National Energy Retail Amendment (Assisting hardship customers) rule change

30th January 2025

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About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are marginalised and facing disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

Energy and Water Justice

Our Energy and Water Justice work improves regulation and policy so all people can access the sustainable, dependable and affordable energy and water they need. We ensure consumer protections improve equity and limit disadvantage and support communities to play a meaningful role in decision-making. We help to accelerate a transition away from fossil fuels that also improves outcomes for people. We work collaboratively with community and consumer groups across the country, and our work receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation.

Australian Council of Social Service

The Australian Council of Social Service is a national advocate supporting people affected by poverty, disadvantage and inequality, and the peak council for community services nationally.

Sydney Community Forum

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St Vincent de Paul Society NSW

The St Vincent de Paul Society NSW is a lay catholic organisation whose vision is to create a more just and compassionate society. Members provide help and support to people at risk of homelessness or experiencing disadvantage in all sorts of ways.

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1. Introduction

The JEC, ACOSS, Sydney Community Forum, St Vincent de Paul Society NSW and the Ethnic Communities Council of NSW welcome the opportunity to respond to the AEMC's consultation paper on *National Energy Retail Amendment (Assisting hardship customers) Rule 2025* (the consultation paper).

Our organisations agree that households experiencing payment difficulty are often materially impacted because they are not on the best available deal from their retailer and are left paying more than necessary (and often accumulating larger debts than necessary).

Whilst we strongly support the intent behind this rule change, we are concerned about its implementation and the potential unintended consequences of the mechanism proposed. We are not confident the proposal will deliver on the intent and are concerned it presents credible risks of causing or exacerbating consumer harms, rather than alleviating them.

We strongly encourage the AEMC to consider a wider scope of alternative (more preferable) rule changes that may more meaningfully achieve the intent of the proposal, with less risk to consumers. We recommend this include consideration of a broader scope of complementary measures than contained in the proposal.

Our submission discusses the wider context in which this rule change is being proposed, details the limitations and risks of the proposed approach, and provides feedback on some alternative approaches the AEMC could consider.

2. There is a consistent and more substantial problem

There is consistent evidence[1] that most people experiencing payment difficulty (including those in retailer hardship programs) are not on their retailers' best offer and are often unable to consistently access better offers from other retailers. This has a material (and unnecessary) impact on the affordability of their required payments and the quantum of their debt.

Recently IPART has also found that while better offers (and significant savings) are theoretically available in the retail market, the majority of consumers are not accessing them.[2] This includes those experiencing payment difficulty and in need of retail hardship support. The price differentials indicate affected consumers are more likely to experience payment difficulty due to being on more expensive offers. They are also less likely to be able to resolve any payment difficulty, and more likely to require ongoing hardship support as a result of being left on more expensive offers

People in retail hardship support programs represent a tiny fraction of those experiencing payment difficulty. Problematically, the determination of whether they should receive hardship

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1 See: The Justice and Equity Centre, 2024, *Powerless: Debt and disconnection*; The Justice and Equity Centre and All Sustainable Futures, 2022, *Insights into retailer practices*; The Justice and Equity Centre, 2018, *Close to the Edge: A qualitative and quantitative study*.

2 IPART, 2024, *Monitoring the NSW retail electricity market 23-24 report*, pp.54-67

support (or are 'merely experiencing payment difficulty') is solely the responsibility of the retailer. This determination is made by retailers according to their own inconsistently applied and often subjective criteria.

It is very likely there are many more consumers who should be receiving retail hardship support than are currently assisted. In any case, we contend the problem identified in the rule change proposal extends beyond those deemed by retailers to be eligible for hardship support, and that a rule which relies on retailer identification of this narrow group is not likely to be effective.

Research (including our own) consistently reveals wide variation in the experience of consumers, both in terms of their ability to access hardship programs (when their circumstances should demonstrate a need) and the supports they receive if they are successful. This inconsistency exists both between and within retailers. The proposed approach does not address the fundamental consistency issues arising from retailer discretion in determining eligibility according to their own (largely opaque) criteria. We are concerned this presents critical risks to the success of the proposal and indicates more 'objective' (and wider) alternative eligibility criteria is needed.

3. Leveraging the AER's work on Payment Difficulty

Given this proposal currently relies on provisions for retail support for consumers 'experiencing payment difficulty due to hardship', it is necessary to consider these proposals within the wider context of measures relating to payment difficulty. As such there is scope for this process to draw on work done through the AER's Review of Payment Difficulty Framework.

Community and consumers advocates provided a comprehensive submission[3] to the AER, detailing ongoing consumer experiences of payment difficulty and considerations for effective solutions. The submission noted a number of structural flaws in the NECF protections, relevant to this rule change proposal. These issues were further demonstrated in the AER's listening session with Voices for Power on the Payment Difficulty Framework.[4] These undermine any scope to effectively and consistently ensure those who need additional protections from higher-than-necessary retail costs are 'eligible' for them. We provide a summary of these flaws as relevant considerations for alternative measures to address the problem identified in the consultation paper:

- **There is no clear definition of 'hardship' or 'payment difficulty'**
  The current framework distinguishes between payment difficulty and payment difficulty due to hardship, without providing an objective definition for either. This leaves retailers unreasonable discretion in exercising their responsibility for determining who needs assistance, on the basis of a definition they are also responsible for framing. This discretion doesn't provide scope to be flexible in the consumers best interest, but simply drives inconsistency in response, and subjects 'eligibility' for assistance to the retail incentive to 'gatekeep' as a means of reducing cost and administrative/regulatory burden.

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3 The Justice and Equity Centre et al. 2024, *Joint Submission to the AER Review of Payment Protections in the National Energy Customer Framework*

4 AER and Sydney Community Forum, 2024, *Consultation summary: Voices for Power listening session*

- **The onus is on consumers to self-identify as experiencing payment difficulty**
  While retailers are encouraged to provide assistance early, most of their systems (and the regulatory requirements they respond to) put the onus on the consumer to indicate when they are in payment difficulty (or hardship). This creates a number of points at which the framework can fail – because people don't know about assistance, don't know how to access it, have physical or communications barriers in accessing it, or what they say is not recognised by their retailer as a request for help.

  It is also increasingly apparent that many people aren't likely to request help from their retailer because of the stress, worry or shame it causes. This is especially problematic for people experiencing issues such as physical and/or mental health issues or trauma of some type. As The JEC's *Powerless* research shows, many people – especially First Nations people – can also feel too ashamed or embarrassed to contact their retailer about payment difficulty or 'hardship'.[5]

- **Assessment of payment difficulty and hardship is too subjective to be consistent**
  While guidelines give some indication of the intent behind hardship support, the assessment of who may be experiencing payment difficulty 'due to hardship' is made by the retailer, and often by staff with very different understandings of what this refers to. Fundamentally, even with a more effective definition it is problematic that retailers are required to identify that a consumer is experiencing hardship. Given the potential for added cost and administration in supporting hardship customers, retailers have some degree of incentive to minimise the number of people regarded as in hardship regardless of how many people may otherwise meet the criteria. Identification needs to be simpler, more objective and more openly accessible.

- **Existing provisions implicitly assume transitory hardship**
  Energy payment assistance is founded on an assumption that payment difficulty (and hardship) is transitory and focuses on assisting people who are experiencing a short-term issue impacting on their ability to pay. However, many households experience circumstances which make their inability to afford the energy they need ongoing. For them it is often likely to be permanent, absent any additional measures (such as substantially increased income, substantially reduced energy costs or improved housing quality and household circumstances).

- **Energy hardship and payment difficulty is often hidden**
  A substantial dimension of payment difficulty (and therefore hardship) experienced by people goes unrecognised by retailers and is not captured by existing energy-related monitoring. Increasingly people may access credit and payment advance products to pay bills they cannot otherwise afford. They may reduce usage, go without other essentials such as food and healthcare, and borrow from friends and family. These behaviours demonstrate energy payment difficulty shifted elsewhere from energy (because energy is seen as a priority household bill). The payment difficulty and hardship exists, and often continues to worsen, until the point at which even energy bills cannot be sustained.

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5 The Justice and Equity Centre, 2024, *Powerless: Debt and disconnection*, pp.51-53 and 68.

This is an important consideration, as the longer hidden payment difficulty persists, the more difficult the resulting energy debt is to overcome. Any approach to payment difficulty must attempt to recognise this reality and seek to consider ways to 'internalise' payment difficulty within the energy protections framework, and ways to use signs of hidden payment difficulty as triggers for energy payment assistance.

We are not recommending the burden of all payment difficulty be assumed by energy assistance frameworks. But energy frameworks must reliably assist with the energy-related aspects of payment difficulty to the greatest degree possible, and minimise the burden of energy payment difficulty which is 'externalised'.

- **The terminology 'hardship' is fundamentally problematic**
  Hardship is a pejorative and subjective term which many people (including those most likely to be experiencing it) do not identify with. Many people dealing with extreme payment difficulty may simply regard their circumstances as the 'usual' and are unlikely to self-identify as in hardship. The subjective nature of the term means retail staff are likely to have widely varying perceptions of who may or may not be in hardship. Both factors mean that the use of the term has a material impact both on those seeking assistance from their retailer, and the likelihood their retailer will recognise and respond to their need appropriately.

- **Retailers 'gatekeep' access to hardship support according to opaque criteria**
  Related to the distinction between payment difficulty and hardship is the resulting 'gatekeeping' by retailers, restricting access to more substantial supports either intentionally or through poor structures. Retail staff decide who is passed to hardship specialist staff, who is regarded as eligible (even when people may explicitly ask for hardship support) and who can access any of the individual supports provided through hardship programs. This leads to significant inconsistency within and between retailers, and makes that inconsistency opaque to the AER, making meaningful monitoring and enforcement impossible.

  The JEC's *Powerless* research revealed concerning incidents where people are asked to provide personal details and 'evidence' in support of hardship eligibility, though this is not consistent across retailers/within retailers.[6] Even where people are contacting their retailer in response to disconnection or a disconnection threat, they are often not offered the most substantial support[7] as a result of the exercise of retailer discretion.

- **People served through exempt sales and prepayment have less protection**
  'Eligibility' for protection from payment difficulty and hardship is not equally applied to those served through exempt sellers or prepayment. Despite some of the most vulnerable people living in embedded networks (such as people living in caravans) and prepayment arrangements (remote Aboriginal communities), people living with these arrangements often have less (or no) access to protection. The business choices of suppliers should not structurally disadvantage consumers access to essential energy and protections when they experience difficulty paying for it.

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6 *Ibid,* pp.44-45 and p.54.
7 *Ibid,* pp. 60-61; pp.71-72 and pp.81-82.

We recommend the AEMC review the entirety of our submission to the AER's process, as further context and evidence for the proposed hardship rule change.

4. Response to the proposed rule change

As noted earlier, we strongly support the intent of the proposed rule change as we understand it. That is, an intent to ensure retailers are delivering the maximum consumer impact through their hardship and payment difficulty assistance measures by ensuring consumers experiencing payment difficulty are receiving the best possible offer from their retailer (or the equivalent impact). Consumers energy affordability, their capacity to meet payment obligations, and their capacity to stabilise and address debt is materially impacted by the nature of their energy offer and we understand this proposal is intended to ensure retailers are utilising the best possible deal to calculate consumers obligations.

We understand the proposal arose from a broad agreement, in principle, that it is reasonable for retailers to ensure customers in certain circumstances (such as those experiencing payment difficulty and energy affordability issues) are on the best possible offer (and hence, paying no more than necessary). We strongly support this principle. We contend it could (and perhaps should) be applied more broadly, such that retailers are prevented from leaving consumers on demonstrably worse offers. We recommend this be a consideration for this and the other concurrent retail rule changes.

4.1 Risks and limitations of the proposed approach

Our organisations consider the proposed rule change is not likely to deliver on the intent of this process and is not the best means of assisting consumers in payment difficulty.

We highlight the following risks and limitations of the proposed approach:

- It will be difficult to implement this rule while restricting it to only a defined subset of consumers – particularly a subset that is narrowly (and inconsistently) determined by retailers themselves. Arguably the rule introduces a principle of retail responsibility for leaving a consumer on a poor offer, by requiring them to alleviate the impact of this. We question whether it is appropriate to limit this responsibility to a particular class of customer that the retailer themselves identify according to their own criteria.

- There is a risk that this approach materially increases any incentive retailers may have to 'gatekeep' hardship programs, making it harder for consumers to be placed into hardship programs. It is also likely to increase any incentive for retailers to remove people from the program before they have dealt with their payment difficulty. There is a related risk that it may increase retailers' motivation to move their hardship consumers on to other retailers.

- There is a risk that availability of offers may become even more opaque than is already the case. For instance, by adding to a possible incentive for retailers not to make substantially better offers publicly available and restricting them to less transparent 'retention' offers provided to existing 'desirable' consumers who contact them.

