ESSENTIAL SERVICES COMMISSION

SUPPORTING CUSTOMERS, AVOIDING LABELS

Energy Hardship Inquiry Draft Report

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MESSAGE FROM THE CHAIRPERSON

Debt or disconnection? It is a terrible choice for customers. It is an invidious decision for energy retailers, and it is an insurmountable dilemma for regulators. The hardship provisions that have been in the regulatory framework since 2006, attempt to steer a path between these choices. They seek to guide customers and retailers back to sustainable energy use and payment arrangements. In large part, the current framework pivots on the notion that customers are identifiably experiencing financial hardship.

After ten years, the central premise of the framework— namely, that customers must identify themselves, or be identified by their retailers, as being in 'hardship'—has been shown to be misplaced. As we show in this report, energy retailers invest much effort in identifying and assisting customers who may be finding it hard to pay their bills. But, as we also show, those efforts are often 'hit and miss'. This observed arbitrariness is largely due to the regulatory expectation that a customer must be labelled as being 'in hardship' before the retailer provides assistance. This premise is flawed: the focus must be on assisting customers, not labelling them.

The current framework rightly provides retailers with a broad discretion in choosing how they respond to their customers. That discretion was intended to give retailers room to innovate in their policies, procedures and practices. However, our findings suggest that this discretion has inadvertently created uncertainty and inconsistency for customers, individually and as a whole. To be clear, we do not suggest retailers have acted wilfully. As should be expected, they have interpreted the regulatory framework through the lens of their commercial imperatives. In this context, best practice is difficult to define at any point in time, or in a way that applies to all types of payment difficulty. Nonetheless we have distilled a number of the key elements of best practice that make it more likely that payment difficulties will be successfully managed.

Payment plans appear to be reasonably successful in preventing the ongoing accumulation of debt, so long as they are made available early enough. However, the evidence shows these plans are not guaranteed to be provided in a timely or consistent manner. Hardship programs appear to be even less successful in avoiding an ongoing accumulation of debt and the potential disconnection of a customer. By the time many customers are admitted to a hardship program, it is too late. Their indebtedness is irretrievable. Too often, and increasingly so, hardship programs simply provide a stepping stone towards disconnection rather than an avenue away from it. That is, the original objectives of the regulatory framework's hardship provisions are failing in practice.

We should not be surprised, therefore, that retailers are still confused after ten years about their obligations and the regulator's expectations of them. Similarly, it is not surprising that customer representatives continue to allege retailers' treatment of customers is often inconsistent, inadequate and unfair. Further, our findings shed light on why policy makers remain uncertain about whether retailers pursue disconnections only as measure of last resort. Inadequately functioning regulation results in disappointing outcomes while still imposing costs on regulated entities and, ultimately, on all customers.

We propose a new framework that does away with the shortcomings of the old one. In particular, it does away with the compulsion to label customers as being 'in hardship' before they are actively assisted. In so doing, retailers will no longer be required to assess a customer's capacity to pay. Experience shows retailers are poorly placed to make such assessments. Requiring them to do so simply diverts their efforts from actually providing assistance, and it has resulted in unpleasant and often unwelcome intrusions into the private lives of their customers. Consequently, retailers will no longer be required to submit hardship policies to the Commission. Instead, their efforts will be directed at providing useful information and meaningful assistance to customers. Removing obligations to have hardship policies and costly capacity-to-pay assessments will free resources that retailers can put to more effective use.

The proposed framework will require retailers to manage customers more attentively. It provides clear and proportionate actions that retailers must follow as a customer increasingly shows signs of financial difficulty. While maintaining many features of the existing arrangement, the proposed framework provides unambiguous guidance on how and when those obligations are to be implemented. As an example, retailers will still be required to make two payment plans available, but there will be no doubt about when those plans are to be implemented. In this way, customer assistance will be targeted and timely rather than ‘hit and miss’.

The proposed framework also extends the forms of assistance that retailers make available. Customers experiencing early or temporary payment difficulty will have more options to self-manage their situation. Conversely, when financial constraints have become profound, customers will have better access to facilities that help them manage their energy use within affordable limits. Retailers will also be required to facilitate other forms of assistance that may be available from external providers. In return, customers will be expected to cooperate with retailers’ efforts to assist them. Avoiding debt and disconnection can succeed only if all parties accept their share of responsibility.

After ten years, the current regulatory framework has been found to provide the wrong incentives and opportunities. It has focused too little attention on customers while they were slipping into trouble, and too much attention on responding once they were deep in trouble. We now know this assistance has been inadequate and it has come too late for many customers.

The proposed framework focuses attention where it is required—namely, on the customer. We are confident that our proposed arrangements will lead to better and more consistent outcomes for customers. These new arrangements will reduce the ambiguous expectations that retailers face, and they will avoid the confusion and disputative distractions of the past decade.

Following release of this Draft Report, we will immediately commence an extensive round of consultations on the proposed framework. We will also establish technical working groups to help us develop supporting guidance material.

Dr Ron Ben-David

Chairperson

ACRONYMS

ABS	Australian Bureau of Statistics
AER	Australian Energy Regulator
CALC	Consumer Action Law Centre
CPI	Consumer Price Index
CUAC	Consumer Utilities Advocacy Centre
EIA	*Electricity Industry Act (Vic.)* 2000
ESC Act	*Essential Services Act (Vic.)* 2001
EWOV	Energy and Water Ombudsman (Victoria)
GIA	*Gas Industry Act (Vic.)* 2001
GSL	Guaranteed Service Level
HESS	Home Energy Saver Scheme
ISCH	Inner South Community Health
Operating Procedure	Operating Procedure – Compensation for Wrongful Disconnection
the Code	Energy Retail Code (Version 11)
the Commission	Essential Services Commission of Victoria
URG	Utility Relief Grant
WDP	Wrongful disconnection payment

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1 INTRODUCTION

In February 2015, the Essential Services Commission (the Commission) received terms of reference (see Appendix A) from the Minister for Finance (in consultation with the Minister for Energy and Resources) to conduct an inquiry and report on the best practice financial hardship programs of energy retailers.

The inquiry aims to provide confidence that energy customers who cannot pay their bills in full and on time get the assistance to which they are entitled from their energy (electricity and gas) retailer. It also aims to assess whether the current obligations on retailers represent regulatory best practice.

This Draft Report outlines the Commission's preliminary advice, including the Commission's findings on the design and operation of the current regulatory framework. It also outlines our proposal for a new approach, which we will now consult on with interested parties.

1.1 SCOPE OF THE INQUIRY

The inquiry focuses on how energy retailers support customers experiencing difficulty paying their energy bills. Specifically, it examines how the regulatory framework operates in practice.

Investigating the broader socio-economic causes of financial difficulty is beyond the scope of the inquiry. Rather, the inquiry examines how energy retailers account for the financial circumstances of individual customers when assisting customers experiencing payment difficulties.

The drivers of energy costs and therefore energy affordability in general are also beyond the scope of this inquiry. However, the inquiry examines the extent to which energy retailers consider customers’ energy use and its cost when providing assistance to customers experiencing payment difficulties.

The classification of energy as an essential service, and the increasing dependency of all Victorians on electricity are also beyond the scope of the inquiry. However, they provide important context, given how disconnection for non-payment of energy bills affects individuals.

1.2 OUR CONSULTATION TO DATE

In March 2015, we released a paper setting out the Commission’s proposed approach to the inquiry. The paper outlined the context and principles that would guide the Commission in conducting the inquiry (box 1.1), and posed a series of questions about the design and operation of the current framework.

We received 22 submissions from stakeholders on the proposed approach, which are available from our website. We also contacted more than 40 organisations around the state and met with 25 of these organisations individually to discuss the issues raised by the inquiry.

BOX 1.1 PRINCIPLES FOR THE INQUIRY

Principle 1 - Effectiveness

An effective regulatory framework produces outcomes that are consistent with those being sought.

Principle 2 - Flexibility

A regulatory framework supports flexibility by focussing on the desired outcomes and allowing regulated entities to adopt varying and innovative approaches to meeting their legal obligations.

Principle 3 - Consistency

Regulation should have predictable and identifiable outcomes for regulated entities and consumers.

Principle 4 - Efficiency and Proportionality

In an efficient regulatory framework, retailers are able to assist customers in financial hardship that is consistent with their legal obligations, such that the net cost of compliance is proportionate to the net benefit produced.

Principle 5 - Transparency and Clarity

A transparent regulatory framework ensures the obligations, decisions and actions of participants are clearly communicated, readily accessible, relevant, complete and understandable.

Transparency requires clarity about the regulatory obligations imposed by regulators and the consequences for noncompliance.

Principle 6 - Accountability

Accountability involves bearing the consequences of actions.

1.3 STRUCTURE OF THIS REPORT

This Draft Report is divided into eight chapters:

- Chapter 1 contains the introduction
- Chapter 2 sets out the context for the inquiry
- Chapter 3 describes the current regulatory framework
- Chapter 4 presents the Commission’s preliminary findings on how retailers in Victoria assist customers in practice
- Chapter 5 presents the Commission’s findings on how other jurisdictions and industries assist customers experiencing payment difficulties
- Chapter 6 explains the Commission’s analysis and response to the findings in the preceding chapters
- Chapter 7 outlines the Commission’s proposal for a new approach to the regulatory framework
- Chapter 8 sets out the next steps of the inquiry.

2 CONTEXT

INTRODUCTION

This chapter outlines the context for the inquiry. It discusses energy as an essential service, as well as the rationale for regulating retailer obligations to customers experiencing payment difficulties. It also includes an overview of how energy is supplied to Victorians, and summarises some of the key industry participants and their roles.

2.1 AN ESSENTIAL SERVICE

Access to energy underpins the wellbeing of all Victorians. Electricity and gas have long been considered essential for the energy services they provide. In particular, heating, lighting, cooking and refrigeration are widely regarded as universal standards of modern life. Loss of access to these services would expose individuals to social and economic costs, for example, through increased risk to health and lower workforce participation. To the extent that these increase the demands on public services, such as health and welfare systems, there is a broader economic cost.

However, today access to electricity in particular has a far more extensive impact as it underpins social and economic participation. Electronic devices at home, school and in the workplace have transformed the way we live and work. Electricity is now essential for people to access information, communicate, study and carry out a wide range of everyday transactions. With this increasing dependence on electronic communication, a loss of access to electricity has far greater social and economic consequences today than it did a decade ago.

Importantly, there are becoming fewer, if any, practical substitutes for many of the services underpinned by electricity. The loss of access to electricity, therefore, has the potential to create social and economic isolation.

2.2 RATIONALE FOR REGULATION

2.2.1 CAUSES OF PAYMENT DIFFICULTY

From time to time, many Victorians will experience difficulty paying for the energy they have consumed on time, in full, or at all. The financial circumstances of the customer, their family and household all affect whether energy bills can be paid. Households experiencing financial difficulties can delay or discontinue some purchases or services but energy consumption cannot be readily set aside.

In 2012, the cost of energy was approximately 2 per cent of average household income.[1] For low income households, it was approximately 5 per cent. From 2007-08 to 2013-14, there was a 90 per cent increase in average residential electricity prices in Victoria.[2] Today, energy costs represent approximately 2.3 per cent of average household income. However, low income households[3] spend between 6 and 7 per cent of their income on energy.[4]

Financial hardship is a broad and complex issue and diverse individual circumstances can create a situation where people cannot pay their energy bills. Table 2.1 illustrates some of the temporary, fluctuating and persistent causes of payment difficulties. Households who earn a limited income or who are vulnerable in other ways (such as due to ill health, family size or language barriers) may be least able to manage their payment difficulties.

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[1] Australian Bureau of Statistics 2012, *Household Energy Consumption Survey*, Australia: Summary of results, 2012 cat. No. 4670.0. Canberra (http://www.abs/ausstats/abs@.nsf/Lookup/4670.0main+features132012)

[2] AER (Australian Energy Regulator) 2014, *State of the energy market*, December, p. 134.

[3] The Australian Bureau of Statistics defines low income households as those households in the second and third deciles of equalised disposable household income.

[4] Australian Bureau of Statistics 2012, *op. cit.*

TABLE 2.1 ANTECEDENTS OF PAYMENT DIFFICULTY

Category	Characteristic	Examples
Temporary	The customer does not meet some or all of their energy bills for a short period of time due to: • a change in their income relative to household expenses or • a temporary increase in usage.	• medical emergency • unexpected high energy bill • job loss • one-off event such as a bushfire or flood.
Fluctuating	The customer makes sporadic payments as a result of: • managing a range of household expenses on a fluctuating income or • having a static income but energy usage and other expenses vary considerably.	• casual employees • household managing multiple bills on a limited income • highly variable energy bills • customers with intermittent health issues.
Persistent	The customer does not have enough income to cover a range of household expenses.	Household on a limited income, or no income, potentially combined with one or more of the following: • living in inefficient housing stock • high energy consumption • household with multiple dependants • health issues.

2.2.2 CONSEQUENCES OF PAYMENT DIFFICULTY

Debt is the immediate consequence for a customer for not paying energy bills on time.[5] When energy debt becomes chronic, there are costs to individual customers, retailers and energy consumers as a whole.

Energy in Victoria is supplied by private businesses. As commercial entities, energy retailers can and should expect to be paid for the energy they sell. Effective debt management is efficient business practice.

Initially, when a customer does not pay their bill, there are incentives for both the customer and the energy retailer to work together to enable the debt to be repaid, while continuing to supply the customer with energy.

[5] For this inquiry, debt is money owed that has not been paid by the due date.

However, if the bill continues to go unpaid, and particularly if multiple bills are unpaid, disconnection becomes commercially rational. Retailers will consider disconnecting customers when the (low) probability of being paid for the energy supplied, does not justify the cost of continuing supply. Generally, the social and economic costs to the individual or society are not commercially relevant when deciding to disconnect a customer. A retailer may consider these costs, if disconnecting a particular customer could impact negatively on its business reputation and therefore potentially its market share. Conversely, a business may want to actively signal to customers that it takes a firm line on non-payment of bills.

Because energy businesses do not generally account for the social and economic costs to society of disconnection, rates of disconnection may be higher than society would prefer. Similarly, energy businesses do not generally account for social and economic costs of debt collection, such as the cost of providing legal advice to customers facing debt collection or bankruptcy proceedings. As a result, the level of referral or sale of energy debt to debt collectors may also be higher than society would prefer.

Successive governments have intervened to ensure that retailers support customers experiencing payment difficulties and that disconnection only occurs as a last resort. Nonetheless, the regulatory framework must also ensure the energy market remains financially viable and can efficiently supply energy as an essential service.

Current regulation requires energy businesses to assist customers experiencing payment difficulties. This regulation will be efficient if it reduces the social and economic cost of energy debt, disconnection and debt collection by more than the cost of providing that support.

2.2.3 REGULATION OF PAYMENT DIFFICULTY

A customer's ability to pay their energy bills in full and on time depends on a number of factors including:

- their income
- their living expenses
- the price of energy
- the amount of energy they consume
- any outstanding debt owed to their current or previous energy retailer, and
- the nature of the relationship with their retailer.

Neither a regulator nor an energy retailer can influence a customer's income directly, but there are indirect influences that can be brought to bear. For example, a retailer can check a customer's eligibility for any relevant income support measures provided by federal and state governments, such as concessions and relief grants, and apply them to the customer's account.

The price paid for energy is outside the scope of this inquiry. However, a retailer can check that a customer is on a contract that is likely to minimise the total cost of energy used based on their individual circumstances. The retailer can also assist customers to manage the amount of energy they consume. For example, retailers can use a customer's interval data (information from their smart meter) to open a discussion about electricity use.

The regulatory framework can also affect how early energy debt is addressed and how that debt is managed, in part by setting out what is expected in interactions between retailers and their customers.

2.3 OVERVIEW OF ENERGY SUPPLY

The price of energy that a customer pays is influenced by the industry structure and processes for sourcing and supplying that energy. An efficient market keeps energy costs down while providing desired service quality, which provides the best outcome for customers. Industry structure also affects the customer's experience in dealing with the industry, how they pay for energy and what they are paying for. Understanding the industry provides context for the discussion later in the paper.

Although new technologies, such as distributed generation, are beginning to change how energy is produced and consumed, the energy supply chain continues to have four main components:

- energy source
- transmission
- distribution
- retail.

The energy source may be where electricity is generated (for example, at a power station or a wind farm) or where gas is obtained. Transmission is the process of transporting large quantities of energy from the source to distribution hubs. Distribution involves transporting energy from these distribution hubs to the final customers. Energy retailers sell this energy to customers and act as an intermediary between the energy source and the customer by obtaining energy from the wholesale market and selling this energy on to residential, industrial and commercial customers. Transmission and distribution costs are built into the price retailers charge their customers. In Victoria retail energy prices are not regulated and customers can choose their energy retailer.

2.3.1 ELECTRICITY RETAIL

Today in Victoria there are 18 licensed electricity retailers supplying just under 2.4 million residential customers.[6]

The price at which retailers offer to sell electricity to customers takes into account their costs. Efficient retailers should in principle be able to offer lower prices to customers than less efficient retailers. However, some of a retailer's costs, including the wholesale electricity price and transmission and distribution costs, are not under their direct control. Wholesale prices are set every five minutes in a spot market, and are influenced by how much generation capacity is available at that time, and the overall level of demand from customers. Factors, such as the time of day and the weather, can affect both consumer demand and generation capacity. Nonetheless, efficient retailers manage their risk wholesale price volatility by hedging. Electricity transmission and distribution prices have been set by the Australian Energy Regulator (AER) since 2009.

Average residential electricity prices in Victoria increased by around 90 per cent from 2007-08 to 2013-14, with other Australian states experiencing similar increases over this period.[7] Prices are expected to decrease by 0.6 per cent for the average customer from 2014-15 to 2016-17.[8]

Total demand in Victoria for electricity fell by 1.7 per cent each year for the past 5 years.[9] Total demand is forecast to continue to decline by 2.1 per cent from mid-2014 to mid-2017. Factors expected to drive lower demand include reduced demand from energy intensive industries, weaker economic growth, continued increase in the use of solar Photo Voltaic (PV) generation[10], and the installation of increasingly efficient electrical appliances. Solar PV currently makes up around 6.4 per cent of the National Electricity Market's generation capacity. Most of this was installed after 2010.[11]

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[6] Essential Services Commission 2014, *Energy Retailers Comparative Performance Report – Customer Service, 2013-14*, December, p. 8.

[7] AER (Australian Energy Regulator) 2014, *State of the energy market*, December, p. 134.

[8] Australian Energy Market Commission 2014, *Residential Electricity Price Trends*, December, Sydney. State figures approximated because data is provided at the capital city rather than state level.

[9] AER 2014, *op. cit.*, p. 5.

[10] AEMO (Australian Energy Market Operator), as quoted in AER 2014, *op. cit.,* p. 5.

[11] AER 2014, *op. cit.,* p. 28.

2.3.2 GAS RETAIL

Today Victoria has 8 licensed gas retailers supplying approximately 1.8 million residential customers.[12] All gas retail licensees are also licensed to sell electricity.

Like electricity, the price at which retailers offer to sell gas to customers takes into account their costs, including the wholesale gas price, transmission and distribution costs. Wholesale gas prices are driven by supply and demand. The network (transmission and distribution) prices for accessing pipelines are set by the AER.

Retail gas prices in Victoria increased by around 45 per cent from 2007-08 to 2013-14, a rise similar to other Australian states over the period.[13] Prices are expected to continue to rise in the coming years as a gas export industry emerges in Australia. Retailers will need to match the prices that gas suppliers can attain on the global market. This is expected to put upward pressure on the price at which retailers offer to sell gas to customers.[14]

Residential and commercial gas consumption is anticipated to grow by 1.1 per cent each year between 2014 and 2019.[15]

[12] Essential Services Commission 2014, *Energy Retailers Comparative Performance Report – Customer Service, 2013-14*, December, p. 8.

[13] AER 2014, *State of the energy market*, December, p. 28. State figures approximated because data is provided at the capital city rather than state level.

[14] T Wood, D Blowers and C Chisholm 2014, *Gas at the crossroads*, Grattan Institute, (http://grattan.edu.au/report/gas at-the-crossroads-australias-hard-choice/, accessed 21 July 2015).

[15] AEMO 2014, *National gas forecasting report*, December, p. 16.

2.4 ROLES OF OTHER PARTICIPANTS

As discussed in the previous section, privately owned businesses supply energy in Victoria. However, other institutions and organisations are also involved in providing services to customers, including government, the regulator and not-for-profit organisations.

2.4.1 GOVERNMENT

The Commonwealth Department of Human Services develops policy relating to access to social, health and other payments and services. Centrelink delivers social security payments for vulnerable customer groups and facilitates direct payments of energy bills from a customer’s social security benefit through the Centrepay system.

The Victorian Department of Health and Human Services administers a Utility Relief Grant (URG) Scheme for customers meeting certain eligibility criteria, who cannot pay their energy bills due to a temporary financial crisis such as a loss of employment or significant unexpected medical expenses. This department also administers customer concession payments and other rebates.

The Department of Economic Development, Jobs, Transport and Resources supports the Minister for Energy and Resources to develop energy policy and legislation. This department also provides energy-saving tools and tips on its Switch On and My Power Planner websites that help customers manage their energy use.

2.4.2 THE REGULATOR

The Commission regulates the energy retail market in Victoria. The regulatory framework includes specific consumer protections for customers facing payment difficulties.[16] Electricity and gas retail prices are fully deregulated in Victoria. The Commission is also responsible for regulating the non-economic aspects of the wholesale supply, transmission and distribution of energy. For example, the

[16] The AER regulates other aspects of energy supply in Victoria. This paper does not cover these regulatory protections because they are not specific to customers facing payment difficulties.

Commission prohibits distribution businesses from physically disconnecting customers that use electricity for life support equipment through the Electricity Distribution Code (Version 7).

As Victoria's independent economic regulator of prescribed essential utility services, the Commission promotes the long term interests of Victorian consumers. We achieve this through:

- licensing energy retailers and approving their hardship policies
- ensuring retailer compliance with regulatory obligations through retailer performance reporting requirements, audit programs and resolving compliance issues
- making decisions on wrongful disconnection cases and taking enforcement action as necessary
- providing customers with information about what they are entitled to expect from their energy company, and retail energy market information such as annual trends in energy prices and retailer compliance.

