ESSENTIAL SERVICES COMMISSION

SUPPORTING CUSTOMERS, AVOIDING LABELS

Energy Hardship Inquiry Final Report

February 2016

An appropriate citation for this paper is:

Essential Services Commission 2016, *Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report*, February 2016

CHAIRPERSON'S OVERVIEW

Since the start of this inquiry, the Victorian Government has amended the energy industry legislation to provide the Commission with a new statutory objective, namely, to 'promote protections for customers facing payment difficulty'. The legislation also sets out the expectation that retailers will facilitate continuity of supply to domestic customers as they work through their payment difficulties. The terms of reference for this inquiry establish that regulation should aim to 'ensur[e] that wherever possible, energy customers remain connected to supply, and that disconnection of customers is only used as a measure of last resort by energy retailers'.

In effect, the task before the Commission has therefore been to establish a framework that defines the terms 'wherever possible' and 'last resort' for customers and retailers.

Our draft report in September highlighted the outcomes being experienced by Victorian energy customers under the current framework. The elements of the regulatory framework that affect whether a customer gets access to assistance, and what assistance they get, cannot be enforced because they rely on broad retailer discretion. Unsurprisingly therefore, we also found that there was no consistency in what assistance a customer in payment difficulty could expect to receive. There was also no consistency in the actual assistance provided, and therefore wide variation in outcomes for customers experiencing payment difficulty. 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.

We attributed these outcomes to the retailers' very broad discretion under the current framework to determine who is entitled to assistance, the level of assistance that they provide, the timing of that assistance, and the terms on which they amend or withdraw that assistance. We concluded that the current framework is the cause of the poor outcomes for customers, and is therefore in need of reform. Our findings and the conclusions we drew from them in the draft report were not contested during our subsequent consultations with consumer groups, retailers and other interested parties.

Based on those conclusions, our draft report proposed an alternative regulatory model for supporting customers in payment difficulty. Most of our subsequent consultations, including many technical workshops over four months, were focussed on testing and improving the proposed regulatory arrangements.

In this final report we outline a regulatory framework that is the product of those very detailed discussions. The main features of the new framework include:

- Building on existing obligations regarding the provision of payment plans, energy management support and other forms of assistance, but codifying how retailers are expected to provide this support to customers.
- Moving away from retailers' very subjective and often highly intrusive assessments of customers' financial circumstances in order to ascertain whether customers are 'in hardship' and therefore whether they are eligible for assistance. The new framework requires retailers to offer assistance based on the ***type*** of payment difficulty being experienced by customers, rather than the ***cause*** of that payment difficulty. Importantly, retailers' customer account records already have all the information required to assess ***type*** of payment difficulty.
- Embedding the principles of shared responsibility and proportionality in the design of the framework. That is, the framework requires customers to engage with their retailer's efforts to assist them and ensure the assistance offered is proportional to the payment difficulty being experienced. It requires retailers to provide more intense assistance when the payment difficulty is more acute.
- Establishing new obligations on retailers to:
  - make 'self service' options readily available so customers can self-manage any anticipated payment difficulties, for example, with a just a 'click-or-two' on the retailer's website
  - automatically place any customer who misses a bill payment on a very simple payment plan. This will ensure all customers at risk of payment difficulty are identified automatically in retailers' billing systems at the earliest possible stage.
  - work intensively with customers whose debt continues to grow, to help them bring their energy use into line with what they can afford. If debt is continuing to grow after three months, then the retailer will be able to place the customer on a 'pay as you go' payment plan (pre-payment) subject to safeguards. Doing so

will curtail further growth of customer indebtedness and limit the risk of disconnection.

Other supporting measures beyond the safety net include:

- opportunities for retailers to innovate in the way they offer and provide assistance to their customers; we will monitor these developments through regular 'best practice' reporting
- quarterly compliance reporting by retailers so that breaches are identified and remediated early
- enforcement action that we may take in accordance with our new powers under the *Energy Legislation Amendment (Consumer Protection) Act (Vic.)* 2015
- our annual performance reporting to monitor the outcomes experienced by customers, retailers and the Energy and Water Ombudsman Victoria.

We are confident that the safety net regulatory framework, supported by these additional measures, will limit the debt a customer can accumulate while helping them to remain connected to supply. It will do so by avoiding the need for retailers to label customers as being 'in hardship' before actively assisting them. It will also free up retailer resources by obviating the requirement that a retailer assesses a customer's' capacity to pay, and by removing the obligation to submit a 'hardship policy' to the Commission. And it will focus retailers' efforts where they are most required, namely, in assisting customers rather than assessing them.

While this report outlines the design of the proposed regulatory framework, much work will be needed to codify the framework in the Energy Retail Code. That work will, once again, involve the Commission working collaboratively with retailers and consumer groups.

Throughout this inquiry we endeavoured to work as closely and as openly as possible with all interested parties. We are very grateful for their generosity, in particular their time and willingness to share, contest and debate ideas. The framework outlined in this report is the product of those shared efforts in promoting the long term interests of Victorian consumers.

ACRONYMS

AER	Australian Energy Regulator
CALC	Consumer Action Law Centre
CALD	Culturally and linguistically diverse
CUAC	Consumer Utilities Advocacy Centre
ECCV	Ethnic Communities' Council of Victoria
EWOV	Energy and Water Ombudsman (Victoria)
GSL	Guaranteed Service Level
Operating Procedure	Operating Procedure – Compensation for Wrongful Disconnection
the Code	Energy Retail Code (Version 11)
the Commission	Essential Services Commission of Victoria
URG	Utility Relief Grant
VCOSS	Victorian Council of Social Service
WDP	Wrongful disconnection payment

CONTENTS

CHAIRPERSON'S OVERVIEW II

ACRONYMS V

1 CONTEXT 1

INTRODUCTION 1

1.1 SCOPE OF THE INQUIRY 1

1.2 AN ESSENTIAL SERVICE 2

1.3 OUR APPROACH 4

1.4 STRUCTURE OF THIS REPORT 7

2 SUMMARY OF FINDINGS 9

INTRODUCTION 9

2.2 DETERMINING CUSTOMER PAYMENT DIFFICULTY 11

2.3 OUTCOMES OF THE CURRENT REGULATORY FRAMEWORK 14

2.4 ASSISTANCE PROVIDED BY RETAILERS 17

2.5 COMPLIANCE AND ENFORCEMENT 29

2.6 CONCLUSION 32

3 ISSUES AND RESPONSE 35

INTRODUCTION 35

3.1 THE NEED FOR REFORM 37

3.2 OBJECTIVES OF REFORM 39

3.3 IMPLEMENTING THE NECESSARY REFORM 44

4 THE COMMISSION'S PROPOSAL 59

INTRODUCTION 59

4.1 PURPOSE AND OUTCOMES 60

4.2 DESIGN PRINCIPLES 62

4.3 OVERVIEW OF THE PROPOSED FRAMEWORK 63

4.4 SCOPE OF ASSISTANCE IN DETAIL 72

4.5 DELIVERY OF ASSISTANCE IN DETAIL 77

4.6 DETAILS OF MONITORING AND REPORTING 99

4.7 IMPACTS OF THE NEW FRAMEWORK 102

4.8 CONCLUSION 105

5 ROADMAP FOR IMPLEMENTATION 107

INTRODUCTION 107

5.1 FURTHER CHANGE TO REGULATORY INSTRUMENTS 107

5.2 TRANSITION TO THE FRAMEWORK 108

APPENDIX A - TERMS OF REFERENCE 113

APPENDIX B - REFERENCE LIST 117

1 CONTEXT

INTRODUCTION

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

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

This final report summarises the inquiry's findings as well as the conclusions that the Commission and stakeholders have drawn from them. It also presents the architecture for a new regulatory framework to assist customers experiencing payment difficulties.

This chapter outlines the context for the inquiry. It discusses energy as an essential service and why disconnection is viewed as a last resort option only. The rise in disconnection levels that occurred around the time the inquiry commenced is also briefly discussed (and further covered in chapter 2). Finally, this chapter summarises our approach to the inquiry, including the principles that guided it and the consultation process that supported it.

1.1 SCOPE OF THE INQUIRY

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

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

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

The classification of energy as an essential service and the increasing dependency of all Victorians on electricity were not matters subject to review within the scope of the inquiry. However, these matters provide important context, given the effect on individuals of being disconnected for non-payment.

1.2 AN ESSENTIAL SERVICE

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

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

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

1.2.1 RATIONALE FOR REGULATION

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

Debt, therefore, is the immediate consequence for a customer for not paying energy bills in full, on time, or both.[1] When energy debt becomes chronic, there are costs to individual customers, retailers and energy consumers as a whole.

Initially, when a customer does not pay their bill, both the customer and the energy retailer have incentives to work together: working together meets the retailer's need for the debt to be repaid, and it meets the customer's need to remain on supply.

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

Because energy businesses do not generally account for the social and economic costs to society of disconnection, rates of disconnection may be higher than society would prefer. Similarly, energy businesses do not generally account for social and economic costs of debt collection, such as the cost of government and non-government agencies providing legal advice to customers facing debt collection or bankruptcy

---

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

proceedings. As a result, the level of energy debt referral or sale to debt collectors may also result in an inefficient use of society's resources.

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

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

1.2.2 DISCONNECTIONS

The current framework is designed with the intention that disconnection is a last resort. A retailer must follow many steps before it can disconnect a customer's supply of energy, and there are penalties for wrongful disconnection.[2] In 2013-14, approximately 58 503 customers were disconnected for non-payment of energy bills. This was the highest number of disconnections ever recorded by the Commission.

According to the Energy and Water Ombudsman (Victoria) (EWOV), the number of wrongful disconnection cases per year that resulted in a settlement payment to a disconnected customer increased from 2564 cases in 2009-10 to 9032 cases in 2013-14 (an increase of 252 per cent).

1.3 OUR APPROACH

In March 2015, we released a paper setting out the Commission's proposed approach to this inquiry. The paper outlined the context and principles that would guide the

---

[2] Under the industry Acts, retailers must compensate customers for wrongful disconnection cases. These cases come in the first instance via EWOV.

Commission in conducting the inquiry (box 1.1), and posed a series of questions about the design and operation of the current regulatory framework.

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

We released the draft report on 1 September 2015. In response to the draft report, stakeholders made 19 submissions, all of which are available on our website. In addition, the Commission established three working groups (comprising representatives from consumer groups, financial counselling organisations, retailers and EWOV) to help us develop the detail of the framework. The Commission held 14 working group meetings in total between October 2015 and January 2016. The working groups will have an ongoing role beyond the release of this paper to help us prepare for implementation. In addition, the Commission held a number of forums and roundtables to work through specific elements of detail with stakeholders.

This final report is the last paper of the inquiry. Chapter 5 of this report outlines the next steps required to implement the framework.

BOX 1.1 PRINCIPLES FOR THE INQUIRY

Principle 1 - Effectiveness

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

Principle 2 - Flexibility

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

Principle 3 - Consistency

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

Principle 4 - Efficiency and Proportionality

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

Principle 5 - Transparency and Clarity

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

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

Principle 6 - Accountability

Accountability involves bearing the consequences of actions.

1.4 STRUCTURE OF THIS REPORT

This Final Report is divided into five chapters:

- Chapter 1 sets out the context for the inquiry and outlines our approach.
- Chapter 2 presents a summary of the Commission's findings on how retailers in Victoria assist customers in practice, identifying various shortcomings in the outcomes experienced by customers in payment difficulty. The chapter draws on our findings reported in the draft report as well as our subsequent consultations.
- Chapter 3 summarises what the Commission considers to be the main issues that need to be addressed in order to reform of the framework. It includes issues raised by stakeholders, both in submissions and working groups established by the Commission after the release of our draft report. It also provides an account of the Commission's response to these issues.
- Chapter 4 presents the architecture of a new regulatory framework to assist customers experiencing payment difficulties. Case studies are used to demonstrate how the framework will operate in practice.
- Chapter 5 outlines the roadmap for implementing the proposed regulatory arrangements.

2 SUMMARY OF FINDINGS

INTRODUCTION

This chapter sets out the Commission's major findings (see box 2.1 below). It presents a summary of some of the key information we collected during the inquiry, and our analysis that informs these findings.

The information presented in this chapter comes from a range of sources, including:

- data collected for the Commission's annual comparative performance reports
- research into the policies, procedures and practices of nine retailers that collectively supply energy to around 96 per cent of Victorian residential customers[3]
- information provided in submissions to the inquiry and other published data and reports
- wider consultation with stakeholders, including public forums and roundtable discussions.

The information in this chapter is presented in four main sections:

- the types of customer payment difficulty observed
- debt and disconnection outcomes from retailer practices under the current regulatory framework
- detail about the retailer assistance provided to customers
- compliance and enforcement of the current regulatory framework.

[3] Information collected from the nine participating retailers was gathered and prepared by independent consultants engaged by the Commission.

BOX 2.1 KEY FINDINGS OF THE INQUIRY

TYPES OF PAYMENT DIFFICULTY

1. While the causes of payment difficulty are unique to individual customers, the types of payment difficulty are not.
2. All types of customer payment difficulty can be objectively determined using standard customer account data.

OUTCOMES OF THE CURRENT REGULATORY FRAMEWORK

3. By the time customers are provided with assistance their debt is often too large to be addressed by the assistance that retailers are required to provide.
4. Hardship programs are generally ineffective at preventing customers from accumulating debt.
5. Increasing numbers of customers are being disconnected after exiting retailers' hardship programs; preliminary performance data reported to the Commission for the 2014-15 year shows that this trend is continuing.

RETAILER ASSISTANCE

6. Information is not readily available on what assistance retailers will provide.
7. Eligibility for assistance is largely at retailers' discretion.
8. Many customers with payment difficulty are not receiving assistance.
9. While there are obligations on retailers to offer assistance, there are no prescribed minimum standards. This means that, in practice, the nature of the assistance provided varies widely.
10. No one retailer is demonstrating 'best practice' but some retailers employ better practices than others.

COMPLIANCE AND ENFORCEMENT

11. There is no evidence of widespread non-compliance with the current framework.
12. The elements of the regulatory framework that affect whether a customer gets access to assistance, and what assistance they get, cannot be enforced because they rely on retailer discretion.

2.2 DETERMINING CUSTOMER PAYMENT DIFFICULTY

The current regulatory framework requires retailers to offer customers experiencing payment difficulty a payment plan, and assess their eligibility for the retailer's hardship program. To receive assistance, customers must identify themselves, or be identified by their retailer, as experiencing payment difficulties. Customers typically have to provide personal information about their circumstances to have their eligibility for assistance assessed.

All retailers must have a hardship policy approved by the Commission and offer eligible customers with assistance in accordance with that policy. Programs of assistance under a retailer's hardship policy are commonly referred to as hardship programs. For a customer to access assistance through a hardship program, their retailer assesses whether they are considered as being 'in hardship' or not. If a customer is deemed to be 'in hardship' they are then typically referred to as a 'hardship customer'.[4] Only hardship customers have access to hardship programs.

The inquiry found that there is no objective definition of 'hardship'. Rather, customers experience different types of payment difficulties along a continuum. While the causes of payment difficulty are unique to individual customers, the types of payment difficulty are not. The distinction between the ***causes*** of payment difficulty and the ***types*** of payment difficulty is discussed below.

2.2.1 CAUSES OF PAYMENT DIFFICULTY

From time to time, many Victorians will experience difficulty in paying for the energy they have consumed on time, in full, or at all. Financial hardship is a broad and complex issue, and diverse individual circumstances can create a situation where people cannot pay their energy bills. Table 2.1 illustrates some of the temporary, fluctuating, and persistent causes of payment difficulties. Households that earn a limited income or are vulnerable in other ways (for reasons such as ill health, family size or language barriers) may be least able to manage their payment difficulties.

---

[4] The Energy Retail Code v.11 defines a 'hardship customer' as 'a residential customer of a retailer who is identified as a customer experiencing financial payment difficulties due to hardship in accordance with the retailer's customer hardship policy'.

TABLE 2.1 CAUSES OF PAYMENT DIFFICULTY

Category	Characteristic	Causes (examples)
Temporary	The customer does not meet some or all of their energy bills for a short period of time due to: • a change in their income relative to household expenses; or • a temporary increase in usage.	• Medical emergency • Unexpected high energy bill • Job loss • One-off event such as a natural disaster.
Fluctuating	The customer makes sporadic payments as a result of: • managing a range of household expenses on a fluctuating income; or • having a static income but greatly varying energy usage and other expenses.	• Casual employees • Household managing multiple bills on a limited income • Highly variable energy requirements • Customers with intermittent health issues.
Persistent	The customer does not have enough income to cover a range of household expenses.	Household on a limited income, or no income, potentially combined with one or more of the following: • Living in inefficient housing stock • High energy consumption • Household with multiple dependants • Health issues.

2.2.2 TYPES OF PAYMENT DIFFICULTY

Payment difficulties can arise for many reasons and are not confined to low income households. We found payment difficulty occurs along a continuum characterised by increasing duration and level of debt. We also found payment difficulty can be divided into five objectively determined types. Table 2.2 illustrates these five types of payment difficulty.

The first type of payment difficulty arises when a customer who has previously been paying their energy bills first becomes aware they will not be able to pay a particular bill when it is due. At this point, the customer is anticipating payment difficulty and creation of debt is likely. The Commission has categorised this first type of payment difficulty as Type A.

The second type of payment difficulty (Type B) arises when a customer misses a bill payment and then owes money to their energy retailer. At this point, the customer has to both pay the cost of their ongoing energy use and repay their energy debt.

Type C customers are those who have entered an arrangement with their retailer to repay what they owe over an agreed period (a 'payment plan'). Although they can meet the cost of their on-going energy use, they cannot meet their debt repayments in full. In this case, the customer is in arrears as their debt is reducing but not at the agreed rate.

Customers who pay only enough to cover their ongoing energy use without repaying their energy debt experience the fourth type of payment difficulty (Type D). In this case, the customer's debt is static because it is not being reduced but it is also not increasing for as long as the customer pays for their ongoing energy use.

The fifth and most severe form of payment difficulty (Type E) is when a customer is not even paying for the cost of their energy use. In this case, the customer's debt is increasing.

Individual customers move between categories of payment difficulty.

TABLE 2.2 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

In contrast to this categorisation of payment difficulty, the current regulatory framework requires retailers to categorise the customer according to whether they are:

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

This categorisation creates a focus on whether the customer meets that particular retailer's eligibility criteria for entry into its hardship program. Eligibility criteria vary between retailers. 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.

The cause(s) of a customer's payment difficulty may be hard to identify, and if identified, may or may not meet their retailer's definition of 'hardship'. Focusing on whether a customer meets the retailer's definition of 'hardship' and the causes of payment difficulty, rather than responding to the type of payment difficulty causes the retailer to gather information from the customer that is often highly personal in nature. The subjective judgements inherent in these assessments mean that many customers miss out on the assistance they need.

Throughout the inquiry many stakeholders highlighted that customers do not consider themselves as being in 'hardship', much less refer to themselves in these terms. Stakeholders also observed that such labels can stigmatise customers (see section 3.3.1), discouraging customers in need from engaging with their retailer.

The causes of payment difficulty are many and varied, but, as shown in table 2.2, the types of payment difficulty can be objectively determined using just three pieces of information about a customer. Importantly, a retailer already has access to this information, which consists of:

- the amount the customer is required to pay at any point in time;[5]
- the customer's actual payments; and
- the total amount a customer owes to the retailer.

2.3 OUTCOMES OF THE CURRENT REGULATORY FRAMEWORK

This section summarises the Commission's findings on customer energy debt and disconnection – that is, the outcomes of the current regulatory framework in practice.

[5] The amount a customer is required to pay is determined by their energy use and terms of their contract.

2.3.1 DEBT

At 29 July 2015, customers facing payment difficulties owed retailers an estimated $50 million.[6] Of this amount, the 23 000 customers participating in hardship programs owed approximately $37 million, or 74 per cent of the total.[7] [8]

The average customer debt at entry to a payment plan outside a hardship program was $620. Across retailers, this level ranged from $331 to $1787. At the time the research was undertaken for the inquiry, customers on these payment plans had reduced their debt by approximately 33 per cent since entry, from an average debt on entry of $620 to an average current debt of $414. However, the level of success of payment plans to reduce debt varied significantly across retailers (table 2.3).

TABLE 2.3 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

[6] 'Customers facing payment difficulty' was defined as customers on payment plans or in hardship programs.

[7] At 29 July 2015 there were approximately 32 000 customer accounts in the hardship programs of the nine retailers that participated in our research. The 32 000 accounts were a combination of electricity and gas accounts, representing approximately 23 000 customers.

[8] The $50 million estimate excluded customer debt that retailers might have written off or sold to third parties. Early in this inquiry, one retailer informed the Commission that it had recently sold $8 million of debt to third parties. The overall amount of customer debt for energy was therefore likely to have been significantly more than $50 million.

