Inquiry into the Financial Hardship Programs of Energy Retailers

Submission to Approach Paper

May 2015

VCOSS
Victorian Council of Social Service

About VCOSS

The Victorian Council of Social Service (VCOSS) is the peak body of the social and community sector in Victoria. VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups, and individuals interested in social policy. In addition to supporting the sector, VCOSS represents the interests of vulnerable and disadvantaged Victorians in policy debates and advocates for the development of a sustainable, fair and equitable society.

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Contents

Acronyms

ABS	Australian Bureau of Statistics
CPI	Consumer Price Index
CUAC	Consumer Utilities Advocacy Centre
ERAA	Energy Retailers Association of Australia
ESC	Essential Services Commission
EWON	Energy & Water Ombudsman NSW
EWOV	Energy & Water Ombudsman Victoria
VCOSS	Victorian Council of Social Service
VEET	Victorian Energy Efficiency Target
WDP	Wrongful Disconnection Payment

Executive Summary

VCOSS welcomes this inquiry and commends the Essential Services Commission on its considered and evidence-based approach.

VCOSS is particularly concerned with the number, rate of increase, and nature of wrongful disconnections. Our analysis of the best available data sources[1] suggest that the wrongful disconnections rate with respect to all disconnections has tripled in the last five years. Other data shows that energy prices, debts and disconnections rates are moving together, though at different rates; and suggests that hardship programs are increasingly unable to adequately deal with customers in bill-payment difficulty. Energy retailers need to improve their management of hardship programs; but it is increasingly apparent that the size and seriousness of the problem is bigger than retailer hardship programs can resolve alone.

In general, the growing problem of poor outcomes for vulnerable customers is more an issue of compliance than regulation. Thus the regulatory response must rest primarily in adding clarity; greater prescriptiveness where warranted, and strengthening compliance mechanisms. Areas needing attention include capacity to pay assessments, assistance with energy efficiency, use of lump sums to trigger hardship assistance or reconnections, and treatment of ongoing usage vs. arrears.

A well-designed performance target system could improve hardship performance of retailers, along with greater prescriptiveness for procedural requirements and penalties for regulatory breaches. Hardship indicators are useful for gaining insight into the operation of hardship assistance and the level of need it is addressing, but there are currently no measures about how effective hardship programs are in actually changing the circumstances of consumers. New evaluation techniques targeting actual customers' experiences are needed.

There are many examples of best practice hardship policies in other industry sectors, with proven outcomes. The energy retail sector has much to learn from these.

[1] WDPs paid as a result of EWOV investigations, as reported periodically to VCOSS by EWOV; plus WDPs paid after a ruling by the ESC, as reported in the annual compliance reports

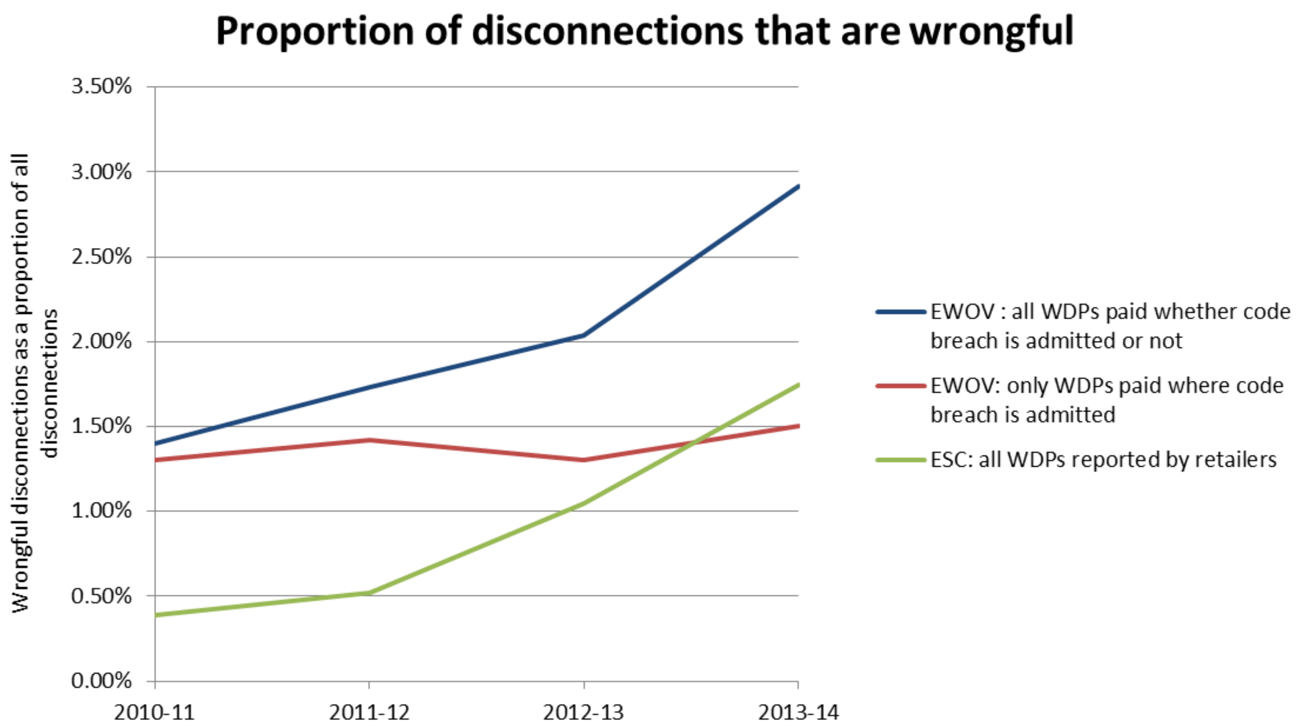
Introduction

VCOSS welcomes this inquiry and commends the Essential Services Commission on its considered and evidence-based approach. VCOSS has long been engaged with the Commission, other state government departments, and the energy retail industry on matters of hardship. We also have a long history of working with community support and consumer advocacy organisations to understand fuel poverty and energy-related hardship and devise policy and procedural interventions that pursue the ultimate goal of energy security for vulnerable Victorian households.

Wrongful disconnections

VCOSS is particularly concerned with the number, rate of increase, and nature of wrongful disconnections. Data on the annual number of wrongful disconnections is difficult to collate reliably, as they are not reported in one place, and there are significant disparities between the reports from energy retailers the Energy and Water Ombudsman Victoria (EWOV). Our analysis of the best available data sources[2] suggest that the wrongful disconnections rate with respect to all disconnections has tripled in the last five years.

