Problems with Payment

How energy retailers can assist consumers having trouble paying bills

A report prepared by the Consumer Action Law Centre

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This report has been prepared for the Consumer Action Law Centre.

Disclaimer

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The views expressed in this document do not necessarily reflect the views of the Consumer Advocacy Panel or the Australian Energy Market Commission.

The case studies cited herein do not claim to be representative or of a statistically significant number. They are, however, the lived experience of 13 consumers who have approached Consumer Action and MoneyHelp for assistance, and represent a range of vulnerable and disadvantaged consumers across different geographic areas and retailers. Analysis of the incoming calls to MoneyHelp also suggests that the issues raised in the case studies are broadly representative where the same or similar issues are experienced by other callers.

The Consumer Action Law Centre is an independent, not-for-profit consumer casework and policy organization based in Melbourne, Australia.

www.consumeraction.org.au

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1. Introduction

Energy is an essential service which underpins our way of life and our wellbeing. Without energy, our ability to eat well, wash or adequately heat and cool our homes is not possible. However with rapidly and consistently rising energy prices across all Australian jurisdictions, people's ability to continue to afford this essential service is compromised.

Electricity prices in Australia have jumped by an average of 82 per cent in the last seven years and 45 per cent in the last three years alone.[1] Even in Melbourne, which has the highest level of consumer switching, prices have increased by 84 per cent in seven years.

By contrast, the Australian Bureau of Statistics (**ABS**) reported that in the five years to December 2013, the Consumer Price Index (**CPI**) rose by only 13 per cent.[2]

The growth in energy prices outstripping growth in CPI is a problem for consumers, whose income cannot keep up with the rising cost of an essential service. This places pressure on household budgets, felt hardest by the most vulnerable consumers.

Energy price rises are expected to continue. Current Australian Energy Market Commission (**AEMC**) forecasts anticipate that residential electricity prices will increase by an average 1.2 per cent a year over the three years to 2015/16.[3] Victoria's electricity market offer prices are expected to increase slightly more over the same period, by 1.3 per cent a year.[4]

While the adequacy of low incomes and government income support is not the responsibility of energy retailers, as providers of an essential service there is a duty of care to ensure that the provision of energy, and the treatment of people experiencing difficulty paying bills, does not add to existing hardship or social disadvantage.

[1] Electricity Supply Association of Australia, *Fact sheet: Electricity Price Growth* http://www.esaa.com.au/Library/PageContentFiles/64b28ac8-0cad-4f90-85fd-cc493840aa1f/121017_Electricity_Price_Growth.pdf

[2] Australian Bureau of Statistics (2014), *6401.0 Consumer Price Index , Australia, March 2014*. Table 1. http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6401.0Main+Features1Mar%202014?OpenDocument

[3] Australian Energy Market Commission (2013), *Household Electricity Price Trends*, http://www.aemc.gov.au/Media/docs/National-information-sheet-4867eb25-63fc-410a-b56f-8a88739d8e51-0.PDF

[4] Ibid, p.*iv*

This briefing paper presents the experience of real people finding it hard to pay their energy bills in Victoria, and highlights the challenges consumers face in accessing hardship support with Victorian energy retailers.

In summary, the case studies find:

- Those who live on government incomes alone, especially when combined with private rental, have a very limited ability to pay their energy bills.
- Energy retailers often do not accept instalment plans that low-income consumers say they can afford, but rather suggest repayment levels that are unaffordable and exacerbate hardship.
- If a consumer is unable to afford a proposed instalment arrangement, they are commonly informed that accounts will be due in entirety, referred to debt collectors or informed about the prospect of disconnection.
- Early and proactive communication from the energy retailer about the accruing of debt can help a sustainable payment arrangement be established.

Consumer Action acknowledges and welcomes recent efforts by energy retailers to improve their hardship assistance, and the investments being made. The recommendations in this paper are designed to support retailers through this process and provide a pathway to more equitable processes that ensure power is provided to people, regardless of their financial circumstances.

2. The consumer experience of high bills

Australians from all walks of life are feeling the pinch of rising utility bills, either because their lifestyle is very energy intensive, or because basic energy use represents a very high percentage of their income. People with low incomes or with low capacity to earn can and do struggle with the rising cost of living, and especially with the rising cost of essential services.

The NAB Quarterly Australian Consumer Anxiety Index for the first quarter of 2014 found that utilities were by far the most important driver of higher costs of living. Utility costs remain the biggest source of anxiety for cost of living pressures—particularly in NSW, Victoria and Queensland.[5]

In 2012, the average Australian household spent $39 per week on electricity and gas for their homes.[6] However when transport fuels are included, low income households spend an average of $77 per week on energy.[7]

In addition, low income households spend more of their income on energy than other household types. In 2012, low income households spent approximately 12 per cent of their income on energy, compared to 5.3 per cent for all households combined. In terms of household energy alone (i.e. without transport fuels), these figures are 5.4 per cent and 2 per cent respectively.[8]

The ABS states:

> *Although average energy costs increased in relation to household income and wealth, energy costs had more impact on the economic wellbeing of lower economic resource groups. For instance, nine percent of low income households experienced at least one indicator of financial stress associated with their energy use compared to two percent of high income households. Nearly one in five low income households (18%) could not pay their electricity, gas or telephone bills on time, while 13% had their electricity or gas services disconnected sometime during the last 12 months. By comparison, only five percent of high income households could not pay their bills on time and two percent had their services disconnected.*[9]

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[5] National Australia Bank (2014) *NAB Quarterly Australian Consumer Anxiety Index: Q1 2014 Special Report - Factors Impacting Cost of Living,* http://business.nab.com.au/wp-content/uploads/2014/03/anxiety-special-report-03-2014.pdf
Australian Bureau of Statistics (2013) *4670.0 - Household Energy Consumption Survey, Australia: Summary of Results, 2012*
http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4670.0~2012~Media%20Release~Households%20spend%20$99%20per%20week%20on%20energy%20(Media%20Release)~10000
[7] Ibid.
[8] Ibid, Table 6A. http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4670.02012?OpenDocument
[9] http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4670.0~2012~Main%20Features~Economic%20resources~10003

Due to a higher proportion of income being spent on energy bills, low income households have a higher incentive to take action to reduce their energy bills. In their 2012 Household Energy Consumption Survey, the ABS found that:

- 66 per cent of low income households switch appliances off at the wall in order to reduce energy costs (compared with 61 per cent of middle income households and 52 per cent of high income households);
- 63 per cent of low income households took shorter showers to reduce energy costs (compared with 58 per cent of middle incomes and 51 per cent of high incomes); and
- 34 per cent of low income households used draft proof seals on doors and windows (compared with 30 per cent of middle incomes and 29 per cent of high incomes).[10]

However while low income households are already taking action to keep their energy bills affordable, there are barriers that prevent people on low incomes from investing in the technology advances to increase energy efficiency, and thereby reduce costs. Due to lack of access to capital and the inability of renters to improve the energy efficiency of rental properties, the opportunities for energy efficiency improvements are low.

The Australian Council of Social Services found a lower incidence of insulation in low income housing and tenanted properties, and higher rates of ownership of inefficient appliances that are cheap to buy but expensive to run.[11]

Because of these compounding factors, the number of people experiencing difficulty paying their bills is on the rise in Victoria. Disconnections are rapidly increasing[12] and the Energy and Water Ombudsman of Victoria has recorded increasing complaints from consumers with low capacity to pay in relation to disconnections (up 12 per cent over the last 12 months), debt collection (up 25 per cent) and payment difficulties (up 29 per cent).[13] In addition, in the last quarter alone disconnections in Victoria rose by 29 per cent and 'imminent' disconnections rose by 46 per cent.[14]

[10] Ibid.
[11] Australian Council of Social Service (2013), *Energy Efficiency & People on Low Incomes: Improving Affordability*, p1 http://acoss.org.au/images/uploads/ACOSS_ENERGY_EFFICIENCY_PAPER_FINAL.pdf
[12] Essential Services Commission (2014), *Energy retailers comparative performance report — customer service 2012-13* pg 30 http://www.esc.vic.gov.au/getattachment/983c8101-90be-4173-b57e-73ec365f2648/Energy-Retailers-Comparative-Performance-Report-Cu.pdf
[13] Energy and Water Ombudsman Victoria (2013) *Annual Report* http://www.ewov.com.au/__data/assets/pdf_file/0019/9640/1-EWOV-2103-Annual-Report.pdf
[14] Energy and Water Ombudsman Victoria (2014), *Res Online No. 7* https://www.ewov.com.au/publications-and-media/res-online-no.7-may-2014/most-common-issues/credit

3. Consumer protections

While consumer protections in the energy sector are set out by the Energy Retail Code ('**the Code**')[15] in Victoria and the National Customer Protection Framework (**NECF**) for those states that are signatories, there seems to be no consistent approach to their application amongst energy retailers.

