear Australian Energy Regulator,

Compliance Quarter Submission on Review of Payment Difficulty Protections in the National Energy Customer Framework

Compliance Quarter welcomes the opportunity to provide feedback on the AER's Issues Paper 'Review of payment difficulty protections in the National Energy Customer Framework.' We appreciate the AER's comprehensive review of the current framework and consideration of potential improvements. We commend the AER's staff for the production of a comprehensive and well researched paper.

Compliance Quarter is supportive of the AER's intention to strengthen the regulatory framework to protect consumers who are experiencing payment difficulties. We work with new entrant and established energy retailers who are operating across the NEM. Our practical experience gives us insight into the ways in which retailers implement and apply the regulatory framework and the potential shortcomings of regulatory mechanisms.

Summary of our recommendations

1. Abolish distinction between 'hardship' and 'payment difficulty' to ensure that all residential customers who are experiencing payment difficulties have the same protections.

2. Adopt Ofgem triggers for proactive consumer support to ensure that customers are proactively contacted with information on available support.

3. Improve readability of hardship policies and remove language that carries stigma.

4. Consider social tariff subsidised by reduced network tariffs. Introducing a new social tariff that is made available by local area retailers.

5. Harmonise reporting regimes between Victoria and NECF to reduce compliance costs and to improve insights.

www.compliancequarter.com.au [redacted]

Question 1. Do you have any feedback on the proposed approach for the review?

We agree with the proposed approach for the review and highlight the importance of considering measures of success of the existing or proposed regulatory framework. In Part 1.2 of the Issues Paper, the AER notes that:

> *The problem that this review seeks to address is that some consumers experiencing payment difficulty have poor outcomes under the current framework, with people accruing high levels of debt before receiving appropriate assistance and experiencing disconnection in circumstances where it could have been avoided.*

The AER notes that the problem is particularly important in the context of increased costs of living and decreased energy affordability.

The initial indicators to measure are set out by the AER in Table 1 of the Issues Paper:

- Increase in the proportion of customers in energy debt who are receiving assistance (through hardship programs and payment plans).
- Decrease in the proportion of customers in medium-term (12–24 months) and long-term (over 24 months) energy debt.
- Decrease in the proportion of payment plans cancelled for non-payment.
- Decrease in the proportion of payment plans cancelled for non-payment where the customer has had at least one other payment plan cancelled by the retailer for non-payment in the previous 12 months.
- Decrease in the proportion of customers disconnected within 12 months of being on a payment plan or successfully completing a hardship program.
- Decrease in the proportion of customers disconnected for non-payment on more than one occasion in the previous 24 months.

We agree that the listed measures are appropriate however note that wider economic conditions (and increasing energy costs) directly affect the level of energy debt of energy consumers and their capacity to pay. In other words, economic factors are not context, they are direct influencing factors (which go on to directly influence the measures identified above).

Submission: We submit that the AER should widen its review to look at more than retailers' obligation. Improvements to the measures above cannot be achieved by simply increasing regulatory obligations on energy retailers. Those regulatory obligations result in higher cost to serve, and care needs to be taken to ensure that new regulation is not simply more regulation.

Question 2. What can we learn from other approaches to strengthening protections for consumers experiencing payment difficulty?

Examining the effectiveness of each regulatory framework

We say that to the extent that a retrospective comparison of performance of each regulatory framework is possible, that comparison should be undertaken.[1] Secondly, we say that the AER and ESC should work together to consider harmonisation of reporting metrics in each performance reporting guideline. Harmonisation will allow for more in-depth analysis of the impact of each regulatory framework with a shared set of metrics.

The AER notes that 'it is not possible to directly compare metrics across the NECF and the Victorian frameworks due to differences in retailers' performance reporting requirements.[2] While the way in which the ESC and AER present performance data is different, the number of residential customers who are disconnected is a common indicator. If that indicator has meaning, then it should be used to assess the utility of changes that are proposed to the NECF framework and to test any assumption that change is required.