- In advance of a review of the Better Bills Guideline and the outcomes consumers are experiencing since changes were implemented, we are aware of issues with the practical accessibility of deemed better offers and inconsistencies with how they are calculated, including:
    - Failures of choice and consent in the energy retail market, detailed in our submission to the AEMC's consultation paper on *Delivering more protections for energy consumers: changes to retail contracts*[8], have been reported by consumers in their attempts to access their deemed better offer. This includes being told offers are no longer available, not available to them, being signed up for a different offer than requested, and being told they are already on the better offer indicated (though at a different price).
    - There are inconsistencies in how deemed better offers are calculated across retailers, including what are regarded as material terms, and the period over which those terms are considered.
- There is a risk of consumers experiencing bill shock when they leave the hardship program and return to their previous, presumably more expensive, energy plan. Given retailers set the conditions of hardship protection, consumers experiencing payment difficulty can already be confused as to whether they are still being supported by a hardship program. Our disconnections research has regularly documented consumers being disconnected while they assumed they were in a hardship program. The proposed change would increase the difference between hardship and non-hardship assistance and risk exacerbating the impact of leaving hardship programs – potentially creating further affordability issues.
- This rule change will not improve the durability and substance of support for consumers in long-term/permanent payment difficulty and their ability to achieve a sustainable connection to the energy they need.

4.2 Alternative and complementary approaches

To better deliver on the intent of the proposed rule change, we encourage the AEMC to consider a wider range of alternative (more preferable) approaches than is envisaged in the current proposal. This may include making additional, complementary recommendations as well as a more preferable rule change. Recommendations include considering:

- Adapting the proposed mechanism to address the issues and risks we have outlined. If the proposed crediting mechanism progresses, it must be based on clearer, more objective, consistent and transparent parameters. This could include:
    - Applying the mechanism to consumers who fall into defined categories (or defined combinations of categories) which are transparently and consistently applied (and monitorable). Such as:

8 The Justice and Equity Centre et al. 2025, *Submission to the AEMC on Delivering more protections for energy consumers: changes to retail contracts* (sent to the AEMC, awaiting publication).

        - Recipients of government concessions or rebates
        - Consumers with debt or arrears or who have accumulated debt or arrears which exceeds a defined amount or timeframe.
        - Consumers on a payment plan of any kind
        - Consumers experiencing domestic violence
        - Consumers who meet any other criteria set by the retailer as a demonstrating experience of payment difficulty (that is the retailer nominates these criteria in advance and is responsible for ensuring all consumers who meet these criteria receive the benefit).

    In any case, the retailer must be responsible for ensuring consumers understand what criteria entitle them to this assistance, and responsible for ensuring they receive it in a timely manner. It is crucial that the criteria are independently monitorable and subject to independent dispute resolution or regulatory response where not applied correctly.

    - A principled approach applying the mechanism to all consumers – or at least all consumers with arrears or accumulated debt - so that retailers are required to regularly or periodically compensate all consumers (or all consumers with debt) for being left on an offer which is inferior according to narrowly defined criteria (or which has resulted in their debt being larger than necessary). In any case debts should not be calculated according to costs higher than those relating to the best possible deal available to that customer.

    - Other measures to apply an objective definition to which consumers should be assisted by this measure, such that retailers have no/limited discretion in its application. This may involve implementing a consistent definition of 'payment difficulty due to hardship' for the purposes of the application of this rule. If this approach is taken, we recommend an inclusive definition based on our response to the AER review of payment difficulty protections – such as:

      'a consumer is experiencing payment difficulty when they are unable to afford the energy they need to support household health, wellbeing and inclusion, without impacting their ability to afford other essentials'

      We note that an approach of this nature would likely require the implementation of a retail duty of care to be most effective.

- Implementing measures to augment explicit informed consent and facilitate advanced consent for future 'automatic' switching to a better offer. This approach would need to involve appropriate conditions protecting consumers and preserving their choice and meaningful consent, including:

    - Ensuring that the terms of any 'future consent' are clearly and simply (and consistently) communicated to the consumer, and are time limited to the period of the contract they apply to.

  - Ensuring any 'automatic switch' must be clearly signalled in advance, outlining the impact for the consumer and offering them a reasonable opportunity to 'opt out' if they wish to retain their current offer.
  - Involve defined, simple and consistent criteria by which 'best offers' are determined.
  - Ensuring any 'benefit' assumed in a best offer is not contingent upon consumer behaviour (or does not require a change from the consumers current behaviour) and is predictable and durable. For instance, it cannot involve paying on time, managing usage in a particular way, or meeting other specific conditions
  - Be implemented alongside measures to implement a retailer duty of care or responsibility to consumers (as outlined below).

  Our organisations consider this measure could be implemented alongside a version of the proposed measure, or as a simpler and more effective alternative to it. It should be possible for retailers to obtain (a defined) general consent for future automated switching to the best available offer. Alongside other reforms, such as the implementation of a consumer duty, this involves less risks and is more likely be effective than the mechanism proposed.

- Supporting the introduction of an explicit retailer duty of care and responsibility to act in the best interests of the consumer in the delivery of good consumer outcomes in access to energy as an essential service. This would support a principle that retailers are responsible for ensuring consumers are not left on inferior offers, and that particularly those experiencing payment difficulty do not experience worse outcomes as a result.

  Energy is an essential service and retailers do (and should) have a 'duty of care' to their customers in providing that service. Enshrining this duty, and responsibility for customer outcomes, would put the onus on retailers to demonstrate they have fulfilled their duty and acted to deliver the good outcomes understood and agreed upon by their customer.

  The onus of proof would be on retailers to show how they helped the consumer in need and contributed to a good outcome for them. Where defined 'poor outcomes' occur (such as the accumulation of certain levels of debt, or threats of disconnection) the onus would be on the retailer to demonstrate they have still fulfilled their duty and done everything possible to avoid that outcome. This is particularly important in relation to disconnections and large debts, and leaving consumers on the inferior offers which contribute to them. A duty of care would incorporate proactive and culturally sensitive communication (both preventative and supportive).[9]

- Recommending exploration of measures to materially alter the underlying cost of energy, the equity of the recovery of costs and their impact on affordability of energy for people experiencing disadvantage (such as renters, people on low incomes and other consumers without access to efficiency or household generation technology). This should include:

  - Recovering the cost of environmental and efficiency schemes more equitably, and

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9 AER and Sydney Community Forum, 2024, *Consultation summary: Voices for Power listening session,* *p.7-8*

- recovering the upfront costs of large transmission investments and Renewable Energy Zones more equitably.

- Recommending the implementation of a form of social tariff.[10] This was discussed and recommended as part of the AER's Gamechanger processes and warrants further consideration.

  A social tariff should apply to all consumers who fall into a transparently and consistently within definable categories – such as any consumers with debt exceeding a certain amount, any consumer receiving a rebate or concession and/or any consumer on a payment plan of any kind.

5. Continued engagement

The JEC, ACOSS, Sydney Community Forum, St Vincent de Paul Society NSW and the Ethnic Communities Council of NSW welcome the opportunity to meet with the AEMC, Energy Ministers and other stakeholders to discuss these issues in more depth.

6. Appendix 1: Joint Submission to the AER'S Review of Payment Difficulty in the NECF

10 Consumer Action Law Centre has similarly recommended the introduction of social tariffs to address energy affordability issues. Consumer Action Law Centre, 2024, *Energy Assistance Report: 4th Edition: Keeping the lights on - How Victoria's energy policies are impacting Victorian households*, p.13

AER Review of payment protections in the NECF

Joint Submission

5 July 2024

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Contributing and supporting organisations

This submission was collated and drafted by the Justice and Equity Centre (formerly PIAC) with contributions and support from the following organisations, who support its conclusions and recommendations.

South Australian Council of Social Service (SACOSS)

The South Australian Council of Social Service (SACOSS) is the peak non-government representative body for non-government health and community services in South Australia, and has a vision of *Justice, Opportunity and Shared Wealth for all South Australians*. SACOSS' purpose is to influence public policy in a way that promotes fair and just access to the goods and services required to live a decent life. We undertake policy and advocacy work in areas that specifically affect disadvantaged and low-income households in South Australia.

Queensland Council of Social Service (QCOSS)

QCOSS is Queensland's peak body for community services. We bring our members, the community sector, other peak bodies, government, business and the community together in our work to improve the lives of all Queenslanders. Our work is evidence based, focused on the whole of Queensland and reflects the views and perspectives of our members, who share our vision and are deeply involved in our work. We are committed to self-determination for First Nations Peoples.

Council on the Ageing Australia (COTA)

COTA Australia is the peak body representing the almost nine million Australians over 50. For over 70 years our systemic advocacy has been improving the diverse lives of older people in policy areas such as health, retirement incomes, and more. Our broad agenda is focussed on tackling ageism, respecting diversity, and the empowerment of older people to live life to the full.

COTA Energy Advocates is a panel of consumers, consisting of representatives from each State and Territory jurisdiction in the National Energy Market. COTA Energy Advocates are supported by COTA Australia.

Council on the Ageing ACT

Council on the Ageing NSW

Council on the Ageing (COTA) NSW is the leading not-for-profit organisation representing the rights and interests of people over the age of 50 in NSW. We advocate to ensure that the voices of older people in NSW are heard and respected to create a just and inclusive society.

Sydney Community Forum

Sydney Community Forum is a regional community development organisation that has worked towards social justice, inclusion, and sustainability outcomes for disadvantaged and marginalised communities in Sydney since 1974. Since 2017, in collaboration with the Sydney Alliance, we have worked closely with migrant community leaders through the Voices for Power project to highlight the climate justice and energy equity related issues, concerns and priorities of migrant communities in Western and South-Western-Sydney.

Ethnic Communities Council of NSW

The Ethnic Communities' Council of NSW (ECCNSW) is the peak body for all culturally and linguistically diverse communities in NSW. It undertakes a range of activities on behalf of its members and has maintained an energy advocacy officer who operates across the National Energy Market (NEM) for nearly two decades.

Northern Territory Council of Social Service (NTCOSS)

The Northern Territory Council of Social Service (NTCOSS) is a peak body for the Social and Community Sector in the Northern Territory (NT) and an advocate for social justice on behalf of people and communities in the NT, who may be affected by poverty and disadvantage. NTCOSS advocates for policies and programs to eliminate energy poverty in the NT

Uniting Vic.Tas

Summary of recommendations

Recommendation 1

That the Victorian Payment Difficulty Framework (VPDF) be used as the basis for the development of a payment difficulty framework in the NECF, with experience of VPDF implementation and AER work on consumer vulnerability informing development of a protections framework improving on the VPDF.

Recommendation 2

That the AER develop a broader definition of energy payment difficulty capable of underpinning a comprehensive understanding of energy payment difficulty and consideration of a more effective protections framework. This should help ensure assistance with energy payment difficulty does not unreasonably add to risks to health and wellbeing elsewhere.

Recommendation 3

That the scope of the review be broadened to consider delivering better outcomes for all consumers through more effective payment difficulty assistance and protections.

Recommendation 4

That the approach to the review be amended to include consideration of measures to more effectively avoid the experience of payment difficulty and identify and respond to 'hidden payment difficulty.

Recommendation 5

That the approach to the review identify related measures outside the scope of payment difficulty assistance which contribute to the objective of improved consumer outcomes, and include recommendations to progress them.

Recommendation 6

That the approach to the review adjust the relative consideration of consumer impacts and 'market impacts' and ensure an appropriately robust and transparent weighting is adopted which prioritises improved outcomes for consumers over consideration potential impacts on retailers.

Recommendation 7

That the indicators of intended outcomes be augmented to recognise a broader scope for the review and a more effective focus on improved consumer outcomes, including minimising the experience of payment difficulty.

Recommendation 8

That the protections framework resulting from this review adopt a set of explicit objectives outlining the focus of protections and their role in delivering intended outcomes for consumers.

Recommendation 9

That the payment difficulty and protections frame include measures to more effectively identify and respond to hidden payment difficulty, and make recommendations for other relevant measures required to support the protections framework in minimising the incidence of payment difficulty.

Recommendation 10

That the payment difficulty protection framework be based on universal entitlement to assistance with a retail obligation to offer (or initiate) assistance in response to objective triggers.

Recommendation 11

That the protections framework (and retail regulation more broadly) be centred on an explicit retailer duty of care and responsibility to act in the best interests of the consumer in the delivery of good consumer outcomes in access to energy as an essential service.

Recommendation 12

That processes regulating the threat of disconnection recognise, reflect and mitigate the harm impact to the consumer and involve measures to limit retailer discretion in issuing threats of disconnection.

Recommendation 13

That no-one is disconnected because they cannot afford to pay for the energy they need. Processes regulating any permitted disconnection should take a precautionary principle to protect consumers and ensure retailers have demonstrated all possible steps to avoid disconnection have been taken in advance of authorising disconnection.

Recommendation – 14

That the framework is designed to be transparently monitored, with intended consumer outcomes enforced. Monitoring and enforcement should be structured to place the onus on retailers to provide they have fulfilled their duty of care and undertaken all possible actions to deliver intended good consumer outcomes.

1. Introduction

This is a joint submission on behalf of:

- The Justice and Equity Centre (Formerly PIAC),
- South Australian Council of Social Service (SACOSS),
- Ethnic Communities Council NSW (ECC NSW),
- Council on the Ageing NSW (COTA NSW),
- Council on the Ageing Australia (COTA),
- Council on the Ageing ACT (COTA ACT)
- Queensland Council of Social Service (QCOSS),
- the Australian Council of Social Service (ACOSS)
- Sydney Community Forum (SCF)
- Uniting Victoria-Tasmania
- Northern Territory Council of Social Service (NTCOSS)

We welcome the opportunity to collectively respond to the Australian Energy Regulator's (AER) Review of payment difficulty protections in the National Energy Customer Framework (NECF) (the Review) Issues paper (the Issues paper).

In addition to our own submission, we support the work and recommendations of the Consumer Action Law Centre (CALC) in their submission to this process[1]. We have incorporated many of their observations into our work and consider their recommendations aligned with those contained in this submission.

