Do the Poor Pay More?
- A research report

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The Consumer Law Centre Victoria is one of Australia's leading consumer organisations, undertaking research, policy development, advocacy and education. The Centre also operates a large consumer legal practice assisting over a thousand low-income consumers each year with free legal advice and representation. The Centre's work is focussed on advancing the interests of low-income and vulnerable consumers.

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Table of Contents

Foreword

Chris Field*

In April 2003, a Reserve Bank of Australia (**RBA**) report on bank fees revealed that fee income from deposit, loan and transaction services totalled 7.8 billion dollars in 2002 - an increase of 10 per cent on 2001.[1] There was nothing particularly remarkable about these figures - it was well accepted at the time that fee income earned by banks had been rising for some years, indeed, fee income has continued to rise since. What did make the RBA report remarkable was the evidence presented about the distribution of bank fees among consumers. In their report, the RBA observed that:

> Bank customers have not been affected uniformly by these trends in fees and interest margins. Arguably, those who have benefited most are those with a loan secured by a residential mortgage, who use electronic payment channels and who avoid late payment and other similar charges. Such customers have benefited from lower interest rate margins and can avoid many of the banking fees introduced over the past decade. In contrast, those customers without a loan, who have low balances and have a high-volume of transactions would not have benefited from the fall in interest margins and would be paying higher fees.

Unfortunately, a typical profile of a low-income consumer is a person who maintains low balances, has a high-volume of transactions and does not have a mortgage. Moreover, such a consumer is more likely to incur punitive late payment and other similar charges as the capacity to avoid these charges is largely determined by having adequate financial means. By contrast, a typical profile of a higher-income consumer is a person with a residential mortgage, who uses electronic payment channels and is able to avoid late payment and other similar charges.

This is the context for the work that follows.[2] *Do the Poor Pay More?* is a landmark report, a report that considers the outcomes for low-income consumers of more than a decade of micro-economic reform. It is now time to take stock of this significant period of economic growth in our community. The distributional effects of markets - the so-called "winners and losers" of competition - needs considered analysis. *The Poor Pay More?* is a collection of essays written by consumer lawyers; each essay examines a significant essential services market and the effect that privatisation, deregulation and the introduction of competition has had on low-income consumers.

The essays contained within this report do not conclude that competition is a bad thing for consumers. On the contrary, there is good evidence that competitive markets deliver the best price and access to a variety of goods and services for the majority of Australians. They also deliver the best quality of goods and services. In the words of John Vickers, Chairman of the UK Office of Fair Trading, "[c]ompetition is pro-consumer for the simple reason that rivalry among suppliers to serve consumers well is good for customers."[3] In short, strong competition is critical to a robust and growing domestic economy - and strong economies are good for consumers.

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[1] Reserve Bank of Australia, 'Banking Fees in Australia', *Reserve Bank of Australia Bulletin*, April 2003 at 6.

[2] A seminal study into poverty in the United States by David Caplovitz, *The Poor Pay More*, provided the inspiration for the title of this work. The actual content of the respective works differ – Caplovitz's work was a study of poverty in US communities, while *Do the Poor Pay More?* is a study of the effect of market reform in modern consumer markets on low-income consumers.

[3] John Vickers, *Economics for Consumer Policy*, British Academy Keynes Lecture, 29 October 2003 at 4.

This report accepts the beneficial role of competition, but it argues for a fair distribution of the great dividends that our open and free market creates. We are a society that is genuinely and rightly concerned with distributional outcomes – the spirit of a fair go and egalatarianism exists strongly in our culture. As Canadian academic, Michael Trebilcock, has powerfully observed:

> For economists to claim that they are only concerned with maximising the total value of social resources, without being concerned about how gains in the value of social resources are to be distributed and whether these gains are in fact making the lives of individuals better … reflects a highly impoverished view of the world. [4]

In their recent review of the implementation of National Competition Policy, the Australian Productivity Commission found that there would be value in considering distributional and adjustment issues in the guiding principles underpinning future economic reform. This finding is supported by *Do the Poor Pay More?*

Do the Poor Pay More? also finds that we need to consider the effectiveness of our current consumer protection regulations, particularly in markets that have been deregulated over the past decade. An idea that runs through each of the essays in *Do the Poor Pay More?* is the need to move beyond the simple rhetoric of "heavy-handed" versus "light-handed" regulation. Regulation is needed where markets fail consumers. We must, of course, always be mindful of the true costs and benefits of regulation – we must ensure that our otherwise good intentions in enacting consumer protection regulation do not have a distorting effect on competition that outweighs the benefits we are seeking to create. In making this assessment about costs and benefits we must consider economic efficiency, promoting positive environmental and social outcomes and the broader public interest. We must also consider the fact that consumer protection regulation is not necessarily anti-competitive, in fact it may be pro-competitive. Ron Bannerman, the then Chairman of the (then) Trade Practices Commission (now, the Australian Competition and Consumer Commission) said:

> I have seen consumer protection on the one hand and competition on the other as principles that should be mutually supporting … [c]onsumers not only benefit from competition, they activate it and one of the purposes of consumer protection law is to ensure that they are in a position to do so.[5]

Where consumer protection measures promote confidence in markets, assist consumers to safely exercise choice of suppliers and eliminate unfair terms that exist due to lack of information, then consumer protection measures can make markets work more effectively – they can be pro-competitive. As the former Chair of the US Federal Trade Commission, Timothy Muris, observed, "well-conceived competition policy and consumer protection policy take complementary paths to the destination of promoting consumer welfare." [6]

Do the Poor Pay More? supports the conclusion of the Australian Productivity Commission in its recent review of the implementation of National Competition Policy that it is time to consider:

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[4] Michael Trebilcock, 'An introduction to law and economics', 23 *Melbourne University Law Review* 1 at 157.

[5] Ron Bannerman, *Trade Practices Commission Annual Report 1983/4*, AGPS, Canberra 1984 at 184.

[6] Timothy Muris, The *Interface of Competition and Consumer Protection*, Fordham Corporate Law Institute's Twenty-Ninth Annual Conference on International Antitrust Law and Policy, New York City, 31 October 2002 at 2.

> a national review of consumer protection policy [which] would provide the opportunity to examine whether such policies are continuing to meet the needs of consumers in a more competitive environment, as well as look at the complementarities between competition and consumer protection laws and how these might be most appropriately harnessed.[7]

Economic growth exists within a social and environmental context, it exists to serve not just the majority of Australians, but all of them. In support of this view, we need look no further than the father of free market economics, Adam Smith. Smith tells us that, "labourers and workmen of different kinds … make up the far greater part of every political society. But what improves the circumstances of the greater part can never be regarded as an inconvenience to the whole."[8]

In considering the effects of market reform, *Do the Poor Pay More?* asks the questions:

- Are we sharing fairly the great dividends that our free market creates?
- Are we ensuring that low-income and vulnerable consumers are protected when markets fail?
- While a very large number of Australians have undoubtedly benefited from privatised and deregulated essential services such as electricity, gas, banking and telecommunications, do the poor pay more for these services?

The poor can never be an inconvenience to the greater good. The acceptance of an unfair share for the poor can never be an acceptable public policy outcome. Do the poor pay more? They do, and it is a great challenge for us all to ensure that they do not.

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[7] Productivity Commission, *Review of National Competition Policy Reforms*, Discussion Draft, October 2004 at xxxi.
[8] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nation,* Book 1, Ch. 8, 1776.

This chapter is re-produced with minor variations from C Connolly and K Hajaj, *Financial Services and Social Exclusion*, Financial Services Consumer Policy Centre, University of New South Wales Chifley Research Centre, Sydney, NSW (2001).

Do the Poor Pay More for Financial Services?

Chris Connolly*

1. Introduction

Financial exclusion is the lack of access to financial services by individuals or communities due to their geographic location, economic situation or any other 'anomalous' social condition which prevents people from fully participating in the economic and social structures of mainstream communities.

There is global evidence that financial exclusion exists, and that its main causes are the high costs of basic banking services. Barriers to access and particular groups affected by financial exclusion can be identified.

The provision of financial services to all members of the community has become an essential factor in ensuring social inclusion. The most basic and the most important financial service for most Australians is the bank account. The provision of a bank account is essential for receiving pay and benefits and making and receiving payments. Having a bank account is no longer a mere convenience - it is a prerequisite for engaging in the economic process.

In recent years Australian banks have undergone a 'paradigm shift' where every facet of their operation must now be seen to make a profit. This is in place of their traditional *modus operandi* whereby a system of cross-subsidies would see that the banks' traditional roles were also being met.

While the banks argue that this operational approach has been engendered by virtue of necessity and deregulatory pressures, critics point to data from Australia and abroad showing the dangers of such an approach, and encourage consideration of alternative regulatory and business models which ensure greater social inclusion.

The more an individual or community is marginalised from financial services, the more likely it is that they will also be socially excluded, which exacerbates their overall civic marginalisation.

2. Financial exclusion and its impact

Financial exclusion is the lack of access to financial services by individuals or communities due to their geographic location, economic situation or any other 'anomalous' social condition which prevents them from fully participating in the economic and social structures of mainstream communities.

Accordingly, financial exclusion is a key policy concern since the options for operating a household budget without mainstream financial services are more expensive, often unregulated and very limiting.

Studies conducted in the United Kingdom[1] argued that financial exclusion is not just about changes to physical access caused by the changing geography of financial services provision. The study pointed out that exclusion from financial services has a number of other critical dimensions and identified them as:

Access exclusion: The restriction of access through the process of risk management;

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[1] Financial Services Authority, *In Or Out? Financial Exclusion: a literature and research review*, UK, July 2000.

Condition exclusion: Where the conditions attached to financial products make them inappropriate for the needs of some people;

Price exclusion: Where some people can only gain access to financial products at prices they cannot afford;

Marketing exclusion: Where some people are effectively excluded by targeted marketing and sales; and

Self exclusion: Where some people decide that there is little point applying for a financial product because they believe they will be refused. Sometimes this is a result of having been refused personally in the past, sometimes because they know someone else who has been refused, or because of a belief by the financial institution that 'they don't accept people who live round here'.

Financial exclusion is a complex and dynamic process. Some people experience short episodes of exclusion, maybe more than once in their lives. For a small number, however, it can be long term, perhaps even life long.

Financial exclusion depends mainly on who you are, but where you live is also important. Those at highest risk of suffering financial exclusion include people on low incomes who are in receipt of social security benefits (including pensioners and unemployed), with low education, and living in depressed economic areas or rural and regional areas.

The following are the groups that will most likely fall outside of the financial services system[2]:

- Households and individuals who have never had a secure job;
- Elderly people who are part of a cash only generation;
- Young people and households who have not yet made use of financial services;
- People on low incomes;
- Women who become single mothers at an early age; and
- People and communities from culturally and linguistically diverse backgrounds.

People stop using financial services either due to a drop in income, or, for women, the loss through separation or death of a partner who held all the household's financial products. Similarly, following a drop in income, some people choose to disengage from financial products in order to keep tight control over their money. Others, however, only do so once they have fallen into financial difficulties and may have facilities withdrawn by financial services providers. Some women without financial products choose not to apply for replacements, while others apply but are turned down or do not apply fearing that they will be turned down. However, most of these people will resume using financial services once their income increases.[3]

Accordingly, large numbers of individuals and households are not denied access to financial products, but neither have they made an unconstrained choice to opt out. Instead, most face barriers which constrain their use of financial services. These include:

- Products being too expensive, for example, high home contents insurance for people living in economically disadvantaged regions;

[2] Joseph Rowntree Foundation, *Understanding and Combating 'Financial Exclusion'*, UK, March, 1999.
[3] As above.

- Conditions attached to products, such as limited transactions, expensive cheque accounts and prohibitive fees and charges; and

- Financial institutions are generally not keen on attracting low income customers, hence there is virtually no marketing of their more affordable products such as basic bank accounts.[4]

In Australia, access to a bank account is, in effect, compulsory. Any given individual must have a bank account in order to receive their pay, pension and allowances. Failure to access a current account virtually deprives an individual of income. This is especially the case for many indigenous communities who are likely to reside in remote and regional areas and be heavily dependent on government benefits. While there are no particular policies which prevent the most disadvantaged from having access to an account, it is also the case that structural and procedural matters sufficiently disenfranchise an individual (including matters such as minimum account balances, a fixed address, identification criteria and physical access in areas where bank branches have closed).

Without a current bank account households are forced to deal entirely in cash. This complicates the process of bill paying, may result in cash charges and prevents those individuals from utilising the convenience and cost effectiveness of electronic commerce. Lack of access to a bank account also creates difficulties for people wanting to either issue or cash a cheque.

3. Causes of financial exclusion

Most commentators and researchers who have considered the causes of financial exclusion conclude that it is a natural symptom of the larger forces of change affecting the financial services industry – globalisation and competition.

Pierre Agnes, for example, believes that financial exclusion is the result of several worldwide developments, all taking place simultaneously:

> During the past decade, the consumer financial services industry in Australia (and indeed in other OECD nations) has experienced substantial changes associated with several interrelated processes of global economic restructuring including deregulation, growing competition, the expansion of electronic banking, the rationalisation of bank branch networks, and the shift in service offerings by banks away from transaction accounts towards investment-based financial products such as superannuation and insurance.[5]

Does this mean that financial exclusion is inevitable? Governments around the world have not been prepared to accept that financial exclusion cannot be addressed, and have recognised that the strength of financial exclusion depends on the actions of individual players within the industry and the reactions of government and the community. If the natural drift in the marketplace is towards financial exclusion, then this is an argument in favour of intervention, rather than an argument against, as is sometimes assumed.

The main causes of financial exclusion for individuals can be grouped into one of two fields: affordability and access.

3.1 Affordability

The question of affordability needs to be carefully considered. It is not the contention of this chapter that all financial services are unaffordable, or even that they are less affordable than previously. Clearly some financial services have become more affordable for particular groups.

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[4] As above.

[5] P Agnes, *The death of banking? Corporate restructuring in Australia's consumer financial services*, Sydney 1999, unpublished research manuscript.

However, those financial services products which are essential for low income and disadvantaged consumers – bank accounts for daily transactions, consumer credit products and basic insurance products – have generally become more expensive. Gizycki and Lowe have commented, by way of example, on the uneven distribution of affordable products and some of its causes:

> The growth of [bank] non-interest income over the second half of the 1990s is largely explained by growth in fee income, particularly from services provided to the household sector. The most notable examples are the introduction of mortgage fees and account service fees; for example, it is now common for banks to levy monthly servicing fees of $4 on transaction accounts and $8 on mortgage accounts, whereas in 1990 such fees rarely existed. The introduction of these fees is part of the unwinding of cross subsidies that has followed the downward pressure on lending margins. While, in aggregate, consumers of financial services have benefited from this process, the benefits have not been evenly distributed, with some consumers of previously subsidised services clearly worse off.[6]

In its 2003 article on banking fees in Australia, the Reserve Bank of Australia also noted that not all consumers had benefited from trends in the financial services market:

> … [b]ank customers have not been affected uniformly by these trends in fees and interest margins. Arguably, those who have benefited most are those with a loan secured by a residential mortgage, who use electronic payments channels and who avoid late payment and other similar charges. Such customers have benefited from lower interest rate margins and can avoid many of the banking fees introduced over the past decade. In contrast, those customers without a loan, who have low balances and have a high volume of transactions would not have benefited from the fall in interest margins and would be paying higher fees.[7]

One motivation for the setting of fees is the desire to cherry pick profitable customers. Wealthy consumers (people with mortgages, people with term deposits or other investments, and members of professional associations) all receive generous fee exemptions and no attempt is made to recover the costs of individual transactions from such customers. This means that poorer customers who do pay fees subsidise their wealthier counterparts on a per transaction basis, although the banks would argue that they still make more income from their wealthy customers through their other business with the bank, despite the lost fee revenue.

Another motivation is to exclude certain types of customers by discouraging them through high prices. This motive is rarely admitted in Australia although it is acknowledged quite frankly overseas[8]. Occasionally an Australian bank will acknowledge this motive in very limited circumstances. When the ANZ Bank introduced a new fee for cash advances on one of its popular credit cards, they noted that it was designed to discourage cash advances because their data showed that consumers who utilised cash advances were more likely to default on repayments.[9] There was no link to recovering the costs of the transaction itself, which was well covered by an existing fee plus the fact that interest is calculated from the time of the cash advance, negating all interest free periods.

Other attempts to determine the extent to which banks deliberately price out some customers have not succeeded, as bank staff have been unwilling to discuss the matter on the record. One review of this issue concluded:

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[6] M Gizycki and P Lowe, *The Australian financial system in the 1990s*, Reserve Bank of Australia, 2000.
[7] Reserve Bank of Australia, 'Banking Fees in Australia', *Reserve Bank of Australia Bulletin*, April 2003 at 6.
[8] For example, the larger banks in Hong Kong openly question why they should be required to provide services to poorer customers.
[9] http://www.anz.com.au

> For banks, the issue of customer management and segmentation throws up emotive questions about social responsibility and shareholders' returns. Culling unprofitable customers, whether by stealth or not, goes against the first but improves the second.[10]

Consumer organisations have argued for many years that banks, whether acting deliberately or not, have created a "bank fee poverty trap" from which their poorer customers are unable to escape.

The trap works in this way:

- Banks charge account keeping fees on many accounts, including accounts specifically designed for disadvantaged consumers like pensioner deeming accounts, if a minimum balance is not maintained. Both the size of the fee and the size of the minimum balance required increase on a regular basis;

- Banks waive all fees for consumers who have home loans, term deposits, or other investments with the bank. These waivers are almost always out of reach of low-income and disadvantaged consumers;

- Banks waive all fees and provide other discounted services for members of professional associations (such as lawyers). These waivers and discounts are not available to low-income and disadvantaged consumers;

- Banks increase fees on those transaction channels utilised by low-income and disadvantaged consumers, especially over the counter transaction fees. Fees for electronic channels and Internet banking are usually lower, but low-income and disadvantaged consumers have difficulty accessing those channels;

- Banks impose severe restrictions on accounts designed for low-income and disadvantaged consumers. Most do not pay interest. All will limit the amount of free transactions. Many will charge high fees after the number of free transactions has been exceeded. This is in contrast to the waiver accounts for wealthier customers which pay interest and are unrestricted; and

- Banks impose very heavy fees for any form of default. These include slipping into overdraft temporarily, bouncing a cheque, receiving a bounced cheque, failed direct debits where insufficient funds have been available and late payment of credit cards. Interest and penalty interest may also apply to some of these situations.

This situation develops into a bank fee poverty trap because it is so difficult for a poorer person to move into a more affordable account. They are unlikely to earn interest and continual fees mean that they are unlikely to meet minimum balance requirements – especially on fixed incomes like social security benefits. Any temporary defaults will set them back substantially and often lead to a cycle of other fees. Even if low-income consumers do gradually progress to the stage where they may avoid paying some fees, the fee structure at most banks changes every one to two years and may price them out again. Of course it must be remembered that consumers caught in this trap are already disadvantaged to begin with.

This fee structure is designed to attract and retain a different type of customer. The annual survey of the financial services industry by KPMG regularly reports on this issue:

> Fee structuring is also used by the banks to influence customer behaviour. Low-profit or loss-making customers are encouraged to use cheaper distribution channels, whilst highly profitable customers are rewarded with waived or reduced fees.[11]

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[10] S Lloyd, 'The culling game: how companies are trying to improve profits by getting rid of their low value customers', 22 (13) *Business Review Weekly*, 2000.
[11] KPMG, Financial institutions performance survey, 1999.

In the end, the bank fee poverty trap acts to entrench the position of low-income customers. The only options for customers on fixed incomes are to qualify for a special 'basic' account, forgo interest and conduct as few transactions as possible, or to access electronic banking channels, which have particular expenses of their own.

Another cause of financial exclusion linked to affordability is the number of people who are in inappropriate accounts. This seems to arise from:

- Poor consumer understanding of the different account choices available;
- Lack of promotion of specialist accounts (for example, for social security recipients);
- The complexity of current bank fee structures;
- Difficulties (perceived and real) in changing accounts; and
- Lack of consumer confidence that another account will actually be more affordable.

Of course, these arguments presume that appropriate accounts are actually available for all consumers, and this is definitely not the case. For example, it took years of advocacy to convince the Australian bank with the most pensioner customers, the Commonwealth Bank of Australia (the **CBA**), to offer an account to pensioners which offers at least one free over the counter transaction per pension pay day.[12] The CBA still refuses to offer an affordable bank account to low-income consumers.

3.2 Access

The most critical development in the banking industry over the past ten years has been the method of delivering and accessing financial services. Changes in technology have meant that traditional methods of delivering those services have been quickly phased out. Face-to-face banking transactions are no longer a prerequisite for delivering financial services. Australian banks have been aggressive in their rush to reduce customer dependency on traditional banking methods. The new methods of operation include telephone banking, Automatic Teller Machines (ATM), the EFTPOS system and Internet banking.

The evolutionary shift from traditional face-to-face banking to electronic banking has also been responsible for facilitating systematic re-assessment of costs among mainstream financial institutions and has ushered in a period of cost-reduction and a redirection of resources to maximise profits. Accordingly, the maintenance of traditional banking services, including branch networks, was seen as too costly by the banks. Over the past ten years, Australian consumers have had to endure a massive spate of bank closures fuelled by this supposed drive to greater efficiency as well as market consolidation through a further spate of bank mergers.

Branch closures are not a new phenomenon and have been the subject of expert commentary for many years.[13] However, the past ten years has seen a substantial increase in the rate of closures. During this period there have been more than 2000 branch closures – more than 700 of which were in rural and remote areas.[14]

The pattern of branch closures has been spatially uneven, focusing on remote communities and deprived urban areas, populated by people on low incomes. Leyton and Thrift have described a similar process in the UK as 'financial desertification'. This is in view of some regions and suburbs suffering a complete physical withdrawal of financial services.

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[12] The CBA was the last bank of the four major banks in Australia to agree to offer an equal number of free over the counter transactions as pension pay days in a month - on 19 March 2001.

[13] M Taylor and J Hirst, 'Environment technology and organisation: the restructuring of the Australian trading banks', *Environment and Planning A* 16, 1984.

[14] For up to date figures on branch closures see http://www.fscpc.org.au .

The National Farmers Federation, in 1998, estimated that there were around 600 communities in rural and regional Australia without any access to financial institutions.[15] It seems that Australia-wide, towns with populations of less than 1000 account for over 50 per cent of towns where banks have closed their only branch in town - towns with populations of less than 600 account for nearly 44 per cent.

In addition, access to new technology financial services, especially Internet banking, is subject to extremely high barriers to access. The National Centre for Social and Economic Modelling (**NATSEM**) research found that significant sections of Australian society do not enjoy access to online services.[16] They found that access barriers were not geographical – they were more likely to be the result of low income or low levels of education.[17]

While the number of Australian households with regular Internet access is increasing, almost 50 per cent of households still have no access, and poorer sectors of the community will not have effective access to Internet banking for many years. The latest Australian Bureau of Statistics statistics on Internet access show that the growth in access has varied each year and the growth in household access to a personal computer may be beginning to plateau.[18]

This trend is extremely worrying in terms of financial exclusion because it may mean that a particular segment of the community will continue to require traditional access to financial services, yet the banks are pursuing electronic banking as their primary means of access. The entrenched section of the community who will remain without Internet access will be extremely difficult to service in the future if branch networks are not maintained and, indeed, upgraded.

It is clear that access to new technology will be the next significant barrier to access to financial services.

4. Groups affected by financial exclusion

There are specific groups of consumers who are affected by financial exclusion.

4.1 Regional and remote communities

Probably the most obvious form of financial exclusion is where there is simply no form of physical access to financial services. It is therefore no surprise that the leading categories of financial exclusion in all jurisdictions, but especially in Australia and Canada, are based on geography. In Australia, the communities with the least access are those in regional and remote areas.

4.2 Urban depressed communities

Less consideration has been given to the level of financial exclusion in metropolitan areas, particularly in urban depressed and urban fringe communities. Unfortunately, there has been no general quantitative research in Australia on financial exclusion in urban areas to date.

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[15] National Farmers Federation, Submission to the House of Representatives Standing Committee on Economics, Finance and Public Administration inquiry into regional banking, 1998.
[16] O Hellwig and R Lloyd, *Sociodemographic Barriers to Utilisation and Participation in Telecommunications Services and Their Regional Distribution: A Qualitative Analysis*, 2000.
[17] See also Australian Bureau of Statistics, *Household Use of Information Technology, Australia 2001-2*, September 2003; J McLaren and G Zappalà, *The new economy revisited: an initial analysis of the digital divide among financially disadvantaged families*, Smith Family, Background paper No.5, 2002.
[18] Australian Bureau of Statistics, *Household Use of Information Technology, Australia 2002-3*, September 2004.

4.3 Low income consumers

In Australia, there appears to be a particular emphasis on affordability as a cause of financial exclusion. Other barriers to access seem to be more prominent in the UK, but this may be because they have much lower fees than in Australia. Indeed Australian bank accounts are very expensive when compared to international products. Low-income consumers therefore bear the brunt of financial exclusion in Australia.

4.4 Older consumers

It is probably too broad a claim to suggest that older consumers in their entirety suffer financial exclusion. There are too many variables within the group. However, older persons have low levels of access to online services and often low levels of mobility. These two factors alone contribute to financial exclusion, but when combined with the low (and often fixed) income levels of many older consumers, sections of the group certainly suffer from financial exclusion.

4.5 Consumers from Culturally and Linguistically Diverse Backgrounds

Consumers belonging to Culturally and Linguistically Diverse (**CALD**) communities tend to be amongst the most disadvantaged in the community. A very large proportion of people from CALD backgrounds live in poorer parts of Australia's major cities. Consequently, they tend to suffer the double disadvantage of being of a CALD background as well as living in areas which are already less affluent and hence suffering from a degree of financial exclusion.

A 1993 study of banks and migrants found that migrants are marginalised as a result of bank neglect. Migrants, according to a report by Supriya Singh,[19] are an "untapped market". The report generally found that CALD communities have been very poorly served by the financial system and hence disadvantaged. The report found that:

- Banks and non-banks are not effectively competing for the business of the poor;
- Nearly four-fifths of CALD consumers have been with the same bank since their arrival in Australia; and
- Nearly one in ten did not have a bank account.

5. Consequences of financial exclusion

The consequences of not having an affordable bank account are more serious now than they were in the past. On the whole, the options for operating a household budget outside the mainstream financial services sector are far more costly and often unregulated. Where whole communities have limited access to financial products, the process becomes self-reinforcing and an important contributor to social exclusion more generally.

Being without banking facilities has become increasingly problematic as the majority of people now make heavy use of a bank account and the facilities for automatic transactions that this provides. Lack of access to a bank account and banking facilities can make money management more complex and time consuming, more costly and less secure. UK researchers have noted that we are entering a period where financial exclusion has mattered more than in any previous era:

> Ironically, as the number of excluded households falls, the problems they face become more severe. Being without a current account, insurance or long term investments or a pension is more important because these products are so much more common among the majority of households. Indeed, lacking financial products

[19] S Singh, *Banks and migrants: An untapped market*, Consumer Credit Legal Service Victoria, 1993.

> can contribute to more general social exclusion and most households in this position identify key areas of unmet need.[20]

It is important to recognise that the consequences of being without banking facilities do not simply apply to those who have no current account at all. They can be equally relevant to people who have basic bank accounts, but are not given access to additional banking and financial services such as direct debits, cheques, and credit or debit cards.

Lack of access to a bank account also requires those people to keep money at home or carry it until they are ready to spend it. This compromises their safety and security, deprives them of interest earnings and from establishing a savings record for future reference.

Within the Australian context, possession of a bank account is often a portal to the provision of other important financial products. Amongst those is access to short term credit facilities such as credit cards. Accessing non credit card loans is also a very difficult process as access to any given loan is often based on a set criteria which, amongst other things, includes having a bank account through which the customers' financial transactions are monitored in order to establish whether he or she is a worthy credit risk.

Credit facilities are generally used in two ways. Short term credit, such as a credit card, is often used to ride out peaks and troughs in a person's or family's household budget. Other longer term products, such as personal loans, are used to purchase larger items such as consumer durables or cars.

A current account is often the 'passport' upon which a bank, credit union or building society depends to approve a loan. Failure to own an account often leads to those same consumers having to look for other less reputable means to meet their credit needs. Studies in the United States[21] show that these people fall into two groups. First, people with poor credit records or a history of bad debt, who are forced to turn to non-traditional lenders to meet their credit needs. Secondly, people living on low incomes who often have to look to alternative credit providers, such as payday lenders and pawnbrokers.

Both these groups of people are particularly vulnerable, as they have no option but to borrow from lenders operating outside the mainstream credit industry, some of whom are less principled in their mode of operation.

5.1 Personal consequences

The personal consequences of financial exclusion in Australia are similar to those of the international experience as set out above, with two important differences.

The first is that Australia does not have the same proportion of persons without access to a bank account as abroad. Our social security system which relies heavily on the direct deposit of benefits into an account has resulted in a comparatively high level of penetration of accounts. Whether or not these accounts are accessible or affordable is another matter, but compared to overseas Australia does not have the problems associated with large sectors of the community who are "unbanked". The major personal consequence in Australia appears to be the high cost of personal banking, and the financial strain which this places on low-income consumers in particular.

A small minority of consumers do not have bank accounts and make special arrangements with their local Centrelink provider for the payment of benefits.

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[20] E Kempson, *Understanding and combating financial exclusion,* Personal Finance Research Centre, University of Bristol, 2000.

[21] J Campen, 'Neighbourhoods, Banks and capital flows: the transformation of the US financial system and the community reinvestment movement', *Review of Radical Political Economics* 29, 1998.

The second distinctive feature of the Australian experience is that geographic factors play a more significant role (although the issue is similar in regional and remote areas of Canada).

The personal consequences of financial exclusion as a result of geographic factors have been considered briefly in Australian research. Beal and Ralston, writing in 1998, found that the main personal consequences of exclusion as a result of a bank branch closure were:

- Reduced savings;
- Increased size of cash withdrawals;
- Reduced investment income;
- Reduced access to and increased cost of finance; and
- Reduced access to financial planning.[22]

The House of Representatives Standing Committee on Economics, Finance and Public Administration inquiry into regional banking services found several additional consequences from its consideration of the submissions made to it:

- Increased travel requirements;
- Increased security risks; and
- Increased need for credit from local businesses.[23]

5.2 Community consequences

The main consequences are:

- Increased travel requirements;
- Higher incidence of crime;
- General decline in investment;
- Difficulties gaining access to credit;
- Decreased choice in local shops and businesses; and
- Increased unemployment.

The consequences of financial exclusion on communities in regional and remote areas are, again, considered by Beal and Ralston:

- Financial drain from the community, as people travelled to larger centres to do their banking and shopping, with 88 per cent of respondents reporting that their expenditure locally had decreased;
- Loss of financial investment, with 30 per cent of respondents indicating that the new financial environment had persuaded them not to proceed with undertaking a loan; and
- Loss of confidence in the community, with 90 per cent of respondents indicating they were now more pessimistic about the future of their community and 39 per cent reporting that they would leave if they could.[24]

6. Conclusion

It is clear that there are no easy stand alone solutions to financial exclusion. What has been missing in Australia is an authority with the power and resources to coordinate efforts to address financial exclusion.

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[22] D Beal, D Ralston, *Economic and social impacts of the closure of the only bank branch in rural communities*, Centre for Australian Financial Institutions 1997.
[23] The House of Representatives Standing Committee on Economics, Finance and Public Administration, Regional banking services: money too far away, Canberra 1999.
[24] Above n 20.

Unfortunately, Australia has been drifting on this issue while other jurisdictions have undertaken major research and implemented substantial reform.

In the UK, Kempson and Whyley have concluded:

> Possible solutions to financial exclusion should focus on four main areas: reducing barriers to access; product design; delivery of services; and encouraging take up. Tackling these may require action by government and financial institutions in partnership.[25]

We agree with that conclusion, and propose that government, banks and the community all play a role in addressing financial exclusion by coordinating efforts through an appropriate regulatory agency.[26]

Some of the tools which could help to address financial exclusion in Australia include:

- To set out social obligations in a Banking Social Charter;
- To provide a regulator with the objective, regulatory power and resources to coordinate investigation of financial exclusion in Australia and to take steps to address financial exclusion;
- To issue standards for products that will help address financial exclusion, such as basic banking accounts, reserving the option to mandate such standards if voluntary compliance is not achieved;
- To conduct a census of bank branches in Australia and to impose a branch closure protocol requirement on banks;
- To require banks closing branches to fund viability studies which may be used by affected communities to explore banking alternatives; and
- To reform the process for considering and approving bank mergers.

Without these measures, continued ad hoc attempts by various federal, state and local governments will only scratch the surface of financial exclusion, and Australia will fall further behind our international counterparts in addressing this issue.

[25] E Kempson and C Whylie, *Kept out or opted out? Understanding and combating financial exclusion*, Policy Press, London 1999.

[26] It is noted that the ANZ bank recently announced that it is introducing a range of Community Development Finance programs to assist Australians facing financial exclusion: see ANZ, *Community Development Finance in Australia: ANZ Response to Consultation*, November 2004, available from http://www.anz.com.au/aus/aboutanz/Community/Programs/CommDevelopment.asp.

Do the Poor Pay More for Credit?

Dr Justin Malbon*

1. Introduction

Poor people pay more for credit than the wealthy. This rather nasty reverse Robin Hood effect presumably means that freely available credit will widen the gap between rich and poor, making nonsense of public policies seeking to address poverty.[1] On the one hand, public health, schooling, social security and other government schemes seek to alleviate poverty, yet financial regulation allows lending practices, more particularly predatory lending practices, which promote or exacerbate poverty.[2]

Predatory lending is an enduring social scourge – for at least three millennia it has brought misery and acted as a catalyst for rebellions, riots and pogroms against minority groups. The practice has wrecked havoc on families, filled debtor prisons and led to murder, suicide and social disgrace. It has inspired a rich literary tradition led by such great works as Shakespeare's *Merchant of Venice*, Dostoevsky's *Crime and Punishment* and Dickens' *Bleak House.*

Unchecked, predatory lending has the capacity to undermine social cohesion and wreck havoc upon families. Particularly concerning at present are the historically unprecedented levels of consumer debt in western nations. In 1989 Australian households gained the dubious honour of becoming net debtors to the financial system, and in the past two decades a growing number of consumers became unable or less able to service their debts [3]

Consumer debt is not solely attributable to predatory lending, indeed it only accounts for a relatively small proportion of that debt.[4] But it does constitute a socially corrosive and harmful practice that preys on financially vulnerable members of our community. Predatory lending is essentially an opportunistic practice – it is invariably the symptom of policy failures rather than the root cause of poverty and indebtedness. Uneven wealth distribution, the failure to provide equality of opportunity, the social exclusion of groups because of their geographic location, race or social status all contribute to rendering certain groups more financially vulnerable than others.

According to the lobby group Acord.com, predatory lending involves 'imposing unfair and abusive loan terms on borrowers, often through aggressive sales tactics, taking advantage of borrowers' lack of understanding of extremely complicated transactions, and outright deception'.[5] The practice does not simply rely upon consumer ignorance, it also takes

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[1] Between 1980-1996, total consumer debt in Australia rose by more than 560%, from $33.3 billion to $220.3 billion. Average per capita debt rose by 430%, from $2,270 to $12,033, far exceeding GDP growth and inflation. See M Griffiths, 'The Sustainability of Consumer Credit Growth in Late Twentieth Century Australia' (2000) 24 *Journal Consumer Studies and Home Economics* 23,30.

[2] See Barr, who observes that 'The costs of these basic financial transactions reduce the effectiveness of federal income transfer programs such as the EITC and may undermine public initiatives to move families from welfare to work'. MS Barr, 'Banking the Poor' (2004) 21 *Yale Journal on Regulation* 121,135.

[3] Griffiths, above n 1 at 30.

[4] The pay-day loan industry in Australia, for example, appears to be relatively small at present. See D Wilson, *Payday Lending in Victoria - A Research Report* (Consumer Law Centre Victoria Ltd, 2002) www.clcv.net.au, 34 where he states that on a conservative estimate there were 153,600 payday loans for the year 2000, although it was expected that this number could grow considerably. It was estimated in early 2001 that the industry would be lending $200 million annually.

[5] Acorn is the Association of Community Organisations for Reform Now - www.acorn.org.

advantage of the financial vulnerability of its victims and the limited options they have for dealing with a financial crisis.

Financial vulnerability stems from a number of circumstances; sometimes it results from a borrower's lack of capacity to respond to a job loss, an injury or sickness, and in other cases it may result from addiction to alcohol, drugs or gambling. Serious financial vulnerability may be temporary or enduring. Some members of the community are more prone than others to financial vulnerability because of their geographical location, race, age or marital status. And interestingly, financial vulnerability is not limited to the poor, as it can also extend to some middle-class households with dependent children.

The causes of vulnerability to predatory lending are both elaborate and complex. The policy solutions required to deal with the practice are similarly elaborate and complex. This chapter limits itself to exploring the legal and policy options for dealing with the symptoms – that is, predatory lending practices themselves – rather than the deeper issues related to its causes. In so doing, this chapter seeks to avoid raising unwarranted expectations that merely regulating, or even attempting to ban, predatory lending will solve the problems manifesting from financial vulnerability. Nor, it is suggested, will any one or two policy approaches cure the disease. Rather, much like dealing with severe and chronic health syndromes, multiple and ongoing treatments will be required to at least subdue the worst of the suffering caused by the disease.

