

**ECCV Submission
To
The Victorian Essential Services Commission's
Supporting Customers, Avoiding Labels: Energy Hardship
Inquiry Draft Report
September 2015**

The Ethnic Communities' Council of Victoria Inc. (ECCV) is the voice of multicultural Victoria and the peak policy advocacy body for eight regional ethnic community councils and up to 220 members including ethnic and multicultural organisations across Victoria since 1974. During this time, we have been the link between multicultural communities, government and the wider community.

Recently the ECCV was requested to review the Essential Services Commission's (ESC) draft report *Supporting Customers, Avoiding Labels: Energy Hardship Inquiry Report, September 2015* (the Report).

In 2015 ECCV completed one submission to the Australian Electricity Regulator (AER) for its *Electricity Pricing Review* and one consumer education project for culturally and linguistically diverse (CALD) consumers in Victoria funded for one year by the Department of State Development, Business and Innovation (DSDBI). These efforts have focused more on culturally and linguistically diverse (CALD) consumers specifically as residential customers of energy retailers. For CALD small business owners we refer you to ECCV's 2015 publication *Business Energy Smart Tips* (BEST).

The ECCV project - The Multicultural Communities Energy Education Project (MCEE) – partially informs this response to the ESC's draft report. ECCV has attached its independent evaluation of this project *Multicultural Communities' Energy Education Project Evaluation Report, September 2015 (Attachment 1)*. ECCV also provided some ongoing feedback to the AER and attended a workshop conducted by ENA/CSIRO on the development of its *Consumer Engagement Handbook* for electricity network businesses. It has had brief conversations with the Victorian Council of Social Services (VCOSS), The Consumer Utilities Advocacy Centre (CUAC) and the Consumer Action Law Centre. While aligned in many respects, ECCV has decided to make a brief submission focused on aspects of the proposed framework which it sees as potentially disadvantaging CALD consumers.

Disadvantaged Customers

1. ECCV recognises that early intervention payment plans may be useful to some consumers who function well on the current plans but is not yet convinced that the new framework will meet the needs of vulnerable CALD consumers. The evidence for the success of the retail sector in currently providing clear and transparent communication to its CALD consumer customers is not obvious in the report. Since it is proposed that retailers will be charged with identifying vulnerable CALD consumers, ECCV has chosen to make this submission.
2. ECCV advocates for communities who sometimes experience entrenched or even generational low incomes and not temporary ones. Our council would like to see some further recognition of the consumer rights movement in Victoria's retail energy framework.

Excluding socio-economic issues from the scope of this inquiry, however, divorces CALD energy consumers from consumer protection principles that support hardship provisions in the retail and consumer credit sectors. Advocacy and legal appeal often depends on the existence of hardship provisions to assist vulnerable consumers. ECCV does not consider the identification of 'vulnerable consumers' and their 'capacity to pay' as unnecessary "labelling" as it benefits CALD consumers in genuine hardship affecting their capacity to pay.

3. Human rights inform the current retail framework and provide CALD consumers with recognition of the barriers affecting their ability to engage with retailers about payment difficulties. Recognition of vulnerable consumers and unfair trading practices influence fair trading and consumer protection legislation in other states and nationally through related issues such as the National Credit Code (NCC). Consumer hardship and vulnerability for all consumers has its origins in the socio-economic conditions which inform ECCV's advocacy work. Despite these conditions being excluded from the scope of the Inquiry, ECCV feedback indicates that Victorians from new and emerging communities suffer economic hardship by inadvertently accumulating bill fines they are unable to pay. The ESC needs to further explain to CALD consumers how the Victorian energy retail regulator and sector differs from other jurisdictions to the extent that the proposed framework warrants removal of the categories of "hardship provisions" and "vulnerable consumer" as well as the need for retailers to consider the consumer's "capacity to pay".

Recommendation 1

That the ESC retains the categories of "hardship provisions", "vulnerable consumer" and the need for retailers to consider the consumer's "capacity to pay".

4. The draft report states that avoiding debt and disconnection only works if energy retailers and customers share responsibility, however the report is problematic in assuming that increasing disconnection rates do not have socio-economic causes. Many older people and newly arrived people from non-English speaking backgrounds have low financial literacy and a poor understanding of energy retailers due to the migration experience. These CALD consumers have a reduced capacity to pay and limited understanding of current retail hardship provisions. Research by Ethnic Communities' Council of NSW (ECCNSW) found that older migrants were "... less likely than the other groups to do anything to reduce or conserve energy. They weren't aware of any financial help options available to assist with hardship in paying bills. They want information on energy provided in their first language." (Cunningham & Schaffer, ECCV 2012, p2). ECCV's believes that where CALD consumer application for hardship provisions is low it does not mean that they do not need the provisions at all.