Building on long-term work

This submission builds on years of work by members of the National Energy Consumers Roundtable, including responses to the AER's previous reviews of Hardship Protections[2] and collaborative work with retailers to develop Best Practice responses to payment difficulty.[3] The objectives, principles and approaches developed through that work remain relevant to this process, with its priority to minimise energy related payment difficulty, and ensure better outcomes for those who do experience difficulty paying for the energy they need.

In developing this submission, we have undertaken a series of meetings with stakeholders, including the Victorian Essential Services Commission (ESC), Energy and Water Ombudsman Victoria (EWOV), Victorian Department of Energy, Environment and Climate Action (DECCA) as well as a range of energy consumer advocates in Victoria and the National Energy Consumer Framework (NECF) jurisdictions. We have drawn on the observations and recommendations of Victorian consumer stakeholders including the Consumer Action Law Centre (CALC). Our engagement has sought to build on our understanding of the operation of the NECF and the

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1 https://consumeraction.org.au/wp-content/uploads/2024/06/20240628-CALC-AER-NECF-Payment-Difficulty-Review-Submission.pdf

2 https://jec.org.au/wp-content/uploads/2019/03/19.03.01-PIAC-response-to-AER-draft-hardship-guidlines-final.pdf

3 https://www.energycouncil.com.au/best-practice-resources/

Victorian PDF, the outcomes they deliver for energy consumers, and where the needs of energy consumers are not being met as intended.

An improved payment difficult framework is needed

The central conclusion of our work is that the National Energy Customer Framework (NECF) is failing to prevent energy related payment difficulty and provides inadequate protections and assistance to consumers to help them overcome it when it occurs. We further conclude that the Victorian Payment Difficulty Framework (PDF) offers a superior platform to address these issues, with the adoption of a range of augmentations we explore in detail in this submission (and which CALC and others have recommended in their responses to this process).

The Justice and Equity Centre's (JEC) research, *Powerless: Debt and disconnection* (which is provided as Appendix A and is referred to in this submission as '*Powerless*') provides clear evidence that most households experiencing payment difficulty are not receiving effective assistance that helps them overcome it and prevents them from re-experiencing issues in the future. 83% of household respondents (who have experienced a disconnection, been notified of a disconnection, or are seriously worried about a disconnection in the preceding 2 years) indicated that they are still grappling with payment problems.

Measures to prevent payment difficulty are required

The Issues Paper and the own AERs' retail reporting demonstrates ongoing issues with the accumulation of energy related debt, and the difficulty (even with support) in overcoming debt once it has been accrued. The experience of payment difficulty, particularly when it is associated with ongoing debt, is stressful and often adds extra expense (through fees and costs associated with credit products used to manage bills). We contend this should be taken as an indication effective response to payment difficulty must include measures to mitigate payment difficulty and debt before it occurs. While much of this work may sit outside the direct scope of this review, we highlight the need for this process to consider and progress these measures as part of comprehensive response to payment difficulty, including:

- Reform to the Default Market Offer and price regulation to ensure availability of a genuine, efficient and fair default consumers can access whenever they wish, including in circumstances where they have not chosen another deal, or where the deal they have chosen has changed or is not available.

- Reform to retail market regulation to ensure more meaningful retail choice and assert robust explicit informed consent so that consumers can access the retail deals that best suit their needs and be assured the terms of that deal will persist, as expected, for the term of that contract.

- Measures to make smaller and more frequent bills the default arrangement for all consumers.

- Continue to progress other measures to materially reduce bills for those experiencing long-term payment difficulty, including social tariffs, improved equity in the recovery of environmental scheme costs, and recovering the costs of transmission and renewable energy zones on government budgets, as examples.

- Supporting advocacy to Increase the quantum of support offered to those on key Government and income supports, including JobSeeker.

Addressing the needs of those in perpetual payment difficulty

Both current protections frameworks are founded on an assumption that payment difficulty is transitory, and focus on assisting people who are experiencing a short-term issue impacting on their ability to pay. However, many households experience circumstances which make their inability to afford the energy they need ongoing. For them it is often likely to be permanent absent any additional measures (such as substantially increased income, substantially reduced energy costs or improved housing quality and household circumstances). We understand there are limits to the scope of this review and what can be achieved by payment support protections. However, this review has a role to play in ensuring assistance frameworks are:

- robust,
- do not involve unreasonable burden for those being supported,
- can be relied on to do all that is possible for those experiencing energy payment difficulty, and
- provide a reliable and consistent basis for consideration of other Government and industry supports which may be required (such as those assessed through the Gamechanger process).

Recognising and minimising hidden payment difficulty

A substantial dimension of payment difficulty experienced by people goes unrecognised by retailers and is not captured by existing energy-related monitoring. Increasingly people may access credit and payment advance products to pay bills they cannot otherwise afford. They may reduce usage, go without other essentials such as food and healthcare, and borrow from friends and family. These behaviours demonstrate energy payment difficulty shifted elsewhere from energy (because energy is seen as a priority household bill). The payment difficulty exists, and often continues to worsen, until the point at which even energy bills cannot be sustained.

This is an important consideration, as the longer hidden payment difficulty persists, the more difficult the resulting energy debt is to overcome. Any approach to payment difficulty must attempt to recognise this reality and seek to consider ways to 'internalise' payment difficulty within the energy protections framework, and ways to use signs of hidden payment difficulty as triggers for energy payment assistance.

We are not recommending the burden of all payment difficulty be assumed by energy assistance frameworks. But energy frameworks must reliably assist with the energy-related aspects of payment difficulty to the greatest degree possible, and minimise the burden of energy payment difficulty which is 'externalised'.

Protections must apply equally for all consumers

All people experiencing, or at risk of experiencing, energy payment difficulty should be equally entitled to protection and assistance. This must include all people living in embedded networks and those currently served through pre-payment arrangements. The National Energy Objective does not discriminate between consumers. It refers to the long-term interest of consumers. We regard this as implying universality, as it is not in the interest of consumers for protections and assistance to be provided differentially, based on living arrangements of the consumer or the business structure or discretion of the energy provider.

The goal of payment difficulty protections for all consumers, must be to help people maintain/achieve control of their energy bills and a sustainable connection to energy they need to support their health and wellbeing. It cannot simply be to 'reduce' debt and disconnection.

Ongoing reform founded on robust principles

There are limits to what can be achieved through improvements to energy protections frameworks, particularly given the rapid change in the energy system, the development of new services and the evolution of new practices and problems. But success requires this process to adopt a strong objective to build the most robust energy protections framework, founded on durable principles of:

- Entitlement for all consumers to be protected and assisted,
- energy being an essential support for household health and wellbeing,
- that harm to consumers from disconnection (and threats of disconnection) should not be risked without demonstration that all other options have been exhausted,
- that, retailers have a duty to act in the best interests of good outcomes for consumers, and be required to demonstrate that they have done so,
- that consumer requests for assistance or statements regarding their circumstances must be regarded and responded to in good faith,
- That there is a focus on actual consumer outcomes in monitoring, compliance and enforcement.

This process should act as a robust platform for future action and should be regarded as a tangible step towards the implementation of the Protections framework for future energy services.

The structure of this submission

In this submission we:

- Comment on the AER's approach to the Review.
- Provide our insights into how the protections in the NECF are failing consumers.
- Provide our insights into what is and isn't working well in Victoria's Payment Difficulty Framework (PDF).
- Provide an international example of a precautionary principle approach to payment difficulty.
- Provide input on key aspects of an improved payment difficulty framework and how it could be incorporated into the NECF.
- Respond to the consultation questions.

2. Proposed approach of the review

Definition of the problem

The Issues Paper outlines a review scope focused on reducing debt and disconnection and assisting people to recover from 'transitory' payment difficulty. These are valid and worthwhile aims, but we consider this scope to be too narrow to meet the intent. We recommend that a more comprehensive view of the experience of (and response to) payment difficulty be adopted.

This wider view should commence from a robust definition of payment difficulty capable of serving as a durable and objective basis for considering the evolution of protections and assistance frameworks. We propose developing a broader understanding of payment difficulty such as:

'Energy payment difficulty refers to any circumstance where a consumer cannot afford to pay for the energy services they need to sustain their health and wellbeing without impact on their ability to afford other essentials'.

A definition such as this can better serve as the basis for considering how such circumstances are to be identified, minimised and overcome with the assistance of retailers, Governments and the community. In adopting a definition, we strongly recommend that it explicitly recognise the interaction between energy payment difficulty and the wider financial sustainability of the household and their access to essentials.

Recommendation 2

That the AER develop a broader definition of energy payment difficulty capable of underpinning a comprehensive understanding of energy payment difficulty and consideration of a more effective protections framework. This should help ensure assistance with energy payment difficulty does not unreasonably add to risks to health and wellbeing elsewhere.

Scope

The Review scope must consider outcomes for all household consumers, regardless of their metering or billing arrangements.

There are many vulnerable people living in embedded networks (such as caravan parks) and they disproportionality experience poor outcomes as review after review has confirmed.[4] While we understand the current intent is to consider reform options for exemptions in a parallel process, this review must consider outcomes for these people with the intent that the future path for reform should work towards all consumers having equal protections.

While pre-payment arrangements are noted in this review, there is scope for more robust consideration and application of the principle that all consumers are entitled to equal protection. It

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4 For example, NSW Parliament Committee on Law and Safety, *Embedded Networks in NSW* (2022), EWOV, EWON, EWOSA and EWOQ, *Submission to the AER exemption framework for embedded networks – issues Paper* (2024), Australian Energy Market Commission, *Updating the regulatory frameworks for embedded Networks: Final Report* (2019).

is the JEC's contention that equal protection is fundamentally incompatible with energy prepayment. Pre-payment is currently prevalent in many remote Aboriginal communities and presented as a debt-mitigation measure. This review process should identify or initiate consultation to work with Aboriginal stakeholders and communities to understand the energy needs of those communities. This should form the basis of further consultation to design appropriate energy payment platforms for those communities which better enable equal entitlement to the full range of energy consumer protections.

As we discuss throughout this submission, the current scope of this Review should also be expanded to consider instances of hidden payment difficulty and measures to mitigate and minimise the development of payment difficulty, as a key part of an objective to comprehensively address the problem of energy payment difficulty.

Accordingly, the scope of this review should then be widened to recognise all relevant considerations, with the challenge to:

- Consider how to implement an equal entitlement to protection from, and assistance with payment difficulty for all household consumers regardless of their circumstances (including those served through exempt selling and prepayment arrangements)
- Identify ways to reduce 'hidden payment difficulty' and systems to identify and respond to it.
- Consider other opportunities to reduce the instances of payment difficulty.
- Assist people experiencing 'transitory' payment difficulty to return to financial stability and more sustainably manage bills for the energy they need.
- Provide protections for people in long-term or entrenched payment difficulty, securing their connection, minimising their accumulation of debt and minimising the ongoing burden on them (in time, money and stress)
- Manage debt accrual, exploring options to mitigate and eliminate it, and implementing robust systems to identify debt which is unlikely to ever be repaid (as a basis for informing the development of other measures to deal with this).
- Reform the role of disconnection, implement measures to reduce instances of it and ensure that where any disconnection for non-payment is allowed, processes and protections reflect the level of harm it inflicts on impacted households.

Recommendation 3

That the scope of the review be broadened to consider delivering better outcomes for all consumers through more effective payment difficulty assistance and protections.

Objective focus for the review

We welcome recognition of the need for the review (and the payment difficulty protections which result from it) to be grounded in an explicit set of objectives. Following on from the expanded scope, the Review objectives should include:

- Understanding the incidence, experience and contributors of payment difficulty in all jurisdictions (NECF and those covered by the PDF).
- Identify the structural elements of effective payment difficulty protections and assistance measures.

- Implement payment difficulty protections framework to minimise the experience of payment difficulty, ensure effective support to overcome payment difficulty and ensure support for ongoing connection to energy services for all consumers.
- Identify enabling and complementary reforms to support the objectives of effective energy payment difficulty protection.

Approach of the Review

We broadly support the approach to the Review identified in the Issues Paper and welcome the AERs intent to identify the flaws in the existing framework and consider a range of alternative approaches. We further congratulate the AER for the flexible approach they have taken to the consultation process and the willingness to adopt a range of consultation methods in order to ensure a comprehensive survey of perspectives and experiences from stakeholders and consumers.

While the proposed approach is robust, we have some concerns with aspects which could curtail the scope of the review and, potentially, skew its findings. These include:

- Insufficient scope to consider opportunities to avoid and minimise the experience of energy payment difficulty.

- Insufficient recognition of the incidence of ‘hidden payment difficulty’ and the role identifying hidden energy payment difficulty could have in improving the effectiveness of responses to the experience of energy payment difficulty within the framework.

- The absence of explicit consideration of the role of the payment difficulty framework as a platform for potential measures to deal more effectively with those experiencing entrenched, long-term inability to afford the energy they need.

- An apparent equivalence in the consideration of consumer impacts and ‘market impacts’ of proposed changes. These should not be regarded as equivalently important in the review. A robust explanation of how consumer harm impacts and market impacts will be relatively weighted in considering potential reform measures is required.

Recommendation 4

That the approach to the review be amended to include consideration of measures to more effectively avoid the experience of payment difficulty and identify and respond to ‘hidden payment difficulty.

Recommendation 5

That the approach to the review identify related ‘enabling’ measures outside the scope of a payment difficulty assistance framework which contribute to the objective of improved consumer outcomes, and include recommendations to progress them.