Figure 1: Wrongful disconnections as a proportion of all disconnections



[2] WDPs paid as a result of EWOV investigations, as reported periodically to VCOSS by EWOV; plus WDPs paid after a ruling by the ESC, as reported in the annual compliance reports

The difference between data reported by EWOV and retailers appears to be largely explained by retailers increasingly not including in their reports most wrongful disconnection payments (WDPs) resulting from an EWOV investigation, when the retailer did not admit a breach. The omission of these instances appears to be the basis of retailers' claims that the wrongful disconnection rate (as a proportion of total disconnections) has remained relatively constant. This example highlights the need for transparent and reliable data to describe the operation of the energy market, and specifically points to a need for more robust reporting of WDPs.

VCOSS agrees with the Commission that the growth in wrongful disconnections is unacceptable, and supports the government's proposal to double the WDP daily amount and penalise retailers for each breach that led to a wrongful disconnection.

The relationship between energy prices, debts, hardship, and disconnections

Rudimentary analysis of the data is insufficient to show whether energy prices, debts and disconnections are connected, but does demonstrate that they are moving together, though at different rates (see Table 1.).

Over the last five years, both the disconnection rate and average debt on entry to hardship programs have increased faster than energy prices; and the wrongful disconnection rate has increased at a much higher rate than any other indicator.

All else being equal, we would expect that a real increase in energy costs would lead to an increase in households experiencing hardship. This proposition is supported by hardship program participation rates rising in line with energy costs. The fact that debt on entry to hardship programs has significantly outpaced rising energy prices suggests hardship programs are increasingly targeted at households in more serious hardship. If households in less serious hardship are not entering hardship programs they are more vulnerable to disconnection and to increased debt.

Most hardship program participants will be on an instalment plan, but currently only 15 per cent of customers on budget instalment plans are in hardship programs. Over 120,000 customers in any given month are not in hardship programs but still financially vulnerable enough to pay their energy bills in instalments.[3] This is one indication that the extent of energy hardship extends well beyond those in energy hardship programs.

[3] Data from Essential Services Commission 2014 *Energy Retailers Comparative Performance Report – Customer Service, 2013–14*, December 2014.

Table 1: Energy costs, debts, disconnections, and hardship program participation over the last five years[4]

	2009–10	2013–14	Rate of increase
Typical energy bills**			
electricity*	$1,089	$1,563	43.5%
gas*	$1,113	$1,426	28.1%
combined*	$2,202	$2,989	35.7%
Hardship program participation rate	1.06 per 100	1.43 per 100	35.1%
Average debt on entry to hardship program*	$670	$1,034	54.3%
…as number of typical** quarterly elec. bills	2.46	2.65	7.5%
…as number of typical** bimonthly winter gas bills	2.58	3.11	20.5%
…as proportion of typical** combined energy cost	30.4%	34.6%	13.8%
Disconnection rates			
electricity	0.59 per 100	1.47 per 100	147.1%
gas	0.85 per 100	1.33 per 100	55.5%
total	1.27 per 100†	2.5 per 100†	95.9%
Wrongful disconnection rates			
re households	0.013 per 100	0.073 per 100	462.4%
re disconnections	0.01 per discon.	0.029 per discon.	187.1%

Notes: ** All dollars are 2014 dollars. † Total and wrongful disconnection rates and hardship program participation rate are expressed as per household (electricity customers used as proxy) rather than per energy account.*
*** 'Typical' energy costs are based on average annual standing offers.*

Closer examination of hardship program data sheds more light on the reach of programs and raises more questions about their effectiveness. Table 2 shows that fewer participants are successfully completing programs and that more are being removed for not complying with the terms of program participation – presumably, not meeting agreed payments. It also suggests that households not eligible for energy concessions may be increasingly finding themselves in sufficient difficulty to be accepted into hardship programs. This interpretation is supported by anecdotal evidence from energy retailers' hardship program staff. However, it may equally reflect the shorter time spent in programs by all participants or a greater likelihood of concession participants (compared to non-concession participants) to be excluded due to non-participation. This ambiguity is because the data on concession participation is a monthly average, while the total participation is an annual figure. Reporting the annual total of concession participants or monthly average of total participants would give more conclusive data on the proportion of hardship program participants who are concession households.

[4] Wrongful disconnection data from EWOV data provided to VCOSS and ESC Energy Retailers Compliance Reports; Melbourne CPI data (used to calculate prices in constant dollars) from ABS Consumer Price Index, Australia (6401.0); all other data from ESC Retail Comparative performance reports (Customer Service and Pricing), noting that total number of customer (calculated by the ESC using data provided by retailers) appears to be inaccurate in some years.

Table 2: hardship program composition and completion over the last five years[5]

Proportion of hardship program participants	2009–10	2013–14	Rate of change
…who are concession customers*	43%	36.8%	14.3% decrease
…who successfully completed the program†	17.6%	11.5%	34.6% decrease
…who were removed for non-compliance	23.4%	26.8%	14.3% increase
Average number of days spent in program	356	269	24.6% decrease

Notes: ** Concession proportion is indicative only as it compares monthly average with annual total. This is a limitation of the data.*
† 'Successfully completed the program' is those reported as 'Participants exiting a hardship program by agreement with the retailer'.

Taken together, these indicators and their movement over the last five years suggests that hardship programs are increasingly unable to adequately deal with customers in bill-payment difficulty – but also that concessions are not consistently bridging the affordability gap, and that many non-concession households are also in energy hardship. More fundamentally, the number of lower-income Victorians vulnerable to energy bill-related hardship is growing faster than energy retailers have been able to manage. Case studies from community service organisations, EWOV, and the Essential Services Commission (ESC) show that energy retailers need to improve their management of hardship programs; but it is increasingly apparent that the size and seriousness of the problem is bigger than retailer hardship programs can resolve alone.

The responsibilities of energy retailers

Many energy retailers are failing in their duty of care to customers in hardship. Nevertheless, the problem of energy-bill payment difficulty and associated debt and hardship cannot be fully addressed by energy retailers alone. Many households have inadequate incomes and high energy use over which they limited control, meaning they will have ongoing difficulty in meeting the full costs of their energy use. Assisting short- and medium-term debt for customers in temporary hardship is an appropriate role for energy retailers. Responding to customers with chronic unaffordability seems more a shared responsibility with still some key roles for energy retailers – for example: exemplary customer service, investment in energy efficiency to minimise excess consumption, and ensuring these customers are on the lowest possible tariff in addition to ongoing support from a well-resourced community services and support program.