2.4.3 DISPUTE RESOLUTION SERVICES

If a licensed energy retailer cannot resolve a dispute with a customer, the customer may raise a complaint with an external dispute resolution scheme. Under their licence conditions, Victorian energy retailers participate in a dispute resolution scheme approved by the Commission. The Energy and Water Ombudsman (Victoria) (EWOV) is the only approved dispute resolution scheme and it provides independent, external dispute resolution services. EWOV also assesses and seeks to resolve customer complaints about potential wrongful disconnection, referring these and other compliance issues to the Commission for decision as necessary.

2.4.4 CONSUMER ADVOCATES

Some organisations advocate on behalf of individuals and groups of energy customers. For example, financial counsellors who are trained to assist customers manage their financial difficulties, may assist customers to negotiate a payment plan with their energy company. These financial counsellors may be based either in social service organisations or in government agencies.

Other consumer groups and social service organisations provide a range of broader support services to customers. These services may include advocacy, legal advice, policy and research, emergency relief, energy information, energy audits, and language services.

2.4.5 OTHER STAKEHOLDERS

The energy market also plays host to a range of other stakeholders, such as energy efficiency consultants, community legal centres and debt collectors. Energy retailers may use debt collectors to act as their agent to recover debt from customers. Customers may raise complaints about retailers' debt collection practices with EWOV. There are also partnerships that have emerged over time that connect customers with customer support services and private sector businesses.

3 THE CURRENT REGULATORY FRAMEWORK

INTRODUCTION

The regulatory framework, as it relates to customers experiencing payment difficulties, includes obligations set by the legislation and given effect through conditions of energy licences granted by the Commission. It also includes conditions on licences on a range of matters, including the obligation to comply with the Energy Retail Code (Version 11) (the Code). The Code sets out standards of conduct required to meet licence conditions. Guidelines provide further detail on particular practices expected of retailers.

These interconnecting elements mean the regulatory framework must be viewed as a whole when considering the obligations, standards and incentives that apply to energy retailers assisting customers experiencing payment difficulties.

This chapter explains the regulatory framework for supplying and selling electricity and gas in Victoria as it applies to customers experiencing payment difficulties.

3.1 PURPOSE OF THE REGULATORY FRAMEWORK

The purpose of the framework for assisting all customers facing payment difficulties is not specified in the legislation, licences or the Code. However, its purpose can be inferred from the objectives and content of the industry and essential services legislation taken together, supported by second reading speeches, conditions of energy licences and the content of the Code.

The objects of the sections that cover hardship policies in the industry legislation are:

a. *to recognise that financial hardship may be suffered by domestic customers; and*
b. *to promote best practice in electricity service delivery to facilitate continuity of supply to domestic customers experiencing financial hardship.*[17]

The purpose of these sections was to provide greater support for energy consumers who are experiencing genuine incapacity to pay their bills.[18]

It was also clearly expected that retailers would facilitate early response by retailers and consumers where consumers do not have the capacity to meet their energy bill payments.[19]

As outlined below, the legislation sets out other obligations that also aim to assist customers experiencing payment difficulties, such as prohibiting late payment fees and disconnections for customers complying with an agreement made under a hardship policy. Further, energy retail licences require compliance with standards set out in the Code on matters affecting customers experiencing payment difficulties, including identifying customers at risk of payment difficulty, debt repayment plans and debt recovery.

The purpose of the regulatory framework for customers facing payment difficulty can therefore be defined as to:

> ***assist consumers to avoid long-term energy debt, and repay debt that does accrue, while wherever possible maintaining access to energy as an essential service.***

We have used this purpose as a reference point for the inquiry. This purpose sits within the overall objective for regulating Victoria's retail energy businesses, which is to

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[17] Section 42 of the *Electricity Industry Act 2000 (Vic.)* and section 48F of the *Gas Industry Act 2001(Vic.)*.

[18] The Hon. Mr Brumby 2006, Treasurer, Electricity Industry Act 2000 and Gas Industry Act 2001 (Hardship, Metering and Other Matters) Bill, Second Reading Assembly, 19 July, p. 2371.

[19] Ibid.

promote the long term interests of Victorian consumers,[20] having regard to, amongst other things, the financial viability of the industry, and the costs and benefits to consumers as a whole.[21]

3.2 RETAILER OBLIGATIONS

The current regulatory framework sets out specific provisions to assist customers experiencing payment difficulties in two ways: provisions addressing ‘payment difficulties’ and provisions addressing ‘hardship’. There are also specific provisions covering processes for disconnection due to non-payment.

3.2.1 PAYMENT DIFFICULTIES

LEGISLATION

The following legislation contains specific obligations with respect to customers experiencing payment difficulties:

- *Electricity Industry Act 2000 (Vic.)* (EIA)
- *Gas Industry Act 2001 (Vic.)* (GIA)
- *Essential Services Commission Act 2001 (Vic.)* (ESC Act).

These Acts require energy retailers operating in Victoria to hold a valid licence and prescribe the required conditions for licence holders. They also prescribe the powers to grant licences and regulate licence holders via licences, codes and guidelines.

[20] Section 8 of the *Essential Services Act (Vic.)*.

[21] Section 8A of the *Essential Services Act (Vic.)*.

Relevant provisions in the Acts for customers experiencing payment difficulties include:

- a prohibition on late payment fees
- the power to control or prohibit pre-payment meters
- the power to control or prohibit exit fees
- provisions on bill smoothing.

LICENCES

Licences set out the conditions that retailers must meet to participate in the retail energy market. They are the mechanism for placing obligations on energy retailers to assist consumers. These obligations include statutory conditions taken directly from the legislation, as well as conditions the legislation allows the Commission to determine as necessary to promote the long term interest of Victorian consumers. Licences also require licensees to comply with other relevant regulatory instruments, such as the Code.

The Commission grants licences under its powers under the EIA and GIA. Licences also allow the Commission to enforce compliance with licence conditions.

ENERGY RETAIL CODE

Codes published by the Commission stipulate the standard of conduct required of energy retailers (and distributors) in dealing with customers. The Code is an important component of the Victorian retail energy regulatory framework. It comprises minimum standards of conduct that elaborate on the statutory licence conditions contained in the relevant legislation.

Customers cannot take direct action to enforce the Code. Rather, the Commission, as regulator, promotes and encourages compliance with the Code and enforces the Code as necessary.

The Code defines the standards retailers must meet to comply with their licence conditions. The Code provides detail on the assistance that retailers must provide to customers experiencing payment difficulties. If a customer informs their retailer they are experiencing difficulty paying their energy bill by the due date, or if the retailer identifies that this is the case, the retailer must offer a payment plan.[22] A payment plan allows a customer to pay for arrears and future consumption over a set timeframe. Retailers must consider a customer's capacity to pay, arrears and future consumption when developing a payment plan.[23]

- A retailer must inform customers of:
  - the duration of the payment plan
  - the amount of each instalment
  - the number of instalments required.[24]
- A retailer is not required to offer a payment plan if the customer:
  - has failed two payment plans in the past 12 months due to non-payment, or
  - is convicted of an offence involving illegal energy use.[25]

The Code also contains specific requirements for retailers to provide information about government funding schemes.

- A retailer must inform the customer about:
  - government funded energy charge rebates
  - applicable concessions
  - relevant relief schemes, including the Utility Relief Grant (URG) Scheme.[26,27]
- A retailer must not require a payment as condition of providing an URG application form.[28]

The Code also contains requirements for paying bills and collecting debt:

- A retailer must allow Centrepay as a bill payment option.[29]

[22] Clause 33 of the Energy Retail Code (Version 11).

[23] Ibid.

[24] Clause 72(2) of the Energy Retail Code (Version 11).

[25] Clause 33(2) of the Energy Retail Code (Version 11).

[26] URGs are available from the Victorian Department of Health and Human Services to customers who meet certain eligibility criteria and are unable to pay their energy bills due to a temporary financial crisis.

[27] Clause 33(3) of the Energy Retail Code (Version 11).

[28] Clause 33(3A) of the Energy Retail Code (Version 11).

- A retailer must not place a customer experiencing payment difficulties on a shortened collection cycle.[30]
- A retailer must not proceed to recover debt if:
  - the customer is adhering to a payment plan
  - the retailer has not complied with the EIA and GIA or the guidelines on debt collection issued by the Australian Competition and Consumer Commission.[31]

GUIDELINES

Guidelines provide guidance to retailers on interpreting the Code. The main guideline relevant to this inquiry is the Operating Procedure—Compensation for Wrongful Disconnection (Operating Procedure).

The Operating Procedure guides energy retailers and EWOV when completing wrongful disconnection payment assessments. It explains the Commission's interpretation of the regulatory obligations on retailers that it will consider when deciding on wrongful disconnection cases.

The Operating Procedure provides guidance on three key elements relevant to this inquiry: identifying customers experiencing difficulty paying their bills, assessing a customer's capacity to pay, and the requirements for complying with 'best endeavours' for contacting a customer prior to disconnection.[32]

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[29] Clause 74 of the Energy Retail Code (Version 11).

[30] Clause 34(2) of the Energy Retail Code (Version 11).

[31] Clause 72A of the Energy Retail Code (Version 11).

[32] Essential Services Commission 2014, *Operating Procedure - Compensation for Wrongful Disconnection,* Appendix A – Interpretation of Energy Retail Code, Melbourne, October.

3.2.2 HARDSHIP

LEGISLATION

The EIA and GIA prescribe the Commission's powers to regulate licensed retailers in their dealings with customers in financial hardship. The term "hardship" is not defined in the legislation or in the Code. Individual retailers identify customers they believe are in 'hardship' using criteria set out in their hardship policies. Under the EIA and GIA, retail energy licences are deemed to include a condition requiring licensees to develop and implement a financial hardship policy.[33] A hardship policy contains the retailer's approach to supporting customers experiencing financial hardship, including the assistance measures it states it will, or may, provide. The Commission must approve the policy and the licensee must also review its policy if directed by the Commission.

Hardship policies must include:

- flexible options for paying energy bills
- a provision for auditing a customer's energy usage
- flexible options for replacing household electrical and gas equipment
- processes for early response by both retailers and customers experiencing financial difficulty.[34]

The Commission expects the contents of hardship policies will be 'transparent, detailed and accessible'.[35]

LICENCES

Retail energy licence conditions require licensees to:

- have a hardship policy approved by the Commission
- comply with the standards relevant to hardship as set out in the Code, including those relating to the contents and implementation of a hardship policy

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[33] Section 43 of the *Electricity Industry Act 2000 (Vic.)* and section 48G of the *Gas Industry Act 2001(Vic.).*

[34] Section 43C(d) of the *Electricity Industry Act 2000 (Vic.)* and section 48GC(d) of the *Gas Industry Act 2001(Vic.).*

[35] Clause 71A of the Energy Retail Code (Version 11).

- maintain the financial viability and technical capacity necessary to comply with these hardship obligations
- monitor and report to the Commission on their performance and compliance with these requirements.

ENERGY RETAIL CODE

While the Acts set out general principles for the necessary contents of retailers' hardship policies, the Code specifies the standards the Commission expects hardship policies to meet. Specifically, the Code defines the actions retailers must take to assist customers who are identified as experiencing payment difficulties in accordance with the retailer's hardship policy. These customers are referred to as 'hardship customers'.[36]

Under the Code, retailers must set out the process they will follow to advise hardship customers of their rights and obligations under the retailer's hardship program. A retailer must be able to offer the following forms of assistance to customers under their hardship policy:

- review the customer's tariff
- provide information on grants and concessions
- provide information on the customer's rights and obligations while in a hardship program
- provide information on the hardship policy as follows:
  - inform them of the hardship policy
  - provide a copy of it at no expense
  - make it available on its website
- provide payment plans, which must consider:
  - the customer's 'capacity to pay'
  - arrears owing by the customer to the retailer

[36] Part 3, clause 71 of the Energy Retail Code (Version 11).

– expected energy use.[37]

Retailers may choose which additional hardship assistance option(s) to offer to their customers, such as energy efficiency field audits or appliance replacements. They do not have to offer all the discretionary hardship assistance options contained in their hardship policy to every customer. However, retailers must provide ‘equitable access’ to the options appropriate to the customer’s circumstances.[38] Retailers are not required to report on how they ensure equitable access.

A retailer can decide to waive debt for a customer receiving assistance under the terms of its hardship policy.

Under the Code, the Commission may determine and amend requirements about hardship program indicators (data that energy retailers report to the Commission) that may cover entry, participation and the assistance available.[39]

GUIDELINES

The Operating Procedure provides guidance on the ‘capacity to pay’ assessment process[40] specified in the Code[41].

3.2.3 DISCONNECTION

LEGISLATION

The Acts prescribe the Commission’s powers to regulate disconnection. Under the EIA and GIA, a licensee must not disconnect supply if the customer is complying with the terms of a hardship program. Under the Acts, retailers must compensate customers for wrongful disconnections.[42]

[37] Part 3 of the Energy Retail Code (Version 11).

[38] Clause 71B(1) of the Energy Retail Code (Version 11).

[39] Clause 75 of the Energy Retail Code (Version 11).

[40] Essential Services Commission 2014, *Operating Procedure - Compensation for Wrongful Disconnection,* Appendix A – Interpretation of Energy Retail Code*,* Melbourne, October.

[41] Clause 72(1)(a) of the Energy Retail Code (Version 11).

[42] Section 40B, of the *Electricity Industry Act 2000 (Vic.)* and section 48A of the *Gas Industry Act 2001(Vic.).*

LICENCES

Electricity or gas licences do not contain specific provisions for disconnection. Rather, licensed retailers must comply with any obligations set out in other relevant regulatory instruments.

ENERGY RETAIL CODE

The Code contains provisions that protect customers who are unable to pay their energy bills by the due date from disconnection. It sets out the steps a retailer must follow before it can disconnect a customer, including:

- issuing reminder notices
- issuing disconnection warning notices subsequent to reminder notices
- using 'best endeavours' to contact the customer after issuing warning notices.[43]

The Code also includes specific restrictions on disconnecting customers:

- if the customer is a hardship customer, or a customer experiencing payment difficulties, the retailer cannot disconnect that customer until it has offered two payment plans within 12 months and the customer has either not agreed to, or failed, both payment plans
- the customer is actively participating in a hardship program
- the customer is adhering to a payment plan (either in a hardship program or otherwise)[44]
- there is life support equipment at the property
- there is an open complaint with the retailer or EWOV
- an application for a government grant has been made

[43] Clause 111 of the Energy Retail Code (Version 11).

[44] The obligations contained in both Clause 33(4) and in the notes to Clause 72 of the Energy Retail Code (Version 11) require retailers to administer payment plans in the same way for both customers on a retailer's approved hardship program, as well as other residential customers that the retailer knows, or believes, are requiring payment assistance. Clause 111(a)(i) protects customers on a payment plan from disconnection if they are adhering to the terms of the plan.

- the outstanding amount that the customer owes the retailer is not related to selling energy
- the amount is less than $120 (excluding GST)
- during a 'protected period'.[45,46]

GUIDELINES

The Operating Procedure provides guidance on retailer requirements for complying with 'best endeavours' to contact a customer. Best endeavours include the requirement to attempt to make contact with the customer in person or by phone, during and outside business hours, not more than a month prior to disconnection.[47]

The Commission has also determined what constitutes non-engagement by a customer for the purpose of deciding whether a retailer has met its obligation to offer the customer a payment plan. A retailer will not be able to claim that the customer has not engaged if the customer has:

- made some payment under a first instalment plan before it failed, or
- engaged in discussion when telephoned or visited, or
- replied to correspondence from the retailer, or
- otherwise contacted the retailer.

Retailers are obliged to retain comprehensive evidence of the attempts to engage the customer if they are to claim non-engagement in lieu of a second payment plan.[48]

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[45] Clause 108 of the Energy Retail Code (Version 11) defines the protected period as a business day before 8am or after 2pm for a residential customer; a Friday or the day before a public holiday; or a weekend or a public holiday; or the days between 20 December and 31 December (both inclusive) in any year.

[46] Clause 116 of the Energy Retail Code (Version 11).

[47] Essential Services Commission 2014, *Operating Procedure - Compensation for Wrongful Disconnection,* Appendix A – Interpretation of Energy Retail Code, Melbourne, October.

[48] Essential Service Commission 2012, - *Obligations to customers: disconnection and reconnection – Final Decision*, February, p 14.

3.2.4 OTHER

LEGISLATION

The Acts prohibit late payment fees[49] and permit regulation to be made by Order in Council prohibiting pre-payment meters.[50]

ENERGY RETAIL CODE

The Code contains other provisions to support customers experiencing financial difficulties. These provisions include general requirements for good operating practices:

- retailers must publish information about customers' rights, entitlements and obligations on their website including the retailer's standard complaints and dispute resolution procedure and the contact details for the relevant energy ombudsman[51]
- requirements on how to conduct energy marketing activities.[52]

More specifically relating to debt, there are also restrictions on particular credit management practices, such as:

- retailers cannot require a security deposit from a hardship customer[53]
- retailers cannot charge customers interest for undercharged energy that is backbilled, but retailers must pay interest to customers if they overcharge[54]
- retailers can recover only nine months' worth of energy charges if they undercharge[55]
- retailers are also prohibited from offering supply capacity products for credit management purposes.[56]

[49] Section 40C of the *Electricity Industry Act 2000 (Vic.)* and section 48B of the, *Gas Industry Act 2001(Vic.)*.

[50] Section 40E of the *Electricity Industry Act 2000 (Vic.)* and section 48D of the *Gas Industry Act 2001(Vic.)*.

[51] Clause 56 of the Energy Retail Code (Version 11).

[52] Division 10 of the Energy Retail Code (Version 11).

[53] Clause 43 of the Energy Retail Code (Version 11).

[54] Clause 30(1)(b) and clause 31(4) of the Energy Retail Code (Version 11).

[55] Clause 30 of the Energy Retail Code (Version 11).

[56] Clause 76A of the Energy Retail Code (Version 11).

4 CURRENT INDUSTRY PRACTICE

BOX 1.1 KEY FINDINGS

1. Customers experience different types of payment difficulty along a continuum. The current framework is based on a retailer's judgment about whether a customer is 'in hardship' or not.
2. Each retailer defines hardship differently, so two customers experiencing the same payment difficulty may receive a different level of assistance depending on their retailer.
3. There is no consistent relationship between the length of a payment plan and the level of debt a customer owes, both within and between retailers.
4. Customers on payment plans outside hardship programs are more successful in reducing their debt than customers in hardship programs. Hardship programs are not very effective at preventing customers from accumulating further debt, especially when debt on entry to the program is high.
5. Customers in hardship programs are offered little more support than customers on payment plans. In particular, there is limited practical assistance provided to help manage their energy consumption.
6. Although hardship programs offer some flexibility in their repayment of outstanding debt, retailers are removing an increasing proportion of customers from hardship programs for failing to meet their required repayments.
7. Disconnection rates are increasing, indicating more customers are reaching the 'last resort' stage of the credit cycle. The concurrent rise in wrongful disconnection payments indicates retailers are not meeting the procedural requirements of the existing regulations when disconnecting customers.
8. Large energy debts accumulated over a long period can cause longstanding credit-related problems, and lead to legal proceedings.

INTRODUCTION

This chapter presents the preliminary findings on how the current regulatory framework operates in practice to assist customers experiencing payment difficulties. The findings are drawn from data collected for the Commission's annual comparative performance reports and from information and data provided by nine retailers. The nine retailers studied, collectively supply energy to around 96 per cent of Victorian residential customers.[57] This chapter also draws on information provided in submissions to the inquiry and other published data and reports. The chapter outlines the types of payment difficulties customers face, the way retailers currently identify and assist these customers, and the outcomes for consumers and retailers.

4.2 TYPES OF PAYMENT DIFFICULTY

As outlined in chapter two, payment difficulties can arise for many reasons and is not confined to low income households. The types of payment difficulty experienced by customers and the categories of support provided to these customers are outlined below.

4.2.1 A CONTINUUM OF PAYMENT DIFFICULTY

Payment difficulty occurs along a continuum characterised by increasing duration and level of debt. Table 4.1 illustrates the continuum of payment difficulty.

[57] Information collected from the nine participating retailers to inform this inquiry was gathered and prepared by an independent third party. The identity of individual retailers was not disclosed to the Commission.

TABLE 4.1 TYPES OF PAYMENT DIFFICULTY

Type	Characteristic	Consequential influence on debt
Short term payment difficulties	The customer's debt arises from late or missed payments and is being addressed through a payment plan(s).	Debt decreases predictably
Longer term payment difficulties	The customer is making repayments and reducing their debt, but payments are not being made in accordance with the terms of the payment plan.	Debt decreases but not necessarily in a predictable or reliable manner
Ongoing payment difficulties	The customer is paying the cost of their ongoing energy consumption but not meeting their debt repayments.	Level of debt unpredictable but unlikely to diminish over time
Severe payment difficulties	The customer is neither paying for the cost of their energy use, nor repaying their debt.	Debt continues to increase, often erratically

Individual customers frequently move between categories of payment difficulty. The type of payment difficulty in which customers find themselves reflects the temporary, fluctuating and persistent causes of payment difficulty outlined in chapter 2.

A threshold issue that affects the outcome of a customer's payment difficulty is whether they are able to meet the cost of their ongoing energy consumption. If a customer cannot pay for their ongoing energy consumption, their debt will continue to increase. A customer's ability to meet the cost of ongoing usage is driven by a combination of income, consumption and energy prices, all of which can change over time.

4.2.2 CATEGORISING CUSTOMERS AND ASSISTANCE PROVIDED

When a customer is experiencing payment difficulties, the regulatory framework requires retailers to categorise customers according to whether they are:

- a hardship customer entitled to assistance under the retailer's hardship policy, or
- a customer who may be assisted outside of the hardship program, usually by a payment plan.

This categorisation creates a focus on whether the customer meets that particular retailer's eligibility criteria for entry into its hardship program. Focusing on whether a customer meets the retailer's definition of 'financial hardship', rather than responding to the type of payment difficulty, means customers miss out on the assistance they need.

There is a high degree of variation in how retailers determine who is and who is not a 'hardship customer',[58] and therefore who is entitled to support under a retailer's hardship program. How support mechanisms are provided to customers varies significantly between retailers and is discussed throughout this chapter.

4.3 CUSTOMERS AT RISK

Retailers are required to offer and apply a payment plan to customers who have been identified as having repeated difficulties paying their energy bills. However, the regulatory framework contains no express obligation on retailers to identify customers *at risk* of payment difficulty.

