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Essential Services Commission
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Submission to the Inquiry into the financial hardship arrangements of energy retailers

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide input into the Essential Services Commission's (the **Commission**) Inquiry into the financial hardship arrangements of energy retailers, and the paper released by the Commission (the **Approach Paper**).

This submission provides commentary from the perspective of a consumer organisation that advocates on behalf of vulnerable and disadvantaged consumers who experience payment difficulty with energy bills. Both our telephone financial counselling service, MoneyHelp, and our consumer legal assistance service, regularly assists people who experience difficulty with energy debt and disconnection. The causes of these difficulties are often complex, but in many instances may be ameliorated by improved market and customer services practice by energy retailers.

The outline of this submission is as follows:

1. Broad comments on regulating for good customer service and vulnerable consumers in a competitive market;
2. Comments on better practice approaches to financial difficulty and hardship, including in other industries (chapter 5 of the Approach Paper); and
3. Response to the 'principles' proposed by the Commission to guide its assessment of the regulatory framework (chapter 2 of the Approach Paper);
4. Comments on the regulatory framework that currently operates (chapter 3 of the Approach Paper);
5. Comments on the performance, compliance and enforcement framework for the regulatory framework (chapter 4 of the Approach Paper);
6. Examples of better practices to financial hardship from other jurisdictions; and
7. Comments on benchmarking (chapter 6 of the Approach Paper).

This Inquiry does not seek to solve energy affordability or regulate the cost of energy. However, we expect that the Inquiry is well placed to offer observations to policy makers and other stakeholders in an effort to improve outcomes for energy consumers. This could include, for example, the administration of the concessions system or improvements to broader consumer protections to ensure competition works effectively.

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We have provided comment to the sections outlined in the Approach Paper, and have included recommendations throughout the report. All recommendations are compiled into the box below.

Recommendations

1. That the Commission take a 'vulnerability' approach to its recommendations on financial hardship policies, programs and practices.
2. That the Commission work with industry to identify good practice standards for dealing with vulnerable customers, based on the UK Standard for Inclusive Service Delivery.
3. That the Commission facilitate the collection of data and indicators to better understand the cost of energy hardship and disconnection to the community.
4. That the Commission adopt the recommendations in our 2014 report, *Problems with payment: How energy retailers can assist consumers having trouble paying energy bills*.
5. That the Commission audit energy retailers' compliance with their obligations to inform customers about the URG.
6. That the Commission recommend that energy retailers be required to take more proactive steps to ensure eligible customers access concessions.
7. That the Commission adopt the recommendations of our *The Pursuit of the Impossible* report, particularly:
 - that energy debts not be outsourced to a collector where the debtor's sole source of income is social security;
 - that energy retailers be prohibited from imposing contractual terms that allow recovery of debt collection costs.
8. That a provision is included in the Energy Retail Code that prevents energy retail businesses and their debt collectors from taking enforcement action for energy judgment debt unless there is an oral examination in the Magistrates Court.
9. That the Energy Retail Code include a framework to facilitate debt waiver of 'old' energy debt, for consumers whose income and assets are protected by law.
10. That the Commission set standards about the accessibility of hardship assistance and support offered by retailers.
11. That the Commission prioritise the role of enforcement in ensuring that there is 'accountability' in the energy market regulatory framework.
12. That the Commission ensure that consumer protections relating to payment, collection and hardship apply broadly to all customers.
13. That the Commission review the ERC to ensure that any protections lost through 'harmonisation' are reversed.
14. That the Commission revise best practices for hardship programs to be around early intervention, including flags for non-payment and prioritising early checks and assistance.
15. That the Commission require retailers to set industry-wide standards for contact centre training on financial hardship and difficulties.
16. That the Commission require retailers to adopt practices which automatically refer consumers with high debts to hardship programs.
17. That additional processes be introduced to ensure businesses are further accountable for the act of disconnecting a household, including bolstering the wrongful disconnection penalties.
18. That retailers be required to block the transfer of a customer to a new retailer, where that customer has an accumulated debt.
19. That a range of incentives be re-affirmed or introduced to the energy market to shift retailers'

approach to delivering good customer service, particularly for those experiencing difficulty paying their bills.

20. That compliance monitoring be expanded, including more regular and timely reporting and public responses from the Commission to systemic issues identified by EWOV.
21. That performance indicators be expanded beyond those that are participating in hardship programs, to customers that are in debt arrears.
22. The Commission revise its approach to addressing reports of potential non-compliance and systemic issues raised by EWOV and community service providers.
23. That the Commission adopt a robust benchmarking regime, prioritising affordability, disconnection and customer service.

1. Regulating for Good Customer Service: Prioritising Vulnerable Consumers

The Approach Paper recognises energy is an essential service necessary for health, wellbeing and social participation. The delivery mechanism for energy services—particularly the role of energy retailers who supply and sell energy to consumers—must be robust and be able to deliver according to the needs of all.

Financial difficulty can happen to anyone. The vast majority of those experiencing financial difficulty want to pay their bills and keep connected to essential services. However, it is often an unexpected external event that can affect people’s financial security, for example, a job loss, illness, a relationship breakdown, the failure of a small business. Sadly it is also the everyday experience of those living in entrenched poverty, with poor housing and low incomes.

It can be difficult to identify those that will experience difficulty with paying energy bills. For example, many low-income Victorians pay their bills but forego other needs. Others may have the capacity to pay their bills, but suddenly lose that capacity due to some external event. We submit that the focus must be on how industry can best respond to the individual needs of vulnerable consumers, that is, providing all customers with effective, responsive service.

It is difficult to directly regulate “good customer service”. However, regulation can provide the appropriate incentives for businesses to deliver good customer outcomes. In a competitive market, the incentives for business do not naturally provide a focus on the needs of vulnerable consumers with payment difficulties. This is because there can be cheaper ways for the firms to “get ahead”, for example, continually churning customers with a focus on the “profitable”, particularly those that pay on time but don’t engage by seeking out the cheapest deal. For those that don’t pay on time, automated collection processes are adopted for cost reasons, and these may not have the inbuilt capacity to respond to individual needs. Recent reports from Energy and Water Ombudsman Victoria (EWOV)¹ and consumer advocates provide insights into the customer experience of financial stress and hardship policy in practice.²

¹ EWOV, *Quarterly Affordability Report*, February 2015, http://ewov.com.au/data/assets/pdf_file/0004/14089/Affordability-Report.pdf

² Consumer Action Law Centre, *Problems with Payment; How energy retailers can assist consumers having trouble paying energy bills*, July 2014, http://consumeraction.org.au/wp-content/uploads/2014/07/Problems-with-Payment_July-2014.pdf; Financial Consumer Rights Council, *Rank the Energy Retailer Victorian financial counsellors rank the financial hardship policies and practices of energy retailers*, August 2014, http://www.fcrc.org.au/wp-content/uploads/2014/08/FCRC_RANK-THE-ENERGY-RETAILERS-REPORT_AUGUST-2014.pdf

There is a role for the regulator to encourage businesses to respond to the needs of the vulnerable, which requires a strong understanding of the circumstances and vulnerability of consumers, and the roles of the companies and markets that are regulated. The Commission already has experience in this area, and can also draw upon the experiences of others.

The UK Financial Conduct Authority recently released a paper on consumer vulnerability.³ That paper identifies a range of problems that cause or exacerbate consumer vulnerability:

- policy – many businesses lack an overarching strategy or policy on consumer vulnerability, and where policy exists it can inhibit staff from using discretion;
- systems – failure of internal systems, particularly automation and use of call centres, which create challenges in spotting potential vulnerability and ensuring customers are referred to specialist teams where necessary (this can result in consumers having to repeat their ‘story’ or, more commonly, becoming disengaged and ignoring letters and calls from businesses);
- products – inflexible products including payment terms which do not factor real-life events into their design;
- implementation – where good policies exist, there can be a policy/practice gap, with frontline staff not implementing policy or failing to refer people to specialist teams.

Recognising these problems, researchers from the University of Leicester made a number of recommendations for how regulators can promote a regulatory environment that encourages businesses to respond to consumer vulnerability:⁴

- regulators being prepared to use their powers and influence to the maximum needed;
- challenging assumptions, including that consumers can become ‘active’ and ‘engaged’ to advocate for themselves and find better deals;
- having a clear strategy, for example adopting an explicit vulnerability strategy that sets out the regulator’s thinking and expectations;
- having an evaluation framework that incorporates the experience of consumer and welfare organisations; and
- having organisational intelligence, including a targeted program of consumer research to develop understanding of consumer vulnerability.

UK consumer groups have worked with industry through the British Standards Institute to develop a standard for inclusive service provision. This standard helps businesses identify and responding to consumer vulnerability.⁵ A similar standard could be adopted in Australia.

Recommendation 1: That the Commission take a ‘vulnerability’ approach to its recommendations on financial hardship policies, programs and practices.

Recommendation 2: That the Commission work with industry to identify good practice standards for dealing with vulnerable customers, based on the UK Standard for Inclusive Service Delivery.

³ Financial Conduct Authority, *Occasional Paper No. 8, Consumer Vulnerability*, February 2015.

<http://www.fca.org.uk/news/occasional-paper-no-8>

⁴ Mike George, Cosmo Graham, Linda Leonard & Kate Scribbins, *Tackling Consumer Vulnerability: Regulators’ Powers, Actions and Strategies*, University of Leicester School of Law Research Paper No. 15-06:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2568716

⁵ British Standards Institute, *Standard for Inclusive Service Delivery (BS 18477: 2010)*, <http://www.bsigroup.com/LocalFiles/en-GB/consumer-guides/resources/BSI-Consumer-Brochure-Inclusive-Services-UK-EN.pdf>

2. Better practice approaches to financial hardship and difficulty

There is ample evidence, presented here, in the Commission's own compliance reports, and in data regularly released from EWOV, that Victorian energy retailers are not providing good customer service to Victorian energy consumers. Poor customer service and retailer practices can lead to people who can currently pay for their consumption under normal circumstances slipping into debt or an ongoing hardship cycle. Our concern, however, is that poor customer service and hardship practices have a disproportionate impact on those already living with low incomes and other forms of disadvantage. Early identification and intervention measures, combined with best practice customer service across all customer segments will significantly improve outcomes for Victorian consumers.