Table 2.3 shows that payment plans under hardship programs are often not successful in reducing the level of customer debt. In fact, on average, customer debt is more likely to **increase** while a customer is participating in a hardship program. For the nine retailers in our research, the average current debt for customers in payment plans through hardship programs was $1074, compared with the weighted average debt on entry of $947; an increase of $127.

These findings indicate that retailers' assistance to customers experiencing the most severe payment difficulties (that is, those in hardship programs) is insufficient for those customers to avoid the accumulation of further debt and repay the debt they owe.

2.3.2 DISCONNECTION

In 2013-14, 58 503 customers were disconnected for non-payment of energy bills. Disconnection rates varied significantly across retailers.[9]

Customers cannot be disconnected while participating in a hardship program. Of the 58 503 customers disconnected for non-payment in 2013-14, 1569 customers were disconnected within 12 months of exiting a hardship program.[10]

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

- disconnections of customers who had not previously been on payment plans or hardship programs rose 136 per cent, from 17 976 to 42 358
- disconnections of customers who had previously been on payment plans rose 37 per cent, from 10 341 to 14 204
- disconnections of customers who had previously been in hardship programs rose 202 per cent, from 642 to 1941.

We were unable to reach definitive conclusions about why disconnections have increased. Possible reasons include changes to retailers' internal policies and practices and remote disconnection enabled by the introduction of smart meters.

---

[9] After the Commission's preliminary findings from the November 2015 compliance audit, a large retailer updated its reporting methodology. This then required data to be resubmitted, resulting in changes to the figures presented in the draft report.

[10] Preliminary performance data from the 2014-15 period indicate that this figure increased significantly.

Overall, we found the assistance provided to customers is often too little, too late. By the time many customers are offered assistance, their debt is too large to be addressed by the assistance that retailers provide. In other words, retailers' efforts may be doing little to alleviate customers' risk of disconnection.

2.4 ASSISTANCE PROVIDED BY RETAILERS

The current regulatory framework permits significant discretion to retailers in the way they choose to assist customers experiencing payment difficulties. This discretion has resulted in significantly different experiences and outcomes for customers in otherwise similar situations. There is variation in both how customers access assistance and what assistance is provided, including the terms and conditions on which assistance is provided and on which it is withdrawn.

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

Retailers are required to publish their hardship policy on their websites. Some policies are easier to find than others. Some retailers have a hardship link available in the footer menu, or under a 'Help' tab, or located in a 'Paying your bill' section of their website. Other retailers display their hardship policy under sections called 'Terms, prices and regulatory information', 'The legal stuff' or 'Resources', which makes them more difficult to locate.

This section summarises the inquiry's findings on how customers gain access to assistance from their retailer and what assistance they actually receive.

2.4.1 ELIGIBILITY CRITERIA

Eligibility for assistance varies across retailers because the regulatory framework provides retailers with broad discretion in defining the criteria that apply.

There are two sources of this broad discretion. The first is the obligation on retailers to provide at least two payment plans to customers experiencing payment difficulties without sufficient regulatory guidance about the terms and conditions on which those plans are offered. The second is the requirement that retailers assess a customer's capacity to pay (to determine their eligibility for assistance) without any regulatory guidance about the form of that assessment. Such discretion was provided to give retailers scope to innovate and tailor their assistance programs so they can deliver the programs as efficiently as possible. Ten years of experience shows that this open-ended discretion has led to highly variable practices by retailers and inconsistent outcomes for customers.

USE OF INDICATORS

Eight of the nine retailers surveyed use 'indicators' to identify customers who may require assistance. The indicators typically relate to information about a customer's financial or personal circumstances. Examples include a change in employment status, illness or disability. The presence of an indicator is used by these retailers to identify customers who may be experiencing 'hardship'. This in turn prompts an internal business decision about whether the customer should be transferred to the hardship program, or whether the customer can repay their debt on a short-term payment plan outside the hardship program.

ACCESS TO ASSISTANCE

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

Five of the retailers determine the customer's 'capacity to pay' from what the customer tells them about the amount of debt that they can afford to repay, and over what timeframe. These five retailers look at the customer's ability to repay the debt in a specified time frame (typically less than 12 months) as their primary consideration for transferring a customer to the hardship program. If a customer does not appear able to repay their debt in that time period, then they are transferred to the retailer's hardship program.

The other four surveyed retailers require significant financial and personal information from customers to decide whether to provide those customers with access to their hardship programs. Typically, they gather this information via an income and expenditure tool. They then use the information to determine whether to transfer that customer to the hardship program.

This approach requires customers to provide potentially sensitive and detailed financial information, which may include how much they earn and how much they spend on other household expenses such as rent, food and children's expenses.

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

Retailers also use the capacity to pay assessment process to make judgments about whether a customer has the capacity but not the intention to pay.[11] If a customer is assessed as having the capacity but not the intention to pay, then a retailer will proceed with its usual credit management processes, possibly leading to disconnection and/or debt collection activity.

The Commission's 2004 paper on disconnections highlighted the problems associated with assessing a customer's capacity to pay. At that time, the Commission noted the regulations did not include an objective test for assessing capacity to pay, adding 'it is doubtful whether such a test could be developed or would be appropriate'.[12] That conclusion remains true today.

Stakeholders also commented that, in their experience, customers are assessed for eligibility through a range of other criteria.

---

[11] 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.

[12] Essential Services Commission 2004, *Disconnections and capacity to pay report on energy retailers' performance*, October, p. 4.

Kildonan UnitingCare noted, for example:

> *It has been Kildonan's consistent experience that one major and one second tier energy retailer have a standard practice of refusing vulnerable customers access to their hardship programs if they do not have a health care card, even though this is not the only criteria for entry to a hardship program.*[13]

Whether a customer is offered a payment plan or transferred to a hardship program depends on each retailer's internal policies and practices. Energy consumers as a whole are not being given consistent access to assistance.

2.4.2 FORM OF ASSISTANCE PROVIDED

Retailers have significant discretion to determine the form of assistance to offer customers experiencing payment difficulty. We found that the form of assistance offered primarily relates to whether the customer is in the retailer's hardship program, rather than the customer's type of payment difficulty.

In 2013-14, 33 673 Victorian customers participated in hardship programs, an increase of 40 per cent over the previous five years. The proportion of a retailer's customer base in a hardship program ranged from 0.1 per cent for one retailer to 1.2 per cent for another. The provision of support through hardship programs varies significantly across retailers and across years, which external factors cannot explain. We attribute this variability to differences in, and changes to, retailers' internal policies and practices.

Table 2.4 compares the options offered to customers on hardship programs with the options offered to customers only on payment plans.

[13] Kildonan UnitingCare 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, Submission to Commission issues paper, May, p. 12.

TABLE 2.4 COMPARISON OF ASSISTANCE POTENTIALLY AVAILABLE TO CUSTOMERS EXPERIENCING PAYMENT DIFFICULTY

Support that may be offered	To PAYMENT PLAN customers	To HARDSHIP PROGRAM customers
Concession check	7 of 9 retailers	All 9 retailers
Utility Relief Grant	7 of 9 retailers	All 9 retailers
Tariff review	5 of 9 retailers	All 9 retailers
Payment deferral	All 9 retailers	None of the 9 retailers
Bill smoothing	7 of 9 retailers	None of the 9 retailers
Payment plan	All 9 retailers	All 9 retailers
Incentive payments[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

While the majority of retailers provide customers with Utility Relief Grant forms and may check for concessions eligibility, only five out of the nine retailers offer a tariff review to customers on payment plans and even fewer refer customers to a financial counsellor. Although six of the nine surveyed retailers said they offer energy efficiency audits to customers in their hardship programs on a case-by-case basis, in practice only 464 audits were conducted in 2013-14 (see figure 2.3).

The degree of regulatory obligation varies for the different assistance measures. Some of the assistance measures listed in table 2.4 are provided with no regulatory requirement for the retailer to do so. For example, those retailers who provide incentive payments do so based solely on their own commercial considerations.

In undertaking the analysis shown in table 2.4, we do not suggest all retailers should provide all these measures to all relevant customers. A regulatory framework

[14] An incentive payment is defined as where the retailer agrees to ‘match’ a customer’s payments in some form.

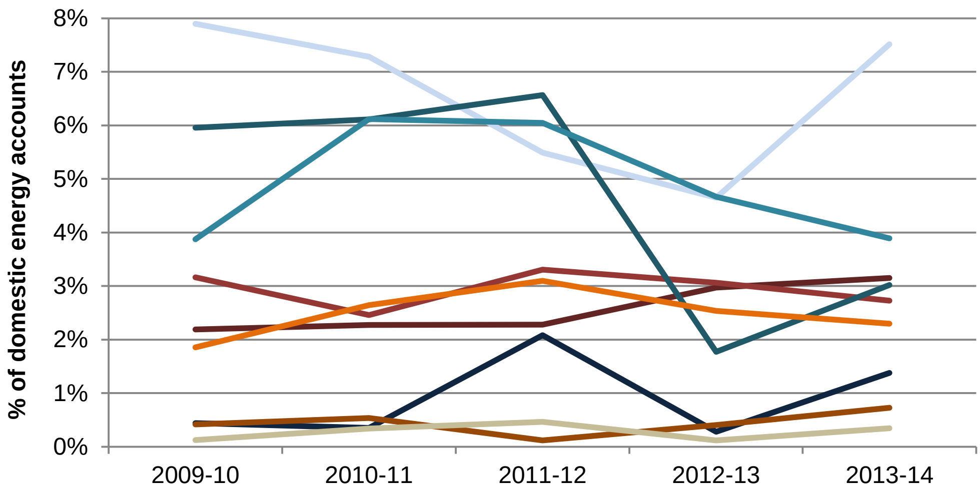
addressing payment difficulties inevitably has to define the commercial limits of the obligations that it can reasonably impose on service providers.

PAYMENT PLAN OVERVIEW

Payment plans are the primary mechanism that retailers use to assist customers experiencing payment difficulties. 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. The proportion of customers being offered payment plans varies notably across retailers. Figure 2.1 illustrates this variation for the nine retailers in our research and shows changing participation over time. [15]

FIGURE 2.1 PROPORTION OF ALL RESIDENTIAL CUSTOMERS ON PAYMENT PLANS – NINE RETAILERS

2009-10 to 2013-14



[15] Data for figure 4.2 come from the Commission's *Comparative performance report—customer service* (to provide a view over time, rather than a snapshot) and not from the data received from the Commission's recent survey.

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

In 2013-14, an average of 132 213 customers were on payment plans each month.[16] In 2009-10 this figure was 167 128, representing an overall decrease of 21 per cent over six years. The proportion of total customers on payment plans in 2013-14 was 3.5 per cent, compared to 4.1 per cent in 2009-10. But the proportion ranged for each retailer; in 2013-14 it ranged from 0.5 to 2 per cent for eight retailers and up to 7.5 per cent for one of Victoria's largest retailers.[17]

The internal policies and procedures that determine whether a customer is offered a payment plan include whether and how a retailer assesses a customer's capacity to pay, and how the retailer applies eligibility criteria. We found internal policies and practices vary significantly across retailers, reflecting previous findings by the Energy and Water Ombudsman (Victoria) (EWOV).[18] 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

Retailers determine the terms and conditions of payment plans, including the instalment amount and frequency, and, consequently, the duration of the plan. It is therefore unsurprising that our research revealed considerable differences in the design and duration of payment plans. Across all surveyed retailers, no relationship is evident between the size of customer debt and the payment plan duration.

We would expect that a fair and reasonable payment plan should be of a duration that is proportionate to the size of the debt to be repaid. However, two surveyed retailers have all of their customers (outside hardship programs) on a payment plan of a single duration (table 2.5).

---

[16] Essential Services Commission 2014, *Energy retailers comparative performance report—customer service, 2013-14*, December, pp. 19-21.

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

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

Three surveyed retailers have a range of duration options but most customers are on shorter term plans. By contrast, two other retailers also have a range of duration options but most of their customers are on longer term plans. Two retailers have half of their payment plan customers on plans of more than two years, although the average debt of their customers on payment plans differs significantly ($1512 for one retailer and $411 for the other).

Some surveyed retailers ask for a significant proportion of the debt within the first few months. This practice is consistent with stakeholder experience, with consumer advocates noting that some retailers require upfront payments as a way for a customer to demonstrate an intention to pay. The Consumer Action Law Centre (CALC) raised this in its submission to the Commission's issues paper, noting retailers may require upfront payments for a customer to access a payment plan.[19]

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

> *The fact that unaffordable or unsustainable payment plans is a common feature in EWOV complaints about payment plans suggests that energy retailers are not appropriately assessing their customers' capacity to pay.*[20]

---

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

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

TABLE 2.5 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

It is common practice for retailers to work progressively through an internal menu of payment plan options until reaching an agreement with the customer. In these discussions, customers typically do not know the range of possible options available.

ENERGY MANAGEMENT ASSISTANCE

The legislation requires retailers' hardship policies to include flexible payment options for the purchase or supply of replacement electrical appliances, and provide for an audit of a domestic customer's energy usage (wholly or partly at the expense of the retailer). In practice, customers receive little practical assistance to better manage their energy use.[21] This is despite the fact that customers on payment plans and in hardship programs use, on average, more than twice as much electricity as other customers in their postcode.[22] Customers on payment plans use an average of 121 per cent *more* energy than other customers in their postcode, and customers participating in hardship programs use 116 per cent *more* energy.[23]

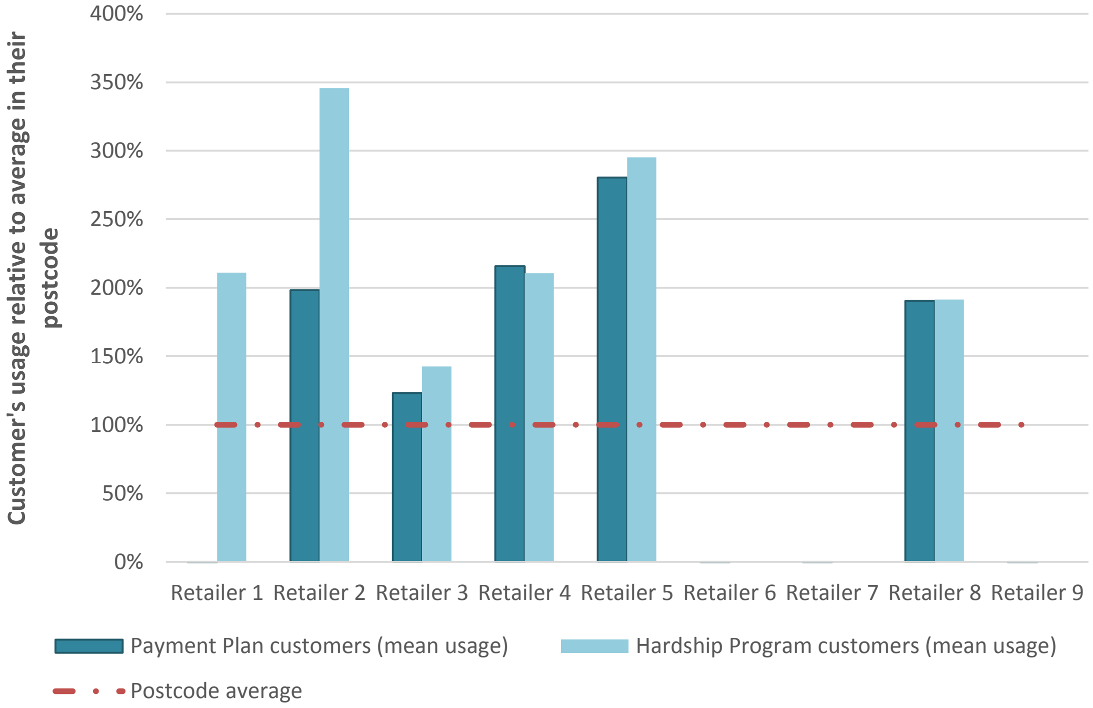
[21] Our preliminary analysis of retailer performance data for 2014-15 shows that the number of customers provided with assistance to audit their energy use fell significantly.

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

[23] Research for this inquiry compared energy consumption of customers on payment plans and in hardship programs with the electricity consumption benchmarks prepared for the Australian Energy Regulator. Those benchmarks are

Figure 2.2 presents the energy usage of customers experiencing payment difficulties relative to average consumption. Three surveyed retailers were unable to provide the consumption information at postcode level.

FIGURE 2.2 AVERAGE ELECTRICITY USAGE OF CUSTOMERS EXPERIENCING PAYMENT DIFFICULTY
Relative to the average in their postcode



As part of their regular reporting to the Commission, retailers state the number of energy efficiency field audits and replacement appliances that they provided to customers on their hardship program in the previous period.[24] Retailers also report they provide some energy efficiency advice over the telephone, but there is no consistency of views about the effectiveness of these telephone audits.[25]

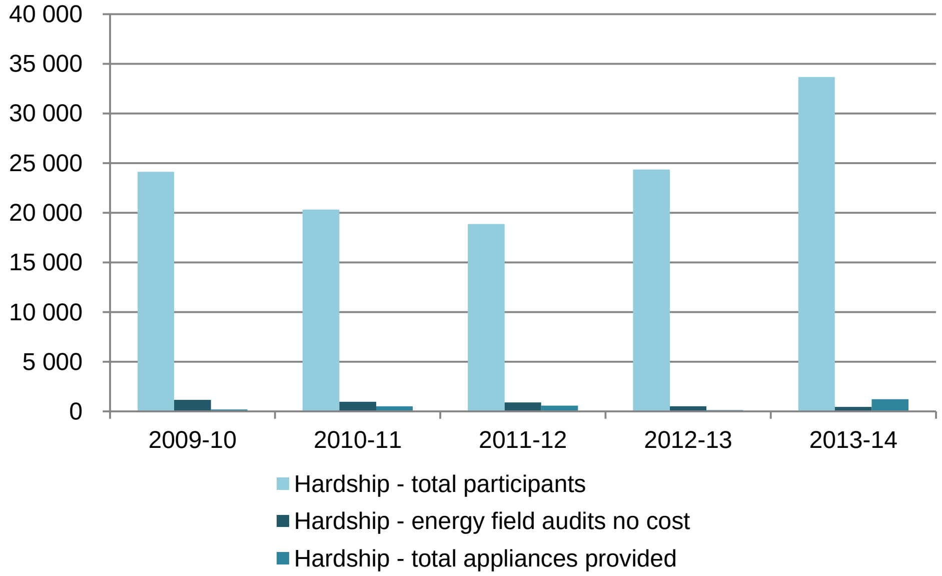
available for electricity consumption only, so gas was not compared. Some retailers compared gas consumption for customers on payment plans and in the hardship program within their own customer base, which provided similar results.

[24] The Commission publishes this information annually in its *Energy retailers comparative performance report—customer service*.

[25] AER 2015, *Review of energy retailers' customer hardship policies and practices*, Melbourne, p. 19.

Figure 2.3 illustrates the amount of energy efficiency assistance retailers provided to customers participating in their hardship programs between 2009-10 and 2014-15. Clearly, a diminishing proportion of hardship customers receives energy efficiency assistance.

FIGURE 2.3 ENERGY EFFICIENCY ASSISTANCE PROVIDED TO CUSTOMERS IN HARDSHIP PROGRAMS



The Australian Energy Regulator (AER) noted few energy efficiency field audits may be carried out because customers perceive the audits as inconvenient and invasive and retailers prefer to provide energy efficiency advice over the telephone.[26] Field audits are costly to retailers and not always considered effective. Simply Energy noted:

> *Audits and energy efficient appliances do not automatically mean that a hardship customer's usage will decline.*[27]

EWOV suggested not all retailers provide energy advice, even though an understanding of energy use is fundamental to addressing energy affordability and exposure to debt.[28]

---

[26] AER 2015, *Review of energy retailers' customer hardship policies and practices*, Melbourne, p. 19.

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

2.4.3 ALIGNING INCENTIVES

Throughout the inquiry, both retailers and consumer groups emphasised the importance of consumers and retailers working together to address payment difficulties.

Retailers argued that there is a natural incentive to support customers experiencing payment difficulties as they will repay the retailer with their loyalty.[29] AGL, for example, submitted a natural incentive exists for retailers to:

> *… proactively identify customers that may be experiencing payment difficulties and [support] customers that are experiencing hardship.*[30]

However, this view is not held by all stakeholders, with Kildonan UnitingCare suggesting that some retailers try to steer customers who should rightfully be in hardship programs *away* from these programs:

> *…there seems to be a preference among some retailers to keep customers who identify that they are financially vulnerable away from hardship programs and deal with the debt issue either through resolution or credit teams.*[31]

Further, reports from consumer groups and financial counsellors have highlighted the difficulties customers have encountered when trying to engage with their energy retailer.[32]

The Commission has found that the regulatory framework creates financial incentives for retailers to limit a customer's access to assistance, which when combined with the

---

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

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

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

[31] Kildonan UnitingCare 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, Submission to Commission issues paper, May, p. 18.

