



FCA response to AER - Review of payment difficulty protections in the NECF - Issues paper - May 2024

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Financial Counselling Australia (FCA) is the peak body for
financial counsellors in Australia.

About Financial Counselling Australia

FCA is the peak body for financial counsellors in Australia. We support financial counsellors and provide a voice on national issues. We advocate on behalf of the clients of financial counsellors for a fairer marketplace that will prevent financial problems in the first place.

What Financial Counsellors Do

Financial counsellors provide information, support and advocacy to people experiencing financial difficulty. Working in community organisations, their services are free, independent and confidential. Financial counsellors are required to hold, or to obtain, a Diploma in Financial Counselling. They need knowledge of a wide range of areas of law and policy, including consumer credit law, debt enforcement practices, the bankruptcy regime, industry hardship policies and government concession frameworks.

Financial counsellors also document their experiences and highlight issues that have a negative impact on their clients. Either individually, or through FCA, they consult with industry, government and other stakeholders and to encourage practices that prevent financial and consumer problems in the first place.

The main causes of financial difficulty are unemployment, illness and relationship breakdown. Financial counsellors also assist many people trying to make ends meet on very low incomes.

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ABOUT THIS SUBMISSION

We note that the purpose of the AER Issues Paper is to seek stakeholder views on key issues that have been identified through extensive early engagement, preliminary analysis and direct consumer research, including:

- the effectiveness of existing protections for consumers experiencing payment difficulty, including:
 - who is eligible for these protections
 - the obligations on retailers to identify, engage with and assist consumers experiencing payment difficulty
 - debt recovery and disconnection protections
- the benefits and limitations of other approaches, including but not limited to the Victorian payment difficulty framework
- the potential benefits and limitations of harmonising payment difficulty protections across the national energy market
- the impacts of potential changes on a retailer's cost to serve.

FCA's response to these issues is high-level as we understand that the AER will consult further with stakeholders to further analyse and detail the requirements to improve outcomes for energy consumers experiencing payment difficulty.

SUMMARY OF RECOMMENDATIONS

By implementing the following recommendations, the payment difficulty framework can provide comprehensive, effective and equitable support to all customers experiencing financial distress, ensuring no one is left without the necessary assistance due to technical definitions or inconsistent practices.

1. Unification of terms: Combine Financial Hardship and Payment Difficulty.
2. Adopt best practices from other jurisdictions and set minimum standards of assistance.
3. Proactive and early identification of at-risk consumers.
4. Enhance consumer engagement through multi-channel, clear and compassionate communication.
5. Provide flexible, tailored and timely support options and assistance.
6. Leverage technology and data for automated and predictive identification.
7. Streamline and provide consistency of the regulatory framework across jurisdictions.

RESPONSE TO CONSULTATION QUESTIONS

QUESTION 1. FEEDBACK ON THE PROPOSED APPROACH FOR THE REVIEW

- **Unification of terms:** The proposed approach for the review should emphasise the unification of the terms "financial hardship" and "payment difficulty." Separating these concepts can lead to inconsistent protections and confusion for both the consumer and the retailer. Regardless of the terminology used, consumers experiencing financial distress require clear, consistent, and robust protections.
- **Effectiveness of Proposed Indicators:** Indicators seem appropriate but do not cover short-term, but only cover medium term (12-24 months) and long-term (more than 24 months) hardship. There is a question about how you would determine the category in which the consumer sits. Indicators also don't include capturing consumers at risk of hardship /payment difficulty or those that simply cannot afford their energy costs.
- **Limitations of Current Protections:** The review should recognize that current protections might not fully encompass all consumer scenarios, particularly those who may not neatly fit into existing definitions of hardship or payment difficulty. We also need to build in flexibility into any approach to adapt to the changing landscape of how energy is provided into residences and businesses.

QUESTION 2. LEARNING FROM OTHER APPROACHES

- **Victorian Framework:** The Victorian Energy Payment Difficulty Framework mandates that retailers offer tailored assistance based on consumers' capacity to pay, setting a high standard for consumer protection. It is easy to understand and follow and requires proactive identification of consumers experiencing payment difficulty/hardship by providers.
- **Other Australian Standards to Consider:** Telecommunication providers (telcos) are required to have a range of responses to assist customers in financial hardship meet their financial obligations and stay connected.

The new [Telecommunications \(Financial Hardship\) Industry Standard 2024](#) came into effect on 29 March 2024. The new standard sets out the rules that telecommunications providers must follow when assisting a customer experiencing financial hardship to stay connected to essential phone and internet services.