The outcomes of current approaches to financial difficulty and hardship are, however, poorly understood beyond high level indicators including number of disconnections, number of wrongful disconnections, and complaint categories arising within EWOV. The *true* cost of current hardship and disconnection approaches is much broader. Numbers of disconnections (wrongful or otherwise) do not capture the flow on implications of the disconnection to the household, or the ways in which the disconnection could have been avoided. They also do not capture the cost that poor customer service imposes on support and emergency relief agencies that help vulnerable consumers to maintain their financial security, wellbeing and connection to essential services.

In light of this, Consumer Action commissioned two studies to assess the broader implications of current practices: to the financial counselling sector; and to the disconnected individuals themselves.

We present the preliminary results of this information below. Both studies are yet to be completed, and the data and findings will be made available to the Commission as soon as they become available.

In collecting the data for these studies we have encountered some difficulties that have material implications for our ability to comment on the adequacy of current approaches to financial difficulty and hardship. In particular, it is very difficult to collect data from across the sector to appropriately monitor the outcomes of current practices for consumers. We believe that this needs to be rectified through this Inquiry in order to increase scrutiny of poor practices and competitive pressure for practices to improve. We have provided more detail below.

2.1 The cost of poor hardship practices to the sector

Vulnerable and disadvantaged consumers frequently rely on financial counselling services to assist them to stay connected to their energy supply in the face of an inability to pay off a debt, pay for ongoing consumption, or both. Through our telephone financial counselling service MoneyHelp, we have observed increasing numbers of clients presenting with issues relating to their energy supply, and an increasing proportion of those clients presenting with problems negotiating an affordable payment plan, getting access to the concessions they are eligible for, or trying to avoid disconnection in the face of high bills and debts. We have also observed an increase in the number of Victorian retailers who refer clients to our financial counselling services as a condition of accessing a payment plan or the hardship program. This is not a requirement of the Energy Retail Code (**ERC**), and is effectively outsourcing basic customer service to MoneyHelp. While we welcome appropriate referrals—for example, where an individual has multiple debts—many energy debt matters should be dealt with appropriately by the retailer themselves without referral to a financial counsellor.

In light of these trends, we commissioned Oakley Greenwood to undertake a survey of Victorian financial counsellors, quantifying the cost to the sector of providing services relating to energy debts and hardship, including access to concessions and payment plans. The survey was sent to 200 financial counsellors across Victoria, and we received 23 responses,⁶ representing 4070 vulnerable Victorians over the last 12 months (April 2014-April 2015).

Preliminary results from the survey indicate that:

- **65% of clients present with an energy issue.**
- **95% of financial counsellors report that this percentage has increased over the last 3 years** (increased a lot: 65%; increased a little: 30%). Only 1 respondent reported a decrease in time spent on energy cases over the last 12 months.
- **Financial counsellors spend on average 43% of their time on clients' energy issues** (although this varies widely between 20% and 80%).

The time that financial counsellors spend on energy cases is made up of:

- rectifying problems caused by retailers and negotiating affordable payment plans (44%);
- assisting clients access hardship programs (17%);
- addressing high consumption (11%);
- working to avoid client disconnection or organise reconnection (9%);
- assisting clients access utility relief grants (9%); and
- addressing a range of other energy related issues (10%).

These results indicate that energy retailers are frequently failing to provide adequate customer service generally, and hardship services more specifically, to the most vulnerable Victorians. This is supported by a further finding which indicates that in 41% of energy cases received by financial counsellors, the client should have been given access to the retailer's hardship program, but had not been; 13% should have been referred directly to DHS in relation to concessions or a Utility Relief Grant, but had not been; and approximately 10% should have been referred to EWOV for dispute resolution (including wrongful disconnections), but were not.

While we are yet to quantify the cost of this to the financial counselling sector, it is clear that there is significant scope for improving customer service within energy retail operations, and in particular, in providing reasonable access to hardship assistance and programs to vulnerable and disadvantaged Victorians. We anticipate that picking up the tab for a failure in customer service will represent a significant cost to financial counselling organisations, at a time when funding to these organisations for financial counselling services is being cut.

The time that financial counsellors spend dealing with energy-related issues that are primarily the responsibility of the energy retailer, is time which could have been spent on other pressing issues for the client, or with another client. Poor energy retailer customer service has flow on impacts beyond the individual.

There will undoubtedly be examples of best-practice hardship programs in other jurisdictions and utility sectors. While the lessons from these programs should be evaluated and applied here to the extent

⁶ While we acknowledge that the response rate is low, it is reflective of the very high workload and under-resourcing of financial counsellors, which is exacerbated by the retailer practice of referring customers to financial counsellors before retailers attempt to provide assistance to the customer themselves.

that they can improve conditions for Victorians experiencing financial difficulty, we believe that simply delivering on the requirements of the ERC would result in a tangible benefit to vulnerable consumers.

2.2 The cost of disconnections to the household

The reported number of disconnections in Victoria is one measure of the adequacy or otherwise of current hardship arrangements and practices. Reported volumes of disconnections are a poor proxy however for the actual impact of those disconnections on the people disconnected, including the financial cost and the broader psychological impact. These people are all too often the most disadvantaged in our society.

We commissioned RMIT to collect detailed case studies of six Victorians households who have been disconnected in the last 12 months.⁷ The full analysis is not yet available, but the key themes arising from the preliminary research are:

a) Disconnections occur as part of complex family, health and financial circumstances

Disconnections do not occur in a vacuum: participants were typically experiencing numerous financial stresses at the time when they were disconnected, and these were often intertwined with complex crises. Domestic violence was a contributing factor for four of the six participants. One participant had been a victim of violent crime. Most also suffered from physical illness or injury, and all had histories of mental illness. No efforts were made to specifically recruit participants with these or other experiences or backgrounds.

Participants typically experienced compounding or ‘snowballing’ costs and debt in the lead up to their disconnections. Several had been left with financial burdens from previous events and unexpected costs had often tipped them (further) into debt. For example, one participant’s hot water system broke down and another’s car was badly damaged in an accident.

Several participants found themselves rotating through disconnections from various services—for example they would have to decide whether their phone or gas was more important that month, knowing that paying one bill would mean another could not be paid.

All but two participants had dependent children at the time of the disconnection/s. In some cases children had special needs, such as illnesses that required extra expenditure and contributed to the household’s financial burden.

b) Inadequate retailer responses and practices

Participants’ reports indicated numerous deficiencies in how ‘frontline’ retailer staff dealt with them. They consistently described staff as unsympathetic, patronising, and insensitive to genuine hardships. This exacerbated existing mental health issues for participants. Participants particularly noted the distress associated with having to repeatedly tell their stories to unsympathetic staff, and feelings of harassment and intimidation by their retailer’s practices.

Crucially, retailer responses were rarely reported to assist participants avoid future disconnections—rather, they tended to increase their likelihood. For example, several participants were denied access to hardship programs even though they were clearly experiencing significant

⁷ We acknowledge that the numbers of case studies is low. See **Section 2.3** below regarding the current shortcoming of the energy retail market governance which prevent information being more widely available.

hardship at the time. In some cases this was because they had missed payments while on hardship programs in the past; for others, frontline staff prevented access to those involved in dealing with hardship customers.

Participants consistently reported that call centre staff demanded large upfront and ongoing repayments even when participants communicated their regular income and expenses and clearly demonstrated that the requested payments were unaffordable in their circumstances. Retailers reportedly refused to accept participant offers of lesser, more affordable payments. Many participants also reported that retailers did not inform them about or refer them to services that could assist them, such as financial counsellors and EWOV. Participants typically came across these services by chance or through other channels, sometimes after being disconnected multiple times or for long periods. For example, several participants saw financial counselling services advertised in brochures, or were told about them while seeking food or other help from social service providers. They were usually surprised to learn that such services existed, and many felt that as the disconnections were 'their fault' nobody would be able or willing to help them.

Retailers also failed to alert participants to schemes or concessions they were eligible for, such as the Utility Relief Grant (**URG**) Scheme and the Medical Cooling Concession. In addition, in two cases retailers were not applying appropriate concessions for which participants had provided concession eligibility details. In those cases, financial counsellors or EWOV discovered that concessions were not being applied while acting on participants' behalves.

It is also worth noting the role of aggressive/predatory retailer marketing practices in disconnection cases: several participants had been repeatedly approached by door-to-door and online marketers seeking to sign them up to new energy contracts, sometimes over a period of several months or in one case, more than a year. It is possible, since participants who reported these experiences lived in socio-economically disadvantaged areas, that retailer salespeople were deliberately targeting vulnerable households. Some reported customer acquisition tactics had (deliberately or otherwise) confused participants. For example, one participant signed up to a contract thinking she was only answering a survey while another spent twenty minutes with a door-to-door salesperson inside her home, believing him to be an official who was checking she was on the correct tariff. The same person also had a door-to-door salesperson arrive at her back door, having entered the property by climbing over a fence.

c) Impact on mental health and wellbeing

Disconnections caused significant distress for most participants. Participants experienced feelings of shame, humiliation, fear and anxiety, and the disconnection events compounded existing mental health issues and had a serious impact on participants' wellbeing.

As mentioned previously, all participants suffered mental health problems and several were experiencing post-traumatic stress disorder (PTSD), depression and anxiety at the time of their disconnections. These participants described how their dealings with retailers exacerbated their symptoms, and led them to see themselves and/or their situations as hopeless. One participant described feeling that she had failed her child, and was almost suicidal by the time she started to see a financial counsellor.

Participants who had experienced domestic violence or assault had very real reasons to fear unidentified or unexpected phone calls and visits. Retailer practices of concealing their phone

numbers and calling at unexpected hours, including late at night or early in the morning, contributed to participants' trauma and feelings of being 'stalked', 'bullied' or 'harassed'. Far from 'motivating' people to keep up to date with their bills, the emotional impacts made it more difficult for customers experiencing hardship to engage in complex processes to improve their financial situation.