2. The surprising history of predatory lending

Peterson provides a fascinating account of the history of predatory lending in which he describes consumer credit as providing 'one of the earliest tools of forced poverty, social oppression, and enslavement'.[6] He points out that almost from the creation of the first ordered societies by the Sumerians (who established the first city-states and a system of writing) problems developed from lending practices and the enforcement of debts. Enforcement often compelled free people to sell their families or themselves as slaves. Slave owners could do as they pleased with their slaves, including gouging out their eyes to prevent their escape. One of the earliest legal codes, dating from around 2350 BC, sought to control these abuses by freeing debt slaves.[7] Debt amnesties through royal decree became a regular (although somewhat random) practice over the following centuries; a practice which is the ancient ancestor of present day bankruptcy laws.[8]

Another policy measure with an ancient heritage for dealing with predatory lending is interest rate capping. Morris justifiably describes it as the 'oldest continuous form of commercial regulation'.[9] The Babylonian Code of Hammurabi of 1750 BC, for example, set interest rate caps of about 20 per cent per annum for loans on silver and 33 per cent on loans of grain.[10] According to Peterson:

> Hammurabi's interest rate cap, along with its other lending format restrictions proved remarkably durable. The rate cap remained intact as law for 1200 years – well over an entire

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[6] CL Peterson, 'Truth, Understanding, and High-Cost Consumer Credit: The Historical Context of the Truth In Lending Act' (2003) 55 *Florida Law Review* 807 at 810.

[7] As above at 818-19.

[8] According to Peterson, above at 820, 'Similar to Sumerian and Babylonian kings, Europe's princes also issued decrees canceling debts. The crucial difference, however, was that European princes usually canceled only their own loans or the loans of their closest allies and associates. For example, 'Philip the Fair (IV) of France, 1285-1314, borrowed heavily at unstated rates, but instead of repaying his bankers he banished them, canceled his own debts and decreed that the principal of all other debts must be paid to the Crown. His principal creditor, the Order of Knights Templar, which had become largely a banking organization, was utterly destroyed. Edward III of England, 1312-1377, likewise repudiated his debts . . . and ruined his Florentine bankers'.

[9] R A Morris, 'Consumer Debt and Usury: A new rationale for usury (1988) *Pepp Law Review* 151.

[10] Peterson, above n 6 at 821.

> millennium. In 2000 years the only significant change was to equalize the maximum allowable rate of grain to match that of silver.[11]

What was to prove as enduring as the laws fixing interest rate caps was the failure to consistently and effectively enforce them. Interest rate caps imposed after 450 BC by the Romans were poorly enforced because of the inflexibility of the caps in comparison to the highly volatile Roman economy. As a result pawn shops and other lenders regularly charged three to ten times the legal limit.[12] Interest rates in China were capped at 36 per cent and laws prohibited the collection of interest amounts that exceeded the original loan principal, yet in 1587 over 20,000 pawn shops operated in the country that breached those caps. The mal-administration of the law and the high levels of corruption allowed foreclosures on homes of poor rural farmers on an enormous scale in China, and the regular use of thugs to enforce the repayment of debts.[13] The Chinese experience of interest rate caps is broadly representative of historical experience in which effective policing requires more resources than most societies are willing to spend.[14]

In Britain interest rate caps were set at 5 per cent by the Statute of Anne in 1713, a rate that was more or less followed in the British colonies. The colonies in North America capped rates at between 4 per cent and 10 per cent, and after independence most US states set the rate at 6 per cent.[15] Usury laws (which cap interest rates) have survived in many US jurisdictions until the present. In Australia, New South Wales, Victoria and the Australian Capital Territory impose by regulation a 48 per cent interest rate cap on consumer credit contracts, but the effectiveness of the rate cap is very much dependent upon it being enforced by the relevant government agencies. The historical lesson is that merely fixing an interest cap does not necessarily lead to automatic compliance – time and energy also needs to be expended on enforcing the law.

Yet another form of dealing with predatory lenders, which has a long antecedence, is the charitable lending institution. In the early 16th Century, 87 charitable pawnshops were established on the Italian peninsular, which only charged fees to defray their administrative costs. The charitable pawnshops either seriously curtailed the operations of the predators, or put them out of business altogether. The charitable pawnshops gained official approval of the Lateran Council of 1515, allowing them to spread throughout the European continent over the next two centuries under the sponsorship of the church, municipalities and independent charities.[16] Some of these operations continue today, including the Dorotheum in Vienna and the Credit Municipal in Paris.[17] Despite the success of these institutions, charitable lending institutions suffered from difficulties in mobilising sufficient capital, and the menacing campaigns of private lenders.[18] In Peterson's view, charitable lending has 'historically lacked the profit-driven zeal to successfully compete with private lenders'.[19] Government support is usually required, and even here 'successful governmental rent-seeking behaviour is costly, inconsistent, and unpredictable, especially when opposed by powerful, organised private lobbies'.[20]

Another response to predatory lending is the lending co-operative. One of the earliest co-operatives was Ketley's Building Society, which was a club in which members pooled their

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[11] As above at 822.
[12] As above at 824.
[13] As above at 825.
[14] As above at 827.
[15] As above at 844.
[16] As above at 835-36.
[17] As above at 836.
[18] As above at 838.
[19] As above at 836.
[20] As above at 838.

resources to purchase a house for a club member chosen by lot.[21] This was followed by a German initiative in 1850 in which the mayor of Delitzsch, Herman Schulze, created a co-operative that sold shares, and then lent the proceeds to mechanics, tradesmen and other local benefactors.[22] A subsequent variant on this scheme aimed at lending to poor families rather than local merchants. By 1882 there were over 3,000 credit unions in Germany, with the concept rapidly spreading throughout the rest of Europe and the world thereafter.[23] Credit unions and building societies tended to benefit the middle-class rather than the poor, and so are not a complete answer to predatory lending.

Community Development Finance (**CDF**) programs are a more recent initiative for dealing with predatory lending. A discussion paper issued by the ANZ Bank in 2004 considers the possibility of the bank itself, one of Australia's largest, becoming involved in providing CDF programs that aim to provide alternatives to predatory lenders.[24] The ANZ Paper defines CDF as 'an "umbrella term" to describe the areas of "microfinance", "microcredit", "microbanking", "microinsurance" and "microenterprise"', and 'can include the provision of small loans, acceptance of small savings deposits, provision of insurance and financial literacy training'.[25] CDF is aimed specifically at the underbanked and others who are financially excluded. The ANZ Paper cites Connolly and Hajaj's definition of the financially excluded as individuals and communities who lack access to financial services because of "their geographic location, economic situation or other social condition preventing people from fully participating in the structures or institutions of mainstream society".[26]

The ANZ Paper notes that low-income communities 'can become stuck in a cycle of under-investment, low levels of enterprise, poor employment prospects and stagnant asset values'.[27] The aim of a CDF program, therefore, is to allow the community to break the cycle of under-investment by stimulating purchasing power and wealth accumulation.[28] As a means of providing a CDF program, the bank is trialing an Individual Development Accounts scheme, based on US schemes. The program focuses on low-income workers to assist them save for school education expenses. The ANZ matches each dollar saved by participants with two dollars from the bank, with matched funds capped at $2,000.[29] There are 250 participating families from New South Wales and Victoria, with each being provided a relationship manager to ensure the program meets their individual needs. The bank works with community groups to help develop each participant's financial skills. Preliminary data on the scheme shows that 96% of participants make a monthly deposit at an average of $68 per month. Before the scheme, almost half of participants had less than $50 in the bank, and 70 per cent had not set a savings goal in over 5 years.

After undertaking a study of payday lending in Victoria in 2002, Wilson concluded that one way of attacking the practice is to introduce a low interest loan scheme in partnership between banks, government and community organisations.[30] As we have seen, dealing with predatory lenders by offering competing low interest schemes has a long history, with mixed success. In some instances, competing schemes have been remarkably successful, leading to the development of building societies and credit unions. The modern history of CDF programs

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[21] As above at 840.
[22] As above at 840-41.
[23] As above at 841.
[24] *Community Development Finance in Australia: A Discussion Paper* (ANZ Bank, May 2004) www.anz.com/aus/aboutanz/community/programs/pdf/51562_CommRelatB&W_51683.pdf (**ANZ Paper**).
[25] As above at 3.
[26] As above at 2, citing Connolly and Hajaj, *Financial Services and Social Exclusion,* Report prepared for the Chifley Research Centre, University of NSW, March 2001.
[27] ANZ Paper, above n 24 at 3.
[28] As above.
[29] As above at 5.
[30] Wilson, above n 4 at 85.

suggests that they cannot succeed without indefinite government and private subsidies.[31] Of the 7,000 to 10,000 programs worldwide, none is profitable in industrialised countries.[32] The more successful overseas programs, such as ACCION in the US and Street in the UK, claim that they have difficulty in attracting clients.[33] ACCION, for example has attracted less than 1,000 clients a year after 10 years of operation.[34]

The UK Social Investment Task Force provides a more positive view on poverty alleviation schemes involving financial organisations, stating that in 2000 community loan funds totalled £80 million, of which £65.6 million was funded by the private sector.[35] Some 93 per cent of the total private sector funding was sourced from companies including banking and financial institutions.[36] The Task Force concluded that under-invested communities offer profitable opportunities for private investors who are offered appropriate incentives. These could include community investment tax credits, the creation of a community investment fund in partnership with government and obligations imposed on financial bodies to disclose the amounts of their investments in poorer communities.

Although, at first view, it may seem inappropriate for government to provide incentives to private investors or underwrite commercially operated CDF programs, it actually makes perfect sense. Assisting communities out of the underinvestment cycle by offering incentives to financial institutions aligns with government anti-poverty schemes such as public housing, pension schemes and other welfare arrangements. It adds further armoury to the battle against poverty, and reduces total reliance on direct welfare schemes.

3. Who is financially vulnerable?

The question then is; who should be assisted by anti-predatory lending policies and laws? That is, who is vulnerable to predatory lending? There is no clear and simple way of knowing who is financially vulnerable. Drawing together a range of indicators does allow insights about who they are and the nature of their financial circumstances and needs. These insights are a necessary first step towards developing relevant and effective policies to reduce the prevalence of predatory lending. The indicators considered in this part include an Australian Bureau of Statistics (**ABS**) Household Expenditure Survey in 1998 of financial distress and Australian bankruptcy figures.

Although it is natural enough to assume that poverty and financial vulnerability go hand in hand, we need to be careful in any discussion about predatory lending that we distinguish between poverty *per se* and financial stress. They are not necessarily the same thing. But even if we do confine our analysis to defining who the poor are, we soon find that this is contentious and requires exercising a degree of value judgement.[37] According to Saunders and Tsumori there are two ways of thinking of poverty; in absolute or relative terms.[38] A family lives in absolute poverty when it struggles to find adequate food, shelter and clothing, but this is relatively uncommon in Australia. The measure typically used in Australia is a

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[31] As above at 9.
[32] R Copisarow, 'The Application of Microcredit Technology to the UK: Key Commercial and Policy Issues' (2000) 2 *Journal of Microfinance* 13 at 14.
[33] ANZ Paper, above n 24 at 9.
[34] As above.
[35] As above.
[36] As above.
[37] According to the Canadian Council on Social Development: "The central point is that virtually all measures of poverty are relative. Whether we define poverty in terms of a given level of income compared to the average (an income line) or in terms of the cost of a basket of goods and services compared to the average, we still have to settle on how great a distance we want to exist between 'the poor' and others who live in the same society." See *Defining and Re-Defining Poverty:A position paper* (Ottawa October, 2001) www.ccsd.ca/pubs/2001/povertypp.htm
[38] P Saunders and K Tsumori, 'For richer or poorer, we're still a lucky country: Don't exaggerate the extent of poverty in Australia', *The Australian,* 16 January 2002.

relative one: generally, a person or household is considered poor if their income is below half the national median income. At the time of writing the median household income is $33,540 per annum, which would draw the poverty line for households at $16,770 per annum. About 8 per cent of Australian households are poor under this definition.

Merely setting a benchmark poverty line figure does not tell us much about the experience of poverty. A household can suffer considerable financial stress without falling within the poverty category. In 1998-99, the ABS included in their Household Expenditure Survey questions about household cash flow problems and financial resources. The survey assumed that income alone is not an accurate indicator of financial stress. In writing about the survey, McColl, Pietsch and Gatenby noted that income is not a perfect predictor of the standard of living of households if measured by what people consume:

> People can save some of their income instead of spending it all on goods and services now, so that they shift their consumption to future periods when they will draw down their savings, or spend the income received as returns from their invested savings. At times the saving may not be discretionary, for example, when it is used to repay loans taken out at an earlier time to support earlier consumption. On the other hand, expenditure can be greater than income. Additional expenditure can be financed by running down savings made in earlier times, by selling an asset, by borrowing, or by using money received from a non-income source such as an inheritance.[39]

To gain indications of the level of financial distress in Australia, the ABS survey asked whether the surveyed household:

- Spends more money than it gets (over the past 12 months);
- Is unable to raise $2000 in a week for something important;
- Could not pay electricity, gas or telephone bills on time;
- Could not pay car registration or insurance on time;
- Pawned or sold something;
- Went without meals;
- Could not afford to heat home;
- Sought assistance from welfare/community organisations; and
- Sought financial help from friends or family.

In addition, indicators were sought for financial deprivation of the 'basics of life', including whether or not a household could afford a holiday for at least one week a year, a night out once a fortnight, a special meal once a week, leisure or hobby activities, and whether they could afford friends or family over for a meal once a month and could only afford second hand clothes most of the time. The greater the number of those indicators that applied to a family, the greater the evidence of their financial deprivation and distress.

Nearly 1.2 million households reported one indicator of financial stress, with the number dropping to a little over half that number for households reporting two indicators. About 200,000 households reported six stress indicators. About the same number of average to high-income households reported having up to three stress indicators. The groups suffering high financial stress were single parents with dependent children (41 per cent), followed by a lone person under 35 years (21 per cent), followed by couples with dependent children (14 per cent); compared with all households facing high financial stress – 12 per cent. McColl, Pietsch and Gatenby concluded from the survey results that:

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[39]Australian Bureau of Statistics Year Book 2002: Income and Welfare Special Article, B McColl, L Pietsch and J Gatenby, 'Household income, living standards and financial stress'.
www.abs.gov.au/Ausstats/abs@.nsf/94713ad445ff1425ca25682000192af2/793d1402ee51ba8bca256a5d0004f5d5!OpenDocument

> Within the lower income quintiles, the households indicating financial stress were much more likely on average to contain dependent children, while the households not indicating stress were much more likely to comprise people over 65 years of age. Consistent with their different demographic composition, 66 per cent of the lower income households not indicating stress own their own home without a mortgage, compared to only 19 per cent of the higher stressed.[40]

These findings show that while poorer people are more likely to be suffering financial stress than wealthier people, financial stress is not confined to the poor. The findings are consistent with a US study by Warren and Warren Tyagi, which shows that even double income families with dependent children are financially vulnerable.[41] Their study concluded that financial deregulation and the decreasing proportion of GDP spent on public funding of health and education have conspired to increase middle class indebtedness. Reduced public funding for schools has led to declines in the quality of education, leading to bidding wars for houses in suburbs with better funded and supported schools. High-priced, debt-laden houses are the result. In addition, double-income families have to carry the costs of simply maintaining two people at work, with the additional costs of maintaining two cars for getting to work, and paying child care expenses.[42] And so,

> … with more money earmarked for the necessities of middle-class existence – house and car payments, insurance costs, educational expenses – there is less flexibility and freedom and a greater chance that expenses will outstrip resources and compel bankruptcy if disaster strikes.[43]

Another indicator of financial stress is bankruptcy. Recent bankruptcy figures can provide us with some insight as to who constitutes the general class of poor people, although this is not a reliable indicator. Some wealthy people construct their affairs in such a way as to appear to be financially bereft and bankrupt themselves to avoid their debtors. And of course, not all poor people are bankrupt. Nevertheless, there is no doubt that those earning below the average income are much more likely to become bankrupt than above average income earners. Australia's Insolvency and Trustee Service's *Summary of Key Findings of Debtors Who Became Bankrupt* found that during 2003 nearly 80 per cent of bankrupts earned below $30,000, and nearly 25 per cent earned below $10,000.[44] Half of bankrupts owed less than $20,000 and nearly 80 per cent owed less than $50,000, with nearly 90 per cent having assets of less than $1,000. The second greatest contributor to personal bankruptcies (behind unemployment) was excessive use of credit, which accounted for almost a quarter of all 2003 personal bankruptcies. The main contributor to non-business bankruptcies was unemployment, followed by excessive use of credit (23 per cent).[45]

Interestingly, more males became bankrupt than females in Australia during 2003, which contrasts with the ABS study on financial stress, which shows that the most stressed group are single parents with dependent children, and Warren and Tyagi's study, which concluded that in the US motherhood is now the single most reliable predictor of financial ruin.[46] The largest

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[40] As above.

[41] E Warren and A Warren Tyagi, *The Two-Income Trap: Why middle-class mothers and fathers are going broke* (Basic Books, New York, 2003).

[42] As above at 8, Warren and Tyagi observed that 'Mothers now work two jobs, at home and at the office. And yet they have less cash on hand. Mom's paycheck has been pumped directly into the basic costs of keeping the children in the middle class'.

[43] See J Sullivan, 'The Two-Income Trap: Why Middle-Class Mothers and Fathers Are Going Broke, by Elizabeth Warren and Amelia Warren Tyagi' (Book Review) 27 *Harvard Women's Law Journal* 2004 at 273.

[44] There were nearly 22,000 people who became bankrupt in Australia during 2003, compared with 1.61 million who became bankrupt in the US in the 12 months ending June 2003. See JA Smith Jr 'Financial Literacy, Regulation And Consumer Welfare' (2004) 8 *North Carolina Banking Institute* 77 at 85. The US rate was more than 10 times greater than the Australian rate of bankruptcy on a per capita basis.

[45] See www.itsa.gov.au/dir228/itsaweb.nsf/docindex/About%20Us->Publications->Debtor%20Profile%20document/$FILE/Profiles_of_Debtors03.pdf?OpenElement

[46] Above n 43.

group in terms of relationship status of Australian bankrupts are single people without children (44 per cent), followed by couples with children (21 per cent) and singles with children (18 per cent). Comparing the bankruptcy figures with the ABS study on financial distress suggests that there is not a close correlation between financial distress and bankruptcy. Although no direct comparison can be made with the ABS study (because it relates to 1998-1999) the most financially distressed under the ABS study are single people with dependent children (41 per cent), but this group is the third ranked group of bankrupts (18 per cent). The first ranked group of bankrupts are single people without children (44 per cent), but lone persons under 35 years rank as the second highest financially stressed group (21 per cent). It is possible that financially stressed single parents are reluctant to use bankruptcy as a way of alleviating their financial stress.

An additional take on who are poor in terms of the provision of financial services involves finding out which consumers are excluded from the financial system; that is, finding out who are the unbanked? Kempson and Whyley undertook extensive research into financial exclusion in the UK, which they published in 1999.[47] Their study involved both quantitative and qualitative methodologies and a secondary analysis of a Family Resources Survey undertaken in 1995-96, in which 26,435 householders were interviewed in relation to 23 different financial products. Kempson and Whyley also analysed data collected by the UK Office of National Statistics for the Office of Fair Trading, involving interviews with 3,708 vulnerable householders. They also reanalysed 87 in depth interviews with those making no or very little use of mainstream financial services and conducted five focus groups, involving 32 people who made very little or no use of mainstream financial services.[48]

Kempson and Whyley found that the proportion of financially excluded people in the UK is steadily rising. Some 7 per cent of British households do not use financial services at all, and a further 20 per cent use just one or two financial services. The evidence they examined showed that financial exclusion depends upon who you are and where you live. Those at highest risk of financial exclusion are householders who have never had a secure job, people over 70 (from the cash-only generation), young people who have not yet used financial products, women who were single mothers at a young age, and members of some minority ethnic groups. Financially excluded people are also likely to be renting accommodation. Race and residence also indicate risk of exclusion: those from Pakistani or Bangladeshi communities in the UK or those who reside in deprived local communities in greater London or other parts of Britain are at high risk. Notably, many more households move in and out of financial exclusion than are without financial products at any one time. Temporary financial exclusion may result from a drop in income from a job loss or loss of an income earning partner through death or separation.

In summary, the emerging picture of the financially vulnerable is both complex and dynamic. Financial vulnerability can be temporary, brought on by personal calamities, including injury, sickness and loss of employment. Financial vulnerability is not confined to low-income earners, although they are more susceptible to financial crises than higher-income earners. And financial stress can expose a household to financial vulnerability, even if it is above the poverty line.

4. The nature and experiences of financial exclusion

Gaining insights into who is vulnerable to predatory lending prompts another question: what is the nature of their experience of vulnerability, and what are their financial needs? Qualitative data from various sources provides some insight into those questions. Wilson's research into payday lending in Victoria in 2002 for the Consumer Law Centre Victoria

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[47] E Kempson and C Whyley. *Kept out or opted out? Understanding and combating financial exclusion*. (Policy Press, Bristol, 1999).
[48] See a summary of key findings by Kempson and Whyley at www.jrf.org.uk/knowledge/findings/socialpolicy/369.asp.

provides a number of useful insights into the experiences of some 78 pay-day borrowers.[49] Interviews were conducted as a 'street survey' with borrowers leaving payday lending establishments. Wilson concluded from his research that borrowers usually resort to payday lenders because of ongoing financial problems.[50] He found that:

> For the vast majority of consumers, payday loans are used to cover electricity and gas bills, automotive costs, rent and other living expenses. However they may first come to use payday loans through some financial 'shock' to fragile finances. There are also consumers who use payday loans because of a poor credit rating or existing credit over-commitment.[51]

The impression one gets is that consumers resort to payday lenders as a lender of last resort rather than from ignorance about the existence of other lenders offering better rates of interest and other loan terms. Wilson's interviews suggest that consumers who resorted to payday lenders were on fixed low-incomes, had impaired credit ratings and were unable to access credit elsewhere.[52] One consumer interviewed said that:

> Banks are cheaper but when I started using them [payday loans] no one would touch me with a ten-foot pole because of my credit rating and that was the major thing that sent me off to them at the time, because I couldn't get a loan, I couldn't get nothing….[53]

Another said:

> I don't feel good going in there. If I saw someone going in there I would say they're broke or they must be in debt or something and I would go in there and people would be saying the same thing. I wouldn't use it unless I had to. I would go to the bank and get a loan.[54]

Others said, 'they're a rip off, but they give you money' and 'who else is going to lend to someone who's unemployed'.[55] Wilson concluded that those interviewed 'knew how much they were required to repay and were generally aware of potential penalties involved with the loan'.[56] He also concluded that very few consumers interviewed in his study had any comprehension of annual percentage rates, but this ignorance 'probably reflects a more general lack of understanding of APRs in the wider community'.[57]

Although consumers appear to be aware that they are receiving suboptimal loans, UK evidence suggests that financially excluded householders have a remarkably low knowledge of financial products and are mistrustful of many financial providers. Kempson and Whyley found that lack of experience and knowledge of financial products deterred some people from using products or using inappropriate products, which they concluded confirms their need for independent information and advice.[58]

The front counter experience is a powerful one for many consumers, not just vulnerable consumers.[59] A consumer who feels looked down upon or not treated with respect is likely to take their business elsewhere. Payday lenders are very effective in taking advantage of the humiliating or bureaucratic experiences their customers receive from mainstream lenders. They provide a quick and easy service and make vulnerable consumers feel welcome. One

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49 Wilson, above n 4 at 30.
50 As above at 71.
51 As above.
52 As above at 73.
53 As above.
54 As above at 76.
55 As above at 77.
56 As above.
57 As above.
58 Kempson and Whyley, above n 47.
59 See for example J Malbon, *Taking Credit: A Survey Of Consumer Behaviour in the Australian Consumer Credit Market*, Report for the Ministerial Council on Consumer Affairs (1999) www.creditcode.gov.au/content/downloads/Malbon_report.pdf at 61, where focus group discussions indicated that 'Customer service was an important issue. Participants were much more likely to choose a lender who treated them as a valued customer'.

respondent to Wilson's survey was typical in her response about the service provided by her payday lender:

> They were excellent in the way they treated you as a person. They didn't treat you in the way that you get treated because you're on a pension. They treated you as if you were a client that was worth being treated well.[60]

Vulnerable consumers will take out payday loans even if continually financially burnt by the experience. According to one respondent to the Wilson survey, 'It's good in one way, to get the money. But when you've got to pay it back with that amount of interest it hurts. It really hurts'.[61]

It seems that mainstream lenders alienate vulnerable consumers by rejecting loan applications or by providing a slow, humiliating and bureaucratic service. Additionally, the cost of their products is too high.[62] Australian banks seldom offer personal loans of less than $4,000, or for less than 12 month periods[63] and, according to Wilson, credit cards are undesirable, unobtainable or inadvisable for many vulnerable consumers.[64] It is the banks' failure to cater for these consumers that, in part, has facilitated the emergence of payday lending.[65]

In the US, low-income households often lack access to bank accounts and face high costs for basic financial transactions through cheque cashers and other financial services.[66] In fact nearly a quarter of low-income families in the US earning under $25,000 (over 8 million families) lack the most basic financial tool – a bank account, and these unbanked households and other underbanked low-and moderate-income individuals face high costs, relative to their income, for basic financial services'.[67]

The relatively high proportion of unbanked in the US does not appear to be reflected in Australia. A recent discussion paper published by the ANZ Bank states that a 2003 survey it undertook showed that 97 per cent of adult Australians had an ordinary, everyday account with a bank, building society or credit union and that 34 per cent of adults had at least one loan, whether a personal or home equity loan, a line of credit, an overdraft or margin loan.[68] We need to treat these figures with some caution because it is possible that a person with a bank account is using it to receive social security payments, with little other engagement with the mainstream financial system. It is therefore not enough simply to have a bank account, there needs to be some capacity to 'cushion financial shocks, which may involve having some level of savings, the capacity to purchase a home and to be able to engage children in post-secondary school education'.[69]

Kempson and Whyley found that unbanked people who participated in their focus groups expressed little desire for saving or consumer credit products to assist with the purchase of consumer goods. Apart from that, the requirements of the financially excluded are not that different from other consumers. Focus groups indicated that what is required is a simple money management account to maintain tight control of day to day finances. For this purpose, basic money transfer facilities that would allow a buffer zone without leading to the

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[60] Wilson, above n 4 at 76.
[61] As above at 79.
[62] I Ramsay, *Access to Credit in the Alternative Consumer Credit Market*, (Office of Consumer Affairs, Industry Canada/Ministry of Attorney General, British Columbia, 2000) at 40 www.strategis.ic.gc.ca/pics/ca/ramsayen.pdf See also I Ramsay, 'Consumer Credit Law, Distributive Justice and the Welfare State' (1995) *Oxford Journal of Legal Studies* at pp. 177-197, cited by Wilson above n4 at 83.
[63] Wilson, above n 4 at 84.
[64] As above.
[65] As above.
[66] Barr, above n 2 at 121.
[67] As above at 121.
[68] ANZ Paper, above n 24 at 4.
[69] Barr, above n 2 at 121.

provision of credit is required to spread the costs of paying bills. In addition, short term credit facilities that offer small one-off fixed term loans are required rather than on-going, or revolving, credit facilities. In other words, what is required are the types of loans offered by pay day lenders, without the high interest rates and the roll-over facilities that compound the amount of debt owing.[70]

Barr believes that people on low incomes can save if they have structured mechanisms for doing so:[71]

> Providing a better opportunity for the poor to save is likely both to reduce their short-term exposure to liquidity shocks, and to increase their long-term prospects for building their human capital and saving for homeownership or other assets that can help them get out of poverty. [72]

The exclusion of people on low incomes from the mainstream banking system therefore exposes them to high cost lending.[73] A survey undertaken by the US Treasury in 2000 found that workers on $12,000 a year pay about $250 merely for cashing payroll cheques at cheque cashing outlets.[74] They pay even more for money orders, wire transfers, bill payments, and other common transactions.[75]

Young people also appear to be a group that will become increasingly vulnerable to financial distress and exclusion, even though they represented a comparatively low proportion of Australian bankrupts during 2003 (10 per cent of people under 25 years became bankrupt). If Australia follows US trends, this figure is likely to increase substantially. During the past ten years in the US there has been a 96 increase in bankruptcy filings by people under 25 years. According to the Chief Bankruptcy Judge in Rochester, New York State, John Ninfo II, his court's interactions with this age group confirm other studies that have found that American high school students are 'financially illiterate in too many ways, especially about credit card matters'.[76] Judge Ninfo cited Chief Judge John Walker of the U.S. Second Circuit Court of Appeals as noting that 'many young people are caught up in our consumptive society and have poor financial role models'.[77] As a result, they easily blur the lines between needs and wants.[78] He added, 'it is especially troubling that more and more young people are falling victim to credit card abuse and turning to bankruptcy as a means to relieve their oppressive debts'.[79]

The significant increase in consumer debt over the past decade or two raises questions about what is causing this phenomenon. The finger of blame is often pointed at consumers for over-consumption.[80] An examination of consumption in the US, where consumer debt has risen most alarmingly, shows that there has not been a sufficiently sudden or dramatic change in spending habits to explain the growing danger of financial ruin.[81] Warren and Tyagi identify the cause as the deregulation of the credit industry, leading to increased availability of credit (including through the ubiquitous credit card) for which high interest rates and fees are

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[70] Kempson and Whyley, above n 48.
[71] Barr, above n 2, 124.
[72] As above at 127.
[73] As above at 134.
[74] See Dove Consulting, US Department of the Treasury, Survey of Non-Bank Financial Institutions 34 (2000), at 9. See also Barr, above n 2 at 134.
[75] As above.
[76] JC Ninfo II "Credit Education for Young People Works" (2004) 23 *American Bankruptcy Institute Journal 32.*
[77] As above, quoted by JC Ninfo II at 32.
[78] As above.
[79] As above.
[80] According to Sullivan, as above at note 43 "The 'overconsumption myth' asserts that consumers in financial trouble have nobody to blame but themselves". See *contra*, C Hamilton *Growth Fetish* (Allen & Unwin, Sydney 2003).
[81] Sullivan, above n 43.

charged. The rising waters of financial vulnerability are not only engulfing the poor, they are encroaching on the middle-class. According to Sullivan, credit card companies and sub-prime mortgage lenders:

> … capture substantial profits by consigning the middle-class family to a modern debtor's prison: the consumer becomes subservient to a creditor who tolerates, and even induces, excessive borrowing to collect a lifetime of exorbitant fees and interest payments from debtors who never had a chance.[82]

5. What are the appropriate policy responses to financial vulnerability?

What then are the appropriate policy responses to financial vulnerability and the consequent risk of low-income consumers resorting to predatory lending? Relatively recent innovations for dealing with predatory lending include financial literacy programs and disclosure requirements. Added to these innovations are statutory provisions allowing courts and administrators to strike out harsh terms in contracts.[83] The other policy and legal responses are time honoured, including interest rate caps, debt amnesties (bankruptcy) and alternative low cost loan options for the poor.

The long history of lending regulation suggests that no single approach will solve the problem. Also, as economic and social conditions change, the legal and policy settings also need to change in response. Predatory lending seeks out gaps and failures in social policy and regulatory frameworks. It also relies on the existence of poverty itself, which oftentimes results from wealth distribution problems, the social exclusion of certain racial, geographic and other groups, and drug, alcohol and gambling addiction.[84] In other words, predatory lending is invariably a symptom of deeper failures within our politico-legal system.

One time honoured systemic failure is the lack of regulatory commitment to enforcing laws designed to protect vulnerable consumers, including the failure to prosecute for interest rate cap breaches. Recent policy innovations seek to reduce the reliance on enforcement by attempting to encourage consumers not to deal with predatory lenders in the first place. The policy assumption (which aligns with classical economic theory) is that reducing information asymmetries between lenders and borrowers will promote a competitive marketplace, which in turn will drive out overpriced loans. As we have seen, this assumption is fine, providing that there are better alternative lending options available to low-income consumers, such as government supported CDF schemes.

Two broad strategies adopted to deal with information asymmetries between borrowers and lenders involve financial literacy programs and product disclosure requirements. Financial literacy programs achieve little unless undertaken 'in concert with laws and regulations that address consumer protection through regulation of conduct in the marketplace'.[85] There is clear evidence that a one size fits all approach to financial education will be less effective than more tailored and targeted approaches.[86] According to Smith:

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[82] As above.

[83] See, for example, s 70 *Uniform Consumer Credit Code* and Part 2B *Fair Trading Act 1999* (Victoria).

[84] For the links between pawn broking and gambling see K Densley and V Ayres-Wearne, *Fair Dealing? The Consumers' Experience of Pawnbroking in Victoria*, (Good Shepherd Youth and Family Service/Financial & Consumer Rights Council Melbourne,1997) V Ayres-Wearne *Money Lenders or Loan Sharks: The consumers' perspective on the impacts of deregulation of the pawnbroking industry*, (Good Shepherd Youth and Family Services Melbourne, 2000).

[85] JA Smith Jr, 'Financial Literacy, Regulation and Consumer Welfare' (2004) 8 *North Carolina Banking Institute* 77 at 77.

[86] Jeanne M. Hogarth et al., 'Patterns of Financial Behaviors: Implications for Community Educators and Policy Makers', 22 (Discussion Draft Feb. 2003), available at http:// www.federalreserve.gov/communityaffairs/national/CA_Conf_ SusCommDev/pdf/hogarthjeanne.pdf. cited by Smith, as above at 77-78.

> Financial education has some positive effects that are limited and that vary depending on the audience for education classes. The research suggests that the teaching of financial concepts may have some effect on subsequent financial behaviour, but the correlation is a weak one.[87]

Smith also refers to research which shows that over an extended period one-on-one credit counselling has a positive impact on borrower behaviour.[88] Smith adds:

> Among the demonstrated effects were: (i) a positive impact on credit scores, particularly for those with low scores at the time counseling began; (ii) improvement in a broad range of specific credit characteristics relative to those not counseled; and (iii) improved delinquency rates for those who have been counseled relative to those who have not been counseled.[89]

Research also shows that some forms of indirect counselling, particularly by telephone, are of little or no value.[90] Studies show that one of the best ways to oust 'bad actors' from the market 'is through education, with programs that focus on the most common victims of predatory lending – particularly the poor, the elderly, and minority groups – programs that provide information on predatory practices and on non-predatory financial options'.[91] The common theme of these studies is that financial literacy programs are worthwhile, providing they target the particular needs of those using the service. This makes it a relatively expensive policy option.[92]

Another modern policy approach requires lenders to make disclosures about loan products to potential borrowers before they sign up. The *Uniform Consumer Credit Code* (the **Code**), which applies in all Australian States and Territories, is typical of this model. Sections 14 and 15 of the Code set out information that must be provided to consumers before they enter into a loan, including the annual percentage rate of interest, the total amount of interest charges payable and the credit fees and charges payable. According to the statements by the Minister for Consumer Affairs when introducing the Code to Parliament in 1994, the Code aims to ensure truth in lending. This means, according to the Minister, that 'a consumer can make an informed choice between credit providers as to the nature of the credit being offered, as well as the comparative costs between credit providers'.[93] The theory behind disclosure requirements is consistent with classical economic theory; 'each debtor is empowered to protect their own best interest, and in doing so will contribute to the overall welfare of society'.[94]

Arguably, the disclosure requirements under the Code do allow limited comparison shopping for products based on comparing interest rates, but the Code is not decisive in promoting competition in the consumer credit market. I say this because the Code regulates housing loans, personal loans, credit cards and linked credit loans markets in much the same way, yet research undertaken in 1999 for the Ministerial Council on Consumer Affairs[95] showed the

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[87] Smith, above n 85 at 87.
[88] Smith, above n 85 at 88 who cites Gregory Elliehausen et al., 'The Impact of Credit Counseling on Subsequent Borrower Credit Usage and Payment Behavior', 2 (Jan. 2003), available at http://www.federalreserve.gov/communityaffairs/national/CA_Conf_ SusCommDev/pdf/statenmichael.pdf (describing creditor subsidies of counseling services) at 31.
[89] As above.
[90] As above.
[91] Comptroller of the Currency John D. Hawke, Jr., 'Financial Literacy: A Key to New Banking' Markets, Remarks at the Consumer Bankers Association, (8 April 2002), at www.occ.treas.gov/ftp/release/2002-32a.txt
[92] Barr, above n 2 at 130.
[93] Second Reading Speech, Queensland Parliament *Handsard,* 4 August 1994 at 8830.
[94] Peterson, above n 6 at 890.
[95] I undertook the research with the assistance of Chris Batt, Fiona Guthrie and Catherine McNamara, and using the services of the Queensland Government Statisticians Office. This involved interviewing 20 credit providers, holding six focus group sessions with consumers in Melbourne and Brisbane and undertaking a national phone survey with 1,600 consumers who had purchased credit under the Uniform Consumer Credit Code. See Malbon report, above n 59.

level of competition in those markets greatly differs. If the Code played a decisive role in promoting competition, we would expect that similar regulatory requirements for each loan market would lead to roughly similar levels of competition. The fact that there are markedly different levels of competition proves that the Code does not play a decisive role in promoting competition.[96]

A number of findings came from the report to the Ministerial Council, some of them unsurprising. First, consumers take more time considering housing loans than credit card loans. This is unsurprising because it is rational to shop more carefully for large loans than for small loans due to the relative transaction costs involved. Second, consumers only take notice of headline information, such as the interest rate, the amount repayable each month and whether any loan insurance is required before they sign up and they do not generally read all of the small print in loan contracts. Some consumers might check the exit fees for early termination. The evidence shows that deluging consumers with enormous volumes of pre-contractual disclosure information is a waste of everyone's time.[97]

The report also compared the shopping behaviour of respondents with annual incomes below \$31,000 (the average income in 1999), with those above that income. Somewhat surprisingly, respondents behaved in roughly the same way, regardless of their income or gender, or whether they resided in metropolitan or non-metropolitan areas.[98] Consumers with below average incomes generally considered the same number of lenders, sought information from the same kinds of sources (for example, friends and advertisements) as above average income respondents. There were, however, some statistically significant differences in shopping behaviour. Of the 1,600 respondents questioned, those on lower incomes were less likely to decide *not* to take out a loan because of something they read in the loan information provided to them by the lender (8 per cent) than those on higher incomes (13 per cent). Lower income respondents were, however, more likely to read personal loan information before they signed (92 per cent) than those on higher incomes (84 per cent). Higher income consumers were more likely to report that they found comparing personal loan products confusing (6 per cent) than lower-income respondents (1 per cent).[99] Lower income respondents were more likely to obtain a credit card from a department store (19 per cent) than those on higher incomes (10 per cent) and unsurprisingly, respondents on higher incomes were more likely to be offered various loan options by their lender when purchasing a credit card (20.5 per cent) than those on lower incomes (10 per cent). But the interest rate was more influential in helping those on higher incomes to decide to obtain a linked credit loan (34 per cent) than those on lower incomes (17 per cent) – perhaps because higher income groups believed they had more product choice.[100]

The report suggests that potential borrowers are rational in their behaviour. They spend more time shopping around and considering loan information for large loans, such as housing loans, than smaller loans. They will also compare interest rates if that information is readily available and is worthwhile comparing (there was relatively little interest rate competition for credit cards in 1999, so most consumers did not bother comparing interest rates when shopping around). Lower income consumers are no more or less rational in their behaviour than higher income consumers. Apparent irrational behaviour by lower income consumers, such as applying for a high interest loan, is more likely to be a result of circumstance rather than than their lack of knowledge relative to higher income earners.