4.3.1 ENERGY USAGE

There is a relationship between energy usage and customers experiencing payment difficulties. Customers on payment plans and in hardship programs use, on average, more than twice as much electricity as other customers in their postcode.[59] Customers on payment plans use an average of 121 per cent more energy than other customers in their postcode. Customers participating in hardship programs use 116 per cent more energy than other customers in their postcode.[60]

[58] The Energy Retail Code defines a 'hardship customer' as a 'residential customer of a retailer who is identified as a customer experiencing financial payment difficulties due to hardship in accordance with the retailer's customer hardship policy'.

[59] This statistic is not controlled for customer characteristics, such as household size and labour market status. For example, if a low income household residing in a modest house takes in boarders, or the occupants are more likely to occupy the house during the during the day (due to labour force status or for health reasons), higher household energy usage is to be expected.

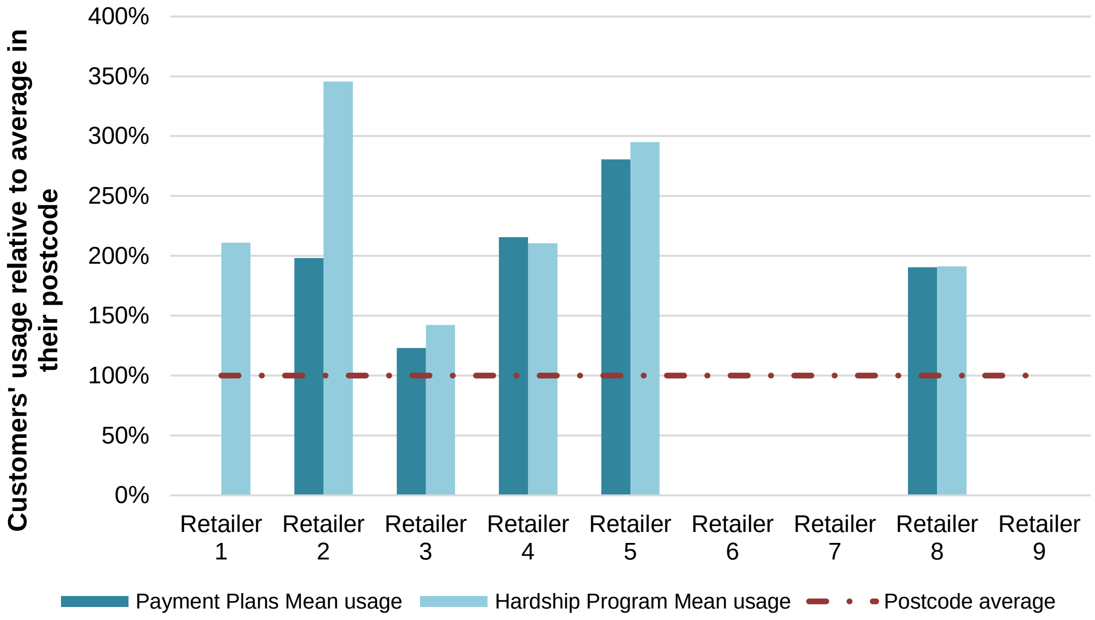
[60] Research conducted to inform this inquiry compared energy consumption of customers on payment plans and in hardship programs with the electricity consumption benchmarks prepared for the Australian Energy Regulator. Those benchmarks are only available for electricity consumption so gas was not compared. Some retailers compared gas

Figure 4.1 presents the energy usage of customers experiencing payment difficulties relative to average consumption. Three retailers that took part in the Commission's research were unable to provide the information on consumption at postcode level.

Using significantly more energy than other households does not in itself create payment difficulties. However, these households regularly receive high energy bills which increases the risk of payment difficulties if there is a sudden decrease in income or if other expenses rise unexpectedly.

FIGURE 4.1 AVERAGE ENERGY USAGE OF CUSTOMERS EXPERIENCING PAYMENT DIFFICULTY

Relative to the average in their postcode



consumption for customers on payment plans and in the hardship program within their own customer base, which provided similar results.

4.3.2 RETAILER PRACTICES

Of the nine retailers that participated in the Commission's research, one systematically identifies customers at risk of experiencing payment difficulties. The remaining eight retailers identify customers who require assistance through their credit management cycle and only once the customer's account is already in arrears.

The retailer that systematically identifies customers early uses a statistical predictive model based on various customer attributes and behaviours to assess a customer's risk of ongoing non-payment and applies it across the customer base. This model is used to identify customers who may be at risk as soon as a bill becomes overdue. The retailer monitors the top one per cent of risk based customers and contacts them pre-emptively if necessary. Of the customers contacted, 26 per cent either paid their bill or established a payment plan.

Smart meters have greatly increased the information available to retailers about their customers' energy use. This information is now readily available and it exists almost in real time. When coupled with other information that a retailer has at its disposal (specifically, account payment and payment history), greatly expanded opportunities now exist for retailers' systems to be more readily attuned to the early detection of customers who may be at risk of payment difficulties.

4.4 HOW DO PAYMENT PLANS WORK?

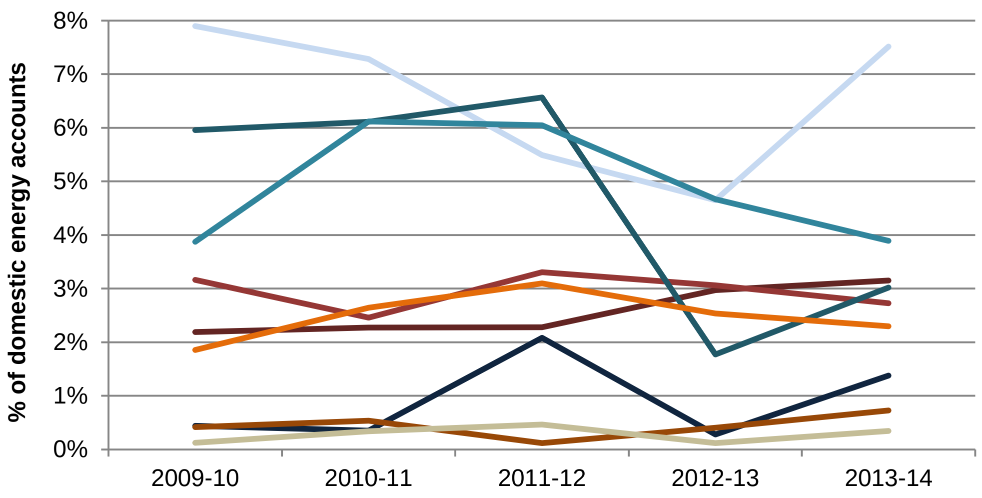
Payment plans are the primary mechanism retailers use to assist customers experiencing payment difficulties. A payment plan is an agreement between a retailer and customer to pay off an amount owing in regular instalments, in addition to paying for their ongoing energy usage.

4.4.1 PROPORTION OF CUSTOMERS ON PAYMENT PLANS

In 2013-14, an average of 146 716 customers were on payment plans in each month.[61] Of these, 85 per cent were not participating in hardship programs. The proportion of total customers on payment plans is 3.5 per cent, but it ranges from 0.5 to 2 per cent for eight retailers and up to 7.5 per cent for one of Victoria's largest retailers.[62]

Whether a customer is offered a payment plan or transferred to a hardship program depends on each retailer's internal policies and practices. The proportion of customers on payment plans varies notably across retailers. Figure 4.2 illustrates this variation for the nine retailers that took part in the Commission's research[63] and shows how participation changed over time.

FIGURE 4.2 PROPORTION OF ALL DOMESTIC CUSTOMERS ON PAYMENT PLANS
2009-10 to 2013-14



[61] Essential Services Commission 2014, *Energy Retailers Comparative Performance Report—Customer Service, 2013-14*, December, pp. 19-21.

[62] Ibid., pp. 19-21.

[63] Data for figure 4.2 comes from the Commission's *Comparative Performance Report—Customer Service* (to provide a view over time, rather than a snapshot) and not from the data received from the Commission's recent survey.

The changes from year to year do not occur in a regular pattern across all retailers and are therefore unlikely to be caused by external influences, such as changes in macroeconomic conditions. Rather, internal policies are the most likely cause of the changing proportions of customers on payment plans.

The specific internal policies and procedures that determine whether a customer is offered a payment plan include whether and how a retailer assesses a customer's capacity to pay, and how it applies eligibility criteria. The Commission finds internal policies and practices vary significantly between retailers, reflecting previous findings by the Energy and Water Ombudsman (Victoria) (EWOV).[64] Differences in and changes to internal policies between retailers and within individual retailers affect the likelihood that customers will be offered a payment plan.

4.4.2 HOW PAYMENT PLANS ASSIST CUSTOMERS

Payment plans aim to assist customers to reduce their debt over time by enabling the customer to make repayments in manageable instalments. The amount of debt a customer owes their retailer before being offered a payment plan affects the likely success of the payment plan, and this amount varies significantly.

Of the nine retailers surveyed to inform this inquiry, the average customer debt at entry to a payment plan was $620. Between retailers, this level ranged from $300 to $1800. The earlier a customer is offered a payment plan and the lower the debt at that time, the more likely it is the customer will be able to make the required repayments. Section 4.6.1 compares debt on entry to a payment plan and current debt.

[64] Energy and Water Ombudsman (Victoria) 2015, *A closer look at Affordability: an Ombudsman's perspective on energy and water hardship in Victoria*, March, p. 15.

4.4.3 DIFFERENCES IN ASSISTANCE PROVIDED

The type of assistance retailers provide to customers on payment plans outside hardship programs is entirely at a retailer's discretion. The assistance provided varies across retailers (table 4.2).

TABLE 4.2 SUPPORT POTENTIALLY AVAILABLE TO CUSTOMERS ON PAYMENT PLANS OUTSIDE HARDSHIP PROGRAMS

Support that may be offered	Retailers that offer it
Concession check	7 of 9 retailers
Utility Relief Grant	7 of 9 retailers
Tariff review	5 of 9 retailers
Payment deferral	All 9 retailers
Bill smoothing	7 of 9 retailers
Payment plan	All 9 retailers
Incentive payments	None of the 9 retailers
Debt waiver	None of the 9 retailers
Review method of payment (Centrepay, direct debit etc.)	All 9 retailers
Energy efficiency advice over the telephone	All 9 retailers
Energy efficiency field audit	None of the 9 retailers
Equipment/appliance replacement	None of the 9 retailers
Financial counselling referral	3 of the 9 retailers

The assistance retailers provide to customers focuses on repaying arrears. In particular, only five out of nine retailers offer a tariff review and even fewer refer customers to a financial counsellor. Little practical assistance is provided to help customers on payment plans to better manage their energy usage. This is despite, as discussed in section 4.3.1, customers on payment plans use twice as much energy on average than other customers in their postcode. Retailers report they provide some energy efficiency advice over the telephone but there is no consistency of views about the effectiveness of these telephone audits.[65]

[65] AER 2015, *Review of Energy Retailers' Customer Hardship Policies and Practices*, Melbourne, p. 19.

CAPACITY TO PAY IS ASSESSED IN DIFFERENT WAYS

Under the current framework, payment plans must be established having regard to a customer's 'capacity to pay'. However, retailers interpret this obligation differently.

Five retailers in the Commission's study said they accept the amount a customer advises that they can afford to pay. The other four retailers use some form of income and expenditure tool to assess a customer's capacity to pay. This approach requires customers to provide potentially sensitive and detailed financial information, which may include how much they earn and how much they spend on other household expenses such as rent, food and children's expenses.

While using this information to determine the required level of repayments, some retailers also use it as a screening mechanism for entry into hardship programs. A customer's failure or reluctance to provide this information therefore puts them at risk of being denied access to further assistance.

A number of stakeholders told the Commission that some retailers place the onus on customers to demonstrate their capacity to pay. The Consumer Action Law Centre (CALC) in particular noted some retailers refer customers to financial counsellors for assessment.[66]

During consultation, retailers acknowledged the importance of developing an affordable payment plan, but also highlighted their difficulties in assessing a customer's capacity to pay. Red Energy, for example, stated there is:

> *a significant emphasis on a retailer offering a customer an affordable payment arrangement, in line with their capacity to pay …* [with] *… a lower emphasis placed on the sustainability of the arrangement.*[67]

Retailers also use the capacity to pay assessment process to make judgments about whether a customer has the intention but not the capacity to pay.[68] If a customer is

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[66] Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 16.

[67] Red Energy 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 3.

seen to have the capacity but not the intention to pay, then a retailer will proceed with its usual credit management processes, possibly leading to disconnection and/or debt collection activity.

Consumer advocates noted that, in their experience, some retailers require upfront payments as a way for a customer to demonstrate an intention to pay. CALC raised this issue in its submission, noting retailers may require upfront payments to get access to a payment plan.[69]

The Consumer Utilities Advocacy Centre (CUAC) and EWOV were also concerned about the effectiveness of capacity to pay assessments. CUAC noted:

> *The fact that unaffordable or unsustainable payment plans is a common feature in EWOV complaints about payment plans suggests that energy retailers are not appropriately assessing their customers' capacity to pay.*[70]

The Commission acknowledged the problems associated with assessing capacity to pay in its 2004 paper about disconnections. At that time, the Commission noted the regulations did not include an objective test for assessing capacity to pay, adding that:

> *it is doubtful whether such a test could be developed or would be appropriate.*[71]

This situation remains true today.

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[68] Clause 71B of the Energy Retail Code (Version 11) requires a hardship policy to reflect that a customer in financial hardship has the intention but not the capacity to pay.

[69] Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 11.

[70] Consumer Utilities Advocacy Centre 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 3.

[71]Essential Services Commission 2004, *Disconnections and Capacity to Pay Report on Energy Retailer's Performance*, October, p. 4.

TERMS AND CONDITIONS OF PAYMENT PLANS VARY

Retailers have discretion to determine the terms and conditions of payment plans, including the amount and frequency of instalments and consequently, the duration of the plan. It is not surprising, therefore, that research revealed considerable differences in the design and duration of payment plans.

As a starting proposition, a fair and reasonable payment plan should be of a duration that is proportionate to the size of the debt to be repaid. However, two retailers included in the research have all of their customers (outside hardship programs) on a payment plan of a single duration (table 4.3). Three retailers have a range of duration options but most customers are on shorter term plans. By contrast, two other retailers also have a range of duration options but most customers are on longer term plans. Two retailers have half of their payment plan customers on plans of more than two years duration, although the average debt of customers on payment plans for each retailer differs significantly ($1512 for one retailer and $411 for the other).

The data shows no relationship between the size of customer debt and the duration of payment plans across all retailers.

TABLE 4.3 DURATION OF PAYMENT PLANS FOR CUSTOMERS OUTSIDE HARDSHIP PROGRAMS
Months

Retailer	Average debt	0-3	3-6	6-9	9-12	12-15	15-18	18-21	21-24	> 24
Retailer 1	N/A					100%				
Retailer 2	N/A	44%	40%	4%		4%	4%			4%
Retailer 3	$244	2%	25%		42%					31%
Retailer 4	$156	21%	32%	3%	38%		1%		5%	
Retailer 5	$418				100%					
Retailer 6	N/A									
Retailer 7	$1512	29%	11%	6%	4%					50%
Retailer 8	$425	63%	21%	11%	5%	<1%				
Retailer 9	$411	46%	3%		1%					50%

It is common practice for retailers to work progressively through an internal menu of payment plan options until reaching an agreement with the customer. In these discussions, the customer would benefit from knowing upfront the range of possible options available.

4.5 HOW DO HARDSHIP PROGRAMS WORK?

There are significant differences in retailers' hardship programs. Specifically, eligibility criteria and the scope of assistance offered vary across retailers. The current regulatory framework permits variation so retailers can respond flexibly to customers' needs. However, our findings suggest the discretion provided to retailers may be causing significantly different experiences and outcomes for customers in otherwise similar situations. We are concerned the discretion permitted in the regulatory framework creates uncertainty for customers and allows unintended variation in the outcomes customers experience.

Hardship policies outline the terms and conditions of retailers' hardship programs. There are significant differences in the amount of detail provided in hardship policies. Some retailers are clear about what they will and will not offer, while others retain the discretion to decide on a case-by-case basis (for example, whether customers will be offered appliance replacements).

Retailers are required to publish the policy on their website. Some are easier to find than others. Some retailers have a hardship link available in the footer menu, or under a 'help' tab, or located in a 'paying your bill' section of their website. By contrast, other retailers display their hardship policy under sections called 'terms, prices and regulatory information', 'the legal stuff' or 'resources', which makes them more difficult to locate.

4.5.1 THE PROPORTION OF CUSTOMERS IN HARDSHIP PROGRAMS

In 2013-14 in Victoria, 33 673 customers participated in hardship programs. Hardship program participation increased by 40 per cent over the past five years, from 24 122 in 2009-10 to 33 673 in 2013-14. The proportion of a retailer's customer base in a hardship program ranges from 0.1 per cent for one retailer to 1.2 per cent for another. Comparing the three largest retailers in Victoria, the proportion ranges from 0.6 per cent to 1 per cent of customers.[72]

4.5.2 ELIGIBILITY CRITERIA

Eligibility criteria to access hardship programs vary across retailers, because the regulatory framework permits retailers to define the criteria that apply.

Of the nine retailers that participated in the Commission's research, two use the presence of an 'indicator' as the basis for transferring a customer to the hardship program. These indicators are derived from some circumstances or situations retailers considered as common signs of hardship, which typically become evident in conversation with customer service staff. Retailers report these indicators include:

- a drop in income due to an illness or injury
- unemployment
- relationship breakdown or bereavement
- financial literacy challenges
- cultural or linguistic difficulties
- living on government pension or welfare
- natural disaster
- a history of late or missed payments.

[72] Essential Services Commission 2014, *Energy Retailers Comparative Performance Report—Customer Service 2013-14*, December, p.14.

Another two retailers use the existence of such indicators to prompt a consideration of whether the customer should be transferred to the hardship program or whether the customer can repay their debt on a shorter term payment plan. All retailers except one use at least one of the indicators listed above, or variants, to detect signs of payment difficulties.

Five retailers consider the customer's ability to repay the debt in a specified time frame (typically less than 12 months) as the primary consideration before transferring a customer to the hardship program. If a customer does not appear able to repay their debt in that time period, then they are transferred to the retailer's hardship program.

Stakeholders commented that, in their experience, customers are assessed for eligibility through a range of other criteria. Kildonan Uniting Care noted, for example:

> *It has been Kildonan's consistent experience that one major and one second tier energy retailer have a standard practice of refusing vulnerable customers access to their hardship programs if they do not have a health care card, even though this is not the only criteria for entry to a hardship program.*[73]

4.5.3 PATHWAYS TO HARDSHIP PROGRAMS

There are three main pathways for customers to enter a retailer's hardship program:

- **Self identification:** where a customer requests to participate in the retailer's hardship program.
  - This category includes referral on the basis of customer-initiated contact, and may extend beyond explicit requests to enter the hardship program.
- **Retailer identification:** where the retailer becomes aware a customer requires more intensive support after defined 'indicators' are communicated to customer service staff.
  - This category covers instances where customers are contacted by their retailer to discuss a late or missed payment. Four retailers that took part in the

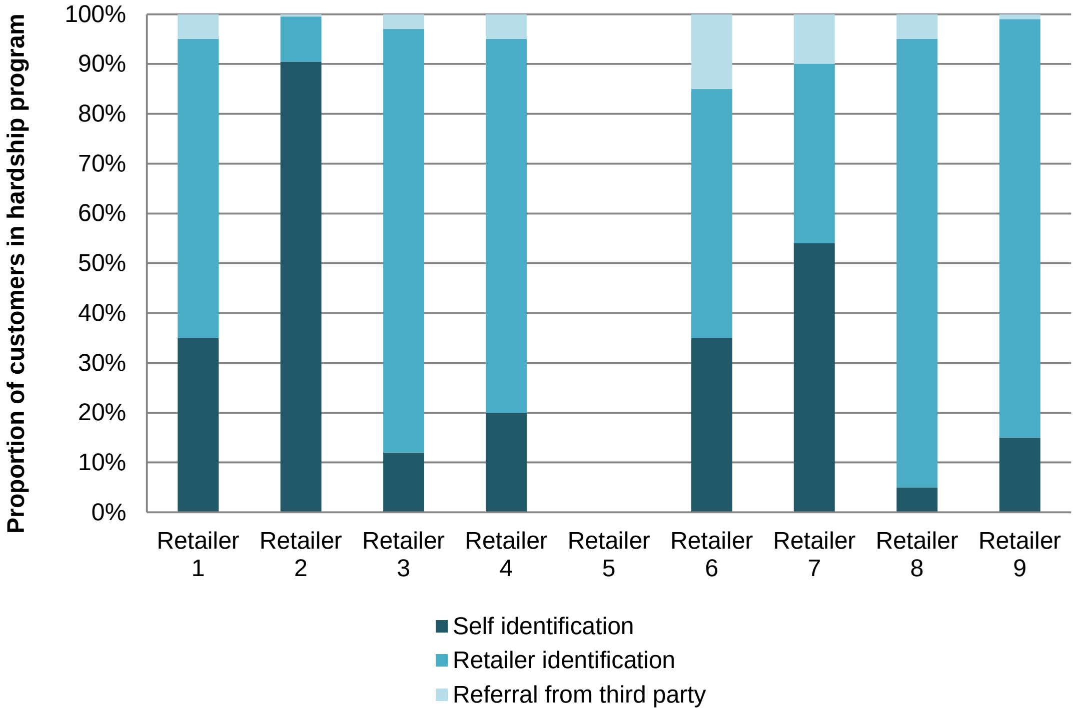
[73] Kildonan Uniting Care 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 12.

Commission's research primarily refer customers to their hardship programs as a result of an outbound call to discuss a late or missed payment.

- **Referral from a third party:** a financial counsellor or other third party refers the customer to the hardship program.

Figure 4.3 shows the proportion of customers identified through each channel in the Commission's research.[74]

FIGURE 4.3 PROPORTION OF CUSTOMERS REFERRED TO HARDSHIP PROGRAMS THROUGH DIFFERENT CHANNELS



The majority of customers are referred to hardship programs from within the business, either because a customer has contacted the retailer or because the retailer has contacted the customer as part of its credit management cycle. Few customers are transferred to hardship programs as a result of referrals from financial counsellors.

[74] The proportions in figure 4.3 are based on estimates by retailers and so are indicative only.

The different ways that customers enter programs, and the variety of outcomes between retailers, suggests there is no ‘best practice’ pathway for entry to hardship programs.