[32] Kildonan UnitingCare 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, Submission to Commission issues paper, May, p. 18; Inner South Community Health 2015, *Submission to the Essential Services Commission Inquiry into the financial hardship arrangements of energy retailers*, Submission to Commission issues paper, May.

extensive discretion over what assistance is provided, can result in customers not receiving the assistance they need. Indeed, the prohibitions on disconnection and debt recovery for customers in hardship programs, combined with the cost of supporting customers in these programs, suggest that there are commercial incentives for retailers to limit access to hardship programs.

Customers are also insufficiently incentivised to engage with their retailer when they need support. A range of submissions highlighted retailers' difficulty in engaging with customers who have missed payments. The level of energy debt is a significant contributor to this difficulty. That is, once a customer's energy debt becomes out of proportion to their available income, the customer has limited incentive to engage with their retailer, unless they believe the retailer will provide realistic options for managing their way out of the debt. For this reason, stronger incentives are needed to encourage customers experiencing payment difficulty to work with their retailer.

2.5 COMPLIANCE AND ENFORCEMENT

This section sets out the Commission's findings in relation to retailer compliance and the enforcement of the current framework through Wrongful Disconnection Payments.

2.5.1 COMPLIANCE

In the AER's 2015 review of energy retailers' customer hardship policies and practices it found that:

> *…many community concerns about hardship assistance and payment plan affordability are not symptomatic of widespread noncompliance with the Retail Law and Rules.*[33]

Audits of retailers undertaken by the Commission during 2015 have confirmed that there is no widespread non-compliance with the hardship provisions.

[33] AER 2015, *Review of energy retailers' customer hardship policies and practices*, Melbourne.

However, as outlined previously, while there are obligations on retailers to offer assistance, these are broadly defined and do not provide minimum standards against which compliance can be assessed. Equally significantly, the Commission found that the elements of the regulatory framework that affect whether a customer gets access to assistance, and what assistance they get, cannot be enforced because they rely on retailer discretion.

2.5.2 ENFORCEMENT

The wrongful disconnection provisions of the Acts are designed as an extra incentive for retailers to ensure they follow precisely the required procedures before proceeding to disconnection.[34] Wrongful disconnection payments (WDPs) are payable to a customer when a retailer disconnects a customer's supply without complying with the terms and conditions of their contract (as governed by the Code).[35]

According to EWOV, the number of wrongful disconnection cases per year that resulted in settlement involving a payment to a disconnected customer, increased from 2564 cases in 2009-10 to 9032 cases in 2013-14 (an increase of 252 per cent). Figure 2.4 presents the trend in the number of payments made after EWOV assessments between 2005 and 2015.

---

[34] Section 40B of the *Electricity Industry Act 2000* (Vic.) and section 48A of the *Gas Industry Act 2001* (Vic.) outline the obligations regarding wrongful disconnection payments.

[35] The *Energy Legislation Amendment (Consumer Protection) Act* 2015 increased the daily rate of compensation payable to customers for wrongful disconnection from $250 to $500, without any change to the compensation cap of $3500. As a result, the maximum compensation under the cap is for a disconnection of seven days, compared with 14 days previously.

FIGURE 2.4 WRONGFUL DISCONNECTION PAYMENTS

Paid by retailers without referral to the Commission for formal decision.

For the first five years of the wrongful disconnection scheme, the average number of payments per month was fewer than 20. Between mid-2009 and mid-2011, the average climbed from 20 to close to 60 per month. In early 2014 the average rose significantly, to 88 payments by mid-year. Between December 2013 and June 2014, one retailer made over 750 wrongful disconnection payments through EWOV due to a series of systemic compliance issues. WDPs as a proportion of total disconnections have fluctuated from 1 per cent to 3 per cent since 2008, with peaks during periods where EWOV resolved systemic issues with retailers.

The total volume of WDPs, and the volatility in WDP numbers, may in part be due to the lack of objective standards against which retailers and consumers can determine whether a disconnection was in fact wrongful. The nature of the Wrongful Disconnection decisions referred to the Commission in past few years has highlighted the subjective nature of the judgments that are involved. Both EWOV and retailers have sought clarification of relevant standards from the Commission through these decisions.

2.6 CONCLUSION

We found that while the causes of payment difficulty are unique to individual customers, the types of payment difficulty are not. We also found wide variability in the way that retailers assist customers with payment difficulties in practice. This is because the current regulatory framework permits significant retailer discretion to determine who gets what assistance and when they get it. Eligibility for assistance relies on retailers' subjective assessments of whether a customer is 'in hardship' or has the 'capacity to pay'. We also found that some customers incur a large amount of debt before retailers offer assistance, and by then the assistance is too little, too late.

The Commission has concluded that the current framework does not meet many of the principles of good regulatory practice, including the principles established for the inquiry set out in chapter 1. In particular, the current framework is ineffective in helping many customers avoid debt and disconnection. The framework has also led to a lack of consistency, transparency and clarity in retailer practices, which can reduce consumer confidence in the protection and assistance that retailers will provide.

The importance of customers and retailers working together to address payment difficulty was highlighted throughout the inquiry by a number of stakeholders. However, there are insufficient incentives within the regulatory framework to encourage customers and retailers to work together to avoid and repay customer debt.

Our findings also indicate that there are certain practices that can deliver better outcomes for customers, such as:

- identifying and providing early assistance to customers experiencing payment difficulty
- applying payment plans that have a duration that is proportionate to the level of debt and ***type*** of payment difficulty of the customer (to improve the likelihood that debt will be repaid)
- providing customers with practical in-home assistance for energy management
- establishing partnerships with government and the welfare sector to address the underlying ***causes*** of payment difficulty
- having unambiguous conditions that limit the use of disconnection as a last resort measure, and clear disconnection procedures that can be strictly enforced.

The next chapter summarises what the Commission considers to be the main issues that need to be addressed in order to reform of the framework. It includes issues raised by stakeholders, both in submissions and working groups established by the Commission after the release of our draft report. It also provides an account of our response to these issues.

3 ISSUES AND RESPONSE

Immediately following the release of our draft report in September 2015, the Commission established three technical working groups comprising representatives from energy retailers, consumer groups, financial counselling organisations and the Energy and Water Ombudsman Victoria. Each working group met several times, with each meeting lasting up to three hours. The working groups explored, challenged and debated at length the findings, assumptions and proposals outlined in the draft report.

With each meeting, the Commission's proposed framework evolved to account for the concerns raised and the suggestions made by the working groups. This chapter provides an overview of the issues raised in submissions to the draft report as well as matters subsequently discussed by the working groups.

INTRODUCTION

The Commission's statutory objectives were recently amended to include the objective to promote protections for customers facing payment difficulty. As outlined in the terms of reference for the inquiry, we particularly need to provide confidence that the regulatory framework ensures retailers disconnect customers for non-payment only as a measure of last resort.

Our findings clearly point to the need to strengthen the regulatory framework for customers experiencing financial difficulty. The Commission considers that the regulatory framework needs reform to:

- 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 without the retailer offering assistance to manage the payment difficulty
- 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
- provide a safety net for customers in the most severe payment difficulty, to help them to remain connected to their energy supply.

As discussed in chapter 2 (section 2.2) we found that customer payment difficulties are often (but not always) related to wider social issues. The regulation of energy payment difficulty complements a range of existing social policies and programs that aim to address these issues. However, energy regulation cannot solve the underlying causes of payment difficulty. The Commission therefore considers that the regulation of payment difficulty can only complement, not substitute for, social policies and programs.

While we found the causes of payment difficulty are unique to individual customers, the types of payment difficulty are not. As a result, we consider the assistance that retailers are required to provide should be based on an objective assessment of payment difficulty, not on the indeterminate subjective assessment of customer 'hardship' and 'capacity to pay' that underpins the current framework.

We found that the five types of payment difficulty outlined in chapter 2 are comprehensive, objectively measurable and capable of simple determination, using data already available in retailers' customer account systems. We also found that not all customers experiencing these types of payment difficulty are currently receiving assistance.

The Commission considers that all customers experiencing payment difficulty should receive assistance, and that the assistance should be staged and structured to ensure that it is proportionate to the payment difficulty.

This chapter summarises the range of stakeholder views on these matters and illustrates them through a representative sample of extracts from stakeholder submissions. Taking these views into account, the chapter also sets out what the Commission considers to be a balanced but effective way forward in reforming the current framework.

The chapter proceeds with a review of the submissions and subsequent working group discussions surrounding the need to reform the regulatory framework (section 3.1). This is followed by a discussion of the matters raised by stakeholders regarding the objectives that should drive the reform of the framework (section 3.2) and then stakeholders' responses to our proposals for implementing those reforms through the regulatory framework (section 3.3). Each section also describes how the Commission has responded to the views of stakeholders.

3.1 THE NEED FOR REFORM

The levels of customer debt and disconnection, the lack of clarity both in what assistance is available and the consistency of the assistance provided, and the fact that there is no widespread non-compliance, have led us to the conclusion that the current framework is no longer fit for purpose.

The current framework focuses on evaluating whether a customer is 'in hardship' and gives the retailer discretion to determine what assistance a customer may receive. These features undermine customers' entitlements to assistance and lead to inconsistent and potentially inequitable outcomes. Stakeholders highlighted such problems with the current framework throughout the inquiry.

For example, AGL submitted that the binary state of a customer either being 'in hardship' or not leads to:

> *…an arbitrary treatment of hardship customers [that]... leads to poor outcomes for some customers that do not clearly fall within either category.*[36]

In its response to the draft report, Red Energy expressed the view that the current regulations are outdated and represent:

> [A] *convoluted and unmanageable set of … regulations … that aren't designed to achieve specific objectives.*[37]

---

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

[37] Red Energy 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October, p. 1.

The Energy and Water Ombudsman Victoria (EWOV) confirmed that in its view:

> *...the existing framework is not working well.*[38]

Frankston City Council said:

> *…the regulatory framework requires reform to in order to better support customers ... to avoid debt and remain connected to essential services.*[39]

EnergyAustralia said:

> *There is a lack of consistency in how customers are assisted by different retailers.*[40]

The Victorian Council of Social Service (VCOSS) considered that the problems are industry wide:

> *…the energy retail industry as a whole performs poorly at [providing] timely and effective responses to people in payment difficulty.*[41]

Our extensive discussions with stakeholders have led us to the view that there is broad stakeholder support and acceptance of the Commission's diagnosis of the problems with the current framework, and also that the information on the operation of the current framework presented in the Commission's draft report provides a good starting point for necessary reform.[42]

---

[38] Energy and Water Ombudsman Victoria 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October, p. 1.

[39] Frankston City Council 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October, p. 1.

[40] EnergyAustralia 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October, p. 8.

[41] Victorian Council of Social Service 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October, p. 5.

[42] See for example Red Energy 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October, p. 2; AGL 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October 2015, p. 4.

The Consumer Action Law Centre (CALC) noted:

> *It is evident from the Draft Report that the Commission has gone to lengths to diagnose the problems facing energy consumers who are experiencing financial difficulty.*[43]

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.

3.2 OBJECTIVES OF REFORM

This section sets out what we consider should be the purpose of the regulation of payment difficulty. It also sets out what we consider to be the relationship between the regulation of payment difficulty and broader social policies.

3.2.1 THE PURPOSE OF REGULATION

Consistent with the finding of the 2005 Hardship Inquiry, and as noted in the Commission's draft report, we consider that the regulatory framework for payment difficulty should have a clear purpose that defines its goals and objectives.[44] That purpose should be:

> **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.**

[43] Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October, p. 1.

[44] Committee of Inquiry into the Financial Hardship of Energy Consumers 2005, *Main report*, September, p. 7.

The focus on debt reflects the fact that debt is the cause of disconnection. Customers who do not have an energy debt, or whose debt is being repaid, do not get disconnected. Debt is also the cause of a range of other legal and practical problems for customers. However, the proposed purpose also recognises the need to help customers who are struggling to avoid or repay energy debt to remain connected wherever possible.

We consider that the current framework cannot contain debt and minimise disconnection, so the objective of reform should be to develop a framework that can do so. A number of stakeholders supported this objective.

The Energy Retailers Association of Australia said it:

> *…believes the objectives of the proposed alternative framework outlined in the Draft Report are appropriate.*[45]

Frankston City Council stated that it provides in principle support for 'the objectives of avoiding debt, repaying debt ... and aligning energy consumption with affordability'.[46]

Red Energy considered that setting out the key objective 'is an important step in that it outlines what we are trying to achieve'. Red Energy also supported its intent:

> *…the primary objective of the regulations should be to assist a customer to manage and pay for the energy they consume, and to avoid the accumulation of debt, by aligning that consumption with their affordability.*[47]

Some consumer groups were concerned that a focus on avoiding and repaying debt could weaken the retailers' focus on facilitating continuity of supply.

---

[45] Energy Retailers Association of Australia 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October, p. 1.

[46] Frankston City Council 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report,* October, p. 1.

[47] Red Energy 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report,* October, p. 2.

For example, CALC said:

> *…this focus on avoidance and repayment of debt diminishes a focus on facilitating continuity of supply to domestic customers experiencing financial hardship.*[48]

The Consumer Utilities Advocacy Centre (CUAC) went further, stating that:

> *…the overwhelming objective should be to facilitate continuity of supply to domestic customers experiencing financial hardship.*[49]

These consumer groups proposed a prohibition on disconnection of customers experiencing payment difficulty who engage with their retailer.[50] This principle would apply irrespective of whether a customer is paying for their energy use or repaying their debt.

It is not clear how the advocates of such a policy expect customers' accounts to be settled. (As noted in our draft report already many customers are in arrears by many thousands of dollars.) We are unclear whether there is an expectation that government should provide funds to retailers to cover these debts, or whether they would be paid for by cross subsidies from higher prices paid by all energy consumers. In any event, such decisions are a matter of policy. They should not be settled through regulatory design. We note that there is no prohibition on disconnection in the relevant industry Acts.

As outlined above, debt is the direct cause of disconnection and our findings clearly show that a failure to address energy debt in its earliest stages can often lead to a debt spiral. We are also concerned about the significant legal consequences that can arise from energy debt. For these reasons, we consider that the proposed purpose of the regulatory framework is consistent with the expectation that disconnection is a last resort, and strikes a balance between the complex problems of debt and disconnection.

---

[48] Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report,* October, p. 2.

[49] Consumer Utilities Advocacy Centre 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report,* October, p. 4.

[50] See for example, Victorian Council of Social Service 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report,* October, p. 7; Brotherhood of St Laurence 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report,* October, p. 13.

We do not agree that the proposed regulatory purpose, and the framework's design outlined in chapter 4, will reduce retailers' focus on facilitating continuity of supply. Indeed, there can be no focus on the continuity of supply without an equal focus by retailers and their customers on managing payment difficulties. This is clearly illustrated by the increasing number of customers who are being disconnected after exiting retailers' hardship programs (see section 2.3.2). We fully agree with the view expressed by many stakeholders during the course of this inquiry that the effective management of payment difficulty requires active assistance from retailers and committed engagement by customers.

3.2.2 RELATIONSHIP TO BROADER SOCIAL POLICIES

A number of submissions proposed that the regulatory framework should focus on the underlying causes of payment difficulty.

Kildonan UnitingCare for example submitted:

> *…the framework's focus on debt, not usage and other underlying issues ...does not address long-term endemic financial difficulty issues that result in the inability for some people to meet ongoing usage costs.*[51]

As outlined in chapter 2, the Commission found that some customers face particular long-term challenges that can result in payment difficulty. We also found that many of these challenges are extremely complex and extend well beyond just difficulty in paying energy bills.

Submissions highlighted, for example, the issues that may contribute to payment difficulty, including family violence,[52] the challenges facing culturally and linguistically diverse (CALD) customers,[53] mental illness and other health issues,[54] the energy

---

[51] Kildonan UnitingCare 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report,* October p. 5.

[52] Women's Legal Service Victoria 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October.

[53] Ethnic Communities' Council of Victoria 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October.

[54] Yarra Valley Water 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October p. 17.

inefficiency of public and private rental accommodation,[55] and unemployment. We note that a range of social policies and programs exist to support customers in these circumstances.

But, during the inquiry many stakeholders called for changes to these social policies. AGL, for example, called for:

> *…a broader revision of the social policy framework.*[56]

CALC considered that when efforts to minimise energy use have been made:

> *...the focus should be on the broader social policy framework to ensure income adequacy and appropriate housing.*[57]

VCOSS recognised the limitations of the energy industry and regulation to address these issues submitting that:

> *…broader social policy initiatives should address accrued debt and unaffordable ongoing usage when it exceeds the capacity of the energy industry and regulatory framework to do so.*[58]

EnergyAustralia submitted that:

> *Regulatory intervention in the energy sector may have a marginal impact, but cannot ever address the underlying issues facing vulnerable people.*[59]

---

[55] Kildonan UnitingCare, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report,* October p. 16.

[56] AGL 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October, p. 3.

[57] Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report,* October, p. 12.

[58] Victorian Council of Social Service 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report,* October, p. 4.

[59] EnergyAustralia 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, p. 1.

We consider that energy regulation can support the provision of advice and action to improve how customers manage the cost and use of energy, but cannot solve wider causes of payment difficulty

A number of submissions called for the Commission to make recommendations to the Victorian Government on changes to the social policy framework.[60] The Commission considers this role is beyond the scope of this inquiry. However, we will share our findings with other government agencies, and work with those agencies to assess opportunities to further align and improve how the regulatory framework integrates with relevant instruments of social policy.

3.3 IMPLEMENTING THE NECESSARY REFORM

As discussed in the previous sections, there has been strong support for the need to reform the current regulatory provisions assisting customers in financial hardship. Likewise, there has been little disagreement with the overall objectives that should guide these reform efforts. Views among stakeholders differed most when it came to discussing how these reforms might be implemented through amendments to the regulatory framework. This section outlines the main areas where views differed and our response to those views.

In light of the Commission's findings and feedback from stakeholders, we consider that reform of the current regulatory framework is required to:

- Provide an objective set of criteria for how customers experiencing payment difficulties are identified (section 3.3.1)
- Improve the scope, certainty and transparency of the minimum level of assistance retailers are required to provide to their customers, while providing retailers with opportunities to innovate beyond these requirements (section 3.3.2)
- Ensure that there are adequate incentives for customers and retailers to work together to address payment difficulties (section 3.3.3)

[60] For example see Victorian Council of Social Service 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, p. 4; Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, p. 15; and Kildonan UnitingCare, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, p. 4.

- Set out clear and enforceable standards for disconnection and reconnection (section 3.3.4).

Each of these is discussed in the sections below.

3.3.1 IDENTIFYING CUSTOMERS IN NEED

Our findings indicate that the current framework is not providing certainty that a customer experiencing payment difficulty will be provided with proportionate assistance. The Commission considers that this uncertainty is due to the reliance in the current framework on inherently subjective program eligibility assessments of whether a customer is 'in hardship' or has the 'capacity to pay'. The duration and terms and conditions of assistance are also at the retailers' discretion. For these reasons, the protections afforded to customers 'in hardship' are both elastic and porous, undermining customer confidence and providing retailers with unclear obligations.

To comply with the current framework, some retailers consider that they must request customers to provide them with very personal information that has little (or nothing) to do with the primary nature of the relationship, namely the supply and consumption of energy.

Alinta submitted that:

> *…commonly referred to terms such as 'hardship', 'vulnerability' and 'capacity to pay' cannot be effectively defined for the purpose of regulation.*[61]

Removing the need for retailers to make subjective assessments would also eliminate the impact of labelling energy customers according to their financial and personal circumstances.

[61] Alinta Energy 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October, p. 2.

The Energy and Water Ombudsman NSW noted:

> *The proposed framework provides early interventions to avoid debt accumulation. This process removes the stigma attached with the hardship label.*[62]

VCOSS submitted that many of its members confirm the problems with the current framework in practice including:

> *…use of the 'hardship' label to control access to hardship assistance, intrusive personal questions to determine eligibility...and inappropriate capacity-to-pay assessments.*[63]

CUAC indicated support for:

> *An approach that de-stigmatises consumers (by not labelling them as 'in hardship') and that does not require consumers to prove their financial circumstances.*[64]

Research undertaken in 2014 into the operation of hardship policies in the banking, energy, water and telecommunications sectors, highlighted that customers do not use the term 'hardship'.[65] The label is unwanted and imposed by others, including regulators, retailers and advocates.

Given the regulatory framework is based on such inherently subjective terms, it is difficult to enforce. And, while there is no evidence of widespread retailer non-compliance with the current framework, we present the evidence in our draft report (summarised in this final report in chapter 2) of little correlation between retailer compliance and customer outcomes.

---

[62] Energy and Water Ombudsman NSW, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October, p. 7.

[63] Victorian Council of Social Service 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report,* October, p. 3.

[64] Consumer Utilities Advocacy Centre 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report,* October, p. 2.

[65] Financial Counselling Australia 2014, *Hardship policies in practice: a comparative study*, Australian Communications Consumer Action Network, p. 4.

CALC recognised this problem:

> *We acknowledge the difficulties involved for a regulator enforcing a requirement to assess a customer's capacity to pay.*[66]

Some stakeholders (including CALC) nonetheless consider some form of hardship or 'capacity to pay' assessment should remain part of the regulatory framework[67] for reasons that include the following.