Respondents in focus groups complained that loan documentation and contracts were complex and confusing. According to the report:

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[96] See J Malbon, 'Shopping for Credit: An empirical study of consumer decision-making' (2001) 29 *Australian Business Law Review* 44, 58-61.
[97] Malbon, above n 59 at 9-12.
[98] As above at 10.
[99] As above at 77.
[100] As above.

> Whilst some participants carefully read the information provided to them, a number found it difficult to use. The complaints about the information included that it was 'beyond comprehension', 'needs to be simpler, in layman's terms', 'is repetitive and boring.[101]

Because of the complexity of these documents, consumers were invariably reliant on the good reputation of the lender to protect them and on the potential reputation damage to a mainstream lender if they were publicly outed for having unfair terms in their loan contracts. The Code allows the mere presentation of the proposed loan contract itself to the consumer to satisfy the disclosure requirements, providing the section 15 information is included somewhere in the contract.[102] That is to say, the Code assumes that the terms set out in the proposed contract are sufficiently comprehensible to constitute disclosure. The Code presumably assumes that this disclosure is sufficiently clear and obvious to overcome information asymmetry. In reality, this assumption is absurd. And even more perversely, the law rewards lenders who include complex, and to an extent unfair, terms in their contracts. The lender will not be rewarded for providing plain, clear and meaningful disclosure to consumers, and there is no incentive for ensuring that the disclosure information actually means anything to the ordinary consumer. As Peterson correctly observes, 'many creditors inject complexity into their contracts and the negotiation process preceding them simply for the strategic value of the complexity itself".[103]

Courts provide an incentive for complexity, which subverts the disclosure policy, by taking the text of contractual provisions seriously, regardless of whether the parties understood the contract terms.[104] The courts assume that the parties freely negotiated their loan contract and agreed on the contract terms, despite it being patently obvious that the borrower had no say in negotiating the terms, or even understood them. The Code ameliorates this absurdity to some extent by the unjust terms provision – section 70. An unjust term in a consumer credit contract includes a term that is unconscionable, harsh or oppressive. The amelioration of the strict legal position is, however, more apparent than real. First, because it is time consuming, expensive and just plain risky for a consumer to contest a provision under section 70 in a court or tribunal. Second, Australian courts tend to apply procedural as opposed to substantive justice in relation to statutory provisions like section 70 that deal with unconscionability. That is, the consumer must first establish that he or she suffered a disability (for example, age, poor understanding of English or drunkenness) of which the credit provider took unfair advantage before the courts will consider the unfairness of the contract term itself. If the consumer is not suffering from a particular disadvantage, the contract will be upheld, regardless of the unfairness of the actual contract terms.[105]

A recent amendment to the *Fair Trading Act 1999* (Vic) (the **FTA**), which adopts provisions from the UK Unfair Terms in Consumer Contracts Regulations, aims to attack the problem of substantive unfairness in consumer contracts, but does not apply to consumer credit contracts. The regulation of consumer credit contracts is dealt with by the Code. The FTA voids an unfair term in a consumer contract (other than consumer credit contracts). Under section 32W of the FTA (which copies the UK definition), a term is regarded as unfair if, contrary to the requirements of good faith and in all the circumstances, it causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer. The government can prescribe a term that it discovers in standard contracts to be

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[101] As above at 71.

[102] Section 14 (5) states that the precontractual statement may be the proposed contract document or be a separate document or documents.

[103] Peterson, above n 6 at 891.

[104] As above at 890.

[105] See Standing Committee of Officials of Consumer Affairs "Unfair Contract Terms Working Party Unfair Contract Terms: A Discussion Paper" (2004) at 27.
http://www.fairtrading.qld.gov.au/oft/oftweb.nsf/AllDocs/CD456F7C38F523684A256E240014EF7C/$File/Unfair%20Contract%20Terms%20Discussion%20Paper%20pt1.pdf

unfair, and once prescribed, becomes void in all consumer contracts. This potentially provides an effective consumer protection mechanism because it reduces transaction costs for consumers in enforcing their statutory rights. The problem is the FTA amendments are limited in that they only apply in Victoria and do not apply to consumer credit contracts.

The UK and Victorian legislation requires proof of significant imbalance between the parties, which according to Lord Bingham in *Director General of Fair Trading v First National Bank,*[106] arises 'if a term is so weighted in favour of the supplier as to tilt the parties' rights and obligations under the contract significantly in his favour'.[107] Undue weighting might exist if the contract requires the consumer to grant the supplier a beneficial option, discretion or power, or by imposing a disadvantageous burden or risk or duty on the consumer.[108] According to Lord Bingham, finding out whether a term is unfair, involves looking at the contract as a whole and considering the position of typical parties when the contract was entered into.[109]

Importantly, the requirement of good faith under the UK legislation covers both the process of entering and the substance of the contract. Its meaning has not yet been tested under the Victorian amendments. Good faith under the UK legislation requires meeting good standards of commercial morality and practice, and fair and open dealing:

> Openness requires that the terms should be expressed fully, clearly and legibly, containing no concealed pitfalls or traps. Appropriate prominence should be given to terms which might operate disadvantageously to the customer. Fair dealing requires that a supplier should not, whether deliberately or unconsciously, take advantage of the consumer's necessity, indigence, lack of experience, unfamiliarity with the subject matter of the contract, weak bargaining position or any other factor listed in or analogous to those listed in Schedule 2 of the [UK] regulations.[110]

As welcome as the UK and Victorian legislation is in dealing with issues of substance and providing for effective enforcement mechanisms (at least in the case of the UK experience), even more effective disincentives could be created to deal with complex and unfair contract terms and ineffective disclosure. The legislation could be extended to provide greater parity between classical contract and economic theory and the bargaining of loan contracts, to provide greater incentives for clearer disclosure. The proposal that I suggest has two elements: first, a contract term should be rendered void if the ordinarily prudent consumer in the circumstances of the plaintiff would not have agreed to it. This test creates a proxy (the ordinarily prudent consumer) for the welfare maximizing consumer of classical contract law and economic theory. The proxy serves to rebalance the bargaining relationship to position the parties on an equal footing. The desired policy outcome is fairer, more balanced (in terms of party self-interest) contracts, which should promote improved competition and a more effective marketplace.

The 'ordinarily prudent consumer' test is not novel – I have borrowed it from the jurisprudence arising from the US Lanham Act.[111] Admittedly, the Lanham Act is designed for a different purpose than the FTA.[112] The Lanham Act aims to protect consumers from confusion or deception about the source, price, quality and type of products on offer. Businesses often use the Lanham Act to claim that the trademarks and the appearances of competing products could be confused with their products. The US courts apply the ordinarily prudent consumer test (a phrase that does not appear in the legislation) to decide

[106] [2001] UKHL 52 (25th October, 2001).
[107] As above at para 17.
[108] As above.
[109] As above at paras 17 and 20.
[110] As above at para 17.
[111] The Lanham Act, also known as the Trademark Act of 1946 is codified in Title 15 of the United States Code,§§ 1051-1127.
[112] See G Austin, 'Trademarks and the Burdened Imagination' (2004) 69 *Brooklyn Law Review* 827.

whether a consumer could confuse one trademark or product with another. The test is largely a legal construct:

> Like her cousin, tort law's 'reasonable person,' the 'ordinarily prudent consumer' is an amalgam of legal and policy aspirations, commitments and beliefs, distilled over time as doctrines emerge and legislators innovate. Whereas tort law's reasonable person is recognized as an analytical tool, trademark law's ordinarily prudent consumer is a proxy for real people - the actual consumers who might be confused by the defendant's use of a contested symbol.[113]

The test is not without its critics.[114] However, it offers a means for a court to examine a contract within a truer context than is offered by the common law, and to an extent the UK FTA. The Lanham Act tends to trigger equitable responses and the common law implied good faith obligation approach to rescue consumers from harsh terms. The FTA and ordinarily prudent consumer tests overlap to some extent, but operate on distinctly different premises. One adopts the traditional equitable and common law approaches of intervening where one party has acted in some kind of amoral and unfair manner, whereas the other accepts that the competitive market can best enhance consumer welfare. In the latter case, party imbalance is seen to be antithetical to competitive market outcomes. The ordinarily prudent consumer test aims to rebalance that aspect of the relationship. It does this by inquiring what the position would be if there was no imbalance between the parties. It asks what a prudent consumer would do, if acting rationally in his or her own interests relative to the lender and in all the circumstances, would he or she have agreed to challenge terms of the loan contract? The FTA approach really involves a question of whether there was fair play between the consumer and the supplier. The ordinarily prudent consumer test requires actively inquiring into whether a rational consumer would agree to the challenged contract terms.

A second proposal is to give a further incentive for lenders to provide clear disclosure. The proposal is this: there may be unfair terms that the plaintiff is prepared to accept, even if he or she is fully cognisant of their harshness or apparent unfairness. A consumer might accept some tough terms, for example, because he or she is a credit risk and cannot get loans on better terms. There should be a defence if the challenged term is disclosed to the plaintiff in circumstances in which an ordinarily prudent consumer in plaintiff's position would have understood the terms of the disclosure and appreciated its effect and consequences. Some adjustments might need to be made to the test to allow for the peculiarities of the plaintiff (for example, language problems or age) that were, or should have been, evident to the lender. Here there is a strong incentive for the lender to make clear and meaningful disclosure to the plaintiff for the disclosure to be effective. This would align the policy objective of requiring disclosure to deal with information asymmetries between the borrower and lender, with the operation of the law in deciding whether or not to uphold challenged contract terms.

The aim of the two tests is to broaden the inquiry into the substantive fairness of loan contract terms, and to provide an incentive to lenders to provide clear and unambiguous disclosure regarding potentially challengeable loan terms. Contract terms that exploit the lender's superior bargaining position are obviously not confined to loan contracts offered by predatory lenders. Indeed, the successful prosecution of cases against exploitive terms in non-predatory lending loans may have well a positive flow-on effect leading to the removal of similar terms in contracts offered by predatory lenders.

6. Conclusion

The problem of predatory lending is deep and complex. It is an opportunistic practice that relies on failures within our social and economic system. Predatory lending seeks out the financially vulnerable, and offers them temporary relief from financial hardship but in the longer term exacerbates the vulnerability. Providing predatory loans to deal with financial

[113] As above at 832.
[114] See for example, Austin, as above.

hardship is like providing an alcoholic with whisky to deal with a hangover. It exacerbates rather than cures the problem. Unchecked, predatory lending compounds poverty, undermines social cohesion and makes a mockery of anti-poverty policies.

There are numerous strategies available for dealing with predatory lending, some of them are quite ancient. No single strategy will succeed in dealing with the problem. What is required is the application of a range of strategies, and most importantly, the commitment by government to pursue those strategies vigorously and to take seriously the enforcement of laws designed to reign in predatory lending.

Do the Poor Pay More for Telecommunications?

Nicole Rich*

1. Introduction

This chapter examines whether low-income households pay more for telecommunications services than other households. For the purposes of this discussion, telecommunications services are defined to include both fixed-line and mobile telephone services and Internet services.

The chapter chooses to analyse telecommunications service consumption at the level of the household rather than the individual consumer because, as noted by the Communications Law Centre, telecommunications services are not only used by consumers as individuals but are also accessed and used as a household.[1] That is, households commonly share the use of a fixed-line telephone or Internet access, and sometimes mobile phones as well. Data regarding the consumption of telecommunications services is collected at a household level.[2] Further, the effects of an inability to pay for telecommunications usage, namely disconnection of a telephone and/or Internet access, are usually felt at the household level.

It is important to state from the outset that the Consumer Law Centre Victoria (**CLCV**) considers telephone services, both fixed-line and mobile, to be essential services. Essential services are those services essential to a person's survival, health (both physical and mental) and ability to participate in Australian society, all of which are necessary to support a basic standard of living.[3] Access to telephone services has become necessary for social and economic participation in our society;[4] not only are telephones used to maintain basic social contact with family and friends, in addition telephones (and, increasingly, Internet access) are also needed for contact to and from potential or actual employers, government agencies and health and community services.

Internet services are not yet considered as critical as telephone services by many Australian households, although some households do consider Internet access to be essential. This issue is discussed further below. Given that Internet services are more likely to continue to gain, rather than diminish, in importance in the future, it is considered appropriate in this context to examine them together with telephone services as telecommunications services. However, in this discussion of whether the poor pay more for telecommunications services, the chapter place a greater focus on telephone services due to the broader acceptance of their essential nature.

The essential nature of telecommunications services in today's society means that even low-income households will put a priority on maintaining access to these services.

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[1] C Casson, K MacNeill and D Wilding, *One Size Fits None: Australian telecommunications household profiles*, Communications Law Centre, March 2002 (**One Size Fits None**) at 72.

[2] See, for example, Australian Bureau of Statistics (**ABS**), *Household Expenditure Survey: Detailed Expenditure Items 1998-1999*, September 2000.

[3] Cf D Walker, *Regulation of Victoria's Energy and Water Utilities*, Consumer Law Centre Victoria Ltd, May 1995 at 13.

[4] See, for example, K MacNeill, *Counting the cost: Telecommunications and low income households*, Communications Law Centre, November 2002 (**Counting the cost**) at 16; Telecommunications Industry Ombudsman (**TIO**), *TIO Talks*, Issue no. 31, March 2004 at 2.

2. Telecommunications services and low-income households

In David Caplovitz's seminal study of the consumer practices of low-income families, *The Poor Pay More*,[5] Caplovitz observed that low-income families require access to important or desirable consumer goods and services in order to participate equally in society, however they cannot afford to purchase these goods and services and, due to their low-income, are unable to access mainstream credit to fund their purchases as they are seen as poor credit risks. As a result, low-income families are faced with a dilemma – either they agree to obtain credit on exploitative terms in order to fund their purchases or they go without important goods and services. He writes:

> Society now virtually presents the very poor risks with twin options: of either foregoing major purchases or of being exploited.[6]

Caplovitz concluded that arrangements that exploit the poor in this manner may even be inevitable given the "twin options" dilemma, namely that low-income families will still want or need to obtain major goods and services.[7]

Low-income Australian households will be faced with a similar twin options dilemma in relation to telecommunications services. In fact, the twin options dilemma may even be more pronounced given the essential (not just desirable) nature of access to telecommunications services.

The essentialness of a particular service will often be demonstrated by a lack of price elasticity of demand for that service. In other words, consumers will continue to consume an essential service even if the price of the service rises, sometimes to the point that the consumer struggles to afford the service, because they need the service – there are few or no substitutes for the service.[8]

Several Australian studies suggest that Australian households consider access to a telephone service to be essential. The Industry Commission released a staff information paper on telecommunications issues in 1997[9] that demonstrated that the cost of access charges for the use of a telephone service had little impact on demand for access. The amount of call costs for local calls also had little impact on demand for local calls.[10] In relation to mobile phones, the National Centre for Social and Economic Modelling (**NATSEM**) released a research report in 2000 that demonstrated that the take-up of mobile phones was not influenced to a considerable degree by income.[11]

The above research indicates that Australian households, including low-income households, will continue to pay for access to telephone services even if the cost is high. For households

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[5] D Caplovitz, *The Poor Pay More*, 1967.
[6] As above at 180.
[7] As above.
[8] See, for example, R Pindyck and D Rubinfeld, *Microeconomics*, 2001 (5th ed) at 116-123.
[9] Industry Commission, *Telecommunications Economics and Policy Issues*, March 1997.
[10] As above at 32-37.
[11] O Hellwig and R Lloyd, *Sociodemographic Barriers to Utilisation and Participation in Telecommunications Services and Their Regional Distribution: A Quantitative Analysis*, National Centre for Social and Economic Modelling, 21 August 2000; Contra One Size Fits None, above n 1 at 54 and ABS, *Household Use of Information Technology, Australia 2001-2*, September 2003. However, although these last two publications find that higher income households are more likely to have access to a mobile phone, it is clear that low-income households still have access to a mobile phone in large numbers and the difference in access between higher and lower income households is considerably less than for Internet access at home (discussed below).

that cannot afford telephone services, the twin options dilemma will, unavoidably, present itself.

This contrasts with demand for Internet access. The NATSEM report demonstrated that, in contrast to mobile phones, take-up of Internet services by households varied significantly according to income, with higher-income households much more likely to have access to the Internet at home than low-income households.[12] The Smith Family has also produced research indicating that low-income families are less likely to have Internet access (or, to a lesser degree, a computer) at home.[13] ABS data supports these findings.[14] These studies suggest that, unlike telephone services, many Australian households do not yet consider Internet services at home to be essential services. A survey of 33 low-income Victorian households conducted for the CLCV by the Wallis Consulting Group in May 2004 (the **CLCV Survey**) also found that, for some households, Internet access 'is a luxury they cannot justify especially when local libraries and internet cafes are easily accessible'.[15] Australian households are more willing to go without Internet access at home if its cost is high, meaning that, in relation to Internet services, the twin options dilemma resolves itself – low-income households would rather forego the service.

Due to this difference, the chapter focus particularly on telephone services in examining whether low-income households pay more than other households for telecommunications services. However, the role of Internet access in our society is growing in importance. It is conceivable that more and more Australian households may come to view Internet access at home as essential for full participation in Australian society.[16]

In fact, both the NATSEM and the Smith Family studies indicate that the educational level of the adults in a household, not income, is the single most important factor determining whether households have a computer and/or Internet access at home. Further, households with school-age children are more likely to have Internet access at home than other households,[17] reflecting the growing importance of Internet services to educational outcomes.[18] The CLCV Survey also found that Internet access 'is a *must have* for people who need access to it for study or work'.[19] One single mother in rural Victoria commented:

> [I have Internet access at] home, because I have 3 teenage children and they all need to use the Internet for school. One of my children submits their homework via the Internet. It's a must. My use is minimal – it's all for the kids.[20]

This suggests that some groups of Australian households already view Internet services to be essential. Low-income households who come to view Internet access as essential will once again find themselves facing a twin options dilemma of foregoing Internet access or being exploited.

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[12] Hellwig and Lloyd, *Sociodemographic Barriers to Utilisation and Participation in Telecommunications Services and Their Regional Distribution: A Quantitative Analysis*, above n 11 at 29.
[13] J McLaren and G Zappalà, *The new economy revisited: an initial analysis of the digital divide among financially disadvantaged families*, Smith Family, Background paper No.5, 2002.
[14] See ABS, *Household Use of Information Technology, Australia 2001-2*, September 2003.
[15] Wallis Consulting Group, *Consumer Law Centre Victoria: Do the Poor Pay More?: Research Report*, June 2004 (**CLCV Survey**) at 28. (See Appendix A)
[16] See, for example, One Size Fits None, above n 1 at 32-35.
[17] See, for example, ABS, *Household Use of Information Technology, Australia 2001*-2, above n 14.
[18] See, for example, One Size Fits None, above n 1 at 46-47; McLaren and Zappalà, *The new economy revisited: an initial analysis of the digital divide among financially disadvantaged families*, above n 13 at 18-19.
[19] CLCV Survey, above n 15.
[20] As above.

3. Why might low-income households pay more for telecommunications services?

Australian telecommunications service providers predominantly bill consumers for their usage *after* that usage has occurred. That is, consumers receive a regular bill which notifies them of the amount that they must pay for the use of services over the billing period. This amount is at least partly based on the cost of the services that the consumer has actually consumed over the billing period.[21]

This can be contrasted with "pre-paid" services, by which the consumer pays *before* using the service. The consumer pays to place credit on their telephone or Internet service. This credit is then used up as the consumer uses the service; once credit has run out, the consumer must again pre-pay before they can continue to use the service.

3.1 Telecommunications service providers as credit providers

Billing in arrears is effectively credit provision by the telecommunications service provider, as it permits a customer to consume services and defer payment to a later date. The amount of the deferred payment will vary according to usage and the limits placed on the customer's account by the service provider. This chapter terms the provision of credit by a telecommunications service provider the provision of "telecommunications credit".

Unlike with pre-paid services, a customer's liability for payment when billed in arrears may not be not limited to an amount that they are actually able to afford to pay. Instead, the provision of telecommunications credit may lead to the customer receiving an unexpectedly high bill which they cannot afford, a phenomenon sometimes referred to as "bill shock". It is clear, therefore, that an over-extension of telecommunications credit may lead to financial problems for some households, particularly low-income households.

3.1.1 Lack of regulation of telecommunications credit as credit

Despite the fact that an over-extension of telecommunications credit may lead to bill shock, in Australia at present, the provision of telecommunications credit is not treated as credit provision for the purposes of legislation relating to credit. In particular, the provision of telecommunications credit for household use is not covered by any of the state or territory-based *Consumer Credit Acts* nor by the Uniform *Consumer Credit Code*.[22] This means that household consumers who experience difficulties in repaying telecommunications credit are not protected by the provisions of the *Consumer Credit Code*.

Importantly, unlike in relation to other household credit provision, a consumer experiencing financial hardship is not entitled to ask for a variation of the arrangements for the repayment of telecommunications credit to assist the consumer to repay their debt in a more manageable way.[23] This means that telecommunications service providers may insist on repayment regardless of whether the consumer can or cannot afford to repay on the terms demanded.

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[21] Billing in arrears may nevertheless contain some billing in advance. For example, telecommunications service providers commonly bill call costs in arrears but line rental or service charges in advance (on one bill).

[22] The Uniform *Consumer Credit Code* is found in the Appendix to the *Consumer Credit (Queensland) Act 1994* (Qld) and has been adopted in each Australian state and territory by their *Consumer Credit Act*.

[23] See the *Consumer Credit Code* section 66.

In a "double-whammy" for consumers, this is also the case regardless of whether the telecommunications service provider took the consumer's capacity to repay the telecommunications credit into account before extending the credit. For example, the Communications Law Centre has reported the observation by financial counsellors of the ease by which mobile phones are obtained, suggesting that telecommunications service providers undertake inadequate credit assessments.[24] By contrast, under the *Uniform Consumer Credit Code*, a credit provider's failure to take into account a consumer's capacity to repay may be taken into account in determining whether a consumer credit contract should be reopened as an "unjust" transaction.[25] In the Australian Capital Territory, legislation has imposed a further obligation on credit providers to carry out a 'satisfactory assessment process' *before* extending credit under a credit card contract with a consumer or increasing the limit on the consumer's credit card.[26] A satisfactory assessment process is an 'assessment of the debtor's financial situation sufficient to satisfy a diligent and prudent credit provider that the debtor has a reasonable ability to repay the amount of credit provided or to be provided' and must take into account a statement of the debtor's financial situation provided by the debtor.[27]

3.1.2 Regulation of telecommunications credit by industry code

Given the lack of regulation of telecommunications credit, the Australian telecommunications industry has developed a voluntary industry code to deal with credit management issues, under the auspices of the Australian Communications Industry Forum (**ACIF**) – ACIF Industry Code C541:2003 Credit Management (the **Code**).[28] The Code does not, however, contain any provisions requiring a telecommunications service provider to take a consumer's capacity to repay telecommunications credit into account before extending telecommunications credit. Further, the Code contains no provisions requiring telecommunications service providers to, for example, vary repayment arrangements as requested by a customer or offer a customer an instalment payment plan if the customer is facing difficulties paying a bill.

Section 6.1 of the Code, titled *Payment Difficulties*, does provide that a telecommunications service provider 'must have in place processes to assist customers who are experiencing difficulties in paying their accounts.' However, this obligation is too unclear to be genuinely effective in addressing payment difficulties being experienced by customers. For example, there is no requirement on telecommunications service providers to implement any particular 'process'. Rather, the exact 'processes' to be put into place are left to individual telecommunications service providers to determine, with various options such as more frequent billing, instalment plans or extended payment periods being listed as examples only. The term 'difficulties' is also not defined and it is therefore left to individual telecommunications service providers to determine which customers are 'experiencing difficulties' and are thus able to access the assistance 'processes' put in place. Note that 'difficulties' does not necessarily have to encompass general financial hardship experienced by a customer; the examples of 'difficulties' listed in section 6.1 are bill-specific only, namely 'payment difficulties arising due to backbilling or other unexpected charges becoming payable'.[29]

In any case, the Code does not constitute mandatory regulation of telecommunications service providers. It is a voluntary code only and, according to the ACIF website, only four

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[24] Counting the Cost, above n 4 at 16.
[25] See the *Consumer Credit Code* section 70.
[26] *Fair Trading Act 1992* (ACT) section 28A.
[27] As above at section 28A(3) and (4).
[28] Registered with the Australian Communications Authority on 17 July 2003.
[29] ACIF, *Industry Code C541:2003 Credit Management* (the **Code**) at section 6.1.1.

telecommunications service providers are signatories.[30] There is little in the way of sanctions for a signatory that breaches the Code, with public naming of the signatory and the breach engaged in being the most serious sanction.[31] ACIF is also able to refer a matter involving a breach of the Code to the Australian Communications Authority if it has first taken the matter through its full range of sanctions, however the Australian Communications Authority has no power to sanction a telecommunications service provider for breach of a voluntary industry code until it first takes the further step of directing that provider to comply with the code in question.[32] There do not appear to be any instances in which the Australian Communications Authority has directed a telecommunication service provider to comply with an industry code.

The sole remedy available to a consumer who wishes to complain about a breach of the Code is to make a complaint to the Telecommunications Industry Ombudsman (**TIO**).[33] In its Annual Report for 2003-2004, the TIO reported 47 confirmed breaches of the Code by signatories to the Code and 38 established breaches of the Code by non-signatories, an increase of 50 per cent and 300 per cent respectively from the previous year. A further 517 potential breaches of the Code by signatories and 498 possible breaches by non-signatories were recorded by the TIO. In total, the TIO received 1,100 complaints under the Code, an increase of 20 per cent in complaints under the Code from the previous year. Complaints under the Code represented 21.5 per cent of all complaints about breaches of industry codes in 2003-2004.[34] These numbers provide ample evidence of the need for more effective regulation of telecommunications credit.

In addition, it appears that the TIO has similar concerns regarding the effectiveness of section 6.1 of the Code. The TIO stated in its Annual Report that it conducted an analysis of a selection of its credit control complaints in mid-2003 because, despite the high number of complaints involving breaches of the Code, these represented only 10 per cent to 20 per cent of the TIO's total credit control complaints. The TIO concluded that:

> some important credit-related issues that the TIO deals with were not adequately covered by the code. In particular, the code falls short in relation to the issue of payment arrangements. While the code requires that providers have processes in place to assist customers who are having difficulties paying their accounts, there is no requirement as to what these processes should be, or even that they be reasonable.[35]

The TIO also noted, in relation to ACIF code complaints generally, that they appeared to be industry-wide, not limited to particular providers or practices, and that the high number of breaches involving non-signatories to codes was worrying, indicating 'a low level of industry support' for ACIF codes.[36] As noted above, given that the Code is voluntary, it is doubtful that it can be effective when it is supported by so few telecommunications service providers.

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[30] ACIF, *Code Compliance Status Report*, www.acif.org.au/code_compliance/status_report, accessed 9 December 2004. The four signatories are PowerTel, Optus, AAPT and Telstra.
[31] See the Code, above n 29 at section 8 and ACIF, *Industry Guideline G514:2003 Code Administration and Compliance Scheme* (the **Guideline**) at sections 2.8 and 3.7.
[32] *Telecommunications Act 1997* (Cth) section 121.
[33] See the Guideline, above n 31 at section 3.3: section 3.3.3 of the Guideline states that 'Consumer Complaints that are within the TIO's usual or extended jurisdiction will be referred to the TIO.' Section 3.3.4 of the Guideline provides that 'Consumer Complaints that are not within the TIO's jurisdiction will be noted by the ACIF Executive and recorded for Complaint monitoring purposes. The ACIF Executive may act in relation to such Complaints in its discretion.'
[34] TIO, *Annual Report 2004* at 73.
[35] As above at 69-70.
[36] As above at 69.

3.1.3 Comparing the regulation of telecommunications credit with energy and water credit

In Victoria, it is also interesting to contrast the situation in relation to telecommunications credit and debt with that of credit and debt incurred in relation to other essential services, particularly electricity, gas and water services.[37] The current Victorian *Electricity and Gas Retail Codes* provide that Victorian electricity and gas retailers must abide by certain minimum standards when dealing with customers experiencing payment difficulties. Amongst other obligations, the retailers must offer a customer with payment difficulties an instalment payment plan that takes into account the customer's capacity to pay.[38] The retailers are not permitted to disconnect a customer's energy service without first complying with this obligation.[39] Similarly, the new water *Customer Service Code*, which will commence operation in Victoria on 1 July 2005, also imposes an obligation on the metropolitan and regional urban water businesses to offer customers an instalment payment plan that takes into account a customer's capacity to pay before the business may consider restriction of a customer's water services.[40]

Many of the Victorian energy and water businesses have gone further than their minimum legal obligations, implementing formal financial hardship policies that address how the business should deal with customers in financial hardship. These policies vary but all provide for more flexible and sensitive treatment of customers in financial hardship and for a variety of measures to assist customers who do not have the capacity to pay for their energy or water usage. Such measures may include instalment plans based on the customer's capacity to pay, other payment options, debt waiver and improved monitoring of the customer's account and the account's accumulation of debt, all undertaken with protection from disconnection or restriction.[41]

By contrast, Australian telecommunications service providers are not subject to mandatory minimum standards in relation to their treatment of customers experiencing payment difficulties.[42] Further, no Australian telecommunications service provider currently has a formal financial hardship policy in place.[43] Again, this means that telecommunications

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[37] In Victoria, electricity, gas and water services are generally billed to the customer in arrears, although in some circumstances a customer may arrange with their retailer to pay by way of regular instalment payments (the purpose of which may be either to cover ongoing usage and repay accumulated arrears or to cover ongoing usage in advance).

[38] *Electricity Retail Code* clause 11.2; *Gas Retail Code* clause 11.2.

[39] *Electricity Retail Code* clause 13.2; *Gas Retail Code* clause 13.2. The new draft *Energy Retail Code*, which will replace the *Electricity Retail Code* and *Gas Retail Code* from 1 January 2005, retains the same obligations in clauses 11.2 and 13.2 respectively.

[40] Essential Services Commission, *Customer Service Code: Metropolitan Retail and Regional Water Businesses*, clause 5.2, 5.3, 7.1(f).

[41] Clause 5.4 of the *Customer Service Code* for water, as above, provides that a water business must have a hardship policy that details procedures for assisting residential customers in hardship and sets out guidelines for such a policy.

[42] As discussed earlier, the Code is voluntary. Further, although it requires telecommunications service providers who are signatories (of which there are only four) to have in place processes to assist customers who are experiencing difficulties in paying their accounts, minimum standards for these processes are not set and individual telecommunications service providers are free to determine what assistance processes they implement. In addition, in relation to fixed-line telephone services, Telstra is required under clause 22 of its *Carrier Licence Conditions* to 'offer, or have a plan for offering, products and arrangements to address the needs of low-income customers.' - see Telstra, *Telstra's Access For Everyone Package: Telecommunications initiatives for customers on low incomes*, Summary Report, Telstra Low Income Measures Assessment Committee, 31 December 2003. This obligation does not, however, set any minimum standards as to how the needs of low-income customers should be addressed.

[43] See also TIO, *TIO Talks*, above n 4 at 2; TIO, *TIO Talks*, Issue no. 30, December 2003 at 10; Australian Communications Authority, *Media Release No. 48*, 13 November 2003.

service providers are relatively free to demand repayment of telecommunications credit from households, regardless of whether the household can or cannot afford to repay or whether the telecommunications service provider took capacity to repay into account before extending the telecommunications credit.[44] Indeed, the Communications Law Centre reported in November 2002 that financial counsellors were observing an increased inflexibility on the part of telecommunications service providers to assist customers with debts[45] and the TIO stated in its most recent Annual Report that the high number of complaints involving breaches of the Code appeared to be linked to increased credit management activity within the industry, including the factoring of debt.[46] One third of the low-income households surveyed by the CLCV Survey had been disconnected from a mobile or fixed-line telephone service,[47] and the relative speed and ease with which disconnection and late fees can be levied was deemed to be a significant contributing factor to the high proportion of respondents who had experienced billing problems (including disconnection).[48]

In summary, credit provision by a telecommunications service provider may lead to a situation in which a low-income household is unable to afford its telecommunications bill. If this occurs, given the lack of consumer protections in the Australian telecommunications arena, the household will find itself facing a version of the twin options dilemma:

- The household does not pay and is disconnected from, or forgoes, telephone and/or Internet services; or
- The household seeks to avoid disconnection by obtaining credit to pay its telephone and/or Internet service arrears.

In addition, the household may face two further "options":

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[44] Since 2002, Telstra has offered nine programs for low-income customers of fixed-line telephone services under its "Access for Everyone" package – see Telstra, *Telstra's Access For Everyone Package: Telecommunications initiatives for customers on low incomes*, above n 42. Although the development of measures to assist low-income households is welcomed, the Access for Everyone package does not change the fact that Telstra (and other providers) remain relatively free to demand repayment of telecommunications credit from low-income households. In addition, the Access for Everyone package remains inadequate. For example, Telstra's "Homeline Budget phone plan" for low-income households provides for a lower monthly rental charge but specifically states that it imposes higher than standard per call costs. This is similar to the manner in which pre-paid mobile phones are charged – see section 3.4.2. As another example, the "Telstra Bill Assistance Program" provides financial relief to customers having difficulty paying their Telstra home phone bill. This is a commendable idea but Telstra is not involved in the application of the program. Instead, Telstra provides $25 certificates to community welfare agencies for distribution to the clients of those agencies and leaves the agencies to determine who receives the certificates (and how many). This means that Telstra abrogates its responsibility to develop its own policy to deal with customers in financial hardship or to deal appropriately with hardship customers who contact Telstra directly regarding their financial difficulties and do not access a welfare agency.
Lastly, households that are unable to pay their home telephone account may access the "InContact" telephone service. The "InContact" service is a home telephone service with no monthly access charges, under which the customer is able to receive incoming calls but is unable to make any outgoing telephone calls other than emergency 000 calls. Although the "InContact" service is preferable to total disconnection from a telephone service, the "InContact" service clearly does not provide the full range of necessary telephone services and should not be considered an "alternative" to other telephone services, as marketed by Telstra. On the contrary, the experience of CLCV casework is that low-income households unable to repay telecommunications credit are invariably placed on Telstra's "InContact" service without any further consideration by Telstra of other options to address the household's difficulties affording their telecommunications bills.
[45] Counting the cost, above n 4 at 17.
[46] TIO, *Annual Report 2004* at 69.
[47] CLCV Survey, above n 15 at 23.
[48] As above at v-vi, 22.

- The household may delay payment until it has the funds to pay, leading to the incurring of penalty fees, for example late payment fees; and/or
- The household may choose (or be forced) to forgo services in their current form and access other, more expensive options for provision of the service.

Apart from the first option of simply forgoing telecommunications services, all of the above options will add to the cost of the services.[49] In other words, low-income households that maintain access to telecommunications services will find themselves paying more for the services. This is particularly likely to occur in relation to telephone services given that, as discussed earlier, a household is unlikely to simply forgo telephone services in their entirety.

The options identified above, and the manner in which they add to the cost of telecommunication services for low-income households, are discussed in further detail below.

3.2 Obtaining credit to pay telecommunications bills

The twin options dilemma identified by Caplovitz will, as discussed above, present itself to low-income households unable to afford their telecommunications services arrears, namely the telecommunications credit provided to them. It is likely that many low-income households will seek to avoid total disconnection from telecommunications services, particularly given that telecommunications (telephone and, to a lesser extent, Internet) services are essential services.