4.5.4 HOW HARDSHIP PROGRAMS ASSIST CUSTOMERS

Hardship programs are considered to be a more intensive form of support for customers experiencing payment difficulties. In practice, customers in hardship programs do not receive an extensive range of support options (table 4.4). The extent of support provided also varies across retailers. Section 4.5.5 discusses the scope of assistance that may be offered to customers on hardship programs.

4.5.5 DIFFERENCES IN ASSISTANCE PROVIDED

Retailers have significant discretion to determine what assistance options to offer customers participating in their hardship program.

SCOPE OF ASSISTANCE

Table 4.4 compares the suite of options offered to customers on hardship programs with the options offered to customers only on payment plans.

TABLE 4.4 COMPARISON OF ASSISTANCE POTENTIALLY AVAILABLE TO CUSTOMERS EXPERIENCING PAYMENT DIFFICULTY

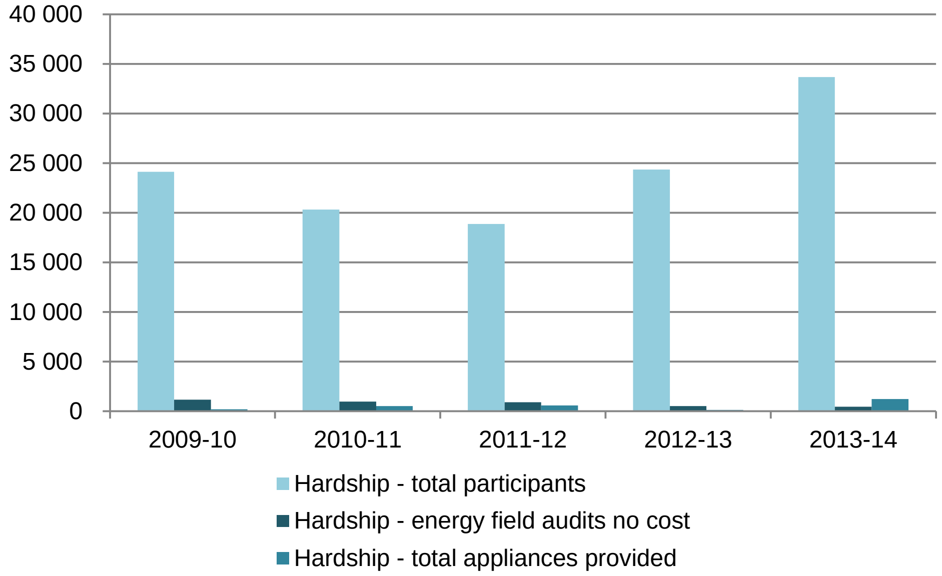
Support that may be offered	To PAYMENT PLAN customers	To HARDSHIP PROGRAM customers
Concession check	7 of 9 retailers	All 9 retailers
Utility Relief Grant	7 of 9 retailers	All 9 retailers
Tariff review	5 of 9 retailers	All 9 retailers
Payment deferral	All 9 retailers	None of the 9 retailers
Bill smoothing	7 of 9 retailers	None of the 9 retailers
Payment plan	All 9 retailers	All 9 retailers
Incentive payments	None of the 9 retailers	Offered by 6 retailers on a case-by-case basis
Debt waiver	None of the 9 retailers	Offered by 1 retailer on a case-by-case basis
Review method of payment (Centrepay, direct debit etc.)	All 9 retailers	All 9 retailers
Energy efficiency advice over the telephone	All 9 retailers	All 9 retailers
Energy efficiency field audit	None of the 9 retailers	6 of the 9 retailers on a case-by-case basis
Equipment/appliance replacement	None of the 9 retailers	2 of the 9 retailers on a case-by-case basis
Financial counselling referral	3 of the 9 retailers	All 9 retailers

In practice, customers participating in hardship programs are offered limited practical assistance to reduce consumption (figure 4.4), despite using significantly more energy, on average, than other customers in their postcode.[75] Retailers report to the Commission the number of energy efficiency field audits and replacement appliances they provided to customers on their hardship program.[76]

[75] Section 4.3 provides more information about the energy consumption of customers experiencing payment difficulties.

[76] The Commission publishes this information annually in its *Comparative Performance Report—Customer Service* report.

FIGURE 4.4 VOLUME OF ENERGY EFFICIENCY ASSISTANCE PROVIDED TO HARDSHIP CUSTOMERS



The Australian Energy Regulator noted few energy efficiency field audits may be carried out because customers perceive the audits as inconvenient and invasive and retailers prefer to provide energy efficiency advice over the telephone.[77] Field audits are costly to retailers and not always considered effective. Simply Energy noted:

> *Audits and energy efficient appliances do not automatically mean that a hardship customer's usage will decline.*[78]

EWOV suggested not all retailers provide energy advice, even though an understanding of energy use is fundamental to addressing affordability and exposure to debt.[79]

[77] AER 2015, *Review of Energy Retailers' Customer Hardship Policies and Practices*, Melbourne, p. 19.

[78] Simply Energy 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 2.

[79] Energy and Water Ombudsman Victoria 2015, *A closer look at Affordability: an Ombudsman's perspective on energy and water hardship in Victoria*, March, p. 18.

DURATION OF PAYMENT PLANS FOR HARDSHIP CUSTOMERS

One retailer has all of its customers in its hardship program on short term payment plans. This retailer also has the highest average customer debt. Nonetheless, customers in hardship programs are more likely to be on longer term payment plans than customers on payment plans outside hardship programs. Four retailers have a significant share of customers in their hardship programs on payment plans of no fixed duration (table 4.5).

TABLE 4.5 DURATION OF PAYMENT PLANS FOR CUSTOMERS IN HARDSHIP PROGRAMS

Months

Retailer	Average debt	0-3	3-6	6-9	9-12	12-15	15-18	18-21	21-24	>24	No fixed duration
Retailer 1	$1734	100%									
Retailer 2	$942				90%	3%	3%	2%	1%	2%	
Retailer 3	$670	69%			1%						30%
Retailer 4	$268		2%		7%		3%		88%		
Retailer 5	$737						21%		40%		39%
Retailer 6	$1218	N/A									
Retailer 7	$1070	17%	30%	3%							50%
Retailer 8	$1148	32%	23%	19%	7%	4%	3%	2%	3%	7%	
Retailer 9	$1211	49%	0.5%	0.1%	0.1%	0.2%					50%

Estimates of change are rounded to the nearest whole number

Customers in hardship programs have larger average debt than customers on payment plans outside hardship programs, but are also more likely to be on longer term payment plans.

Debt for customers in hardship programs is discussed in more detail later in this chapter (section 4.6.1).

4.5.6 EXITING HARDSHIP PROGRAMS

Customers will leave a hardship program if they successfully repay their debt, or if they fail to meet their repayment obligations or do not engaging with the retailer.

The number of customers removed from hardship programs for not meeting the agreed payment schedule and not discussing their circumstances with their retailer rose by

60 per cent between 2009-10 and 2013-14, from 5652 to 9022. The number of customers exiting hardship programs by agreement with the retailer after successfully completing the program fell by 9 per cent from 4243 in 2009-10 to 3871 in 2013-14.

These figures show the number of customers with unsuccessful payment plans in hardship programs is growing faster than the rate of success. This result could be a sign that the plans offered in hardship programs are not sustainable.

4.6 OUTCOMES FOR CUSTOMERS

Outcomes for customers with payment difficulties vary considerably between retailers. Outcomes can also vary depending on whether a customer is enrolled in a hardship program or if they are supported by a payment plan outside a hardship program.

There are four main outcomes for customers experiencing payment difficulties:

- successfully repaying their debt and returning to regular billing and payment arrangements
- not being able to successfully repay their debt (either debt stays stable or increases over time, depending on the customer's ability to pay for their ongoing energy consumption)
- disconnection
- legal consequences if debt escalates to an unmanageable level and is pursued through the courts.

The current regulatory framework does not specify the outcomes expected from a hardship program. A number of stakeholders commented on their observations regarding outcomes for customers. CALC, for example, wrote:

> *Our MoneyHelp advice service has identified a variety of hardship practices by different retailers providing different outcomes for consumers.*[80]

[80] Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 16.

4.6.1 DEBT

At 29 July 2015, customers facing payment difficulties owed retailers an estimated $50 million.[81] Of this amount, customers participating in hardship programs owed approximately $37 million.

This amount excludes debt incurred by the customers who were disconnected but were not on payment plans and in hardship programs. In 2013-14, 43 753 customers were disconnected for non-payment, without having been on a payment plan or in a hardship program in the previous 24 months.

The $50 million amount also excludes customer debt retailers may have written off or sold to third parties. One retailer informed the Commission that it recently sold $8 million of debt to third parties. The overall amount of customer debt for energy is likely to be significantly more than $50 million.

Research for this inquiry showed customers on payment plans outside hardship programs are more likely to succeed in repaying their debt than customers on hardship programs. Customers on payment plans reduced their debt by approximately 33 per cent, from an average debt on entry of $620 to an average current debt of $414. However, the level of success of payment plans to reduce debt varies significantly between retailers (table 4.6).

For five retailers, average customer debt while on a hardship program increased. By contrast, customers with three other retailers reduced their debt while on a hardship program.

[81] We calculated this figure using information supplied by the nine retailers that participated in our survey. Seven of the nine retailers could supply information about the debt owed by customers on payment plans also. We extrapolated this information to estimate the debt owed by all customers on payment plans and hardship programs.

TABLE 4.6 COMPARISON OF DEBT ON ENTRY TO A PAYMENT PLAN AND CURRENT DEBT

Average $

	Payment plans outside Hardship Programs			Hardship Programs		
	Debt on entry	Current debt	Change	Debt on entry	Current debt	Change
Retailer 1				1100	1734	634
Retailer 2	1002	966	–36	915	942	27
Retailer 3	331	294	–36	642	670	27
Retailer 4	348	156	–191	393	268	–125
Retailer 5	541	468	–73	849	737	–112
Retailer 6				1036	1218	182
Retailer 7	1787	1512	–275	967	1070	103
Retailer 8	1053	425	–628	1239	1148	–91
Retailer 9	687	411	–277	1207	1211	4
All 9 retailers	620	414	–206	947	1074	127

Hardship programs are generally not successful in reducing the level of customer debt (table 4.6). In fact, customer debt is more likely to *increase* while participating in a hardship program. For the nine retailers participating in our research, the average current debt for customers in hardship programs was $1074, compared with the average debt on entry of $947— an increase of $127.

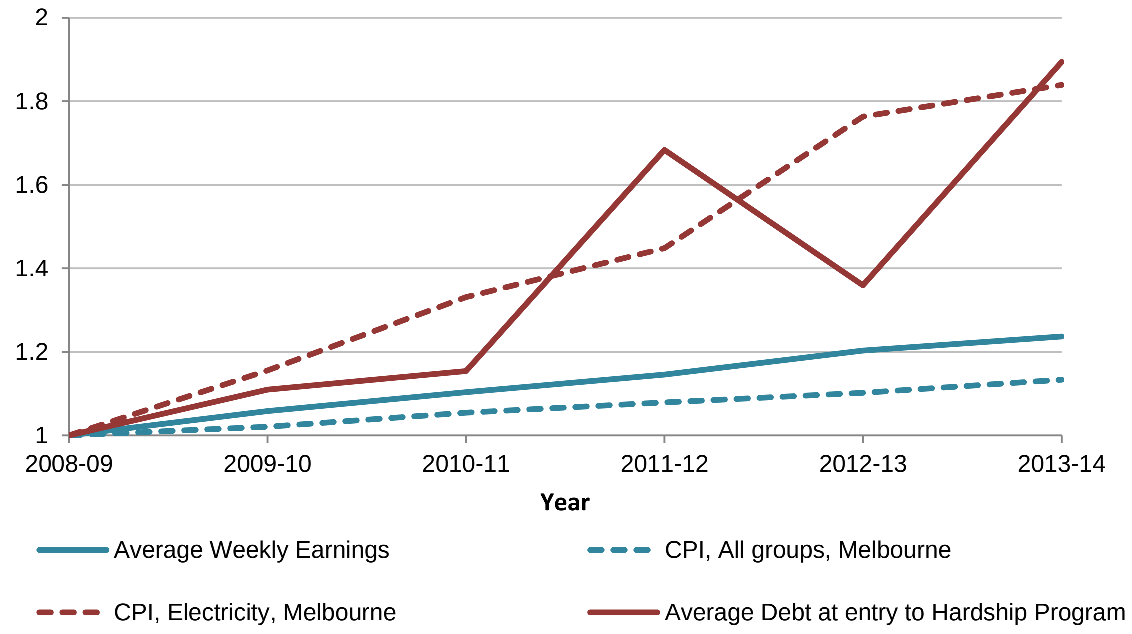
One retailer has been successful in reducing debt for customers both in and outside hardship programs. This retailer offers all standard assistance measures to every customer that comes into its credit management cycle. This retailer also reports it invests time upfront so the right supports and payment plans are offered and expects that customers will reduce their energy usage to a level that they can afford. This retailer also requires the customer to pay back their debt as a condition of remaining in a hardship program.

By contrast, another retailer that is not successful in reducing customer debt has very high debt levels on entry to its hardship program compared with other retailers and prefers to use short duration payment plans. This retailer has a lenient approach to removing customers from its hardship program and customers are only removed from the program if they refuse to engage with the retailer by not responding to multiple attempts to contact them. This retailer's customers are at risk of accumulating more debt, with unclear prospects about how to stabilise their situation in the longer term.

AFFORDABILITY

As outlined in chapter 2, electricity prices rose by 90 per cent (nominal), by 62.3 per cent in real terms, between 2008-09 and 2013-14. In this period, the electricity price component of the Consumer Price Index rose by 83.9 per cent. At the same time, the average debt of customers entering hardship programs rose by 89.4 per cent (figure 4.5).

FIGURE 4.5 ENERGY DEBT AND ELECTRICITY PRICES
Relative to CPI and weekly earnings



Both these rates of increase are far in excess of growth in consumer prices generally and average weekly earnings. Affordability—the relationship between what a customer uses, and what they can pay for—is a key element in the size of the debt accrued. Energy represents a growing share of average household costs, and this situation is heightened for low income households.

The Energy Retailers Association of Australia, in its submission stated that:

> *It must be recognised that cost of living issues have been a key factor in driving the outcomes that have resulted in this review.*[82]

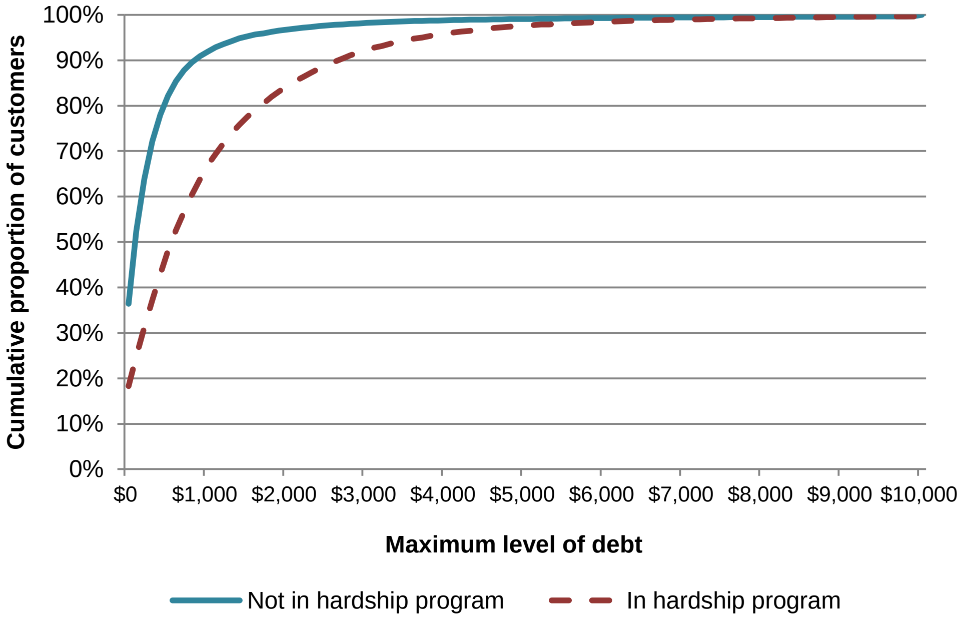
DISTRIBUTION OF CUSTOMER DEBT

Success in paying off debt can vary widely for individual customers, even within a retailer. While 80 per cent of customers on payment plans have a debt of less than around $550, 5 per cent have a debt greater than $1550 and 1 per cent have a debt greater than $4600. A small percentage of accounts with payment plans (0.3 per cent) have debt in excess of $10 000.

In addition, 80 per cent of customers on hardship programs have a debt of less than around $1770 (a debt greater than customers on payment plans). However, some customers have a significantly greater debt. We found 5 per cent of customers on hardship programs have a debt greater than $3800 and 1 per cent have a debt greater than $7000. Figure 4.6 illustrates the proportion of customers on payment plans and customers in hardship programs owing significant levels of debt. Most customers on payment plans owe less than $1000, compared with customers in hardship programs, who owe between $1000 and $4000.

[82] Energy Retailers Association of Australia 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 3.

FIGURE 4.6 PROPORTION OF CUSTOMERS OWING SIGNIFICANT DEBT
Customers on payment plans in and outside of hardship programs

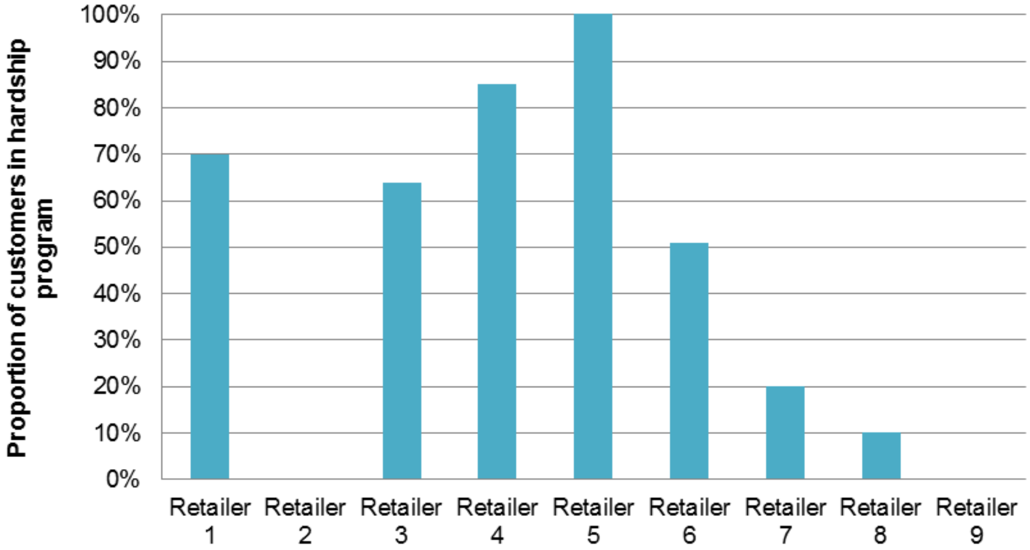


PAYMENT AND USEAGE

Some retailers accept repayment amounts that fall below the cost of a customer's estimated future energy usage, leading to an increasing level of debt over time.

Figure 4.7 shows the proportion of customers on hardship programs who are paying enough to cover their ongoing energy use. Only one retailer has all of the customers on its hardship program paying enough to cover energy usage. By contrast, two retailers have 80 per cent of customers on hardship programs paying less than is needed to cover their energy usage, which almost inevitably leads to an increase in debt. (Two retailers were unable to provide the relevant data and so no details were recorded for them in this comparison.)

FIGURE 4.7 PROPORTION OF CUSTOMERS ON HARDSHIP PROGRAMS PAYING ENOUGH TO COVER USAGE



These findings reveal current hardship programs are generally ineffective in avoiding the continuing accumulation of long term debt because many customers do not pay for the energy they use. Further, not only can outcomes vary considerably for individual customers, but the current framework can allow customer debt to reach levels in excess of $10 000.

4.6.2 DISCONNECTION

The current framework is designed so that disconnection is a last resort. A retailer must follow many steps before it can disconnect a customer's supply of energy, and there are penalties for wrongful disconnection. In 2013-14 approximately 58 626 customers were disconnected for non-payment of energy bills. The Commission's performance reports show disconnection rates are not consistent across retailers. In 2013-14, for example:

- five retailers who reported disconnection rates of 1 to 2 per cent accounted for 50.9 per cent of the customer base and 61.8 per cent of disconnections, and

- five retailers who reported disconnection rates over 2 per cent (the highest figure being 5.15 per cent) accounted for 14.8 per cent of all customers but 29.9 per cent of disconnections.[83]

INTERACTION BETWEEN HARDSHIP ARRANGEMENTS AND DISCONNECTION

The Commission found that between 2009-10 and 2013-14:

- disconnections of customers not on payment plans or in hardship programs rose 14 per cent
- disconnections of customers previously on payment plans rose 29 per cent
- disconnections of customers previously in hardship programs rose 144 per cent.

Disconnection is not an end point for customers. Instead, it is one point on a continuum of their experience with retailers. Retailers use disconnection as a credit management tool. That is, disconnection may prompt a customer to contact their retailer and access support and be reconnected to their energy supply.

The Commission's data shows reconnections of customers previously on a hardship program (as a proportion of all hardship customers) increased between 2009-10 and 2013-14, from 0.8 per cent to 2.2 per cent. This may suggest that, for these customers, disconnection was indeed a catalyst for them to re-engage with their retailer.

Even though data on disconnections has been collected and published for over 10 years, it is difficult to make definitive conclusions about what is happening to customers experiencing payment difficulties.