Prepayment metering

Energy retailers often propose prepayment metering, where supply ceases when customers have no credit, as a solution to support customers who are unable to pay their bills in full and on time. Prepayment meters only eliminate customer debt at the unacceptable cost of removing the ability of households in financial stress from using the energy they need when they need it. It must be remembered that the fundamental problem we are trying to solve is how to ensure vulnerable

[5] Calculated from hardship program performance data in ESC Retail Comparative Performance Reports (Customer Service)

households have access to the energy they need to live. VCOSS refers the Commission to our 2014 submission to the Energy & Water Ombudsman NSW's discussion paper on prepayment metering[6] and reassert our conclusion that prepayment metering harms vulnerable customers.

> Prepayment metering:
>
> - does not solve the problem it is supposed to
> - offers nothing to vulnerable consumers that cannot be delivered by other means
> - cannot provide all the elements of the customer protection framework
>
> Prepayment metering, by constraining consumers' choices, limits their access to the full range of energy products and prices. In Victoria, all consumers, including low-income households, have paid for smart meters to give them these choices; and they should get the benefit of their investment.
>
> Prepayment metering excludes people from the mainstream market, creating a second class of consumers. This runs counter to government objectives for energy market policy, which is predicated on all households being able to participate in the energy market equally, by choosing products, tariffs, and service levels appropriate to their needs.
>
> Prepayment metering gives people a poorer service, and often encourages them to restrict energy use at the expense of their health and well-being. Prepayment metering undermines the fundamental principle that no one should be disconnected from supply because of an inability to pay. Indeed, the euphemistic term 'self-disconnection,' implies that a free choice to go off supply has been exercised by the householder.[7]

VCOSS supports the current ban on prepayment metering and opposes any move to allow it in Victoria.

[6] Available at: http://vcoss.org.au/documents/2014/08/Joint-consumer-submission-on-EWON-prepayment-discussion-paper.pdf
[7] VCOSS, CUAC *et al.* 2014, *Joint consumer submission to EWON prepayment meter discussion paper*, August 2014: p.1

Questions for response

The Commission's approach (chapter 2)

Q1. Are the principles of effectiveness, flexibility, consistency, efficiency and proportionality, transparency and clarity, and accountability (of all stakeholders) the most relevant principles for this inquiry? Are there other principles that should be included or used? Should some principles be given greater weight?

- **The principles identified are relevant**
- **Effectiveness, transparency and clarity, and accountability are the most critical**

We agree that the costs of retailers complying with regulation and dealing with customers in hardship must be considered when changing the customer protection framework in order to not unduly add to all customers' bills. However, we do not believe that small incremental cost increases push customers into payment difficulties. Analysis of energy market price and hardship indicators, and examination of case studies of households in hardship, suggest that it is large price increases or large mismatches between price and capacity to pay that are significantly implicated in bill-payment difficulty.

We agree that the principles identified by the Commission are relevant, and consider that effectiveness, transparency and clarity, and accountability are the most critical.

Effectiveness must be given the greatest weight because if elements of the framework are not effective, their other characteristics are irrelevant. For example, flexibility must be subsumed to effectiveness if the flexibility impedes effectiveness. In this submission, VCOSS recommends in a number of places that regulation is made more prescriptive precisely because its flexibility has compromised its effectiveness.

Transparency has a number of facets. Accurate energy market data is one. Preparing this submission and undertaking work on long-term trends in the Victorian energy market has shown deficiencies in the suite of market data that in some case obscure real changes. One example is data on wrongful disconnections. Having no single conclusive data source means movement in the rate of wrongful disconnections is obscured and their significance remains contentious. Other indicators need to be refined or better contextualised to improve transparency.

Transparency and clarity at all levels needs to be improved. For example, regulatory clarity is in constant tension with regulatory flexibility. When the hardship policy guideline was first developed the ESC took great care to craft a flexible framework to give retailers room to "implement an approach that they consider to be effective and provides an opportunity for innovation”.[8] Some innovation was indeed seen initially, but this has been less evident over subsequent years and only recently, with initiatives taken by the Energy Retailers Association of Australia and AGL, have there been signs of more innovation. Meanwhile, there have been many occasions where retailers have asked for clearer guidance in specific areas,[9] and some where the Commission has issues more prescriptive guidelines for elements of the framework it felt were being insufficiently delivered.[10]

With regard to transparency and clarity for customers, the Commission notes in the Approach Paper that “The Code is typically predicated on print, mail and telephone channels as the dominant forms of communication between retailers and customers”[11]: and this is demonstrated in the case studies of wrongful disconnections as well as evident in the aforementioned clarification around ‘best endeavours’ in attempting to contact customers prior to disconnection. The Commission does go on to note that text messages and social media are emergent communication channels[12]. VCOSS member agencies report that Facebook and text messages are becoming primary communication channels for an increasing number of vulnerable people. Therefore VCOSS recommends that the Commission consider these modes to be of equivalent significance to the more traditional channels, and factor this into decisions and guidance relating to retailer–customer communication and engagement.

Accountability, as noted in the consultation paper, is addressed by effective compliance mechanisms and transparency around performance data.

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[8] Essential Services Commission 2007, *Final Decision: Energy Retailers’ Financial Hardship Policies*, April: p. 4.
[9] For example, requests in 2011 for clear guidance over what constitutes ‘best endeavours’ with regard to attempts to contact non-responsive customers prior to disconnection.
[10] For example, clarification over the process for offering instalment plans – in particular, second instalment plans – prior to disconnection, as documented in Essential Services Commission 2012 *Obligations to customers: disconnection and reconnection – Final Decision*, February 2012 (C/12/5781)
[11] Essential Services Commission 2015, *Inquiry into the financial hardship arrangements of energy retailers: Our approach,* March 2015: pp. 18-19.
[12] Essential Services Commission 2015, *Inquiry into the financial hardship arrangements of energy retailers: Our approach,* March 2015: p. 19.

Regulatory framework (chapter 3)

Q2. Does the regulatory framework need to be improved to support customers who are unable to pay their energy bills in full and on time? If so, what improvements are needed? Are certain aspects of the framework ambiguous, unnecessary or ineffective? Are there other regulatory frameworks offering good examples that the Commission should examine?

