

QCOSS

Queensland Council
of Social Service

Strengthening protections for customers in hardship

Response to consultation paper



June 2018

About QCOSS

The Queensland Council of Social Service (QCOSS) is the state-wide peak body representing the interests of individuals experiencing or at risk of experiencing poverty and disadvantage, and organisations working in the social and community service sector.

For more than 50 years, QCOSS has been a leading force for social change to build social and economic wellbeing for all. With members across the state, QCOSS supports a strong community service sector.

QCOSS, together with our members continues to play a crucial lobbying and advocacy role in a broad number of areas including:

- place-based activities
- citizen-led policy development
- cost-of-living advocacy
- sector capacity and capability building.

QCOSS is part of the national network of Councils of Social Service lending support and gaining essential insight to national and other state issues.

QCOSS is supported by the vice-regal patronage of His Excellency the Honourable Paul de Jersey AC, Governor of Queensland.

Lend your voice and your organisation's voice to this vision by joining QCOSS. To join visit [the QCOSS website](http://www.QCOSS.org.au) (www.QCOSS.org.au).

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Introduction

QCOSS thanks the Australian Energy Market Commission (AEMC) for the opportunity to comment on the *Consultation Paper: National Energy Retail Amendment (Strengthening protections for customers in hardship) Rule 2018*.

Under the current hardship rules, the Australian Energy Regulator (AER) provides guidance to help retailers meet their hardship obligations under the National Energy Customer Framework (comprising the National Energy Retail Law, Regulations and Rules). This guidance is provided through the Hardship Guidelines.

The current Hardship Guidelines provides guidance to retailers on the kind of information to include in their customer hardship policies, or to submit as supplementary information to the AER, when seeking approval of their customer hardship policy. The information in the Guidelines is meant to assist retailers to demonstrate that their policy satisfies all the minimum requirements and obligations specified in the Retail Law and Rules.

The hardship obligations are to:

- Implement an approved hardship policy that meets the minimum requirements.
- Report on performance against hardship program indicators.

The current guidelines lack clarity and certainty and this leads to ineffective hardship policies that provide inadequate consumer protections, inconsistent hardship practices, poor outcomes for customers and are difficult to enforce. Reform is required to provide greater certainty for retailers, customers, their community advocates, and regulators through improved guidance about what the minimum requirements mean in practice. Hardship policies should not be approved if they are inconsistent with the guidelines.

Improved hardship guidelines would result in more effective hardship policies that provide strong consumer protections, consistent hardship practices, improved outcomes for customers and improved compliance and enforcement.

The Proposed Rule Change

The proposed rule change is seeking to strengthen the protections for residential customers in financial hardship by allowing for the development of binding Customer Hardship Policy Guidelines (Hardship Guidelines).

QCOSS supports the intent of developing binding guidelines to strengthen hardship policies and agrees that the current hardship guidelines (and the hardship policies developed in accordance with them) need to be strengthened. However, we are concerned that the proposed rule change would just standardise current practice which generally is not providing good customer outcomes. Therefore, it is critical that the proposed rule change includes revised guidelines that provide clear expectations about the customer outcomes a hardship policy should provide. The rule change must result in better hardship policies and compliance with these improved hardship policies must be enforced.

Key messages

- Energy is an essential service.
- Australia's energy systems exist to serve the community and underpin every aspect of our lives.
- Positive outcomes for people should be at the heart of hardship policies.
- Many current hardship policies are not working. Despite the requirement for all energy retailers to have hardship policies, there has been an increasing trend in the number of customers not being able to pay their bills, being disconnected and struggling to complete hardship programs.¹
- Hardship policies must be strengthened. Households experiencing payment difficulty should receive the supports they need to manage their bills, manage debt and to stay connected. This support must be provided early to prevent escalation of debt and financial hardship.
- People must be able to access effective dispute resolution processes in relation to any issue that affects their rights as energy customers.
- There are broader social, economic and cultural benefits that flow from investing in more effective supports for customers at risk of energy hardship and disconnection.