In summary, under the Industry Standard, telecommunications providers must:

- Establish a payment assistance policy that sets out how they can assist their customers who are having trouble paying their bills due to financial hardship.
- This policy must be clear, easy to understand, accessible, and include information about support services such as financial counselling and the TIO.
- Tell their customers about their payment assistance policy and publish it on their website and app (if they use one).
- Take steps to proactively identify, contact and support customers promptly who are, or may be, experiencing financial hardship.
- Offer customers suitable assistance options to meet their individual needs. This includes options to reduce costs or establish suitable payment arrangements to keep the customer connected.
- Take certain steps, including offering payment assistance, before a customer in financial hardship can be disconnected. Disconnection should only be used as a last resort. Should disconnection be necessary, the customer must be given at least 10 working days' notice.
- Not refer customers who have applied for, are in discussions about, or are in an agreed financial hardship arrangement, to a debt collection agency.
- The new rules apply for small business, residential and not-for-profit consumers.
- **Minimum Standards:** Establishing minimum standards is crucial for ensuring that all energy consumers receive a baseline level of support. This approach can be seen in both the Victorian framework and the Telecommunications (Financial Hardship) Industry Standard 2024, which outlines specific assistance protocols for consumers facing financial hardship and ensures that disconnection is a last resort.

QUESTION 3. ADEQUACY OF CURRENT ELIGIBILITY FRAMEWORK

The current eligibility framework should be expanded to include all consumers experiencing any form of financial distress, not just those formally classified as in hardship or who self-identify.

- **Effectiveness of Definitions:** Definitions of hardship and payment difficulty should be unified to prevent arbitrary exclusion of consumers in need. The Victorian model does not distinguish sharply between these terms, offering a more inclusive approach.
- **Differentiation and Scope:** Protections should be inclusive, with minimum assistance guaranteed for all, and additional tailored support for those in severe hardship or who have specific needs such as victim survivors of family and domestic abuse.
- **Minimum Standards of Assistance:** Establishing minimum standards ensures that all consumers receive essential support, with enhanced protections for those with greater needs. Both the Victorian Energy Payment Difficulty Framework and the Telecommunications (Financial Hardship) Industry Standard 2024 provide a good basis to refer to on what these are including how to ensure that disconnection is a last resort.

QUESTION 4. EARLY IDENTIFICATION OF CONSUMERS

Early identification is critical for proactive support.

- **Current Indicators and Triggers:** Indicators should include payment history, sudden usage spikes, and direct communication from consumers. The Victorian framework's use of proactive engagement and monitoring can serve as a model. The Telecommunications Hardship standard indicators state that if the consumer has **two** consecutive overdue bills, or three overdue bills in a six-month period, or arrears of more than \$200 then the consumer is in financial hardship and must be offered assistance.
- **Identifying Payment Difficulty in Customers on Prepayment Meter Systems or Prepaid Billing Arrangements:** These customers may not engage with their energy providers until they are already in a state of crisis, making early identification crucial. For example, a strategy for early identification is to monitor changes in usage and top-up patterns as a sudden decrease in top-ups or consistent low balances can indicate financial stress.
- **Use of Automation and Predictive Analytics:** These tools can help with the pro-active identification of at-risk consumers early, enabling timely intervention. However, safeguards are needed to ensure data privacy and prevent misuse.

QUESTION 5. EFFECTIVE ENGAGEMENT WITH CONSUMERS

Engagement strategies must be clear, compassionate, and accessible.

- **Communication and Engagement Approaches:** Communication about assistance should be clear, accessible, and tailored to the consumer's preferences and needs. Retailers should use various communication channels, including phone calls, emails, SMS, in-app notifications, to reach diverse groups of consumers. The Victorian framework's focus on clear, consistent communication is exemplary. The Telco Hardship standard requires providers to give consumers information about their hardship policy, discuss options available, offer to provide a copy of the application form, provide an email and telephone number for the consumer to contact, and, if the consumer has specific needs, then assist customer to make an application.
- **Supporting Diverse Consumer Needs:** The framework should support practices that cater to the diverse needs of consumers, including those from different cultural and linguistic backgrounds. Retailers should train staff in cultural competency, provide translation and interpreter services to assist non-English speaking customers, and ensure all communications are accessible for people with disabilities, including those with visual and hearing impairments.
- **Purpose and Role of Hardship Policies:** The hardship policy should serve as a comprehensive guide for both retailers and consumers, outlining the support available, the process for accessing assistance, and the rights and responsibilities of all parties involved. These policies should mandate specific, actionable assistance measures and be easily accessible to consumers.
- **Proactive and Automated Engagement:** The current approach to identifying customers experiencing payment difficulty relies heavily on self-identification and certain predefined criteria. This approach can miss a significant number of consumers who do not reach out for help due to various reasons, including stigma, lack of awareness, or communication barriers. Automation can quickly identify at-risk customers based on usage and payment patterns, but it must be complemented by personalised support to the identified consumers.