First, although many retailers accept the amount that a customer agrees to pay as the measure of their 'capacity to pay', some retailers believe that they should be able to make their own detailed assessment. One of their key reasons for this practice is to detect customers who are 'gaming' the system, namely, those who have the financial resources to pay but choose not to do so.

In addition to the inherent subjectivity involved in such assessments, the Commission is concerned that the use of the term 'hardship' involves making value judgments about customers. As the 2014 research found:

> *...two competing value judgments shape the way hardship programs operate in different businesses. These are: 'people want to pay' versus 'people are out to avoid their obligations (or they're paying everyone else but us)'.*[68]

We acknowledge that there are some customers who may attempt to obtain access to energy without paying. However, we consider that retailers have more effective ways of preventing 'gaming' than by the subjective and intrusive assessment and labelling of customers.

A second reason given for retaining the term 'hardship' in the regulatory framework is that it can have a broad definition that would apply to a range of customer circumstances.

---

[66] Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report,* October, p. 8.

[67] For example see Kildonan UnitingCare 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report,* October, p. 6.

[68] Financial Counselling Australia 2014, *Hardship policies in practice: a comparative study*, Australian Communications Consumer Action Network, p. 4.

The Ethnic Communities' Council of Victoria (ECCV), for example, submitted:

> *For advocates, it is important to be able to categorise CALD consumers [as] experiencing hardship because of that category's relationship to broader legislation, codes of practice and financial institute policies.*[69]

The 2014 research found that the use of the term 'hardship' in the banking sector is not defined by regulation but by a voluntary industry code of practice. Further, assessing a customer's financial capacity is part of the core business of the banking and financial services sector, which is not the case in the energy sector.

The 2014 research also highlighted the impact of the use of the term hardship on business practices:

> *These value judgments flow through in many ways, for example in the use of language (whether people experiencing hardship are 'customers' or 'debtors') and in requirements for 'proof' of financial hardship.*[70]

We are concerned that the regulatory framework may be causing retailers to indirectly alter the nature of their primary relationship with customers, in such a way that the relationship focuses on financial risk and credit management rather than energy supply and use.

Some consumer groups nonetheless called for the regulatory framework to continue to require retailers to look into a customer's overall financial circumstances, and to require customers to comply with requests for detailed personal information for such assessments.

However, as outlined in chapter 2, while the ***causes*** of payment difficulty are unique to individual customers, we found that the ***types*** of payment difficulty are not. We also found that all types of payment difficulty can be established simply and objectively using standard customer account information (section 2.2 2).

---

[69] Ethnic Communities' Council of Victoria 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report,* September, p. 4.

[70] Financial Counselling Australia 2014, *Hardship policies in practice: a comparative study*, Australian Communications Consumer Action Network, p. 4.

By contrast, we found that the existing framework was unclear, uncertain and unenforceable, because it is largely based on retailer discretion and subjective assessments.

The Commission does consider that a discussion between the customer and retailer about what the customer can pay is an essential part of the process of tailoring retailer assistance to the customer's needs. But it is neither desirable nor necessary to use inherently subjective assessments of a customer's 'capacity to pay', 'willingness to pay', or 'hardship' status to establish a customer's basic entitlement to assistance with their payment difficulty.

As a final point, customers may share information on income, spending patterns and information about their personal circumstances, but we believe that it should be their choice to do so, not a requirement of the regulatory framework.

3.3.2 ASSISTANCE REQUIRED

This section sets out the scope of assistance that we consider retailers should provide to customers experiencing payment difficulty. It also describes the need for clarity and transparency in the available assistance for customers in each type of payment difficulty.

SCOPE OF ASSISTANCE

The Commission's research into retailers' current practices showed that retailers use payment plans as their primary mechanism to assist customers to repay their debt. However, we also found that payment plans alone do not lower the risk of recurrence of payment difficulties for many customers.

Retailers are required by legislation to assist customers to understand and manage their energy use. However, we found that the provision of assistance is almost entirely at retailers' discretion. We also found that the assistance available varied across retailers and seemingly between regional and metropolitan areas.

By highlighting that customers on payment plans use, on average, double the amount of energy used by other households in the same postcode, our draft report underscored the central importance that such assistance may be able to play in alleviating payment difficulty.

As outlined above, retailer assistance to customers experiencing payment difficulty complements wider social policy objectives. The Commission considers that for customers with the most severe payment difficulties in particular, retailer assistance should involve making links to, and where possible integration with, the wider assistance provided through programs administered by relevant government and non-government agencies.

We therefore consider that customers experiencing payment difficulty should be able to access three elements of assistance, as part of a minimum set of safety net requirements:

- **payment plans** that enable customers to pay for their energy use and progressively repay any accrued debt
- **energy management** information, advice and assistance to reduce the cost of energy consumption
- **information and referral** to other government and non-government programs of assistance.

These three elements are the building blocks of the customer safety net described in chapter 4.

CERTAINTY AND TRANSPARENCY

The Commission considers that greater certainty and transparency of retailer obligations is necessary to ensure that retailers can provide assistance efficiently and effectively to customers in payment difficulty.

Referring to its 2015 report *A closer look at affordability*, the Energy and Water Ombudsman Victoria noted the report said:

> *… "sometimes... contact centre staff do not make referrals to their company's hardship team or specialists, despite indications of payment difficulties", and described customers' experience of retailers imposing barriers to entry to hardship programs, such as requiring that the customer first see a financial counsellor.*[71]

---

[71] Energy and Water Ombudsman Victoria 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October, p. 2.

However, some stakeholders opposed increasing certainty through minimum standards.

Origin, for example, stated that:

> *…setting a minimum requirement for all retailers stifles innovation and prevents development of new flexible approaches over time.*[72]

Alinta observed that:

> *Any framework needs to strike a balance between a defined procedural process and the flexibility to innovate in order to deliver on objective based outcomes.*[73]

The Commission considers that the absence of minimum standards is a major cause of the inconsistency and uncertainty of the current framework. The current framework provides retailers with very broad discretion (including discretion to innovate) but in doing so, it provides customers with little clarity or certainty. We have concluded, therefore, that some rebalancing is required, and that minimum standards should be defined for the assistance that customers can expect from their retailer. Such standards can be defined in a manner that does not limit best practice or innovation.

Standards should be defined for the following types of assistance:

- **self-service** options to encourage and assist customers to self-identify and manage their payment difficulty
- **immediate assistance** to limit the capacity for a customer to accumulate energy debt without the retailer offering assistance to manage the payment difficulty
- **tailored assistance** to ensure that customers receive the assistance that is matched to their payment difficulty
- **connection support** to provide additional protection from disconnection for customers experiencing the greatest payment difficulty.

---

[72] Origin Energy 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October, p. 1.

[73] Alinta Energy 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October, p. 4.

Chapter 4 sets out details of these types of assistance, along with the minimum standards of assistance that would apply. The minimum standards are structured around the types of payment difficulty being experienced by the customer as defined in chapter 2.

The Energy and Water Ombudsman NSW supported the introduction of staged and structured assistance: ‘staged assistance options with clear obligations is a positive approach (p. 3), going on to say:

> *Overall, the proposed structured assistance ... is an improvement on the current arrangements as it will ensure consistency for customers, regardless of their retailer.*[74]

Alinta also said it: ‘supports the initiative to ensure retailer obligations are as unambiguous as possible’.[75]

FLEXIBILITY AND INNOVATION

A range of stakeholders expressed concern that the proposed regulatory framework set out in the Commission’s draft report was inflexible, overly linear and prescriptive, and provided little room for innovation. This concern arose primarily because the proposal prescribed requirements of both retailers and customers at each stage of the customer’s journey through payment difficulty.

Stakeholders were also concerned that the proposal would require national retailers operating in Victoria to maintain duplicate systems.

The Commission considers that these criticisms had merit, and has taken on board stakeholder feedback in the revision of the proposed framework set out in chapter 4.

Our revised framework is now based on a safety net of minimum protections that must be provided to Victorian consumers. Because the revised proposal does not prescribe how retailers must provide assistance, the framework (as with other jurisdictional protections) can be implemented through adjustments to retailers’ national systems.

---

[74] Energy & Water Ombudsman NSW, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October, p. 4.

[75] Alinta Energy 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, p. 2.

Further, our revised framework does not limit retailers' capacity to innovate above the minimum standards. Retailers also have opportunities for innovation in how they deliver elements of the safety net, such as providing for different ways of meeting retailers' obligations to provide energy management assistance.

3.3.3 INCENTIVES FOR RETAILERS AND CUSTOMERS TO WORK TOGETHER

Following stakeholder feedback on the draft report, the Commission reconsidered the role of financial incentives, fully variable tariffs, supply capacity control and limitations on customer transfer in the proposed framework.

FINANCIAL INCENTIVES

We found that customers in greatest need of financial incentives to pay their energy bills are the least able to access them. For example, many retailers do not provide pay-on-time discounts to customers who are in hardship programs.

There were divided opinions about whether pay-on-time discounts should be available to customers experiencing payment difficulty.

Origin Energy submitted that increasing incentives each time a customer fails to make a payment:

> *…undermines the reason these discounts are offered in the first place to customers who pay their bills on time and in full.*[76]

In cases of more severe payment difficulty, EnergyAustralia supported pay-on-time discounts:

> *…supports the proposal to require retailers to pass on any pay on time discounts or apply "the comparable discount currently offered by that retailer".*[77]

---

[76] Origin Energy 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October 2015, p. 6.

[77] EnergyAustralia, 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October 2015, p. 6.

Consumer groups in the Commission's working groups were strongly supportive of providing access for customers experiencing payment difficulty to pay-on-time discounts.

On balance, the Commission considers that to preserve the integrity of pay-on-time discounts as part of the contract between the retailer and customer, discounts can be lost when a payment is first missed, but should be made available again to customers who subsequently meet their payments under the relevant payment plan. How this would apply in practice is set out in section 4.5.

FULLY VARIABLE TARIFFS

In light of the trend for retailers to increase the fixed charges on energy bills,[78] we examined the potential to require retailers to offer customers experiencing payment difficulty a fully variable tariff that could maximise the financial incentive for customers to reduce their energy use.[79]

Stakeholder feedback on the complexity and cost of implementing such a proposal has now led the Commission to the view that, at this stage, fully variable tariffs should not be regulated for customers experiencing payment difficulty.

SUPPLY CAPACITY CONTROL

Supply capacity control is currently prohibited for credit management purposes. Nonetheless, the Commission considered the potential for supply capacity control to play a role in helping those customers in the most severe payment difficulty.

Supply capacity control was strongly opposed by consumer groups, and few retailers expressed a view that it could be a useful addition to the assistance that they provide. We thus consider that supply capacity control should not be included, at this stage, in the minimum safety net.

---

[78] Essential Services Commission 2016, *Retailers comparative performance report — pricing 2014-15*, January, pp. 38-39.

[79] For further detail see pp. 107-108 of our draft report.

TRANSFER RESTRICTIONS

The Commission has a statutory objective to promote the development of full retail contestability. It must balance this objective with its other statutory objectives, particularly with promoting protections for customers facing payment difficulty.

We consider that the current framework provides inadequate incentives for retailers and customers to work together to resolve the payment difficulty. In particular, we found that many retailers make either limited or no use of their existing capacity to oppose transfer of a customer to another retailer on the grounds of outstanding debt.

During the inquiry the Commission was presented with evidence (particularly from financial counsellors) of customers churning through retailers and accumulating significant levels of debt with each one. We consider that this practice comes at a significant cost to the individual customers and retailers, and is not in the long term interests of Victorian consumers in general.

We therefore consider that if a customer has an agreement in place with a retailer that allows them to make payments below their on-going cost of energy use whilst both parties work together to reduce the cost of that energy use, the retailer should be obliged to oppose the transfer of the customer to another retailer.

We also consider that a customer who is meeting the on-going cost of their energy use should be allowed to switch to another retailer, provided they maintain an agreement with their current retailer to repay any outstanding debt.

3.3.4 DISCONNECTION AND RECONNECTION

This section outlines the Commission's views on when retailers should be able to consider disconnecting a customer for non-payment of their energy bill. It also sets out the circumstances in which we consider that a customer should be reconnected.

DISCONNECTION

As outlined above, a key question that both retailers and consumer groups believe needs to be answered is whether the regulatory framework should allow a customer who is not able to pay for the energy they use to be disconnected and if so in what circumstances. We received feedback that this was unclear in our draft report.

Some retailers believe that an assessment of a customer's 'willingness to pay' should continue to be used in deciding whether a customer should be disconnected.

AGL for example, stated that:

> *A customer with a willingness to pay that continues to engage with a retailer won't be disconnected.*[80]

We consider that the inherently subjective assessment of a customer's 'willingness to pay' should not be used by retailers to determine whether a customer should be disconnected.

The current regulatory framework allows a customer to be disconnected for failing two payment plans if they are not in a hardship program. It also allows for a customer to be disconnected if they fail a hardship program.

The current framework allows retailers discretion in setting the terms and conditions of hardship agreements. So, while customers in hardship programs are protected from disconnection, we found that significant numbers of customers are being excluded or removed from hardship programs and then disconnected.

In the absence of clear standards for payment plans and criteria for customer access to and exit from hardship programs, the current retailer discretions provide an inadequate level of customer protection, because a customer has no certainty of either their entitlements or their responsibilities.

The Commission believes that a retailer should only be able to consider disconnecting a customer if:

1. the customer does not make the repayments required under a relevant payment plan;[81] and
2. the customer does not engage with their retailer to make new arrangements to resolve their payment difficulty; and
3. the retailer can demonstrate that:

---

[80] AGL 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, p. 14.

[81] A relevant payment plan is a payment plan that meets the regulatory requirements for the type of payment difficulty being experienced by the customer.

a. it has provided all of the required assistance; or
b. it has used its best endeavours to do so.[82]

By making these conditions explicit and unequivocal, the proposed framework will provide customers with a significant increase in protection from disconnection compared with the current framework. We consider that retailers should also be required to report on how they exercise their discretion to disconnect a customer in these circumstances.

RECONNECTION

We found that a large proportion of customers who are removed from hardship programs and then disconnected are reconnected through the process facilitated by the Energy and Water Ombudsman Victoria (EWOV). However, retailers commonly require significant upfront payments, including debt repayment before agreeing to reconnect the customer. The amounts required can be unmanageable for customers.

On the other hand, we also found that it is common for customers to be allowed to make below-cost payments after reconnection. This arrangement is unsustainable and can lead to a debt spiral.

On balance, the Commission considers that customers should remain connected (and be reconnected) where they are paying for use, and should not be required to contribute to debt. Thus retailers should be required to reconnect customers who either:

a. pay their arrears under the relevant payment plan; or
b. pre-pay their energy use, and pay for any energy that they used between the end of their pay-as-you-go (pre-pay) period and disconnection.

The proposed framework therefore increases the certainty for customers that have been disconnected compared to the current framework, because a customer who is disconnected knows that their retailer must reconnect them if they meet a clear set of conditions for reconnection. Details of the Commission's proposed approach are outlined in section 4.5.6.

[82] The Commission will develop guidance on how best endeavours might be considered in this case, taking as a starting point its decision from February 2012 about use of the term with regard to offering payment plans. (Essential Services Commission 2012, *Obligations to customers: disconnection and reconnection: final decision*, February.)

4 THE COMMISSION'S PROPOSAL

INTRODUCTION

This chapter presents the broad architecture of a new approach to assisting customers experiencing payment difficulties. It outlines the design of the proposed framework and explains how the approach delivers the changes to the current system that we consider are necessary to meet the Commission's objectives, including the new statutory objective:

> *[T]o promote protections for customers, including in relation to assisting customers facing payment difficulty.*[83]

The chapter explains how the framework would operate in practice to deliver on the Government's policy expectation as set out in the terms of reference for the inquiry that:

> *[W]herever possible, energy consumers remain connected to supply, and that disconnection of customers is only used as a measure of last resort.*[84]

In particular, the chapter describes a new customer safety net that establishes minimum standards for all retailers, and illustrates how the safety net would apply to a range of customer circumstances. It also provides an overview of the costs and benefits of reform to the current framework, and notes some of the points of detail that would need further consultation as part of the framework's implementation.

The chapter proceeds as follows: section 4.1 provides an overview of the purpose of the proposed framework and highlights its intended outcomes, while section 4.2 details the design principles we applied in developing the framework. Section 4.3 provides a high-level overview of the framework and how it will deliver outcomes for customers

[83] Section 10(c) of the *Electricity Industry Act* 2000 and s18(c) of the *Gas Industry Act* 2001.

[84] Terms of reference – ESC Inquiry into the Financial Hardship Programs of Retailers, letter dated 4 February 2015.

and retailers. Sections 4.4 to 4.6 describe the different parts of the framework in further detail with the latter section providing case studies to highlight how the framework will operate in practice. Section 4.7 reflects on the merits of the new framework and section 4.8 concludes the chapter.

4.1 PURPOSE AND OUTCOMES

Debt causes disconnection. Customers without debt do not get disconnected. As outlined in chapter 3, we therefore consider that the purpose of the framework for assisting customers experiencing payment difficulty should be:

> **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.**

As shown in chapter 2, the current framework is preventing neither debt nor disconnection consistently, with outcomes for individual customers varying significantly.

We consider that an effective framework should deliver:

- **aligned incentives** for retailers and customers to work though the payment difficulties together
- assistance to customers that is **proportionate** to their payment difficulty
- **engagement by customers** with their retailer to take up the assistance that is provided
- **innovation by retailers** in how they assist customers experiencing payment difficulty
- **clarity** for customers, retailers, the ombudsman and regulator about the retailers' obligations and the standard of assistance that customers can expect
- **enforceability** of retailer obligations.

We consider the framework that we propose in this chapter will deliver these outcomes.

The proposed framework builds on retailers' existing obligations to offer payment plans to customers experiencing payment difficulties, and on the prohibition on disconnection of customers who meet the terms of these payment plans. However, it goes beyond the existing general obligation to offer a payment plan: it provides a universal 'safety net' of minimum standards of assistance for customers experiencing different types of payment difficulty.

The framework also removes the uncertain, unclear and unenforceable obligations on retailers to enter agreements with 'hardship customers' according to their hardship policies, and to have regard to a customer's capacity to pay when establishing a payment plan.

As outlined in chapter 3, it is neither desirable nor necessary for an energy company to intrude into its customers' personal circumstances – or carry out an inherently subjective assessment of their 'hardship' status – in order to establish a customer's basic entitlement to assistance with payment difficulty.

Instead, the proposed framework places a clear obligation on retailers to objectively assess a customer's payment difficulty, and to ensure that a customer receives at least the minimum standard of assistance to which they are entitled based on their type of payment difficulty.

In addition to clarifying existing obligations, the proposed framework includes significant new consumer protections that aim to:

- promote self-initiated action by customers to avoid missing a payment when they believe that they are likely to experience payment difficulty
- provide assistance automatically to customers that miss a payment to ensure that their payment difficulty is immediately addressed
- add a final stage of last resort measures to help customers align their energy consumption with what they can afford to pay.

The framework sets out how retailers should meet their legislative obligations to provide customers with assistance to manage their energy use.[85] It also sets out how retailers should inform customers about other forms of assistance and help them access this support.

[85] Section 43C(b)-(c) *Electricity Industry Act 2000* and s48GC(b)-(c) *Gas Industry Act 2001*.

We expect these reforms to deliver substantial and necessary improvements to the current regulatory framework. Most importantly, they should translate into substantial and necessary improvements to the assistance provided to customers experiencing payment difficulty.

4.2 DESIGN PRINCIPLES

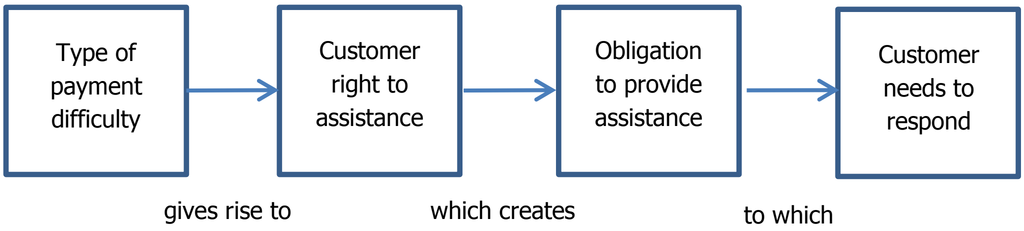
To meet the above outcomes, we designed the proposed framework around a series of principles. These principles reflect current legislation, government policy and our findings on what underpins effective assistance. The principles also underpin the concept that retailers and customers share responsibility for customers to manage payment difficulty; a concept widely supported by stakeholders throughout the inquiry.

The principles are that:

- customers are expected to pay for the energy they consume
- retailers should provide customers experiencing payment difficulty with assistance to help them avoid or repay debt, and thus avoid disconnection
- the assistance that a customer is entitled to receive should depend on the type of payment difficulty that they are experiencing, and be proportionate to that payment difficulty
- payment difficulty should be objectively determined and not involve value judgments or labelling of customers
- retailers should 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 regulatory safety net
- customers should be responsible for engaging with their retailer and acting on the assistance provided
- the greater the assistance, the greater is the customer's responsibility to engage with their retailer and act to manage their energy use and payments.