Adequacy of the current approach to hardship

Question 1(a) To what extent do you consider that the current approach to the application of hardship policies provides adequate protections to consumers in financial difficulty?

The current approach to the application of hardship policies by retailers appears to be based on the need to recover debt rather than provide genuine protections to consumers experiencing financial difficulty. This stems from the uncertainty around the minimum requirements that a hardship policy must contain. The current guidelines do not provide adequate guidance on what the minimum standards mean, how they are to be reflected in hardship policies and how they are to be applied in practice to support customers in hardship.

The following works through each of the minimum standards and explains how they are falling short on delivering good customer outcomes.

Provision of information about hardship

There is currently no requirement around the provision of hardship information to consumers unless they have been already identified as being in financial difficulty. In practice, identification of financial hardship by a retailer occurs only after significant debt has been accrued by which time it is often too late. Many customers are not aware of hardship programs and do not know that they can ask for support. Presentation of hardship programs as a customer right and proactive release of information about hardship programs could prevent much hardship and improve customer outcomes.

Retailers don't tend to provide customers with a clear statement of customer rights or protections generally available to customers experiencing financial difficulty, even in the hardship policy itself. They will usually just set out the customer's payment obligations and the consequences of not paying.

All hardship policies rely on the customer's ongoing engagement with the retailer. Some customers are hard to reach, particularly those who are experiencing financial difficulty and

¹ Energy Security Board, *The Health of the National Electricity Market – 2017 Annual Report*, Energy Security Board, Sydney, at page 40.

hardship. This must be recognised and addressed in hardship policies through the inclusion of good engagement practices and the requirement to build a relationship with their customers. If customers have a bad experience with their retailer, they are unlikely to continue to engage.

Identification of customers experiencing payment difficulty (Eligibility for hardship programs)

The purpose of a retailer's hardship policy is to identify residential customers who are experiencing payment difficulties due to hardship and assist them to better manage their bills on an ongoing basis. As outlined above, retailers do not generally provide energy customers with a right to access support under a hardship policy and do not do enough to identify and offer support to customers that are showing early signs of experiencing payment difficulty.

Under the National Energy Retail Law (NERL) a hardship customer is defined as a "residential customer who is identified as a customer experiencing financial payment difficulties due to hardship in accordance with the retailer's customer hardship policy." As such, eligibility for support is determined by the retailer, leaving the customer without fair and equitable access to the retailer's hardship program and other assistance.

This is exacerbated by practices that interrogate the customer about their financial position to before deciding if they are eligible for their hardship program. This can be a confronting experience for the customer and can cause that customer to disengage.

What does early response mean

Retailers are required to have processes for early response in the case of residential customers identified as experiencing payment difficulties due to hardship. However, it is not clear what response is required (if anything). It is also clear from the information about average debt on entering a hardship program that the assistance being offered is too little too late. It is critical that this minimum requirement is clarified to improve customer outcomes.

Flexible payment options – payment plans

Payment plans are essential feature of a hardship policy however, they must not set customers up to fail.

While the retailer must take into account the customer's capacity to pay as well as how much the customer owes and how much energy they are likely to use over the coming year, the terms of the plan are largely at the discretion of the retailer.

Currently there is little guidance to support retailers in making this judgement. A customer's capacity to pay should be determined by reference to affordability such as amount of energy used, prices paid, income and other costs of living, and other considerations such as child safety, domestic and family violence, health and participation in education, training and employment. In assessing capacity, customers should not be subject to unnecessary questioning and should be taken on their word and not have to meet evidentiary requirements unless there is some identified compliance risk.

Clarity and guidance for retailers would support better customer outcomes.

Given the essential nature of the energy market, payment plan terms should be flexible, not subject to credit or payment history and disconnection should be avoided at all cost.

Concessions

Retailers are required to have processes to identify appropriate government concession programs and appropriate financial counselling services and to notify hardship customers of those programs and services.