QUESTION 6. TAILORED ASSISTANCE FOR CONSUMERS

Assistance should be flexible and tailored to individual circumstances.

- **Addressing Financial Hardship and Payment Difficulty:** It's crucial to unify the terms "financial hardship" and "payment difficulty." The current distinction creates unnecessary barriers and confusion. Both terms describe consumers struggling to meet their financial obligations and

should be treated as a single category. The Victorian Energy Payment Difficulty Framework sets a strong precedent by treating all consumers facing payment issues under a unified support system, ensuring no one falls through the cracks due to technical definitions. By adopting a unified approach, the framework can provide comprehensive, equitable, and effective support to all consumers in financial distress, ensuring no one is left without the necessary assistance due to semantic distinctions.

- **Forms of Practical Assistance:** This includes debt waivers, flexible payment plans, payment matching, energy efficiency advice, ensuring client is on the best energy plan, information about and assistance with applying for energy rebates and other state and federal government grants/financial assistance, referral to financial counselling if the client needs further support.
- For consumers in permanent hardship, those who cannot afford ongoing energy costs, there needs to be a strategy to keep them connected, including regular reassessment of their situation. Some friction needs to be introduced. For example, requiring providers to first check in with the customer who is in arrears/debt and is looking to switch providers and offer them practical assistance before agreeing to the switch. Debt waivers, either partial or in full, are a form of assistance that must be considered for consumers who are in permanent hardship. Assistance programs should also be specifically tailored for prepayment meter customers e.g. emergency credit to help customers manage unexpected financial difficulties without losing access to energy.
- **Timeliness and Accessibility:** Assistance should be provided as soon as financial difficulty is identified, and access to support should be straightforward and user-friendly.

QUESTION 7. DISCONNECTION IS A LAST RESORT

To ensure that disconnection remains a true last resort, several key aspects of the current framework must be reviewed and strengthened.

- **Minimum Disconnection Amount:** The current disconnection amount of \$300 is too low and does not reflect current energy costs. The amount should be raised to at least \$1,200. A higher threshold could delay engagement, so it must be paired with stronger early intervention policies. The framework should also implement a mechanism for the regular review and adjustment of the minimum disconnection amount to reflect current economic conditions and average energy costs.

- **Hardship and Payment Difficulty:** Current arrangements are based on how providers classify clients in hardship or payment difficulty and are problematic as there is no unified definition of hardship and payment difficulty. Please see our comments above regarding the unification of these terms to ensure that all customers experiencing financial distress receive consistent and equitable support.
- **Early and Proactive Engagement:** There is currently no proactive identification of customers in financial distress and needing assistance – meaning that a reminder notice and disconnection notice may be first correspondence received by the consumer without any information on how to access support and assistance. Retailers should be required to identify at-risk customers early and reach out proactively to prevent payment difficulties from escalating to the point of disconnection. This includes providing information about consumer’s rights and support options available on bills, reminder and disconnection notices.
- **Current Debt Recovery and Disconnection Protections:** The current requirement to offer two payment plans within twelve months often functions as a "two-strike rule," which may not adequately address the diverse needs of consumers facing payment difficulty. This rule is far too rigid and does not consider the consumer’s situation or that additional support measures should be offered.
- **Connection and Reconnection:** Security deposits can be a significant barrier for people already experiencing financial distress; prohibiting them or waiving them for hardship customers would improve access. Offering flexible payment plans for reconnection fees, allowing them to be spread over several billing cycles, can also ease the financial burden on already stretched customers.

QUESTION 8. COSTS AND BENEFITS OF POTENTIAL CHANGES

Harmonising protections across jurisdictions will provide consistent consumer experiences and provide a simplified regulatory compliance framework for retailers. While this might initially increase compliance costs, it can lead to long-term savings such as streamlined processes, reduced consumer debt, and enhanced consumer trust and satisfaction.

CONCLUDING REMARKS

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Lody Stewart on [REDACTED] or [REDACTED].

Yours sincerely

Domenique Meyrick and Peter Gartlan

CO-CEOs

FINANCIAL COUNSELLING AUSTRALIA