16 June 2017

Dr Ron Ben-David
Essential Services Commission
Level 37/2 Lonsdale Street
Melbourne VIC 3000
Lodged online

Dear Dr Ben-David,

New Draft Decision—Safety Net for Victorian Energy Consumers Facing Payment Difficulties

Origin Energy (Origin) welcomes the opportunity to provide a response to the Essential Services Commission of Victoria's (the Commission) New Draft Decision on its Safety Net for Victorian Energy Consumers Facing Payment Difficulties (Draft Framework).

Origin appreciates that the Commission made a decision to release a new Draft Decision in May this year. The present Draft Framework has addressed some of the concerns that were raised by Origin in its previous submission, including the high degree of prescription and the potential for over-capture.

Whilst the Commission may have listened to Origin and other stakeholders about the nature of the problems involved in the pervious decision, it has not always drawn directly and transparently on the experience of retailers and consumer groups when developing new policy positions. Accordingly, the current Draft Decision addresses some of the problems with the previous Draft Decision whilst creating a set of new and different issues that now need to be addressed. The consequence of these problems is often that customers will either be disconnected with more debt than would have been the case or they will be given the opportunity to gradually accumulate more debt than the existing Energy Retail Code. Some customers will accordingly be worse off than would otherwise be the case due to this increased debt, and retailers will accumulate additional costs for no demonstrable benefit.

The major issues that Origin has identified in the Draft Framework, and outlined in this submission, include:

- The definition of 'arrears', which will cause debt to increase for some customers;
- The arrears only minimum standard for Default Assistance, which contributes to customers potentially having multiple payment schedules for different invoices;
- The arrears only minimum standard for Tailored Assistance, which has no precedent and is demonstrably less effective than other practices;
- Ambiguity around Hardship plans and their role in the Framework;
- Customer circumstances and what a retailer 'should reasonably have known';
- Significant discretions are provided to customers to 'propose', vary and extend their plans;
- The potential for customer loops and the unclear pathway to ending 'broken' payment plans that are continuously varied or extended without being paid;
- The lack of evidence that an automatic payment plan will in fact assist customers, and the problems involved in having a payment plan without a conversation between a customer and a retailer; and

- Miscellaneous issues with objecting to customer transfers and postage requirements.

Origin is also concerned with aspects of ACIL Allen's preliminary cost benefit analysis. It appears that both KPMG and ACIL Allen have assumed that the Commission's Framework will succeed in meeting its objectives in order to create a positive net present value (albeit a very narrow one for retailers). It is unclear why new practices are assumed to be more efficient and effective than current practices; making this assumption defeats the purpose of undertaking a cost benefit analysis. It is also concerning that ACIL Allen was not aware of the issues mentioned above. Had the Framework been better understood then we suspect a positive net present value for the cost benefit analysis was highly unlikely.

Origin does not believe that the Commission needed to invent new standards and processes to deliver improved outcomes for customers in payment difficulty. Much of the architecture for improving customer outcomes is already present in current retailer practices and there was no need to try and 'reinvent the wheel' through numerous proposed Frameworks. It is also the case that retailer assistance can only go so far; much of the assistance necessary is elsewhere in the hands of Governments and welfare agencies.

Origin may not agree with every aspect of the Commission's work but we want to ensure that it determines a balanced and workable Framework. Accordingly we have proposed a number of solutions that we think address the issues contained in the Draft Framework. These amendments are required to make the Framework more workable. We hope that they are considered by the Commission.

Whilst a Draft Decision is ordinarily a reasonable indication of a likely Final Framework, problems have been identified with the architecture of the Commission's Framework. The Commission has been open about this during forums and technical workshops. It is clear that from the Process Mapping Workshop, a fortnight before submissions were due, that stakeholders and the Commission are only beginning to appreciate the extent of some of the problems created by the Framework. Origin believes that additional time and consultation is therefore needed to determine these matters, and to resolve a number of issues that are still present in the proposed Framework. We earnestly believe that the best way to achieving a workable Final Decision will be for the Commission to issue something like an Options Paper that canvasses some of the solutions from stakeholders in order to receive formal feedback on them. This should include further process mapping and discussions on suitable drafting. We believe that a collaborative and transparent approach to formulating a Framework has the best chance of producing a workable Final Decision.

The Commission's Draft Framework represents a considerable departure from current practices in Victoria and other jurisdictions. Once finalised, Origin and other retailer need twelve to eighteen months to implement these changes; the Commission has allocated around half this amount of time, even with a phased implementation. The phased implementation is unnecessary if retailers are simply given the appropriate amount of time.

We address these issues, and the Commission's Draft Framework, in more detail below.

Should you have any questions or wish to discuss this information further, please contact Timothy Wilson, Regulatory Analyst, .

Yours sincerely

Jon Briskin
General Manager, Retail

1 Issues with facing 'payment difficulties' and 'arrears'

1.1 The interaction between 'payment difficulties', 'arrears' and 'hardship'

One of the foundational concepts of the Commission's Draft Decision is the provision of assistance to customers that are facing 'payment difficulties'. The phrase 'payment difficulties' is mentioned in the definitions of arrears and payment plan, and it is particularly important in clauses 91, 92 and 111A where it is used in relation to enforceable obligations. Unfortunately, the Commission has not defined 'payment difficulties' in the Draft Code. Origin is unsure of how it can comply with a requirement that has not been defined in the Draft Framework.

A possibility is that the Commission intended to use 'arrears' as a surrogate for 'payment difficulties', but this has not been explicitly stated and should not be assumed by retailers. After all, doing so does not resolve the issue of how to interpret clause 91(c) or 92, both of which rely on a concept of 'payment difficulties' that differs from merely being in 'arrears'. Further, for reasons we explain below, the definition of 'arrears' creates its own set of problems. The solution is to remove any obligations or responsibilities that are contingent on a customer being in 'payment difficulties'; we believe our proposals in this submission make the concept of 'payment difficulties' unnecessary for the purpose of creating standards and obligations.

The Commission has returned to the concept of 'hardship' in its current Draft Decision. This likely reflects the feedback of stakeholders in the previous Draft Decision and the fact that 'hardship' is an enacted concept in the *Electricity Industry Act* and the *Gas Industry Act*. The Commission should keep hardship as a separate category of customers as it clearly distinguishes between those who merely miss a bill and need some help to repay arrears, from those that are struggling to meet their payments in the long term. This distinction is implicitly made in Tailored Assistance and we believe that those customers receiving help under clause 79(3) are effectively in 'hardship'.