Figure 4.1 shows how the above design principles apply to establish a system of shared responsibility between customer and retailer.

FIGURE 4.1 APPLICATION OF THE DESIGN PRINCIPLES



The proposed framework limits the level of debt that a customer can accumulate, unlike the current framework, under which customers often accrue thousands of dollars of debt. Further, if a customer is engaging with the retailer and acting on the assistance provided to them, then the proposed framework also makes disconnection extremely unlikely.

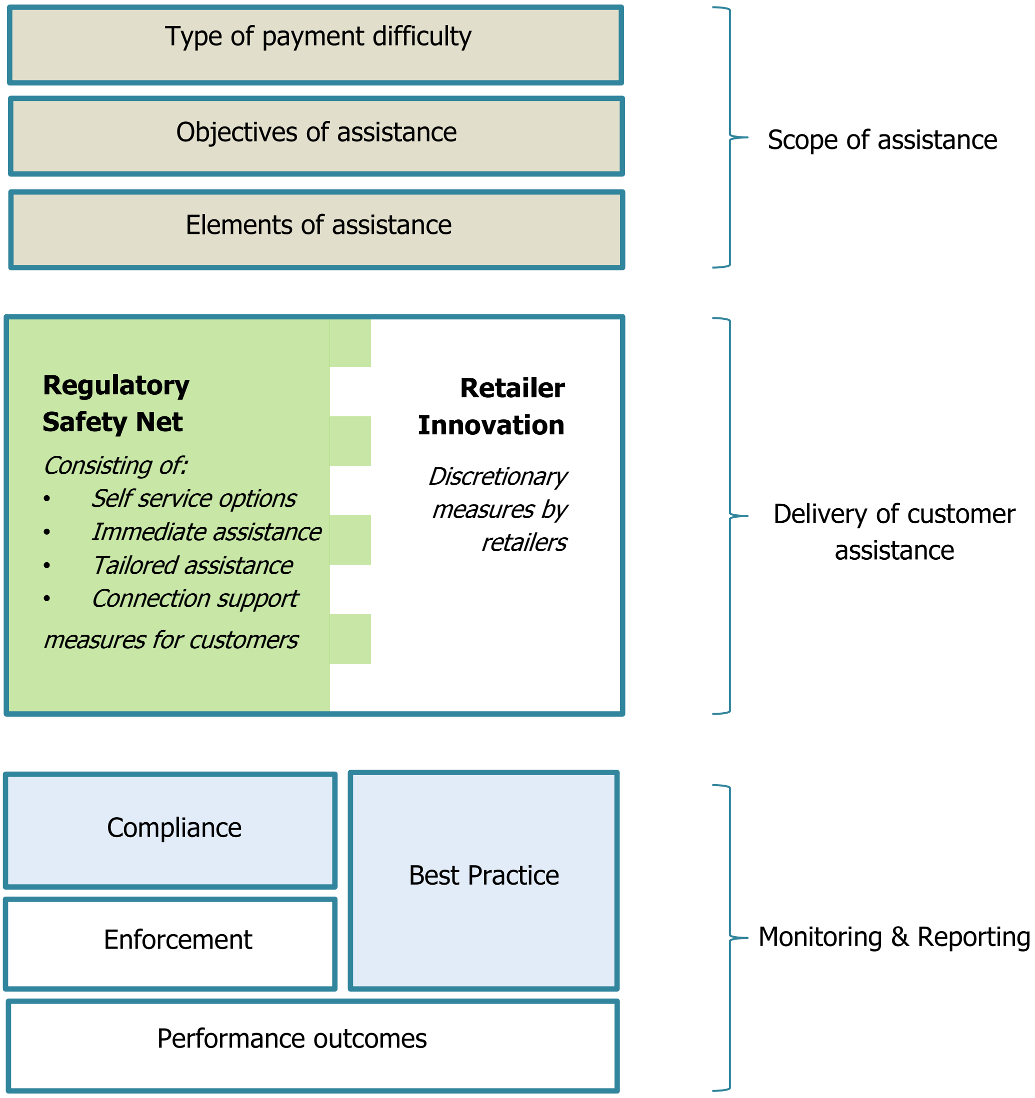
4.3 OVERVIEW OF THE PROPOSED FRAMEWORK

The current framework for assisting customers experiencing payment difficulty is set out in the Energy Retail Code (the Code). Compliance with the Code is a condition of the licences granted to energy retailers by the Commission. The proposed framework would replace the current hardship and payment difficulty provisions of the Code with new requirements setting out the:

- **scope of assistance** customers can expect to receive from their retailer
- **delivery of assistance** to meet the minimum standards defined by the safety net
- **monitoring and reporting** requirements.

Figure 4.2 illustrates the key elements of the proposed framework.

FIGURE 4.2 THE PROPOSED FRAMEWORK



4.3.1 SCOPE OF ASSISTANCE

As outlined in chapter 2, the 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 expect from their retailer should depend, therefore, on the type of payment difficulty that they are experiencing.

A retailer can objectively determine the type of payment difficulty using existing information available from its billing system. Payment difficulty can be comprehensively and objectively determined using the following data:

- the cost of the energy being used by the customer[86]
- the amount of money actually paid by the customer for that energy use
- the amount of energy debt accrued by the customer.

As a result, a customer's payment difficulty can be determined without value judgement or intrusive assessment, and without unwelcomed labelling of the customer.

Under the proposed framework, the assistance provided to a customer in each type of payment difficulty will be guided by a defined objective that is proportionate to that type. In other words, the assistance offered to a customer must be capable of achieving the relevant objective.

The assistance provided to a customer must also include three elements:

- a payment plan
- energy management assistance
- information and referral to other support services.

The level of assistance for each element must match the customer's type of payment difficulty and the objective of assistance. Figure 4.3 provides an overview of the scope of assistance. It shows the link between the status of the customer's debt, the type of payment difficulty giving rise to that debt status and the objective of the assistance required to alleviate that payment difficulty. It also shows the name that we have given the different assistance levels. Section 4.4 describes in greater detail the determination of payment difficulty (section 4.4.1), the objectives of the different forms of assistance (section 4.4.2) and the elements of assistance (section 4.4.3).

[86] The cost of the energy used is determined by the terms of each customer's contract.

FIGURE 4.3 OVERVIEW OF THE SCOPE OF ASSISTANCE

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

4.3.2 DELIVERY OF ASSISTANCE

As shown in the second part of the proposed framework illustrated in figure 4.2, retailers 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. There is already scope to innovate **within** the safety net: Tailored Assistance and Connection Support are flexible in this regard. Retailers can also go beyond the safety net requirements of the framework at every stage of payment difficulty.

CUSTOMER SAFETY NET

The safety net operates to ensure that all customers can be confident that they will receive a level of assistance consistent with their payment difficulty. It comprises four forms of assistance that apply to different stages of payment difficulty:

- **self-service options** to assist all customers to manage their energy payments to avoid getting into debt in the first place
- **immediate assistance** provided automatically to a customer when they miss a payment, to minimise the amount of debt that accumulates before assistance is provided
- **tailored assistance** offered to a customer following discussions about their payment difficulty and energy use, to ensure further debt does not accumulate and any accrued debt is repaid
- **connection support** offered as a last resort to a customer whose debt is still increasing, to help reduce the cost of energy consumption and avoid disconnection.

Figure 4.4 provides an overview of the customer safety net.

FIGURE 4.4 THE CUSTOMER SAFETY NET

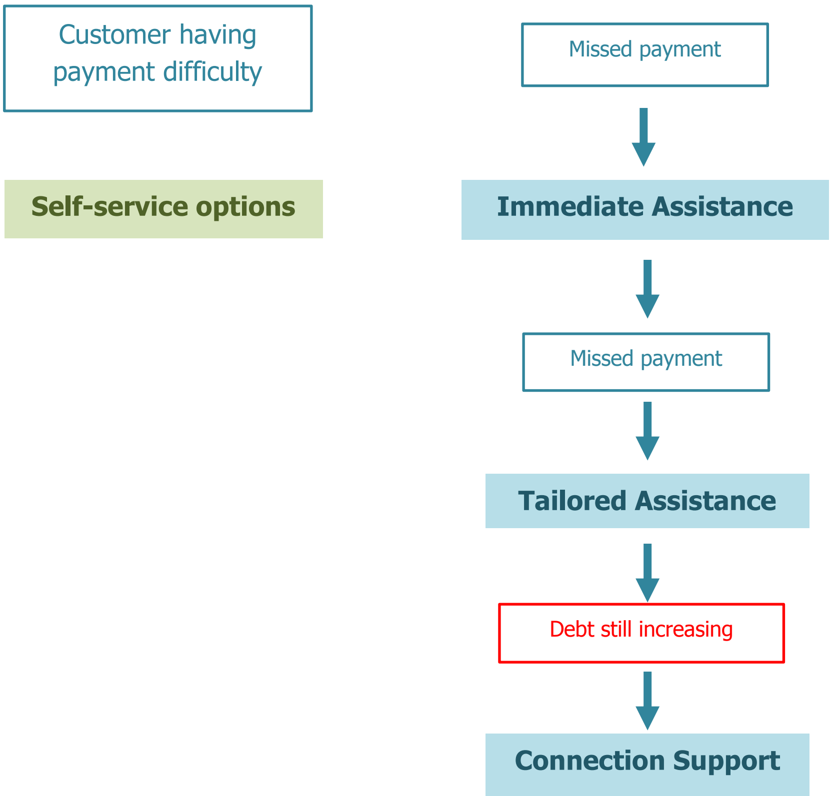


Figure 4.4 highlights the relationship between the four forms of assistance.

The framework will require retailers to make a number of Self Service options available to customers.

Regardless of whether a customer takes up any of the Self Service options, if they then miss a payment the retailer will be required to automatically place them on Immediate Assistance.

If an Immediate Assistance payment is missed, the retailer will be required to provide the customer with Tailored Assistance, where the retailer and customer work together to lower the customer's energy costs and plan for the repayment of outstanding debt.

If debt continues to increase, the customer will be placed on Connection Support. This involves the retailer and the customer working together to lower energy use to an affordable level. As a condition of Connection Support, if debt is continuing to increase after three months, the retailer can place the customer on a pay-as-you-go plan (pre-payment). This last resort measure avoids further debt from accumulating while allowing the customer to remain connected to their energy supply.

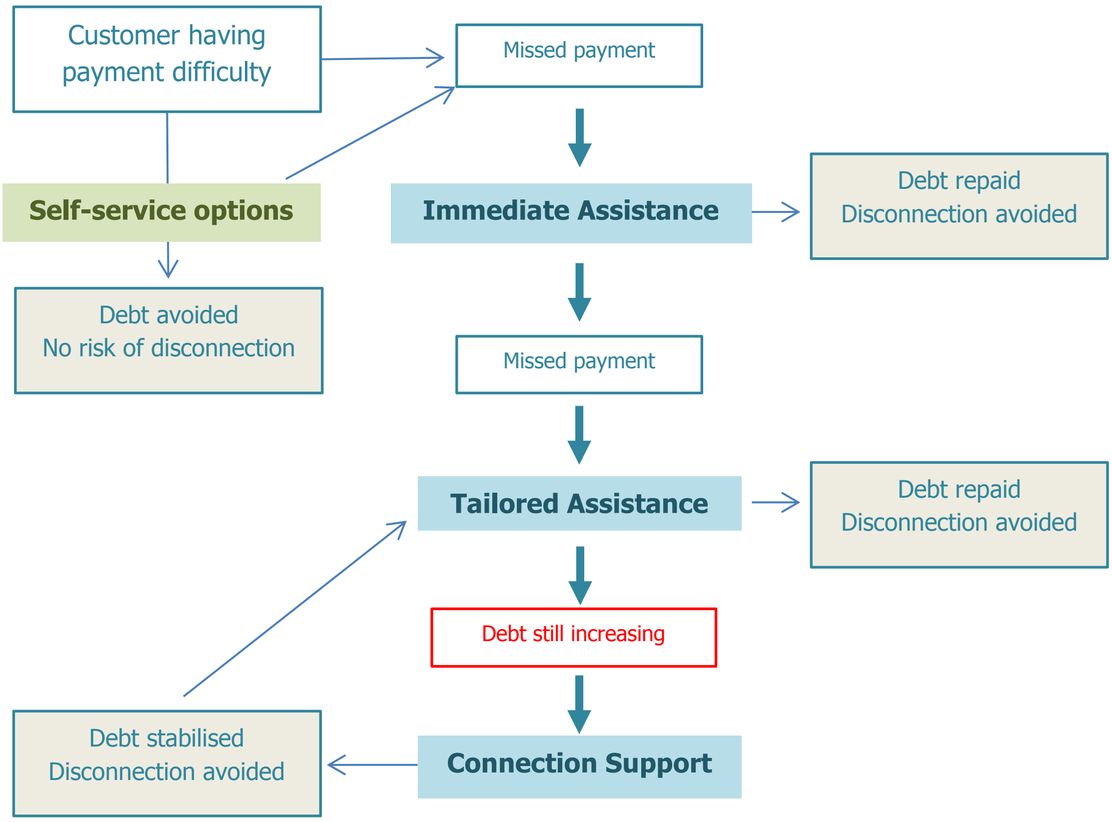
These different forms of assistance are described in detail in section 4.5.

CUSTOMER ENGAGEMENT

As outlined in section 4.2, the regulatory safety net will operate on the principle of customer engagement. If a customer engages with their retailer and acts on the assistance provided, the safety net promotes outcomes whereby debt is avoided or repaid, or at least stabilised.

Figure 4.5 illustrates how effective customer engagement through the framework can achieve these outcomes.

FIGURE 4.5 OUTCOMES OF EFFECTIVE CUSTOMER ENGAGEMENT



Although the proposed framework increases the incentives for a customer and their retailer to work together, it still needs to address the situation in which a customer refuses to engage.

In this case, the framework will operate in conjunction with the disconnection procedure,[87] which sets out the process by which a retailer may disconnect a customer for non-payment of their energy bill. The disconnection process includes the requirements to give notices and a warning to a customer at various stages leading up to disconnection.

Under the proposed framework, a customer will not be disconnected for non-payment of their energy bill if they are either:

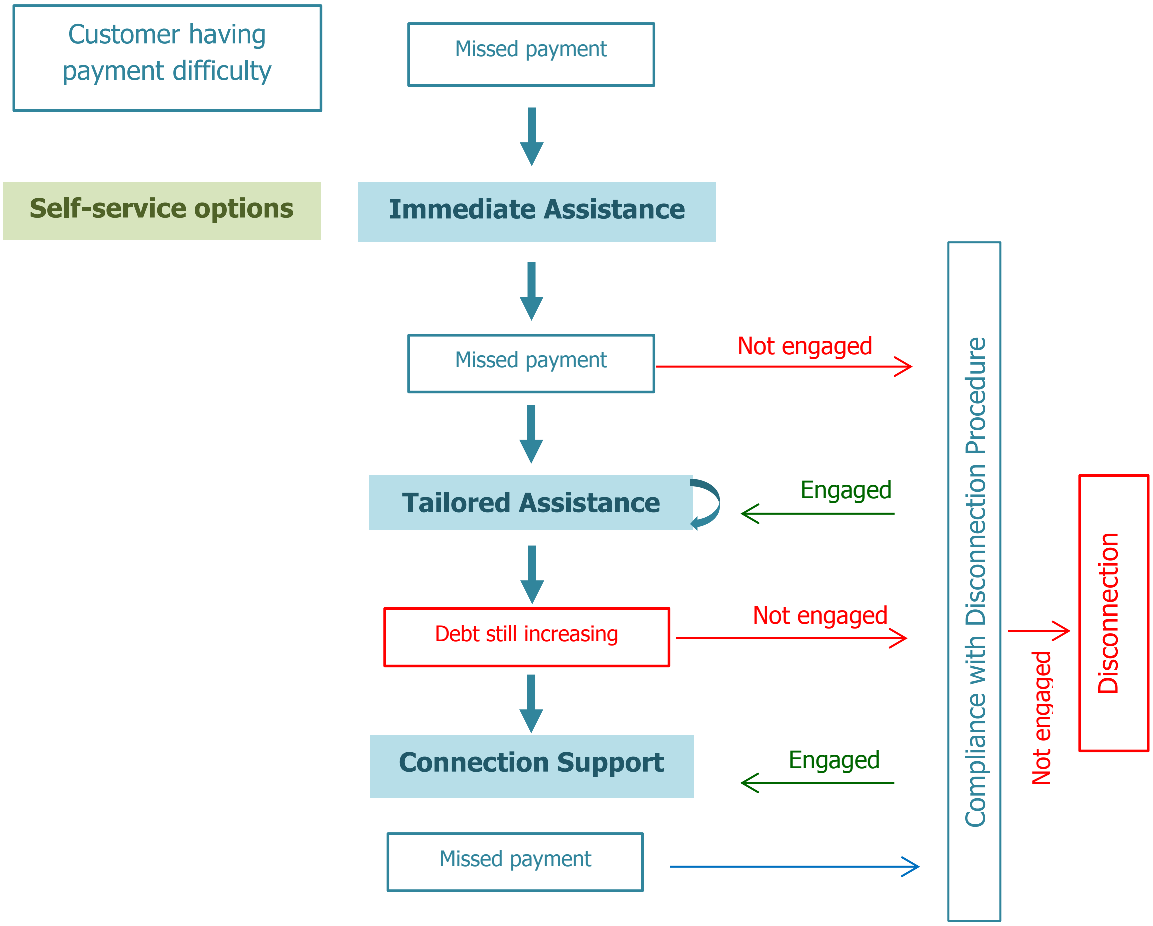
- making the repayments required under a relevant payment plan[88] or
- actively engaging with their retailer to make new arrangements to resolve their payment difficulty.

Figure 4.6 sets out the relationship between the proposed framework and the disconnection procedure. It shows a customer cannot be disconnected for missing a single payment. Instead, if a customer misses a payment, then they will be automatically placed on a defined payment plan and contacted by their retailer to discuss other assistance that they may need. Section 4.5.2 details this ‘Immediate Assistance’ level of the customer safety net. Figure 4.6 also shows that customers have opportunities to re-engage with their retailer and avoid disconnection at each stage of payment difficulty. Even if a customer is disconnected, they can be reconnected if they engage with their retailer (see section 4.5.6).

[87] Energy Retail Code (Version 11), Part 6: De-energisation (or disconnection) of premises—small customers.

[88] A relevant payment plan is a payment plan that meets the regulatory requirements for the type of payment difficulty being experienced by the customer.

FIGURE 4.6 CUSTOMER NON-ENGAGEMENT AND DISCONNECTION



If a retailer disconnects a customer experiencing payment difficulty without providing the relevant level of assistance, or without using its best endeavours to do so, the disconnection will be wrongful and the retailer must make a Wrongful Disconnection Payment (WDP) to the customer.[89] The Commission may also issue the retailer with a Wrongful Disconnection Penalty Notice.[90]

---

89 Under section 40B of the *Electricity Industry Act* 2000 and section 48A of the *Gas Industry Act* 2001, if an energy retailer disconnects a customer in breach of the standards and procedures set out in the Energy Retail Code, they are required to make a prescribed payment of $500 for each whole day that the customer is off supply up to a maximum of $3500.

90 Under sections 54H and 54I of the *Essential Services Commission Act* 2001, the Commission may issue a $5000 Wrongful Disconnection Penalty Notice to an energy retailer if the Commission has reason to believe that the customer was disconnected in breach of the requirements of the Energy Retail Code.

4.3.3 MONITORING AND REPORTING

As shown in the third part of the proposed framework illustrated in figure 4.2, the proposed framework includes a monitoring and reporting framework for:

- monitoring **compliance** through retailer reporting and auditing
- **enforcing** the regulatory framework in the event of non-compliance
- assessing and reporting on **best practice**
- reporting on the **customer outcomes** as measured against the purpose of the framework.

Further details of the proposed monitoring and reporting framework are provided in Section 4.6.

4.4 SCOPE OF ASSISTANCE IN DETAIL

This section sets out details of the scope of the proposed framework, as illustrated in the first part of figure 4.2. This includes the objective determination of payment difficulty (section 4.4.1), the objectives of assistance that relate to each type of payment difficulty (section 4.4.2) and the elements of assistance that customers can expect to receive (section 4.4.3).

4.4.1 OBJECTIVE DETERMINATION OF PAYMENT DIFFICULTY

As outlined in chapter 3, objective determination of a customer's payment difficulty is essential to ensure the assistance to which a customer is entitled is clear, certain and enforceable.

Under the proposed framework, the type of payment difficulty will be determined using standard data available to retailers and customers on the cost of the customer's energy use, and the customer's payment history and debt status.

Chapter 2 notes the five types of payment difficulty that cover the entire continuum of customer payment difficulties. The payment difficulty types range from a customer who has no debt but is likely to miss a payment, to a customer who not only has a debt that they cannot repay, but is also unable to pay for their ongoing energy use and thus has increasing debt.