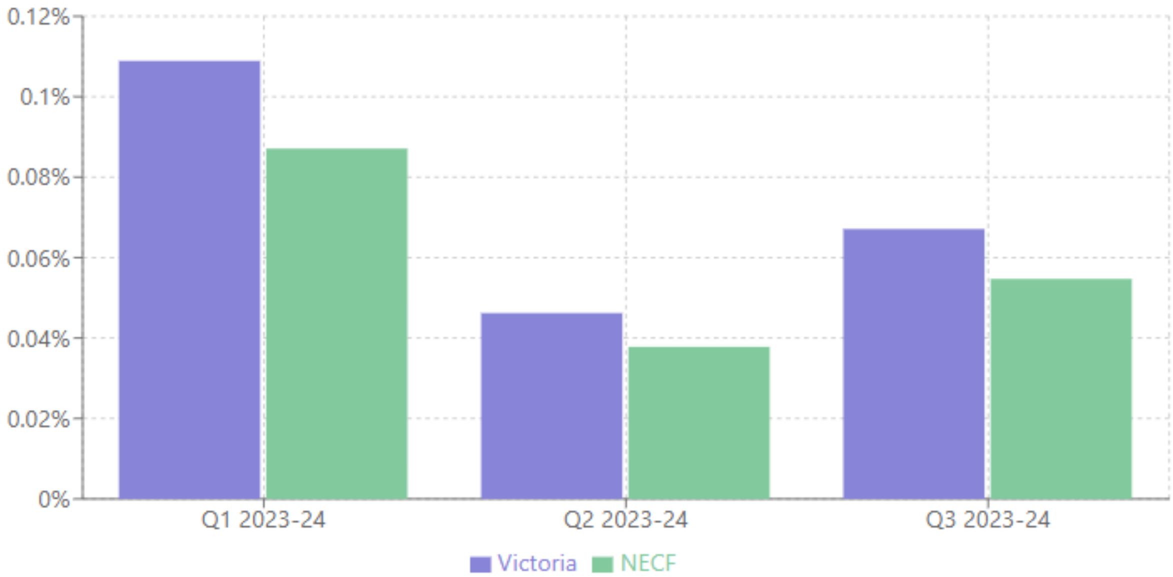
[1] We note that the ESC is currently reviewing the Energy Retail Code of Practice. The possibility here would be for the AER and ESC to combine their reviews of payment difficulty frameworks and to implement a more consistent framework that would ultimately reduce compliance costs and ensure consistency in communication for consumers.
[2] Australian Energy Regulator, 'Review of Payment Difficulty Protections in the NECF Review of Payment Difficulty Protections in the National Energy Customer Framework Issues Paper' (2024).

In Victoria, the ESC's dashboard notes there were: 2,528,738 residential customers at the end of Q1 (2023-24) 2,517,190 residential customers at the end of Q2 (2023-24), and 2,528,738 residential customers at the end of Q3 (2023-24). The same dashboard indicates that retailers reported the following disconnections of residential customers for non-payment: Q1 (2023-24): 2753 residential disconnections, Q2 (2023-24): 1164 residential disconnections, and Q3 (2023-24): 1697 residential disconnections.[3]

The AER's performance reporting data examines the percentage of residential customers disconnected for non-payment and the corresponding percentages are: Q1 (2023-24): 0.0871% residential disconnections Q2 (2023-24): 0.0378% residential disconnections Q3 (2023-24): 0.0547% residential disconnections.

Corresponding disconnection percentage rates are set out below.

Graph 1: Residential disconnections by jurisdiction during 2023-2024



The timeframe examined in our review is limited (three quarters). However, it indicates that while Victoria and NECF follow similar trends, Victoria has higher disconnection rates.

[3] Essential Services Commission, 'Energy Market Dashboard' <https://www.esc.vic.gov.au/electricity-and-gas/market-performance-and-reporting/victorian-energy-market-report/energy-market-dashboard> accessed 27 June 2024.

The parallel nature of the changes (similar percentage decreases and increases) suggests that both regions are influenced by similar factors affecting residential disconnection rates, but Victoria seems to have additional factors leading to consistently higher rates.