1.2 The definition of arrears will cause debt to increase

Origin and other stakeholders argued that the October Draft Decision over-captured residential customers by requiring an automatic payment plan (Immediate Assistance) at the reminder notice phase. The Commission has responded to this by making an automatic payment plan (Default Assistance) much later in the collection cycle. At the same time, clause 111A of the Draft Framework suggests that all residential customers must be offered Default Assistance prior to disconnection.

In doing so, the Commission has created an entirely new problem: customers cannot receive Default Assistance until they are in 'arrears' and this occurs only after their second bill.[1] The effect of the 'arrears' definition is to pause the disconnection process until the second bill is received. This means that unengaged customer on quarterly billing may be disconnected in

[1] See clause 83 of the Draft Code.

35 to 53 business days following their second bill.[2] Without the new arrears definition, Origin estimates that a disengaged customer would most likely be disconnected prior to their second bill. A session was held by the Commission on 2 June 2017 in which this issue was brought to light. It became clear that an unengaged customer on a quarterly billing cycle would be accumulating debt for at least two bills (and potentially a third bill) before disconnection. For Victorian electricity customers, this equates to an average electricity bill debt of $888 and an average gas bill debt of $744.[3] It was also apparent that this customer would receive multiple bills and a separate Default Assistance schedule for their second overdue bill. This schedule would apply only to the second bill because the first Default Assistance schedule only applied to the first debt.

Accordingly, unengaged customers can accrue a much higher debt than is currently the case prior to disconnection. We note that most of Origin's electricity customers are on quarterly billing and we expect that a majority of customers would be too across the state. It will also unnecessarily extend the credit cycle for retailers, imposing additional debt costs that will be met by the individual (who is less likely to be able to pay a higher debt) or the community (via higher energy costs).

The picture is similar for customers on monthly billing, except with an overlay of additional Default Assistance notices and customer confusion. Again, because it will take approximately 35 to 53 business days following a customer being in 'arrears' before they are disconnected, an unengaged customer will have received three to four monthly bills prior to disconnection. This means that they will be in arrears for at least their third monthly bill. Any delays in disconnection would in fact see a fifth bill issued because it is very close to the estimated time of disconnection. Given the Commission's expectations that all customers be provided with the assistance to which they are entitled to under the Draft Code, a retailer would issue a Default Assistance schedule for the arrears of each invoice. The result is an unengaged customer on monthly billing with multiple, cascading arrears only schedules for each invoice. This gives rise to a potential scenario where a customer chooses to make payment of their first amount under the *second* Default Assistance schedule, but then not paying their first or third Default Assistance payment. The result would be an eventual disconnection for their first Default Assistance schedule, despite contributing to the second. We believe that the combination of multiple Default Assistance schedules and increasing debt is undesirable for customers and retailers—and with no conceivable benefit to justify it.

The problem also arises for gas customers (generally on bi-monthly billing), who would accrue three bills prior to disconnection. Given the seasonal nature of gas demand, a customer in the colder months of the year could end up with a significant arrears prior to disconnection. They would also receive multiple Default Assistance notices for different bills prior to disconnection.

1.2.1 Solution to 'arrears'

[2] This represents an estimate. The difference between the numbers is explained by whether a retailer undertakes Best Endeavours Tailored Assistance prior to the second bill or whether a retailer waits until after the second bill before offering Tailored Assistance, A customer with a perfect payment history may not get offered Tailored Assistance until after the second bill.

[3] This calculation is based on the average for Origin customers over a period of two quarterly bills in 2017.

The solution to the arrears problem was flagged by retailers at the recent Stakeholder Forum. It involves setting the trigger for an entitlement to Default Assistance at $300 (GST inclusive) and at the same time increasing the Disconnection Amount to the same sum.

Default Assistance is meant to be a last offer to all customers who are at risk of being disconnected for non-payment. It is consistent with this objective to link Default Assistance with the disconnection process. At present, clause 116(1)(g) sets the disconnection amount at $120 ($132 including GST). Origin believes that it makes sense for the amount in Victoria to be adjusted to match the National Energy Customer Framework (NECF) amount of $300 per fuel (GST inclusive). This was recently reviewed by the AER and found to be a sum that balances maintaining supply with avoiding unnecessary debt accrual.[4] Using the debt amount means that a retailer could merge the offer of Default Assistance with a disconnection warning notice (which the Commission has confirmed is permissible under the Draft Code). The customer can then choose whether they accept the offer of Default Assistance, pay the outstanding amount in full, or proceed to disconnection.

As a consequence, 'arrears' would no longer be a threshold for assistance in the Framework—which means that Tailored Assistance also needs to be separated from 'arrears'. To resolve this issue, the Commission should make issuing a Reminder Notice the trigger point for the customer receiving an offer of Tailored Assistance. The Notice would contain relevant information about Tailored Assistance, which is already contemplated in the current Draft by the requirement in clause 109(2). Note that nothing should prevent a retailer from offering Tailored Assistance prior to this point. Retailers ought to also be given the opportunity to continue offering Standard Assistance measures at the same time as Tailored Assistance.

We believe that this combination of measures balances the problem of avoiding debt accrual with providing customers a reasonable opportunity to access assistance to resolve their payment difficulties. Disconnections may occur sooner than the current Draft Decision (in order to avoid debt accrual) but it would still be later than under the current Energy Retail Code because a retailer is still obliged to offer both Tailored and Default Assistance to a disengaged customer. It is also important to note that the $300 threshold means that customers are more likely to be able to receive effective assistance from the Utility Relief Grant Scheme (URGS) than under the current proposal because their debt is less likely to exceed $500.

1.2.2 Solution to multiple Default Assistance notices

The issue of multiple cascading bills and Default Assistance schedules can be resolved by combining use and arrears as a minimum standard in Default Assistance. Including future use in the written schedule of payments would shift the customer away from receiving an arrears-only plan plus ongoing bills at their chosen frequency; instead, the customer would receive upfront notification of their likely future use and arrears smoothed over a period of time. Customers would not receive a number of use-only bills and subsequent Default Assistance warning notices that overlap with this. Instead, their next *installment* combining use and arrears would fall due.

[4] AER, *Review of the Minimum Disconnection Amount*: *Final Decision*, March 2017, p. 13.