TRENDS IN WRONGFUL DISCONNECTION

The wrongful disconnection provisions of the Acts[84] are designed as an extra incentive for retailers to ensure they follow precisely the required procedures before proceeding to disconnection. Wrongful disconnection payments (WDPs) are payable when a

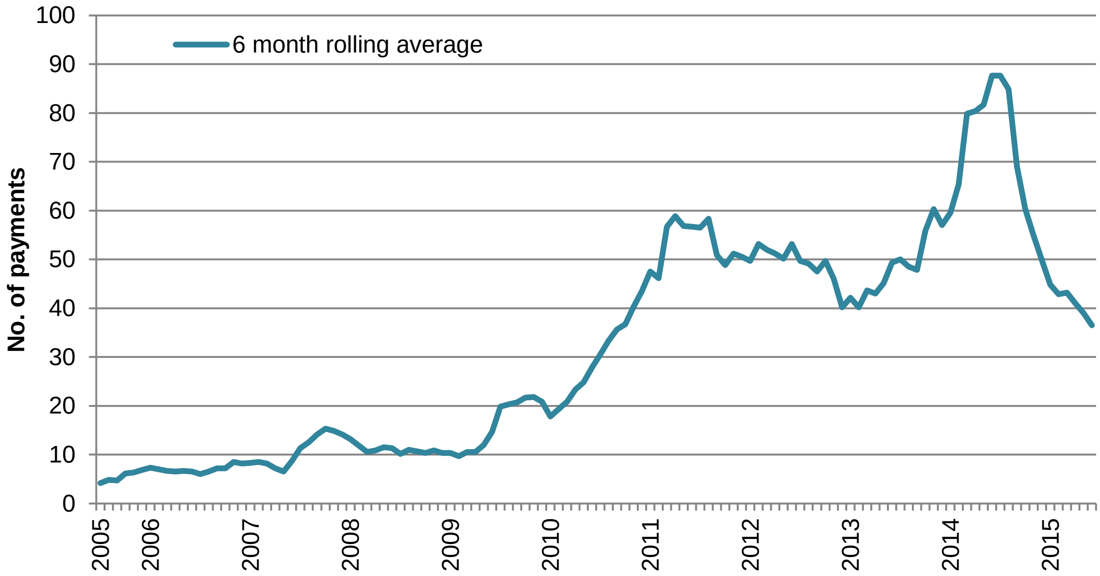
[83] While information for individual retailers is presented in the published comparative performance data, this inquiry does not focus on the performance of particular retailers.

[84] Section 40B of the *Electricity Industry Act 2000 (Vic.)* and section 48A of the *Gas Industry Act 2001 (Vic.)*.

retailer disconnects a customer's supply without complying with the terms and conditions of their contract.

According to EWOV, the number of wrongful disconnection cases per year that resulted in settlement involving a payment to a disconnected customer, increased from 2564 cases in 2009-10 to 9032 cases 2013-14 (an increase of 252 per cent). Figure 4.8 presents the trend in the number of payments being made after EWOV assessments between 2005 to 2015.

FIGURE 4.8 WRONGFUL DISCONNECTION PAYMENTS
Paid by retailers without referral to the Commission for formal decision.



For the first five years of the wrongful disconnection scheme, the average number of payments per month was less than 20. Between mid 2009 and early 2011, the average climbed from 20 to 60 per month and stayed at that level for two years. In early 2013 the average rose to about 75 payments per month. Between December 2013 and June 2014, one retailer made over 750 wrongful disconnection payments through EWOV due to a series of systemic compliance issues.

WDPs as a proportion of total disconnections fluctuated from 1 per cent to 3 per cent since 2008, with peaks during periods where EWOV resolved systemic issues with customers. Growth in the total volume of WDPs shows retailers are not meeting all of their obligations or precisely following the procedures required before disconnection. These figures highlight the issues that are occurring at the 'last resort' stage of the current framework.

4.6.3 LEGAL AND SOCIAL CONSEQUENCES

Customer debt can reach up to and in excess of $10 000 for some customers, as illustrated in figure 4.6. When retailers are unable to resolve the outstanding debt with the customer, they may choose to sell it to a debt collector. In some instances, this can lead to changes to their credit rating and possible legal consequences. Legal problems can include credit default listings and third parties aggressively pursuing debt. These circumstances can, in turn, trigger social problems. EWOV reported 1619 collection cases concerning default listings or debt collection agency activity between January and June 2015.[85] This result is a 33 per cent increase on the result for the previous six months.

Further, consumer groups reported cases where the level of energy debt accrued by a consumer contributed to, if not caused, bankruptcy. Bankruptcy can lead to even more severe consequences, such as house repossession[86] and the threat of eviction.

CALC noted:

> *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….in the most extreme case, consumers end up homeless as a result of these debts.*[87]

[85] Energy and Water Ombudsman Victoria 2015, *Quarterly EWOV Affordability Report—1 April 2015 to 30 June 2015*, Melbourne, August.

[86] K Collier 2015, *'Victorian family threatened with bankruptcy over power bill, one of dozens pursued by retailers'*, Herald Sun, 10 July.

[87] Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 13.

Taking action through the courts is practical only if the debt being pursued is large enough to justify the costs.

4.7 OUTCOMES FOR RETAILERS

The Commission estimates that administering hardship programs costs retailers in excess of $22 million per year in staff and system costs alone (the estimate does not include the financial cost of the assistance provided to customers).

Many retailers expressed frustration with the current regulatory framework and the challenges they face in providing appropriate support. Simply Energy wrote:

> *Offering hardship merely sinks to becoming a step in the process that must be followed to arrive at disconnection and prevent substantial revenue leakage. Regulations can place more checkpoints in the process because it might be perceived by those not having to manage the problem that those steps are 'best practice' but it will not prevent disconnection. It will merely lengthen the process and make it more costly.*[88]

Origin Energy called for more clarity regarding regulatory obligations:

> *to promote a consistent understanding of the current minimum requirements across stakeholders.*[89]

Considering the cost of providing hardship programs and the debt retailers are currently carrying, as well as the outcomes for customers experiencing payment difficulty, the Commission believes greater clarity is required regarding standards for key elements of the regulatory framework.

[88] Simply Energy 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p 2.

[89] Origin Energy 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 5.

5 LEADING AND BEST PRACTICE

BOX 5.1 KEY FINDINGS

1. Some energy retailers in Victoria are applying elements of best practice in their assistance to customers experiencing payment difficulties. Other elements are evident in the energy sector in other jurisdictions, and in other industries.
2. Best practice is a dynamic concept, continually refined by the development and implementation of leading practices by retailers, consumer groups, the welfare sector and other stakeholders.
3. Best practice:
   a. emphasises the early identification of customers who are experiencing payment difficulties
   b. ensures customers have clear and unambiguous information about the assistance that is available to them, and their obligations in return for that assistance
   c. uses sustainable payment plans, where the duration is in proportion to both the type of payment difficulty and the level of debt
   d. involves partnerships with specialist service providers to help customers with ongoing payment difficulties.

INTRODUCTION

The preceding chapters outline the current regulatory framework and explore how assistance to customers experiencing payment difficulties is operating in practice.

This chapter builds on the themes of best practice identified in our Approach Paper and incorporates further findings from research conducted for the inquiry.[90] It incorporates views on best practice as expressed in submissions to this inquiry.

Best practice is a dynamic concept. It is the continual evolution of leading practices that reflects market developments and the broader socio-economic context of payment difficulties.

Leading practice refers to service providers' methods that consistently show results superior to those achieved by other means. It can be found in programs developed within the retail energy sector both in Australia and overseas, and in the practices and policies other industries have developed, to tackle similar challenges in assisting customers experiencing payment difficulties.

5.2 LEADING RETAILER PRACTICE IN VICTORIA

As illustrated in chapter 4, one retailer in Victoria appears to be significantly more successful than others in assisting customers to avoid accruing long term debt and to repay debt incurred. Its success seems to be as a result of:

- identifying customers early and assisting them when their debt is still relatively low
- actively assisting customers to manage their energy usage
- offering customers payment plans that are tailored to the nature of their payment difficulty.

[90] The themes identified in the Approach Paper were: early identification, resource efficiency, availability of useful information, appropriate staff training, partnerships, a sensitive and flexible approach and regular review.

Leading practice by Victorian retailers in assisting customers to manage their energy use involves analysing a customer's energy usage data to identify when and where the customer is using the most energy. Specific practical ways to reduce the customer's cost of that energy use is then be explored, and the customer assisted to make the changes needed.

5.3 LEADING REGULATORY PRACTICE IN OTHER JURISDICTIONS

5.3.1 OTHER AUSTRALIAN STATES

The retail energy sector in New South Wales, the Australian Capital Territory, Tasmania and South Australia is regulated by the Australian Energy Regulator (AER). In January 2015, the AER published the report *Review of Energy Retailers' Customer Hardship Policies and Practices* to better understand how retailers identify and assist customers experiencing payment difficulties, and to share examples of good practice across the industry.[91,92]

In its report, the AER expressed concern about uncomfortably high levels of consumer debt.[93] It found retailers reported a relatively high level of customer debt in conjunction with a comparatively low number of customers on a payment plan or in a hardship program. This finding suggests retailers have problems identifying and assisting customers in financial difficulty. The AER also found retailers reported customers had relatively high levels of debt on their entry to a hardship program, which again suggests retailers have problems promptly identifying and assisting customers.[94]

[91] AER (Australian Energy Regulator) 2015, *Review of Energy Retailers' Customer Hardship Policies and Practices*, January, p. 18.

[92] The AER's scope appears to be narrower than the broader scope of the terms of reference for the Commission's inquiry. In particular, the Commission is tasked with exploring options to improve the regulatory framework.

[93] The AER's finding on high consumer debt levels parallels the Commission's concern which underpins the need for reform of current arrangements.

[94] AER 2015, *op. cit.*, January 2015.

The AER found a range of attitudes among retailers in engaging with customers in financial difficulty, ranging from retailers that merely observe the minimum regulatory obligations for assessing ‘capacity to pay’, to retailers that genuinely try to go beyond the minimum requirements to develop and implement strategies to engage with customers.[95]

NEW SOUTH WALES

In New South Wales, energy retailers must develop, implement and publish detailed Customer Hardship Charters. These charters must include flexible payment options and appropriate financial counselling services.[96]

In addition to support available through retailers’ hardship policies, customers may also be eligible for $50 to use towards energy bills in cases of crisis or emergency. These vouchers are available through the New South Wales Government's Energy Accounts Payment Assistance Scheme[97].

QUEENSLAND

Payment Plans

Queensland’s Electricity Industry Code[98] ceased on 30 June 2015. It was superseded in respect of energy retail by Queensland’s adoption of the National Energy Customer Framework from 1 July 2015.

The old code placed considerable emphasis not only on the relationship between retailers and customers in payment difficulty, but also prescribed the contents of payment plans. This contrasts with Victoria, where the content of payment plans is left largely to individual retailers.

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[95] AER 2015, *Review of Energy Retailers’ Customer Hardship Policies and Practices*, January, p.18.

[96] Independent Pricing and Regulatory Tribunal (IPART) website, (www.ipart.nsw.gov.au/Home/For_Consumers/Compare_Energy_Offers/Having_trouble_paying_your_bill).

[97] New South Wales Department of Industry Resources and Energy website, (www.resourcesandenergy.nsw.gov.au/energy-consumers/financial-assistance/stay-connected-through-financial-crisis), accessed 27 August 2015.

[98] Electricity Industry Code (Version 17).

In offering a payment plan Queensland retailers were required to:

- specify no less than four instalments, unless the customer agreed otherwise
- state that due to seasonal fluctuations in usage, paying by instalments may result in the customer being in credit or debit during the period of the plan
- monitor the customer's compliance with the plan
- have fair and reasonable procedures to address payment difficulties a customer may face while on the plan.[99]

Prepayment

The Queensland Electricity Industry Code also enabled retailers to require residential customers to pay in advance by installments if the customer was in arrears, or as an alternative to the customer paying a security deposit.[100]

[99] Clause 4.14.4 of the Electricity Industry Code (Version 17).

[100] Clause 4.14.2 of the Electricity Industry Code (Version 17).

5.3.2 THE UNITED KINGDOM

Energy retailing in the United Kingdom is regulated by the Office of Gas and Electricity Markets (Ofgem). Its regulatory framework offers a number of protections to customers not available in Victoria.

Many retailers have signed up to a voluntary code of practice called the 'Safety Net', which offers customers further protections via enhanced measures that are integrated into all suppliers' debt management processes. These enhanced measures include:

- an agreed universal definition of a potentially vulnerable customer[101,102]
- improved communication with support agencies
- a range of debt management and repayment options
- follow-up procedures to support customers.

EARLY IDENTIFICATION OF CUSTOMERS IN FINANCIAL DIFFICULTY

In its submission to the inquiry, the Consumer Action Law Centre noted that consumer groups in the United Kingdom worked with the British Standards Institution to develop criteria that retailers can consider when identifying and handling customers who could be regarded as vulnerable. Voluntary Standard BS 18477:2010[103] is a guide to developing best practice (across a range of industries) for identifying vulnerable consumers. It also provides guidance on maintaining those customers' accessibility to services, avoiding discrimination, helping organisations understand consumer rights, and raising consumer confidence in commercial processes.[104]

[101] A 'vulnerable customer' is one who is 'significantly less able than a typical consumer to protect or represent his or her interests in the energy market' and/or is 'significantly more likely than a typical consumer to suffer detriment or that detriment is likely to be more substantial'.

[102] Office of Gas and Electricity Markets 2013, *Consumer Vulnerability Strategy*, London, July, p. 4.

[103] An overview of BS 18477 is provided on the British Standards Institution's website (www.bsigroup.com/LocalFiles/en-GB/consumer-guides/resources/BSI-Consumer-Brochure-Inclusive-Services-UK-EN.pdf).

[104] Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, Melbourne, May, p. 4.

ENERGY MANAGEMENT

In the United Kingdom, retailers have an active obligation to address energy usage. Energy efficiency measures are the focus of the Energy Company Obligation. The main focus of the obligations is for energy suppliers' to provide home insulation and repair or replace home heating equipment.

Load control is used more in the United Kingdom than in Australia, and products are being developed to make load control devices easier and more effective. As technological advances in metering occur, load control can play an increasingly valuable role in overcoming energy debt for those customers who voluntarily enter a load control arrangement.

A recent review by Frontier Economics and Sustainability First of demand-side responses in the United Kingdom[105] found automatic intervention responses deliver the greatest and most sustained household shifts in demand when consumers have certain flexible loads, such as air conditioners or electric heating.[106,107] The review also found, after automation, a combination of economic incentives and enhanced information generally delivers the greatest demand response.[108]

DISCONNECTION PROTECTIONS

Retailers in the United Kingdom are prohibited from disconnecting a premises occupied by eligible customers during the winter months.[109] Further, they must never knowingly disconnect a vulnerable customer, for reasons of age, health, disability or severe insecurity.

[105] Frontier Economics and Sustainability First 2012, *Demand Side Response in the Domestic Sector- A Literature Review of Major Trials Final Report prepared for the Department of Energy and Climate Change*, August.

[106] The concept here is that the technology would enable quarantining of critical appliances such as refrigerators from load control or interruption.

[107] Frontier Economics and Sustainability First 2012, *op. cit.,* p. 13.

[108] Ibid., p. 5.

[109] Restrictions on disconnection in winter months or extreme temperatures also occurs in several US states. (See www.liheapch.acf.hhs.gov/Disconnect/disconnect.htm).

PREPAYMENT

If a retailer cannot agree on a repayment arrangement with a customer, it must offer to install a prepayment meter to enable a consumer to repay the debt and avoid disconnection.

In the United Kingdom, an estimated 4 million people, including many living in rental properties, have a prepayment meter. Prepayment meters can assist customers with low incomes to manage their energy bills but are not a substitute for other forms of assistance to customers to manage their energy usage. [110]

In the United Kingdom energy suppliers can install prepayment meters under warrant as a last resort for customers with debt to avoid disconnection. On 26 May 2015, Ofgem announced an examination into an increase in the number of pre-payment meters installed under warrant following concerns expressed in some quarters on mistreatment of customers.[111] Similar concerns underpin the prohibition of prepayment meters for credit management in Victoria.

5.4 PRACTICE IN OTHER SECTORS

5.4.1 WATER

The water sector has a tradition of innovation in the handling of customers who experience payment difficulties.[112]

This includes the provision of assistance to customers experiencing financial difficulty in regulating their water usage, and implementing successful partnerships with organisations that provide social services.

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[110] Energy & Water Ombudsman NSW, *Prepayment Meters*, Discussion Paper, 25 July 2014.

[111] OFGEM press release, *OFGEM statement on prepayment meters installed under warrant*, 26 May 2015.

[112] Essential Services Commission 2014, *Review of New Hardship Measures Taken by Metropolitan Water Businesses*, December.

PARTNERSHIPS

Submissions from several representatives of Victoria's social services sector pointed to the important role of social service agencies in advising and supporting customers in financial difficulty. These services range from budgeting advice to a broader range of support when the sources of financial difficulty are more complex.

The successful management of customers in severe payment difficulties may depend on these partnerships between retailers and social service organisations. CareRing (see box 5.1) is one such partnership.

BOX 5.1 CareRing

CareRing is a community / corporate partnership program established on 1 July 2014. Current partners include Kildonan Uniting Care, Western Water, Yarra Valley Water, ANZ, Swinburne University and South East Water.

The program takes a holistic approach to supporting and empowering vulnerable customers, with a focus on early intervention. When any partner in the program identifies a customer as experiencing payment difficulty that person (with their consent) is referred to CareRing.

CareRing has a team of skilled professionals from multi-disciplinary backgrounds who assess and respond to complex customer issues (such as family violence, drug and alcohol, and mental health) that may be inter-related and affect a customer's ability to pay bills. The customer is put in contact with relevant support and services, ranging from financial counselling (59 per cent), emergency relief (20 per cent), utility visits (15 per cent), microfinance (3 per cent), family services (3 per cent) and additional community support services (44 per cent), depending on the customer's needs.[113]

[113] Percentages are based on the 620 clients referred to CareRing from 1 July 2014 to 30 April 2015 as presented by Kildonan Uniting Care at the 'Understanding your customers: the real impact of family violence on the household budget' forum, 1 July 2015.

With their consent, the customer is also connected with the payment difficulty support options at the other partner organisations with which the customer has contracts (such as their bank or water company).

Outcomes measured for the corporate partners included:

- improvements in customer's situations
- an increase in partner's number of sustainable and recurring payment arrangements
- a reduction in complaints by the partner's customers
- a reduction in debt level
- a reduction in pressure on the partner's hardship staff.

Source: Kildonan Uniting Care.

Kildonan Uniting Care's extensive experience in working with many of Victoria's vulnerable and disadvantaged customers and their families, coupled with the cross referral set up between partner organisations, allows CareRing to help customers experiencing severe payment difficulties with low to high capacity – that is, it helps those customers to manage their payment difficulties and the associated issues impacting them.

COMMUNICATION

An example of leading practice in communication is Watercare. This communication hub was established as a one stop website for community workers, public servants, financial counsellors and water authority staff to access information on all hardship programs, as well as recent innovations and the latest research in this area.

GUARANTEED SERVICE LEVELS

A guaranteed service level (GSL) scheme is a financial mechanism that provides incentives for businesses to meet defined service standards. The schemes involve businesses providing payments or rebates to customers that experience certain supply problems or do not receive defined levels of performance.

GSLs reflect the most important aspects of service delivery identified by customers. Ideally, they are objectively definable and easily understandable. They may also be reported on. Importantly, payment amounts must give businesses incentives to deliver appropriate service levels, not compensate the customer.

A hardship related guaranteed service level applies to all urban water businesses under the Urban Water Customers Service Code. Breach of the service level entitles the customer to an automatic payment of $300.

5.4.2 FINANCE

PARTNERSHIPS

Innovation is at the heart of the partnership between Good Shepherd Microfinance, the Department of Social Service, Ernst & Young, and the Centre for Social Impact. This partnership is collaborating on the creation of Australia's first Financial Inclusion Action Plan program, which is designed to improve the financial resilience of individuals and communities. This is in addition to Good Shepherd Microfinance's ongoing no interest and low interest loans to purchase household whitegoods. In its submission to this inquiry, Good Shepherd Microfinance reported on its "encouraging conversations" with major energy retailers on potential involvement in the plan.[114]

[114] Good Shepherd Microfinance 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 10.

5.4.3 TELECOMMUNICATIONS

Innovation is the norm in the telecommunications sector, which uses an approach designed to limit the escalation of customer debt.

PARTNERSHIPS

The Telecommunications Industry Ombudsman, Australian telecommunications retailers and consumer representatives have worked together to identify shared principles and practices to underpin a best practice approach for dealing with customers in financial difficulty.[115] These principles and practices complement protections already provided in the regulatory framework.[116]

Telstra is one retailer working with social services organisations to assist customers in financial difficulty. It runs a Bill Assistance Program, under which, welfare organisations distribute vouchers and payphone cards.

RESOURCE EFFICIENCY

A key shared principle and practice is that retailers should offer payment and service solutions that are affordable and sustainable. Under clause 6.3(4) of the shared principles and practices statement, telecommunication companies may consider restructuring a customer's account and 'right-sizing' the services provided to that customer to increase affordability.[117]

Telstra's InContact Service is an example of this principle in practice. It is designed for customers in financial difficulty whose main income is a government allowance. The service allows people to receive calls but restricts all outgoing calls other than free calls to emergency telephone numbers and Lifeline. It also does not charge monthly rental fees.[118]

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[115] Telecommunications Industry Ombudsman 2014, Responding to Customers in Financial Hardship: Principles and Practices for Telecommunications *Providers,* March.

[116] Telecommunications Consumer Protections Code 2 C628:2012.

[117] Telecommunications Industry Ombudsman 2014, *op. cit.*, p. 11.

[118] As explained on the Moneyhelp website (www.moneyhelp.org.au/managing-bills-debt/phone-internet-and-pay-tv/).

PREPAYMENT

Many telecommunications retailers offer prepayment options. These may be available not only to customers in financial difficulty, but also the general customer base. They are usually in the form of prepaid month-by-month arrangements with a cap on the services included.

5.5 CONCLUSION ON BEST PRACTICE

Being dynamic, best practice is difficult to define at any point in time, or in a way that applies to all types of payment difficulty. Nonetheless, key elements of best practice make it more likely that a customer can work with their retailer to manage their payment difficulties.

These elements of best practice include:

- early identification of customers in financial difficulty
- payment plans that customers can afford
- practical in-home assistance for customers with their energy management
- partnerships with government and the welfare sector to address the underlying causes of payment difficulty
- clear and strictly enforced procedures for disconnection
- use of prepayment to assist customer to reduce consumption
- guaranteed service levels as incentives for retailers to provide assistance for customers.

The current regulatory framework governing assistance to customers does not provide guidance on the minimum standards of retailer performance in these elements that should apply across the energy sector.

6 RESPONSE TO THE FINDINGS

INTRODUCTION

In this chapter, we consider the findings in chapter 4 in relation to the leading retailer practices noted in chapter 5, to identify how retailer practices need to improve. We also assess whether the regulatory framework is achieving its overall purpose as set out in chapter 3. In light of our conclusions in both areas, we then consider how the regulatory framework needs to change to promote more effective and efficient assistance to customers experiencing payment difficulty.

