



# INQUIRY INTO THE FINANCIAL HARDSHIP ARRANGEMENTS OF ENERGY RETAILERS

Our approach

March 2015



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# PREFACE

Energy is an essential service that underpins the wellbeing of all Victorians. Everyone has an obligation to pay for the energy they consume, and energy retailers ultimately have the right to disconnect customers who do not pay their bills. However, occasionally customers may find they are unable to pay their energy bills as a result of personal circumstances or life events.

The Essential Services Commission regulates the sale and supply of energy in Victoria, under the *Electricity Industry Act 2000* (Vic), the *Gas Industry Act 2001* (Vic) and the *Essential Services Commission Act 2001* (Vic). One of the aims of the regulatory framework is to ensure that wherever possible, energy customers who are unable to pay their bills on time remain connected to supply, and that customers are disconnected only as a last resort.

Victoria's licensed energy retailers have a number of obligations to both support customers who experience difficulty paying their energy bills, and to follow agreed processes and procedures before disconnecting a customer. Energy retailers must also have hardship policies that offer practical support to customers in financial hardship, to reduce the likelihood of disconnection. Customers who are wrongfully disconnected by their energy retailer are entitled to a wrongful disconnection payment.

The level of disconnection of energy customers in Victoria is at its highest level in 18 years and is also the highest in Australia. The reasons for this are unclear. Customer complaints to the Energy and Water Ombudsman (Victoria) about disconnections have increased significantly. Participation in hardship programs offered by energy retailers has also increased, but the effectiveness of these programs is unclear.

It is in the long term interest of Victorian consumers that energy retailers adopt best practice in their hardship and disconnection practices. By so doing, the energy retail sector contributes to community confidence in the ongoing delivery of these essential services. This inquiry will review the current policies, practices and procedures of energy retailers to assess whether they reflect best practice. It will also identify whether the current regulatory framework represents regulatory best practice and develop options for improvement. The Commission will consult widely in conducting the inquiry and this paper represents the first step in the consultation process.

# GLOSSARY

<b>best practice</b>	a method or technique that has consistently shown results superior to those achieved by other means
<b>customer</b>	a person (a) to whom energy is sold for premises by a retailer; or (b) who proposes to purchase energy for premises from a retailer*
<b>customer in financial hardship</b>	includes 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^
<b>disconnection</b>	de-energisation (a) in the case of electricity—the opening of a connection; or (b) in the case of gas—the closing of a connection, in order to prevent the flow of energy to the premises*
<b>energy</b>	electricity or gas or both*
<b>financial hardship</b>	a circumstance, either temporary or permanent, in which a household is unable to meet their normal operating costs
<b>financial hardship policy</b>	a policy or an amended financial hardship policy approved by the Commission# that outlines how a retailer supports customers experiencing financial hardship

<b>hardship arrangement</b>	every level of assistance a retailer can offer a customer in financial hardship, including payment plans and hardship program options
<b>hardship customer</b>	a residential customer of a retailer who is identified as a customer experiencing financial hardship in accordance with the retailer's customer hardship policy*
<b>hardship program</b>	a program outlined in a customer hardship policy*
<b>payment plan</b>	a plan for (a) a hardship customer; or (b) a residential customer who is not a hardship customer but who is experiencing payment difficulties to pay a retailer, by periodic instalments in accordance with the Energy Retail Code, any amounts payable by the customer for the sale and supply of energy*
<b>regulatory framework</b>	the legislative and subordinate instruments that govern the expected conduct of regulated parties towards their customers. In the energy industry, this includes the <i>Electricity Industry Act 2000 (Vic)</i> , the <i>Gas Industry Act 2001 (Vic)</i> , the Energy Retail Code (Vic) (and guidelines) and the Operating Procedure Compensation for Wrongful Disconnection
<b>retailer</b>	a person who holds a retail licence under the <i>Electricity Industry Act 2000 (Vic)</i> or the <i>Gas Industry Act 2001 (Vic)</i> *
<b>wrongful disconnection</b>	where an energy retailer disconnects the supply of energy to the premises of a customer and fails to comply with the terms and conditions of the contract specifying the circumstances in which the supply of energy to the premises may be disconnected <sup>#</sup>

Sources: ^ the Terms of Reference for this inquiry, \* the Energy Retail Code, # the *Electricity Industry Act 2000 (Vic)* and the *Gas Industry Act 2001 (Vic)*.

# ACRONYMS

AER	Australian Energy Regulator
EWOV	Energy and Water Ombudsman (Victoria)
the Code	Energy Retail Code (Version 11)
the Commission	Essential Services Commission of Victoria
URG	Utility Relief Grant

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# SUMMARY

On 18 February 2015, the Victorian Government announced an inquiry into best practice financial hardship programs of energy retailers. The Essential Services Commission (the Commission) was asked to conduct this inquiry and provide its preliminary advice by August 2015.

The inquiry's primary goal is 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 retailer. Disconnection should happen only as a last resort. An additional aim is to review the Commission's ability to monitor and enforce compliance with the regulatory obligations governing how energy retailers support these customers.

The current regulatory obligations governing how retailers must support customers who are unable to pay their bills in a timely manner have evolved since Victoria first adopted full retail competition. Victoria's approach adapted and improved over time, as the state's competitive market developed. The current regulatory framework consists of legislation, licences, codes and guidelines that aim to make disconnection a last resort and that focus on protecting customers in financial hardship. The obligations exist because energy supply is essential for economic participation and wellbeing, so its deprivation produces broader social costs that energy retailers may not consider fully when deciding whether to disconnect a customer.

The Commission must approve retailers' hardship policies, to ensure that individual customers get support and that a level of consistency applies across all affected customers. The Commission reports on retailers' performance in this area through annual performance reports. Indicators are intended to reflect retailers' performance in supporting customers, as well as their compliance with regulatory obligations. They provide some insight into customers' experiences at an industry level, but without context about each customer's circumstances, it is difficult to determine how effectively retailers assist customers in financial hardship.

The Commission is examining financial hardship programs from other sectors and countries as part of this inquiry, to identify elements that could be incorporated into the Victorian energy regulatory framework. The main elements of best practice identified include:

- early identification – identifying customers who are unable to pay their energy bills in full and on time, to avoid debt from accumulating and to avoid disconnection
- resource efficiency – using the minimum amount of energy required to maintain health and wellbeing
- availability of useful information – providing customers with information on assistance that is easily accessible, clear and understandable
- staff training – ongoing staff training to keep staff up to date on new techniques as well as ensuring staff are aware of techniques to treat customers with respect and dignity
- partnerships – cultivating effective partnerships with customer welfare groups, financial counselling agencies, legal aid, dispute resolution bodies and other sectors for mutual referrals, to increase access to assistance available to customers
- sensitive and flexible approach – tailoring interactions to each situation so customers receive the best assistance suited to their situation
- program review – continuously reviewing programs, so businesses see what is and what is not working and adapt where necessary
- organisation wide support – ensuring the chief executive officer and other senior staff are committed to sustained good performance in hardship assistance and the integration of the hardship team across the broader customer facing parts of the business.

The Commission is required to establish a benchmarking framework for measuring the effectiveness of energy retailers' hardship policies, practices and procedures. The framework's design will be informed by:

- four identified elements of an effective hardship program (the suite of options developed by energy retailers to assist customers, effective customer identification, facilitating access to assistance and reviewing customers' circumstances) that ensure that customers are only disconnected as a last resort

- the models and examples of best practice identified in chapter 5 and the principles discussed in chapter 2
- retailers' current practices
- benchmarking frameworks in other industries with similar regulatory requirements regarding their treatment of customers in financial hardship
- standard design requirements for performance measures – namely: that they be clearly defined; and readily understandable, measurable and verifiable.

This paper is the first step of the consultation process for this inquiry. The Commission will consult widely, including with energy retailers, energy customers and consumer groups, financial counsellors, the Energy and Water Ombudsman (Victoria), relevant Victorian government departments, agencies and the Australian Energy Regulator. The Commission is particularly interested to hear from energy customers, and will hold public meetings across Victoria to ensure it fully understands the issues.

Stakeholders can comment on any topic discussed in this paper and within the scope of the terms of reference. The Commission is interested to know whether there are important areas, relevant to the inquiry, that this paper does not cover and whether it interpreted the available information correctly. As part of the inquiry, the Commission will assess proposals against an assessment framework, based on relevant legislation, previous reports prepared by the Commission and from other relevant inquiries.

Section 1.5 contains the full list of questions for which the Commission seeks information. Submissions will be used to identify issues to address in the inquiry and possible improvements to the framework.

The Commission will provide the Minister for Finance and the Minister for Energy and Resources with preliminary advice, in the form of a draft report (containing draft recommendations), by the end of August 2015. We will invite submissions on the draft report, and there will be further opportunities for stakeholder consultation. The Commission will provide its final report to the Ministers in late 2015.



# 1 REQUEST FOR SUBMISSIONS

## 1.1 INTRODUCTION

Under the terms of reference, the Commission will review retailers' policies, practices and procedures in supporting customers experiencing financial hardship to avoid disconnection.

This chapter outlines the inquiry's scope and processes, and summarises the key issues for comment.

## 1.2 THE INQUIRY PROCESS AND KEY DATES

This is the first of three papers the Commission will release during this inquiry. It explains the Commission's task, the Commission's approach and the current regulatory framework. Stakeholders can make submissions on any topic covered by the terms of reference, but we note some specific questions in the following chapters.

The Commission will provide the Minister for Finance and the Minister for Energy and Resources with preliminary advice, in the form of a draft report (containing draft recommendations), by the end of August 2015. We will invite submissions on the draft report, and there will be further opportunities for stakeholder consultation. The Commission will provide its final report to the Ministers in late 2015.

The Commission is seeking submissions from interested parties on the matters raised in this consultation paper by 1 May 2015.

Table 1.1 presents indicative timing for the inquiry.

**TABLE 1.1 INQUIRY PROCESS TIMING**

<b>Activity</b>	<b>Timing</b>
Inquiry launched	18 February 2015
Approach paper release	27 March 2015
Submissions to approach paper close	1 May 2015
Consultation and roundtables	April to June 2015
Draft report release	August 2015
Consultations and public meetings*	August to September 2015
Submissions to draft report close*	September 2015
Final report to Ministers	late 2015

\*We will notify stakeholders of the specific dates for public meetings and the closing date for submissions on the draft report when they are set.

### 1.3 SCOPE OF THE INQUIRY

As specified by the terms of reference, matters to be covered by the inquiry are:

- 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).
- 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.
- 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.

- cost-effective options for improving how energy retailers assist customers experiencing financial hardship manage their energy costs – including their use of energy.
- 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.

A full copy of the terms of reference and the letter of transmittal from the Minister for Finance are presented in appendix A.

## 1.4 WHAT IS OUT OF SCOPE

The inquiry will not address:

- the broader issue of affordability and the cost of energy. The Commission does not regulate energy prices and affordability is not a matter specified in the terms of reference.
- prohibiting disconnections outright. Energy retailers should use disconnections only as a last resort. They must follow the prescribed processes to contact and interact with customers to find and implement reasonable payment solutions before pursuing the disconnection of a customer’s premises.
- general provisions of energy licences. The licensing framework is essential to compliance and the Commission will consult separately on its operation.

## 1.5 QUESTIONS

These questions are intended to assist stakeholders wishing to make a submission on this paper. However, the Commission invites stakeholders to raise any other issues that are directly related to the terms of reference for this inquiry (see appendix A).

## QUESTIONS FOR RESPONSE

### **The Commission's approach** (chapter 2)

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

### **Regulatory framework** (chapter 3)

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

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

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

### **Performance and compliance** (chapter 4)

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

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

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



**Best practice** (chapter 5)

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

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

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

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

**Benchmarking** (chapter 6)

Q12. What other matters should the Commission take into account when designing a benchmarking framework for assessing the effectiveness of retailers' hardship programs?

Q13. Which aspects of an energy retailers' hardship policies, practices and procedures should be given priority in the benchmarking framework?

**Additional question** (chapter 7)

Q14. Are there any other matters the Commission should consider to help customers who are unable to pay their bills in full and on time to avoid disconnection?

## 1.6 HOW TO MAKE A SUBMISSION

Stakeholders are invited to make written submissions on any issues raised in this paper or on any other issue relevant to and within the scope of the terms of reference.

Please submit your response by 1 May 2015.

You can email your submission to **[energyhardshipreview@esc.vic.gov.au](mailto:energyhardshipreview@esc.vic.gov.au)**

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

Essential Services Commission  
Level 37, 2 Lonsdale Street  
Melbourne Victoria 3000

The Commission can also be contacted on (03) 9032 1300.