The Commission has stated that there is nothing to prohibit retailers from offering an 'arrears only' option and an 'arrears plus use' option in the Default Assistance schedule. In practical terms an unengaged customer will receive three separate amounts it has to pay on a notice: the full arrears (which can be paid), the arrears only, and the combined arrears and projected use. Being confronted with so many options is potentially confusing for an otherwise unengaged customer; we would expect their response to be a continued lack of engagement. Origin believes that combining use and arrears is preferable from a customer perspective as it provides a clear indication of what payment is due and thus gives them the opportunity to plan for their amount.

2 Standard Assistance

Origin agrees with the Commission's Draft proposal to require retailers to provide a minimum of three options to customers. We appreciate that these options are modeled closely on the form of assistance retailers already apply to customers.

2.1 Clause 76(2)(e)

However, we believe that the Default Assistance equivalent in clause 76(2)(e) is unnecessary given that a customer could be placed on a payment plan for a period of between three and nine months under clause 76(2)(a). A distinction may be drawn between these measures insofar as clause 76(2)(e) applies to anticipated arrears only. For reasons we have explained above, we do not believe that splitting arrears from use is a helpful distinction for customers in payment difficulty, and it is unlikely to be taken up by customers given that it is a bad experience to have multiple bills for the same account (that is, one for use and one for arrears).

We also note that a customer could elect to receive assistance under clause 76(2)(e) and then cease paying or engaging with the retailer. The result would be that a customer would again receive the same type of payment plan prior to disconnection in the form of Default Assistance—despite already demonstrating that this assistance did not meet their needs. Origin does not believe that duplicating assistance in this manner is beneficial for either a customer or a retailer.

The Commission should introduce an unspecified fifth option by replacing 76(2)(e) with "any other assistance that retailers develop". We are conscious that a new measure may be developed by a retailer and that retailers should be permitted to offer it to customers under Standard Assistance.

2.2 Minimum standards

The Commission has defined Standard Assistance as applying to customers "to help them avoid getting into arrears" (clause 74). At the same time, the Commission has made it clear that retailers are permitted to exceed minimum standards but that it is not permissible to substitute minimum standards with other assistance.[5] This raises the question: is it

[5] Essential Services Commission of Victoria, *Payment Difficulty Framework: New Draft Decision*, May 2017, pp. 58 and 112.

acceptable to offer a customer *in arrears* both Standard Assistance and Tailored Assistance, or does this represent a substitution?

Origin supports retailers being able to offer Standard Assistance measures to customers after they have missed their bill. To use the Commission's language, we believe that this is a supplement rather than a substitution. As an example, a customer may benefit from the assistance described in clause 76(2)(c) when a customer is in arrears as they may only need an extension of time to pay their bill rather than a Tailored Assistance payment plan. We don't believe that these customers should be deprived of this opportunity by limiting Standard Assistance to customers who are yet to miss a bill. It should be a retailer's discretion if they wish to offer customers Standard Assistance because this would exceed minimum standards.

3 Tailored Assistance

3.1 Minimum standards of energy management assistance

Origin supports the tiered approach to energy management assistance set out in Tailored Assistance. In particular, we agree with the Commission requiring a different level of assistance for customers that depends on whether they can or cannot pay for ongoing usage. Some stakeholders have suggested that all customers who miss a bill should receive "more assistance" earlier on. In principle we do not object to assistance being provided early on and we believe that clauses 79(1)(a) to (d) captures this need. However, Origin considers that assistance to hardship customers is most effective when it is targeted. If customers request or demonstrate a need for deeper assistance measures then these are catered for appropriately in clauses 79(1)(e) to (f) (we would consider these to be Hardship customers).

Automatically requiring that any or all of the assistance in clauses 79(1)(e) to (f) be provided to all customers regardless of the level of payment difficulty they are in will lead to a misallocation of retailer resources and increased costs. Lifting costs across the board for all customers would likely have the perverse impact of limiting some retailer's ability to offer additional assistance to Hardship customers that genuinely need it. Maintaining the targeted approach minimises this risk.

3.2 Hardship plans

Origin supports the Commission's decision to maintain Hardship plans in the Draft Code. The way we have interpreted the role of Hardship policies is that they are an explanation of how a retailer will provide the minimum standards of assistance set in the Draft Code and existing legislation. Traditionally, Hardship programs have been available to customers who need the most assistance to manage their energy costs. This would generally be customers that cannot pay for their ongoing use and need assistance closing the gap between what they can afford to pay and their actual costs. In the Draft Code, this is reflected in clauses 79(3). To the extent there is any significant retailer discretion in the Draft Code, it is contained in clauses 79(1)(e) to (f) where retailers implement measures to assist customers with lowering their energy use. It is reasonable for retailers to set out the measures they will undertake to achieve this.

Origin does not believe that it is appropriate to apply Hardship policies to customers receiving assistance under clause 79(1)(a) to (d) customers and Default Assistance. Default Assistance applies to all customers prior to disconnection; not all of those customers will be in payment difficulties—let alone hardship. Similarly, there is a distinction between customers on Tailored Assistance that pay for use and those that do not. Accordingly, Origin believes that the Commission should revise clause 87(b) so that Hardship policies only apply to the entitlements in clauses 79(1)(e) to (f) rather than all of Division 3 and Default Assistance.

3.3 Replacing Payment Plans with Payment Proposal

The Commission has shifted away from the language of payment 'plans' and replaced it with payment 'proposals'. A payment plan represents an agreement between the customer and the retailer; a payment proposal suggests something that has been put forward but has not been agreed upon. This distinction is reflected in clause 80 of the Draft Decision, which requires a retailer to accept whatever a customer proposes as long as they pay their arrears at least once a month over 24 months. In Origin's view, this creates an anomalous situation where customers effectively have a veto over whatever options a retailer may advise a customer of in clause 79(1)(b) because they have the right to propose any alternative they wish. Retailers do not have a corresponding right. We do not believe that this is a necessary or productive manner for regulating the reaching an agreement between a customer and the retailer.

The shift from 'payment plan' to 'payment proposal' appears to be an attempt to empower customers by making retailers subject to their discretion. It is also an attempt to ensure that retailers cannot move customers onto unmanageable payment plans.[6] Origin does not object to customers advising retailers of how much they can afford to pay, based on assessment of their arrears and likely future use. We agree that customers should have agency in determining how much they can pay and establishing a payment plan. This has long been Origin's practice: asking a customer what they can afford to pay and then establishing a payment plan that combines this with their likely energy use.