The reasons for these differences could be due to various factors such as:

1. Differences in state-specific energy policies
2. Variations in economic conditions between Victoria and other NECF jurisdictions
3. Differences in the composition of energy retailers or market structure
4. Variations in consumer protection measures or hardship programs

Submission: We submit that the AER should carefully review comparable measures in the NECF and Victorian performance reporting data and that the AER and ESC should work together to harmonise the performance data that is collected. Such harmonisation will result in a significant decrease in costs for retailers and will improve the insights that can be gained from assessment of that data by regulatory bodies, government, researchers, and industry.

Readability of Hardship Policies and regulatory frameworks

We submit that the AER should ensure that retailers' hardship policies are readable. Readability is critical to ensure accessibility for consumers who are assumed to be able to access and understand hardship policies. Readability is also critical to ensuing that front line consumer facing retailer staff are able to adequately explain and implement consumer protections for those consumers who are experiencing payment difficulties.

We reviewed the text of the ten retailer hardship policies using the *textstat* python library that provides various measures of readability.[4] Victorian policies were harder to read based on our measures however the difference in readability was not significant. Overall, using the Flesch Reading Ease all documents reviewed were classified as between 'fairly difficult to read' to 'difficult to read' and, in our submission, this is not acceptable.

[4] Python application code used in this review is accessible here: https://github.com/lawquarter/DocumentSimplicity

The same consideration applies when examining the readability of the key regulatory documents. We say that complexity and difficulty of readability (including the extent to which clauses cross reference other clauses or other instruments) are materially important in that regulatory obligations ultimately need to be implemented by individuals with varying levels of literacy. While it is reasonable to expect that energy retailers have experienced compliance and legal professionals who are available to develop compliance management systems, the obligations that are the subject of this review are implemented by front line staff.

Question 3. How adequate, effective and appropriate is the current eligibility framework for payment difficulty protections?

One of the issues identified in the Issues Paper is the lack of clarity and consistency in the definitions of 'hardship' and 'payment difficulty'.

As the AER notes, there is a distinction in s 50(1) of the NERL and in the NERR between customers who are ‘hardship customers’ (s 50(1)(a)) and residential customers who are ‘experiencing payment difficulties’ (s 50(1)(b)). Rather than define each term, we say that the distinction should be abolished and that any customer who is experiencing payment difficulties as set out in s 50 (1)(b) should be considered a hardship customer.

Corresponding amendments to rules 33, 34, 76E, 111, 141, 145, 146, 167 and the model standard retail contract in the NERR should be made. Additional resulting changes may be needed to ensure that hardship protections that are afforded to hardship customers adequately recognise that hardship may be experienced over a short period of time or a longer period. The use of the term hardship should also be reconsidered as it comes with stigma.

As the AER notes, ‘some retailers already take a more inclusive approach to identifying customers as hardship customers’ and that is reflected in our experience.

Submission: We recommend that the distinction between hardship and payment difficulty be abolished.

Question 4. How could the framework better support early identification of consumers experiencing payment difficulty? And Question 5. How could the framework better support effective engagement with consumers experiencing payment difficulty?

In section 3.2 of the Issues Paper the AER discusses the various challenges for consumers seeking to access support including under retailer's hardship policies. This includes the focus on 'self-identification,' and challenges faced by particular groups of consumers.

Potential resolutions include the introduction of 'trigger' based obligations such as Victoria's $55 threshold or Ofgem's obligation to attempt contact at the 'earliest opportunity and no later than following 2 consecutive missed monthly scheduled payments, one missed quarterly payment, or notification by a consumer.' It is our view that Ofgem's triggers are significantly more likely to be effective if they are a trigger for a retailer's obligation to contact the relevant customer to seek to assist them and to provide them with information on hardship support available.

The Ofgem triggers are easily measurable and can be implemented. Other measures, such as a set level of debt, or use of a Buy Now, Pay Later Services are either not reflective of the individual impacts of payment difficulties or would be difficult or impossible to implement.

Submission: We support the use of Ofgem triggers as the basis of an obligation on retailers to proactively reach out to consumers and offer them support.

