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Retail Practice for Vulnerable and Hardship Customers

Jo De Silva & Bronwyn Colby

SACOSS Events

- Hardship and Affordability Conference 2013: Perspectives on Energy and Water
- Hardship and Affordability Conference 2014: Stakeholder Conversations
- Hardship and Affordability Conference 2015: Energy, Water and Telecommunications
- Bimonthly meetings with Essential Services Group

SACOSS HARDSHIP & AFFORDABILITY CONFERENCE 2015

ENERGY, WATER & TELECOMMUNICATIONS

Better Practice Guideline for Energy Retailers

- A collaborative approach to preventing hardship among energy consumers
- Published November 2014
- Principles endorsed by the Energy Retailers Association of Australia

SACOSS
RETAIL PRACTICE FOR VULNERABLE AND HARDSHIP CUSTOMERS

Better Practice Guideline for Energy Retailers

A collaborative approach to preventing hardship amongst energy consumers

November 2014

Early Intervention

- Acknowledges the chronic financial stress experienced by many Australian households
- Opportunity to actively assist vulnerable customers and minimise the number of defaults
- A critical tool in the prevention of early debt accumulation and reducing disconnections

Customer Focussed Capacity to Pay

- Hinges upon respectful and meaningful conversations between retailers and their customers
- Results in fair, reasonable, sustainable and flexible arrangements for consumers

Collaborative Partnerships

- Energy affordability is a shared responsibility for all stakeholders
- Context for information exchange and innovation on resolving customer hardship issues

Measuring Outcomes

- Opportunity to understand what works well and what can be improved

Hardship Policies

- An essential tool for supporting vulnerable energy consumers
- Endorsed by National Energy Retail Law

Better Solutions for Helping Customers With Financial Difficulties

- A cross sector approach to supporting vulnerable customers
- Published January 2016
- Features Yarra Valley Water, Credit Corp Group Limited, Australian Bankers' Association

Yarra Valley Water

Our Customer Support Team Values

Yarra Valley Water

Building Trusted Relationships Across the Sector

UnitingCare Kildonan
Making a positive difference

FCRC
Financial & Consumer Rights Council Inc.

financial counselling australia

consumer action law centre

CUAC
Consumer Utilities Advocacy Centre

Yarra Valley Water

Training Staff Across the Business

Yarra Valley Water

Our Programs

Individual
Case
Management

Yarra
Valley
Water

Delivering Great Outcomes

Yarra Valley Water

Prevention is the Cure

Yarra Valley Water

Staying in the Mainstream

OF CUSTOMERS WHO
TRANSITION
OUT OF HARDSHIP

STAY ON TRACK

&

DO NOT

BOUNCE BACK

Yarra Valley Water

Achieving best practice:

- Strategic partnerships
- Developing a dedicated team
- Customer support team values
- Delivering great outcomes


Credit Corp Group Limited

Improvement Plan had 4 phases:

- Listening, observation and assessment
- Embedding an improved collection culture
- Comprehensive training and external engagement
- Redefining performance and ongoing training

Benefits to CCG

- From a business perspective CCG has also gained benefit, including:
- Over 50% increase in revenue from flexible payment arrangements that comprise over 70% of CCG's monthly collection receipts (an industry leading statistic)
- Over 25% increase in staff productivity
- Maintaining the 'integrity of the corporate objective of minimising financial losses'

- Achieving 'on-target customer satisfaction feedback'
- 27% increase in recurring payment arrangements (activated to reduce defaults)
- 'Substantial improvements in customer dealings and better relationships with the community sector and regulators'

The common element of their success

...they have designed programs that align with Better Practice Principles, including:

Early Intervention

- a critical tool in the prevention of debt accumulation and reduction of disconnections/ restrictions

Customers Focussed Conversations

- respectful and meaningful conversations between retailers and their customers that result in fair and reasonable arrangements for customers

Collaborative Partnerships

- partnerships between retailers and community organisations which provide the ideal context for information exchange and innovation on resolving customer financial stress issues

Measurable Outcomes

- provides retailers with the opportunity to understand what works well and what can be improved

Financial Stress Philosophies and Policies

- essential tools for supporting vulnerable utilities customers experiencing financial stress

Success

- What are some highlights of your current program?

Barriers

- What might be some of the barriers your business will face in trying to adopt better practice?

Better Practice Measures

Accessible customer/retailer communication

- Identification of customer telephonic device & call back service for mobiles
- Maximum on-hold time of 2 minutes
- SMS contact to customers
- Customer 1800 number

Early Intervention

- Databases developed to identify and monitor credit problems
- Identifying customers requiring additional assistance early in the collection process
- Vulnerable customers and hardship sensitivity training for staff
- Assess all customers requiring additional assistance on a case by case basis and based on a two way conversation

Consumption management

- In-home energy audits
- Education on reducing consumption
- Retrofit programs
- Energy efficiency phone advice
- Appliance replacement schemes

Collaborative partnerships

- Retailers partner with other utility businesses and community organisations to create cross referral and triage services
- Online portal for community workers to access information (hardship programs, industry updates and connection to other workers and retailer staff)

- Collaboration between retailers, community organisations and governments to improve harmonisation of jurisdictional concession schemes
- Regular reviews and updates of retailer training package by external partners

Measurable outcomes

- Businesses develop KPI's to measure effectiveness of vulnerable customers and hardship policies, procedures and practices
- Businesses implement a review mechanism to monitor progress of respectful practices

Hardship Program measures

- End-to-end case management with a nominated case manager for as long as the customer needs it
- Customer incentives to successfully graduate from hardship programs

Hardship Policy measures

- Payment matching and subsidised plans
- Whole-of-business training approach for all customer-facing staff (including external contractors) on Hardship Policy
- Underpin policy with a philosophy of respectful practice inc. willingness to learn and ability to listen

Improved access to hardship teams

- Direct phone number for FinCo's/ consumer advocates
- Email service between customers, retailers and FinCo's

Customer focused capacity to pay

- Call centre staff KPI's based on long term success and viability of payment plans

Other

- Publishing/gazettal of standing offers all on the same day (SVDP)
- Concessions eligibility established at point of sale
- Concessions eligibility regularly monitored (every quarter)

Concluding comments

- Culture of organisation
- Continuum of vulnerability
- Hardship versus vulnerability
- Genuine payment gap for some consumers – what is their thinking around that?
- Victoria

Better Solutions for Helping Customers with Financial Difficulties: Energy and Water

A cross-sector approach to supporting vulnerable consumers

January 2016

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South Australian Council of Social Service

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A cross-sector approach to supporting vulnerable consumers
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Background

The South Australian Council of Social Service (SACOSS) is the peak non-government representative body for health and community services in South Australia, and has a vision of Justice, Opportunity and Shared Wealth for all South Australians.

SACOSS has a long-standing interest in the delivery of essential services. Our research shows that the cost of basic necessities like electricity, gas and water impacts greatly and disproportionately on vulnerable and disadvantaged people.

Energy and water affordability remains a persistent problem for many Australian households. Recent data from the Australian Energy Regulator for NECF participatory jurisdictions[1] illustrates approximately 228,000 customers had incurred an energy debt with an average electricity debt of $709 and $453 for gas. Over 158,000 customers were paying for their energy consumption via a payment plan and approximately 45,000 customers were signed onto a hardship plan with their energy retailer[2]. These figures highlight the financial hardship and potential financial stress[3] many residential consumers are living with.

Creating better outcomes for energy and water consumers experiencing financial stress is an important element of SACOSS' advocacy work. In 2014, SACOSS (in partnership with energy retailers and community sector organisations) developed a Better Practice Guideline for Energy Retailers, a collaborative approach to preventing hardship amongst energy consumers. This Guideline seeks to assist energy retailers in developing and implementing hardship policies and business practices that work towards minimising consumer financial stress. The Guideline contains five better practice principles highlighting the priority issues experienced by vulnerable consumers and also provides retailers with mechanisms to implement and maintain the better practice principles and measures.

Collaborative dialogue on delivering better practice to vulnerable consumers continued at the SACOSS Hardship and Affordability Conference 2015: Energy, Water and Telecommunications. The 'What makes transformational change possible in a business environment?' session showcased three businesses which have successfully transformed their approach to customer hardship. These businesses are presented as case studies within this report.

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[1] National Energy Customer Framework currently applies in the ACT, Tasmania, SA, NSW and QLD. The data does not include QLD who commenced NECF in July 2015. http://www.aemc.gov.au/Energy-Rules/Retail-energy-rules/Guide-to-application-of-the-NECF

[2] Data collected from the AER's Retail Statistics reporting, 2014-15 Q3, as at 31st March 2015, http://www.aer.gov.au/retail-markets/retail-statistics.

[3] Financial stress as defined by Brackertz (2012, p. 5) refers to people who are '*unable to afford essential items such as food and heating or may not be able to pay their bills. It is also a source of stress and anxiety which negatively affects people's health and ability to cope'*, www.salvationarmy.org.au/Global/News%20and%20Media/Reports/2012/00099-I-wish-I-had-known-sooner-Oct-2012.pdf.

Introduction

With customer financial stress firmly on the advocacy agenda, SACOSS is embarking on a project to partner with energy retailers. This project will focus on collaborating with retail businesses to identify enhancements to current business activities in line with the SACOSS Better Practice Guideline and to address barriers to retail businesses adopting elements of the SACOSS Guideline.

This report has been developed to inform energy and water retailers of the pathways other businesses have taken to improve the outcomes for vulnerable consumers. Containing three case studies from Australian water and finance industries, the report examines the process each business has undertaken to transform their financial stress frameworks, policies and programs.

The case studies presented within illustrate better practice in customer financial stress management for the following businesses:

- Yarra Valley Water - an award winning best practice Victorian water supply and sanitation business. Yarra Valley Water has successfully implemented a customer financial stress framework across the entire customer service operation, including external contractors;
- Credit Corp Group - a national debt management company. Credit Corp Group has collaborated with community service organisations to develop and implement responsible customer financial stress practices[4] and,
- Australian Bankers' Association - a policy, advice and advocacy service for the banking industry. The Australian Bankers' Association is responsible for pioneering an industry-wide approach to customer financial stress.

This report is intended to be read with the SACOSS Better Practice Guideline for Energy Retailers, a collaborative approach to preventing hardship amongst energy consumers[5].

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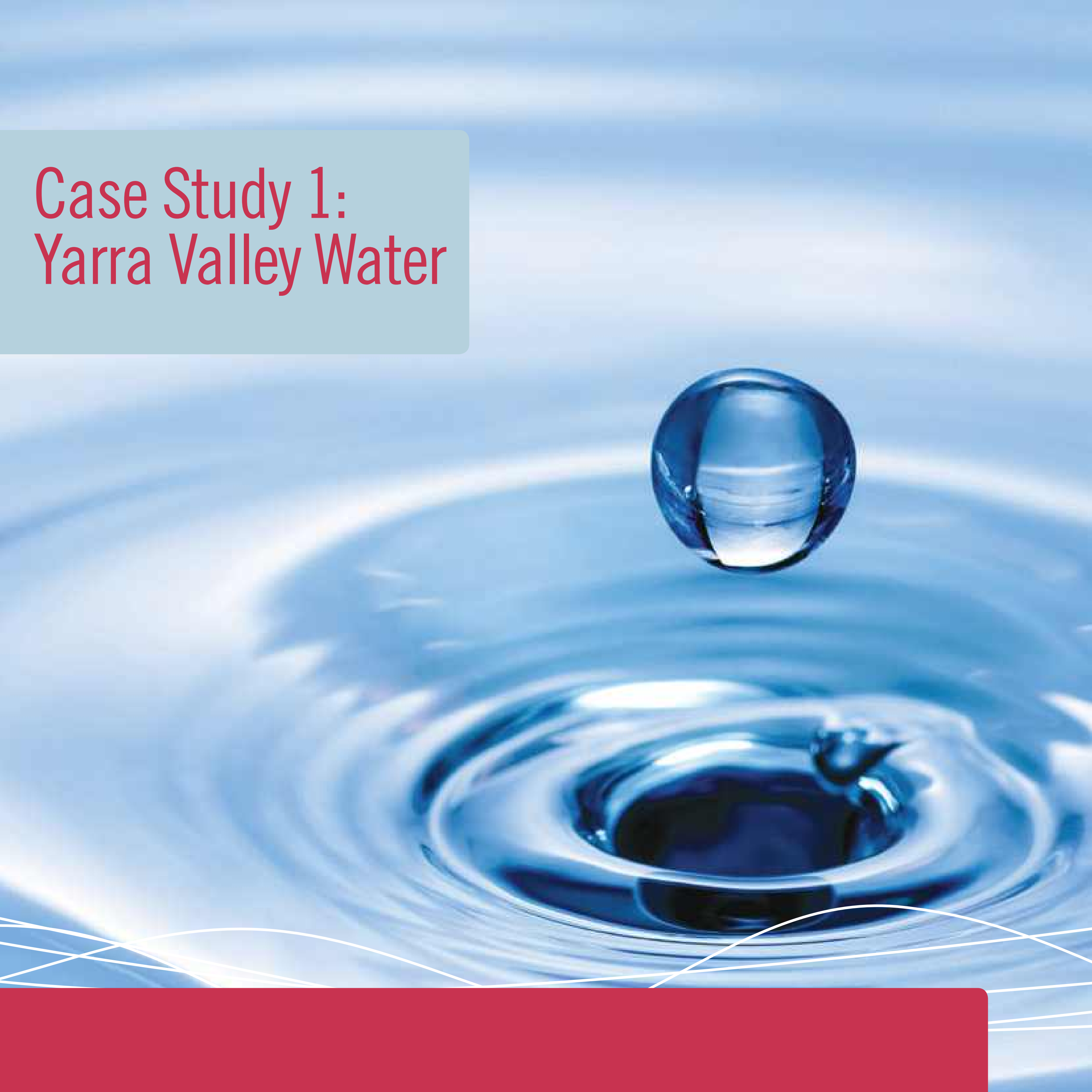
[4] Footscray Community Legal Centre and Federation of Community Legal Centres 2012, *Council debt collection: alternatives to suing ratepayers in hardship*, http://www.footscrayclc.org.au/images/stories/Council_debt_collection_Alternatives_to_suing_ratepayers_report_2012.pdf, p. 8.

[5] SACOSS 2014, Better Practice Guideline, https://www.sacoss.org.au/sites/default/files/public/documents/Reports%20copy%201/Better_Practice_Guidelines_FINAL-min2.pdf

Case Study 1: Yarra Valley Water



Overview of the Business[6]

Yarra Valley Water (YVW) is the largest water and sanitation provider in Melbourne, servicing over 1.7million people and 50,000 businesses in the northern and eastern suburbs. The business employs approximately 543 full-time employees, is overseen by an independent Board appointed by the Victorian State Government and is regulated by the Essential Services Commission (of Victoria).

One of the biggest challenges facing all utility stakeholders is the affordability of essential services such as electricity, gas and water. YWV recognises this is a growing challenge for many people with a recent survey indicating 42% of Melburnians are particularly vulnerable to financial hardship'[7].

YVW's business model for supporting customers in financial difficulty is widely recognised as best practice and their commitment to genuinely assist vulnerable customers has evolved over many years culminating in an effective Hardship Policy Framework.

YVW's success in developing a 'customer-focussed hardship policy' was formally acknowledged at the national level in 2005. In partnership with Kildonan Child and Family Services, YVW was awarded the Prime Ministers' Award for Excellence in Community Business Partnerships'[8].

Validation from the community services sector is also evidenced in research findings that conclude, 'Yarra Valley Water has the most comprehensive hardship assistance scheme in place'[9] and are considered to be an 'industry leader' for best practice in the management of utility debts for women who are experiencing domestic violence[10].

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[6] YVW, Our Organisation, http://www.yvw.com.au/Home/Aboutus/Ourorganisation/index.htm.

[7] GA Research 2013, *Supporting Vulnerable Customers* Report, http://clearwater.asn.au//user-data/research-projects/swf-files/10tr13---001-supporting-vulnerable-customers_final_report.pdf, p. 6.

[8] Australian Government 2005, Former Ministers, Victorian community business partnership awarded, Media Release, http://www.formerministers.dss.gov.au/6772/victorian_community_22aug05/.

[9] Consumer Law Centre Victoria 2006, *The implementation of residential hardship policies by Victorian water businesses*, http://consumeraction.org.au/wp-content/uploads/2012/05/DL51.pdf, p. 35.

[10] Consumer Utilities Advocacy Centre 2014, *Helping not hindering: Uncovering domestic violence and Utility debt*, http://www.cuac.org.au/research/cuac-research/345-helping-not-hindering-uncovering-domestic-violence-utility-debt/file, p. 37.

Framework

Underpinning YVW's hardship policy and support programs is a philosophy that places the customer at the centre of the process. This is evident from the business recognising[11]:

a) Residential customers can experience either short-term or long-term financial difficulty and the policy 'ensures that all these customers are treated with dignity and respect', including referring to customers in financial difficulty as Customer Support Customers;

b) Effective hardship policies and associated programs need to be 'based on a focus of shared responsibility and delivered in a model that supports self-determination' and,

c) Vulnerability is a 'continuum with different requirements and [requires] various treatment streams'.

Policy

YVW's Hardship Policy is available for any Customer Support Customer (CSC) 'who is identified either by themselves, YVW, or an independent accredited financial counsellor as having the *intention, but not the financial capacity* to make the required payments within the timeframes set out in [YVW's] payment terms' (full assessment criteria is available from the YVW website)[12].

The YVW Hardship Policy has five Key Principles as outlined below[13].

1. Information provision that is transparent and accessible including:

- The Hardship Policy is available on request and via YVW's website including in other languages; and,
- Information on how to discuss payment arrangements is included on all bills and follow-up notices.

2. Operational protocols that are respectful and engaging including:

- YVW recognises conversations with CSC's may be difficult and challenging for the customer and this requires sensitivity and compassion from YWV staff;
- Proactive and empathetic communication and listening without judgement to achieve outcomes that meet customer and business needs;
- Identifying customers who may require additional assistance early in the collection process;
- Free call 1800 number for customers;
- Contact details of the Customer Support Team (CST) provided to key stakeholders; and,
- Escalation processes in place to deal with complaints regarding the Hardship Policy.

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[11] YVW, Hardship Policy, http://www.yvw.com.au/Home/Website/hardship-policy/index.htm.

[12] Ibid.

[13] Ibid.

3. Extensive and ongoing staff training including:

- All customer contact staff are trained in the Hardship Policy and programs during induction and at regular refresher sessions; and,
- Regular reviews and updates of the training package by YVW's financial counselling partner.

4. Water efficiency focus including:

- Assisting customers in financial difficulty to manage their water consumption and their account;
- In assessing a customer's situation the CST review the need for water efficiency advice and eligibility for YVW water conservation and retrofit programs; and,
- If additional plumbing work outside of the above assistance is required for a CSC, YVW engages with the customer, to look at options 'to address the customer's situation'.

5. Continual improvement including:

- Annual review of the Hardship Policy and programs in consultation with key partners;
- Participation in forums with key external stakeholders to improve the businesses 'understanding of the complex issues confronting customers'; and,
- Review of customer and key stakeholder feedback to improve YVW services.

The entire Hardship Policy is available from the YVW website[14] and the WaterCare Hub website in 20 languages.

[14] YVW, Hardship Policy, http://www.yvw.com.au/Home/Website/hardship-policy/index.htm.

Programs

YVW has a suite of customer support options under its WaterCare Program. There is no formal assessment criteria used to determine a customer's eligibility as all customers are assessed on a case by case basis and are based on a two-way conversation. Some of the indicators that may highlight a customer's need for additional assistance include the following[15]:

- 'Eligibility for Government funded concessions (e.g. Health Care Card, Centrelink benefit)';
- A history of frequent requests for payment extensions or payment arrangements that have not been met;
- Unable to afford the costs of current usage and debt, even if smoothed over a 12 month period;
- Previous application 'for a Utility Relief Grant (irrespective of whether or not the application was successful)';
- 'A payment history that indicates difficulty paying their account in the past';
- 'Sudden change of circumstances that adversely affects … financial capacity to pay';
- Via 'referral from a financial counselling agency or community organisation';
- Self-identification of financial difficulty;
- A low level of income, that is unlikely to change; and,
- Unemployment.

YVW considers 'the above points are possible indicators of a customer requiring additional support, however [YVW assesses] each case in accordance with the customer's individual circumstances'[16] .

YVW's WaterCare Programs are available to all residential customers depending on their needs at the time and include:

SmoothPay – a flexible payment arrangement aimed at reducing the impact of quarterly bills on household budgets. This option allows customers to 'average out the annual cost of their water bills and schedule payments over 12 months on a fortnightly or monthly basis'[17].

Payment assistance – YVW works with customers to implement tailored solutions that help customers 'take back control' of their bills. Solutions may include affordable payments based on individual circumstances (Arrange and Save), access to government assistance and/or concessions, home visits and financial counselling[18].

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[15] YVW, Hardship Policy, http://www.yvw.com.au/Home/Website/hardship-policy/index.htm.

[16] Ibid.

[17] YVW, SmoothPay Terms and Conditions, http://www.yvw.com.au/Home/Website/Termsconditions/SmoothPaytermsandconditions/index.htm.

[18] YVW, Need support paying your account?, http://www.yvw.com.au/Home/Youraccount/Paying/Havingtroublepayingyouraccount/Paymentassistance/index.htm.

Deferred debt – A portion of the debt is removed from the current balance and payment is deferred until a later date. This provides customers with the opportunity to pay current charges and pay off the older debt when circumstances change[19]. This arrangement is based on capacity to pay and is available to home owners who are unable to cover the cost of usage and outstanding debt. Terms, conditions and eligibility criteria are applicable[20].

Payment extensions – Customers experiencing short-term payment difficulties can extend their payment due date by up to 30 days (from the current due date) via YVW's online portal[21].

Concessions and pensions – YVW assists eligible customers to receive state government concessions or entitlements and applies the concession directly to the bill[22]. This assistance also includes validating eligibility with Centrelink every quarter[23].

Achieving Best Practice

It is clear that YVW has invested heavily in their commitment to assist vulnerable customers. Managing Director, Pat McCafferty during a presentation at the 2015 SACOSS Hardship and Affordability Conference outlined the key elements of YVW's journey to best practice. These include the importance of strategic partnerships, developing a dedicated team, identifying and implementing customer support team values and delivering great customer outcomes[24].

Strategic Partnerships

YVW believes building trusted relationships across the sector is vital. The business has a long history in collaborating with community service organisations to gain valuable 'insights on how to best support customers experiencing financial hardship[25]'. Industry partners include Kildonan UnitingCare; Financial and Consumer Rights Council Inc; Consumer Utilities Advocacy Centre; Victorian Council of Social Service; Financial Counselling Australia and, Consumer Action Law Centre[26].

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[19] YVW, Deferred debt for home owners, http://www.yvw.com.au/Home/Youraccount/Paying/Havingtroublepayingyouraccount/deferred-debt/index.htm.

[20] Email communication C Sterling, YVW 25 November 2015.

[21] Ibid.

[22] YVW, Concessions and payments, http://www.yvw.com.au/Home/Youraccount/Accountconcessions/index.htm.

[23] YVW, Concessions and payments, https://www.yvw.com.au/Home/Youraccount/Accountconcessions/Applyforconcession/index.htm

[24] McCafferty, P 2015, YVW, *Our customer support journey*, SACOSS Hardship and Affordability Conference, https://www.sacoss.org.au/sites/default/files/public/documents/Pat%20McCafferty%20SACOSS%20H%26A2015%20%28Delivering%20Best%20Practice%29%20COMPRESSED.pdf.

[25] YVW 2013, *Draft Essential Services Commission Price Decision Response*, http://www.esc.vic.gov.au/getattachment/85596175-2648-4ba0-af2a-62bc89f3ae18/Yarra-Valley-Water.pdf, p. 22.

[26] McCafferty, P 2015, YVW, *Our customer support journey*, SACOSS Hardship and Affordability Conference, https://www.sacoss.org.au/sites/default/files/public/documents/Pat%20McCafferty%20SACOSS%20H%26A2015%20%28Delivering%20Best%20Practice%29%20COMPRESSED.pdf.

These partnerships have assisted YVW to develop and implement financial stress policy measures that are effective and respectful. Practical examples of this include collaborating with the financial counselling partner to ensure YVW staff training is 'current, relevant and appropriate' and the development of 'appropriate, customer focused but commercial and innovative ways to assist CSC's to reduce debt levels and effectively transition them back to mainstream billing and payment processes'[27].

YVW's commitment to customer solutions has also included participation in Kildonan UnitingCare's 'CareRing' Pilot Program. This program was subsequently rolled out to other utility businesses in 2014 and tackles 'financial hardship by working directly with businesses to identify vulnerable customers at the earliest stages of financial stress. The project, described as an Australian-first, aims to triage financial issues and facilitate debt relief and payment plans, while also screening for co-occurring issues that could be contributing to or compounding problems'[28].

The fostering of inter-agency assistance is mutual with the development of the YVW Water Care Hub. The Hub is designed as an online information resource centre for community organisations, providing access to credible and timely information including WaterCare Programs, customer support services; forms and brochures in multiple languages, water industry updates and connection to other Hub members and experienced YVW staff[29].

Collaboration with industry has also seen YVW take the lead and partner with other utility businesses to develop and implement a Cross Utility Hardship Referral Program Pilot. These programs assist in ensuring 'early identification of customers in hardship and provides simple and effective referral pathways into other utilities'[30].

Engaging in community consultation via YVW's Community Advisory Group (CAG) is an important mechanism for the business to make informed decisions. The CAG has been active since 1995 and provides input on a range of customer issues including identifying 'a number of challenges for the business on key customer issues'. The Committee is represented by a diverse group of consumers, community service workers and industry groups[31].

Developing a Dedicated Team

Central to YVW's customer outcomes is a team of people dedicated to delivering the best possible service to vulnerable customers. YVW is achieving this via various means including ensuring a whole-of-business training approach for all customer-facing staff (including external contractors) on WaterCare Programs and their Hardship Policy.

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[27] YVW, Hardship Policy, http://www.yvw.com.au/Home/Website/hardship-policy/index.htm

[28] Kildonan UnitingCare 2014, Business N-F-P partnership to tackle financial hardship, https://www.kildonan.org.au/media-and-publications/news/business-nfp-partnership-to-tackle-financial-hardship/.

[29] YVW, About WaterCare, http://www.watercare.com.au/about-watercare.

[30] YVW, *Annual Report 2011/12*, http://www.yvw.com.au/yvw/groups/public/documents/document/yvw1003361.pdf, p. 3.

[31] YVW, Community consultation, http://www.yvw.com.au/Home/Inyourcommunity/Communityconsultation/Page1/index.htm.

Staff training includes understanding triggers of financial difficulty, how to talk to customers experiencing financial difficulty – focusing on language and tone, literacy and access issues, government assistance and, legal requirements and responsibilities. Training programs and procedure manuals are provided to external partners including debt collectors and plumbing contractors to ensure the level of customer service is in accordance with YVW's requirements[32].

YVW 2015, Our Customer Support Team Values Word Cloud[34].

Customer Support Team Values

These words describe the values incorporated in YVW's Customer Service Team ethos and are demonstrated by ensuring CSC's:

- 'Are treated with dignity and respect and complete confidentiality;
- Have a dedicated case manager in the [CST] who will work with customers for as long as support is required and,
- Are shielded from further debt recovery action in relation to water and sewerage bills'[33].

Delivering Great Outcomes

YVW customers have also validated the businesses approach to customer hardship by '80% of customers transitioning out of hardship, stay on track and do not bounce back'[35] and 82% of hardship customers rating their relationship and YVW's service as 'better or much better than other utilities'[36].

[32] YVW, Hardship Policy, http://www.yvw.com.au/Home/Website/hardship-policy/index.htm.

[33] YVW, Need support paying your account? https://www.yvw.com.au/Home/Youraccount/Paying/Havingtroublepayingyouraccount/Paymentassistance/index.htm.

[34] McCafferty, P 2015, YVW, *Our customer support journey*, SACOSS Hardship and Affordability Conference, https://www.sacoss.org.au/sites/default/files/public/documents/Pat%20McCafferty%20SACOSS%20H%26A2015%20%28Delivering%20Best%20Practice%29%20COMPRESSED.pdf.

[35] Ibid.

[36] YVW, *Annual Report 2013/14*, http://www.yvw.com.au/yvw/groups/public/documents/document/yvw1004855.pdf, p. 5.

Case Study 2: Credit Corp Group Limited

Overview of the Business

Credit Corp Group Limited (CCG) 'is Australia's largest receivables management company, specialising in debt purchase and debt collection services'[37]. CCG focuses on consumer and small business debts from Australian and New Zealand banks, finance companies and telecommunication and utility companies'[38]. With over 900 staff located in Australia and off-shore, CCG offers a range of debt recovery services including debt sale, agency services (collections), hardship management and insolvency management[39].

The nature of CCG's business means it is often at the coal face of customer financial stress. In 2014 CCG had 744,000 customers in various forms of financial stress. 120,000 of these customers were making regular weekly or fortnightly payments and on average projected to take more than three years to repay the debt. Over two-thirds of CCG's collections are received via these long-term arrangements[40].

Managing Customer Financial Stress

In 2009, following a five year period of significant business growth CCG recognised the need to transform their response to customers experiencing financial stress. CCG acknowledged a discord within the company's collection culture, a lack of engagement with financial counsellors and consumer advocates, inconsistent consumer outcomes and increased scrutiny from peak regulators (due to business growth) as issues that required attention[41].

CCG's response to the above began with an honest external review of the businesses customer hardship and collections philosophy and processes. Kildonan UnitingCare, an innovative and trusted community service organisation, was engaged to conduct the review and a plan of improvement was developed in partnership with the business[42]. The plan included a 'diagnostic phase, engagement and early assistance and staff training, aimed at ensuing customers were treated fairly while maintaining and improving the company's financial performance[43].

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[37] Credit Corp Group 2011, About us, http://www.creditcorp.com.au/corporate/about-us/

[38] Credit Corp Group 2014, *Working With You Annual Report*, http://www.creditcorp.com.au/CCG%20content%20files/Annual%20 Reports/Credit%20Corp%20Annual%20Report%202014.pdf, p. 4.

[39] Credit Corp Group 2011, Debt Recovery Services, http://www.creditcorp.com.au/corporate/services/.

[40] Credit Corp Group 2015, *Grow with Community Annual Report,* http://www.creditcorp.com.au/CCG%20content%20files/ASX%20 Announcements/CreditCorpAnnual%20Report2015.pdf, p. 10.

[41] Angell, M 2013, CCG, 'Respectful practice in Australia's largest debt collection company' presentation, Credit and Collections in Energy and Water Conference, 28-29 May.

[42] Ibid.

[43] Kildonan UnitingCare 2013, *Annual Report 2012-2013*, https://www.kildonan.org.au/media-and-publications/strategic-plans-and-annual-reports/, p.12.

[44] Borrell, J 2012, *Keeping ahead of the game: responding to changing environments*, Kildonan UnitingCare, https://www.kildonan.org.au/media-and-publications/research/hardship-forum-paper/, p. 13.

Transforming the Way CCG Manages Customer Financial Stress

Initially the collaborative partnership between CCG and Kildonan UnitingCare presented some challenges, in particular the divergence between business objectives and improved outcomes for vulnerable consumers. Sue Fraser, Senior Manager Enterprise Partnerships, from Kildonan publically commented 'It took us six months to decide to work with each other. It was like a dance. Trust and confidentiality was important'[44]. CCG and Kildonan UnitingCare worked through the challenges by recognising that agreement wouldn't always occur and ultimately decided to 'focus on the consumer in realistic and honest' ways[45].

The process to develop and implement the improvement plan has been a four-year collaborative project for CCG and Kildonan UnitingCare. Each phase of the plan is outlined below[46]:

Phase 1: Listening, observation and assessment

CCG listened more to consumers, financial counsellors, legal aid centres and regulators to gain feedback on their performance. These conversations enabled CCG to understand the reality for vulnerable customers and to also recognise assumptions were being made regarding consumer behaviours[47]. CCG acknowledged its '…reputation, whilst not completely justified, was not particularly healthy or conducive to positive consumer engagement'[48].

Phase 2: Embedding an improved collection culture

This was facilitated by[49]:

- Developing and implementing respectful practice underpinned by a philosophy of respect, willingness to learn and an ability to listen. This also included a review mechanism to monitor progress;
- Removing tunnel vision (a recognised industry norm) from the collection practice;
- Implementing an accelerated process for financial counsellors;
- Engaging regularly with the consumer sector to facilitate continuous learning; and,
- Improving collection policies including those relating to consumer profiling, legal action and compliance.

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[45] Fraser, S & Angell, M 2012, Kildonan Uniting Care and Credit Corp Group, 'And the financial counsellor said to the debt collector…' presentation Financial Counselling Australia Conference, 16 May.

[46] Angell, M 2014, CCG, 'Debt Collection or Hardship Management?' presentation Collections and Hardship Programs in Utilities, Banks and Telecommunications Conference, 24 June.

[47] Fraser, S & Angell, M 2012, Kildonan Uniting Care and Credit Corp Group, 'And the financial counsellor said to the debt collector…'

[48] Angell, M 2013, CCG, 'Respectful practice in Australia's largest debt collection company' presentation.

[49] Ibid.

Phase 3: Comprehensive training and external engagement

CCG implemented the following measures[50]:

- Introduction of a training program on contemporary society to improve the understanding of the issues impacting consumers;
- A whole-of-operation respectful practice training program delivered by Kildonan UnitingCare trainers;
- Implementation of a robust consequence policy for staff and team leaders;
- Implementation of processes to write-off debt for appropriate cases; and,
- Approval of recommended repayment arrangements from accredited financial counsellors.

Phase 4: Redefining performance and ongoing training

CCG's commitment included[51]:

- Introducing a 360 degree review process to include feedback from financial counsellors, legal services, consumers, regulators and CCG staff to obtain an honest appraisal of CCG's progress and performance;
- Developing policies, procedures and scripts which address the 'realities of engaging with consumers in hardship' and also satisfy regulation requirements;
- Introducing ongoing staff training (delivered by Kildonan UnitingCare trainers) to improve awareness of the issues customers in hardship experience;
- Introducing an incentive program based on the creation of appropriate payment methods rather than the amount of revenue collected[52];
- Challenging standard collection incentive models by aligning bonus systems with desired behaviours;
- Ensuring compliance with polices and acting against breaches via preventative and investigative methods; and,
- Repeating the above actions to continuously improve business practices and performance.

Impacts of the Improvement Plan

The implementation of the improvement plan has provided positive results for CCG's vulnerable customers including[53]:

- An understanding by CCG employees that 'anyone can experience unexpected financial problems';

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[50] Angell, M 2013, CCG, 'Respectful practice in Australia's largest debt collection company' presentation.

[51] Angell, M 2014, CCG, 'Debt Collection or Hardship Management?' presentation.

[52] Angell, M 2013, CCG, 'Respectful practice in Australia's largest debt collection company' presentation.

[53] Angell, M 2014, CCG, 'Debt Collection or Hardship Management?' presentation.

- A customer engagement culture which 'encourages continued contact, honest representation of the issues and intentionally counteracts potential roadblocks including embarrassment and avoidance';
- Tailored customer solutions which work 'within the constraints of a customer's financial circumstances'; and,
- Effective collaboration with 'financial counsellors and other consumer representatives'.

From a business perspective CCG has also gained benefit, including[54]:

- Over 50% increase in revenue from flexible payment arrangements that comprise over 70% of CCG's monthly collection receipts (an industry leading statistic);
- Over 25% increase in staff productivity;
- Maintaining the 'integrity of the corporate objective of minimising financial losses';
- Achieving 'on-target customer satisfaction feedback';
- 27% increase in recurring payment arrangements (activated to reduce defaults)[55]; and,
- 'Substantial improvements in customer dealings and better relationships with the community sector and regulators'[56].

In the 2014 Annual Report CCG stated:

'Our aim is structured repayment plans which allow customers to remain active in the community, while continuing to recognise their credit obligations. Once we establish contact with a new customer, we commit ourselves to working with the customer to understand their financial situation.

It is our experience that people in financial difficulty can be assisted most effectively through an open dialogue and a flexible repayment approach. CCG only pursues remedies such as legal enforcement when a customer fails to enter into a constructive dialogue. We encourage our customers to reach a negotiated resolution and demonstrate an ability to comply with any resulting agreement. It is our view that this constructive approach supports customers in resolving their financial difficulties'[57].

Credit Plan B

Credit Plan B, as a subsidiary of CCG, also offers assist to customers who are managing multiple debts. This includes free alternatives that do not require up-front costs such as reducing and consolidating monthly repayments, freezing interest and charges and dealing with creditors on customers' behalf[58].

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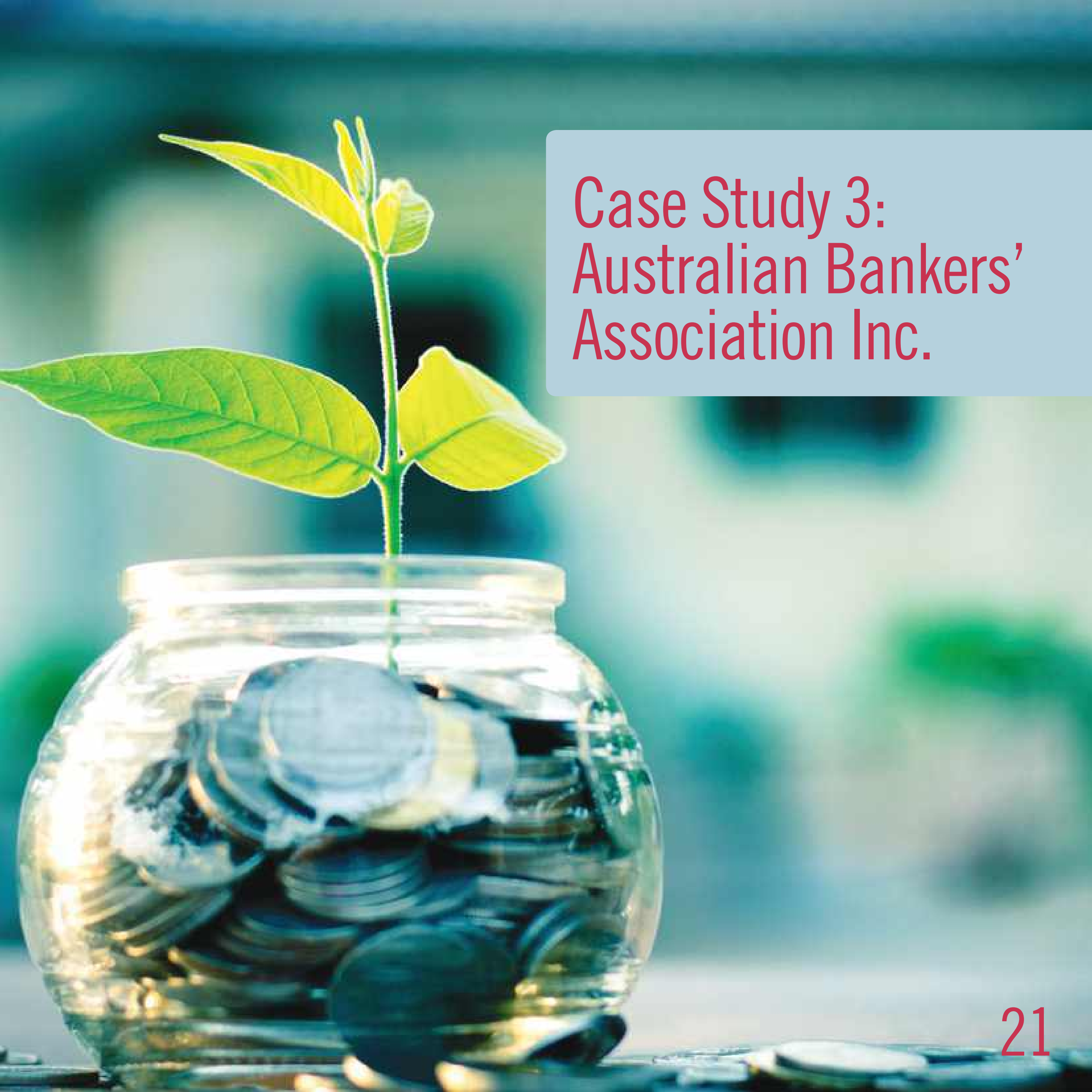
[54] Ibid.

[55] Kildonan UnitingCare 2013, ***Annual Report 2012-13***, https://www.kildonan.org.au/media-and-publications/strategic-plans-and-annual-reports/.

[56] Ibid.

[57] Credit Corp Group 2014, ***Annual Report***, http://www.creditcorp.com.au/CCG%20content%20files/Annual%20Reports/Credit%20 Corp%20Annual%20Report%202014.pdf, p. 14.

[58] Credit Plan B, http://www.creditplanb.com.au/.



Case Study 3: Australian Bankers' Association Inc.

Overview of the Business

The Australian Bankers' Association (ABA) 'provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services'[59]. The ABA is governed by a Council[60] and currently has 26 member banks in Australia including ANZ, Commonwealth Bank of Australia, NAB, Westpac and Bendigo and Adelaide Bank[61].

The ABA seeks to ensure banking in Australia is affordable and accessible and customers get the right products and services. This aim is supported by a focus on a large range of policy issues including the development of industry standards and codes, improving support to vulnerable customers and improving financial literacy Australia-wide[62].

ABA supports vulnerable customers by taking an industry-wide approach to customer financial financial stress. This is demonstrated by ABA's commitment to facilitating best practice across the banking sector via the development of industry codes, standards and guidelines that address customer financial stress and the co-creation of a financial hardship package. Details of these are outlined below.

Codes, Standards and Guidelines*

Code of Banking Practice

The ABA is actively involved in continually developing the Code of Banking Practice. The Code is the 'industry's customer charter on best banking practice standards' and sets out key commitments and obligations regarding standards of practice, disclosure, principles of conduct and dispute resolution[63]. Whilst the Code is not legislation it forms part of the broader national consumer protection framework and 'banks that adopt the Code are considered to be contractually bound by their obligations under the Code[64]. Compliance to the code is monitored by the Code Compliance Monitoring Committee; an independent body tasked with investigating and determining allegations of breaches of the Code[65].

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*Full versions of the codes, standards and guidelines are available at http://www.bankers.asn.au/Consumers/Industry-Standards

[59] ABA, About us, http://www.bankers.asn.au/About-Us/The-ABA.

[60] Ibid.

[61] ABA, Members, http://www.bankers.asn.au/About-Us/Members.

[62] ABA, What we do, http://www.bankers.asn.au/About-Us/What-We-Do.