Although a customer's payment difficulty may change over time, the types of payment difficulty are mutually exclusive. That is, a customer can experience only one type of payment difficulty at any point in time. Figure 4.7 sets out the detail of the five types of payment difficulty.

4.4.2 OBJECTIVES OF ASSISTANCE

To ensure a customer receives assistance that matches their type of payment difficulty, the proposed framework sets objectives for the assistance that a retailer must provide for each type of payment difficulty. Figure 4.7 outlines these objectives.

FIGURE 4.7 OBJECTIVES OF CUSTOMER ASSISTANCE

Type of payment difficulty	Objective of assistance
Type 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	To encourage **customers to avoid debt** by taking up self-service options to reschedule energy payments.
Type B Customer has missed a payment and therefore has an energy debt	To provide **immediate assistance** to customers who miss a payment to repay their energy debt.
Type C Customer has energy debt • and is making payments that reduce debt • but not in accordance with their payment plan	To assist customers to better **manage their energy use** to help them repay their energy debt.
Type D Customer has energy debt • and is paying for their energy use • but is not reducing their debt	To **reduce the cost of energy use** to enable debt to be repaid.
Type E Customer has energy debt • and is not paying for their use	To **reduce energy use** to an affordable level.

4.4.3 ELEMENTS OF ASSISTANCE

As summarised in section 4.3.1, the assistance provided to customers at each stage of payment difficulty will include three elements:

- a payment plan
- energy management assistance
- information and referral.

The following detail on each element includes how the minimum level of assistance for each element varies for the type of payment difficulty that a customer is experiencing.

PAYMENT PLANS

In line with existing retailer obligations, payment plans under the proposed framework will remain central to assisting customers experiencing all types of payment difficulty. A customer's payment plan will set out what they must pay to the retailer, and over what timeframe. Payment plans will vary depending on the type of payment difficulty and in accordance with the relevant objective of the assistance.

Debt repayment will be required over the short to medium term for customers with payment difficulty Types B and C (noting Type A is not yet in debt). Longer-term payment plans will be required for customers with more severe payment difficulty Types D and E.

Debt will not increase under the payment plans for customers experiencing payment difficulty Types B to D, because the customer is paying for the on-going cost of their energy use.

A customer in Type E payment difficulty is by definition not paying for the cost of their energy use. Their payment plan therefore allows a three-month period of below cost payments. The aim of this period is to enable the retailer and customer to work together intensively on energy management options to help the customer reduce their energy use. If the customer is still not meeting the cost of their energy use after three months, pre-payment for energy use (pay-as you- go) will be required for them to remain connected.

ENERGY MANAGEMENT

Energy retailers are specialists in the supply of energy to meet customer needs. In accordance with the energy industry legislation, the proposed framework requires energy retailers to provide energy management information, advice and assistance to customers experiencing payment difficulty. Retailers will need to provide this assistance to all customers experiencing payment difficulty. The nature of the energy management assistance will vary, however, according to the type of payment difficulty.

The minimum requirement of retailers will be to make general and practical energy management information available on-line for all customers. As payment difficulty increases, the information and advice will need to become more specific to the individual customer's circumstances. For customers with the most severe forms of payment difficulty, practical in-home assistance will be required.

INFORMATION AND REFERRAL

Energy retailers will be required to be aware of, and provide information on, wider government and non-government assistance to customers experiencing payment difficulties. This assistance would range from specific forms of financial assistance such as Utility Relief Grants (URGs) and energy concession payments, through to more general welfare assistance that may be available locally to the customer.

The requirement on retailers to provide customers with information about or referral to these forms of assistance will vary according to the customer's type of payment difficulty. For customers in early stages of payment difficulty, general information would be required. But for customers in Type E payment difficulty, a retailer would need to show that the customer had received information about their rights and responsibilities from an independent third party prior to being moved onto a pay-as-you-go plan. The third party would need to be accredited by the Commission for this purpose.

Figure 4.8 provides an overview of the different elements of assistance available to a customer in each type of payment difficulty. Further details are provided in section 4.5.

FIGURE 4.8 ELEMENTS OF CUSTOMER ASSISTANCE

Type of payment difficulty	Elements of assistance Payment plan	Energy management	Information and referrals
Type 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	The customer is provided with self-service options including: • Deferred payment • Bill smoothing • Varying payment periods	General information on energy management	General information on sources of government and non-government assistance.
Type B Customer has missed a payment and therefore has an energy debt	The customer is automatically placed on a monthly payment plan, with the amount of monthly debt repayment capped.	Customer specific information on energy management, taking into account the information available on the customer's actual energy use.	Customer specific information on relevant government and non-government assistance.
Type C Customer has energy debt • and is making payments that reduce debt • but not in accordance with their payment plan	The customer is provided with options to vary monthly payments but with the amount of monthly debt repayment capped.	Energy management advice based on an understanding of the customer's energy needs, and taking into account the information available on the customer's actual energy use.	Advice on how to access relevant government and non-government assistance
Type D Customer has energy debt • and is paying for their energy use • but is not reducing their debt	The customer makes standard monthly payments for their current use, while actively working with their retailer to reduce the cost of their energy use. Debt reduces in proportion to the customer's reduction in energy cost.	Practical assistance to reduce the cost of energy consumption, based on an assessment of the customer's energy needs and taking into account the information available on the customer's actual energy use.	Assistance to access relevant government and non-government assistance.
Type E Customer has energy debt • and is not paying for their energy use.	The customer will be allowed to make up to three months of below cost payments, while actively working with their retailer to reduce the cost of their energy use. The customer is required to move to pre-payment to remain connected if they are unable to reduce their energy cost.	Practical in-home assistance to reduce energy consumption, based on an assessment of the customer's energy needs, and taking into account the information available on the customer's actual energy use.	Assistance to access relevant government and non-government assistance including retailer referral (with consent). Retailer must ensure customer provided with information on their entitlements and responsibilities (from an independent third party) prior to moving to pay-as-you-go.

4.5 DELIVERY OF ASSISTANCE IN DETAIL

This section sets out details of how the proposed framework will underpin the delivery of assistance to customers experiencing payment difficulty, as illustrated in the second part of figure 4.2. It also outlines how the proposed framework provides retailers with the flexibility to go beyond the minimum standards and to innovate in their service delivery.

The regulatory safety net sets out the minimum standards of assistance that retailers must provide to customers in each of the five types of payment difficulty as set out in figure 4.3 above. Case studies are included to provide examples of how the safety net would work for customers with different personal circumstances, and how customer outcomes under the proposed framework compare to the current framework.

Sections 4.5.1 to 4.5.5 outline the details of the safety net as it applies to each of the five types of payment difficulty. Each section is set out according to:

- the type of payment difficulty being experienced
- the assistance a customer in that payment difficulty is entitled to receive
- retailer obligations to provide assistance
- the customer's responsibilities.

Section 4.5.6 sets out how customers who are disconnected should be reconnected under the customer safety net.

Section 4.5.7 explains how the proposed framework provides flexibility and allows for innovation.

4.5.1 SELF SERVICE

To encourage customers to take proactive steps to manage their payment difficulties, retailers will be required to make a number of standard payment options available to all customers. These 'Self Service' options will enable customers to modify their payment arrangements prior to missing a payment.

At this stage of a customer's payment difficulty, the primary aim is to help customers avoid incurring energy debt in the first place. A customer who knows in advance that they cannot make a payment, either in full or on time, will be able to choose from the Self Service options that all retailers will be required to offer.

TYPE OF PAYMENT DIFFICULTY

Self Service options will be available to any customer experiencing Type A payment difficulty. A customer in Type A payment difficulty anticipates being unable to meet their next payment.[91]

CUSTOMER ENTITLEMENT TO ASSISTANCE

Customers are entitled to the Self-Service payment options to help avoid getting into energy debt. These options will empower customers to manage short-term payment difficulties discreetly. By acknowledging and acting on their payment difficulties early, the customer electing a Self Service option will not lose any pay-on-time discount entitlements. They will also avoid incurring a debt that may affect their credit rating, without any stigma of being labelled as ‘in hardship’, and without being required to provide personal information about their finances or personal circumstances.

RETAILER OBLIGATION TO PROVIDE ASSISTANCE

Retailers will be required to make a standard set of Self Service options readily accessible through their websites and call centres, and will also be required to alert customers to their availability. These payment options will be available as a right to any customer at any time. Retailers will also be required to provide general information on their websites about how to manage energy consumption, and about relevant government rebates and concessions.

The menu of self-help options that must be offered by retailers will include:

- **bill smoothing**, which involves spreading the estimated total cost of a customer’s energy bills for the next year across equal monthly or fortnightly instalments
- **deferred payment**, for customers who have not missed a payment in the past 12 months, for up to four weeks, for the amount of the total bill
- a **shortened payment cycle**, which means that customers can choose to pay smaller amounts more frequently.

[91] In practice, these options will be available to any customer irrespective of whether they anticipate future payment difficulty.

CUSTOMER RESPONSIBILITIES

A customer who chooses a Self Service option will be expected to make the payments required for that option in full and on time. If they do so, they will be able to retain any discounts available under their contract. If a customer cannot make a payment, or the self service options prove insufficient to meet the customer's payment difficulty, the customer will be expected to contact their retailer to obtain additional assistance.

ILLUSTRATIVE CUSTOMER EXAMPLE

Case Study 4.1 shows how a customer might access Self Service, and how this new stage provides additional support for customers experiencing Type A payment difficulty relative to the current regulatory framework. The customer in this example has not yet missed a gas bill payment but cannot meet his next payment.

CASE STUDY 4.1 SELF SERVICE IN ACTION

Edward has only been able to find casual employment for a number of years, but is about to start a new full-time job. He had previously shared his rental house with another tenant, who moved out without notice and without paying his expected contribution to upcoming utility bills for the property. Edward had difficulty paying the rent on his own at the start of this month. Until he has received his first pay cheque at the end of next month, he cannot pay his gas bill.

Current framework

Edward has no entitlement to assistance. If Edward contacts his retailer, he may be offered an extension, or have a missed payment registered on his account and lose his pay-on-time discount.

The proposed safety net

Edward has not yet missed a payment (Type A payment difficulty) and so is eligible for Self Service assistance.

Payment plan

Edward goes on-line and selects a payment deferral. He also decides to change his payments to monthly bill smoothing.

Energy management

The retailer's website alerts him to energy management tips available elsewhere on the website.

Information and referral

The retailer's website alerts him to information elsewhere on the website about energy concessions and Utility Relief Grants.

Outcome

Edward avoids accruing debt. He receives a payment extension without having to provide any personal information. He retains his pay-on-time discount.

4.5.2 IMMEDIATE ASSISTANCE

To ensure that debt is not allowed to accrue through lack of retailer responsiveness, customers who miss a bill payment will be automatically placed on Immediate Assistance. The payment plan under Immediate Assistance has standard terms and conditions including a requirement to pay the on-going cost of energy use in full. Debt repayments (arising from the missed payment) in any payment period are, however, limited to a prescribed proportion of the debt.

TYPE OF PAYMENT DIFFICULTY

Immediate Assistance will be available to any customer experiencing Type B payment difficulty. A customer is deemed to be in Type B payment difficulty 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**.[92]

CUSTOMER ENTITLEMENT TO ASSISTANCE

Customers will have the protection of an automatic payment plan where they have missed a payment. Customers will have their debt spread over a specified number of months, without needing to be labelled as being 'in hardship' to obtain assistance, and without being required to provide information to their retailer about their personal circumstances. At this stage, customers that miss a payment will not retain any pay-on-time discounts to which they are entitled.

[92] The Commission considered a number of possible points in the collection cycle for the date of a 'missed' payment. The Commission took into account advice from retailers that many people routinely pay their energy bill only after they receive the reminder notice. We also took into account the need to limit the amount of debt that is accrued.

RETAILER OBLIGATION TO PROVIDE ASSISTANCE

A retailer must contact the customer if a payment is not received by the end of the reminder notice period. The retailer must advise the customer that they have been placed on an **automatic monthly payment plan**, and provide the customer with energy management and other assistance required.

Under the automatic payment plan, customers will be required to pay in full for the energy that they use each month. They will also be expected to repay a proportion of their debt. The amount they will have to repay will depend of the customer's current payment cycle.

> <u>Monthly payments</u>
>
> If a customer is already required to make monthly payments, their debt repayments will be limited to a third of the amount owed, paid in three equal instalments.
>
> <u>Bimonthly payments</u>
>
> If the customer is making bimonthly payments (i.e. a payment every two months), they will automatically be switched to a monthly payment cycle and their monthly debt repayments will be limited to a sixth of what is owed.
>
> <u>Quarterly payments</u>
>
> If the customer is making quarterly payments, they will automatically be switched to a monthly payment cycle and their debt repayments will be limited to a ninth of what is owed for each of the next nine months.

In addition to an automatic payment plan over three, six or nine months, retailers will provide the customer with basic advice on practical ways to better manage their energy consumption. They will also provide information about government and non-government assistance that may be available, including rebates, concessions and financial counselling.

CUSTOMER RESPONSIBILITIES

A customer is expected to pay the cost of their on-going energy use and make the monthly debt repayments required. The customer is expected to pay on time, and to contact their retailer immediately if they cannot make a payment according to the payment plan.

If the customer misses an Immediate Assistance payment[93] and has not engaged at all with the retailer, a disconnection warning notice may be issued. The Commission recognises that standards will need to be developed to provide some flexibility to deal with partial payments.

ILLUSTRATIVE CUSTOMER EXAMPLE

Case Study 4.2 shows how a customer could access Immediate Assistance, and how the proposed framework provides greater consistency of service and support for customers experiencing Type B payment difficulty relative to the current regulatory framework. The customer in this example has missed an electricity bill payment.

CASE STUDY 4.2 IMMEDIATE ASSISTANCE IN ACTION

Ian is a divorced father of a teenage girl who lives with him. He is self-employed and his income is variable. Ian usually pays his quarterly electricity bills reasonably promptly, almost always before reminder notices are sent out. Ian has not paid a recent electricity bill, because he has not yet been paid for some recent work, and has paid some unexpected medical expenses for his daughter. The electricity bill remains unpaid.

Current framework

Ian has no entitlement to assistance. His retailer may offer him a payment plan or allow the debt to build.

The proposed safety net

Ian has missed a bill (Type B payment difficulty) and so is eligible for Immediate Assistance.

Payment plan

Ian’s retailer contacts him to advise him that he has been automatically placed on a repayment plan. Ian is advised that he will be able to repay the amount he owes in nine monthly payments (or sooner if he wishes). The retailer tells Ian how much the monthly repayments will be.

Energy management

Ian’s retailer alerts him to energy management tips available on their website that may be

---

[93] A customer who misses an Immediate Assistance Payment will have received a reminder notice prior to having been placed on Immediate Assistance.

particularly relevant to him to help manage his cost and use of energy.

Information and referral

Ian's retailer alerts him to information on the retailer's website about other assistance to which he may be entitled.

Outcome

Ian's energy debt is being managed. He has arranged to repay his debt in a predictable way. Ian receives assistance from his retailer automatically, without having to disclose any personal information.

4.5.3 ASSISTED REPAYMENT

Assisted Repayment is one of two tailored forms of assistance that provide customers with the opportunity to extend their debt repayment schedule. It provides flexibility to accommodate customers who need to repay their debt in smaller amounts.

TYPE OF PAYMENT DIFFICULTY

Assisted Repayment will be available to any customer experiencing Type C payment difficulty. A customer is in Type C payment difficulty when they are making payments that reduce their debt but not in accordance with their payment plan. Debt is not rising for customers in this category.

CUSTOMER ENTITLEMENT TO ASSISTANCE

Assisted Repayment enables customers to extend their repayment schedule without having to provide their retailer with any information about their personal or financial circumstances.

Customers on Assisted Repayment will be offered energy management advice, based on a discussion with their retailer about their energy needs and their actual pattern of energy use.

Information about other relevant government and non-government assistance available will also be provided to customers on Assisted Repayment.

RETAILER OBLIGATION TO PROVIDE ASSISTANCE

Assisted Repayment requires the retailer to offer a payment plan for the customer to pay their ongoing cost of energy use, and up to 15 per cent of the amount owed in equal instalments each month.[94]

If a customer makes the payments required under Assisted Repayment, then the retailer will be required to give the customer the benefit of any discounts that were lost when they missed their first payment. This recognises the fact that the people who are in greatest need of low cost energy are often least able to obtain discounts.

There will be no restriction on customers repaying outstanding debt more quickly if they choose to do so (for example if they gain access to additional funds), or more frequently (for example fortnightly repayments). Retailers will also be able to agree to a repayment schedule involving lower payments over a longer period.[95]

Retailers will be obliged to use their information on each customer's energy consumption patterns to provide energy management advice on practical ways to reduce the cost of customer's energy consumption.

CUSTOMER RESPONSIBILITIES

A customer is expected to pay the cost of their on-going energy use and repay an amount agreed with their retailer up to the limit of 15 per cent of their debt. The customer is expected to pay on time, and to contact their retailer immediately if they cannot make a payment.

If the customer does not make a payment required under Assisted Repayment and has not engaged at all with the retailer, a disconnection warning notice may be issued.[96] As outlined above, standards will need to be developed to provide some flexibility to deal with partial payments.

---

[94] The limit on debt repayment gives customers certainty that they will not be required to make unaffordable repayments. Fifteen per cent has been selected as a level that provides flexibility for customers, but still requiring repayments to be made in a timely manner (approximately seven months).

[95] For example, ten per cent of the debt being repaid in equal instalments over ten months.

[96] In order to limit the risk of further debt accumulation, no reminder notices will be required to be issued to customers for payments required under Assisted Repayment.

ILLUSTRATIVE CUSTOMER EXAMPLE

Case Study 4.3 shows how a customer could access Assisted Repayment, and how the proposed framework provides greater consistency of service and support for customers experiencing Type C payment difficulty relative to the current regulatory framework. In this case study, the customer is already on an Immediate Assistance package but does not make the payments required. In other words, the customer's type of payment difficulty has escalated from Type B to Type C.

CASE STUDY 4.3 ASSISTED REPAYMENT IN ACTION

Maria is a new customer. She is unemployed and relies solely on Centrelink payments. Maria paid her first electricity bill in full but missed her second bill. She did not respond to efforts made by her retailer to contact her. Maria was automatically placed on Immediate Assistance by her retailer but she only partially paid her next bill. She paid enough to cover the cost of her energy use and a portion of the debt that was owed.

Current framework

Maria may be deemed by her retailer to have failed her first payment plan. Because she is not responding to the retailer's efforts to contact her, her retailer may initiate disconnection procedures.

The proposed safety net

Maria has an energy debt and made a payment that covered the cost of her energy use but did not cover the debt repayment in full (Type C payment difficulty). Therefore, she is eligible for Assisted Repayment.

Payment plan

Maria's retailer contacts her by phone and leaves a message advising her that she is entitled to vary her repayments. Maria returns the call to find out more about the assistance available and agrees to a new payment plan that covers the cost of her energy use and 15 per cent of her outstanding debt per month.

Energy management

Maria's retailer tells her that almost half of her daily energy use occurs between 6.00pm and 9.00pm. Maria explains her normal evening routine and discusses how this is affecting her energy use with her retailer. She receives advice over the phone on ways she may be able to reduce the cost of her energy consumption.

Information and referral

Maria's retailer sends her a Utility Relief Grant form, and refers her to information on the retailer's website that provides links to other support options that may be available to her from government and welfare agencies.

Outcome

Maria accepts the payment plan and offer of assistance from her retailer. As a result, she can pay for her energy use and repay her debt in a predictable way over the coming months.

4.5.4 ACTIVE ASSISTANCE

Active Assistance is the second of the tailored forms of assistance available under the customer safety net. It provides more active assistance to deal with the situation where a customer has incurred energy debt, and although they are able to pay for the cost of their on-going energy use, they are not able to make their debt repayments. Active Assistance is focused on reducing the cost of energy consumption, with cost savings being used to start to repay the customer's debt.

TYPE OF PAYMENT DIFFICULTY

Active Assistance will be available to any customer experiencing Type D payment difficulty. A customer is in Type D payment difficulty when they are paying for their use but not repaying any of their debt. Debt is not rising for customers in this category.

CUSTOMER ENTITLEMENT TO ASSISTANCE

Active Assistance enables customers to extend the duration of their debt repayments to allow for:

- a period of payments at the cost of their current energy use, while the retailer provides comprehensive practical assistance to help reduce the cost of the customer's energy consumption
- information about, and referrals to community and welfare agencies with the customer's agreement.

The payment plan under Active Assistance must be of sufficient duration to enable all arrears to be repaid.[97] There will be no restriction on customers repaying outstanding debt more quickly if they elect to do so.

RETAILER OBLIGATION TO PROVIDE ASSISTANCE

Active Assistance requires the retailer to agree to a payment plan where the customer pays equal monthly payments that cover the cost of their energy use. The retailer must then work closely with the customer to reduce the cost of their energy consumption, to enable the customer's monthly payment to begin to repay their debt.