Recommendation 6

That the approach to the review adjust the relative consideration of consumer impacts and 'market impacts' and ensure an appropriately robust and transparent weighting is adopted which prioritises improved outcomes for consumers over consideration potential impacts on retailers.

The case for change: Criteria for assessing potential changes

We support the AERs presentation of the case for change and strongly support a focus on consumer outcomes and experience being the central consideration in assessing the need for change and the scope of change required. We highlight the recent report[5] released by the Consumer Action Law Centre (CALC) as well as our own research on disconnection and debt (attached as Appendix A) as further evidence demonstrating the experience of consumers with payment difficulty, and the serious harm impacts of that experience.

Assessing potential changes should, likewise, be firmly centred on the impact on consumers experience of payment difficulty and its related harms. This should include (but not be limited to):

- Impact on ability to prevent the experience of energy payment difficulty and minimise its incidence.

- Impact on consumer utilisation of payment difficulty supports when they are experiencing or anticipating experiencing difficulty paying their bills.

- Impact on the experience of payment difficulty, particularly:
    - addressing debt early,
    - minimising debt accumulation,
    - shortening periods of debt,
    - minimising the burden on consumers of time, stress and administration in accessing assistance,
    - preventing disconnection and threats of disconnection,
    - ensuring those experiencing long-term payment difficulty are supported without shame and added burden and stress.

- Impact on the retailer reliance on disconnection threats.

- Impact on instances and duration of disconnection.

- Considering the 'cost' impact (in consumer harm and wider costs) of not making a potential reform.

While impact on retailers should be considered, we are concerned at the apparent equivalence of 'market impacts' with impacts on consumers. We strongly recommend the AER clarify how 'market' impacts will be weighted and considered relative to the consumer outcome improvements associated with these 'costs'.

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5 *Energy Assistance Report, 4th Edition*

We recommend adopting transparent principles and approach for how this will be done as part of the next stage of this review. In doing this the potential for consumer harm (as documented in the JEC's Powerless research) should be given priority, and any cost impact on retailers should be assessed against this harm. The potential for harm to consumers should also be considered differently to the potential for costs to retailers in recognition of the different scope for response. Consumers are likely to experience the harm impacts with limited or no alternative avenues to manage those impacts. Whereas retailers have a range of tools available to them to manage costs and potential risk impacts associated with regulatory changes. In other words, managing risk and cost is fundamental to retailer's role as businesses providing an essential service.

Intended outcome

The intended outcome should be expanded to reflect the scope and wider objectives outlined above. It should be framed as a simple statement of the role payment difficulty protections must play in supporting access to an essential service. For example:

People can use the energy they need to support their health and wellbeing and be supported to afford it when they cannot, with specific outcomes including:

- *Hidden payment difficulty is reduced.*
- *Consumer experience of energy payment difficulty is minimised.*
- *Instance of payment difficulty are identified early.*
- *Assistance with payment difficulty is determined by the needs of the consumer, and provided at the time it will have the best impact for the consumer.*
- *Retailers can (and must) demonstrate how they are acting in the best interests of their customers.*
- *Consumer experience of payment difficulty lasts no longer than necessary.*
- *Repeat and long-term payment difficulty is minimised.*
- *People experiencing long term payment difficulty continue to get the support they need to stay connected without accumulating more debt.*

Indicators measuring intended outcome

In addition to the indicators identified in the Issues Paper, indicators of the intended outcomes outlined above should include:

- Decreased (or eliminated) disconnections for non-payment.
  While we agree that process indicators should include reducing repeat disconnections or disconnections following being on a payment plan, there should also be an absolute aim to eliminate disconnections due to debt and payment difficulty.

- Decreased disconnection notices issued.
  The JEC's *Powerless* research shows the notification process itself is harmful. Even where the disconnection is avoided this often involves measures the household takes which don't involve retail assistance and often leave the household more likely to

experience future disconnection and debt.[6]

- Increase in number of all consumers (particularly people experiencing payment difficulty) on their retailer's best offer.

- Reduction in the number of late payments
  Although some households pay late for other reasons, it does remain a strong indicator of payment difficulty.

- Reduction in age of debt and the incidence of longer-term debt
  The longer debt persists the more stress consumers experience, the less likely it is to be resolved and the less likely it is a retailer is fulfilling their obligations to make every effort to address debt.

- Increase in numbers of eligible people continually receiving their concession/rebate.
  Retailers have a critical role in improving uptake of concessions and rebates and JEC research shows the substantial impact receipt of rebates has on reducing the incidence of disconnection.

- Reduction in numbers of people using credit products to pay for their energy bills.
  Noting that most credit products mirror the role of payment plans and other assistance measures, they should not be required (or allowed) for the payment of energy bills and retailers should be actively undertaking measures to identify and reduce consumer use of these products for energy.

- Reduction in the number of consumers 'under-consuming' or energy rationing
  While this is difficult to identify in monitoring, evidence suggests it is a significant (hidden payment difficulty) issue with direct impacts on household health and should be identified as a key outcome measure.

- Increase in the number of 'additional support measures' provided by retailers
  Indicators of payment plans, and hardship support provided should be augmented with increases in the numbers (and amount) of payment matching undertaken, debt written-off, appliance and energy efficiency support provided.

Recommendation 7

That the indicators of intended outcomes be augmented to recognise a broader scope for the review and a more effective focus on improved consumer outcomes, including minimising the experience of payment difficulty.

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6 In the research, 54% of 'notified' households became anxious or distressed, 48% significantly reduced their energy use and 24% took on additional work (see page 70). To avoid the disconnection, 'notified' households were most likely to delay or miss other important payments (34%), cut back on food/groceries/access a foodbank (32%) and/or borrow money from friends/family (32%) (see pages 78-80).

3. Strengths and weaknesses of the existing NECF payment difficulty framework

As noted earlier, we support the critique of the current framework provided in the Issues Paper. We again highlight the work of CALC and our own research in support of the case presented by the AER, and our recommendations for an expanded scope in this Review, and consideration of more robust reform measures.

Wider context for supports

While the primary consideration for this review is the framework for energy payment difficulty support, it is important to consider the wider social and economic context and the widespread affordability issues of which energy payment difficulty is a part.

Energy is fundamentally a cost of housing and prioritised after mortgage and rent costs. For many, these costs collectively exceed their capacity to pay. Increasingly this results in households with even with middle and higher incomes, facing difficult decisions of which essentials to prioritise and which to sacrifice.

As important investments in the distribution and transmission system proceed, further costs are being added to energy bills. Those who can afford it, are protecting themselves from these costs, through solar, batteries, improved energy efficiency and new energy services. For those who rent or have inefficient homes they cannot afford to upgrade, these are costs they cannot mitigate.

The energy retail market continues to be complex, opaque and stacked against consumers simply seeking to access the energy they need and pay a fair price they can afford. Alongside the markets for other essentials, the retail energy market requires ongoing engagement, understanding and oversight from consumers, increasing the burden on many households and leaving them with the significant costs of any inability to navigate the market successfully.

This is the context in which energy payment protections and assistance exists, and the context which must be a significant part of the AERs consideration of the role and success of payment protections, and identification of what reforms are required.

Strengths of the existing framework

For those experiencing ‘transitory’ payment difficulty, the existing NECF has demonstrated some success in providing support to assist people to restore financial stability. This is particularly true for those with the capacity, information, time and resources to advocate for themselves, and for those fortunate enough to successfully contact the right staff at their retailer who understand their needs and effectively connect them with assistance.

It is important to recognize that good outcomes are possible under the current framework. But it is also important to recognize the majority who miss out on those good outcomes, the inconsistent nature of good outcomes, and their contingency on self-advocacy, luck and a high degree of ongoing effort from impacted consumers. The key issue is that the current framework is not capable of delivering any good outcomes consistently and effectively and is not capable of delivering them for those in most need.

Given the identified case for change in the Issues Paper, we will focus on aspects of the existing framework which are failing consumers as a more useful basis for identifying where reform is required.

Weaknesses of the existing framework

The consumer impacts of the current frameworks' flaws are well documented. As noted in the Issues paper, the current system doesn't lead to financial control/stability for households. The JEC's research, *Powerless*, aligns with this understanding, finding that 83% of respondents who experienced payment difficulty in the last two years are still grappling with ongoing payment difficulty.[7]

We consider there to be a range of structural contributors to these outcomes, which are relevant points in assessing potential reforms to payment difficulty.

Framework is not future focused

At the outset we must note the lack of future focus and fitness for purpose of the current framework. For example:

- It is only fully applied to those consumers served by authorized retailers. It does not fully apply to those in exempt selling and prepayment arrangements, and is not compatible with expansion required to deal with new service structures which are increasingly prevalent as part of the energy system transition.

- It does not acknowledge or seek to address the widening bill differences between those who can safely reduce energy use (through energy efficiency and CER) and those who are unable to do so. It is only able to alleviate the symptoms of this gap, rather than more durably address the causes for more long-term resolution of this inequity.

- It does not have scope to deal with the range of issues which arise from the increasingly severe impacts of climate change. As our climate changes, and we face more extreme temperatures and more frequent natural disasters, we need to reconsider how we see our homes as safe places which protect us from extremes. This includes stronger protections through natural disasters as well as measures to ensure protection and restoration of services through the long tail after disasters.[8]

Current indicators of payment difficulty are not effective

The current focus of payment difficulty indicators does not present an accurate and comprehensive picture of payment difficulty. The narrow focus on energy debt and disconnection can leave retailers and the AER without an accurate picture of the actual consumer experience of energy payment difficulty and the true scope and impact of that experience on consumers. In particular the current framework has no scope to consider:

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7 Page 84.

8 For more information see: EWON, *Spotlight On: Natural Disasters – the long-term customer experience, 2023*.

- Those going without the energy needed for health and wellbeing, and social and financial inclusion. This is often referred to as under consuming, is anecdotally very widespread, but poorly recognized or quantified by retailers and the AER.

- Those going without other essentials, such as food and healthcare. Energy payment difficulty does not exist in isolation. People are often forced to make impossible decisions between paying energy bills and buying food or essential medicine or treatment. The current framework (and retailers) are concerned only that bills are paid, with no consideration of the impact of making those payments on other essentials.

- Those utilizing pay advance and other credit products, such as Buy Now Pay Later (BNPL) to defer payments and break up large bills into manageable amounts. These products serve a function equivalent to many forms of retail support (such as bill smoothing and flexible payment plans, but without their oversight and protections) but are utilized because consumers are experiencing difficulty paying their bills when they are due and don't know retail support is available or because they can't easily access it. Accordingly, where these products are allowed as payment methods for energy, they are a relevant indicator of payment difficulty.

- People effectively deciding to give up an electricity connection. The JEC's *Powerless* research found this to be an issue for some people as a result of ongoing inability to afford their bills or deal with the requirements of retailers. This is particularly relevant for those served through prepayment arrangements. Who may be disconnected multiple times for extended periods and regarded as 'self-disconnected'.

- The numbers of people served by exempt sales and embedded networks and their experience of energy payment difficulty. Monitoring requirements for exempt sellers are not as robust. Comprehensive indicators of payment difficulty are not consistently available for many consumers in these circumstances. This includes fundamental figures on disconnection, debt, payment and hardship support. Given the number of consumers these circumstances apply to and the fact that many experience greater vulnerability, this is a significant and unacceptable gap.

The full extent of the payment difficulty is not captured in the current system. People in these circumstances outlined above are not recognized by the existing energy payment difficulty framework. They are seen as 'managing' because they avoid energy debt and paying late[9] but their experience of the impacts of payment difficulty is just as significant, and in the case of those disconnected even more so.

Costs are currently shifted elsewhere

Significant costs and harms associated with payment difficulty are currently shifted elsewhere through the frameworks inability to deal with hidden payment difficulty, or to effectively assist households to overcome payment difficulty without unreasonable burden. These costs and harms manifest as stress and 'health and wellbeing' impacts on households, their family, community

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[9] See pages 47-50 of PIAC's *Powerless* research for more information.

services, and the health system. While there are obviously limits to what issues an energy protection framework can solve, it is crucial that the framework is better able to 'internalize' as much of the energy related payment difficulty impact as possible – where it currently shifts much that could (and should) be done through energy assistance by retailers, onto the consumer and community.

An insufficient platform to assist those with ongoing need

It is increasingly true that a significant cohort of people will never be able to afford the 'market cost' of their energy needs without unreasonable impact on their health and wellbeing, or without accumulating unsustainable debts. The current framework is not capable of ensuring these people receive the maximum support possible 'within the system'. This makes reliably identifying additional need (potentially addressed through social tariffs and other measures explored through the Gamechanger initiative) impossible. A more robust and reliable energy protections framework is crucial to ongoing work to develop more sustainable solutions for people with ongoing need.

Issues with ensuring consistent eligibility for protections

The AER is correct in highlighting significant issues with the consistency in retailer assessment of eligibility for protections. We agree and note a number of structural flaws in the NECF protections which undermine any scope to effectively and consistently ensure those who need protections are 'eligible' for them.

- **No clear definition of 'hardship' or 'payment difficulty'**
  The current framework distinguishes between payment difficulty and payment difficulty due to hardship, without providing an objective definition for either. This leaves retailers unreasonable discretion in their responsibility for determining who needs assistance, on the basis of a definition they are also responsible for framing. This discretion doesn't provide scope to be flexible in the consumers best interest, but simply drives inconsistency in response, and subjects 'eligibility' for assistance to the retail incentive to 'gatekeep' as a means of reducing cost.