The Code, established by the Essential Services Commission (the **Commission**), sets out requirements for gas and electricity retailers with respect to domestic customer payment difficulties. In the case where a domestic customer contacts an energy retailer and the customer and retailer fail to agree on an alternative payment arrangement, the retailer must offer a payment instalment plan (subject to certain conditions) and provide the customer information about the Utility Relief Grant Scheme, over the phone information about energy efficiency and advice on the availability of an independent financial counsellor. A retailer must also consider undertaking an energy efficiency field audit for customers struggling to pay.

The Code does not specify requirements regarding hardship policies. However, section 43 of the *Electricity Industry Act 2000* and section 48G of the *Gas Industry Act 2001* (see Appendix 1) require retailers to prepare financial hardship policies, which are approved by the Commission. The Commission has released a guideline to assist energy retailers with development of hardship policies.[16] This guideline specifies requirements for energy retailers regarding the management of domestic customers in financial hardship, including requirements to:

- provide equitable access to options for assistance appropriate to a customer's individual circumstance;
- recognise that a customer in financial hardship is someone with the intention but not the capacity to make a payment on time;
- offer fair and reasonable payment terms; and
- ensure that all staff involved in the administration of the retailer's hardship program are trained as necessary.

Both the legislation and the Code promote the use of payment plans as a key means to support customers experiencing financial difficulty. The Code provides that

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[15] Consumer Action acknowledges that the Victorian Government intends to sign up to the National Energy Customer Framework over time. However as there is no implementation plan or timelines for this process, it is assumed that Victorian retailers will continue to be regulated by the Energy Retail Code for the foreseeable future.

[16] Essential Services Commission (2011), *Guideline 21 – Energy Retailers' Financial Hardship Policies*. http://www.esc.vic.gov.au/getattachment/a35692f1-794f-4b7a-90a9-25aedf250765/Guideline-21-Energy-Retailers-Financial-Hardship-P.pdf

energy retailers should consider a consumer's capacity to pay, the level of arrears, and expected energy consumption in setting a payment plan.[17] The Code also places the onus on consumers who are experiencing payment difficulties to initiate the hardship process by contacting their energy retailer. However, the regulations also stipulate that a retailer should publish details of hardship policies on its website in a way that is easy to access, and provide assistance if it believes that the customer is experiencing repeated payment difficulties in paying a bill or requires payment assistance. Further, energy retailers have obligations to contact customers proactively before disconnection, either in person or by telephone.[18] At that point of contact, the retailer must make available a payment plan and offer other relevant assistance.

Full details of the regulatory framework, and other government support options, are provided in Appendix 1. It is important to note that while the regulatory framework provides guidance to energy retailers, it does not mandate the level or quality of the service provided by retailers or the ethics and respect which are brought to negotiations with vulnerable consumers.

[17] *Energy Retail Code (Version 10)* May 2012, s11.1
[18] *Energy Retail Code (Version 10)* May 2012, s13.2

4. Case studies: the failure of payment plans

The following 13 case studies from Consumer Action's MoneyHelp service highlight the lack of capacity that vulnerable consumers have to pay for the rising costs of an essential service.

The case studies are based on instructions provided by consumers to Consumer Action lawyers or financial counsellors. Consumer Action provides one-off telephone legal advice to around 3,000 Victorians per year, and provides ongoing legal advice and assistance to a proportion of those consumers. MoneyHelp, which provides telephone financial counselling services to Victorians experiencing financial difficulty, reaches over 10,000 consumers per annum and many more through its information website.

The issues identified by the case studies have not been verified with the retailers, which was beyond the scope of the report. The case studies also do not claim to be a representative or a statistically significant number. However, the case studies presented here are generally reflective of the issues raised in the many calls relating to capacity to pay and payment plans received by Consumer Action.

The names of all consumers have been changed to protect their identity and privacy. The names of individual retailers have also been removed, to encourage focus on the issues raised rather than the identity of the particular retailer. However, the retailers represented include all large retailers, AGL, EnergyAustralia, Origin Energy, as well as smaller retailers such as Neighbourhood Energy.

4.1. Case Study 1: Alyce

Alyce is 37 years old, and currently unemployed. She receives the sole parent pension, is in private rental accommodation, and has been with her retailer for a year.

Alyce has a $3,500 energy debt with her retailer. To help better manage her bills, Alyce went on a $40 per fortnight payment plan. Alyce told her retailer she couldn't afford this amount, and although they weren't happy about it, they allowed her to pay $30 per fortnight. Alyce struggled to afford this lesser amount as well, and just paid whatever she could.

The retailer sent Alyce a disconnection notice, saying that they wanted the total overdue amount to be paid. Alyce told them she couldn't afford to pay the full amount. The retailer then told her that she had to pay $140 per fortnight, without considering her financial situation. They told her this amount would only cover her consumption, not the debt accrued. Alyce again told her retailer that she couldn't afford it. In response, the retailer referred her to a financial counsellor, so she contacted MoneyHelp for assistance.

Alyce is continuing to pay what she can.

Problems raised by case study

1. Alyce couldn't afford to pay energy bills on her low income.
2. The retailer sent Alyce a disconnection notice despite previously agreeing to a payment plan.
3. The retailer didn't consider Alyce's capacity to pay when they demanded the high repayments.
4. Alyce's repayments don't cover her accrued debt, only her ongoing consumption.

What should the retailer have done differently?

As a single parent getting a government allowance in private rental accommodation, the retailer's demands for $140 per fortnight are likely to constitute a significant proportion of Alyce's income. The retailer should have assessed her income and expenditure before suggesting a payment plan Alyce had little hope of being able to afford.

Given Alyce's circumstances, the retailer should be considering the likelihood of recovering a large debt from a customer on a single parent pension. In this instance, the retailer may be better off helping Alyce to understand and control her energy usage—as much as is possible, given she lives in a rental property—and consider Alyce's eligibility for other assistance available.

4.2. Case Study 2: Andy

Andy is 46 years old and lives alone. His only income is the disability support pension, which is $700 per fortnight, and he pays a mortgage of $260 per fortnight. He owes approximately $3,000 to the council for rates and fines. He received a Utility Relief Grant of $500 last year.

Andy has been a customer of his retailer for about two years. He switched to them after being cold-called and told his energy would be cheaper if he switched to them.

Andy's nephew lived with him during the first year he was with his retailer. His nephew used radiators during his stay, and the household had two fridges connected. When the household energy bills started to rise, Andy suspected those appliances might be the cause, so he disconnected the second fridge. He also believed that the electric stove was drawing power when he wasn't using it, and unplugged it as well.

Andy couldn't manage the high bills and he estimates that for about a year, simply stopped trying to pay at all. He hoped that his nephew might pay the bills, but he didn't.

The retailer sent letters saying that he would be disconnected if he didn't start paying his bills, and then made a phone call in which they threatened to cut his service off.

During the call, Andy offered to enter a $60 per fortnight payment plan. The representative refused, saying the amount wasn't enough to cover his ongoing use of energy. Andy hung up and called back and made the same offer to another customer service staff member, who accepted this offer. This amount is just affordable for Andy.

Andy still pays $60 per fortnight. The retailer calls him approximately once a fortnight and asks him to pay more, stating that his payments are not covering his consumption. Andy says he can't afford to pay anything extra on his income.

Problems raised by case study

1. Andy did not have information or external advice about how to reduce his energy use.
2. Andy could not afford to pay his energy bills on a disability support pension.
3. Different call centre staff had different approaches to capacity to pay.
4. The retailer is persistently asking Andy to pay more on his payment plan, although he has told them he cannot afford to pay any more.
5. The amount that Andy is paying off does not cover his ongoing consumption of energy.

What should the retailer have done differently?

It appears a payment plan was not offered until Andy was well behind in his energy payments, and after disconnection threats. It's unclear whether the retailer tried to negotiate a payment plan any earlier, however earlier phone contact with Andy could have helped him enter a payment arrangement sooner. It's also unclear whether Andy was ever offered access to a hardship program.

Andy would have benefited greatly from information from his retailer about how much energy certain appliances use. Given the retailer's ongoing concern that he isn't covering the costs of his energy consumption, a home assessment or at least a referral to a home energy efficiency program would have been important in helping Andy to control his energy bills.

4.3. Case Study 3: Ryan

Ryan is 35 years old, and receives $600 per fortnight as a Newstart recipient. He has been a customer of his retailer for almost ten years, and when we spoke with him, he was highly agitated and angry about the way that he had been treated.

A few years ago Ryan asked his retailer to put him on a payment plan to help him pay his bills, because he was struggling to keep up with cost of living increases. He offered to pay $35 per fortnight for his gas and electricity, which was accepted by the retailer, and he kept his payments up while he lived at the property. Ryan's rent rose dramatically, so he moved in with friends to help get his costs under control. When he called his retailer to close his account, they told him $1,446 was outstanding on his electricity and gas bills. His debt had continued to climb despite his payments on the payment plan, because it wasn't covering his ongoing consumption of energy. The retailer offered him two months to pay the full amount owing, which Ryan told them he couldn't afford to do. He offered to pay $40 per fortnight. The retailer refused this offer, and said that if he didn't pay it all within two months they would refer the debt to a debt collector.