Most also described electricity disconnection as a humiliating experience, and feelings of shame led several participants to hide their situations from family and friends.

d) Financial impact

Disconnections resulted in various extra costs for participants that made it harder for them to get out of debt and avoid future payment defaults and disconnections. Some of these extra costs are very direct—for example, disconnection and reconnection fees. Other, less obvious costs include

- Replacement of spoiled food when there is no electricity to power fridges and freezers
- Purchase of take-away meals, often for the whole family
- Transport costs for trips to laundries, shops and other people's houses to wash clothes, buy food, shower and cook
- Use of coin-operated public laundries for washing, public BBQs for cooking. entry to public facilities such as swimming pools to shower,
- Phone charges for calls to retailers, social service providers, EWOV and others to deal with disconnection or otherwise seek help
- Purchasing candles, blankets and other goods to manage in the absence of heating, lighting etc.

One participant also had to pay for a new fridge as a result of her electricity disconnection, after melt water got into the motor. The costs that flowed from her disconnection totalled more than \$700. For households already experiencing hardship, these extra costs could lock them into a cycle of payment default and disconnection.

e) Impact on dependents

Four out of six participants had dependent children at the time of their disconnection/s and were concerned about the impacts on them. One told of how her son, aged 4, stood at the fridge crying because he was hungry but the food had gone off, and several mentioned rationing food, going hungry so their children could eat, or feeding their children unhealthy food because they could not cook. There were also concerns about the emotional impact on children, through being exposed to parents' stress and shame. One participant's daughter suffered asthma which was made worse in the absence of heating when the gas was disconnected.

f) Financial counsellors and EWOV

All participants found their way to financial counsellors at some stage but it often took time before they knew this assistance was available and where to look for it. Four cases had also been assisted by EWOV. Participants often became emotionally overwhelmed when they spoke about the help they'd received from counsellors and EWOV. They described feeling relieved, surprised and grateful because someone was finally helping them, when they had thought they were alone with their problems.

Financial counsellors and EWOV staff typically took over negotiations on behalf of participants, and usually achieved outcomes that participants had not been able to. These included getting

services reconnected, negotiating payment plans, identifying eligible concessions and schemes, and in one case, arguing for compensation for spoiled food.

A social service provider paid \$480 on behalf of a participant because the retailer refused to reconnect without it, but the reconnection took a further four days. In this case it was unclear why the worker did not refer the participant to EWOV, who may have achieved a better outcome—it is possible the worker did not know about EWOV.

However, in all other cases the involvement of financial counsellors and/or EWOV meant services were reconnected on the same or the following day, regardless of how much (if any) of the debt was paid up front.

2.3 Reporting and access to information

The above studies required the collection of data from a range of organisations and businesses across the industry. Without exception, we found it prohibitively difficult to access data, which is not reported publically and prevents adequate scrutiny of current practices.

In response to a request by the Commission, we initially attempted to calculate the economic cost of the current disconnection cycle to energy retailers, EWOV, financial counselling organisations, emergency relief organisations and the government (in the provision of concessions). Although we contracted an independent research company to collect and analyse the information on our behalf, ensuring its anonymity, we were not provided with access to high-level cost information from any institution. The information that we aimed to collate would provide an insight into the financial burden of the current approach to keeping people connected to their energy supply, and would provide a valuable point of reference to compare whether alternate approaches could lead to better consumer outcomes at lower cost to retailers, the government and consumers more broadly.

Similarly, in trying to identify Victorians who have been disconnected from their energy for the social research, we tried to work with a number of institutions, including EWOV, to find participants for the research. Despite appointment of a qualified social researcher with ethics approval from RMIT University, and commitment to financially reimburse disconnected individuals for their time, we were not able to access any database of potential participants. We therefore had to identify individuals through disparate service providers which has been highly time consuming and has led to very limited numbers of case studies in our final report. We were able to identify a small number of clients through our financial counselling service, but we generally receive clients on referral from a retailer at the point of threatened disconnection, not post disconnection.

Our conclusion, in response to this experience, is that Victoria's energy market fundamentally lacks coordination in the collection and analysis of data which is critical to the assessment of energy retailers' performance on hardship. Beyond headline levels of disconnections, retailer performance on providing adequate hardship practices lacks any transparency. This prohibits proper monitoring and precludes evidence-based decision making on the shortfalls of current processes and identification of efficient and effective ways to improve processes and outcomes for vulnerable and disadvantaged Victorians.

We strongly recommend that the Commission introduces meaningful indicators of the success of hardship practices as a result of this review, and continues to collect, monitor and report information against these indicators as part of their core work.

Recommendation 3: That the Commission facilitate the collection of data and indicators to better understand the cost of energy hardship and disconnection to the community.

2.4 Areas for improvement

Through our MoneyHelp financial counselling service and legal advice line, we see first-hand the outcomes of poor retailer customer service. We provide the evidence and recommendations from our recent research reports on various relevant issues below.

2.4.1 Problems with Payment

In 2014, Consumer Action released a research report, *Problems with Payment*,⁸ outlining the experience of vulnerable consumers trying to negotiate an affordable payment plan to repay a debt to their energy retailer. This report included case studies of 13 MoneyHelp clients and presented their experiences. The findings are directly relevant to this Inquiry—we found that retailers often require very high up-front payments in order to grant access to a payment plan, do not undertake an adequate capacity to pay assessment and therefore frequently insist on instalments that are not affordable to the consumer. People with debts were also frequently not offered with assistance beyond a payment plan, meaning that they were often in the dark about whether there were ways to reduce their consumption, prevented from accessing support such as URGs or not offered incentives to pay (ie. matched payments).

From that report, we recommended that energy retailers:

- Work closely with consumer groups to develop best-practice hardship practices, led by senior management.
- Develop processes for early identification and intervention for people showing early signs of financial difficulty.
- Ensure easy and consistent access to information for consumers through a dedicated hardship team.
- Ensure easy and consistent access to information for financial counsellors and community workers through a community hub.
- Ensure appropriate training across all call centre staff to equip them to understand and compassionately deal with people in financial difficulty.
- Develop consistent, respectful and realistic procedures for internally assessing a customer's capacity to pay, which are based on the customer's income and expenditure.
- Incorporate an energy efficiency focus to hardship assistance.
- Develop consistent procedures for checking that eligible households are receiving the concessions they may be due.
- Undertake regular reviews of the business' response to hardship.

Recommendation 4: That the Commission adopt the recommendations in our 2014 report, *Problems with payment: How energy retailers can assist consumers having trouble paying energy bills*.

⁸ Consumer Action Law Centre, *Problems with Payment*, July 2014:
http://consumeraction.org.au/wp-content/uploads/2014/07/Problems-with-Payment_July-2014.pdf

2.4.2 Utility Relief Grants: Barriers to Access

Our report, *Barriers to accessing Utility Relief Grants*,⁹ describes the key issues consumers experience in relation to accessing Utility Relief Grants (**URGs**). By facilitating easier access to this key grant at a time of financial difficulty, retailers are in a position to assist customers to head off any potential for falling behind in payments, and entering into a cycle of debt. Unfortunately the barriers facing consumers accessing URGs means this is not the case.

We understand the URGs themselves are currently under review by the Department of Human Services, however there are a number of key intersections with the ERC where we believe energy retailers could perform better, to ensure better outcomes for consumers. The key recommendation for the Commission is to audit energy retailers' compliance with their obligations to inform customers about the URG. Prolonged failure to comply with the relevant obligations should result in penalties.

Recommendation 5: That the Commission audit energy retailers' compliance with their obligations to inform customers about the URG.

Recommendation 6: That the Commission recommend that energy retailers be required to take more proactive steps to ensure eligible customers access concessions.

2.4.3 Debt collection and the Pursuit of the Impossible

At the same time as disconnections have been increasing, external collection of retail energy debts has skyrocketed, outstripping the rate of growth of disconnections. Over the last 5 financial years debt collection cases have increased by 337%, compared to a 112% increase in disconnections.¹⁰ While the focus on disconnections is valid, as it cuts vulnerable people off from essential services entirely, consumers' experience of debt collection also warrants attention.

Retailers' approach to debt collection, in the experience of Consumer Action's clients, is a far cry from best practice. Our 2012 research report, *The Pursuit of the Impossible*,¹¹ on consumer experience with debt collection, revealed a culture of harassment in debt collector practice. There was a strong preference for full payment of a debt, whereas the ERC gives people access to payment plans. Debt collectors are not required to assess a person's capacity to pay, and often pursue debt when they are aware that a debtor's income is protected. Debt collectors also often add on their own fees, resulting in the payments sought being higher than the original debt.

The following recommendations from *Pursuit of the Impossible* are relevant to this Inquiry:

- Regulators increase monitoring and enforcement activity relating to misconduct in the collection of energy debt.
- Energy market rules clarify that energy debts are not referred to a debt collector until a payment plan and participation in the hardship program has been offered.
- Energy retailers be required not to refer debts to a debt collector where they are aware that the debtor's sole source of income is social security.
- Energy retailers be prohibited from imposing contractual terms that allow recovery of debt collection costs in energy contracts.

⁹ Consumer Action Law Centre, *Barriers to accessing Utility Relief Grants*, June 2014: http://consumeraction.org.au/wp-content/uploads/2014/08/Utility-Relief-Grants-Draft-Case-Study-Report-Draft_FINAL.pdf

¹⁰ EWOV, *A Closer Look at Affordability*, March 2015: <https://www.ewov.com.au/reports/a-closer-look-at-affordability>

¹¹ Consumer Action Law Centre, *Pursuit of the Impossible: consumer experience with external debt collection of energy debts*, July 2012: <http://consumeraction.org.au/the-pursuit-of-the-impossible-consumer-experience-with-external-collection-of-retail-energy-debts/>

- Energy ombudsman schemes be empowered to award compensation to energy consumers who have been subject to unfair debt collection practices.
- All collectors of energy debts be licensed.

An issue we regularly see through our legal advice line is when a retailer is suing for a debt. This is particularly problematic given the level of complexity legal proceedings introduce for consumers, and the fact that this removes the matter from EWOV's jurisdiction. This is concerning when a large percentage of clients cannot engage or respond to a legal system that relies on written requests or responses, because of illiteracy, mental capacity or other legitimate barrier to engagement. In our experience, the most vulnerable clients do not understand the process or how to engage, and courts consequently often find against them without any test of whether the clients have a defence. Court costs are then added to the original debt.