Additionally, we advocate for exploring predictive data analytics and artificial intelligence. We endorse the idea of the AER creating channels for retailers to openly and transparently communicate about the possible application of these tools and their regulatory consequences. Retailers should be incentivised to jointly create technologies, systems, and procedures that lead to prompt detection and assistance for consumers facing hardship.

We agree with the AER's observations in the section of the Issues Paper titled **Role of retailer hardship policies** in communicating available assistance. We agree that the term hardship carries stigma, and that hardship polices are not, currently, a consumer-friendly way to present information on support available.

Question 6. How could the framework better ensure that consumers experiencing payment difficulty are supported appropriately with assistance that is tailored to their individual circumstances?

We are strongly supportive of retaining the methodology by which payment plans are established based on a customer's capacity to pay, arrears owning, and expected consumption over the next 12 months with an offer to pay in advance or in arrears by instalments. Should the distinction between hardship customer and customer experiencing payment difficulties be abolished, the right to a payment plan determined on this basis should apply to consumers who currently fall in either 'category.' Obligations to ensure that retailers make contact with such customers based on the Ofgem's triggers would increase the number of consumers who are able to access a payment plan earlier.

We are also supportive of the flexibility of the framework in NECF and say that the discretion that is afforded to retailers should be retained. Discretion to support consumers according to their individual circumstances is critical as the nature of hardship is highly variable.

Submission: Don't introduce additional prescriptive obligations if they will simply result in a more complex framework that does not benefit consumers.

Question 7. How could the framework better ensure that disconnection is a last resort?

It is our experience that the majority of retailers do ensure that disconnection is a last resort. Retailers are acutely aware of the implications of disconnection on consumers and the consequences of non-compliance in relation to hardship and disconnection. This was reflected in the cessation of disconnection during the height of the pandemic.

Best endeavours and the need for discretion

We note the *knock to stay connected* report and encourage the AER to consider examination of rule 111 (e) of the NERR: the 'best endeavours' obligations to contact a customer following the disconnection warning notice (and the AER's prior guidance on this). While we do not believe that a definition of best endeavours is required, further consideration and revised guidance should be given to the circumstances in which in person contact is required to satisfy the obligation.

We agree that it is critically important that retailers consider the individual circumstances of each consumer before processing a disconnection and submit that there should be a list of factors that a retailer is required to consider. Ultimately, other than prohibitions and ensuring that retailers follow each of the steps set out in the regulatory framework, there should remain the ability for retailers to disconnect for non-payment as removing this ability would potentially expose retailers to unlimited liability to network operators and so on.

A social tariff

One of the challenges that retailers face is balancing their risk of ongoing liability for energy consumed and for network services and so on with their social obligation to consumers who are not identified as being in hardship but by virtue of non-payment either are or will be in hardship as a result of disconnection. It is our view that there should be an option that goes beyond the obligation of the local area retailer to offer all customers a standing offer. That, for example, may take the form of a tariff that is provided by local area retailers that is specifically designed to ensure that consumers can cover basic energy needs. [5] It is our view that the most efficient way to provide such a tariff would be for the NSPs to provide a discounted network tariff that can be retrospectively applied for periods of hardship by the relevant consumer's local area retailer. The relevant customer could have access immediately to the relevant tariff and the local area retailer would then be 'made whole' by a reduced network bill.

Submission: Consider whether a social tariff that is made available by local area retailers could be mandated.

[5] See for example Dr Bjorn Sturmberg's discussion on the SwitchedOn podcast and on Renew Economy: https://reneweconomy.com.au/switchedon-podcast-free-electricity-to-cover-essential-needs/

Question 8. What are the costs and benefits of potential changes to the framework?

Once this review has developed recommendations, we will be in a position to provide further detail on actual costs that are likely to result.

Harmonisation between reporting regimes in Victoria and NECF would have a significant positive impact and would reduce retailers' costs.

Conclusion

Compliance Quarter supports the intent of the proposed changes to improve outcomes for energy consumers experiencing payment difficulties. We appreciate the AER's consideration of implementation costs and challenges for retailers in assessing reform options. Compliance Quarter looks forward to further engagement with the AER as this important review progresses.

Please contact [redacted] if any additional information would assist your consideration of this submission.

Kind Regards,

[redacted]