ECCV believes that retailers are not able to meet the procedural requirements in the current legislation to identify and support CALD consumers. Furthermore ECCV advocates that early intervention, better language services and investment in the CLE sector in the current framework would achieve improved outcomes for CALD consumers without removing key hardship provisions in the draft framework.

5. ECCV community feedback indicates that the risk of homelessness for older CALD consumers who are renting will be increased if the proposed changes to the “hardship provisions” are made. The majority of full aged pensioners in Victoria are from a CALD background. CALD aged pensioners who are renting are already struggling to pay both their rent and their energy bills. Many abstain from using their amenities to save money and many others use the “hardship provisions” to make payment plans so that their bills are affordable over time. ECCV feedback indicates that homelessness services already see many older CALD people who have received a 14 day notice to vacate from their rental property because they were unable to pay their rent. If “hardship provisions” are no longer available for energy bills, this number will increase significantly.
6. ECCV’s 2014 policy paper *Multicultural Aged Care Strategy: What matters to seniors from non-English speaking background in Victoria* (ECCV, 2014) recommended that the Victorian Government introduce increases in senior pensioner concession rates for utilities and council fees in recognition of their financial hardship and vulnerability.
7. CALD consumers may become more disadvantaged if it is assumed that retailers have the cultural capacity or access to a well-funded community legal educator network in Victoria to close gaps in CALD customer/consumer education. Proposed costs and benefits under point 7.5 (ESC, p.114) on customer benefits assume the cultural competency of retailers to engage with CALD customers and that proposed minimum levels of support to CALD consumers will reflect this. ECCV would like to see this point developed as its MCEE project found that there is a limited number of energy information programs targeting CALD communities who still experience difficulty in comprehending or filling out forms and contracts including those provided by door knock electricity salespeople.

Recommendation 2

That the ESC provides bilingual awareness-raising to CALD consumers about shared retailer and consumer responsibility.

Recommendation 3

ESC to further explain to CALD consumers the data and consultation that informs its confidence that the retail sector can accurately identify, communicate and support (or refer) vulnerable CALD consumers to appropriate “Active Assistance programs” before disconnection.

Reduced Advocacy and Legal Capacity for CALD Consumers

8. ECCV is concerned that removing the importance of the concept of ‘vulnerable consumer’ and ‘hardship’ may weaken CALD consumer advocacy and legal representation. Identifying vulnerable consumers without labelling them as such permits retailers to legally group some

consumers as 'high risk', which is what the banking sector is able to do through the practice of "de-risking". Under the proposed framework vulnerable consumers would no longer be "labelled" as such, this is also a legal omission that could reduce the evidence trail if retailers were to repeat unfair trading practices by 'de-risking' CALD consumers if compliance costs, for example in staff training, exceeded the profit of identifying and referring vulnerable CALD customers.

For advocates, it is important to be able to categorise CALD consumers experiencing hardship because of that category's relationship to broader legislation, codes of practice and financial institute policies. Advocates rely on these categories to gain data that informs their submissions for legislative reforms and amendments; or to highlight breaches in access and equity. The proposed framework could see the retailer's accountability to CALD consumers reduced if they only have to refer vulnerable consumers who cannot pay to 'Active Assistance Programs' that are ineffective. ECCV would like to see the ESC consider any potential imbalance between retailer and CALD consumers in the new framework which may affect consumers seeking advocacy or clarity of their legal rights.

Recommendation 4

That retailers provide culturally responsive/bilingual awareness sessions on how to undergo legal appeal as CALD energy consumers.

ECCV's Multicultural Communities Energy Education Project (MCEE)

9. The MCEE project delivered by ECCV held over 40 energy education workshop engaging 1214 participants through information sessions and more community members broadly through media. A minimum of 200 community members across six cultures were deeply engaged directly through attending a series of workshops. ECCV has attached our external evaluation of the MCEE project in this submission to share its findings on CALD energy consumers (**Attachment 1**) in Victoria with the ESC and other interested parties.

The MCEE was a one year project from September 2014-15 providing practical advice on how to reduce costs and energy use on household electricity bills and raise awareness on renewable energy and climate change among six culturally and linguistically diverse communities in Victoria. The communities were Polish, Russian, Turkish, South-Sudanese, Chin-Burmese and Bhutanese.

10. The MCEE project's bilingual workers reported that the communities did not understand the structure of energy bills and could not read them. An evaluation of the project confirmed the extent of bill stress and lack of knowledge within CALD communities. CALD consumers were unaware of flexible pricing options, concessions and utility relief funds available. Anecdotally, bills are high and unscrupulous energy retailers are targeting suburbs with high concentrations of newly arrived migrants who do not understand the energy system. Reports of high energy use during winter due to a lack of awareness of energy saving options came from some newly arrived African communities.