Access to concession should not be linked to hardship programs. Information on concessions should be provided to all customers on signup and should continue to be provided proactively and regularly to all customers. Any interaction with the retailer should include information and support to the customer to identify and access concessions they are eligible for. There is a perception among community service providers that some retailers act as a gate keeper and do not proactively provide any information or assistance to help people identify and access concessions that they are eligible for.

Programs to assist hardship customers

Retailers are required to include in their hardship policy information on programs that the retailer may use to assist hardship customers including financial counselling, emergency assistance schemes and energy efficiency programs.

The current guidelines are unclear on the extent to which a retailer is required to provide tailored advice about what supports a hardship customer may be eligible for, how much support, if any, they should provide to help people access them, and what role financial counselling services are meant to play (eg. formal partnerships or referrals).

Like hardship information generally, information on financial counselling and emergency assistance schemes should be provided early and proactively to help avoid escalating debt and financial hardship.

The current service offers around energy efficiency are ad hoc and while there is some good information and supports out there, more tailored supports and advice in this area are non-existent, or can even be counter productive. For example, hard to engage customers, particularly with anxiety or mental health issues, may find a phone energy audit confronting and may disengage when asked questions about their energy use over the phone. This comes back to the need for retailers to build relationships with their customers and to utilise, where appropriate, community advocates and supports.

Provision of this information is at the discretion of the retailer and there are no objective standard or measure of effectiveness of programs in providing customer outcomes. There is also no requirement to provide information about the circumstances in which debt waivers will be considered.

Appropriateness of customer's energy plan

Retailers are required to have processes to review the appropriateness of a hardship customer's market retail contract in accordance with the purpose of the customer hardship policy. This requirement appears to be about ensuring that a customer is on the most appropriate energy plan so that they can better manage their bills on an ongoing basis.

There is no real incentive for a retailer to do their best for customers. It is unclear if this implies that retailers should match any appropriate available market offer for the time a customer is experiencing hardship. It is not clear what a retailer should do if a customer simply cannot afford any appropriate available market offer. To what extent is a hardship customer entitled to a sustainable energy plan, that is tailored to their needs and capacity to pay?

Dispute resolution

There is often no internal dispute resolution process in place within retailers for those customers seeking a review of any decisions about accessing the program, or the nature of the support that is offered. Retailers should provide a right to review of a decision as part of their hardship policies.

Question 1(b) Are general obligations that are more difficult to enforce leading to inadequate consumer protections?

Hardship policies that contain general obligations such as those in the current minimum requirements for hardship policies and customer hardship rules, will continue to fall short of community expectations. Hardship policies should contain a clear statement of:

- your rights as a customer (what you can expect from us); and
- your obligations as a customer (what we expect from you).

Currently there is no line of sight between a retailer's hardship policy and individual customer outcomes. This creates a situation where customers have no way of knowing what they can expect, and whether their treatment under a hardship policy was fair and reasonable. This includes access to a hardship program.

For the regulators, including ombudsman schemes, they can only enforce what is in the hardship policy. If the policy meets the minimum requirements but is otherwise not very effective there is nothing much they can do. Strengthened guidelines must result in a better hardship policies, better outcomes for customers, and compliance with these policies must be enforced.

Hardship indicators

Question 2(a) Do the current indicators appropriately reflect the success or failure of hardship policies in protecting consumers who are facing financial difficulty? Please explain your perspective.

The current hardship indicators do not appropriately reflect the success or failure of hardship policies in protecting consumers who are facing financial difficulty .

The purpose and objectives of hardship policies need to be more clearly defined to inform hardship indicators and should provide greater insight into the overall effectiveness of hardship policies, as well as the appropriate application of policies in individual cases.