- **While some aspects of the framework are lacking, in most cases poor compliance rather than poor regulation, is the problem**
- **Some areas figure prominently in wrongful disconnection cases and would benefit from greater clarity or prescriptiveness**
- **Energy efficiency as a mitigator of payment difficulty needs greater attention**
- **Requirements for lump sum payments to 'demonstrate intent' are problematic and should be prohibited**
- **Debt needs to be considered separately to payments for ongoing usage**
- **Chronic hardship cannot be addressed via hardship programs and needs a broader solution**

VCOSS refers the Commission to the Consumer Utilities Advocacy Centre (CUAC)'s recent *Regulatory Review*,[13] which examines the Victorian energy consumer protection framework with a particular focus on its capacity to support customers in hardship: including a number of areas where the harmonised retail code provides less protection than the pre-harmonised code.

Nevertheless, it is apparent that in general, the growing problem of poor outcomes for vulnerable customers is more an issue of compliance than regulation. Thus the regulatory response must rest primarily in adding clarity; greater prescriptiveness where warranted, and strengthening compliance mechanisms.

Some areas that repeatedly feature in wrongful disconnection and EWOV investigation case studies and therefore may need greater clarity or prescriptiveness include:

- Assessment of customers' capacity to pay for the purposes of instalment plans[14]
- Assessment of whether customers are exhibiting signs of being in hardship[15]
- What constitutes 'best endeavours' to contact a customer prior to disconnection[16]
- Verification of the correctness of address details[17]
- Effectiveness of steps taken to communicate with customers on deemed contracts[18]

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[13] CUAC (2015), *CUAC Regulatory Review: A Comparative Analysis of Key Consumer Protections*, Consumer Utilities Advocacy Centre Ltd., Melbourne.

[14] For example, *Wrongful Disconnection Decision for Customer T & Origin Energy* in which the customer – who disclosed financial hardship – was repeatedly offered (and agreed to) various one-off and regular repayments that she was subsequently unable to meet, with no evidence that a capacity to pay assessment was ever made.

[15] For example, *Wrongful Disconnection Decision for Mr Jason S & AGL Sales* in which the customer's repeated late or partial bill payments, missed instalment payments, disclosure of unemployment, and history of disconnections of gas and electricity were not interpreted as signs of hardship.

[16] For example, *Wrongful Disconnection Decision for Ms G & AGL Sales* in which the only attempt to contact the customer after sending a disconnection warning was three automated phone calls within a six-hour period on a Saturday, with no message left.

[17] For example, *Wrongful Disconnection Decision for Lumo Energy & Customer A* and *Wrongful Disconnection Decision for Lumo Energy & Customer B* in which the retailer went ahead with a disconnection despite having had all correspondence returned due to invalid address details, and not taking steps (as EWOV did in its investigations of the cases) to verify whether or not the addresses existed.

- Clear communication of change of occupancy[19]

A recurring theme in wrongful disconnection cases is the tension between what is affordable for customers and how much they owe the retailers. This is often related to the amount of debt, because repayments that will cover ongoing usage and pay down debt are naturally higher than those for usage alone. But accumulating debt is itself a sign that paying for ongoing usage may be difficult – and retailers regularly speak about customers in hardship who cannot afford to pay for their ongoing usage even after a debt waiver, and report that hardship customers on average have significantly higher average usage than the customer base as a whole.[20]

A number of wrongful disconnection cases[21] show a long period of recurring instalment arrangements not met, payment amounts renegotiated, and admission to hardship programs followed by exclusion for non-compliance with payment arrangements, before the final disconnection. Others show customers managing instalment plans for quite some time until the retailer demands the instalment amount be increased to reflect increased usage or price, which leads to payment defaults and disconnection.[22] Many of these cases show considerable customer engagement with the retailer – but the customers' inability to continue making payments at the levels demanded ultimately lead to the disconnection.

In some cases, up-front payments are demanded by retailers as a condition of admission to a hardship program.[23] More frequently, lump sums are demanded of customers as a condition of reconnection.[24] Some retailers may see this as a demonstration of intent to pay by the customer; but if the amount is more than the customer can afford, non-payment may have nothing to do with intent. Customers who borrow money to make the upfront payment[25] may find their ability to meet subsequent instalments compromised by the need to repay the loan.

Deemed customers represent a special case. Reports from VCOSS member agencies reveal that people routinely ignore 'dear occupier' letters because they presume they are advertising mail – especially when the household has no known relationship with the retailer in question, or believes it has an energy account with another retailer. Taken together with the relatively high incidence of

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[18] For example, *Wrongful Disconnection Decision for Customer K & TRUEnergy*, *Wrongful Disconnection Decision for Lumo Energy & Customer A*, and *Wrongful Disconnection Decision for Lumo Energy & Customer B* in which just two or three 'dear occupant' letters were mailed before disconnection.

[19] For example, *Wrongful Disconnection Decision for Customer W & AGL Sales* in which the customer's gas supply was disconnected due to the previous occupant's non-payment despite having sufficient evidence that a change of occupancy had occurred.

[20] For example, average annual electricity consumption of AGL's Victorian customers participating on its *Staying Connected* hardship program is around 40% higher than the average annual consumption of its Victorian customer base. (reported to stakeholder workshop on Energy Efficiency & Customers in Hardship, 30 April 2015.

[21] For example, *Wrongful Disconnection Decision for Customer K & TRUEnergy*, *Wrongful Disconnection Decision for Customer T & Origin Energy*, and *Wrongful Disconnection Decision for Mr Jason S & AGL Sales*.

[22] For example, EWOV case study *A hardship customer's electricity is disconnected unexpectedly* (http://www.ewov.com.au/publications-and-media/archive/february-2015/a-hardship-customers-electricity-is-disconnected-unexpectedly).

[23] For example, *Wrongful Disconnection Decision for Mr C & AGL Sales*.

[24] For example, EWOV case study *Customer faces disconnection and debt collection activity after failure to offer hardship assistance* (http://www.ewov.com.au/publications-and-media/archive/2015/august-2014/customer-faces-disconnection-and-debt-collection-activity-after-faoilure-to-ffer-hardship-assistance).

[25] As in EWOV case study *Customer faces disconnection and debt collection activity after failure to offer hardship assistance* (http://www.ewov.com.au/publications-and-media/archive/2015/august-2014/customer-faces-disconnection-and-debt-collection-activity-after-faoilure-to-ffer-hardship-assistance).

deemed customers among wrongful disconnection cases, this suggests that a different, perhaps more personalised approach, may need to be adopted, such as site visits.