However, we believe that giving customers this veto leads to unnecessary overregulation when there are already minimum standards in the Draft Code that customers can fall back on.

3.3.1 Solution

We believe that the Commission can ensure that customers are protected via minimum standards that already exist in the Draft Code. A better regulatory approach is to allow customers to be able to negotiate a payment plan that is subject to these minimum standards. Customers do not need to provide their consent for payment plans that are any less than the minimum standards. This allows for customer agency to be respected and sets a clear expectation of how long customers have to meet their repayments.

Origin believes that the Commission should therefore remove clause 80(1) of the Draft Code because the concept of a 'payment proposal' is made redundant by minimum standards. If a

[6] Ibid, p. 94.

customer can afford to pay within six months then they should be provided the opportunity; equally, we accept that some customers will need up to 24 months based on what they are able to pay and taking their use into account. The minimum standards permit customers and retailers to form payment plans that meet both of these scenarios without any 'proposals' being required.

3.4 Customer circumstances and what a retailer "should reasonably have known"

The effect of Clause 93, and the guidance on page 113 of the Draft Decision, is to prohibit retailers from requiring customers to provide information of their financial or personal circumstances as a precondition for receiving assistance. A retailer is not explicitly prohibited from asking questions about personal and financial information but a customer does not need to answer these questions to obtain a payment plan. If a customer refuses to provide information then retailers need to take what a customer tells they can pay, and by when, at face value. The only 'loose' condition on this is that the customer must pay at least one every month and within two years. (As we discuss below, the conditions are loose because the customer could vary their plans length *ad infinitum*.)

At the same time, retailers are being asked to provide assistance in clause 82 based on what they 'should reasonably have known' about the customer. This means that retailers have to extend assistance that matches our knowledge of customer circumstances—but if we are not told facts from a customer then how 'should' we know certain things under clause 79, 80 or 81 (each of which is referenced in clause 82)?

The language of 'should reasonably have known' also implies that retailers are required to ascertain additional facts; this is because the retailer has responsibilities under clause 82 to extend assistance to match the customer's circumstances. Whether a retailer ascertained relevant information will be judged by bodies external to the retailer (namely the Commission and the Energy and Water Ombudsman of Victoria). Origin is concerned that there is no common or firm reference point among these bodies for what any given retailer should or should not have known about a customer. Retailer segmentation of customers based on their payment risk will not assist with determining customer circumstances under clause 82. Just because a customer has a poor payment history does not provide an objective guide to their actual circumstances or the assistance they need.

3.4.1 Solution

The Commission has indicated that they did not intend to require retailers to make inquiries when determining the relevant level of assistance in clause 82 and the other sections mentioned therein. The intent of the section is to determine whether the retailer reasonably used the information they had about customer circumstances when providing them with assistance. Accordingly, the Commission should use the language of a 'reasonable belief' when assessing whether the action of retailers was appropriate. We note that clause 79(3)(b) already utilises this standard, and we believe that it also belongs in clauses 80, 81 and 82.

3.5 Arrears as a minimum standard for Tailored Assistance

The current Draft Decision's arrears-only minimum standard for Tailored Assistance will require retailers to build systems that separate an arrears payment from a customer's bills for

their ongoing use. A customer that did choose an arrears-only Tailored Assistance Plan would be confronted with multiple conflicting bills for their ongoing consumption. This situation could get even more confusing for a customer if they choose an arrears-only Tailored Assistance plan but then fail to pay a subsequent bill for their ongoing use. If the customer does not engage following their subsequent missed bill for use, but continues to pay their arrears only Tailored Assistance payment plan, then they will ultimately be offered Default Assistance for their second missed bill. Hypothetically this customer could accept Default Assistance and have an arrears-only payment plan on foot for two separate arrears—whilst receiving their ongoing bills.

As with Default Assistance above, the potential for multiple bills and payment plans would lead to confusion and a poor customer experience. It is reasonable to assume that a poor customer experience will produce less compliance with a payment plan—hence the reason why standard practice is to simplify it into bill smoothing arrangement. Even if most customers chose a plan that smoothed arrears and use together into a single payment plan, retailers would still need to build a system and train staff to offer and set-up arrears only plans. Origin would not expect most customers to choose an arrears-only payment, which underscores the lack of benefit relative to the cost involved in making this change.

3.5.1 Solution

Origin does not support the Commission splitting arrears from use. Doing so has no basis in past or present regulatory practice, which emphasises customer certainty by providing them a stable arrears amount that is combined with a smoothed ongoing usage. Customers are familiar with bill smoothing. Retail Codes in Victoria have consistently established payment plans based on arrears and future use—dating back to the State Electricity Commission's 'Easyway' plan. The basis for these plans is that customers are provided with a degree of consistency about when their bills are due and the likely amount. In Origin's experience, establishing a combined amount provides a signal to the customer about the amount they can expect to have to pay and provides them with a positive opportunity to establish a rhythm in their bill payments. The Commission's previous Draft Decision also acknowledged this by incorporating a combined payment into Tailored Assistance. If an arrears-only plan was more favourable it would have become an established practice by now; it has not.

Gas customers provide a useful illustration of why the smoothing of use and arrears ought to be the minimum standard. In Victoria, gas is a highly seasonal fuel, with demand significantly increasing in response to winter heating requirements. A customer will be far better placed to manage their arrears and use if they are smoothed out over a period of time rather than potentially having to pay arrears with a high usage component during the winter.

There has been some suggestion that retailers could providing an arrears plus ongoing use option to customers. Putting aside the system build required to achieve this, it would not be a viable minimum standard for gas customers whose meters are read bi-monthly. To facilitate gas customers with a monthly arrears payment it will be necessary to combine both use and arrears are in a smoothed payment. Similarly, a quarterly billing customer would still be getting their arrears each month unless they shifted to monthly billing.

Accordingly, clauses 79(a) and (b) should be amended to refer to "repayment of arrears and use..." as a minimum standard for Tailored Assistance.

If the Commission does accept that both arrears and use needs to be combined then it needs to permit retailers to vary usage so that it reflects changes in the pattern of consumption. Origin does not believe that an interval for variations should be prescribed as this may lead to unintended consequences for no real additional benefit. If the Commission set a minimum standard (e.g. requiring assessment every three months) then this creates confusion about whether varying more or less frequently exceeds minimum standards or substitutes them. Regulation is also not warranted in this area because there is no evidence to suggest that the market has failed to govern variation of payments reasonably. As long as the Commission permits variation then retailers can determine an interval when establishing a plan.