6.1 IMPROVING RETAILER PRACTICES

This section identifies and discusses four areas of retailer practice that need to be improved, or applied more widely and more consistently:

- early identification
- sustainable payment plans
- managing energy consumption
- providing integrated assistance.

6.1.1 EARLY IDENTIFICATION

For over a decade, a wide range of stakeholders have highlighted the benefits of early identification and support for customers experiencing, or at risk of, payment difficulties. Yet, early identification is still not a focus for the majority of retailers.

The Brotherhood of St Laurence described this problem with the current regulatory framework:

> *Currently, retailers' financial hardship programs are the tertiary stage of the continuum of support. Prevention and early intervention also need to be a part of the picture for people experiencing difficulty paying their bills.*[119]

One retailer clearly demonstrated that early identification, when combined with assistance tailored to the type of payment difficulty being experienced, can significantly limit the debt accrued and increase the chance of debt being repaid.

This evidence supports the view expressed by the Consumer Action Law Centre (CALC) in its submission that:

> *Early identification and intervention measures, combined with best practice customer service across all customer segments will significantly improve outcomes for Victorian consumers.*[120]

Some retailers are committed to improving their approach to identification. AGL, for example, noted it is committed to:

> *Taking an early intervention approach to supporting vulnerable customers, including trialing new methods of identification to contact customers, and taking steps to better proactively identify vulnerable customers.* [121]

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[119] Brotherhood of St Laurence 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, Melbourne, May p.13.

[120] Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, Melbourne, May, p. 5.

[121] AGL 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers,* Melbourne*,* May, p. 3.

The Consumer Utilities Advocacy Centre's submission was strongly supportive of such approaches:

> *Early intervention is the key. If customers are engaged early in the process and assisted/supported adequately, it is more likely that issues will be resolved prior to them being escalated.*[122]

In its submission, Good Shepherd Microfinance summed up the current situation:

> *Often by the time a customer applies for a hardship program it is too late.*[123]

Early intervention is a key element of leading practice. The Commission welcomes the industry initiatives in this area, and believes that they need to be better supported through the regulatory framework.

6.1.2 SUSTAINABLE PAYMENT PLANS

Submissions by both retailers and consumer organisations stressed that assistance for customers experiencing payment difficulties must be sustainable. Assistance is sustainable if it progressively resolves the customer's energy bill payment difficulty and the outstanding debt in a way that is acceptable to both the customer and the retailer.

Submissions referred to sustainability from the perspective of both customers and retailers. Origin Energy, for example, when describing its hardship program stated that the intent of the program is:

> *to keep the customer engaged and working towards sustainable bill management.*[124]

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[122] Consumer Utilities Advocacy Centre 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, Melbourne, May p. 6.

[123] Good Shepherd Microfinance 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, Melbourne, May, p. 7.

[124] Origin Energy 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 1.

Lumo Energy stated:

> *assistance must be sustainable in the long term, and utilise a number of methods across all levels of our contact centres to achieve this sustainability.*[125]

And Kildonan Uniting Care stated:

> *it supports sustainable payment arrangements that are affordable and provide customers with a fighting chance to repay legitimate debts.*[126]

Having sustainable payment plans is particularly important. At a minimum, a sustainable payment plan should reduce the level of energy debt over the length of the plan. Yet, very large numbers of customers in hardship programs are currently on payment plans that are more likely to increase their level of debt.

As the Energy and Water Ombudsman (Victoria) (EWOV) noted:

> *By not …providing a sustainable payment arrangement, some companies are allowing customer debt to grow rather than addressing the affordability issues head-on.*[127]

As outlined in chapter 4, one retailer has an internal policy of entering into payment plans where the level of payment must, at a minimum, cover the customer's cost of ongoing energy use. However, such a policy on its own is not leading practice. Rather, in isolation, it would be highly likely to increase the level of disconnections if customers still cannot pay for their current energy use.

[125] Lumo Energy 2015*, Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 1.

[126] Kildonan Uniting Care 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 10.

[127] Energy and Water Ombudsman (Victoria) 2015, *A closer look at Affordability: An Ombudsman's perspective on energy and water hardship in Victoria*, p. 24.

Sustainable payment plans would also:

- show a direct relationship between the amount of debt to be repaid and the duration of the plan
- include practical assistance and incentives to customers to manage their energy consumption
- provide customers with information about other assistance measures (e.g. concessions) and referrals to other support services.

Because payment plans are retailers' primary mechanism for assisting all customers in payment difficulty, there is a need for clear and consistent standards for how payment plans should be offered to and negotiated with customers. Amplifying the need for this clarity and consistency, is the fact that a customer's failure to meet the terms and conditions of their payment plan is a trigger for a retailer to initiate the process leading to disconnection.

6.1.3 MANAGING ENERGY CONSUMPTION

Although all customers are responsible for their energy use, some customers may not be able to reduce their consumption significantly without assistance. For example, customers living in rented accommodation may not be able to make energy efficiency improvements, while many customers cannot afford to upgrade their appliances.

Clearly, the majority of customers experiencing payment difficulties in Victoria are being provided with limited practical assistance to manage their energy consumption.

Reflecting observations made by EWOV, Inner South Community Health (ISCH) submitted that:

> *Energy efficiency support is often only provided over the phone and in brochures, and that free home energy audits are rarely undertaken any more.*[128]

Other submissions expressed a range of views about the effectiveness of the assistance provided.

ENERGY MANAGEMENT OPTIONS

One retailer actively integrates advice on managing energy consumption in its overall package of support for customers experiencing payment difficulties. However, the majority of retailers simply offer general advice on energy efficiency over the phone. ISCH also observed that:

> *A common method of providing customers with a home audit was making a referral to the Australian Government's Home Energy Saver Scheme (HESS).*[129]

However, funding for HESS ceased on 30 June 2014. Further, general advice delivered without an analysis of the customer's pattern of energy consumption, or an audit of their home, is unlikely to deliver particularly significant benefits to the customer.

Some other jurisdictions, notably the United Kingdom, emphasise the role of retailers in delivering energy efficiency advice and support, particularly to vulnerable customers.

ISCH in its submission called for:

> *Energy retailers [to be] held to greater account on their provision of energy efficiency support.*[130]

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[128] Inner South Community Health 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 4.

[129] Ibid.

Advice and support for customers to better manage their energy consumption is an important element of assistance that retailers can and should provide to customers experiencing payment difficulties. ISCH noted why this type of support is so important:

> *Energy efficiency measures are an effective way for vulnerable clients to modify their behaviour and break the cycle of financial hardship with respect to their energy consumption.*[131]

Such assistance is critical for customers who are not currently meeting the cost of their ongoing energy use.

Energy management options are not limited to energy audits and appliance replacements. Customers can reduce some uses of electricity and gas by making adjustments to the way appliances are used. For example, changing thermostat settings on air conditioners or heaters, reducing the amount of time air conditioners and heaters are used and dimming or reducing lighting.[132] Customers can also shift electricity consumption to off-peak times when prices are lower.

TARIFF OPTIONS

All customers should be on a tariff that is best suited to the type of payment difficulty they are experiencing. Submissions expressed a range of views on the extent to which customers are indeed placed on a tariff that suits them, and whether it is effective in helping customers avoid debt accumulation and repay existing debt.

When a customer is unable to meet the cost of their ongoing energy use, there is a need to maximise the incentives for that customer to reduce consumption. A tariff comprised of fixed and variable elements dampens the price signal for these customers to reduce consumption. That is, the customer experiencing payment difficulties will still receive a significant energy bill irrespective of their energy consumption. The

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[130] Inner South Community Health 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 4.

[131] Ibid.

[132] G Owen 2013, *Addressing Peak Demand – Opportunities and Risks for Vulnerable Consumers*, Monash Sustainability Institute, April.

Commission recently estimated that the proportion of an average energy bill comprised of a fixed charge (or supply charge) has increased in recent years from 20 per cent to 28 per cent. In other words, customers' capacity to manage their own bills has diminished.

6.1.4 INTEGRATED ASSISTANCE

For some customers, the main assistance they need to address their payment difficulty is help to manage their finances. Typically, this help involves the services of financial counsellors employed by welfare and other consumer support organisations. Many, although not all, retailers have established systems by which customers can be referred to services providing this specialist assistance.

A recent survey of financial counsellors commissioned by CALC found that 65 per cent of their clients experienced difficulty in paying for their energy, and 95 per cent of the counsellors reported that this number increased over the past three years.[133] However, concern has been expressed that by referring customers to financial counsellors, retailers are 'outsourcing basic customer service to the community sector'.[134]

Nonetheless, retailers and community organisations also recognised that energy debt for many customers is a problem that exists in a wider context of multiple and complex economic and social challenges.

Alinta Energy, for example, noted that:

> *A customer who is experiencing difficulty in meeting their financial obligations with their energy supply is also likely to be experiencing similar difficulties in meeting other financial obligations.*[135]

[133] Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers,* Melbourne, May, p. 6.

[134] Ibid., p. 6.

[135] Alinta Energy 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 1.

Extensive research from other sectors shows services to customers with complex needs are more effective when they are integrated with other support services.[136] As outlined in chapter 5, Victoria's water sector has leading practice in providing integrated assistance to customers facing payment difficulties. This leading practice involves an active partnership between a water utility and a range of service providers, focusing on helping the customer with the spectrum of social and economic challenges that they may be experiencing.

While recognising the differences between the energy and water sectors, the Commission considers the application of such partnership approaches should be actively explored in supporting energy customers.

6.2 IS THE CURRENT FRAMEWORK FIT FOR PURPOSE?

Many elements of the current regulatory framework were established over ten years ago. Energy prices have since increased well above the consumer price index and average weekly earnings, as shown in chapter 4. As a result, energy bills now comprise a larger proportion of household budgets, particularly for low income households.

The energy industry is also rapidly evolving in terms of both new technologies and new business models. The internet, smart phones and 'apps', for example, have altered many aspects of retailer–consumer interaction and transaction. Further, the introduction of smart meters in Victoria means energy providers can access real time data on energy use by individual customers.

In submissions, some stakeholders considered the current regulatory framework is sufficient to accommodate these developments,[137] while others supported the inquiry

[136] Productivity Commission 2015, *Report on Government Services 2015*, Canberra, January.

[137] See, for example, AGL 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 3.

as a timely opportunity to review the efficiency and effectiveness of the regulatory framework.[138]

The Salvation Army observed that the framework needs to be:

> *tightened and made more explicit to ensure that energy retailers put best practice into action and make genuine efforts to ensure that their customers are offered opportunities to repay arrears and access supports to make future payments more manageable.*[139]

This section assesses whether the regulatory framework is achieving each of the three elements of its purpose (as outlined in chapter 2), being:

- to assist consumers to avoid long-term energy debt
- to help them repay debt that does accrue
- wherever possible, maintain their access to energy as an essential service.

In light of this assessment, and accounting for current and likely future developments in the energy sector, this section also assesses whether the current regulatory framework remains fit for purpose.

6.2.1 AVOIDING DEBT

Avoiding energy debt in the first place and preventing its escalation are essential if the assistance provided by retailers to customers experiencing payment difficulties is to be effective.

The current regulatory framework does not include any obligations on retailers to systematically monitor and assess customers at risk of payment difficulty. So, while

[138] See, for example, *Submissions to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailer*, May, from Alinta Energy, EnergyAustralia, Lumo Energy and Red Energy.

[139] The Salvation Army 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 13.

early intervention is widely regarded as leading practice in avoiding debt escalation, it is not general practice.

The current framework provides total discretion to retailers about what level of debt is accrued before the retailer acts to recover the debt, or when and how a retailer needs to offer customers assistance in repaying the debt. On the one hand, the level of customer debt that a retailer is prepared to carry is a commercial decision. On the other hand, it is clear that successful repayment of debt is most likely when a customer maintains their debt at its lowest possible level.[140]

Further, as outlined in chapter 2, unsustainable energy debt has significant economic and social consequences for both the individual customer and society as a whole. The consequences arise from the debt itself and the disconnection that may follow. Without regulation, these consequences will not be taken into account by energy retailers.

In its recent report on disconnections, CALC noted that:

> *one's financial position can become substantially worse, as a result of disconnection. It can also contribute to poor health and exacerbate other social problems.*[141]

The debt that some customers accrue before assistance is offered, and the degree of variation between retailers in the average debt levels accrued before assistance is offered, provides evidence that the framework is not achieving its intended outcome. While energy debt is initially a consequence of a customer's financial difficulty, once accrued, it becomes a cause of that difficulty. As discussed in chapter 2, the framework's hardship provisions seek to ensure that retailers act as though they are internalising the broader social and economic cost of unsustainable energy debt. Clearly, the current regulatory framework does not succeed in doing this.

[140] Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 7.

[141] Consumer Action Law Centre 2015, *Heat or Eat*, Melbourne, August, p. 7.

6.2.2 REPAYING DEBT

The current framework is having limited success in enabling many customers to repay their energy debts. Submissions to the inquiry presented a range of reasons for this, including:

- the increases in the cost of energy [142]
- the need to address the underlying causes of hardship [143]
- the insufficiency of the regulatory framework.[144]

Lumo Energy, referring to the challenge of working with customers to reduce their consumption to an affordable level, said that it:

> *frequently see customers … being adversely impacted by the protections in the regulatory framework.*[145]

The regulatory framework places significant limits on a retailer's capacity to act to limit the growth of debt, but creates few incentives for the customer to reduce consumption. So, when a customer continues to use more energy than they can afford but does not reduce consumption, the regulatory framework's silence inadvertently disregards the customer's accumulation of further debt.

Lumo Energy also observed that customers in these circumstances:

> *can end up with significant debts that may never be able to be repaid.*[146]

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[142] See *Submissions to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailer,* May from EnergyAustralia p. 2, Origin Energy p. 10.

[143] See *Submissions to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailer,* May from EnergyAustralia p. 2, Origin Energy p. 10 and Simply Energy.

[144] See *Submissions to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailer,* May from Consumer Action Law Centre and Consumer Utilities Advocacy Centre.

[145] Lumo Energy 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers,* Melbourne, May, p. 4.

[146] Ibid.

Energy Australia's submission stated that:

> *retailers are being required [by the regulatory framework] to support households in entrenched poverty who are unable to meet payments to cover their on-going consumption and have little chance of paying off any accrued debt.*[147]

As shown in chapter 4, the regulatory framework (particularly in relation to hardship policies and programs) often fails to assist customers repay their debts.

STANDARDS

As explained in chapter 3, the regulatory framework requires retailers to have regard to a customer's capacity to pay when establishing a payment plan.

Chapter 4 highlights that while a majority of retailers rely primarily on a customer's own representations about what they can afford, a number of retailers make their own assessments of a customer's capacity to pay when establishing payment plans.

Other than the requirement for a retailer to have regard to the customer's capacity to pay, their current arrears, and future energy consumption, the current payment plan system is largely unregulated.

Victoria's energy sector has no overall industry standards of competence for retailers engaging with customers experiencing financial difficulties, despite the complex and sensitive judgements being made.

This issue was highlighted by CALC in its submission that called for:

> *the Commission to require retailers to set industry-wide standards for contact centre training on hardship and financial difficulties*[148]

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[147] EnergyAustralia 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers,* Melbourne, May, p. 2.

[148] Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers,* Melbourne, May, p. 21.

Debt repayment plans have a range of characteristics that are similar to basic financial products. In many ways, they can be viewed as defining the terms of a customer's repayment of a notional 'loan' that has already been 'borrowed' from the retailer.

In the financial services sector, competency standards do exist. However the recent Financial System Inquiry examined these standards, including basic banking and insurance products that may be analogous to payment plans, and concluded that 'the current standards in the industry need raising'.[149]

If energy retailers were to continue to be required to assess and advise customers about these matters, standards akin to those in the financial service sector would need to be contemplated. Clearly, there would be major consequences of such requirements for retailers in the form of process design and staff training.

In conclusion, the Commission is not convinced that requiring retailers to adopt standards akin to those in the financial service sector is the most appropriate and effective role for energy retailers in assisting customers experiencing payment difficulty.

ROLE OF ENERGY RETAILERS

Energy is an essential service, and dependency on electricity for social and economic participation, has increased greatly in the past decade or so. Electronic devices have become essential for people to access information, communicate and carry out a wide range of everyday transactions. The consequences of disconnection for both individual customers and the community are now potentially much larger now than in the past. Therefore, there is now an even stronger imperative to ensure that retailers' obligations are as unambiguous as possible and that customers are aware of the assistance available.

The experience and example of other jurisdictions and industries show terms such as 'hardship', 'vulnerability' and 'capacity to pay' cannot be defined effectively for the purpose of industry regulation. This lack of definition has left significant ongoing interpretation and judgment required by retailers, customers and regulators. Wide and

[149] The Commonwealth of Australia 2014, *Financial System Inquiry – Final Report* ,Canberra (http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf).

potentially conflicting interpretations of such terms is a major reason why the regulatory framework is not delivering the assistance to customers that they need. The Commission is also concerned that these conflicting interpretations and expectations are damaging community confidence in the energy retail sector.

For these reasons, the Commission has therefore formed the view that it is not appropriate for energy retailers to be required to:

- define hardship
- set eligibility criteria for hardship programs
- assess whether a customer is 'in hardship'
- assess a customer's 'capacity to pay'.

All customers experiencing financial hardship should have the same access to assistance, irrespective of which retailer they are with, whether they meet that retailer's eligibility criteria, or what judgment is made by their retailer about their capacity to pay.

Further, some retailers' current approach and the practices observed in other industries clearly show none of the above four elements of the current regulatory framework are necessary for retailers and customers to work together to maintain supply and avoid (or repay) debt.

6.2.3 MAINTAINING ACCESS

We found conflicting evidence about the extent to which the regulatory framework is enabling customers experiencing payment difficulties to remain connected to their energy supply.

While disconnection for non-payment of bills has increased, it is also evident that significant numbers of customers are being excluded from hardship programs. Nevertheless, the number of customers previously on hardship programs who are being disconnected appears to remain relatively low as a proportion of the total number of customers excluded.

On balance, the Commission considers the current regulatory framework, with its incentives for retailers to avoid wrongfully disconnecting customers, has had some effect in assisting customers to remain connected wherever possible.

6.2.4 CONCLUSION

The current design and operation of the regulatory framework is enabling significant numbers of customers who would otherwise be disconnected to retain access to their energy supply. However, this outcome comes at a significant cost to:

- individual customers who continue to accumulate debt
- retailers, which have to carry the cost of the debt while supporting customers
- consumers in general, in terms of higher energy prices (as retailers recover their higher administration and debt management costs through higher energy prices).

The current framework includes elements that have the potential to provide effective assistance, but also includes elements that have proved to be ineffective. Some of the elements that have the greatest potential to be effective are already being widely used by retailers (most notably, payment plans). However, key elements of the framework, including hardship policies and capacity to pay assessments, have proven to be ineffective in practice. The Commission concludes these elements cannot be reformed without extensive prescription, costly compliance and detailed regulatory oversight and therefore believes a different approach is needed.

6.3 THE NEED FOR CHANGE

This section outlines the need to change the regulatory framework in order to:

- ensure the framework addresses the continuum of payment difficulties experienced by energy customers
- better align the incentives for customers and retailers to avoid and repay debt
- remove barriers to both customer engagement and innovation in providing the assistance that customers need
- eliminate the risk of labelling and stigmatising customers experiencing payment difficulties
- provide greater clarity and certainty around the shared responsibilities of retailers and customers in addressing payment difficulties
- reduce the risk that legal action to recover energy debt will escalate into further significant legal problems for customers.

6.3.1 CONTINUUM OF PAYMENT DIFFICULTY

The regulatory framework is largely silent on the way in which retailers should engage with customers experiencing payment difficulties in general, and particularly in the early stages of payment difficulty. Further, it does not guide how retailers should engage with customers when their accumulated debt has not been satisfactorily resolved. Rather, the regulatory framework focuses primarily on the minimum assistance that retailers must provide to customers whom the retailer categorises as 'in hardship'.

The focus on hardship policies creates what AGL has described as:

> *a binary state of being either in hardship or not in hardship.*[150]

[150] AGL 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 5.

AGL also said:

> *an arbitrary treatment of hardship customers (which has traditionally been the case in the energy industry) leads to poor outcomes for customers that do not clearly fall within either category.*[151]

The Victorian Council of Social Service, in its submission, also commented on the way in which outcomes for customers could be improved:

> *Some increase in prescriptiveness is sorely needed in some areas, and some performance targets highly desirable in others. A multifaceted, nuanced approach offers the best change to improve outcomes for vulnerable Victorians without limiting those retailers committed to better serving their vulnerable customers.*[152]

The framework's focus on categorisation has the paradoxical consequence that assistance to help a customer avoid incurring significant debt may be available only after the customer has accrued that level of debt. Importantly, the level of debt that is 'significant' depends on each customer's circumstances. Once the level of debt relative to available income grows beyond a certain point, the support available appears to be ineffective in helping the customer to repay their debt. This is reflected in the fact that for five of the retailers surveyed, the average current debt of customers in hardship programs is higher than the average debt on entry.

The focus of the regulatory framework on categorising customers, and the discretion it affords retailers to determine what assistance a customer may receive, both undermines the rights of customers and leads to poor outcomes for many customers experiencing payment difficulty. Changes to the regulatory framework are needed to ensure that all customers have the same access to assistance, and to effectively address the full continuum of payment difficulty.

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[151] Ibid.

[152] VCOSS (Victorian Council of Social Service) 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 16.

6.3.2 ALIGNING INCENTIVES

Retailers argued that there is a natural incentive to support customers experiencing payment difficulties as they will repay the retailer with their loyalty.[153] AGL, for example, submitted there is a natural incentive in many situations:

> *to proactively identify customers that may be experiencing payment difficulties and supporting customers that are experiencing hardship.*[154]

However, conflicting incentives within the regulatory framework discourage customers and retailers from working together to avoid and repay debt.

The current regulatory framework does not establish sufficient incentives for energy retailers to provide the assistance that customers need, and to provide it when it is most likely to be effective. Indeed, the prohibitions on disconnection and debt recovery for customers in hardship programs, combined with the cost of supporting customers in these programs, provide strong commercial incentives for retailers to limit access to hardship programs. In fact there are relatively low numbers of customers in hardship programs, compared to the total number of customers disconnected for non-payment of bills. There is, however, no data available to explain why these bills are not paid.