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

## 1.7 ADDITIONAL CONSULTATION

The Commission will meet with a wide range of stakeholders including energy retailers, consumer groups and government bodies. It will also hold public meetings after the draft report has been released, with at least one in Melbourne and others in regional Victoria. Details of these meetings will be made public once they are confirmed. If you would like to participate in this consultation, please contact us through the channels specified above.

## 1.8 THE STRUCTURE OF THIS PAPER

This paper is structured as follows:

- chapter 2 – explains the Commission’s approach to this inquiry
- chapter 3 – provides an overview of the current regulatory framework
- chapter 4 – explores how the current framework is operating
- chapter 5 – presents our research on hardship assistance best practice from Australia and overseas as well as from other sectors and discusses its relevance
- chapter 6 – explores options for benchmarking retailers’ policies, practices and procedures
- chapter 7 – presents the Commission’s next steps for the inquiry process
- appendix A – terms of reference
- appendix B – reference list for the materials used in preparing this paper.



# 2 THE COMMISSION'S APPROACH

## 2.1 INTRODUCTION

This chapter explains the Commission's approach to this inquiry. Our approach is guided by a set of principles, derived from legislation and other relevant sources. We will use these principles to assess proposals before making recommendations in the draft and final reports. The chapter also summarises the context for our approach to this inquiry.

## 2.2 CONTEXT

Financial hardship is a broad and complex issue. It describes circumstances, either temporary or permanent, where a household is unable to meet its normal operating costs.

Many factors can contribute to financial hardship, including energy bills. Households can delay or discontinue some purchases or services to manage financial hardship, but others, such as energy purchases, cannot be set aside readily without causing severe detriment. Energy is essential to maintain health and wellbeing and to enable economic participation in society. Any household can find itself unable to pay its bills on time and in full, but households who earn a limited income or who are vulnerable in other ways (such as due to ill health, family size or language barriers) may be least able to navigate through such circumstances.

Energy (especially electricity) is essential for economic participation and wellbeing more generally. Depriving households of energy can therefore result in broader adverse social consequences that a retailer may not consider fully when deciding whether to withdraw the service. That is, from a society-wide perspective, there may be

too many disconnections (or disconnections may occur too readily) in the absence of regulatory intervention to ensure retailers only disconnect a customer's energy supply as a last resort.

The Victorian regulatory framework imposes consumer protections that seek to prevent disconnection until all other measures to assist that customer have failed. Indeed, even once all these measures fail, retailers are bound by a strictly defined notification process that they must follow before disconnecting a customer. Given these arrangements, a customer in financial hardship may continue to use energy for some weeks or months – and continue to increase their 'energy debt' – before they are disconnected and their debt ceases to accumulate.

Retailers and other customers will likely bear the costs of this 'energy debt'. Energy retailers may spread the cost of recovering outstanding debts across other customers by increasing energy prices. This situation, in turn, may make it more difficult for other customers to pay their bills.

Under the *Essential Services Commission Act 2001* (Vic), the Commission must consider the effect of its actions on the price of energy (as an essential service) as well as the industry's financial viability and the benefits and cost of regulation for low income and vulnerable consumers.<sup>1</sup> That is, the regulatory framework must support a viable market that efficiently supplies energy as an essential service to Victorian consumers.

The regulatory framework by itself, however, cannot guarantee acceptable social outcomes for customers experiencing chronic and ongoing financial hardship. The Commission's 2004 report on disconnections and capacity to pay found the most effective model for addressing financial hardship involves businesses, consumer organisations, regulators and government agencies cooperating to develop more comprehensive and integrated measures of support and assistance.<sup>2</sup>

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<sup>1</sup> Section 8A of the Essential Services Commission Act 2001 (Vic)([http://www5.austlii.edu.au/au/legis/vic/consol\\_act/esca2001327](http://www5.austlii.edu.au/au/legis/vic/consol_act/esca2001327))

<sup>2</sup> Essential Services Commission 2004, Disconnections and capacity to pay report on energy retailers' performance, Melbourne. (<http://www.esc.vic.gov.au/Energy/Energy-Hardship-Review/Disconnections-and-Capacity-to-Pay-Report-on-Energ>)

Customers' ability to pay for the energy they consume depends on factors such as their income, the price of energy, the amount of energy they consume and any outstanding debt owed to their energy retailer. The relationship between a customer and a retailer is also important to managing financial hardship, because it determines the quality of the interaction between the parties and the trust each has for the other.

The regulatory framework relies on shared responsibility to resolve customers' difficulties in paying their energy bills. A customer experiencing financial hardship must engage with their retailer to agree on terms to resolve outstanding bills. In turn, the retailer must inform customers of help that is available, such as concessions and financial counselling services, and engage with customers about matters such as energy efficiency. If a customer shows signs of financial hardship (for example, by not paying their bills, or by repeatedly paying them late), the retailer must attempt to engage with the customer, to decide if they need assistance and if so, the appropriate form of assistance. Chapter 3 provides more information on how the regulatory framework addresses the factors affecting financial hardship.

Through this inquiry, the Commission will assess the effectiveness and efficiency of these regulatory obligations, considering both the industry's financial viability and the outcomes the framework achieves for customers.

The Commission will also review retailers' policies, practices and procedures for supporting customers who are unable to pay their energy bills and assess whether they reflect best practice.

The following section outlines the Commission's assessment approach.

## **2.3 ASSESSMENT APPROACH**

The Commission has developed a set of principles to guide its assessment of the regulatory framework. These principles are based on the applicable legislation, previous Commission reports and other relevant inquiries and reports. These principles apply to the assessment of the regulatory framework and may also be relevant to the review of retailers' policies, practices and procedures.

## 2.3.1 THE PRINCIPLES

### EFFECTIVENESS

Effectiveness is the ability to produce an intended or expected outcome. Such outcomes can be expressly defined in legislation or policy statements, while at other times they may remain implicit and open to the regulator to interpret (typically in consultation with the relevant parties). The Victorian Energy Retail Code (the Code) directly reflects statutory provisions from the *Electricity Industry Act 2000* (Vic) and the *Gas Industry Act 2001* (Vic), but it also contains obligations that have been developed over time following extensive consultation by the Commission.

An effective regulatory framework produces outcomes that are consistent with those being sought. The framework can do so in a prescriptive manner whereby the actions required by retailers are strictly defined. Alternatively, the framework can focus on specifying desired outcomes and then allowing retailers to identify the most effective way to achieve those outcomes. The Code tends towards a prescriptive approach in seeking to ensure retailers assist customers in financial hardship to avoid disconnection.

Effectiveness is not a static notion. A regulatory framework may initially be effective in producing the desired outcome but its effectiveness may wane as the parties' behaviours change in light of the regulatory framework. (Sometimes these modified behaviours are known as 'gaming the system'.) Conversely, a framework may initially prove ineffective but may improve as the parties become accustomed to their obligations, the regulator becomes more effective in enforcing compliance with the framework, or both. Whichever is the case, regulators should routinely assess a framework's effectiveness by monitoring performance (that is, observable outcomes) against stated objectives or standards.

The Commission will evaluate the different elements of the Code's hardship obligations to assess whether they effectively promote the objective of helping customers in financial hardship avoid disconnection.



## **FLEXIBILITY**

Flexibility refers to the capacity to be adaptable. 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.<sup>3</sup> A regulatory framework can, itself, also demonstrate flexibility if it is open to being amended and adjusted over time as circumstances and policy priorities change.<sup>4</sup>

The Code has been amended from time-to-time since its inception in 2004. As part of this inquiry, the Commission is reviewing the relevant provisions of the Code and will consider whether the current approach provides adequate flexibility for retailers to be innovative while ensuring customers in financial hardship receive timely and effective assistance.

## **CONSISTENCY**

Regulation should have predictable and identifiable outcomes for regulated entities and consumers.<sup>5</sup> Administration of the regulatory framework should provide all parties with confidence that they will be treated in accordance with all relevant provisions and policies.<sup>6</sup>

Moreover, a well-designed regulatory framework will provide that where the circumstances are identical, the outcomes are also identical. This expectation of consistency applies equally to actions taken by retailers in response to customers' circumstances, and actions taken by regulators in response to retailers' circumstances.

This inquiry will examine whether retailers are providing consistent outcomes for customers in financial hardship, even if retailers' approaches are different. The

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<sup>3</sup> New Zealand Treasury 2012, *The best practice regulation model: principles and assessments*, (<http://www.treasury.govt.nz/economy/regulation/bestpractice>)

<sup>4</sup> Productivity Commission 2012, *Performance benchmarking of Australian business regulation: the role of local government as regulator*, Research report volume 2, Melbourne, p. 627. (<http://www.pc.gov.au/inquiries/completed/regulation-benchmarking-local-government/report>)

<sup>5</sup> Productivity Commission 2012, *Performance benchmarking of Australian business regulation: the role of local government as regulator*, Research report volume 2, Melbourne, p. 627. (<http://www.pc.gov.au/inquiries/completed/regulation-benchmarking-local-government/report>)

<sup>6</sup> Productivity Commission 2012, *Performance benchmarking of Australian business regulation: the role of local government as regulator*, Research report volume 2, p. 626. (<http://www.pc.gov.au/inquiries/completed/regulation-benchmarking-local-government/report>)

Commission will also consider whether the regulatory framework can be improved in order to better support its consistent implementation by retailers and its consistent administration by the Commission.

## **EFFICIENCY AND PROPORTIONALITY**

Efficiency is the ability to perform or function to an agreed standard (quantity, quality, timeliness) using the least amount of resources (labour, capital, goods and services). In an efficient regulatory framework, retailers are able to assist customers in financial hardship consistently with their legal obligations such that the net cost of compliance is proportionate to the net benefit produced.<sup>7</sup> Where this is not the case, it is appropriate to review the regulatory obligations to examine whether alternative obligations can be designed to deliver similar or better outcomes for customers at lower costs to retailers.<sup>8</sup>

It is expected that customers unable to pay their bills in a timely manner will receive targeted and effective assistance from their energy retailer and that this assistance should be deliverable at an efficient cost to the retailer. While this inquiry is not concerned with how efficiently individual retailers organise themselves (which is a private and commercial concern for them alone), the Commission will consider whether the regulatory framework balances obligations (and the costs they impose) against the beneficial outcomes being sought.

## **TRANSPARENCY AND CLARITY**

Transparency has numerous applications in the context of this inquiry depending on whether the ‘observer’ is a customer, a retailer or the community at large (including regulators and policy makers).

For a customer, transparency entails readily accessible, relevant, complete and understandable information from the retailer (and in some instances, from the regulator — for example, information about a customer’s rights and obligations). How such information is provided is becoming increasingly varied. The Code is typically predicated on print, mail and telephone channels as the dominant forms of

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<sup>7</sup> New Zealand Treasury 2012, *The best practice regulation model: principles and assessments* (<http://www.treasury.govt.nz/economy/regulation/bestpractice>)

<sup>8</sup> ‘Proportionality’ can also be used in the context of the regulatory consequences for noncompliance — otherwise known as “the punishment should fit the crime”.

communication between retailers and customers. Of course, many new channels have emerged in recent years (for example, text messages, social media and Youtube).

For a retailer, transparency involves ensuring that regulatory enforcement (or any other form of action taken by a regulator) is clearly communicated and the basis for that action is made apparent to the affected parties. Transparency therefore requires clarity about the regulatory obligations imposed by regulators and the consequences for noncompliance. Disputes can arise if the parties interpret regulatory obligations and protections differently. Regulators should seek to avoid ambiguity in their instruments (without limiting flexibility and opportunities for effective innovation) and in their decisions.

For the community (including regulators and policy makers), transparency involves being able to assess the effectiveness of the regime in delivering the desired outcomes. Typically, industry performance monitoring frameworks and benchmarking reports are established in order to provide this information to interested parties on a regular basis. Transparent reporting, based on clear and well-design indicators, can provide industry participants with a strong incentive to ensure their regulatory compliance; and regulators with the tools to monitor and enforce that compliance.<sup>9</sup> Transparency can also provide the community with visibility of the regulator's effectiveness in upholding the regulatory framework.

The Commission will investigate whether any aspects of the regulatory framework lack transparency and clarity, and will identify opportunities for improvements where necessary.

## **ACCOUNTABILITY**

Accountability means being answerable for actions taken.

For a retailer which fails to comply with its regulatory obligations, accountability involves bearing the consequences of any enforcement action taken by the regulator

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<sup>9</sup> Productivity Commission 2012, *Performance benchmarking of Australian business regulation: the role of local government as regulator*, Research report volume 2, Melbourne, p .626.  
(<http://www.pc.gov.au/inquiries/completed/regulation-benchmarking-local-government/report>)

and, possibly, any public criticism that arises when the noncompliance becomes widely known (for example, through the transparency mechanisms discussed above).