Energy efficiency

The correlation of high consumption with hardship was the rationale for the inclusion of energy audits and replacement appliances in the hardship program guidelines in the past, and has long been an area of interest for consumer advocates. However, working with customers on their consumption does not seem to have been consistently a feature of hardship programs. Perusal of the last several years' *Energy Retailers Comparative Performance (Customer Service) Reports* published by the ESC shows that these important interventions have only been widely used by a few retailers, and only sporadically.

When the Department of Human Services' *Capital Grants Scheme* and its successor *Homewise* were in operation, many hardship customers received replacement appliances; but more recently it appears that beyond replacement light bulbs, little has been done. In the 2013–14 customer service report, only four customers participating in hardship programs received a replacement appliance, and just 464 received an energy audit, from just two of 16 retailers.[26,27] If hardship customers are actually more likely to have energy efficiency problems, it would be expected that most retailers would have some activity in this area and that the number of customers helped would be greater.

However, to appropriately assist all customers in hardship programs whose payment difficulties are caused or compounded by efficiency problems is a significant task. It is likely that to achieve the required extent of activity, a publicly funded energy efficiency program is needed to provide additional resources. The problem of poor housing and appliance quality as a factor in financial hardship is big enough to require public investment as well as intervention from energy retailers. This is partly evidenced by the significant use of *Homewise* by retailers before the program was closed down. A stronger obligation on retailers to conduct free energy audits for hardship customers with high usage and facilitate access to replacement appliances or retrofits has the potential to make a real difference. This would be assisted by a government funded program to supplement retailer's own expenditure, and perhaps partly offset by VEET.

Lump sums

The practice of some retailers to require a lump sum payment before reconnection or admission to a hardship program is a problem if a lack of money is the major factor in the disconnection or need to enter a hardship program. The belief that paying a lump sum demonstrates intent represents a lack of understanding of the very nature of financial hardship and vulnerability. The Commission should prohibit these practices. A customer making the first instalment of a new payment plan based on a genuine assessment of capacity to pay is a sufficient demonstration of intent.

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[26] Essential Services Commission *2014, Energy Retailers Comparative Performance Report – Customer Service, 2013–14*, December 2014.

[27] It should be noted that, according to the Commission, "Some other retailers were unable to provide information on this metric, citing privacy restrictions on behalf of their energy auditors." Essential Services Commission 2014, *Energy Retailers Comparative Performance Report – Customer Service, 2013–14*, December 2014: p.12

Ongoing usage versus debt

The Energy Retail Code stipulates that retailers must offer customers unable to pay their bills a payment plan that considers their capacity to pay balanced against the need to both pay down arrears and cover ongoing usage. For many customers, this is difficult. The amounts stipulated for fortnightly or monthly payments are presumably based on covering usage and paying down arrears, but are clearly financially challenging for a household on a very low income. Informal reports from energy retailer hardship program staff affirm that in many situations, covering ongoing usage and paying down arrears exceeds households' capacity to pay.

A number of water businesses make a clear distinction between debt and usage when negotiating payment instalment within their hardship programs.[28] When a customer enters the program, the debt is 'parked' and instalments are set up to just cover ongoing usage. Once the customer can stay on top of that, instalments are increased (by negotiation) to start to pay down debt. In some cases, incentive payments by the water business reduce the debt, or part of the debt is waived once the customer has settled into regular payments.

Clearly, the energy retail business is quite different from the state-owned water sector, and the capacity of retailers to waive large amounts of debt may differ too. But the example from the water businesses shows the value in treating debt and ongoing usage differently – especially in terms of working with customers to improve budgeting and payment behaviour. Changes to the Code or the hardship policy guidelines to require retailers to treat ongoing usage and arrears separately, and to give greater weight to capacity to pay, would still allow scope for innovation but better meet the needs of many customers in financial hardship.

Conclusions

In summary, the failure of regulatory obligations on retailers to drive consistent performance in a number of areas suggests that a more prescriptive or punitive approach is needed. Areas include assessing capacity to pay, identifying customers in hardship, making genuine attempts to contact customers who don't respond to letters (including verifying whether address details are correct and making additional efforts with deemed customers), and helping customers with high usage improve energy efficiency.

Along with this, it must be recognised that some customers have so little financial capacity that they can never pay off an accumulated debt as well as cover their ongoing use; and that some cannot even cover the costs of just their ongoing usage. Ultimately, this problem cannot be addressed by hardship programs and needs a broader solution in which the energy retailer plays an important but not the only role.

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[28] Presentations by Sydney Water and Yarra Valley Water at the Informa *Managing Collections and Hardship in Utilities, Banks and Telecommunications Providers* conference, 24–25 June, 2014, Melbourne.

Q3. What incentives could be introduced to the regulatory framework to promote innovation in assisting customers who are unable to pay their bills in full and on time?

- **Performance targets on key indicators, with penalties for not meeting targets**

In line with the Commission's preference for outcome- rather than output-based regulation,[29] a performance-target based approach may prove effective at driving innovation in and increasing the effectiveness of retailers' hardship policies.

Identifying a number of performance targets on a range of outcome indicators and penalising retailers for not meeting targets may be a more effective way to drive innovation and produce better customer outcomes than the current situation, where poor customer outcomes can occur in high quantities with no penalty so long as the code has not been breached. However, outcome indicators need to be carefully constructed to minimise the incentives for gaming the system. Simplistic or out-put based targets can be too easily gamed, such as the public transport example, where targets for on-time performance are achieved by 'timetable padding' or 'station skipping', rather than genuine improvements in providing customers certainty that they can reach their destination quickly and reliably.

While it is appropriate for performance targets to allow for a certain number of undesirable outcomes – in recognition that elements outside retailers' control are factors – VCOSS agrees with the Commission[30] that compliance with the customer protection framework is entirely within retailers' control and thus that a performance target of zero wrongful disconnections is the only appropriate one.

Q4. Does the regulatory framework provide sufficient flexibility and discretion for energy retailers to assist customers in financial hardship effectively? Should the Commission's Code and guidelines be more or less prescriptive in order to facilitate best practice and promote innovation by retailers? If so, what should be changed and how?