The energy retailer has a choice of how to enforce the court order against its clients. If it issues a summons for oral examination in the Magistrates Court, it can find out the financial circumstances of its client and the court has an opportunity to let the client know the consequences of non-payment. More importantly, if the client fails to attend court, a warrant can be issued so that they are brought before the court. Clients then have an opportunity to demonstrate that their home, for example, is at risk. They may be able to access legal help, seek an order for repayment by instalments or raise the money from the sale of an asset or take out a loan. This process costs a few hundred dollars at most.

The alternative, when the creditor knows or believes there is a substantial asset such as a home, is to issue a bankruptcy notice and, when this is not complied with, bankrupt the clients and appoint a private trustee. We are increasingly seeing large national debt collection firms, having purchased energy debts, proceed with bankruptcy proceedings or property seizure following a judgment, without negotiating or considering the debtor's financial position. For those who fail to understand the process, it ends up costing already vulnerable and disadvantaged clients tens of thousands of dollars in trustee fees. In the most extreme case, consumers end up homeless as a result of these debts.

The Commission must address both the way in which energy retailers engage with consumers over debts, and the ability of the ERC to prevent retailers and other businesses suing for an energy debt without an oral examination.

Consumer Action Case Study

Our clients were sued in the Magistrates Court by an energy company for an unpaid bill of around \$12,000. It appears an outsourced firm was involved with this recovery approach. They own a small property, but have little income. Bankruptcy proceedings were then initiated, with our clients being made bankrupt and a trustee appointed. Our clients have not engaged with the trustee and the trustee is now seeking to evict them from their property. Trustee fees mean that the amount to be recovered is likely to be excess of \$80,000. The couple have four dependent children and came to our attention through a social worker assigned to their case as they are about to be made homeless.

Recommendation 7: That the Commission adopt the recommendations of our *The Pursuit of the Impossible* report, particularly:

- that energy debts not be outsourced to a collector where the debtor's sole source of income is social security;
- that energy retailers be prohibited from imposing contractual terms that allow recovery of debt collection costs.

Recommendation 8: That a provision is included in the Energy Retail Code that prevents energy retail businesses and their debt collectors from taking enforcement action for energy judgment debt unless there is an oral examination in the Magistrates Court.

2.5 Approach to debt waiver

In recent years, we have seen other industries develop more progressive approaches to collecting debt from those that are the most vulnerable—those who have no assets other than household goods, and whose income is government benefits alone, and thus protected pursuant to any court recovery procedures (i.e. bankruptcy, garnishee orders etc).

In the debt collection sector, the Australian Collectors and Debt Buyers Association Limited (**ACDBA**) has developed the National Hardship Register “to address the serious issue of long-term and severe financial hardship experienced by a small but growing number of vulnerable consumers”¹². The NHR, funded by industry, protects debtors with little assets (nothing that might be recovered through bankruptcy) and protected income levels from ongoing and unnecessary debt collection activity. In short, the industry has recognised that it is good practice not to collect from this group of customers.

The NHR was initiated following the ‘Bulk Debt’ projects, developed by legal centres and legal aid¹³. The purpose of this project was to prompt businesses to recognise that there was little point seeking debt recovery from this group of vulnerable consumers.

To be included on the NHR, a consumer must meet the eligibility criteria and make an application at no cost via a not-for-profit financial counsellor (counsellor). Broadly, the eligibility criteria are:

- the consumer must have an income around that of a basic Centrelink income;
- the consumer must have no assets other than those protected in bankruptcy; and
- the consumer’s financial circumstances must have no reasonable prospect of improving in the foreseeable future.

A number of other businesses have developed similar approaches. For example, Westpac has developed its own fast track debt-waiver process for debtors that fulfil similar criteria. Most recently, the Australian Bankers Association has revised its ‘financial hardship guideline’ which includes a number of case studies where it considers debt waiver is appropriate¹⁴.

There is no systematic approach to debt waiver in the energy area. As noted in the summary of ‘Pursuit of the Impossible’ contained above, a growing problem is debts which are owed to energy customers despite the customer no longer being a customer of that retailer (that is, the customer has switched). Sometimes these debts are referred to debt collectors or purchased by collectors. For the energy industry to be ‘best practice’ we suggest that it adopt a framework for debt reduction or waiver that protects the most vulnerable from continued contact and harassment by debt collectors, while improving the consumer’s capacity to contribute to current consumption.

¹² Australian Collectors and Debt Buyers Association, *National Hardship Register, for vulnerable consumers in long-term and severe financial hardship*: <https://www.nhr.org.au/index.php/13-nhr/1-about>

¹³ Alternative Law Journal, *The National Bulk Debt Project*, 2012, <https://www.altlj.org/news-and-views/downunderallover/duao-vol-37-3/402-the-national-bulk-debt-project>

¹⁴ Australian Bankers Association, *Industry Guideline - Promoting understanding about banks' financial hardship programs*. <http://www.bankers.asn.au/Media/Media-Releases/Media-release-2015/New-guidance-to-enhance-support-for-people-in-financial-hardship>

Recommendation 9: That the Energy Retail Code include a framework to facilitate debt waiver of 'old' energy debt, for consumers whose income and assets are protected by law.

2.6 Availability of hardship assistance

Consumer Action strongly supports much greater availability in retailer hardship assistance. In 2013/14, only 0.81 per cent of residential customers received assistance through a hardship program. Even though this was up from 0.57 in 2012/13, this is a very low proportion of customers.¹⁵ To improve accessibility, greater transparency is required around:

- a) *Information about hardship policies:* Customers need to know that hardship programs and assistance exists and it is their right under the ERC to access them if they meet certain criteria. At the moment this information is rarely easily available and is often expressed using the term 'hardship' which many consumers do not understand. Information relating to retailers' hardship policies needs to be more prominent, including placement of information on website home pages. We also encourage the placement of information relating to hardship practices on customer bills, prominently located near payment information.
- b) *Entry to hardship programs:* Many consumers find it difficult to access hardship programs. MoneyHelp receives high volumes of calls from clients who are having trouble negotiating payment plans to repay a debt and have not been able to access the hardship program despite sometimes very high debts that they have been struggling with for some time. The criteria for entry to a hardship program should be publically available and should be consistently applied to all consumers.
- c) *Contacting hardship teams:* At present, even if a consumer can find information about a retailer's hardship policy on their webpage, they are normally then directed through the main customer service line to get access to the team or program. This creates a significant barrier to access, as frontline customer service representatives are often not trained to identify vulnerability or hardship, practices do not allow for a swift referral to the hardship team, and long wait times on automated phone lines can be disproportionately costly to those in financial difficulty who do not have access to a land line. A dedicated phone number for financial counsellors representing clients in relation to energy affordability issues will improve client assistance.

Recommendation 10: That the Commission set standards about the accessibility of hardship assistance and support offered by retailers.

¹⁵ Essential Services Commission, Energy Retailers Comparative Performance Report, December 2014, <http://www.esc.vic.gov.au/getattachment/0fdace1d-e672-46bc-8b9b-b432340b2d34/Energy-retailers-comparative-performance-report-Cu.pdf>.

3. Principles to guide assessment of regulatory framework

We agree with the principles listed by the Commission. We propose additional measures within those principles that may assist with more fully determining whether retailer hardship policies, programs and practices are indeed 'best practice'.

3.1 Effectiveness

We support this principle, particularly as it seeks to acknowledge the changing nature of regulatory frameworks. The ERC has undergone significant change as it harmonised with the National Energy Retail Rules, within an expanding retail energy market that includes the introduction of new services and technology. We strongly support an approach that seeks to determine whether hardship obligations have effectively 'promoted' the objective of helping customers in financial hardship avoid disconnection. In this context, we urge the Commission to consider what the overall objective of the ERC is, and whether in fact it is delivering to that objective. Our observation is that the ERC has lost relevancy to market changes which erode consumer protections over time.

The effectiveness of the regime is only as good as its compliance and enforcement framework. Any review of effectiveness must therefore consider if poor retailer performance, resulting in poor outcomes for consumers experiencing financial hardship, could have in fact been prevented, or addressed at an earlier time, with more active enforcement measures by the Commission itself.

3.2 Flexibility

We are concerned that the 'harmonised' approach to the ERC has reduced flexibility. For example, over the period when the ERC was under review, no policy suggestions were being considered, resulting in the current ERC that has not responded to the changing nature of the Victorian energy market. For example, the majority of protections within the ERC apply to those consumers on standing contracts, where in reality, the majority of consumers are on market contracts.

3.3 Consistency

We support this principle. Our MoneyHelp advice service has identified a variety of hardship practices by different retailers providing different outcomes for consumers. For example, one top tier retailer is over-represented in our case load because it often refers clients to Moneyhelp before offering them a payment plan. Competition in hardship practice makes no sense—all businesses should provide a consistent and measurable baseline support to vulnerable customers, with expectations for this baseline laid down in the regulations.

3.4 Efficiency and Proportionality

Efficiency and proportionality must be considered from the entire community perspective, not just industry. While it may be costly for businesses to provide individual assistance and conduct individual capacity to pay assessments, this should be seen in context. The cost to the community in support services, such as financial counselling, ombudsman, concessions and relief payments, may far outweigh the cost of the early intervention. The discussion under section 2.1 above provides some evidence for this.

3.5 Transparency and clarity

We support the inclusion of this principle. We acknowledge that there is currently good practice in the level of reporting available in the sector, for example, the Commission's reporting on hardship

indicators and EWOV's affordability reporting.¹⁶ These reports provide a good level of transparency in the market that demonstrates market failures and highlights areas of consumer detriment. We strongly support this level of transparency, and we support its continuation. By comparison, the Australian Energy Regulator's, recent hardship report¹⁷ relied upon information provided by the business and was, in our view, opaque.

There are opportunities for the Commission to enhance its transparency. We refer to our comments under section 2.3 above.

We are increasingly concerned that there are may be aspects of the ERC that are unclear to retailers, or at least open to interpretation. We suggest that current reviews of the ERC seek to understand the intent of each clause, and the inter-relation of clause, to ensure their interpretation is unambiguous.