Indicators could include:

- level of debt both across the customer base and upon entering hardship programs (with good performance being lower levels of debt as an indicator of early intervention)
- number of disconnections (again, lower levels indicating success)
- customer experience
- outcomes on exit from hardship (debt levels; retention with retailer)
- supports provided to hardship customers

Question 2(b) Should the hardship program indicators reside in the binding Hardship Guidelines as proposed or remain as separate to the Guidelines as a stand-alone requirement in the NERL? Please explain your perspective.

QCOSS does not have a view on the best place for the indicators, but believes all monitoring and reporting obligations for retailers should be contained in the one place.

Proposed approach

Question 3(a) Are you of the view that Hardship Guidelines that include standard statements adequately protect the long-term interest of consumers in financial difficulty, while providing retailers with flexibility in how they apply hardship provisions?

The inclusion of standard statements may provide clarity and certainty, but unless they require a higher standard than the current approach they will continue to fall short of adequately protecting the long-term interests of customers in financial difficulty.

Revised guidelines must at least address the current uncertainty around the minimum requirements as advised in the section above.²

Question 3(b) Is there another approach that would better meet the requirements under the NERL in relation to customers in hardship, and allow retailers to meet their obligations more efficiently?

Energy is an essential service. Good hardship policies have this at their core. They are concerned about people, not debt recovery. A good hardship policy that focuses on finding a sustainable energy outcome will also get good debt collection outcomes, but a debt collection policy will not achieve good hardship outcomes. Hardship programs should provide a safety net for those customers that can't afford to pay their energy bills, either temporarily or sustained.

A different approach could be to reframe hardship policies around building stronger relationships between customer and service provider that achieve fair and reasonable outcomes, that promote energy as an essential service, and recognise that Australia's energy systems exist to serve the community and underpin every aspect of our lives.

Inherent in this approach is the creation of rights and responsibilities that promote sustainable energy outcomes for customers in hardship. The current NECF provides an opportunity to clarify the current requirements and promote best practice, moving towards a more inclusive energy system. Within the existing customer hardship framework, imagine if energy customers experiencing hardship had the right to:

- be informed of their rights as an energy hardship customer
- fair and equitable treatment at all stages of their journey as a hardship customer

² Section 44 of the National Energy Retail Law

- access hardship program if identified (by self or by retailer) as experiencing payment difficulties
- a payment plan that corresponds to their capacity to pay, no more and no less than they can sustain without having to go without other essential goods and services, and without accumulating unsustainable debt
- all government concessions and rebates they are eligible for
- financial counselling and/or other appropriate community supports
- tailored advice or assistance to reduce bills based on their individual circumstances (eg. energy efficiency)
- debt relief where the customer has taken all reasonable steps to meet their payment obligations and manage their energy bills on an ongoing basis but is still experiencing persistent hardship
- the best available (and appropriate) offer, or tailored affordable and sustainable energy plan where no available offer is appropriate
- contest the bill or accumulated debt if any of these rights are breached
- stay connected if a retailer has not established a case for disconnection, or if it would be unfair to disconnect the customer after consideration of all the relevant circumstances, beyond just a failure to pay.

Under this approach, retailers would be obligated to do all that is reasonable necessary to give effect to these rights. Guidance could be developed or endorsed to help retailers meet their obligations. For example, Chapter 4 of the Essential Services Commission Report on energy hardship (2016) could be endorsed as interim guidance for the approval of hardship policies.

An energy customer's obligation to the retailer is to accept their offer for support, to cooperate and work with them, and to otherwise do all that is reasonably necessary, taking into account their individual circumstances, to achieve a sustainable energy outcome.

It is in the area of tailored assistance and tailored plans where retailers can really innovate. They are not constrained in how they provide good customer outcomes. They can build relationships with their customers. They can work with them to come up with a great solution to the person's energy hardship. This might include offering a home visit and a tailored affordable plan with incentive discounts for meeting certain energy or payment targets, or partnering with community service organisation to provide broader supports.

Enforceability of Hardship Guidelines

Question 4 The AER proposed that all Hardship Guidelines be enforceable. Do you agree that all aspects of the guidelines should be enforceable? If not, what aspects of the guidelines should or should not be enforceable and why?