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

Retailers will be required to assist customers to reduce the cost of their energy consumption in one of three ways:

- a **performance based approach** that requires a specified reduction in the cost and/or level of a consumer's energy use through any means that the retailer and customer agree;[98] or
- a **conduct based approach** which uses a points-based system that requires retailers to choose from (and provide) a range of services to customers;[99] or
- a **Guaranteed Service Level** payment to a customer where the cost of assisting the customer to reduce their consumption may exceed the value of the potential energy savings.[100]

[97] The Commission recognises that there will be a need for transition provisions for customers that transfer to Active Assistance from existing hardship programs with significant levels of debt. The duration of the Active Assistance payment plan for these customers will need to be longer to address their accumulated debt.

[98] The Commission considers that a reduction of five per cent use or ten per cent cost is reasonable for customers on Active Assistance; however, this would be subject to consultation in the design of the regulation.

[99] The Commission considers that options that could be included in the conduct option (with associated points) would include tailored telephone advice, in-home audits, appliance replacements and installation of in-home-displays. The options and the points structure would be subject to further consultation.

[100] The Commission will develop the Guaranteed Service Level (GSL) system using established economic principles. Industry and other stakeholders will be consulted in the development of the system.

The retailer is also required to work with the customer to identify other government and community programs to which the customer may be entitled. The retailer will be required to assist the customer to access this assistance (for example, by referral).

CUSTOMER RESPONSIBILITIES

Customers on Active Assistance will be responsible for:

- paying for their energy consumption,
- paying on time and contacting their retailer immediately if they cannot make a payment,
- taking steps to better manage their energy consumption, and
- starting to repay their debt from the costs avoided by managing their energy consumption.

If the customer does not make a payment and has not engaged at all with the retailer, a disconnection warning notice may be issued.[101] As outlined above, standards will need to be developed to provide some flexibility to deal with partial payments.

ILLUSTRATIVE CUSTOMER EXAMPLE

Case Study 4.4 shows how a customer would access Active Assistance, and how the proposed framework provides greater consistency of service and support for customers experiencing Type D payment difficulty relative to the current regulatory framework. The customer is already on an Immediate Assistance package but her payments only cover the cost of their energy use.

CASE STUDY 4.4 ACTIVE ASSISTANCE IN ACTION

Amy recently lost her job. She didn't pay her electricity bill when it became due. She was offered Immediate Assistance, but then missed her next payment. She found another job in the interim, but earned less than she had before. However, the new job enabled her to make a payment that covered the cost of her energy use. Amy contacted her retailer to advise them that she cannot make her debt repayments.

[101] In order to limit the risk of further debt accumulation, no reminder notices will be required to be issued to customers for payments required under Assisted Repayment.

Current framework

Amy may be deemed by her retailer to have failed her first payment plan. Because she contacted her retailer she must be offered a second payment plan. Because Amy is employed and making payments, she may not be offered access to the retailer's hardship program. The retailer may require the payment amount to include debt repayments. If Amy does not make the payment in full she may be deemed by her retailer to have failed her second payment plan, and her retailer may initiate disconnection procedures.

The proposed safety net

Amy owes her retailer money but has paid enough to cover her usage (Type D payment difficulty), and so is eligible for Active Assistance.

Having noticed that Amy had only paid for her energy use, Amy's retailer contacts her and offers her Active Assistance.

Payment plan

Amy is advised that she is entitled to a payment plan that involves a set monthly amount that covers the cost of her current usage. Amy is advised that this will enable her to repay her debt in a predictable way as she reduces the cost of her energy consumption with the assistance of her retailer.

Energy management

Amy responds to her retailer's invitation to discuss the assistance with energy management that is available. Her retailer decides to provide specific package of energy measures (conduct approach). She accepts her retailer's offer of practical in-home assistance in the form of a home assessment. Following the home assessment, her retailer offers her a tariff that would better suit her pattern of energy use, as well as providing an in-home display to help her monitor her ongoing consumption.

Information and referral

Amy's retailer assists her to apply for a Utility Relief Grant, and also puts her in contact with a local government support service in her area that provides advice and assistance for low income households.

Outcome

By following the practical energy management advice provided by her retailer, and by continuing to make her standard monthly payments and reducing the cost of her energy use, Amy has a clear path to repaying her debt.

4.5.5 CONNECTION SUPPORT

The purpose of Connection Support is to provide a customer with a last resort option to avoid disconnection. This option requires the retailer and customer to work closely together to reduce energy use to an affordable level and ensure the customer has access to available forms of government and non-government support.[102]

Connection Support is available for up to two years in two phases:

- In the first three months a customer can pay below the cost of their energy use while they work intensively with their retailer to reduce the cost of their energy consumption
- If after three months the customer is still not paying for their energy use, they will be required to make pay-as-you-go payments of their energy use in order to remain connected.

TYPE OF PAYMENT DIFFICULTY

Connection Support will be available to any customer experiencing Type E payment difficulty. A customer is in Type E payment difficulty when they have energy debt and are not paying for the cost of their on-going energy use. As a result, their debt to the retailer continues to increase.

CUSTOMER ENTITLEMENT TO ASSISTANCE

Connection Support enables a customer to remain connected when they are not paying for the cost of their energy use in full or making debt repayments. Under the current framework these customers could be disconnected.

A customer on Connection Support will have their debt put on temporary hold. For customers in the most severe payment difficulty this enables their payment difficulty to be broken down into manageable steps. The first step involves the customer and their retailer working towards the customer paying only for the energy they consume.

[102] Whereas in Active Assistance, the emphasis was on reducing energy *costs*, in Connection Support the emphasis is on reducing energy *use*, consistent with the objectives of assistance set out in section 4.4.2.

Connection Support entitles a customer to a three-month period of below cost payments,[103] during which time they and their retailer must work together to reduce energy consumption and identify the community and welfare support the customer may need to remain connected in the longer term.

If, after three months, the customer on Connection Support is still not paying for their energy consumption, they are entitled to remain connected provided they move to a pay-as-you-go arrangement to cover their energy use. This ensures no further growth in the customer's debt to the retailer. The customer is entitled to information from an independent third party prior to moving to the pay-as-you go arrangement (see below).

The customer receiving Connection Support cannot switch to another retailer in the first three months. However, if a customer moves onto the pay-as-you-go arrangement, they will be able to switch retailer, provided they enter into an agreement with their original retailer to repay their outstanding debt.

If a customer has switched to another retailer but does not meet the agreed debt repayments, their original retailer will be able to seek to recover the outstanding debt through normal processes. The Commission would expect that retailers will only engage debt collectors who adhere to the ASIC-ACCC guideline on debt collection.[104]

RETAILER OBLIGATION TO PROVIDE ASSISTANCE

For a three-month period at the start of Connection Support, the retailer will be required to provide the customer with a payment plan where the customer pays a fixed monthly amount that is below the cost of their energy use.

During the three-month period, the retailer will need to assist the customer to reduce their energy consumption and to access community and welfare support. The aim is to stabilise the customer's debt by matching their energy use to their monthly payment.

[103] The Commission will consult with the industry and stakeholders on the practical limits that might be placed on below cost payments. In principle, the additional debt accrued as a result of below cost payments should be practically capable of being repaid from the combination of assistance measures to reduce energy cost (e.g. more suitable tariffs), reduced consumption (energy management) and income support (e.g. URGs, concessions).

[104] ASIC-ACCC 2015 *Debt collection guideline: for collectors and creditors*, July (reissue). The Commission would also expect adherence to the ASIC-ACCC guideline for debt collection services who are **sold** debts from retailers.

If after three months the customer's debt is still increasing, a retailer must allow the customer to remain connected provided the customer moves to a pay-as-you-go arrangement.[105]

Prior to moving the customer onto pay-as-you-go the customer must be given one month's notice. During the notice period the retailer will be required to arrange for an independent third party to contact the customer to offer to provide them with information about the pay-as-you-go arrangement.

The Commission considers that there are a range of organisations that may be well-placed to provide these services, particularly those that have a good understanding of the challenges faced by customers experiencing payment difficulty, and are familiar with the welfare sector.[106] The Commission would nonetheless need to accredit any organisation wishing to provide this service.

Once this information has been provided to the customer (or is deemed to have been provided),[107] the retailer can place the customer on a monthly pay-as-you-go arrangement that covers the cost of the customer's energy use.[108]

A customer who misses a payment in either phase of Connection Support would be issued with a disconnection warning notice as per the Disconnection Procedure, with disconnection to occur no sooner than six business days from the notice.[109]

A customer who is disconnected in either phase retains the protection of the Connection Support arrangement. As a result, the retailer must reconnect the customer on request, subject only to the customer paying the agreed a pay-as-you-go amount plus the cost of energy incurred during the period from the disconnection notice to the date of disconnection.

---

[105] Pay-as-you-go must not involve the use of pre-payment meters.

[106] The information service would be paid for on a user pays cost recovery basis.

[107] A customer will be deemed to have been provided with the information if the accredited third party shows that it used its best endeavours to contact the customer to provide the information.

[108] The Commission considers that the previous month's energy use is the most appropriate measure because it most closely reflects the customer's current use, including efforts to reduce consumption. The Commission considered other options such as monthly or seasonal averages. The Commission would consult on the specific detail of how the pay-as-you-go amount should be calculated in the development of the regulations.

The Commission also recognises that there may not be accurate actual data for some customers (at the least this will affect gas customers), and will work with stakeholders to develop a fair means of calculation.

[109] Subject to meeting all the necessary requirements of the Disconnection Procedure.

Customers on Connection Support have a right to the same energy management assistance provided under Active Assistance. This includes the retailer needing to choose between:

- a **performance based** approach that requires a specified reduction in the cost and/or level of a consumer's energy use through any means that the retailer and customer agree; or
- a **conduct based approach** which uses a points-based system that requires retailers to choose from (and provide) a range of services to reach a target; or
- a **Guaranteed Service Level** payment to a customer where the cost of assisting the customer to reduce their consumption far exceeds the value of the potential energy savings.

However, if the customer has already received this assistance under Active Assistance, the retailer is not required to make the same assistance available again. While a customer is on Connection Support, the retailer cannot seek to recover or sell the customer's debt. Retailers must also object to a request from another retailer to transfer a customer if they are in their first three months of Connection Support. If a customer on the pay-as-you-go arrangement switches to another retailer, the Connection Support arrangement with the original retailer ends and that retailer can seek to recover the debt.

CUSTOMER RESPONSIBILITIES

Customers on Connection Support will be responsible for:

- working with their retailer to reduce energy use; and
- paying on time and contacting their retailer immediately if they cannot make a payment.

Consistent with the principles of shared responsibility and proportionality underpinning the proposed framework, customers on this highest level of assistance will need to engage actively with their retailer and take genuine steps to act on the assistance provided.

ILLUSTRATIVE CUSTOMER EXAMPLE

Case Study 4.5 shows how a customer could access Connection Support, and how the proposed framework provides new additional protection from disconnection for customers experiencing the greatest payment difficulty. The customer is already on Immediate Assistance because she missed a payment.

CASE STUDY 4.5 CONNECTION SUPPORT IN ACTION

Ayesha switched to a new retailer in January 2015. In early May 2015, she became seriously ill and was hospitalised. During the period that Ayesha was in hospital, her first quarterly electricity bill was due for payment. Incoming medical bills, and the fact that Ayesha has been off work, mean she will not be able to pay for her energy in the coming months.

Current framework

Ayesha responds to the disconnection warning notice on her return home. If Ayesha explains her circumstances, she will be offered a payment plan. The plan may include debt repayments as well as the cost of Ayesha's on-going energy use. Ayesha may or may not be considered eligible for her retailer's hardship program. If her retailer considers that she might be eligible, Ayesha may then be required to provide evidence of her income, medical and other expenses. If Ayesha misses a payment under an initial payment plan, she must be offered a second plan. Should Ayesha not be able to meet the terms of the second plan, her retailer may allow the debt to accumulate, offer a further payment plan, or disconnect Ayesha's supply. If disconnection occurs, reconnection by the retailer may be subject to Ayesha paying her outstanding debt.

The proposed safety net

While she was in hospital, Ayesha was automatically placed on Immediate Assistance. Her retailer subsequently sent a disconnection warning notice when Ayesha missed her first Immediate Assistance payment and did not contact her retailer. On her return home from hospital, Ayesha contacted her retailer who advised her that she is entitled to Connection Support.

Payment plan

Ayesha's retailer offers her a payment plan that allows her to pay less than the cost of her energy use for the first three months. After that, she must pay for the cost of her energy use. Ayesha is asked to contact her retailer again once she returns to work, to arrange to move onto Assisted Repayment and begin to repay her debt.

Energy management

Ayesha is offered assistance with her energy management; however, she already lives in an energy efficient home and advises that she does not need any further advice.

Information and referral

Ayesha's retailer refers her to other support options that may be available to her from government and welfare agencies.

Outcome

Ayesha eliminated the risk of disconnection without having to provide any information to her retailer about her medical condition, her financial affairs or other personal matters. She was able to make below use payments for three months while she was paying her medical bills. Unfortunately, Ayesha's recovery took longer than she had hoped, and she remained on Connection Support for a further six months. However, during this time she paid for her on-going energy use and so did not increase her debt. After returning to work she contacted her retailer and arranged to repay her debt over the next seven months on Assisted Repayment. After 16 months[110] Ayesha was no longer in payment difficulty.

4.5.6 RECONNECTION UNDER THE SAFETY NET

This section sets out customers' entitlements to reconnection under the customer safety net. The proposed safety net strictly limits the conditions under which a customer may be disconnected from supply.

As outlined in section 3.3.4, a retailer may only consider disconnecting a customer experiencing payment difficulty if:

1. the customer does not make the repayments required under a relevant payment plan;[111] and
2. the customer does not engage with their retailer to make new arrangements to resolve their payment difficulty; and
3. the retailer can demonstrate that it has provided:
   a. all of the required assistance; or
   b. that it has used its best endeavours to do so.

Any customer who is disconnected 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. For example, if a customer on Assisted Repayment is

[110] The total period of payment difficulty comprised: three months - Connection Support (initial phase); six months - Connection Support (second phase); and seven months - Assisted Repayment.

[111] A relevant payment plan is a payment plan that meets the regulatory requirements for the type of payment difficulty being experienced by the customer.

disconnected, they will be entitled to reconnection if they contact their retailer and arrange to pay the cost of their energy use plus the scheduled debt repayment. This is a higher level of protection than the current framework, which allows a retailer to request an arbitrary amount of debt repayment as a condition of reconnection.

If a customer on Active Assistance is disconnected, they will be entitled to reconnection if they pay the cost of their energy use in full. Again, this is an improvement on the current framework, which allows a retailer to require any debt repayment amount as a condition of reconnection.

A customer on Connection Support would be required to make their fixed payment or a pay-as-you-go amount depending on which phase of Connection Support they were in prior to disconnection. Their retailer would not be able to require any debt repayment as a condition of reconnection.

Case Study 4.6 shows how the framework applies to a customer who is disconnected for not paying for their energy use and not engaging with their retailer.

CASE STUDY 4.6 CONNECTION SUPPORT IN ACTION - RECONNECTION

During a period of unemployment, Darren ignored his bills, allowing them to pile up unopened. He hoped that he would pay his bills when he found work. Darren also ignored attempts by his energy retailer to contact him by phone and e-mail.

Within two months of missing his first energy bill payment, Darren was disconnected. Darren contacted his retailer on the same day that he was disconnected.

Current framework

As Darren contacted his retailer within ten days of disconnection he has a right to reconnection under financial terms set by his retailer. Darren may be required to provide personal information about his circumstances and finances. His retailer may require him to pay a connection fee and repay a significant amount of debt. If Darren and his retailer cannot agree the terms of reconnection, Darren may contact EWOV. If he does so, he should be reconnected on the same day.

However, Darren may be required to make a significant upfront payment covering both his energy use and a proportion of his debt as a condition of reconnection. EWOV will also facilitate an agreement between Darren and his retailer regarding the amount he should pay to remain connected. This amount may or may not cover the cost of Darren’s energy use, and may or may not include repayment of debt. If Darren does not make the agreed payments he may be disconnected again.

The proposed safety net

Reconnection

If Darren contacts his retailer, he must be reconnected if he agrees to pay the cost of one month's energy use up front and a reconnection fee. Darren will not be required to repay any of his debt as a condition of reconnection.

Payment plan

Darren will be placed on Connection Support after reconnection. Darren is able to pay below the cost of his energy use for up to three months while he and his retailer work to reduce the cost of his energy consumption and ensure that he has access to community and welfare support.

Energy management

Darren's retailer tells him that his energy consumption is more than twice the average. Darren tells his retailer that his rented flat needs constant heating and cooling as the windows don't fit properly and there are holes in the walls. Darren also tells his retailer that he has wall mounted electric radiators and his cooling is from an old window mounted air conditioner. Darren's retailer offers to assist him to replace his heating and air conditioner with an efficient reverse-cycle air conditioner. Darren seeks his landlord's approval to make the changes but is refused permission. He is provided with basic advice on how he may be able to make low cost improvements to reduce his energy consumption such as using cheaper forms of heating and basic improvements to the energy efficiency of the rooms he uses most. Darren's account is credited with a GSL payment.

Darren is on a standard contract. His retailer offers him a market contract at a lower rate including discount for Centrelink payment and bill smoothing. His retailer helps him to arrange the Centrelink payment.

Information and referral

Noting that Darren is out of work, the retailer ensures that Darren is aware of other support options that may be available to him from government and welfare agencies in the form of concessions and income support. Darren's retailer assists him to apply for a Utility Relief Grant (URG) and ensures that he is registered for energy concession payments.

Outcome

Darren was reconnected without having to either provide detailed personal information or go to EWOV for assistance, and without having to make large upfront payments. Darren's debt was stabilised within three months. Because his total debt was limited to the cost of three months energy use, the combination of the URG and the GSL credit was sufficient to eliminate his debt.

Darren disconnected his wall mounted electric heaters and obtained some energy efficient fan heaters through a local community organisation with whom his retailer had a partnership.

Darren has been able to keep up with his payments with the assistance of his energy concession payments.

4.5.7 FLEXIBILITY TO INNOVATE

Retailers will be required to deliver customer assistance that meets the standards of the customer safety net. The safety net applies for all customers experiencing payment difficulty as defined by the framework, and customers cannot agree to waive their rights.

However, the framework also allows for retailer innovation. Retailers will have the discretion to offer services that complement the safety net for any of the three elements of assistance. Such innovations, nonetheless, would need to remain consistent with the objectives of assistance for each customer type, and retailers must be able to demonstrate that any assistance offered complies with the minimum requirements of the safety net.

For any customer a retailer may provide assistance that goes beyond the customer’s minimum entitlement for their type of payment difficulty. A retailer may, for example, provide a customer experiencing Type C payment difficulty with Type D assistance, or with innovative services consistent with the objective of Type D payment difficulty. A retailer may also provide other innovative forms of assistance not covered by the customer safety net.

The Commission will monitor retailers’ records to ensure that customers are fully informed about their rights under the safety net. We will also require performance reporting on the assistance provided (both innovative and through the safety net) via a best practice reporting framework. The proposed best practice framework is discussed in section 4.6.

4.6 DETAILS OF MONITORING AND REPORTING

Compliance and performance monitoring will provide insight into how retailers are assisting customers who face payment difficulties. We intend to collect and report on a range of information from retailers about how they are meeting their obligations, including any service provision that exceeds the standards of the safety net. This section sets out details of the monitoring and reporting under the proposed framework as illustrated in the third part of figure 4.2.

4.6.1 COMPLIANCE

As noted at the beginning of this chapter, recent changes to the energy industry legislation requires the Commission to 'promote protections for customers, including in relation to assisting customers who are facing payment difficulties'.

We will require retailers to maintain records of their exchanges with customers to demonstrate customers are informed about their options. We will also require retailers to report aggregate data to the Commission as part of their existing reporting obligations. Further, we will incorporate new payment plan obligations into the retailer compliance reporting manual, and retailers will be required to report breaches of their payment plan obligations. Retailer compliance will be audited through our audit program.

We will publish information on retailer compliance in accordance with our statutory reporting obligations.[112]

4.6.2 ENFORCEMENT

As discussed in previous chapters, the current approach to customer payment difficulties and hardship suffers from a lack of enforceability. The proposed framework has been designed with the objective of improving monitoring and enforcement.

The Commission was recently given increased enforcement powers under the *Energy Legislation Amendment (Consumer Protection) Act* 2015. The Act provides more tools

---

[112] Section 54V *Essential Services Commission Act* 2001.

for the Commission's regulatory toolkit, which allows for a more nuanced and tailored approach to enforcement. Increases in applicable penalties also grant the Commission more power to influence compliance behaviour.

The Commission will use its statutory enforcement powers to address non-compliance with the safety net. We will consult on and revise our current Compliance Policy Statement[113] to set out our overall approach to non-compliance.