Some low-income households may seek to avoid disconnection by obtaining credit to pay their telecommunications bill. For example, 27 per cent of the respondents to the CLCV Survey had borrowed money to pay a telecommunications bill.[50] However, the use of credit, including mainstream credit products such as personal loans or credit cards, will increase the overall cost of the services purchased with the credit, as the provision of credit generally entails repayment of the amount borrowed together with interest. Therefore, even at this basic level, low-income households who access credit to obtain the funds needed to pay for their telecommunications services will pay more for those services. For example, a survey of low-income earners undertaken by Anglicare Victoria in May 2001 reported that, of those respondents who had a credit card, not one was able to pay off their credit card within the interest free period.[51]

For low-income households, however, the cost of credit itself is often increased. This is due to the fact that low-income consumers are more likely to obtain credit at a higher rate of interest because they cannot access mainstream credit products. This is the classic scenario described by Caplovitz, namely credit providers cover the increased risk posed by low-income consumers by increasing the amount that low-income consumers must pay for credit.[52] In other words, a residual market of high cost or exploitative credit for low-income consumers is created by the market failure caused by rational discrimination against low-

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[49] There is a further "option" – a household may choose to divert expenditure from other goods and services to pay for their telecommunications service. This phenomenon is well-documented – low-income households will choose which bills to pay based on their priorities or may sacrifice essential items such as food or heating to pay for other goods and services. See, for example, Senate Community Affairs References Committee, *A hand up not a hand out: Renewing the fight against poverty*, March 2004 at 251. In these circumstances, a low-income household is certainly "paying more" for their telecommunications service, even if they are not paying more in a direct sense, as the increased cost is simply transferred to other essential goods and services or manifests itself in under-consumption of essential items. See also the CLCV Survey, above n 15 at 6-7.
[50] CLCV Survey, above n 15 at 23.
[51] Anglicare Victoria, *Financial Hardship in Victoria: Survey by Anglicare Victoria*, May 2001 at 12.
[52] See Caplovitz, *The Poor Pay More*, above n 5.

income consumers.[53] The CLCV Survey of low-income households found that 39 per cent of respondents had applied for a mainstream credit product and been refused. Other respondents had not applied for mainstream credit because they believed that they would be refused.[54]

Other chapters in this Report discuss in greater detail why low-income consumers are likely to be forced to access high cost, "fringe" credit, such as payday loans, rather than being able to access mainstream credit products.[55] Indeed, the CLCV's *Payday Lending in Victoria* report (the **Payday Lending Report**) found that payday loan customers are predominantly low-income consumers.[56] The recent Senate Community Affairs References Committee Report into poverty noted evidence that payday lenders specifically target vulnerable consumers,[57] as was also noted by the Payday Lending Report.[58]

Fringe credit providers such as payday lenders offer short-term credit at excessive interest rates and high fees. For example, the Payday Lending Report surveyed 18 payday lending businesses in November 2001 and found that, on a 14 day loan of $200, the annual percentage interest rate ranged from 585 per cent to 897 per cent.[59] Further, 65 per cent of the payday loan customers surveyed for the Payday Lending Report had used payday loans more than once, with many using payday loans on a continuous basis.[60] Low-income consumers can become trapped in a debt cycle, in which they need to borrow further funds to repay existing loans, incurring higher and higher costs.[61]

It becomes easy to see how, in the case of low-income consumers who borrow money in order to be able to pay their telecommunications bills, the poor will pay more for their telecommunications services. If there is any doubt that low-income households access fringe credit in order to pay telecommunications bills, the Payday Lending Report found that the majority of payday loans are taken out in order to pay bills and cover day-to-day living expenses and stated that consumers use payday loans to 'buffer shocks to income created by large bills and in many cases simply to meet regular household expenses'.[62] Anglicare Victoria's recent survey of low-income earners, undertaken in May 2004, also reported that their respondents used credit predominantly to pay for groceries and utility (electricity, gas, telephone and water) bills.[63] Further, some of the individual stories of consumers who had used payday loans, reported in the Payday Lending Report, specifically mention telephone debt as a reason for obtaining a payday loan:

> …I was already kicked out of the house because of rent. It [the payday loan] got me out of that. Electricity and gas, the phone was getting cut off and I borrowed money from ChequEXchange and they got me out of that…[64]

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[53] Rational discrimination occurs because credit providers do not know all important facts about borrowers and must therefore make decisions based on what they do know. In the case of low-income consumers, most observable facts (eg income level, credit history) generally tend to indicate to credit providers that low-income consumers pose a greater risk of default. See also D Wilson, *Payday lending in Victoria – A research report*, Consumer Law Centre Victoria, July 2002 at 81-82; Cf ANZ, *Community Development Finance in Australia: A Discussion Paper*, May 2004 at 2-3.
[54] CLCV Survey, above n 15 at 8-12.
[55] See also Wilson, *Payday lending in Victoria – A research report*, above n 53.
[56] As above at 56.
[57] Senate Community Affairs References Committee, *A hand up not a hand out: Renewing the fight against poverty*, above n 49 at 198.
[58] Wilson, *Payday lending in Victoria – A research report*, above n 53 at 50-51.
[59] As above at 44-46.
[60] As above at 65.
[61] See, for example, as above at 67, 75.
[62] As above at 66-67.
[63] Anglicare Victoria, *Financial Hardship in Victoria: Report by Anglicare Victoria*, May 2004 at 12.
[64] Wilson, *Payday lending in Victoria – A research report*, above n 53 at 72.

and

> Sharni also described the financial and personal stress caused by mounting bills and inadequate income…The backlog of debts accumulated during unemployment created acute financial pressure, leading her to apply for a payday loan.
>
> "...mainly with Telstra because they were threatening legal action…"[65]

3.3 Telecommunications services and penalty fees

Low-income households commonly juggle bills and other expenses that they are unable to pay at one time; bills are paid according to the household's individual priorities.[66] A low-income household may therefore delay payment of a telecommunications bill until the household has the funds to pay.

For example, an older family in Melbourne told the CLCV Survey:

> Yes, we sacrifice our grocery/entertainment/basic living costs in order to pay the bills on time. Utilities are more important than the phone – we have a mobile. But the direct debit for the mortgage and the car loan go first, then we pay designated bills, then thirdly we use what's left over to budget for the remainder of the period until we get paid again.[67]

An elderly pensioner in rural Victoria said:

> Electricity is more important than the phone. But the phone is important…[68]

However, it is common for Australian telecommunications consumer contracts to contain various terms and conditions imposing fees on the customer in the event that the customer "defaults" in some way, such as by paying a bill late. This chapter terms these sorts of fees "penalty fees".

Some examples of penalty fee terms in telecommunications consumer contracts that the CLCV has seen through its casework practice include terms allowing the telecommunications service provider to:

- charge late payment fees for payment of a bill after the due date on the bill;
- add credit management fees (debt collection fees) to the amount owed if the customer does not pay by the due date; and
- charge an excessive fee for early termination of a fixed-term contract. [69]

All of these terms have the effect of imposing further costs on a customer in relation to their telecommunications services. It is low-income households who are the customers most likely to incur these penalty fees.[70]

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[65] As above.
[66] See Senate Community Affairs References Committee, *A hand up not a hand out: Renewing the fight against poverty*, above n 49.
[67] CLCV Survey, above n 15 at 7.
[68] As above at 22.
[69] See C Field, 'The Death of Unfair Contracts', (2000) 29 *Alternative Law Journal* 35 at 35. Cf Australian Consumers' Association, *Submission on the Review of the Competition Provisions of the Trade Practices Act 1974 - Attachment II*, July 2002 at 4; Communications Law Centre, *Report on Fair Terms in Telecommunications Consumer Contracts 2003*, May 2003 at 3-5.
[70] See, for example, Counting the cost, above n 4 at 16.

3.3.1 Late payment

As discussed above, low-income households commonly juggle bills and other expenses according to differing priorities. This means that low-income households may be forced to delay payment of their telephone or Internet account until they have the funds to pay. However, by paying late, the household is likely to incur an additional "late payment fee". Late payment fees are commonly imposed by consumer contracts in relation to Internet services and both fixed-line and mobile telephone services. Forty-five per cent of the respondents to the CLCV Survey of low-income households reported that they had been charged a late payment fee for late payment of a telecommunications bill.[71]

The usual justification for the inclusion in a telecommunications consumer contract of a term imposing late payment fees is that such fees encourage those customers who choose to pay late to instead pay on time. For example, Telstra's National Credit Manager told the Victorian Essential Services Commission that 'the imposition of [late payment] fees since 2000 has been partially responsible for more customers paying on time'.[72] This is hardly unequivocal support for the proposition that late payment fees encourage customers to pay on time, nor is it explicitly based on any data. In fact, there does not appear to be any study supporting the assertion that late payment fees encourage payment on time. It therefore remains unclear whether this is, in reality, the effect of late payment fees on customers in general.

Further, for low-income households in particular, it is doubtful that late payment fees act as an incentive to "choose" to pay on time. Low-income households do not choose to pay late, rather they pay late because they do not always have the capacity to pay on time. For example, a single mother in rural Victoria told the CLCV Survey:

> If you can't afford the bill, how do you afford the late fee? I'd sacrifice the weekly grocery budget, but electricity is more important than the phone.[73]

A young couple in Melbourne who had paid a $5 late payment fee said:

> I had to wait 'til I got paid and then paid the bill with the additional $5 late fee…I just didn't have the money to pay for it, so I had no choice.[74]

An older family in rural Victoria said:

> I try to pay all my bills in advance or on the due date, but every now and then you just can't do it. My husband had to get brain scans last month and you have to find the money from somewhere and we don't have a credit card.[75]

Any "encouragement" that *is* provided by late payment fees for low-income households to pay on time may also be more accurately described as a fear of punishment for late payment. For example, another older family in rural Victoria told the CLCV Survey:

> A late payment fee does make you sacrifice other things like food before getting the late fee. But if you haven't got the money, you haven't got the money…a late payment fee makes you feel sick to the stomach.[76]

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[71] CLCV Survey, above n 15 at 27.
[72] Essential Services Commission, *Final Decision: Review of Electricity and Gas Retail Codes – Energy Retail Code*, May 2004 at 13.
[73] CLCV Survey, above n 15 at 27.
[74] As above.
[75] As above.
[76] As above.

A young couple in Melbourne who had not paid a late payment fee before said:

> There is no way I'd pay a late payment fee. I'd give up food if I had to. Those late payment fees just go up and up.[77]

An "encouragement" that, in fact, either encourages low-income households to sacrifice food or punishes them with a financial penalty for not doing so is wholly inappropriate.

It is clear from the above that low-income households will not always have the capacity to pay their telecommunications bill on time and may be forced to pay late. For this reason, late payment fees impose a disproportionate burden on low-income households. They force low-income households to pay more than wealthier households for the same telecommunications services.

3.3.2 Reconnection

Many telecommunications service providers also charge customers a "reconnection fee" for reconnection of a telecommunications service that has been disconnected for non-payment. Again, this is a fee that imposes a disproportionate burden on low-income households, as they are the customers most likely to be unable to afford a telecommunications bill and may be forced to delay payment, leading to disconnection, until they are able to raise the funds to pay.

A single mother from rural Victoria commented to the CLCV Survey that:

> Yes, [I was disconnected from the telephone] twice in the last few years. The re-connection charge was about $55. Then they have the audacity to announce to the public that they made $160 million profit.[78]

An older family from rural Victoria also noted the effect of reconnection fees:

> With the telephone there is no leniency. They just lob it off if you're late, then you have to pay a re-connection fee.[79]

Given that, in order to be reconnected, the customer is still required both to pay any outstanding arrears that led to the disconnection and to continue to pay any ongoing charges, the reconnection fee is, essentially, an additional payment for the same service.

Telecommunications service providers would no doubt argue that the reconnection fee allows them to recover the cost of reconnecting a service. There are two points to raise in response. The first is that, while a reconnection fee may include an element of cost recovery, telecommunications service providers do not provide their customers or the general public with transparent information regarding their costs, in particular the cost to them of connecting or reconnecting a service. It is therefore impossible for a customer to assess whether a reconnection fee does, in fact, represent mere cost recovery.

On the other hand, connection and reconnection costs vary from one telecommunications service provider to another. Further, many telecommunications service providers waive initial connection costs for customers who enter into certain deals with the provider, presumably because the cost of connection is wrapped up in other fees and charges under the deal and under the provider's cost structures generally. It is therefore likely that *re*connection costs are also accounted for under a telecommunications service provider's general fee and

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[77] As above at 28.
[78] As above at 23.
[79] As above at 24.

cost structures. Given the above, without evidence from telecommunications service providers that reconnection fees are mere cost recovery, it seems more likely that reconnection fees, at least in part, punish customers who do not pay their bills within the period set by their telecommunications service provider. As noted above, low-income households are the customers most likely to attract this punishment.

The second and perhaps more important point is that telecommunications service providers are subject to very few constraints on their ability to disconnect a customer for non-payment, even if that customer is experiencing payment difficulties or is in financial hardship. This was discussed in detail in section 3.1 above. Better protections for households experiencing difficulties paying a telecommunications bill would reduce the number of disconnections by limiting the ability to disconnect a service in inappropriate circumstances, namely when a household is simply unable to afford its bill. Instead, telecommunications service providers would be required to consider other options to deal with customers in financial hardship. It is disingenuous for telecommunications service providers to argue that they impose reconnection fees merely to recover the cost of reconnecting a service when, in many cases, they should not have disconnected the service in the first place.

In any case, even when viewed as a charge to recover costs, this does not alter the fact that, from the perspective of a low-income household, a reconnection fee is an additional cost for the same service. Reconnection fees ensure that low-income households pay more for telecommunications services.

3.3.3 Early termination

In Australia, many telecommunications services are provided on a fixed-term basis. That is, the telecommunications service provider will provide services only if the customer agrees to obtain the services from the provider for a minimum fixed period, often 12 or 24 months. For example, mobile phones are commonly provided on 12 or 24 month plans, with the customer agreeing to pay a minimum amount per month for the term of the plan and additional charges according to the customer's usage.

From CLCV casework, it is our experience that it is common for fixed-term telecommunications consumer contracts to impose an "early termination fee" on the customer if the customer cancels the contract before the minimum fixed term has ended. Sometimes this may take the form of a separate, identified fee for cancellation of the contract. In other contracts, the customer may not have to pay an early termination fee but may instead be bound to continue to pay the minimum monthly fees due under the contract for the remainder of the term of the contract or to pay a lump sum equal to the amount of the remainder of monthly fees, effectively an early termination fee.

There may be several reasons why a customer wishes to cancel a fixed-term contract before the fixed term has expired. For example, a customer may not be happy with the quality of the service provided and may wish to switch to another telecommunications service provider. A customer may also wish to switch to another telecommunications service provider to take up an offer that the customer perceives is a better deal. In these circumstances, the customer has a choice whether or not to cancel the service and incur an early termination fee. The customer is able to weigh the fee against the benefits of the other course of action and make a decision accordingly.

There are, however, other reasons why a customer may cancel a fixed-term contract that are not based on this kind of choice. For example, a customer may be moving residence and may have to cancel a fixed-term contract that is not able to be applied at their new residence. This may occur if the telecommunications service provider is not able to service the new residence or if the customer is a tenant in a shared household and the other co-tenants in the new residence have already entered into a contract to obtain telecommunications services from another provider. Clearly, tenants, particularly long-term renters, will be more likely to cancel a fixed-term contract for these sorts of reasons, meaning that they may be unable to avoid the early termination fee.

Households may also choose or be forced to cancel a telecommunications service if they cannot afford to continue to pay for the service. A low-income household may make a conscious decision to cancel a telecommunications service for this reason and inform its provider accordingly. For example, an older parent in rural Victoria told the CLCV Survey that they cancelled an Internet service because it was too expensive (although they were not charged a cancellation fee).[80] In such circumstances the household, by trying to manage its debt responsibly, pays more for the service.

An early termination fee may also be charged by a telecommunications service provider if a service is disconnected for non-payment, as this may be considered to be early cancellation of the contract. As discussed in detail above, however, low-income households commonly juggle bills and other expenses and may leave a telecommunications bill unpaid in order to be able to pay for other essential items. Many low-income households will therefore be unable to avoid the early termination fee. When an early termination fee is charged to households that are already unable to afford their telecommunications bill, the fee in effect imposes a further penalty on the household.[81]

For low-income households, therefore, early termination fees do not influence the choice whether to continue with or cancel a fixed-term telecommunications contract. Instead, these fees are unavoidable and represent a disproportionate financial burden on low-income households. Early termination fees simply add to the amount a low-income household may have to pay for obtaining telecommunications services.

3.4 Paying more for telecommunications services

As discussed in sections 3.1 and 3.2 above, low-income households may be faced with the twin options dilemma of foregoing telecommunications services or being exploited by credit providers to obtain the funds to pay for telecommunications services.

However, low-income households may also face increased costs not because they obtain exploitative credit to pay for their telecommunications services, but because they are forced to access more expensive options for the telecommunications services themselves. This is another version of the twin options dilemma, save that the exploitation faced by low-income households is through the type of telecommunications services accessed rather than through the type of credit used to obtain funds to pay for the services.

3.4.1 Growth in the use of mobile phones

The use of mobile phones in Australia has risen rapidly in the last few years. Forty-four per cent of Australian households had access to a mobile phone in 1998, compared with 72 per cent in 2002.[82]

As mentioned above, a NATSEM report in 2000 demonstrated that the take-up of mobile phones was not influenced to a considerable degree by income.[83] Australian Bureau of Statistics data shows that low-income households have increased their use of mobile phones significantly. 44 per cent of households earning less than $25,000 annually and 74 per cent of households earning between $25,000 and $50,000 annually had access to a mobile phone in

[80] As above at 30.
[81] See, for example, Counting the cost, above n 4 at 16.

2002 compared with only 17 per cent and 44 per cent respectively in 1998.[84] The CLCV Survey of low-income households also found that 79 per cent of respondents used mobile phones in the household.[85]

Mobile phone call costs are generally more expensive than fixed-line call costs. For example, in May 2004 Telstra charged between 17.5 to 30 cents for each local call from a fixed-line home phone to another fixed-line phone. By contrast, it charged from 26 to 48 cents per minute for local calls from mobile phones to fixed-line phones, together with a 25 cent connection charge per call. Similarly, Optus charged between 15 and 22 cents per local call to a fixed-line phone made from a fixed-line home phone, compared with between 25.3 and 44 cents per 30 seconds for a local call to a fixed-line phone made from a mobile phone, together with a 24.2 cent connection charge per mobile phone call.[86]

Low-income households are therefore using mobile phones despite their high cost. In its 2002 *Counting the cost* report, the Communications Law Centre identified several reasons why this may be the case, including insecure housing tenure, casual employment and disconnection of the home phone for non-payment.[87] For example, the report noted that:

> Many young adults on lower incomes regarded their mobile phone as a substitute for a home phone. It tended to suit them more, as they were rarely home and it was the only way that people could contact them. A recurrent comment was that the mobile was necessary in case someone wanted to contact them about a job.[88]

The report also stated:

> The use of a mobile phone as the primary form of communication makes absolute sense for those with no stable housing. The cost of using a mobile phone can, however, be higher than equivalent calls made on a home phone, depending on the consumer's patterns of use. Some clients will find that they move on to mobile phones because their home phone has been disconnected for failure to pay. Mobile phones are now easily obtained. When faced with the prospect of owning a mobile, or having no phone at all, some consumers have found mobiles a quick solution to their communications problems. However, some soon find that further financial problems arise.[89]

In other words, low-income households, disproportionately affected by factors such as insecure housing, casual employment and disconnection for non-payment, are attracted to the more expensive mobile phone option as a 'quick solution to their communications problems'. The solution to their need for telecommunications services is, therefore, to pay more.[90]

This trend towards greater use of mobile phones by low-income households is exacerbated by high (and increasing) up-front costs for the provision of fixed-line phone services. Fixed

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[82] ABS, *Household Use of Information Technology, Australia 2001*-2, above n 14.
[83] Hellwig and Lloyd, *Sociodemographic Barriers to Utilisation and Participation in Telecommunications Services and Their Regional Distribution: A Quantitative Analysis*, above n 11.
[84] ABS, *Household Use of Information Technology, Australia 2001*-2, above n 14.
[85] CLCV Survey, above n 15 at 24, 30.
[86] Information obtained from Telstra and Optus websites in May 2004. It is acknowledged that the total cost of a consumer's telecommunications bill will vary according to their usage and to the specific terms of their contract, for example the number of free calls they are granted each month.
[87] Counting the cost, above n 4; see also A Sharam and E Gregory, *Paying Too Much! Redlining, Economic Discrimination and Essential Services*, Energy Action Group and Footscray Community Legal Centre, 2002 at 4.
[88] Counting the cost, as above at 21.
[89] As above at 16.
[90] This is perhaps reflected in the large increase in household expenditure on telecommunications services over the last few years, together with the increasing incidence of telecommunications debt in bankruptcy matters, both examined in *Counting the cost*, above n 4 at 7-13.

monthly fees, for example line rental or service fees, effectively mean that low volume users subsidise higher volume users, as they pay more per call. However, more significantly, the increasing amount of these fixed fees has made it difficult for low-income households to afford to maintain access to a home phone service, let alone pay for call costs.

A fifth of the low-income earners surveyed by Anglicare Victoria in May 2004 reported that they no longer had a home phone and utilised a pre-paid mobile to save money on monthly line rental charges.[91] One survey respondent said:

> The last time telephone rental charges went up I got rid of our home phone and now I just use a pre-paid mobile and only really use it for incoming calls or emergencies.[92]

An SMS poll by Melbourne's *MX* newspaper on 30 April 2004 asked readers to answer "yes" or "no" to the question "Will Telstra's fixed-line price rise push you to only use a mobile?". The response was 85 per cent "yes" and only 15 per cent "no".[93] Further, a young person also told the CLCV Survey:

> Yes, I have a pre-paid mobile so I wouldn't have to pay a regular connection fee and I can control my usage and expenditure.[94]

In other words, low-income households must pay more for calls in order to avoid home phone access charges that they cannot afford.

3.4.2 Pre-paid mobile phones – paying more for telephone services

It is clear from the above that *pre-paid* mobile phones, in particular, are popular with low-income households. For example, the CLCV Survey of low-income households found that 79 per cent of respondents used mobile phones, in line with the national average. However, over half of these respondents' mobile phones were pre-paid mobiles, well above the national average.[95]

Low-income households like pre-paid mobile phones because they allow them to budget and control telephone costs.[96] This is evident in the comment by the young person quoted above and in the comments of other respondents to the CLCV Survey, for example a couple in rural Victoria who said:

> I went pre-paid because I didn't want another bill coming in and I only use if for an emergency – it helps me control my spending and the calls made.[97]

However, pre-paid mobile phone call costs are generally higher than call costs for mobile phones on a plan under which billing is conducted in arrears.[98] For example, in May 2004 AAPT charged between 9 and 17 cents per 30 seconds for off peak calls, together with a connection charge of 22 cents, for calls made from AAPT mobile phones on a plan to other

[91] Anglicare Victoria, above n 63 at 11.
[92] As above.
[93] MX newspaper, *Have Your Say*, Monday, 3 May 2004 at 2.
[94] CLCV Survey, above n 15 at 24.
[95] As above at 24, 30.
[96] See One Size Fits None, above n 1 at 56. See also Counting the cost, above n 4 at 21.
[97] CLCV Survey, above n 15 at 24.
[98] See, for example, Australian Consumers' Association, *Pre-paid mobile phone plans*, Choice on-line, www.choice.com.au, August 2002.

mobile phones. Calls from AAPT pre-paid mobiles were charged at a flat rate of 49 cents per minute.[99]

In addition, Australian telecommunications service providers impose a time limit within which a consumer must use the credit they have pre-paid.[100] After this time limit, pre-paid credit is forfeited. This means that consumers are penalised for effective budgeting that reduces their call costs. Given that low-income households use pre-paid mobile phones to assist with budgeting and controlling call costs, this measure ensures that low-income households are at risk of losing credit, meaning that they pay more for their phone.[101] As one low-income household surveyed by the Communications Law Centre said:

> Those pre-paid cards sound all right but there is a gimmick because depending on how much you paid you have to use it in a certain amount of time otherwise you lose it.[102]

Low-income households may be unable to access full telephone services other than by obtaining a pre-paid phone. As mentioned in section 3.4.1, a household that has its telephone services disconnected for non-payment will, unless it repays its telecommunications debt, be left with few options for re-obtaining services, principally using a pre-paid phone.[103] This situation is exacerbated by credit reference tools, which allow telecommunications service providers to identify those consumers who have previously failed to pay for their telecommunications (or other) expenses, and to refuse to supply them with telecommunications services on a billing in arrears basis. Unlike, for example, Victorian electricity and gas retailers, Australian telecommunications service providers are not subject to any specific restrictions on disconnection for non-payment or the manner in which they may use credit reference tools.[104]

Ben's story[105]

Ben, who lives in regional Victoria, is a disability pensioner who has suffered from chronic schizophrenia for many years. Although he manages his day to day affairs, Ben suffers from hallucinations and his day to day activities are impaired by reduced concentration and short-term memory deficit. Ben instructed the CLCV that, in late December 2001, he had agreed to act as "guarantor" to a Telstra mobile phone contract for a 17 year old friend (who also suffers from epilepsy and psychiatric illness) whom he had accompanied to a store. We later discovered that Ben was, in fact, the principal under the contract. The friend made over $1,000 worth of phone calls before he realised the amount he had spent, and the phone was disconnected when he did not pay. Telstra then pursued Ben for the debt, which he could not afford. Ben's social worker contacted the CLCV for assistance.

We provided Telstra with a medical report describing Ben's condition. Telstra then wrote to us informing us that they would not pursue the debt 'at this time' but that the debt would remain on Telstra's internal system, preventing him from accessing any Telstra services in

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[99] Information obtained from AAPT website in May 2004. It is acknowledged that the total cost of a consumer's telecommunications bill will vary according to their usage and to the specific terms of their contract, for example the number of free calls they are granted each month.
[100] At May 2004, Telstra, Optus and AAPT all imposed a 6 month limit on pre-paid credit. Vodafone imposed a 12 month limit.
[101] See Counting the cost, above n 4 at 21, 24.
[102] As above at 21.
[103] Telstra also offers nine programs for low-income customers under its "Access for Everyone" package – see above n 44.
[104] See section 3.1 of this chapter; Essential Services Commission, *Electricity Industry Guideline No. 4 - Credit Assessment*, April 2002; Essential Services Commission, *Gas Industry Guideline No. 1 - Credit Assessment*, May 2002.
[105] Ben was a client of the CLCV. His name has been changed to protect his privacy.

future. Telstra would not confirm whether Ben's current landline service with Telstra, which was unrelated to the mobile phone account, and which Ben required for contacting health service providers, would be disconnected.

We asked Telstra whether we could pursue the matter further, but Telstra stated this was the highest level to which we could take the matter. We had to make several requests before Telstra mentioned the existence of an Ombudsman scheme. When we stated that Ben may consider referring the matter to the TIO, the Telstra representative stated that the TIO would simply agree with Telstra. We had to point out that the TIO makes an independent assessment of matters referred to it.

We made a complaint to the TIO, after which Telstra confirmed that the debt would not be applied to Ben's current landline service, that the debt had been removed from external listing and that it would not be pursued at any time. However, Telstra also confirmed that Ben would be unable to access any post-paid Telstra services in future, due to the internal listing of the debt, unless the debt was repaid. Telstra stated that Ben could obtain pre-paid home and mobile services instead.

Given the above, it appears that pre-paid mobile phones represent an expensive residual market providing access to telecommunications services for low-income consumers and households. The residual market is created because, as described earlier in relation to credit, telecommunications services providers cover the increased risk of default seemingly posed by low-income consumers by increasing the amount that low-income consumers must pay for telecommunications services.[106] Ironically, however, in the case of pre-paid mobile phones there is no risk for the telecommunications service provider of a customer defaulting in payment, as calls cannot be made without the customer first pre-paying for the calls. This has not reduced the call costs for pre-paid mobile phones.

Nevertheless, low-income households use pre-paid mobile phones because they meet the demand for telephone services that low-income households have but cannot satisfy elsewhere. Clearly, there is a demand for less exploitative telephone services as an alternative to current pre-paid mobile phones. Until such services are offered, however, this market failure will ensure that low-income households pay more for telephone services.

One alternative to a pre-paid mobile phone is, of course, to use payphones. The Australian Communications Authority's February 2004 *Payphone Policy Review* found that low-income earners, renters, the unemployed, young people and people in rural and remote areas, including remote indigenous communities, were still reliant on payphones due to these groups' lack of access to home and mobile phone services, including for affordability reasons.[107] The Review stated that 'payphones have a proportionally higher usage by disadvantaged people and are therefore important for social equity'.[108] However, the cost of a payphone call is noticeably higher than the cost of a home phone call.[109] Further, people using payphones are not readily able to receive incoming calls, meaning that they must bear more of the cost of their telephone usage themselves.[110] Payphones appear to present another high cost alternative for low-income households, once again ensuring that the poor pay more for telephone services.

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[106] Cf Caplovitz, *The Poor Pay More*, above n 5.
[107] Australian Communications Authority, *Payphone Policy Review*, February 2004 at 19-21, 24, 52-58.
[108] As above at 24.
[109] Telstra's local call charges are capped at 22 cents per call from a home phone but 40 cents per call from a public payphone.
[110] See One Size Fits None, above n 1 at 60-61.

3.4.3 Other ways in which low-income households pay more

The discussion above has focused principally on the higher prices that low-income households pay for telephone services, particularly the use of pre-paid mobile phones. There are, however, other ways in which low-income households pay more than other households for their telecommunication services. Some of these issues are raised briefly below.

a) Bundling

It is increasingly common for telecommunications service providers to offer discounts to customers who agree to obtain a bundle of services from the one provider. For example, Optus, Telstra and AAPT all offer their fixed-line phone customers incentives, such as a certain number of free calls or discounts on installation fees or monthly service fees, for each additional service obtained from them by the customer, including post-paid mobile phones, Internet access and pay TV.[111]

Low-income households struggle to obtain these discounts; even if they would like to obtain all the telecommunications services offered, they are unable to afford them. As discussed in section 2, low-income households are less likely to have Internet access at home than other households. They are also more likely, as discussed in section 3.4.2, to have a pre-paid rather than a post-paid mobile phone. It seems likely that low-income households would also be unlikely to be able to afford pay TV services.[112]

The result is that low-income households pay more because they cannot access the same discounts as other households.

b) Bearing the cost of telecommunications usage

Many consumers will have access to telecommunications services at their place of employment. This means that they do not bear the full cost of their telecommunications usage, as they use telephone and Internet services while at work. Indeed, some employers pay for mobile phones for some of their employees.

Such employment is unlikely to be low-paid or casual employment. Low-income consumers are more likely to bear the cost of a greater proportion of their telecommunications service consumption, either because they do not have access to telephone or Internet services at work or because they are unemployed.[113] Low-income households must therefore rely heavily on home access to telecommunications services to meet their communication needs, for which they must bear the cost themselves. Unemployment, illness or a disability, factors which contribute to low-income status, also ensure that low-income consumers are at home more often, further increasing their reliance on telecommunications services which they must pay for themselves.[114]

The result is that low-income households pay more because they must bear the full cost of their telecommunications services usage themselves. This usage is further escalated due to their life circumstances.

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[111] Information obtained from Telstra, Optus and AAPT websites in June 2004.
[112] Pay TV take up rates generally are relatively low – see, for example, Australian Communications Authority, *Telecommunications Performance Report 2002-3* at 109.
[113] See also Counting the cost, above n 4 at 24.
[114] See also One Size Fits None, above n 1 at 56, 65, 68-69.

4. Conclusion – the poor pay more for telecommunications

Low-income households are faced with an unenviable situation in relation to telecommunications services. First, Australian telecommunications services providers are relatively free to extend telecommunications credit to low-income households who may experience difficulties repaying this credit. There is little in the way of protection against, or alternatives to, disconnection from telecommunications services for households in financial hardship and unable to repay a telecommunications bill. This is exacerbated by the life circumstances of low-income households, which cause low-income households to bear the full cost of their telecommunications usage, while other households obtain the benefit of using telecommunications services at work.

However, low-income households will be unlikely to forgo telecommunications services, particularly telephone services, due to the essential nature of these services. They will therefore face several options if they wish to maintain access to telecommunications services, all of which ensure that low-income households pay more for the services. They may choose to borrow funds to pay their telecommunications bill but the cost of credit, particularly exploitative credit, adds significantly to the amount that low-income households pay. Low-income households also commonly delay payment of bills, including telecommunications bills, until they can raise the funds to pay. However, telecommunications service providers impose a range of penalty fees on households who do this, leading low-income households, again, to pay more for the same service. Lastly, low-income households unable to access a full fixed-line phone service, or even a post-paid mobile phone service, due to their cost or a previous inability to pay for telephone services, may choose to use other, more expensive, alternatives, in particular a pre-paid mobile phone, to meet their communication needs. These alternatives ensure that the household pays more for telephone calls.

There are several measures that could be introduced to deal with each of the above issues in turn. Fundamentally, it is critical that telecommunications credit be appropriately recognised and regulated as credit. This would include granting consumers the right to ask for a variation of repayment terms if they are experiencing financial hardship and imposing obligations on telecommunications service providers both to assess a consumer's capacity to repay before extending telecommunications credit and to implement formal hardship policies, based on minimum required standards, that provide alternatives to disconnection for households unable to pay their telecommunications bill. Not only would these measures reduce the number of disconnections from what are essential services, they would have the added benefit of reducing the need for low-income households to access exploitative credit to avert disconnection.

Secondly, penalty fees should be banned. They impose a disproportionate financial impact on low-income households and, without evidence that they represent mere cost recovery, appear to punish households rather than recover costs.[115] At the very least, penalty fees should be monitored and regulated, so that telecommunications service providers are forced to justify fees as cost recovery and low-income households are made exempt from these fees.

Thirdly, low-income households must be offered less expensive alternatives to meet their communications needs. Tools are available to assist low-income households to budget and control costs, such as smoothed payments and caps on accounts, that are not tied to expensive

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[115] It is also arguable that the penalty fees imposed by telecommunications service providers are, in fact, unlawful at law as penalties – namely, they punish the consumer for default rather than represent a genuine pre-estimate of the loss suffered by the provider.

pre-paid mobile phones. Even pre-paid mobile phones with lower call charges would be a better alternative.[116]

Finally, the introduction of the above measures and ongoing monitoring of the situation faced by low-income households with regard to telecommunications services can only be achieved through strength of will by government, regulators and the community. The current system with its over-reliance on self-regulation by the telecommunications industry is clearly failing low-income Australian households. With a new communications regulator soon likely to be created by the merger of the Australian Communications Authority and the Australian Broadcasting Authority, the new regulator should prioritise these issues and the Federal Government should give the regulator the powers to achieve change for the benefit of low-income Australian households.

[116] However, pre-paid mobile phones may raise other problems for low-income consumers; for example they may allow low-income consumers to “self-disconnect” if they are unable to afford to put credit on the phone for a certain period of time.

Do the Poor Pay More for Utilities Services?

Anna Stewart*

1. Introduction

This chapter examines whether low-income households pay more for electricity, gas and water[1] services (**utilities services**) than other households.

As with the chapter on telecommunications, an analysis of utilities services consumption has been made at the level of the household rather than the individual consumer, given that utilities services are not only used by consumers as individuals, but are typically accessed at a household level. Disconnection or restriction for an inability to pay utilities bills affects everyone living in the household, not just the person who is named on the account.

The Consumer Law Centre Victoria (**CLCV**) believes that energy and water services are essential services, fundamental to the welfare of individuals.[2] Energy is required for lighting, heating, cooking and refrigeration. Water is required for drinking in order to sustain life and is also required for cooking, washing, cleaning, and the removal of sewerage waste.[3] The disconnection or restriction of energy or water services leads to and exacerbates social exclusion, and accordingly, all consumers, including low-income consumers, place a high priority on access to these essential services.

For a variety of reasons, which will be discussed in this chapter, low-income households often find the costs associated with the provision of utilities services difficult to meet and this can lead to situations in which credit is relied on in order to pay bills and therefore avoid disconnection or restriction.

2. Regulation of utilities services

Before examining the issue of low-income consumers and utilities services, it is important to provide the context for this chapter by briefly describing the structure and regulation of the electricity, gas and water industries. As the regulatory and consumer protection frameworks governing the provision of utilities services vary across jurisdictions, rather than describe the industries in each Australian state or territory, the focus of this chapter is on Victoria, where competition in the energy industry has presented particular challenges with respect to low-income consumers.

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[1] Note that some rural and regional consumers in Victoria do not have access to reticulated gas or water systems and therefore rely on LPG or water tanks. The term 'utilities services' does not, for the purposes of this chapter, encompass sewerage services or the supply of LPG.

[2] N Rich and M Mauseth, *Access to Energy and Water in Victoria – A research report*, Consumer Law Centre Victoria Ltd and Consumer Utilities Advocacy Centre, 2004 at 16; D Walker, *Consumer Benchmarks for Energy and Water*, Consumer Law Centre Victoria Ltd, November 1996 at 4.

[3] See, for example, *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3, UN document A/6316 (1966), art 11 (entered into force 3 January 1976; Committee on Economic, Social and Cultural Rights, *General Comment 4, The Right to Adequate Housing (Art 11(1))*, (Sixth session, 1991), Annex Item III, 114, UN Doc E/1992/23 (1991), particularly clauses 7 and 8(b), available at www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+4.En?OpenDocument.

2.1 Structure and regulation of the Victorian energy industry[4]

Full retail competition (**FRC**) in Victoria's energy sector was introduced in stages. Since January 2002 all Victorian households have had a choice of electricity retailer and since October 2002 all Victorian households with access to the reticulated gas system have had a choice of gas retailer. Prior to the introduction of FRC, Victorian consumers had no choice but to obtain their electricity and gas supply from the 'host' retailer responsible for their particular geographical location. However, FRC enables all Victorian consumers to obtain their energy supply from any of the retail businesses under a market contract, provided that the retail business is also willing to supply the consumer.

It is, of course, conceivable that retailers may choose not to supply a consumer, for example because the consumer does not consume enough energy to make supply profitable or because the consumer has a poor payment history or credit rating. However, legislation currently provides that energy retailers *must* connect consumers in their host area to electricity or gas supply under either the deemed offer, a transitional tariff for those consumers who have not entered the market since the introduction of FRC, or under the standing offer, a tariff for consumers who move into the retailer's host area but do not enter into a market contract for the supply of electricity or gas.[5] The energy retailers have the responsibility for determining the prices that will be charged under the deemed and standing offer tariffs, however, the Victorian government has retained the power to regulate these prices. The deemed and standing offer tariffs do not, however, oblige a retailer to continue to supply electricity or gas to a customer who does not pay their bills or does not pay a refundable advance legally requested by the retailer.