After speaking to the retailer, Ryan called MoneyHelp, and we referred him to the Energy and Water Ombudsman of Victoria. EWOV called the retailer on his behalf, who then accepted the $40 per fortnight to pay off the debt.

Ryan says it's not really affordable for him, but he wants to stick to the agreement.

<u>Problems raised by this case study</u>

1. The amount that Ryan could afford to pay on his energy bills did not cover the amount he actually used, and his debt increased over time.
2. The retailer did not consider Ryan's ability to pay and refused to accept a payment plan that he could afford, threatening him with a debt collector.
3. The retailer accepted the same repayment arrangements Ryan proposed when the Ombudsman intervened.

What should the retailer have done differently?

The retailer should have taken into account Ryan's past reliability in keeping to his bill payments, and the reasons he was disconnecting his service, before threatening him with debt collection.

Given Ryan was a customer for such a long time, and what appears to be the long-term accumulation of the debt as he used more energy than he could afford, Ryan would have benefited from retailer assistance with managing his energy consumption. The retailer was on notice that he needed help, given that Ryan had himself initiated a payment arrangement. The retailer could have proactively acted on this information to help Ryan avoid accumulating debt.

4.4. Case Study 4: Jim

Jim is 54 years old. He has three children but they are grown up and no longer live with him. His income is the disability support pension, which is $960 a fortnight. His current rent is $460 a fortnight, which is almost half of his income. A financial counsellor assessed Jim's situation and found his outgoings were $962 per fortnight—a little more than his income.

Jim has been a customer with his retailer for 6 to 8 years. Around 2009, he lived in a two bedroom flat in regional Victoria. He used his under-floor heating in winter, because his neighbour told him it wouldn't be expensive. When he got his bills however, he realised that it had been very expensive for him and he had accrued debt.

In late 2011 he asked his retailer to go on a payment plan for $60 per fortnight to help him pay off his high bills. This payment plan lasted for 12 months, and Jim says his retailer didn't make it clear that the amount he was paying didn't also cover his energy use. As a result, Jim continued to accrue debt.

Jim says he did receive quarterly bills which showed that he was on the retailer's payment plan program, but also showed an account balance of around $1,000. He didn't think he had to worry about that, because he was on a plan. He says he was never specifically contacted by his retailer advising of the increasing debt. In August 2012, Jim called the retailer and told them he was struggling to pay the $60 per fortnight, and asked for the amount to go down to $30 per fortnight.

Jim moved to a new property in November 2013. In late December, he received a letter from his retailer threatening legal action to recover the debt he owed, which had accrued to $1,900. Jim still isn't clear whether the retailer brought the debt across to the new account, or if it is attached to his old account.

Jim called the retailer and asked how much he would need to pay to start paying off the debt, and to cover his ongoing energy use. The retailer told him that he would need to pay $130 per fortnight. Jim said he couldn't afford that, and the retailer put him through to their hardship department for assistance. This is the first time he had spoken to the hardship department although he had been struggling to pay for a number of years. Jim now has a case manager, and says there is no threat of disconnection.

Jim has since spoken to a financial counsellor, who worked out that he simply can't afford to pay off the debt he has accrued. The financial counsellor is advocating on his behalf with the energy company to have the debt waived. He's continuing to pay $30 per fortnight.

Problems raised by this case study

1. Jim's repayment amounts don't cover the full amount of the accrued debt, and it's unclear to him whether his payments are for the debt or the ongoing usage.
2. Jim didn't know he was continuing to accrue debt on a payment plan.
3. Jim wasn't offered access to the hardship team, any concessions or a utility relief grant at any point; nor was he offered advice on how to help lower his energy usage.

What should the retailer have done differently?

The retailer showed flexibility in allowing Jim's repayment amount to be reduced when he asked, but ultimately allowed a high debt to continue to accrue beyond his ability to pay.

Jim was in hardship for around four years before he was offered access to a hardship support team, despite displaying clear signs of hardship, asking to go on a repayment plan, and subsequently asking to reduce his repayment amounts.

Jim should have been offered a home energy assessment, given the option of applying for a utility relief grant, and access to a hardship program much sooner. Earlier communication with Jim about the fact his debts were continuing to accrue, and what his repayments were actually repaying, could have enabled an earlier intervention to stop the debt climbing. The retailer could also have considered debt forgiveness as an option when the debt was increasing, not declining.

4.5. Case Study 5: Natalie

Natalie is 37 years old and has been with her retailer for 15 years. She works nine hours a week, earning around $480 per fortnight. Two years ago, Natalie was unable to work for an entire year due to a back injury, and her only income during this time was the disability support pension. While Natalie and her partner are up to date with payment on their current energy account, Natalie has a debt of $2,000, which she accrued at a past residence.

Natalie and her partner share the responsibility for their energy bills in their current home. However even though they live together, Natalie and her partner are financially independent, although Natalie's partner's income means Natalie can't receive Centrelink support and her income remains very low.

In the year she was not working Natalie fell behind on her electricity bills, and the retailer threatened to disconnect her electricity. She called EWOV for assistance, and they approached the retailer to get Natalie onto the retailer's hardship program, on which she paid $5 per fortnight for electricity.

Once she had started working again, Natalie contacted her retailer and offered to pay $20 per fortnight, which was accepted by the retailer. However since then, Natalie's caseworker at her retailer contacted her and requested she pay $40 per fortnight, because the debt needs to be 'reduced faster'. The retailer has not asked Natalie what she can afford to pay on her income. The $40 amount only covers Natalie's debt from her past electricity use, not the ongoing consumption in her current home.

Natalie says her caseworker is 'pushy', and claims they call her constantly and harass her about increasing her fortnightly repayments. Representatives of the retailer also call her partner on his mobile phone at work, and are threatening that they will 'take the next step' if Natalie does not go and see a financial counsellor. Natalie isn't sure what they mean by that, but she is worried they intend to disconnect her at her new residence. As Natalie says, she "can't get this money from nowhere".

Natalie has seen a financial counsellor in the past, but she knows that a financial counsellor can't help her now, as she simply can't afford the payments that the retailer is asking for. The retailer has told Natalie that they will take her off their hardship program, meaning that the amount she owes them may be sold to a debt collector.

Problems raised by case study:

1. Natalie was unable to afford to pay for her electricity consumption on the disability support pension.
2. The retailer did not initially refer Natalie to its hardship program, despite her struggling to pay her bills.
3. The retailer did not consider Natalie's capacity to pay when asking her to pay $40 per fortnight.
4. The retailer is harassing and threatening Natalie and her partner about the debt, and calling her partner at work.
5. Natalie can't afford to both pay off the debt from her prior residence and the cost of her ongoing consumption.

What should the retailer have done differently?

Being in the hardship program has no doubt helped Natalie keep her electricity on when she needed it most. However, having a 'pushy' caseworker who is making threats about the future of Natalie's energy supply is increasing pressure on Natalie.

Natalie has been making regular payments towards a debt incurred at a prior residence, and she is up-to-date with all payments at her current residence. This indicates that she is a long-term customer with a clear willingness and intent to repay the outstanding amount, however is unable to do so at the higher level of repayments being suggested by the retailer.

While Natalie's situation has improved since she accrued the debt, she is still earning very little. By demanding more than she can afford to contribute towards an old debt, the retailer is risking her ability to pay her ongoing consumption, which could in turn mean that Natalie ends up in long-term hardship as a result of a short-term inability to pay. Based on her circumstances, Natalie would have been eligible for a Utility Relief Grant that would have helped pay down the debt faster. Natalie should have been made aware of this when she accrued the debt or when the retailer requested higher repayments.

4.6. Case Study 6: Percy

Percy is 48 years old. He is self-employed, and does not receive any government benefits. His wife is a carer for her mother and receives the carer's pension. Percy and his wife entered into an energy contract with their retailer after a door-to-door salesman visited them, on the basis that they would receive a discount for paying their bill on time.
Percy's energy bills were based on estimates rather than a meter reading, and

overcharging was discovered. The retailer told Percy not to pay while they undertook an investigation. By the time they had resolved the issue and the amount owing was decided, Percy found he owed the retailer $2,000.

Percy entered into a payment plan, which was set at $190 per fortnight. The retailer didn't ask whether he could afford this. He has mostly found this amount affordable, although he did miss a few payments when he had urgent car repairs.

Percy's wife called the retailer, and was told they had to pay the whole debt due because they had broken the payment plan. Percy was concerned about this, and called MoneyHelp for advice. When he spoke to MoneyHelp, he still owed $1,600. Following the support provided by MoneyHelp, Percy negotiated with the retailer to restart the payment plan, however the retailer would only accept the same rate as his earlier plan, paying $95 per week instead of $190 per fortnight. Percy describes this amount as "mostly affordable".

Problems raised by case study:

1. Percy built up an electricity debt despite being on a medium income.
2. The retailer did not consider Percy's capacity to pay in forming a payment plan.
3. Percy was not referred to the retailer's hardship team.
4. Percy was not able to convince his retailer to let him pay a lower amount when the higher payments of $190 per fortnight are not always affordable when he has unexpected expenses.