This feedback highlighted the lack of current awareness and programs available to help CALD consumers to take steps to better manage their energy consumption. This includes culturally appropriate assistance to manage their negotiation of payment plans with retailers or any third party registered to assist CALD consumers such as community legal educators (CLE). ECCV also notes that in Victoria CLE sector funding has been reduced and it is not in a position to provide external active assistance programs that might benefit CALD consumers. Further, the grants for the MCEE project for which 19 applicants were successful is not ongoing. ECCV recommends that an across-government approach to further ESC draft reports would benefit CALD consumers.

Recommendation 5

ESC to consider seeking more data on the effectiveness of ethno-specific energy programs currently provided by retailers and the capacity of the CLE sector to provide effective “Active Assistance Programs” as referral services.

CALD Consumers’ Capacity to Pay

11. The new framework from the Report recommends the removal of current hardship provisions in place of early intervention by retailers, the removal of the concept of ‘vulnerable consumers’ and the removal for retailers to have ‘regard to a customer’s capacity to pay when establishing a payment plan’ (ESC, Sept 2015, p.99). ECCV would like the ESC to consider the effects on CALD consumers, and all vulnerable Victorian energy consumers, of taking steps to remove these consumer protections.
12. In the draft Report’s section 7.4.4 (ESC, p.113) it removes the requirement for CALD consumers to disclose their payment difficulty, which places the responsibility onto the retailer to effectively assess their customers’ “capacity to pay” or “vulnerability” to refer them onto the assistance programs. This assumes a confidence in the sector and, as with ECCV’s Recommendation 1, ECCV would like to see the data which shows that retailers have the capacity to identify vulnerable CALD consumers. It also notes that removing these categories means that retailers have no obligation if they ‘get it wrong’.

The ESC’s draft report is premised on the assumption that labelling customers as being ‘in hardship’ is due to an irregular and unguided response by retailers towards disadvantaged consumers without the capacity to pay. ECCV sees these hardship provisions as an important element of energy retail regulation that understands that CALD consumers (including CALD seniors) experience vulnerability as consumers of a range of public and private services.

There may also be other reasons for customers not being identified as needing hardship provisions including that:

Retailers –

- a) lack language proficiency and/or interpreter/translations services;
- b) lack cultural competency when identifying vulnerable consumers;

- c) practice unconscious bias/ or discrimination;
- d) do not want to invest in culturally appropriate consultation, education material and staff training.

Some CALD Consumers:

- a) experience language and financial literacy barriers;
- b) reside in suburbs or regional areas with poor access to retail services and higher unemployment;
- c) experience higher unemployment;
- d) CALD communities (such as new and emerging communities and refugees) experience high levels of entrenched debt caused by accumulated bills and fines across sectors;
- e) Experience economic stress due to making regular overseas remittance payments;
- f) are also seniors isolated without adequate family support;
- g) have a fear of authority; and
- h) are less informed about the implications of written and verbal contracts

Recommendation 6

ESC to consult both CALD consumers and across government, other jurisdictions and national legislation affecting CALD consumers to seek clarity on the benefits CALD consumers gain by removing the retailers obligation to have regard for CALD consumers' "capacity to pay".

13. The proposed framework relies on clear communication between customer and retailer in meeting the 'engagement' principle to understand their rights and responsibilities. ECCV believes the Active Assistance Programs are not culturally responsive enough to effectively reach vulnerable CALD consumers. ECCV is concerned that such a framework could justify disconnections by the retailer with impunity, leaving CALD consumers without legal appeal.

While some of the proposed incentive payment plans are promising, ECCV notes that they can also be offered as clearer obligations on the retailer under the existing framework without dismantling consumer protection principles. ECCV agree that retailers need more support to engage with and communicate their policies to CALD consumers.

14. In the Report's section 7.5.1 (ESC, p.114). it is assumed that the new framework will clarify, "...the retailers' obligations to assist customers in payment difficulty, which reduces time spent in dispute with customers, financial counsellors, welfare and other agencies, EWOF and the Commission." ECCV, as one of those other agencies advocating for CALD consumers notes that not all disputes are the fault of the customer or the existing framework but may also be fair trading issues on the part of the retailer. The reduction in time in dispute should not be confused with a reduction in time spent on legitimate consumer complaints. If the term "clarify" from this section also means to relinquish obligation then the ECCV does not support benefits to retailers at the expense of consumer rights.

15. While ECCV understands that the term 'vulnerable' can sometimes be abused, the significant changes proposed by the ESC's draft report will tip the regulatory balance in favour of the retailer and weaken the consumer protections for CALD consumers in Victoria.

ECCV thanks the ESC for the opportunity to submit comments on the early draft of the new framework for hardship provisions for Victorian energy retail regulation.

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References

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