For a regulator, accountability to regulated parties means that the reasons for its actions are made clear to the affected parties and, subject to the law providing it, those decisions are subject to further scrutiny and review (for example, by an appeals panel, administrative tribunal or court). A regulator's accountability to the broader public is typically exercised through the transparent reporting mechanisms discussed above as well as through other mechanisms such as releasing information about individual actions that it has taken. Transparency is possibly the most significant and powerful accountability mechanism imposed on a regulator.

A well-designed regulatory framework holds all relevant parties (including the regulator) to account if they do not meet their responsibilities as defined within that framework.

The Commission will consider whether the regulatory framework governing the Victorian retail energy industry provides clear accountabilities; and if not, the improvements that may be possible.

## 2.4 SUMMARY

Financial hardship is a broad and complex issue and many factors can contribute to financial hardship, including energy bills. Energy is an essential service and so the obligation on retailers to only disconnect customers as last resort is embedded in the regulatory framework. The next chapter will look in more detail at the regulatory framework.

This chapter identifies the principles the Commission proposes to use to assess proposals, before making recommendations in the draft and final reports. The Commission is interested in views from stakeholders on the proposed principles.

## QUESTION

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



# 3 THE REGULATORY FRAMEWORK

## 3.1 INTRODUCTION

The regulatory framework contains consumer protections with which licensed energy retailers operating in Victoria must comply, and aims to ensure that wherever possible, customers who are unable to pay their energy bills remain connected to their energy supply. The regulatory framework requires that disconnection should occur only as a last resort.

## 3.2 CURRENT REGULATORY FRAMEWORK

The current regulatory framework comprises legislation, licences, codes and guidelines. The key elements relevant to this inquiry are:

- *Electricity Industry Act 2000* (Vic)
- *Gas Industry Act 2001* (Vic)
- *Essential Services Commission Act 2001* (Vic)
- Electricity and gas retail licences
- Energy Retail Code (Version 11)
- Operating Procedure – Compensation for Wrongful Disconnection.

The following sections describe how each of these elements relates to customer hardship.

### 3.2.1 LEGISLATION

The *Electricity Industry Act 2000* (Vic) and the *Gas Industry Act 2001* (Vic) (the Acts) contain consumer protections for domestic and small business customers. The Acts require energy retailers to hold a licence to sell electricity or gas in Victoria.

Under the Acts, licences are deemed to include a condition requiring energy retailers to implement a financial hardship policy.<sup>10</sup> This policy must be approved by the Commission and must include:

- flexible options for paying energy bills (payment plans)
- a provision for auditing a customer's energy usage
- flexible options for replacing household electrical and gas equipment
- processes for the early response by both retailers and customers experiencing financial difficulty.<sup>11</sup>

The Acts prescribe the Commission's powers to regulate hardship and disconnection.<sup>12</sup> The Commission does this via licences, codes and guidelines.<sup>13</sup> The *Essential Services Commission Act 2001* (Vic) prescribes the Commission's powers to monitor energy retailers' compliance with their licences, codes and guidelines, and to enforce compliance where necessary.

In addition to the specific provisions regarding hardship and disconnection, the legislation provides broader protections that apply to all customers. These protections may also impact customers experiencing financial hardship. Examples include a prohibition on late payment fees and pre-payment meters, and provisions to ensure

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<sup>10</sup> Section 43C of the *Electricity Industry Act 2000* and section 48GC of the *Gas Industry Act 2001*. ([http://www.austlii.edu.au/au/legis/vic/consol\\_act/eia2000261](http://www.austlii.edu.au/au/legis/vic/consol_act/eia2000261) and [http://www5.austlii.edu.au/au/legis/vic/consol\\_act/gia2001167](http://www5.austlii.edu.au/au/legis/vic/consol_act/gia2001167))

<sup>11</sup> Section 43(1) of the *Electricity Industry Act 2000* and section 48G(1) of the *Gas Industry Act 2001*. ([http://www.austlii.edu.au/au/legis/vic/consol\\_act/eia2000261](http://www.austlii.edu.au/au/legis/vic/consol_act/eia2000261) and [http://www5.austlii.edu.au/au/legis/vic/consol\\_act/gia2001167](http://www5.austlii.edu.au/au/legis/vic/consol_act/gia2001167))

<sup>12</sup> Division 6 of the *Electricity Industry Act 2000* and Division 4A of the *Gas Industry Act 2001*. ([http://www.austlii.edu.au/au/legis/vic/consol\\_act/eia2000261](http://www.austlii.edu.au/au/legis/vic/consol_act/eia2000261) and [http://www5.austlii.edu.au/au/legis/vic/consol\\_act/gia2001167](http://www5.austlii.edu.au/au/legis/vic/consol_act/gia2001167))

<sup>13</sup> Section 44 of the *Electricity Industry Act 2000* and section 48H *Gas Industry Act 2001*. ([http://www.austlii.edu.au/au/legis/vic/consol\\_act/eia2000261](http://www.austlii.edu.au/au/legis/vic/consol_act/eia2000261) and [http://www5.austlii.edu.au/au/legis/vic/consol\\_act/gia2001167](http://www5.austlii.edu.au/au/legis/vic/consol_act/gia2001167))



that customers remain connected should their retailer no longer be able to supply them.<sup>14</sup>

### 3.2.2 LICENCES

Licences are the mechanism by which obligations for consumer protection are placed on energy retailers. Electricity and gas retail licences include conditions that require retailers to:

- have a hardship policy approved by the Commission;
- comply with the standards relevant to hardship set out in the Energy Retail Code (the Code), including those relating to the contents and implementation of a hardship policy;
- maintain the financial viability and technical capacity necessary to comply with hardship obligations;
- monitor and report to the Commission on their performance and compliance with these requirements.

The licence also provides the Commission with the capacity to enforce compliance.

### 3.2.3 CODES

The Commission developed the Code in consultation with the industry and stakeholders, to further define the standards of conduct required of energy retailers in dealing with their customers. The Code elaborates on the statutory obligations for retailers that relate to hardship and disconnection. The Code also provides protections that apply to all customers. Some of these broader protections may also affect customers experiencing financial hardship, such as bill smoothing options, limits on early termination fees and restrictions on requiring and retaining security deposits.<sup>15</sup>

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<sup>14</sup> Section 40C, 40E and Division 8 of the Electricity Industry Act 2000, and section 48B, 48D and Division 6 of the Gas Industry Act 2001.

<sup>15</sup> Clause 23, 40-15 and 49A of the Energy Retail Code (Version 11). (<http://www.esc.vic.gov.au/getattachment/bd6bae17-f639-4c68-a5dc-a4de803a48ae/Energy-Retail-Code-Version-11-January-2015.pdf>)

The standards that specifically relate to hardship and disconnection are contained in clause 33 of part 2, in part 3 and part 6.

Part 6 of the Code protects customers who are unable to pay their energy bills by the due date from disconnection. It sets out various steps a retailer must follow before it can disconnect a customer, such as issuing reminder notices and following them up with disconnection warning notices. It also places restrictions on disconnection where, for example, a customer is participating in a hardship program or has an unresolved dispute being investigated by the Energy and Water Ombudsman (Victoria) (EWOV).

Clause 33 of part 2 of the Code details the arrangements for customers who are unable to pay their bills in full and on time. If a customer informs the retailer they are experiencing difficulty paying their energy bill by the due date, or if the retailer identifies that this is the case, the retailer must offer a payment plan. The payment plan allows a customer to pay for arrears and future consumption over a set timeframe.

Under clause 33, a retailer must also inform the customer about government funded energy rebates as well as concession or relief schemes, including the Utility Relief Grant (URG) Scheme. URG are available from the Victorian Department of Health and Human Services to customers that meet certain eligibility criteria who are unable to pay their energy bills due to a temporary financial crisis. The amount of the grant (which can only be granted once every two years) is based on the balance owing at the time of application and is capped at six months' worth of usage, up to a maximum of \$500.

The retailer, however, may determine that a payment plan and information about assistance available will not be sufficient for a customer and it may identify the customer as a 'hardship customer'. Once identified as a hardship customer, the retailer must inform them of the existence of its hardship policy.<sup>16</sup> A customer on a hardship program receives additional protection against disconnection for nonpayment and debt recovery proceedings, which are prohibited while the customer actively participates in a hardship program.

Part 3 of the Code is of particular relevance to this inquiry as it requires all retailers to have a financial hardship policy approved by the Commission (in keeping with the

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<sup>16</sup> Clause 71(1) of the Energy Retail Code (Version 11). (<http://www.esc.vic.gov.au/getattachment/bd6bae17-f639-4c68-a5dc-a4de803a48ae/Energy-Retail-Code-Version-11-January-2015.pdf>)

legislative obligations). It prescribes what is expected in a hardship policy and defines the actions retailers must take to assist its hardship customers. These options include, for example, referring customers to a financial counsellor, reviewing the customer's tariff, providing information on grants and concessions, and providing information on the rights and obligations of hardship customers on the hardship program. While the Acts set out general principles for the necessary contents of retailers' hardship policies, part 3 of the Code specifies in greater detail the Commission's requirements, which were developed through consultation. Box 3.1 summarises the contents required in a hardship policy in line with the Code.

### **BOX 3.1 SUMMARY OF HARDSHIP POLICY CONTENT**

Under part 3 of the Code, the Commission expects that retailers' hardship policies are transparent, detailed and accessible. The policy should reflect that hardship customers wish to pay on time but cannot, and include:

- processes and criteria to identify a hardship customer
- flexible, fair and reasonable payment plans
- hardship assistance options and a process to assess when to use the options
- that debt recovery proceedings will not take place while a customer participates in a hardship program
- a process for making field audits of electricity or gas use available, including any potential costs involved
- a process for assisting with an appliance replacement
- making appropriate referrals to support agencies
- rights and obligations of hardship customers under the program
- circumstances in which the hardship program arrangement will cease
- requirements for staff awareness of their hardship policy and skills development to sensitively and effectively engage with hardship customers
- a requirement to recommend the most appropriate tariff at the time of entry to the program and during the program and to facilitate a change if necessary
- a mechanism to monitor behaviour and consumption during program participation to ensure the most appropriate tariff is in place and to facilitate change if necessary
- Centrepay as a payment option, at no extra charge to the customer.

Retailers can choose which hardship assistance option(s) to offer to customers. The Code does not require retailers to offer all hardship assistance options to every hardship customer. However, the Code states that a retailer must provide equitable access to the options appropriate to the customer's circumstances. Retailers are not required to report on how they ensure equitable access.

Once a retailer has classified a customer as a hardship customer, or the customer has notified the retailer that they are experiencing financial difficulties (or the retailer otherwise believes this to be the case), the Code requires retailers to offer the customer a payment plan. However, the retailer has discretion regarding the timing of any subsequent hardship assistance options it chooses to offer.

### **3.2.4 GUIDELINES**

The Commission has developed an operating procedure to provide guidance to energy retailers in interpreting the legislation, licence conditions and the standards contained in the Code.

The Operating Procedure - Compensation for Wrongful Disconnection (the Operating Procedure) guides energy retailers and EWOV when completing wrongful disconnection payment assessments. The Operating Procedure contains guidance on two key elements relevant to this inquiry: identifying customers experiencing difficulty paying their energy bills and assessing a customer's capacity to pay.<sup>17</sup>

## **3.3 SUMMARY**

The regulatory framework aims to ensure that wherever possible, energy customers who are unable to pay their bills remain connected to their energy supply, and that disconnection is only ever a last resort. It sets out hardship obligations that retailers must follow.

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<sup>17</sup> Essential Services Commission 2014, Operating Procedure - Compensation for Wrongful Disconnection, Melbourne. (<http://www.esc.vic.gov.au/Energy/Wrongful-disconnection/Final-Operating-Procedure-Wrongful-Disconnection-C>).

The regulatory framework relevant to hardship consists of legislation, licences, codes and guidelines. Licences granted by the Commission place obligations on energy retailers to assist customers experiencing financial difficulties, and require them to monitor and report on their compliance and performance. The Code issued by the Commission sets the standard of conduct required. The Operating Procedure provides guidance to energy retailers in interpreting the Code.

The regulatory framework defines minimum standards of conduct, while allowing energy retailers flexibility and discretion in the specific hardship programs offered to customers. Retailers are not required to report on how this discretion operates in practice.

The next chapter explores how hardship obligations operate in practice.