As part of their licence conditions, electricity and gas retailers operating in Victoria must abide by the *Electricity Retail Code* and the *Gas Retail Code* respectively. The Codes contain consumer protection measures intended to provide minimum standards and obligations in relation to matters such as meter reading and billing, payment difficulties and disconnection for non-payment of a bill. The Electricity and Gas Retail Codes were reviewed in 2004 and the Essential Services Commission (**ESC**), the independent energy regulator in Victoria, replaced them with a single *Energy Retail Code* that took effect on 1 January 2005.

2.2 Structure and regulation of the Victorian water industry[6]

Three metropolitan water retailers supply water and sewerage services to consumers in the Melbourne metropolitan area. Melbourne Water is the wholesaler of Melbourne's water and is also responsible for sewerage treatment and drainage. All four businesses are Victorian government-owned, although the three metropolitan water retailers have been corporatised and operate under licences monitored by the ESC[7], whereas Melbourne Water remains a statutory corporation. The three retailers each have an allocated geographical area in which they supply water and sewerage services to consumers through the reticulated water distribution system - consumers are not able to choose which retailer they wish to supply them with water. Outside the Melbourne metropolitan area, Victoria has thirteen Regional Urban Water Authorities (**RUWAs**) and five Rural Water Authorities (**RWAs**).[8] All of these water authorities are Victorian government-owned statutory bodies under the *Water Act 1989* (Vic).

As with the energy industry, the Victorian water industry is subject to a number of regulatory measures. From 1 January 2004, the ESC became responsible for the economic regulation of prices, service standards

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[4] For more detailed information regarding the structure of the electricity and gas industries in Victoria see N Rich and M Mauseth, above n 2 at 17-19.
[5] See section 35 of the *Electricity Industry Act 2000* (Vic) and sections 44 and 46 of the *Gas Industry Act 2001* (Vic).
[6] For further information about the structure of the Victorian water industry see N Rich and M Mauseth, above n 2 at 20-23.
[7] See the *Water Industry Act 1994* (Vic) Part 2.
[8] One irrigation trust in the Mildura area and four rural water authorities.

and market conduct in relation to the metropolitan water retailers, Melbourne Water Corporation, the RUWAs and the RWAs.

As a condition of their licences, the three metropolitan water retailers must each develop a customer contract, which is deemed by section 19 of the *Water Industry Act 1994* (Vic) to have been entered into by the retailer and each of its customers. The ESC is responsible for approving these customer contracts and has developed a Benchmark Customer Contract, with which the retailers' contracts must be consistent. The *Benchmark Customer Contract* (and its summary, the *Benchmark Customer Charter*) contains minimum standards and obligations in relation to matters such as the right to supply, payment terms, disconnection for non-payment and complaints handling.[9]

3. Utilities services and low-income households

> Our priority is water, electricity and gas over everything else. You have to run your fridge, you don't want cold showers, you need to cook food, heat your children. When you don't earn much money you tend to spend more time at home because you can't afford to go anywhere, so you need the home to be warm and comfortable.[10]

As this comment from an older low-income family in regional Victoria demonstrates, energy and water are essential to every day life. Yet, in the year 2000, almost 170,000 working households in Australian could not pay their utilities bills and 30,000 could not afford to heat their homes.[11] In a recent survey of disadvantaged Victorian households by the St Vincent de Paul Society, 27.3 per cent of the 362 individuals surveyed from across metropolitan Melbourne and regional Victoria, stated that energy costs were unaffordable, with only food, holidays and clothing considered to be less affordable than energy.[12] More than half of the 33 respondents to the CLCV Survey reported having difficulties paying utilities bills in the previous 12 months[13], and 58 per cent of 138 respondents to an electricity survey completed by the Wallis Consulting Group for CLCV stated that they felt electricity was less affordable in 2004 than it was in 2001.[14] Indeed, recent studies show that the average annual electricity bill for households is increasing.[15] According to the ESC, 'it is clear that the energy affordability problem is a significant one in Victoria', with one sixth to one third of Victorian energy consumers (including those receiving concessions) experiencing difficulties in paying their energy bills.[16]

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[9] Note that a *Customer Service Code* was released by the ESC in October 2004. It is proposed to take effect from 1 July 2005 and will replace the *Benchmark Customer Contract*, applying to both metropolitan retailers and RUWAs. Separate customer service arrangements will be developed for RWAs. Part C of the Code, regarding customer charts, came into operation on 1 November 2004. See www.esc.vic.gov.au/water103.html for further information.

[10] Wallis Consulting Group, *Consumer Law Centre Victoria: Do the Poor Pay More?: Research Report*, June 2004 (**CLCV Survey**) at 36. (See Appendix A)

[11] Victoria Council of Social Service (**VCOSS**), *Submission to the Senate Community Affairs References Committee Inquiry into Poverty and Financial Hardship*, March 2003 at 7.
See www.aph.gov.au/senate/committee/clac_ctte/poverty/submissions/sub118.pdf Also see Senate Community Affairs References Committee, *A hand up not a hand out: Renewing the fight against poverty*, March 2004 at 191-193 for a discussion regarding the difficulties faced by low-income households with regard to accessing utilities services.

[12] Social Justice Committee for the St Vincent de Paul Society, *Victorian survey of disadvantaged households*, St Vincent de Paul Society, March 2003 at 4.

[13] CLCV Survey, above n 10 at 37.

[14] Wallis Consulting Group, *Consumer Law Centre Victoria: Do the Poor Pay More?: Electricity Report,* June 2004 at 6.

[15] N Rich and M Mauseth, above n 2 at 32; G Dufty, *What has competition delivered for Victorian households?*, Society of St Vincent de Paul, September 2004 at 2.

[16] ESC, *Public Draft Report, Special Investigation: Review of Effectiveness of Retail Competition in Gas and Electricity (**FRC Draft Report**)*, March 2004 at 107. For cases studies highlighting the problems associated with energy affordability in regional Victoria see J McMillan and D Nelthorpe, *Submission to the Essential Services Commission on the Draft Energy Retail Code – High Customer Bills*, September 2003 at www.esc.vic.gov.au/electricity587.html.

Fuel (or water) poverty, the term used to describe the situation in which a person is unable to meet their basic energy (or water) needs, is primarily caused by inadequate income, household size, poor thermal efficiency of housing, inefficient appliances and particular stages in the life-cycle, intersecting with tariff structures and geographic location (where remote locations have higher costs of supply).[17]

A household experiencing payment difficulties with respect to utilities may face disconnection or restriction of energy or water services – indeed, disconnection and reconnection in the same name is a clear indicator that the household is in financial stress. To avoid disconnection or restriction, low-income households may under-consume services, as evidenced by a CLCV Survey respondent from rural Victoria who stated, 'I ring up my supplier to find out how much it's costing me (electricity). So now I only turn the heaters on in the evening and freeze during the day.'[18] A young family in rural Victoria stated that they 'usually cut down on food to pay for electricity, gas and water.'[19] Some low-income consumers may also prioritise utility payments over other essentials, thereby accumulating unsustainable levels of debt. This may ultimately lead to a 'debt spiral' in which obtaining credit (usually at a high cost) is the only option available in order to meet living expenses. It may also ultimately lead to bankruptcy, as indicated by figures provided by Insolvency and Trustees Service Australia, which show that in 2003, 38 percent of all bankruptcies had utilities as a creditor.[20]

3. Low-income consumers in a competitive energy market

As described briefly above, Victoria's energy market is now competitive. For competition to be effective, certain widely recognised factors must be present, namely:

- knowledge of the market by both operators and consumers;
- negligible transaction costs for consumers;
- equal bargaining power for market participants;
- access to the market;
- freedom of choice; and
- freedom to enter and exit the market.[21]

The ESC's 'Review of Effectiveness of Retail Competition and Consumer Safety Net in Gas and Electricity' (the **FRC Review**) in 2004 recognised that not all of these factors are yet present in the Victorian energy market and low-volume, and remotely located energy users who offer low or negative margins for retailers, are unlikely to be receiving market offers from retailers.[22] Yet, as commentators have noted, unlike other conventional markets, electricity consumers have 'virtually no scope to withdraw' from the energy market given the essential nature of the service being provided.[23]

As noted above in section 2.1, Victorian energy consumers are able to exercise choice as to their energy provider and can elect to move from a standing offer (where the price paid for supply is regulated by the Victorian Government) to a competitive market offer. Market offers can provide price benefits and non-

[17] There is a significant amount of literature regarding fuel poverty. See, for example, The Financial and Consumer Rights Council, *Power, markets and exclusion. Assessing the effectiveness of social protections in deregulated markets: An Electricity Case study from Victoria*, 2004 at 19; VCOSS, *VCOSS Response to the Review of effectiveness of retail competition and the consumer safety net for electricity and gas – Issues Paper*, Submissions to the ESC, December 2003 at www.esc.vic.gov.au/gas728.html; FRC Draft Report, above at 106.
[18] CLCV Survey, above n 10 at 37.
[19] As above at 40.
[20] Insolvency and Trustees Services Australia, *Profiles of Debtors, 2003* (released 14 May 2004) at 13. See www.itsa.gov.au.
[21] Centre for the Study of Privatisation and Public Accountability (**CSPPA**), Monash University, *Protecting Utility Consumers From Market Failure*, February 2004 at 4.
[22] FRC Draft Report, above n 16 at 7; ESC, *Final Report to Minister, Special Investigation: Review of Effectiveness of retail Competition in Gas and Electricity, Overview Report*, 22 June 2004 at 13, 17.
[23] B Naylor, 'Regulating for Consumer Rights and redress in the Victorian Electricity Industry', *Law in Context*, 20 (2002) 1 at 117 in CSPPA, above n 21 at 4.

price benefits. The ESC defines price benefits as those that provide a dollar discount to the standing offer tariff applicable to the offer, including a credit that reduces a monthly or quarterly bill.[24] Non-price benefits are defined as those that provide a benefit not related directly to the energy supply, for example, where the customer is offered a loyalty payment after the start of the contract. [25] For the purposes of the FRC Review, energy retailers provided the ESC with the type of market contracts being offered to domestic consumers. The following lists some of the price benefits contained in the market offers available at the time of the FRC Review (including dual fuel offers) [26]:

- direct debit credit – dollar credit paid over a 3 year contract period;
- one-off dollar credit from first electricity bill;
- loyalty rebates paid annually; and
- variable dollar rebates (from $0 to over $200 depending on consumption, single or dual fuel and location, paid equally with each quarterly bill over 3 years).[27]

Non-price benefits being offered by retailers include:

- bill smoothing – annual bills averaged out to equal, regular installments;
- dollar vouchers to be used towards home service work – electrical work; gas appliance repair; servicing or installation;
- credit card company bonus points; and
- vouchers for movies, restaurants, equipment, home services, travel and accommodation discounts.[28]

In summary, the ESC's analysis of available price discounts found that market contracts offer discounts for most residential customers of between 0 and 10 percent for electricity and 2 and 6 percent for gas, with higher discounts for metropolitan Melbourne customers than regional customers and for high consumption customers.[29]

While all of the retailers surveyed by the ESC for the FRC Review agreed that customer attractiveness (in terms of the marketing of market offers) was largely driven by consumption levels, there was also recognition that customers regarded as a poor credit risk were unattractive due to 'the probability of bad debts and the debt management responses process required under the Retail Code.'[30] And as the FRC Draft Report noted, 'lower consumption levels tends to be associated with low-income and potential credit risk',[31] - a conclusion which is supported by the results of the Victorian Utility Consumption Survey 2001 which show that concession cardholder households consume 22 per cent less electricity and 35 per cent less gas than non-concession cardholder households.[32] It is also important to note that under the *Victorian Transfer Code* retailers can object to transfers to another retailer where customers have an outstanding debt of $200 or more. So, even if the possibility exists for the household to save money under a market offer, they may be unable to take advantage of the offer due to debt-blocking practices. Again, this is more likely to occur for a low-income household than a high-income household, where energy affordability is clearly less of a problem.

Another issue with regard to market contracts is the fact that many are offered on the basis that payment must be made by way of direct debit, which is the most efficient method of payment from the retailer's perspective. However, direct debit can cause difficulties for low-income consumers, who may find

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[24] FRC Draft Report, above n 16 at 78-79.
[25] As above.
[26] A dual fuel contact is defined in the *Energy Retail Code* as 'an energy contract for the sale of electricity and for the sale of gas by the retailer to a customer, or two energy contracts between the same customer and the same retailer, one an electricity contract and one a gas contract, under which billing cycles for electricity and gas are synchronised.'
[27] FRC Draft Report above n 16 at 79.
[28] As above at 85.
[29] As above at 86.
[30] As above at 63-64.
[31] As above at 64.
[32] Roy Morgan Research, *Victorian Utility Consumption Survey 2001*, Final report, DHS, June 2002 at 41.

themselves in the situation of having insufficient funds in their bank account to cover the direct debit amount, which can then lead to a direct debit default being charged by their financial institution.[33] Any savings that may have been made under the market contract for payment by direct debit may ultimately be swallowed up, or indeed exceeded by, penalty fees charged by the consumer's financial institution. A further difficulty, more likely to be faced by low-income consumers, is an inability to compare energy offers comprehensively, both between retailers and between the standing tariff and market tariff, due to literacy and numeracy problems.[34]

Acknowledging that the FRC Draft Report determines that there do not appear to be large differences in the rates of receipt and acceptance of market offers in the Victorian energy market, arguably there are nevertheless greater barriers for low-income consumers to enter into and benefit from the competitive energy market.[35] Accordingly, many low-income consumers may remain on the standing offer tariff. This may not presently be overly problematic, given the price certainty flowing from the Victorian Government's agreement in December 2003 with the local retailers for a four year average price path (2004-07) for standing offer prices. However, it is likely that when the price-path expires, and as the industry moves to more cost-reflective pricing for low volume, off-peak and more remotely located customers, low-income consumers who fall into these categories, may have no option but to remain on the standing offer tariff, the rate of which is likely to increase as greater numbers of consumers accept more competitive market offers and move off the more expensive standing tariff.[36]

4. Utilities service providers as credit providers

As with telecommunications services, utilities service providers generally bill consumers for their usage after that usage has occurred. Electricity consumers in Victoria are predominantly billed every 3 months[37], while gas and water is billed every two months.[38] The bill notifies the customer of the amount payable for the consumption of the service during the period, and also generally includes fixed service charges. Given that billing occurs in arrears, thereby enabling customers to defer payment until after consumption, like telecommunications service providers, utilities service providers are effectively credit providers. This leads to a situation in which consumers may not be aware of how much energy they are consuming and how much it is costing them. Arguably, however, even if consumers were more aware of their consumption levels, through, for example, interval metering technology, low-income consumers in particular may have little control over their consumption due to factors mentioned earlier, such as energy inefficient housing and appliances and spending more time in the home due to unemployment or illness.[39]

Despite the fact that utilities service providers are effectively extending credit to consumers, utilities service providers, like telecommunications service providers, are not considered to be providing credit for the purposes of the *Uniform Consumer Credit Code* (the **Consumer Credit Code**) or any of the state or

[33] Note that as at the time of writing, the ANZ, Bendigo Bank, Westpac, the CBA, the NAB and St George charged direct debit dishonour fees of between $35 to $50 on personal transaction accounts. See N Rich, *Unfair fees: A report into penalty fees charged by Australian banks*, Consumer Law Centre Victoria Ltd, December 2004.

[34] Note that the FCRC Report acknowledges that price comparison is problematic for all consumers, not only low-income consumers.

[35] Similar difficulties exist for low-income consumers in other jurisdictions where competition has been introduced in the energy market. For a discussion of energy affordability and low-income consumers in the UK energy market see G Klein, National Consumer Council, *Life lines: the NCC's agenda for affordable energy, water and telephone services*, National Consumer Council, September 2003.

[36] See B Duggan and A Sharam, *Bleak House: The implications of the contest between private utilities and landlords for the non-discretionary income of vulnerable households*, Institute for Social Research, Working Paper 9, October 2004, 20-21.

[37] Clause 3.2, *Energy Retail Code*. Note that some customers may arrange to pay their retailer by way of regular instalments or go onto a shortened collection cycle. Payment by way of instalments may cover arrears as well as ongoing consumption.

[38] Clause 3.2, *Energy Retail Code*; clause 7.5.1,Benchmark Customer Contract for Water.

[39] For a discussion of consumer price responsiveness see G Dufty and M Langmore, *Domestic electricity demand elasticities, Issues for the Victorian Energy Market*, St Vincent de Paul Society Victoria, June 2004.

territory-based *Consumer Credit Acts*.[40] Accordingly, domestic consumers who are having difficulties paying their utilities bills are not afforded the protection of the *Consumer Credit Code*. In contrast with other credit provision, utilities consumers cannot rely on the *Consumer Credit Code* as the basis for a request that their utilities service provider vary arrangements for repayment of the debt on the basis of financial hardship.[41]

Despite this lack of coverage under the *Consumer Credit Code*, Victorian energy and water consumers are afforded some protections by virtue of the respective retail codes. Electricity and gas providers are required to assess a customer's capacity to pay in situations where the customer is experiencing financial hardship and must offer the customer an instalment plan to pay their energy bills. Disconnection of the energy service cannot take place unless the customer has first been offered an instalment plan which takes into account their capacity to pay.[42] With regard to water, the *Customer Service Code*, due to commence operation in Victoria on 1 July 2005, imposes a similar obligation on metropolitan and regional urban water businesses.[43]

As noted in the chapter on telecommunications, many utility retailers have exceeded their minimum obligations with respect to customers in financial hardship and have introduced hardship policies to facilitate access to the utility services.[44] While more sympathetic and flexible treatment of customers in financial hardship is generally welcomed, as some advocates have argued, mandated hardship policies would be unnecessary if utilities service providers were offering their customers affordable instalment plans in the first instance.[45] For some time, financial counsellors, social welfare organisations, consumer advocates and the Energy and Water Ombudsman Victoria (**EWOV**) have been concerned by the systemic failure of many utilities service providers to genuinely take into account a customer's capacity to pay, despite the fact that they have a legal obligation to do so under the retail codes. According to a recent report by the CLCV, instalment plans negotiated by retailers are often unrealistic and it is not long before the consumer defaults and is faced once again with imminent disconnection or restriction.[46] And despite the implementation of more hardship programmes by utilities service providers, a report recently released by EWOV shows that the number of actual disconnections for gas and electricity in Victoria is increasing.[47] According to EWOV, its case review 'strongly suggested that the hardship programmes implemented (or being implemented) by a number of electricity and gas retailers were not yet sufficiently accessible to customers, or comprehensive enough in detail, to proactively address capacity to pay issues.'[48] Consequently, in an environment in which utilities service providers appear to be failing to take into account a customer's capacity to pay, low-income consumers often have no option but to seek credit to avoid disconnection or restriction. Alternatively, in the case of water, they can delay payment and subsequently face the possibility of incurring interest on the

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[40] The Uniform *Consumer Credit Code* is located in the Appendix to the *Consumer Credit (Queensland) Act 1994* (Qld) and has been adopted in each Australian state and territory by their *Consumer Credit Act*.
[41] Section 66 of the *Consumer Credit Code* enables a consumer to seek a hardship variation.
[42] Clauses 11.2 and 13.2, *Energy Retail Code*.
[43] Essential Services Commission, *Customer Service Code: Metropolitan Retail and Regional Businesses*, clauses 5.2-5.4, and 7.1(f).
[44] Note that the three local retailers in Victoria, AGL, TXU and Origin, each has a hardship policy which codifies their internal processes and practices for dealing with customers in financial hardship. At the time of writing, the ESC's work program for 2004-05 includes a project to assess whether there is a need to develop more effective regulatory responses in relation to energy consumers experiencing hardship. This may or may not result in hardship policies becoming mandatory for energy retailers in Victoria. By way of comparison, the Draft Customer Service Code for water, at clause 5.6, states that water providers must have a hardship policy in order to assist residential customers in financial hardship.
[45] See, for example, VCOSS and CLCV submissions to the FRC Review at www.esc.vic.gov.au/gas728.html.
[46] N Rich and M Mauseth, above n 2 at 60-63.
[47] See EWOV, *Resolution 18: 1 January 2004-30 June 2004*, Bi-annual Newsletter, available from www.ewov.com.au/html/publications.html. Also see N Rich and M Mauseth, above n 2 at 23-33 and B Romeril, *Submission to the Senate Community Affairs References Committee Inquiry into Poverty in Australia: Access to Essential Services*, March 2003 for a discussion on disconnection trends in Victoria since the introduction of FRC: http://www.aph.gov.au/senate/committee/clac_ctte/poverty/submissions/sub91.pdf.
[48] *Resolution 18*, above at 11-12.

amount owing, thereby adding to the cost of the service and exacerbating existing levels of financial hardship.

It is worth noting briefly that some energy retailers have recently been promoting the use of prepayment meters to assist consumers to better manage their expenditure in relation to energy.[49] However, while prepayment meters may be a legitimate credit management tool from the perspective of retailers, many in the consumer and social welfare sectors strongly argue that they are not budgeting tools, but rather represent a way for retailers to minimise their credit risk with respect to low-income consumers. Put simply, a prepayment meter, similar to a pre-paid mobile phone, removes the need for retailers to be credit providers and deal directly with consumers in financial hardship. If the consumer is unable to afford to put more credit on the meter, then they will have no choice but to self-disconnect, resulting in serious social and health implications. While recognising that this is perhaps simplifying a complex issue, arguably, prepayment meters would have little positive impact on the affordability of energy services for low-income consumers. Indeed, experience in the United Kindgom suggests that prepayment meters actually increase the cost of energy for low-income consumers due to the tariff structure applied to them.[50]

4.1 Credit reporting

Energy and water retailers are able to access Australia's credit reporting system and accordingly can list customer defaults with a credit reporting agency.[51] As the following case studies demonstrate, even relatively small amounts of debt to a utility company can have a detrimental impact on an individual's ability to access credit for as long as the default listing remains. Having a default listing on a credit report is problematic for most consumers, but particularly for those on low-incomes, as it renders it virtually impossible for such consumers to access credit other than that offered by fringe lenders and pay day lenders, as discussed further below in section 6. In addition, as discussed above in section 3, a poor credit rating can make it more difficult for a low-income household to access a competitive energy offer.

Utilities debt and credit reporting: case studies[52]

Bill's story

Bill lived in shared rental accommodation and opened an electricity account for the household in his name. Upon leaving the house he neglected to change the name on the account. He later discovered that a bill of $400.00 incurred after his departure had not been paid, and that a default listing had been placed on his credit report regarding the arrears.

[49] See, for example, submissions by Country Energy and Aurora Energy to the ESC Review of Electricity and Gas Retail Codes at www.esc.vic.gov.au/electricity 587.html. Note that under the Energy Retail Code retailers are not permitted to introduce prepayment meters without the prior approval of the ESC. There has been considerable debate on prepayment meters in recent times and the negative impacts of prepayment meters have been well documented by the community sector. See, for example, A Savage, *Prepayment meters and why they don't work for the fuel poor*, VCOSS Noticeboard, September 2003; also, N Rich and M Mauseth, above n 2 at 114-118.

[50] See, for example, Klein, above n 35.

[51] Credit reporting and access arrangements are regulated pursuant to the *Privacy Act 1988* (Cth). Credit reporting agencies are usually only entitled to give access to personal credit information to 'credit providers'. In a report dated 4 April 2002 the Office of the Federal Privacy Commissioner advised that utilities are generally credit providers on the basis that a substantial part of their business involves the provision of loans (where a loan is defined to include a contract under which a person is permitted to defer payment of a debt, or to incur a debt and defer its payment). Note that under clause 6.1 of the *Electricity Industry Guideline No.4 – Credit Assessment (Public Version)* a retailer may only provide information to a credit reporting agency if the relevant default relates to an electricity bill issued by that retailer.

[52] Case studies provided by Credit Helpline for inclusion in Consumer Credit Legal Service, Submission to the Privacy Commission on the Review of Credit Reporting Determination No.1 of 2002, November 2002 at 18-19.

Charlie's story

Charlie lived in shared rental accommodation and opened an account with a water utility in his name. Upon leaving the house he neglected to change the name on the account. He later discovered that bills incurred after his departure had not been paid, and that a default listing had been placed on his credit report regarding the arrears. Now, despite earning an income in excess of $60,000, he is unable to obtain a home loan.

4.2 Refundable advances

Energy retailers in Victoria are permitted to request that a customer provide a refundable advance if 'the retailer decides that the customer has an unsatisfactory credit rating.'[53] A refundable advance is defined as 'an amount of money or other arrangement acceptable to a retailer as security against a customer defaulting on a final bill.'[54] Prior to requesting a refundable advance, energy retailers must first comply with an ESC administered guideline on credit assessment.[55] Only relevant defaults can be taken into account by the retailer, with a relevant default being a failure by the customer to pay an electricity, gas or water bill within the last 5 years and where payment is at least 60 days overdue.[56] Currently, an electricity or gas retailer when requiring a refundable advance may charge a customer 37.5 per cent of the amount billed to the customer for supply for the previous 12 months. For customers on dual fuel contracts, the amount charged for a refundable advance, where the customer is considered a credit risk, is 25 per cent of the amount billed for the previous 12 months.[57] While the use of refundable advances has been 'steadily decreasing since 2000', with 397 refundable advances being sought in 2002 (0.020 per cent of customers),[58] the ESC nevertheless acknowledges that:

> …the majority of customers assessed as having an unsatisfactory credit rating are those customers who have experienced difficulty in previous bill payment because of a lack of capacity to meet their financial obligations.[59]

The fact that retailers are requesting refundable advances primarily from consumers already struggling to pay for their energy services leads to the inevitable conclusion that the use of refundable advances is yet another way in which the poor are placed in the position of having to pay more for the supply of energy.[60]

5. Utilities services and penalty fees

5.1 Late payment fees

> Any late payment for us is a nightmare. Whatever the late payment (fee) is you have to take it out of your food/ clothes budget. My husband and I tend to go without for the sake of paying what we have to pay.[61]

This comment provided to the CLCV Survey by an elderly pensioner living in metropolitan Melbourne demonstrates the impact that late payment fees can have on consumers who are continually juggling limited resources to pay for daily expenses. As a single mother living in

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[53] Clause 8.1, *Energy Retail Code.* Note that the retailer must first offer the customer an instalment plan and the customer does not accept the offer.
[54] Clause 35, *Energy Retail Code*.
[55] ESC, *Electricity Industry Guideline No.4 – Credit Assessment (Public Version)*, April 2002.
[56] Above at clause 2.1.
[57] Clause 8.1(b), *Energy Retail Code*.
[58] ESC, *Final Decision: Review of Electricity and Gas Retail Codes – Energy Retail Code*, May 2004 at 8.
[59] As above.
[60] Note that under clause 6.4 of the *Customer Service Code* water businesses cannot request a security deposit (except under section 63(3)(b) of the *Water Industry Act 1994* (Vic)) from a residential customer unless otherwise approved by the ESC.
[61] CLCV Survey, above n 10 at 45.

regional Victoria said when asked about the possible introduction of late payment fees for electricity and gas in Victoria:

> It would make things harder, it would hurt. I already pay things fortnightly, so if I get behind one fortnight then I have to pay more the next. If I had late fees something else wouldn't get paid that week. I'd have to juggle. I'd just get further and further behind.[62]

A young single low-income person in Melbourne also commented with respect to late payment fees on utilities bills that:

> The effect would snowball. It would have the affect of setting us further back on other payments for example, rent.[63]

The ESC, in its review of the retail codes, took the view that, despite considerable opposition to their introduction by consumer and social welfare organisations, late payment fees would:

> …provide an incentive for those who can pay their bills on time to do so or, if they choose not to, it will allow the cost of late payment to be recovered from those who generate the cost.[64]

However, while late payment fees are permitted in South Australia and New South Wales, the Victorian Government has recently introduced legislation banning the introduction of late payment fees in Victoria.[65]

While economic theory suggests that cost-reflective pricing is necessary for the optimum functioning of a competitive market, it is doubtful that late payment fees send price signals to which all late paying consumers can respond. If the purpose of a late payment fee is to encourage timely payment, there is an implicit assumption that the consumer will be able to pay on time to avoid the fee. However, a low-income consumer already unable to pay the bill on time due to a lack of funds will not subsequently be in a position to pay the bill on time in the event that a late payment fee will otherwise be imposed. Put simply, the consumer either has the money to pay the bill on time or they do not. Accordingly, late payment fees, whether they be imposed for late payment of utilities bills or any other bills for goods and services, place a disproportionate burden on consumers experiencing poverty, including the working poor. Late payment fees add to overall financial hardship, as indicated by the following quote from a low-income rural Victorian to the CLCV Survey:

> I had a late payment fee for gas. I had to go without food, that is, I didn't eat any meat, and I lived off veggies. It is very demoralising. A late payment fee would affect me a lot. It's hard enough to pay the original bill without paying extra. We already make sacrifices like cutting back on food and buying clothes from the Op Shop.[66]

Nineteen per cent of respondents to the Victorian Utility Consumption Survey 2001 stated that electricity was the first bill to be paid, second only to rent/mortgage repayments.[67] However, regardless of the importance of energy or water services, as noted above, for many low-income and disadvantaged consumers the notion of choice to pay on time or late is non-existent. It is simply that they often do not have the capacity to pay their bill on time and have to delay payment until such time as they have raised the funds to pay.

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[62] As above at 44.
[63] Above at 43.
[64] ESC, FRC Final Report, above n 22 at 8.
[65] See the *Energy Legislation (Amendment) Bill 2004*, which received royal assent on 9 December 2004. The Bill, among other things, amended the *Electricity Industry Act* to prohibit fees for late payment.
[66] CLCV Survey, above n 10 at 37. Given that retailers of reticulated gas are not permitted to charge late payment fees it is assumed that this consumer was using bottled LPG.
[67] Roy Morgan Research, above n 32 at xvi.

With respect to water, retailers in metropolitan Melbourne are not permitted to charge late payment fees or interest under the Benchmark Customer Contract in the event of late payment.[68] However, regional water businesses are able to charge customers interest on outstanding amounts not paid by the due date[69] and there are several businesses that currently do so, some at a rate as high as 11.25 per cent.[70] Again, considering that a low-income household is more likely to be paying their water bills after the due date than more affluent households, interest charges place a disproportionate burden on low-income households, adding to the overall cost of the service.

5.2 Reconnection

Following disconnection or restriction for non-payment of an account many utilities service providers charge customers a fee for reconnection to the service. This fee, which is added to arrears, can be as high as $82.50 for electricity reconnection, and is an additional burden for low-income households given that they are the households most likely to be disconnected or restricted due to an inability to pay their account by the due date.[71] The following comment to the CLCV Survey from a single mother living in rural Victoria not only demonstrates the way in which low-income households go without services, such as telephone, in order to pay for reconnection of utilities services, but is also a graphic example of the way in which low-income households are continually struggling to meet the costs of living:

> We got disconnected from electricity and water at the same time. We had to pay that bill we didn't pay another one. So we delayed the Telstra bill, which caused trouble. It's all very stressful, it takes a long time to get out of the loop. It's very hard to get on top of things. We had to get re-connected with the water company for a fee of $40. The reconnection took 1½ weeks, then it took us 3 weeks to get back on track regarding payment of the Telstra bill. The electricity was disconnected for 2 weeks and the phone for 3-4 days.[72]

While there may be a cost involved in reconnecting a service, there is little transparency with respect to the percentage amount of the fee representing actual cost recovery. Utilities service providers argue that they impose a reconnection fee purely on the basis of cost recovery – this seems somewhat ironic given that in many instances, where reconnection is in the same name, the low-income household would not have been disconnected or restricted in the first place if their capacity to pay had been properly taken into account before the situation escalated to the point of disconnection or restriction. Reconnection fees simply add to the cost of utilities services for low-income households and are another reason why the poor pay more for utilities services.

Another perhaps less obvious consequence of disconnection from electricity is that in attempting to contact the company to arrange reconnection, some low-income consumers may be forced to use a mobile phone to contact their supplier, as the following story of a single mother with three children illustrates:

> My father was critically ill and I couldn't get hold of him as my phone needs electricity… I had to make an expensive mobile phone call to get reconnected… I had to make a long call and argue a lot. The call cost me $18 as they kept putting me on hold.[73]

Even something as seemingly simple as a phone call from a land line can be impossible for a household disconnected from electricity, and as a result of having to resort to typically more expensive mobile phone calls, ultimately low-income households are paying more for their utility services.

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[68] Under clause 6.5 of the *Customer Service Code* a metropolitan water business must not charge interest except in accordance with the *Water Act 1989* (Vic) and the *Water Industry Act 1994* (Vic) or other charges in respect of outstanding amounts owed by customers unless otherwise approved by the ESC.
[69] They are permitted to do so under section 281 of the *Water Act 1989* (Vic).
[70] Personal correspondence with Portland Water Authority, 8 July 2004.
[71] Note that the ESC approves charges and terms set by the electricity distributors for services such as reconnection. See www.esc.vic.gov.au/electricity209.html.
[72] CLCV Survey, above n 10 at 37.
[73] N Rich and M Mauseth, above n 2 at 49.

5.3 *Termination fees*

Market contracts for electricity and gas supply are generally fixed term contracts, in which the customer agrees to purchase their energy supply from the particular retailer for a fixed time period, usually of between 12 months to 3 years. While acknowledging that many low-income consumers are not currently accessing competitive market offers in Victoria, it is nevertheless important to recognise that there are low-income consumers on market contracts who, for reasons possibly beyond their control, may have to terminate a fixed term contract prior to the expiration date. Typically, this may occur in situations where a tenant has entered into a fixed term contract and subsequently has to move out of the property they are renting. Not all market contracts are portable, and those that are, often cannot be transferred to a new supply address on the same terms and conditions (that is, the price for the service may increase or unused rebate amounts at the previous supply address cannot be transferred). Alternatively, a tenant moving into share accommodation may have no choice over their energy retailer as the household may already have an existing relationship with another retailer. Termination fees on electricity market contracts currently range from $50 to $75, and for gas, $30 to $75. These additional charges have the potential to compound the cost of energy services for low-income households, particularly tenants, further supporting the conclusion that the poor pay more for utilities services.[74]

6. Obtaining credit to pay utilities bills

An additional burden frequently borne by low-income households with respect to utility services presents in the form of high cost credit. To avoid disconnection or restriction, as discussed above, low-income households may have no option but to use credit to pay their bills. This generally adds to the cost of the overall service, given that many low-income consumers may be unlikely to pay their credit card accounts (if they have access to mainstream credit products) within any applicable interest free period given other budgetary pressures, such as rent and food. Indeed, in May 2004 Anglicare Victoria undertook a survey of low-income earners and respondents noted that they used credit predominantly to pay for groceries and utility (including telephone) bills.[75]

As the CLCV's *Payday Lending in Victoria* report (the **Payday Lending Report**) found, low-income consumers are typically forced into high-interest fringe lending products, such as payday loans, rather than being able to access less costly mainstream credit products.[76] Primarily this is due to the way in which credit scoring operates in mainstream financial institutions, whereby income levels, credit history and personal assets, are used to determine whether an individual is considered to be a credit risk. In comparison, approval can be provided for a payday loan in less than one hour, with little or no assessment of the customers' overall financial situation.[77]

The Payday Lending Report highlighted the fact that payday loans, which can carry an annual interest rate of as high as 897 per cent[78], are typically used to pay bills and cover day-to-day living expenses.[79] Utility bills clearly come within the category of day-to-day living expenses and it is therefore extremely likely that the high cost of fringe credit is yet another contributing factor to the greater cost of utilities services for low-income households.

This conclusion is supported by the survey of low-income consumers conducted for the *Access to Energy and Water in Victoria – A research report*.[80] The father of a young family of four interviewed for the report stated that in order to reconnect the gas supplier, the retailer demanded a payment of $400. Rather than

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[74] Note that the Victorian Government has reserve powers under the *Electricity Industry Act* to monitor termination fees.
[75] Anglicare Victoria, *Financial Hardship in Victoria: Report by Anglicare Victoria*, May 2004 at 12.
[76] D.Wilson, *Payday lending in Victoria – A research report*, Consumer Law Centre Victoria Ltd, July 2002.
[77] As above at 47.
[78] As above at 46. At the time of writing, Cash Converters charge $35 for every $100 borrowed, which, on a two-week loan, equates to an annualised percentage rate of 910 per cent.
[79] Above at 66.
[80] N Rich and M Mauseth, above n 2 at 54-56.

remain disconnected, the father decided to charge the amount to his credit card.[81] A single mother interviewed for the report said:

> Since I've been single, about 3 years, I've had problems with bills… including electricity. I was behind in the rent, had to catch up. I had car trouble. I need the car to take the children to school because its so far away so I had to get it repaired. It was $400 so I had to borrow to pay it. Then [I] had to repay [this loan] and I couldn't get back on top of the debts.[82]

Further, a report by the Western Region Energy Action Group in South Australia noted that:

> Heating and cooling is more expensive for low-income households than for the more affluent, and particularly those who own their own homes, due to… the practice of pawning goods to pay electricity bills, [which] is in effect taking out a high interest loan… Similarly, the use of loans, credit cards etc. incurs a significant interest cost.[83]

Clearly, the use of credit to pay for everyday expenses, such as utilities services, not only adds to the cost of the service, in terms of the fees or interest that may be payable on the loan, but more significantly, it can lead to a debt spiral. Unfortunately, for many low-income consumers, using credit in order to avoid disconnection or restriction from an essential service may be the lesser or two evils.