What should the retailer have done differently?

The retailer advised Percy to pay nothing at all after the discovery of overcharging, and this advice meant that Percy found himself with a large debt when the amount owing was finalised. The retailer may have assisted Percy to better manage by requiring some payments over that time that were based on his average metered usage, which they could have refunded if his contributions were more than what was owed.

The repayment plan is high for a self-employed person earning under $40,000 per year, and it was appropriate for the retailer to set a lower repayment amount. In addition, the retailer's demand that the full amount be paid after a missed payment seems unreasonable, given that he had been told to stop paying by the retailer while they corrected the charges for Percy's energy usage.

4.7. Case Study 7: Sarah

Sarah is in her mid-thirties and is a full-time sole carer for her young autistic son. She receives $900 per fortnight in Centrelink payments, and pays $260 a week in rent.

Sarah accrued a debt of about $900 with her energy retailer, due to a faulty split system heater. Eventually the split system broke down completely, and Sarah now has to use portable electric heaters in her home during winter.

Sarah received a letter from her retailer stating that the debt would be handed over to a debt collector if she didn't contact them about the amount owed. Sarah called her retailer and asked if she could go on a payment plan to manage her debt. The retailer said that on a payment plan she would have to pay $110 per fortnight, without enquiring about her income, or asking whether the amount was affordable. This amount is unaffordable for Sarah.

Following this conversation, Sarah called MoneyHelp, and we advised her that she should ask to be put through to the retailer's hardship team. She told the hardship department that she'd had advice from a financial counsellor, and would go to EWOV if they didn't negotiate with her.

Sarah told the retailer that she could only afford to pay $60 per fortnight, and the retailer agreed to this amount. This will cover Sarah's debt and her ongoing consumption of energy. The retailer told Sarah that if her consumption level doesn’t decrease, the amount may need to be increased in the future.

Problems raised by case study:

1. The retailer didn't consider Sarah's capacity to pay in proposing a payment plan until she specifically asked them to.
2. Sarah was told that the amount of the payment plan may have to be increased in future, to cover her consumption, although her income remains low and she couldn't afford an increase in payments.

What should the retailer have done differently?

The retailer should have asked Sarah early in their discussions about her income and eligibility for hardship assistance before threatening debt collection, to ascertain if the payment plan they proposed was going to be appropriate for her. Demanding an unaffordable repayment amount exposed Sarah to higher potential for falling into long-term hardship, as she may have been forced to direct money needed for other utility bills or essential expenses into paying off her energy debt. It would have been more appropriate to accept a lower amount of repayment, while referring Sarah either to the Utility Relief Grant Scheme, for which she would have been eligible, or a home appliance replacement program, given the high bill was caused by a faulty appliance.

4.8. Case Study 8: Rosemary

Rosemary is 77 years old and a pensioner. She also receives a carer's allowance for her husband, who is in poor health.

Rosemary has been with her retailer for 48 years, and she used a voluntary bill smoothing program to help manage her budget. When she first started on the program, she paid $25 per fortnight for electricity, and $32 for gas.

In June 2012, Rosemary and her husband received a bill of almost $1,500 for their gas usage for the three month period of April to June 2012. When Rosemary spoke to her retailer about it, she told them that she couldn't afford to pay the bill, as she just didn't have the money. The retailer told her that if that was the case, she would be cut off from her gas supply. The retailer representative told her that if she didn't want to be cut off, she would have to continue paying $25 dollars a fortnight for electricity, but $60 for gas—double her usual amount. The retailer didn't ask her whether she could afford these payments.

When Rosemary protested that she couldn't afford this, the retailer suggested that she shouldn't turn the gas heating on, and to wear a coat and a blanket to keep warm instead. Rosemary's husband is ill, and it isn’t feasible for them to stop using the heating.

Rosemary borrowed money from a friend, and paid $700 towards her overdue bill the day after she spoke with her retailer. Rosemary is now paying the amounts that the retailer demanded, even though this is very difficult for her financially. She now pays $85 a fortnight out of her carer's pension on electricity and gas. Rosemary called MoneyHelp for assistance, and we advised her to contact EWOV if the retailer continued to threaten her with disconnection.

Rosemary's payments do not cover her ongoing consumption, and she has recently received another bill for almost $1,000.

Problems raised by case study:

1. The retailer threatened Rosemary with disconnection when she told them she couldn't afford the bill.
2. Rosemary couldn't afford to pay her gas bill on the carer's pension.
3. The retailer didn't consider Rosemary's capacity to pay in forming the payment plan.
4. The retailer offered insensitive advice in helping Rosemary avoid high bills, rather than provide an energy audit or refer her to an energy efficiency support program.

What should the retailer have done differently?

Given Rosemary’s gas bill rose so high so quickly, the retailer could have investigated to ensure there was no gas leak or other problem on Rosemary’s property which could explain such an excessively high bill. Similarly, a check of her gas appliances may have been suitable, as would the opportunity to upgrade her appliances. Rosemary could also be a candidate for a Utility Relief Grant, which would have offset much of the amount owing.

The retailer suggested that Rosemary would be disconnected unless she paid a much higher amount, despite Rosemary specifically stating that she could not afford the level being proposed. The advice to wear more clothing was not helpful for Rosemary, whose husband had health problems that required gas for heating. Rather, providing an audit of Rosemary's appliances and consumption could have provided practical options for Rosemary to manage her energy bills.

4.9. Case Study 9: Ellie

Ellie is 29 years old, and currently unemployed. She receives the disability support pension, and the family tax benefit for her two children. Ellie's partner works, but his income varies.

Over the past year, Ellie accrued a debt of $1,100 to her energy retailer. The retailer requested that Ellie enter a payment plan and contribute $50 per week to the debt. She agreed because at the time the amount was affordable for her.

Later, Ellie tried to contact her retailer to renegotiate her payment plan and get information about any grants that might assist her. Ellie says that it was difficult to speak with her retailer, as she was moved between representatives and departments and no-one was able to assist her. Ellie eventually hung up out of frustration.

Recently, the retailer has been sending Ellie texts telling her that her debt has increased, and she must pay the $1,100 she owes. Ellie can't afford to do that. She called her retailer to explain this, and they told her she needed to increase her payments to $140 per fortnight. Ellie told them she couldn't afford it, but the retailer did not accept this.

Ellie called a financial counsellor, who assisted her to negotiate with her retailer. The financial counsellor told the retailer that Ellie could only afford to pay $50 per fortnight, and they accepted that. The fortnightly payment of $50 only covers Ellie's accrued debt, not her ongoing consumption. Ellie's debt to her retailer is continuing to rise, but someone from the company is coming to look at Ellie’s usage.

Problems raised by case study

1. Ellie couldn't afford to pay energy bills on a disability support pension.
2. Ellie was unable to find someone at her retailer to speak to her about hardship assistance.
3. The retailer repeatedly sent Ellie text messages, which made her feel harassed.
4. The retailer didn't consider Ellie's capacity to pay the amount they demanded under a payment plan.
5. The payment plan does not cover Ellie's ongoing consumption so Ellie's debt is still increasing.

What should the retailer have done differently?

The retailer's insistence that she pay more than she could afford was unhelpful and stressful for Ellie, who suffers anxiety issues. Taking the time to make appropriate enquiries themselves, rather than outsourcing this process to a financial counsellor, might have saved time and not placed Ellie under stress.

Given that Ellie is on a low income, and her partner’s income is variable, we think they are good candidates for any energy efficiency programs that could help her manage her energy usage. It is positive that the retailer has agreed to send someone to visit to consider Ellie’s usage. Additional support may also be required for those that are unable to pay both for outstanding debt and current consumption.

4.10. Case Study 10: Jenny

Jenny is a 31 year old single mother. She is currently unemployed, and receives the parenting payment of $720 per fortnight. She signed up with her retailer six years ago, after a door-to-door salesperson attended her house and offered her a contract with a discount for paying on time.

Jenny accrued a high energy debt of about $3,400 after she had not received bills for some time, and contacted her retailer to enter into a payment plan. She was worried as they had sent her a final notice threatening disconnection. Jenny offered to pay $80 a fortnight towards the debt, but the retailer said this wasn't enough—they wanted her to pay $125 a fortnight. Jenny told them that she couldn't afford that level of repayment, and the retailer told her that she had to talk to a financial counsellor, who should negotiate on her behalf to arrange a payment plan.

Jenny has been on a waiting list to speak with a face to face financial counsellor since that time, and spoke with MoneyHelp in the interim who recommended she apply for a Utility Relief Grant and contact a home energy efficiency program. Although Jenny had agreed to meet with a financial counsellor, when Jenny contacted MoneyHelp she was still receiving letters from her retailer stating that she must pay her debt in full immediately, or her electricity will be disconnected.

Problems raised by case study

1. Jenny couldn't afford to pay her energy bills on a disability support pension.
2. The retailer continued to send Jenny letters seeking payment in full and threatening disconnection, despite Jenny agreeing to see a financial counsellor and being on a waiting list for this service.
3. The retailer didn't consider her capacity to pay the amount they demanded under a payment plan.