3.6 Accountability

We support the accountability principle. Retailers should expect that misconduct will be met with enforcement action and be in no doubt about the consequences. Effective enforcement is a key determinant in the way in which retailers deliver services to their customer base, and this is particularly relevant to those consumers experiencing financial difficulty. We are concerned that the Commission has not placed a high emphasis on enforcement and suggest there is a considerable opportunity to dedicate more resources to this area to drive up the performance standards of energy retailers.

Consumer Action's *Regulator Watch*¹⁸ report highlights best practice approaches to consumer protection enforcement including the following:

- Regulators should ensure that they are undertaking enforcement action in a strategic way designed to achieve particular articulated outcomes in the marketplace.
- Increasing enforcement work is not just about increasing the total number of enforcement actions, but, subject to the demands of the articulated strategy, regulators should increase actions across the regulatory pyramid and in particular ensure that there are sufficient actions at the 'pointy end' of the pyramid to have a real deterrent effect on businesses that may otherwise fail to comply.
- Increasing enforcement action includes taking on litigation where it is necessary to test the law.
- Governments and the community have an interest in the law being tested to ensure that it meets policy objectives. If it is demonstrated to be adequate this avoids the need for debate and inquiry on the imposition of further regulation
- To facilitate an increase in enforcement work regulators should have regard to the issues of regulatory agency culture set out in the report.
- To actually deliver the required increase in enforcement work regulators need to consider the barriers that they are currently facing in doing so and work to overcome them, whether they relate to internal culture, lack of necessary skills, fear of media criticism, lack of resources allocated to enforcement or other matters.

Recommendation 11: That the Commission prioritise the role of enforcement in ensuring that there is 'accountability' in the energy market regulatory framework.

¹⁶ EWOV, *Quarterly Affordability Report*, February 2015: http://ewov.com.au/_data/assets/pdf_file/0004/14089/Affordability-Report.pdf

¹⁷ Australian Energy Regulator, *Review of Energy Retailers' Customer Hardship Policies and Practices*, January 2015. https://www.aer.gov.au/sites/default/files/AER%20Review%20of%20energy%20retailers%27%20customer%20hardship%20policies%20and%20practices%202015_0.pdf

¹⁸ Consumer Action, *Regulator Watch: The enforcement performance of Australian Consumer Protection Regulators*, March 2013. <http://consumeraction.org.au/wp-content/uploads/2013/04/CALC-Regulator-Report-FINAL-eVersion.pdf>

4. Regulatory framework

4.1 More universal access to consumer protections

Many of the protections in the ERC apply to customers that are identified to be 'in hardship', rather than customers broadly. The current ERC requires payment plans to be available only for those who are identified, or self-identify, as being in financial difficulty (Clause 33). However if payment plans (ie. bill smoothing) were available to all customers, regardless of their financial situation, those consumers who want to proactively manage their finances would be able to do so. Those that need to use budgeting strategies to pay their bills will not face the shame or judgement they may feel with a difficulty paying a bill.¹⁹ Early access to a payment plan may allow consumers to manage their financial difficulties prior to them becoming chronic. Further, clause 72 should also be amended so that 'capacity to pay' assessments are necessary for all consumers experiencing financial difficulty, not simply those on hardship programs.

As noted earlier in this submission, many of the protections in the ERC apply to those on standing offers only. With the significant proportion of Victorians on market offers, it is essential that these provisions are extended to all contracts, so they are universal.

Recommendation 12: That the Commission ensure that consumer protections relating to payment, collection and hardship apply broadly to all customers.

4.2 Diminishing consumer protections

Harmonisation of the ERC with the National Energy Retail Rules (NERR) has also eroded consumer protections. For example, under the previous version of the ERC, a retailer is obliged to continue to offer further instalment plans to assist customers, event after two instalment plans have been offered in a 12 month period, *if* a customer provides a 'reasonable assurance to the retailer that the customer is willing to meet payment obligations under a further instalment plan'. The latest version of the ERC does not appear to oblige the retailer to provide further repayment plans after two have been offered in a 12 month period and both of these have been rejected or failed.

Further, under the previous version of the ERC, a customer who fails to pay a bill through 'lack of sufficient income of the customer' and who provides 'a reasonable assurance to the retailer that the customer is willing to meet payment obligations under a further instalment plan' is afforded a protection against disconnection. This protection does not appear to have been incorporated into the latest version of the ERC.

Recommendation 13: That the Commission review the ERC to ensure that any protections lost through 'harmonisation' are reversed.

4.3 Early intervention

Hardship programs, as they are currently, are necessary for those consumers who have an inability to pay for their consumption, largely as a result of insufficient income. However, we think hardship programs need to be applied more broadly as a preventative measure, to prevent consumers from falling into hardship. Effective early identification and intervention should ultimately limit the number of

¹⁹ A key finding of our research is that consumers find it increasingly difficult to have to recount traumatic experiences when they speak to call centre staff in order to justify their inability to pay or their need for a payment plan., It is particularly harrowing when they have to repeat their experience over and over again, to different contact centre staff to simply access basic assistance.

consumers who need to access to more intensive hardship provisions. This is demonstrated by Figure 1 below.

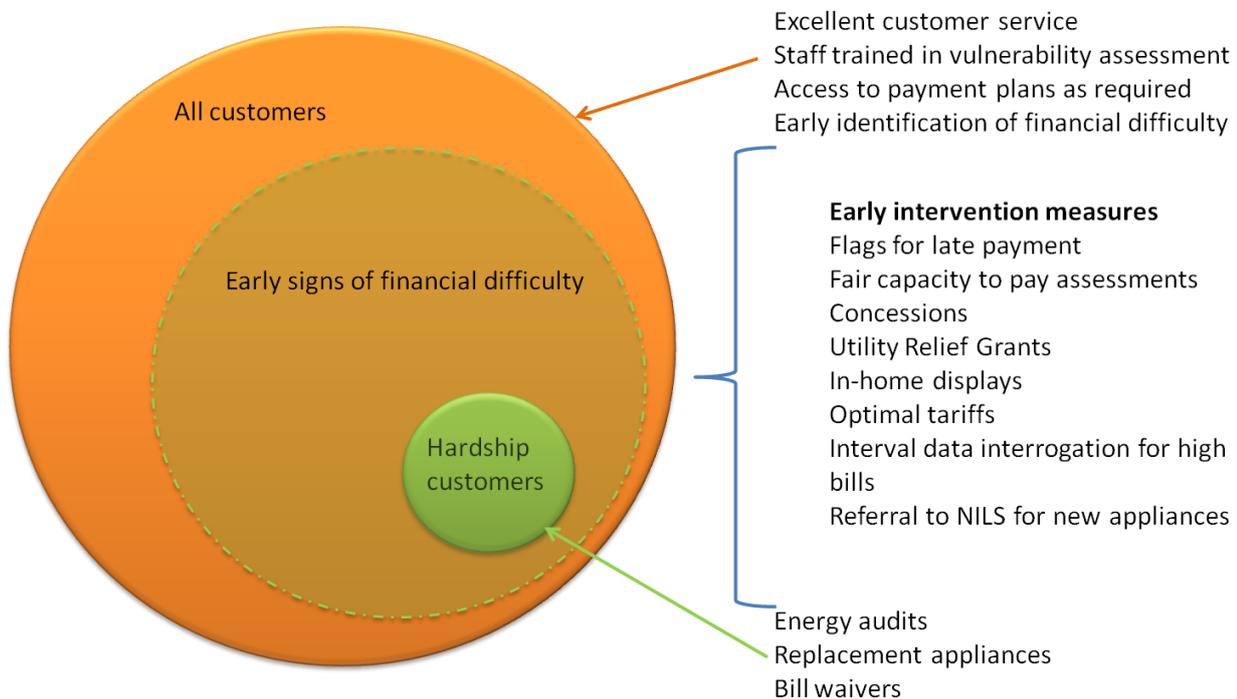


Figure 1. The majority of assistance can be provided to those customers showing early signs of financial difficulty to greater effect, thereby limiting the number of consumers who ultimately need to access hardship programs.

The following are some suggestions relating to early intervention measures that could be incorporated into the regulatory framework.

4.3.1 Flags for late payment

Retailers should have a positive obligation to contact consumers who had paid, for example, two consecutive bills late. The type of contact needs to be sensitive to a consumer’s potential situation.

4.3.2 Payment plans and capacity to pay

We have already outlined the need to extend payment plans to a broader range of people. However on top of this, capacity to pay assessments for those using payment plans to repay a debt need to be fair and based upon an adequate assessment of the customer's capacity to pay. As detailed in our *Problems with Payment* report, capacity to pay assessments must consider the limitations of the consumer's actual income. Options for assistance in paying bills and arrears should be flexible, be based on the situation of the customer, and include Centrepay, reviews of fees and tariffs, incentive plans, and include partial or complete waiver of debt in some circumstances.

4.3.3 Early checks and assistance:

There are a range of assistance measures that could be applied:

- **Concessions:** Retailers should develop consistent procedures for regularly checking that households are receiving the concessions they may be due. This extends beyond checking if

an account holder is a concession holder at the point of sign up, and include when a fixed benefit period or energy contract period reaches completion. Checks need to be in place in early conversations with consumers presenting with financial difficulty to ensure concessions are being applied. Where they are not being provided, retailers should be obliged to facilitate access to concessions and retrospectively apply concessions where the customer was eligible.