- **Distinction between payment plans and payment plans in hardship**
  Discriminating between payment plans in different circumstances provides yet more discretion to retailers with a strong short-term incentive to offer one over the other. This introduces complications and potential harms which are unnecessary. Payment plans which include consideration of capacity to pay must be the standard which is applied universally. Where there is scope to offer plans without these requirements there is no transparency on how decisions are made and how that discretion is exercised. The JEC's *Powerless* research found considerable harm being caused where there is no consideration of capacity to pay.[10]

- **The word 'hardship' is fundamentally problematic**
  Hardship is a pejorative and subjective term which many people (including those most likely to be experiencing it) do not identify with. Many people dealing with extreme payment difficulty may simply regard their circumstances as the 'usual' and are unlikely to

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10 Pages 31-34.

self-identify as in hardship. The subjective nature of the term means retail staff are likely to have widely varying perceptions of who may or may not be in hardship. Both of these factors mean that the use of the term has a material impact both on those seeking assistance from their retailer, and the likelihood their retailer will recognise and respond to their need appropriately.

- **Retailers 'gatekeep' access to hardship support**
  Related to the distinction between payment difficulty and hardship is the resulting 'gatekeeping' by retailers, restricting access to more substantial supports either intentionally or through poor structures. Retail staff decide who is passed to hardship specialist staff, who is regarded as eligible (even when people may explicitly ask for hardship support) and who can access any of the individual supports provided through hardship programs. This leads to significant inconsistency within and between retailers, and makes that inconsistency opaque to the AER, making meaningful monitoring and enforcement impossible.

  The JEC's *Powerless* research revealed concerning incidents where people are asked to provide personal details and 'evidence' in support of hardship eligibility, though this is not consistent across retailers/within retailers.[11] Even where people are contacting their retailer in response to disconnection or a disconnection threat, they are often not offered hardship support[12] as a result of the exercise of retailer discretion.

- **People served through exempt sales and prepayment have less protection**
  'Eligibility' for protection from payment difficulty is not equally applied to those served through exempt sellers or prepayment. Despite some of the most vulnerable people living in embedded networks (such as people living in caravans) and prepayment arrangements (remote Aboriginal communities), people living with these arrangements often have less (or no) access to protection. The business choices of suppliers should not structurally disadvantage consumers access to essential energy and protections when they experience difficulty paying for it.

- **Low English or digital proficiency reduces access to assistance**
  All consumers may experience difficulty paying for the energy they need, but the current frameworks disadvantage those with lower English proficiency and less access to reliable digital platforms. Access to assistance will be inconsistent as long as it continues to rely on English-only digital channels.

Identifying and engaging with consumers experiencing payment difficulty

Related to the issue of inconsistently applied eligibility are the flaws in the current frameworks capacity to effectively identify consumers experiencing payment difficulty and engage assistance early enough to have the intended impact.

While the intent of the current framework is to encourage retailers to identify and respond to payment difficulty early, this intent is not being consistently delivered. In part this is due to the

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11 Page 54.
12 PIAC found this occurring in its *Powerless* research – see pages 60-61; 71-72 and 81-82.

flaws in the understanding of payment difficulty we have outlined, and in part this is due to the structure of the protection framework itself and the nature of obligations on retailers and the lack of robust prescription. Issues with the identification of consumers experiencing payment difficulty currently include:

- **The onus is on consumers to self-identify**
  While retailers are encouraged to provide assistance early, most of their systems (and the regulatory requirements they respond to) put the onus on the consumer to indicate when they are in payment difficulty (or hardship). This creates a number of points at which the framework can fail – because people don't know about assistance, don't know how to access it, have physical or communications barriers in accessing it, or what they say is not recognised by their retailer as a request for help.

  It is also increasingly apparent that many people aren't likely to request help from their retailer because of the stress, worry or shame it causes. This is especially problematic for people experiencing issues such as physical and/or mental health issues or trauma of some type. As The JEC's *Powerless* research shows, many people – especially First Nations people – can also feel too ashamed or embarrassed to contact their retailer about payment difficulty.[13]

- **Assessment of need is too subjective to be consistent**
  While guidelines give some indication of the intent behind hardship support, the assessment of who may be experiencing payment difficulty 'due to hardship' is made by the retailer, and often by staff with very different understandings of what this refers to. Fundamentally, even with a more effective definition It is problematic that retailers are required to identify that a consumer is experiencing hardship. Given the potential for added cost and administration in supporting hardship customers, retailers have some degree of incentive to minimise the number of people regarded as in hardship regardless of how many people may otherwise meet the criteria. Identification needs to be simpler, more objective and more openly accessible.

- **There are no consistent, transparent triggers for assistance**
  Evidence consistently shows there are a number of points at which assistance, if provided earlier, would have been more effective. The current system does not have any transparent triggers related to these points and is often not engaging assistance until it is too late (if at all). People who call up to complain about a bill, have a history of late payments, a history of broken payment plans, a history of requested payment extension, have received a disconnection warning notice or have been disconnected in the last 12 months are providing objective signs of payment difficulty which should trigger more tangible assistance than being provided information about a hardship program they may or may not be able to access. These points should be considered as triggers for required assistance or offers of assistance.

- **Staff capability and training is insufficient and inconsistent**
  While some staff in retail support teams may be well trained and capable of the

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13 Pages 51-53 and 68.

awareness, sensitivity and flexibility to identify and respond to the needs of people in payment difficulty, a consistent and reliable assistance process relies on all staff having more capability. If general service staff receiving calls lack cultural competency, are insensitive or unable to interpret customer messages and identify need, then the consumers path to effective assistance is broken.

We share the AER's concerns that the type and quality of retailer training varies and there is little cultural competency training. This is particularly concerning given the over-representation of First Nations people in payment difficulty.[14]

Ineffective assistance for consumers experiencing payment difficulty

The Issues paper correctly identified a number of issues with the assistance provided to people experiencing payment difficulty and hardship. Some of the issues relate to the effectiveness of measures themselves, some related to how often and early they are made available, and some related to the conditions or other aspects of how they are provided. Thes issues include:

- The limited assistance measures made available to people experiencing payment difficulty who aren't in a hardship program.
- That the Sustainable Payment Plans Framework is voluntary, is inconsistently applied and not enforceable. Requirement to consider capacity to pay is not required for all payment plans.
- That arrangements for payment plans seem to prioritise the recovery of arrears and expected consumption over capacity to pay. In these circumstances they are not so much a payment assistance measure, as a debt collection tool.
- In setting up payment plans, when consumers present what they can afford, it is not necessarily accepted by retailers.[15]
- That referrals to hardship programs only tend to occur when a payment plan exceeds a specific time period, not because the retailer has considered the consumers circumstances warrant it.
- That people feel pressured into agreeing to payment plans (especially in response to disconnection threats), even if they know it is unaffordable for them and will drive more severe payment difficulty in energy and elsewhere.
- That default on a payment plan can occur when an agreed payment is not made in full, or not made on time – payments made in good faith or attempts to make payments are not recognised.
- That defaulting on two payment plans in the previous 12 months acts as a 'two strikes and you're out' system and can exclude people from receiving the assistance they need

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14 See pages 10-11 of PIAC's *Powerless* research report.
15 See quotes from 'Anna' and 'Jodi' on page 34.

through further payment plans.

- That retailer discretion in the provision of support doesn't result in the most effective measures being employed when they would have the best impact for the consumer. Payment plans are the most commonly applied assistance measure and are often applied in isolation, rather than in conjunction with emergency assistance payment applications, better offers and other measures. Even for consumers in more serious need other supports available such as payment matching, debt waivers, best offer or energy efficiency assistance are rarely provided.

- There is insufficient independent support and flexibility to ensure that payment plans, and payment matching arrangements are set up in a sustainable way that does not place undue financial or psychological burden on consumers in a vulnerable circumstances.

- Assessments for retrospective readjustment of debt are not required as part of the establishment of payment plans. Many consumers are not on the best possible offer and have not had their concessions/rebates applied in the accumulation of their debt. Readjusting their debt with a better plan, application of concessions/rebates, alongside any other measures, would ensure the resulting payment plan is a more accurate reflection of actual consumer debt, and result in more sustainable payments.

- That protections and assistance for payment difficulty is lost when a consumer switches. This is exacerbated by the fact that accumulated debts are often sold to recovery, with less protections relating to how that recovery is undertaken.

- There is limited (or no) effective assistance available for people in prepayment arrangements.

Disconnection is used as an engagement tool not a last resort

Disconnection and threats of disconnection are a central element of the current framework. Retailers rely on being able to threaten disconnection and regard the consumer 'reaction' to these threats as an important point of 'engagement'.

However, disconnection, including threats of it and the fear of it, cause people real harm. The fear and threat of disconnection drives people to unhealthy responses which endanger their health and wellbeing, and often cause them to agree to financial arrangements which are unsustainable and cause further financial difficulty.

The framework may employ language asserting disconnection is a last resort, but the frequency of threats and completed disconnections indicates it remains a more commonly accessed tool and 'business as usual'. In any case it is too easy for retailers to resort to the threat without oversight, a fact which leaves them little incentive to genuinely find more positive and effective ways to engage consumer assistance. Consumers experiencing payment difficulty pay the full cost, in stress and angst as well as increased cost, for the failure to appropriately ensure disconnection is only ever threatened when no other option remains.

There is no consistent human intervention at the point of disconnection

Anecdotally, we are aware that meter readers sent to undertake a disconnection might not complete the disconnection if they can see that it would not be appropriate (for example the householder is clearly vulnerable). This human intervention is not built into the framework and is itself inconsistent and not undertaken by anyone appropriately qualified to do so. This informal protection is also disappearing as advanced metering allows the possibility of remote disconnection placing greater risk of harm on households.

Extreme weather protections are largely undefined

Whilst disconnection for non-payment can't be undertaken in extreme weather, South Australia is the only NECF jurisdiction that has a consistent definition of what extreme weather is. These protections do not apply to people with pre-payment meters who involuntarily 'self-disconnect'. As our weather changes and becomes more extreme, these extreme weather protections will be more important to keep people safe, where disconnection for non-payment continues to be allowed.

The minimum disconnection amount is not fit for purpose

The current framework allows disconnection once an amount of debt has been accumulated. This is currently set at $300, an amount well under the average quarterly bill. This leaves households at risk of disconnection after a single bill. Whilst retailer practice varies widely, it is a matter of discretion they can exercise without any oversight or demonstration of compliance before initiating a threat. Given the substantial harms associated with a disconnection or threat of a disconnection, the ability to trigger this in response to such a low debt, and with such discretion, is not appropriate.

To date retailers have argued retaining this discretion enables them to get a response from consumers who are difficult to contact, ostensibly to get them the assistance they may need. We do not consider this acceptable and see no evidence that disconnection threats are effective in consistently initiating support consumers need.

In any case the current level of disconnection debt trigger does not reflect the intent for disconnection to be initiated only as a last resort.

Reconnection fees add expense for households who can least afford it

Reconnection fees and other payments vary widely and are levied on people at a point of maximum vulnerability. Where peoples disconnection results from payment difficulty they add further financial burden that makes recovery from debt even more difficult. We do not consider any fees for reconnection following a disconnection due to inability to pay, to be acceptable.

4. Strengths and weaknesses of the Victorian payment difficulty framework

We reiterate our support for the main elements and principles of the Victorian Payment Difficulty Framework (VPDF) and our support for it being utilised as a template when considering reforms to payment difficulty protections in the NECF.

While we support the broad structure of the VPDF, experience with its operation to date demonstrates there are a range of augmentations and improvements required to deliver the intended better outcomes for consumers. In this section we consider the strengths of the VPDF which should be adopted, and the weaknesses, which should help inform required augmentations and improvements. In addition to our own assessments here, we highlight a number of reviews undertaken by the Essential Services Commission (ESC) and Energy and Water Ombudsman Victoria (EWOV), and recommend the AER draw on their observations and recommendations, as well as those contained in the recently released report by CALC.[16]

Strengths of the Victorian Framework

Aspects of the VPDF which should be adopted in reform of NECF payment difficulty protections include:

- Payment difficulty protections based on universal entitlement.
- An explicit aim for more consistent and equitable consumer outcomes.
- Creating triggers for assistance which are transparent and 'objective'.
- Less onus the consumer to request or initiate assistance, with obligations placed on the retailer.
- An explicit aim to prevent people getting into arrears.
- An explicit intent for assistance to be provided based on the needs/situation of the consumer (tailored assistance)
- Requiring a range of payment assistance information to be readily available to all consumers, at all times.
- Requiring retailers to provide additional forms of practical assistance, including:
    - Assistance to apply for concessions (Victoria has highest level of people applying for concessions in the NEM).[17]
    - Requiring an application of assistance for Utility Relief Grant Scheme (URGS).
    - Making 6-month debt freezes available (noting some mixed outcomes from this provision).
- Allowing bill due dates to be extended by at least a year, assisting people in short term payment difficulty.
- Providing some protections for people who try to switch retailers when they have debt.
- Adding an extra step with an intention to disconnect notice in the disconnection process, giving people an additional opportunity to avoid disconnection.