What should the retailer have done differently?

Given Jenny earns $720 per fortnight, allocating $125 per fortnight to pay her energy debt is a significant proportion of her income. The retailer could have been more amenable to accepting the rate that Jenny offered, subject to review after her appointment with a financial counsellor. This would have lessened the stress caused by the ongoing threat of disconnection.

The retailer's payment demands and disconnection threats do not help Jenny to establish a payment arrangement that she can afford. The retailer could have suggested she apply for a Utility Relief Grant, and undertake a home audit themselves to see if Jenny could have improved her energy efficiency. Jenny could also have been referred to home energy efficiency program for assistance with her energy use. Similarly, Jenny should have been offered entry into a hardship program, where staff should have the skills to deal appropriately with people in hardship.

It is unclear how long it took Jenny to accrue this debt, but it's clear that an earlier intervention from the retailer may have prevented the amount becoming so large and unmanageable. Given Jenny's low fixed income, her retailer needs to be realistic about how likely is it that Jenny can repay the outstanding amount, given that she will also have to pay for her ongoing consumption.

4.11. Case Study 11: Belinda

Belinda is 47 years old, and is employed part time. She has a debt to her retailer of $2,000 for gas and $1,700 for electricity.

Belinda called her retailer and asked for a payment plan, because she was worried that she would be disconnected because of her debt. The retailer put her on the hardship program, and she made instalment payments of $40 per fortnight towards each of her electricity and gas accounts. Because of her low income, Belinda couldn't continue the repayments.

When she fell behind, the retailer offered Belinda another payment plan, reducing fortnightly payments to $30 gas and $35 for electricity. Belinda again told her retailer that she couldn't afford those amounts, but was told they could not offer lower repayments. Belinda fell behind again, and the retailer cancelled the payment plan. Belinda said she was only a few days late each time she fell behind on her payment plan, but her retailer cancelled it anyway.

Belinda is now on a new payment plan, where payments were increased to $49 for electricity and $53 for gas per fortnight. The retailer has told her that if she fails to pay, they will cancel the plan and disconnect her from her energy supply. While these higher amounts are difficult for her, Belinda now pays regularly as she is concerned about disconnection. If she needs to, Belinda calls her retailer and tells them before or on the due date of payment that she will be late.

The retailer told Belinda if she keeps up the higher payments for another two months they might put her back on the hardship program.

Problems raised by case study

1. The retailer did not consider Belinda's capacity to pay the repayments they demanded.
2. The retailer increased the payments of her payment plan, despite the previous plan being set at a level that was unaffordable for Belinda.

3. The retailer has threatened Belinda with disconnection if she can't afford the payments they have requested.
4. Belinda's energy bills are not affordable for her on a part-time salary.

What should the retailer have done differently?

Rather than remove Belinda from the hardship program when her instalments were unaffordable, the retailer could have renegotiated a more affordable payment level and/or referred Belinda to a financial counsellor. The retailer could have also provided information to Belinda about obtaining a Utility Relief Grant, offered a home energy audit, or checked she was on the best available tariff.

4.12. Case Study 12: Barbara

Barbara is 48 years old and receives a carer's pension, which is her only source of income. Barbara has been with her retailer for five years, and over the last few years, has built up a debt of $1,800 to her retailer for gas, and $700 for electricity.

Barbara called her retailer and asked for a payment plan as she was worried about being disconnected. She agreed to pay $25 a fortnight each for gas and electricity on her retailer's hardship program. Barbara never missed instalments on her payment plan, however her retailer contacted her and told her she needed to increase her payments to $60 each for gas and electricity per fortnight. Later, the retailer contacted Barbara again, and told her she had to pay $90 each for gas and electricity per fortnight. This amount was to cover her accrued debt and her ongoing consumption.

Barbara told her retailer that the increased amount wasn't affordable for her on a carer's pension, but the retailer did not accept this. Barbara told them that she could try and pay $70 per fortnight, at a stretch, but the retailer refused. Barbara became upset, and was sarcastic with the customer representative. The representative then took her off the hardship program. She was then contacted by the resolutions department, asking her to pay the full debt.

Barbara told the retailer that she can't afford to pay the full debt, but the retailer told her to see a financial counsellor to sort out a budget. The retailer also told Barbara that if she didn't tell them a date for her appointment with the financial counsellor, they would disconnect her energy.

Barbara told her retailer she had an appointment in three weeks' time, so they would not disconnect her, but in reality was still on a waiting list to confirm an exact date for an appointment with a face-to-face financial counsellor.

Problems raised by case study

1. The retailer did not consider Barbara's capacity to pay on a carer's pension when proposing a payment plan.
2. Barbara can't afford her energy bills on a carer's pension.
3. Barbara was asked to pay the full amount owing to the retailer rather than renegotiate her payment plan.

What should the retailer have done differently?

Rather than remove Barbara from the hardship program, the retailer could have considered entering into a more affordable payment plan. This may have prevented Barbara's account being referred to the collections department, and the unreasonable proposition that she pay the amount outstanding in full.

It seems that the retailer intended to rely on the advice of a financial counsellor to determine a suitable repayment amount for Barbara. Whilst seeing a financial counsellor may have benefited Barbara, the retailer could have more actively listened to Barbara when she tried to negotiate a payment plan she could afford. The retailer could also have been understanding that waiting times to see face-to-face financial counsellors can be very lengthy and out of Barbara's control – threatening to disconnect her during the waiting period was not appropriate.

Barbara's energy debt built up over several years, indicating that her usage was in excess of her low fixed income over a long time. If Barbara hadn't been paying her bills in full over several payment cycles, the retailer could have considered asking Barbara to participate in a hardship program earlier, or even organised an energy audit to try and find out if there were ways she could help control her energy costs.

4.13. Case Study 13: Sylvia

Sylvia is 58 years old and has been with her retailer for four and a half years. She is unemployed and receives the Newstart allowance.

Sylvia accrued a debt of $3,000 and, after accessing a Utility Relief Grant, called her retailer and asked to go on a payment plan. The retailer arranged for her to make fortnightly repayments of $150 for energy and $60 for gas, and committed to match those payments. Sylvia told her retailer that she couldn't afford it, but the retailer said she didn't have a choice and threatened to disconnect her if she refused to pay those amounts.

Sylvia struggled to keep up with the payments, borrowing money from family and her children to pay the bills. She fell behind again. She called the retailer, who said they were going to increase the amounts to $178 per fortnight for electricity and $80 for gas. Sylvia says that her retailer told her to provide them with her credit card details, and to borrow from her family or friends if she didn't have the money.

Sylvia continued to try and pay the increased repayments. When she fell behind again, the retailer called her and told her she had made no effort to pay and her services would be disconnected. Sylvia called and spoke to MoneyHelp, who referred her to EWOV for assistance.

Problems raised by case study

1. Sylvia can't afford to pay her energy bills on the Newstart Allowance.
2. The retailer did not consider Sylvia's capacity to pay the repayments they are demanding.
3. The retailer asked Sylvia to provide them with her credit card details and to borrow from family or friends to make payment.

What should the retailer have done differently?

Sylvia's is another case where the retailer has demanded increased payment, despite knowing she is on a low fixed income and not assessing her capacity to pay their desired amount. Instead, they could have tried to help her control the amount of energy she is using through a home energy audit. The retailer's offer to match Sylvia's payments dollar for dollar could have assisted her to get control of the debt, had it not been set at an amount that was unsustainable for Sylvia.

5. How retailers are performing on hardship

In the 2012-2013 period, the Essential Services Commission (**ESC**) found that participation in hardship programs had increased 29 per cent on the previous year, with a total of 24,356 people accessing these programs.[19] On average, 11,142 customers participated in a hardship program in every month of 2012-13, with 71 per cent of these concession card holders.[20]

While it is encouraging that an increasing number of low income consumers are gaining access to hardship programs, within the same time period the number of customers denied access to a retailer's hardship program also rose by 93 per cent. Moreover, the overall proportion of customers accessing hardship programs is extremely low, at 0.57 per cent of all residential customers. Alarmingly, the rate of disconnections also rose by 150 per cent over the preceding five years.

The trend is also towards consumers spending less time in hardship programs. On average participants spent 363 days in a program in 2012-13, significantly down from 504 in the preceding year. Fifty five per cent of participants left the hardship program because they no longer complied with the program's requirements.[21]

In 2012-13, the average debt on entry to a hardship program was $742, compared to $919 in the previous year. While this points to earlier intervention on behalf of energy retailers, the average debt on exit from a hardship program in 2012-13 had *increased* from debt on entry, up to $1,054 (in 2011-12 average debt on exit was $715).[22]

While noting these figures are averages, and that there may be different factors which influence these figures, it could be expected that should hardship assistance be successful, debt levels would decrease rather than increase, Moreover, the very low proportion of customers accessing hardship programs, together with increasing rates of disconnection, points to a deteriorating quality of service from retailers toward people suffering hardship.