7. Conclusion – the poor pay more for utilities services

In its recently released *Review of National Competition Policy Reforms* discussion paper, the Productivity Commission states that 'in the electricity sector, notwithstanding some variation, average real prices across Australia have fallen by 18 per cent since the early 1990s.'[84] However, while competition in the Victorian electricity and gas markets may have led to overall cost decreases for some consumers, it is clear from the discussion above that not all consumers are paying less for their utility services. This is of growing concern to those in the community sector advocating on behalf of low-income and vulnerable consumers. As the Public Interest Advocacy Centre argues, '…competition reform in electricity and gas has resulted in a wide distribution of costs yet succeeded in delivering benefits (and modest gains at that) to a tiny proportion of the community.'[85]

This chapter has outlined a number of reasons why the poor pay more for their utilities services, including:

- Lack of access to competitive market offers for energy;
- High bills caused by poor quality housing, inefficient appliances and more time spent in the home due to illness or unemployment; and
- Penalty fees in the form of late payment fees, reconnection fees and termination fees.

Due to the essential nature of utility services, low-income households will do what they can to avoid disconnection or restriction, often resorting to the use of high cost and exploitative credit to pay utilities bills. While concessions and other forms of government assistance, such as utility relief grants, undoubtedly help low-income households to pay for their utilities services, ultimately, the fact that low-income consumers are paying more for their utilities services suggests that in order to address the issue of energy and water affordability a multifaceted approach is required.

Credit is one of several critical factors to be considered if we are to ensure that low-income consumers do not have to pay more for utilities services than more affluent consumers. It is unacceptable for low-income consumers to have to resort to high cost exploitative credit in order to pay utilities bills. The retail codes

[81] Above at 54.
[82] Above at 55.
[83] Western Region Energy Action Group, *Powering Poverty: A report on the impact of the 2003-2004 electricity price rises on 12 low-income households in South Australia*, July 2004 at 11.
[84] Productivity Commission, *Review of National Competition Policy Reforms*, Discussion Draft, October 2004 at xix.
[85] Above at 80.

governing the relationship between customers and their energy or water retailer provide specifically for customers unable to pay their bills as a result of financial hardship. It is imperative that retailers adhere to the provisions of their respective codes and offer customers affordable instalment plans that take into account their capacity to pay. It is also vital that the ESC monitor and enforce retailers' obligations pursuant to the codes. In addition, the efficacy of retailers' hardship policies must be monitored to ensure that they address hardship issues and provide flexible options for debt management, including, where appropriate, debt waiver.

Fundamentally, however, solutions to address the problem of fuel poverty require a whole of government approach, which could entail measures such as:

- mandated energy and water efficiency standards for public housing and private rental stock;
- comprehensive and state-wide retrofitting programs;
- up-front financial assistance for low-income households wanting to acquire energy and water efficient appliances;
- a ban on penalty fees and prepayment metres; and
- energy offers and tariff structures (for both water and energy) that are tailored to the needs of low-income households.

While measures such as these would assist in the alleviation of fuel poverty, it is also essential that government, regulators and industry address the impact that high cost credit has on the affordability of essential services for low-income consumers. In this regard, appropriate financial products for low-income consumers must continue to be developed by the banking sector in collaboration with the community sector and, perhaps more importantly, 'loopholes' in the Consumer Credit Code which allow fringe lenders to charge exorbitant interest disguised as fees, should be the subject of legislative reform.

Do the Poor Pay More for Essential Household Goods and Services?

Anoushka Bondar and Eliza Collier*

> If the poor pay more for the goods they buy, they are being denied the benefits of their earning power. They are forced to live in a world of inflation that more well-to-do citizens are able to escape. [1]

Introduction

To function properly in civil society and to retain an acceptable level of general health and well being, all Australian households need to pay for the day-to-day expenses of modern life. Such expenses necessarily include housing, food, clothing, white and brown goods, furniture, rent or mortgage payments, utilities, motor cars, work-related expenditure, public transport, insurance, education, childcare, school fees and medical costs.

Increasingly, for low-income Australians, the cost of day-to-day living can create significant financial stress. In March 2004, the Senate Community Affairs References Committee (the **Senate Committee**) released a comprehensive report on poverty and financial hardship titled, *A hand up not a hand out: Renewing the fight against poverty* (the **Senate Report**).[2] The Senate Report found that while there have been strong economic gains in Australia in the last twenty years, the level of inequality, poverty, homelessness and housing stress is growing rapidly, 'driving more and more Australians into deprivation and disadvantage.'[3] The Senate Report noted a decline in the real incomes of poor households, the failure of incomes to keep pace with increases in the costs of services and rising numbers of 'the working poor.'[4] It also reported evidence of decreasing housing affordability[5], the inadequacy of social security payments to cover the minimum costs of living[6] and financial hardship caused by the movement to 'user-pays' models in education and health care.[7]

We note that the findings of the Senate Committee stand in contrast to claims that microeconomic reforms introduced in Australia from the mid-1980's have benefited all Australians.[8] Thus, while the Assistant Commissioner of the Productivity Commission, Dean

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[1] D Caplovitz, *The Poor Pay More: Consumer Practices of Low Income Families* (1967).

[2] Senate Community Affairs References Committee, *A hand up not a hand out: Renewing the fight against poverty* (March 2004).

[3] Senate Community Affairs References Committee, above n 2, 'Overview' at xv.

[4] Senate Community Affairs References Committee, above n 2, 'Overview' at xvii. xviii.

[5] Senate Community Affairs References Committee, above n 2, 'Overview' at xxi. See also the Australian Council of Social Services (**ACOSS**) submission to the Productivity Commission's Inquiry into Home Ownership (2003) and T Burke and H Short, Australian Housing and Urban Research Institute (**AHURI**), *Analysis of expenditure patterns and levels of household indebtedness of public and private rental households, 1975 to 1999*, Swinburne-Monash AHURI Research Centre (July 2002).

[6] Senate Community Affairs References Committee, above n 2 at 105-107. See also Victorian Council of Social Service (**VCOSS**), *Preventing poverty, Protecting dignity: VCOSS Response to the Discussion Paper Building a simpler system to help jobless families and individuals* (June 2003) at 3.

[7] Senate Community Affairs References Committee, above n 2 at 157-159 (on education costs) and 'Overview' at xix (on health). See also H Smallwood, M Webster and V Ayres-Wearne, *User Pays. Who Pays? A report into the impact of government fees and charges on people living with low incomes*, Good Shepherd Youth and Family Service Inc. (2002); E Cervini, 'Parents feel the pinch as school costs soar' *The Age* (27 January 2002); and F Farouque, 'Poor miss out on child care', *The Age* (7 May 2004).

[8] See D Parham, 'Microeconomic reforms and the revival in Australia's growth in productivity and living standards', paper delivered to the *Conference of Economists*, Adelaide (1 October 2002).

Parham acknowledges that high unemployment and social disadvantage, particularly 'pockets of poverty', remain and require attention[9], he is of the view (quoting US author Richard Lester) that,

> a rising tide will not lift all boats. However, a rapidly rising tide will leave fewer boats stranded.[10]

Nevertheless, there is evidence that, as a result of financial stress, low-income Australians will at times go without essential household goods and services, including food, heating and insurance, for the simple reason that they cannot afford them.[11]

In a classic text *The Poor Pay More: Consumer Practices of Low Income Families,*[12] published in 1967, David Caplovitz set out a basic dilemma facing low-income consumers who cannot afford to buy the essential goods and services that they need to survive. Where low-income consumers represent too poor a credit risk to access mainstream credit on fair and affordable terms, they are forced to choose between going without essential goods and services and obtaining credit on exploitative terms. As Caplovitz writes:

> Society now virtually presents the very poor risks with twin options: of either foregoing major purchases or of being exploited. [13]

As a result, low-income consumers are forced to pay more for the essential goods and services that they purchase.

This chapter argues that Caplovitz's thesis is as relevant in Australia today as it was in the United States of America in 1967: low-income Australian consumers are forced to pay more for consumer credit and therefore pay more for essential goods and services. In Part One of this chapter we develop the argument that low-income Australians pay more for consumer credit, outlining the reasons why low-income consumers use high-cost consumer credit and why that credit comes at a higher cost. In the following parts, we discuss examples of essential goods and services for which low-income consumers are more likely to use high-cost credit. Part Two deals with general household goods and services, specifically looking at the use of high interest retail finance and the detrimental impact of some door-to-door sales practices on low-income and vulnerable consumers. In Part Three, we discuss the high costs of parenting, education and health and in Part Four, motor vehicles. We highlight these examples because they are necessary to ensure an adequate standard of living.

1. The high cost of credit

In recent decades, Australia has witnessed an increasing reliance on credit, with access to consumer credit perceived as critical to participation in modern society.[14] However, when it comes to the use of credit by low-income and vulnerable consumers to purchase basic and

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9 Parham, above n 8 at 25.

10 R Lester, *The Productive Edge: How US Industries are Pointing The Way to a New Era of Economic Growth* (1998) at 48, as cited in D Parham, above n 8 at 25.

11 The *Australian Bureau of Statistics Household Expenditure Survey 1998-99* (2000). See also Wallis Group, *Consumer Law Centre Victoria: Do the Poor Pay More?: Research Report,* June 2004 (**CLCV Survey**). (See Appendix A)

12 Caplovitz, above n 1.

13 Caplovitz, above n 1 at 180.

14 Reserve Bank of Australia, *Do Australian Households Borrow Too Much?* Speech given by I J Macfarlane, Governor, Reserve Bank of Australia (3 April 2003). See also D Wilson, *Payday Lending in Victoria – a research report* (Consumer Law Centre Victoria; July 2002) at 36; D Wilson, 'Payday Lending: Policy Making for the Financial Fringe' (October 2004) 33 *Just Policy* 18.

essential household goods and services, there is a serious inequity operating in the marketplace caused by the use of high-cost and exploitative credit.[15]

Following the deregulation of the banking industry in the 1980s, mainstream banks began to target their products at more affluent customers, in preference to financially vulnerable low-income and socially disadvantaged groups.[16] For example, mainstream banks generally do not provide personal loans of less than $4,000; small amounts of credit are reserved instead to credit cards, presenting a more financially viable option for the lender but incurring higher fees and interest rates for the consumer.[17]

In addition, many low-income and vulnerable consumers may be denied access to or are excluded from the mainstream credit market for reasons of unemployment, the existence of a poor credit rating, their geographic location or other social factors.[18]

Fringe credit

In this context, when low-income households require credit to cover the costs of essential household goods and services such as white goods and brown goods, education and medical expenses, they are vulnerable to fringe credit lenders who offer short-term credit at disproportionately higher costs than mainstream consumer credit.[19] For instance, many low-income consumers use payday loans - short term loans which typically must be repaid within two to four weeks with interest rates between 288 per cent to 2158 per cent per annum[20] - to meet regular day-to-day expenses (such as bills, car repairs, registration and rent or mortgage payments) or to cushion the unexpected shocks of large bills and emergency expenses and the high costs associated with caring for dependants.[21] Other fringe credit products commonly include loans from pawnbrokers; bills of exchange or bill facilities and non-bank finance products.[22]

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[15] See Wilson, *Payday Lending in Victoria – a research report,* above, n 14 and Good Shepherd Youth and Family Services, *Submission to the Financial System Inquiry (the Wallis Inquiry)* (September 1996).

[16] Wilson, *Payday Lending in Victoria – a research report*, above n 14 at 29, 35.

[17] Chant Link & Associates on behalf of the ANZ, *A Report on Financial Exclusion in Australia* (November 2004) at 71-72. One respondent to a survey of 33 low-income households by The Wallis Group said that one mainstream bank would not give her a personal loan to purchase a motor vehicle and insisted she open a credit card account with them instead: see CLCV Survey, above n 11 at 19-20.

[18] ANZ, *Community Development Finance in Australia: A Discussion Paper* (May 2004). See also Chant Link & Associates, above n 17.

[19] See Good Shepherd, above n 15; Wilson, *Payday Lending in Victoria – a research report*, above n 14; C Field, 'Pay Day Lending – an exploitative market practice' (2002) 27(1) *Alternative Law Journal* 36.

[20] Wilson, *Payday Lending in Victoria – a research report*, above n 14 at 46. See also L McIlveen, L Milligan and G Leech, 'Crackdown on payday loan sharks', *The Australian* (4 April 2001) at 4, as cited in, Field, above n 19 at 36.

[21] Wilson, *Payday Lending in Victoria – a research report*, above n 14 at 65, 73. See also Wilson, 'Payday Lending: Policy Making for the Financial Fringe' above n 14 at 19-22, which discussed the findings of the 2002 research report; Senate Community Affairs References Committee, above n 2 at 198, citing evidence given by Lismore Financial Counselling Service; Field, above n 19 at 36-37.

[22] See generally the Ministerial Council of Consumer Affairs (**MCCA**), *Fringe Credit Providers: Discussion Paper* (August 2003) (the **Discussion Paper**) published online at http://www.consumer.gov.au/html/Fringe%20Credit/fringe_credit.html, at 5-6. See also the joint submission to the Discussion Paper by the Consumer Credit Legal Centre (NSW) Inc., the Consumer Credit Legal Service Inc. (Vic), the Consumer Law Centre of the Act and the Consumer Law Centre Victoria (October 2003) (copies of this submission are available on request from the Consumer Law Centre Victoria).

For indigenous consumers living in remote locations where there is a marked absence of mainstream financial services, one type of fringe credit used for the purchase of basic goods and services is the practice of 'book up,' also known as 'bookdown,' which involves unregulated local businesses (such as shop owners or taxi drivers) providing informal short-term credit and the cashing of social security cheques.[23] Problems identified with this type of credit include high interest rates, excessive service fees and price exploitation. Unregulated traders have been reported as requiring the consumer's key card, passbook or PIN number as security for groceries and other goods supplied on credit, exposing the consumer to liability for unauthorised use of their PIN or passbook.[24] In one instance, a trader who loaned large sums of money to Aboriginal people at high interest through a book up arrangement was reported to have turned off the electricity in the caravan park where a debtor lived to encourage payment.[25]

The disproportionately higher interest rates and fees associated with fringe credit typically exacerbate the low-income household's vulnerable financial situation. Indeed, a report published by the Consumer Law Centre Victoria (**CLCV**), *Payday Lending in Victoria,* revealed that repeat loans are common phenomena, as the consumer will often be unable to repay the loan within its term.[26] With each repeat loan, the consumer becomes increasingly over-committed and the debt spiral continues, increasing their position of poverty and disadvantage.

Adding to the significant financial costs associated with fringe credit are the exploitative terms and conditions on the basis of which such loans are offered. For example, the use of blackmail tactics is common amongst fringe products, with some fringe credit providers taking securities over essential household items including cars, furniture and white goods, as a method of ensuring the loan repayments are met.[27]

There is currently one fringe credit franchise whose loan contracts commonly create mortgages over a range of essential household items including beds and other furniture and the family car (necessary for the family's transport and getting to work).[28] In its chapter looking at poverty and the use of credit, the Senate Report recommended that such 'blackmail securities' be prohibited and found that the threat of repossession forces the household to repay the loan, often to the detriment of other basic needs.[29]

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[23] See G Renouf, Australian Securities and Investments Commission (**ASIC**), *Book up: Some Consumer Problems*, (March 2002). See also P Cerexhe, 'Black Money Business,' *Consuming Interest* 74 (Autumn 1998), at 6; S McDonnell and N Westbury, *Giving credit where it's due: The delivery of banking and financial services to Indigenous Australians in rural and remote areas*, Centre for Aboriginal Economic Policy Research, No 218/2001, (2001) at 25.

[24] Renouf, above n at 23.

[25] Cerexhe, above n 23 at 8.

[26] Wilson, *Payday Lending in Victoria – a research report*, above n 14 at 65. See also Field, above n 19 at 37 and the joint submission to the MCCA's Discussion Paper, above n 22.

[27] Senate Community Affairs References Committee, above n 2 at 197, 199 – 200. See also Field, above n 19 at 39.

[28] See Diane's Story (insert).

[29] Senate Community Affairs References Committee, above n 2 *Chapter 9: Other Issues: Utilities, Credit, Gambling*, Recommendation 35.

Diane's Story[30]

Diane, a sole parent receiving Centrelink payments, borrowed $600 from a company that advertised itself as offering finance and cash solutions. The loan included an establishment fee of $350, a loan application fee of $20 and a 30 per cent annual interest rate, bringing the total amount to be repaid to approximately $1,065.24. The contract secured a mortgage over most of Diane's essential household items, some of which belonged to her parents (despite the company's knowledge that the items were owned by a third party). As a result of significant over-commitment, Diane entered bankruptcy, releasing her from all her debts. Nevertheless, she continued to make weekly payments on the loan because of the fear of losing her essential household items.

Another practice of fringe credit providers that the Senate Report found to be detrimental to consumers is the practice of requiring repayment of loans via direct debit. Fringe credit providers have been known to access the debtor's account repeatedly when there are insufficient funds in the account, leaving the consumer to pay the accumulated penalty fees and charges imposed by the bank.[31]

In addition, some fringe credit providers even actively seek to avoid the operation of the *Uniform Consumer Credit Code* (the **Code**) by methods including requiring that the borrower sign a Business Purpose Declaration, which creates a presumption that the Code does not apply. In a joint consumer submission to the Ministerial Council of Consumer Affairs Discussion Paper on long term regulation of fringe credit providers, it was argued that such specific exemptions create 'loopholes' that will be exploited by fringe lenders.[32] The submission also argues that the 48 per cent cap on interest which applies in Victoria under the *Consumer Credit (Victoria) Act 1995* (as well as in the Australian Capital Territory and New South Wales) should be applied uniformly in all Australian jurisdictions and that the cap should be specified to include all fees and charges associated with the loan.[33]

Why high-cost credit?

Research on the use of high-cost fringe credit by low-income households to pay for essential goods and services has revealed that where low-income and vulnerable consumers are paying the highest prices for credit, it is the direct result of the limited availability of affordable and equitable credit for these households.[34] While information asymmetry between the lender and the consumer can and does impact on the ability of vulnerable consumers to understand the true nature of high-cost credit, particularly in circumstances of significant levels of low financial literacy in Australia,[35] research has revealed that those who use fringe credit are most often aware that they are entering into exorbitant transactions; they simply have no other choice.[36] For this reason, Good Shepherd Youth and Family Service (**Good Shepherd**), an agency that deals at the coalface with credit and debt issues for low-income and vulnerable

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[30] Diane, whose name has been changed for confidentiality reasons, was a client of the Consumer Credit Legal Service Inc. (Victoria) (**CCLS**). The CCLS assisted Diane to bring a VCAT application seeking appropriate remedies on the basis that the contract was unjust pursuant to section 70 of the Uniform Consumer Credit Code. The matter settled at mediation.

[31] Senate Community Affairs References Committee, above n 2 at 200; Field, above n 19 at 39.

[32] Joint submission to the MCCA Discussion Paper, above n 22.

[33] Joint submission to the MCCA Discussion Paper, above n 22.

[34] Wilson, *Payday Lending in Victoria – a research report*, above n 14 at 81. See also, Good Shepherd, above n 15.

[35] See *ANZ Survey of Adult Financial Literacy in Australia: Final Report* (May 2003), which highlighted the correlation between low socio-economic status and low levels of financial literacy.

[36] Wilson, *Payday Lending in Victoria – a research report*, above n 14 at 81. See also, Good Shepherd, above n 15; Wilson, 'Payday Lending: Policy Making for the Financial Fringe', above n 14 at 21-22.

households, has stated that good financial literacy cannot compensate for the existence of unethical or exploitative practices.[37]

A recent survey undertaken by The Wallis Group, on behalf of the CLCV, of 33 low-income households (the **Wallis Report**) found that low-income consumers were refused mainstream credit, or felt that they could not access it. [38] Overwhelmingly, responses to the question of whether the consumer had ever been refused a loan were either that they had applied for mainstream credit and been refused or offered a more expensive alternative. Otherwise, the consumer held the perception that they would be refused, with the result that an application for mainstream credit was not even made. Indeed, one older couple from rural Victoria stated, 'I would never bother to apply for a loan as we would be refused.'[39]

This is not to say that there are no sustainable credit alternatives to fringe credit for low-income and vulnerable consumers. For example, the No Interest Loans Scheme (**NILS**) is a national network of community-based no interest loan programs coordinated by Good Shepherd, which aims to assist people who face barriers in obtaining basic and essential household items, such as household white goods.[40]

It is also encouraging to note that at the time of writing, the mainstream banking industry was taking initial steps towards developing financial services aimed at increasing the financial inclusion of disadvantaged consumers. In 2004, the National Australia Bank (**NAB**) launched a program of small loans to low-income earners at a fixed interest rate of 6.9 per cent.[41] NAB's program, developed together with Good Shepherd, is termed StepUP Loans and is being piloted in a number of urban and regional centres. It aims to compliment the scope of the NILS scheme through the provision of larger loans for a range of household needs, including utilities such as gas, electricity and water (the NILS scheme is limited to loans of usually not more than $800 for the cost of essential white goods; other essential items, such as motor car repairs, utility bills and school fees are not covered).

In November 2004, research commissioned by the ANZ bank into the incidence of financial exclusion in Australia was released.[42] As a result of the findings about financial exclusion, the ANZ has highlighted its commitment to increase investment to programs aimed at increasing the inclusion of low-income consumers, including small personal loans, loans for enterprise development, matched savings schemes, financial counselling and advice and financial literacy training.[43]

The provision of sustainable financial products that address the needs of low-income and vulnerable consumers is critical. However, the current scope and operation of sustainable financial products available to low-income and vulnerable consumers is very limited, leaving many low-income households with no current access to credit on fair and sustainable terms.[44]

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[37] Good Shepard Youth and Family Service, *NILS Newsletter #4* (January 2004) at 1.
[38] CLCV Survey, above n 11 at 10.
[39] As above.
[40] Further information on NILS is available on Good Shepherd's website, www.goodshepherd.com.au.
[41] Good Shepherd and NAB, Media Release: *Good Shepherd and the National launch unique low-interest loan* (23 March 2004).
[42] Chant Link & Associates, above n 17.
[43] See comments by ANZ Chief Executive John McFarlane, reported in *The Age*, 'Financial access limited for poor', (*The Age*, 25 November 2004); see also A Horin, 'Credit where credit's due as bank dives into shark-infested waters' (*The Sydney Morning Herald*, 25 November 2004).
[44] At a Brotherhood of St Laurence hosted forum held in Melbourne in October 2003, *Banking on the Margins*, there was a generally held view between representatives of the banking industry, community workers and government that available sustainable credit options in Australia are quite limited: see further ANZ, above n 18, which discusses the findings of the forum. See also Wilson, *Payday Lending*

The result is that those in poverty are generally left to pay a higher price for consumer credit, which leaves them paying more for essential goods and services.

2. The cost of household goods and services, white goods and brown goods

The cost of expensive items, such as basic furniture, white goods (including refrigerators, microwave ovens, washing machines or dryers) and brown goods (including televisions, audio equipment or computers), can place significant financial stress on low-income households, who may not be able to cover day-to-day expenses, let alone save for lump sum expenses.[45] As a result of financial stress, low-income households are often forced to borrow to cover the cost of replacing an essential item such as a refrigerator or washing machine.[46] Where low-income consumers are unable to access mainstream credit, the use of high-cost credit adds to the expense of these important items.

High-cost retail finance

One type of credit product typically relied on by low-income households to assist with the cost of white and brown goods and household furniture is retail credit. Retail credit includes finance programs, store-branded credit cards and store cards, which are offered by the larger department stores including Myer and David Jones, as well as franchise companies like Harvey Norman, Freedom Furniture and Retravision.

While retail finance is sometimes provided directly by the retailer, it is more commonly provided by a third party entity (David Jones is one of the only in-house financing operations, through David Jones Financial Services Limited). For example, retail credit programs offered by Coles Myer (the Coles Myer Card, Coles Myer Source MasterCard and Coles Myer Source Gold Mastercard), Harvey Norman, Barbeques Galore and Retravision are provided by General Electric (**GE**) Consumer Finance. Indeed, GE Consumer Finance provides most finance programs offered throughout Australia.[47]

The primary attraction for consumers to retail finance programs, store-branded credit cards and store cards are the initial interest free and no deposit periods. In particular, for low-income households, programs that offer interest free and no deposit periods present an immediate solution to a lack of funds in the household budget to cover day-to-day expenses and to pay for major household purchases. Several respondents to the Wallis Report stated that interest free retail finance provided a mechanism through which they could purchase more expensive household items.[48]

However, where retail credit typically incorporates interest rates of around 22 per cent or more (significantly higher than interest rates on mainstream credit cards)[49] as well as establishment fees, account keeping fees and other fees and charges, the overall costs of retail credit can rapidly increase. For example, Harvey Norman offers a finance program that incorporates a 12 month interest free period, with interest payable after the interest free period at a rate of 29 per cent per annum and Freedom Furniture offers a finance program with a

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in Victoria – a research report, above n 14 at 86, which found that very few payday loan consumers were currently aware of NILS.

[45] Good Shepherd, above n 15.

[46] As above.

[47] K Needham, 'Shoppers flock to "free" credit cards,' *The Age* (13 December 2003).

[48] CLCV Survey, above n 11 at 18-20.

[49] Needham, above, n 47. See also I Hamilton, 'The charge brigade,' *The Age* (19 May 2004) and 'Credit Cards: A buyers' guide', *Choice*, published online at http://203.166.10.94/cp/money/creditcard2.cfm for a breakdown of interest rates and annual fees for 242 credit cards.

27.5% per annum. interest rate.[50] By way of contrast, a review of credit card interest rates by *Choice* magazine reported that the interest rate on mainstream bank credit card rates currently ranges from approximately 10 per cent to 19 per cent (with annual fees ranging from nil to $250, no interest free periods or varying interest free periods and various reward schemes).[51] However, we note that the two types of Coles Myer Source Card offer a rate of 17.5 per cent, more comparable to mainstream rates.[52]

The higher interest rates associated with retail credit are usually incurred when the consumer fails to repay the loan in the interest free period.[53] In such circumstances, the application of a high interest rate to the full original purchase price, backdated to the date of purchase, drastically increases the amount owed.

How much does an $800 refrigerator cost?[54]

Based on a 29 per cent per annum interest rate, $25 establishment fee and $2.50 monthly account keeping fee, the purchase of a refrigerator for an original price of $800, could result, at the end of the one year interest free period, in a total payment of approximately $1,087.00. This figure is more than 35 per cent of the original loan amount.

The experience in both Australia and the United Kingdom has shown that a central problem associated with retail finance is the lack of transparency about key terms and conditions, including the applicable interest rates and the operation of interest-free periods.[55] This lack of transparency has been attributed, in part, to the manner in which the cards are marketed and sold on the shop floor, generally with a limited explanation of critical terms and conditions.[56]

This lack of transparency can have detrimental consequences for low-income households if they sign up for retail credit products without a proper understanding of critical terms and conditions. Problems can arise if the balance to be paid out in the interest free period is not clearly identified or calculated, particularly when fees and charges are added to the price of the goods. Indeed, financial counsellors from regional Victoria have reported that many of their clients, who typically come from a low-income demographic, do not understand the true effect of interest free periods and are unaware of the fees and charges associated with the cost of the retail finance.[57] As a consequence, their clients are left with high levels of debt that they cannot hope to repay. Similarly, the Wallis Report revealed that terms such as '12 months interest free credit' are not generally well understood.[58]

Tom Gentile, the Chief Executive Officer of GE Consumer Finance Australia, the company that owns a large number of retail finance programs in Australia, has been reported as saying

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[50] Examples based on enquiries made by the CLCV in May 2004.
[51] *Choice*, 'Credit Cards: A buyers' guide,' above n 49.
[52] As above.
[53] Based on interviews with financial counsellors from regional Victoria conducted by CLCV in 2004. In Needham, above n 47, it was reported that GE Consumer Finance was asked how many consumers did not re-pay their loan within the interest free period. GE Consumer Finance declined to answer the question.
[54] Example based on figures obtained by enquiries made to Harvey Norman by the CLCV in May 2004.
[55] See generally the report by the United Kingdom Office of Fair Trading (**UK OFT**), *Store cards* (March 2004). A mystery shopping exercise undertaken for the purposes of the UK OFT report revealed that three quarters of shoppers were refused copies of terms and conditions upon their request to take them home and consider. In addition, 28% of respondents to a consumer survey said that they did not know the relevant interest rate at the time of opening the account. See also Needham, above, n 47.
[56] See UK OFT, above n 54. See also Needham, above n 47.
[57] Based on interviews with financial counsellors from regional Victoria conducted by CLCV in 2004.
[58] CLCV Survey, above n 11 at 21.

that its retail finance programs are used by consumers who are otherwise unable to qualify for mainstream credit cards.[59] Where such finance clearly comes at a higher cost than mainstream consumer credit, the result is that more vulnerable consumers are paying a higher price for basic household goods. Where anecdotal evidence of financial counsellors and consumer advocates in Victoria reveals that the debt problems associated with retail credit is on the increase, with rates of bankruptcy associated with retail finance also increasing,[60] the fundamental link between the use of high-cost credit by low-income households and poverty and financial disadvantage cannot be ignored.

Mr Gentile was also reported as saying that traditional retail cards are profitable for GE.[61] But the profit of these products lies in a significant percentage of customers failing to pay within the interest free period, without which the company lends for virtually nothing.[62] Indeed, the casework experience of the CLCV has revealed that some retail finance providers prefer low-income consumers who are unlikely to be able to repay the loan within the interest free period to those who are able.[63]

Mary's Story[64]

Mary and her partner Anthony were shopping for new white goods through a franchise white goods trader. As Mary and Anthony had recently purchased an apartment and faced significant mortgage repayments in their first year, they sought to take advantage of the interest free period offered under the retail finance program which the trader advertised. Upon making enquiries of the trader, they completed an application for finance stating that their total joint gross incomes was $130,000 approximately.

Mary and Anthony's application for finance was subsequently rejected. When an employee of the trader, Paul, contacted them to inform them that they had not been successful, he explained that the company who supplied the finance, preferred consumers who were unlikely to repay the loan during the interest free period, to ensure the loan attracted interest. On this basis, Paul suggested that they submit another application, entering Mary's income only, a total of $30,000. This time, the application was approved.

Door-to-door sales of goods and services

Many household products and services are sold or marketed door-to-door, including home security systems, household furniture and vacuum cleaners, roof repair and home or garden maintenance services.[65] While many door-to-door salespersons are reputable, reports from state fair trading agencies and consumer advocates indicate that some disreputable door-to-door salespeople engage in coercive sales techniques and exploitative practices that are

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[59] Needham, above n 47. GE Consumer Finance is also a major player in the United States of America and is currently being investigated in the United Kingdom: see also UK OFT, above n 55 at 20-21.
[60] Interview conducted by CLCV with financial counsellor from Anglicare Gippsland Morwell office in June 2004.
[61] Needham, above n 47.
[62] CLCV Survey, above n 11 at 18-19. One respondent reported that when they managed to re-pay their Buyer's Edge loan (a finance product also owned by GE Consumer Finance) within the interest free period, the company offered them an increase in their credit limit.
[63] See Mary's Story (insert).
[64] The CLCV advised Mary, whose name has been changed for confidentiality reasons, as part of their telephone advice service.
[65] Based on the casework experience of the CLCV. See also Ministerial Council on Consumer Affairs, *The Little Black Book of Scams*: *A Consumers' Guide to Scams, Swindles, Rorts and Rip Offs* (2004). at 32; Seniors Information Service, *Health and Well Being: Consumer Protection*, (updated October 2003) published online at http://www.seniors.asn.au/Hwfiles/hwcons.pdf

particularly damaging to vulnerable consumers.[66] Examples given by the New South Wales Office of Fair Trading of high-pressure tactics that are used by disreputable door-to-door sellers included:

- preying on the consumers emotions by implying that if they do not buy their product, their family will suffer (for example, asthma reducing vacuum cleaners);
- making unrealistic claims for a product; eliciting sympathy from the consumer;
- claiming the consumer has wasted their time; and
- calculating the price then offering a discount that is available only on that day.[67]

It is widely accepted that consumers are generally more susceptible to unscrupulous salespeople who visit them in their own homes.[68] Problems arise from asymmetric information between the buyer and seller, as the consumer is likely to be unaware of the market price of a particular product or service or the availability of a wider range of products or services, and the use of high-pressure sales tactics or misleading claims by disreputable sellers.[69] Vulnerable consumers may end up paying much higher prices for household products or services purchased from a door-to-door salesperson than they would have had they shopped around or influenced to purchase products or services that are unnecessary or that they cannot afford.[70]

Disreputable door-to-door salespeople also appear to target more vulnerable consumers, who are often those who are on the lowest incomes. The Aboriginal Community Benefit Fund (**ACBF**) is a notorious example of door-to-door sales targeting Aboriginal communities. ACBF provided services related to funeral expenses and arrangements. They used sales people known to the community and misleading marketing to suggest that they were an Aboriginal community organisation.[71] Consumer protection agencies and consumer advocates also report that older people have been targeted by some door-to-door scams.[72] For example, the Queensland Office of Fair Trading recently reported a door-to-door seller who made unsolicited visits to older people living in retirement villages to arrange carpet

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[66] Based on the casework experience of the CLCV. See also Queensland Office of Fair Trading (**QLD OFT**), *How to deal effectively with the Hard Sell: Advice for consumers from the Office of Fair Trading*, published online at
http://www.fairtrading.qld.gov.au/OFT/OFTWeb.nsf/AllDocs/45A9BF2CB2B52C0E4A256BE900783252/$File/The%20Hard%20Sell.pdf, at 28;
Consumer Affairs Victoria (**CAV**), *Contact Sales Scams,* published online at
http://www.consumer.vic.gov.au/cbav/fairsite.nsf/pages/of_shop_scams_contact;
NSW Office of Fair Trading (**NSW OFT**) *Shopping: Door-to-door Sales*, published online at
http://www.fairtrading.nsw.gov.au/shopping/shoppimgfromhome/doortodoorsales.html

[67] Examples from NSW OFT website, above n 65.

[68] For this reason, various state fair trading legislation across Australia contains significant protections for consumers purchasing items and services via door-to-door sales, including cooling-off rights: *Fair Trading Act 1999* (Vic), Part 4, Division 2; *Door to Door Sales Act 1967* (NSW); *Consumer Affairs & Fair Trading Act 1992* (NT), Part 7; *Door to Door Trading Act 1987* (WA); *Door to Door Trading Act 1991* (ACT); *Fair Trading Act 1989* (QLD), Part 3, Division 4; *Fair Trading Act 1989* (SA), Part 3; *Door to Door Trading Act 1986* (Tas).

[69] The problems arising from information asymmetry have also been identified as arising in the broader context of direct marketing generally (including email, telephone and direct mail marketing techniques): see J Wallace, D Ironfield and J Orr, Chapter 4, 'Case Study: Self-Regulation in Direct Marketing', *Analysis of market circumstances where industry self-regulation is likely to be most and least effective*, (May 2000), at 73-74, published online at
http://www.selfregulation.gov.au/publications/TaskForceOnIndustrySelf-Regulation/ConsultantReport/ch4.rtf.

[70] NSW OFT, above n 66.

[71] See press releases regarding action taken against ACBF by the ASIC at
http://www.asic.gov.au/fido/fido.nsf/byheadline/04057+Federal+Court+rules+on+door-to-door+sales+in+Aboriginal+communities?openDocument.

[72] CAV, *Annual Report 2002-2003* (November 2003) at 68.

cleaning work. He quoted approximately $80 but asked for payments up to $1,331 for additional unauthorised work he claimed to have done, even taking one older woman to the bank to withdraw money.[73] The CLCV also reported a case of an unscrupulous trader selling kitchen appliances and cookware who targeted newly-weds by using a list of attendees at a bridal show.[74]

Where such door-to-door sales are achieved through the use of credit (for example, through a finance contract arranged by the salesperson) the consumer will also become liable for continuing loan repayments to a third party, often a finance company, incurring high interest and additional fees and charges associated with the loan.[75] Thus, once again, the use of credit to buy household items can create additional costs for vulnerable and low-income consumers who are least able to afford to pay.

Joanne's Story[76]

Joanne, a disabled pensioner, entered into a lay-by contract with a door to door salesperson to buy cookware and other kitchen items including a water purifier, clock and knife set. The door-to-door salesperson led Joanne to believe that she had won a 'prize' at a bridal show that entitled her to purchase kitchen items valued at over $5,500 at a substantially discounted price of $2,945. Joanne agreed to make payment in ten instalments by direct debit from her credit card. The door-to-door salesperson subsequently failed to deliver some of the items and substituted less valuable items for some of the items specified in the contract. Joanne also discovered that the total value of the items was much less than represented to her by the supplier. When she refused to pay the balance of the contract price (by cancelling her credit card to prevent further payments) Joanne was sued by the supplier in the Magistrates' Court.

Nadine and Ben's Story[77]

Nadine and Ben, a young couple on a low-income with two small children, were visited by a representative of a home security system company at their home. The representative, who was uninvited, offered Nadine and Ben a free gift and a chance to win an overseas holiday if she could give them a presentation on the home security system. When they said that they could not afford it, the salesperson assured Nadine and Ben that they would not have to make any payments at all for the first 24 months of the contract. As a result, Nadine and Ben agreed to have the home security system installed. A few days later, the salesperson returned and Nadine and Ben signed a finance agreement for a loan of $2,390 (plus an establishment fee of $50). However, contrary to the salesperson's representations, payments on the loan were due monthly from the beginning of the contract.

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[73] QLD OFT, above n 66 at 31. See also QLD OFT, 'Warning re dodgy door to door trader' regarding another trader who specifically targeted older people for massively overpriced home repairs, published online at http://www.consumer.qld.gov.au/oft/oftweb.nsf/0/34FAFC34A9892C874A256CCC002E5380?OpenDocument.

[74] See Joanne's Story (insert).

[75] Based on the casework experience of the CLCV and interviews with financial counsellors from regional Victoria conducted by the CLCV in 2004. See also Nadine and Ben's story (insert).

[76] Joanne, whose name has been changed for confidentiality reasons, was a client of the CLCV. The CLCV assisted Joanne to prepare a defence relying on false representations made by the supplier and a confidential settlement was eventually reached between the parties.