[63] ABA, Code of Banking Practice, http://www.bankers.asn.au/Industry-Standards/ABAs-Code-of-Banking-Practice.

[64] ABA 2013, *Code of Banking Practice FAQ's,* http://www.bankers.asn.au/Industry-Standards/ABAs-Code-of-Banking-Practice, p. 1.

[65] ABA, External dispute resolution, http://www.doingittough.info/Need-Help-Right-Now-/Making-a-complaint/External-dispute-resolution/External-dispute-resolution.

The Code includes a specific clause on assisting customers in financial difficulty and includes clauses relating to the standards expected for customer contact, information provision and the level of training for banking staff managing hardship customers[66].

Code of Operation

The ABA and its members are co-signatories (with the Department of Human Services and Department of Veterans Affairs) to the Code of Operation regarding the recovery of debts from income support customers who are overdrawn on their bank accounts. This Code 'prescribes that no more than 10% of an income support or Department of Veterans' Affairs payment should be applied to the recovery of debts. The aim of this Code is to ensure recipients of income support have sufficient income to maintain adequate living standards'[67].

Industry Guidelines*

Promoting Understanding about Banks' Hardship Programs[68]

This Guideline promotes best practice across the banking industry by providing the information required for ABA members to develop and implement appropriate hardship programs. This includes:

1. Definitions of financial hardship
2. Principles for industry practice
3. Examples of hardship arrangements including:
   - postponed/deferred payments
   - debt restructuring
   - payment holiday
4. Information on the regulatory framework
5. Accessing hardship programs
6. Implementing hardship programs including:
   - appropriate staff training
   - identifying customers in hardship
7. Promoting awareness of hardship assistance
8. Complaint processes

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* Partipation in ABA industry guidelines is voluntary. However the guidelines outlined have been developed in consultation with and agreed to by member banks.

[66] ABA 2013, *Code of Banking Practice*, http://www.bankers.asn.au/Industry-Standards/ABAs-Code-of-Banking-Practice, pp. 23 & 24.

[67] ABA, Industry Standards, http://www.bankers.asn.au/Consumers/Industry-Standards.

[68] ABA 2015, *Promoting understanding about banks' hardship programs*, http://www.bankers.asn.au/Consumers/Industry-Standards, pp. 1 – 14.

Protecting Vulnerable Customers from Potential Financial Abuse

Financial stress caused by financial abuse is a serious concern. Recent research conducted by WIRE demonstrates the levels of financial abuse within family relationships is 'widespread and common' but is also 'often hidden and unrecognised'[69].

The ABA has created a guideline to support banks and their customers in dealing with financial abuse. This guideline provides valuable information for banks in identifying financial abuse and understanding the impact it has on customers. It also provides a 'framework for banks to raise awareness and promote consistent arrangements to deal with suspected cases of financial abuse'[70].

Indigenous Statement of Commitment[71]

The ABA recognises many Indigenous Australians face 'significant social, economic and financial disadvantage'. In 2007 the ABA developed the Indigenous Statement of Commitment that outlines how the retail banking industry may make a difference for Indigenous People and their communities. This includes:

- Acknowledging Indigenous banking issues across the retail banking sector
- Advocating for better understanding of Indigenous culture
- Promotion of Indigenous financial literacy, inclusion and assistance programs
- Advocating for regulatory reforms that seek to address unscrupulous practices

Financial Hardship Package

The ABA in conjunction with its members, consumers and community groups has developed a package of initiatives to assist customers experiencing temporary financial hardship. This is in response to the concerns raised by stakeholders regarding existing bank practices and the general lack of customer awareness regarding the hardship assistance banks can offer. ABA research suggests that only one in four customers are aware banks can offer hardship assistance[72].

The financial hardship package includes[73]:

1. The industry Guideline on financial hardship, 'Promoting understanding about banks' hardship programs' as described in the precious section;

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[69] Cameron, P 2014, *Relationship problems and money: women talk about financial abuse*', http://www.wire.org.au/wp-content/uploads/2014/08/WIRE-Research-Report_Relationship-Problems-and-Money-Women-talk-about-financial-abuse-August2014.pdf, p. 56.

[70] ABA, *Protecting vulnerable customers from potential financial abuse*, http://www.bankers.asn.au/Consumers/Industry-Standards, p. 1.

[71] ABA 2007, *Indigenous Statement of Commitment*, http://www.bankers.asn.au/Consumers/Industry-Standards, pp. 1 & 2.

[72] ABA 2013, *Doing it tough? Banking industry package to help those experiencing financial difficulties*, Media Release http://www.bankers.asn.au/Media/Media-Releases/Media-Release-2013/Doing-It-Tough.

[73] Ibid.

2. A revamped online website for consumers, “Doing it Tough” (outlined in the following section);
3. A consumer fact sheet on financial hardship;
4. Online industry commitment to improve access to information regarding financial hardship. This includes a website homepage button or link, that redirects customers directly to specific hardship information;
5. Standardised forms to simplify the process for financial counsellors assisting customers in hardship;
6. Individual branch commitment to promote greater awareness of hardship assistance. This includes displaying a poster, TV presentation, counter card and brochures in branches encouraging customers to ask for help; and,
7. An industry-wide commitment towards staff training to ensure an aware of responsibilities and hardship programs. This includes a minimum standard of training.

Community Collaboration

The ABA has collaborated with specialised external stakeholders in the development of industry hardship instruments to ensure content and delivery is relevant, timely and appropriate. As far back as 2006 the ABA recognised the value of partnering with community and welfare groups in developing responsible corporate behaviour[74].

Examples of the ABA collaborating with communities include:

1. Consulting with Financial Counselling Australia (FCA) to develop standardised forms that simplify processes, these include the Statement of Financial Position and Financial Counsellor Authorisation Form[75];
2. Collaborating with FCA, Consumer Action Law Centre and the Consumer Credit Legal Centre to develop an industry-wide financial hardship package[76]; and,
3. Liaising with the following on the review of the Code of Banking Practice which provides additional support for vulnerable customers (Financial Ombudsman Service, Consumer Action Law Centre, Financial Counselling Australia, Consumer Credit Legal Centre, The Salvation Army, Reconciliation Australia, Brotherhood of St Laurence, Kildonan Uniting Care, Victorian Council of Social Service, Good Shepherd Microfinance and COTA Australia[77]).

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[74] ABA 2006, CAMAC *Discussion Paper: Corporate social responsibility*, http://www.camac.gov.au/camac/camac.nsf/byheadline/pdfsubmissions_2/$file/aba_csr.pdf, p. 3.

[75] ABA 2013, Doing it tough? Banking industry package to help those experiencing financial difficulties, Media Release http://www.bankers.asn.au/Media/Media-Releases/Media-Release-2013/Doing-It-Tough.

[76] Ibid.

[77] ABA 2013, Improved Code of Banking Practice. Media Release, http://www.bankers.asn.au/Media/Media-Releases/Media-Release-2013/Improved-Code-of-Banking-Practice.

Recognition of ABA's work in supporting vulnerable customers is evidenced in a recent research report by the Australian Communications Consumer Action Network and Financial Counselling Australia:

> *'At an industry-wide level, the approach that the banking industry has taken to improve [customer] access [to hardship program] stands out. It is the only industry to have voluntarily implemented meaningful structural changes in order to increase access'[78].*

ABA and the banking industry have demonstrated industry leadership in their approach toward customers in hardship:

'In 2012, the banking industry, led by bank CEOs and coordinated by the Australian Bankers Association, made a conscious decision to improve the industry's reputation. The industry undertook a number of consultations and ultimately set up a high level stakeholder working group.

In relation to financial hardship, this has led to a number of initiatives [including] an industry guideline on hardship, a 'doing it tough' website with information about how to contact your bank if you're experiencing payment problems and financial hardship links on the home pages of all bank websites. The industry has also worked to promote the availability of basic bank accounts'[79].

Direct Customer Assistance

The ABA has created a website specifically for bank customers who are experiencing financial difficulties. This website Doing it tough?, provides customers with the following information[80]:

1. A glossary of banking terms and definitions

2. Financial health check including early warning signs and tips for budgeting

3. Financial Hardship

- Definitions of financial hardship. For the banking industry these are: late payment assistance, financial hardship (willing to pay but can't) and permanent change in financial circumstances
- Do's and dont's for customers
- What customers can do and what the bank can do
- Customer rights

4. Immediate help

- Common problems
- Applying for hardship

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[78] ACCAN & FCA 2014, *Banking, Energy, Water, Telecommunications, Hardship policies in practice: A comparative study*, https://accan.org.au/files/Reports/Comparative%20Hardship_Final.pdf, p. 21.

[79] Ibid, p. 32.

[80] ABA, Doing it tough?, http://www.doingittough.info/.

- Debt collection
- Complaints
- Contact details for support agencies

5. Web addresses and phone numbers for member banks hardship teams

6. Fact sheets

- Basic bank accounts
- Code of Banking Practice
- Increasing savings
- Dealing with debt
- Financial hardship
- Budgeting made easy
- Keeping credit under control
- Minimising the cost of banking

The Affordable Banking website launched by the ABA provides information on basic bank accounts including customer eligibility, account features and a list of banks offering this product[81].

The ABA has also made a commitment to improving financial literacy via its Broadening Financial Understanding program. This program aims to assist all Australians to make informed and confident decisions regarding their money and finances and is designed to complement the programs of member banks. It is comprised of[82]:

- Materials development program for the development of 'resources that promote banking concepts and address areas of community interest and need for targeting audiences';
- Information dissemination program for the distribution of materials in collaboration with partners; and,
- Access and awareness program to increase access to financial literacy materials, programs and activities.

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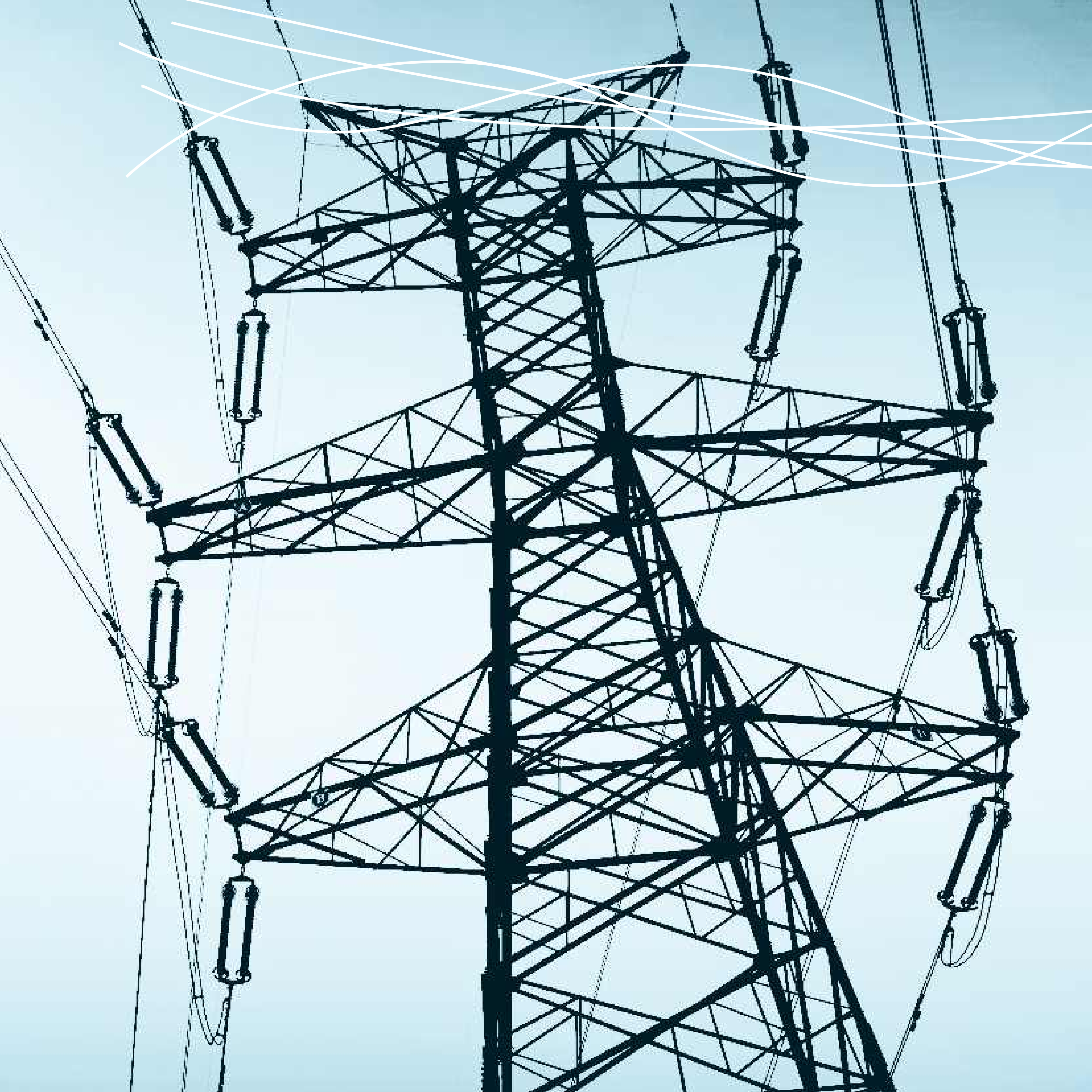
[81] ABA 2013, Affordable Banking, http://www.affordablebanking.info/.

[82] ABA, Financial Literacy Program, http://www.bankers.asn.au/consumers/financial-literacy-program/Financial-Literacy-Home.



Conclusion

Yarra Valley Water, Credit Corp and Australian Bankers' Association are all excellent examples of businesses which strive to deliver best practice programs and outcomes for customers in financial stress. The common element of their success is that they have designed programs that align with Better Practice Principles, including:

- **Early Intervention** – a critical tool in the prevention of debt accumulation and reduction of disconnections/restrictions;
- **Customers Focussed Conversations** – respectful and meaningful conversations between retailers and their customers that result in fair and reasonable arrangements for customers;
- **Collaborative Partnerships** – partnerships between retailers and community organisations which provide the ideal context for information exchange and innovation on resolving customer financial stress issues;
- **Measurable Outcomes** – provides retailers with the opportunity to understand what works well and what can be improved; and,
- **Financial Stress Philosophies and Policies** – essential tools for supporting vulnerable utilities customers experiencing financial stress.

As the peak non-government representative body for the health and community services sector in South Australia, the South Australian Council of Social Service (SACOSS) believes in Justice, Opportunity and Shared Wealth for all South Australians.

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Better Practice Guideline for Energy Retailers

A collaborative approach to preventing hardship amongst energy consumers

November 2014

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Acknowledgment

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- AGL
- Alinta Energy
- Anglicare SA
- Energy Australia
- Origin
- South Australian Council of Social Service
- South Australian Financial Counsellors Association
- St Kitts Associates
- The Salvation Army
- Uniting Communities
- UnitingCare Wesley Bowden
- UnitingCare Wesley Country SA
- UnitingCare Wesley Port Adelaide

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Endorsement

The Energy Retailers Association of Australia (ERAA) has provided its support to the five better practice principles listed in this Guideline. SACOSS notes that the ERAA convened a national affordability forum in August 2014. The forum generated several priority focus areas, with working groups established to develop these further. The mechanisms outlined in this Guideline offer suggestions for the ERAA working groups to consider as part of their process.

Introduction

Recent reports by the Australian Energy Market Commission (AEMC)[1] and the Victorian Essential Services Commission (ESCV)[2] highlight that South Australia continues to have both the nation's highest electricity prices and highest rates of electricity disconnections for failing to pay bills on time. These trends provide an insight into a problem of growing concern in the South Australian community - the chronic financial hardship and stress[3] experienced by vulnerable energy consumers.

Customer financial hardship is legally recognised within the National Energy Retail Law [NERL] (South Australia) Act 2011 (Division 6). All authorised energy retailers operating in South Australia are governed by this Act and as such must comply with the minimum requirements prescribed for customers in financial hardship[4]. However, it is the experience of community sector personnel who work closely with vulnerable energy consumers in South Australia that these protections can be inadequate.

It is these issues that prompted the South Australian Council of Social Service (SACOSS) to facilitate its annual Hardship and Affordability Conference with a specific focus on vulnerable energy consumers. SACOSS' vision was to bring together representatives from the major energy retailers in South Australia, and experienced financial services providers and policy managers from some of the community sector's leading organisations.

The conference delivered an ideal context for a diversity of views and proposals to be expressed. Discussions throughout the day focused on the prevention of financial hardship, the facilitation of consumer well-being and financial health, and support for businesses in dealing with their customers and communities. SACOSS believes the conference delivered several positive outcomes including unique opportunities for relationship building and knowledge sharing, and the development of this better practice guideline.

The ideas and vision expressed in this guideline are the result of the respectful dialogue, creative thinking and participatory approach from the stakeholder groups.

Whilst SACOSS acknowledges that some of the elements presented in this guideline are current retailer business practices, we strongly encourage all energy retailers to consider complementing their current business practices by implementing where reasonably practicable some of the better practice principles and measures identified in this report. Not only will this improve further assistance to vulnerable energy consumers to effectively manage their energy bills, it will also help facilitate the long term social outcome of building confidence and trust between consumers and energy retailers.

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1 AEMC 2013, Residential Electricity Price Trends **www.aemc.gov.au/market-reviews/completed/retail-electricity-price-trends-2013.html**

2 ESCV Energy retailer's comparative performance report – Customer service 2012-13 Table 3.2, p. 35, **www.esc.vic.gov.au/Energy/Energy-retail-performance-reports**

3 Financial stress as defined by Brackertz (2012, p. 5) can refer to people who are *'unable to afford essential items such as food and heating or may not be able to pay their bills. It is also a source of stress and anxiety which negatively affects people's health and ability to cope'*, **www.salvationarmy.org.au/Global/News%20and%20Media/Reports/2012/00099-I-wish-I-had-known-sooner-Oct-2012.pdf**

4 AEMC 2014, Guide to the application of the NECF, **http://www.aemc.gov.au/Energy-Rules/Retail-energy-rules/Guide-to-application-of-the-NECF**

Overview

This guideline is presented in three sections:

1. **An overarching guideline objective;**
2. **Five better practice principles that facilitate achieving the guideline objective and,**
3. **Mechanisms for implementation that aim to assist energy retailers in delivering better practice principles to their customers.**

Guideline Objective

The objective of the Better Practice Guideline is to work towards minimising the financial stress experienced by vulnerable energy consumers.

Better Practice Principles

There are five better practice principles that highlight the priority issues experienced by vulnerable energy consumers. Each principle includes measures identified by energy retailers and community representatives for improving and managing the issues identified.

1. **Early intervention**
2. **Customer focused capacity to pay**
3. **Collaborative partnerships**
4. **Measurable outcomes**
5. **Hardship policies**

Mechanisms for Better Practice Implementation

The following mechanisms are provided to assist energy retailers in implementing and maintaining the better practice principles and measures.

Integration

Results

Evaluation and Review

Better Practice Principles

1. Early intervention

Early intervention is viewed by key stakeholders as a critical tool in the prevention of energy debt accumulation and reducing disconnections for vulnerable and disadvantaged households. This principle acknowledges the chronic financial stress experienced by many South Australian households. In adopting this better practice principle energy retailers (retailers) have a unique opportunity to actively assist vulnerable consumers and to minimise the number of customer defaults. Retailers can and currently do adopt various initiatives within their business processes to assist with early intervention. The following measures are good examples of better practice that could be adopted by stakeholders to enhance existing early intervention processes:

Accessible customer/retailer communication

- Customer free call 1800 number
- Call centre staff able to identify if a customer is calling from a mobile phone and offer a call back service
- Minimal on-hold times (maximum of 2 minutes)
- Using SMS to make initial contact with customers to avoid the blocked caller ID issue (i.e. customers don’t know who is calling) and to connect with disengaged customers
- Using online web chat technology and email as additional methods to communicate with customers

Improved access to hardship teams

- A direct phone number for financial counsellors and consumer advocates to access retailer hardship teams
- Retailer call centre staff trained in assessing customer hardship to reduce the need to transfer calls
- Using email as an additional contact method between customers, retailers and financial counsellors
- Integrating billing, credit and hardship departments to enhance coordination of customer assessment

Concessions and non-financial consumer assistance

- Concessions eligibility established at the point of contract sale and regular monitoring of eligibility for customers on hardship plans
- Provision of customer in-home energy audits and assisting customers on how to reduce consumption

2. Customer focused capacity to pay

The cornerstone of energy affordability is the capacity for customers to pay their energy bills. This is becoming increasingly difficult for vulnerable energy consumers who are living in financial stress. Successful assessment of capacity to pay hinges upon respectful and meaningful conversations between retailers and their customers that result in fair, reasonable, sustainable, and flexible arrangements for consumers. Whilst retailers deploy various business processes that place the customer at the centre of this dialogue, following are some examples that could potentially be used to enhance these processes. These include:

- The development of retailer databases that identify customer credit problems with ongoing system alerts
- Regular monitoring of hardship program customers to ensure assessment remains current
- Key Performance Indicators for call centre staff that focus on the long term success and viability of payment plans
- Hardship sensitivity training for dedicated call centre and hardship staff to improve appropriate customer assessment. This includes working with customers to identify affordable and realistic payments based on their income and expenditure. The debt amount should only be used where this presents a realistic basis for consumer repayments.
- Ability for call centre and/or hardship staff to transfer customers onto more appropriate tariffs (where these are available) at the point of conversation i.e. no lag time

3. Collaborative partnerships

Developing collaborative partnerships within the community is an important step in tackling issues that affect vulnerable energy consumers. This principle is underpinned by the premise that energy affordability is a shared responsibility for all stakeholders - industry, consumers, governments and community organisations. Partnerships between retailers and community organisations provide the ideal context for information exchange and innovation on resolving customer hardship issues. Whilst there are existing frameworks that ensure active collaboration between retailers and community organisations the following collaborative approaches are good examples of better practice:

- A review of the Emergency Electricity Payment Scheme (EEPS) documentation process by retailers, financial counsellors and the South Australian government. This is strongly recommended as the current process is administratively burdensome and results in long application wait times.
- Evolving industry partnerships with financial counsellors to enhance customer referral opportunities including the active promotion of the Financial Counsellors Helpline **1800 007 007** to vulnerable customers

  "there are better outcomes for consumers when financial counsellors are involved"
  - stakeholder conference participant

- Retailers establishing links with community organisations to keep abreast of social trends in South Australian communities that are likely to affect capacity to pay
- Retailers seeking input from community organisations in the development of hardship staff training materials; including the development of a list of meaningful triggers / verbal cues for identifying customers in hardship and a list of questions to ask

  "customers do not always identify themselves as being in hardship"
  - stakeholder conference participant

- Collaboration between retailers, community organisations and governments to improve harmonisation of concession schemes across jurisdictions

  "today it is as complex for retailers as it is for customers"
  - stakeholder conference participant

4. Measuring outcomes

Measuring the outcomes of retailer hardship policies and the subsequent business processes provides retailers with the opportunity to understand what works well and what can be improved. The following measures are good examples of better practice:

- Developing a set of Key Performance Indicators (KPI's) to measure the effectiveness of hardship policies, procedures and practices
- Developing adequate systems that facilitate regular measurement of KPI's
- Actively engaging with the community services sector on continuous improvement strategies

In assessing customer hardship measures retailers are encouraged to consider what constitutes a successful hardship program. The following measures are good examples of better practice:

- Stable and flexible arrangements
- Bills that match a consumers capacity to pay
- Incentives for customers to successfully graduate from hardship programs
- Regular monitoring of customers on hardship programs
- End-to-end case management with a nominated case manager

5. Hardship policies

Retailer hardship policies are an essential tool for supporting vulnerable energy consumers experiencing financial hardship. This is endorsed by the inclusion of hardship policies in the National Energy Retail Law [NERL] (South Australia) Act 2011. The NERL stipulates that authorised retailers[5] must develop, maintain and implement hardship policies for the purposes of:

'identifying residential customers experiencing payment difficulties due to hardship and to assist those customers to better manage their energy bills on an ongoing basis'[6].

The following hardship policy measures that seek to assist customers in managing their energy bills are good examples of better practice:

- Tariff freezes for hardship customers
- Payment matching and subsidised plans to incentivise hardship customers, and to ensure sustainability of payment plans
- Pay-on-time discounts offered to customers on hardship programs
- Flexible payment arrangements including shorter billing cycles (e.g. monthly)
- Diverse payment options such as Centrepay
- Waiving extra fees and charges (e.g. late fees) for hardship customers

5 The NERL only covers jurisdictions that are participating in the National Energy Customer Framework (currently SA, NSW, ACT and Tasmania), AEMC 2014, **http://www.aemc.gov.au/Energy-Rules/Retail-energy-rules/Guide-to-application-of-the-NECF**

6 National Energy Retail Law (South Australia) Act 2011, s.43, ss. 1&2.

Mechanisms for Better Practice Implementation

The following mechanisms should be considered as tools that can be used by retailers when adopting better practice.

Integration

Integrating better practice into an existing business model requires retailers to view hardship policies as an integral part of doing business. Retailers that are committed to better practice demonstrate a commitment to integration by:

- Understanding the key issues that vulnerable energy consumers experience
- Working with community organisations to develop policy measures that are respectful, realistic and effective
- Maintaining dialogue with all stakeholders on contentious issues

Results

A sound approach in implementing better practice is a clear focus of the results that are to be achieved. Results that fulfil the better practice objective include:

- A decrease in the number of customers disconnected for an incapacity to pay
- Early identification of customers who are struggling to pay their energy bills
- Significantly lower energy debts for vulnerable energy customers
- An increase in the numbers of customers successfully graduating from hardship programs
- Strong partnerships developed and maintained between retailers and financial counsellors

Evaluation and review

This better practice guideline provides a foundation for retailers who are committed to supporting vulnerable energy customers. Refinement and continuous improvement of the better practice elements presented herein is strongly encouraged. Business processes that are good examples of better practice are:

- Regular evaluation and review of hardship policies, procedures and business practices
- Implementation of a robust evaluation strategy and methodology to facilitate the above process
- A willingness to communicate and discuss the results with key stakeholders (including relevant community organisations and government departments)
- Creating opportunities for stakeholders to collaborate on issues identified during the evaluation and review processes

As the peak non-government representative body for the health and community services sector in South Australia, the South Australian Council of Social Service (SACOSS) believes in justice, opportunity and shared wealth for all South Australians.

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Review of the Australian Energy Regulator's and Essential Services Commission of Victoria's Frameworks for Customers Facing Payment Difficulties

November 2016

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Executive Summary

Consumer protection frameworks in the National Energy Market have been evolving over recent years. Identification of unresolved debt issues and high rates of disconnections are two of the key issues shaping the regulatory approach to these frameworks. While the consumer impacts are well documented, there has been less focus on how the underlying strategic policy settings are impacted by different regulatory approaches to these issues.

SACOSS believes that discussion of these strategic policy issues is timely with the development of the Australian Energy Regulator's (AER) Sustainable Payments Framework and the release of the Essential Services Commission of Victoria (ESC) Hardship Review Final Report. SACOSS notes that both the Australian Energy Regulator and the Essential Services Commission of Victoria have identified similar issues – rising debt levels, high disconnection rates, variability between retailers and within retailers and low success rates in hardship programs. While the identification of issues is similar, the approach to resolving them is vastly different.

Late in 2015, SACOSS began a project which focussed on conversations with energy retailers to try to influence their approaches to dealing with vulnerable customers. We have been working with seven energy retailers – AGL, Energy Australia, Red, Lumo, Simply, Origin and Alinta. The idea is carrot rather than stick. It involves intensive discussion of the barriers to better practice transformation, and ongoing conversation to try to find the most useful means of overcoming those barriers.

In the course of our discussions, we have found that all seven retailers have programs to address the needs of their vulnerable customers. Each retailer also had more plans underway to expand their programs. However, a number of factors have impacted on this expansion. The progress of reform in Victoria and the potential that it has to impact on these businesses is reportedly one significant factor. The different customer base and cost structures of the businesses is another. In general, we have found that the tier 2 businesses are less likely to have fully developed programs in place, and have more work still to do in this area than the tier 1's.

After several rounds of discussion, the need for cultural transformation within some of these businesses has emerged. If some of the tier 2 businesses are to further expand the development of their programs for vulnerable customers, they will need the right organisational culture to support such changes to occur. SACOSS believes that energy retail businesses have a special obligation to their vulnerable customers as providers of an essential service. SACOSS considers that this needs to be made explicit to these businesses on entry to the market, and proposes for consideration entrenchment of the related expectations in the licensing framework.

Through the process of intense conversation with retailers, SACOSS has also developed a number of fundamental principles that underpin our view on what is an effective and sustainable program for managing vulnerable energy customers. These principles include:

- Disconnection of a vulnerable energy customer is a 'last resort' and there must be clear processes around if, when and how energy supply is disconnected and reconnected;
- Early identification and constructive intervention on a person to person basis is more effective than later remediation;
- A vulnerable customer has the right to be treated with respect and empathy throughout the process;
- The vulnerable customer must be fully engaged in and have a reasonable sense of personal control during the process;
- The process must be sufficiently flexible to accommodate changes in the customer's circumstances during the process;
- Similarly, the process must be adaptable to changes in the energy market itself, such as smart meters, remote connect/disconnect, local generation;
- Collaborative partnerships between vulnerable customers, retailers and other service providers enhance the outcomes for all parties;
- Regular reporting and feedback to the industry, policy makers, regulators, and consumer stakeholders provides the foundation for continuous improvement; and
- The benefits of the program, and any changes to the program, must outweigh the costs and risks of change to the vulnerable customers and to the community at large.

Rights - Role of empowerment

SACOSS further holds that the success of any program to assist vulnerable customers in accessing an essential energy service lies not only in reducing the level of consumer debt and the number of disconnections, although these outcomes are of course important.

The success of any program must also be measured in terms of the quality of the process and the outcomes for consumers. By this SACOSS means that the process undertaken by retailers and regulators must recognise the complexity of the causes of vulnerability and demonstrate empathy and respect for vulnerable consumers.

The process must also seek to meaningfully engage with vulnerable customers throughout the program. Meaningful engagement means that a vulnerable customer can understand the options available, is able to fairly negotiate appropriate solutions with their energy retailer and can, over time, become an active participant in and beneficiary of the competitive retail market.

In turn, this outcome requires flexibility and sensitivity by the energy service providers in their communications with the customer.

In contrast, regulatory processes that remove or lessen a customer's engagement in the process and their agency in finding resolution to their energy payment difficulties are not likely to be sustainable. There is a real risk that in the absence of engagement and agency, a vulnerable customer will become locked into a long term and destructive cycle of mounting debt and ultimately, a higher risk of disconnection.

Comments on reform processes

This report provides an assessment of the ESC's Victorian Hardship Review Final Report and the AER's Sustainable Payments Framework.

It is appropriate at the outset of any assessment of the two proposals to express SACOSS' support for the work of both the AER and ESC in critically evaluating the existing regulatory frameworks for vulnerable energy customers.

SACOSS also shares the concern of both the AER and the ESC that despite all the efforts to improve the outcomes for consumers, very little has changed from the perspective of a vulnerable customer.

Both the AER's and the ESC's retail performance reports indicate that many customers are not completing the repayment plans, and the most vulnerable customers are generally not able to eliminate their historical debt. In some cases, the level of debt is increasing.

This is an unacceptable burden on these vulnerable customers, and on the community as a whole. Ultimately, the cost of unpaid debt is passed on to all customers.

However, it appears that this has not necessarily translated into increasing levels of disconnection.

A second area that is unacceptable to SACOSS is the finding by the AER and by the ESC that there are significant differences between retailers, in their treatment of vulnerable customers. Individual retailers also appear to change their approaches over time.

While the AER and the ESC state that there was no evidence of systematic non-compliance by retailers with the existing regulatory regime, it is clear that the current regimes leave scope for retailers to comply the letter of the law while having very different outcomes for their customers.

The paucity of customers receiving advice from their retailers on how best to manage their usage is also indicative of a gap in the management of vulnerable customers.

In summary, SACOSS agrees that there is need to 'rethink' the current regulation of programs for vulnerable customers experiencing payment difficulties and we support the AER and the ESC in conducting these reviews.

Customer representatives in general have been very committed to the review process and SACOSS has initiated a number of multi-disciplinary conferences on the topic.

SACOSS therefore has some sympathy with the views of the ESC Chairman, Dr Ron Ben-David as the ESC commenced the process of reviewing regulatory frameworks for customers experiencing payment difficulties. At a conference in May 2015, he stated:

> *…dealing with financial hardship is perhaps the most vexing of problems we face as a regulator charged with promoting the long term interests of all consumers.*[1]

This is a Gordian knot in manifold dimensions. A knot of issues and consequences; rights and obligations; choices and capacities; customers and retailers. This knot sits in a rope with no free ends; no obvious starting point from which we might begin to unravel its entangled mesh of concerns.

However, having recognised the complexity of the issue of financial hardship for customers of an essential service, the ESC's final response is to implement a highly structured framework with mandated steps and payment options.

The ESC's framework relies heavily on system-based solutions and less on early engagement with customers and empowerment of these customers to better manage their payment difficulties and their interaction with the competitive retail market in general. SACOSS questions whether system-based solutions are the most appropriate method to manage the complex problems identified by the ESC, or to resolve the 'manifold dimensions' of the Gordian knot.

Perhaps an alternative is to turn to the insights of Tolstoy, namely:

> *Happy families are all alike; every unhappy family is unhappy in its own way*[2]

SACOSS would argue that every vulnerable customer is vulnerable in their own way. It follows that any process to better manage these customers, particularly those customers with long-term debt, must take account of the specific circumstances facing that customer.

SACOSS does acknowledge that there are still many uncertainties around the effective management of vulnerable customers. This should not inhibit an immediate focus on respectful communication, engagement and empowerment while the search for better and more comprehensive and sustainable solutions continues.

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[1] Dr Ron Ben David, "Supporting Energy Customers in Financial Hardship: Untying the Gordian Knot?" 11 May 2015, p. 23. Paper presented at the Credit Collections & Hardship Program in Utilities conference.

[2] Tolstoy, L. (Original work published 1875-1877). Anna Karenina (R. P. L. Volokhonsky, Trans.). New York, NY, USA: Viking Penguin.

SACOSS places a strong emphasis on implementing a process that demonstrates respect and empathy for the customer and their situation.

SACOSS also emphasises the importance of the vulnerable customer having a sense of engagement and control over the process, and empowerment to make decisions on the management of their debt and future energy use.

This is not to say that the vulnerable consumer is not supported in this decision-making. The AER's framework, for instance, encourages the retailer to provide information and advice to the customer in coming to this decision.

Nor does empowerment and agency mean that the customer is not required to pay back their energy debt and manage ongoing payments. To the contrary, empowerment provides the consumer with the personal resources to better manage these situations and to have confidence to participate in the competitive market in the future.

SACOSS' view on this is supported by both practical experience and social theory as captured in the following quotation:

> *Marketing and policy responses must be against discrimination, against promoting or facilitating learned helplessness and for empowerment by assisting individuals to develop skills that foster optimal functioning and individual agency… Public policy should be based on consumer perspectives of vulnerability, not on well-meaning third parties' evaluations of their situations. Being treated like someone else wants to be treated may well not be appreciated.*[3]

SACOSS considers that the ESC's approach in the Final Report is too prescriptive and is overly broad in its sweep. In particular, the ESC's framework suggests that any customer who has missed a payment must be automatically placed on a monthly repayment plan. This 'decision' involves no discussion with the customer. An automated process with a standardised payment plan is not necessarily beneficial to the more vulnerable customers.

In particular, the extent of automation and standardisation is likely to remove any sense of control over the process by the customer. Both the process and the payment plan will depend only on the 'type' of customer debt rather than the individual customer's needs at the time.

The customer is in effect disempowered and likely to be disengaged in finding constructive solutions with their retailer. Moreover, there is no flexibility for the

[3] Baker SM, Gentry JW & Rittenburg TL, "Building Understanding of the Domain of Consumer Vulnerability". Journal of Macromarketing, Vol 25 No. 2, December 2005, p. 10. https://www.researchgate.net/profile/James_Gentry2/publication/258153302_Building_Understanding_of_the_Domain_of_Consumer_Vulnerability/links/5592d42f08ae1e9cb4297cfa.pdf

retailer to respond to the individual circumstances of the customer. The billing machine is in control!

In marked contrast to this automation of the initial stages of the process, the AER's framework is very much focussed on enhancing and personalising the initial contact between the retailer and the customer. That is, the AER's framework is designed to engage and support the customer at the very outset.

By enhancing the customer's sense of control and agency early in the process, SACOSS believes that the AER's Sustainable Payment Plan Framework offers a more effective pathway towards improving the outcomes for vulnerable customers.

While the ESC is correct in saying it is not its task to evaluate these situational factors, this does not mean that these factors are not an important component of the retailer's conversation with the customer. These conversations offer a pathway not only to effective resolution of the current payment difficulty, but also enhance the capacity of the customer to manage future situations and avoid future payment 'crises'.

Secondly, SACOSS also has some concern that the AER's Framework is voluntary and aspirational. There is already evidence accepted by both the AER and the ESC of good practices by some retailers. These same retailers will no doubt be the first to sign up to the voluntary Framework.

However, it is a leap of faith that other retailers who, while complying with the minimal requirements under the NERL and NERR, will start to provide more in the way of consistent and appropriate support to vulnerable customers.

Will these industry laggards be sufficiently motivated to move towards best practice? Or will their more vulnerable customers continue to receive a lower standard of service.

If moral suasion is to be a component of the AER's Framework, then it is essential that there be more public scrutiny of the different performance and customer outcomes.

Some recommendations for governments

Victorian Government

SACOSS understands and supports the Victorian Government's concerns when it established the broad ranging Hardship Enquiry with the increases in the rate of disconnections.

In the first instance, however, before embarking on wholesale changes to the current Energy Retail Code (Version 11) SACOSS considers it is important to understand exogenous influences such as the impact of smart meters and remote disconnection and reconnection on the reported number of disconnections and on the experience of consumers.

As evidenced in section 3 of this report, it is reasonable to maintain that it was the increase in disconnection completion rates (controlled by the distributors) that was driving the jump in actual disconnections in 2013-14. SACOSS notes that they appear to have stabilised in 2014-15 in line with the near completion of the smart meter roll-out.

SACOSS would also welcome the Victorian Government investigating in detail the costs of the ESC's proposal to Victorian consumers relative to the incremental benefits, particularly given the analysis above. This should include consideration of the immediate and longer-term costs of Victoria moving further away from harmonisation with the national regime.

Commonwealth Government & COAG Energy Council (CEC)

SACOSS is concerned that despite supporting many industry workshops on consumer vulnerability, the CEC has not demonstrated sufficient leadership on the issue.

Nor has the CEC formally acknowledged the importance of the issue in its current work program despite that fact that changes in the energy market can have a disproportional negative impact on vulnerable customers if not proactively managed.

SACOSS strongly recommends that COAG and the CEC put the issue of vulnerable customers squarely 'back on the table'. The impacts of the CEC's policy decisions on vulnerable customers should be considered as a specific topic in each major policy area.

While there has been debate about rising energy prices, there has been little recent policy discussion on the corollary of increasing price rises, that is, the increasing challenge facing vulnerable customers in affording essential services such as energy.

The current focus of these bodies on the Power of Choice fails to recognise the limited choice that is available to these customers. Nor does it recognise that with the increasing complexity of the market, vulnerable customers risk being left further behind and missing the benefits of competition and technology change.

SACOSS also recommends that COAG investigate the possibility of establishing Australia's own Customer Vulnerability Strategy program under the auspices of the AER or the AEMC. The need for good quality, independent research to support policy decisions has never been more important.

Post script

In August 2016, SACOSS hosted a public forum on consumer protections with representatives from ESC, the Essential Services Commission of Victoria, the AER and business and consumer representatives. The forum considered the range of perspectives of stakeholders in the Victorian and NECF jurisdictions on the reform processes underway.

It is notable that after the SACOSS forum, the ESC indicated to SACOSS that the ESC was in the process of dealing with the issues raised at the forum. SACOSS understands that following the forum, there were some modifications made to the ESC proposed approach for reform as compared with the Hardship Review Final Report.

It is beyond the scope of the current project to undertake a comprehensive review of the modifications that the ESC has made following the SACOSS forum. However, SACOSS has undertaken some preliminary analysis and we remain very concerned with the direction of the ESC in relation to payment difficulties. Specifically, SACOSS remains concerned that increased automation will take away customer agency, consumers who currently pay below consumption will fall between the cracks, the reform will result in increasing numbers of disconnections, there is an exceptionally high cost of reform and there is entrenchment of divergence in consumer protection frameworks.

Acknowledgements

SACOSS wish to knowledge the extensive contribution of Ms Beverley Hughson, Darach Energy Consulting Services, to this project. We are extremely grateful for the extensive experience and depth and rigour of analysis by Ms Hughson.

Full responsibility for any errors or omissions rests with SACOSS.

Contents

1 Introduction

1.1 Overall purpose of the study

SACOSS holds that energy supply is an essential service for all Australian households. As such it is the joint responsibility of the whole of the Australian community, the industry regulators and all state and federal governments to ensure that households are not denied access to energy services as a result of difficulties in paying their energy bills.

SACOSS further holds that the success of any program to assist vulnerable customers in accessing an essential energy service lies not only in reducing the level of consumer debt and the number of disconnections, although these outcomes are of course important.

The success of any program must also be measured in terms of the quality of the process and the outcomes for consumers. By this SACOSS means that the process undertaken by retailers and regulators must recognise the complexity of the causes of vulnerability and demonstrate empathy and respect for vulnerable consumers.

The process must also seek to meaningfully engage with vulnerable customers throughout the program. Meaningful engagement means that a vulnerable customer can understand the options available, is able to fairly negotiate appropriate solutions with their energy retailer and can, over time, become an active participant in and beneficiary of the competitive retail market.

In turn, this outcome requires the energy service provider to demonstrate both flexibility and sensitivity in their communications with their customers.

In contrast, regulatory processes that remove or lessen a customer's engagement in the process and minimise the customer's agency in finding resolution to their energy payment difficulties are not likely to be sustainable. There is a real risk that in the absence of engagement and agency, a vulnerable customer will become locked into a long term and destructive cycle of mounting debt and ultimately, a higher risk of disconnection.

SACOSS also emphasises that financial vulnerability is not just about a customer's capacity to pay for adequate energy supply. Vulnerable energy customers generally face challenges in meeting all their basic needs and are constantly prioritising and reprioritising their expenditures.

As a result, policy makers should not rely just on changes to the regulation of the energy retailers' conduct, important as that may be. The regulation of energy retailers forms only part of the broader issue of consumer vulnerability. A wider and more integrated approach that addresses issues such as government concessions and rebate schemes, non-government services, housing and appliance standards, efficiency, social wages and energy prices is also required.