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[19] The increase comes after abnormally low participation in the preceding two years - current rates show a return to the hardship program participation rate reported in 2008-09 and 2009-10 (0.64 and 0.65 per 100 customers respectively).
[20] Essential Services Commission (2014), *Energy retailers comparative performance report — customer service 2012-13*, p13 http://www.esc.vic.gov.au/getattachment/983c8101-90be-4173-b57e-73ec365f2648/Energy-Retailers-Comparative-Performance-Report-Cu.pdff
[21] Ibid, p12
[22] Ibid p 16

Data from the Energy and Water Ombudsman of Victoria (**EWOV**) indicates that nearly half of the 12,245 people that made an energy-related credit complaint in 2012-13, complained about energy disconnection. This was followed by debt collection as the main issue for 29 per cent of complaints (up 25 per cent) and payment difficulties as the main issue for 20 per cent of customers (up 29 per cent).[23] As EWOV states, '[f]acing rising industry cost pressures, some energy retailers have increased their use of disconnection, or the threat of disconnection, as a means of collecting debt. Others are on-selling debt.'[24]

Consumer Action's analysis supports these general conclusions. Through our case work, and the case studies in this report, we have observed that energy debt is accumulating quickly and beyond what some consumers can afford, including some on medium incomes. This is particularly true for consumers on government allowances, which in many cases are insufficient to cover living costs generally, and rising energy costs specifically.

The case studies in this report highlight that, for many consumers, current energy retailer hardship practices are not adequate to protect their interests and provide them with equitable access to an essential service.

The case studies show that energy retailers:

- Often don't factor a consumer's capacity to pay into the establishment of payment plans;
- Are not always making affordable and sustainable payment arrangements available to help consumers pay off debt while still meeting their current energy needs;
- Do not always refer eligible customers to their hardship programs, despite being aware that financial difficulties exist;
- Are increasingly using the threat of disconnection, or threatening language, to leverage unaffordable payments out of vulnerable households, exacerbating the hardship cycle;
- Are not routinely offering basic assistance to vulnerable consumers, such as checking that they're on the lowest tariff or helping consumers access energy efficiency advice and audits;
- Are not always advising consumers about all the options available to them to meet their energy debt, including energy concessions and particularly about Utility Relief Grants; and

[23] Energy and Water Ombudsman Victoria (2013) *Annual Report,* pp 18, 20, 24 http://www.ewov.com.au/__data/assets/pdf_file/0019/9640/1-EWOV-2103-Annual-Report.pdf

[24] Energy and Water Ombudsman Victoria (2013) *Annual Report*, p24 http://www.ewov.com.au/__data/assets/pdf_file/0019/9640/1-EWOV-2103-Annual-Report.pdf

- Are not proactively identifying consumers who are experiencing temporary or chronic financial hardship.

While Consumer Action acknowledges that energy companies primarily exist to sell a product, as providers of an essential service they also have an obligation to assist vulnerable members of the community to maintain their wellbeing through providing equitable access to energy. Consumer Action also acknowledges that retailers are making efforts to improve hardship assistance, and are investing in their staff, capabilities and processes to provide better support. The above findings provide the evidence to support this necessary investment by energy retailers.

Unjust treatment of consumers in the recovery of energy debt has significant implications for wellbeing, including significant shame and anxiety through uncompassionate treatment or unaffordable payment plans contributing to the debt spiral that vulnerable consumers get caught in. These impacts are exacerbated by disconnection, threats of disconnection or the sale of debt to third-party debt collectors.

5.1. Disconnection

Disconnections in Victoria are currently at an all-time high. Disconnections from electricity have risen from approximately 9,500 in 2008-09 to over 25,000 in 2012-13. This is the second highest rate of disconnection in all Australian states.[25]

It is important not to understate the experience of people during their disconnection and the flow on implications for wellbeing. The 2004 Report *Access to Energy and Water in Victoria*[26] outlined the lived experience of consumers whose energy supply had been cut off due to payment issues. We hope to revisit the experience of consumers who are disconnected in a forthcoming report.

5.2. Energy Debt Collection

Consumer Action's 2012 report *Pursuit of the Impossible: Consumer Experiences with External Collection of Retail Energy Debts*[27] was prompted by a growing number of calls to Consumer Action with complaints of debt collection. Many clients reported that debt collectors were:

[25] Essential Services Commission (2014), *Energy retailers comparative performance report — customer service 2012-13* pg 30 http://www.esc.vic.gov.au/getattachment/983c8101-90be-4173-b57e-73ec365f2648/Energy-Retailers-Comparative-Performance-Report-Cu.pdf

[26] Consumer Law Centre Victoria & Consumer Utilities Advocacy Centre (2004), *Access to Energy and Water - a research report*.

[27] Consumer Action Law Centre (2012), *Pursuit of the Impossible*, http://consumeraction.org.au/the-pursuit-of-the-impossible-consumer-experience-with-external-collection-of-retail-energy-debts/

- Leaving numerous telephone messages or missed calls on debtors' phones;
- Seeking full payment of a debt without considering whether the debtor has the capacity to pay or should be assisted through a hardship program;
- Pursuing debt from debtors when they know that the debtors' income is protected;
- Misrepresenting the consequences of not paying a debt; and
- Seeking payment of costs in addition to the debt being recovered, or recovery of debt that is disputed or not owed.

While consumers who are unable to pay their bill can be pursued for payment by internal credit collection teams, or external debt collectors if the debt is outsourced or on-sold, it is important that this is done within limits. Currently, debt collector conduct standards and consumer protection from undue harassment are spread across a number of jurisdictions, including Victorian specific laws, the national energy market, and industry practice guides.

Victoria's energy regulations don't explicitly deal with the way in which energy retailers recover debts from consumers, but place broad restrictions on retailer conduct. For example, the Energy Retail Code requires a retailer who is aware that a consumer is experiencing such difficulties or is facing disconnection to tell the consumer about its hardship policy.

The Code prevents retailers from commencing legal proceedings for recovery of a debt while a consumer is making payments under an agreed payment arrangement. In addition, a retailer cannot start legal proceedings for debt recovery until it has assessed a consumer's capacity to pay, made available evidence about that assessment, offered the consumer an instalment plan, and provided information about concessions, Utility Relief Grants and the availability of an independent financial counsellor.[28]

The joint ASIC and ACCC *Debt collection guideline for collectors and creditors*[29] recommends debtors only be contacted a maximum of three times per week, and that phone calls can only be made between 7am and 9pm on weekdays, and 9am to 9pm on weekends. Consumer Affairs Victoria can seek fines for breach of the prohibited debt collection practices, and consumers can seek compensation of up to $10,000 for humiliation or distress as a result of a course of conduct in contravention of the prohibited debt collection activities.

[28] *Energy Retail Code*, v10 (May 2012), Clauses 11.2 and 11.4
[29] http://www.asic.gov.au/asic/asic.nsf/byheadline/Debt+collection?openDocument

5.3. Barriers to accessing repayment options

While energy retailers have obligations to provide assistance to customers experiencing financial difficulty, Consumer Action takes numerous calls which suggest that this is not always happening. People using the MoneyHelp telephone service report many obstacles in attempting to gain access to hardship programs or other repayment assistance.

In particular, callers are increasingly reporting that energy retailers require them to see or speak to a financial counsellor before they are eligible for support from the hardship team, or a Utility Relief Grant (URG, see Appendix 1). There is no such requirement in the laws and guidelines that regulate hardship practices. While referral to a financial counsellor may be appropriate—particularly if the consumer is dealing with many debts—energy retailers and their hardship teams should be capable of assisting consumers with energy debt without automatic referral to a financial counsellor.

Like all processes that require a consumer to take action, there is immense value in making the process user friendly and as simple as possible; it is critical to avoid the need for multiple steps to avoid people simply giving up and not claiming entitlements because it's perceived as too hard.

6. Power to the People - A better approach to capacity to pay

The experiences of the real consumers presented in this report, and the findings of regulatory bodies with respect to the delivery of energy hardship programs in Victoria, highlight a clear need for reform to ensure that consumers are:

- Identified early as having financial difficulties.
- Provided with simple, clear and consistent information about their options for dealing with difficulties paying their bills which is easily available.
- Provided with appropriate access to hardship programs and ongoing access to energy.
- Treated with respect and compassion through their time of hardship.

The challenge to bring about this reform and achieve better outcomes for vulnerable consumers falls to governments, the community support sector and retailers as the providers of an essential service.

A useful example of improving the treatment of vulnerable consumers is provided by reforms currently underway in the UK.

The UK energy regulator (**Ofgem**) has recently undertaken key reforms that provide a useful example for a better way to identify and tackle energy hardship. Ofgem's Vulnerability Strategy[30] takes a holistic view on the causes of hardship, the identification of vulnerable consumers and their treatment in a privatised energy market in order to reduce the likelihood and consequences of incapacity to pay. Four priorities were identified through the Strategy:

1. Ensuring there was suitable support for vulnerable consumers to access the energy market.
2. Methods for facilitating access to energy services, including switching sites and third party advice, for vulnerable consumers.
3. Implementing incentives and rewards for distribution businesses to work with third party companies to support vulnerable consumers.
4. Reviewing retailer vulnerability and hardship practices to identify and promote the best practice available.