- **URGs:** We frequently receive calls from consumers who have not been told about Utility Relief Grants, despite being eligible for the Scheme. Retailers should proactively work with consumers to determine their eligibility, and assist them with filling out as much of the form as possible. We note that Yarra Valley Water do this for their customers and consider it a valuable contribution to ensuring consumers can navigate the cost of a high bill. We provide further comments on URGs below.
- **Information to financial counsellors and others:** Retailers should ensure easy and consistent access to information for financial counsellors and community workers through a 'community hub' model. Retailers should consider mirroring the Yarra Valley Water hub for the energy sector, and commit to keeping it updated with trustworthy and current information about all hardship programs and policies.
- **Optimal tariffs:** It should be a minimum requirement that retailers work with customers experiencing financial difficulty to ensure that they are on the best possible tariff for their needs, to ultimately lower their bills.. For example, a lower fixed charge and high consumption charge may be more suitable to someone who can actually change their consumption patterns. Alternatively, a higher fixed charge and lower consumption charges may more appropriately suit a consumer who has little ability to move their load.
- **Interrogation of interval data:** Retailers could be required to assist consumers by interrogating their interval data to identify if there are anomalies to consumption patterns that are contributing to higher than expected bills. While this falls short of a full energy audit (which should be mandatory for consumers in long-term hardship), this may be a low cost way of identifying faulty appliances or high-cost behaviours which could be easily addressed to lower bills.
- **Appliance replacement:** Removal or replacement of a particular appliance could save the customer significant energy usage costs. However the capital cost of replacing inefficient appliances can be difficult for some consumers. Referral to a NILS program will be appropriate for some consumers. In cases of entrenched hardship retailers could assist the customer with purchasing that appliance directly, and we note this is already happening in at least one top tier retailer's hardship program. We note that there are existing obligations that relate to appliance replacement in the legislation, and believe an effective means of meeting these obligations would be to link them to existing programs.

Recommendation 14: That the Commission revise best practices for hardship programs to be around early intervention, including flags for non-payment and prioritising early checks and assistance.

4.4 Contact centre staff training

A positive obligation on retailers to provide training on identification and treatment of vulnerability to all contact centre staff is required to ensure that each interaction with the retailer is a positive one. We

note the Australian Bankers Association's requirement to do this.²⁰ Training should come from groups that have direct experience with consumers in financial difficulty to ensure that it is not a theoretical presentation of concepts such as 'vulnerability' from internal training channels, but a reminder of the reality of vulnerability and financial difficulty from those actually interacting with it. Training should include:

- The cause of financial difficulties;
- Proactive identification of customers that may be facing financial difficulties;
- How to talk to customers experiencing financial difficulties;
- The role of financial counsellors;
- When to refer customers to the 'hardship program'; and
- Literacy and access issues experienced by some customers

Recommendation 15: That the Commission require retailers to set industry-wide standards for contact centre training on financial hardship and difficulties.

4.4 Customers experiencing long-term hardship

If, after the above avenues of assistance have been explored, it is apparent that a consumer simply can't afford their consumption, referral to a hardship program is essential. Barriers to accessing hardship programs should be removed. Those consumers who have high debts (> \$1,000) should automatically be included in hardship programs. All aspects of a hardship program then need to be available to those consumers. In recent years we have noted a trend towards providing only a payment plan to the bulk of hardship customers.

We are aware of the claims of energy businesses that consumers disengage at this point, and it is hard for them to get payment from a number of customers. However, high debt accrual is an indicator that early identification programs have not been adequately implemented. A change of approach that relies on more effective customer service, where consumers feel they can approach their retailer for assistance with payment difficulties, may dissuade consumers from choosing avoidance.

Recommendation 16: That the Commission require retailers to adopt practices which automatically refer consumers with high debts to hardship programs.

4.5 Disconnection

We are concerned that the rise in wrongful disconnection figures released by EWOV indicates a failure in customer service generally and hardship practice specifically. There are a range of provisions that could be introduced to ensure that consumers are not disconnected due to the inability to pay.

We are particularly concerned in the context of smart meters that there is the potential for households to be disconnected in greater numbers. The introduction of the remote disconnection function of the meter speeds up the disconnection process as the distribution business no longer needs to physically visit the property.

²⁰ Australian Bankers Association, Doing it Tough: Doing It Tough? Banking industry package to help those experiencing financial difficulties, June 2013 <http://www.bankers.asn.au/Media/Media-Releases/Media-Release-2013/Doing-It-Tough>

In Queensland, staff of distribution business Energex are required to check in on householders prior to proceeding with disconnection. Energex has been tracking this since October 2013 and report that these checks have resulted in the avoidance of about 700 disconnections.²¹ The following types of checks are performed before proceeding with disconnection:

- Indications that disconnection may cause a risk to customer's life (e.g. customer requires supply for oxygen concentrator);
- Indications that disconnection may cause a risk to other people in the customer's care (e.g. child care centre);
- Risk to livestock (e.g. disconnecting a fish farm's pumps may result in loss of all stock, disconnecting a cattle property may result in cattle not being able to be watered); and
- Advice of family bereavement.

A similar obligation could be introduced in Victoria to ensure due consideration has been taken before disconnection is actioned.

Proposals to increase the wrongful disconnection payment (from \$250 per day to \$500 per day), and introduce a wrongful disconnection penalty scheme, should also result in improved accountability around disconnection processes.²² We believe these proposals should be implemented as a priority.

The seriousness of the consequences of poor customer service leading to disconnection suggests a need to escalate responsibility and oversight of the disconnection. A higher level review mechanism, to executive level, would drive an internal culture change towards disconnection as a genuinely last resort response to those who can, but will not, pay.

Recommendation 17: That additional processes be introduced to ensure businesses are further accountable for the act of disconnecting a household, including bolstering the wrongful disconnection penalties.

4.6 Objecting to transfers due to accumulated debt

Historically, energy retailers have had the power to object to customer transfers to a new retailer when the customer has accumulated a debt of \$200 or more. It is not clear whether retailers ever do exercise this right—given the high incidence of debt collection, we suspect not.

We believe that where a customer has debt, it should be required to block a transfer. This would put an onus on that retailer to appropriately respond to the consumer's debt. It would be required to provide the consumer with hardship assistance, in accordance with its regulatory obligations.

This would ensure that aged debt is not referred to an external debt collector. In our experience, when debt is referred to an external debt, relevant hardship protections can be lost.

Recommendation 18: That retailers be required to block the transfer of a customer to a new retailer, where that customer has an accumulated debt.

²¹ As reported by a Queensland-based consumer advocate.

²² Victorian Labor, ESC Powers policy document, 2014.

4.7 Incentives to promote innovation in customer service

Energy retail businesses need to refine their approach to customer service, with the goal to help their customers stay connected and pay their bills. Customers respond positively to good customer service and are often loyal to those businesses that provide it. Unfortunately the current market structure incentivises churn of retail customers, which means that unless a business is investing heavily in good customer service that promotes customer retention, the cycle of high debt and inability to pay will continue.

Some incentives that can promote innovation in customer service include:

- **An active and flexible compliance framework:** There is an opportunity for the Commission to initiate a compliance framework that measures the customer service practices of energy retail businesses, through approaches such as shadow shopping, assessment of call recordings and customer surveys. This will enable the regulator to develop a more detailed understanding of the consumer experience in the current market.
- **Business incentives:** There is an opportunity to incentivise businesses to ensure that appropriate referrals are being made to the necessary financial assistance or hardship programs within the business. This could be introduced at a reporting level, where businesses are required to report on internal referral levels within the organisation, where the key performance indicators of include time on phone to quality of outcome.
- **Threat of enforcement response:** The commitment by the current Government to increase the enforcement capability of the Commission will ensure that the Commission can respond to energy retailers breaching current regulations. While the penalty amounts that can be issued are inconsistent with general consumer laws²³, the ability for the Commission to apply these more consistently will provide some incentive to address non-compliance. We consider that the new powers to name retailers and improve public disclosure and reporting will be of great benefit to consumers, and ensure the reputational risk of energy retail businesses is fully considered in operations. We encourage the Commission to embrace its new powers when they are introduced, and to pursue misconduct with vigour.

Recommendation 19: That a range of incentives be re-affirmed or introduced to the energy market to shift retailers' approach to delivering good customer service, particularly for those experiencing difficulty paying their bills.

5. Performance, compliance and enforcement

5.1 Monitoring compliance

There are a number of options available to the Commission to monitor the compliance and effectiveness of hardship assistance as provided by energy retailers.

²³ We note the civil penalty provisions under the Australian Consumer Law to be \$1 million for bodies corporate and \$200,000 for natural persons

Measures could include:

- **More regular reporting:** Regular reporting by retailers would assist the Commission to understand the issues facing consumers. We note the Victorian Government's commitment to compliance reports being released twice yearly, and support this initiative.
- **Respond with priority to EWOV:** A robust, transparent process between the Commission and EWOV is necessary to ensure that systemic issues identified by EWOV are prioritised by the Commission with clear processes for investigation and enforcement as required. The results should be reported publicly. We again support the Victorian Government's commitment to introducing a framework to deliver this.
- **Conduct spot checks:** The Commission needs to utilise its audit functions to undertake a range of spot checks of a retailer hardship program. This could be used to assess debt levels of customers, assistance provided, and the overall efficacy of the hardship program.

Recommendation 20: That compliance monitoring be expanded, including more regular and timely reporting and public responses from the Commission to systemic issues identified by EWOV.

5.2 Performance indicators

Indicators such as the identification of actual debt levels of individuals within a hardship program upon entry and exit are a strong and useful tool to assess the efficacy of hardship programs. If retailers are working with the customers sufficiently well, debt levels should drop, with overall positive outcomes for consumers.

Hardship indicators need to be expanded to cover the range from early intervention for payment difficulties through to more acute cases, to assess the effectiveness of preventative measures. Currently the indicators in relation to participant numbers tell us little about those that do not participate in the hardship programs, but are in fact carrying debt.

Recommendation 21: That performance indicators be expanded beyond those that are participating in hardship programs, to customers that are in debt arrears.

5.3 Enforcement

A key problem with the existing regulatory framework is that there has been very limited initiative from the Commission to enforce compliance. As noted above, we encourage the Commission to adopt a pro-active enforcement approach including:

- **Using broader enforcement powers:** We encourage the Commission to embrace its new powers when they are introduced including infringement notices and court-enforced undertakings, and to actively pursue misconduct. For these measures to act as a deterrent, the regulator must use the measures in response to non-compliance.
- **Reduce reliance on breach reporting:** We caution a reliance on breach reporting to assess compliance. We have noted wide differences in the numbers of breaches, including wrongful disconnection payments, being made to the Commission versus those that are reported by EWOV. We query the value of the self-reporting mechanism on this key indicator of performance in relation to customers experiencing payment difficulty.