SACOSS notes that this need for a comprehensive and integrated approach has been well recognised by regulators and consumer representatives.

For instance, in 2013, the Australian Energy Ombudsmen, the Energy Retailers Association of Australia (ERAA) and the Australian Council of Social Services (ACOSS) conducted a "National Affordability Roundtable". The Standing Council of Energy and Resources (SCER) endorsed the Roundtable and a report with an extensive list of recommendations was submitted to SCER in May 2013.[4]

The Roundtable initiative was based on the premise that addressing energy affordability was a challenge for all sectors, and that solutions "require a partnership approach with Governments, Industry, the Community sector, Ombudsmen and Regulators".[5] Representatives from all these sectors were therefore included in the Roundtable and committed to its recommendations.

Nevertheless, despite SCER's support in principle of the underlying premise of an integrated approach, SACOSS has been unable to find any evidence of further discussion of this important issue by SCER or its successor, the COAG Energy Council (CEC).

Therefore, any critique of the current arrangements or proposed arrangements to improve the regulatory framework for management of vulnerable customers by retailers must also take account of this national policy vacuum.

1.2 The specific purpose of this current study

The specific purpose of this current report is to assess the recent developments by regulators designed to improve the management of vulnerable customers and to ensure disconnection of these customers from their energy supply because of their inability to pay is a 'last resort'.

The report will also consider whether the revised regulatory arrangements provide a sustainable solution that encourages customer choice and agency in the future.

In particular, the report will consider how the Australian Energy Regulator (AER) and the Victorian Essential Services Commission (ESC) are proposing to address these issues through the new regulatory arrangements that have been recently published and are likely to come into effect in the coming months.

[4] See, "National Energy Affordability Roundtable Report to the Standing Council on Energy and Resources (SCER)", May 2013.

[5] ibid, p.p. 2-3.

In undertaking this review, this report will first examine the current regulatory frameworks for the management of vulnerable customers. This includes an examination of the national regulatory framework for hardship customers set out in the National Energy Consumer Framework (NECF) legislation and in the AER's guidance documents.

While the AER is not a law or rule maker, it can interpret the law and rules through the provision of formal guidelines or less formal guidance to retailers or other energy market participants. In addition, the AER is responsible for enforcing the national law and rules in jurisdictions that have signed up to the NECF. This responsibility includes the monitoring and enforcement of the hardship program requirements that are set out in the energy laws and rules.

Victoria is not a signatory to the NECF. Instead, retailers' obligations are captured in the relevant electricity and gas industry laws and in the Victorian Energy Retail Code (Code) and associated guidelines. The ESC administers the Code and has the statutory power to amend the Code and to develop guidelines for retailers.

This report will then consider the reviews of retail practices undertaken in 2014-2015 by both the AER and the ESC.

Both these reviews found a rather consistent range of issues with the prevailing policies and practices. The issues were also consistent with other research by regulatory bodies. The current report, for instance, considers the findings of the Office of the Gas and Electricity Market (Ofgem) in the UK. Ofgem has a long history of research in this area and many of their findings are relevant to the Australian experience.

These findings have in turn, resulted in the AER and the ESC introducing new elements to the existing regulatory processes and requirements on retailers when managing vulnerable customers experiencing difficulty in paying their energy bills.

Both the AER and the ESC are seeking ways to reduce the levels of customer debt and the number of disconnections of vulnerable customers. To whit, in 2015 both the AER and the ESC have proposed new arrangements to improve the management of vulnerable customers. The basic principles and framework for these new arrangements are set out in the following documents and are the basis for this report by SACOSS.

- AER, Sustainable Payment Plans – A good practice framework for assessing customers' capacity to pay, Version 1, July 2016. (AER, Sustainable Payment Plans Framework)
- Essential Services Commission 2016, Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Report, February 2016. (ESC, Energy Hardship Inquiry Report)

Notwithstanding the similarities in their research findings, the approaches adopted by the AER and the ESC in addressing the issues are quite different. SACOSS characterises the AER's approach as 'evolutionary' and the ESC's approach as 'revolutionary'. That is, the ESC turns away from the traditional focus on capacity to pay assessments, to a more objective and more prescriptive assessment based on the type of payment difficulty that the customer is (or maybe going to) experience. Terms such as vulnerable customer and hardship customer are put aside and replaced with terminology based on the type of payment difficulty which is, in turn, defined by a set of objective criteria. The responsibilities of retailers and the customers all flow from the type of payment difficulty categorisation.

1.3 SACOSS assessment approach

This report will discuss the differences between the AER's and the ESC's new approaches. It will assess these differences against the stated aims of reducing debt and disconnections. However, the report will also consider the two approaches in terms of the longer-term sustainability of the process.

SACOSS' conclusions in this report also reflect a number of fundamental criteria that underpin our view on what is an effective and sustainable program for managing vulnerable energy customers. The criteria have been developed having regard to the findings of the AER and the ESC along with SACOSS' long experience with the issues around affordability of energy for vulnerable customers.

Table 1 (p. 41) sets out SACOSS' evaluation of the AER's and the ESC's framework proposals on each of these assessment criteria. They include:

- Early identification of the customer's payment difficulties;
- Improving the quality of the initial conversations with the customer;
- Ensuring customers have access to relevant information on rebates etc.;
- Flexibility to respond to customers' requests and changing circumstances;
- Regulatory monitoring of customers' energy usage and debt levels;
- Providing feedback and encouragement to stay on the plan;
- Improving the level and quality of additional assistance measures (e.g. energy management advice);
- Appropriate referral to qualified 3rd parties (e.g. specialist financial counsellors)
- 'Checking in' with customers after completion of the plan to minimise future payment issues;
- Cost effective mechanisms to identify and process customers; and
- Processes that can be adapted readily to changes in the market.

In making these assessments, SACOSS has also carefully reviewed the regulatory development processes conducted by the AER and by the ESC. SACOSS has also conducted interviews with a number of key consumer representative bodies in Victoria and nationally who have participated in these processes.

SACOSS also considers there are valuable lessons to be learnt from other essential services industries and our assessment has drawn on their experiences.

Finally, SACOSS emphasises that there are risks and costs in developing different regulatory processes across the energy market and SACOSS is, therefore, generally supportive of national harmonisation of regulation.

Having nationally consistent policies and programs not only reduces costs for retailers and confusion for customers. National policy and program consistency also enables the community sector to more efficiently and effectively contribute to social policy development and to support vulnerable customers across a range of essential services.

1.4 The regulatory context

SACOSS considers that an understanding of the regulatory context in which the AER and the ESC operate and develop a regulatory framework for the management of vulnerable customers is important. It underpins a constructive evaluation of the respective proposals by the AER and the ESC.

Section 4 of this report will therefore provide more detail regarding the regulatory framework in which the AER and the ESC have developed their new arrangements for customers facing difficulty paying their energy bills. A brief overview of the key regulatory components follows below.

1.4.1 Regulatory context for the AER

The AER administers the National Energy Consumer Framework (NECF). The NECF includes the National Energy Retail Law (NERL) and the National Energy Retail Rules (NERR). Together, the NERL and NERR provide the legal framework for the management of vulnerable customers in the ACT, New South Wales, Queensland and South Australia.[6]

The relevant law and rules for instance, define the obligations on retailers to offer payment plans for vulnerable customers and to offer a more intensive "hardship" program for customers facing significant challenges in paying their energy bills.

The AER does not have powers to make laws or rules in the national energy market. The energy laws set out in the NERL are determined by the Australian Council of Australian Governments (COAG) with the advice of the COAG Energy Council (CEC) representing each of the states. The Australian Energy Market Commission (AEMC) determines the rules in the NERR following formalised consultation processes.

[6] A number of the states that are signatories to the NECF have additional requirements and/or derogations that are captured in their jurisdictional regulations and codes. These additional requirements are not addressed in this report.

These two instruments define the role of the AER. For example, the NERL tasks the AER with approving retailers' hardship policies and monitoring and reporting on retailers' compliance with the minimum standards set out in the NERL and the NECF more generally.

To facilitate this task the AER also provides guidance to retailers on its interpretation of the law and rules and its expectations with respect to retailers' management of vulnerable customers and the content of a retailer's hardship policies.[7]

The AER has developed a suite of performance measures ('hardship indicators') to monitor retailer compliance with the NERL and NERR. The AER provides both quarterly and annual public reports on retailers' compliance with the law and rules and on the outcomes for vulnerable customers.[8]

Overall, therefore, the AER is not at large to make substantial changes to retailers' obligations or to mandate that retailers perform beyond these minimum standards set out in the NERL and NERR. The AER's task is to ensure retailers' compliance with the minimum standards, to bring clarity and consistency to the interpretation of the law and rules, and to use 'moral suasion' to move the industry to best practice.

The AER's Sustainable Payment Plans Framework is designed to achieve this outcome.

1.4.2. Regulatory context for the ESC

Victoria is not a signatory to the NECF and is therefore not subject to the NERL and NERR or to the AER's compliance monitoring and reporting. The AER's proposed enhancements summarised above are, therefore, not directly relevant to the retailers operating in Victoria and to their Victorian customers.

The relevant regulatory framework in Victoria includes broad obligations defined in the Electricity Industry Act 2000 (EIA), the Gas Industry Act 2001 (GIA) and the Essential Services Commission Act 2001 (ESC Act).

The EIA and GIA (the Acts), for instance, include reference to the promotion of best practice service delivery to facilitate continuity of energy supply to domestic customers experiencing financial hardship.[9]

The Acts also state that a licence to sell electricity or gas is 'deemed' to include a condition requiring the licensee to prepare a financial hardship policy that includes

[7] See AER, Final Guidance on AER approval of customer hardship policies, May 2011. A list of retailers' approved hardship policies can be found at http://www.aer.gov.au/retail-markets/retail-guidelines/guidance-on-aer-approval-of-customer-hardship-policies

[8] See: http://www.aer.gov.au/retail-markets/performance-reporting

[9] EIA, s. 42; GIA, s. 48F.

flexible payment options, energy audits, replacement equipment and processes for early response to domestic customers with bill payment difficulties.[10]
The ESC has the authority under the Acts to approve a retailer's financial hardship policy subject to certain principles such as equitable access and that energy supply will not be disconnected solely because of a customer's inability to pay – disconnection should be a last resort.[11]

Under the ESC Act, the ESC is also required to determine indicators of performance of an energy retailer in relation to disconnections and reconnections, compliance with licence conditions, wrongful disconnection and penalty notices and any other indicators the ESC determines as relevant.[12]

In addition, the ESC is authorised to publish guidelines and to make 'Codes of Practice'.[13] A Code of Practice may provide for a regulated entity to: "develop, issue and comply with customer-related standards, procedures, policies and practices… in accordance with the Code".[14]

A Code may impose a duty, direct how a matter is to be done, create an enforceable legal right and impose a penalty.

Thus, through the mechanisms of retail licence conditions and the Energy Retail Code, the ESC has scope to make significant changes to the manner in which the retail market operates, including the management of vulnerable customers (or as the ESC states: "customers experiencing payment difficulties").

Therefore, within the broad parameters of the relevant Victorian Acts, the ESC is at large to act on its view that the current financial hardship policies are no longer fit for purpose and require substantial amendment.

1.5 What defines a "vulnerable customer"?

In this report, SACOSS prefers to use the term: "vulnerable customer". However, it is important to define at the outset what is meant by the term "vulnerable customer".

In general, SACOSS' understanding of a vulnerable customer parallels the implied definition in the NERL.

The NERL does not, in fact, use the term 'vulnerable customer'. However, the NERL does identify two classes of customers, the first of which can be regarded as a subset of the second.

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[10] EIA, s. 43; GIA, s. 48GC.

[11] EIA, s. 45; GIA, s. 48K & 48KI

[12] ESC Act, s. 54W

[13] ESC Act, s. 47.

[14] ESC Act, s. 47 (2)(a)

For example, the NERL sets out the obligation on retailers to "offer and apply" payment plans, as follows:[15]

(1) A retailer must offer and apply payment plans for:

a) hardship customers; and

b) other residential customers experiencing payment difficulties if the customer informs the retailer in writing or by telephone that the customer is experiencing payment difficulties or the retailer otherwise believes the customer is experiencing repeated difficulties in paying the customer's bill or requires payment assistance.

SACOSS considers these two classes of customers that are described in the NERL provide a useful framework for defining and identifying vulnerable customers. That is, the NERL identifies both a general class of vulnerable customers and a specific class of 'hardship customers' who can be differentiated from other vulnerable customers by the severity of their payment difficulties.

While the NERL places obligations on retailers servicing either of the two classes of vulnerable customers, it places more extensive obligations on retailers servicing hardship customers. For example, the NERL requires a licenced retailer to have a hardship policy and it sets out quite specific minimum requirements for this policy.[16] The minimum requirements include (inter alia) a requirement that the retailer's hardship policy sets out processes to identify customers "experiencing payment difficulties due to hardship".[17]

However, despite the centrality of the concept of a 'hardship' customer, and the obligations on a retailer that follow this, the NERL provides surprisingly little guidance on how a retailer is expected to define a hardship customer. For example, the NERL defines a "hardship customer" as follows:[18]

Hardship customer means a residential customer of a retailer who is identified as a customer experiencing financial payment difficulties in accordance with the retailer's customer hardship policy.

In other words, the NERL defines a hardship customer as a customer that an individual retailer determines is a hardship customer in its hardship policy. That is, under the NERL it is still up to the individual retailer to define and operationalise the criteria they will use to assess if a customer qualifies as a "hardship customer" or as a "customer experiencing payment difficulties". Little wonder there has been such a divergent approach between retailers to the management of their vulnerable customers.

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[15] NERL, s. 50.

[16] See NERL, Division 6, s. 44.

[17] NERL, Division 6, s. 44 (a).

[18] NERL, Part 1, Division 1.

Despite the limitations of the NERL, the AER has provided a useful operational distinction between the two categories of vulnerable customer in its retail performance reports. For example, in its 2014-15 annual retail performance report the AER states:[19]

> Referral to a hardship program is generally the most appropriate form of assistance **when a customer's payment difficulties are overwhelming**, such that they cannot meet a payment plan arrangement because they lack the capacity to pay for current and future consumption. (emphasis added)

Based on this analysis, SACOSS considers that the term "vulnerable customer" should refer to an energy customer who is willing to pay for their energy usage but has had difficulty in doing so either at a particular point in time or at various times in the past.

Within that general category of vulnerable customers and in line with the AER's operational distinction above, SACOSS recognises that there is a sub-group of energy customers who cannot, or are unlikely to be able to in the future, manage a payment plan that recovers both outstanding debt and ongoing energy usage costs. In these instances, the customer's debt will continue to climb and, without significant intervention, disconnection becomes a strong possibility.

The identification and management of customers in these two different classes of vulnerable customers goes to the heart of any assessment of both the regulatory framework and the implementation processes set out by the AER and by the ESC (for Victorian customers).

It is important to also recognise that a vulnerable customer's payment difficulties can be caused by a number of factors. It can arise from relatively short-term factors, such as a period of unemployment or ill health. Vulnerability can also arise from longer-term, more systemic factors, such as low household income or chronic health issues. Increasingly, however, difficulties in paying bills are occurring in what would be regarded as average income households reflecting the pressure of other commitments such as high mortgage payments.

SACOSS considers that a clear understanding of these different factors and their impact on the customer's requirements for assistance is an essential component of any effective and sustainable regulatory approach to vulnerable customers.

For this reason, this report draws on the work by Ofgem and the progressive development of Ofgem's Consumer Vulnerability Strategy (CVS). The CVS explicitly links the requirements of vulnerable customers with the causes of vulnerability.

[19] See for instance, AER, Annual Report on the Performance of the Retail Energy Market 2014-15, November 2015, p. 24.

2 Summary of Findings by Regulators

2.1 Overview

It is almost universally accepted that the provision of energy to households is an essential service. As such, governments, regulators and the energy industry all share a responsibility to ensure that all customers have the opportunity to access energy services on an equitable basis.

Clearly, however, providing this opportunity is a challenge in the face of the reality of many customers experiencing short or long-term payment difficulties and particularly when these customers cannot pay for their current debts and their ongoing energy usage.

Policy makers and regulators have grappled with this issue for many years and have responded by placing various obligations on energy retailers to develop and implement policies that assist customers with payment difficulties.

At a national level, these retailer responsibilities are captured in the regulatory requirements set out in the NECF, and in particular, in the NERL and NERR. The requirements in the NERL and NERR apply to customers experiencing payment difficulties in New South Wales, Queensland, South Australia and Tasmania.

The AER has responsibilities for interpreting the requirements in the NERL and NERR and providing guidance to retailers on these requirements.[20] The AER is also responsible for approving retailers' hardship policies, monitoring and reporting on retailers' performance and, where applicable, imposing penalties for failure to comply with the NERL and NERR.

However, Victoria is not a signatory to the NECF. In Victoria, the obligations to protect ongoing energy supply for vulnerable customers are set out in the relevant electricity and gas industry Acts and in the Energy Retail Code and energy licences. The ESC is responsible for the development of the Energy Retail Code and the energy licence requirements and for monitoring and enforcement of compliance with the Code and licences.

[20] For example, see AER, *Guidance on AER approval of customer hardship policies,* May 2011. The AER states that the purpose of the Guidance is to provide for retailers: "the information they could include in their customer hardship policy to ensure their policies fully satisfy the requirements of the Retail Law and Rules". See http://www.aer.gov.au/retail-markets/energy-retailers-customer-hardship-policies

2.2 Assessments by the AER and ESC of the current regulatory frameworks

Over the last two years, the AER and the ESC have undertaken parallel investigations into the operation of their respective regulatory frameworks for the management of financially vulnerable energy customers.

Both regulatory bodies have found very similar issues with the operation of the current frameworks. In terms of customer outcomes, little had changed over the years. Relatively few customers (25%) completed their repayment programs. In many cases debt was higher at the end than it was at the beginning of the program.

Both the AER and the ESC identified that there were:

- Large variations in the way retailers interpreted their regulatory obligations and the manner in which they managed their vulnerable customers;
- Significant inconsistencies in retailers' approach to identifying a customer's 'capacity to pay' and, therefore, in their ability to place a customer into the most appropriate assistance program;
- Limited success in improving outcomes for customers as measured by the amount of debt customers held, the reduction in debt as a result of the programs, and the number of disconnections for debt.

Many other studies have found similar results. It is an area where issues are complex and solutions hard to find.

As a result of this research, and feedback from many stakeholders, both the AER and the ESC have proposed changes to their respective frameworks for the management of vulnerable customers.

Notwithstanding the issues with the current regulatory framework are common to both the AER and ESC, their solutions are quite different.

Partly this reflects the different regulatory functions of the AER and the ESC. For instance, the AER is not empowered to adopt a binding code on retailers; the AER must work within and is limited by the NERL and NERR. The ESC, however, has the power to bind retailers through its control over the licencing of retailers and the Energy Retail Code (see above).

However, in large part the different 'solutions' to the problems identified in their research appear to reflect a more fundamental difference in the AER's and the ESC's view on how the vulnerable customer is identified and managed through the hardship process in order to achieve the objectives of reduced debt and fewer disconnections.

At a high level, SACOSS has described the difference between the AER and the ESC as 'evolutionary' change versus 'revolutionary' change. The key elements of the AER's and the ESC's proposals are summarised below.

2.3 AER's "Sustainable Payment Plan Framework" (AER Framework)

The AER's Framework builds on the existing Hardship Policy Framework captured in the NERL, NERR and in the AER's own guidance documents. There is a common emphasis on retailers assessing the vulnerable customer's 'capacity to pay' as this defines the payment plans and additional service offerings.

The AER's new Framework is aimed at identifying good practice in assessing a customer's capacity to pay and encouraging retailers to sign up to this Framework. However, adoption of the AER's Framework is voluntary. The Framework goes beyond the minimum requirements set out in the NERR and NERL and the AER does not have the statutory power to force a retailer to sign up to the Framework.

The AER's voluntary Framework is principles based and stresses the importance and value of the retailer applying these principles in all its interactions with the vulnerable customer. The good practice principles include:

- Empathy and respect;
- Flexibility to changing circumstances;
- Consistency in the management of the customer.

The AER's Framework is also based on encouraging the customer to become engaged in the process. For example, the 'capacity to pay' conversation between the retailer and the customer would start with the customer suggesting what they could afford to pay rather than the retailer imposing a repayment schedule.

The retailer may then discuss with the customer if this amount is appropriate given factors such as the level of debt, the customer's ongoing usage and their particular circumstances. The retailer can also explain what the proposed amount would mean in terms of the overall time period required to complete the repayment.

Based on this additional advice, the customer may propose a different repayment schedule. Alternatively, the customer may choose to work with an independent financial counsellor to clarify what a sustainable payment plan might be in their particular circumstances before reverting to the retailer.

The AER's Framework then describes three options based on the discussion with the customer with each option in turn defining an optimal level of ongoing support for the customer. The options are:

- **Option A**: The customer nominates an amount that the retailer agrees to that will cover their ongoing usage and repay any amounts owing over a period up to 12 months.
- **Option B:** The customer nominates an amount that the retailer agrees to that will cover ongoing usage and repay debts owing over a period of 12 to 18 months. The retailer should consider if the customer would benefit from

more support such as the support available under the retailer's hardship program.

- **Option C:** the customer nominates an amount that is less than the amount needed to pay for ongoing usage and reduce any debt. This is a signal that the customer would benefit from the more tailored support under the retailer's hardship program.

If the customer makes the agreed payments the retailer should still monitor usage and conduct routine checks with the customer. However, if the customer misses payments or finds the plan unaffordable there would need to be further mutual review of the repayment options. If the customer does not engage with the retailer, however, then the retailer may proceed to implement the disconnection process.

The AER's view is that if the conversations with the customer are respectful, if the approach is flexible and takes account of the customer's circumstances and there is a consistent and positive approach, then the customer is more likely to maintain their engagement with the retailer and proactively seek further assistance if required.

In addition, the AER considers that if an approach encourages the customer to realistically define their capacity to pay and commit to the agreed payment plan, then the plan is more likely to be sustainable and repayments completed.

Follow up monitoring by the retailer and regular 'checking-in' with the customer will also support the ongoing engagement of the customer and the sustainability of the program.

2.4 ESC's Framework: "Supporting Customers, Avoiding Labels"

In its current form, the regulatory requirements in Victoria for retailers managing customers with payment difficulties are largely aligned with the requirements in the NECF. This alignment reflects the extensive work undertaken in 2014-15 to 'harmonise' the Victorian Energy Retail Code with the NECF21 as a prelude to Victoria's expected signing up to the NECF.

Following its 2015-16 Inquiry, however, the ESC has concluded that the current regulatory was no longer 'fit for purpose' and required substantial reforms. Community stakeholders generally supported the need for reforms given the mounting levels of debt and customer disconnections.

The ESC has, therefore, put forward a very different approach to resolving the issues identified in its Inquiry. This different approach will require significant changes to the Energy Retail Code, the industry laws and to many other processes and procedures.

The ESC's analysis begins with the proposition that the assessment of a customer's 'capacity to pay' is inherently a subjective and intrusive process and results in

[21] See for instance: ESC, Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework, Final Decision Paper, July 2014. Chapters 18 and 19.

inconsistent outcomes. In its Final Decision, the ESC builds a new framework around what it sees as objective criteria, i.e. assistance to customers is defined by the 'type' of payment difficulty that the customer is experiencing. This 'type' of payment difficulty can, in turn, be objectively defined and consistently applied by retailers.

The ESC defines 5 'types' of payment difficulty in its Final Decision. For each type of payment difficulty there is a corresponding obligation on the retailer to provide a specific and codified form of assistance (the 'safety net' assistance). That is, the ESC's process sets a precisely defined minimum service level for each type of customer. The ESC states that the retailer is also free to provide services above the safety net standards. The five 'types' are defined as follows in order of severity of the actual or potential repayment difficulty:

Type A: The customer has not yet missed a payment but is concerned about the next payment. Retailers must provide a 'self-service' web based facility that allows the Type A customer to choose a variety of pre-set payment plan options.

Type B: The customer has failed to make a payment by the end of the reminder bill period (as set out on the reminder notice) and therefore has an 'energy debt'. The retailer must automatically place this customer on a monthly prepayment plan with pre- specified standard conditions for repayment amounts and period.

Type C and D: The customer has an energy debt and is making repayments of the debt and payment for ongoing energy usage. However, the customer is not paying sufficient amounts to reduce the overall level of their debt sufficiently. These customers must be placed on a standardised repayment plan and may require more tailored assistance such as information on rebates and energy efficiency.

Type E: The customer is unable to pay for their ongoing energy usage and is not repaying their debt. As a result, debt continues to increase. The retailer must assign this customer to a "connection support" arrangement focussed initially on reducing energy consumption to an affordable level. The customer may be placed on a pay-as-you go payment plan[22] after three months.

At each stage (A to E), the retailer must provide the customer with access to each of three mandatory elements of an assistance plan (the 'building blocks'), namely:

- Payment plans to enable the customer to progressively repay accrued debt through monthly or more regular payments;
- Energy management information to reduce the cost of consumption;
- Information and referral to other government and non-government agencies.

The customer also has an obligation at each stage to make the payments under the self-selected option or through an agreed repayment plan. If the customer fails to do

[22] The ESC states that this is not a pre-payment meter plan.

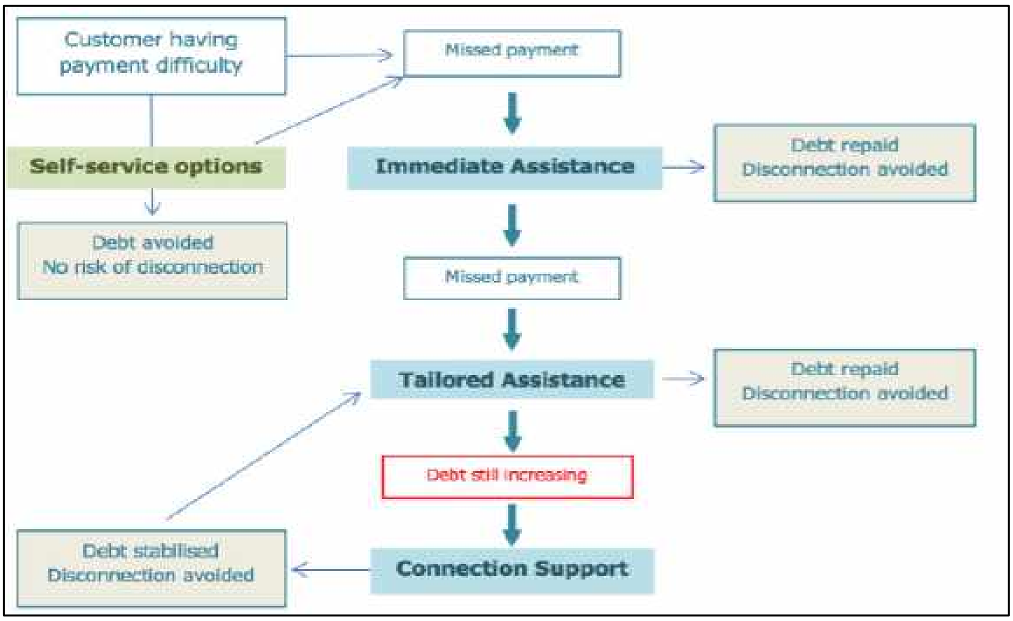
so and fails to engage with the retailer, then the retailer may commence the formal disconnection process.

However, if a retailer disconnects a customer who is making payments and/or is negotiating with the retailer for an alternative arrangement, the retailer will be subject to a Wrongful Disconnection Notice (WDN).

The ESC states that its approach will not only avoid subjective 'capacity to pay' assessments and labelling of customers as 'hardship' customers. Because of the automatic nature of much of the process and the prescribed features of the payment plans, customers will see a more standardised level of service and will avoid the accumulation of debt.

Figure 1 below illustrates the overall process and the relationships between the payment difficulty type and the required level of assistance as envisaged by the ESC in its Final Decision.

Figure 1: Outcomes of the ESC's Final Determination process



Source: ESC, *Supporting Customers, Avoiding Labels*, Feb 2016, Figure 4.5 p. 69.

2.5 Other research

There is a considerable body of literature on the best practice approach to managing customers experiencing difficulties paying for essential services. Some of these views are supported by specific research; other views are based more on direct experiences with assisting vulnerable consumers.

It is not within the scope of this report to consider all these different views. However, this report briefly considers some of the more recent investigations by Ofgem in the UK.

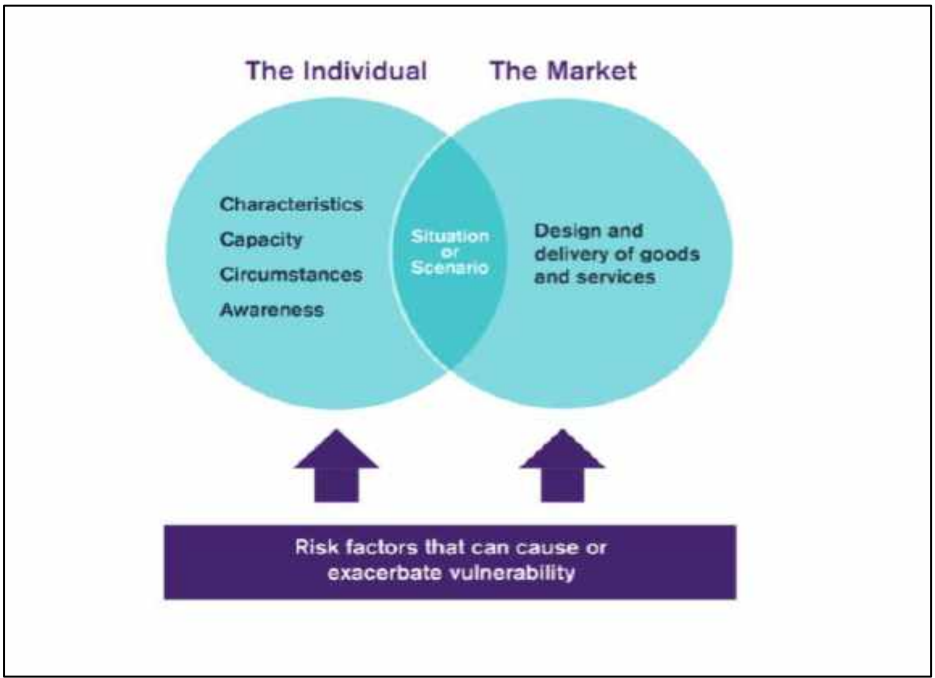
Ofgem conducted a review of suppliers' approaches to debt management and prevention in 2010. The findings of that review were very similar to the observations made by both the AER and the ESC in their reviews.

As a result, Ofgem initiated a Consumer Vulnerability Strategy (CVS). The CVS supports an ongoing research program designed to provide 'evidence-backed' solutions to the complex issue of customer vulnerability. It provides important insights for the assessment of the new regulatory frameworks in Australia.

The CVS program includes the development of a conceptual 'model' of vulnerability and the use of this model to frame the assessment of retailer programs.

Figure 2 below illustrates the model of vulnerability. Notably, it takes into account both the individual characteristics of the customer and the characteristics of the market (such as access to competitive market offers). Taken together, these two 'risk' factors define the overall situation facing the vulnerable customer.

Figure 2: Risk Factors that can cause or exacerbate vulnerability



Source: Ofgem, *Consumer Vulnerability Strategy Progress Report*, September 2015, p. 67

Having identified the risk factors for vulnerability, the CVS has emphasised the importance of early intervention, empowerment of customers and improved access of vulnerable customers to the market. Going forward, the CVS has stated its aims are to:[23]

- Protect and empower consumers in vulnerable situations – to reduce the likelihood and impact of vulnerability and;

[23] Ofgem, *Consumer Vulnerability Strategy Progress Report*, September 2015, p. 10.

- Ensure all consumers can access market benefits – so that nobody is at a disadvantage due to their circumstances.

The next section of this report will set out SACOSS' conclusions on the respective merits of the new frameworks proposed by the AER and ESC. We consider that the insights provided by the CVS' research program is relevant to this assessment.

For example, SACOSS places great importance on the nature of the interactions between the retailer and the consumer and the extent to which the process empowers the customers to make decisions and find solutions that best suit their individual circumstances.

Similarly, SACOSS believes it is important that vulnerable customers are assisted in getting access to the competitive market and to products and services suitable for their needs at competitive prices.

3 SACOSS Conclusions about New Regulatory Frameworks

3.1 Overview

It is appropriate at the outset of any assessment of the two proposals to express SACOSS' support for the work of both the AER and ESC in critically evaluating the existing regulatory frameworks for vulnerable energy customers.

SACOSS also shares the concern of both the AER and the ESC that, despite all the efforts to improve services to these vulnerable customers, including regulatory reforms and the efforts of some retailers, very little has changed in terms of the overall outcomes.

Both the AER's and the ESC's retail performance reports indicate that many customers are not completing the repayment plans, and the most vulnerable customers are generally not able to eliminate their historical debt. In some cases, the level of debt is increasing.

This is an unacceptable burden on these vulnerable customers, and on the community as a whole. Ultimately, the cost of unpaid debt is passed on to all customers.

However, it appears that this has not necessarily translated into increasing levels of disconnection. Overall, disconnection rates suggest that disconnection is a 'last resort' for most retailers.[24]

A second area that is unacceptable to SACOSS is the finding by the AER and by the ESC that there are significant differences between retailers in their treatment of vulnerable customers. Some retailers also appear to change their approaches over time leading to inconsistent outcomes for their customers.

While the AER and the ESC state that there was no evidence of any systematic non-compliance by retailers with the existing regulatory regimes, it is clear that these current regimes leave scope for retailers to comply with the letter of the law while their customers are experiencing very different outcomes.

The relatively low level of vulnerable customers, including 'hardship customers', receiving advice from their retailers on how best to manage their usage also indicates a gap in the retailers' management of vulnerable customers and in the regulatory frameworks and enforcement policies.

It is acknowledged that there are a number of obstacles to providing effective energy efficiency advice to individual households. However, improved energy efficiency is

[24] SACOSS has identified some anomalies in recent disconnection data and is seeking clarification from the relevant regulator.

an essential component of enabling a customer to better manage their energy bills and SACOSS considers all efforts should be made to overcome these obstacles.

In summary, SACOSS agrees that there is need to 'rethink' the current regulation of retailers' programs for vulnerable customers and we support the AER and the ESC in conducting these reviews.

Customer representatives in general have also been very committed to the review processes and SACOSS has initiated or participated in a number of multi-disciplinary conferences on the topic.

SACOSS therefore has some sympathy with the views of the ESC's Chairman, Dr Ron Ben-David, at the commencement of the ESC's review of the regulatory frameworks for customers experiencing payment difficulties. At a conference in May 2015, he stated:[25]

> *…dealing with financial hardship is perhaps the most vexing of problems we face as a regulator charged with promoting the long term interests of all consumers.*
>
> *This is a Gordian knot in manifold dimensions. A knot of issues and consequences; rights and obligations; choices and capacities; customers and retailers. This knot sits in a rope with no free ends; no obvious starting point from which we might begin to unravel its entangled mesh of concerns.*

However, having recognised the complexity of the issue of ensuring ongoing and adequate energy supply for vulnerable customers experiencing financial hardship, the ESC's final response is to implement a highly structured framework with automated stages and mandated payment plan options.

The ESC's framework relies heavily on system-based solutions to identify customers and less on early engagement with customers and empowerment of these customers to better manage their payment difficulties.

SACOSS questions whether a system-based, automated process is the most appropriate method to manage the complex problems identified by the ESC, or to resolve the 'manifold dimensions' of the Gordian knot.

Perhaps an alternative is to start with the insights of Tolstoy, namely:

> *Happy families are all alike; every unhappy family is unhappy in its own way.*

SACOSS would argue that every vulnerable customer is vulnerable in their own way. It follows that any process to better manage these customers, particularly those

[25] Dr Ron Ben David, "Supporting Energy Customers in Financial Hardship: Untying the Gordian Knot?" 11 May 2015, p. 23. Paper presented at the Credit Collections & Hardship Program in Utilities conference.

customers with long-term debt, must take account of the specific circumstances facing that customer.

However, SACOSS also concludes that while the ESC's proposed framework as set out in its Final Determination has significant limitations, the AER's more evolutionary approach has limitations too.

The next section will provide more detail of some of SACOSS' concerns with the AER's and the ESC's frameworks.

SACOSS does acknowledge that there are still many uncertainties around the effective 'best practice' management of vulnerable customers, particularly when this is defined in terms of outcomes such as the level of debt and the rate of disconnection.

However, this uncertainty should not delay an immediate focus on improving the quality of the experience for vulnerable customers through respectful communications, better engagement and customer empowerment while the search for better and more comprehensive and sustainable solutions continues.

3.2 The reasons for the conclusions by SACOSS

3.2.1 The importance to the customer of 'agency' and control

SACOSS places a strong emphasis on processes that demonstrate respect and empathy for the customer and the situation they find themselves in.

SACOSS also emphasises the importance of the vulnerable customer having a sense of engagement and control over the process and that the customer is genuinely empowered to make appropriate decisions on the management of their debt and their future energy use.

This is not to say that the vulnerable consumer should not be supported in their decision-making. The AER's framework, for instance, encourages the retailer to provide information and advice to the customer in coming to this decision.

Nor does granting the customer some degree of empowerment and agency in the process mean that the customer has no obligations to the retailer. SACOSS considers that true agency also means the customer accepting that there are mutual obligations. The retailer has responsibilities to listen, advise and inform, and the customer has responsibilities to communicate with the retailer and, ultimately, work with the retailer with the aim of repaying their debts for the services rendered to them.[26]

[26] Subject to a decision by the retailer to forgive all or part of the debt.

However, by empowering the customer, the retailer is providing the consumer with the personal resources to better manage their current situation and in the future to the benefit of both the retailer and the customer.

From a broader policy perspective, empowerment enhances the confidence of the consumer to actively participate in the competitive market in the future.

SACOSS' view on this is supported by both practical experience and social theory as captured in the following quotation:[27]

> *Marketing and policy responses must be against discrimination, against promoting or facilitating learned helplessness and for empowerment by assisting individuals to develop skills that foster optimal functioning and individual agency… Public policy should be based on consumer perspectives of vulnerability, not on well-meaning third parties' evaluations of their situations. Being treated like someone else wants to be treated may well not be appreciated.*

In this context, SACOSS considers that the ESC's approach set out in its Final Determination is overly automated and prescriptive. Further, it is too broad in its definition of customers needing assistance from their retailer.

In particular, the ESC's framework as set out in its Final Determination suggests that any customer who has missed a payment must be automatically placed on a monthly repayment plan. This 'decision' involves no discussion with the customer.

As a result, many customers who are not vulnerable will end up on monthly payment plans that the customer has neither requested nor required. Retail resources will in turn be tied up in dealing with complaints from these customers and in resetting their billing arrangements.

An automated process with a standardised payment plan is not necessarily beneficial to the more vulnerable customer either.

In particular, the extent of automation and standardisation built into the early stages of the process will mean that the customer will have little if any sense of personal control over the process. Both the process and the payment plan will depend only on the 'type' of customer debt, as defined by a computerised algorithm, rather than by the individual customer's needs at the time.

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[27] Baker SM, Gentry JW & Rittenburg TL, "Building Understanding of the Domain of Consumer Vulnerability". Journal of Macromarketing, Vol 25 No. 2, December 2005, p. 10. https://www.researchgate.net/profile/James_Gentry2/publication/258153302_Building_Understanding_of_the_Domain_of_Consumer_Vulnerability/links/5592d42f08ae1e9cb4297cfa.pdf

The disempowered customer is likely to also be a disengaged customer unwilling to work constructively with the retailer or to contact the retailer in times of difficulty.

Moreover, there is no flexibility for the retailer to respond to the individual circumstances of the customer. The billing machine and the algorithm are in control!

It is only at Stage D and E that the ESC's Final Determination framework appears to focus on the retailers having meaningful conversations with the customer to understand the customer's energy use and capacity to pay and thereby tailor a payment plan more aligned with the customer's situation. SACOSS considers that by this time, the customer is likely to have become disengaged from the process and is unlikely to feel committed to any payment plan whether tailored or not.

In marked contrast to the ESC's automation of the initial stages of the process, the AER's framework is very much focussed on enhancing and personalising the initial contact between the retailer and the customer.

That is, the AER's framework is designed to engage and support the customer at the very outset; it is the customer together with the retailer who identifies whether there is a payment difficulty and the extent of this difficulty.

By enhancing the customer's sense of control and agency early in the process, SACOSS believes that the AER's Sustainable Payment Plan Framework offers a more effective pathway towards improving the outcomes for vulnerable customers.

SACOSS also considers that by specifically discounting the value of early conversations and capacity to pay assessments, the ESC's process fails to recognise the importance of understanding the broader context in which the customer experiences this vulnerability.

While the ESC is correct in saying it is not its task to evaluate these situational factors, this does not mean that these factors are unimportant in establishing effective communication between the retailer and the customer. Understanding of these factors will facilitate the development of a sustainable payment plan while also enhancing the customer's capacity to manage future payments and, eventually, participate in the competitive market.

3.2.2 Are there potential benefits of more prescriptive regulation?

Despite SACOSS' view that the conversation with a customer must commence at the start of the process not the end, SACOSS also recognises that some aspects of the ESC's proposed changes are worthy of further consideration in the national framework.

For example, SACOSS would support the ESC's focus on early intervention and we consider that the ESC tackles 'head on' the troubling observation of increasing levels of consumer debt and uncompleted payment plans, particularly for the most vulnerable customers.

The ESC's approach also imposes a specific obligation on retailers to provide additional advice and energy management services to all customers with payment difficulties. The ESC's approach mandates further, more proactive intervention to manage consumption levels for those customers in the most need and who cannot pay for either their current debt or future consumption.

Ultimately, when rebates, concessions and the like are exhausted, finding ways to effectively reduce usage (without negative impacts on health and wellbeing) may be the only long-term solution for these most vulnerable sectors.

There is no doubt that there are many barriers to improving the efficiency of energy use, particularly for low-income households or those with special needs. However, by mandating a high standard for retailers to provide energy efficiency services to these customers, the ESC process has the potential to give some relief in the longer term.

There is, however, a real need for further research on what programs have the best effect over the longer term for vulnerable customers. To date, the results are very mixed, reflecting in many cases the wider situational factors these customers face.

While SACOSS supports the intent of this aspect of the ESC's program, we reiterate our view that for an energy management program to succeed, the recipient must feel engaged and empowered in the decision-making from the outset. Energy management forced on a client simply for the sake of ticking the compliance box with the ESC's regime will have high costs but deliver little long-term benefit.