[77] Nadine and Ben, whose names have been changed for confidentiality reasons, were clients of the CLCV.

3. The cost of parenting – education & health

In its report on poverty and disadvantage, the Senate Report found that the costs associated with school education are a significant cause of household financial stress.[78] In circumstances of financial hardship, low-income parents struggle to find money to pay for voluntary contribution fees as well as essential items such as uniforms, books, shoes, excursions, levies for libraries and computers, school magazines and materials for particular courses or subjects.[79] Where financial exclusion from activities can cause significant problems for young students and detrimentally affect participation rates, the negative impact of such financial stress is further exacerbated.[80]

Similarly, the costs associated with health care of dependents are a significant cause of financial stress. Low-income parents, who face a daily struggle to afford their basic necessities, are placed under increased pressure where the costs associated with choosing one necessity over another include their children's general health, well being and education.

Good Shepherd has also reported on the financial stresses associated with the cost of education and health in a report, *User Pays. Who Pays?,* which analysed the impact of government fees and charges on people with very low-incomes.[81] The report showed that the cost of education, health and public transport significantly increased during the decade 1990 to 2000, an increase that was disproportionate when measured against all consumer price index groups.[82] The report makes critical findings about the impact of increased costs on low-income households, who are faced with a daily struggle to pay for essential household goods. Good Shepherd found that low-income households are, as a result, often forced to make a choice between one necessity over another, thereby going without essential goods and services, including food, medication, school excursions and heating.[83] A survey conducted by Good Shepherd in preparing its report also revealed that the use of credit to pay for education and health costs dramatically increases the financial burden on low-income households.[84]

Other research has revealed that sole parents, particularly female sole parents, commonly experience high levels of hardship when it comes to the costs of caring for dependents

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[78] A number of submissions to the Senate Committee noted the financial stress associated with the costs of education. For example, Anglicare Tasmania noted that uniform, excursion and camp costs are a major cause of financial stress for households: Senate Community Affairs Reference Committee, above n 2, *Chapter 7: Education and Training*, at 157-159.

[79] Senate Community Affairs References Committee, above n 2 at 156-159; Smallwood, Webster and Ayers-Wearne, above n 7 at 30.

[80] Senate Community Affairs References Committee, above n 2 at 157. The Senate Report found that lack of financial means often results in children from low-income households being excluded from activities which come at a price (such as excursions and camp) and going to school without breakfast or lunch.

[81] Smallwood, Webster, and Ayres-Wearne, above n 7; Anglicare Victoria, *Financial Hardship in Victoria: Survey* (May 2001).

[82] Smallwood, Webster, and Ayres-Wearne, above n 7, at 18-19.

[83] Smallwood, Webster, and Ayres-Wearne, above, n 7. Good Shepherd's report referred to the *Australian Bureau of Statistics Household Expenditure Survey 1998-99,* above, n 11, which showed the reality for low-income households was often going without activities or items for the reason that the household could not afford them. Similarly, in its report on poverty and disadvantage, the Senate Report noted the various alternative measures of poverty to the mainstream measure which looks at the cash income of households. One of the alternative measures is the use of deprivation measures, that is, measuring the items or services which a household goes without as a result of a shortage of money. One proponent of this measure is Professor Saunders, referred to in the Senate Report, who discusses the need for a wide definition of deprivation measures to include all living costs. See further, Senate Community Affairs References Committee, above n 2 at 24-26.

[84] Smallwood, Webster, and Ayres-Wearne, above n 7 at 55.

including child-care, education and medical costs.[85] In such circumstances, sole parents may go without meals and heating and resort to high interest credit to cover the costs.[86] The CLCV's report on payday lending in Victoria found that 25 per cent of all payday loan consumers are sole parents who use payday loans as a means to meet the costs of their children's education and health.[87] Where payday loans represent credit of an unconscionable nature, this statistic raises serious concerns about the level of disadvantage suffered by low-income single parents and their children.

4. The cost of motor cars

For most Australian households, motor cars are a necessity, providing transport to work and to school. However, cars are an expensive household purchase and for low-income households can represent a major cause of financial stress. For the reason that they cannot afford to purchase a car or have their cars repaired, many low-income households are forced to go without.[88]

In the experience of consumer organisations and community workers, it is clear that low-income and vulnerable consumers often pay more for finance used to purchase motor cars, whether it is a loan offered by a fringe credit provider or through trader arranged finance, which often comes at a much higher cost than might be obtained elsewhere.[89] Increasing the costs associated with alternative finance, young people may be persuaded into purchasing loan insurance. Indeed, the Australian Securities and Investments Commission's, 'Top 10 finance tips for Young Adults', warns that finance companies or motor car traders may represent that the approval of the loan is dependent on the consumer purchasing loan insurance.[90]

Higher cost finance is often relied upon because the low-income motor car buyer is not aware that there are less expensive options available. However, low-income buyers may also simply have no choice. Indeed, one respondent to the survey conducted by the CLCV was refused a car loan by a mainstream bank which then suggested he apply for a loan through a car dealership as an alternative.[91]

Increasing the cost associated with trader arranged finance, unscrupulous traders have been reported as encouraging young car buyers to exaggerate the amount of their income and the period for which they have been employed in order to guarantee approval of finance.[92] In doing so the consumer often lacks a proper understanding of the possible consequences of their actions and may become seriously overcommitted as a result. However, their actions have been influenced by conduct on the part of the trader that is potentially misleading and deceptive.[93] Where the consumer has a particular vulnerability, such as an intellectual

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85 Senate Community Affairs References Committee, above n 2, Chapter 10: 'Women and Sole Parents'.
86 See generally the Department of Family and Community Services (FaCS) submission to the Senate Committee inquiry into poverty as cited at Senate Report, above n 2 at 227.
87 Wilson, *Payday Lending in Victoria – a research report*, above n 14 at 73.
88 Anglicare Victoria, above n 81.
89 The Victorian Automobile Chamber of Commerce publication on buying cars, *Better Car Deals; Your Guide to Buying a New or Used Car* (2001) recommends shopping around for finance as trader arranged finance is generally more expensive.
90 For further information go to www.fido.asic.gov.au/fido/fido.nsf/byheadline/Top+10+finance+tips
91 CLCV Survey, above n 11 at 12.
92 Based on the casework experience of the CLCV. The CLCV has also seen cases where the trader has inflated the contract price, including the deposit paid by a corresponding amount, on the premise it will assist the consumer to obtain the finance.
93 See *Trade Practices Act 1975* (Cth), section 52.

disability or a mental illness, the trader's conduct could also be considered to be unconscionable.[94]

In October 2004, the CLCV published a report into the motor vehicle industry titled, *Buying a Car - Pitfalls for Consumers* (the **Car Report**).[95] The Car Report, which was commissioned by the Royal Automobile Club of Victoria, documents case studies from the CLCV, the Consumer Credit Legal Service (Vic), Consumer Affairs (Mallee) Mildura, Peninsula Community Legal Centre and Anglicare Gippsland. These case studies reveal systemic problems experienced by consumers when purchasing a new or used car from a motor car trader including misleading and deceptive conduct, unconscionable conduct, harassment and coercion, problems with car and finance insurance and lack of consumer awareness of contractual rights such as cooling-off rights and statutory warranties.

Unscrupulous practices such as those identified in the Car Report can only exacerbate the costs associated with high cost car finance faced by low-income and vulnerable consumers. Furthermore, low-income and vulnerable consumers are more likely to enter contracts for the purchase of motor cars based on misrepresentations about the quality, price or history of the vehicle, as a result of high pressure sales techniques or a lack of disclosure about the contents of the contract.[96]

John's Story[97]

John, a low-income consumer, bought a motor vehicle from a licensed motor car trader. The vehicle was represented to him as an imported 1995 motor vehicle. Within six months of purchase, the car began to break down regularly. Eventually, the car's head gasket blew and John was told that the engine needed to be rebuilt at a cost of approximately $8,000. Several mechanics had noted that the poor condition of the car was unusual for its ostensible age and kilometres.

John made various inquiries about the car with relevant agencies, including VicRoads, the Federal Office of Road Safety and the head office of the motor car company. His searches revealed that the car was a 1995 Australian model that, following an insurance write-off, had been repaired using major components from an imported 1990 motor vehicle (which was imported for dismantling purposes only). The rebuilt car was re-registered in 1997. Apart from the VIN, however, John's motor vehicle appeared to be composed entirely of the 1990 imported vehicle and not the 1995 Australian vehicle.

In the Car Report, the CLCV also identified a growing incidence of problems being reported in relation to with 'rent to buy' arrangements for the purchase of motor vehicles.[98] Under this type of arrangement, the purchaser agrees to pay the seller in instalments to rent a motor vehicle for a certain period of time, at the end of which ownership of the vehicle is transferred to the purchaser. The purchaser is often responsible for the cost of repairs and maintenance, registration fees or insurance costs during the contract period.

A rent to buy arrangement may provide an alternative method of finance for the purchase of a motor vehicle for the purchaser who has a low income or poor credit rating and cannot access

[94] See *Trade Practices Act 1975* (Cth), section 51AB.
[95] CLCV, *Buying a Car - Pitfalls for Consumers: A Case Study Report Prepared by the Consumer Law Centre Victoria for the Royal Automobile Club of Victoria* (October 2004) published on-line at www.clcv.net.au.
[96] A Maynard, Consumer Credit Legal Service, *How to get out of a car contract* (1997).
[97] John, whose name has been changed for confidentiality reasons, was a client of the CLCV. The CLCV assisted John to bring an application in the Victorian Civil and Administrative Tribunal (**VCAT**). The matter settled prior to hearing.
[98] CLCV, above n 95 at 19.

mainstream car finance or other credit. However, the price of the contract can be over-inflated by the seller or incorporate hidden fees or interest. In addition, the purchaser is unlikely to be covered by the protections usually afforded to borrowers under the *Consumer Credit Code*, such as a right to vary a loan contract in circumstances of financial hardship, or to purchasers of used motor vehicles under the *Motor Car Traders Act 1986* (Vic), such as cooling-off rights. Examples of such contracts have also revealed the use of contract terms that are strongly biased towards the interests of the seller, for example the use of unfair penalties for breach or termination of the contract.[99] If the purchaser is late with a payment they may risk losing the car and all of the payments made under the contract. As such, this type of arrangement can be highly exploitative of low-income consumers. It shows, once again, how low-income consumers who cannot access affordable credit can end up paying more for essential goods and services.

Conclusion

The reliance of low-income and vulnerable consumers on high-cost credit to pay for basic goods and services has created a serious inequity. Where the poorest members of our society are paying the highest market prices for credit, the result is that low-income households pay a significantly higher price for essential household goods and services. As this chapter has argued, the long term consequences of high-cost credit include increasing the household's levels of over-commitment and indebtedness, diminishing their capacity to manage their debts and exacerbating their position of disadvantage.[100]

This inequity can only be addressed through a uniform model of robust consumer protection that restricts the scope and operation of high interest credit in the marketplace. However, a robust consumer protection framework will only be effective if it is combined with a sustained commitment by government, industry and the community sector to the provision of fair and affordable credit options for people in poverty and disadvantage. To otherwise leave the most vulnerable members of society open to the detrimental impacts of inequitable credit is to fail in the commitment we need to make to address the levels of poverty and disadvantage that exist in the community.

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[99] As above.
[100] See submission by the ACA cited in Senate Community Affairs References Committee, above n 2 at 193-194.

APPENDIX A

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CONSUMER LAW CENTRE VICTORIA
DO THE POOR PAY MORE?
RESEARCH REPORT

prepared for

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APPENDIX A

TABLE OF CONTENTS

1.0 EXECUTIVE SUMMARY

A study consisting of 33 telephone in-depth interviews with a range of householders in different circumstances but all living in households that earn a total of less than $30,000 and that reported having difficulties in paying basic household bills in the last year found:

With regards to credit:

- 13 of the 33 Victorians interviewed had been refused credit although most others had not applied for credit either because they did not believe they would be accepted or they did not believe in using it;
- Respondents believed that credit had been rejected on the grounds of their low incomes and/or poor credit ratings. Personal loans from banks and credit cards were the main types of credit refused. In the case of being refused personal loans, some respondents were offered credit cards instead. If money was needed for a short time then respondents' first instincts were to turn to family and friends for help, however where no such support is available, credit cards (if accessible) are used. Where major items were to be purchased over a long time frame, respondents leaned towards borrowing money from finance companies, especially to purchase cars.
- When asked which companies respondents would not approach for a loan, some said banks because of fear of rejection, however finance companies and loan sharks (sometimes considered to be one and the same) were mentioned frequently because of the way customers are (perceived to be) treated.

The same number of respondents (13), although not entirely the same people, had purchased major goods and services using credit in the last year. Their experiences were as follows:

- Most purchases were considered to be major and essential, although in some cases day to day expenses including food were paid for using credit cards. While some made a conscious decision to use credit cards for day-to-day purchases in order to control cash flow or gain Frequent Flyer points, for most credit was only used for these items in emergency situations. For larger items such as cars, computers, furniture and major whitegoods, finance companies were the major source of credit.

- Of the 13 respondents who had used credit, 3 had experienced difficulties in meeting the repayments, although only one had defaulted on the loan as a result of a business failure.
- Most respondents were happy with the deal they got in terms of the ticket price of the items purchased and the terms and conditions of the credit used to buy them. Several respondents felt that finance would have been less expensive had they been able to secure a personal loan from a bank, building society or credit union and some felt that they could have obtained a better ticket price had **they** been more patient.
- While the subject was not raised by many, those that mentioned interest free periods did not seem to understand that retailers build the lack of interest into the ticket price or into the interest payable once payments are due.
- Although not strictly speaking "credit", some people who rely entirely on government benefits reported getting advances of up to $500 from Centrelink to tide them over or to buy items and "paying this back" by receiving a reduced benefit for a pre-determined period thereafter.

As the study was conducted by telephone everyone had access to a fixed line phone, thus we are unable to comment on the ability of these respondents to access such services. Nonetheless, one respondent had been refused a telephone and had the current phone registered in a parent's name. The following points are of note in relation to telecommunications:

- 9 of the 33 respondents had borrowed money to pay telecommunications bills in the recent past. 15 had been charged late payment fees. Late payment fees do not act as a great deterrent to paying bills late - other bills, in particular, mortgage/rent and utilities such as electricity, gas and water, take precedence over telecommunications for all except those whose general livelihood depends on phone and/or internet services, for example, the self employed or those with health problems in the family. People living outside Melbourne see these fees as a greater threat and this also relates to dependence on telecommunications.
- 26 of the 33 respondents have mobile phones and of these 14 are pre-paid. While this sample is not representative, the proportion of all respondents having a mobile phone (eight in ten) is the same as the general community, but the proportion using pre-paid mobiles is higher. Respondents choosing the pre-paid

option do so in order to control their phone costs or to avoid monthly connection fees. People living in share homes find having individual mobile phones less problematic than a single fixed-line phone as each is then responsible for their own bills.

- 11 respondents had been disconnected from a telecommunications service. This high proportion probably relates to the speed and ease with which disconnection can occur, coupled with the lower priority placed by most respondents on access to telecommunications and the lower reconnection fees compared with other utilities. When money is tight, other bills take priority over telecommunications as the problems and costs associated with losing connection are considered to be lower than for other household expenditure items.
- Internet is desirable for some of the 13 respondents who did not have easy access to it. Households containing someone who is studying or working from home consider it a "must have". All respondents reported being able to access the internet through cafés and public libraries if the need arises.
- 7 respondents reported having telecommunications services disconnected, all bar one involved changing internet providers. While cancellation fees were levied these were, generally, thought to be outweighed by the benefits gained from using a different or no service provider.

After paying for major items such as rent/mortgage, major loan repayments (car loan) and, in most cases, food, utilities were considered to be the most important household expenditure items. Electricity was the most talked about of these, although this is not surprising given that only a third of respondents resided in Melbourne with a third being in major regional centres and the rest in rural Victoria – places that are less likely to have access to mains gas. On this subject:

- 17 of the 33 respondents reported having been in a situation where they could not afford to pay a utility bill in the last year. Most respondents turned to friends or family for short-term help. Suppliers were seen to be helpful when payment difficulties arise, offering payment instalment plans and regular payment options to help out. Nonetheless, 3 respondents had been disconnected from one or more of the major utilities and had suffered considerable discomfort, both financially and physically, while waiting for reconnection.

- Of the 33, only one respondent believed that energy costs comprised a low proportion of household running costs and all respondents reported a range of measures they were taking to reduce their energy bills. Some respondents reported not using heaters and other appliances at all to reduce their costs.
- The subject of late payment fees drew mixed, but generally negative, responses from respondents. Some said it would not affect them in the hip pocket as they always paid on time, but it would impose additional stress to ensuring payments were met. Others felt they were already paying these and managing to do so. Some felt that their introduction would cause considerable hardship, especially those who continually pay late, or pay late on occasion because of the way in which they receive income and/or pay their bills. While most felt that late payment fees would make them pay on time, some felt that they would simply have to pay these by reducing expenditure elsewhere. Late payment fees appear to pose more concern to respondents living outside Melbourne.
- 21 of the 33 respondents paid the Energy Concession Rate. Single parents and elderly pensioners were the most likely of these to receive the Concession Rate **and** to rate the proportion of their household expenditure given to energy as "high".
- All 6 respondents who had disconnected a service themselves lived outside Melbourne. All except one of these related to internet access and the high fees associated with its use. While most respondents felt they had paid disconnection fees these were felt to be offset by the savings made in changing to a new provider.

From these findings we conclude:

- Finance options are limited for low and fixed income Victorians who apply for credit and are even more restricted for those who feel they have no hope of having their credit application approved. The advantages of owning major items, especially a home, are not lost on respondents, one of whom only qualified for this study because of the financial straits she has put herself in to enter the property market.
- Where personal loans are rejected, respondents are directed to finance companies especially for major purchases. While respondents are aware that the "cost" of money to them is higher than personal finance from a bank, credit union or building society, the items they are purchasing are considered to be sufficiently essential that they must proceed.
- Where credit applications are refused, Victorians are faced with resorting to other means to cover occasions where they are temporarily short of money. In particular, family, friends or, if they are in receipt of government benefits, advances from Centrelink are used.
- Respondents are therefore mostly using more expensive forms of credit than "mainstream Australia" and have little choice in this.
- Terms such as "12 months" interest free credit are not well understood and it is thought that if the loan is paid within the timeframe specified **no** interest is payable.
- All respondents in this study had fixed line phones and thus, are not entirely representative of all households living in financially difficult circumstances. About 80% of Australian homes now have mobiles in them[1] and, although this sample is small, the proportion reporting having mobiles is the same as the average. However, unlike the average, more than half of those having mobile phones in this study had chosen pre-paid mobiles – the more expensive option, so that they could control costs or avoid ongoing connection fees.
- A high proportion of respondents reported billing problems, being charged late payment fees and being disconnected. It seems that a combination of respondents' placing telecommunications bills below others in terms of priority order for payment, coupled with the relative speed and ease with which

[1] IDC Research, May 2004 – "Upwardly mobile: Australian Cellular 2004-2008 Forecast and Analysis"

disconnection and late fees can be levied, is responsible for this. Late payment fees pose a greater problem the greater the level of dependence there is on the phone. This seems to be related to remoteness with respondents living in regional and rural Victoria being more likely to say these fees pose a threat.

- There is some evidence that people living in share homes opt for mobiles as well as, or instead of, fixed line phones.
- Most people who wanted internet access had it and felt the costs to be reasonable. However, most of the service disconnections involved the internet and all but one were outside Melbourne highlighting the relatively greater expense involved in using it where calls to ISPs may be charged at STD rates.
- Utilities are given a high priority in terms of paying bills to maintain services, with most respondents putting only food and major ongoing payments for investments such as homes, above these in their priority listing. There is much evidence to suggest that these respondents are taking many measures to reduce energy consumption and it is very likely that some would consume more energy to attain a basic level of comfort, if they had the means to pay for it.
- Disconnection rates for utilities are lower than for telecommunications because of the higher priority placed on paying these bills and the accommodating measures that suppliers are taking, albeit that these are legislated for[2], to assist with billing problems.
- The introduction of a late payment fee would pose considerable problems for the majority, if only to introduce additional stress to the already fraught juggling act that many undertake when deciding the order in which to pay bills with only limited funds available.
- With the exception of the costs of some telecommunications services, there is no evidence to suggest that low-income householders are more or less disadvantaged on the basis of where they live.

[2] See Electricity Retail Code (October 2001), Gas Retail Code (December 2002) which include guidelines that retailers must meet in respect of supply and access to services in order to meet the terms of their retail licenses.

2.0 BACKGROUND AND OBJECTIVES

CLCV has been funded by the Consumer Credit Fund to undertake a research and education project, titled 'Do the Poor Pay More?' (**Poor Pay More Project**). The project aims to analyse, from both an empirical and theoretical viewpoint, the differential cost for people living in poverty. The hypothesis is that differential pricing of essential goods and services for people in poverty, compounded by the need to access differentially priced credit products to fund purchasing goods and services, exists in the marketplace.

In summary, qualitative data is needed which will inform the hypothesis regarding whether or not people in poverty are paying more for banking, credit, telecommunications, utilities and general goods and services (such as furniture etc) than wealthier consumers.

There are four key areas of investigation and key questions as follows:

- Credit
  - Did you apply for a loan, but were refused? What sort of institution was it (bank, building society, pay day lender) and what sort of loan (credit card, interest free purchase, personal loan, housing loan etc)
  - Why do you think you were refused/ what reason were you given for the refusal?
  - How did they treat you - nicely, rudely, like they didn't want to know about you? Are some places more likely to be welcoming than others eg payday lenders?
  - Are there some places you would never even try and go for a loan - eg banks; if so why?
- Goods and Services
  - In the last 12 months have you used credit to pay for any major household items? Which types of credit?
  - Why did you use the type of credit?
  - Have you been able to repay the loan or have you defaulted on the loan?
  - Did you buy the goods because you needed them or did you feel pressured by the salesperson?
  - Did you shop around on the price of goods and/or the credit used to pay for goods?

- Relating to Department store cards – What is your understanding of the interest free period? What are the terms and conditions of use?
- Did you meet the terms of the credit contract? If not, what happened?

- Telecommunications
  - Do they have a home telephone (that they can make calls from)?
  - If not, why not? Would they like to have a home phone service? If so, why?
  - Do they have a mobile phone? If so, pre-paid? If pre-paid, have you ever lost credit because the credit expired before you could use it?
  - Have you ever had to borrow money to pay a telephone bill? If so, fixed-line, mobile or both? How/from whom did you borrow the money?
  - Have you ever been charged a late payment fee for paying a telephone bill late?
  - Does the threat of being charged a late payment fee affect whether you pay on time?
  - Have credit management/debt collection charges ever been added to your telephone bill for not paying the bill on time?
  - Have you ever cancelled a telephone or Internet contract and had to pay an early termination/cancellation fee? If so, why did you cancel the contract early?
  - Have you ever been disconnected from the telephone for non-payment of a bill? If so, did you pay a reconnection charge to be reconnected? How much?
  - Do you have Internet access at home? If so, why did you obtain the service? If not, why not? Would you like to have Internet at home? If so, why?
- Utilities (electricity, gas and water)
  - Have you ever had to borrow money to pay a gas, electricity or water bill? If yes, from whom did you borrow the money?
  - Have you been asked to pay a refundable advance before being connected to gas, electricity or water services? If yes, how much did you pay? Was it difficult for you to come up with the money?
  - Have you ever been disconnected or restricted from a utility service for non-payment of a bill? Were you charged to have the service reconnected?

- Have you been offered a market contract for gas or electricity services? Have you requested a market contract and been denied one? If yes, what is the reason you were given?
- Have you ever been charged a late payment fee or interest charge for paying a water bill late? If yes, how much were you charged?
- Do you regularly pay gas or electricity bills late? If a late payment fee was introduced would this make you pay your bill on time? If not, why not?

A qualitative methodology was designed to tease out answers to these questions.

3.0 METHODOLOGY

Recruitment for this project was arranged in conjunction with a small quantitative telephone survey designed to gauge whether and to what extent Victorians living in low income and fixed income households are better off since full retail competition entered the Victorian electricity industry.

To qualify for either study, respondents needed to live in households earning less than $30,000. To qualify for this study, to ensure a range of views was represented, the following interviewing grid was established with the numbers in brackets being the number of in-depth telephone interviews completed:

	Group of young people	Young couple	Single parent	Older families	Older couple
Source of income					
• All earned					
○ Metro	1	1 (1)	(1)	1	1
○ Rural	1 (1)			1(1)	
○ Regional urban	1 (1)	1 (2)	1 (1)	(1)	
• Mostly pensions and benefits					
○ Metro	1	1	1 (1)		1 (4)
○ Rural		1 (1)	1 (2)	1	1 (2)
○ Regional urban	1		(1)	1	1 (1)
• Combination of earnings and benefits					
○ Metro	(3)	1 (1)	1 (1)	1	1
○ Rural	1		1 (1)	1 (2)	1(2)
○ Regional urban	1	1	1 (1)	1 (1)	1
TOTAL = 33	**7 (5)**	**6 (5)**	**6 (9)**	**7 (5)**	**7 (9)**

As the table above shows, of the achieved interviews:

- 12 respondents lived in Melbourne
- 12 respondents lived in rural Victoria; and
- 9 respondents lived in regional Victoria

Respondents were recruited at random from the electronic White Pages listings during the daytime, evenings and weekends. The sample was boosted with numbers from areas that CLCV has outreach programs in including:

- Warrnambool
- Swan Hill
- Morwell and surrounds

In the city, areas with high concentrations of public housing and/or where students tend to congregate were also loaded disproportionately in the sample. Respondents were invited to undertake a short questionnaire, and if they met the criteria in the table overleaf to agree to a longer interview. Participants were offered a $20 Coles Myer voucher in recognition of the length of time donated in the case of the longer interview – the results of which are reported here. The discussion framework used for the interview is appended.

Interviews were conducted between May 12th and 27th 2004.

It is important to note that respondents were contacted by fixed line phone. Therefore we were unable to explore means by which financially disadvantaged Victorians deal with being denied access to this service.

Qualitative research is subjective in nature. Numbers quoted in this report should be treated as indicative.

4.0 DETAILED FINDINGS

Four key areas were investigated:

- The role of credit overall
- The use of credit to purchase major household items
- Utilities
- Telecommunications

While each area was investigated separately, respondents were asked to think about expenditure across the board in order to establish their key priorities. Taken together, payments on major investments such as houses and cars take first priority then the key item is food, followed by essential services, especially electricity and water. Items then are purchased (or sacrificed) on personal preference. There are exceptions to this rule. For example, where a family is dealing with ill health then telecommunications assumes greater importance as does finding money for medical bills. Similarly, the self-employed and those who are studying, place a higher importance on telecommunications as it affects their ability to operate to a greater extent than others.

For example, one young person who has started his own business, believes the telephone is more important than utilities, because without the phone he has no means of earning any money!

> *Utilities are less important because my phone is needed for my business, so if I was disconnected people couldn't get through to me and the business would die* – young person, all income earned, rural Victoria.

While food was most often mentioned top-of-mind as the most important item, respondents were prepared to compromise to pay major bills in terms of the quality, type or amount of food consumed.

> *I don't give up food (to pay electricity bills), but I feel like I'm forever going to the supermarket and then getting to the checkout and having to put stuff back on the shelves because I don't have enough money after paying the bills. I hate that!"* – single mother, all benefits, regional Victoria.

> *It's very important – especially electricity and the heating. I'm not going cold for nothing! If you don't use the heating you get sick and then you have to pay doctor's fees, it's like a vicious circle. It's the same with water. You can't cut back there. Because you've got to make sure you are clean and hygienic and look after yourself* - single mother, all benefits, regional Victoria.

For those respondents who are purchasing a major asset, be it a home or a car, re-payments on the largest loan take priority:

> *Yes, we sacrifice our grocery /entertainment /basic living costs in order to pay the bills on time. Utilities are more important than the phone - we have a mobile. But the direct debit for the mortgage and the car loan go first, then we pay designated bills, then thirdly we use what's left over to budget for the remainder of the period until we get paid again* – older family, income all earned, Melbourne

Although the question was not asked directly, the majority of younger respondents were renting their accommodation and this was clearly a major cost to them.

> *Utilities make up a moderate proportion of household costs, but rent is very high* – single mother, all benefits, Melbourne

4.1 The Role of Credit

A key assumption of this project is that low income or people living in financially constrained circumstances have less access to credit and, where it is forthcoming, are penalised for low income or poor credit ratings by paying higher interest and other rates for it.

While 13 of the 33 respondents claimed to have had credit refused, most others either had not applied because they did not believe they would be accepted or because they did not believe in it.

Most people who had applied for credit had applied for a personal loan for a major item (especially cars) or a credit card for general use. However, there were circumstances when loans were wanted for short periods to overcome unforeseen outlays. There is some evidence that the loan would have been more helpful than the solution that was found.

> *I know he (husband) went to get a loan because our car blew up and was rejected because we hadn't paid a water bill. So he took it to the garage and we hope to God it doesn't blow up again. It's taken us six months to pay off that garage bill. We were charged interest on the bill* – older family, all income earned, rural Victoria

Credit cards were considered useful for emergency situations and when regular bills were higher than anticipated:

> *Groceries are purchased on credit when additional or extra payments or late payment fees come into effect or unexpected situations have to be dealt with* - older family, all income earned, Melbourne

> *I once applied for a credit card with NAB. I only wanted it for emergencies as my parents live overseas. I got refused on the grounds of low income. I told my parents what happened. They were concerned and agreed that I needed some kind of emergency funds. So I now have a "supplement card" attached to my father's credit card* – young person, benefits and income, Melbourne

There is also evidence to suggest that there is misinformation and misunderstanding. For example, a middle-aged pensioner who owned her house outright approached her bank to see whether she could borrow money for a car against her home and was told that she could not do this. This respondent obtained finance through a finance company, but it prompted her to make the following comment:

> *I feel demoralised by the fact that pensioners and low income earners can't get loans.* Middle aged pensioner, rural Victoria

Some respondents displayed an aversion to taking on any type of credit:

> *I don't want to live beyond my means. I'm not in a position to pay the bank – I stay away from credit – it is trouble!* – young person, combination of benefits and earnings, Melbourne

> *I don't believe in credit or loans. If you don't have the money to pay for it, you're not meant to have it* – aged pensioner, Melbourne

But there are special circumstances:

> *When I separated from my husband we borrowed off his house to get a loan on mine. This was the only way we could get a house. The bank thought it was an investment property, gave us the loan and when we finalised the divorce we signed the house over into my name. It was the only way I had to do it as no other bank would have given us a loan. Our bank manager advised us to do this* – single mother, all benefits, rural Victoria

> *Yes, once, for one of my husband's missionary trips he was asked to bring a video camera to capture his work. Though a friend offered to lend us one, it was too heavy. It was considered essential. We couldn't afford to buy it up front. AGC financed it with six months interest free. It was paid off within this period and no interest was paid* – age and disability pensioner, Melbourne

Thus there is little doubt that the hypothesis that people living in financially constrained circumstances have restricted access to credit and the credit offered is of the most expensive form. For example, credit cards rather than personal loans or mortgages. The following section elaborates further on these findings.

4.1.1 Applying for Credit

As mentioned earlier, 13 respondents had applied for credit and had their applications rejected. Others were not confident that an application would be looked on favourably and/or had not even tried.

> *I would never bother to apply for a loan as we would be refused* – older couple, combination of benefits and earnings, rural Victoria

> *We enquired about consolidating all our loans and just having one payment and the answer we got we weren't happy with, so I guess we didn't get rejected, but we would have if we'd applied. Our home loan is through our parent's estate so we don't have interest on it. They (the bank) wanted us to borrow money from them to pay off the house ($30,000) and then they would give us a loan – which is daylight robbery because when their interest kicks in we'd have to pay double!* – older couple, combination of benefits and earnings, rural Victoria

Although in one case an apprehensive respondent had been successful…

> *I wouldn't bother applying for credit because I can't afford it. I have a bad credit rating, I wouldn't even try. I have a car with Toyota/Esanda. I went to a number of car yards and was refused from a couple, but this one accepted me. I just signed straight away and didn't read the fine print (or any print). The car is my most important and most essential asset. I have no idea of the terms and conditions or whether I've got a good deal from Esanda. I didn't go to the bank because I tried that before and was told that even though I own my own house outright my income is too low* – middle aged pensioner, rural Victoria

So, this respondent had not attempted to borrow against her home as she felt that she was not creditworthy – which may have been a less expensive option.

Personal loans were the main financial instrument mentioned and these were usually for large items, such as cars, that would be paid back over a long time frame. In most cases, respondents turned to family or friends when short-term financial help was required.

However, in the case of unforeseen circumstances, such as major repairs to a car, finance had been applied for or, if the respondent had one, credit cards had been used.

Banks and credit card companies were those most often mentioned as rejecting applications by this group of respondents:

> *I tried with Westpac. The credit card was refused because my income was too low. It was a blatant rejection and they did not offer an alternative suggestion* – young person, benefits and income, Melbourne

> *Last week I went for a personal loan with ANZ bank. They refused me because I have a bad credit rating (I hadn't paid one Optus bill). I received no help from them regarding suggestions or alternatives* – young couple, income all earned, Melbourne

> *I tried AGC a few times when I had my old job and didn't earn enough. No alternatives were offered. I had to get a job that paid more – it was as simple as that* – young couple, all income earned, regional Victoria

> *I was refused by the Bank of Melbourne. They didn't tell me the reason, but I know the reason. I have a bad credit rating because my ex's new girlfriend stole my Keypass and changed the photo in it. She bought mobiles in my name to the value of $1,200. One of the phones was with Vodafone and I explained to them what had happened. Vodafone was able to look up that I had a pre-paid phone with them and they wiped the bill she had made using my Keypass. But Telstra said the bill was in my name, so I had to pay it at $50 a fortnight. They've just called me to say I skipped three payments, but I don't care. I'll pay it when I'm good and ready. It's not my bill!! To meet this Telstra bill I've given up a pair of pants and several dinners! I haven't been to the police because my ex beat me up and threatened to kill me. The police did nothing to help me then and they won't do anything now* – young couple, benefits and income, Melbourne

> *I was refused a loan from the bank (CBA) for a motor vehicle. I needed a vehicle, I was separating from my husband. The CBA said that I was renting a property, was a single mother and on casual employment. I had no credentials according to them. They suggested a credit card* – single mother, combination of benefits and earnings, rural Victoria

A year ago I looked into home loans. My mother enquired for me. It turned out that I may have been eligible for a $100,000 loan, but only just and that would not be enough (to buy anywhere) anyway. I was not optimistic about it. I would normally not even consider any loan because my income is too low – single mother, all benefits, Melbourne

I applied to get a loan for a car from Bendigo Bank and got refused because I didn't earn enough money to be able to pay it back. I needed the car fairly desperately. They gave me alternatives and told me to apply for a loan through a car dealership – single mother, all benefits, rural Victoria

When we got the computer I rang around all the credit unions for a personal loan and they all said, "no". There was a place in Morwell that was advertising giving small loans to pensioners. The maximum I could borrow from them was $2,000 which was what we needed. We had to pay it back in six months which was impossible for me. We also would have had to put a car (which I don't have) or my whole house full of furniture up as collateral. My ex-husband ended up paying for the computer in cash. I know he would have saved out of his wages and gone without paying other bills like health insurance – single mother, all benefits, regional Victoria

I wanted to get a Virgin credit card, but they said I couldn't afford it. I already have a Coles Myer card and I can change that into a Mastercard. But I wanted the Virgin credit card because of the low interest rates. There is a big difference in the interest rates. I won't be able to buy a TV and lounge suite I was hoping to get next year because of the interest rates on the Mastercard – single mother, combination of earnings and benefits, Melbourne

We applied for a Virgin credit card because it had no annual fee and we thought the Fly Buy option might be better given that it is Virgin – a flight company. We were rejected on the grounds that my base income was too low. Ideally we would have had the two cards and eventually phased out whichever was the most expensive – older family, combination of benefits and earnings, rural Victoria

However, some respondents, especially aged pensioners, did own or were buying their homes and had successfully received finance. One young couple only qualified for this study by dint of putting themselves into difficult financial circumstances in order to *get ahead.* The respondent's partner is completing his studies and she is re-training as a child care worker…

> *I've worked since I was 13 and got a deposit. I lived with my parents so it was easy. I had the deposit and the rent money covered the mortgage – except for about $100 a month, which I could find. So when I bought this unit, I could borrow against the house. I'm 23 at the moment and I bought the house when I was 19 – lucky I bought it, it's worth double what I paid for it!* - young couple, benefits and income, regional Victoria

And another respondent had taken on large borrowings to start a business that subsequently failed.

> *I saved up $17,000 and borrowed money from 5 banks and building societies to get $75,000 to start a stripper business. This included a $42,000 car loan (from a bank). After 7 months the six girls working for me had only one gig a week and I couldn't pay the $500 or so a week in loans, I thought I'd be making much more. I threw in the towel and filed for bankruptcy – I lost the phones, car and credit rating* – single father, benefits and income, regional Victoria

Needless to say, this respondent is not very enthusiastic about his chances of obtaining finance in the future.