- **Audits:** Audit functions are worthwhile, but have so far been irregular and insubstantial. The use of shadow shopping and monitoring of call recordings will provide the Commission with an opportunity to gain a clearer insight into the customer service practices of energy retail businesses.

Recommendation 22: The Commission revise its approach to addressing reports of potential non-compliance and systemic issues raised by EWOV and community service providers.

6. Better practices from other sectors and jurisdictions

6.1 Best practice in other sectors

Financial Counselling Australia has published a report comparing best practice to businesses' approach to dealing with financial hardship.²⁴ We commend this report to the Commission.

The report identifies six factors that make the greatest impact on hardship policy and practice, based on interview data, and a multi-stakeholder workshop. The areas are:

- **Access:** access to a hardship team is of benefit to consumers. However, many people in financial difficulty are either unaware of hardship assistance or sometimes find that access is blocked by gatekeepers. The report notes that banking industry has tackled this issue; as part of an industry-wide voluntary initiative, the home page of every bank website has information about what action to take when experiencing financial difficulty. There is also a dedicated website, as well as information in bank branches that advise on hardship practices.
- **Early identification:** the water industry has had success in proactively identifying customers who may be in hardship, but there has been mixed success in other industries. To be successful, early identification has to be approached sensitively.
- **Sustaining good performance:** all interviewees said that sustaining good performance is hard. A key factor is the commitment of the people in the hardship team and the leadership from the CEO and senior staff. The effectiveness of the regulatory framework also influences the extent to which companies focus on assisting customers in hardship in a meaningful way. This includes appropriate compliance and enforcement.
- **Attitudes and culture:** critical for sustaining good performance are the attitudes and culture of the people in an organisation. Training is one mechanism to ensure appropriate attitudes. Cultural change at an industry level through the development of specific hardship frameworks has been initiated by the banking industry and is expected similarly in the telecommunications industry.

²⁴ Financial Counselling Australian and ACCAN, *Hardship policies in practice, A comparative study*, May 2014, https://accan.org.au/files/Reports/Comparative_Hardship_Final.pdf

- **Business case:** it is a widely held view that the business case for a hardship function within an organisation is cash positive, but this research only unearthed one example where one had been undertaken (Yarra Valley Water). We acknowledge that the Commission has previously done work in this area, but this might be revisited.
- **Concession and grant frameworks:** participants reported that many Australians are missing out on concessions or grants that could assist them and that Australia's concessions framework is ad hoc, inconsistent, complex, confusing and, in many cases, inadequate.

In the energy sector, we would add an efficiency focus to this list—many consumers can be supported through appropriate energy efficiency assistance, to reduce the impact of high consumption.

6.2 Best practice in other jurisdictions

Consumer Action has undertaken an extensive review of energy affordability and hardship practices in other jurisdictions in an attempt to identify practices which may provide better outcomes to consumers than our current debt accrual and disconnection process. We have provided the results of our research in the **Appendix**.

In particular, we think the following programs have merit and could be assessed for applicability in the Victorian market:

Program/Jurisdiction	Potential application in Victoria's energy market
<p>The Fuel Direct Scheme in the United Kingdom enables consumers to pay directly from their government benefits at a capped rate for affordable supply (this was set at £3.55 a week in 2013 and reflective of the amount they receive as the Job Seeker Allowance which varies however is capped at a maximum of £73.10 per week).</p>	<p>The equivalent of Fuel Direct could be implemented via Centrelink, with the amount of income available for utility payments capped at an affordable level. It could be applied by establishing a restriction on the amount a retailer recover through Centrepay and oblige the retailers to ensure ongoing connection. While a level would need to be determined external to this process, Moneyhelp's Financial Counsellors recommend that those consumers on Newstart, would be unable to pay more than \$50 a fortnight (and this would need to cover all energy and water bills). Any shortcomings in the cost of usage over consumption would provide incentives to energy retail businesses to work with those consumers to achieve an affordable level of consumption, including for example, advocating to government or private landlords, on behalf of tenants, to enable the replacement of appliances as necessary.</p>
<p>A program implemented by EDF in France that provided face to face meetings between hardship customers and dedicated retailer staff. Staff were able to discuss the consumer's energy usage, provide explanation of bills and talk about other issues that were of most interest to the consumer. The program enabled consumers to build a trusted relationship within the retailer, and was reportedly a low cost effective option to address</p>	<p>This initiative is an enhanced measure of a hardship program that includes case management of customers experiencing hardship, and could assist with customers developing a trust based relationship with their retailer, which could in turn assist those consumers to meet affordable consumption rates, where income and consumption allowed.</p>

<p>both hardship and disengagement. The program is reported to have reduced the company's disconnection rate by a third.</p>	
<p>The ACT Civil and Administrative Tribunal provides a hardship assistance program that grants consumers who are unable to reach a realistic agreement with their retailer access to support and a free informal hearing with hardship experts. If the Tribunal agrees that disconnection would cause substantial hardship, they can order the retailer to maintain supply (with conditions usually placed on the consumer). This third-party intervention provides an avenue for independent dispute resolution with the authority to require certain actions from the retailer (where an Ombudsman scheme would not)</p>	<p>While this service is effective in a market the size of the ACT, we do not see it being easily transferrable to the Victorian market. However, the appointment of a higher level representative within each organisation, even at CEO level, would ensure that the business is accountable for the impact of its decision to disconnect and is likely to reduce the number of wrongful disconnections, and disconnections overall..</p>

7. Benchmarking

The commitment to a robust benchmarking framework is welcome and Victoria can provide leadership for other jurisdictions who are following the deregulation approach.

In addition to the four identified elements of an effective hardship program as described in the issues paper (**options, identification, availability and review**), benchmarks should consider the **fairness** of the options on offer and be able to rate the overall **effectiveness** of the program both from a fixed best practice point and relative to other retailers.

Consumer advocates are often unable to provide accurate independent ratings of retailer performance relevant to their client or membership base because of the lack of data available. This opacity in the market hampers competition and masks poor, and conversely good, retailer performance.

A benchmark that measures **accountability** would significantly assist consumer advocates to lift customer engagement and market confidence. This can be directly measured by regular market research, and would drive upward improvement through competition.

The current Energy Retail Performance Indicators are comprehensive, but reporting emphasis will change depending on priorities at the time of reporting. The current priorities in energy sector regulation are affordability, disconnection and customer service. A prioritisation framework is suggested in the table below.

Priority	Quantitative measures	Qualitative measures	Regulator
Affordability	<ul style="list-style-type: none"> - Number of customers who have been granted more time to pay - Number of customers on instalment payment plans - Percentage increase or decrease from previous year 	Retailer explanation of reasons for upward/downward movement	Identification of areas of concern and measures that will be taken to address them.
Assistance	<ul style="list-style-type: none"> - Number of people eligible for URG - Number of people who are successfully assisted to apply 	Retailer explanation of the difference between eligibility vs success	Identify barriers and seek assistance from the relevant government department to address them.
Disconnection	<ul style="list-style-type: none"> - Reconnection within 7 days 	Report against previous figure and explain upward/downward movement	Investigate upward rates as this might indicate failure of hardship practice within that retailer.
Customer Service	<ul style="list-style-type: none"> - Number of complaints received by the retailer and the category of complaint - Number of complaints referred to EWOV 	Report against previous figures and explain upward/downward movement	High levels of customer complaints suggest failure in one or more parts of the business and can affect consumer confidence – investigate causes and apply appropriate regulatory response

We support the Commission’s preference for a positive approach to benchmarking, and encourage a “Best In Show” culture amongst retailers in their reporting on the indicators. Retailers with an effective hardship practice culture will identify and assist those who need the help and therefore avoid spiralling debt, disconnection and emergency relief service intervention.

Disconnection is punitive, but it is likely to remain as a measure to protect a legitimate business right to be paid for goods or services provided. The goal should be to ensure that only those who will not pay, despite having the ability to do so, have this last resort measure applied to them.

Recommendation 23: That the Commission adopt a robust benchmarking regime, prioritising affordability, disconnection and customer service.

Thank you for the opportunity to comment on the Approach Paper. Please contact us if you have any questions.

Yours sincerely
CONSUMER ACTION LAW CENTRE



Gerard Brody
 Chief Executive Officer

Appendix: Better financial hardship practices from other jurisdictions

Measure	States that use the measure	Details	Discussion
<p>No disconnection while a complaint or assessment is lodged</p>	<p>New Zealand, ACT (Aus), France, Brussels, Ontario</p>	<p>The New Zealand Energy Authority's website states that you cannot be disconnected when: "You're currently using your retailer's or an independent consumer complaints scheme to dispute the amount of debt that you're about to be disconnected for." (Energy Authority, 2015)</p> <p>In the ACT, ACAT offers a hardship assistance program. Their pamphlet states: "You can start an ACAT hardship assistance application by ringing 6207 7740 and talking to staff. Staff will help you complete an application. ACAT staff may also order the utility not to disconnect your supply until your application has been looked at. ACAT members will meet with you to discuss options for continuing your supply and making appropriate payments. If you are already disconnected from supply, ACAT may order the utility to reconnect supply within 24 hours." (Australian Capital Territory Civil and Administrative Tribunal, 2015)</p> <p>In France a consumer cannot be disconnected while their application for assistance is being considered. (Brynart & Grevisse, 2011, pg.9)</p> <p>In Brussels "If a payment plan fails to be observed, the supplier can request disconnection (after 60 days). If it embarks on a debt mediation process, the household can be "protected" during a period of 6 months." (Brynart & Grevisse, 2011, pg.10)</p> <p>In Ontario a disconnection can be ordered not to occur for 21 days if there is contact with a social</p>	<p>Measures such as these ensure no further injustice is incurred while waiting for due process, and could save time and resources by removing the cost to disconnect and reconnect households and the cost of social services provision in response to a disconnection.</p> <p>The ACAT process involves a consumer facing substantial hardship booking a free informal hearing with two ACAT hardship experts. The consumer can then attend the hearing with an expert who accompanies and represents them and discuss the account and the best ways to make payments before they make an order. If the tribunal agrees that disconnection would cause substantial hardship they can order a supplier to maintain supply with conditions on the consumer. This is superior to current processes in Victoria, as it is the Energy and Water Ombudsman who provides the assistance to consumers, but the Essential Services Commission who has the authority to require retailers to respond in certain ways. By combining the two functions, the ACAT program provides greater protection and ease to hardship consumers.</p> <p>Further, while this service is effective in a market the size of the ACT, we do not see it being easily transferrable to the Victorian market. However, the appointment of a higher level representative within each organisation, even at CEO level, would ensure that the business is accountable for the impact of its decision to disconnect and is likely to reduce the number of wrongful disconnections, and disconnections overall.</p>