3.2.3 Are there risks in relying on a voluntary framework such as the AER's approach set out in its Sustainable Payment Plans framework?

SACOSS has some concern that the AER's Framework is both voluntary and aspirational. There is already evidence accepted by both the AER and the ESC of good practices by some retailers. These same retailers will no doubt be the first to sign up to the AER's voluntary Framework.

However, it is a leap of faith that other retailers who are currently only meeting the minimum standards will sign up to a Framework that will require them to provide more services and in a more consistent way to support their customers experiencing payment difficulties.

Will these industry laggards be sufficiently motivated to move towards and commit to better practices? Or will their customers continue to receive a lower, minimalist level of support when facing payment difficulties? Will these retailers seek to save costs by 'pushing' these customers towards the standard retailers?

The AER appears to believe that it can promote widespread adoption of the Framework by having a public list of all retailers who have signed up to the

Framework and by removing retailers from the list if they fail to meet the higher standards.

This is a 'moral suasion' argument. If moral suasion is to be used as a means of lifting the standards of all retailers, then it is essential that the AER strongly promote the existence and import of the 'list' of retailers signed up to the Framework.

More generally, however, given the characteristics of many households experiencing higher degrees of difficulty paying their bills, it is not sufficient for the AER or policy makers to rely on the competitive market to drive the quality of retailers service offerings to these consumers.

3.2.4 The potential benefits of enhanced monitoring and reporting

SACOSS is pleased to see the formalisation of the processes for monitoring and reporting outcomes. This provides the basis for ongoing improvement in the management of customers, although it is only in the last few years that the data has been strategically analysed by the regulators.

Customers' circumstances change and the environment changes. For instance, the advent of smart meters has enabled remote disconnection and reconnection of residential customers in Victoria.

This in turn 'accelerates' the turn-around between a retailer ordering a disconnection and the distributor disconnecting the customer[28] and increases the incidences of multiple disconnections of the same customer in a year, as demonstrated in the recent report by St Vincent de Paul Society and Alviss Consulting.[29] The report also highlights the relationships between remote disconnection and the observed increased incidence of multiple disconnections for the same customer.[30]

Enhanced monitoring and reporting has the potential to flag issues such as this early in the process, thus providing time for the regulator to assess and adjust the regulatory requirements.

The benefits also include a greater capacity for the regulator to apply 'moral suasion' (see above) to achieve improvements and increase competitive pressures on retailers.

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[28] In Victoria, only the distributors can physically disconnect a customer even though in almost all circumstances it is the retailer requiring the disconnection.

[29] See: St Vincent de Paul Society & Alviss Consulting, *Households in the dark; Mapping electricity disconnections in South Australia, Victoria, New South Wales and South East Queensland*, May 2016, p.p. 4 & 6. In the non-Victorian states there may be up to 2-3 weeks between the time the retailer raises the disconnection request and the completion by the distributor (ibid, p 26). In the meantime, a significant number of customers will have paid their invoice and the retailer cancels the uncompleted disconnection request.

[30] ibid, p. 7.

3.2.5 The need for a better understanding of the customer and the situational context

Ofgem has revealed the importance of a more global understanding of the customer, the market and the situational context facing the customer.

Yet neither the AER nor the ESC discusses the implications of these external factors in the management of vulnerable customers. The focus is on the retailer – customer interactions, but these do not occur in isolation and to ignore these factors is to underestimate the challenge and the solutions.

As SACOSS has noted above, for instance, the evidence from the Alviss Consulting study suggests that the advent of smart meters with remote disconnection and reconnection capability has directly led to increases in the number of disconnections in Victoria. There have also been increases in the number of multiple disconnections of the same customer.[31]

The study found a clear downward trend in Victoria in the number of disconnection orders that were not completed. The Victorian trend in 'completed disconnections' parallels the roll-out of smart meters as summarised below:[32]

- **2012-13**: 53 per cent of disconnection orders by the retailer were *not completed* by the distribution company;
- **2013-14**: This figure had dropped to 27 per cent;
- **2014-15**: Only 20 per cent of retailer initiated disconnection orders were not completed by the distributor.

In contrast, the proportion of disconnection orders that were not completed by the distributor in other states that required a site visit to complete a disconnection ranged from 33 per cent up to 53 per cent.[33] This reflected the significant time delays between the raising of the retailer's disconnection order and the response by the relevant distribution company together with (perhaps) the distributor's reluctance to disconnect customers in some areas.

It would therefore be easy, but far too simplistic, to look at an increase in disconnection rates in Victoria and attribute this solely to the limitations of the retailers' management of their vulnerable customers.

The case for greater, more prescriptive regulation is not clearly made when external factors are likely to be the cause of or contribute to the observed increases in disconnection rates.

[31] ibid.

[32] ibid, p. 17.

[33] ibid, Chart 5, p. 15. Note there may be some timing differences between this data and the information in the Victorian data tabled above.

3.2.6 Do the frameworks support adaption to change and innovation?

The discussion above on smart meters is just one example of the changes occurring in the energy market. It is essential that the frameworks are flexible and encourage innovation so that vulnerable consumers can benefit from these changes.

By empowering vulnerable consumers to take control of their own energy payments, the AER's framework facilitates this participation. Because it is principle based rather than tied to specific actions (beyond the minimum requirements), it also provides scope for retailers to innovate in how and when they deliver different forms of assistance.

SACOSS has already noted that the ESC's more prescriptive framework as set out in the ESC's Final Determination, may reduce a customer's sense of control and empowerment. SACOSS is also concerned that the prescriptive nature of the ESC's frameworks will limit opportunities for innovation.

This issue has been raised by a number of stakeholders during the ESC's consultation process and the ESC considers it has addressed this issue in its Final Framework.

In reality, however, the ESC's approach may well hinder retailers adopting innovative practices even if in theory such practices are allowed. The significant costs, complexities and risks of implementing the ESC's multi-stage process may well lead to a focus on compliance rather than innovation. Retailers, conscious of the need to rigorously comply with each step in the ESC's multi stage process, may not be willing to take on further costs and risks by introducing innovations in the process.

This is particularly the case in Victoria because, in parallel to the introduction of the new Framework, the penalties for wrongful disconnection have been substantially increased,[34] as have the ESC's compliance assessment and enforcement responsibilities.[35]

[34] The wrongful disconnection payment was increased to $500 per day via amendment to the *Energy Legislation Amendment (Consumer Protection) Act* 2015 (Vic) and the ESC was granted new powers to impose a $5,000 penalty for each breach of the Energy Retail Code that has led to a wrongful disconnection.

[35] Effective from 1 June 2016, the ESC has a new compliance and reporting function and new and updated enforcement powers following amendments to the Essential Services Commission Act 2001 and associated regulations. See: http://www.esc.vic.gov.au/project/energy/30280-interim-approach-to-energy-compliance-and-enforcement/

3.2.7 Have the costs and benefits of the frameworks been adequately assessed?

SACOSS considers that reducing the level of customers' energy debts and the rate of disconnections will have benefits to customers and to the wider community. However, like all new regulation, there must be a careful assessment of both the benefits and the costs of implementing and operating the new frameworks.

The cost to retailers of implementing and operating the AER's Sustainable Payment Plans Framework is likely to be small relative to the benefits. Firstly, participation is voluntary. Secondly, the Framework builds on existing processes, the aim being to enhance the quality of these processes rather than to fundamentally change them.

The experiences of other essential services providers, such as Yarra Valley Water (YVW), confirm the benefits to customers and to the business of improving the quality of the processes and the interactions with the customers. YVW is widely recognised as a leader in developing programs for customers experiencing payment difficulties that benefit both the customer and the business.

For example in its submission to the ESC's Draft Determination, YVW states: [36]

> *The most recent review of the cost effectiveness of our current support program in the hardship case model, continues to produce a substantial business case. Therefore, whilst we continue to protect the health and wellbeing of our most financially vulnerable customers, our hardship program continues to achieve a positive financial outcome.*

YVW's approach to managing vulnerable customers, therefore, does not rely on highly structured and automated processes. Rather, it relies on a strong and consistent commitment to improving the quality of the consumer's experience and maintaining positive lines of communication with the customer and with other partner agencies. These feedback loops in turn allow YVW to test ideas and progressively enhance its services.[37]

The YVW hardship customer is also encouraged to determine what they can afford to pay rather than the retailer determine it for the customer. As YVW states in its submission with respect to its "Arrange and Save" program:[38]

> *The program has an underpinning philosophy of behaviour change and assists in building positive, trusted and stronger relationships between the retailer and the customer. Yarra Valley Water reported a payment compliance of 94%*

[36]Yarra Valley Future Water, *Response to Essential Services Commission's Energy Hardship Inquiry Draft Report*, October 2015, p. 12.

[37] See for instance, Kildonan Uniting Care, *Response to Energy Hardship Inquiry Draft Report*, October 2015, p. 5.

[38] ibid, p. 10. The Arrange and Save program is directed at customers who are unable to afford the cost of debt along with the ongoing usage.

for customers who are participating in the Arrange and Save program last year which shows the effectiveness of this engaging model.

The AER's Sustainable Payment Plans Framework incorporates many of the elements of the YVW model by emphasising the quality of the interactions and the customer's ability to engage in the process.

In contrast, the ESC's new framework (as set out in its Final Report) will require substantial changes to retailers' processes and systems and will have implications for other parties such as the community sector, financial counsellors and perhaps the Ombudsman (given the changes to the disconnection and billing procedures).

The ESC has stated in its Final Report that it has altered some aspects of its proposed framework in response to feedback from retailers on the costs of implementation. The ESC states that it has made these significant changes: "in response to feedback about how the framework would need to build on the national framework rather than duplicate it".[39]

Nevertheless, the changes to current processes are substantial and will involve extensive changes to retailer systems, staff training, customer communications, rewriting of market contracts, market transfer systems[40] and so on.

Retailers, for instance, have identified issues with the ESC's final framework such as the need to track in 'real time' customer debt levels and matching these debt levels with forecast consumption profiles, in order to assess the customer's 'type' of payment difficulty and the appropriate mandated payment plan.

AGL described the impact of the ESC's "highly stratified approach to categorising customers" as follows:[41]

> *Large system costs as retailers track various debt accrual thresholds through the system. Also added complication for customers who may move between 'Types' or levels. No clarity on how this will be addressed… Increased bills due to system changes. Over-reliance on system solutions as opposed to engagement with customers.*

Not only does the ESC appear to underestimate the overall costs of its proposed scheme, the ESC also claims that the costs of its approach will relate largely to the implementation stage and ongoing costs will be small. SACOSS is not convinced and considers that ongoing costs could be substantial.

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[39] Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February 2016, p. 103

[40] This is because certain customer categories will not be able to transfer to another retailer until the outstanding debt issues are resolved.

[41] AGL Energy, "ESC- retailer perspective", 17 March 2016. Presentation to the National Consumer Roundtable.

For instance, the initial automated processes are likely to 'sweep up' many non-vulnerable customers who do not need and do not want to enter some form of repayment plan.[42] This in turn is likely to impose ongoing costs on retailers in terms of rising customer complaints, customer messaging, resetting billing cycles (as customers move to and from monthly billing) and so on.

It is also likely that these increased concerns will flow through to increases in the Ombudsman's costs associated with these complaints, and increased costs for the community sector and financial counsellors.

It will be up to the ESC to explain to energy users why energy retailers in Victoria have this unique obligation to place customers on monthly payment plans without the customers consent or engagement, simply because they have not paid their bill 'on time'. The move by many retailers to a standard monthly billing cycle for electricity by many retailers will accelerate the billing and missed payment cycle, potentially exacerbating the problems.

The ESC's changes will also create a different regime in Victoria than the national framework with all the attendant additional costs for Victorian consumers. Currently, each of the retailers appear to have established a common customer hardship program process and reporting protocols that apply across all states including Victoria.[43]

However, given the features of the ESC's proposal in its Final Report, the retailers will now require a separate and complex change to processes and reporting protocols to apply to Victorian customers only. The Energy Retail Association of Australia (ERAA) in its submission to the ESC explains this issue as follows:[44]

> *The costs of implementing an alternative framework will be significant … Maintaining and operating two different hardship frameworks to cater for different jurisdictional requirements is expensive and inefficient. Retailers have incurred significant costs in developing systems and processes that meet both the National Energy Customer Framework (NECF) and the harmonised Energy Retail Code in Victoria. To promote efficiency and competition in the NEM [National Energy Market], nationally consistent frameworks are necessary*.

These additional costs of a stand-alone Victorian process will also be incurred by the community sector as they too will need processes and procedures that align with the ESC's process in Victoria.

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[42] This arises as a result of the ESC's proposal that all customers who have not paid their energy bill by the due date on the reminder notice, and who have not contacted the retailer, will be automatically placed on a three, six or nine month payment plan (depending on their billing cycle).

[43] Particularly since the Victorian Energy Retail Code Version 11 which reflected the previous policy of harmonisation with the NERL, NERR and the AER's guidance.

[44] ERAA, Letter to ESC re: "Supporting Customers, Avoiding Labels – Energy Hardship Inquiry Draft Report", 2 October 2015, p. 2.

While the ESC has claimed that its Final Report introduces a number of changes that better align it with the national arrangements, the fact remains that there are significant differences with significant cost implications.

It is of concern that the ESC does not appear to have systematically investigated the totality of the costs to retailers and other stakeholders.[45] Nor has the ESC indicated how these costs might be recovered – presumably, the ESC is willing to accept that costs will be passed through to all residential customers, but this is not stated.

Nor does the ESC appear to have compared the costs and benefits of its proposal to the costs and benefits of other approaches that might address the issues and be more aligned with the national approach and Version 11 of the Energy Retail Code.

To be clear, however, SACOSS recognises the deficiencies in the current arrangements and the need for some change. It is the nature of the change and the lack of any transparent cost benefit evaluation process undertaken of the proposed approach versus alternatives that is of concern here.

3.2.8 Consultation Processes

SACOSS has not been closely involved in the development of the ESC framework but SACOSS does acknowledge the investment that the ESC and consumer representatives in Victoria have made to date in an attempt to improve outcomes for vulnerable customers.

SACOSS has, however, interviewed a number of consumer stakeholders who have been closely involved in the ESC's development process. As noted by the ESC, the consumer representatives generally supported the ESC's assessment of the issues with the current hardship policy framework. Stakeholders also supported the general principle of early intervention to reduce the customer's debt and the removal of stigma associated with this debt.

Nevertheless, in its discussions with the Victorian consumer representatives, SACOSS found a common frustration about the direction the ESC was taking in revising the framework.

Most particularly, the consumer representatives were concerned that the ESC's approach was not promoting solutions that involved better communication and understanding between retailers and their vulnerable customers, particularly the most vulnerable customers who faced significant difficulties in paying back debt and paying for ongoing usage.

There was a clear view that early respectful conversations with consumers, including assessments of the customer's 'capacity to pay', were required in order to find sustainable solutions.

[45] However, SACOSS has received informal advice that these costs were sought by the ESC but not provided until relatively late in the review process.

The consumer representatives considered that the automated process and prescriptive assistance measures contradicted the best practice principles of engagement, agency, and respect.

These representatives argued that the ESC's framework would take away customers' sense of control and limit the ability of retailers to respond with flexibility to the particular issues facing a vulnerable customer.

SACOSS understands that prior to and following the publication of the Final Report, the ESC is continuing to consult with all stakeholders regarding the implementation of the scheme. SACOSS hopes that the ESC will address the real concerns with the ESC's process and outcomes expressed by retailers and by consumer advocates who have had many years of experience with assisting energy customers.

3.3 Summary

Table 1 below summarises SACOSS' current views on the AER and the ESC approaches (as set out in their respective final reports) against the evaluation criteria set out previously in this paper. For instance, the ESC has undertaken some further revisions to its approach since publishing its Final Report.[46]

In making this assessment, SACOSS is well aware that the two approaches are not yet implemented and that the ESC's approach in particular will evolve as the implementation issues are worked through.

In addition, the regulatory framework that underpins the reviews of both the AER and the ESC are quite different. The AER is more restricted in some ways, as it must develop its program within the NERL and NERR. On the other hand, the ESC can amend the Energy Retail Code and place new obligations on retailers.

However, the ESC is also bound by the industry laws and by the terms of reference set by the Victorian government.

Nevertheless, and recognising these limitations, SACOSS uses its considerable experience with policy development and assessment to evaluate the two proposals. SACOSS believes that such an evaluation is an important step in the process of improving the management of vulnerable energy customers.

[46] The ESC held two short seminars in September 2016 to provide a high level explanation of the changes it has introduced since the publication of the Final Report.

Table 1: Summary of SACOSS response to the AER and ESC proposals

SACOSS Assessment Criteria	AER: Sustainable Payment Plans Framework	ESC: Supporting customers avoiding labels	Comment
Mandated actions	No (voluntary)	Yes	ESC requirements will be included in Energy Retail Code, et al, with penalties for non-compliance
Change from current approach	Designed to enhance current process	Substantial changes	ESC emphasises automation of processes and prescribed formulas to achieve consistency across retailers
Earlier identification of customer experiencing payment difficulties	Likely: Early identification is more likely if customer expects a positive experience	Yes early identification a feature of the model	Risk that the ESC's model sweeps up many customers who do not need and do not want a payment plan. Lead to high dissatisfaction & consume resources of retailers and others to address these issues
Improve quality of communications to identify risk (respect, understanding.)	Yes	Not a major theme	ESC categorises types of customers using objective billing/usage data rather than relying on customer communications. Risk that customers who do not want or need assistance are captured in payment plan
Ensure consumer engagement & control	Yes, explicit purpose of the AER's approach	Not initially; greater engagement for hardship customers in later steps in the process or if self-identify to retailer	Automation of early stages in the ESC process, and design of assistance programs, risks customers becoming disengaged & not responding proactively/may even be negative.
Ensure customers have all relevant information (rebates etc.)	Yes	Yes for all customers	ESC process supports requirements to provide information on tariffs etc., with information available to all customers with payment difficulties
Ensure customers have access to a variety of energy management (EM) services	Yes, for hardship customers	Yes, for all customers	ESC proposal creates strong obligation to provide EM. Value of EM is not certain given tariffs and social-economic factors. Further research required on this.
Flexibility to vary plan to respond to changing needs	Yes	Limited	Automation means that it is difficult for a retailer to tailor a payment plan to the customer and their particularly situation at least early in the process.

Regular monitoring	Yes	Yes	ESC proposal is strong on regular monitoring and reporting of compliance & performance outcomes. Important that it is timely. AER should also provide early feedback on participation in its voluntary scheme.
Encouragement, rewards & feedback to customers on their progress	Yes, built into the best practice approach including feedback at the end of the repayment period.	Limited to the most vulnerable customers	Automatic process to categorise customers and detailed prescribed payment plan features limit the opportunity for retailers to provide additional services at least in the early stages of the process.
Improve measurement of outcomes & compliance incentives	Yes – improve measurement No compliance incentives (non-mandatory)	Yes	ESC proposes significant improvement in the measurement of outcomes and reporting...ESC has enhanced enforcement powers. Important that these reports are more timely than the current ESC Performance Reports
Appropriate referral of customers to 3rd parties	Yes	Yes	ESC intends to formalise the use of 3rd parties. ESC requires accreditation of 3rd parties & that may be beneficial to customers
Post plan completion 'check-in'	Yes	No	ESC does not identify any follow up with customer in the process although this will assist in reducing future payment 'crises'. However retailers could introduce this step as part of their program
Cost efficient	Yes	No cost-benefit analysis provided	Implementation of ESC's proposal will be more expensive & shared over smaller customer base (Victoria only). Ongoing costs higher due to more consumer calls, monitoring & reporting obligations likely to add costs to other national consumer stakeholder organisations and the Victorian Energy & Water Ombudsman.
Impact on disconnections	Positive given improved communications	Uncertain. Some stakeholders consider disconnections will increase.	ESC process means debt identified earlier, but lower consumer engagement and confidence may reduce cooperation with the retailer. Disengagement leaves

			disconnection as the only resort if bills not paid.
Process is adaptable to changing market conditions	Yes, focus is on improving quality of interactions	No	High investment costs in systems and automation of processes means changes are expensive and slow with relatively high implementation risks
Supported by stakeholders	Yes	Reservations	Stakeholders concerned with cost and complexity of the ESC's proposal and the lack of flexibility. Stakeholders consider the process is rule driven rather than customer driven.
National harmonisation	Yes	No	Victoria will be less aligned with NECF than currently. Not clear if this will have a negative impact on Victoria signing up to NECF as it would require a significant derogation.

3.4 Some recommendations for governments

3.4.1 Victorian Government

SACOSS understands and supports the Victorian Government's concerns when it established the broad ranging Hardship Enquiry with the increases in the rate of disconnections.

In the first instance, however, before embarking on wholesale changes to the current Energy Retail Code (Version 11) SACOSS considers it is important to understand exogenous influences such as the impact of smart meters and remote disconnection and reconnection on the reported number of disconnections and on the experience of consumers.

Table 2 illustrates the potential influence of the increased 'disconnection completion' rates, enabled by remote disconnections capabilities, on the apparent disconnection rates in Victoria. The 'adjusted' figures for disconnections and disconnection rates per 100 customers are based on maintaining the *same completion rate* as observed in 2012-13, the base year in this analysis.

Table 2: Disconnection levels and levels adjusted for changes in completion rates

Victorian Data	Base Year 2012-13	2013-14	2014-15
Number of Disconnections (Note 1)	25,254	34,496	34,418
Disconnections per 100 customers (%) (Note 2)	1.07	1.47	1.45
Disconnection orders completed (%) (Note 3)	47%	73%	80%
Adjusted number of disconnections (Note 4)	25,254	22,210	20,221
Adjusted disconnections per 100 customers (%)	1.07	0.95	0.85

Note 1: See Table 4.1 in ESC, *2014-15 Comparative Performance Report –Customer Service*, May 2016 p. 41.
Note 2: ibid, Table 4.1
Note 3: See St Vincent de Paul Society & Alviss Consulting, *Households in the dark*, May 2016, p. 17. The data in the report is estimated as described in the report and should be regarded as indicative only.
Note 4: Figures for 2013-14 and 2015-16 adjusted to align with the completion rate observed in 2012-13. That is, if retailers retained the same processes in 2013-14 and 2015-16 as they had in 2012-13, and completion rates continued at 47%, what would be the estimated number and rate of disconnections.

The table suggests that if completion rates had stayed the same in 2013-14 and 2014-15 as in 2012-13, then disconnections would actually be declining or at least not rising to the degree that underpinned the initial Government's concerns. Moreover, the disconnection rates would be (if completion rates remained at 2012-13 levels) similar to those observed in other states.[47]

It is reasonable, therefore, to argue that it was the increase in disconnection completion rates (controlled by the distributors) that was driving the jump in actual disconnections in 2013-14. SACOSS notes that they appear to have stabilised in 2014-15 in line with the near completion of the smart meter roll-out.

SACOSS would also welcome the Victorian Government investigating in detail the costs of the ESC's proposal to Victorian consumers relative to the incremental benefits, particularly given the analysis above. This should include consideration of the immediate and longer-term costs of Victoria moving further away from harmonisation with the national regime.

3.4.2 Commonwealth Government & COAG Energy Council

SACOSS is concerned that despite supporting many industry workshops on consumer vulnerability, the CEC has not demonstrated sufficient leadership on the issue.

Nor has the CEC formally acknowledged the importance of the issue in its current work program despite that fact that changes in the energy market can have a disproportional negative impact on vulnerable customers if not proactively managed.

[47] Based on ESC, *2014-15 Comparative Performance Report – Customer Service*, May 2016, Table 4.2, p. 42.

As noted in one report by Financial Counselling Australia:[48]

> *Financial difficulty is often the result of a change in circumstances…Poverty is also a major cause of financial hardship…Financial difficulty is also correlated with (or may cause) other problems. It can affect physical and mental health, relationships and children…*
>
> *Whatever the reasons for financial difficulty, appropriate action could mean the difference between financial recovery and financial oblivion. If financial problems can be minimised or rectified, there are obvious benefits for individuals and families as well as industry and the wider community.*

SACOSS would, therefore, strongly recommend that COAG and the CEC put the issue of vulnerable customers squarely 'back on the table'. The impacts of the CEC's policy decisions on vulnerable customers should be considered as a specific topic in each major policy area.

While there has been debate about rising energy prices, there has been little recent policy discussion on the corollary of increasing price rises, that is, the increasing challenge facing vulnerable customers in affording essential services such as energy.

The current focus of these bodies on the Power of Choice fails to recognise the limited choice that is available to these customers. Nor does it recognise that with the increasing complexity of the market, vulnerable customers risk being left further behind and missing the benefits of competition and technology change.

SACOSS also recommends that COAG investigate the possibility of establishing Australia's own Customer Vulnerability Strategy program under the auspices of the AER or the AEMC. The need for good quality, independent research to support policy decisions has never been more important.

[48] Financial Counselling Australia 2014, *Hardship Policies and Practice: A Comparative Study*, Australian Communications Action Network, Sydney. The study was sponsored by the telecommunications industry body.

4 Current Regulatory Framework

4.1 Background

SACOSS recognises that both the AER and the ESC have committed significant resources to assessing the outcomes of the current regulatory framework for protecting vulnerable customers and developing potential improvements to the framework. Their investigations have provided useful insights into the problems facing vulnerable customers, complementing the existing substantial body of information that has been collated over the last decade or so.

SACOSS also appreciates that both regulators have consulted extensively with community representatives, retailers and other stakeholders as they progressed through the review process. As noted in many responses to the review, financial vulnerability is a 'shared' problem and the solutions must lie in engaging a broad cross section of stakeholders bringing multiple perspectives and experiences to the issue.

Moreover, the AER has undertaken its investigations in the absence of any significant policy guidance from the Federal Government or the CEC. While the Victorian Government provided more direction in initiating the ESC's review, its terms of reference to the ESC were relatively broad and gave no specific direction on if and to what extent the ESC should seek to establish a new framework that went contrary to the previous NECF harmonisation programs.[49]

SACOSS also acknowledges that energy retailers have made important contributions to the communities understanding these issues. In a sense the energy retailers are the 'first responders' and they have collectively built up a body of evidence on what works and what does not from both a retailer and a customer perspective. Ultimately, all the energy retailers should share the objective of reducing bad debt while retaining the confidence and trust of their customers.

Over time, a number of energy retailers have made sustained efforts to improve their management of vulnerable customers and the efforts of these retailers go well beyond "compliance" with the 'minimum standards' required under the law.

However, as highlighted elsewhere in this report, customer vulnerability is a complex and multi-faceted problem and sustainable policies and practical solutions require a joint commitment by governments, regulators and ombudsman, retailers and consumers and their representatives.

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[49] The Victorian Government initiated the "Energy Hardship Inquiry" in February 2015. The terms of reference for the ESC reflected the government's concern with what it perceived to be a growing number of disconnections and was consistent with its amendments to objectives in the *Essential Services Commission Act 2001*.

It follows that this report can only represent one slice of the overall challenge of providing affordable essential services to vulnerable consumers in our community.

SACOSS also understands that the remit of the AER and ESC is constrained by the national law and rules (AER) and by Victorian law and the Victorian Governments' Inquiry Terms of Reference (ESC).[50] The broader social drivers of energy poverty and disconnection are beyond the scope of the two regulatory authorities.

The pity is that while the national policy makers define the scope of the regulators, they have not sought to fill the gap identified through regulatory review. Specifically, there is no national commitment by officials to ensuring that the interests of vulnerable customers are considered as a priority item in each of the Council's "priority" areas.[51]

Subject to these caveats, the current report considers both the most recent regulatory programs developed by the AER and separately, by the ESC over 2014-16. Both regulators seek to improve the standards of service provided to energy customers experiencing difficulty in paying their energy bills. This includes not only the traditional 'hardship customer' but the broader group of customers who face difficulties in paying their energy bills in the short or long-term.

However, to understand the proposals by the AER and the ESC, it is important to first consider the current regulatory frameworks.

4.2 Requirements under the NECF and the AER's Guidance to Retailers

The NECF has been progressively rolled out across all eastern states except Victoria over the period 2011-2015. It comprises the National Energy Retail Law (NERL), the National Energy Retail Rules (NERR) and associated national regulations.

Victoria is not a signatory to the NECF. As discussed in Section 2.1, retailers in Victoria are subject to Victorian industry laws and the Victorian Energy Retail Code.

The NECF does not include legislation on energy retail prices, or control the price that consumers pay for energy services. Nor does it have a role in determining energy concessions and energy rebate programs – both important components of the management of the most vulnerable customers.

Energy concessions and energy rebate programs are the responsibility of each state and territory government and vary significantly from state to state in the amounts and 'terms and conditions' of the concessions and rebates. This variation in turn leads to different outcomes for these most vulnerable customers.

[50] The ESC's review was initiated by direction from the Victorian Government who also established the terms of reference for the study in February 2015.

[51] SACOSS notes that the Energy Consumers Australia has been established to inform regulatory and policy decisions impacting on customers, but this is an advisory role and its views do not appear to be central to the priority area assessment processes.

Nor does the NECF have any direct influence on social wage and pension arrangements, social housing conditions or energy efficiency standards, all of which impact on the affordability of energy for households.

4.2.1 Requirements under the National Energy Retail Law (NERL)

The NECF regulation has progressively replaced jurisdictional legislation with a common national framework [52] that defines the responsibilities of energy retailers towards vulnerable residential customers (noting the caveats on concessions and rebates described above).

The NERL also sets out matters that the Australian Energy Regulator (AER) and the Australian Energy Market Commission (AEMC) must consider when exercising their respective regulatory functions. For example, the NERL states that: [53]

> *The AER must, in performing or exercising an AER regulatory function or power, perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the national energy retail objectives, and where relevant, **in a manner that is compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers**.* [emphasis added]

Similar requirements are placed on the AEMC with respect to its rule making functions.[54]

The NERL identifies two classes of vulnerable customers that are nominated for 'consumer protections' with respect to the supply of energy, namely:[55]

- 'Hardship' customers, as defined in a retailer's hardship policy; and
- Other residential customers experiencing payment difficulties who have advised their retailer of this, or if the retailer observes that the customer has repeated difficulties in paying the customer's bill.

A retailer must offer their 'hardship' customers a payment plan but these particular customers also have additional protections under the NERL to reflect their higher level of financial vulnerability.

Other residential customers who advise their retailer that they are experiencing payment difficulties (or the retailer has good reason to believe so) must also be given access to payment plans and are protected from disconnection if they are

[52] Excluding Victoria, see Section 2.1.

[53] NERL, Division 1, s. 205.

[54] See NERL, Division 1, s. 236 and Division 6, s. 49(2).

[55] NERL, Division 6, s. 50 (1) (a)-(b)

meeting the agreed payment plan or have contacted their retailer to seek a revised plan.

In practice it appears that retailers do not generally distinguish between hardship customers and other residential customers with payment difficulties in the services they offer even though the NERL appears to differentiate the two groups (without clearly defining the criteria to distinguish them).

The principle regulatory obligations with respect to hardship customers (only) are set out in Division 6 of the NERL, and are summarised below: [56]

- Obligation on energy retailers to develop, manage and communicate a hardship policy; [57]
- The minimum requirements for a customer hardship policy (for details see Box 1); [58]
- Conditions for AER's approval of a hardship policy or variation of an existing policy, including a requirement for the AER to have regard to certain regulatory principles, namely:[59]
    - Supply of energy is an essential service for residential consumers;
    - Retailers should assist hardship customers by means of programs and strategies to avoid disconnection due to inability to pay bills;
    - Disconnection due to inability to pay bills is a last resort option;
    - Residential customers should have equitable access to hardship policies, and these polices should be transparent and applied consistently.

[56] The NERL sets out these obligations with specific reference to 'hardship customers' only. A customer who was not qualified by the retailer as a hardship customer even though having payment difficulties appears to sit outside these obligations including the obligations to provide minimum conditions of service for a hardship customer.

[57] NERL, Division 6, s. 43 & 46.

[58] NERL, Division 6, s. 44.

[59] NERL, Division 6, s. 45.

Box 1: Minimum requirements for a retailer's customer hardship policy[60]

a) Process to identify residential customers experiencing payment difficulties due to hardship;
b) Process for early response by the retailer where the customer is identified as experiencing payment difficulties;
c) Flexible payment options (including a payment plan with Centrepay);
d) Process to identify appropriate government concessions and financial counselling services and to notify hardship customers of these services;
e) An outline of a range of programs that the retailer has to assist hardship customers;
f) Process to review the appropriateness of a hardship customer's market retail contract;
g) Process or programs to assist customers to improve their energy efficiency, where such actions are required by a local instrument;
h) Any variations specified by the AER or required by the Rules; and
i) Any other matters required by the Rules.

In addition to the specific protections for hardship customers (above), both hardship customers and other residential customers experiencing payments difficulties have the following important protections set out in Division 7 of the NERL:

- Obligation on energy retailers to offer payment plans to both hardship customers and to other residential customers experiencing payment difficulties; [61]
- Prohibition on debt recovery if customer adheres to payment terms or retailer has failed to comply with requirements of hardship policy or the law; [62]
- Retailers' obligations to provide quarterly and annual performance information to the AER. [63]

4.2.2 Requirements under the National Energy Retailer Rules (NERR)

The NERR provides further detail on the application of the NERL in the development, application and approval of each retailer's hardship policy.

Specifically, the NERR reinforces the obligations for retailers to communicate their customer hardship policy[64], to implement suitable payment plans[65], to apply a

[60] See NERL, Division 6, s 44 (a) – (i).

[61] NERL, Division 7, s. 50.

[62] NERL, Division 7, s. 51

[63] NERL, Part 12, Division 2, s. 282.

[64] NERR, r. 71.

[65] NERR, r. 72.

waiver of late payment fees[66], provide access to payment by Centrepay[67], to develop and apply hardship program indicators.[68]

The NERR also specifically leaves open the option for a retailer to waiver the debt of a hardship customer – however this is not an obligation.[69]

The NERR includes the process a retailer must work through prior to disconnecting a customer for non-payment.[70] The NERR also sets out when a retailer cannot arrange for a customer to be disconnected.[71]

This prohibition on disconnection includes a hardship customer or a residential customer who is adhering to a payment plan. It also extends to the situation where a customer has made a complaint that is directly relating to the reason for the proposed disconnection to the retailer or an ombudsman.

Disconnection is also prohibited when a retailer becomes aware that the customer has formally applied for assistance such as a rebate, concession or relief payment under any government funded scheme, and the decision on the application is pending.

The NERR also requires the AER to set a "minimum disconnection amount" of debt. If a residential customer's energy debt is less than the specified minimum amount, the retailer cannot disconnect that customer for non-payment.[72]

With respect to the *suitability of a payment plan for a hardship customer*, the NERR mandates that: [73]

1) A payment plan for a hardship customer must have regard to the customer's capacity to pay, the arrears owing by the customer and the customers expected energy consumption needs over the next 12 months; and
2) The retailer must inform the customer of the duration of the plan, the instalment amounts and dates due, the number of instalments to recover the

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[66] NERR, r. 73

[67] NERR, r. 74

[68] NERR, r. 75

[69] NERR, r. 76. Specifically the rule states that nothing in this Part (r. 71 – r. 75) prevents a retailer from waiving any fee, charge or amount of arrears for a hardship customer in accordance with the retailer's hardship policy.

[70] NERR, r. 111 (1) – (3).

[71] NERR, r. 116 (1).

[72] NERR, r. 116 (g). The AER approved a minimum amount of $300 (GST inclusive) for both gas supply and electricity supply, effective from July 2012. The AER is currently conducting a review of this amount (see: AER: Review of the Minimum Disconnection Amount –2016). http://www.aer.gov.au/retail-markets/retail-guidelines/review-of-the-minimum-disconnection-amount-2016

[73] NERR, r. 72 (1) – (2).

arrears and, if payments are required in advance, the basis on which instalments are calculated.

4.2.3 AER's guidance for approval of a retailer's hardship policy

In 2011, the AER published a guidance notice to inform retailers how it will interpret the requirements in the NERL and NERR and what factors it will take into account when approving a retailer's hardship policy.[74]

For example, in its guidance to retailers, the AER stated that a retailer's hardship policy should satisfy the following principles based on the NERL requirements:[75]

- The supply of energy is an essential service for residential customers;
- Retailers should have programs and strategies in place to assist customers to avoid disconnection solely due to inability to pay;
- Disconnection of a hardship customers should be a "last resort"; and
- Customers should have equitable access to a hardship program. [76]

The AER's guidance to retailers also sets out some 13 separate "factors" that flow from these principles and will be considered by the AER when approving a retailer's hardship policy.

The factors include such matters as: whether the policy is clearly written and "consumer friendly"; explains how a customer can access a hardship program; the obligations on customers re compliance with the program; and information on the retailer's complaints handling procedures.[77]

The AER's Final Guidance (2011) to retailers includes a checklist that the AER will use to assess whether a retailer's hardship policy complies with the minimum requirements in the NERL and with the NERR. [78] Table 3 below sets out these hardship indicators.[79]

[74] AER, Final Guidance on AER approval of customer hardship policies, May 2011.

[75] ibid, section 2.7, p. 7.

[76] NERL, Division 6, s. 45(3).

[77] For details of the 13 factors identified by the AER, see: AER, Final Guidance on AER approval of customer hardship policies, May 2011, p. 8.

[78] See NERL, s. 287.

[79] The AER's hardship indicators include 10 measures that must be reported quarterly and an additional 3 measures that form part of the AER's annual retail performance report. Results are generally reported by jurisdiction and by retailer.

Table 3: Customer hardship policy approval submission checklist

Section	Requirements		Included in customer hardship policy
3.3-3.7	**Identifying customers experiencing payment difficulties**	Processes to identify customers eligible for inclusion in the hardship program including: ▪ Self identification ▪ Retailer identification ▪ PPM customers	
3.8-3.10	**Early response**	Processes in place for early response	
3.11-3.13	**Flexible payment options**	Flexible payment options that may be offered, including: ▪ Payment plans ▪ Centrepay	
3.14-3.16	**Government concession programs and financial counselling services**	Processes in place to identify and notify the customer of: ▪ government concessions programs, and ▪ financial counselling services	
3.17-3.19	**Programs used to assist hardship customers**	Programs and initiatives that are on offer to hardship customers	
3.20-3.22	**Processes to review market retail contracts**	Processes for reviewing the appropriateness of hardship customers' market retail contracts to ensure Centrepay available	
3.23-3.25	**Strategies to improve energy efficiency**	Processes or programs to assist customers with strategies to improve their energy efficiency, including ▪ those required by a local instrument ▪ others offered by the retailer	
3.30-3.32	**Other hardship obligations**	Hardship customers will not be charged late payment fees.	
		Hardship customers will not be required to pay a security deposit	
		Communication and promotion of the customer hardship policy to residential customers	
		Disconnection of a hardship customer's premises is a last resort option	

Source: AER, *Final Guidance on AER approval of customer hardship policies*, May 2011, p. 24. Note: PPM is pre-payment meter customers.

4.2.4 Retail Performance Reporting & Hardship Policies

In addition to approving retailers' hardship policies, the AER has an important role in monitoring and reporting retailers' performance on a range of hardship indicators.

The AER's obligations to monitor and report on performance are set out in some detail in the NERL. For example, the NERL requires the AER to determine and publish hardship indicators[80] along with procedures and guidelines to provide guidance to retailers on measuring performance against these hardship indicators.[81]

[80] NERL, s. 287.

[81] NERL, s. 286.

The NERL also requires the AER to publish an annual 'Retail Market Performance Report'. This Report must include, inter alia, a report on the performance of retailers by reference to the 'hardship program indicators'.[82]

The AER's performance reporting framework was finalised in 2012 after extensive consultations with stakeholders.[83] The framework includes both quarterly and annual reporting on many measures including customer complaints, handling of customers experiencing payment difficulties, levels of debt, disconnection and reconnection, energy concessions, security deposits, and hardship program indicators.

The AER's hardship program indicators for customers experiencing payment difficulties are particularly relevant in this context. The indicators include the following relevant measures for electricity and gas (E&G) customers:

- Number of residential E&G customers on a retailer's hardship program at the end of each month;
- Number of E&G hardship program customers who are also energy concession customers;
- Number of E&G customers denied access to the hardship program during each month;
- Average debt upon entry to the hardship program by calendar month;
- Levels of debt of customers entering the hardship program with an energy bill debt that was:
    - between $0 and $500
    - over $500 but less than $1,500
    - over $1,500 but less than $2,500
    - $2,500 or more
- Payment methods of hardship customers:
    - Payment plan
    - Centrepay
    - Prepayment meter
    - Any other payment method
- Average energy bill debt of E&G program customers;
- Number of customers exiting the program;
- Reasons for customers exiting the program;
- Disconnection of previous hardship program customers;
- Reconnection of previous hardship program customers;
- Assistance provided to hardship program customers;
- Case studies (optional).

[82] NERL, s. 284 and s. 285.

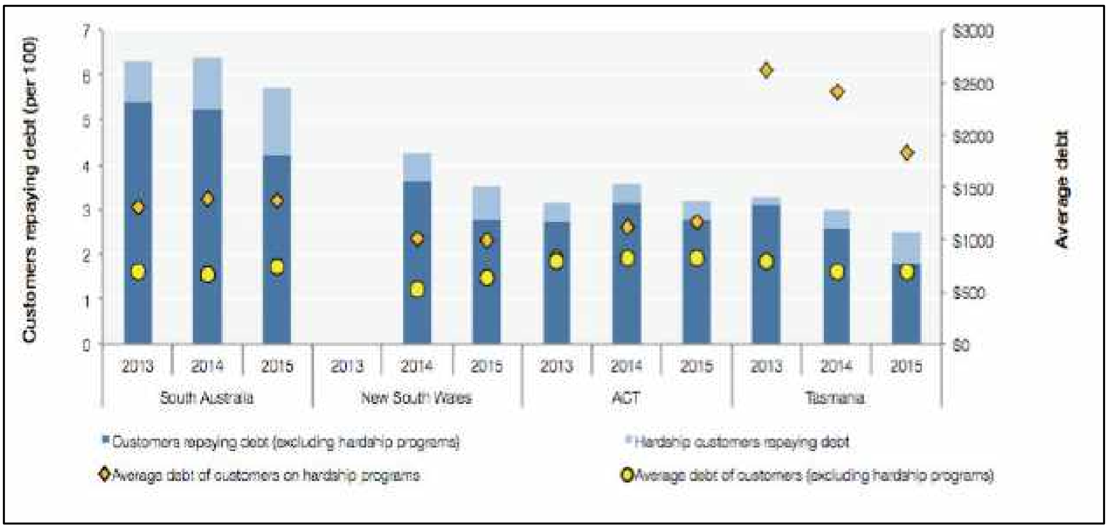
[83] See: AER (Retail law), Performance Reporting Procedures and Guidelines, June 2012, Version 2, p. 15-17, "Handling customers experiencing payment difficulties".