Broadly, as it has operated to date, it appears the VPDF has improved outcomes for those experiencing less serious, more transitory payment difficulty. The VPDF has demonstrated failure to consistently deliver better outcomes for those with more significant needs and has also struggled to get the levels of consistency of response, particularly for those with more significant

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16 *Energy Assistance Report, 4th Edition.*

17 Consumer Policy Research Centre, *Mind the Gap: Identifying the gap between concession eligibility and concessions received*, November 2022, p. 4

assistance needs. In this context, assessing the VPDF weaknesses contributing to that inconsistency is key to identifying where further improvements are required.

Weaknesses of the Victorian Framework

The Issues paper noted areas of potential improvement in the VPDF. We provide further comment on these and other areas where Victorian consumer stakeholders recommend reform.

Framework insufficiently focused on consumer outcomes

Victoria's PDF aims to reduce disconnections for non-payment, debt and lower energy costs. While it has had success in achieving this, an effective payment difficulty framework must lead to good outcomes for consumers. This means maintaining and restoring financial stability, and where this can't be achieved (because the payment difficulty is based on broader structural issues and/or significant personal issues), the energy connection must be secured, and more substantial assistance provided long term.

Failure to adequately assist people in long term or permanent payment difficulty

Similar to protections in the NECF, the Victorian Framework is primarily focussed on people whose payment difficulty is short term. The ESC's 2021 review found that people who could pay for their ongoing energy use benefited most from the PDF.[18]

For a range of often overlapping reasons there are people who experience longer term, permanent and/or more complicated payment difficulty. The PDF does not effectively support these people and in some cases (such as where payment plans are limited to 2-year durations) they can be left worse off. The impact of elements, such as this 2-year timeframe, are not designed to improve outcomes for these people, or they are not delivering on their intent because they are interacting with other aspects of the PDF in unintended ways. For instance, they are not being supported by requirements to waive or forgive debt that cannot be repaid in 2-years.

People in these longer-term circumstances are likely to be left 'cycling' through support programs with significant debts and payment obligations, as well as the associated stress and compounding impacts which result. We highlight CALC's submission to this process, which documents several such cases to illustrate the consequences of this failure. The experience of those with longer term issues needs to inform improvements to better manage risks and ensure better outcomes for people in these circumstances.

Insufficient direction or incentive to provide more than minimum assistance

Commentary regarding the PDF consistently notes that improvements are needed to ensure minimum assistance measures are regarded as a floor, not a ceiling. Triggers to offer 'minimum' assistance are transparent and objective, but there is still significant discretion in the activation of more significant 'tailored' assistance measures, and evidence that this is resulting in little application of those measures where they are needed.

Payment plans are often one of the first – and sometimes only - assistance measures provided for people in payment difficulty. As financial counsellors are aware, for a person experiencing

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[18] As reported in the Issues paper, 14.

payment difficulty, there should be an order established of what assistance helps. A payment plan is valuable but should be established when 'affordability' assessment is more meaningful. That is, after ensuring the best offer, checking for rebates and concessions, and applying for emergency assistance. Ideally establishment of a payment plan should come after all other measures to minimise the debt to be recovered (for instance through reassessment of the debt after better-offers and concessions/rebates or emergency assistance are applied).

We also note that the impact of Government funding on concessions/rebates and URGS (emergency supports) is hugely reduced (even eliminated) if people who receive this assistance are not on their retailer's best offer.

Flaws in the establishment and review of payment plans

As outlined above, the PDF allows considerable variation in how retailers approach payment plans, leading to poor and inconsistent consumer outcomes. A key cause is the 2-year limit placed on the repayment of debt through payment plans.

Data published by CALC on National Debt Helpline calls indicated that the majority of payment plans set up in Victoria are based on retailers insisting the debt be repaid in a two-year period, without supporting measures to waive or forgive debt that cannot sustainably be recovered in a 2-year period. As a result, some repayments are as high as $300 a fortnight.[19] Where consumer capacity to pay (including consideration of their other essential payments) is not considered, this drives them to seek other credit, adopt unhealthy behaviour or otherwise 'externalise' their payment difficulty.

This is a concerning trend and a failure of the intent of protections. Although the preference is to pay ongoing usage and pay down debt, of primary importance is that the consumer has a payment plan which is affordable and sustainable and allows them to afford their other essential expenses. For some households, payment difficulty is short term and, with assistance from the retailer, debts will be repaid eventually. There will also be households who have longer term and/or more significant payment difficulty issues and might take longer or never be able to afford the energy they need. Payment plan amounts must be based on the individual needs and circumstances, not set up with an arbitrary repayment timeframe. Where a timeframe applies, supporting systems must be in place to require retailers to match payments, and waive or forgive debt that cannot be sustainably recovered.

There is also no requirement for review of payment plans, or for those requiring support or assistance to have payment plans set (or reviewed) with access to independent support to do so. This absence compounds issues with establishment.

Inconsistent application of the Framework

We have also heard from sources, including the ESC, that there's inconsistent application of the Framework across retailers and within retailers. We are aware that this also occurs with the NECF protections.

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19 At page 23.

Beyond the structural flaws of the frameworks themselves, a key contributor appears to be insufficient or inconsistent training undertaken by retailers. Some retailers provide low-level 'assistance' training to all their customer service staff in order to provide better outcomes at lower levels of need. But this means that complex issues are not able to be dealt with by more experienced and highly trained staff.

Other retailers take the approach that most call centre staff receive very little or no training in assistance, with a small specialist team receiving significantly more training. This repeats issues identified with the NECF, where untrained staff become a barrier to people experiencing payment difficulty being identified and supported appropriately to connect with more substantial assistance. The result is many consumers 'slip through the cracks' getting no or little help from frontline staff who effectively gate keep the specialist staff.

Missed intervention points

Despite the focus on objective triggers for assistance, some people still accumulate debt and are not assisted. The debt trigger is an effective measure, but it is not accompanied by other triggers which can indicate payment difficulty or expectation of payment difficulty. For example, EWOV reported they receive significant numbers of complaints where consumers have high bills and have not been assisted by their retailer. EWOV note a correlation between complaints about high bills and people experiencing payment difficulty and recommend bill complaint calls to retailers be considered as a 'trigger' for offer of assistance. An improved framework must consider a range of triggers for initial assistance, and for escalation of assistance obligations.

Disconnection notices are being used as an engagement tool

CALC note that regardless of the number of completed disconnections, the number of disconnection threats/notices continues to be high.[20] They conclude this indicates disconnection threats are not being regarded as a last resort as intended, but a common tool to elicit a response from the consumer. The JEC's *Powerless* research shows the same evidence and documents the harms that receiving a disconnection notification causes, even where the disconnection is avoided.[21]

Households still get disconnected

While some additional protections exist, the framework still allows a significant number of disconnections. As the JEC's *Powerless* report shows disconnection causes harm - in terms of stress and additional cost – particularly to the most vulnerable households. The PDF contains insufficient measures to ensure vulnerable people are not disconnected simply because they can't afford their energy bill.

No mechanism to identify and assist people with 'hidden' payment difficulty

As with the NECF payment difficulty framework, the PDF has no means of identifying and responding to energy payment difficulty which is 'hidden' (such as cutting back on energy use to

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20 *Energy Assistance Report, 4th Edition*, 25.
21 Pages 70-73.

unhealthy levels; cutting back on other essentials such as food and health care; borrowing from friends, family, or using credit products; or even going without an energy connection at all).

In many cases people in 'hidden' payment difficulty may pay their bill in full and on time, or may pay their payment plan obligations as required. In these cases, retailers do not consider them as being in payment difficulty or in need of more substantial assistance. Similarly, consumers threatened with disconnection (or even being disconnected) who manage to make a required payment may not trigger a retailers offer of more substantial payment assistance. In effect, they may be regarded as having been 'able to pay' after all.

Retailers do not have an obligation to 'solve' all affordability issues, but they must be required to recognise the essentiality of energy and the priority energy payments receive. This places an obligation on them to do what they can to ensure paying for energy does not result in a cascade of unreasonable impacts on essentials elsewhere. To do so is to effectively 'externalise' or transfer payment difficulty from energy (where it is visible and subject to assistance) elsewhere (such as to BNPL or other credit products), where it is neither.

The consumer still bears most responsibility for engaging assistance

While triggers, obligations and entitlements exist, the onus for engaging actual support rests with the consumer. Consumers must still respond to retailer communications when their debt triggers a requirement to offer assistance. Systems to access assistance can be full of barriers, such as not (necessarily) having direct lines to retailer staff who can help them (meaning they get passed around between staff) and often being faced with impractically long call wait times.

In addition, eligible people don't automatically receive concessions/rebates and can unknowingly stop receiving them. Without triggers for more tailored assistance, the consumer is still required to advocate for themselves if they feel they need more help.

More broadly the VPDF exists in an environment where consumers can be impacted by price rises on their retail offer without their consent, yet cannot simply be given the best available offer. Reforms must consider how consumer consent can be retained while ensuring retailers are required and able to leave consumers better off when it is in their best interests.

No duty of care to ensure good outcomes

Like the NECF the PDF imposes no duty of care or obligation on retailers to act in the best interests of the consumer. The Victorian PDF does not require retailers to provide anything but minimum assistance to people experiencing payment difficulty. The lack of a duty or obligation on retailers is likely a key reason minimum standards remain the most common response and is certainly the reason why the most effective responses to payment difficulty are often only initiated well after they would have the most benefit for the consumer (if ever).

A well-crafted and robust consumer duty or obligation to act in the best interests of consumers is likely to be a key enabler of a more effective framework for payment difficulty support.

5. Models elsewhere

Catalonia, Spain

We highlight a protections model in place in Catalonia, Spain which we consider a relevant example demonstrating alternative approaches to disconnection, which better protect consumers and manage the risk of harm to them.

This framework adopts a precautionary principle to electricity, gas and water disconnections. If an energy or water provider considers it necessary to disconnect a service for non-payment, they must first consult the social services of the applicable city council to determine whether the person may be in a vulnerable circumstance. That service conducts an in-person visit. If they determine that the person is experiencing vulnerability, the provider is prevented from disconnecting the householder and must continue to guarantee supply.

Where a household has been protected against disconnection, the utility company and the public administration must cover or cancel the debt that the householder has accumulated. To date, the utility company has covered from 50% to 100% of debt, with the public administration covering the balance.

The determination of vulnerability also requires the utility company to provide lower prices by removing profit margin through:

- Putting the household on to the 'regulated market';
- Offering a social bonus (discount) of electricity;
- Seeing whether the contracted power can be lowered; and
- Deleting any extra services which have been added to contract conditions.[22]

While this model is not directly applicable, it does provide an example of measures which can be adopted to ensure households who are vulnerable are better protected. It also demonstrates approaches to engaging broader assistance for households at risk of disconnection, including assisting with other debts they have, to help them achieve more long-lasting financial security.

6. Protections for a more inclusive energy system

Vision

Our vision for an inclusive energy market and the protections framework which supports it, is one that focuses on achieving equity of good outcomes for all consumers.

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22 Alliance Against Poverty, 'The case of ban on disconnections in Catalonia: The law 24/2015, *Manifesto for a ban on energy disconnections in Europe*, 2023.

Objectives

The objectives of an effective energy protections framework should expand upon what is required to achieve the 'vision' and should include each of the key aspects of the protections framework. For example:

> *All consumers have ongoing access to the energy services they need to sustain their health and wellbeing and are equally supported where they are unable to afford the energy they need without impacting their access to other essentials.*
>
> *Consumer experience of energy payment difficulty is minimized and resolved as early as possible where it occurs.*
>
> *Consumers requiring longer term support are provided the support that best meets their needs to keep them connected and supported.*
>
> *No consumers are disconnected because they cannot afford the energy they need.*

Recommendation 8

That the protections framework resulting from this review adopt a set of explicit objectives framing the focus of protections and their role in delivering intended outcomes for consumers.

Principles

Robust principles should contribute to the objectives and inform how those objectives are to be achieved and, crucially, what structures and protections are required to achieve them. Principles supporting good consumer outcomes should include:

- Preventing payment difficulty is preferable to resolving it after it occurs
- All consumers are equally entitled to payment difficulty assistance that meets their needs
- Triggers for assistance should be objective and prescriptive, and minimise reliance on consumer self-advocacy
- Energy payment difficulty refers to inability to afford the energy needed without unreasonable impact on other essentials
- Consistency of good consumer outcomes must be delivered regardless of consumer circumstances
- Retailers have a duty of care and an obligation to act in the best interests of good outcomes for their customers
- The onus is on retailers to demonstrate they have acted in the best interests of their customer when their customer experiences a poor outcome
- Energy is essential and no-one should be disconnected because they cannot afford the energy they need to sustain their health and wellbeing
- Threats of disconnection have a serious harm impact on consumers
- The harm impact of disconnections and threats on consumers should be reflected in the processes regulating disconnection.
- Protections are future focussed

We expand on these principles and how they can be implemented in practice in the remainder of this section

Minimising payment difficulty and responding to hidden payment difficulty

Many aspects of measures to minimise payment difficulty require action outside of the protections framework. These measures can also contribute to the improved identification of hidden payment difficulty and better response to it. Measures to minimise payment difficulty and better identify and respond to hidden payment difficulty could include:

- Using payment by credit product providers as a trigger for assistance offers from the retailer – with specific focus on setting up flexible payment methods to break up or delay future payments and provide other assistance.

- Creating mechanisms to enable notifications (given with permission) by community organisations providing supports, that a household is in need in order to trigger assistance from the retailer.

- Measures to identify low users or a sudden reduction in energy use to trigger outreach by retailers to offer assistance.