4.1.2 Organisations that would not be approached for credit

Finance companies and *loan sharks* were mentioned most frequently as companies to be avoided:

> *Possibly not loan sharks. They beat you up if you don't pay!* – young person, benefits and income, Melbourne

> *Loan sharks, for example, AGC and finance companies because they don't have any hesitation in robbing you. They are prepared to see you in any financial difficulty rather than knock you back!* – single mother, combination of benefits and earnings, rural Victoria

> *When I was 18 I got finance from AGC. I didn't pay my last payment for a week too late. They started hassling my mother. It was probably my fault, but I'll still never go with them again* – single dad, all income earned, Melbourne

> *In the early years when we were first married, we borrowed off AGC finance and AVCO loans. It was so hard to get clear of those loans – everything goes towards it because the interest rate is so high. The monthly payments pay the interest first. If you try to pay it off they charge you! I wouldn't go there again* – single mother, all benefits, regional Victoria

> *Yes, organisations like AVCO finance because they're just ruthless. You never get to pay off those loans. The harassment is ridiculous – very rude. It should be illegal to hassle and harass your customers like that* – older family, combination of benefits and earnings, rural Victoria

> *GE Finance – their interest is too high* – young couple, income all earned, Melbourne

> *GE Finance and loan sharks – you owe them $500 and they want you to sell your house and children. They're vicious. This has never happened to me, but I've seen it happen to my friends. GE Finance backs the Coles Myer card and that's one of the reasons I wanted to get rid of it (CM card). It's the principle. As soon as I pay it off I'm*

> *getting rid of it* – single mother, combination of benefits and earnings, Melbourne
>
> *Some finance companies because a long time ago my husband bought a car and missed one payment and they confiscated the car. He only had $300 left to pay and they came to his work and took it with all his personal belongings, which he couldn't get back. It was a Adelaide finance company* - aged pensioner, rural Victoria
>
> *I wouldn't go to a bank, any bank. It's too hard. There are too many requirements. Not a chance in hell with my circumstances and income* – single mother, all benefits, rural Victoria
>
> *Banks and financial institutions because I don't work and these institutions don't approve loans for people on benefits or who aren't working* – aged pensioner, Melbourne

Not surprisingly, these opinions were mostly raised by people who had applied for and/or had experienced having loans and credit in the past. Some members of the contingent that is averse to finance voiced opinions shown above and others had no opinion as they had avoided finance completely.

4.1.3 Credit Summary

These quotes demonstrate the fact that finance options are limited to low and fixed income Victorians who apply and are even more restricted for those who feel they have no hope of having their credit application approved. One respondent has qualified for this study because of the lengths she has gone to in order to enter the property market and others have no hope of entering it in the first place.

Where personal loans are rejected, respondents were directed to finance companies.[3] Where credit applications are refused, Victorians are faced with resorting to other means to cover occasions where they are temporarily short of money.

There was no discernible difference in the responses of people living in Melbourne, regional or rural Victoria.

[3] A search on the internet revealed that while banks overly publish their interest rates, finance companies do not, instead preferring to quote on the basis of 'working backwards from the amount the applicant can afford'.

4.2 The use of Credit to purchase goods and services

Respondents were asked a series of questions about purchasing major household items and how they had financed these purchases. While respondents of all types had used credit to purchase items recently, it was respondents in households with children in them that were the most likely to do so. 13 of the 33 respondents interviewed had used credit to purchase major household goods and services.

A range of items was purchased using credit including:

- Cars
- Computers
- Furniture
- Clothes; and
- Food

4.2.1 Purchasing goods and services using finance

While some people had access to credit cards, the main source of finance encountered was finance companies.

> *We bought a TV, VCR, DVD and some furniture. We used GE finance credit card (for $3,000) and $4,000 from a financial institution credit card – ANZ. The bed was essential because my wife was coming from overseas, the TV, VCR and DVD were luxuries, but no-one put any pressure on me to purchase those* – young couple, income all earned , Melbourne

> *There is no public transport so we needed to get a car to get my husband to work. The washing machine – just like everyone else, we need to wash our clothes, so I guess they are both necessities. The car was second hand and costs more to keep on the road than it's worth, but we can't afford to even step in the vicinity of a car yard. It's a heap of c##p, but it's all we can afford – it's so far beyond roadworthy, it's not funny. It's a Catch 22 situation – if you have cash for the things you're buying, you can bargain a lot better* – older family, combination of benefits and earnings, rural Victoria

Also in most cases, items purchased were considered to be essential or very important. There were a couple of cases where items were considered to be luxuries, however these respondents were able to pay off the loans without difficulty.

13 respondents had used finance to purchase an item. Of these, only 3 claimed to have had difficulties in paying off the loan. The first of these was a business loan and the respondent declared himself bankrupt (note this quote has been used previously).

> *I saved up $17,000 and borrowed money from 5 banks and building societies to get $75,000 to start a stripper business. This included a $42,000 car loan (from a bank). After 7 months the six girls working for me had only one gig a week and I couldn't pay the $500 or so a week in loans, I thought I'd be making much more. I threw in the towel and filed for bankruptcy – I lost the phones, car and credit rating* – single father, benefits and income, regional Victoria

In the second case, it is the difficulties of juggling resources and a timing issue that causes ongoing problems:

> *Most repayments are on time, however, sometimes we just can't afford it because my husband's wage is one we have to wait for from other people – so if they're not on time, neither are we. We've had to put off bills and ring up and make arrangements for late payments, cut back on food and clothes. Entertainment is non-existent. Cut back on medications that I'm on – Tamoxifen[4] is very expensive ($78 a script), there are many months when I can't afford it, so I go without.* – older family, benefits and income, rural Victoria

And in the third, a more expensive option on car insurance was traded off for meeting repayments:

> *Sometimes I had to sacrifice things like car insurance – or the level of car insurance, I should say. The car insurance was not as important compared with paying off credit. I downgraded the type of cover from comprehensive to third party insurance cover.* – young person, income all earned, rural Victoria

[4] WCG has discovered that Tamoxifen is a chemotherapy drug used to prevent the recurrence of breast cancer.

The majority (20) of respondents had not used credit to purchase items. Some respondents, especially young singles, had not purchased major items and others believed in paying cash.

4.2.2 Reasons for choice of credit

There is evidence that some respondents had no choice in the type of credit they used:

> *I used credit cards because they wouldn’t give me a loan. I was only on casual rates and didn’t earn enough. I researched everything in the fine print to do with credit cards, that is, interest rates, repayments, timeframes, additional charges etc. That was my only choice!* – young couple, income all earned, Melbourne
>
> *A personal loan (with GE Finance) was a cheaper and better option for us. We couldn’t afford to take out a credit card. We pay cash for everything we possibly can. We understood the loan terms and conditions, although you know you’re getting ripped off, you have no choice. Additional fees and charges apply if you’re late with a payment and if so, the harassment following the missing payment is unbelievable!* – older family, combination of benefits and earnings, rural Victoria

However, others made a reasoned decision and used credit to their advantage:

> *I used a credit card – Visa with Westpac. The main reason for using the credit card option is convenience and then, reward points. I read between the lines. The terms and conditions were understood. There was a 30-day interest free period* – young person, all income earned, rural Victoria
>
> *The only credit we have is a Telstra Visa Card. We buy 80% of our groceries with it only because of the Fly Buy option. We want to get enough points to go to the Philippines (wife is Philippino). We pay it off, in full, every month. We are* ***very*** *careful with it – we are fully aware of the terms and conditions of the card!* – older family, combination of benefits and earnings, rural Victoria

> *We have a hire purchase plan, Buyer's Edge. I have a card with them for $5,000 worth of goods at particular outlets. We got it through Harvey Norman and we get 18 months interest free credit. We needed a new Telly as my husband wanted to watch the World Cup (soccer) and it wasn't something we could pay off in one hit. We paid it off in six months. We used to have $3,500 credit on the card, but since we paid it off so quickly, they've raised it to $5,000* – age pension, rural Victoria

And others acted on impulse…

> *It was an impulse. I got the card (AmEx) in the mail. I thought I'd use it. The fridge was a necessity but the HiFi was a luxury. The fridge was a bargain and I got a great deal on the HiFi.* – single father, all income earned, Melbourne

While those with mortgages or collateral managed to use these to their advantage:

> *We used that type of finance (bank loan) because we have everything through the CBA – our mortgage, income protection and more linked to the mortgage (7% interest rate). I had a friend that worked in the loans department so he helped us out. I think the interest rate is about 9% currently but I'm not sure. We make the same repayments every week – by direct debit. The loan setup suited our financial situation and needs. It was a bit complicated to understand the terms at first, but we got there!* - older family, all income earned, regional Victoria

> *I once borrowed $8,000 for a car two years ago. I went to the bank and knew I would get the loan because I've been with them for years and I own my home outright and had a good credit rating. I was fully aware of the terms and conditions and satisfied at the time that I got a good deal, however I've seen better loan options since!* – aged pensioner, rural Victoria

While most respondents felt they got good or reasonable deals on the goods they purchased, several respondents commented that it would have cost them less to use bank finance, which they were unable to access.

> *I put a TV and Hi-Fi, furniture, medical bills and parenting costs on Mastercard because I can't get any form of loan or finance aid (well,*

> *perhaps from a loan shark) due to the fact I'm a single mother, I work casual hours and I rent accommodation. The only reason I have a credit card is because the CBA wouldn't give me a loan to buy a motor vehicle, so they offered a credit card! I understand the terms and conditions of the credit card, however, I had no choice, bills have to be paid. I get no financial help from my family. I'm meeting the repayments and not falling behind. I'm not eating out or throwing money away on sweets though!* – single mother, benefits and income, rural Victoria.

Or that they could have done better given more time:

> *It wasn't the best deal, but it was 18 months interest free that was appealing. If I spent more time looking for deals I would have found something cheaper definitely. But I was rushed* – young couple, income all earned, Melbourne

It seems that respondents believe that an interest free period does not penalise them later and several respondents found the notion of an interest free period appealing…

> *We bought a refrigerator for $1,000 and computer for $1,550 and a washing machine for $800. We used AGC finance – it was very easy to pay off. We had a 15 month interest free period and we knew we would be able to pay for it in that timeframe. It was a good deal. We spent a while researching all options and went with the best offer* – young couple, income all earned, regional Victoria

Some people who rely entirely on government benefits, reported getting advances from Centrelink to tide them over from time to time:

> *Once or twice I've got advances from Centrelink. I used it (the money) for general things like bills and groceries. The advance payment is $500 and I paid it back at $38 a fortnight* – single mother, all benefits, Melbourne

4.2.3 Summary of purchasing good and services

The majority of respondents had either made no major purchases or had not used credit to do so. Of those that had used credit, credit card and finance companies were the principal financiers – we did not encounter the use of store card per se but did happen upon a revolving line of credit.

The experiences of these respondents suggest that:

- They are mostly using more expensive forms of credit than “mainstream Australia” and have little choice in this.
- Terms such as “12 months” interest free credit are not well understood and it is thought that if the loan is paid within the timeframe specified **no** interest is payable.

4.3 Telecommunications

As this study was conducted by fixed line phone, people who are unable to gain connection could not be included. Not surprisingly then, only one respondent reported being refused a fixed line phone and this was because of a former house-mate who was not paying the bills.

9 of the 33 respondents had been forced to borrow money to pay telecommunications bills, 15 had been charged late payment fees and 11 had been disconnected. 20 respondents had easy access to the internet including all young people, and older families. Some single parents did not have access and would like it and all older respondents interviewed did not have access and most did not want it! Internet assumes high importance when there is a student or person running a business in the house.

26 respondents had mobile phones – (4 of the 6 who did not were elderly pensioners). Some respondents had joint mobile/fixed line plans, mostly from Telstra and there were few complaints about the expense.

The general consensus was that phones are important but not as important as utilities. One respondent had managed without any type of phone entirely for 3 years (using a pay phone) and for the last 7 has had outbound "000" access only on a fixed line phone, preferring to use a pre-paid mobile phone to control call costs.

Phones assume increased importance with the presence of an ill person in the house or a relative elsewhere and with increased distances from main centres:

> *Electricity is more important than the phone. But the phone is important because we live half an hour's drive from the nearest hospital and my husband has high blood pressure and heart trouble. We have a mobile, so we could get around it, but the network coverage isn't that good!* – elderly pensioner, rural Victoria.

The high number of billing problems probably relates to the relative lack of importance afforded the phone combined with the ease of dis-and re-connection by both suppliers and consumers.

4.3.1 Billing Problems

Nearly a half of respondents had experienced some form of billing problem. 9 said they had borrowed money to pay a bill – in most cases this was borrowed from family. In most cases, if it was a case of paying a telecommunications bill or one for another utility, telecommunications came second.

> *Yes, fixed line. I borrowed from friends and was allowed to pay it back as I could. I had no problems there!* – single mother, part earning and benefits – rural Victoria

This may underpin the reason why more respondents reported having been disconnected from telecommunications than utilities, although the number of disconnections may also relate to the safety net measures in place to protect recalcitrant customers for telco's compared with essential services.

> *The threat of losing the phone is less than losing utilities* - young person, combination of benefits and income, Melbourne

4.3.2 Disconnection

There were more stories about mobile and fixed line telephone disconnections than other utilities, with 11 of the 33 respondents able to comment. This may relate to the speed with which disconnection occurs and the ease/speed of reconnection and also the lower importance placed on having access to communications vis-à-vis power and water.

> *Yes, while I was overseas I didn't pay the bills for 3 months. I called them and they re-connected it for a $65 fee and I paid the outstanding bills (mobile)* – young couple, all income earned, Melbourne

> *I had a mobile bill of more than $300. I paid it off progressively, but they disconnected it fairly early on* – young couple, all income earned, regional Victoria.

> *Yes, twice in the last few years. The re-connection charge with about $55. Then they have the audacity to announce to the public that they made $160 million profit!* – single mother, part income and benefits, rural Victoria.

> *With the telephone there is no leniency. They just lob it off if you're late, then you have to pay a re-connection fee. My husband's wages*

> *go in right on the date the bill is due. Because I pay at the Post Office it takes 24 hours for the money to go through. So three times I've been cut off because of that. I didn't pay the reconnection fee, but I had to ring up and tell them that I've paid it and the money hasn't gone through and you've been disconnected. It is very stressful. Finally, they've moved the payment date til 3 days after my husband's pay goes in* – older family, all income earned, rural Victoria

The relatively low late payment and re-connection fees relative to other services and the relatively lower inconvenience of being without a phone are being traded off against other bills.

4.3.3 Mobile Phones

14 of the 26 mobile phone owners had prepaid mobiles, the remainder were on a monthly plan. Respondents who chose pre-paid plans did this so that phone costs would not accumulate unchecked.

> *I went pre-paid because I didn't want another bill coming in and I only use it for an emergency – it helps me control my spending and the calls made* –couple, all benefits, rural Victoria

> *I have a pre-paid price plan with $25 re-charge cards. This was the cheapest and the only option for my circumstances. I did not want to be presented with other options because I knew that the only way I could keep myself in line was on pre-paid* – single mother, combination of earnings and benefits, Melbourne

The monthly connection fee is a reason why some people go mobile:

> *Yes, I have a pre-paid mobile so I wouldn't have to pay a regular connection fee and I can control my usage and costs* – young single, Youth Allowance and income, Melbourne

People living in share homes had problems with having the fixed line phone in one person's name, including:

- for the named individual if others do not contribute to bills;
- to those not named, if friends and family are trying to find them in the phone directory; or
- to everyone if several friends or family members are trying to call house mates simultaneously.

The only case of a fixed line phone being refused was in this situation where the named person did not pay the bills. When that person left the house the others attempted to change the name on the bill. Having been refused, the phone was put into the name of one of the housemates' parents. Each member of the household having their own phone and taking responsibility for it removes the problems associated with managing joint bills, where the contributors are not related to each other. This phenomenon may be greater than it appears here as we only contacted people with fixed line phones.

There is no evidence to suggest that respondents haven't been offered a range of options and plans. Some chose the least expensive:

> *I have a $20 plan with Telstra – it was the cheapest I could get. There were plenty of options presented, but financially they weren't viable. I've got 14 months left on the contract. I'm satisfied with the costs of running it.* – single mother, income earned and benefits, rural Victoria.

> *Yes, I have a CDMA phone - $20 a month plan. I've had it for four years. Last month I made $5 worth of calls, when you consider the convenience it's very economical. I'm very satisfied. I went for the cheapest plan as I knew it would be mostly for emergencies etc* – elderly couple, part pension, part income, rural Victoria

Others matched their requirements with the plan on offer:

> *I have a $50 plan with Telstra. I could have got a cheaper phone, but I wanted this particular type. I make $70 worth of calls and with this plan you get $50 worth of free calls and the phone you want, so it*

> *works out fine. Plenty of options were presented to me. I chose this because it suited my expenditure. I'm very satisfied with the phone - it has good coverage. But costs keep going up – I'm not overly happy about that!* – young couple, all income earned, regional Victoria
>
> *$110 a month plan with Optus. For the type of work I do, it was the only option. I'm on a business plan as most of my calls are during the day. This gives off-peak rates during the day and it's tailor made to suit me. There are other bonuses. I get $110 a month free calls. I had other options presented and we decided that this was the best. I've got two months left on my contract. I'm satisfied with the phone and the costs of running it* – single father, self - employed, Melbourne

Several respondents had packaged fixed line and mobiles together to reduce the number of bills and/or expense:

> *I have a Telstra mobile on a plan - $20 a month. The plan is tied to a fixed line phone – it's the same bill for both accounts. I was offered a variety of mobile phone plans and I went for the cheapest. I only use the mobile 2 times a week. I think it's very cheap, economical and handy. I only use it when travelling to Melbourne* – middle aged pensioner, rural Victoria

Some had been caught having to pay out a contract and one respondent replied that he considered this to be disconnection:

> *I had to pay an extra $40 over four months because my contract hadn't run out and I couldn't use my phone because it was stuffed. So it wasn't a cancellation fee as such, I was just paying out the remainder of the contract* – young couple, all income earned, regional Victoria

Most were happy with the service they received in terms of cost and coverage.

4.3.4 Late Payment Fee

15 of the 33 respondents recalled having paid a late payment fee. The effect of the fee relates to how important telecommunications is considered to be to the individual and the timing of the bill.

> *For $5 it's not worth stressing over. If it was $20 then that would be a different story altogether. Utilities are less important because my phone is needed for my business so if it was disconnected people couldn't get through to me and the business would die* – young self employed, rural Victoria

> *If you can't afford the bill, how do you afford the late fee? I'd sacrifice the weekly grocery budget, but electricity is more important than the phone!* – single mother, combination of earnings and benefits, rural Victoria

> *Yes - $5. I had to wait 'til I got paid and then paid the bill with the additional $5 late fee. Sometimes I call them and ask for an extension or split the bill in half option. I just didn't have the money to pay for it, so I had no choice. I get paid a couple of days after the bill comes in* – young couple, all income earned, Melbourne

> *A late payment fee does make you sacrifice other things like food before getting the late fee. But if you haven't got the money, you haven't got the money. My husband was sick one week because he injured his arm and had already used up all his sick pay with the flu. So that fortnight it was hard to pay the bills – a late payment fee makes you feel sick to the stomach!* – older family, all income, rural Victoria

> *I try and pay all my bills in advance or on the due date, but every now and then you just can't do it. My husband had to get brain scans last month and you have to find the money from somewhere and we don't have a credit card. I prefer the electricity to stay connected, but then again, the phone is essential especially if you're living in country areas and you don't have a mobile phone. We sacrifice anything all the time!* – older family, combination of earnings and benefits, rural Victoria

The majority (18 respondents) could not recall having paid a fee and some were adamant that they never would:

> *There is no way I'd pay a late payment fee. I'd give up food if I had to. Those late payment fees just go up and up* – young couple, income part earned, part benefits, Melbourne

14 respondents felt that a fee would encourage them to pay on time and the impact of such a fee seems greatest to respondents outside Melbourne. Again this probably relates to dependence on telecommunications.

4.3.5 Internet

Internet is desirable for some of the 13 respondents who did not have easy access to it. Some older pensioners displayed no interest in it whatsoever, but by no means all of them. It is a *must have* for people who need to access it for study or work. For some it is a luxury they cannot justify especially when local libraries and internet cafes are easily accessible.

> *I would like to have a computer and internet at home. I use the internet to pay bills and keep an eye on the world. My friends don't have it. It's at the local library, but that's timed sessions* - young couple, all income earned, Melbourne

> *I'd love to, but it's not within my budget. I have got access to it at my parent's house which is not that far from my home* – single parent, all benefits, regional Victoria

> *At home, because I have 3 teenaged children and they all need to use the internet for school. One of my children submits their homework via the internet. It's a must. My use is minimal – it's all for the kids* – single mother, combination of earnings and benefits, rural Victoria

> *Internet is very important especially for students for research, e-mail etc. I have a dial up connection, $25 a month plus call costs – pretty cheap really!* – student, combination of benefits and income Melbourne

> *I have internet at home. I got it so I could look up my rosters at work* – young couple, combination of earnings and benefits, Melbourne

And some took on the internet, only to have a rude shock at the costs:

> *I used to have it connected. I didn't fully understand the deal I got. I got a dial-up internet access account with the computer. I thought it would be good for the kids. But we were being charged for STD calls each time we connected on line. This became apparent when my teenage son racked up a $500 bill for looking at porn sites. I cancelled the account, borrowed $500 off my parents to pay the bill and my son paid me back in instalments!* – single mother, all benefits, rural Victoria

This example highlights the problems faced by Victorians outside Melbourne where broad band may not be available and dial up access involves calls to an ISP that may be located in Melbourne or a regional centre thus incurring STD phone call rates.

4.3.6 Disconnecting Services

Seven respondents reported having services disconnected, four of the seven were single parents and all bar one involved the internet. In most cases a cancellation fee was levied, however, respondents seemed generally happy to pay this to move to a less expensive service. The one exception was in the case of a mobile phone where paying out a contract and disconnection were seen to be synonymous.

> *I had to pay an extra $40 over four months because my contract hadn't run out and I couldn't use my phone because it was stuffed. So it wasn't a cancellation fee as such, I was just paying out the remainder of the contract* – young couple, all income earned, regional Victoria.

> *Yes. I changed from Telstra my phone line, cable TV and internet, to Optus. There was a $200 fee, but I just paid it. It was the only time I checked my (Telstra) bill and they overcharged me $80, which they reimbursed me when I took it up with them* – single mother, income all earned, Melbourne

> *I used to have it connected. I didn't fully understand the deal I got. I got a dial-up internet access account with the computer. I thought it would be good for the kids. But we were being charged for STD calls each time we connected on line. This became apparent when my teenage son racked up a $500 bill for looking at porn sites. I*

> *cancelled the account, borrowed $500 off my parents to pay the bill and my son paid me back in instalments!* – single mother, all benefits, rural Victoria
>
> *I've swapped, but I don't think they've charged us any fees. Because I'm blind, though, it's very difficult for me to read bills so I usually just pay them. But I'm not doing any more chopping and changing of internet companies because an Optus man came to my door and said he could make our calls to Denmark cheaper but they ended up being $10 more expensive so I went back to AAPT* – single mother, all benefits, regional Victoria
>
> *Internet, yes. It cost me $20. I got a better offer. It is cheaper in the long run* – single mother, benefits, rural Victoria
>
> *I have, the Internet. I cancelled one company because they were too expensive. I wasn't charged a cancellation fee* – older parent, income all earned, rural Victoria

4.3.7 Summary - telecommunications

All respondents in this study had fixed line phones but in a high proportion of cases also reported having mobile phones as well. About 80% of Australian homes now have mobiles in them[5] - although this sample is small, the proportion reporting having mobiles is the same as the average. However, unlike the average, more than half of those having mobile phones in this study had chosen pre-paid mobiles – the more expensive option, so that they could control costs.

A high proportion of respondents reported billing problems, being charged late payment fees and being disconnected. It seems that a combination of respondents' placing telecommunications bills below others in terms of priority order for payment, coupled with the relative speed and ease with which disconnection and late fees can be levied, is responsible for this.

There is some evidence that people living in share homes opt for mobiles rather than fixed line phones although these people are not included in this study.

Most people who wanted internet access had it and felt the costs to be reasonable. However, most of the service disconnections involved the internet and one case highlighted the relatively greater expense involved in using it outside Melbourne where calls to ISPs may be charged at STD rates.

While late payment fees do not pose the same threat as late fees for utilities (see section 4.4.4), it seems that respondents outside Melbourne consider them a greater problem. In turn, the perceived degree of severity of these fees appears to relate to the level of dependence on the service.

[5] IDC Research, May 2004 – "Upwardly mobile: Australian Cellular 2004-2008 Forecast and Analysis"

4.4 Utilities

Respondents place utilities as their highest priority after food, especially electricity. Older people (particularly pensioners) are more likely to scrimp on food to pay utility bills than younger people – particularly if there are children in the house.

Given the sample was heavily skewed towards regional and rural Victoria, where mains gas is not generally available, the emphasis on electricity displayed by respondents is not surprising.

> *Our priority is water, electricity and gas over everything else. You have to run your fridge, you don't want cold showers, you need to cook food, heat your children. When you don't earn much money you tend to spend more time at home because you can't afford to go anywhere, so you need the home to be warm and comfortable* – older family, all income earned, regional Victoria.

Depending on personal circumstance there are occasions where telecommunications can be judged as more important, for example a young self-employed person needed the phone to run his business and his ability to pay other bills rested on the health of his business. An elderly couple placed the phone as top priority as one of the two is diabetic and could slip into a coma. These seem to be the exceptions, not the rule.

Nonetheless, only one respondent felt their electricity/utility costs comprised a small proportion of household expenditure, with most saying it was a high proportion (19 said it comprised a "high" proportion, 13 said or implied it was "moderate"). People on fixed incomes were the most susceptible to fluctuations in cost and the introduction of new fees, such as late payment fees.

No one interviewed reported having to pay a refundable advance before having utilities connected. 21 of the 33 respondents reported paying the Energy Concession Rate. Elderly pensioners and single parents seem the most likely to both receive the Energy Concession Rate and view their energy bills as high. Presumably this is a confluence of low income and high heating needs.

4.4.1 Reducing bills

Many respondents took a range of measures to reduce their energy bills, including:

- Ensuring lights and appliances are only on when necessary
- Turning appliances off at the wall when not in use
- Wearing extra clothes
- Buying and using hot water bottles and extra blankets
- Installing low energy appliances and light bulbs (although for some the up-front cost of doing this, even though they acknowledged savings in the long run were too high)
- Going to bed early to save on fuel.

Some respondents did not use their heaters, because they could not afford them:

> *I ring up my supplier to find out how much it's costing me (electricity). So now I only turn the heaters on in the evening and freeze during the day.* – middle-aged family, all income earned, rural Victoria.

Obviously, there is not a fixed relationship between household income or wealth and energy usage as there is only so much energy a household can use at the upper end of the scale. However, at the lower end there is a contingent that would use more energy to attain a base level of comfort, if they could afford it.

4.4.2 Payment difficulties

17 of the 33 respondents reported having been in a situation where they couldn't afford to pay their utilities bill in the last year. Water bills did not present the same problems as energy, although several respondents were encountered who used grey water on the garden or vegetable patches and others who had rainwater tanks installed to reduce water usage. In these cases, it was not entirely clear whether these were altruistic or cost-saving measures. There was only one billing difficulty noted with water per se.

> *There was only one instance. We have both town water and other water. The bill for other water is annual and just happened to coincide with the power and phone bills. I deferred payment and borrowed money off a friend to pay the bill, deferred payment on a computer*

> *monitor I had just purchased and talked my way out of a late payment fee AND my wife and I didn't go out for dinner* – older couple, rural, pension and income

Gas also seemed to create few problems, so when questioned about payment difficulties in the arena of utilities, the problems that emerged related, almost unanimously, to electricity bills.

Problems came about in a variety of ways including:

- Moving house

  Currently owe $1,000 for electricity, it has been overdue for 18 months from a previous house. When I moved out I forgot to get the electricity disconnected, then I was hit with this huge bill. I recently filed for bankruptcy. I'm on a pension with part time work, so there is no way I can pay it. I told the supplier to "get lost" and they have stopped sending me letters, so I'll just ignore it. They didn't offer for me to pay it in instalments, I don't think – I can't remember now. single father, combination of benefits and income, regional Victoria

- Inaccurate and spasmodic meter readings

  We received an unusually high electricity bill for $350. I rang the supplier to dispute it and another guy was sent out to read the meter again. As it turned out, the first guy had not actually read the meter as he could not find it, so he made an estimation of how much the bill would be. After calling [supplier] I discovered that the second reading hadn't been recorded, so they sent out a third guy and it was agreed then that the first bill was too high – it should have been $160, which we can afford to pay. But we still haven't received the bill and we've had a couple of disconnection threats! – older family, combination of income and benefits, rural Victoria

- Unforeseen circumstances

  I couldn't afford to pay a particularly high electricity bill. The bill was $600 – normally bills are around $160. I applied to the supplier for a bill reduction on the grounds that the maintenance on the hot water system done by the landlord had resulted in the high bill. The

> *application was successful and the bill was reduced from $600 to $300. The landlord had to pay a further $150 off the remaining debts. I applied for the reduction because I was advised to do so by a charitable organisation (Interviewer note, couldn't remember the name but said it was like the Smith family or the Salvos). I went onto a payment plan to pay. $60 a month seeing that the reduced bill was still around double my usual bills. I had a lot of trouble paying it off. I reduced the amount I spent on petrol, entertainment for the kids (for example, videos etc) and bought cheaper brands in the supermarket. If my application for the reduction not been a success, I would have borrowed the money from my Mother who would be happy to oblige - s*ingle mother, all benefits, Melbourne

The cases we encountered where respondents queried meter readings and unusually high bills had mixed responses from suppliers. With some being sympathetic as evidenced in the earlier quote (see quote under "inaccurate and spasmodic meter reading" bullet point) and others not…

> *When we first moved into a share house our first bill was $560 for electricity. This seemed way too high. We contacted our supplier and were given no options other than to pay it in full. Being students, low income etc we couldn't afford it. So we borrowed the money off our parents* – student on Youth Allowance, Melbourne.

With general bills (ongoing payment problems), suppliers did help respondents by means of arranging instalment plans.

> *Sometimes I'm late, but I ring them up and they say it's fine, because I've been here 15 years* –age pensioner, Melbourne

> *I offered to pay 50%, but the supplier put me on a contract where I paid $38 a fortnight (this rose to $50 and then $80). This worked out very well and I'm no longer on it. I had no problems making the payments nor did I have to make any sacrifices* – elderly pensioner, Melbourne

While younger respondents tended to turn to their parents for help when payment difficulties arose, older respondents either did not have this option, turned to friends or used their age and experience to negotiate with their suppliers:

> *Yes, there's been situations when I couldn't pay all three! I ring them up (suppliers) and ask for extensions. I don't have anyone I could borrow from. We usually cut down on food to pay for electricity, gas and water* – couple, one young child, income all earned, rural Victoria.

Some respondents had opted to pay regular amounts to reduce or cancel their bills completely.

> *I already have a payment plan where they calculate how much my bills average a year and divide them by 26. Then I pay the same amount each fortnight. It doesn't matter if the bills are more or less as it averages out over the year* – single mother, combination of benefits and income, Melbourne

> *I have four cards, one each for phone, gas, electricity and water. Each fortnight I pay $20 on each in advance which normally clears all my bills before they come* - elderly, all benefits, Melbourne

4.4.3 Disconnection

Three cases of disconnection were encountered because of late payment, two of the three were elderly pensioners:

> *Yes, I got in contact with them to get it reconnected. It cost about $50. I rang them (electricity supplier) when I noticed it was disconnected and they had it reconnected within 24 hours* – All benefits/pensions, Melbourne

> *I was ill and could not make it into town to pay the bill. I rang my supplier and arranged to pay on the last possible day, but on that day I was still sick. To my surprise the electricity was cut off the next day. My thought was it was a blackout. Then I rang my supplier in the afternoon and we were re-connected and we incurred a late fee. Paying the $30 was no hindrance financially; it was just a one-off unfortunate experience* – older couple, pensioners, Melbourne

And the other was a single mother…

> *We got disconnected from electricity and water at the same time. We had to pay that bill we didn't pay another one. So we delayed the Telstra bill, which caused trouble. It's all very stressful, it takes a long time to get out of the loop. It's very hard to get on top of things. We had to get re-connected with the water company for a fee of $40. The reconnection took 1½ weeks, then it took us 3 weeks to get back on track regarding payment of the Telstra bill. The electricity was disconnected for 2 weeks and the phone for 3-4 days* – single mother, combination of earnings and benefits, rural Victoria

Although several have come close!

> *No, we just got sent a disconnection warning because I was one week over. I honestly forgot all about it, so I rang them up and paid it. They never disconnected it!* – older pensioner, rural Victoria

4.4.4 Late payment fees

The introduction of a late payment fee was put to respondents. Some claimed they were already paying these:

> *I had a late payment fee for gas. I had to go without food, that is, I didn't eat any meat, and I lived off veggies. It is very demoralising. A later payment fee would affect me a lot. It's hard enough to pay the original bill without paying extra. We already make sacrifices like cutting back on food and buying clothes from the Op Shop* – older low-income family, rural

> *Yes, the late fee is only $5 so I just add it to the next bill. I didn't have to borrow from anyone. My company already does charge a late payment fee, so I'm already dealing with it. I guess the only thing you can do is grin and bear it and pay the late fee, I mean, if you haven't got the money you just haven't got it, but when it's time to pay the next bill you budget for the extra $5.* – single mother, benefits and income, regional

Others felt it would make no difference if it were introduced especially younger people, people already paying by installment and those that did not have fixed incomes

> *Late payment wouldn't affect me – we've four low payment cards. I pay off $20 a fortnight – which is the lowest amount you can pay off. It doesn't bother me if we've always got something to pay off!* – young couple, combination of benefits and income, Melbourne

> *Yes, once. I just paid the excess in the next bill. It had no major impact. The late fee was about $20, I think. (if introduced) it would just make our budget a bit tighter. I'd leave more money for these things in case there are extra costs, or I'd just pay the bill before the end due date or on the date* – young single, all income, regional

Others felt it could cause them considerable hardship. This was especially the case amongst working, single parents and people on fixed incomes made up mostly or entirely of government benefits.

> *I'd probably end up paying it every time! I live in a share house and everyone's slack getting their money for bills in on time. I often pay the whole thing first for everyone else. Then they pay me. I sacrifice paying other bills to do this* – young single, regional Victoria

> *It would make me angry (if LPF introduced). We'd have less money in your pocket after the fee of $5. I would possibly sacrifice food or entertainment* – young single, part income/pension, Melbourne

> *The effect would snowball. It would have the affect of setting us further back on other payments for example, rent. Buy less items when we shop or a combination.* – Young single, combination of income and benefits, Melbourne

> *Late payment fee? I've never been charged it but it would affect the household only because it is sometimes tricky logistically to gather the money of three different people to pay on time, but I have never paid late to date* – 4 young people sharing a house – 3 students and one in part time employment, Melbourne

I've never paid a late payment fee, but if it was to be introduced by my supplier it would have a disastrous affect as I often pay late. Utilities account for a large proportion of household costs. – young person, income and benefits, rural Victoria

I haven't paid one, no. It will affect me because every dollar counts. $5 is a lot when you try to budget everything to the cent, but sometimes it can't be helped! – young couple, all income earned, Melbourne

Some bills come in a few days before I get paid so I have been late paying, but I've never been charged a late fee. If I had incurred a late fee, I'd just pay it with the next bill. A late fee would have a big impact on my budget – single mother, all benefits, rural Victoria

It would make things harder, it would hurt. I already pay things fortnightly, so if I get behind one fortnight then I have to pay more the next. If I had late fees something else wouldn't get paid that week. I'd have to juggle. I'd just get further and further behind – single mother, combination of benefits and income, regional Victoria.

We don't normally get late fees, so I don't think it would affect us much. It's only $5 or something isn't it anyway? – middle-aged couple, pensioners, regional Victoria

It would have a minor impact. I set money aside for bills so I usually have enough to cover whatever is needed. If it was $5, I'd have no problem. If it was $20 it would have a major impact – older family, combination of benefits and income, regional.Victoria

We always pay on time, but a late fee would be seen as having an effect on the household. This household is very conscious of ways to reduce bills and the costs of living. We grow our own vegetables, wear thermal underwear and beanies rather than turn the heating on, recycle our water on the garden, turn appliances off at the power point. It is only because of these precautions that utilities amount to such a low proportion of our overall household costs – older family, combination of income and benefits, rural Victoria.

It would affect us greatly! Any late payment for us is a nightmare. Whatever the late payment (fee) is you have to take it out of your food/

> *clothes budget. My husband and I tend to go without for the sake of paying what we have to pay* – retired, elderly pensioners, Melbourne

> *If you don't have the money to pay the bill, how are you going to pay the bill* *and* *the extra money? I don't think they should do this, because it is difficult to get on top* – elderly pensioner, Melbourne

> *No, I don't think I've paid one. It would have a great impact – every dollar counts* – elderly pensioner, rural Victoria

4.4.5 Summary – Utilities

Utilities comprise a significant proportion of household costs for low and fixed income earners in Victoria. The majority of respondents pays the Energy Concession Rate. Single parents and elderly pensioners were the most likely of these to receive the Concession Rate **and** to rate the proportion of their household expenditure given to energy as "high".

Utilities also are a high priority in terms of maintaining services, with most respondents putting only food and major ongoing payments for investments such as homes, above these in their priority listing. There is much evidence to suggest that these respondents are taking many measures to reduce energy consumption and it is very likely that some would consume more energy to attain a basic level of comfort, if they had the means to pay for it.

Half of the respondents interviewed reported being unable to afford a utility bill in the last year. Only one respondent had problems with water and the rest related to electricity. This is not surprising given that many respondents were living in rental accommodation and in areas that do not have access to mains gas. Nonetheless, respondents were able to tell of experiences of being cut off from all three utilities – in one case power, water and telephone were disconnected simultaneously.

The introduction of a late payment fee would pose considerable problems for the majority, if only to introduce additional stress to the already fraught juggling act that many described in deciding the order in which to pay bills with only limited funds available.

Where family is available and amenable, it is turned to for help with bills. However suppliers have demonstrated their willingness to extend payment terms and set up payment installment plans to help respondents avoid disconnection. Where disconnection has occurred in most cases reported here, re-connection has been swift.

No respondents in this study had been asked to pay a refundable advance prior to being provided with the supply of any utility.