Figure 3 below provides an illustration of the type of information that the AER publishes based on the data collected from retailers on their payment plans and hardship programs.

It is clear from Figure 3, for instance, that hardship customers (as defined by the AER) are experiencing much higher levels of average debt than other vulnerable customers on payment plans. There are also significant differences between jurisdictions in the proportion of customers on payment plans or hardship programs. It is not clear from the AER's report what are the reasons for these differences.

Although not illustrated here, the AER's performance reports also suggest there are very significant differences between retailers on the AER's various hardship indicators.

Figure 3: Residential Electricity Customers repaying debt and average debt as at 30 June 2015



Source: AER, *Annual Report on the Performance of the Retail Energy Market*, 2014-15, November, 2015, Figure 2.2, page 21.

SACOSS would expect that an effective national policy for the management of vulnerable customers should not result in such a diversity of outcomes.

National regulatory policy needs to be sufficiently flexible to address the differences between jurisdictions, and responsive to the various underlying causes of vulnerability and energy affordability. However, the ultimate goal should include some consistency and equity in outcomes for vulnerable customers across the country. It remains to be seen if this divergence continues into the future and following the implementation of the AER's Sustainable Payment Plan Framework.

4.2.5 SACOSS' conclusions regarding the AER's current framework

The current national regulatory framework for the management of vulnerable customers consists of the NERL, the NERR, the AER's Final Guidance to retailers for the approval of Hardship Policies and the AER's Performance Reporting Procedures and Guidelines.

Each regulatory instrument has been developed following a substantial consultation process and draws on the experience of jurisdictional regulators, the energy retail industry, jurisdictional ombudsmen and community representatives.

Taken together, the regulatory requirements should provide a significant degree of protection for customers experiencing payment difficulties. Appropriately, the regulatory requirements have a particular focus on what are called 'hardship customers'.

Unfortunately, however, there is no clear definition of what constitutes a vulnerable customer, a customer facing payment difficulties or a hardship customer. For instance, the NERL defines a hardship customer as: [84]

> *a residential customer who has been identified as a customer experiencing financial payment difficulties due to hardship in accordance with the retailer' customer hardship policy.*

In other words, a hardship customer is a hardship customer if an individual retailer defines them to be such in their hardship policy.

Many of the regulatory protections for a customer are linked to the customer being defined as a hardship customer. Therefore, in the interests of equitable access to hardship program protections, it is important that there is consistent application of the definition of a hardship customer.

However, retailers can and do vary in how they identify a hardship customer and therefore which customers will gain access to the additional protections in the retailer's hardship program.[85]

Similarly, there is no real definition of what counts as a customer experiencing "financial payment difficulties" as set out in the second leg of the NERL's categories of customers requiring specific protections from disconnection.

Most retailers' hardship programs include some sort of eligibility criteria and financial hardship indicators. These may include self-reports or referrals from third party agencies and/or billing history data.

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[84] NERL, Div. 1, s. 2(1), p. 35.

[85] For example, the minimum requirements for a customer hardship policy only specify that the retailer must have a 'process to identify residential customers experiencing payment difficulties due to hardship'. See NERL, s. 44 (a).

However, again there is a lack of consistency regarding what constitutes a "financial payment difficulty" that will create an obligation on the retailer to offer a payment plan and to withhold disconnection for non-payment while that plan is in place (as required by the NERL).

As a result, retailers appear to have developed their own set of financial indicators of hardship, and this in turn has led to inconsistent outcomes for customers regarding access to a payment plan or a hardship program and the debt levels that they take into the plan or program.

There is also little regulatory guidance for determining what type of payment plan is most appropriate and the time period over which the repayments occurs.

Nor is their regulatory guidance on what are the most effective and realistic methods for improving the efficiency of energy use in the home for vulnerable customers.

The AER's Final Guidance for instance requires the retailer to have processes or programs in place to assist customers with their energy efficiency[86] but it does not provide guidance about what these programs should be. As a result, retailers have adopted very different practices ranging from energy saving 'tips' on the retailers' web-sites to retailers arranging for in-home audits.

SACOSS also notes that there is limited referral in the NERL, NERR or the AER's Final Guidance to the quality of the interactions between the customer and the retailer.[87] As discussed in Section 3, SACOSS considers that the quality of this interaction includes treating customers with empathy and respect, engaging customers in the process, allowing customers a sense of control over the process.

These are, in turn, all factors that are fundamental to the successful management of vulnerable customers. The variation in outcomes for different retailers in terms of the level of debt and the completion rates for repayment plans suggests that retailers may vary significantly in the quality of their interactions with customers.

In contrast, Yarra Valley Water's measured success in reducing debt levels and increasing level of payment plan compliance demonstrates the value of focussing on the quality of the interactions with the customer in establishing a sustainable payment plan and ensuring completion of the plan.

[86] AER, Final Guidance on AER approval of customer hardship policies, May 2011, Section 3.23 – 3.25, p. 15.

[87] The main reference to the quality of the interaction is in the AER's Final Guidance and this is made in the context of staff training and as one of the factors the AER 'may consider'. See ibid, 3.4 (b), p. 10.

The NERL states that as a matter of principle all residential customers should have equitable access to hardship policies and that these policies should be transparent and applied consistently.[88]

However, the variations in practices and outcomes between retailers and even within a retailer over time, suggest that this principle is somewhat lacking in practice across the sector.

4.3 The Victorian Legislation, Energy Retail Code and Guidelines

4.3.2 Background

Victoria had long seen itself as a leader in energy market reform and consumer protection. Therefore, the Victorian Government has been reluctant to sign up to the NECF if it perceives that this will reduce or remove some consumer protections available to energy users in Victoria.

Taken together, the Victorian energy legislation, Energy Retail Code and the energy licences and ESC guidelines provide a relatively well-developed framework for the protection of vulnerable customers. Unpicking this framework is, arguably, a relatively complex task compared with other jurisdictions.

As a result, Victoria is not yet a signatory to the NECF although in recent years there has been a move to better align Victorian legislation, licences, codes and guidelines with the NECF in the expectation that at Victoria would eventually sign up to the NECF; albeit with a number of derogations to preserve elements of the consumer protection framework. For example, the current Victorian Energy Retail Code[89] reflects the Victorian government's policy intent of aligning Victorian retail codes and guidelines with the national retail regulation (the NECF) "to the extent possible"[90].

In Victoria, the energy industry retail legislation (including consumer protections) and the legislation governing the role and responsibilities of the ESC are solely the province of the Victorian Government. The Victorian Government can also direct the ESC to undertake investigations and has done so with respect to the current investigation into the Victorian consumer protection framework.

The ESC is the regulatory body tasked with the development and implementation of the Energy Retail Code, and associated guidelines and licence conditions. As such, the ESC has significantly more influence over the structure and content of the consumer protection framework in Victoria for licenced retailers and their customers than the AER.

[88] NERL, Division 2, s. 45 (3).

[89] Energy Retail Code Version 11, January 2015.

[90] See ESC, "Harmonization of Energy Retail Codes and Guidelines with the National Energy Customer Framework". http://www.esc.vic.gov.au/project/energy/2116-harmonisation-of-energy-retail-codes-and-guidelines-with-the-national-energy-customer-framework/

While the AER's role is limited to guidance and enforcement of the law and rules, the ESC combines the rule making and rule implementation and enforcement roles of both the AEMC and the AER (respectively).

The energy industry legislation and the ESC legislation set out relatively high level parameters with respect to consumer protection, as discussed in sections 4.3.2 and 4.3.3 below. The detailed obligations on retailers relating to consumer protections, including the protection of vulnerable customers, are contained in the Energy Retail Code and associated guidelines.[91]

4.3.2 Requirements under the Energy Industry Acts

The relevant energy industry acts in Victoria are the Electricity Industry Act 2000 (GIA) and the Gas Industry Act 2001 (GIA).

4.3.2.1 Energy sector objectives in the Industry Acts

The EIA and GIA set out specific energy sector objectives for the ESC. These three objectives are to promote:[92]

- Consistent regulatory approach between the electricity and gas industries, to the extent that it is efficient and practicable to do so;
- The development of full retail competition; and
- Protections for customers, including in relation to assisting customers who are facing payment difficulties.

Given these legislated objectives, the ESC must find a careful balance between promoting retail competition and protecting consumers, particularly consumers facing payment difficulties.

For example, additional regulation of retailers has the potential to inhibit the entry of new retail companies into the retail market, ultimately leading to reduced competition and higher prices for consumers.

SACOSS considers that it is important to test the ESC's proposed amendments to the Energy Retail Code against these statutory objectives. In particular, it is not clear to SACOSS how the ESC has considered the statutory objective of protecting consumers with the objective of promoting full retail competition. Promoting full retail competition would require a careful and transparent assessment of the costs and benefits of such a significant change including the costs of creating a separate consumer protection process to the established national process.

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[91] Prior to Version 11 of the Energy Retail Code, the ESC's Hardship Customer Guidelines were contained in a separate document. It now forms part of Version 11 of the Code.

[92] EIA (2000), s. 10 (a) – (c), GIA, s. 18 (a) – (c). The objectives in the EIA and GIA were updated in 2015 to include specific reference to customers facing payment difficulties,. (see: Energy Legislation Amendment (Consumer Protection) Act 2015, s. 4.

This same challenge will arise when considering the statutory obligations on the ESC under the Essential Services Commission Act 2001 as discussed in section 4.3.3 below.

4.3.2.2 Financial hardship policies in the Industry Acts

As a condition of a retail licence, the EIA and GIA require retailers to prepare a policy to deal with domestic consumers experiencing financial hardship, and submit that policy for approval to the ESC within three months of being granted a licence. [93]

The obligation in section 43 of the EIA and s 48G of the GIA is supplemented by additional requirements as set out below. These requirements include the quite extensive amendments to the acts made in 2014 as part of the project to harmonise Victorian legislation with the NECF.

The ESC is also empowered under the acts to direct a 'licensee' (retailer) to review and amend their policy for customers facing financial hardship.[94]

A retailer's financial hardship policy for domestic customers must include:[95]

- Flexible payment options;
- Provision for the auditing electricity usage;
- Flexible options for purchase or supply of replacement electrical equipment; and
- Processes for the early response by both retailers and customers to electricity bill payment difficulties.

The EIA and GIA also state that the ESC may develop, issue and amend guidelines in relation to the retailers' financial hardship policies and these guidelines must be published by the ESC.[96]

In approving a financial hardship policy for domestic customers, the ESC must have regard to a number of factors including: [97]

- The essential nature of electricity and gas supply;
- An expectation that retailers will work with domestic customers to manage present and future electricity or gas usage and associated financial obligations;
- Supply will not be disconnected solely because of a customer's inability to pay for electricity or gas supply;

93 EIA, s. 43 and GIA, s. 48G.

94 EIA, s. 43A and GIA.

95 EIA, s. 43C and GIA.

96 EIA, s. 44 and GIA.

97 EIA, s 45 and GIA.

- The principle that energy should only be disconnected as a last resort; and
- The principle that there should be equitable access to financial hardship policies and that those policies should be transparent and applied consistently.

The Industry Acts direct that a retailer cannot disconnect a domestic customer if the customer is complying with the terms and conditions of an agreement entered into under the terms of a retailer's financial hardship policy. A term in a market contract is void if it is inconsistent with these obligations.[98]

4.3.3 Requirements under the *Essential Services Commission Act* 2001 (ESC Act)

The ESC Act sets out the specific objective of the ESC, which is to promote the long-term interests of Victorian customers with regard to the price, quality and reliability of essential services.[99]

In seeking to achieve this outcome, the ESC must have regard to the following matters (as relevant):[100]

- Efficiency in the industry and incentives for long-term investment;
- The financial viability of the industry;
- The degree of, and scope for, competition within the industry;
- The relevant health, safety, environmental and social legislation applying to the industry;
- The benefits and costs of regulation (including externalities and the gains from competition and efficiency) for:
    - consumers and users of products and services (including low income and vulnerable consumers);
    - regulated entities;
- Consistency in regulation between states and on a national basis; and
- Any other matters specified in the industry's empowering instrument.

In January 2016, the ESC Act was amended to further promote the objectives of the ESC and to include *a new objective for the ESC* to promote protections for customers including in relation to assisting customers who are facing payment difficulties. [101]

These amendments to the ESC Act also included a requirement for the ESC to publish an annual Compliance and Enforcement Report.[102] The report will provide more detailed information on retailer performance including the retailers' performance

[98] EIA, s. 46A and GIA.

[99] *Essential Services Commission Act* 2001, s. 8.

[100] *Essential Services Commission Act,* 2001 s. 8A.

[101] See: *Energy Legislation Amendment (Consumer Protection) Act* 2015.

[102] *Essential Services Commission Act* 2001 s. 54V.

against the obligations in the Energy Retail Code and with respect to customer disconnection and reconnections.[103]

The amendments also strengthened the capacity of the ESC to enforce the obligations under the industry acts and the Energy Retail Code and to take action on retailers that do not comply with the relevant Codes.[104] The ESC has recently published its compliance and enforcement policy that sets out the ESC's approach to compliance and enforcement under the revised ESC Act.[105]

Similar to the EIA and the GIA, SACOSS notes that the ESC Act requires the ESC to balance a number of potentially competing factors. For example, the ESC Act requires the ESC to have regard to efficiency, viability and competition in the industry while promoting the long-term interests of consumers.

As described above, the ESC Act also requires the ESC to balance the benefits and costs of regulation with specific reference to the low income and vulnerable customer sector.

The ESC's proposed amendments to the Energy Retail Code must, therefore, be tested against all the ESC's statutory requirements under the industry acts and the ESC Act.

4.3.4 Victorian Energy Retail Code– Version 11 (Energy Retail Code)

4.3.4.1 Background to the Victorian Energy Retail Code

The Energy Retail Code is a 'Code of Practice' that applies to all licenced energy retailers.[106] The Energy Retail Code has the power of law and the ESC can enforce compliance with the Code including imposing penalties for non-compliance.

The Energy Retail Code covers many issues that are relevant to all customers, including vulnerable customers, such as: explicit informed consent; terms and conditions in standard retail contracts and market retail contracts; energy price and product disclosure; publication of offers; billing requirements; tariff changes; security deposits; information provision and marketing activity.

More particularly, the Energy Retail Code now includes specific obligations on licenced retailers with respect to their customer hardship policies and disconnection procedures.

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[103] *Essential Services Commission Act* 2001 s. 54W.

[104] See, *Energy Legislation Amendment (Consumer Protection) Act* 2015, s. 14 & s. 17. These sections set out amendments to s. 10 of the ESC Act and s. 54 (respectively).by including a new section 10AA.

[105] Essential Services Commission 2016, *Energy Compliance and Enforcement Policy*, July 2016.

[106] The Energy Retail Code does not cover suppliers of electricity or gas who are classified as exempt retailers under a General Exemption Order or individual exemption granted under an Order in Council.

The discussion in this section of the report centres on Version 11 of the Energy Retail Code that was published in October 2014 with minor revisions in January 2015.

Version 11 of the Energy Retail Code was prepared as part of the Victorian project to harmonise the Code with the NECF 'to the extent possible'. Version 11 also incorporated a number of what were previously separate ESC Guidelines including "Guideline no 21 – Energy Retailers' Financial Hardship Policies – April 2014."

Given the overall project to harmonise the Victorian Energy Retail Code with the NECF regulatory instruments, the existing Code requirements are similar to those found in the national laws and rules.

As such, the Victorian Energy Retail Code Version 11 includes some of the same ambiguities and definitional difficulties which, in turn, may result in different outcomes for customers. In particular, the Victorian Energy Retail Code includes:

- A distinction between 'hardship customers' and 'customers experiencing payment difficulties'. A retailer's obligations to hardship customers are more extensive than to the general category of customers experiencing payment difficulty. However, there is no clear and objectively defined distinction between the two classes of customer;
- The definition of a 'hardship customer' is somewhat circular: a hardship customer is what a retailer's hardship policy says it is. For instance, the definition of a 'hardship customer' in the Energy Retail Code mirrors that in the NERL, namely:[107] [108]
    - *hardship customer means 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*.
- Similarly, the definition of a 'payment plan' is circular: a payment plan is defined as a plan for a hardship customer or a residential customer who is not a hardship customer but who is experiencing payment difficulties.[109] Such a definition also requires clarification on what is a hardship customer that goes beyond the definition cited above.

4.3.4.2 Obligation to offer payment plans

As discussed above, a retailer must offer and apply payment plans for both hardship customers and all other residential customers experiencing payment difficulties.

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[107] ESC, *Energy Retail Code*, Version 11, p. 14.

[108] However, the Code does state, when setting out the contents of a customer hardship policy, that "..a customer in financial hardship is a residential customer who has the intention but not the capacity to make a payment within the timeframe required by the retailer's payment terms. See ESC, Energy Retail Code, Version 11, cl. 71B (2)(a), p. 66.

[109]ibid, p. 16.

A customer may self-identify as a 'hardship customer' and a 'customer experiencing payment difficulties'. Alternatively, the retailer may identify the customer if the retailer believes the customer is experiencing repeated difficulties in paying the bill or otherwise requires payment assistance.

In both instances, a retailer is obliged to provide information to the customer about the availability of government funded energy charge rebate, concession or relief schemes including the Victorian Utility Relief Scheme.

However, a retailer is not obliged to offer a payment plan if the customer has had two previous payment plans cancelled for non-payment in the previous 12 months or has been convicted of illegal use of energy in the previous two years.

Section 72 of the Energy Retail Code sets out the high level requirements of a payment plan for both a hardship customer and a customer experiencing payment difficulties as defined in the Code.[110] Section 72 states:

- a payment plan must have regard to a customer's capacity to pay; any arrears owed by the customer and the customers expected energy consumption needs over the following 12 months;[111]
- a payment plan must include an offer for a customer to pay in advance or in arrears by instalment payments; [112]
- a retailer must inform the customer of the duration of the plan, the amount of each instalment, the frequency of instalments and the date by which each instalment must be paid.[113]

A retailer must not commence proceedings to recover an energy sale debt from a residential customer if the customer continues to adhere to the terms of an agreed energy plan or payment arrangement.[114] If the retailer has failed to comply with all aspects of the retailer's hardship policy, the industry acts and the Retail Energy Code, including offers of payment plans, the retailer cannot commence debt proceedings.[115]
The Energy Retail Code also provides some protection for a 'small customer' (including residential customers) regarding a retailer's request for a security deposit.

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[110] ESC, *Energy Retail Code*, s. 33 (4) links the obligation for payment plans for customers experiencing payment difficulties to s. 72, although s. 72 (1) refers to a payment plan for a 'hardship customers'. See also Note to s. 72.

[111] ESC, Energy Retail Code, s. 72(1)(a).

[112] ESC, Energy Retail Code, s. 72(1)(b).

[113] ESC, Energy Retail Code, s. 72(2)(a) & (b).

[114] ESC, Energy Retail Code, s. 72A(a).

[115] ESC, Energy Retail Code, s. 72A(b).

For instance, a retailer cannot require a residential customer to provide a security deposit if the customer is identified as a hardship customer by their current retailer or was identified as a hardship customer by another retailer.[116]

In addition, a retailer cannot demand a security deposit from a residential customer unless the retailer has offered the option of a payment plan and the customer has rejected the offer.[117]

The Energy Retail Code also sets out very specific obligations on a retailer to allow a hardship customer access to payment using the Centrepay facility. A retailer must allow the hardship customer to use Centrepay as a payment option irrespective of whether the customer is on a standard or a market contract.[118]

If the customer is already on a market contract that does not include the Centrepay option, then the retailer must transfer the customer (with the customer's explicit informed consent) to a market contract that does include that option at no cost or penalty to the customer. [119]

4.3.4.3 Obligation to develop and apply a customer hardship policy (CHP)

The Energy Retail Code states that for the ESC to approve a CHP, the CHP must include the specific requirements set out in the EIA and GIA.[120]

In addition to compliance with the industry acts, section 71B of the Energy Retail Code sets out the expected contents of a CHP if it is to be approved by the ESC. Box 2 below provides a summary of the extensive list of requirements for a retailer's hardship policy.

[116] ESC, Energy Retail Code, s. 40(3)(a) & (b).

[117] ESC, Energy Retail Code, s. 40 (4).

[118] ESC, Energy Retail Code, s. 74(2) & (3).

[119] ESC, Energy Retail Code, s. 74(4) – (8).

[120] ESC, Energy Retail Code, s. 71A(2).

Box 2: Energy Retail Code: Contents of a Retailer Hardship Program

(a) reflect the fact that a customer in financial hardship is a customer who has the intention but not the capacity to make a payment within the timeframe of the retailer's payment terms;
(b) allow customers in financial hardship to identify themselves to the retailer, be identified by a financial counsellor to the retailer or be identified by the retailer;
(c) provide details of the processes and criteria the retailer will use to identify hardship customers;
(d) provide details of the options that will be provided to hardship customers and how they will be assisted to maintain participation in the payment plans;
(e) provide details of the process the retailer will use to work with the hardship customer and, as appropriate, with a financial counsellor;
(f) offer fair and reasonable payment options with fair and reasonable instalment intervals that accommodate individual circumstances and to monitor payments including debt levels;
(g) provide details of how and in what circumstances the retailer will make field audits of energy usage and the cost to the customer of these including circumstances for partial funding by customer;
(h) provide details of circumstances when retailer will assist customer to replace electrical and gas appliances;
(i) provide for the referral of hardship customers to other support agencies where appropriate;
(j) set out the process the retailer will follow to advise a hardship customer of their rights and obligations under the hardship plan;
(k) set out circumstances in which a hardship arrangement will cease;
(l) require the retailer's staff to be made aware of the policy and require staff with direct involvement to have the necessary skills to 'sensitively' engage with hardship customers;
(m) be transparent, accessible and communicate to hardship customers; financial counsellors and community assistance agencies;
(n) recommend the most appropriate tariff at the time of entry into the hardship program;
(o) monitor hardship customer's behaviour and consumption to ensure they remain on the most appropriate tariff and facilitate a tariff change if necessary.

4.3.4.4 Disconnection and Reconnection

The Energy Retail Code includes a strict prohibition on a retailer disconnecting a customer who is a hardship customer or a residential customer who has informed the retailers that they are experiencing payment difficulties.[121]

In addition, if the retailer believes the customer is experiencing repeated difficulties in paying the energy bills or requires payment assistance, the retailer must not disconnect the customer unless the customer has been offered two payment plans

[121] ESC, Energy Retail Code, s. 111(2)

in the previous 12 months and has not agreed to either of them or has not paid the retailer in accordance with the payment plan(s).[122]

The retailer is also prohibited from disconnecting a customer if the retailer is advised that the customer has applied for assistance such as for a rebate, concession or relief payment under a relevant government funded scheme and the decision on the application has not yet been made. [123]

Customers cannot be disconnected if the outstanding amount relates to an energy bill less than $120 (GST exclusive).[124]

A customer has the right to be reconnected if they have rectified the debt or made satisfactory arrangements with the retailer for repayment of the debt within 10 business days of the disconnection.[125]

More particularly, if a 'small customer' is eligible for a Utility Relief Grant (URG) and applies for that grant within 10 business days of disconnection, the retailer must take this as rectification of the matter that led to disconnection.[126]

4.3.5 Retail Performance and Hardship Program Indicators

The ESC highlights that:[127]

> *Victorian legislation aims 'to promote best practice' in facilitating continuity of energy supply to domestic customers experiencing financial hardship …The Energy Retail Code is the primary instrument that sets out obligations of energy retail businesses with respect to customers experiencing financial hardship.*

The Energy Retail Code states that the ESC may, in consultation with retailers and other interested stakeholders, determine hardship program indicators. [128]

These indicators may cover entry into hardship programs, participation in hardship programs and assistance available to and provided to customers under customer hardship policies.[129]

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[122] ESC, Energy Retail Code, s. 111(2) (a)-(c).

[123] ESC, Energy Retail Code, s. 116(e).

[124] ESC, Energy Retail Code, s. 116(g).

[125] ESC, Energy Retail Code, s. 121(1).

[126] ESC, Energy Retail Code, s. 121(2A).

[127] Essential Services Commission 2016, *Energy Retail Comparative Performance Report – Customer Services*, May 2016, p. 22.

[128] ESC, Energy Retail Code, s. 75(1).

[129] ESC, Energy Retail Code, s. 75(2).

The ESC's annual *Energy Retail Comparative Performance Report – Customer Service,* provides (inter alia) an annual update of customer participation and retailers' performance on the payment plans and hardship programs.

As an example, Table 4 below summarises the ESC's findings for 2014-15 for the two categories of services offered to customers experiencing payment difficulty, namely payment plans and hardship programs.

Table 4: Customer participation rates in payment plans and hardship programs

		Rate per 100 customers	Highest rate[1]	Lowest rate[1]
Payment Plans (not hardship)	Electricity	3.25	9.13	1.42
	Gas	3.08	8.31	1.21
Hardship Programs	Electricity & Gas	1.20[2]	1.66	0.4

Note 1: Includes only first tier retailers and major second tier retailers (AGL, Energy Australia, Lumo, Origin Energy, Red Energy, Simply Energy),
Note 2: Rate is based on rate per 100 electricity customers, due to difficulties disaggregating the relevant data.
Source: ESC, *Energy Retail Comparative Performance Report – Customer Service*, May 2016, Tables 3.1, 3.2 and 3.4.

The ESC intends to update its annual Energy Retail Comparative Performance Report to include additional measures of retailer performance on a range of hardship indicators. The revised report will also include information on the ESC's compliance and enforcement activities. SACOSS notes that it is important that these reports are published as soon as possible if they are to have maximum value to customers, retailers and regulators.

4.3.6 SACOSS' conclusions regarding the ESC's current framework

The current regulatory framework for the management of vulnerable energy customers in Victoria consists of the industry acts (the EIA and the GIA), the ESC Act and the Energy Retail Code (including the previous Guideline 21 on Hardship Programs).

In 2014, the ESC undertook a very substantive program to rewrite the Energy Retail Code in order to better align its content with the NECF.

Since 2015, the Victorian Government has been strengthening the legislative framework. For instance, the Government has included a new objective in the EIA, the GIA and the ESC Act which require the ESC to explicitly consider the impact of its decisions on customers experiencing payment difficulties.

SACOSS notes (see above) that this may contradict the objective in the Act of promoting competition and it is not clear how the ESC should or does balance these two requirements.

The compliance and enforcement powers of the ESC have also been increased through amendments to the ESC Act and the ESC has recently released guidance on how it proposes to implement these enhanced powers. As noted above, the ESC will be expanding its performance reporting on customer outcomes, retailer compliance and the ESC's enforcement activities.

SACOSS notes that the ESC consulted widely during these developments of Version 11 of the Retail Code and the consumer representatives in Victoria generally supported its approach. SACOSS considers these developments have moved the Victorian energy market towards a more equitable consumer protection regime for customers experiencing payment difficulties.

However, given the retail market data is not yet available for 2015-16 it remains to be seen if the current Code has succeeded in its intent.

In addition, there are a number of the gaps that SACOSS has identified in the current national framework that also appear in the current Victorian framework.

For example, there is some ambiguity over how a hardship customer is identified versus a customer experiencing payment difficulties, yet this distinction underpins the level of support provided to a customer experiencing payment difficulties.

It is hardly surprising that there are large differences in the rate of participation in hardship programs when different retailers may use different criteria and different sources to identify hardship customers.

Like the NECF's minimum requirements for an approved hardship policy, the requirements in the ESC Act focus on ensuring there are processes in place to identify hardship customers and to determine the appropriate payment plans. It is less clear what these processes should include.

Similarly, the criteria by which a customer can be classified as having payment difficulties and eligible for a payment plan is not clearly defined in the regulatory instruments. It is again not surprising that there is a large range in proportion of customers on payment plans across different retailers.

The ESC Act also requires that the retailer offer payment plan options that are fair and reasonable. However, it is up to the retailer to further define what fair and reasonable may be for each individual customer. There is no guidance on this in the regulatory instruments.

The retailers must also set out 'how and in what circumstances' they would propose an energy audit or appliance replacement. The regulatory framework provides no guidance on how this decision might be made or what level of assistance should be provided in these circumstances.

This may explain why the ESC states that its 2014-15 retail performance data show that: "energy field audits are not being provided to customers by retailers to any meaningful extent".[130] Only two retailers reported conducting energy field audits.

SACOSS also notes that there is limited referral in Victorian regulatory instruments to the quality of the interactions between the customer and the retailer.[131]

SACOSS noted a similar gap in the NECF framework and highlights again the importance of the quality of interaction between the retailer and the customer and the importance of the customer having a sense of engagement and control in the process.

The variation in outcomes for the customers of different retailers suggests that retailers may also vary significantly in the quality of these interactions with the vulnerable customers.

The Victorian legislative framework emphasises as a matter of principle that all residential customers in financial hardship should have equitable access to hardship policies and that these policies should be transparent and applied consistently.[132]

However, just as we observed in the national framework, the variations in practices and outcomes between retailers in Victoria and even within a retailer over time, suggest that this principle is lacking in practice across the sector.

The frustration is that these gaps continue despite the best intentions of all stakeholders to implement a sustainable program for customers experiencing payment difficulties that minimises the rate of disconnection due to inability to pay energy bills.

The next section of this report will consider the outcomes of the AER's and the ESC's review of their hardship policies in 2014-15.

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[130] Essential Services Commission 2016, *Energy Retail Comparative Performance Report – Customer Services*, May 2016, p. 30.

[131] The main reference to the quality of the interaction is in the ESC's Energy Retail Code where it refers to a process for training staff in the skills to sensitively engage with hardship customers as one of the factors that the ESC would consider when approving a hardship policy. See also Box 2.

[132] See for instance. ESC, Energy Retail Code, s. 71(b) and (m).

5. Findings of AER and ESC in their reviews of Hardship Customers and Retailer Policies

Section 4 of this report outlined the current regulatory requirements set out in the NECF and the Victorian legislative instruments. Section 4 also summarised the AER's and the ESC's interpretations of these requirements as presented in the AER's Guidance to Retailers and the ESC's Energy Retail Code and related documents.

Over the course of 2014 and 2015, both the AER and the ESC conducted reviews of the relevant policies and the outcomes for customers experiencing payment difficulties.

The reviews provide valuable insights into the challenges facing the AER and the ESC in providing an effective and efficient regulatory framework. Both the AER and the ESC have, therefore, used the findings of these studies, to further develop the programs to support vulnerable customers, including hardship customers.

The results of these two separate reviews are, therefore, summarised in the following sections 5.1 and 5.2.

Section 5.3 presents findings from other research, specifically, the work of Ofgem. Ofgem has spent well over a decade refining its energy customer protection framework and their work has some relevance for stakeholders in Australia.

5.1 The AER Hardship Policy & Practices Review[133] (AER Review)

5.1.1 Reasons for the AER's Review

The AER undertook a "targeted" review of the operation of retailers' hardship policies and practices throughout 2014.

The review was instigated in the first instance by the concerns of various consumer representative organisations with the practical implementation of the retailers' hardship policies. In particular, consumer representatives identified two specific areas of concern, namely:[134]

- Barriers that restrict customer access to hardship assistance; and
- Retailers setting unaffordable payment plans.

In addition, the AER's and the ESC's retail performance reports revealed that vulnerable customers were entering payment plan arrangements and hardship programs with very high levels of debt and were, in many cases, not reducing that

[133] AER, *Review of Energy Retailers' Customer Hardship Policies and Practices*, January 2015 ("AER Review").

[134] ibid, p. 3.

level of debt. There was a high rate of 'drop-out' from hardship programs. Clearly, neither process was consistently achieving the desired outcomes.

The AER also noted that an independent review of Centrepay in 2013 raised concerns that customers may be carrying high credit balances and recommended that the AER investigate energy retailers' practices with regard to this. [135]

Given these concerns, the AER initiated the review as part of its compliance activities for 2013-14. The stated purpose of the review was to:[136]

- Better understand the significance and prevalence of concerns regarding customer access to hardship assistance and affordability of payment plans;
- Identify any concerns with retailers' compliance with the NERL and NERR, particularly with respect to the identification of customers, how retailers have regard to capacity to pay when establishing payment plans and how retailers promote, use and monitor Centrepay; and
- Work collaboratively with retailers and consumer stakeholders to promote compliance and improve the effectiveness of assistance provided to customers experiencing hardship.

Consistent with the stated purpose of the review, the AER adopted a multi-faceted approach that that included meetings and surveys of consumer representatives, community workers, jurisdictional ombudsmen and retailers as well as examination of the most recent retail performance data for 2013-14.[137]

5.1.2 Findings of the AER's Review

The AER's Review presented its findings and observations under four headings. They were: [138]

- Identification of vulnerable customers and access to suitable assistance programs;
- Capacity to pay assessments;
- Centrepay arrangements; and
- Review of hardship policy documents.

The AER's findings are consistent with the concerns raised by consumer representatives with the current processes of managing customers facing payment difficulties. The AER's findings on each of these four matters is summarised below.

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[135] ibid. See also: Department of Human Services (Australian Government), *Report of the Independent Review of Centrepay 2013*.

[136] See AER: ibid, p. 6.

[137] ibid, p. 7.

[138] ibid, p. 8.

5.1.2.1 Identification and Access

The NERL requires that retailers have processes in place to identify customers experiencing payment difficulties due to hardship, including identification by the retailer, and self-identification by a residential customer. [139]

The AER notes that:[140]

> *Early identification of customers experiencing financial hardship will maximise the opportunities for effective intervention to help the customer manage and overcome their difficulties.*

This is consistent with SACOSS' observations and our priorities for policy reform.

In line with the NERL, the AER also identifies two 'pathways' to the identification of a customer experiencing payment difficulty, namely self-identification by the customer and identification by the retailer.

The AER's review, therefore, considers practices that address both identification pathways with the aim of uncovering factors that might promote earlier identification by the customer and/or the retailer. The AER's findings on each of the two pathways are set out below.

Self-identification by the customer

The AER observed that there is a range of practical and social barriers to self-identification by customers. Similarly, the AER observed that: "retailers varied in the nature and scope of their efforts to overcome these barriers and promote their hardship programs…"[141]

The barriers to the customer approaching their retailer included barriers that arose from or were exacerbated by the retailer's policies and treatments. The AER identified the principal barriers as follows:

- Lack of awareness by the customer of the existence of their retailer's hardship program. Retailers differed in the extent to which they effectively used a variety of channels to communicate with their customers;
- Reluctance to notify their retailer that they were in financial difficulties due to various social factors. Retailers differed in their methods to overcome this reluctance.
- High mobile phone costs could be a barrier. Some retailers offered to call back when receiving a mobile call and/or provided email contact options;

[139] ibid, p. 9. See also NERL, s. 44(a).

[140] ibid.

[141] ibid, p. 10.

- Call centre hours. Some retailers provided extended hours to provide greater accessibility for customers.
- Previous poor experience when asking for assistance. Some retailers demonstrated greater commitment to training staff in working with vulnerable customers.

Identification by the retailer

The AER found that retailers differed in both the processes used to identify customers with payment difficulties and in their efforts to contact customers who have been identified as ‘at risk’.

For example, some retailers use automated credit management systems to flag customers who have missed payments and remove them from the billing and collections cycle for follow up. Other retailers use checking systems that result in manual reviews of accounts in arrears, while others flag customers who have reached a certain level of debt or missed a number of payments.

In terms of attempts to contact customers, the AER found some retailers who made up to eight or nine efforts to contact the customers, where other retailers made only the minimum number of contacts required by the regulations. The AER observed that using a combination of contacts methods (letters, SMS, emails, phone calls) at different times appears to be more effective.

Access to ‘meaningful and appropriate’ hardship assistance

The AER observed retailers offered different types and different levels of assistance such as extension of time to pay, realistic payment plans and referrals to the retailer’s hardship program.

The challenge for retailers is to establish a process that places the customer in the ‘right box and at the right time’. For example, extending the time to pay or establishing a payment plan may not be sufficient when the customer cannot meet payments for their current and ongoing usage.

Such customers will need access to a more tailored and more comprehensive suite of intervention services such as those available in the retailer’s hardship program. The hardship program should address not only payment plans, but access to concessions and rebates, appropriate tariffs, and energy usage information and intervention.

The AER noted the comments of consumer advocates that ‘front-line’ staff often did not have the necessary knowledge of the retailer’s hardship programs or the skills to identify the appropriate level of assistance required for each customer.

These essential retailer staff skills include but also go beyond the provision of information on concessions, tariffs, energy efficiency and so. Also important is that the retailer’s front line staff are trained in the ‘soft skills’. The AER stated that these soft skills include active listening, respectful practice and demonstrated empathy and sensitivity to the customer and their situation.

The AER also noted the importance that consumer advocates place on these 'soft skills'. The consumer advocates emphasised that the quality of this initial interaction will influence the customer's sense of empowerment, their ongoing engagement with the retailer and their willingness to cooperate with the relevant plan.

The AER concluded that retailers varied in the level of proactive intervention and demonstrated 'soft skills'. The AER stated: [142]

> *We observed differences in retailers' practices for recognising and responding to the signs of hardship, which suggest that those with specialist staff training and documented processes in place tend to provide a higher quality response.*
>
> *...*
> *Retailers with more effective approaches also benefited by being able to maintain a positive and cooperative relationship with customers dealing with hardship issues.*

5.1.2.2 Capacity to pay assessments

The NERR requires the retailer to have regard to a customer's capacity to pay, the amounts owed by the customer and the expected energy consumption when establishing a payment plan.[143]

The AER observed that retailers varied in how they establish a customer's capacity to pay and in how they responded if a customer could not afford to pay for their ongoing usage, let alone repay existing debt over time.

Capacity to Pay

The AER noted that there were generally two approaches adopted by different retailers to establishing a customer's capacity to pay although some retailers adopted a mixed approach. The two approaches were:[144]

- Accepting on face value the payment amount proposed by the customer as being affordable without probing into the customer's individual circumstances; or
- Actively exploring with the customer what they can afford to pay, having taken some note of the customer's individual circumstances.

[142] ibid, p 13.

[143] NERR, 72(1)(a).

[144] See: AER, *Review of Energy Retailers' Customer Hardship Policies and Practices*, January 2015, p. 15.

The AER further noted that there seemed to be a preference amongst consumer representatives for the first option, with the consumer identifying what they could afford to pay. The benefit of this approach was that the consumer was empowered to make the decision. However, this approach incurs the risk that the customer may be 'too optimistic' in assessing what is affordable in their circumstances.

The majority of retailers reported that they adopted the second approach that relied on active discussion with the customer on the customer's financial situation. Such discussions usually began with an implicit or explicit assessment by the retailer of an optimal payment plan based on the level of debt and forecast consumption.

However, the AER noted that there was a significant variation in how retailers approached this discussion, and how much detail they sought about the customer's financial circumstances in order to confirm or modify their starting assessment.

Unless these discussions were managed with a high level of skill by the retailer's staff, there was a risk that the customer would not be adequately engaged in the process, would resist providing the appropriate information and resent the intrusion. It appears that retailers differed in the extent to which they invested in specialised training of suitable staff.

Managing customers whose capacity to pay is less than ongoing consumption

The AER identified significant levels of concern amongst retailers with the number of vulnerable customers who cannot afford to pay for current consumption.

Some retailers estimated that for customers on payment plans, there was a relatively small proportion that were paying more than their current consumption. In other words, any payment plan that was within the customer's ability to pay was less than required to recover historical debt as well as ongoing consumption.

Again, retailers varied along a spectrum in terms of their response to this situation. Over time, some individual retailers moved along the same spectrum.

The AER highlights that at one end of the spectrum, some retailers demonstrated "tolerance and empathy" and a "stronger commitment" to helping these customers.

At the other end of the spectrum, the AER reported retailers whose 'customs and practices' appeared to be "frustrated by the challenges and costs of managing hardship customers".[145] For these retailers, the management of the customers and the development and maintenance of their payment plans was focussed on "debt recovery" and "payments on time". [146] The payment plans implemented by these retailers therefore required, at a minimum, payment of current consumption even if the customer stated that they could not afford such payments.

[145] ibid.

[146] ibid.

The consequence of this latter approach was too often a failure of the customer to pay their energy bills and a reluctance to renegotiate terms given their initial negative experience with the retailer. Consequently, the customer's debt escalates and the risk of disconnection increases.

SACOSS also notes and agrees with the AER's view that the current suite of hardship program indicators does not provide a clear picture of the dynamics of the retailer-customer relationship and how that is driving outcomes.[147]

Negotiation, disputes and the role of financial counsellors

In developing suitable payment plans for vulnerable customers, the AER cites feedback from the consumer representatives and concludes that: [148]

> *… giving customers the opportunity to effectively negotiate for themselves provides an important sense of control and empowerment. Doing so also promotes a sense that the retailer is willing to listen and is approachable in a time of difficulty.*

The AER also notes that this finding is consistent with a study conducted for Ofgem on the implementation of their guidelines for the management of vulnerable customers.[149] This research study concluded that giving customers the opportunity to effectively negotiate for themselves "provides an important sense of control and empowerment". [150]

Similarly, the AER notes the findings of 2014 research by Financial Counselling Australia, which stated the ability to pay as being: "inextricably linked to human dignity". [151]

In the AER's own survey, financial counsellors indicated that the most positive outcomes could be achieved by empowering the customer to negotiate with the

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[147] See ibid. The AER notes that indicators such as 'debt on entry' versus 'average debt' while on a hardship program, and the proportion of customers successfully completing a hardship program, provide some information but many factors other than the nature of the retailer's program may impact on this data. The indicators do not provide a longitudinal picture of the customer's struggle to manage energy debt and the competing demands on their limited financial resources.

[148] ibid.

[149] cited in ibid, p. 17:Consumer Futures (2013), *Ability to Pay: Exploring the extent to which Ofgem guidelines regarding indebted consumers are followed from the consumer and debt advisor perspective*; A report by RS Consulting for Consumer Futures, p. 41. 'Consumers Futures' was at that time the operating name of the UK's National Consumer Council.

[150] ibid.

[151] Cited in ibid, p. 18: Financial Counseling Australia and the Australian Communications Consumer Action Network (2014), *Hardship policies and practices: A report on comparative hardship policies*, p. 46.

retailer. While it may be necessary to involve financial counsellors for some customers with high and/or complex needs, some stakeholders consider that retailers refer their customers to financial counselling services too readily. They observed that some retailers require the customer to speak to a financial counsellor before they can be put on a payment plan.

However, the AER also noted that retailers did not agree with this assessment.[152] The retailers claimed that referral to financial counsellors was to enhance the support for a customer with a "high level of need", rather than to enable the retailer to broker an agreement.[153]

Referral to financial counsellors can sometimes delay the process of establishing an agreed payment plan because of the time to make an appointment. This, in turn, increases the overall level of debt.