As previously stated, QCOSS supports the intent of developing binding guidelines to strengthen hardship policies and agrees that the current hardship guidelines (and the hardship policies developed in accordance with them) need to be strengthened. Clear and best practice minimum standards that are mandatory could provide consistency of practice and improved outcomes. The rule change must result in better hardship policies and compliance with these improved hardship policies must be enforced.

Implementation

Question 5(a) What transitional arrangements should be put in place to require that retailers amend their current policies to comply with the Hardship Guidelines, if this rule were made?

Transitional arrangements should provide retailers with a reasonable amount of time to amend guidelines, seek approval and implement the changes. Retailers must provide customers currently in hardship programs with information about how the changes affect them, be offered any additional supports that they may now be eligible for, and be provided with a clear statement of their rights and expectations under the new policy. All new hardship customers should be treated in accordance with the new and improved hardship policy from the date of approval.

Baseline data on customer outcomes should be collected before and after the implementation of the new guidelines to establish the current efficacy of retailers' hardship policies and to be able to gauge the impact and effectiveness of any changes.

Ombudsman schemes must be given the appropriate authority to intervene in all aspects of hardship programs and agreements, notwithstanding the role of the Australian Energy Regulator to enforce the guidelines. There should also be broader engagement with community advocates to ensure that they understand the changes and can support their clients.

Question 5(b) What aspects of the rule, if made, should be a civil penalty provision?

The purpose of this rule change would be to clarify the law so that it can be more effectively monitored and enforced. The changes would ensure that the current civil penalty provisions work more effectively and should not need to be expanded. However, we suggest that the AER considers other ways to improve compliance and outcomes for customers in addition to imposing civil penalties.

Costs and benefits

Question 6(a) Please comment on the benefits and costs that have been identified, in terms of the adequacy in assessing the rule change proposal and any quantification of those factors.

Question 6(b) Will improving hardship policies through the Hardship Guidelines result in a cost saving to consumers as a result of a reduction in bad debt? Please explain your perspective.

As outlined earlier, while greater enforcement capacity is supported, QCOSS is concerned that a change that only focusses on enforcement has a risk that it will standardise the current poor practice. Greater customer benefits will only be achieved through improved guidelines with clear minimum standards that are then enforced.

Improving hardship policies, particularly around early intervention and access to assistance, could potentially result in cost savings to retailers through reduction of bad debts, debt collection and carrying costs. Improved relationships with customers may reduce churn also returning a benefit to the retailer. Provided that these cost savings are passed on in full, all energy consumers would benefit.

Improved hardship policies can provide many benefits to customers experiencing hardship or payment difficulty. This includes an improvement on range of wellbeing indicators including: reduced stress; improved confidence in engaging in the energy market (and other markets); reduction in financial hardship.

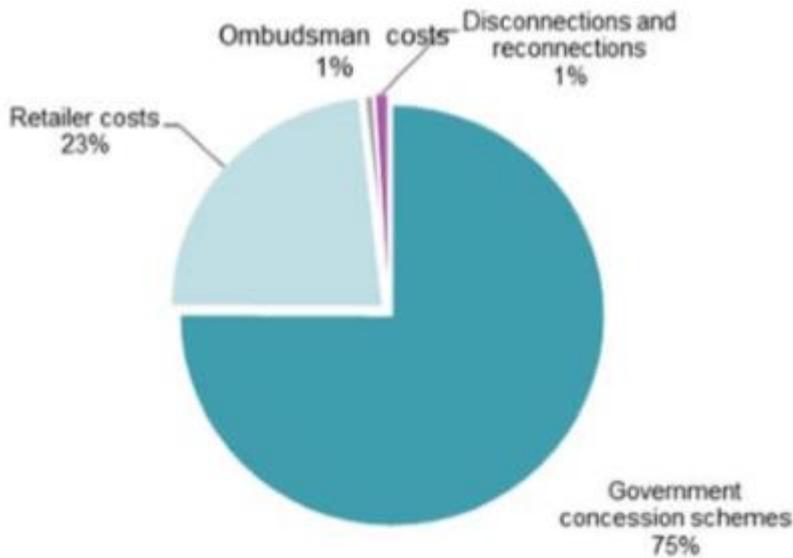
In 2016, KPMG cautiously estimated retailer costs incurred when customers can't afford their energy to be \$270 million per year. Energy Ombudsman costs related to energy affordability issues was estimated at approximately \$10 million across Australia. The estimated cost of residential electricity disconnections and reconnections was \$6.9 million and the total systems cost of energy affordability was estimated to be \$1.1 billion (KPMG – ECA, *Quantifying the costs of customers experiencing difficulties in paying their bills*, 2016 [here](#)).