- More widespread programs from retailers to support and enable energy efficiency improvements (these must extend beyond audits and 'advice' for all customers).

- Government messaging on energy use focussed on maintaining household health, and encouraging households to contact their retailer for help if they don't think they can affordably use their heater or cooler.

- Measures to share the benefits of CER and demand management, even if a household does not directly have access to these.

- Automatic application of concessions/rebates to bills and systems to eliminate people 'slipping off' from having concessions/rebates applied to their bill.

- Ensuring effective, simple fair (flat price) default (through a reformed DMO) which applies in all circumstances where a consumer has not explicitly chosen an offer, has had their offer (or its terms) expire, or where they otherwise choose it.

- Reforming retail regulation and explicit informed consent to ensure consumers can identify the offer that suits them, sign up to the offer they expect, and be guaranteed to retain the terms of the offer they consent to for the duration of that offer (including preventing price rises or structure changes during the term of a contract).

- Ensuring consumers have genuine choice of energy deals and different price structures (rather than being required to adopt them). Those who can (and want) to use energy more flexibly should be able to do so and should be able to benefit from this.

- Payment structures and processes work better for people's circumstances and preferences and are better designed to mitigate the impact of high bills: for example, monthly billing as the default and greater scope for people to initiate and manage their own payment plans (with offers of further assistance at each step or where requested arrangements trigger 'concern').[23]

- Exploring measures to substantially alter the cost of energy. This should include, improving the equity of cost recovery for environmental schemes, recovering the costs of large transmission investments and Renewable energy zones from government budgets, and implementing a form of social tariff.

Recommendation 9

That the payment difficulty and protections framework include measures to more effectively identify and respond to hidden payment difficulty, and make recommendations to progress other relevant measures required to support the protections framework in minimising the incidence of payment difficulty.

Assistance is universally offered by obligation

Assistance must be universally available and triggers for offer (or provision) of assistance must be objective. Where retailer discretion in assistance decisions is possible it should only be able to leave a consumer 'better off'. Measures should include:

- **Ensuring simple, objective triggers.**
  In addition to an initial 'gateway' debt trigger as used in the VPDF, we recommend introduction of a range of other triggers, including those which may trigger obligations to provide more substantial assistance.

  Triggers should be designed to deal with different aspects of the framework (and potentially refer to different objectives). For instance, addressing hidden payment difficulty could be implemented through a trigger related to payment by a credit product, multiple late payments, underconsumption (or consumption drops) or bill complaint calls.

  Triggers for more substantial assistance could be multiple late payment plan payments and requests to reduce or suspend payment plans.

  It may be that the framework adopts a range of triggers and that retailers can select a number from each 'category' to demonstrate how their processes will comply.

  Given Victoria's experience these need to be carefully defined and there needs to be clear enforcement for when retailers are not acting as required.

- **Ensuring evidence of payment difficulty cannot be requested**
  Consistent with new rules relating to domestic and family violence which prevent retailers from requiring evidence, people should not be required to 'provide evidence of payment

23 For more details, please see PIAC's *Powerless* research, pages 86 and 88-90.

difficulty' in order to get assistance. People should only provide personal information voluntarily where they are comfortable doing so and should have the option to disclose this information with the support of independent assistance in circumstances where that information can help them receive more targeted/appropriate assistance.

Recommendation 10

That the payment difficulty protection framework be based on universal entitlement to assistance with a retail obligation to offer (or initiate) assistance in response to objective triggers.

Retailers have a duty of care and a responsibility for consumer outcomes

Energy is an essential service and retailers have a 'duty of care' to their customers in providing that essential service. Enshrining this duty, and responsibility for customer outcomes would put the onus on retailers to demonstrate they have fulfilled their duty and acted to deliver the good outcomes understood and agreed upon by their customer. The onus of proof would be on retailers to show how they helped the consumer in need and contributed to a good outcome for them. Where defined 'poor outcomes' occur, the onus would be on the retailer to demonstrate they have still fulfilled their duty and done everything possible to avoid that outcome. This is particularly important in relation to disconnections and large debts.

Recommendation 11

That the protections framework (and retail regulation more broadly) be centred on an explicit retailer duty of care and responsibility to act in the best interests of the consumer in the delivery of good consumer outcomes in access to energy as an essential service.

Retailer responses are consistent both across retailers and within

Requirements for defined approaches to training (of both specialist and general staff) could help implement greater consistency of retail response to payment difficulty and could be supported through monitoring and enforcement frameworks which enable more qualitative assessment of assistance. This could include audits of consumer relationships, outcomes and experiences.

Protections are maintained when switching retailers

Consumers with debt who switch need protection for that debt. The AER should consult more deeply on the most appropriate measures to implement this. Options could include requiring the initial retailer to retain this debt and either write it off or continue to assist the consumer with it, mechanisms to transfer debts to the new retailer, or supported measures to ensure a customer stays with the original retailer and is better supported to deal with this debt. Preventing the sale of debt for external (to the energy system) recovery must be a key consideration.

Disconnection threats are not used as an 'engagement tool'

Disconnection and threats of disconnection have harmful impacts on consumers and are not effective or appropriate means of engaging support in the consumers best interests. Where allowed the level at which such threats can be initiated should reflect the harm inflicted on the consumer. In any case, the 'minimum disconnection amount' must be substantially increased.

Recommendation 12

That processes regulating the threat of disconnection recognise, reflect and mitigate the harm impact to the consumer and involve measures to limit retailer discretion in issuing threats of disconnection.

No-one should be disconnected because they cannot afford the energy they need

A robust focus on reducing energy payment difficulty, providing early and more effective assistance, and placing the onus on retailers to ensure that assistance results in good outcomes for consumers, should reduce the number of consumers at risk of disconnection.

There are likely to be some circumstances where a retailer struggles to get the engagement, they wish from a customer who is behind in their energy bills. This should be regarded, according to the precautionary principle, as an indicator that additional assistance is required.

This ‘precaution’ could be implemented through a transparent process requiring a retailer to demonstrate all other possible measures have been employed. A qualified, independent person could then attend the home to assess the circumstances and the households need for further assistance. Where no contact is made or assistance required, the disconnection can proceed.

Such a process would ensure that disconnection is guaranteed to be absolutely the last resort. In any case reform to disconnection should place the onus on retailer demonstration of appropriate action supporting good consumer outcomes before any initiation of disconnection threats is allowed.

Recommendation 13

That no-one is disconnected because they cannot afford to pay for the energy they need. Processes regulating any permitted disconnection should take a precautionary principle to protect consumers and ensure retailers have demonstrated all possible steps to avoid disconnection have been taken in advance of authorising disconnection threats.

The framework supports robust monitoring and enforcement of outcomes

Key to robust monitoring and enforcement is placing the onus on retailers to demonstrate their fulfilment of their duty of care and their responsibility to deliver good outcomes in the consumer’s best interest. We contend this change enables greater delivery on the intent of protections and allows outcome indicators to operate more effectively as monitoring and enforcement tools.

The AER will need to develop a comprehensive set of indicators as well as implement new processes to require ‘customer relationship audits’ by a retailer, and mechanisms for retailers to indicate how they will demonstrate outcomes when they are required to do so.

Later stages of this review process should consult specifically on the development of indicators which can be effectively used as monitoring and enforcement tools.

Retail performance reporting should be made more accessible and directly practical to consumers. This could include published guides for each retailer with accessible reports on their performance against key consumer outcome indicators. This could be an important accountability measure to help drive retailers to move beyond 'minimum required' measures in fulfilling their duty to their customers.

Recommendation – 14

That the framework is designed to be transparently monitored, with intended consumer outcomes enforced. Monitoring and enforcement should be structured to place the onus on retailers to prove they have fulfilled their duty of care and undertaken all possible actions to deliver intended good consumer outcomes.

7. Response to consultation questions

We have provided targeted response to questions in the Issues Paper. However, more detailed recommendations and reasoning are contained throughout the submission. We recommend the AER read responses to each question in conjunction with the relevant sections identifying issues with the existing frameworks, and our recommendations in section 6 detailing aspects of a more effective framework.

Question 1. Do you have any feedback on the proposed approach for the review?

Refer to 'Proposed approach to the Review' above.

Question 2. What can we learn from other approaches to strengthening protections for consumers experiencing payment difficulty?

The Sustainable Payment Plans Framework has shown that an unenforceable guideline is not sufficient to encourage consistent standards from retailers. The minor repercussions for signatories not complying has not had the desired effect of encouraging application of the guideline. All guidelines, particularly those pertaining to payment plans and assistance should be mandatory and applied consistently to all consumers.

Evidence has shown that the exemptions framework results in poor outcomes for some consumers[24]. The NEO refers to consumers and does not make a distinction between some consumers and others. Frameworks should apply equally to all consumers to ensure the interests of all consumers are equally promoted and protected.

Remote disconnection is a risk for consumers. Evidence in Victoria indicates full implementation of remote disconnection resulted in substantial increases in disconnection completion rates - and repeated disconnections - of households.[25] Human intervention programs such as Knock to Stay Connected will not work, for example, if there is no distributor involved in the disconnection

24 For example, NSW Parliament Committee on Law and Safety, *Embedded Networks in NSW* (2022), EWOV, EWON, EWOSA and EWOQ, *Submission to the AER exemption framework for embedded networks – issues Paper* (2024), Australian Energy Market Commission, *Updating the regulatory frameworks for embedded Networks: Final Report* (2019).

25 St Vincent de Paul Society (2016) *Households in the dark: Mapping electricity disconnections in South Australia, Victoria, New South Wales and South East Queensland*, 4.

process. Where distributors are removed from the process, disconnection interventions will need to be conducted by independent third parties.

Question 3. How adequate, effective and appropriate is the current eligibility framework for payment difficulty protections?

Please refer to the section covering Issues with eligibility for protections. We broadly support the AER identification of eligibility issues with our commentary and addition as follows:

- **No clear definition of 'hardship' or 'payment difficulty'**
  The current framework distinguishes between payment difficulty and payment difficulty due to hardship, without providing an objective definition for either. This leaves retailers responsible for determining who needs assistance, on the basis of a definition they are also responsible for framing. This discretion doesn't provide scope to be flexible in the consumers best interest, but simply drives inconsistency in response, and subjects 'eligibility' for assistance to the retail incentive to 'gatekeep' as a means of reducing cost.

- **Distinction between payment plans and payment plans in hardship**
  Discriminating between payment plans in different circumstances provides yet more discretion to retailers with a strong short-term incentive to offer one over the other. This introduces complications and potential harms which are unnecessary. 'Hardship' payment plans, which include consideration of capacity to pay should be the standard. Where there is scope to offer plans without these requirements there is no transparency on how decisions are made and how that discretion is exercised. PIAC's *Powerless* research found considerable harm being caused where there is no consideration of capacity to pay.[26]

- **The word 'hardship' is fundamentally problematic**
  Hardship is a pejorative and subjective term which many people (including those most likely to be experiencing it) do not identify with. Many people dealing with extreme payment difficulty may simply regard their circumstances as the 'usual' and are unlikely to self-identify as in hardship. The subjective nature of the term means retail staff are likely to have widely varying perceptions of who may or may not be in hardship. Both of these factors mean that the use of the term has a material impact both on those seeking assistance from their retailer, and the likelihood their retailer will recognise and respond to their need.

- **Retailers 'gatekeep' access to hardship support**
  Related to the distinction between payment difficulty and hardship is the resulting 'gatekeeping' by retailers, restricting access to more substantial supports either intentionally or through poor structures. Retail staff decide who is passed to hardship specialist staff, who is regarded as eligible (even when people may explicitly ask for hardship support) and who can access any of the individual supports provided through hardship programs. This leads to significant inconsistency within and between retailers,

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26 See pages 31-34.

and makes that inconsistency opaque to the AER, making meaningful monitoring and enforcement impossible.

PIAC's *Powerless* research revealed concerning incidents where people are asked to provide personal details and 'evidence' in support of hardship eligibility, though this is not consistent across retailers/within retailers.[27] Even where people are contacting their retailer in response to disconnection or a disconnection threat they are often not offered hardship support.[28]

- **People served through exempt sales and prepayment have less protection**
'Eligibility' for protection from payment difficulty is not equally applied to those served through exempt sellers or prepayment. Despite some of the most vulnerable people living in embedded networks (such as people living in caravans) and prepayment arrangements (remote Aboriginal communities), people living with these arrangements often have less (or no) access to protection. The business choices of suppliers should not structurally disadvantage consumers access to essential energy and protections when they experience difficulty paying for it.

- **English or digital proficiency reduces access to assistance**
All consumers may experience difficulty paying for the energy they need, but the current frameworks disadvantage those with lower English proficiency and less access to reliable digital platforms. Access to assistance will be inconsistent as long as it continues to rely on English-only digital channels.

Question 4. How could the framework better support early identification of consumers experiencing payment difficulty?

Understanding the incidence and impact of 'hidden payment difficulty' is key to ensuring more effective early identification of payment difficulty and effective interventions to avoid and mitigate payment difficulty.

Early identification of hidden payment difficulty and engagement of effective assistance could be improved if:

- Using payment by credit product providers as a trigger for assistance offers from the retailer – with specific focus on setting up flexible payment methods to break up or delay future payments and provide other assistance.

- There are mechanisms to enable notifications (given with permission) by community organisations providing supports/, health care providers that a household is in need in order to trigger assistance from the retailer.

- There are measures to identify low users or sudden reduction in energy use to trigger outreach by retailers to offer assistance.