Failure to allow retailer variation will have negative consequences for customers and retailers. If customer use increases then retailers will need to recover this cost at a later date. Customer payments therefore need to rise to meet this increased use to ensure that they are not left with yet another debt at the end of their payment period. For some customers, increasing the payments is also an important signal that they may need to take steps to reduce their usage.

Customers that reduce their energy use in response to their circumstances (and retailer assistance) should receive the benefit of this via a reduction in their smoothed payment. The Commission must also permit retailers to occasionally review and vary these payments if they set use and arrears as a minimum standard for Tailored Assistance.

3.6 Customer variation of payment amounts

Related to the issue 3.4 is the manner in which customers are empowered to set any individual payment amounts for their arrears up to 24 months. Under the Draft Code the customer has the right to two courses of action—either separately or simultaneously:

- firstly, a customer can set a different payment amount of their arrears for each month because there is no requirement for consistency in the amounts (‘customer variation’); and
- secondly, a customer can set nominal payments for 23 months and then a large payment for the balance in the final month (‘balloon payment’).

A version of the second issue was contained in the previous iteration of Tailored Assistance, whereby a customer could vary their payments as long as they met a 25% payment requirement every six months. As retailers explained to the Commission previously, this meant that customers could set small nominal amounts for five months before not meeting a larger payment at month sixth. Under the current Code the situation is potentially worse because the balloon payment could be extended out to the twenty fourth month.

3.6.1 Solution to variation

As with section 3.5.1, smoothing use and arrears will provide a solution to customers seeking to set payment plans with different arrears-only amounts. A smoothed plan that combines use and arrears will mean that equal payments are expected over the amount of time required by the customer for up to 24 months.

Payment plans are generally stable when smoothed but they do have the capacity to shift when customers advise of the need to do so. This occurs by extending the length of a payment plan for an engaged customer; the variation is to the length of the plan rather than the amount. This effectively maintains the monthly payment amount whilst giving an engaged customers additional time. Origin would support customers being able to vary their payment plan length if:

- firstly, the customer advises the retailer of this need in advance (that is, they are engaged) and;
- secondly, the plan involves smoothing use and arrears as a minimum standard and there is a clear limit of 24 months from the first scheduled payment on the length of the payment period.

The first point means that customers who remain engaged and contact the retailer can vary a payment before it is due. Currently, the right to variation follows a missed payment, but this does not send appropriate signals or incentives to customers. A customer should remain engaged to obtain the benefit of a variation. This is different to the present Draft Code, where a retailer has to make its best endeavours to contact a customer after *they* miss a payment so that a plan can be varied. This enables customers to continually vary payments without actually paying or constructively engaging with their retailer. A retailer should not be prohibited from varying a payment plan after a missed payment but we believe that this ought to be considered additional assistance.

Secondly, we would not seek to place a limit on the number of variations, as long as the plans are smoothed for use and arrears and retailers do not need to accept more than a 24 month period. The 24 months would commence from the date of the first scheduled bill and subsequent variations would not see this period extended as a matter of right; retailers may extend the period as matter of discretion but they would not be required to.

Rather than having retailers decide whether a customer's variation request is reasonable, the Commission should make it clear that the minimum standard of 24 months from the date of the first scheduled bill applies to both retailers and customers. In the same way a customer does not need to consent to less than 24 months to pay their arrears, a retailer does not need to accept a payment plan that extends beyond the 24 months following the missed bill.

A customer would therefore be provided with up to 24 months to pay their arrears–a standard that not all retailers currently meet (but Origin does). If the customer's payment plan is less than 24 months then, in effect, they may extend it as many times as necessary up to the original 24 months from the first payment plan installment. Creating a firm standard will close one of the potential loops where a customer can ask for endless payment variations that extend beyond 24 months and have no firm conclusion. It also ensures that customer debt does not continue to accrue beyond a firm point in time.

To be clear, this extension is subject to our proposal in section 3.7.1 below is also accepted. This means customers have a limited number of times they can break a payment plan within 12 months without being disconnected. Origin does not believe that a customer should be able to extend their payment plans out to 24 months without actually paying for their use and arrears. Otherwise those customers could see their arrears accumulate over 24 months.

Rather than placing discretion largely in the hands on customers, Origin believes that this approach would promote joint responsibility. Retailers have the responsibility to assist a customer that engages, by varying plans up to a minimum standard of 24 months (with discretion to extend beyond that period). Equally, customers are responsible for engaging with retailers so that they do not break their payment plans.

3.6.2 Solution to ballooning

The solution to ballooning is also combining use and arrears in a smoothed arrangement over a period of time. As we explained in section 3.5, Origin's experience is in fact that customers need to set an affordable amount and then proceed to get into a payment rhythm. This is demonstrably more beneficial than numerous individual payment amounts for arrears, which seems to cater more to a hypothetical scenario of a customer needing different amounts at different times. Our experience is that customers are very unlikely to be able to anticipate their ability to pay different arrears so far in advance. A customer making such variations is in fact an indication that a customer will not be able to meet their payment plan in the future.

3.7 Potential for loops and endless customer discretion

A combination of clause 80(1) and the Guidance means that customers have the discretion of extending their payment plans beyond 24 months.[7] As discussed above, customers are also able to vary their plans either before or after they miss a payment; retailers are expected to take steps to allow this to happen.[8] The decision to extend a payment plan is meant to be based on 'customer circumstances' but clause 80(1) and the Guidance on pages 94 and 96 of the Draft Decision suggests that retailers have to extend payment plans at a customer's request if it is considered reasonably necessary taking into account customer circumstances. It is difficult for a retailer not to extend a payment period beyond 24 months if the only information they have is that a customer cannot pay and wants more time. This creates a problem: how can a retailer prove that it is *not* reasonably necessary to provide assistance that a customer has asked for?

Given that a negative cannot be proven, retailers must effectively grant extensions whenever a customer asks for one. Consequently, a customer may continually vary and extend their payment plan and retailers cannot refuse this request.