4.6.3 BEST PRACTICE

A good regulatory framework has the capacity to be flexible and allow for learning from experience. For this reason, the Commission's proposed framework includes a formal approach to best practice. We propose to review the operation of the customer safety net (once established) every two years. These reviews will build upon the research undertaken by the Commission for inquiry. They will include an assessment of retailer policies, practices and procedures that exceed the framework's minimum requirements.

Regular performance reporting will also play a role in our identification of best practice.

Issues of particular interest for the Commission include:

- how retailers use the information they have available to identify customers at risk of missing a payment and offer them assistance before a payment is missed
- how retailers monitor customers' situations and respond with appropriate assistance when a customer's circumstances change
- how many customers take up enhanced retailer offerings relative to the safety net and how effectively these measures assist customers
- methods used by retailers to improve the efficiency and effectiveness of the operation of the framework (for example, staff training).

[113] Essential Services Commission 2012, *Compliance Policy Statement for Victorian Energy Businesses*, 2012.

4.6.4 PERFORMANCE OUTCOMES

The Commission intends to test the effectiveness of retailer practices to meet the objectives of the proposed regulatory framework. We will revise the current performance indicators to replace existing hardship program indicators with new indicators that focus on outcomes for customers with payment difficulties.

We propose to collect performance data in five areas:

1. *The level of payment difficulty*

   For example:

   - number of customers for with each of Types A to E payment difficulty
   - number of customers that moved between each type of payment difficulty.

2. *Retailer innovation*

   For example:

   - amount and form of additional assistance measures (above the safety net) customers for each of Types B – E payment difficulty
   - average debt for each of Types B – E payment difficulty on initial classification.

3. *The level of debt owed*

   For example:

   - distribution of customer debt across Types B – E payment difficulty
   - average debt for customers with each of Types B – E payment difficulty on initial classification and at regular intervals.

4. *The level of disconnection*

   For example:

   - total number of disconnections
   - number of disconnections disaggregated by cause, including for payment plan failure due to insufficient engagement
   - average duration of the disconnections.

5. *Reconnection*

For example:

- number of customers making pre-payments
- average reduction in consumption achieved.

We will consult on the detail of the performance measures to include in retailer performance reports.

4.7 IMPACTS OF THE NEW FRAMEWORK

The proposed framework largely standardises a range of existing retailer practices to improve transparency, consistency and accountability for all customers experiencing payment difficulty. All of the assistance measures included in the proposed framework are already being offered by one or more energy retailers in Victoria.

The following sections outline the likely impacts of the new customer safety net for retailers, customers experiencing payment difficulty, dispute resolution bodies and other participants.

4.7.1 RETAILERS

In the long term, the benefits for retailers are:

- reducing disincentives for customers to engage with their retailer when experiencing payment difficulties
- clarifying the retailers' obligations to assist customers in payment difficulty, which reduces time spent in dispute with customers, financial counsellors, welfare and other agencies and EWOV
- reducing the risk of enforcement action by the Commission and imposition of penalties
- eliminating the cost to retailers of complying with the obligations to have hardship policies
- eliminating the cost to retailers of complying with the obligation to have regard to a customer's capacity to pay in establishing payment plans

- sharing responsibility with the customer to deal with payment difficulties
- reducing the need for interpretation and value judgment of customer circumstances
- reducing overall levels of customer debt.

Throughout the process of designing the proposed framework, the Commission has paid particular attention to the costs of retailer system changes and other costs that will be required to implement the proposed framework.

The Commission made significant changes to its earlier proposal as outlined in our draft report in response to feedback about how the framework would need to build on the national framework rather than duplicate it. This involved moving to a safety net model which specifies the minimum standards that customers in Victoria must receive.

The Commission has also ensured that wherever possible the proposed framework mirrors aspects of current retailer practice (that are already occurring under the nationally harmonised Energy Retail Code), in order to reduce the cost of implementing the changes.

The Commission nonetheless recognises that retailers will still incur transition costs. The main costs relate to:

- modifying the systems required for the operation of the new framework including billing and payment system changes
- the information that retailers will need to make available to customers on the entitlements and responsibilities of both parties
- compliance with the additional protections afforded to Victorian customers compared with other jurisdictions.

The Commission considers that these costs will primarily be transition costs and will be outweighed by the savings identified above.

4.7.2 CUSTOMERS EXPERIENCING PAYMENT DIFFICULTIES

The main benefits for customers experiencing payment difficulties are:

- accessing a payment plan, without being assessed, evaluated or labelled
- eliminating the current practice of requiring an independent financial assessment as a condition of retailer assistance

- having access to a system of payment plans that responds flexibly to changing individual circumstances
- having full and proper disclosure of rights and obligations under a payment plan, including the consequences of not meeting the terms and conditions
- having confidence that all retailers will provide a minimum level of support irrespective of which retailer services the customer's energy needs
- being offered early options and actions to limit their level of debt and having access to a clear pathway to repay any debt incurred
- being able to access additional support to help manage energy use and its cost if they cannot pay for their on-going energy use.

Under the proposed framework, customers will be required to engage with their retailer and commit effort to managing their payment difficulty. We are confident this additional effort will be easily outweighed by the lower risks of unmanaged debt and potential disconnection.

4.7.3 DISPUTE RESOLUTION BODIES

The long term benefits for dispute resolution bodies are:

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

Dispute resolution bodies will need to modify their policies and procedures and train staff about how the framework operates. The Commission will work with relevant bodies to assist them in this task.

4.7.4 MARKET OUTCOMES

Benefits to overall market efficiency will arise from:

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

To the extent that the proposed framework reduces regulatory cost and the retailers' cost of carrying outstanding customer debt, cross-subsidies from customers not experiencing payment difficulties will also be reduced. Over the longer term, the lowered risk of bad debt should lower the cost of capital for many retailers.

4.8 CONCLUSION

The chapter described the proposed framework for assisting customers experiencing different levels of payment difficulty. The framework is consistent with the purpose, objectives and principles outlined at the start of the chapter. It provides customers with a minimum safety net of protections, while also providing retailers scope to innovate in how they assist their customers. There is scope to innovate within the framework (in Tailored Assistance and Connection Support provided the minimum safety net requirements are satisfied) and beyond the minimum safety net requirements of the framework at every stage of payment difficulty.

Importantly, the framework adds two new protections that have no equivalents in the current regulatory arrangements. First, it requires any customer who misses a payment to be automatically placed on a payment plan (Immediate Assistance). This will ensure that customers no longer 'fall through the cracks' and end up in thousands of dollars of debt. Second, the framework provides an ultimate safety net (in Connection Support) that will see customers placed on a prepayment plan when they have exhausted all efforts to lower their energy costs. This will prevent any further escalation of customer debt and the disconnections that inevitably follow.

In other words, we are confident the framework meets the policy objective articulated in the terms of reference for this inquiry, namely, that the disconnection of customers experiencing payment difficulties should only be used as a measure of last resort.

The following chapter provides a road map for implementing the framework.

5 ROADMAP FOR IMPLEMENTATION

INTRODUCTION

This chapter outlines a roadmap for implementing the proposed framework. This would require the Commission to prepare changes to the Retail Energy Code and other regulatory instruments, and also provide a pathway for transition for customers on existing payment plans or in hardship programs.

The roadmap presented here is indicative only, and is based on our best expectations at the time of this Inquiry. As with the inquiry itself, we will consult with interested parties on the roadmap.

5.1 FURTHER CHANGE TO REGULATORY INSTRUMENTS

There are three regulatory instruments that will require change to implement the regulatory framework described in this report:

- the Energy Retail Code
- retailer licences
- the Operating Procedure relating to Wrongful Disconnection.

In particular, the proposed standards of assistance for customers in each type of payment difficulty will need to be codified. In doing so, the Commission will need to consult on a range of specific details discussed in this final report, including:

- how late and partial payments should be treated

- the proposed standard for customer engagement (precluding a retailer from proceeding towards disconnection)
- how the energy management conduct, performance and Guaranteed Service Level standards will apply in practice under Active Assistance and Connection Support
- how a customer's expected energy use should be determined for the purpose of 'pay-as-you-go' arrangements.

Following recent amendments to the *Essential Services Commission Act* 2001, the Commission must determine indicators for the performance of energy retailers.[114] These will necessarily include indicators related to the assistance provided to customers experiencing different levels of payment difficulty. The Commission will also develop the reporting arrangements for the best practice framework.

5.2 TRANSITION TO THE FRAMEWORK

A transition period will be required prior to the commencement of the proposed framework. This will provide stakeholders with the opportunity to familiarise themselves with the new obligations, adjust their systems and processes, and undertake staff training. Retailers in particular will need to develop means of assessing customer payment difficulty types and to establish processes to record customer engagement in line with their new obligations. They will also need to establish appropriate links with government and non-government agencies.

This means that the roadmap will require two key dates to be determined: one that marks the beginning of the transition period; and a commencement date that marks the end of the transition period and the start of the new framework.

5.2.1 CUSTOMER TRANSITION

There are three sets of customer circumstances that will need to be accounted for in transition to the proposed framework. These depend on when a customer first incurs

---

[114] Section 54W *Essential Services Commission Act* 2001.

debt (or contacts the retailer about a payment difficulty) relative to the transition and commencement dates.

The Commission considers that the following should apply:

- **Debt incurred after the commencement date**: Customers who do not have debt at the commencement date but who then experience or anticipate payment difficulty will be supported under the **new** (proposed) framework, with retailer compliance assessed accordingly.
- **Debt incurred during the transition period**: Customers who incur debt or contact the retailer about a payment difficulty for the first time during the transition period will be supported under the **current** framework, with retailer compliance assessed accordingly. However, we would expect that retailers would categorise these customers by their payment types and manage them under the new framework from the commencement date.
- **Debt incurred prior to the transition date**: Customers with legacy debt require careful transition. As discussed in chapter 2, there are currently many customers with significant levels of energy debt; an issue also noted by many stakeholders. As with the treatment of customers who first incur debt during the transition period, we consider that retailers should categorise these customers by their payment types and manage them under the new framework from the commencement date. However, it is likely that the payment plan amounts might need adjustment and the plan duration may need to be lengthened for these customers to accommodate the amount of legacy debt owed at that stage. These arrangements will be resolved during consultation on the necessary changes to the Code.

5.2.2 IMPLEMENTATION PROCESSES

To support a smooth transition, the Commission intends to:

- Ensure our enforcement and compliance policies deliver clear regulatory guidance to retailers about our expectations during the transition period and in the early months after the commencement date.

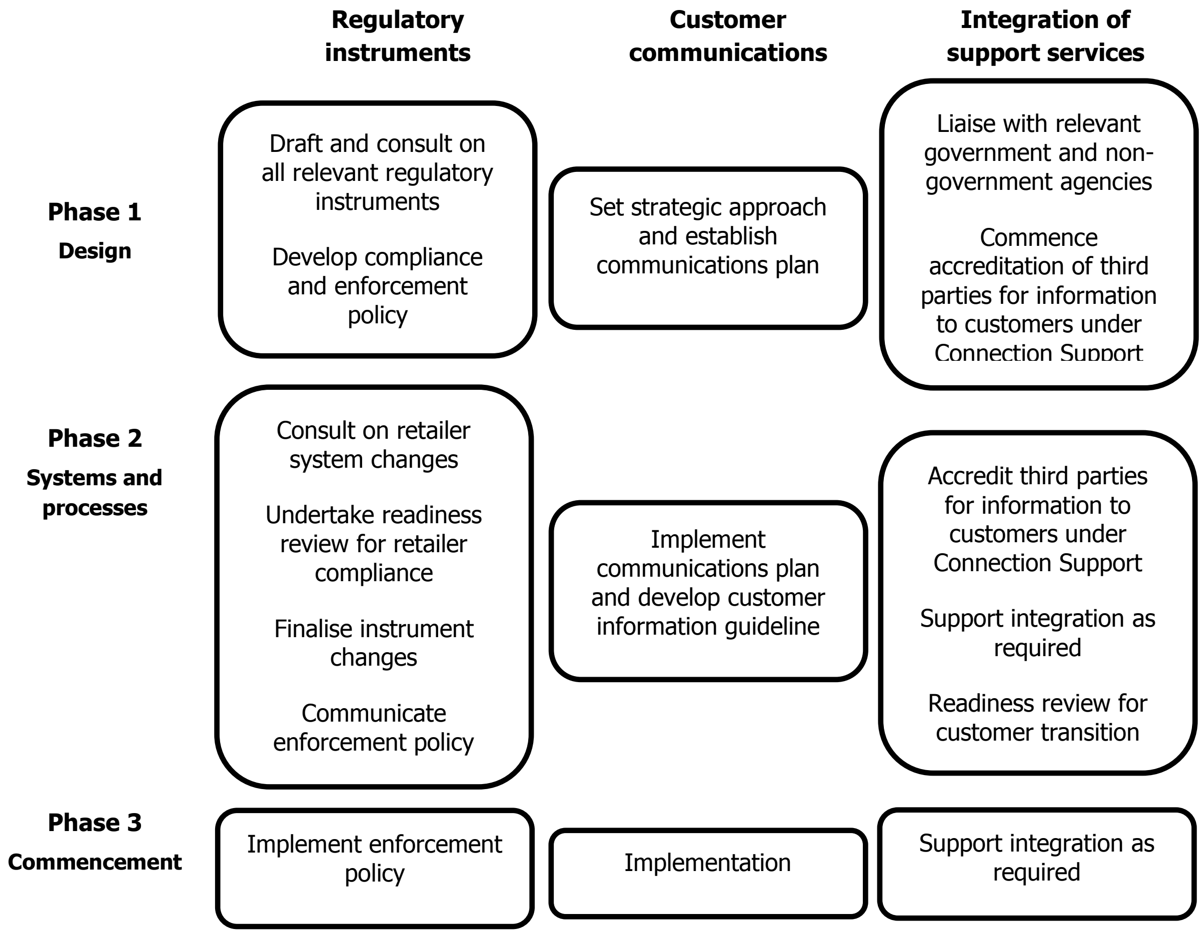
- Develop an appropriate strategy and means of delivering customer communications about the changes to the framework. This includes a new Guideline that will explain to customers their rights and obligations under the proposed framework.

- Liaise with government and non-government agencies to support integration of available customer support services across all elements of the framework, and to manage legislative requirements to support the Commission's implementation of the framework.[115] We will maintain active dialogue with relevant agencies on policies and programs and will also share information and insights gained from this inquiry with other government agencies. We will also need to appoint an accredited third party to provide the required pay-as-you go information to customers under Connection Support.

The streams for further work are shown indicatively in figure 5.1, across three phases. Consultation will occur across all phases, however it will be concentrated in Phase 1, where the changes to regulatory instruments are being determined, and the strategy for communications and integration of support services is being developed.

[115] For example, there may be merit in amending the hardship provisions of the energy industry Acts. There may also be merit in amending the energy industry regulations to enable the Commission to issue infringement notices for breaches of particular aspects of the framework.

FIGURE 5.1 THE IMPLEMENTATION PROCESS



APPENDIX A - TERMS OF REFERENCE

Minister for Finance
Minister for Multicultural Affairs

Level 5, 1 Macarthur Street
East Melbourne Victoria 3002
Telephone: 03 9651 1044
Facsimile: 03 9651 1088
DX 210759

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

4 FEB 2015

Dear Dr Ben-David

ESC INQUIRY INTO THE FINANICAL HARDSHIP PROGRAMS OF RETAILERS

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

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

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

Yours faithfully

ROBIN SCOTT MP
Minister for Finance
Minister for Multicultural Affairs

State Government Victoria

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

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

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

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

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

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

Scope of the inquiry

The matters to be covered by the inquiry are:

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

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

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

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

Inquiry process

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

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

APPENDIX B - REFERENCE LIST

ASIC-ACCC 2015 *Debt collection guideline: for collectors and creditors*, July (reissue).

AGL 2015, *Submission to the Essential Services Commission inquiry into the financial hardship arrangements of energy retailers*, Submission to Commission issues paper, May.

AGL 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October.

AER 2015, *Review of energy retailers' customer hardship policies and practices*, Melbourne.

Committee of Inquiry into the Financial Hardship of Energy Consumers 2005, *Main report*, September (www.energyandresources.vic.gov.au/__data/assets/pdf_file/0004/1122286/Hardship-Report-Main.pdf).

Alinta Energy 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October (www.esc.vic.gov.au/getattachment/e7db6f6f-ac95-4bff-85b8-02a2f3641117/Alinta-Energy.pdf).

Brotherhood of St Laurence 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report,* October (www.esc.vic.gov.au/getattachment/a006ee98-4a85-4e3a-bb7e-b6e9249d630f/Brotherhood-of-St-Laurence.pdf).

Consumer Action Law Centre 2015, *Submission to the Essential Services Commission inquiry into the financial hardship arrangements of energy retailers*, Submission to Commission issues paper, May.

Consumer Action Law Centre 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October (www.esc.vic.gov.au/getattachment/087057d6-6ad9-4713-9f36-55681d93ff00/Consumer-Action-Law-Centre-(CALC).pdf).

Consumer Utilities Advocacy Centre 2015, *Submission to the Essential Services Commission inquiry into the financial hardship arrangements of energy retailers*, Submission to Commission issues paper, May.

Consumer Utilities Advocacy Centre 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October (www.esc.vic.gov.au/getattachment/95d84d81-bdcc-40fb-bce3-add610fedeed/Consumer-Utilities-Advocacy-Centre-(CUAC).pdf).

Energy and Water Ombudsman NSW, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October (www.esc.vic.gov.au/getattachment/f7529816-cb4b-4bce-a656-ab01555496d7/Energy-and-Water-Ombudsman-NSW.pdf).

Energy and Water Ombudsman Victoria 2015, *A closer look at affordability: an Ombudsman's perspective on energy and water hardship in Victoria*, March.

Energy and Water Ombudsman Victoria 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October (www.esc.vic.gov.au/getattachment/8cec55d0-4355-49b9-aa89-3a55b1870734/Energy-and-Water-Ombudsman-of-Victoria-(EWOV).pdf).

EnergyAustralia 2015, *Submission to the Essential Services Commission inquiry into the financial hardship arrangements of energy retailers*, Submission to Commission issues paper, May.

EnergyAustralia 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October (www.esc.vic.gov.au/getattachment/ccb70cf9-47d1-4501-bfa4-77516db8645e/EnergyAustralia.pdf).

Energy Retailers Association of Australia 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October (/www.esc.vic.gov.au/getattachment/80855e2c-1f68-4d2b-a833-956e0aeff8c6/Energy-Retailers-Association-of-Australia-(ERAA).pdf).

Essential Services Commission 2004, *Disconnections and capacity to pay report on energy retailers' performance*, October.

Essential Services Commission 2012, *Compliance policy statement for Victorian energy businesses*.

Essential Services Commission 2014, *Energy retailers comparative performance report—customer service, 2013-14*, December.

Essential Services Commission 2015, *Supporting customers, avoiding labels. Energy Hardship Inquiry: draft report*, September.

Essential Services Commission 2016, *Energy retailers comparative performance report—pricing, 2014-15*, January.

Ethnic Communities' Council of Victoria 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, September (www.esc.vic.gov.au/getattachment/0201338a-390c-4946-ae02-da9b125f0261/Ethnic-Communities-Council-of-Victoria-(ECCV).pdf).

Financial Counselling Australia 2014, *Hardship policies in practice: a comparative study*, Australian Communications Consumer Action Network.

Frankston City Council 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October (www.esc.vic.gov.au/getattachment/8e996f42-4d7f-462b-8c17-a9b6789d7380/Frankston-City-Council.pdf).

Inner South Community Health 2015, *Submission to the Essential Services Commission inquiry into the financial hardship arrangements of energy retailers*, Submission to Commission issues paper, May.

Kildonan UnitingCare 2015, *Submission to the Essential Services Commission inquiry into the financial hardship arrangements of energy retailers*, Submission to Commission issues paper, May.

Kildonan UnitingCare 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October (www.esc.vic.gov.au/getattachment/4b57fe73-7d02-4069-9f54-98a1f13ae133/Kildonan-Uniting-Care.pdf).

Origin Energy 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October (www.esc.vic.gov.au/getattachment/b48d795b-7282-4a16-bf7a-10bc9fa65a2b/Origin-Energy.pdf).

Red Energy 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October (www.esc.vic.gov.au/getattachment/30ae91dd-7a62-4a8c-a7ee-b4726083753d/Lumo-and-RED-Energy.pdf).

Simply Energy 2015, *Submission to the Essential Services Commission inquiry into the financial hardship arrangements of energy retailers*, Submission to Commission issues paper, May.

Terms of reference: ESC Inquiry into the Financial Hardship Programs of Retailers, Letter dated 4 February 2015.

Victorian Council of Social Service 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October (www.esc.vic.gov.au/getattachment/66bd1d8c-da38-4fb8-95e0-7fd56e49c742/Victorian-Council-of-Social-Service-(VCOSS).pdf).

Yarra Valley Water 2015, *Submission to the Essential Services Commission Energy Hardship Inquiry draft report*, October (www.esc.vic.gov.au/getattachment/15353756-ebe4-49ba-b50e-0edd907ec78b/Yarra-Valley-Water.pdf).