A referral can also take responsibility away from the retailer-customer relationship; the retailer is in effect "outsourcing" the relationship with their vulnerable customers. For these reasons, it may be better to reserve financial counselling referrals to specific cases of high need and in particular where the customer's payment plan is not covering their ongoing usage costs.

Further ways to assist hardship customers

The NERL sets out the minimum requirements for customer hardship policies. [154] These minimum requirements set out a number of additional requirements such as providing the customer with additional information on concessions, financial counselling resources, energy efficiency opportunities, and alternative tariff arrangements.

The AER considers that the most effective policies and procedures include actions that assist customers in paying not only their arrears but also paying for future consumption. Energy efficiency advice, tariff checks, information on government grants and concessions and referral to third parties are important in managing future vulnerability.

The AER's survey again indicated a mixed response from retailers. Some retailers appeared to go no further than the minimum requirements and had little in the way of: "extra initiatives and programs to assist hardship customers manage their energy usage and bills".[155]

Other retailers, however, were observed to go beyond these minimum requirements. These retailers had put in place strategies to engage hardship

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

[153] ibid, p. 18.

[154] NERL, s. 45 (a) and s. 44.

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

customers, including energy efficiency advice and financial incentives for committing to an agreed payment plan.

For example, the AER found that at one end of the spectrum, energy efficiency advice simply included a referral to the retailer's website which included a small range of "rather basic tips".[156]

At the other end of the spectrum, retailers were variously involved in promoting their online energy portals, telephone or home audits, appliance replacement programs, community workshops and the like.

However, the AER also reports there was mixed feedback from retailers on the success of some of these measures. For instance, retailers reported that home audits had a low take up as many consumers considered a home audit inconvenient and/or intrusive. Retailers increasingly preferred telephone audits.[157] Appliance replacement programs also did not necessarily reduce consumption.[158]

In its study, the AER considered the merits of various incentive schemes. For instance some retailers provided an incentive such as some form of bill relief or payment matching schemes. While consumer representatives supported this type of scheme, there were mixed views amongst retailers. The AER concludes that: "financial incentives are not necessarily the benchmark of best practice".[159]

The AER also suggested that best practice retailers provided a number of referrals and/or web-site links to third party service providers such as energy saving advice websites, financial counsellors, welfare organisations, legal aid, mental health, addiction services, domestic violence centres and emergency contacts for natural disasters.

Consumer representatives identified a number of best practice activities by specific retailers including:[160]

- Dedicated and accessible hardship team;
- Focus on solutions that are appropriate to individual customer needs;
- Wide range of incentive payment plans;
- Friendly, understanding and considerate consultants;
- Absence of long waits on the phone;
- Listens to counsellors advice on behalf of the consumer;

[156] ibid, p. 20.

[157] ibid, p. 19.

[158] ibid. Retailers advised the AER that sometimes customer retained the original appliance (such as an old refrigerator) as well as the new one. SACOSS is not aware of whether these claims are widespread and if they have been independently assessed.

[159] ibid.

[160] See also ibid, p 21.

- Provision of a dedicated caseworker giving continuity to the hardship customer.

5.1.2.3 Centrepay Arrangements

The NERL requires retailers to offer flexible payment options, including Centrepay, to hardship customers.[161] One expected benefit of Centrepay is that having a regular amount deducted from a customer's Centrelink payments makes it easier for a customer to budget for their energy costs, particularly if accompanied by a bill smoothing arrangement with the retailer.

The AER highlights that there have been "numerous concerns" with the operation of Centrepay resulting in an independent review in 2013. The review recommended that the AER investigate energy retailers' practices with regard to Centrepay arrangements.[162]

As a result, the AER has included a review of Centrepay arrangements in the energy retail industry as a specific component of its review of customer hardship policies and practices. In particular, the AER was concerned to investigate how retailers promote, use and monitor Centrepay arrangements when establishing payment plans for hardship customers.[163]

Feedback from consumer representatives indicated to the AER that some retailers were not offering Centrepay, that it was not mentioned as a payment option and that some customers were told by their retailer that they cannot use Centrepay.[164] These representatives also questioned the extent of the positive balances being held in the customer's Centrepay accounts.

The AER found that there was no direct evidence of misuse of Centrepay facilities by retailers. It was more likely that the stakeholders' concerns reflected an underlying issue about the retailers' assessments of customers' capacity to pay and the affordability of their customers' payment plans (whether managed through Centrepay or through other arrangements).

The AER, however, did accept that: "there was scope for some retailers to better promote the availability of Centrepay to eligible customers".[165] The AER also notes that its own retailer performance data suggests that Centrepay is not strongly promoted by retailers. For instance, the AER states that only 28 per cent of hardship customers use Centrepay, and that: "this varies markedly between retailers".[166]

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[161] NERL, s. 44(c).

[162] ibid, p. 22.

[163] ibid.

[164] ibid.

[165] ibid.

[166] See ibid, p. 23. The AER's figures are based on the AER's 2013-14 annual performance report: *Annual report on the performance of the retail energy market 2013-14*. The AER's 2014-15

AER Review of hardship policy documents

The AER approves a retailer's hardship policy on the basis that:

- The policy meets the minimum requirements set out in the NERL and the requirements in the NERR; and
- The AER is satisfied that the policy will or is likely to contribute to the purpose of identifying hardship customers and helping them manage their energy bills.[167]

However, while a retailer's hardship policy must be published on the retailer's website,[168] there are no requirements around the prominence, positioning or format of the hardship policy document(s).

The AER reports that most hardship policies could be reasonably easily found on the website, although they were called different names and were located in different areas of the retailers' websites. The AER noted some instances where the policy was placed under page headings that were not intuitively obvious to a consumer.[169]

The AER also found that the majority of hardship policies: "did not seem to be written for the benefit of residential consumers".[170] Rather they were written to meet the requirements of the NERL and NERR and using the nomenclature of the NERL and NERR. In addition, the documents were frequently quite long, ranging from five to fourteen pages.

As such, the AER observes that they appeared to be written for a customer with a fairly high level of literacy. It is important that the key points in the hardship policy are written in simple and direct language.

As such, the AER suggests that retailers consider producing a 'short-form' version of the hardship policy document that sets out the key requirements and sits alongside the longer document prepared with regulatory compliance in mind.[171]

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retail performance report suggests the proportion of hardship customers using Centrepay has declined from 2013-14 across all jurisdictions (see Table 2.8, p. 27) although there may be a number of other factors causing this decline.

[167] NERL, s. 45(1)(b).

[168] NERL, s 43(2) and s. 43(3).

[169] For instance, the AER found some policies were under page titles such as 'Privacy and Legal', 'Residential' or 'Resources'. See AER, *Review of Energy Retailers' Customer Hardship Policies and Practices*, January 2015, p. 26.

[170] ibid.

[171] ibid, p. 27.

5.1.3 Lessons from the AER's review

The AER concludes as follows:[172]

> *The review suggests that many community concerns about hardship assistance and payment plan affordability are not symptomatic of widespread non-compliance with the Retail Law and Rules*.

Rather, the AER considers that the issues identified by consumer representatives with hardship assistance and payment plan assessments and compliance are: "linked to broader issues of energy affordability and energy literacy".[173]

Also critical to the process, and not readily measured, is the quality of the retailer's initial communication with vulnerable customers and the effectiveness of the retailer's ongoing communication.

Consumer stakeholders, including SACOSS, place a high priority on establishing and maintaining respectful communication with vulnerable consumers throughout the process of resolving the customer's debt. This is not only beneficial to the customer, as SACOSS considers there is ample evidence that better communication will lead to more successful outcomes which benefits the retailer as well.

The AER review confirms the importance of 'respectful practice'. The AER states that: [174]

> *How a retailer engages with the customer to actively listen and validate their experience of vulnerability is very important in developing and maintaining longer term engagement.*

Despite the review not identifying wide-spread non-compliance, the AER highlighted a number of concerns with some aspects of the retailers' implementation of the current regulatory requirements. The AER's concerns include:[175]

- Retailers reporting relatively high level of debt while having relatively low levels of customers on a payment plan or hardship program;
- Retailers reporting relatively high level of debt on entry to a hardship program;
- Disconnection of hardship customers arising because the retailer was unable to slow or stop the disconnection process even as the customer was entering a hardship program;[176]

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[172] ibid, p. 3.

[173] ibid, p. 4. The AER defines 'energy literacy' as: "the consumers' ability to make informed decisions around selecting an energy offer and understanding their options and rights in relation to their energy supply".

[174] ibid, p. 4.

[175] ibid, p. 4.

- Relatively low number of customers using Centrepay;
- lack of "intuitively locatable and easy to read information" on a retailer's website about the availability of assistance;
- Lack of additional measures to support a hardship customer, i.e. a hardship program is little more than a payment plan; and
- Incorrect reporting of performance data to the AER.

The extent of these issues varied across retailers, and over time. In turn, these differences can have a significant and disproportionate impact on vulnerable customers and on those consumer representatives and financial counsellors providing support to the vulnerable customers.

For instance, the lack of consistency in approach, both between retailers and within a retailer over time, complicates the financial counsellors' task of providing consistent and relevant advice to the vulnerable customers of each retailer.

Moreover, vulnerable customers are less likely to have the knowledge, skills and wherewithal to challenge a retailer or to change retailers in response to an inadequate or non-supportive retail service. Indeed, these consumers may not even know their 'rights' under the regulatory framework to challenge their retailer on such things as payment options, payment periods and so on.

It is essential, therefore, that vulnerable customers have access to information on their 'rights' and 'responsibilities' in the energy retail market and that this information is provided in an accessible and respectful manner.

If this can be consistently achieved across all retailers, then vulnerable customers are more likely to become their own 'agents', confident to represent their own interests, negotiate realistic payment plans, maintain continued communication with their retailer, and progressively adopt recommended actions to reduce their energy costs.

SACOSS, therefore, encourages the AER to establish a regulatory framework that will result in more consistent and equitable outcomes for vulnerable customers and a more sustainable and constructive relationship between retailers and customers.

As noted, SACOSS holds a firm view that if the customer is engaged in the process and can see that the retailer understands and will agree to realistic payment schedules, the customer is far more likely to complete the payment program.

Potential or actual disconnection for non-payment has a role, but only at the edges – as a 'last resort' when a customer has refused to meaningfully engage in the process. Similarly, severe penalties on retailers for wrongful disconnections have a role, but do not address the critical issue of the *quality* of the interaction between the retailer

[176] SACOSS has noted the impact of smart meters and remote disconnection in considerably reducing the time between the retailer issuing a disconnection notice and it being enacted upon by the distributor. This may contribute to the AER's observations.

and the customer. Potentially, such severe penalties may act as a deterrent to innovation by the retailer and a focus instead on the strict 'letter of the law' rather than the intent of the law.

The intrinsically adversarial nature of both these negative actions only increases costs for all consumers over the long term and undermines the hope of achieving positive solutions to the difficult issues of customer vulnerability.

5.2 The ESC Inquiry into Best Practice Financial Hardship Programs

5.2.1 Background to the ESC Inquiry

In February 2015, the ESC received a request from the Victorian Government to conduct an inquiry into: "best-practice financial hardship programs of retailers".[177] In order to determine if energy retailers were adopting best practice, the Government requested the ESC to:[178]

> *[r]eview retailers' policies, practices and procedures in supporting customers experiencing financial hardship avoid disconnection. In doing so, the Commission should also assess whether the regulatory framework governing retailers' obligations in this regard, represents regulatory best practice.*

This inquiry was to include an investigation of the different methods used by retailers to assist customers; the design and efficacy of regulatory obligations; the transparency of energy retailers' hardship policies and practices; cost effective options for improving how retailers assist customers, and developing a benchmarking framework to assess and report on the effectiveness of retailers' policies, practices and procedures.[179]

For the purposes of the inquiry, the Government provided a broad definition of 'customers in financial hardship' that included both actual customers unable to pay their energy bills and customers at risk in the future.

The Victorian Government's terms of reference state that customers in financial hardship include:[180]

- 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.

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[177] See Minister for Finance & Cultural Affairs, "ESC Inquiry into the Financial Hardship Programs of Retailers, Terms of Reference", 4 February 2015.

[178] ibid, p. 1.

[179] ibid, p. 1-2.

[180] ibid, p. 2.

In its Final Inquiry Report (ESC Final Report), the ESC explained that their Inquiry was focussed on how energy retailers support customers experiencing difficulty paying their energy bills including, i.e.: "how energy retailers account for the financial circumstances of individual customers when assisting customers experiencing payment difficulties".[181]

More specifically, the ESC's Final Report stated that the Inquiry was designed to: "examine how the regulatory framework around vulnerable customers operated in practice".[182]

Significantly, the ESC's inquiry did not investigate the broader socio-economic causes of financial difficulty or the drivers of energy costs. The ESC argued that these factors were "beyond the scope of the inquiry".[183]

A further important aspect of the ESC's inquiry is summarised in the following quote from the ESC's Final Report:[184]

> *Current regulation requires energy businesses to assist customers experiencing payment difficulties. The 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 level of regulated support****.* [emphasis added]

Given the ESC's proposed extensive changes to the current regulatory model in Victoria, the emphasis on regulatory efficiency and net societal benefit is useful, even if it may be challenging to measure.

However, SACOSS has previously indicated in this report a concern that a thorough cost benefit analysis has not been undertaken by the ESC, including assessment of costs and benefits of alternative less drastic reforms.

The ESC also set out six more specific principles to guide the ESC in conducting the inquiry and which the ESC regards as 'standard tests of best practice regulation'[185] as set out below. They were:[186]

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[181] See for example, ESC, Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Final Report, February 2016, p.2.

[182] See for example, ibid, p.p. 1-2.

[183] ibid, p. 2.

[184] ibid, p. 4.

[185] See for instance, paper by Dr Ron Ben-David, Chairperson of the Essential Services Commission: "Supporting Energy Customers in Financial Hardship: Untying the Gordian Knot", p. 13. Presentation to Credit Collections & Hardship Program in Utilities Conference, 11 May 2015.

[186] ibid, p. 6. These principles were initially set out in an ESC Issues Paper: ESC 2015*, Inquiry into the Financial Hardship Arrangements of Energy Retailers: Our approach*, March 2015, Chapter 2.

1. Effectiveness
2. Flexibility
3. Consistency
4. Efficiency and proportionality
5. Transparency and clarity
6. Accountability

In Section 1.4, SACOSS provides its initial assessment of the AER and ESC approaches. The requirement of a net social benefit along with the specific principles set out by the ESC will form part of our assessment of the two schemes.

The following sections will, however, highlight some of the important findings of the ESC's inquiry.

5.2.2 Determining a Customer's Payment Difficulty

The current Victorian regulatory framework requires retailers to categorise vulnerable customers according to whether they are: [187]

- 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.

A customer who is categorised as a hardship customer is therefore entitled to a higher level of assistance from their retailer than a customer who may benefit from assistance but does not qualify as a hardship customer.

However, the ESC also noted that, despite the importance of the concept of customer hardship in terms of the assistance a customer should receive, there was no objective definition of 'hardship' in the regulations.

In other words, 'hardship' was what each retailer determined it was. The ESC's concern with the subjectivity of this assessment process is shared by SACOSS.

As the ESC highlights in its Final Report, a retailer's decision to classify a customer as a hardship customer is currently based largely on the retailers assessment of the cause of the payment difficulty[188] – and perhaps, implicitly, on the perceived 'worthiness' of that cause?

The ESC observed that the causes of a customer's payment difficulty may be hard to identify and may or may not meet that particular retailer's definition of 'hardship'.

[187] ESC 2016, *Supporting Customers, Avoiding Labels, Energy Hardship Inquiry, Final Report,* February 2016, p. 13.

[188] ibid, p. 14.

Ascertaining these causes may also require gathering personal information and may lead to customers feeling 'stigmatised' by the retailer.[189]

A retailer's categorisation of a customer as a hardship customer may also rely on more objective assessments of payment difficulties such as the duration and level of debt.

However, the ESC observed that there was a "continuum" of customers incurring payment difficulties characterised by "increasing duration and level of debt". [190]

Different retailers have different marker points along the continuum that they use to define a hardship customer or a customer requiring a payment plan. Again, therefore, even on these more objective measures, there is a degree of subjectivity and vulnerable customers will experience different outcomes depending on where their retailer draws the "cut off" point.

The ESC concluded that the subjectivity of the assessments by retailers resulted in inconsistent levels of service provision depending on the eligibility criteria applied by individual retailers.

The ESC summarised the problem of focusing on the cause of payment difficulties as follows:[191]

> *Typically, the assessment of eligibility focuses on the causes rather than the types of payment difficulties being experienced. To a large extent, this approach arises from the regulatory expectation that retailers will have regard to customers' capacity to pay when determining what assistance should be provided when payment difficulties are identified.*

It is for this reason that the ESC also concludes that it is better to classify customers by the 'type' of payment difficulty rather than the cause of the difficulty.

The ESC's proposal is discussed in more detail in Section 2.4. Table 5 below, provides a high level illustration of the ESC's alternative categorisation by type of payment difficulty.

[189] ibid.

[190] ibid, p 12.

[191] ibid, p. 14.

Table 5: Types of Payment Difficulty

Type	Characteristic	Debt status
A	Customer has not yet missed a payment • And has not missed a payment in the past 12 months • But cannot meet their next payment.	Likely
B	Customer has missed a payment and therefore has an energy debt.	Commenced
C	Customer has energy debt • And is making payments that reduce debt • But not in accordance with their payment plan.	In arrears
D	Customer has energy debt • And is paying for their energy use • But is not reducing their debt.	Static
E	Customer has energy debt • And is not paying for their energy use.	Increasing

Source: ESC, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Final Report*, February 2016, Table 2.2, p. 13.

The ESC considers that classifying the level of vulnerability by type allows the retailer to use a consistent framework based on objective information available in the retailer's billing systems, namely:[192]

- The amount the customer is required to pay at any point in time;
- The customer's actual payments; and
- The total amount a customer owes to the retailer.

5.2.2 Other Outcomes of the Current Regulatory Framework for Vulnerable Customers

The following sections consider in more detail a number of the key findings of the ESC review. The ESC uses these findings in the development of its new regulatory framework for customers experiencing or expecting difficulties in paying their energy bills.

5.2.2.1 Assistance provided by retailers and access to this assistance

As highlighted by the ESC, and noted above, the current Victorian regulatory framework provides a significant degree of discretion to retailers in the way they choose to assist vulnerable customers.

As a result, in addition to the substantial differences in the criteria retailers use to classify customers (see above), there is also significant variation in how customers access assistance and what assistance is provided. The ESC notes that this includes the terms and conditions on which assistance is provided and on which it might be withdrawn from the customer.[193]

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[192] ibid.

[193] ibid, p. 17.

Moreover, the ESC's investigations indicated that information on the type and level of assistance each retailer would provide was not transparent nor readily available to customers in the hardship plans published by retailers on their web sites.

The ESC found that some policies are easier to find on the retailers' websites than others. Section headings such as 'Terms, prices and regulatory information', 'The legal stuff' or 'Resources' makes locating the hardship policies more difficult for the customer, and their counsellor.[194]

With respect to eligibility to assistance and the actual assistance received, the ESC noted the broad discretion of the retailers to determine eligibility, capacity to pay and actual payment plans.

The ESC acknowledges that the broad discretion provided to retailers was designed to provide scope for retailers to innovate and tailor their assistance programs so that they could be delivered efficiently to the customer. However, the ESC concludes that:[195]

> *Ten years of experience shows that this open-ended discretion has led to highly variable practices by retailers and inconsistent outcomes for customers*.

A number of the more significant areas where retailer discretion has led to inconsistent outcomes for consumers are summarised below:[196]

Eligibility criteria

The ESC states that retailers have significant discretion and insufficient "regulatory guidance" in two areas, namely:[197]

- The obligation to provide at least two payment plans to customers experiencing payment difficulty without sufficient regulatory guidance about the terms and conditions on which those plans are offered; and
- The obligation to assess a customer's capacity to pay without any regulatory guidance about the form of that assessment.

The outcome has been highly variable practices by retailers and inconsistent outcomes for consumers**.**

Use of indicators

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[194] ibid.

[195] ibid, p. 18.

[196] For details see Ibid, p.p. 17 – 20.

[197] ibid, p. 18.

Most retailers used ‘indicators’ to identify customers who may require assistance and, more particularly, customers who should be placed into the retailer’s hardship program. These indicators typically relate to an assessment by the retailer’s staff of the customer’s financial or personal circumstances.

Different businesses will rate these factors differently depending on their business policies and processes. As a result, retailers will differ in which customers get access to hardship program assistance and which customers are placed on a short-term payment plan.

Access to assistance

The ESC states that while retailers must establish payment plans having regard to a customer’s ‘capacity to pay’, retailers interpret this obligation differently.

The ESC’s review found that half of the retailers in the study determined a customer’s ‘capacity to pay’ based on what the customer tells them about the debt they can afford and over what timeframe. If a customer does not appear to be able to pay the debt over that timeframe the customer may be transferred to a hardship program.

The other retailers require the customer to provide significant financial and personal information in order to decide if the customer should have access to a hardship program. In some instances, failure to provide this detailed personal information may lead the retailer to deny access to the hardship program even when the customer would be otherwise eligible.

These detailed investigations may also be used by the retailer to assess whether the customer has the ‘intention but not the capacity to pay’ or (in the retailer’s view) the ‘capacity to pay but not the intention to pay’.[198]

Other retailers have a standard practice of refusing vulnerable customers access to their hardship programs if they do not have a health care card even when this is not a formal criteria for entry to a hardship program.[199]

The ESC concludes that whether a customer is offered a payment plan or transferred to a hardship customer depends on each retailer’s internal policies and practices: **“Energy consumers as a whole are not being given consistent access to assistance”.**[200]

[198] ibid, p. 19. 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. Assessing a customer’s ‘intention’ adds another layer of subjectivity to the process of assessing the capacity to pay and access to a hardship program.

[199] ibid, p. 20. Kildonan Uniting Care identified this issue in their submission to the ESC’s issues paper.

[200] ibid, p. 20.

Alignment of Incentives

The ESC also noted that the regulatory framework in Victoria creates financial incentives for retailers to limit a customer's access to assistance.

In particular, the combination of prohibitions on disconnection and debt recovery for customers in hardship programs and the cost of supporting customers on the program act as incentives for retailers to minimise access to hardship programs.

However, the ESC also notes that retailers have found customers have insufficient incentives to engage with their retailer when they need support, particularly when the debt gets high.

The regulatory framework therefore, requires incentives on both retailers and customers to work together.

5.2.2.2 Form of Assistance Provided

Hardship program and payment plans

Retailers have significant discretion to determine the form of assistance to offer vulnerable customers. The ESC found that the form of the assistance primarily relates to whether a customer is included in the retailer's hardship program or is assessed as eligible for a payment plan but not for the retailer's hardship program.

Participation in retailer hardship programs has increased by some 40 per cent over a five-year period to 2013-14.[201] However, it is not clear if this reflects greater payment difficulties or changes in the policies and procedures of the retailer.

In any case, the ESC's review illustrates the importance of the classification process in terms of the types of service provided to a customer with payment difficulties. These differences in services according to the eligibility classification are illustrated in Table 6 below.

[201] ibid, p. 20. Note, this figure understates the 2013-14 changes as it is not adjusted for correction of hardship data by one major retailer in August 2015.

Table 6: Comparison of Assistance Potentially Available to Vulnerable Customers (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[14]	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

Source: ESC, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Final Report*, February 2016, Table 2.4, p. 21.

Table 6 above also illustrates the ESC's observation that the form of support varied across retailers, although most offered the key customer supports for hardship program customers. The ESC's study also revealed that the forms of assistance provided by a retailer varied over time as demonstrated in the next section.

Payment Plans

Payment plans are by far the more common form of assistance provided by retailers to customers experiencing payment difficulties. The ESC defines a payment plan as follows:[202]

> *A payment plan is an agreement with a retailer that the customer will pay off an amount owed in regular instalments, in addition to paying for their ongoing energy use.*

Despite what would appear to be a relatively simple process, the ESC observed that the proportion of customers being offered payment plans varied across retailers.

Across all the sampled retailers, the average proportion of the total customer base on payment plans in 2013-14 was 3.5 per cent. However, this varied across different retailers, from 0.5 per cent to 7.5 per cent.[203]

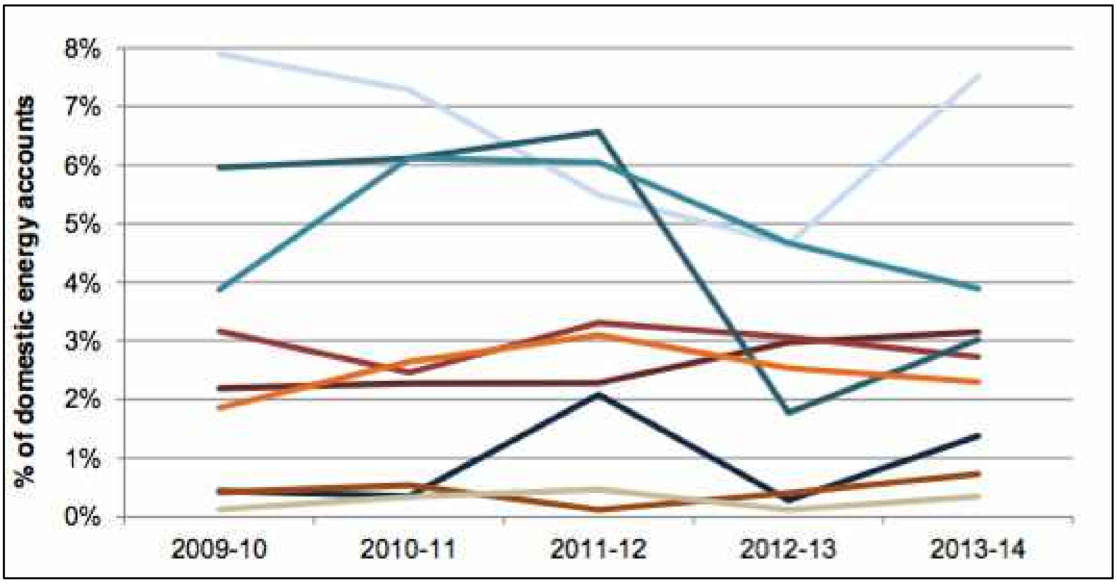
[202] ibid, p. 22.

[203] ibid, p. 23. This figure of 3.5%, has been adjusted to 3.25 per cent following correction of data by one retailer.

Figure 4 illustrates both the differences between retailers and the changes over time for individual retailers. Between 2009-10 and 2013-14, the overall proportion of customers on payment plans decreased by some 21 per cent. [204]

However, three retailers largely drove this decline in the proportion of customers on payment plans. The proportions for other retailers remained static or even increased slightly over the five years.

Figure 4: Proportion of All Residential Customers on Payment Plans – Nine Retailers



Source: ESC, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Final Report*, February 2016, Figure 2.1, p. 22.

There are no obvious reasons why these figures should vary across retailers and over time. The ESC considers that this variation between and within retailers over time appears to reflect different retailer policies and changes in these policies over time, rather than external factors. The ESC concludes:[205]

> *These differences in, and changes to, internal policies across retailers and within individual retailers affect the likelihood that customers will be offered a payment plan.*

Payment plan design and duration

In the current regulatory framework, retailers have wide discretion over the terms and conditions of a customer's payment plan including the instalment amount, frequency of payments and therefore the overall duration of the payment plan.

[204] ibid.

[205] ibid, p. 23.

Reflecting this level of discretion, the ESC's investigation found that there were considerable differences in both the design and duration of payment plans between retailers.[206]

While it might be expected that larger debt was associated with payment plans of longer duration, the ESC observed that in practice there did not appear to be any consistent relationship between the two.

Table 7 below illustrates the outcomes for customers who were on a retailer's payment plans but outside the retailer's hardship programs. Two retailers only offered one type of payment plan duration (retailer 1 and retailer 5). Another retailer (retailer 7) had an average debt of $1,512, but 29 per cent of the customers were expected to pay back their debt over a three month period as well as their ongoing usage. On the other hand this same retailer had 50 per cent of its customers on a payment plan of more than 24 months duration.

Table 7: Duration of Payment Plans for Customers Outside Hardship Programs (months and proportion of customers)

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%

n/a Not available

Source: ESC, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Final Report*, February 2016, Table 2.5, p 25.

Unfortunately, the data in Table 7 do not tell us about whether this variation reflected different customer requirements or was more due to internal policies of the retailer and perhaps even individual staff perceptions of capacity to pay.

The ESC study and other research suggest that the variation in outcomes might well reflect differences in retailers' internal policies. For example, in its 2015 study of energy affordability, the Energy and Water Ombudsman (Victoria) (EWOV) stated:[207]

[206] ibid.

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

EWOV is concerned that some retailers are not providing effective and accessible assistance to customers with payment difficulties.

…

[e]ach retailer has its own procedures and practices to implement these obligations. [the obligations in the Energy Retail Code]

Energy Management Assistance

The Energy Retail Code requires retailers to offer hardship customers an option to purchase or replace electricity appliances. Hardship customers also have an option to receive an energy audit service. [208]

The ESC study indicated that relatively few customers received any practical assistance to better manage their energy use. This is despite the fact that customers on payment plans use an average of 121 per cent more electricity than other customers in their postcode, and customers participating in hardship programs use 116 per cent more energy.[209] Similar results were found for gas usage.

Figure 5 illustrates the very low proportion of hardship customers who received a field audit or a replacement appliance in the ESC study. Less than 10 per cent of hardship customers received a field audit and only slightly more received an appliance replacement despite the real benefits the customer could receive from reduced energy use and energy costs.

This is particularly the case for hardship customers who may not have the ability to pay for their ongoing usage let alone repay the accumulated debt. For these customers, unless usage is reduced, the debt will continue to grow.

The AER also observed a low proportion of field audits for hardship customers. The AER explained this outcome in terms of customer resistance to a home visit and the cost to retailers of a home visit. The AER noted that customers and retailers generally preferred telephone energy audits. However, the effectiveness of a telephone audit in reducing energy usage is not yet known.

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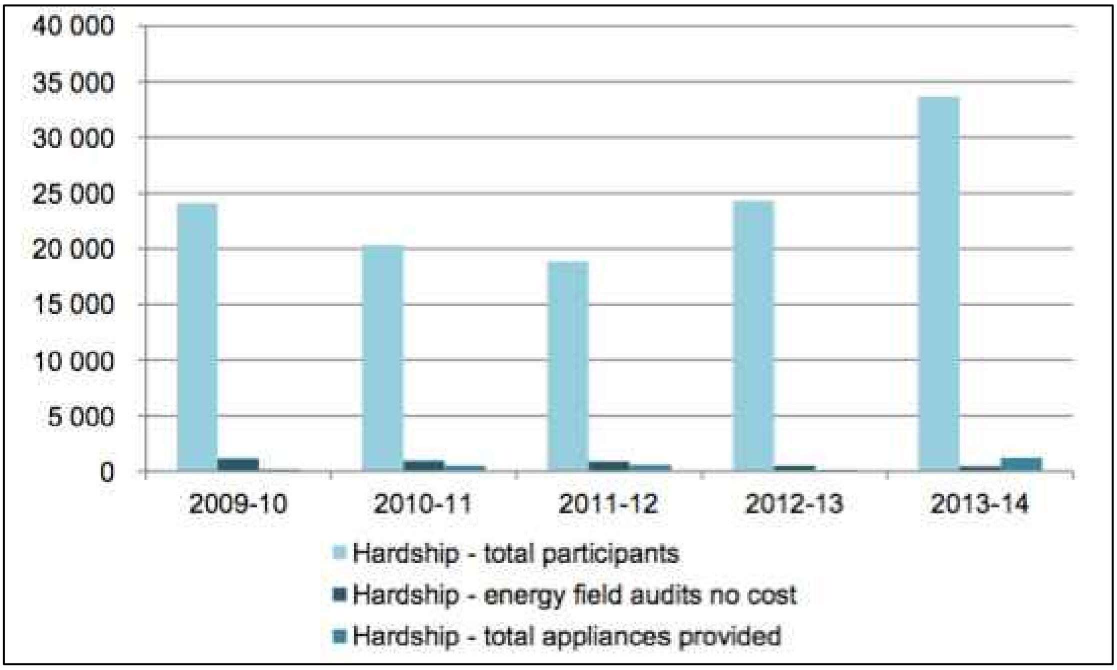
[208] Retailers offer energy usage advice on their web-sites (of differing quality) but this section refers to an actual 'in-home audit' or a telephone audit.

[209] See ESC, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Final Report,* February 2016, p.p. 25-26. See also footnote 23 in the ESC report.

Figure 5: Energy Efficiency Assistance Provided to Customers in Hardship Programs



Source: ESC, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Final Report*, February 2016, Figure 2.3, p. 27.

Debt and Disconnection

The ESC review also sought to identify the average level of debt on customers' entry to a payment plan and the average level of the customers' current debt. The review assessed the levels of debt for hardship customers and, separately, for customers on payment plans who were not categorised as hardship customers.

Table 8 below summarises the ESC's findings based on the results of nine retailers, including the three major retailers operating in Victoria. It is apparent from this table that retailers' payment arrangements differed in terms of the level of debt at which their customers entered a payment plan and the extent to which their activities were associated with a reduction in debt over time.

Notably, four of the nine retailers had allowed debt to accumulate to over $1,000 before entering a payment plan. Four retailers had let debt accumulate to over $1,000 on entry into a hardship program.

In most instances, customers entering a hardship program started the program on a level of debt that was significantly higher (around 53 per cent) than these customers entering into a standard payment plan arrangement. Hardship customer debt averaged $947 on entry while payment plan customers debt averaged $620.

Considering that hardship customers are generally customers who are under the greater financial stress, the level of debt on entry is a matter of great concern and highlights the importance of early identification of these hardship customers.

In addition, for the majority of retailers, the customers on a hardship plan had not been able to reduce their debt. Rather, *average debt for customers on hardship plans had increased* by some 13%, i.e. from $947 on entry to $1074.

In the worst instance, the average debt for the hardship customers of a retailer had grown by some 58 per cent (retailer 1). Only three retailers saw a reduction in the debt of their hardship customers (retailers 4, 5 and 8).

For non-hardship customers on payment plans, however, average debt for customers on a payment plan (excluding hardship customers) was reduced by 33 per cent, i.e. from $620 to $414. All retailers saw a reduction in their customer debt although the amount ranged from 3.6 per cent reduction (retailer 2) to 60 per cent reduction (retailer 8).

Table 8: Comparison of Debt on Entry to a Payment Plan and Current Debt (Average $)

	Payment plans outside Hardship Programs			Hardship Program Payment Plans		
	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
Average (weighted)	620	414	−206	947	1074	127

Source: ESC, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Final Report*, February 2016, Table 2.3, p. 15.

Overall, it is clear that there were very significant differences in the outcomes for customers of different retailers, a fact that is particularly concerning for the most vulnerable customers.

SACOSS therefore agrees with the ESC's conclusion that: [210]

> *These findings indicate that retailers' assistance to customers experiencing the most severe payment difficulties (that is, those on hardship programs) is insufficient for those customers to avoid the accumulation of further debt and repay the debt they owe.*

[210] ibid, p 16.

Various submissions from consumer representatives to the ESC's Draft Inquiry Report also highlighted the issue of customers who cannot pay for their usage let along repay the existing debt. Their view is that the regulatory frameworks do not adequately address this group, yet this group sits at the core of the community challenge to achieve equitable access to energy.

The ESC also points to the profile of customer disconnections, which varies across different retailers and over time.

Customers cannot be disconnected while participating in a payment plan or in a hardship program. However, it is instructive to look at outcomes for customers after the programs are completed and, in particular, whether these customers were subsequently disconnected for non-payment.

The ESC reports that over the period 2009-10 to 2013-14, disconnections for customers who had previously been on a *hardship program* rose by 202 percent. For customers who had previously been on *a payment plan*, disconnections rose by 37 percent.[211]

While the ESC could not reach definitive conclusions on why disconnections in general had increased, it did consider that assistance to customers was often "too little, too late".

By the time many customers are offered assistance, their debt is too large to be addressed by the retailers' assistance programs – the retailers' actions were doing "little to alleviate customers' risk of disconnection". [212]

The ESC also investigated the issue of 'wrongful disconnections' and associated wrongful disconnection payments (WDP). There was some evidence of an increase in WDPs after 2008. WDPs as a proportion of total disconnections have fluctuated from 1 to 3 per cent since 2008.

However, the ESC also notes that one factor behind the fluctuations in the disconnection rate may be the lack of 'objective standards' against which retailers and consumers can determine whether a disconnection was in fact wrongful. The ESC notes that both EWOV and the retailers have sought clarification of the relevant standards from the ESC.[213]

In EWOV's 2015 report on affordability, EWOV reviewed its data on WDPs for the period 2010-11 to 2013-14. EWOV concluded that:[214]

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[211] ibid, p. 16.

[212] ibid, p 17.

[213] ibid, p. 31.

[214] Energy and Water Ombudsman (Victoria) 2015, *A closer look at affordability: and Ombudsman's perspective on energy and water hardship in Victoria*, March, p. 30.

*[e]nergy retailers are **not providing appropriate levels of assistance** to customers before disconnecting their supply.*

*The proportion of paid WDPs suggests that **retailers often don't comply with the requirements of the Energy Retail Code** when disconnecting supply. Their non-compliance is mostly related to process issues, such as notice requirements, however we have also found many procedural shortcomings in the provision of hardship support to customers before disconnection.* [emphasis added]

5.2.3 Lessons from the ESC Inquiry

The ESC believes there is widespread support for the findings of its Inquiry (as summarised above) from both consumer representatives and retailers.

The ESC then concludes:[215]

> *The current regulatory framework cannot ensure that customers experiencing payment difficulty are provided with the assistance they need. **The framework is therefore in need of significant reform.** This is because it provides strong commercial incentives to limit both consumers' access to assistance and the scope of that assistance, whilst at the same time providing retailers with the discretion to determine which customers are eligible for assistance and what assistance they should receive*. [emphasis added]

More specifically, the ESC states that the regulatory framework for customers experiencing payment difficulties should have a "clear purpose that defines its goals and objectives".[216] Moreover, that purpose should have a focus on debt, as **it is debt that is the cause of disconnection** and a range of other legal and practical problems for customers.[217]

The ESC defines the purpose of the regulatory framework as follows:[218]

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

To achieve this purpose, and based on its investigation, the ESC proposes that regulatory reform of the regulatory framework should aim to:[219]

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[215] ibid, p. 39.

[216] ibid.

[217] ibid, 40.

[218] ibid, p. 39.

[219] See ibid, p 35-36 for details.

- Encourage and assist customers to self-identify and manage their payment difficulty as early as possible;
- Limit the capacity for a customer to accumulate energy debt prior to being offered assistance by the retailer;
- Set out clearly the assistance to which customers experiencing different levels of payment difficulty are entitled;
- Require retailers to show that the required assistance has been provided before disconnection can occur; and
- Provide a safety net for customers in the most severe payment difficulty, to help them to remain connected to their energy supply.

SACOSS' response

SACOSS acknowledges that the issues that the ESC has identified, and is attempting to address in its revised framework, are real and have continued for many years without significant changes in the outcomes for customers experiencing payment difficulties.

This outcome is despite ongoing efforts by regulatory bodies to enhance the regulation of retailers and the services they provide to support customers experiencing payment customers.

SACOSS also notes that the issues that have been identified by the ESC are very similar to those found by the AER in its research (see Section 5.1 above) and by a number of other studies including EWOV's 2015 study into affordability. The various consumer stakeholders in Victoria also agree with the ESC's assessments of the issues facing vulnerable customers in Victoria and the limitations of the current regulatory framework.

The findings of the ESC's investigations also align with SACOSS' understanding of the issues around equity in access to payment and hardship programs, consistency in the application of the programs, early identification of payment difficulties, capacity to pay assessments, continuity in the management of the customers over the payment period, and improving access to information and energy efficiency services.

The fact that so little progress has been made in terms of the outcomes of the regulatory frameworks both in Victoria and nationally is indicative of the complexity of the challenge.

In practice, energy payment difficulties are usually just one aspect of the financial challenges that the most vulnerable customers (i.e. the 'hardship' customers) are facing at a point of time or over an extended period.

And the causes of the issues identified by the ESC go well beyond the interaction between the retailers and the customers. A sustainable solution ultimately requires co-ordinated responses from regulators, governments, retailers, community stakeholders and customers.

Even best practice management of vulnerable energy customers – and SACOSS considers some retailers are already close to this – cannot resolve all the issues or satisfy all the customers or eliminate debt and disconnection.

In this respect, SACOSS agrees with the ESC's Chairman, Dr Ben David when he describes the problem as a "Gordian knot in manifold dimensions", [220] and one that many have tried to untangle but few have succeeded in a sustainable way. Cutting the Gordian Knot of financial hardship and essential services may well require some "thinking outside the box".[221]

Source; Wikipedia

One solution is to concentrate on refining the current processes under the NECF and the Energy Retail Code with a particular focus on enhancing the timeliness, consistency and general quality of the interactions between the retailer and the customer and thereby encouraging the customer to become more engaged and more confident in managing the issues they face.

This is the general thrust of the AER's Sustainable Payment Plan Framework (SPPF). The expected benefits of the SPPF include earlier identification of the customer, more appropriate payment plans, longer-term commitment to the plan and, ultimately, the payment of the outstanding debt and the avoidance of future debt.

Another solution is to strengthen the regulation and the enforcement powers of the regulator by establishing a more strongly rules based process that in turn limits the discretion of retailers to decide which customers have access to what benefits and when.

[220] Dr Ron Ben-David, *Supporting Energy Customers in Financial Hardship: Untying the Gordian Knot*. Presented at the Credit Collections & Hardship Program in Utilities Conference, 11 May 2015.

[221] see for instance, https://en.wikipedia.org/wiki/Gordian_Knot

This is the general thrust of the ESC's proposed reforms to the Energy Retail Code and related regulatory instruments. The expected benefits would include more consistency and equity in the management of vulnerable customers albeit at the cost of early quality based intervention and individually tailoring payment schemes for the customer. The discretion of both the retailer and the agency of the customer are limited by the rules and formulas.

Given the intractable nature of the problems facing customers who are unable to repay debt and ongoing usage – and the evidence provided by both the AER's study and the ESC's study that suggest there is a persistent core of such customers – there is merit in considering the proposal by some consumer representatives in their submissions to the ESC.