Kildonan Uniting Care in its submission commented that:

> *there seems to be a preference among some retailers to keep customers who identify that they are financially vulnerable away from hardship programs and deal with the debt issue either through resolution or credit teams.*[155]

A range of submissions also highlighted retailers' difficulty in engaging with customers who have missed payments. The level of energy debt is a significant contributor to this

[153] EnergyAustralia 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 3.

[154] AGL 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 3.

[155] Kildonan Uniting Care 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 18.

difficulty. That is, once a customer's energy debt becomes out of proportion to their available income, the customer has limited incentive to engage with their retailer, unless they believe the retailer will provide realistic options for managing their way out of the debt. For this reason, stronger incentives are needed to encourage customers experiencing payment difficulty to work with their retailer.

Conversely, reports from consumer groups and financial counsellors have highlighted the difficulties customers have encountered when trying to engage with their energy retailer.[156]

6.3.3 REMOVING BARRIERS

The current regulatory framework establishes a number of barriers that prevent customers from accessing forms of support that may assist them to overcome their payment difficulties.

Community and Information Services Victoria noted in its submission that in some cases:

> *It is a 'hardship to get hardship'.*[157]

First, to access assistance from retailers, customers must either advise their retailer that they are in hardship, or be classified by their retailer as a hardship customer. This labelling is unnecessary, and it risks stigmatising customers and deterring them from approaching their retailer, particularly in the early stages of payment difficulty.

[156] Kildonan Uniting Care 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 18 and Inner South Community Health 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May.

[157] Community Information & Support Victoria 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p.2.

The majority of customers experiencing payment difficulty do not regard themselves as in hardship. Good Shepherd Microfinance in its submission said:

> *Our experience shows that many consumers seek high cost credit, as they do not want to seek welfare solutions and hardship provisions.*[158]

The Brotherhood of St Laurence articulated the problem of labelling:

> *Consumer groups advocate a move away from hardship support as applicable only to a small group within the community (WCG 2014). Life transitions can lead to difficulties for many more. Acknowledgement of this in the way support is framed, delivered and promoted would normalise vulnerability, de-stigmatise hardship and encourage people to access support.* [159]

The regulatory framework also places limits on the use of innovative approaches such as prepayment and supply capacity control technologies that have been shown to be effective in other jurisdictions. The use of such approaches has inherent risk for customers, particularly for those in the greatest payment difficulty. Consumer groups have previously raised concerns about the potential for such approaches to be used by retailers to put pressure on customers to make bill payments or face a loss or reduction in supply. But independent third party oversight could mitigate such risks. For this reason, the Commission considers these technologies may be usefully included among a suite of measures to better manage customers' energy consumption.

[158] Good Shepherd Microfinance 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 8.

[159] Brotherhood of St Laurence 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 13.

6.3.4 IMPROVING CLARITY AND CERTAINTY

Certainty of rights and obligations is a fundamental principle of best practice regulation.

As Alinta Energy said:

> *transparency and clarity of obligations impact the potential effectiveness of any regulatory framework.*[160]

Currently, there is no certainty that two customers in the same payment difficulty will receive an equivalent level of support from their retailer. This uncertainty is largely due to the regulatory framework, which affords substantial discretion to retailers to define who is in hardship and what assistance they will receive.

As AGL observed:

> *it is no surprise that the treatment of customers will vary across the industry as hardship policies naturally vary and the definition and treatment of hardship customers will be different from one retailer to another.*[161]

Variation that reflects innovation in customer service, or management that lead to better outcomes for both retailers and customers, should be encouraged. The regulatory framework should not be a barrier to such innovation.

Nonetheless, as outlined above, the significant level of discretion afforded to retailers in many areas of the regulatory framework has undermined the confidence in a key principle of the framework—namely, that all customers should have the same access to assistance irrespective of their retailer.

Customers experiencing payment difficulties are entitled to greater clarity about what support they can expect from their retailer, and their obligations in return. Customers

[160] Alinta Energy 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p. 2.

[161] AGL 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, May, p.4.

should also expect a higher level of consistency in the provision of that support across all retailers, even while retailers are encouraged to innovate in how they offer that assistance. Greater clarity would also benefit retailers in terms of certainty of regulatory obligations, and their comparative performance in delivering on the purpose of the framework would also be consistently reported.

6.3.5 LEGAL CONSEQUENCES

Non-payment of energy bills can and does result in legal action by retailers against customers to recover energy debt. As the Productivity Commission recently noted, disputes over consumer debt may affect individuals, families, and communities in deep and lasting ways.[162]

Conversely, legal action to recover debt is costly for retailers. It is an unpleasant and stressful exercise for all where often no one wins. Reputations are damaged and consumer confidence in the market is eroded.

The level of energy debt being accrued by some customers significantly increases the risk that their payment difficulties will escalate into other legal problems.

The Productivity Commission also observed that:

> *unresolved legal problems ... can and often do exacerbate into much more significant problems later on, particularly in the cases of debt ...* [and] *credit and consumer matters.*[163]

This inquiry also found some evidence that energy debt is leading to legal problems. Consumer groups have reported cases where the level of energy debt accrued contributed to, if not caused, bankruptcy, leading to even more severe consequences such as house repossession and the threat of eviction.[164]

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[162] Productivity Commission 2014, *Access to Justice Arrangements, Inquiry Report No. 72*, Canberra, p. 79.

[163] Ibid., p. 104.

[164] Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers,* Melbourne.

Given energy debt can and does escalate to a level that may lead to significant legal and social problems, the framework must change to reduce this risk.

6.4 STRIKING THE BALANCE

Energy retailers have consistently argued for light-handed regulatory oversight to encourage innovation in response to payment difficulty. On the other hand, consumer groups and the welfare sector have long argued for more prescriptive regulation and detailed oversight, given the impact of payment difficulties on customers (particularly those who are unable to meet the cost of their on-going energy needs).

This is a false choice. The effectiveness of regulation is not measured by its' light or heavy-handedness. Its' effectiveness and efficiency is a function of how well it is designed. Its design should align with its purpose and flexibility should be permitted – but that flexibility should not extend to interpreting the purpose, only to how that purpose is achieved.

Where regulatory flexibility leads not to innovation but to ambiguity over consumer rights and lack of clarity for customers about their pathways out of payment difficulties, then further clarity is needed. The current regulatory framework does indeed generate such ambiguity and confusion for all stakeholders. This is clearly not what was intended, either when the framework was established or when it was modified in 2006.

In the next chapter, we discuss a redesigned approach to assisting all customers with payment difficulties. The Commission believes the proposed framework will deliver more certainty for all stakeholders involved and increase its efficiency and effectiveness.

7 A NEW APPROACH

INTRODUCTION

This chapter presents the broad architecture of a new approach to assisting customers experiencing payment difficulties. It outlines the design of the proposed framework, including how it builds on core elements of the current framework and existing industry practices. It also explains how the framework delivers the changes to the current system that are required, as outlined in chapter 6, and the costs and benefits of these changes. The chapter concludes with a discussion of some of the issues that will need to be addressed in the detailed design and implementation of the framework, and our intention to establish working groups to inform the next stage of its development.

7.1 A TAILORED FRAMEWORK

The proposed framework builds on retailers' existing obligation to offer two consecutive payment plans to customers experiencing payment difficulties, and on the prohibition on disconnection of customers who meet the terms of these payment plans. The framework will provide structured options and payments plans, tailored to the type of payment difficulty that the customer is experiencing.

The proposed framework removes the uncertain and unclear obligations on retailers to have hardship polices, and to have regard to a customer's capacity to pay when establishing a payment plan. Instead, it will place clear obligations on retailers to assist customers at different stage of payment difficulty. It also removes retailers' obligation to enter agreements with 'hardship customers' according to their hardship policy, with customer-centred payment plans based on the principle of shared responsibility.

At each stage of payment difficulty, retailers will have obligations to assist customers who will be expected to be responsible for engaging with their retailer and act on the assistance provided. The greater the assistance, the greater is the customer's responsibility to engage and act to manage their account. The framework aims to align the incentives on retailers and customers to work though the payment difficulties together.

The proposed framework will:

- codify the current obligation on retailers to offer two consecutive payment plans
- introduce a new, light-handed early action option for customers
- limit the level of debt repayment that can be required in an individual billing cycle
- add a new safety net for customers experiencing the greatest difficulty.

The framework will retain the Energy Retail Code's current obligations on retailers to follow the required processes if a customer is to be disconnected. In addition, it will limit the amount of money that a customer can be required to pay as a condition of reconnection.

7.2 OVERVIEW OF THE PROPOSED FRAMEWORK

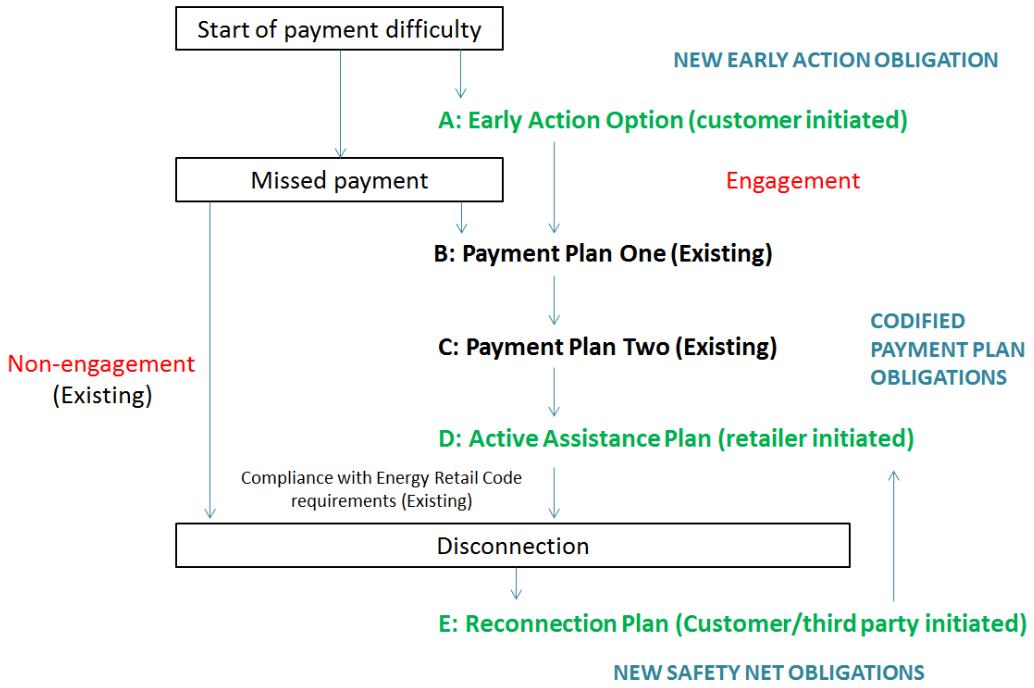
The proposed framework sets out two potential pathways for customers. The first pathway is followed when: a customer does not pay their bill, does not respond to the retailer's efforts to contact them about their non-payment, and fails to respond to the reminder and warning notices as required by the Energy Retail Code. In this case, retailers will continue to be able to disconnect customers after 28 days if the customer does not pay their bill, and does not engage with their retailer.

The second pathway sets out the minimum assistance that retailers must offer to:

- all customers who have a current concession card[165]
- any customer who has been in the retailer's hardship program in the past two years
- any customer who advises their retailer that they are experiencing payment difficulty.

Defined minimum levels of assistance will be provided at each of the five stages of payment difficulty (figure 7.1). Customers receiving the assistance will have clear responsibilities to engage with their retailer during each stage.

FIGURE 7.1 PROPOSED ASSISTANCE FRAMEWORK



[165] Eligible concession cards are Pensioner Concession Card, Health Care Card and the DVA Gold Card.

The objectives of each stage of assistance are outlined in table 7.1 below.

TABLE 7.1 OBJECTIVES OF EACH STAGE OF ASSISTANCE

Stage of assistance	Objective
A: Early Action Option	To avoid energy debt by rescheduling energy payments.
B: Payment Plan One	To repay short term or one-off debt.
C: Payment Plan Two	To repay energy debt and manage energy consumption.
D: Active Assistance Plan	To reduce the cost of energy consumption to enable debt to be repaid.
E: Reconnection Plan	To reduce energy consumption to an affordable level.

The framework will require clear communication between the retailer and the customer about:

- the assistance available from the retailer
- the customer's responsibilities in return
- how customers will progress through the system following non-payment
- the options available to the customer if the retailer does not meet its obligations.

Retailers will also be encouraged to consider additional assistance to individual customers at each stage on a case-by-case basis, and to explore innovative ways of assisting customers. Below, we outline the design of the proposed framework.

7.3 FRAMEWORK DESIGN

This section outlines the minimum obligations on retailers to assist customers with their payment difficulties. It also outlines the requirement for active communication between retailers and customers, both about the assistance available, and the responsibilities on customers. Finally, the section sets out the consequences for retailers of not meeting their obligations, and how customers will progress through the framework following non-payment.

7.3.1 EARLY ACTION OPTION

At this stage of payment difficulties, the primary aim is to help customers avoid an ongoing pattern of energy debt in the first place. A customer who knows in advance that they cannot make a payment, either in full or on time, will have automatic access to an Early Action Option. This option allows the customer to defer that payment for one bill cycle, in exchange for an agreement to repay the outstanding debt over the next two billing cycles.[166]

RETAILER OBLIGATIONS

Retailers will be required to offer the Early Action Option on their website or through their customer call centre to any customer who has:

- not yet missed a bill payment, and
- tells the retailer that they are experiencing payment difficulties.

These customers will be entitled to defer a payment of:

- up to $200 if they are on a monthly billing cycle, or
- up to $600 if they are on a quarterly billing cycle.[167]

And repay the deferred amount over the subsequent two bill cycles.

Retailers will be required to make information about the new option readily accessible and alert customers to it, to help them manage their payment difficulties. Retailers will also be required to provide information on their website about how customers can manage their energy consumption, and about relevant government rebates and concessions.

The uptake and outcomes for customers who elect to use the Early Action Option will be reported by retailers as part of their regular compliance and performance reporting

[166] Either monthly or quarterly.

[167] The amounts that can be deferred are based on the 2012 figure from the ABS which stated annual electricity bills were on average $1560, ABS (Australian Bureau of Statistics) 2012, *Household Energy Consumption Survey, Australia: Summary of results*, 12 cat. no. 4670.0, Canberra.

obligations. The Commission will monitor and audit compliance with the obligation to offer the option as part of our audit program.

CUSTOMER RESPONSIBILITIES

The Early Action Option will empower customers to manage short-term payment difficulties discreetly and anonymously. By acknowledging and acting on their payment difficulties early, the customer electing an Early Action Option can avoid incurring a debt that may affect their credit rating, without any stigma of being labelled as 'in hardship', and without being required to provide personal information about their finances or personal circumstances.

Customers selecting the Early Action Option are responsible for making the agreed payments in full and on time. If they do so they will be able to retain any pay on time discounts available under their contract. If they cannot make a payment, they will be expected to contact their retailer to obtain the additional assistance outlined below.

7.3.2 PAYMENT PLAN ONE

Customers with a concession card, or those who have been in a hardship program with that retailer in the past two years, or those who contact the retailer to advise they are experiencing payment difficulties, will automatically be placed on Payment Plan One following a missed payment. The plan will have standard terms and conditions, and repayments in any bill period will be limited to a fixed percentage of the debt. Customers will be obliged to cooperate with the retailer if they cannot make the required payment in full. For customers on a quarterly billing cycle, retailers will be expected to offer the customer the option to move to a monthly billing cycle, as shorter payment cycles have been shown to help manage payment difficulties.[168,169]

[168] World Energy Council and ADEME 2013, *Case Study on Innovative Smart Billing for Household Consumers*, July, pp. 8-9, 31.

[169] Ontario Energy Board 2014, *Draft Report of the Board: Electricity and Gas Distributors' Residential Customer Billing Practices and Performance*, September, p 8.

RETAILER OBLIGATIONS

Retailers will be required to automatically place any customer who failed to meet their payments either under regular payment arrangements or the Early Action Option, and who:

- has a current concession card, or
- has been in a hardship program with that retailer over the past two years, or
- contacts the retailer to advise they are experiencing payment difficulties

on Payment Plan One, which will require the customer to pay:

- their ongoing cost of energy use, and
- their outstanding debt

over the next two billing cycles.

Retailers will be obliged to provide the customer with basic advice over the phone on practical ways to better manage their energy consumption, and with information about government rebates and concessions. They will also be required to provide information about financial counselling or other customised assistance to these customers.

CUSTOMER RESPONSIBILITIES

Customers will be able to spread their repayments over two billing cycles, without any stigma of being labelled as ‘in hardship’ and without being required to provide personal information about their finances or personal circumstances. In exchange, they will be responsible for making the agreed payments in full, and for cooperating with their retailer throughout Payment Plan One. This cooperation involves responding to at least one formal request from the retailer to contact them if, for example, a payment is late.

7.3.3 PAYMENT PLAN TWO

If a customer misses a payment under Payment Plan One, they will automatically be placed on Payment Plan Two. Under this plan, customers who have been unable to make their payments can reduce the payment amount and extend the term of their payment plan. Repayments in any bill period will be limited to a lower fixed percentage of the debt than the percentage in Payment Plan One.

Customers will be obliged to cooperate with the retailer on an ongoing basis, and to contact their retailer if they cannot make the required payment under Payment Plan Two in full or on time.

RETAILER OBLIGATIONS

Payment Plan Two will require the customer to pay:

- their ongoing cost of energy use, and
- 20 per cent of their outstanding debt

over each of the next five billing cycles.

If a customer makes the payments required under Payment Plan Two, then the retailer will be required to give the customer the benefit of any discounts that were available under their contract before the customer missed the first payment.

Further, under Payment Plan Two, retailers will be encouraged to consider making on-time payment discounts available to customers on standing offers or contracts that do not include such discounts. They will also be encouraged to provide additional incentives for early repayment. Retailers will be required to report on the number of customers offered additional incentives.

Retailers will be obliged to use their information on each customer's energy consumption patterns to provide tailored advice over the phone on practical ways to reduce the customer's energy consumption. The Commission will require retailers to maintain records of their exchanges with customers, and to report aggregate data to the Commission as part of their existing reporting obligations.

CUSTOMER RESPONSIBILITIES

Customers will be able to extend their repayments to five billing cycles without having to provide their retailer with any information about their personal or financial circumstances. In exchange, they will be responsible for making the agreed payments on time and in full, and for cooperating with their retailer throughout Payment Plan Two by responding to formal communications.

7.3.4 ACTIVE ASSISTANCE PLAN

If a customer misses a payment under Payment Plan Two, then their retailer will be obliged to contact the customer immediately to offer an Active Assistance Plan. The purpose of this stage is to establish a tailored payment plan for each individual customer, that aims for their debt to be fully repaid at the end of the payment plan period.

Retailers will be required to provide an agreed package of assistance to the customer. Customers will be responsible for taking steps to better manage their energy consumption, and for considering participation in programs offered by other service providers that aim to address wider causes of payment difficulties.

New Payment Plan Guidelines will set out the broad nature and scope of the assistance that retailers must provide. The agreement between the customer and retailer will detail the specific assistance to be provided.

RETAILER OBLIGATIONS

Retailers will be required to contact a customer who has missed a payment required under Payment Plan Two, and to offer entry to an Active Assistance Plan. The assistance offered under the plan must include:

- fully variable tariff(s)
- pay-on-time discounts
- practical in-home assistance to reduce energy consumption

- provision of current information about the assistance available through other service providers, to help the customer address the underlying causes of long term payment difficulties.

We explain each element of assistance here. First, a fully variable tariff would be determined by taking the customer's total energy cost (fixed and variable costs) over the previous 12 months, and dividing it by their total energy consumption to establish a price per unit of energy consumed.[170]

Second, all customers on an Active Assistance Plan must be offered a pay-on-time discount that is no less than either the discount in their contract or, if no discount is included, the comparable discount currently offered by that retailer in the market.

Third, in-home assistance would not necessarily involve a physical visit to the customer's home. As outlined in chapter 5, leading practice in Victoria involves the analysis of a customer's energy use data, detailed discussion with the customer about their drivers of energy consumption, and the provision of tailored advice and support on options to reduce energy costs.

Fourth, retailers will be required to maintain current knowledge of government and community programs that may assist customers who have long term payment difficulties caused by wider social and economic challenges. They will also be required to provide information to customers about programs that may be relevant to their circumstances.

The new Payment Plan Guidelines—to be developed in consultation with all interested parties—will outline customer information standards and reporting obligations for retailers with customers on Active Assistance Plans. The Commission will audit compliance with the new framework and take enforcement action when necessary. While a customer is making payments under their Active Assistance Plan, retailers will not be allowed to approve a request from another retailer to transfer the customer, for

[170] Retailers would be required to provide customers that currently pay a different rate for off peak use with a fully variable peak and fully variable off peak tariff under the Active Assistance Plan.

two years after the plan is agreed. This is to help ensure that the retailer and customer work together to address the payment difficulties.[171]

CUSTOMER RESPONSIBILITIES

The Active Assistance Plan will enable customers to extend the duration of their repayments to allow for:

- a period of payment below the cost of their current energy use, so long as that cost is repaid over the life of the plan
- practical in-home assistance by the retailer to help manage energy consumption
- changes to how the customer uses energy that will reduce the cost of the energy consumed.

Each element is discussed here. First, the total duration of an Active Assistance Plan would need to be long enough to repay the outstanding debt once the customer reduces their energy costs.

Second, fully variable tariffs will further incentivise customers to reduce their energy consumption, because they will maximise the financial benefits from any reduction in energy use. Pay-on-time discounts may further reduce energy costs.

Third, in return for the assistance provided by retailers, customers on an Active Assistance Plan will be responsible for:

- paying for their energy consumption
- paying on time
- taking steps to better manage their energy consumption
- starting to repay their debt from the costs avoided.

A customer who misses an agreed payment may ultimately be disconnected if the retailer correctly follows the standard disconnection procedure.

[171] Current leading practice in Victoria is to offer payment plans of 24 months.

7.3.5 RECONNECTION PLAN

This stage commences if a customer has been disconnected for failing to meet an agreed payment of an Active Assistance Plan, and EWOV or another registered third party has facilitated their reconnection. Retailers cannot require an upfront payment of more than 10 per cent of the cost of customer's average energy use over a normal billing cycle, as a precondition of reconnection. However, in order to avoid adding significantly to the customer's existing debt, they will only be able to maintain their reconnection for four weeks if they enter into a Reconnection Plan.