The ESC claim there are 'off-ramps' for retailers to cease providing assistance. In relation to each of the potential off-ramps:

- Clause 79(4) applies to customers who cannot pay for ongoing usage and is not relevant for Tailored Assistance customers that are meeting both their usage and arrears. It is meant to indicate that retailers do not need to keep customers indefinitely on a below use payment plan. But it is unclear equally what happens if one of these customers cannot pay their use even if they have been given more than one six month period on a below-use plan. If retailers place them onto a clause 79(1)(a) plan then they loop back onto a

[7] ESCV, *Draft Decision*, p. 94.
[8] See clause 80(3).

clause 79(1)(f) plan. Clause 79(4) therefore does not resolve the underlying loop issue—it permits a loop within a loop.

- Clause 81(2) similarly does not resolve the issue of a loop; it merely mandates retailer contact.
- Clause 91(c) may have been intended as an off ramp but it does not actually assist for a number of reasons. Firstly, as discussed under section 1, 'payment difficulties' has no definition, and therefore it is unclear of when and how it applies to different customers. Secondly, retailers need to prove a negative, namely that a customer is *not* facing payment difficulties. It is impossible for retailers to prove such a negative.

Accordingly, in Origin's view there are effectively no off-ramps for certain classes of customers. As long as a customer remains engaged then they can vary and extend their payments *ad infinitum* and a retailer won't be able to demonstrate that doing so is not reasonably necessary in their circumstances. As discussed above the 24 month period is not firm because a customer can ask to extend it and a retailer is expected to do so. Even missing monthly payments does not allow a retailer to cease giving assistance because a retailer must attempt to contact a customer so that they can exercise their right to vary in clause 80(1).

3.7.1 Solution

Without a clear end point, customers could accrue significant amounts of debt without getting disconnected—or, more likely, before they get disconnected if they remain engaged for quite a long time. In the current Code, clause 33(2)(a) states

> *(2) However, a retailer is not required to offer a payment plan to a customer referred to in subclause (1) if the customer*
>
> *(a) has had 2 payment plans cancelled due to non payment in the previous 12 months*

In effect, a customer has the right to a minimum standard of two payment plans in a twelve month period. This balances both a reasonable opportunity for a customer in difficulty to be provided with assistance, along with the need for retailers to recover debt from customers. The result is less opportunity for customers to accrue debt through payment plans without end, and retailers do not need to recover as much debt.

This has been removed from the Draft Code but Origin believes that a similar kind of minimum standard should be retained. For payment plans that are broken (either a payments is not made, or not paid in full after the due date), an engaged customer's minimum entitlement is one Tailored Assistance plan and one offer of Default Assistance prior to disconnection in any 12 month period. If a customer does remain engaged, then as discussed in section 3.6.1 the customer can vary the payment plan up to 24 months from the original due date.

Tailored Assistance requires customer engagement. If a customer becomes disengaged after their first Tailored Assistance plan then they ought to still reach disconnection. It is not intended that disengaged customers automatically get the benefit of a second plan—Default Assistance is meant to capture these customers according to the Commission. Accordingly,

the standard mirrors the current minimum requirement of two broken payment plans per twelve months.

A customer who has broken one Tailored Assistance plan may still be offered Default Assistance prior to disconnection if they have not already accessed this assistance earlier in the twelve months. This is consistent with the Commission's stated intention that Default Assistance be a final opportunity for unengaged customers. A retailer may choose to provide additional assistance to these customers by again reaching an agreement for a Tailored Assistance Plan—this would be meeting the requirement of (in effect) two payment plans in a 12 month period. (As discussed under 1.2.1, Default Assistance would be a smoothed payment for use and arrears under Origin's proposal.)

This would resolve the issue of a retailer having to provide assistance based on a judgment of customer circumstances. It is more generous than the current Energy Retail Code because it provides up to 24 months for Tailored Assistance plus Default Assistance. In the circumstances we believe it is a reasonable compromise to the problem of assisting customers in payment difficulty but ensuring there are fair limits to that assistance so that debt does not accrue and retailers are not burdened with recovering unreasonable debt levels.

4 Default Assistance

4.1 Default Assistance is not a reasonable measure

Origin does not support Default Assistance and we believe that the Commission ought to abandon this part of the Draft Framework. As with its precursor, Immediate Assistance, Default Assistance is an untested policy that would create new obligations on retailers without any evidence that it will assist customers to pay their arrears. The Commission appears to be giving customers a "last chance" to engage delaying the disconnection by at least two more weeks; at the same time, there is no evidence that this particular notice will cause a customer to engage by either paying the first payment or contacting the retailer to be placed on to a better payment plan.

As Origin demonstrated to the Commission last year before its first Draft Decision, the Disconnection Warning Notice acts to motivate some customers to either pay their bill or engage with the retailer. The Default Assistance schedule, which may be combined with the Disconnection Warning Notice, will not likely trigger additional engagement in the process. ACIL Allen's assumption has been that 80% of customers that receive an offer of Default Assistance will remain disengaged. In other words, it will delay disconnection and permit debt to accrue, within minimal chance of assisting customers.

Ultimately, we expect that Default Assistance will result in a high rate of customers being offered an automatic payment plan that they never accept because they have remained unengaged. Origin does not believe that Default Assistance will assist customers or resolve issues of debt accumulation. We therefore do not believe that, given its likely ineffectiveness, the expense of implementing the necessary system and process changes can be reasonably justified.

4.2 Odd payments

An inevitable issue with automatic payment plans is what constitutes customer agreement in the absence of a conversation with their retailer. The Commission has made clear in clause 85(4) that paying the first installment constitutes acceptance of the offer. What is less clear is how a retailer would be expected to handle 'odd' payments, such as:

- A customer underpays the amount due.
- A customer overpays but the amount itself is not referable to the payment schedule, nor does not represent most of the customer's debt.
- The Default Assistance period expires and just prior to disconnection a customer pays something towards their debt (but not the first schedule amount).

In some instances a retailer may be able to contact a customer and work out a solution to these problems. If a retailer cannot contact a customer, however, then they are at risk of wrongfully disconnecting a customer under the first and third scenario. The Commission therefore needs to be clear in its Guidance about what a retailer is permitted to do where customers make odd payments but do not make their intentions clear via a conversation with their retailer.

4.3 Improvements to Default Assistance

Despite our view that Default Assistance should be abandoned, if the Commission decides to implement an automatic payment plan anyway then it needs to consider some necessary improvements to address problems with its implementation.