For instance, the Consumer Action Law Centre (CALC) suggests that the varying customer experiences require greater flexibility in the retailer's response. CALC suggests that by focusing on debt, the ESC does not address the question of those who cannot pay the debt. CALC argues that a key objective of the ESC's project should be on *retaining supply for all consumers* who engage with the retailer.[222]

Section 6 will further consider the proposed reforms of the process by the AER and by the ESC. SACOSS will assess both of the proposed reforms in the light of the issues identified and the objectives for the reforms.

5.3 Other research into vulnerability and payment difficulties

In this section, SACOSS will review other research that has been undertaken on the issue of 'financial vulnerability' and the financial barriers some households face in paying their energy bills.

In particular, this section will discuss the research that has been conducted in the UK by Ofgem. Ofgem's research adds a number of new dimensions to our understanding of vulnerability, how it arises and how energy regulators and retailers might best address it given the intractable nature of the problem.[223]

Ofgem's research also sheds light on the importance of 'empowerment' of consumers both in addressing their payment difficulties and in participating in and receiving the benefits of competitive markets and new technologies.

[222] See for instance: Consumer Action Law Centre, *Submission to the Energy Hardship Draft Report*, 12 October 2015, p.p. 2-3.

[223] Ofgem uses the terms "vulnerable customers" and "vulnerability" rather than referring to "customers with payment difficulties" or "hardship customers" as commonly used in Australia. However, for the purposes of this report they can be regarded as equivalent terms.

5.3.1 Office of Gas and Electricity Market (Ofgem)

Ofgem in the UK has conducted a number of studies on issues facing vulnerable customers. In response to these studies, and reflecting the importance Ofgem places on the issue, Ofgem has developed a multi-year Consumer Vulnerability Strategy (CVS) that is designed to provide robust research into the causes and effects of consumer vulnerability.

The discussion below looks at two aspects of Ofgem's CVS and associated research program. In the first instance, SACOSS summarises some of the findings of the 2010 report by Ofgem that reviews suppliers' approaches to debt management and prevention.

This 2010 report outlines some of the major issues identified by Ofgem in the management of vulnerable customers by the UK energy retailers. These findings influenced the subsequent establishment of the CVS.

The second section will consider the most recent progress report of the CVS (dated September 2015). This 2015 report provides a useful conceptual framework for understanding vulnerability in the energy market and the customer, situational and external factors that influence this vulnerability.

5.3.1.1 The 2010 DMP Review[224]

There are undoubted differences between the UK energy market and the Australian energy market. There are also differences in economic conditions generally and the 'social contract' assumptions that underpin the regulation of the energy markets.

Nevertheless, it is notable that the findings of Ofgem's DMP Review are quite similar to the findings of the AER and the ESC in their more recent reviews. Key observations by Ofgem in this 2010 study include the following: [225]

- *Progressive increase* in the amount of debt customers owe;
- *Limited level of proactive intervention by suppliers*, not necessarily offering assistance to the customer, even when there were 'early warning signals';
- Concern about the way in which energy suppliers *take into account a customer's ability to pay* when agreeing debt repayment rates;
- *Significant increase* in average weekly repayments;
- *Inconsistent approach* to assessing capacity to pay not only across energy suppliers but within them depending on the approach of individual customer service agents;
- *Lack of systematic way of gathering information* from the customer on their circumstances when establishing a payment plan;

[224] Ofgem, *Review of suppliers' approaches to debt management and prevention*, June 2010. https://www.ofgem.gov.uk/ofgem-publications/57397/debt-review-report.pdf

[225] See ibid, p.p. 1 – 2, for more detail.

- *Inadequate monitoring of customer's payment arrangements* to ensure they remain sustainable;
- *High charges for disconnection and reconnection* and lack of visibility of those charges to customers;
- The need for *early contact with vulnerable customers* before the debt becomes unmanageable;
- *Incentive mechanisms* for staff that may lead to outcomes that are not appropriate for the customer;
- *Limited access to various payment options* including linking customers to the UK "Fuel Direct" program[226] and suitability for prepayment metering; and
- *The way in which debt is followed up*, particularly by debt collectors, and whether this complies with the UK Office of Fair Trading guidance.

In particular, Ofgem highlighted the importance of *proactive and early intervention* by the supplier. Ofgem considered that a proactive approach was preferable to a retailer just waiting for the customer to contact them.

This 'pre-arrears' intervention must, however, go beyond formal letters, texts etc. Rather, the intervention should involve *more personal contact* (by phone or visit) and *be more sensitive to the individual customer's situation*.

Ofgem's 2010 findings are remarkably similar to the AER's and the ESC's findings from their 2014-15 investigations. However, Ofgem's 'solution', which involves personal contact and understanding of the individual customer's situation, is in contrast to the ESC's approach that explicitly seeks to avoid 'capacity-to-pay' assessments by the retailer.

Ofgem's DMP review also served as input into the development of Ofgem's CVS in 2013.

5.3.1.2 Consumer Vulnerability Strategy (CVS)

Background to the CVS

Ofgem developed its CVS in 2013 in response to growing concerns by Ofgem and the UK government with the management of vulnerable energy customers and the level of disconnections.

Ofgem's report also highlighted the lack of any substantive conceptual or empirical analysis of financial vulnerability and the rights of consumers to access an essential service. There was also a concern that the consumer benefits of competitive retail energy were not being shared with vulnerable customers.

[226] The UK Fuel Direct scheme allows some bills, including energy bills, to be paid directly out of a customer's benefits payments. The scheme sets a maximum percentage of benefit payment that can be allocated to a bill (5% for gas, electricity and water). A person is protected from a 'final demand' while paying a bill under this scheme. See https://www.gov.uk/bills-benefits

Given this, Ofgem sees the role of the CVS as twofold. The CVS research program will guide Ofgem's continuing conceptual and empirical work on consumer vulnerability. It will also guide Ofgem's expectations about the performance of the retailers and their assistance to customers experiencing payment difficulties. [227]

SACOSS considers that the work undertaken by Ofgem within the CVS program offers useful insights for the assessment of programs to manage vulnerable customers in Australia. It also points to the benefits of an ongoing research program that is specifically directed at issues around energy supply to vulnerable customers.

Ofgem has realised the importance of clarifying what, in practice, identifies a customer as a 'vulnerable' customer. Ofgem also contends that there needs to be more clarity on the responsibilities of a provider of an 'essential service' (such as an energy retailer) with respect to these vulnerable customers – what is the nature of the 'social contract'.

Ofgem's CEO explained the origin and importance of the CVS as follows:[228]

> *Energy is an essential service which makes a profound difference to all our lives.*
>
> *…*
> *But there is almost nothing more important to me, and to my fellow Board members and Ofgem colleagues than the work Ofgem does to protect consumers in vulnerable situations.*
>
> *Our mission is to make a positive difference for all energy consumers in Great Britain. Our regulatory approach reflects the fact that energy is an essential service, with a wider impact on health and participation in society.*
>
> *So we have a particularly important role in relation to people who may experience greatest harm when things go wrong, or are least able to present their own interests in the market.*

Defining vulnerability and a vulnerable customer

For the purposes of implementing the CVS, Ofgem defines a 'vulnerable consumer' as an energy customer who, when personal circumstances and characteristics combine with aspects of the market, is:[229]

- Significantly less able than a typical consumer to protect or represent their own interests; and/or
- Significantly more likely to experience detriment, or for that detriment to be more substantial.

[227] See for instance, Ofgem, *Consumer Vulnerability Strategy*, 4 July 2015, p. 1.

[228] Ofgem, *Consumer Vulnerability Strategy Progress Report*, September 2015, p. 3.

[229]ibid, p. 67.

Ofgem further explains that whether a customer meets one or other of these criteria depends not only on the personal characteristics of the customer, such as age or disability, but also the situation or scenario they are in and how the market responds to their needs. Ofgem states:[230]

> Vulnerability is about the situations in which consumers are in, rather than about the individual per se. Risk factors can stem from individual circumstances and the market, and how they interact. The range of risk factors means that vulnerability can often be complex and multidimensional. Vulnerability can be transitory as circumstances change*.*

Empowerment of vulnerable customers

Ofgem is concerned that: "(market) competition is not working as well as it could for consumers, not least those in vulnerable situations".[231] To wit, Ofgem's CVS explicitly includes actions that empower consumers and enable all consumers to have better access to the benefits of a competitive retail market.

The empowerment programs might include more proactive provision of information about market offers to vulnerable customers, such as further education of third party intermediaries. It might also include the provision of a free telephone service so that vulnerable customers are not deterred by the cost of a call or delays in call answering. Ofgem states in the CVS Progress Report:[232]

> *We want to ensure that consumers can access telephone services easily and without incurring high call charges. We recognise that high charges can deter customers from engaging with their supplier or result in disproportionate financial detriment.*

Such a program of empowerment enables a vulnerable customer to more actively participate in negotiating the terms and conditions of a more realistic and sustainable payment plan. More generally, greater empowerment will facilitate a vulnerable consumer becoming a more active participant in the energy retail market, better able, in the future, to choose the retail product best suited to their needs.

A risk based model of vulnerability

Figure 6 below illustrates this relationship between the individual, the market and the situation or scenario in determining the risks of a customer becoming a vulnerable customer or exacerbating existing vulnerability.

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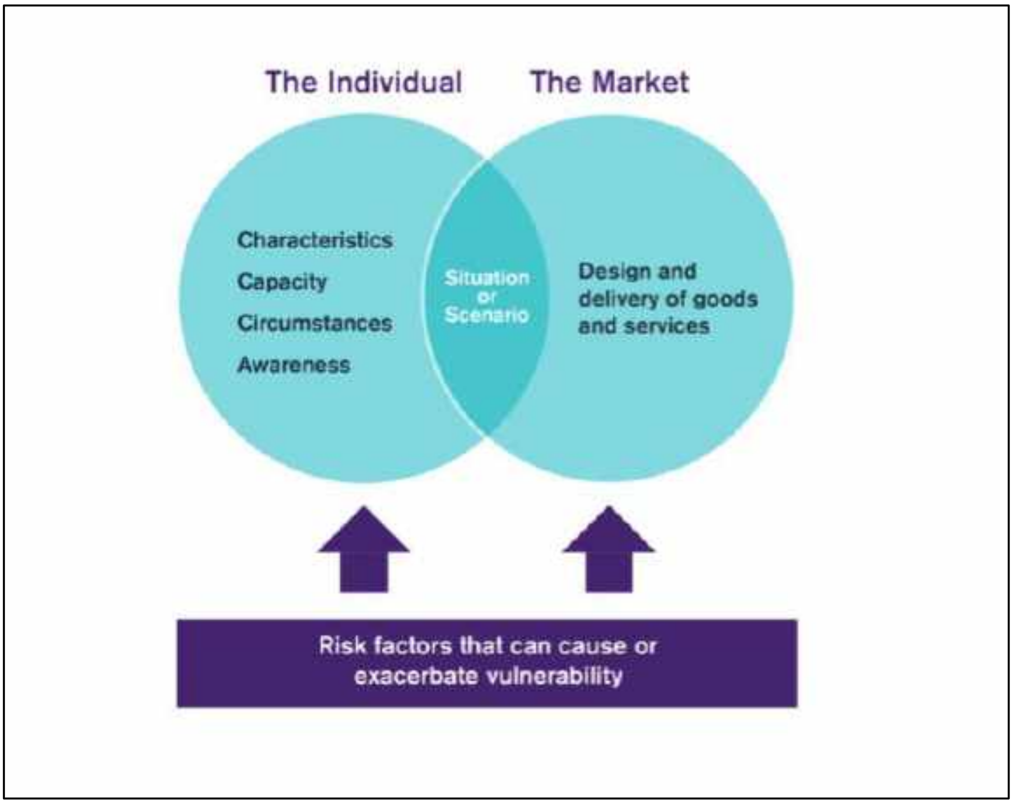
[230] Ofgem, *Consumer Vulnerability Strategy*, 4 July 2013, p. 13.

[231] Ofgem, *Consumer Vulnerability Strategy Progress Report*, September 2015, p. 4.

[232] ibid, p. 38.

Figure 6: Risk Factors that might cause or exacerbate vulnerability



Source: Ofgem, *Consumer Vulnerability Strategy Progress Report*, September 2015, p. 67.

Table 9 below sets out in more detail some of the risk factors, although Ofgem notes that this list is not exhaustive and nor does it indicate that a consumer will always experience detriment even if they meet some of these risk factors.

Rather, these factors make a customer more vulnerable to detriment and the greater the number of these risk factors, the more likely it is that the consumer will experience such detriment.

Moreover, these risks may change over time for any individual customer. For example, vulnerability might be permanent or long-term (such as a vulnerability caused by chronic disease). However, vulnerability may also be transitory, albeit it may take the customer some time to recover and repay all debt. The response of the energy supplier should reflect and be tailored to these differences.

Table 9: Risk factors identified by Ofgem

Characteristics & capacity	Circumstances-personal	Circumstances - general	Market risk factors
Ill-health	Living alone	Living in rural area	Lack of affordable phone access
Mental health	No internet access	Living off gas grid	Complex product information
Literacy/numeracy	Unemployment or redundancy	Living in private rental accommodation	Access for customers with hearing, sight or speech impediments
Speech impairment	Full time carer	Living in a cold, energy inefficient home	Limited market options available to vulnerable customers
English skills	Lone parent	Having a certain meter type (e.g prepayment)	Cost to serve vulnerable customers
Confidence /social skills	Leaving care		Risk assessment for this customer class
	Relationship breakdown		
	Bereavement		

Source: Adapted from Ofgem, *Consumer Vulnerability Strategy Progress Report*, September 2015, p.p. 68-69.

The CVS is built around this framework. In particular, the CVS aims to:[233]

- protect and empower consumers in vulnerable situations – to reduce the likelihood and impact of vulnerability; and;
- ensure all consumers can access market benefits – so that nobody is at a disadvantage due to their circumstances.

Together, these dual aims ensure that the CVS will take a much broader view of the interaction between vulnerable customers and the energy market in general. It is not just about focussing on debt levels and disconnections but empowering these same consumers to proactively participate in the energy market to find the product and services that best meet their needs.

Such an approach requires a deeper understanding of the complex interactions between the individual and the market place. However, as highlighted by Ofgem, the benefit of adopting a risk-factor approach is that it allows the regulator or retailer to

[233] ibid, p. 10.

better identify customers who are at financial risk and under what circumstances is this more likely to occur. Ofgem states:[234]

> *…which consumers are more likely to face detriment, in which scenarios and why. It aims to avoid a 'tick box' approach that can over-simplify vulnerability and it will help us target interventions at those in greatest need.*

Ofgem also considers that understanding these risks factors is central to its regulatory efforts and must be considered as an ongoing and evolving exercise for the regulator. It provides a better understanding of the needs and experiences of customers in vulnerable situations.

Importantly, it also provides a conceptual framework to better understand the 'distributional impacts' of Ofgem's decisions and those of industry and government. [235]

What can we learn from Ofgem's CVS program?

At a policy level, Ofgem's CVS highlights the value of a strong commitment by the regulator to the principle and practice of managing vulnerable customers, supported by a substantial program of theoretical and empirical research.

More specifically, the CVS program illustrates the importance of having a clear understanding of what is meant by a vulnerable customer and what are the obligations on the regulator, the retailer and the consumer regarding the provision of an essential service to ensure vulnerable customers retain equitable access to the essential services.

The CVS also provides an extensive and ongoing body of work that provides greater insight into the risk factors that increase the probability that a consumer is or will become a vulnerable consumer. The CVS illustrates the importance of taking a broader view of vulnerability including the wider social context in which vulnerability can be reduced or exacerbated.

Regulators and retailers who take this into account will be in a better position to identify customers at risk early in the process and to manage these customers before their debt becomes too great.

Finally, but importantly in the Australian context, the CVS places an emphasis on empowering the vulnerable customer. This includes incorporating strategies and policies that empower a vulnerable customer to negotiate payment plans that can be sustained in their own personal circumstances.

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[234] Ofgem, *Consumer Vulnerability Strategy*, 4 July 2013, p. 19.

[235]See: ibid, p. 14.

Empowerment also includes empowering a vulnerable customer to participate actively in the competitive market to ensure that customer has access to the products and services most suitable for their needs.

SACOSS notes the tension here between ensuring consistency between retailers in terms of the outcomes for customers (reduced debt, avoid disconnection) while allowing the flexibility to implement programs that respond to the individual circumstances of the customer. A program such as the CVS supports a more empirically evidence based approach to resolving this dilemma.

6 Recent regulatory developments

6.1 Overview

As noted previously, SACOSS supports the extensive investigations of the current hardship programs that were undertaken by both the AER and the ESC in 2014-15. SACOSS also notes the important research by other bodies (see above) that shed further light on the issues confronting the regulatory bodies.

Following their investigations, and after further consultation with key stakeholders, both the AER and ESC have proposed to further develop their respective regulatory frameworks.

In 2016, the two regulators have each published new arrangements for the energy retail industry as set out in the following key documents:

- AER: *Sustainable Payment Plans – A good practice framework for assessing customers' capacity to pay Version 1*, July 2016.
- ESC: *Supporting Customers, Avoiding Labels, Energy Hardship Inquiry Final Report*", February 2016.

In section 5 of this report, SACOSS highlighted that the AER's and ESC's research findings were very similar and are also reflected in other research reports and in the performance reporting by the regulators.

Despite the similarities in their research findings, however, the AER and ESC have adopted quite different approaches to the reform of their regulatory approach to managing customers facing difficulties in paying their energy bills.

In brief, SACOSS suggests that the AER has adopted an "evolutionary" approach. That is, the AER's approach is to encourage retailers to improve their management of vulnerable customers by developing a further voluntary 'best practice' guideline for energy retailers. The focus of the AER's framework is around early intervention and the quality of the retailers' interactions with their customers, particularly when determining the 'capacity to pay'.

In contrast, SACOSS considers that the ESC has adopted a "revolutionary" approach, reworking much of the current hardship policies and approaches to the management of hardship customers.

The ESC's approach is relatively detailed and prescriptive, relying on 'automated' process to identify customers with payment difficulties and mandating key aspects of the payment plan.

Moreover, the ESC explicitly seeks to avoid retailers initiating 'capacity-to-pay' conversations with the customer facing payment difficulties. It sees these conversations as ineffective and intrusive. The ESC therefore replaces these conversations with what it sees as objective measures of a customer's 'payment difficulties'.

Individual customer management will only occur when and if the customer is designated as a 'hardship customer', using predefined criteria again based on a customer's consumption and payment history rather than an assessment of 'capacity-to-pay'. The process will be set out in the Energy Retail Code and it will be mandatory for all retailers to comply with the Code requirements.

As such, the ESC's approach reflects the view of the ESC that the current process is 'broken' and that 'flexibility' for retailers means, in practice, 'inconsistency' in service standards and outcomes for customers.

The ESC's approach also represents a significant divergence from the national approach and will impose changes to retail billing processes that are likely to impact on a much broader range of customers than just the "hardship" customer.

The following sections provide further details on the proposals by the AER and the ESC to drive the energy retailers towards best practice management of vulnerable customers experiencing payment difficulties.

6.2 The AER's Approach: Sustainable Payment Plans Framework (SPPF)

6.2.1 Overview of the SPPF

The AER's guidance to retailers and the AER's Sustainable Payment Plans Framework (SPPF) have been developed within the context of the NERL and NERR.

Specifically, the NERL requires retailers to establish payment plans for customers having financial difficulties taking into account: [236]

- A customer's capacity-to-pay;
- Any amount the customer owes; and
- How much energy the customer is expected to use over the next year.

While the retailer can objectively assess the last two requirements, assessing the first requirement – the customer's 'capacity-to-pay' – is a far more subjective process. For instance, a customer's capacity-to-pay reflects individual household circumstances (such as household income, the number of dependents, health status of household members and so on); a point that was discussed in section 5 above and highlighted by the Ofgem analysis of vulnerability.

The customer needs to be willing and able to discuss these more personal factors with their energy retailer. However, many customers may find such a process intrusive and may not feel comfortable discussing their personal circumstances with a retailer.

[236] NERR, r. 72.

It also requires both the retailer and the customer to make ‘value’ judgements. For example, the retailer will have to make value judgements about the customer’s willingness-to-pay and to cooperate with their retailer over the course of the program. Likewise, the customer will be making value judgements on the retailer’s trustworthiness and willingness to listen to their concerns.

Much will depend therefore on the quality of the initial interactions between the retailer and the customer. Given the importance of this initial interaction, the AER’s approach is focussed on *improving the quality of these initial discussions*.

The intent of the AER’s SPPF is to identify best practice in identifying a customer’s capacity-to-pay and thereby encourage retailers to adopt practices that will benefit of the customer and the retailer. The AER states:[237]

> *The Framework is intended to* ***improve the quality of capacity to pay conversations****, while still allowing* ***flexibility*** *and encouraging retailers to offer* ***extra assistance to customers****. Its aim is to achieve better outcomes by helping customers and retailers agree to payment plans that are affordable and sustainable.* [emphasis added]

To achieve this end, the AER states that its Framework comprises two elements summarised below and discussed further in sections 6.2.2 and 6.2.3. The two elements of the SPPF are:[238]

- A set of principles to guide retailers’ conversations with customers about their capacity-to-pay; and
- A flow chart that sets out good practice actions and considerations at different stages of a payment plan, that is, good practices that can assist the customer in remaining on the payment plan over an extended time period.

SACOSS agrees with the AER’s emphasis on establishing a set of principles that are designed to ensure the quality of the initial conversations between the retailer and the customer. SACOSS also supports the concept of the flow chart as set out in the SPPF with its emphasis on continued engagement.

There is a strong emphasis in both elements on the quality of the conversations between the retailer and the customer, the emphasis on customer empowerment, and on proactively working with the customer until the completion of the payment plan.

SACOSS considers that in the past, there has been limited attention paid to the processes that follow after the initial capacity-to-pay assessment. This gap is

[237] AER, *Sustainable payment plans; A good practice framework for assessing customers’ capacity to pay, Version 1*, July 2016, p. i.

[238] AER, *Sustainable Payment Plans Framework, AER response to consultation issues*, July 2016, p. 7.

reflected in the very poor – and unacceptable - completion rates of customers on payment plans, particularly hardship customers. It is also likely to be a factor in the frequency with which these customers fall into debt again.

Given this, SACOSS agrees with the AER, that a range of benefits will potentially flow to both the retailer and customer under the best practice framework, including:[239]

- An increase in customers successfully completing payment plans;
- A reduction in customers failing payment plans;
- An increase in customers who proactively take steps to contact their retailer and discuss problems or changed circumstances; and
- Preventing a customer's debt from growing more than necessary while not causing an unsustainable financial burden on the customer.

Notwithstanding SACOSS' support for the principles and the flow chart set out in the SPPF and our agreement with the AER on the associated benefits to both retailers and customers, our view is tempered by the *voluntary nature of the SPPF.*

That is, adopting the SPPF is voluntary. Retailers are not obliged to adopt the SPPF so SACOSS remains concerned that some retailers will simply comply with the minimum standards in the NERL and NERR without striving for 'best practice'.

The AER states that if a retailer chooses to adopt the SPPF, it is the retailer's responsibility to ensure they apply the SPPF and have the appropriate policies and processes in place. There will be no formal compliance auditing.

Instead, the AER will publish a list of retailers who have committed to the SPPF. If the AER becomes aware that a retailer is systematically not applying the SPPF standards and policies, then the AER may remove their name from this list.

Because of this voluntary best practice guidance, SACOSS regards the AER's approach as 'evolutionary'. The AER is, in effect, relying on 'moral suasion' to improve the performance of the retail industry overall.

The clear risk remains, however, that those retailers already lagging behind in their management of customers with payment difficulties will be the ones that don't sign up to the SPPF. Will 'moral suasion' be sufficient to change their behaviour; will the retail competitive market drive these retailers to adopt the SPPF? These are questions that the AER will need to monitor carefully over the coming years.

[239] See: ibid, p. 7.

6.2.2 SPPF: Good Practice Principles

The SPPF sets out three principles that should guide a retailer's interactions with customers when discussing payment plans. The AER's three principles, and associated actions, by the retailer, are set out in Table 10 below. [240]

Table 10: Good practice principles and actions

Principle	Action
Empathy and respect	• avoid blame and judgement
	• act in good faith and assume customer is too
	• recognise the power imbalance between retailer & customer
	• listen to customer about their circumstance & capacity to pay
	• avoid unnecessary requests for personal information
	• explain the consequences of the repayment schedule
	• give customer opportunity to fully consider the proposal
Flexibility	• treat customers as individuals/apply discretion when appropriate
	• offer customers a choice of payment method and frequency
	• understand some customer may not be able to make sufficient payments to cover ongoing usage and/or debt
	• accept customer's circumstances can change
	• work with customer to find a mutually acceptable solution, which may take some 'trial and error'
	• recognise a missed payment is not necessarily a sign of non-engagement or unwillingness to pay
	• be flexible and supportive when communicating with the customer
Consistency	• provide a consistent person whenever possible, particularly for customers on a hardship program
	• maintain thorough notes of all conversations, avoid requiring customers to repeat information
	• fully train all staff dealing with payment plans to ensure consistency in the standards of assistance
	• follow through on any commitments made

[240] For more details, see: AER, *Sustainable payment plans, a good practice framework for assessing customers' capacity to pay, Version 1*, July 2016, p.p. 1-2.

6.2.3 Good practice guide - flow chart

The good practice guide flow chart is in effect a flow chart that sets out a sequence of steps and options and describes the manner in which these steps should be taken by the retailer and the customer over the life cycle of a customer's payment plan.

The aim is to ensure there is continued positive engagement with the customer in line with the principles listed above until the debt is paid off. Importantly, however, the flow chart allows for flexibility in these steps so that the retailer and the customer can mutually agree to adjust the plan in response to changes in the customer's circumstances. The AER correctly sees the payment plan as a dynamic and responsive process.

The flow chart also provides for constructive engagement at the *completion of the payment plan*. Again this is an area that SACOSS considers has been neglected and should form part of standard best practice.

For instance, SACOSS notes the relatively high number of hardship customers who get disconnected within 12 months after being on a payment plan. It is to the benefit of the retailer and the customer to introduce policies that reduce the incidence of this poor outcome.

The AER's four-step flow chart is summarised below.[241]

First step: Identifying the customer's circumstances and capacity-to-pay

The first step in the process involves the retailer having a conversation with the customer by discussing their circumstances to determine what they can afford.

Initial assessment:

The AER prefers that the initial assessment of capacity-to-pay is led by the customer albeit with feedback from the retailer on whether the customer's initial proposal will also cover ongoing usage and how long the payment program will need to continue based on the customer's initial plan. The retailer may suggest alternative plans at this point.

Clarifying the customer's needs:

If it is not clear what the customer wants, then a deeper conversation about the customer's financial situation follows. However, this conversation must be *undertaken with the consent of the customer*. For instance, the AER suggests the retailer may ask the customer if the customer is 'comfortable' with discussing this type of information.

[241] For details see: AER, *Sustainable payment plans; A good practice framework for assessing customers' capacity to pay, Version 1*, July 2016, p. 3.

Accessing further advice:

At this point the customer may propose, or be encouraged to, contact a budget planning website or financial counsellor to assist them in this process. The retailer should be willing to accept the advice of the counsellor about what the customer can afford to pay.

If the customer agrees to meet with a financial counsellor (or similar), then the retailer should discuss establishing a temporary payment plan to avoid growth in debt while waiting for access to a counsellor.[242]

Second step: Defining repayment options

The AER's Framework sets out three repayment options (as nominated by the customer) that in turn indicate to the retailer if additional support might be needed and the extent of that additional support.

The AER also highlights that these options are not restrictive in the sense that the retailer is free to offer any additional support to any customer. However, it does highlight that some customers are more likely to need higher levels of support such as those linked to the formal 'hardship' program. Notably, the customer is still in some control of the process and the repayment schedule.

Option A:

The customer nominates an amount that will *cover ongoing usage and repayments of the debt within 12 months*.

Option B:

The customer nominates an amount that *will cover ongoing usage and repayments of the debt within 12 – 18 months*. A retailer may want to consider if more support is required such as the support provided under the retailer's hardship program.

Option C:

The customer nominates an amount that is *less than the amount needed to cover their ongoing energy usage and reduce any debt*.

If the customer's suggested repayment amount is less than that required to meet ongoing usage, then this is a strong indication that the customer would benefit from an even more 'tailored' support program such as that available under the retailer's hardship program.

[242] Kildonan and other customer advocates have highlighted the long delays faced by customers in accessing financial counselling.

In addition, if the retailer agrees to payments less then ongoing usage, then the payment amounts should be reviewed at least every three months and there should be ongoing discussion on ways to reduce the debt (e.g. reviewing tariffs, assessing rebates, tailored efficiency advice, incentive payments, referral to a financial counsellor).

Third step: Monitoring usage and payments

Monitoring usage:

The retailer should monitor the customer’s usage and their payments to regularly assess if payment plan continues to be suitable. If not, the retailer needs to engage with the customer to develop an alternative plan. However, the retailer should not change the payment plan unilaterally.

Routine checks:

Even if the customer’s usage doesn’t change and payments are being made according to the plan, it is still good practice for the retailer to occasionally follow up with the customer, for instance, to see if the customer would like to accelerate their repayments.

Customer misses payments or claims payments are unaffordable:

The retailer should have another conversation with the customer about what they can afford and whether there should be another repayment plan established.

Retailers should follow up on missed payments (allowing a few days). If there are multiple missed payments, then the customer may be referred to a financial counsellor for further support.

Fourth step: Final Stages

Customer successfully completes the repayment plan:

The retailer and customer should discuss whether another payment plan or more frequent billing (for example) will help the customer in the future.

Customer is not engaging with the plan and/or the retailer:

The retailer may then commence the disconnection process in accordance with the NERL and NERR.

6.2.4 SACOSS' assessment of the AER's SPPF

6.2.4.1 SACOSS' assessment criteria

Based on the research and the results of the regulators' performance measures (cited in section 5 above), SACOSS considers that improvements in customer outcomes will come from the following actions and processes:

- *Early identification* of the customer experiencing payment difficulty
- *Improving the quality of the initial conversations* between the retailers and the customers including ensuring the customer is engaged in the process and has some sense of control or agency;
- Ensuring *customers have access to relevant information* on assistance that can be provided, rebates, concessions etc., and assist in the customers obtaining access to these services if required;
- Having *flexibility to respond* to customer's requests and changing circumstances;
- *Regular monitoring* of the customer's energy usage, debt levels and the customer's repayment pattern over the course of the payment plan
- *Regularly providing encouragement and other feedback* to the customer during the course of the plan (including incentives)
- *Improving the level and quality of the additional measures* for hardship customers including practical and effective energy efficiency advice;
- *Appropriate referral of customers to third parties*, including financial counsellors and collaboration with these third parties;
- '*Checking in' with customers at the completion of the payment plan*, including discussions on how payments might be managed in the future (shorter payment cycles, etc.);
- *Cost effective mechanisms;* programs that have lower net costs provide more room for retailer innovation; large scale system changes tend to increase risk and inhibit innovation as capital has been diverted to IT development, testing and maintenance with a focus on minimum standards for regulatory compliance.
- *Process is adaptable* to changing energy market conditions.

SACOSS considers that these measures will assist customers to be placed on the most appropriate payment plans and successfully complete the plans. It will also minimise future payment 'crises' for these customers. In other words, a program that satisfies these criteria will address the observed issues with the current outcomes, namely:

- Establish a plan that reasonably reflects the customer's capacity-to-pay;
- Improve the unacceptably low completion rates for customers on payment plans (particularly the most vulnerable customers); and
- Address the issue of customers finding themselves in a cycle of repeated debt.

6.2.4.2 The AER's three best practice principles

There are many positive features about the AER's SPPF when assessed against these criteria listed above.

In the first instance, SACOSS supports the AER in defining the basic principles for best practice interactions between the retailer and the customer, and the flow chart that sets out how these principles would be applied in practice; from the initial conversations with the customer to the completion of the payment plan program.

The three principles set out in the AER's Framework of "empathy", "respect" and "flexibility and consistency" underpin all the subsequent stages in the interactions between the retailer and the customer.

Importantly, these principles provide the basis for a customer developing a sense of control, or agency, over the process. In addition, this sense of agency is reinforced throughout the AER's process flow chart. For example, the AER's 'flow chart' illustrates that the customer has some control from the start. It states:[243]

> *Avoid starting the conversation by asking whether the customer can afford the retailer's preferred amount … **Asking the customer what they can afford is often the ideal starting point.***

And

> [if customer is not clear on what they can afford] *Specific questions about a customer's income and expenses may be asked **if the customer is comfortable** discussing this type of information.* [emphasis added]

For instance, a customer who is treated with respect and empathy and who has some sense of agency over the process and the agreed repayment plan is far more likely to commit to a realistic plan and remain with that plan over a 12-month (or so) period.

Moreover, and perhaps equally as important, if the quality of the customer's initial contact is respectful and positive, then the customer is more likely to contact the retailer if their circumstances change to discuss their repayment schedule. This may involve lower or more frequent payments or it may involve agreement for higher payments and a shorter repayment period. Either way, the customer is in control and has confidence in contacting the retailer.

The SPPF also provides some clear indicators about if and when it is appropriate for a customer to be placed on a more tailored hardship program with more intensive support from the retailer and/or referred to a third party such as a financial counsellor.

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[243] Sustainable payment plans; *A good practice framework for assessing customers' capacity to pay, Version 1*, July 2016, p. 3.

SACOSS notes, for instance, that some retailers were requiring customers to first see a financial counsellor before they could be admitted to a hardship. Another retailer appeared to place all customers experiencing payment difficulties directly on their hardship programs, without testing whether simpler payment plans would be more effective for both parties.

SACOSS considers it important to the integrity of the overall system that hardship programs and financial counsellors do not become a 'catch-all' for any and all customers with payment issues. Rather, retailers and customers should be encouraged to initially work constructively together to design the most appropriate level of support.

Hardship programs and referrals to financial counsellors clearly have a place but should be used wisely and parsimoniously, recognising the overall community cost of these more intensive customer management schemes. The AER's good practice guide supports this approach.

SACOSS also strongly supports the AER's framework in terms of the ongoing monitoring of customers usage and payments, and the early intervention by the retailer if things change. As suggested by the AER's Framework, SACOSS considers it is good practice for a retailer to informally contact a customer even if they have not changed their usage patterns and are keeping up with the payment plan. This is particularly important if the payment plan has a longer duration (over 6 months).

SACOSS notes that the SPPF provides opportunities for retailers to tailor their programs throughout the repayment cycle. While this may result in some differences in the treatment of individual customers, the benefit of tailoring the programs outweighs the risk, *providing that the fundamental principles set out by the AER and the engagement steps continue to be applied by the retailer*.

Another important component of the AER's SPPF is the recommendation that retailer's follow up with customers at the completion of the payment program.

This follow-up process provides an opportunity to reinforce the success of the customer in completing the program. It also allows a discussion on whether billing arrangements can be changed (e.g. a permanent move to smoothed monthly payments) or usage reduced.

The fact that having completed a payment plan, so many vulnerable customers (particularly hardship customers) will face further payment difficulties within the next 12 months; provides strong support for this element of the AER's good practice guide.

SACOSS' major concern with the AER's approach is that it is voluntary. It is not clear to SACOSS that being on a list of retailers adopting good practice will be sufficient to lift the conduct of the more inexperienced, less resourced or the recalcitrant retailers.

Nor does SACOSS consider that the 'competitive retail market' will act as a driver for voluntary improvements, at least with respect to vulnerable customers. Indeed some retailers may be happy to leave the work of managing such customers to other retailers. Evidence has been cited by consumer advocates of such behaviour by some retailers.

Further, a major weakness identified in both the AER's and the ESC's reviews is the inconsistent treatment by retailers of customers who are having difficulty paying their bills.

Customers of an essential service do not want, or deserve, a two-tier system. The challenge for the AER is to translate its very constructive Framework into the provision of a quality retail service for all customers experiencing payment difficulties.

SACOSS recognises that the AER must work within the parameters of the NERL and NERR and has no regulatory mandate to enforce conduct by retailers, beyond the minimum standards set out in the NERL and associated regulatory instruments.

However, it is important for the integrity of the SPPF, and its overall effectiveness in reducing disconnections and poor service to customers with payment difficulties, that all retailers move towards the 'good practice' guidelines.

SACOSS encourages the AER to consider additional avenues it can pursue in order to persuade all retailers to commit to the SPPF. In this way, the SPPF can better meet the objective of ensuring that consumers maintain supply of energy even in the face of financial challenges.

6.3 The ESC's Approach: Supporting Customers, Avoiding Labels (Hardship Inquiry Final Report)

6.3.1 Overview of the ESC's Hardship Final Report[244]

In initiating this inquiry in February 2015, the Victorian Government was particularly concerned with the apparent increase in the number of disconnections and the impact this might have on vulnerable customers in the Victorian community.

Reflecting this, the Government's terms of reference (ToR) required the ESC to investigate whether energy retailers were adopting 'best practice' in supporting customers who were experiencing financial hardship to avoid disconnection. The ESC was also asked to assess whether the current regulatory framework governing retailers' obligations in this regard represented best practice. [245]

[244] Essential Services Commission 2016, *Supporting Customers, Avoiding Labels, Energy Hardship Inquiry, Final Report*, February 2016.

As noted in Section 3, the regulatory framework in Victoria consisted of the industry acts (EIA and GIA), the ESC Act, the Energy Retail Code and associated regulations and guidelines. The Minister's ToR therefore provided scope for the ESC to propose amendments to the legislation and regulations/or make amendments to the Energy Retail Code and guidelines.

The ESC's initial investigation found that:[246]

- There was *no consistency* in what assistance a customer in payment difficulty could expect to receive; and
- There was *no consistency* in the actual assistance a customer received.

As discussed in Section 5 of this paper, the ESC reported that many customers were "falling deeper and deeper into debt", often with "little hope" of avoiding disconnection or other forms of recovery action initiated by their energy retailers.[247]

The ESC attributes these outcomes to what it sees as the retailers' broad discretion concerning how it implements the regulatory requirements. Specifically, the ESC states:[248]

> *We attributed these outcomes to the retailers'* ***very broad discretion*** *under the current framework to determine who is entitled to assistance, the level of the assistance that they provide, the timing of that assistance, and the terms on which they amend or withdraw that assistance.* [emphasis added]

The ESC concludes that the current framework, therefore, is "no longer fit for purpose",[249] and in need of "significant reform".[250]

The findings of the ESC's investigations are hardly surprising and similar problems have been found in other studies including in the AER's review of retailer hardship programs. Moreover, the ESC claims that: "there is broad stakeholder support and acceptance of the Commission's diagnosis of the problems with the current framework".[251] SACOSS agrees that stakeholders have confirmed this aspect of the ESC's Inquiry.

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[245] See Minister for Finance, "Terms of Reference – Inquiry into best-practice financial hardship programs of retailers", February 2015.

[246] Essential Services Commission 2016, *Supporting Customers, Avoiding Labels, Energy Hardship Inquiry, Final Report,* February 2016, p. ii.

[247] ibid.

[248] ibid.

[249] ibid, p. 37.

[250] ibid, p. 39.

[251] ibid, p 38.

Thus, the issues with the current framework are not new, nor are they disputed. However, the ESC's response to the issues is one of rejecting the whole basis of the current regulatory model and proposing an alternative regulatory model to address the issues identified in its investigations. As such, the ESC's approach as set out in its Final Report represents a significant departure from the past and from the national regime and Victorian harmonisation objectives.

Other regulators (including the AER) and customer stakeholders have responded to these same issues by investigating different ways to improve the current regulatory framework. For instance, the AER has focussed on improving the quality of the "conversations" between the retailer and the customer and promoting effective 'capacity to pay' discussions.

These quality 'conversations' in turn set the basis for the retailer to better design payment plans and other services in line with the customer's needs. As such, the AER's approach suggests that best practice can be based around early engagement, flexibility in responding to the customer's expressed needs, and a reliance on retailer discretion to adapt, improve and innovate. Ofgem has come to a similar conclusion and has sought to increase its understanding through additional research.

The ESC takes a more 'revolutionary' approach based on its view that retailer discretion has led to a situation where there is no consistency in the treatment of customers. The ESC concludes that the framework is in need of significant reform:[252]

> This is because it provides **strong commercial incentives** to limit both the consumers' access to assistance and the scope of that assistance, whilst at the same time **providing retailers with the discretion to determine which customers are eligible for assistance and what assistance they should receive**.[emphasis added]

The ESC then justifies its alternative framework by stating that the focus of the framework should be on avoiding long-term debt and ensuring debt is repaid, thus avoiding customer disconnections. The ESC states this purpose as follows:[253]

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

The ESC also argues that the current approaches rely on 'capacity-to-pay' discussions that are intrusive and subjective and are not the role of energy retailers. The ESC's approach is to define customer requirements by considering 'objective' measures of consumption and payment histories.

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[252] ibid, p. 39.

[253] Essential Services Commission 2016, *Supporting Customers, Avoiding Labels, Energy Hardship Inquiry, Final Report,* February 2016, p. 60.

The ESC believes that their proposed new framework will better meet this purpose than the existing approach.[254] In its view, the new framework will better align the incentives of retailers and customers to work together.[255]

The ESC also states that the framework will ensure assistance is proportionate to the payment difficulty, will encourage engagement by customers and innovation by retailers, and will give clarity to all stakeholders on the obligations and expected standards from retailers. [256]

Stronger enforcement powers for the ESC will also support more consistent compliance with these new measures.

SACOSS does not dispute the intent or purpose of the ESC's framework. The question SACOSS asks is whether the 'solution' proposed by the ESC will deliver on the intention to assist customers avoid long-term debt, repay debt and maintain access to energy wherever possible.

SACOSS' view is that the ESC's new framework means that the processes of identifying customers experiencing payment difficulty, establishing an initial payment plan and determining if and when other assistance will be required, will all become highly automated.

For instance, as noted above, identifying a customer as a vulnerable customer[257] will not rely on a conversation between the customer and the retailer or even necessarily on the customer's self-identification.

Rather a customer is *deemed to be in payment difficulties* as soon as they have missed a payment. A payment is considered missed *if it is not paid by the end of the reminder notice period*[258] and will therefore be highly automated in retailers' billing systems thus casting a broad net including customers who do not see themselves as being in payment difficulties.

This change in emphasis from the quality of the initial conversations between the retailer and the customer, to a process of deeming customers to be having payment difficulties and automatically defining repayment plans based on the type of

[254] The existing approach is reasonably aligned with the AER's approach following the 2014 Victorian regulation harmonisation program.

[255] ibid.

[256] See: ibid, p 60.

[257] The ESC does not use the term vulnerable customers or hardship customers. The framework defines a customer by the type of payment difficulty as assessed by objective criteria that have been defined by the ESC.