## QUESTIONS

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

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

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

# 4 PERFORMANCE AND COMPLIANCE

## 4.1 INTRODUCTION

This chapter explores how hardship arrangements currently operate. It presents information from energy retailers (published in the Commission's previous performance and compliance reports), as well as information and data published by the Energy and Water Ombudsman (Victoria) (EWOV), the Australian Energy Regulator (AER) and consumer advocacy groups. The Commission seeks comments on how this and other available information can be used to report on the effectiveness of retailers' hardship programs and practices.

## 4.2 THE COMMISSION'S ROLE

The Commission obtains data periodically from energy retailers for the purposes of monitoring their service standards and compliance with regulatory obligations. Energy retailers provide information and data on:

- performance indicators
- compliance breaches.

The Commission uses the information and data it collects to report annually on retailers' performance of key obligations and, separately, on their compliance levels. These reports are:

- *Energy retailers comparative performance report – customer service*
- *Compliance report – energy retail businesses.*<sup>18</sup>

### 4.3 PERFORMANCE INDICATORS

The comparative performance report presents information about the level of customer service energy retailers provide to Victorian customers. It also reports specific indicators that seek to provide an overview of the effectiveness of hardship arrangements.

The indicators have changed gradually over time. Most recently, the Commission reviewed, and consulted on, the indicators in 2013 to create more uniform reporting for retailers across jurisdictions. The Commission harmonised the indicators with the AER's performance indicators where possible. Box 4.1 lists indicators the Commission uses currently to monitor the effectiveness of hardship arrangements.

#### **BOX 4.1 INDICATORS CURRENTLY USED TO MONITOR HARDSHIP ARRANGEMENTS**

- Number of hardship program participants (total)
- Number of hardship program participants (concession cardholders)
- Number of customers denied access to a retailer's hardship program
- Average debt of new entrants to a hardship program
- Average debt of customers in a hardship program

<sup>18</sup> These documents are available on the Commission's website at [www.esc.vic.gov.au](http://www.esc.vic.gov.au)



- Average length of customers' participation in a hardship program (days)
- Number of hardship program participants exiting a hardship program by agreement with their retailer
- Number of hardship program participants excluded from a hardship program for not complying with its requirements
- Number of hardship program participants exiting a hardship program by switching retailers
- Number of disconnections for nonpayment of previous hardship program participants (within 12 months of leaving a hardship program)
- Number of reconnections of previous hardship program participants (within 12 months of leaving a hardship program)
- Number of energy field audits provided at no cost to customers
- Number of appliances provided to hardship program participants
- Number of customers provided with Utility Relief Grant (URG) forms
- Number of URGs approved
- Number of customers on payment plans to help manage bills
- Number of customers disconnected for nonpayment
- Number of customers disconnected for nonpayment who were previously on a payment plan
- Number of customers disconnected for nonpayment on more than one occasion (in the last 24 months).

Source: Essential Services Commission 2013, 2014, Energy retailers comparative performance report – customer service, Melbourne. (<http://www.esc.vic.gov.au/getattachment/0fdace1d-e672-46bc-8b9b-b432340b2d34/Energy-retailers-comparative-performance-report-Cu.pdf>)

### 4.3.1 HARDSHIP INDICATORS

This section compares indicators over time to explore the effect of current hardship obligations.

Hardship program participation increased over the past five years, from 0.6 per cent (24 122) of all energy customers in 2009-10 to 0.8 per cent (33 673) in 2013-14 (figure 4.1). The higher participation rates may indicate an increase in customers experiencing financial difficulties, or it may indicate retailers' increasing commitment to assist customers via hardship programs.

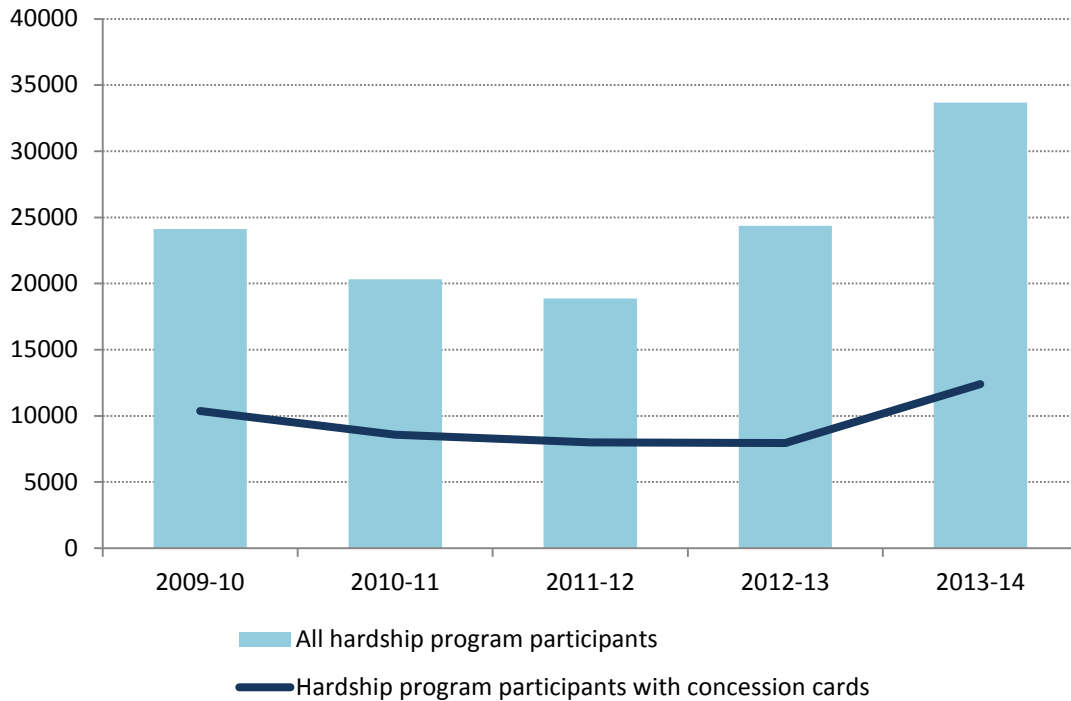
Interestingly, the proportion of hardship program participants who were concession card holders fell from 42.9 per cent in 2009-10 to 36.8 per cent in 2013-14, indicating that the increase in hardship program participation was not primarily due to an increase in concession cardholders seeking assistance.

Considering concession card holders are typically on fixed incomes, the above result suggests that part of the recent increase in hardship participation can be attributable to customers experiencing sudden changes in their household income. This result is also consistent with other reports on financial hardship. A Senate Community Affairs Committee report in 2004 on poverty and financial hardship found sudden changes in household income most affected people's ability to pay their energy bills, not the absolute level of household income.<sup>19</sup>

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<sup>19</sup> Senate Community Affairs References Committee 2004, *Report on poverty and financial hardship* ([http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Completed\\_inquiries/2002-04/poverty/report/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2002-04/poverty/report/index))

**FIGURE 4.1 HARDSHIP PROGRAM PARTICIPANTS WITH CONCESSION CARDS COMPARED TO OVERALL HARDSHIP PARTICIPANTS**



Data source: Essential Services Commission 2010 to 2014, Energy retailers comparative performance report – customer service, Melbourne. (<http://www.esc.vic.gov.au/getattachment/0fdace1d-e672-46bc-8b9b-b432340b2d34/Energy-retailers-comparative-performance-report-Cu.pdf>)

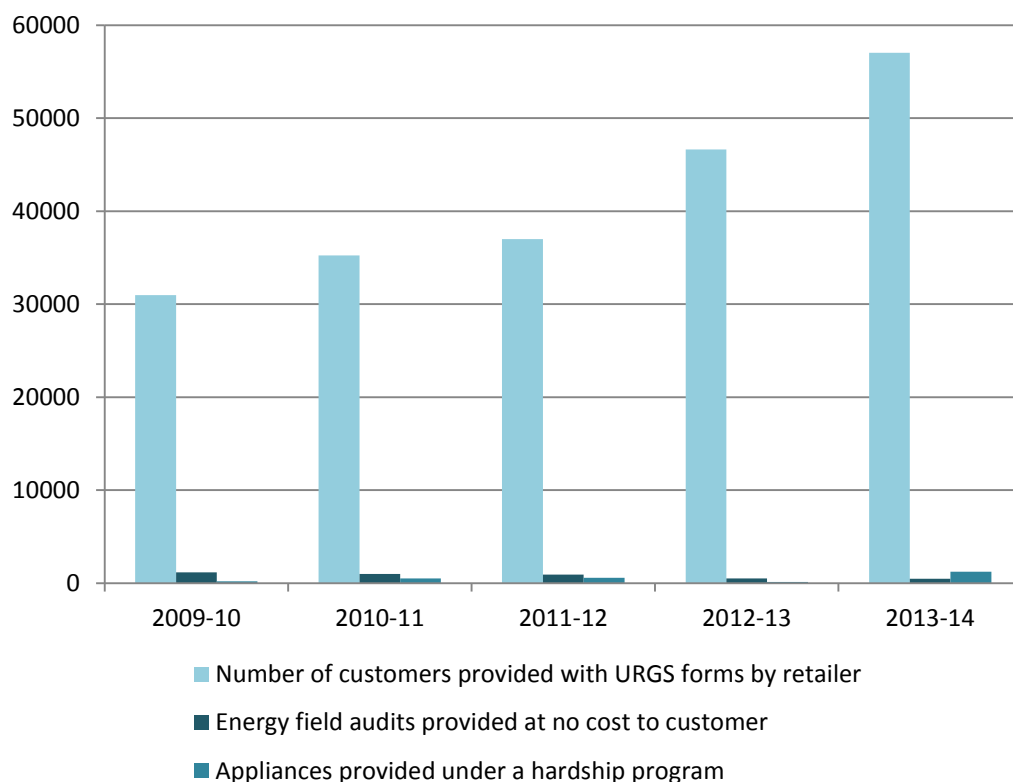
Energy retailers can help customers in financial hardship in several ways: offering payment plans, conducting energy audits at no cost, providing appliances, and providing grant (URG) forms. Retailers report the number of customers receiving these types of assistance each year.

In 2013-14 energy retailers reported the number of payment plans offered to hardship customers and the number of payment plans offered to all customers. In 2013-14, 22 332 hardship customers (or 66 per cent of hardship program participants) were on payment plans. The retailers did not report on the assistance provided to the remaining 34 per cent of hardship customers.

The most common form of assistance offered by retailers between 2009-10 and 2013-14 was providing URG forms to customers. By contrast, retailers conducted very

few energy field audits and the number fell over the period. Retailers also provided very few appliances and the number varied over the period (figure 4.2). It is unclear why retailers offer few energy field audits and appliances, especially compared with the number of hardship participants. Possible reasons include customers cancelling appointments for field audits, or retailers conducting more telephone audits instead. And although retailers provided more URG forms, only half resulted in grants in 2013-14: for every 100 URG forms retailers provided, the Department of Health and Human Services received 59 applications and approved 52 of these.

**FIGURE 4.2 ASSISTANCE PROVIDED**

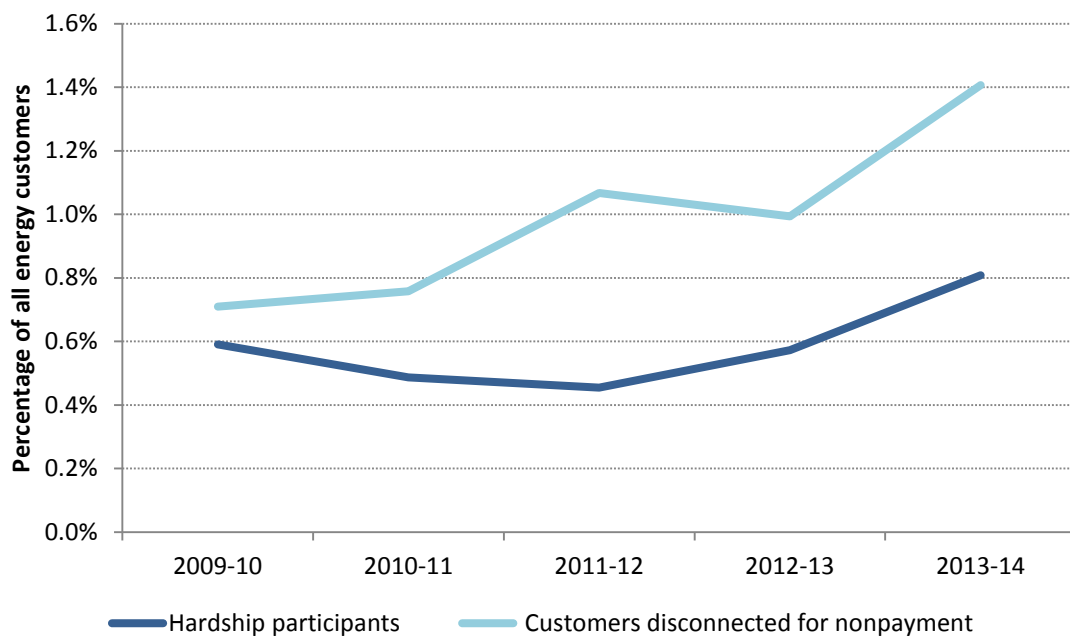


Data source: Essential Services Commission 2010 to 2014, Energy retailers comparative performance report – customer service, Melbourne. (<http://www.esc.vic.gov.au/getattachment/0fdace1d-e672-46bc-8b9b-b432340b2d34/Energy-retailers-comparative-performance-report-Cu.pdf>)

Between 2009-10 and 2013-14, the proportion of customers disconnected for nonpayment grew faster than the proportion of customers receiving hardship assistance (figure 4.3). Five customers were disconnected for every four hardship

program participants in 2009-10. By 2013-14, seven customers were disconnected for every four hardship program participants. That is, retailers were increasingly resorting to disconnection. The reason for more customers being disconnected compared to being placed on a hardship program is not clear. This result could suggest a rise in customers not complying with hardship program requirements, and so being disconnected or excluded from hardship programs, or more customers finding it difficult to access hardship program assistance. Alternatively, this result could suggest a rise in non-hardship related disconnections.