In addition to smoothing use and arrears, Default Assistance should be the same fixed period payment plan for all customers, rather than one that depends on the length of a customer's billing cycle. Origin believes that six months is a reasonable period for all customers. This meets the objective of providing unengaged customers with a reasonable amount of time to pay off their use and arrears. Some customers that become engage will also be able to exercise a right to Tailored Assistance, subject to the conditions set out in section 3.6.1.

5 Miscellaneous issues

5.1 Best Endeavours in Tailored Assistance

At this stage it is unclear what constitutes 'Best Endeavours' for the purpose of Tailored Assistance. We assume that the Commission will provide Guidance on this at a later date.

In doing so the Commission needs to be cognisant of the likely amount of time that Best Endeavours will take and the impact on likely process mapping. The Commission also needs to be aware of the impact that ACCC and ASIC *Debt Collection Guidelines* on Best Endeavours.

The degree to which Best Endeavours will impact on the collection cycle will depend on the steps retailers need to take. With the current definition of arrears, a longer Best Endeavours obligation will potentially see disengaged customers receive additional bills in section 1.2.

We hope the Commission consults further with stakeholders on what Best Endeavours might require.

5.2 Customer Transfer

Origin is concerned that clause 96 creates an obligation on retailers that they cannot always fulfill despite their best efforts. Retailers will not always be aware in time to object to a customer transferring to another retailer. There are three scenarios in which we may not know until it is too late to object:

- Where two people in a household have an account it may be under one person's name. That household could choose to open an account under the other person's name. This will not be flagged on our system until it is too late.
- Secondly, a customer can simply tell another retailer that they are a new move in. This will not come up on our system as a churn because it will be identified as a new move-in.
- Thirdly, a customer can actually move addresses and change retailers. As with the above, we won't know until it is too late to object.

Origin understand the intention of this provision is to stop customers accumulating multiple and unmanageable debts and ensuring that retailers do not lose customers who they are investing resources in assisting.

Origin's preference is for customers being able to churn if they want to; we do not anticipate losing many customers in our Hardship program for the reason that they appreciate the assistance we are providing them. We are, however, uncomfortable about being held responsible for something we cannot control, namely the customer choosing to leave and taking steps to mask that they are doing so. This already happens in the market and we expect it to continue regardless of this rule.

We therefore believe the Commission should revisit this issue and remove this provision from the Draft Code. If the Commission disagrees, then we ask that they change the drafting to permit retailers to lodge an objection if they want to, but not oblige them to do so.

5.3 24 hour post requirement

We note that retailers are required in clause 89(4) to ensure that written communication is delivered within 24 hours. This is an unreasonable and unrealistic requirement. Whether something is delivered in 24 hours is in the hands of Australia Post and not retailers. This provision should be removed and replaced with a more realistic requirement that retailers make take steps to *post* communications promptly.

6 Cost-benefit analysis

Origin is concerned that the cost benefit analysis being undertaken by ACIL Allen is predicated on generous assumptions about the effectiveness of the Commission's Draft scheme. This is particularly the case given the deficiencies that stakeholders have identified in Framework to date, particularly during the recent Process Mapping session. Origin has set out a number of issues above that will require adjustments to the Framework in order to make it work effectively for retailers and customers. The issues include:

- The applicability of definitions such as hardship and payment difficulties. We also note that the definition of arrears in the information request may be interpreted in both the usual sense and terms of the Draft Code's specific definition;
- uncertainty over when a customer can be disconnected, which impacts on retailer debt;
- the impact of the definition of 'arrears' on customer and retailer debt;
- splitting use from arrears in a mandated payment plan and what impact this might have on debt and customer compliance;
- the ability of customers to vary payment plans, combined with an unclear path to disconnection, means that we do not know how long we will need to carry this debt for or how much debt the customer will have;
- the lack of clarity around retailer knowledge of customer circumstances and the resulting risk for retailers of being wrong in that assessment; and
- the confusion of what is a minimum standard at a given point in time, creating confusion about which forms of assistance must be offered and in which order.

Perhaps it is because both the Commission and ACIL Allen were unaware of these issues prior to stakeholder feedback that the preliminary cost benefit analysis produced a narrow net present value of $2.5 million for all retailers over less than ten years.[9] Finding a positive net present value without even knowing about these deficiencies—and therefore not knowing how the Framework will actually work in practice—does not produce confidence in the rigour of the assumptions guiding the cost benefit analysis.

As we have outlined above in section 1.2, the Draft Code will lead to a longer collections cycle for unengaged customers. Similarly, the capacity for an engaged customer to get stuck in a payment loop, where they do not pay down much of their actual arrears, could see their debt rise. This will culminate in significantly increased debt by the time disengaged customers are disconnected under the Draft Framework. Neither KPMG nor ACIL Allen have contemplated this outcome—the latter only undertaking a sensitivity on debt and disconnection *falling*. By ACIL Allen's own admission there is no certainty about what will happen to debt and disconnections under the Draft Code.[10] A sensitivity analysis should therefore be done for both lower and higher debt and disconnections; the impact of these different scenarios on the costs and benefits of any Code need to be clearly stated.

Origin is not confident that any benefits that materialise from the Draft Code will in fact exceed the costs of implementation. For payment difficulty customers who ultimately choose a payment plan and receive any additional assistance, we doubt that they will be in a largely different position to most customers under the current Code. This is not due to the Draft Code being the same as current retailer practice—our analysis above indicates otherwise—but because the ability of customers to repay their arrears is more contingent on external social and economic factors than the assistance they receive from retailers. Payment plans and energy management assistance cannot overcome some of the social and economic difficulties that certain customers face.

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[9] ACIL Allen, *Report to the Essential Services Commission. New Framework for Customers Facing Payment Difficulties, Preliminary Assessment of the Retailers' Costs*, May 2017, p. 36.
[10] Ibid, pp. 21-22.

We note that the Australian Energy Council has made several representations to the Commission about why changes to the Retail Code should be subjected to a regulatory impact statement pursuant to the *Subordinate Legislation Act* 1994. Origin supports these arguments. We would like to see a considered response from the Commission on this issue.

6.1 The use of different datasets

Origin was one of the nine retailers that provided information to ACIL Allen in 2015 when it was undertaking an analysis of different hardship programs for the Commission's Hardship Inquiry. This information forms the basis for ACIL Allen's preliminary cost benefit analysis. It has been acknowledged by ACIL Allen that this data is imperfect and out of date but that retailers have the opportunity to provide more up-to-date information. Given its inadequacy, it is crucial that ACIL Allen not use the 2015 data to fill any gaps in the information retailers will provide following the Draft Decision. We do not believe that out-of-date information should constitute the baseline for any cost benefit analysis.