[258] Essential Services Commission 2016, *Supporting Customers, Avoiding Labels, Energy Hardship Inquiry, Final Report,* February 2016, p. 80. The ESC states that this was based on feedback from retailers and on concern to limit accrued debt.

difficulty, represents a major change in the fundamental features of the regulatory processes and retailers' practices.

SACOSS considers that there is a very real risk that this initial automated process will alienate customers and discourage ongoing interaction with the retailer.

The ESC is currently working through the consequential changes to the Energy Retail Code and other relevant regulatory instruments including the retail licences and the operating procedures relating to Wrongful Disconnection. The ESC will also seek to address the multiple implementation issues in consultation with consumer and industry stakeholders.

The ESC states that it will also seek to integrate its framework with third parties that include government agencies and other non-government service providers that have been accredited by the ESC. The ESC does not, however, discuss the implications for harmonisation of the Victorian regulatory framework with the national framework.

6.3.2 Principal elements of the ESC's proposed framework

As noted above, the unique feature of the ESC's proposed framework is that it focuses on the objective definition of customers in payment difficulty (or vulnerable customers), automated classification of the type of customers and the associated assistance plans and the rights and responsibilities of both the retailer and the customer.

The ESC states that it has designed the new framework around a set of policy principles and the concepts of 'shared responsibility', 'proportionate' response, limiting growth in debt and minimising the number of disconnections due to payment difficulties.

More specifically, the ESC describes the main features of its new regulatory framework for customers experiencing payment difficulties, as follows: [259]

- **Codifying** the requirement for retailers to provide all these customers with payment plans, energy management support and information and referrals to third parties;
- The retailer's assistance is based on the **type of payment difficulty** not the cause of difficulty;
- Retailers and their customers have **'shared responsibilities'** for implementation and completion of the plan;
- The level of individual engagement of the retailer with the customer should be **proportional and reflect the level of assistance required**;
- Retailers will have **new obligations** such as establishing self-service options, and the automatic placement of customers on a payment plan if they miss a

[259] ibid, see p. iii. Emphasis is added.

payment, and if debt continues to grow, providing a 'pay-as-you-go payment plan;

- **New quarterly and annual reporting** obligations;
- Providing **opportunities for retailers to innovate** and progress to best practice.

The ESC also argues that the new requirements will deliver a range of benefits that go beyond limiting the debt that a customer can accumulate and helping the customer remain on supply.

These additional benefits include the removal of labels such as 'hardship customer' and the removal of the obligation for a retailer to assess its customers on the basis of subjective criteria such as the 'capacity-to-pay'.

The ESC states that the new framework will ensure the customer receives at least a 'minimum standard of assistance', however, the level of this assistance will be based on the objectively defined 'type' of payment difficulty rather than the customer or retailer's subjective assessment.[260]

The minimum standards act as a 'regulatory safety net'; however, retailers should have flexibility to provide other additional forms of assistance.[261] The flexibility does not, however, extend to a retailer defining when a customer is facing payment difficulties or what form of payment plan the customer will be placed on (unless and until the customer moves to a hardship plan, although there are rules around the this too).

6.3.3 Structure of the ESC's proposed framework

6.3.3.1 The overall framework

The ESC states that the proposed framework will replace the current hardship and payment difficulty provisions of the Energy Retail Code.

The new requirements in the Energy Retail Code will be extensive and will cover three broad areas, i.e.; the scope of assistance; the delivery of assistance; and the retailers' monitoring and reporting requirements.

Notably, however, the ESC's Framework will not extend to addressing the wider more fundamental causes of payment difficulties.[262] As the ESC states in defining the scope of the framework:[263]

> *[t]he causes of payment difficulty are unique to each customer but the types of payment difficulty are not. The **scope of assistance that a customer can***

[260] ibid, p. 61.

[261] ibid.

[262] ibid, p.p. 42-44.

[263] ibid, p. 64.

expect from their retailer should depend, therefore, on the type of payment difficulty that they are experiencing*.* [emphasis added]

The ESC's framework is, therefore, less concerned with or responsive to the causes of a customer's payment difficulty, whether this is caused by short or long-term customer characteristics or broader socio-economic factors.

The ESC's focus is on the type of payment difficulty where payment difficulty is defined by set criteria that are claimed to reflect the degree of risk of a customer not completing a repayment plan and not being able to pay for ongoing usage.

Figure 7 below illustrates these three dimensions (scope, delivery and monitoring/reporting) and associated elements of the ESC's proposed new framework.

The ESC regards this framework as the basis for setting a minimum level of service for each category of customer, i.e. the 'safety net' requirements (see also Figure 7 which illustrates these 'safety net' requirements). The ESC states:[264]

> *[r]etailers will have the flexibility to decide both what assistance they provide to customers and how they provide it, as long as the assistance meets the minimum requirements of the customer safety net.*

However, this 'flexibility' should be seen in the context of what are very prescriptive minimum requirements.

The ESC is currently codifying these requirements in the Energy Retail Code and amending related regulatory instruments such as licences. Once this process is completed, the requirements will become mandatory and enforceable.

If a customer is disconnected without the retailer having worked through all the requirements for that 'type' of customer, the customer may be eligible for a Wrongful Disconnection Payment (WDP).[265] Retailers who consistently fail to comply with the requirements may be subject to penalties under the ESC's enhanced enforcement powers.[266]

It is important, therefore, to consider the dimensions and related elements in some detail. Further details on each of the three areas are also set out below. [267]

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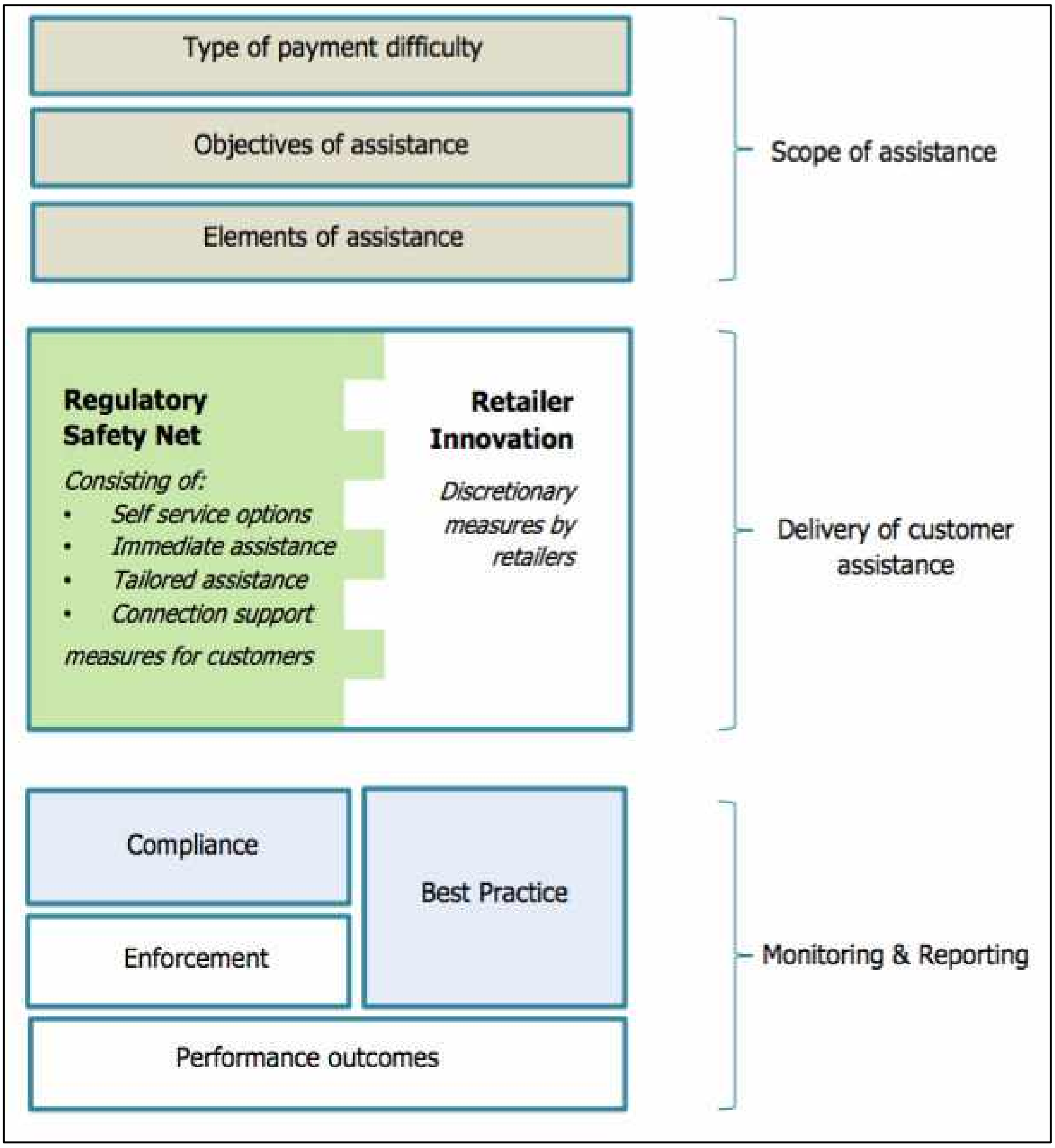
[264] ibid, p. 66.

[265] The amendments to the ESC Act 2001 enables the ESC to issue a WDP Notice of $5,000 per incident with effect from 1 June 2016.

[266] The amendments to the ESC Act 2001 provided for the ESC to have greater enforcement powers, effective from 1 June 2016. See: *Essential Services Commission 2016, Energy Compliance and Enforcement Policy – Final Decision*, July 2016, p. 2.

[267] However, there are many specific details that are currently being consulted on by the ESC. Therefore, the description in this report should not be regarded as final or definitive.

Figure 7: The Proposed ESC Framework



Source: ESC, *Supporting Customers, Avoiding Labels, Final Report*, February 2016, Figure 4.2, p. 64.

6.3.3.2 The scope of retailer assistance

Type and objective of assistance

The scope of retailer assistance extends to consideration of the type of payment difficulty, the objectives of assistance and the elements of this assistance. In terms of the type of payment difficulty, the ESC's proposal sets out five types (levels) of payment difficulty – [A] to [E] – as illustrated in Figure 8 below.

The type of payment difficulty can be defined by reference to the cost of energy, the amount of money actually paid for that energy use and the amount of energy debt that the customer has accrued.

The ESC claims that when defined in this objective way, the customer's payment difficulty can be determined: "without value judgement or intrusive assessment, and without unwelcomed labelling of the customer".[268]

A further benefit of defining the type of assistance in this way is that a retailer can readily identify the type of assistance from its customer billing system – it is not dependent on any initiative or judgement by the retailer nor does the retailer need to collect new data on the customer.

Figure 8 illustrates this relationship and the progressively more intensive management of the customer. The dimensions and elements of the safety net assistance

Figure 8: Overview of the scope of retailer assistance and payment type

Debt status	Payment difficulty	Payment difficulty [Type]	Objectives of Assistance	Safety Net Assistance
Likely	Customer has not yet missed a payment • and has not missed a payment in the past 12 months • but cannot meet their next payment.	[A]	**To encourage customers to avoid debt by taking up self-service options to reschedule energy payments.**	Self Service
Commenced	Customer has missed a payment and therefore has an energy debt	[B]	**To provide immediate assistance to customers who miss a payment to repay their energy debt.**	Immediate Assistance
In arrears	Customer has energy debt • and is making payments that reduce debt • but not in accordance with their payment plan.	[C]	**To assist customers to better manage their energy use to help repay energy debt.**	Assisted Repayment Tailored Assistance
Static	Customer has energy debt • and is paying for their energy use • but is not reducing their debt.	[D]	**To reduce the cost of energy use to enable debt to be repaid.**	Active Assistance
Increasing	Customer has energy debt • and is not paying for their energy use.	[E]	**To reduce energy use to an affordable level.**	Connection Support

Source: ESC, *Supporting Customers Avoiding Labels, Final Report*, Figure 4.3, p. 66.

The ESC sets out minimum requirements for retailers' assistance programs (the 'safety net' assistance measures) for each type of customer payment difficulty.

[268] ibid, p. 65.

Similarly, for each category of assistance, the ESC sets out the obligations on customers to comply and engage with their retailer.

The form of this 'safety net' assistance involves four categories of retailer assistance: self-service, immediate assistance, tailored assistance and connection support depending on the type of difficulty as set out in Figure 8 above.

Each category is linked to the particular objective of the assistance program. For example, the 'self service' category is derived from the objective of encouraging customers to avoid debt by taking up a self-service option to reschedule payments. The obligation on the retailer is to provide a range of self-service payment options, available on its website.

Elements of retailer assistance

According to the ESC's new framework, any assistance plan provided to a customer must include three elements:[269]

- A payment plan;
- Energy management assistance; and
- Information and referral to other support services.

These three elements are discussed briefly below. While these elements are common in the existing policies, the ESC attempts to make the requirements significantly more specific with less retailer discretion.

Payment Plans:

The ESC states that payment plans will vary depending on the type of payment difficulty and the objective of assistance for that particular type.

For example, for customers experiencing Type B and Type C payment difficulties (as per Figure 8 above), debt repayment will be required over the short to medium term. For customers experiencing the more severe Type D and Type E payment difficulties, longer-term payment plans will be required.

For customer Types B to D, there should be no increase in the customer's debt levels. However, for customer Type E there is likely to be an increasing level of debt as the customer cannot pay for their ongoing energy consumption. For these customers:

- The payment plan will allow a three-month period of below cost payments while the retailer and customer work intensively on energy management options;

[269] ibid.

- If the customer is not meeting the ongoing cost of energy after three months, pre-payment for energy use ("pay-as-you-go") is required if the customer is to remain connected.

Energy Management, Information and Referral

Retailers are required to provide energy management information, advice and assistance to all customers experiencing payment difficulty. The nature of this assistance, however, varies with the type of payment difficulty.

All retailers will be required to provide practical energy management information on-line for all customers. As payment difficulty increases, the intervention will need to be more intense and the advice more specific.

For customers in the most severe category, Type E, the objective is to: "reduce energy to an affordable level".[270] Therefore, the ESC's framework requires the retailer to provide practical in home advice, the cost of which may be borne by the retailer or shared with the customer.

Similarly, the level of information on the assistance available from governments and other third parties will vary with the type of payment difficulties. In the earlier Types B to D only general information is required, albeit of increasing specificity to the customers' circumstances.

For Type E customers, however, a retailer will need to demonstrate that the customer has received information from an independent third party accredited by the ESC. The customer must receive this information before the retailer can place them on a 'pay-as-you-go' plan.

6.3.4 Delivery of Retailer Assistance

6.3.4.1 Overview of minimum safety net requirements

Having defined the scope of assistance (including customer type), the ESC then prescribes the forms of delivery of assistance based on the type of customer. Figure 8 above illustrates the relationship between the type of payment difficulty and the minimum assistance level required.

As discussed above, the ESC claims that it is setting the minimum 'safety' net requirements and retailers have the flexibility to decide "what assistance they provide to customers and how they provide it"[271] - providing the retailer meets the minimum safety net requirements set out by the ESC.

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[270] ibid, Figure 4.3, p. 66.

[271] ibid, p. 66.

The following discussion provides a brief overview of the categories of safety net assistance envisaged by the ESC and the minimum requirements. [272]

For each category, the ESC outlines the obligations that apply to both retailers and customers, and the consequences if a retailer or a customer does not comply with these obligations and/or a customer fails to engage with the retailer.

For example, a retailer cannot disconnect the customer if the customer follows the payment plan and/or engages with the retailer to negotiate a revised plan. A customer who is disconnected for non-payment when that customer is following the payment plan or engaged with the retailer, will be eligible for a Wrongful Disconnection Payment (WPD) from their retailer.

Generally the customer must be allowed to retain a retail product discount, such as a 'pay-on-time' discount, if they comply with the agreed plan. Alternatively, if the customer has lost that discount because of non-payment, it must be restored if and when the customer complies with an agreed payment plan.

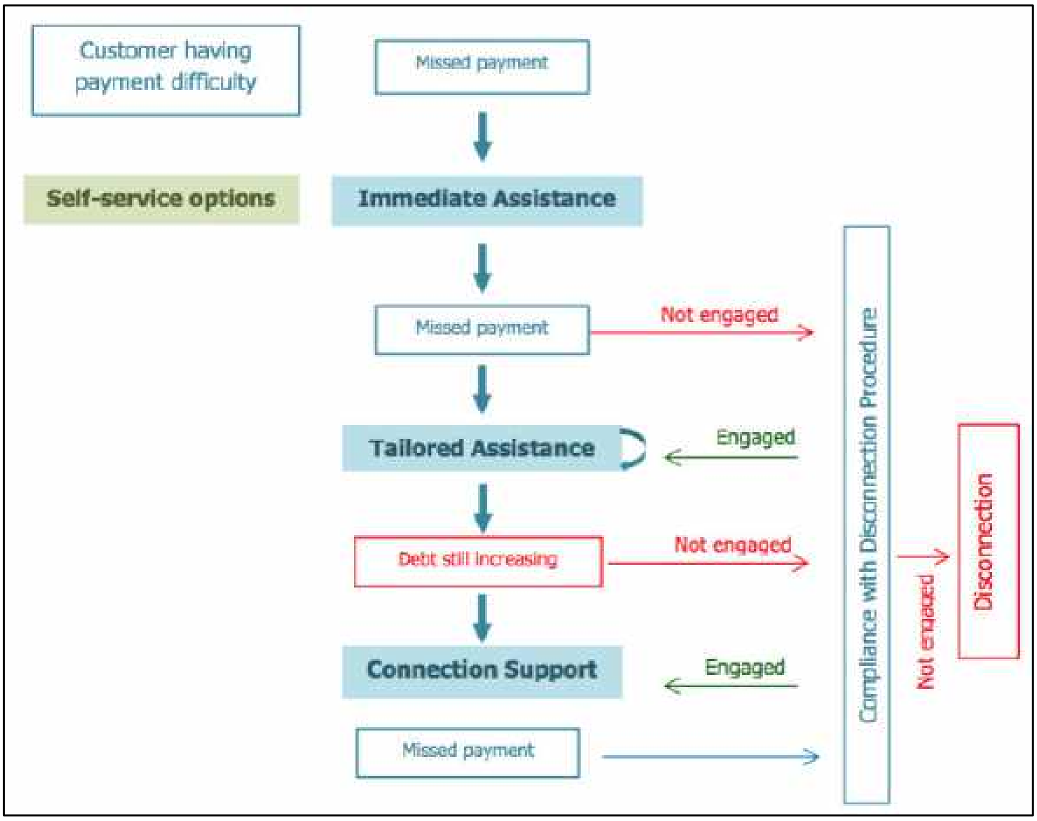
The retailers' interests are also protected, reflecting the ESC's view that outstanding debt should, in almost all circumstances, be paid by the customer. In general, if a customer fails to comply with the relevant assistance plan and has failed to engage with the retailer to discuss options, the retailer has sufficient cause to initiate the disconnection process.[273]

Figure 9 illustrates the different levels and how a customer might 'progress' through those levels. It also demonstrates the points at which a retailer may lawfully initiate the disconnection process for non-payment of bills as set out in the Energy Retail Code.

[272] Note, this is a summary of the main requirements rather than a comprehensive list of all components. Details can be found in ibid, Chapter 4.

[273] Subject to certain customers who cannot be disconnected (such as life-support customers) or criteria set by for instance jurisdictional governments (hot days etc).

Figure 9: Customer Engagement, Non-engagement and Disconnection



Source: ESC, *Supporting Customers Avoiding Labels, Final Report*, Figure 4.6, p. 71.

The four 'types' of retailer assistance to customers experiencing different levels of payment difficulty are briefly described below.

6.3.4.2 Self-service option – for payment Type A

Customers classified as Type A have not necessarily contacted their retailer. Type A customers do not have a current debt but for whatever reason anticipate that they may experience payment difficulties in their next bill.

The aim of this stage is to help customers from incurring energy debt in the first place by enabling them to self-select from a range of options a different payment arrangement. The ESC, therefore, sets a minimum requirement that retailers make a number of 'self-service' options available for Type A customers.

The self-service options would be on the retailer's website and would not require the customer to personally contact the retailer. However, the retailer must accept the customer's self-selection option irrespective of whether the customer is on a market or standard contract.

The ESC's framework also sets out the three minimum self-service options that a retailer must provide as follows :[274]

[274] ibid, p. 78.

- **Bill smoothing** across monthly or fortnightly payments;
- **Deferred payment** for up to four weeks for customers who have not missed a payment in 12 months; and
- **Shortened payment cycle** where customers can choose to pay smaller amounts more frequently.

A customer is expected to make the payments set out in the plan in full, and on time. If the customer cannot manage this, the customer is expected to contact their retailer to discuss other options.

A customer who complies with their selected self-service option will not lose any 'pay-on-time' discount entitlements providing that they pay according to the self-service plan.

6.3.4.3 Immediate assistance plan – for payment Type B

Irrespective of whether the customer takes up a self-service option, if the customer misses a payment, the retailer will **automatically** place them on an 'immediate assistance' plan (payment Type B). This plan will require monthly repayments **irrespective of the customer's current payment cycle**.

> **Note: A payment is considered 'missed' if it is not paid by the end of the reminder notice period.**[275]

Because the process is automatic, the retailer does not have to label the customer as being in hardship or discuss in advance with the customer. Assistance in the form of a **standardised payment plan** is provided on the basis of a missed payment rather than relying on a subjective assessment of the customer's capacity-to-pay.

The retailer must advise the customer that they have been placed on an automatic monthly payment plan and provide customers with energy management advice (e.g. a link to the web-site) and other relevant information on government and non-government assistance including rebates, concessions and financial counselling services.

This automatic monthly payment plan has standard terms and conditions and the customer must pay at least the ongoing energy usage costs and a **prescribed portion** of the outstanding debt. It is not clear how various retail products such as 'pay-on-time' discounts will operate during this period. Presumably these details will be worked out during the technical workshops prior to the finalisation of the Energy Retail Code.

Repayments of the debt will occur over a three, six or nine month period depending on the customer's current payment cycle. For customers on monthly billing for instance, the debt must be repaid over three months. [276]

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[275] See ibid, p. 80 including footnote 92.

If a customer misses an immediate assistance plan payment and has not engaged at all with the retailer, then the retailer may issue a disconnection notice. (See figure 9)

6.3.4.4 Tailored assistance plan – for payment Types C and D

If the customer misses a payment under an immediate assistance payment plan, the retailer will be required to provide the customer with a tailored assistance plan.

In the tailored assistance plan, the retailer and the customer are expected to work together to lower the customer's energy costs and to plan for the repayment of outstanding debt.

The tailored assistance plan comes in two forms:

- **Assisted repayment plan** (for Type C customer): the customer is making payments to reduce the debt but not in accordance with the payment plan.

  Under this plan, the customer pays for ongoing energy and up to 15 per cent of the outstanding debt. This repayment plan does not therefore require the retailer to 'probe' into the customer's particular circumstances. In addition, if the customer makes the payment then they will be entitled to the benefit of any discounts that may have been lost.

  The retailer also has an obligation to provide more personalised advice on energy management and on information about rebates or concessions and details of third party referral services.

  A disconnection warning notice may be issued if the customer does not comply with the plan and does not contact the retailer to discuss.

- **Active assistance plan** (for Type D customer): the customer is paying for ongoing usage but is not repaying any of their debt.

  Under this plan, the customer pays equal monthly payments that cover the cost of their energy use while the retailer and customer work together to reduce the cost of the customer's energy consumption.

  The retailer must also advice the customer about relevant government and community programs. Any pay-on-time discount must be continued as long as the customer meets the agreed payments and engages with the retailer.

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[276] The prescribed amount depends on the previous billing cycle (monthly, bi-monthly or quarterly) as well as the amount of debt owed. If a customer is on monthly billing, then debt repayment will be limited to a third of the amount each monthly bill, paid in three equal installments. Quarterly payment customers will be automatically switched to monthly payment cycle and repayment of debt will be limited to a ninth of what is paid for each of the next nine months.

However, if the customer does not make the agreed payments and has not engaged with the retailer, a disconnection warning notice may be issued.

6.3.4.5 Connection support - for payment Type E

The final step, 'connection support', is offered as a 'last resort' to a Type E customer, that is, a customer who has an energy debt and is also not paying the cost of their on-going energy use. In this instance, the customer's debt continues to increase.

The aim of the customer support plan is therefore to first attempt to reduce the customer's energy use to an affordable level and to also ensure that the customer has access to all available forms of government and non-government support.

The connection support is available for up to two years and in two phases, as follows:[277]

- In the first three months a customer can pay a **fixed monthly payment** that is below the cost of their energy use while working with the retailer to reduce the cost of their energy use;
- If after three months the customer is still not able to pay for their energy use, they will be required to make **monthly pay-as-you-go payments**[278] of their energy use in order to remain connected. This ensures no further growth in debt**.**

The ESC also states that a customer cannot transfer to another retailer in the first three months, as their usage cost is greater than the repayment amounts. A customer that is on a pay-as-you-go plan can switch retailer but the original retailer is entitled to recover outstanding debt through normal debt collection processes.[279]

A retailer must allow the customer to stay connected through this period including when a customer moves to a pay-as-you-go arrangement. The customer is also entitled to discuss the pay-as-you-go arrangement with an independent third party before commencement of the pay-as you-go monthly payments.

However, a customer who misses a payment in either phase of the connection support plan may be issued with a disconnection warning notice. A retailer must reconnect the customer if the customer agrees to the pay-as-you-go amount plus any costs incurred in the interim.

The customer is expected to engage with their retailer throughout the process, including notifying the retailer if they are unable to make the agreed payments. A

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[277] ibid, p. 90.

[278] The ESC states that the 'pay-as-you-go' arrangement must not involve the use of pre-payment meters. See ibid, p. 92 and the associated footnote 105.

[279] ibid, p. 91. However, the ESC also states that it would expect retailers will only engage debt collectors who adhere to the ASIC-ACCC guideline on debt collection.

customer will not be disconnected for non-payment if they are making repayments under the agreed plan, or are actively engaged with their retailer to make new or alternative arrangements.

If a retailer disconnects a customer without providing, or endeavouring to provide, the relevant level of assistance, then the retailer must make a Wrongful Disconnection Payment (WDP) to the customer.

However, if the customer does not engage actively with the retailer through the process, then the framework will operate in conjunction with the disconnection procedures set out in the Energy Retail Code.

Notably, the ESC's process in this Type E circumstance does not appear to involve discussions between the retailer and the customer on the customer's capacity-to-pay, even if these customers are clearly facing longer-term entrenched payment difficulties.

The risk of disconnection at the end of the process, even if the customer engaged with the retailer in the process, remains. In effect, as the process can keep looping around, there appears to be no circuit breaker other than disconnection or, perhaps, intervention by support agencies.

6.3.4.6 Reconnection Under the 'Safety Net' provisions

The ESC's framework specifies that any customer who is disconnected for non-payment will be entitled to reconnection if they meet the conditions of the form of assistance they were receiving under the customer safety net prior to disconnection.[280]

For instance, if a customer on an Active Assistance plan is disconnected by the retailer, the customer is entitled to reconnection if they pay the cost of their energy use in full.

The ESC considers this is an improvement from a customer's perspective over the current framework as this current framework allows a retailer to require any debt repayment as a condition of reconnection. The ESC's proposed framework will limit the retailer to reconnection on the basis of the customer's existing repayment obligations based on the type of payment plan that they were on prior to disconnection.

6.3.5 Monitoring and Reporting

The ESC has acknowledged the importance of monitoring and reporting the outcomes of the proposed framework and process. The ESC's monitoring and reporting will include: [281]

[280] ibid, p. 95.

[281] ibid, p. 72.

- Monitoring compliance through retailer reporting and auditing;
- Enforcing the regulatory framework;
- Assessing and reporting on best practice; and
- Reporting on customer outcomes.

With respect to the monitoring of compliance, the ESC states that it requires retailers to: "maintain records of their exchanges with customer to demonstrate customers are informed about their options".[282] This is in addition to the retailers providing aggregate data for the ESC's reports, including data on the new obligations, and retailers reporting any breaches of the payment plan obligations.

The ESC also notes its new enforcement powers under the Victorian *Energy Legislation Amendment (Consumer Protection) Act* 2015 includes increases in various penalties on retailers for wrongful disconnections and non-compliance with the Energy Retail Code and licence. Penalties of $500 per day and $5,000 per breach of the Code up to a maximum of $20,000 can be imposed on retailers depending on the incident of non-compliance.[283]

The ESC intends to review the operation of the customer safety net Framework every two years, with the review providing an assessment of any retailer policies, practices and procedures that exceed the Framework's minimum requirements. The review will complement the role of the ESC's regular performance reporting.

Clearly, therefore, the measurement of performance outcomes is an important dimension of the ESC's proposal. The ESC proposes to replace the existing hardship program indicators with new indicators that focus on outcomes for customers with payment difficulties.

The specific areas of focus for the ESC's performance reporting include: [284]

- The level of payment difficulty such as the number of customers with Type A to Type E payment difficulty;
- Retailer innovation, for example: amount and form of additional assistance measures above the safety net;
- Level of debt owed, for example, average level of debt for customers with Type B to Type E payment difficulty;
- Level of disconnection, for example, total number of disconnections, number by cause, duration of disconnections; and

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[282] ibid, p. 99.

[283] Essential Services Commission 2016, *Energy Compliance and Enforcement Policy – Final Decision*, July 2016, p. 2. This provides a list of the range of financial penalties and other orders available to the ESC under its new enforcement powers.

[284] See ibid, p.p. 101-102. The ESC notes that further work will be undertaken to develop these performance measures.

- Reconnection, for example, the number of customers making pre-payments and average reduction in consumption achieved.

6.3.5 SACOSS' assessment of the ESC's framework

6.3.5.1 Assessment overview

The ESC sees the current framework as no longer fit for purpose and in need of substantial reform. As a result, the ESC has sought to recast the regulatory framework regarding the management of vulnerable customers that forms part of the national approach and the historical Victorian approach.

The first question to ask, therefore, is whether the current framework needs an evolutionary approach (as per the AER) or a revolutionary approach (ESC) or if there are other options that tread a middle road.

SACOSS accepts that the current framework for managing customers with payment difficulties, as set out in the NERL and NERR has limitations. Similar limitations apply to the current Victorian framework as it largely parallels the national framework.

Moreover, SACOSS agrees that there is an unacceptable lack of consistency in the interpretation and application of the current framework arrangements by retailers, albeit that both the AER and ESC state that there is generally compliance with the existing minimum standards.

Clearly some retailers are strongly investing in improvements to achieve best practice. Other retailers take a minimal compliance approach. For instance, it is unacceptable that some customers are entering payment plans and hardship programs with debts of over $1,500.

The prospect of this debt ever being settled is small. The observed level of average debt in the programs and the poor completion rates of customers on repayment plans or hardship programs support this conclusion. The chronic nature of debt for at least some customers is also demonstrated by the frequency of these customers facing further debt crises even within the same year.

SACOSS therefore agrees with the ESC that it is not in the interests of customers that there is such a level of variation between retailers. SACOSS also agrees that it is important to give a strong focus on outcomes.

The failure of current regulatory requirements to improve the level of debt accrued by customers with payment difficulties and to reduce disconnection rates, despite years of investment in improving outcomes, does mean that a fresh examination of the issues is necessary.

As noted previously, SACOSS is concerned that the AER's voluntary sustainable payment plan approach may not provide sufficient impetus to improve overall energy retail industry standards towards best practice and ensure equality of treatment of all customers experiencing payment difficulties, irrespective of the retailer.

A further consideration is that generally, customers with payment difficulties are less likely to benefit from the competitive retail market either because they are not sufficiently aware of, or confident in, seeking competitive market offers or they have been effectively refused competitive market offers based for instance, on credit histories.

Taking into account these and other issues identified in this paper, SACOSS agrees with the ESC that further reform is required.

However, SACOSS' review suggests that the ESC's approach will increase costs and such a significant change may not be in the long-term interests of customers, if adopted across the national electricity and gas markets. Discussions with various Victorian stakeholders suggest that this may also hold for Victorian consumers.

SACOSS' concerns with the process outlined in the ESC's Final Report are discussed below and include a number of interrelated factors, namely:

- The automation of the key steps in the process;
- The lack of early engagement between the retailer and the consumer;
- The lack of customer control over the process;
- Whether process is effective given changes in technology and retail products;
- The likely implementation costs and ongoing costs;
- The risk that disconnections will increase rather than decrease.

Linking most of these factors is the potential delay in a retailer establishing any level of meaningful engagement with the customer, as well as the detailed prescriptive approach to defining the assistance package for each customer type without the opportunity for the retailer to understand the customer's individual concerns.

The following sections consider a number of these issues in more detail.

6.3.5.2 Customer engagement with the process

Effective engagement of the customer with payment difficulties in the process of resolving outstanding debt is central to successful completion of the repayment program without resorting to the threat of disconnection.

That is, for a customer to want to work with a retailer over a period of 6 to 12 months or more, the customer must believe that they have been involved in, and have some control over the payment plan. The customer must also believe that they are respected and their individual circumstances recognised and acknowledged by the retailer.

SACOSS' experience suggests that in the absence of engagement and a sense of understanding and control early in the process, the customer will more likely than not seek to minimise any ongoing relationships with the retailer.

Under the ESC process, this customer disengagement can, in turn, result in the retailer commencing the disconnection process; thus further breaking trust between the two parties. It is highly unlikely, for instance, that a customer will seek or accept energy management advice following a series of negative interactions with the retailer in which their individual circumstances seem less important than the automated processes.

As a result, SACOSS is not convinced that the ESC process will reduce debt and disconnection, particularly for the most vulnerable customers.

6.3.5.3 The automation of key steps in the process

Defining customer by 'type' based on objective criteria such as whether a bill payment has been missed, has the superficial appeal of removing subjective assessments and ensuring more consistency across different retailers.

SACOSS accepts that more consistency is desirable. However, the ESC is using the very blunt instrument of automating the classification of customers and prescribing in the Energy Retail Code, the minimum features of the payment plan.

For example, the ESC's approach will, inevitably, 'catch' many customers who do not want and do not need a payment plan.[285]

The retailer's time may well be taken up explaining to these customers why they are on a plan at all when they did not seek to be so. Will the retailer be able to reverse the payment plan in these circumstances, and what are the billing system issues of multiple customers being billed and then rebilled?

The link between automation of the process and customer engagement was well expressed by Yarra Valley Water in their submission to the ESC's Draft paper. YVW is generally regarded as having one of the most successful programs for managing customers in financial hardship. Its submission to the ESC stated:[286]

> Our experience has shown that **early and continued customer engagement** has been a key to the success of hardship programs. Respectful communications coupled with tangible support options offered up-front, have proven extremely successful. **The automation and stepped nature of the current proposal runs the risk of a decline in customer engagement**. [emphasis added]

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[285] These are customers who have missed a reminder notice due date, but would otherwise pay their bill and have no need of additional support.

[286] Yarra Valley Future Water, "Response to Essential Services Commission's Energy Hardship Inquiry Draft Report", October 2015, p. 5.

6.3.5.4 Changes in energy technologies and retail product design

It is also not clear if and how the ESC has taken into account the changes in technology, particularly smart meters and the associated time-of-use or demand based retail tariffs.

Smart metering in Victoria has facilitated the introduction of monthly billing by many retailers, thus shortening both the payment cycle and the disconnection time lines.[287]

It is not yet clear how a monthly payment cycle will impact on the number of customers failing to pay their monthly bill by the 'due' date (reminder notice date), but it is reasonable to expect that with a faster billing cycle, the number of customers who are not in payment difficulty (as usually defined) find themselves automatically placed on a 'payment plan' that they neither requested or needed. The excessively wide net of Type B category customers may be cast even wider.

Similarly, it is not clear how the retailer will conduct the required tariff assessments and energy efficiency assessments, taking into account the various options and preferences for tariff types such as time-of-use and demand tariffs in advising their customers.

Traditional energy management activities may have an impact on energy usage (although this is by no means clear for customers in hardship), but with cost-reflective pricing, the savings are only available if peak usage is reduced. In addition, seasonal variation in bills is likely to be exacerbated, and it is not clear how this will affect the efficacy of the payment plan process given the very specific requirements in the ESC's approach.

[287] That is, while the reminder notice and disconnection process follows the timelines set out in the regulations, monthly billing means that this timeline has 12 starting points per year rather than 4 or 6. The potential for overlapping bills and repayments is significantly increased and is potentially more confusing for the customer. At this stage, most retailers have not moved pensioner recipients to monthly billing. However, this is likely to change and in any case does not cover many other customers facing payment difficulties.

6.3.5.5 The Victorian framework and national consistency

SACOSS is also disturbed that the ESC appears to have given little consideration to the impact of moving the Victorian regulatory framework further away from the national program contrary to the previous Victorian harmonisation process.

SACOSS strongly believes there is a long-term benefit to all energy customers, and to the energy retailers and the market in general, in having nationally consistent systems and processes. The previous harmonisation project to improve the alignment of the Energy Retail Code with the NECF illustrates that Victoria had accepted the value of national consistency (albeit with some derogations).

A nationally consistent approach[288] allows policy makers and retailers to focus their attention on the quality of the service to their customers absent the distraction of establishing and maintaining different systems and processes.

For a jurisdictional regulator to move in another direction therefore requires a very strong business case for drastic change. However, the ESC does not appear to have conducted a thorough and comprehensive cost-benefit study of their approach for Victorian and interstate stakeholders to scrutinise.

It is also widely noted that the causes of payment difficulty for customers go well beyond the retailer- customer interface and no process, including the ESC's process, can address the situation where the customer simply cannot afford to pay for ongoing energy usage let alone repay debt from previous periods.

Addressing these fundamental economic and social issues requires multiple stakeholders working together. While the ESC correctly states that it cannot address these matters, it should nevertheless take them into account when designing its framework. By ignoring the impact of these factors on individual consumers, the ESC's process is risking a continued debt cycle for the most vulnerable consumers.

The mapping of disconnections conducted by St Vincent de Paul and Alviss Consulting also provides important clues to the systemic issues that drive disconnection rates across the NEM. SACOSS would encourage the ESC to consider this research before finalising the detail of its Energy Retail Code and regulations. Similarly, the study provides important data for the AER in further development of its Sustainable Payment Plans Framework.

A framework that is state centric, and which departs so substantially from the national policy development process, risks losing influence over national policy on the important social issues of access to energy. In the long run, Victoria's isolation

[288] This does not mean jurisdictional arrangements must all be exactly the same – the process should respect different jurisdictional priorities. However, the ESC's framework represents a level of change well beyond that and may well delay Victorian joining the NECF.

from the national policy development process is not in the long-term interests of either Victorian energy users or energy users across the nation.

SACOSS therefore finds it surprising that neither the Victorian Government nor the ESC appear to have taken this issue seriously or addressed the potential costs to Victorian energy consumers of this divergence.

6.3.5.6 SACOSS' assessment criteria – a summary

In section 6, SACOSS sets out its assessment criteria based on the research and the results of the regulators' performance measures and the work of third parties including Ofgem, EWOV and Victorian consumer advocates.

These measures covered the quality of the conversations, provision of relevant information, flexibility, regular monitoring, feedback to customers, improved measurement, referrals to third parties and regular 'check in' with customers to follow up post payment plan completion and cost efficiency.

In Table 11 below, SACOSS sets out its view of the ESC framework against these criteria. SACOSS has also summarised its view on additional factors such as level of change from the current process, level of disconnections, support from stakeholders, and consistency with the national processes.

Table 11: SACOSS Assessment Criteria & ESC Framework

SACOSS Assessment Criteria	AER: Sustainable Payment Plans Framework	ESC: Supporting customers avoiding labels	Comment
Mandated actions	No (voluntary)	Yes	ESC requirements will be included in Energy Retail Code, et al with penalties for non-compliance
Change from current approach	Designed to enhance current process	Substantial changes	ESC emphasises automation of processes and prescribed formulas to achieve consistency across retailers
Earlier identification of customer experiencing payment difficulties	Likely: Early identification is more likely if experience has been positive	Yes early identification a feature of the model	Risk that the ESC's model sweeps up many customers who do not need and do not want payment plan. Lead to high dissatisfaction & consumer resources to address
Improve quality of communications to identify risk (respect, understanding..)	Yes	Not a major theme	ESC categorises types of customers using objective billing/usage data rather relying on customer communications. Risk that customers who do not want or need assistance are captured in payment plan
Ensure consumer	Yes, explicit	Not initially; greater	Automation of early stages in

engagement & control	purpose of the AER's approach	engagement for hardship customers in later steps	the process and design of assistance programs risks that customers becoming disengaged & do not respond proactively/may even be negative.
Ensure customers have relevant all information (rebates etc.)	Yes	Yes for all customers	ESC process supports requirements to provide information on tariffs etc., with information available to all customers with payment difficulties
Ensure customers have access to energy management (EM)	Yes for hardship customers	Yes for all customers	ESC proposal creates strong obligation to provide EM. Value of EM is not certain given tariffs and social-economic factors.
Flexibility to vary plan to respond to changing needs	Yes	Limited	Automation means that it is difficult for a retailer to tailor offer to the customer and their situation early in the process.
Regular monitoring	Yes	Yes	ESC proposal is strong on regular monitoring and reporting of compliance & performance outcomes.
Encouragement & feedback to customers	Yes	Limited	Automatic process to categorise customers and detailed prescribed payment plan features limit the opportunity for retailers to provide additional services
Improve measurement of outcomes & compliance incentives	Yes – improve measurement No compliance incentives (non-mandatory)	Yes	ESC proposes significant improvement in the measurement of outcomes and reporting...ESC has enhanced enforcement powers
Appropriate referral of customers to 3rd parties	Yes	Yes	ESC intends to formalise the use of 3rd parties. ESC requires accreditation of 3rd parties & that may be beneficial to customers
Post plan completion 'check-in'	Yes	No	ESC does not identify any follow up with customer in the process although this will assist in reducing future payment 'crises'.
Cost efficient	Yes	No cost benefit analysis provided	Implementation of ESC's proposal will be more expensive & shared over smaller customer base. Ongoing costs higher due to more consumer calls, monitoring & reporting obligations Adds costs to other national

			consumer stakeholder organisations.
Impact on disconnections	Positive given improved communications	Uncertain	ESC process means debt identified earlier, but lower consumer engagement and confidence may reduce cooperation
Process is adaptable to changing market conditions	Yes, focus is on improving quality of interactions	No	High investment costs in systems and automation of processes means changes are expensive and slow
Supported by stakeholders	Yes	Reservations	Stakeholders concerned with cost and complexity of the ESC's proposal and the lack of flexibility/rule driven rather than customer driven.
National harmonisation	Yes	No	Victoria will be less aligned with NECF. Not clear if this will have a negative impact on Victoria signing up to NECF.