In their calculations of retailer costs, KPMG included:

- the regulatory and compliance costs of maintaining a hardship program,
- administrative costs of applying concessions and associated reporting,
- operational costs incurred in hardship programs such as call centre staff, extra administration of payment plans,
- Ombudsman involvement,
- the consequential costs of failed hardship programs such as debt collection and carrying costs,
- bad debts.

QCOSS suggests that the focus of the rule change should be strengthening of the design and implementation of hardship policies which would result in considerable savings across all jurisdictions and better outcomes for customers experiencing hardship.

Figure 16 Total costs associated with energy affordability



Source: KPMG calculations

Form of rule

Question 7 Are there amendments that could be made to the proposed rule to better achieve the intent of the rule change request?

As previously stated, QCOSS strongly believes the rule change must include improved guidelines to address the uncertainty in the law that is currently flowing through to hardship policies in the form of inconsistent practices and poor outcomes for customers in hardship. Alternatively, the rule change could state that the minimum requirements must be interpreted and applied in a way that is consistent with the guidelines, instead of making the guidelines themselves binding. As hardship policies are already binding on retailers it could create further uncertainty and compliance costs to have both binding (and enforceable) guidelines and hardship policies.

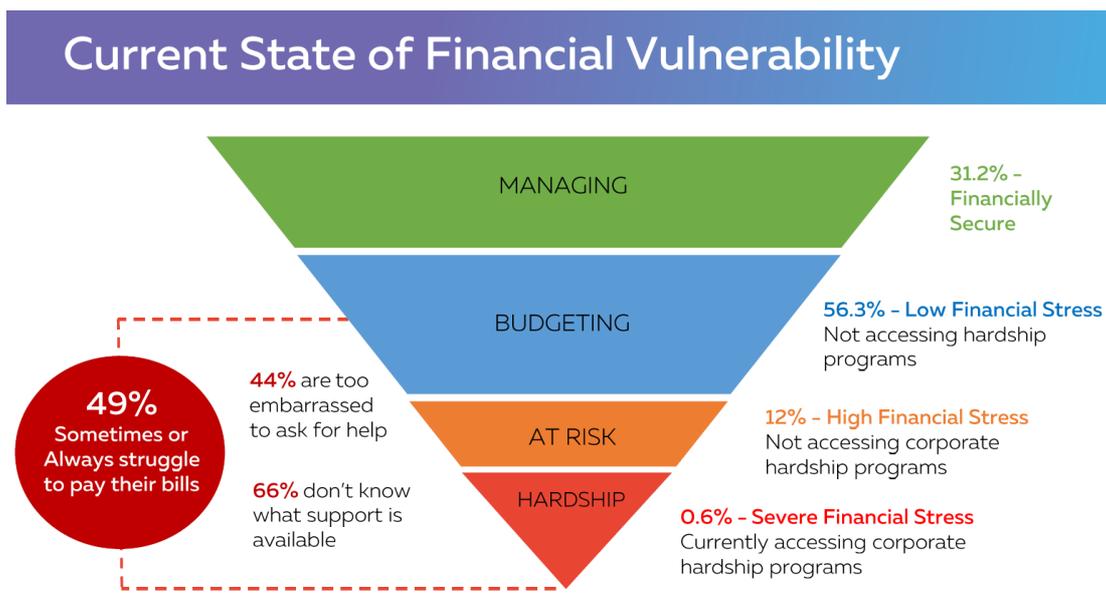
Other issues

Question 8 Please identify broader issues with regards to hardship and affordability that may not be addressed by this rule change, if made.