**FIGURE 4.3: CUSTOMERS DISCONNECTED FOR NONPAYMENT AND HARDSHIP PROGRAM PARTICIPANTS IN VICTORIA**

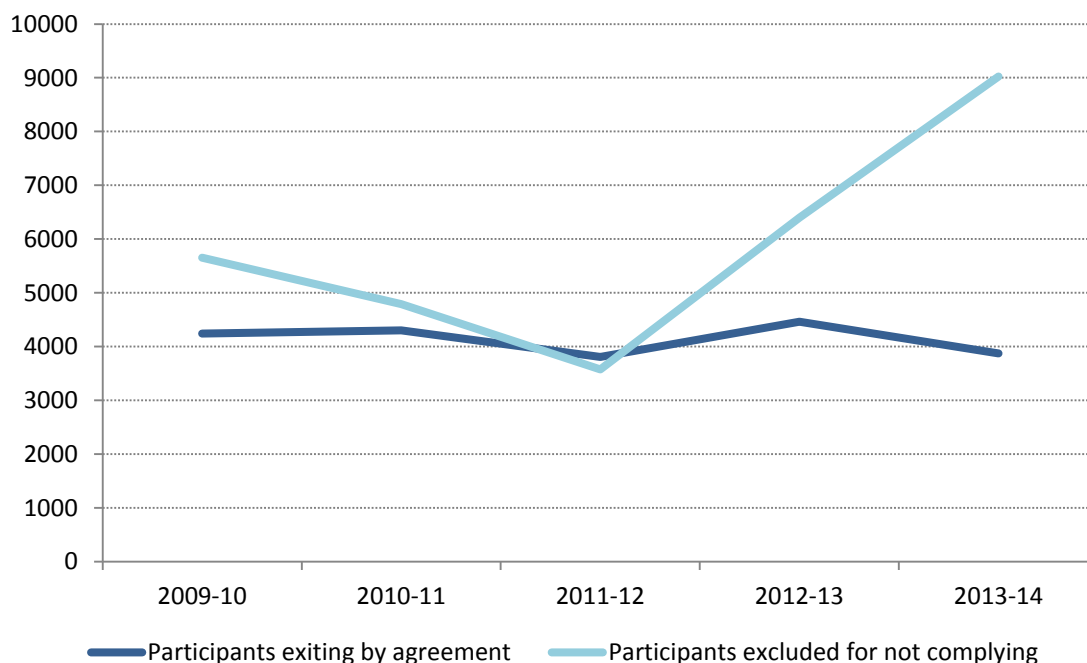


Data source: Essential Services Commission 2010 to 2014, Energy retailers comparative performance report – customer service, Melbourne. (<http://www.esc.vic.gov.au/getattachment/0fdace1d-e672-46bc-8b9b-b432340b2d34/Energy-retailers-comparative-performance-report-Cu.pdf>)

Retailers also report the numbers of participants leaving their hardship programs. Participants can leave by agreement, or they can be excluded for not meeting the program requirements. Over the past five years, the number who exited by agreement was stable, while the number of participants leaving due to noncompliance rose

(figure 4.4). Several factors could explain this rise, but we expect the main reason is that participants did not meet agreed payment arrangements.

**FIGURE 4.4: COMPARISON OF HARDSHIP PROGRAM PARTICIPANTS EXITING FROM HARDSHIP PROGRAMS**



Data source: Essential Services Commission 2010 to 2014, Energy retailers comparative performance report – customer service, Melbourne. (<http://www.esc.vic.gov.au/getattachment/0fdace1d-e672-46bc-8b9b-b432340b2d34/Energy-retailers-comparative-performance-report-Cu.pdf>)

## 4.4 COMPLIANCE

As a condition of their licence, energy retailers must comply with regulatory obligations and monitor their compliance by:

- reporting to the Commission any breaches of their obligations, the causes and remedial action
- independently auditing their compliance with obligations, when directed by the Commission.

The Commission also monitors retailers' compliance with the customer related standards, procedures, policies and practices developed under the codes and guidelines via:

- audits
- compliance reports of energy retail businesses
- complaints data.<sup>20</sup>

#### 4.4.1 AUDITS

Licensed retailers independently audit their compliance with regulatory obligations under Guideline No. 22 *Regulatory Audits of Energy Businesses* (January 2014) as part of the Commission's auditing regime. It is currently auditing retailers, focusing in particular on the implementation of Commission approved hardship policies and retailer adherence to the recent introduction of Version 11 of the Energy Retail Code. The Commission will report its findings over the next 12 months as each audit is completed.

#### 4.4.2 COMPLIANCE REPORTS – ENERGY RETAIL BUSINESSES

The Commission reports retailer reported breaches annually in its retail compliance reports. It classifies breaches of regulatory obligations according to the likely severity of the effect on customers:<sup>21</sup>

- type 1– breaches that could critically affect customers and includes incidents where the effect increases over time if not rectified.
- type 2 - breaches that are reported six monthly, where noncompliance would seriously affect customers, the obligation is new or the impact increases over time.
- type 3 – all other breaches that are considered less serious and reported once a year.<sup>22</sup>

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<sup>20</sup> Section 26(1)(a) of the Electricity Industry Act 2000 and section 31(1)(a) of the Gas Industry Act 2001. ([http://www.austlii.edu.au/au/legis/vic/consol\\_act/eia2000261](http://www.austlii.edu.au/au/legis/vic/consol_act/eia2000261) and [http://www5.austlii.edu.au/au/legis/vic/consol\\_act/gia2001167](http://www5.austlii.edu.au/au/legis/vic/consol_act/gia2001167))

<sup>21</sup> Essential Services Commission, 2014 Compliance Report 2012 -2013 Energy Retail Businesses. (<http://www.esc.vic.gov.au/energy/compliance>)

Among other things, the Commission reports on the compliance breaches that result in wrongful disconnections, which are a type 1 breach.

A disconnection is deemed wrongful when a retailer does not follow the terms and conditions of its contract with its customer, before disconnecting the customer. These conditions include providing the assistance discussed in chapter 3.

The retailer compliance reports recorded approximately 160 wrongful disconnection cases in 2011-12 occurring because retailers did not comply with their hardship assistance obligations. In 2013-14, there were 252 breaches directly related to noncompliance with hardship obligations.<sup>23</sup>

While the major breaches reported are related to wrongfully disconnecting customers, improper marketing activities and incorrectly billing customers are also areas of concern that may affect hardship customers. The compliance data collected by the Commission does not distinguish whether such breaches occurred in relation to hardship customers.

#### 4.4.3 COMPLAINTS DATA

The Commission receives complaint data from customers, retailers' internal dispute resolution reports, other regulators and community agencies, and most regularly from EWOV. EWOV assesses all energy disconnection complaints for wrongful disconnection — that is, failure to comply with hardship obligations. It received its highest recorded number of disconnection complaints in 2013-14 for both electricity and gas and opened 2307 wrongful disconnection cases.<sup>24</sup> Of these cases, retailers voluntarily paid customers on 872 occasions following a breach of the Code. In a further 827 cases, retailers paid customers without admitting a breach. Not all these wrongful disconnections related specifically to hardship obligations. EWOV noted that

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<sup>22</sup> Essential Services Commission, 2014 Compliance Report 2012 -2013 Energy Retail Businesses p 12- 13. (<http://www.esc.vic.gov.au/energy/compliance>)

<sup>23</sup> The 2013-14 compliance report will be released shortly.

<sup>24</sup> Energy and Water Ombudsman (Victoria) 2014, 2014 Annual Report, Melbourne. (<https://www.ewov.com.au/publications-and-media/2014-annual-report>).



wrongful disconnections did not fall between 2008-09 and 2012-13, and that retailers should improve their disconnection and credit-related processes.<sup>25</sup>

In response to consumer concerns about the practical implementation of retailers' hardship policies, the AER recently completed a review of national energy retailers' customer hardship policies and practices. It did not find widespread noncompliance with laws regulating hardship obligations.<sup>26</sup>

## 4.5 SUMMARY

The performance data indicates many customers who are unable to pay their energy bills receive some assistance from their retailer. However, it is difficult to determine if their assistance is targeted and effective, and if all customers needing assistance receive it.

Each indicator provides an insight into a particular aspect of the arrangements in place to support customers experiencing financial hardship. However, the indicators do not allow us to draw an overall conclusion about the efficacy of the hardship arrangements. Finding unambiguous indicators of the impacts of hardship programs is challenging. Despite the Commission's recent review and consultation on the indicators collected, it would appear that room for improvement remains.<sup>27</sup> This inquiry provides an opportunity for new indicators to be suggested and tested.

The next chapter explores best practice in financial hardship policies, practices and procedures in different industries and countries.

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<sup>25</sup> Energy and Water Ombudsman (Victoria) 2014, Submission: reforms to retail regulation 2014 and planned outages, Melbourne. ([http://www.ewov.com.au/\\_\\_data/assets/pdf\\_file/0018/10692/EWOV-comments-on-DSDBI-Draft-Consultation-Paper\\_Reforms-to-Retail-Regulation-2014-and-Planned-Outages.pdf](http://www.ewov.com.au/__data/assets/pdf_file/0018/10692/EWOV-comments-on-DSDBI-Draft-Consultation-Paper_Reforms-to-Retail-Regulation-2014-and-Planned-Outages.pdf))

<sup>26</sup> Australian Energy Regulator 2015, Review of Energy Retailers' Customer Hardship Policies and Practices, Melbourne. (<http://www.aer.gov.au/node/30060>).

<sup>27</sup> Essential Services Commission 2013, Review of Energy Retail Performance Indicators - Final Decision, May 2013. (<http://www.esc.vic.gov.au/getattachment/92c9a896-775a-4513-ab09-e3730e32e731/Final-Decision-Energy-Retail-Performance-Indicator.pdf>)

## QUESTIONS

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

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

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

# 5 BEST PRACTICE

## 5.1 INTRODUCTION

The preceding chapters outlined the current regulatory framework and explored how the financial hardship arrangements operate. The terms of reference ask the Commission to review retailers' hardship policies, practices and procedures and assess whether they reflect 'best practice'.

This chapter discusses themes of best practice identified in the Commission's previous work, and examines best practice from other sectors and countries. The Commission seeks stakeholder feedback on:

- which practices apply to the Victorian retail energy sector
- the parameters and constraints that the Commission should consider when assessing retailer practices
- aspects of the regulatory framework that could be improved to promote and facilitate best practice.

## 5.2 BACKGROUND

Best practice policies and procedures are the methods or techniques employed by particular service providers that consistently show results superior to those achieved by other means and therefore could be used as a benchmark for the rest of the sector. Best practice is always evolving as improvements are tried, evaluated and implemented. To determine best practice in the retail energy sector, the Commission will ask retailers to provide relevant documents and information and will publish its preliminary assessment of their hardship policies, practices and procedures in the draft report. The Commission will consider the principles outlined in chapter 2 to identify and

assess practices that could be categorised as 'best practice' for Victorian energy retailers.

Victoria's hardship framework was designed to promote and facilitate best practice in supporting customers who are unable to pay their energy bills in full and on time. This chapter presents examples of best practice previously identified in the Victorian energy sector, as well as best practice observations in other jurisdictions and industries. Several key themes are identified.