The Reconnection Plan aims to reduce a customer's energy use to a level they can afford over the short to medium term. Once the customer has reduced and is paying for their energy use, they will transition back to an Active Assistance Plan, with the aim of progressively reducing their outstanding debt.

Under the Reconnection Plan, the retailer will provide a direct assistance package to the customer to help them reduce their energy consumption. The package may include prepayments and/or supply capacity controls (provided it is safe to do so). Supply capacity control devices could be used to limit energy use to particular times of the day, particular appliances, or both. However, a Reconnection Plan may only include prepayment or supply capacity control if:

- its use is solely to assist the customer to reduce their energy consumption; and
- the customer has been assisted in their negotiation of the plan by EWOV or another third party registered with the Commission.

The existing prohibition on the use of prepayment meters or load capacity control for credit management will be retained.

The new Payment Plan Guidelines will outline the standards for prepayment and supply capacity control, along with routine recording and reporting on the results of their use to the Commission.

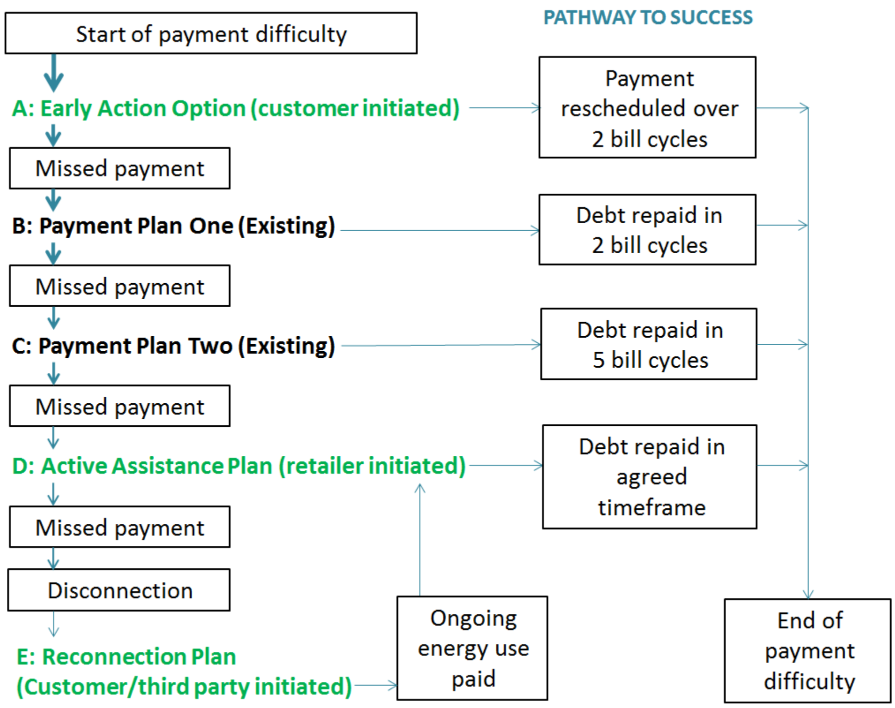
7.4 DELIVERING BETTER OUTCOMES

This section outlines how the new approach delivers on the purpose of the regulatory framework and the changes to the current framework needed that are identified in chapter 6.

7.4.1 CUSTOMER PATHWAY TO SUCCESS

The outcomes delivered by each stage of the new framework are illustrated in figure 7.2.

FIGURE 7.2 CUSTOMER PATHWAY TO SUCCESS



7.4.2 CONTINUUM OF PAYMENT DIFFICULTIES

The framework accounts for the types of payment difficulty any customer may experience. It anticipates that consumer circumstances may change, and that the assistance for a particular customer may also change. It provides standardised assistance to customers in the earlier stages of payment difficulty. It also retains the flexibility for retailers to tailor assistance for those customers experiencing ongoing payment difficulties.

The framework anticipates and expects retailers to innovate in assisting customers most in need. It also promotes partnerships with specialist service providers to address the underlying causes of a customer's payment difficulty.

7.4.3 ALIGNING INCENTIVES

The framework provides incentives for customers to manage their own short term payment difficulties in the first instance. But it also promotes immediate engagement between the retailer and the customer to minimise debt once a customer misses paying a bill.

Customers have strong incentives to continue engaging with their retailer while experiencing payment difficulties. Customers who do not engage as required move through the payment plan stages automatically, which may lead to disconnection as a last resort. Similarly, retailers have strong incentives to help customers in the earliest stages of payment difficulty, when debt levels are likely to be more manageable and have the least impact on the individual, the retailer and consumers more generally.

Retailers can offer incentives such as 'pay on-time discounts', for example, which may be a more efficient and effective way to assist some customers than the more intensive Active Assistance Plan. The fully variable tariff may assist customers experiencing the greatest payment difficulties by increasing the financial benefit from reducing energy consumption. Both the customer and their retailer benefit from working together to reduce energy consumption to a financially sustainable level.

7.4.4 REMOVING BARRIERS

The framework removes a number of current barriers to assistance, particularly the requirements for customers to:

- disclose their payment difficulty, as well as their personal and financial information about the circumstances of the payment difficulty
- meet the retailer's definition of hardship, and for some retailers their assessment of capacity to pay.

Most importantly the framework is available to all customers experiencing payment difficulties, not just customers the retailer categorises as being 'in hardship'.

Clearly defining forms of assistance and setting out when the assistance is available simplifies communication between customers and retailers. Providing this information lessens a barrier to customer engagement and action.

7.4.5 IMPROVING CERTAINTY AND CLARITY

By clarifying obligations on retailers at every stage, the framework increases the likelihood that two customers experiencing the same payment difficulty will receive an equivalent level of support from their retailer. It also helps customers to understand their responsibilities and what happens if they do not make the required payments. Retailers will also know their obligations to provide assistance and when disconnection is allowed. This is because the proposed framework reduces the level of interpretation and judgment needed.

7.4.6 AVOIDING ESCALATION INTO LEGAL PROBLEMS

The framework's focus on early action and maintaining engagement between the customer and the retailer reduces the debt that can be accrued. Further, the framework reduces the risk that energy debt escalates to a level that can lead to legal problems, by containing debt to more manageable levels and assisting customers in greatest payment difficulty within a framework of wider support.

7.5 COSTS AND BENEFITS

The Commission expects the certainty and predictability of the proposed framework to provide long term benefits, but we cannot accurately estimate the costs and benefits at this stage.

The proposed framework largely standardises existing practice to improve transparency, consistency and accountability. It also eliminates costly aspects of the current framework that:

- create conflicting incentives
- lead to inefficient and ineffective systems for assisting customers
- discourage customers from engaging with their retailer.

The following sections outline the Commission's preliminary assessment of the likely costs and benefits of the changes for retailers, customers experiencing payment difficulty, dispute resolution bodies and other participants.

7.5.1 RETAILERS

In the long term, the benefits for retailers are:

- reducing disincentives for customers to engage with their retailer when experiencing payment difficulties
- clarifying the retailers' obligations to assist customers in payment difficulty, which reduces time spent in dispute with customers, financial counsellors, welfare and other agencies, EWOV and the Commission
- eliminating the cost to retailers of complying with the obligations to have hardship policies and to have regard to a customer's capacity to pay in establishing payment plans
- sharing responsibility with the customer to deal with payment difficulties
- reducing the need for interpretation and individual judgment lending itself to greater automation of customer progression
- reducing the cost of dispute resolution and exposure to wrongful disconnection payments

- reducing overall levels of customer debt.

The proposed framework is based on the existing core payment plan obligations and mirrors aspects of current retailer practice, reducing the cost of implementing the changes. However, retailers will incur transition costs in modifying customer service, billing, compliance and reporting systems.

7.5.2 CUSTOMERS EXPERIENCING PAYMENT DIFFICULTIES

The main benefits for customers experiencing payment difficulties are:

- accessing a payment plan, without being assessed, evaluated or labelled
- eliminating the current practice of requiring an independent financial assessment as a condition of retailer assistance
- accessing a system of payment plans that responds flexibly to changing individual circumstances
- having full and proper disclosure of rights and obligations under a payment plan, including the consequences of not meeting the terms and conditions
- having confidence that all retailers will provide a minimum level of support irrespective of which retailer the customer is with
- being offered early options and actions to limit the level of customer debt before being assisted and providing a clear pathway to repay any debt incurred
- receiving additional support to help manage energy use and cost for customers who cannot pay for their ongoing energy use.

7.5.3 DISPUTE RESOLUTION BODIES

The long term benefits for dispute resolution bodies are:

- greater clarity of both customer and retailer obligations and therefore reduced cost and time involved in investigating customer complaints
- improved consistency in retailer practices across the industry, increasing the consistency of outcomes achieved through dispute resolution processes
- eliminating the cost of reviewing assessments of a customer's capacity to pay

- a wider range of negotiation options available for customers seeking reconnection, because Reconnection Plan can include additional options for assistance.

Dispute resolution bodies will need to modify their own policies and procedures and train staff about how the framework operates. Further, in the early stages, it may take time to test the application of the new Payment Plan Guidelines in practice.

Under the new framework, a retailer could still accept payments that are below the customer's cost of ongoing energy use while a dispute is being investigated. However, the new framework eliminates the current option to negotiate a payment plan involving payments below the cost of future energy use.

7.5.4 MARKET OUTCOMES

Benefits to overall market efficiency will arise from:

- simplifying and therefore lowering the compliance cost for retailers with obligations relating to customers facing payment difficulties
- reducing both total energy debt across the industry, and the number of customers encountering legal and other social problems arising from significant levels of long term energy debt.

To the extent that the proposed framework reduces regulatory cost and the retailer's cost of debt, cross-subsidies from customers not experiencing payment difficulties will also be reduced.

7.6 IMPLEMENTING THE FRAMEWORK

This section outlines the potential issues associated with implementing the proposed framework. These issues include developing Service Levels and Payment Plan Guidelines and changing the current approach to monitoring, reporting and enforcement. This section also sets out the next steps to develop the framework.

7.6.1 SERVICE LEVELS AND GUIDELINES

There will be a need to define clear services levels that customers can expect under the new framework. Clear standards for its operation will also be needed to ensure that retailers and other stakeholders have a consistent understanding of the minimum requirements of the framework.

Chapter 5 outlined the Guaranteed Service Level (GSL) scheme adopted in the Victorian water sector since 2011. Under this arrangement, if a water business fails to follow certain minimum standards when seeking to engage with a customer whose bill remains unpaid, then the business provides a monetary payment to the customer. These payments can be credited against the customer's outstanding account. This arrangement has been very successful in encouraging the water businesses to work more effectively with their customers to address payment difficulties. Indeed, very few GSL payments have been made in the four years the scheme has been in place.

A similar scheme could be considered for energy retailers as part of the assistance framework proposed above. For example, a retailer could make a fixed payment to a customer if it fails to meet its obligations at any stage of the proposed framework. The required payment would increase for non-compliance at each successive stage of the system of payment plans.

The Commission will work with all interested parties to develop and consult on new Payment Plan Guidelines, which will determine the required services levels. Compliance with the Guidelines will be a condition of licences to sell energy to residential customers.

7.6.2 MONITORING AND REPORTING

Compliance monitoring and reporting on how the payment plan framework operates will assure customers that retailers are assisting customers facing payment difficulties. It will also assure customers that the assistance is effective in helping customers avoid long term energy debt, while wherever possible remaining connected to their energy supply.

7.6.3 COMPLIANCE MONITORING

The Commission will incorporate new payment plan obligations into the retailer compliance reporting manual. Retailers will be required to report breaches of the payment plan obligations. We will audit compliance through our retailer audit program.

The Commission will publish information on retailer compliance in accordance with its statutory reporting obligations.

7.6.4 PERFORMANCE REPORTING

As suggested in submissions from both retailers and consumer groups, the Commission will revise the current performance indicators to replace existing hardship program indicators with new indicators that focus on outcomes for customers with payment difficulties.

We will collect performance data in four areas:

1. *The level of payment difficulty*

   For example:

   - number of customers at each stage of the payment plan process
   - proportion of customers who did not proceed to the next stage during the reporting period.

2. *The level of debt owed*

   For example:

   - proportion of customers at each stage whose debt has not increased since entry to that stage
   - distribution of customer debt at each stage.

3. *The level of disconnection*

For example:

- total number of disconnections
- number of disconnections disaggregated by cause, including for payment plan failure
- duration of the disconnection.

4. *Reconnection*

For example:

- number of customers making prepayments
- number of customers using supply capacity control to reduce consumption
- average level of reduction in consumption achieved.

The Commission will consult on the detail of the payment plan performance measures to include in retailer performance reports.

7.6.5 ENFORCEMENT

The Commission will use its statutory enforcement powers for noncompliance with payment plan obligations. We will consult and revise our current Compliance Policy Statement[172] to set out the approach to noncompliance with the payment plan obligations. We will also consult with interested parties before finalising a revised Compliance and Enforcement Policy.

Chapter 8 outlines the next steps in the inquiry following the release of this draft report, including the establishment of series of working groups to inform the detailed design of the framework and work through a range of implementation issues.

[172] Essential Services Commission 2012, *Compliance Policy Statement For Victorian Energy Businesses*, 2012.

8 NEXT STEPS

This paper is the second of three papers the Commission will release as part of this inquiry. The first paper, our Approach Paper, was released on 27 March 2015 and outlined the Commission's approach to addressing the terms of reference. This paper, our Draft Report, outlines the Commission's preliminary findings and its proposed new approach. The final report will be released later in the year. It will finalise the Commission's findings and provide an implementation 'road map'.

Given the changes necessary to implement the proposed framework, it is not expected that implementation will occur before 1 January 2017.

This chapter outlines the ways in which interested parties can participate in the next phase of the inquiry.

8.1 CONSULTATION

We will now begin an extensive round of consultation across the state. Consultation will take the form of public forums, working groups and submissions. Details of each of these are provided below.

8.1.1 PUBLIC FORUMS

The Commission will hold a series of six public forums across the State over the next month. A list of where public forums will be held is presented in Table 8.1. All members of the public are welcome to attend these forums. These public forums present an opportunity for the public to express their views on the issues raised in this report, the Commission's findings and the proposed new framework for assisting customers experiencing payment difficulty.

TABLE 8.1 TIMETABLE FOR PUBLIC FORUMS

Location	When	Time
Dandenong Civic Centre 225 Lonsdale Street Dandenong	September 9	6.00 – 8.00 pm
Moonee Valley Clocktower Centre 750 Mount Alexander Road Moonee Ponds	September 10	2.00 – 4.00 pm
Quality Hotel Wangaratta Gateway 29-37 Ryley Street Wangaratta	September 15	2.00 – 4.00 pm
Horsham Sports and Community Club 177-179 Baillie Street Horsham	September 17	2.00 – 4.00 pm
Bendigo Library 259 Hargreaves Street Bendigo	September 18	10.00 am – 12.00 pm
Traralgon Business Centre 55 Grey Street Traralgon	September 22	2.00 – 4.00 pm

8.1.2 WORKING GROUPS

We will also establish technical working groups, drawn from the sector, to help the Commission refine the architecture and develop the detail of the framework, and to plan its implementation.

In particular, we will establish working groups focused on:

- the content of the Payment Plan Guidelines, including the standards of assistance to be provided in Active Assistance and Reconnection Plans
- consequential changes to the Energy Retail Code and the Operating Procedure—Compensation for Wrongful Disconnection
- how to manage transitional issues, including legacy debt under the current scheme

- how the energy management assistance provided by retailers will be integrated with other Government energy management programs such as VEET and the Residential Efficiency Scorecard.[173]

8.1.3 SUBMISSIONS

We welcome submissions on any topic relevant to this inquiry. In particular, we are seeking submissions to help us answer the questions listed in box 8.1.

BOX 8.1 QUESTIONS FOR RESPONSE

Objectives

The proposed regulatory framework is premised on the objectives of avoiding debt, repaying debt, adopting leading practice in energy management and aligning energy consumption with affordability.

1. Are these objectives appropriate? Should any other objectives be considered?

Incentives

The current regulatory framework provides the wrong incentives and opportunities. Outcomes for customers and retailers are uncertain.

2. Does the proposed framework adequately address incentives and opportunities to avoid and reduce customer debt and limit disconnections? What other measures could be considered to provide the right incentives and opportunities?

Costs and Benefits

When compared to the current regulatory framework, the proposed regulatory

[173] Department of Economic Development, Jobs, Transport & Resources 2015, *Saving energy, Growing Jobs - Victoria's energy efficiency and productivity statement,* June, Victoria, p. 3.

framework will involve costs and benefits in both the short and long run. Understanding these costs and benefits will be important to implementation.

3. Are there particular costs and benefits of the proposed framework that the Commission should be aware of?

Staging of assistance

The proposed framework is based on shared responsibility between retailer and customer to address payment difficulties at each stage.

4. Are the retailer obligations and customer responsibilities clear at each stage? If not, what further clarification is required?

Disadvantaged customers

One aim of the proposed framework is to ensure that no customer with payment difficulties is disconnected if they engage with their retailer and cooperate with the active assistance provided by the retailer.

5. Are there any other groups of disadvantaged people in the community whose situation is not dealt with adequately by the proposed framework?

Implementation

Implementation of change to the regulatory framework will require actions to be taken by all participants.

6. What steps are required to ensure that implementation goes smoothly?

Transition

Before the implementation of any new framework there will be a transition period from the current arrangements to the date of introduction of the new framework.

7. What factors should the Commission consider during the transition from the current regulatory framework to the proposed framework?

Readers are invited to examine this report and provide comment, preferably in electronic format, by **2 October 2015**.

Submissions can be emailed to **energyhardshipreview@esc.vic.gov.au**.

You can also send comments by email, marked Submission to Energy Hardship Review, to:

Essential Services Commission

Level 37, 2 Lonsdale Street

Melbourne Victoria 3000.

The Commission can also be contacted on 03 9032 1300.

The Commission's normal practice is to make all submissions publicly available on its website. Please identify clearly any confidential or commercially sensitive information that you do not wish to be disclosed publicly.

8.2 KEEPING YOU INFORMED

We will continue to publish a monthly newsletter providing updates on how we are progressing with the inquiry and the consultation process.

If you would like to be kept informed please register your interest with us by contacting us on 03 9032 1300 or **energyhardshipreview@esc.vic.gov.au** or visit our website: www.esc.vic.gov.au/Energy/Energy-Hardship-Review.

APPENDIX A - TERMS OF REFERENCE

Minister for Finance
Minister for Multicultural Affairs

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Dr Ron Ben-David
Chairperson
Essential Services Commission
Level 37, 2 Lonsdale Street
MELBOURNE VIC 3000

4 FEB 2015

Dear Dr Ben-David

ESC INQUIRY INTO THE FINANICAL HARDSHIP PROGRAMS OF RETAILERS

In accordance with my powers under section 41 of the *Essential Services Commission Act 2001*, I refer to the Essential Services Commission (ESC) the attached Terms of Reference for an inquiry and report on the financial hardship programs of energy retailers; subject to DEDJTR funding any external costs incurred by the ESC.

In addition, I request that you cease work on the ESC inquiry into energy customer disconnections, referred to you by the previous Minister for Finance in October 2014.

If you have any queries on this matter please contact Narelle Hardiman, Assistant Director, Economic Policy Group in the Department of Treasury and Finance on 9651 2463.

Yours faithfully

ROBIN SCOTT MP
Minister for Finance
Minister for Multicultural Affairs

State Government Victoria

Terms of Reference – Inquiry into best-practice financial hardship programs of retailers

Pursuant to section 41 of the *Essential Services Commission Act 2001* (the ESC Act), as Minister responsible for administering the ESC Act, I refer to the Essential Services Commission (the Commission) for inquiry of the financial hardship programs of retailers.

The Victorian Government regulates the supply and sale of electricity and gas (energy) services to end-use customers through the *Electricity Industry Act 2000, Gas Industry Act 2001* and the ESC Act (the Acts).

These Acts set out a number of regulatory requirements aimed at ensuring that wherever possible, energy customers remain connected to supply, and that disconnection of customers is only used as a measure of last-resort by energy retailers.

The Acts also require retailers to develop hardship policies designed to assist customers in financial hardship avoid disconnection. These policies must be submitted to the Commission for approval.

To provide confidence that energy retailers are adopting best practice, the Commission is requested to review retailers' policies, practices and procedures in supporting customers experiencing financial hardship avoid disconnection. In so doing, the Commission should also assess whether the regulatory framework governing retailers' obligations in this regard, represents regulatory best practice.

Scope of the inquiry

The matters to be covered by the inquiry are:

- Investigate the different methods used by energy retailers to assist customers encountering difficulty paying their energy bills because of financial hardship. The review should include, but not be limited to, an assessment of retailers' financial hardship policies, practices and procedures and assess whether these reflect 'best practice'. This should also include a review of relevant policies and practices in other jurisdictions and industries, nationally and internationally (and particularly as they relate to the supply of an essential service).
- Review the design and efficacy of regulatory obligations regarding the assistance provided to customers experiencing financial hardship to ensure that customers receive targeted and effective assistance to avoid disconnection. This should include:
  - the Commission's ability to monitor and enforce compliance with these obligations; and
  - retailers' incentives to innovate in their pursuit and delivery of best practice arrangements in assisting their customers experiencing financial hardship.
- Consider whether the transparency of energy retailers' hardship policies, practices and procedures (and any other relevant information) can be improved and how these services can be accessed more readily by customers experiencing financial difficulty.

- Identify cost–effective options for improving how energy retailers assist customers experiencing financial hardship manage their energy costs — including their use of energy.
- Develop a benchmarking framework for the Commission to assess, and publicly report on, the effectiveness of energy retailers' policies, practices and procedures for supporting customers in financial hardship avoid disconnection.
- Any other matter the Commission considers relevant to supporting customers in financial hardship avoid disconnection.

For the purposes of this review, references to 'customers in financial hardship' (or similar) include:

- residential customers with an inability to pay their energy bills in a timely manner; and
- residential customers at risk of being unable to pay their energy bills in a timely manner.

Inquiry process

It is requested that the ESC consult widely when conducting this review. Consultation is to include: energy retailers, energy consumers and advocates, financial counsellors, the Energy and Water Ombudsman of Victoria, relevant Victorian government departments and agencies, the Australian Energy Regulator and any other party which the Commission considers necessary in order to progress the inquiry.

The Commission should provide the Minister for Finance and the Minister for Energy and Resources with its preliminary advice within six months of the issuance of these Terms of Reference.

APPENDIX B - REFERENCE LIST

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