The apparent flaws in the Draft Decision have already led to the Commission canvassing different options for the Framework. Despite this, retailers have been asked to comply with the information request by providing information that corresponds to the Draft Decision. Origin understands that the Draft Decision is presently the only 'firm' basis for providing costs given no formal Decision has been made to amending the Framework. However, when changes are made between the Draft and Final Decision, ACIL Allen will need to request further information from retailers to reflect those amendments.[11] This is because some of the data we are currently preparing for the Commission will be made redundant by amendments to the Framework. If the Commission does not do this then any cost benefit analysis will be based on inaccurate and out-of-date retailer data.

6.2 Impact of Draft Decision on Origin

Even if the Commission were to accept Origin's suggested changes to the Draft Framework, it still represents a significant derogation from current practices. Whilst we are still in the process of responding to the information request, the following impacts of the Draft Decision are clear:

- Victoria will be ring-fenced from the other NECF jurisdictions, undermining economy of scale and efficiency. This is a significant difference to ACIL Allen and the Commission's guiding assumption that retailer systems and process can be leveraged, thereby minimising the costs.
- Ring-fencing Victoria will entail training a separate workforce specifically for Victorian customers.
- Origin will need to build new products (for example, Default Assistance) and amend current products to meet Victorian specific minimum standards (particularly with respect to arrears). The Commission may not appreciate that it is a significant and time-consuming process to design, scope, test and implement these new and modified products.

[11] At a Forum on 31 May 2017 it was suggested that retailers cost their own proposals. It is better process to have proposals on the table that are agreed to by the Commission (and therefore contemplated by them) and to then provide information. This will create consistent information,

- Depending on compliance requirements specified by the Commission, providing customers with adequate information about their energy use pursuant to clause 79(1)(e)(iii) could involve a lot of resources to provide regular updates (for example, building a process to provide this information to customers via our billing systems and using this to generate compliant correspondence).
- Additional agent training and development is required to understand new minimum standards and to ensure they are complied with. Training will include ensuring that agents understand the sequence of when and what type of assistance to offer customers—this is considerably more complicated under the proposed Framework compared with the existing Energy Retail Code.
- Agent call handling will be further expanded to align with what assistance can be offered so that it is matched to the customer's circumstances.
- An increased compliance burden will arise from demonstrating each aspect of the retailer's compliance with minimum standards and accounting for customer circumstances.
- New internal and external communications need to be developed that are Victoria-specific. This includes the potential for greater correspondence arising from variable payment schedules.
- Average Handling Time will increase to navigate different stages of the Framework, including a new 'Best Endeavours' requirement.
- More resources devoted to Ombudsman complaints because the Framework (by codifying standards) creates new grounds for contesting disconnections and other decisions.
- The creation of new Victoria specific products to meet minimum standards (again, not directly applying current products from NECF jurisdictions).
- Debt will be held longer for customers because more will shift to a 24 month payment plan.
- Customers will accrue more debt which will lead to an additional financial burden being held by retailers; more of that debt will have to be written off because it has been allowed to increase.

In relation to the last two points, this underscores our view discussed under section 6 that ACIL Allen needs to undertake a proper sensitivity analysis of debt and disconnections rising under the scheme. It also needs to understand that there is a category of unengaged customers that do not avail themselves of any assistance; these customers are in fact particularly worse off as a result of the Draft Framework enabling them to accumulate more debt whilst retailers expend significant resources in trying to assist them.

7 Implementation and next steps

The Commission is committed to a phased implementation commencing on 1 January 2018, starting with mainly Standard Assistance measures on this date. It appears that the significant process and system upgrades are required by 1 July 2018.

As Origin has stated in recent Stakeholder Forums, retailers need far more time to implement the significant changes to systems and processes. This should not be construed as avoiding implementation; we accept that once a Final Decision is made that we will need to work towards implementing it. But it is without precedent to introduce such significant systems and

process changes in less than 18 months, let alone the ten months that the Commission is suggesting if the Final Decision is by the end of August. The Commission needs to look no further than the amount of time that was involved to implement Power of Choice reforms, the National Energy Customer Framework and many other rule changes via the Australian Energy Market Commission.

The Chair of the Commission has recently expressed frustration about how long this process has taken relative to building the Empire State Building or privatizing Victoria's energy assets.[12] We share his exasperation and we are committed to helping the Commission reach a reasonable Final Decision. But the time it will take to reach a Final Decision is completely irrelevant to how long it will take to scope, design and implement a new Framework—particularly one which, as we mentioned above, will require ring fencing Victoria from our existing process and products.

Origin therefore asks the Commission to extend the implementation date to 1 July 2019. We do not want a phased implementation; we need a single date to design processes and upgrade systems so that they are coherent and ready to go. The Commission needs to view this as an entirely new process rather than merely something to which existing processes for NECF can be adapted to. Accordingly, a phased implementation is more difficult than having an entire process ready to go by one date. For example, even if it is limited to Standard Assistance commencing early, Origin would need to determine a set of temporary processes for identifying these to customers, possibly changing letters and call centre scripts for only six months. This will also require staff to be trained for what is effectively a temporary form of assistance before it is subsumed within the entire Framework.[13]

Shifting the date will also give the Commission more time to make a Final Decision—which they should use by producing something like an Options Paper or Directions Paper that narrows and consolidates stakeholder suggestions on changes to the Framework. Once a likely set of options is identified, stakeholders can provide brief written submissions and discuss them in Public Forums. Retailers can also provide costing information on certain options—this will ensure that the cost benefit analysis incorporates them. Based on what has been fleshed out and decided in the Options Paper and the costs of those proposals, and following stakeholder feedback, the Commission can move to a Final Decision by the end of 2017. Origin would be committed to helping the Commission as much as possible to reach its decision point by the end of the year.

[12] Dr Ron Ben David, *Payment difficulty framework: stakeholder forum*, 29 May 2017, pp. 5-6.
[13] That is, for six months retailers will be offering the current Energy Retail Code plus Standard Assistance. Materials and process need to comply with the current practices before the new framework comes into place. Then Standard Assistance will need to be modified to fit within the whole new Framework.