Other jurisdictions and industries operate in different regulatory environments and different industry contexts. The Commission will assess the applicability of lessons from other jurisdictions and industries to the Victorian energy sector, and seeks stakeholder feedback.

### **5.3 PREVIOUS REVIEWS INTO BEST PRACTICE HARDSHIP PROGRAMS**

In 2005, the then Minister for Energy Industries established the Committee of Inquiry into Financial Hardship of Energy Consumers. The Committee's final report recommended changes to best practice hardship policy for the Victorian energy industry. The Committee found best practice involved:

- identifying customers experiencing payment difficulties
- providing targeted assistance
- offering flexible payment options
- linking customers to energy efficiency and retrofit programs.<sup>28</sup>

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<sup>28</sup> Department of Primary Industries 2005, *Committee of Inquiry into Financial Hardship of Energy Customers*, Melbourne. (<http://www.energyandresources.vic.gov.au/energy/gas/your-bill/concessions-and-hardship/hardship/hardship-inquiry-summary-report>)

The Committee highlighted and endorsed the Committee for Melbourne's *Utility debt spiral project report* (2004) as providing a solid foundation for a best practice model.<sup>29</sup> That report identified the following themes as best practice for the Victorian energy industry:

- transparent and accessible programs and support
- flexible, affordable and mutually agreeable payment plans
- disconnection, debt collection and legal action not pursued against customers participating in a hardship program
- specialist teams to respond to customers in financial hardship
- extensive and ongoing staff training
- clear communication about hardship policy to customers
- clearly articulated rights for hardship customers
- linkages to efficiency programs, financial counselling services, government grants and assistance, and dispute resolution services
- continuous review mechanisms.

In 2006, the Commission's *Energy retailers' financial hardship policies framework paper* proposed elements for best practice hardship programs.<sup>30</sup> We are using these elements of best practice as a starting point for this inquiry:

- transparency and accessibility – having a hardship policy, which is clearly communicated to customers (with copies available on request, on a website and in brochure format), distributed to community agencies, referenced in customer charters and enclosed with bills
- extensive and ongoing staff training – to all parts of the business on:
  - understanding the causes of financial hardship
  - identifying customers experiencing financial hardship

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<sup>29</sup> Committee for Melbourne 2004, *Utility debt spiral project*, Melbourne. (<http://www.cuac.org.au/research/external-research/180-utility-debt-spiral-project/file>)

<sup>30</sup> Essential Services Commission 2006, *Energy retailers' financial hardship policies framework paper*, Melbourne. (<http://www.esc.vic.gov.au/getattachment/30b2a467-9a95-4477-b188-bb2163c39b13/Energy-Retailers-financial-hardship-policies-frame.pdf>)

- talking with customers experiencing financial hardship
- referring customers to the ‘hardship response program’
- understanding literacy and access issues experienced by some customers
- specialist team – a well-resourced team skilled in responding to customers experiencing financial hardship. Staff in call centres and other parts of the business can refer customers to the hardship team. Customers can directly contact the specialised hardship team, preferably via a freecall phone number but at least via a local call phone number
- appropriate links to energy efficiency programs, financial counselling agencies, concessions, government assistance programs and nongovernment support services and dispute resolution services
- affordability – implement appropriate, affordable and agreed payment arrangements, including flexible options (like Centrepay, incentive plans, partial or complete waiver of debt and review of fees)
- suspended disconnection, debt collection and legal action – while the customer is on the ‘hardship response program’
- customer focus groups – customers who have experienced financial hardship provide direct feedback to retailers on its hardship program and identify areas for improvement
- clarity – clearly and fairly articulate the circumstances in which the provider may move a customer off its ‘hardship response program’ and onto its normal collection procedures, with discretion for particular customer circumstances
- continuous review – retailers learning from others, comparing the ‘hardship response program’ against local, interstate and overseas developments and considering comparative performance reporting undertaken by regulatory authorities.

Recently, the Australian Energy Regulator released a paper – *Review of energy retailers’ customer hardship policies and practices* – that discusses best practice in the retail energy sector.<sup>31</sup> It finds best practice uses a combination of strategies, including

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<sup>31</sup> Australian Energy Regulator 2015, *Review of energy retailers’ customer hardship policies and practices*. (<http://www.aer.gov.au/node/30060>).

increasing customer awareness about how and when to seek assistance from their retailer, proactive contact by retailers at the first signs of payment difficulties (via SMS, phone calls and emails) and approaching hardship issues, such as capacity to pay assessments, with more empathy and sensitivity. Further, effectively communicating hardship assistance involves: setting out a clear message on the energy bill about hardship assistance available, providing easy-to-read information about available assistance on the website and providing easy access to information about assistance available for culturally and linguistically diverse customers.

The Commission is interested in stakeholders' views about whether, and if so how, it can use the regulatory framework to encourage retailers to strive for the best practice approaches discussed above.

## **5.4 THEMES OF BEST PRACTICE IN FINANCIAL HARDSHIP SUPPORT IN OTHER INDUSTRIES AND JURISDICTIONS**

Other industries have recognised the importance of effective financial hardship assistance and developed their own best practice policies and procedures.

This section sets out eight themes that are viewed as best practice – by the industry they operate in – in financial hardship from the banking, water, telecommunications and other sectors in Australia and overseas.

### **5.4.1 EARLY IDENTIFICATION**

Early identification of customers who are regularly unable to pay their energy bills in full and on time helps prevent debt from accumulating and avoids disconnection.

Businesses can review customer debt levels or payment patterns to identify customers who may be unable to pay but who have not yet sought assistance.

Some businesses develop custom approaches for customers with recurring patterns of payment problems – for example, customers with job loss, disability and low income:

- UK energy regulator Ofgem highlighted *first bill teams* as an effective approach to early identification. These teams contact new customers when their first bill is issued, to ensure new customers are correctly registered on their billing systems.<sup>32</sup>
- Some Victorian water companies communicate directly with communities at risk of payment difficulties about assistance.<sup>33</sup> The businesses identify communities from their payment data.
- Several Australian energy retailers target geographic regions affected by a significant environmental or economic event that may leave residents more vulnerable to financial hardship.<sup>34</sup> This personalised communication can help customers to feel comfortable seeking assistance from service providers and encourage customers to self-identify.

## 5.4.2 RESOURCE EFFICIENCY

Using energy efficiently can help customers to manage their bills. Retailers can help by offering customers in their hardship programs energy efficiency audits and energy efficient appliances for free or at a reduced cost. However, not all customers can change their energy consumption. Customers in rental accommodation or in public housing cannot install insulation or double glazing, which can significantly reduce energy consumption, for example. So, energy audits are of limited benefit for some customers.

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<sup>32</sup> Ofgem 2008, *Debt and disconnection best practice review*, London. (<https://www.ofgem.gov.uk/ofgem-publications/57449/debt-and-disconnection-best-practice-review.pdf>)

<sup>33</sup> Wallis Consulting 2014, *Water billing hardship arrangements: a report of interview with financial counsellors, water customers and advocate organisations*, Melbourne. (<http://www.esc.vic.gov.au/getattachment/b757f626-8c00-4966-b737-d5928409e4b7/Water-Billing-hardship-arrangements-%28prepared-by-W.pdf>)

<sup>34</sup> Australian Energy Regulator 2015, *Review of energy retailers' customer hardship policies and practices*, Melbourne. (<http://www.aer.gov.au/node/30060>)



There are other ways retailers can help customers to manage their use of a service. Examples from other sectors include:

- Mobile phone companies alert customers (via SMS or email) when they reach 50, 85 and 100 per cent of their phone usage allowance. If customers use more than their usage allowance they will face additional costs. This helps customers to better understand their usage and potentially modify their behaviour if they are using too much.<sup>35</sup>
- Some Australian energy retailers are developing online portals to help customers monitor their energy consumption. In addition, some energy retailers participate in – or run their own – community energy efficiency workshops or have local shop fronts where customer can access energy efficiency information.<sup>36</sup>
- Water businesses in New South Wales and Victoria have partnered with retrofitters who repair and replace appliances at affordable prices where inefficiencies are identified.<sup>37</sup>
- Energy retailers in the UK often provide information on how to reduce energy consumption and access energy efficiency measures. Some retailers mail out information on energy efficiency to customers with arrears.<sup>38</sup>
- Victorian energy stakeholders supported the now defunct Home Energy Saver Scheme, an Australian Government scheme that offered home energy audits to customers.<sup>39</sup> Energy customers received personalised energy saving advice and tips to reduce their energy consumption and future energy bills.
- Some Victorian energy retailers used the Victorian Energy Efficiency Target scheme to introduce energy efficient appliances into homes. Between 2009 and

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<sup>35</sup> Vodafone 2014, *Financial hardship policy*. (<http://www.vodafone.com.au/doc/terms-financial-hardship.pdf>)

<sup>36</sup> Financial Counselling Australia 2014, *Banking, energy, water, telecommunications: Hardship policies in practice: a comparative study*. ([http://accan.org.au/files/Reports/Comparative%20Hardship\\_Final.pdf](http://accan.org.au/files/Reports/Comparative%20Hardship_Final.pdf))

<sup>37</sup> Sydney Water 2014, *Outlining early intervention approaches to payment difficulties and working effectively with customers in hardship with complex issues*. Presented at the Informa Collections and Hardship Programs in Utilities, Banks and Telecommunications Forum, Melbourne 24 and 25 June 2014. (<http://www.slideshare.net/informa0z/kerry-edgecombe-and-veda>)

<sup>38</sup> Ofgem 2008, *Debt and disconnection best practice review*, London. (<https://www.ofgem.gov.uk/ofgem-publications/57449/debt-and-disconnection-best-practice-review.pdf>)

<sup>39</sup> Australian Government Department of Social Services 2014, *Communities and vulnerable people: Home Energy Saver Scheme*. (<https://www.dss.gov.au/our-responsibilities/communities-and-vulnerable-people/programs-services/financial-management-program/home-energy-saver-scheme/home-energy-saver-scheme>)

2014, over 1.54 million Victorian households installed energy-saving measures under the scheme. Survey results from 2011 suggested low income households may receive proportionally more upgrades under the scheme than households with higher incomes.<sup>40 41</sup>

### 5.4.3 AVAILABILITY OF USEFUL INFORMATION

Energy retailers should provide customers with information on assistance that is easily accessible, clear and understandable. Access to the right information increases customers' awareness of the services and assistance that can help them manage bills, usage and debt. Information should be in plain language and available in many languages and formats. Examples include:

- The Australian banking sector uses banners on their websites and nonthreatening language. Similarly, some Australian energy retailers provide easy-to-find and easy-to-read information about payment assistance options on their websites.<sup>42</sup>
- Ofgem in the UK advocates using visual graphics to simplify information. People with limited literacy skills can often understand symbols that represent important information.<sup>43</sup>
- Several sectors provide links to concessions, government assistance programs and nongovernment support services. Victorian water businesses provide links to support service organisations on their websites, and inform customers via the telephone.<sup>44</sup> Many Australian energy retailers offer a printed contact list or refer customers to a webpage. Currently, all banks in Australia have a link on their home pages to information about assistance when the customer is unable to pay their bill

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<sup>40</sup> Hall & Partners – Open Mind, *Energy saver incentive scheme: phase 1 evaluation survey*, September 2011. (<http://www.energyandresources.vic.gov.au/energy/environment-and-community/energy-efficiency/energy-saver-incentive-scheme/esi-scheme-phase-1-evaluation-survey>)

<sup>41</sup> Hall & Partners – Open Mind 2011, *Energy saver incentive scheme phase 1 evaluation survey*, September 2011. (<http://www.energyandresources.vic.gov.au/energy/environment-and-community/energy-efficiency/energy-saver-incentive-scheme/esi-scheme-phase-1-evaluation-survey>)

<sup>42</sup> Financial Counselling Australia 2014, *Banking, energy, water, telecommunications: Hardship policies in practice: a comparative study*. ([http://accan.org.au/files/Reports/Comparative%20Hardship\\_Final.pdf](http://accan.org.au/files/Reports/Comparative%20Hardship_Final.pdf))

<sup>43</sup> Ofgem 2008, *Debt and disconnection best practice review*, London. (<https://www.ofgem.gov.uk/ofgem-publications/57449/debt-and-disconnection-best-practice-review.pdf>)

<sup>44</sup> Consumer Law Centre Victoria 2006, *The implementation of residential hardship policies by Victorian water businesses*, Melbourne. (<http://consumeraction.org.au/wp-content/uploads/2012/05/DL51.pdf>)

on time and in full. This information includes: phone numbers, online application forms, information on the arrangements that may be offered and other useful website links.<sup>45</sup>

#### 5.4.4 STAFF TRAINING

Staff training and support is an important element of good practice in all sectors. Ongoing training keeps staff up to date on new developments and communication techniques and provides the opportunity for providers to ensure their staff are well versed in how to treat customers with respect and dignity.