[30] Ofgem (2013), *Consumer Vulnerability Strategy* http://www.ofgem.gov.uk/Sustainability/SocAction/Documents1/Consumer%20vulnerability%20strategy.pdf

Ofgem is committed to an annual review of the Strategy and its priorities to ensure that good outcomes are delivered to consumers.

Another UK organisation, Consumer Futures, undertook analysis in the same year of consumers' ability to pay and treatment by energy companies in relation to Ofgem hardship guidelines.[31] The assessment found:

- The causes of debt are typically chronic low income combined with unexpected changes in personal circumstances (ie. job loss, relationship breakdown, health) and the longer a consumer is in debt, the less manageable it becomes.
- Energy retailers typically don't contact a consumer in debt until months after a bill is overdue, although once contact is made, payment plans are in place within two weeks.
- The single biggest obstacle to consumers having their capacity to pay adequately considered was the consistency and level of training of retailer customer service agents.
- The way in which staff from energy retailers speak to vulnerable consumers materially impacts the way in which cases are resolved, with better outcomes to both parties where more sympathetic tones and language is used.
- In the UK, nearly half of all consumers with an energy debt end up on a pre-payment meter.[32]

Consumer Futures' recommendations as a result of this analysis include that:

- Energy suppliers should take a proactive approach to early identification of vulnerable consumers to keep people out of severe hardship and worsening impacts on their wellbeing. This could include a range of identification methods from the use of automated account monitoring to working in collaboration with housing associations, community mental health clinics etc.
- Low cost or free options for consumers to contact their energy provider should be made available, and phone lines should be staffed by people appropriately trained in identifying and communicating with vulnerable consumers.
- Vulnerable consumers should have easy access to information about third party service providers through their energy retailer, especially when

[31] Consumer Futures (2013), *Ability to Pay, Exploring the extent to which Ofgem guidelines regarding indebted consumers are followed, from the consumer and debt adviser perspective* http://www.consumerfutures.org.uk/files/2013/07/Ability-to-Pay-RS-Consulting.pdf

[32] This technology is not available in Australia, and Consumer Action strongly opposes their use as a form of debt recovery now or at any time in the future, including through the similar process of supply capacity control. Pre-payment meters and supply limits are inequitable forms of debt recovery which bring significant potential for poor wellbeing outcomes for already vulnerable people.

identified as a vulnerable consumer, and tariff checks and eligibility for discounts and grants should be performed as a matter of course.
- Monitoring of identified vulnerable consumers should be ongoing.

A more detailed summary of recommendations can be found in the Consumer Futures report.[33]

6.1. A way forward for consumers

Energy retailers have the primary relationship with consumers, and the duty to respond to payment difficulties and ongoing supply of energy. While governments and the community support sector have their role to play, energy retailers are well placed to lead the reform of hardship practices in Victoria, with the aim of more equitable outcomes for consumers, and greater likelihood of avoiding a spiral into long-term hardship and/or disconnection.

Consumer Action broadly supports the areas of greatest impact on hardship policy defined by Financial Counselling Australia and the Australian Communications Consumer Action Network in their recent review of hardship practices.[34] However more specifically we recommend that energy retailers:

1. Work closely with consumer groups to develop best-practice hardship processes, led by senior management. The energy industry should learn from other industries in undertaking this, with particular reference to the banking and water sectors. There is an opportunity for the industry peak body to lead the development of best-practice industry guidance and culture.
2. Redesign internal processes for identifying people having trouble paying their bills, to ensure early identification. Processes and filters should aim to ensure that even people experiencing temporary difficulties are identified early as this gives the best possible chance of keeping consumers out of longer-term financial hardship.

[33] Consumer Futures (2013), *Ability to Pay, Exploring the extent to which Ofgem guidelines regarding indebted consumers are followed, from the consumer and debt adviser perspective,* p44-46 http://www.consumerfutures.org.uk/files/2013/07/Ability-to-Pay-RS-Consulting.pdf

[34] Financial Counselling Australia and the Australian Communications Consumer Action Network (2014), *Hardship Policies in Practice: A comparative study.* http://accan.org.au/files/Reports/Comparative%20Hardship_Final.pdf

3. Ensure easy and consistent access to information for consumers through a dedicated hardship team. This could be via a dedicated option on telephone menus, coupled with round the clock access and a call back service for consumers that can't afford the cost of remaining on hold. Retailers should commit to have information about payment assistance available on all customer bills, and on website home pages, using recent reforms in the banking sector as a guide of good practice.[35]

4. Ensure easy and consistent access to information for financial counsellors and community workers through a 'community hub' model. Retailers should consider joining the Yarra Valley Water hub, and should commit to keeping it updated with trustworthy and current information about all hardship programs and policies.

5. Ensure that the dedicated hardship team is very well trained in energy sector hardship requirements and opportunities, as well as the retailer's own policies and procedures, equipping them to deliver consistent advice to vulnerable consumers. In addition, all customer service staff should be trained in the respectful treatment of vulnerable and disadvantaged people, including:

    a. The cause of financial difficulties;

    b. The proactive identification of customers that may be facing financial difficulties;

    c. How to talk to customers experiencing financial difficulties;

    d. When to refer customers to the 'hardship program'; and

    e. Literacy and access issues experienced by some customers

6. Develop consistent, respectful and realistic procedures for internally assessing a customer's capacity to pay, which are based on the customer's income and expenditure and not merely on the amount owing, and which do not remove people from hardship programs at the end of their payment plan if the account is still in arrears or the household is still having trouble paying their bills. Options for assistance in paying bills and arrears should be flexible, based on the situation of the customer, and include Centrepay, reviews of fees and tariffs, incentive plans, and partial or complete waiver of debt in some circumstances.

7. Incorporate an energy efficiency focus to hardship assistance. Energy efficiency improvements are an essential part of assisting many energy customers in hardship. This assistance should include links to existing energy efficiency programs.

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[35] For more information see the Australian Bankers' Association *Are you experiencing financial difficulty?* initiative at http://www.bankers.asn.au/Consumers/Are-you-experiencing-financial-difficulty-

8. Develop consistent procedures for checking that eligible households are receiving the concessions they may be due, beyond checking if an account holder is a concession holder at the point of sign up.
9. Undertake regular reviews of the business's response to hardship, including through learning from others, and feedback from customers and their representatives. This should be led by senior management in order to ensure commitment to ongoing improvement on hardship across the organisation.

We also encourage energy businesses to develop the 'business case' for effective hardship responses. Some utility businesses have determined that there are economic benefits resulting from effectively dealing with financial hardship, and this acknowledgment can mean that hardship response becomes embedded within businesses' planning processes.

7. Appendix 1: Current Hardship Requirements and Support

Energy retailers' obligations on hardship in Victoria are governed by multiple legislative and regulatory instruments, laid out below.

7.1. Victorian Legislation

Victoria's *Electricity Industry Act 2000* and *Gas Industry Act 2001* lay out the requirement for retailers to prepare financial hardship policies which must be approved by the Essential Services Commission. These requirements are:

- *Electricity Industry Act 2000*[36]

s43 Financial hardship policies

(1) A licence to sell electricity is deemed to include a condition requiring the licensee to, within 3 months after being granted a licence –
   (a) prepare a policy to deal with domestic customers experiencing financial hardship; and
   (b) submit the policy for approval to the Commission under section 45.

(3) a licence to sell electricity is deemed to include a condition requiring the licensee to implement a financial hardship policy by the date specified in the financial hardship policy.

(4) A term or condition in a contract for the supply or sale of electricity by a licensee to a domestic customer is void to the extent that it is inconsistent with the financial hardship policy of the licensee.

- *Gas Industry Act 2001*[37]

s48G Financial hardship policies

(1) A licence to sell electricity is deemed to include a condition requiring the licensee to, within 3 months after being granted a licence –
   (c) prepare a policy to deal with domestic customers experiencing financial hardship; and
   (d) submit the policy for approval to the Commission under section 45.

(3) a licence to sell electricity is deemed to include a condition requiring the licensee to implement a financial hardship policy by the date specified in the financial hardship policy.

[36] *Electricity Industry Act 2000* (Vic) s43
[37] *Gas Industry Act 2001* (Vic) s48G

(4) A term or condition in a contract for the supply or sale of electricity by a licensee to a domestic customer is void to the extent that it is inconsistent with the financial hardship policy of the licensee.

Given their role in administering this requirement, the Essential Services Commission (**ESC**) published a guideline for retailers in the development of financial hardship policies. Guideline 21 explains that this "obligation is placed upon retailers because they have the principal relationship with domestic customers and should continue to have the major responsibility to respond to domestic customers in financial hardship."[38]

Specific requirements of hardship policies include that retailers:

- offer fair and reasonable payment options with fair and reasonable instalment intervals;
- recommend the most appropriate tariff at the time of entry to the hardship program;
- monitor [consumer] behaviour and consumption, and continue to monitor for the duration of their participation in the financial hardship program to ensure that they continue on the most appropriate tariff;
- provide assistance to domestic customers in financial hardship to replace electrical and gas appliances; and
- provide information about how a customer can access field audits in relation to energy efficiency.