- **Greater prescriptiveness is warranted for procedural requirements**
- **Outcomes-based performance indicators on hardship indicators can drive innovation**
- **Penalties for regulatory breaches can improve compliance**

The range of different approaches to working with customers in hardship used by retailers over the years suggests that the framework supplies ample flexibility and discretion. As noted above, the unacceptably high incidence of poor customer outcomes suggests a more prescriptive approach may be needed. The flexibility that introduced to (and initially, to an extent, did) facilitate innovation appears to increasingly waning.

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[29] Essential Services Commission 2007, *Final Decision: Energy Retailers' Financial Hardship Policies*, April: p. 4.
[30] Essential Services Commission 2015, *Energy Retailers Compliance Report 2013-14*, April.

Nevertheless, the current work by AGL in comprehensively reviewing its hardship policies and practices in the light of poor outcomes and developing, with stakeholder consultation, a new more granular, targeted, collaborative, and responsive approach is an example of the type of innovation that *is* enabled by less prescriptive regulation. This presents something of a dilemma: a framework leaving sufficient room for innovative practice risks the wellbeing of those households that are customers of retailers who don't rise to the challenge.

As discussed above, some increase in prescriptiveness is sorely needed in some areas, and some performance targets highly desirable in others. A multifaceted, nuanced approach offers the best chance to improve outcomes for vulnerable Victorians without limiting those retailers committed to better serving their vulnerable customers. This includes:

- Greater prescriptiveness is warranted for procedural requirements such as assessing capacity to pay and likelihood that a customer is in financial hardship, using best endeavours to contact non-responsive customers (including deemed customers), and deducing whether a customer is likely to have an energy efficiency problem (and consequently assessing the nature of the problem).
- Outcomes-based performance targets for key indicators (with penalties for missing targets) allow for retailers to use whatever approaches they like to deliver on fundamental principles of the customer framework. These should attempt to measure as comprehensively as is possible the ultimate objectives of hardship responses: that consumers maintain their energy supply, and they have the knowledge, capabilities and resources to afford the energy they require.
- Penalties for breaches of regulation will help drive better compliance with disconnection procedures. They should also drive improvements in retailers' internal systems – shown by the ESC's *Energy Retailers Compliance Reports* to be a significant issue. In particular, we note with alarm that Energy Australia's implementation of a new billing system in 2012 led to so many serious breaches of the customer framework that an entire chapter was dedicated to it in the last two Compliance Reports. This kind of incident represents a significant failure in one of the most fundamental competencies expected of a large energy retailer and should be treated accordingly.

Performance and compliance (chapter 4)

Q5. How could the Commission better monitor the overall effectiveness of the hardship assistance provided by energy retailers?

- **More and better data needs to be collected and made public**
- **Outcome measures need to be identified and measured**
- **The objectives of hardship programs need to be clearly articulated**

More detail is required in reporting hardship-related data. Data should be linked with what it is expected to represent. Significantly, data should not just be about assessing whether or not retailers are performing well; it should also be about providing a clear understanding of the extent, demographic composition, causes and solutions to energy hardship. Much of the detail of customer hardship, the operations of hardship programs, and the journey customers take into, through, and out of hardship is not transparent to those outside energy retailers' customer service staff.

Moreover, the Commission needs to develop more comprehensive tools to assess the outcome for consumers of hardship programs. Ideally, after engaging with hardship assistance, consumers should be in a better position to manage their energy costs in the future. Elements of this might be that they maintain their energy supply, have better capabilities to access the lowest energy prices, use energy more efficiently, and have the financial skills to manage their energy payments, and know how to respond should they face difficulties in the future. Having greater ability to directly measure the outcomes for consumers, rather than only measure intermediate data, would give greater certainty as to whether retailer's hardship assistance was having any impact.

The objectives need to be articulated, and data chosen to shed light on progress toward these objectives.

There is a role for data being used to 'name and shame' retailers or the industry as a whole as part of the compliance framework. However, as the data is self-reported by the energy retailers there is a risk in the data may be reported in such a way as to minimise reputational damage. This may be why wrongful disconnection data reported by retailers continues to be unreliable.

Q6. Are there better indicators the Commission could use to assess the overall outcomes for customers in financial hardship?

- **There is benefit in trialling direct measurement of consumer outcomes**
- **Current indicators are insufficient and some are imprecise or incomplete**
- **New indicators proposed here will improve the overall suite of data**
- **The way disconnection and participation rates are reported needs to be revised**

Current methodologies focus on measuring indicators of hardship assistance programs and the characteristics of hardship customers. This type of information is of use in gaining insight into the operation of hardship assistance and the level of need it is addressing, and we have further suggestions about how these might be improved.

However, there are currently no measures about how effective hardship programs are in actually changing the circumstances of consumers. As far as VCOSS are aware, there are no public evaluations of hardship programs that determine their level of effectiveness in producing better results for consumers. The Commission should consider the range of mechanisms for evaluating hardship programs, especially evaluation processes that use data reported by consumers about their experience of hardship assistance, and whether their capabilities and their ability to manage energy use and costs has improved afterwards. There are a range of options to consider, such as:

- Requiring independent evaluation of hardship programs, including measurement of consumer outcomes
- Conducting surveys of consumers currently or previously enrolled in hardship programs to determine whether they are meeting consumer expectations

- Requiring entry and exit questionnaires to record changes in consumers capabilities for managing energy use and costs
- Recording instances of consumers re-entering hardship programs or incurring additional payment problems after completion of hardship programs
- Undertaking audits of hardship programs, including before/after and follow-up surveys of customer capabilities.

Preparation of this submission and work on another project mapping energy customer indicators over the last decade has revealed that many of the indicators currently available are imprecise or incomplete. The development of additional indicators would be useful in painting a comprehensive picture of financial hardship among energy customers. In particular, more information about the journey people take into hardship and through hardship programs would be invaluable in designing better interventions at both the industry and regulatory levels. Essentially, data should be chosen based on what conclusions can be drawn from it, or how well it illuminates situations we are interested in.