		service. (Ontario Energy Board, 2015)	
Specialised customer service measures	France, United Kingdom	<p>French retailer EDF runs programs offering a specific person to deal with a consumers account as well as holding local meetings in low income areas to provide information about energy saving. EDF also offers individual staff that will hold face to face meetings with vulnerable customers and have discussions in a private environment instead of over the counter. The journal reported that as a whole these initiatives had reduced the disconnection rate by a third and noted that the lowest cost measures such as personal meetings to discuss issues were the most valued by vulnerable customers. (Wodon, 2001, pg.14)</p> <p>In the UK, Ofgem has several measures that have been implemented by suppliers under the guidance of the retailer association's 'Safety Net'. As part of an effort to proactively identify vulnerability, companies have taken approaches including: training all frontline staff to identify signs of vulnerability as well as how to make offers appropriate to such circumstances; gathering information whenever in contact with customers to help with identifying vulnerability; and when vulnerability is identified companies adding the customer to a Priority Services Register (PSR). One retailer compares data with a third party to ensure a customer's date of birth is registered so they are automatically flagged to the PSR when at pensionable age. Most companies have a separate system for dealing with debt management with people flagged on the PSR, such as having an individual at their retailer that would handle their entire interaction or a separate letter 'default format.' (Ofgem, 2008, pg.5)</p>	<p>The EDF example highlights stronger engagement and consideration of vulnerable customers as an effective measure in reducing disconnections. These customers may be used to being marginalised in dealings with businesses due to their limited resources causing them to be less appealing customers for a for profit business. This marginalisation may also be caused by stigmas meaning constant negative reactions from an frontline staff.</p> <p>Perhaps having a service set up where vulnerable consumers can easily attend a face to face meeting to organise hardship arrangements in a private space would increase their effectiveness and lower disconnection rates. So too a single point of contact within a retailer may build a relationship where they are continually engaged.</p> <p>Similarly on a government level a measure such as the informal ACAT hearings may allow a better engagement and solution process. There could also be capacity for vulnerable consumers to be referred to such meetings by Australia Post or Centrelink staff, organisations that often deal with the payment of energy accounts for vulnerable consumers.</p> <p>The Ofgem regulations and warning of strict enforcement have prompted such a proactive approach to identifying potential issues under the UK's retailers' Safety Net. This shows how a strong approach by regulators has made industry react with a voluntary ERC, reducing costs of regulators enforcing compliance and industry's corresponding penalties for not complying.</p> <p>The measures to identify vulnerable consumers by frontline staff and flag them as early as possible while</p>

			making appropriate offers and responses to their circumstances could also be implemented to limit disconnections and the building up of arrears. The establishment of a Priority Services Register could also help vulnerable customers be identified across multiple suppliers and avoid disconnection issues, however privacy could be a concern and the system would have to be managed as to not further disadvantage the consumers.
Vulnerability checklist before disconnection	United Kingdom	"Consumer Focus has... developed a best practice vulnerability checklist drawing together elements of those currently used by individual suppliers. Consumer Focus has shared this with all suppliers, as part of their individual feedback reports, to further improve consistency in this area and to promote the sharing of best practice across the industry." (Ofgem, 2009, pg.10)	This measure could be a great regulated measure to ensure that vulnerable consumers are not disconnected and are instead directed to appropriate hardship policies or social services. The development of an appropriate checklist and corresponding procedure to ensure it is observed thoroughly by industry would need significant consultation.
Senior management or specific person must sign off before disconnection occurs	United Kingdom, Ireland	A review undertaken by Ofgem in 2009 highlighted two companies who have implemented a requirement where the Chief Operations Officer, or multiple managers, sign off on a disconnection following a thorough review of their case, often including third party data. Ireland's industry association has the Energy Engage ERC which states that retailers will "Ensure each non-engaging Customer's account is reviewed individually, by a suitably trained member of staff, before a decision is made to request disconnection" (Energy Engage ERC, 2015, pg.4)	Such specialised measures would ensure consistency within an energy supplier's organisation in complying with whatever regulatory requirements are set in place at the time of a potential disconnection. They still need strong regulations to correspond to in order to be effective in curbing fuel poverty.

No disconnection during a time period	United Kingdom, Netherlands, Wallonia, Ireland, Quebec, Manitoba	<p>In the United Kingdom it is a licence requirement that consumers who are of pension age, disabled or have a chronic illness cannot be disconnected in winter. This has lead to some suppliers suspending disconnections completely in this time period to ensure there is no possibility of breaching an obligation. (Ofgem, 2009)</p> <p>Ireland's regulator states that a supplier cannot disconnect an elderly customer's supply in winter where the customer has registered this with the company. (Commission for Energy Regulation, 2013)</p> <p>In the Netherlands "A Ministerial Rule is now in place for the winter period (October through April). The rule prevents network operators and suppliers from disconnecting a consumer if the consumer is in the process of debt restructuring with a recognised body. Only if a consumer refuses to enter debt restructuring or if the consumer is turned down by the restructuring authority, then the network company/supplier can disconnect the consumer." (European Regulators Group for Electricity and Gas, 2009, pg.39)</p> <p>By Law, consumers must be reconnected by and not disconnected in the winter period in the Quebec province (CBC, 2014). The state owned enterprise energy supplier in Manitoba also does not disconnect in winter but does install limiters allowing 15 amps (enough to run heating). (Manitoba Hydro, 2009)</p>	<p>When reading around this measure and the various ways it has been implemented across the world it became obvious that it relies on information gathering to predetermine the relevant vulnerabilities that restrict a consumer from disconnection. Commentary on this by Ofgem pointed out that it would be more cost effective to not disconnect in winter periods at all instead of risking data gathering being inaccurate and incurring penalties.</p> <p>In Victoria this limited time period of restrictions on disconnections would be most relevant where there is a risk of a heatwave in the summer, and there have been many deaths particularly among the elderly in the past. It seems that it would be more effective for companies to have such a restriction implemented alongside a requirement for better information gathering and identification of vulnerability in a pre-emptive manner that would prevent a situation where arrears are built up that will never be recovered from unengaged and vulnerable consumers.</p> <p>In banning disconnections at certain time periods a regulator may reduce the risks to vulnerable consumers, but this fails to deal with the issue of disengagement or how the arrears built up in the first place. Thus in a non restricted period the consumer would be disconnected by the retailer where there are no other regulations to ensure that consumers are able to sustain an energy supply. Instead of a time period, an outright ban on disconnecting vulnerable consumers would instead see incentives for industry to act pre-emptively while the ban is left in place as a final protection in extreme cases.</p>
Capped repayment scheme	United Kingdom	<p>In the United Kingdom the Fuel Direct scheme (Ofgem, 2008 pg.22) allows consumers to pay directly from their benefits but at a capped rate for affordable supply. The rate was set at £3.55 a week in 2013. (The Guardian, 2013).</p>	<p>Centrelink, with the amount of income available for utility payments capped at an affordable level. It could be applied by establishing a restriction on the amount a retailer recover through Centrepay and oblige the retailers to ensure ongoing connection. While a level</p>

			would need to be determined external to this process, Moneyhelp's Financial Counsellors recommend that those consumers on Newstart, would be unable to pay more than \$50 a fortnight (and this would need to cover all energy and water bills). Any shortcomings in the cost of usage over consumption would incentivise energy retail businesses to work with those consumers to achieve an affordable level of consumption, including for example, advocating to government or private landlords, on behalf of tenants, to enable the replacement of appliances as necessary.
Post Disconnection check	United Kingdom	Under the UK Saftey Net many suppliers have implemented a post disconnection check including reviewing the procedures around contact with disconnected individuals, explaining disconnection and organising reconnection with customers, undertaking a visit to the property to check for signs of vulnerability, and arranging contact with social services. Some companies will reconnect supply as a priority if there are any signs of vulnerability following disconnection. (Ofgem, 2008, 2009)	This measure seems to only exist as a response to regulation from Ofgem to limit liability and again highlights a response from industry that is in the interests of vulnerable consumers only after strong regulation. Although it is good that such checks exist as a final check, earlier measures should be in place to identify vulnerability and avoid disconnection in such circumstances.
Referral to social service for payment	United Kingdom, New Zealand, Belgium	<p>In New Zealand electricity suppliers will refer customers to work and income with the customer's consent, where they have had difficulty paying bills (Citizens Advice Bureau, 2015).</p> <p>In the United Kingdom it is a requirement under licence obligation to organise a social security payment where available where there are signs of hardship. (Ofgem, 2009).</p> <p>"In France and Belgium, there are funds that can explicitly be used to enable the financing of the discharging of energy debts or debt mediation. In Belgium, the services managing these funds are informed by the supplier in the event of non-payment. These services have a degree of</p>	

		freedom as regards the use they make of them" (Brynart & Grevisse, 2011 pg.546).	
Disconnection only after court order	Brussels	"In Brussels, disconnection must be the subject of a court order. For gas, the minimum disconnection period is 110 days counting from the payment reminder. For electricity, a limiter is installed at least 35 days after the reminder was sent. If a payment plan fails to be observed, the supplier can request disconnection (after 60 days). If it embarks on a debt mediation process, the household can be "protected" during a period of 6 months." (Brynart & Grevisse, 2011, pg.546).	This measure seems that it could incur significant costs for the courts, consumers and energy suppliers and would be very strenuous for many vulnerable consumers to go through. In comparison the informal hearings at ACAT, a ban on disconnections of vulnerable consumers and/or a pre-emptive identification of vulnerable consumers seem less expensive and more effective at engaging and ensuring vulnerable consumers are not in energy poverty.

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