The most effective way to support a customer experiencing hardship is through targeted concessions. Even though retailers are required to include in their hardship policies processes to identify appropriate government concession programs and to notify hardship customers of those programs, QCOSS believes this information should be provided up front to all customers – not just hardship customers. In our experience there are many customers who may be eligible for concessions are not aware of them, and some customers who are particularly vulnerable may not be eligible for them.

We understand that concession programs themselves may be outside the scope of this rule change however, any opportunity to improve how they are integrated into retailer customer engagement and hardship programs should be considered.

Thriving Communities Partnership have provided an analysis of the current state of financial vulnerability. It shows that of the people that are experiencing financial vulnerability, almost half of them sometimes or always struggle to pay their bills, yet only about a quarter of them are accessing hardship programs.



Source: Thriving Communities Partnership

We recognise that low income and vulnerable customers are often difficult to reach and engage with through mainstream channels, and this may be a factor in why many people are not accessing hardship programs.

Based on our experience, we have found that one of the most effective mechanisms to reach low-income and vulnerable customers is via the community organisations they come into contact with on a day-to-day basis. These organisations have a strong reputation and trust within their local communities, and their staff have specific expertise in engaging and assisting people on a range of issues, including the cost of living.

QCOSS believes that more effective engagement with retailers including on their hardship policies can be achieved by working with the community sector. An example of a successful community engagement program was “*Switched on Communities*” where in 2016, AGL provided \$500,000 to the then Queensland Department of Energy and Water Supply to support the education and engagement of vulnerable consumers following electricity price deregulation in South East Queensland from 1 July 2016. The Department asked QCOSS to deliver this project in which we provided grants to nine community organisations to achieve high level outcomes. QCOSS administered the grants funds and provided training in energy literacy and efficiency to the community organisations.

A key objective of the project was to engage difficult to reach groups in society who are at risk of financial vulnerability and especially those who do not engage with retailers. These groups included Aboriginal and Torres Strait Islanders, disability, culturally and linguistically diverse communities, seniors, and low-income renters. An important aspect of the project was the ability for funded organisations to develop tailored approaches that met the needs of their clients utilising their existing relationships with clients and other community organisations. They know best how to reach their own clients and communities.

The following infographic about the program sets out numbers of people and activities undertaken by the project as well as the outcomes, case studies and the community organisations <https://www.qcoss.org.au/sites/default/files/switched-on-infographic.pdf>.

The key project learnings included:

- The market is considered to be too complex for many people to navigate without support from community advocates.
- Improving the understanding of the basics, such as how to read a bill and what hardship and concessions support is available, is essential before customers can feel confident to actively participate in the market and contact retailers.
- Projects also identified a general distrust of electricity retailers suggesting the independence and trust levels of the community sector as a communication channel is critical.
- After the project ended organisations reported that clients/members continued to seek out their services indicating an unmet need for such services.
- An important feature of the projects was the ability to collectively address the diversity of individual circumstances and needs by utilising different approaches tailored to specific audiences. The projects were able to demonstrate how information must be provided in ways that address the particular learning needs of each cohort.

QCOSS hopes that incentivising retailers to build relationships and support effective outcomes for their customers in hardship through partnerships with community organisations can also be a way for retailers to give effect to customer rights. One size does not fit all and being able to address diversity based on individual circumstances is important to ensure fair and equitable outcomes. It is QCOSS’ view that this would complement an outcomes-based framework for hardship customers.