Some examples include:

- Hardship staff in Victorian water businesses receive training from specialists in customer welfare groups and the Department of Human Services. This ensures staff know how to respectfully and sensitively communicate with customers.<sup>46</sup> Water businesses also support the health and wellbeing of staff who work with customers experiencing financial hardship.
- New South Wales water businesses include skilled specialists with relevant qualifications in financial counselling, case management and psychology in their hardship teams. These specialists support and guide other staff and customers.<sup>47</sup> Some programs place new staff in community agencies for a time, to work with people in financial hardship and build relationships with the community sector.
- The Australian banking industry guideline encourages training of all relevant staff, including frontline employees (who deal with customers) and specialised staff (such as financial hardship and debt collections teams) to recognise customers

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<sup>45</sup> Financial Counselling Australia 2014, *Banking, energy, water, telecommunications: Hardship policies in practice: a comparative study*. ([http://accan.org.au/files/Reports/Comparative%20Hardship\\_Final.pdf](http://accan.org.au/files/Reports/Comparative%20Hardship_Final.pdf))

<sup>46</sup> Essential Services Commission 2010, *Attachment: Examples of best practice approaches*, Melbourne. (<http://www.esc.vic.gov.au/getattachment/0e423e2c-6a1d-42b9-8077-08380ad0ed02/Report-Selected-best-practice-approaches-in-financ.pdf>)

<sup>47</sup> Sydney Water 2014, *Outlining early intervention approaches to payment difficulties and working effectively with customers in hardship with complex issues*. Presented at the Informa Collections and Hardship Programs in Utilities, Banks and Telecommunications Forum, Melbourne 24 and 25 June 2014. (<http://www.slideshare.net/informaoz/kerry-edgecombe-and-veda>)

experiencing financial difficulties. The guideline also recommends bank staff refer customers in need to the financial hardship team.<sup>48</sup>

- Ofgem in the UK recognises that staff in hardship teams need appropriate training, skills and authority to offer additional support and solutions. It suggests that the most skilled staff work on the most difficult debt collection cases and that the customer is handled by a team that can best support their needs.<sup>49</sup>

### 5.4.5 PARTNERSHIPS

Hardship assistance can be provided by a range of community welfare groups and partnerships with such groups can increase the types of assistance available to customers. Businesses cultivating effective partnerships with customer welfare groups, financial counselling agencies, legal aid, dispute resolution bodies and other sectors for mutual referrals have more robust networks upon which to draw, so they can respond more flexibly to a customer's needs. Retailers learn from others and facilitate awareness and assistance from all relevant parties.

Partnership examples include:

- Many Victorian water businesses work together within the industry to develop best practice.<sup>50</sup> Businesses share information about what works and improvements to their programs. Businesses also work with other agencies. Yarra Valley Water and ANZ bank refer customers into CareRing, for example. CareRing is a centralised, coordinated point of contact where one phone call can connect people with a range of support services, so customers do not have to go to multiple agencies.<sup>51</sup>
- Telstra has partnerships with over 2000 community agencies across Australia, including The Salvation Army, St Vincent de Paul, The Smith Family and Anglicare

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<sup>48</sup> Australian Bankers' Association Inc. 2013, *Promoting understanding about banks' financial hardship programs*, industry guideline. ([http://www.bankers.asn.au/ArticleDocuments/149/ABA-Industry\\_Guideline-Financial\\_Hardship\\_version1.pdf.aspx](http://www.bankers.asn.au/ArticleDocuments/149/ABA-Industry_Guideline-Financial_Hardship_version1.pdf.aspx))

<sup>49</sup> Ofgem 2008, *Debt and disconnection best practice review*, London. (<https://www.ofgem.gov.uk/ofgem-publications/57449/debt-and-disconnection-best-practice-review.pdf>)

<sup>50</sup> Victorian water businesses do not compete for customers.

<sup>51</sup> Essential Services Commission 2014, *Review of new hardship measures taken by metropolitan water businesses: 2013-14 report*, Melbourne. (<http://www.esc.vic.gov.au/Water/Performance-reports/Hardship-Indicators-Survey>)

Australia. These partners may assist with bill payment or provide calling cards if a customer has no other means to communicate.<sup>52</sup>

#### 5.4.6 SENSITIVE AND FLEXIBLE APPROACH

Financial hardship can arise from many causes that are often interlinked. Energy bills are only one possible cause, but the financial pressure associated with energy bills often appears to be more important than many other possible causes of financial hardship. Energy retailers cannot address the other causes of financial hardship, but they should be sensitive to their customers' circumstances and they should be able to demonstrate this sensitivity. Experience elsewhere suggests that it is possible for particular service providers to demonstrate sensitivity to their customers' broader circumstances. Often, this involves listening to customers, and demonstrating an appreciation of their circumstances by responding with flexible options. Experience suggests customers feel heard and empowered to deal with their current difficulties. Examples include:

- Flexibility – Businesses offer flexible options and different forms of assistance because different situations require different solutions. Businesses in the UK, for example, account for individual circumstances and accept lower repayment levels to encourage regular payment patterns and avoid debt accumulation.<sup>53</sup>
- Case management – The Australian banking, Victorian water and Australian telecommunications sectors use internal case managers, who match hardship assistance to each customer's level of financial hardship. Case managers also provide after service care.<sup>54</sup>
- Relationship building – As stated by a 2014 Financial Counselling Australia report, Australian energy retailers with effective hardship policies and practices maintain positive and cooperative relationships with customers dealing with debt and other

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<sup>52</sup> Telstra 2014, *Adversity and financial hardship*. (<http://www.telstra.com.au/aboutus/community-environment/community-programs/adversity-financial-hardship/>)

<sup>53</sup> Ofgem 2008, *Debt and disconnection best practice review*, London. (<https://www.ofgem.gov.uk/ofgem-publications/57449/debt-and-disconnection-best-practice-review.pdf>)

<sup>54</sup> Essential Services Commission 2012, *Improving approaches to customer financial hardship: summary of business responses to commission request for information on hardship policies and procedures*, Melbourne. (<http://www.esc.vic.gov.au/getattachment/1e2fbeb1-bee5-4c34-a9fc-303fd0bf4f52/Summary-Business-responses-to-hardship-policies-an.pdf>)

personal issues. Staff actively engage with customers, to listen and validate their experience of financial vulnerability. They also empathise with the customer and respond sensitively.<sup>55</sup>

### 5.4.7 PROGRAM REVIEW

Successful hardship programs in other sectors are reviewed regularly. Businesses can see what is working and what needs refining. Programs can be reviewed via audits, mystery shopping and desktop reviews. Examples include:

- Internal reviews – Ofgem in the UK notes best practice includes monitoring performance regularly and periodically reviewing debt and disconnection policies to ensure they are effective and fit for purpose.<sup>56</sup>
- Annual reports and working groups – The Victorian water sector publishes an annual report that highlights trends in best practice, and shares best practice experiences among businesses. Water businesses also engage financial counsellors and consumer representative organisations to review and improve practices and processes.<sup>57</sup>

### 5.4.8 ORGANISATION-WIDE SUPPORT

Research into practices in other sectors shows sustained good performance in hardship assistance requires commitment from the hardship team, as well as leadership, the chief executive officer and other senior staff. The most successful hardship programs are owned by senior management and supported companywide. Further, staff incentives that support positive cultural change and do not hinder progress in processes to help hardship customers typically result in better customer experiences.

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<sup>55</sup> Financial Counselling Australia 2014, *Banking, energy, water, telecommunications: Hardship policies in practice: a comparative study*. ([http://accan.org.au/files/Reports/Comparative%20Hardship\\_Final.pdf](http://accan.org.au/files/Reports/Comparative%20Hardship_Final.pdf))

<sup>56</sup> Ofgem 2008, *Debt and disconnection best practice review*, London. (<https://www.ofgem.gov.uk/ofgem-publications/57449/debt-and-disconnection-best-practice-review.pdf>)

<sup>57</sup> Consumer Law Centre Victoria 2006, *The implementation of residential hardship policies by Victorian water businesses*. (<http://consumeraction.org.au/wp-content/uploads/2012/05/DL51.pdf>)

Examples include:

- The Australian banking sector is encouraging cultural change that supports hardship policies and flows through all levels of the business. The Australian Bankers Association developed a web portal 'Doing it tough'<sup>58</sup> that provides general financial hardship information to customers and links to hardship programs and phone numbers for all banks.
- Creditcorp, a collection agency, recently changed its key performance indicators and bonus schemes to encourage staff behaviours that were consistent with the cultural change it was implementing for its hardship programs. Creditcorp saw a 50 per cent increase in revenue from its hardship customers between December 2011 and July 2013, and improved customer feedback.<sup>59</sup>
- Yarra Valley Water developed a business case to encourage support for its hardship program at every level of the organisation because it was a financially responsible option.<sup>60</sup> Other Victorian water companies support frontline staff by providing the relevant training and authority to work with their customers experiencing financial hardship.
- Ofgem in the UK notes industry leaders in hardship programs have a clear management and organisational focus in this area. They are proactive, focus on debt prevention rather than debt management, and provide holistic solutions to customers.<sup>61</sup>

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<sup>58</sup> Australian Banking Association 2015, Home page, [www.doingittough.info/](http://www.doingittough.info/) (accessed February 2015).

<sup>59</sup> Creditcorp Group 2014, *Debt Collection Or Hardship Management?* Presented at the Informa Collections and Hardship Programs in Utilities, Banks and Telecommunications Forum, Melbourne 24 and 25 June 2014. (<http://www.slideshare.net/informaoz/tag/hardshiputilities14>)

<sup>60</sup> Financial Counselling Australia 2014, *Banking, energy, water, telecommunications: Hardship policies in practice: a comparative study*. ([http://accan.org.au/files/Reports/Comparative%20Hardship\\_Final.pdf](http://accan.org.au/files/Reports/Comparative%20Hardship_Final.pdf))

<sup>61</sup> Ofgem 2008, *Debt and disconnection best practice review*, London. (<https://www.ofgem.gov.uk/ofgem-publications/57449/debt-and-disconnection-best-practice-review.pdf>)

## 5.5 SUMMARY

The Commission's initial review has identified eight common themes accepted as best practice across different sectors, jurisdictions and countries: early identification, resource efficiency, availability of useful information, partnerships, sensitive and flexible approach, program review and organisation-wide support.

The Commission seeks stakeholders' views about whether these themes are relevant for the Victorian energy retail industry. In particular, the Commission is seeking information and guidance from retailers, customers and consumer representative groups about whether practices, policies and procedures reflect these eight common themes of best practice.

### QUESTIONS

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

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

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

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



# 6 BENCHMARKING

## 6.1 INTRODUCTION

The terms of reference for this inquiry require the Commission to assess retailers' financial hardship policies, practices and procedures to assess whether these reflect 'best practice'. The Commission is also requested to develop a benchmarking framework for assessing and reporting on retailers' effectiveness in supporting customers in financial hardship. These are closely related exercises.

This chapter outlines the issues that need to be considered in developing a benchmarking framework. The Commission is seeking feedback on the scope, design and costs of implementing a useful and effective benchmarking framework.

## 6.2 BENCHMARKING

Benchmarking entails a mechanism for comparing the performance of like-entities. Which aspects of performance are included in such comparisons, the information required in order to make these comparisons, how that information is captured (and the cost of doing so) and how comparisons are made and conclusions drawn — are not self-evident. Indeed, resolving these features of a benchmarking framework is often open to debate and contention. Nonetheless, regulators often use benchmarking as a mechanism for publicly reporting on the performance of the industries they oversee.

Benchmarking can be:

- relative or comparative – a particular aspect of a firm's performance can be assessed relative to a pre-established standard, or it can be assessed by way of comparison to the performance of other firms covered by the benchmarking framework

- quantitative or qualitative – it can employ clearly articulated metrics for assessment that allow performance to be summarised in numerical terms, or the benchmark can provide descriptive information only
- objective or subjective – some measures of performance can be assessed in ways that can be independently measured and verified, while other measures may rely on the author (or the reader) providing an opinion involving personal judgement.

Importantly, benchmarking frameworks can be applied at different stages of a given process. They can be used to assess inputs, outputs, processes or outcomes involved with any given activity involving the firm.

Regulators typically rely on a mix of approaches when undertaking their benchmarking exercises. Figure 6.1 shows some of the aspects involved in the design of a benchmarking framework.