For example, of those currently reported:

- **Number of participants in total and number of concession participants** gives useful information about the makeup of programs but because the grand total is an annual total while the concession total is a monthly average the proportion cannot be reckoned.
- **Average debt of new entrants to hardship programs** gives an insight into the earliness of intervention.
- **Average debt of customers in a hardship program** illustrates the position of customers in significant hardship but does not reveal much about the effectiveness of programs in reducing debt because it conflates customers at different stages of the journey through programs, including those who will be excluded due to not complying with requirements.
- **Average length of participation** gives some insight into the journey through hardship programs and could be compared to debt reduction for successful participants (see below) to determine the significance of correlation.
- **Numbers leaving programs for different reasons** provides insight into the degree of successful navigation through programs by customers and, if the data encompasses all customers who leave the program during the period, can be compared to total participation and, if collected, numbers entering programs to give greater insight into throughput.
- **Disconnections and reconnections of former participants** give another angle on effectiveness of programmes.
- **Energy audits and replacement appliances** shows the degree to which energy efficiency is a focus. As mentioned above, currently these data show energy retailers are not focusing on this aspect of hardship assistance.
- **Number of customers on payment plans disaggregated by whether or not they are in hardship programs** shows both the level of financial difficulty in the customer base, and the degree to which hardship programs are used compared to less formal approaches with vulnerable customers.
- The current data collected on **customers disconnected for non-payment** adds richness to the raw disconnection data, showing the extent of more serious hardship (multiple disconnections) and the degree to which disconnected customers have previously engaged

with the retailer about payment difficulties (disconnections of customers previously on payment plans or in hardship programs).

New data, such as the following, will improve transparency and assist both policy development and compliance:

- **Number of concession participants (annual total)** and **number of total participants (monthly average)** would improve intelligence about the concession–non-concession makeup of programs and also provide a useful comparative measure related to the duration of program participation. For example, how does the monthly average compare with the annual total? Is the ratio similar or different for concession and non-concession customers?
- **Number of new entrants to hardship programs** would, in concert with the total number of people leaving programs, give greater insight into throughput.
- **Average debt on entry and exit of people successfully completing hardship programs** would give greater insight into the effectiveness of programs in dealing with debt.
- **Average debt of indebted customers** would avoid the arbitrariness of participation or not in a formal hardship program from customer debt to give a broader indication of the degree of debt across the customer base, as well as indicate whether or not the highest debts are more often with hardship program participants.
- **Number of customers with 90-day debts over $120** both within and outside of hardship programs would show the degree to which debts are dealt with in hardship programs.
- **Average debt of disconnected customers** would give a better picture of the relationship of debt to disconnection.
- **Average consumption of hardship program participants** and **average consumption of all residential customers** would demonstrate the relationship between consumption and hardship. As mentioned above, evidence from retailers shows that customers in hardship are more likely to have high usage – which is a strong rationale for having an energy efficiency aspect to hardship programs. Collecting these data better contextualises this and adds weight to attempts by retailers, regulators, and government to direct energy efficiency assistance to vulnerable customers.

The Commission should consider more regular reporting of hardship indicators, and report relationships between the data in addition to reporting individual indicators, for example:

- **Reporting the proportion of hardship program participants excluded from a hardship program for not complying with its requirements** provides evidence about the quality of engagement of programs, and their success in helping participants.
- **Reporting the relationship between wrongful and all disconnections** shows the extent to which wrongful disconnections are occurring.

The latter also requires more accurate reporting of wrongful disconnections. Currently the actual incidence of wrongful disconnections is unclear and even the best estimate can only be arrived at by assembling data from different places. Significantly, EWOV reports far more wrongful disconnections than retailers self-report to the ESC[31]; and it's unclear whether or not the numbers reported by the ESC as being self-reported by retailers include the cases referred to the Commission by EWOV.

Reporting disconnection and program participation rates

Currently, disconnection and hardship program participation rates are expressed in terms of energy accounts. For disaggregated electricity and gas disconnection rates, this is appropriate. However, where households have aggregated electricity and gas accounts (77% of households with both gas and electricity as two units) when data are reported this can underestimate the disconnection rates. Calculating rates according to the total number of energy-consuming households (for which electricity customers is a good-enough proxy) instead of the total number of energy accounts gives a clearer and more accurate picture of the incidence of hardship and disconnection and the impact on Victorian households. It may still be necessary to use accounts-based rates where necessary for comparison with other states; but households-based rates should be the default approach for all reporting.

Q7. Can the Commission improve how it monitors and enforces energy retailers' compliance with the regulatory obligations? If so, how?

- **Recent changes to compliance reporting are welcome improvements**
- **Performance targets with penalties for missing targets, and a range of proportionate penalties for regulatory breaches would improve compliance**

The Commission's reporting on compliance is thorough and has improved over time. In particular, by reporting the number of different types of breaches, as done for the first time in the 2013–14 Compliance Report, it will now be possible to get a better picture of the extent of non-compliance over time. Because this quantitative data is only available for the last two years, it's not clear whether the increase in almost all areas is indicative of an underlying trend or not. However, the current extent of code breaches and the nature of many of them suggest that enforcement methods may need to be strengthened. The recurrence and significance of billing system errors as a cause of code breaches and poor customer outcomes is of particular concern and suggests that a more punitive approach may need to be taken to better motivate retailers to improve their systems. The extent to which billing and information system limitations block policy outcomes in a number of areas – including, for example, customer access to meter data on communications to customers via bills – adds value to billing system improvements.

Improving enforcement is a complex undertaking that ultimately requires a range of penalties that can be applied proportionately to the seriousness of regulatory breaches, with the ultimate penalty of licence removal at one end and the mildest – public reporting with a voluntary undertaking to improve – at the other. It must also be remembered that regulation is a means to an end and that the ultimate goal is the retail energy market operating in the interests of consumers. Good

[31] Significantly, the 2009–10 Retail Compliance Report noted that retailers report significantly fewer WDPs than EWOV, and that WDP reporting would be addressed in the 2011 regulatory audits.

performance implies compliance. As discussed above, a range of approaches implemented in tandem should improve both performance and compliance including:

- more frequent, public reporting of data
- performance targets for key outcomes
- effective evaluation of hardship programs
- higher WDPs with penalties for breaches causing wrongful disconnections
- a range of proportionate penalties for other regulatory breaches, and
- strategic, selective use of 'name and shame' reporting for the most egregious breaches would provide an effective suite of performance and compliance tools.

Best practice (chapter 5)

VCOSS welcomes the Commission's identification of the Committee for Melbourne's *Guiding principles for supporting utility customers experiencing financial hardship* as a best practice model, as well as the considerable research of best practice examples evident in the consultation paper. VCOSS agrees with the Commission that early identification, resource efficiency, availability of useful information, partnerships, sensitive and flexible approach, program review, and organisation-wide support are appropriate best practice themes.

Q8. Are energy retailers currently providing best practice assistance to customers who are unable to pay their energy bills in full and on time? What evidence is available to support this view?