7.2. The Energy Retail Code

Further consumer protections around capacity to pay energy bills are contained in Victoria's Energy Retail Code (**'the Code'**).[39] The Code is administered by the ESC and sets out the following:

s11 PAYMENT DIFFICULTIES

11.1 Capacity to pay

A customer must contact a retailer if the customer anticipates that payment of a bill by the pay by date may not be possible.

[38] Essential Services Commission (2011), *Guideline 21 – Energy Retailers' Financial Hardship Policies*. http://www.esc.vic.gov.au/getattachment/a35692f1-794f-4b7a-90a9-25aedf250765/Guideline-21-Energy-Retailers-Financial-Hardship-P.pdf

[39] *Energy Retail Code (Version 10)* May 2012

11.2 Assessment and assistance to domestic customers

If

(a) a domestic customer so contacts a retailer and they do not agree on an alternative payment arrangement; or

(b) the retailer otherwise believes the customer is experiencing repeated difficulties in paying the customer's bill or requires payment assistance,

the retailer must:

(1) assess in a timely way whatever information the customer provides or the retailer otherwise has concerning the customers capacity to pay, taking into account advice from an independent financial counsellor if the retailer is unable to adequately make that assessment;

(2) on request, make available to the customer documentary evidence of the retailer's assessment;

(3) unless the customer has in the previous 12 months failed to comply with two instalment plans and does not provide a reasonable assurance to the retailer that the customer is willing to meet payment obligations under a further instalment plan, offer the customer an instalment plan;

(4) provide the customer with details on concessions including the Utility Relief Grant Scheme, telephone information about energy efficiency and advice on the availability of an independent financial counsellor; and

(5) not require the payment of any amount as a condition of providing the customer with an application form for a Utility Relief Grant.

11.3 Energy efficiency field audits

A retailer must consider conducting an energy efficiency field audit to assist a domestic customer to address the difficulties the customer may have paying the retailer's bills. The retailer need on conduct such an audit if the retailer and the domestic customer reach an agreement to that effect. To avoid doubt, any charge the retailer imposes for conducting the audit is not an additional retail charge.

11.4 Debt collection

A retailer:

(a) may no commence legal proceedings for recovery of a debt from a domestic customer unless and until the retailer has complied with all applicable requirements of clause 11.2;

(b) may not commence legal proceedings for recovery of debt while a customer continues making payments according to an agreed payment arrangement; and

(c) must comply with guidelines on debt collection issued by the Australian Competition and Consumer Commission concerning section 50 of the

Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

s12 INSTALMENT PLANS

12.1 Options for domestic customers

In offering an instalment plan to a domestic customer, a retailer must offer each of:

(a) an instalment plan under which the customer may make payments in advance towards the next bill in the customer's billing cycle; and

(b) an instalment plan under which the customer may pay any amount in arrears and continue consumption.

12.2 Requirements for an instalment plan

A retailer offering an instalment plan must:

(a) specify the period of the plan and the amount of the instalments (which must reflect a customer's consumption needs and capacity to pay), the number of instalments and how the amount of them is calculated, the amount of the instalments which will pay the customer's arrears (if any) and estimated consumption during the period of the plan;

(b) make provision for re-calculating the amount of the instalments where the difference between the customer's estimated consumption and actual consumption may result in the customer being significantly in credit or debit at the end of the period fo the plan;

(c) undertake to monitor the customer's consumption while on the plan and to have in place fair and reasonable procedures to address payment difficulties a customer may face while on the plan.

7.3. Concessions and support

In addition to the formal requirements for retailer hardship programs and payment options, there are a range of Government programs that support consumers with low capacity to pay. These programs are distinct from income support programs administered by Centrelink, which many of the consumers featured in this report receive, as do many of the clients who approach Consumer Action and the MoneyHelp telephone service for assistance.

Additional support offered to consumers typically comes in the form of concessions or rebates, grants or direct payments. There is also a range of audit and equipment programs which can help consumers keep energy bills down.

7.3.1. Concessions

A summary of Victoria's concession framework is provided in Table 1.

Table 1: Victorian Energy Concessions

	Description	**Value**
Annual Electricity Concession	All year discounts on electricity bills	17.5% off electricity bills*
Winter Energy Concession	Discount on gas bills during the 6 winter months (1 May – 31 October)	17.5% off gas bills*
Controlled load Electricity Concession	All year discount on off-peak (controlled load) electricity consumption	13% off controlled load off-peak consumption
Service to Property Concession	Applied if the cost of electricity use is less than the supply charge	Reduces the supply charge to the same amount as the cost of electricity over the billing period
Electricity Transfer Fee Waiver	The fee charged by electricity retailers when customers move homes is waived	The value of the fee
Life Support Concession	Provides a discount on electricity bills where a member of household uses an eligible life support machine	The discount is equal to the cost of using 1,880kWh per annum
Medical Cooling Concession	Additional discount on electricity summer bills (1 November to 30 April) where a member of the household has a medical condition that affects the body's ability to regulate temperature	17.5% off the electricity bills (in addition to the Annual Electricity Concession)
Non-Mains Energy Concession	Discounts for households who rely on liquefied petroleum gas (LPG), firewood or oil for heating, cooking or hot water. It also applies to households relying on a generator or those who access non-mains electricity through an embedded network	Up to $484 per annum^
* In July 2012 a threshold for the electricity and gas concessions was introduced to offset the Federal Government's carbon tax compensation. The Annual Energy Concession is not applied to the first $171.60 of a household's annual electricity bill, and the Winter Energy Concession is not applied to the first $62.40 of a household's winter gas bill. ^ As of July 2013		

7.3.2. Utility Relief Grants

The Victorian Governments' Utility Relief Grant provides direct financial assistance for residential consumers who are unable to pay their utility bills due to a temporary (within the last 12 months) financial crisis, who are at risk of disconnection, restriction of supply, or non-supply of gas bottles.

In order to be eligible, Victorians must demonstrate that unexpected hardship has left them unable to pay their bills without assistance or at risk of disconnection or non-supply. Non-concession holders can access the Utility Relief Grant, however the account holder must be registered with their utility company's hardship program. In addition, the applicant must also meet one of the following criteria;

- A significant increase in usage.
- A recent decrease in income, for example, loss of employment.
- High unexpected expenses on essential items.
- The cost of shelter is more than 30 per cent of the household income.
- The cost of utility usage is more than 10 per cent of the household income.[40]

Consumer Action has published a more detailed report on the use of Utility Relief Grants in Victoria.[41]

7.3.3. Home Energy Saver Scheme

The Home Energy Saver Scheme (**HESS**) was launched in 2012[42] and offered free home visits to eligible households to provide tailored energy and financial management information. The program assists consumers to understand their bills and identify the main sources of their energy consumption, helps work out affordable payment plans, offer suggestions about ways to reduce energy use, and provides information about concessions, loans, schemes and subsidies available to purchase energy efficiency appliances.[43]

[40] Department of Human Services, *Utility Relief Grant and Non-mains Relief Grant Schemes* http://www.dhs.vic.gov.au/for-individuals/financial-support/concessions/hardship/utility-relief-and-non-mains-utility-grant-scheme (as at 4 June 2014)
[41] Insert link in final report to URGs report on Consumer Action website once uploaded.
[42] Australian Government (2012) *New scheme helps low-income Australians save on energy* http://www.formerministers.dss.gov.au/12852/new-scheme-helps-low-income-australians-save-on-energy/ (as at 4 June 2014)
[43] Department of Social Services, *Home Energy Saver Scheme* http://www.dss.gov.au/our-responsibilities/communities-and-vulnerable-people/programs-services/financial-management-program/home-energy-saver-scheme/home-energy-saver-scheme (as at 4 June 2014)

HESS National Coordinator, Kildonan UnitingCare, estimated the average yearly saving after an energy efficiency visit to be almost $340,[44] a significant saving for the low income clients who accessed the service. HESS has been defunded effective from June 2014.

7.3.4. No Interest Loan Scheme

The No Interest Loan Scheme (**NILS**) and the NILS Subsidy Scheme are available to help low income households purchase approved energy efficient household goods and appliances. Appliances include: refrigerators and freezers, washing machines, air-conditioners and heaters, and hot water systems.

Some appliances are available for purchase under a national buying scheme, to further reduce the costs of these major household items and lower the cost of the loan.[45]

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[44] Herald Sun, 18 December 2013, *Abbott to axe the Home Energy Saver Scheme* http://www.heraldsun.com.au/news/abbott-to-axe-the-home-energy-saver-scheme/story-fni0fiyv-1226786143496

[45] Department of Social Services, *Home Energy Saver Scheme* http://www.dss.gov.au/our-responsibilities/communities-and-vulnerable-people/programs-services/financial-management-program/home-energy-saver-scheme/home-energy-saver-scheme (as at 4 June 2014)

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