**FIGURE 6.1 ALTERNATIVE FRAMEWORKS FOR BENCHMARKING**

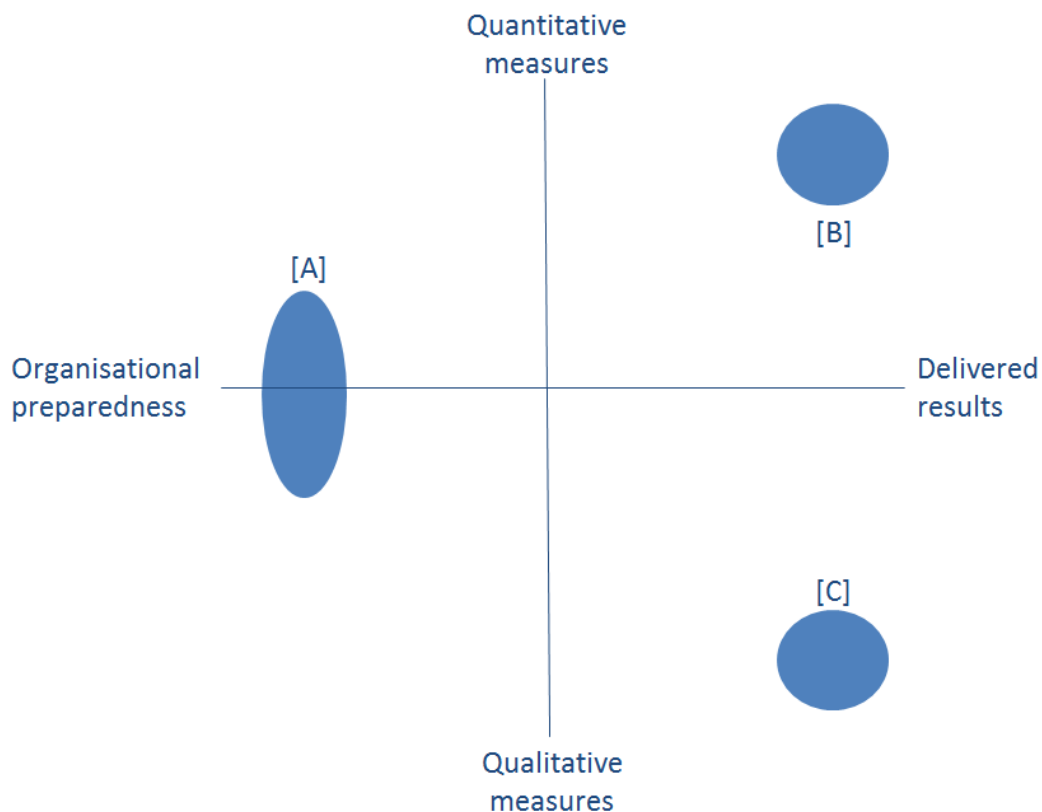


Figure 6.1 shows the range of options for benchmarking performance that lies between measuring how well an organisation is prepared to deliver particular outcomes and how well those outcomes are actually delivered. A range of options are also shown for whether those measures are expressed quantitatively or qualitatively. The three shaded areas represent the reporting frameworks currently used by the Commission.

The area marked as [A] represents the Commission's industry compliance reports. These reports assess how well each energy retailers is complying with its regulatory obligations. These reports rely on audited information about the systems each retailer has in place in order to ensure it is complying with its regulatory obligations. The reports use a mix of quantitative and qualitative measures. While these measures attempt to be as objective as possible (and are often assessed with reference to Australian Standards), the independent auditor may be required to exercise some degree of judgement when assessing a retailer's performance. The Commission's compliance reports are briefly mentioned in section 4.4 of this report insofar as they assess retailers' preparedness to support customers in financial hardship.

The performance indicators discussed in chapter 4 are represented by the shaded area marked by [B]. These indicators are quantitative and seek to capture the results of the retailers' efforts when complying with their regulatory obligations (in the case of chapter 4 these indicators seek to measure outcomes for customers in financial hardship).

In 2011, the Commission sought to better understand customers' experiences with energy retailers when they were experiencing difficulties in paying their bills. This report, which is represented by shaded area [C], relied on over 50 individual customers recounting their experiences and which were compiled into a report where they were expressed in descriptive terms only.<sup>62</sup> While the Commission drew out some common themes, it did not attempt to rate or rank these experiences or the retailers responsible.

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<sup>62</sup> Hall & Partners - Open Mind, 2011, *Customers of water and energy providers in financial hardship: a consumer perspective A report submitted to the Essential Services Commission by Hall Partners | Open Mind*. May 2011. (<http://www.esc.vic.gov.au/getattachment/834a7cd8-bc2c-4042-a89f-002300c89aa2/Hall-and-Partners-report-on-customers-in-hardship.pdf>)

### 6.3 WHAT DOES AN EFFECTIVE FRAMEWORK DO?

The terms of reference require the Commission to establish a benchmarking framework for assessing and reporting on the *effectiveness* of retailers' policies, practices and procedures for supporting customers in financial hardship.

Concerns about the effectiveness of retailers' processes have arisen following the steady increase in disconnections (as reported annually in the Commission's industry performance reports) and following numerous reports from consumer groups questioning the effectiveness of retailers' actions in supporting customers who may be experiencing financial hardship.<sup>63</sup> In the Commission's 2014 *Energy Retailers Comparative Performance Report*, the Commission stated that the 2013-14 disconnection figures *are the highest rates of disconnection ever recorded by the Commission*.<sup>64</sup>

As discussed in chapter 4, the data currently collected does not sufficiently support firm conclusions about the cause of the sustained increase in disconnections; the extent to which customers experiencing financial hardship are represented in these figures; and whether disconnection of hardship customers is indeed a measure of last resort only.

In seeking to provide greater confidence that retailers' policies, practices and procedures are effective in supporting customers in financial hardship and ensuring that they are only disconnected as a last resort, the benchmarking framework will need to cover the following steps:

1. *options* – whether retailers have established an effective and reasonable suite of arrangements that can be made available to customers so that they can avoid disconnection

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<sup>63</sup> Consumer Action Law Centre, 2014, Problems with Payment: How Energy retailers can assist consumers having trouble paying bills, July. ([http://consumeraction.org.au/wp-content/uploads/2014/07/Problems-with-Payment\\_July-2014.pdf](http://consumeraction.org.au/wp-content/uploads/2014/07/Problems-with-Payment_July-2014.pdf)) and Financial and Consumer Rights Council, 2014, Rank the Energy Retailers Report, August. (<http://www.fcrc.org.au/fcrc-releases-rank-the-energy-retailer-report/>)

<sup>64</sup> Essential Services Commission 2014, Energy Retailers Comparative Performance Report – Customer Service, 2013-14, December 2014. (<http://www.esc.vic.gov.au/Energy/Energy-retail-performance-reports/Energy-Retailers-Comparative-Performance-Report-Pr>)

2. *identification* – whether retailers are effectively identifying customers who are, or may be, experiencing difficulty in paying their bills on time and in full due to financial hardship
3. *availability* – whether retailers are effectively making known, and offering, the options available to customers experiencing difficulty in paying their bills and assisting them to identify the most suitable option
4. *review* – whether retailers are effectively reviewing the suitability of the particular arrangements that have been put in place to support a customer before withdrawing those arrangements (and proceeding to disconnection).

If the benchmarking framework can demonstrate that a retailer is effectively following all of these steps, then it should provide confidence that any disconnection of customers in financial hardship will have only been pursued as a last resort.

In developing the framework, the Commission will be mindful of the models and examples of best practices discussed in chapter 5 as well as any matters identified during its consultations. In addition, the principles discussed in chapter 2 will inform how the Commission assesses any regulatory obligations it puts in place in relation to implementing the benchmarking framework.<sup>65</sup> Where relevant, these principles will also be incorporated into the benchmarking framework where it seeks to assess the effectiveness of actions taken by retailers to support their customers.

## 6.4 EFFECTIVE BENCHMARKING

The purpose of benchmarking is not to ambush or embarrass those being benchmarked. An effective benchmarking framework will inform customers, promote improvement and provide confidence.

Energy retailers, and not their regulator, have a direct relationship with their customers. An effective benchmarking scheme does not seek to interfere in that relationship,

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<sup>65</sup> As discussed in chapter 2, these principles will be used to assess all regulatory obligations relating to financial hardship and disconnection. This chapter confirms that the same principles will be used to assess new regulatory obligations supporting the implementation of the benchmarking framework.

rather, it seeks to shine light on that relationship. In doing so, it informs customers of what they can reasonably expect from their energy retailer.

By making it possible for retailers to compare and contrast the effectiveness of their policies, practices and procedures to those of their peers (or relative to industry standards established by the regulator), a benchmarking framework should help and spur firms to identify opportunities for improving their own performance.

Effective benchmarking will support the community's confidence that retailers are fulfilling their obligations to customers in financial hardship and pursuing all reasonable actions to avoid depriving these households of this essential service. Of course, where the framework highlights contrary outcomes, the community will rightfully question whether further action is required by policy makers and their regulators.

In order to achieve these outcomes, the Commission will establish mechanisms to ensure the usefulness, accuracy and reliability of the data and information reported by energy retailers under the benchmarking framework.

## 6.5 SUMMARY

The Commission is required to establish a benchmarking framework for measuring the effectiveness of energy retailers' hardship policies, practices and procedures. The benchmarking framework's design will be informed by:

- the four identified elements of an effective hardship program (options, identification, availability and review) that ensure that customers are only disconnected as a last resort
- the models and examples of best practice identified in chapter 5 and the principles discussed in chapter 2
- retailers' current practices
- benchmarking frameworks in other industries with similar regulatory requirements regarding their treatment of customers in financial hardship
- standard design requirements for performance measures – namely: that they be clearly defined; and readily understandable, measurable and verifiable.

The Commission will consult widely on these matters and will make draft recommendations on the design of the benchmarking framework in its draft report in August 2015.

## QUESTIONS

Q12. What other matters should the Commission take into account when designing a benchmarking framework for assessing the effectiveness of retailers' hardship programs?

Q13. Which aspects of an energy retailers' hardship policies, practices and procedures should be given priority in the benchmarking framework?





## 7 NEXT STEPS

This is the first of three papers the Commission will release for its inquiry into energy hardship arrangements. This paper outlines our intended approach to addressing the terms of reference (appendix A) issued to us by the Minister for Finance and the Minister for Energy and Resources. The Commission welcomes submissions on any of the questions identified in each chapter and listed below, or on any relevant matter.

### QUESTIONS FOR RESPONSE

Q14. Are there any other matters the Commission should consider to help customers who are unable to pay their bills in full and on time to avoid disconnection?

Following the release of this paper, the Commission will begin its formal consultation process – including receiving submissions on this paper, holding workshops with retailers, requesting information and data from retailers, meeting with consumer advocacy groups and other stakeholders, and conducting other roundtable discussions. If you would like to make a submission in response to this paper, or be informed of consultation events such as public hearings, please see the information provided in chapter 1. Submissions in response to this paper close on 1 May 2015.

The Commission will release its draft recommendations in August 2015. It will then consult on the draft report, before releasing a final report in late 2015.



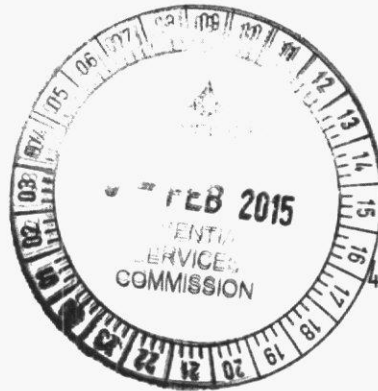
# APPENDIX A – TERMS OF REFERENCE



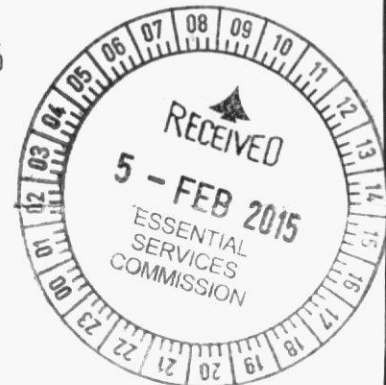
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Dr Ron Ben-David  
Chairperson  
Essential Services Commission  
Level 37, 2 Lonsdale Street  
MELBOURNE VIC 3000



4 FEB 2015



Dear Dr Ben-David

**ESC INQUIRY INTO THE FINANCIAL 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

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

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

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

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

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

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

### **Scope of the inquiry**

The matters to be covered by the inquiry are:

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

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

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

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

### **Inquiry process**

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

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

# APPENDIX B – REFERENCE LIST

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