- **Good practice occurs but overall, best practice is not achieved**
- **Best practice would be reflected in improvements in hardship indicators**

The increase in key indicators of poor customer outcomes and the extent of code breaches discussed elsewhere in this submission suggest that on the whole, energy retailers operating in Victoria are not consistently providing best practice assistance to customers experiencing financial hardship. In particular, the 96 per cent increase in the energy disconnection rate and 462 per cent increase in the wrongful disconnection rate over the last five years implies that households unable to pay their bills in full and on time are at an increasingly greater risk of disconnection than they once were. The 14 per cent increase of average debt on entry to hardship programs as a proportion of annual energy cost suggests that early intervention is not consistently occurring. The low level of provision of audits and appliances suggests that hardship assistance is not targeting energy efficiency.

Wrongful disconnection and EWOV case studies, as well as reports from VCOSS members working with households in energy hardship, show many situations in which customers received substandard assistance. Some of these are noted above. In particular, some wrongful disconnection decision reports show a considerable history of customer engagement, disclosure of hardship, and attempts to make instalment and lump sum payments that still result in disconnection.[32] At the same time, from the same sources we learn of many situations where customers *did* receive appropriate, flexible, and compassionate help. The expertise and understanding is out there, but it is delivered inconsistently across the customer base. This means that while good practice happens, best practice is not achieved.

Q9. Should retailers' hardship practices be more transparent? If so, how can transparency be improved?

- **Greater transparency would be beneficial to policy and regulatory design**
- **Better indicators, program audits, and more granular program outlines would improve transparency**

To comprehensively assess the effectiveness of hardship programs in working constructively with customer in hardship, a view of customers' journeys into hardship, through hardship programs, and out the other side would be necessary. Unfortunately, we generally only see these journeys, albeit in summary form, in wrongful disconnection decision papers and EWOV case studies. No-one outside of energy retailers' hardship teams and community service organisations working closely with people in hardship sees the successful journeys.

One way to improve the transparency of hardship programs is increasing the number of indicators that are reported against, as discussed above. Whilst this sheds more light on what happens for people in hardship programs, it still doesn't say much about individual journeys.

Information from retailers detailing the way programs work in practice – for example, flow charts that show typical progress and descriptions of assessment procedures – would improve transparency. If such information was considered commercially sensitive it could be provided confidentially to the Commission.

There would be value in an auditing procedure where the case histories of random program participants are examined and assessed. Comparing case studies between different retailers, and comparing case studies of successful and unsuccessful journeys with the same retailer, would give great insights into the effectiveness of different approaches.

Q10. What else could we learn from practices by firms operating in other jurisdictions and industries, nationally and internationally about best practice in hardship assistance?

- **The banking and water sectors have proven results in improving access to hardship programs, engaging hardship customers, and reducing recidivism**

Examples from the banking sector show that making specialist hardship assistance easily accessible to customers does not lead to a great rush of customers trying to access special treatment that they don't really need, but simply helps ensure people who need extra assistance

[32] For example, *Wrongful Disconnection Decision for Customer T & Origin Energy*, *Wrongful Disconnection Decision for Customer H & TRUEnergy*.

can self-identify and reach customer support staff skilled and empowered enough to give them that support.[33] Examples from the water sector show that changing the style of communication to disengaged customers to be more open and welcoming can markedly influence customer attitudes and make them much more likely to engage and cooperate.[34] The water sector also provides good examples of how working sequentially with hardship customers first on managing the cost of ongoing usage, and then on paying down debt, is highly effective at reducing recidivism.[35]

Q11. Are there any other themes of best practice that we have not covered in chapter 5? Do some themes require higher priority in the regulatory framework administered by the Commission?

- **The themes identified are all appropriate and important**
- **Highest priority should be given to resource efficiency, early intervention, and sensitive and flexible approach**

All of the themes are important. Those which may be considered to be the most important and thus require higher priority – which may mean more prescriptive in regulation, more transparent in reporting, and given more weight in assessing programs – are:

- **Resource energy efficiency:** The role of poor energy productivity in domestic energy-related hardship is well documented, and hardship program performance indicators show that insufficient attention is given to it. Energy efficiency needs to become a critical aspect of helping households in hardship, and any acceptable hardship policy should clearly show how this is addressed.
- **Early intervention:** High levels of debt feature significantly in hardship case studies, and average debt on entry to hardship programs is an increasing proportion of annual energy costs. Many households would have much better prospects of successfully navigating a hardship intervention if they did not have such large arrears to start with, and early intervention is the key to realising this.
- **Sensitive and flexible approach:** Many case studies and reports from financial counsellors demonstrate a lack of flexibility or sensitivity in negotiations around instalment amounts and scheduling. VCOSS's own research into the experiences of people in financial crisis dealing with utilities providers found that people who felt their situations were understood by hardship program staff and were given flexibility to alter payment amounts and schedules when necessary were more committed to meet their obligations and thus both pay down debt and avoid disconnection.[36]

These are priorities do not diminish the importance of the others mentioned in this submission. Organisation-wide support is critical: the best practice in the world by the hardship team can be easily undermined by other parts of the business not regarding its work or reflecting its principles. It

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[33] Report by Fiona Guthrie (Financial Counselling Australia) to ERAA Energy Affordability Forum, Sydney, 12 August 2014, on the outcome of banks agreeing to provide prominent links on their websites to hardship assistance information.
[34] Report by Sue Fraser (Kildonan UnitingCare) to ERAA Energy Affordability Forum, Sydney, 12 August 2014, on the outcome of a trial with water businesses to change the language on reminder notices.
[35] Presentations by Sydney Water and Yarra Valley Water at the Informa *Managing Collections and Hardship in Utilities, Banks and Telecommunications Providers* conference, 24–25 June, 2014, Melbourne.
[36] David Hunt 2007 *Utility Bill Payment Research: Managing Competing Expenditures with Limited Money*, VCOSS, unpublished.

is also no help if customers cannot find the hardship team when they need it. The banking sector, as mentioned above, found that promoting hardship assistance did not cause an onslaught of customers falsely claiming hardship, but rather meant that customers who needed help could access it. Energy customers would benefit from similarly accessible gateways.

The water and banking sectors both improved their hardship procedures after partnering with community-based agencies that had the expertise they needed to craft responsive and effective policies and approaches. Some energy retailers have taken a similar approach – currently AGL is consulting with community sector stakeholders in its hardship policies review, and this is reflected in the depth of its design. By bringing in broader expertise and admitting a critical eye, partnering with external stakeholders in developing programs is critical to their success.

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