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27 Page 54.
28 PIAC found this occurring in its *Powerless* research – see pages 60-61; 71-72 and 81-82.

- Government messaging on energy use is focussed on maintaining household health, and encouraging households to contact their retailer for help if they don't think they can affordably use their heater or cooler.

Question 5. How could the framework better support effective engagement with consumers experiencing payment difficulty?

It is important to qualify the focus on 'engagement' with consumers. The focus should be on improving the effective delivery of assistance, and ultimately to improve outcomes for consumers experiencing payment difficulty. 'Increasing engagement' should be regarded as a (possible) means to an end only, and should not be focus in and of itself. A focus on engagement places a responsibility on consumers, rather than retailers. We strongly recommend a focus on the intended outcome (provision of assistance and better consumer outcomes) and opportunities to improve outcomes without the need for engagement, including:

- Ensuring concessions/rebates are automatically applied and that retailer systems ensure they are retained (including when consumers switch) without consumer self-advocacy, or consumer detriment (through ensuring continuity of payment, and back-payment in circumstances of failure).

- Ensuring automatic assignment of 'best available offer'. The current framework of consent allows retailers to increase retail prices during the course of a contract and change the pricing structure of a deal during a contract, leaving consumers worse off. This does not align with consumer expectations on robust consent and does not support their best interests.

  If action without consent can leave consumers worse off, there must be scope to require retailers to 'automatically' make changes leaving consumers better off. Such a change would require a robust process to enable consumers to opt-out of a change where they choose to. Absent such a change, reforms are needed to ensure that retailers are prevented from increasing prices or making other substantive changes to a retail deal during the course of a contract. If consent prevents a consumer being made better off, it should also prevent them from being made worse off.

- Moving to monthly billing processes as a default (with opt-out provisions) will narrow the gap between 'normal' payment practice and the engagement of support through payment plans and other associated assistance. Providing all consumers with an 'app-based' payment platform which allows them to make flexible payments, smaller and more manageable payments, and be offered (and provided) assistance more immediately is an example of options which should be explored further.

- Automatically providing information about supports available from the retailer, government and community groups, to all customers at sign-up and making it easily available through many platforms without requiring a response from the consumer.

Framing and understanding engagement from the consumer perspective

Notwithstanding the need to improve automatic outcomes, we understand that effective engagement between retailers and their customers is likely to be crucial to ensuring better and more consistent payment difficulty protection and consumer outcomes. Key to improved engagement is ensuring that engagement is framed and considered from the consumer perspective, in the context of the consumers' needs and experience, rather than those of the retailer.

Broadening what is considered engagement

Understanding engagement from the consumer perspective requires having a broader understanding of what is considered 'engagement'. It must commence from the start point that use of energy is the consumers primary engagement with energy and their retailer.

At the next level, payment of bills (in whole or in part) must be regarded as a fundamental form of engagement with the consumer. This understanding would inform a greater flexibility from retailers, such as accepting payments in good faith (even relatively small amounts) as engagement with the consumer.

Beyond these fundamental engagement points, it is necessary to consider other consumer actions or behaviour which can be regarded as engagement from the consumers perspective and leveraged as opportunities to initiate assistance. For instance, evidence from Ombudsman services indicate that bill complains are often actually driven by affordability issues and indicate a consumer in payment difficulty. This could be used as a sign of engagement from the consumer and trigger an offer of assistance.

Fundamentally, its necessary to understand the limitations consumers experience in 'engaging' with retailers in the form that most suits retailers. For example, people experiencing family violence, physical and/or mental health issues, bereavement and other economic or personal stresses should not be required to engage in particular ways simply to access and retain assistance.

Given the associated heightened anxiety and other barriers that a householder experiencing payment difficulty is likely to have, any effort made by a consumer to make a 'good faith' payment (no matter how small) or reach out or respond in some way (such as answering a phone call) to their retailer should be considered engagement from a consumer. Retail systems should be designed to make 'passive' or simple engagement more common (such as through apps, responding yes or no to text messages, and other innovative service designs). The framework can encourage this by focusing regulatory requirements not on 'attempts' to contact – sending letters or emails – but on receipt or impact of contact.

Understanding and overcoming barriers to engagement

As detailed in the attached research report,[29] barriers to consumers engaging in forms retailers currently require include:

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29 Pages 51-55.

- Discomfort/nervousness/shame asking for assistance.
- Not knowing where to go for assistance/what's available/what they are entitled to.
- Being overwhelmed with circumstances/too many other things happening in their life (including burdens resulting from requirements to engage with housing, insurance, health and telecommunications).
- Not recognising available assistance is 'for them' or is intended for their circumstances.
- Not understanding what they are required to do to get help.
- Mental health issues including mental illness, anxiety and trauma.
- Previous experiences of poor treatment by their retailer/another retailer: Past experience with being denied help, having assistance being ineffective or to difficult to access and maintain, having to 'jump through hoops or wait too long for responses, a lack of compassion, asking too much personal information, or generally frightening people has an ongoing impact on peoples assessments of what to expect from retailers and whether it is worth the time and effort to engage.
- Long call wait times and indirect service pathways and a lack of direct access to phone numbers for assistance (and properly trained staff).
- Inability to access transport, reliable phone or internet services required to navigate assistance processes.
- Not being contacted by the retailer through their preferred means.
- Having the retailer contact not recognising that they are in payment difficulty or not believing their need for assistance when told (ie being assumed they don't want to pay, rather than accepting they cannot pay).
- Lack of access to people trained to provide supports with the required professionalism, sensitivity and understanding.
- Concerns about scams – this is particularly important where texts or emails are being used for critical contacts, where people are increasingly told to avoid clicking on links or responding to contacts purporting to be from service providers utilising 'fear' messages to drive responses.

Many of the 'Measures to reduce disconnection and debt' in JEC's attached research report include recommendations to address these barriers.[30]

Diverse communication channels

As The JEC's research revealed,[31] different people prefer different communication channels, and a variety of ways to interact should be available for consumers, including a direct phone line for support.

Peoples are increasingly familiar with managing their banking through dedicated apps and retailers could explore simple app platforms to help people manage payments, access direct messages and easily initiate support requests without excess time or resource constraints. There is a need to retain a range of alternative pathways to ensure those who do not have reliable smartphone access are not excluded or disadvantaged.

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30 Pages 84-105.
31 Pages 98-100.

Addressing overrepresentation of certain groups in payment difficulty

The JEC's *Powerless* research has identified that there are certain groups or cohorts of people who are significantly over-represented in payment difficulty. This includes First Nations people, young people, women, people with disability (particularly with mental health issues) and renters.

Although not shown in JEC's research, it is also well known that people from CALD backgrounds are overrepresented in hidden payment difficulty because they are less likely to present to retailers.

COTA has documented the particular challenges that older people experience due to payment difficulty.[32]

People with low incomes, particularly those on JobSeeker (and related payments) are also consistently over-represented among those experiencing entrenched energy payment difficulty.

The JEC's *Powerless* research includes recommendations regarding how these over-represented groups could have their needs better met[33] such as culturally appropriate assistance phone lines for First Nations people and designing retail services for young people which provide additional assistance to manage paying bills, more information to understand energy use drivers and platforms to easily enable payment from multiple residents.

Language to build confidence

Retailer communications and materials must make it clear the retailer has a legal obligation to assist consumers having trouble paying their bills in full, when they are due. As evidenced by the inclusion of the mandatory statement – 'The Australian Energy Regulator requires us to include this information' – which must accompany better offer information as part of the Better Bills Guideline, mandatory statements such as this can help overcome consumer cynicism and preconceptions and build trust required for them to respond to retail communications and request and accept offers of assistances. For example. communication to households whose situation or actions have triggered support offers should include a mandatory statement such as 'Energy is essential, and we are required to help you if you are having trouble paying your bill in full or on time.'

Utilising artificial intelligence

As a principle, AI must only be used for consumer benefit. It must not be used by retailers to the detriment of consumers, such as to automate debt collection or to alter plans or payment arrangements which result in more cost to the consumer. Any employment of AI should only be able to improve circumstances or add functionality to consumers, and should always be subject to review by a person.

Question 6. How could the framework better ensure that consumers experiencing payment difficulty are supported appropriately with assistance that is tailored to their individual circumstances?

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32 SEC Newgate, *State of the Older Nation*, 2023 and COTA Australia Cost of Living Survey 2023.

33 Pages 86 and 90-91.

We reiterate our recommendation that this process take every opportunity to identify measures to avoid and mitigate the development of payment difficulty. These measures should either be directly implementable as part of the framework or recommended for progress in other processes.

Retailer duty of care or obligation to act in the interest of good consumer outcomes

We strongly support the adoption of a retailer duty of care or obligation to act in the interest of good consumer outcomes. We contend this is a crucial enabler to an effective payment difficulty framework which overcomes the issue of minimum standards becoming a ceiling rather than a floor. Implementing this duty or obligation would see a focus on consumer outcomes, placing responsibility or onus on providers to demonstrate they have acted according to their duty, or otherwise in the interest of good outcomes for their customer.

Early intervention

As stated in the issues paper and as also found in The JEC's research, early assistance is vital to avoiding, minimizing and eliminating payment difficulty more effectively. Early intervention, in the context of a retailer duty of care or obligation to act in the interests of good consumer outcomes, means providing more coordinated assistance, more substantial assistance, and doing it earlier.

Automatic assistance

Default for monthly payment (with flexibility and opt-outs) as well as the automatic application of 'best possible offers' and automatic application of concessions and rebates should be a priority. But more broadly the framework should seek to explore other opportunities to make assistance which can improve outcomes for the consumer, automatically applicable after certain triggers.

Affordable, sustainable and flexible payment plans

All consumers experiencing payment difficulty should be equally entitled to assistance through a payment plan.

All payment plans should be required to abide by the sustainable payment plans framework, and be set with consideration of the consumers capacity to pay, considering their income and energy and other essential costs.

There should be scope to 'readjust' the debt a payment plan applies if a consumer has not had their concession/rebate applied, or if they were not on the best possible plan available. Other emergency relief should also be required to be applied before debt is calculated.

There should be no limit on the obligation to offer payment plans (in time or in number) to consumers experiencing payment difficulty. Where timeframes apply there should be systems to require retailers to match payments, or waive or forgive debt where debt cannot be repaid sustainably within the timeframe.

Payment plans should be flexible and enable people scope to pay late, miss a payment or make part payment or 'good faith payments' without the plan being cancelled. These should be regarded as triggers for contact or further assessment of assistance, rather than cancellation of a plan.

Consumers should be able to have access to third party advice in setting up or reviewing a plan, to ensure it remains sustainable.

The JEC's research showed that there is considerable harm being caused where consumers adhere to payment plans that are not affordable.[34]

Assistance alongside and beyond payment plans

Payment plans are important tools, but should not be the first assistance offered, and shouldn't be offered in isolation.

Our understanding is that retailers are most likely to only offer payment plans when a household indicates that they are experiencing payment difficulty, and that other forms of assistance – that actually improve affordability - are not as readily provided before, or at all.[35]

Greater consideration and implementation of other measures outside of payment plans must be given. Experience in Victoria indicates it may be necessary to require other assistance to be offered before (or at least alongside) payment plans.

The framework could include a list of all possible assistance measures, with a retailer being able to select from that list according to the needs and circumstances of the consumer. For example, each assistance measure could be given a value and retailers can choose a way to reach a required value (similar to how the 100 points of identification system works). It would be necessary to weight the most substantive measures more highly, and similar to identification, some measures could effectively be required, such as:

- Being moved to the retailer's best offer
- Recalculating and reducing debt according to the 'better offer' a consumer was eligible for
- Pausing payments when the payment difficulty is expected to be short-term.
- Ensuring any concession and rebates are applied.
- Recalculating and reducing debt by the amount of concessions/rebates should have applied
- Assistance/referral to energy crisis support payments.
- Referrals, as appropriate, such as to financial counsellors and/or community organizations/supports to review a payment plan and provide advice for issues broader than energy.

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34 For example, this quote from a Financial Counsellor: "One thing I will say that's really annoying is, often, by the time they've come to us, they probably had to wait a little while [because financial counselling services are so stretched]. And so, they've attempted to be in touch with their retailer, done the right thing, and the retailer has set them up on a really unaffordable payment plan. And, obviously, the client is pressured to say yes to it. One of my clients had stuck to the payment plan for four or five payments, but I was like, 'How?'… And once we worked out what she could afford to pay, she was like, 'Oh, wow! Now I'll be able to afford food.' So, yeah, obviously the communication is 'you're about to be disconnected. In order to not be disconnected, you have to commit to this payment plan.' So, people say yes, which you understand, you don't want to be disconnected and then they give up other things."

35 For example, in PIAC's research, of the households who were receiving assistance from their provider, 57% were receiving a payment plan they could afford, 28% were on a payment plan that they could not really afford, 23% were on a smoothing arrangement, but only 14% were put on a better offer, 14% received energy cost saving advice; 1% indicated they got a deferral for a period of time before they had to pay anything and 2% indicated something else. See page 31 of the report for more information.

Others could be assigned a value, based on the level of assistance given, such as:

- Energy efficiency assistance (beyond an audit or information, this would have to involve an intervention that leads to an improved outcome – such as links with appliance replacement or other government and industry programs).
- Payment matching (with the assistance of an independent third party, or subject to review by them)
- Waiving of debt.

Energy efficiency assistance

Improved energy efficiency (of home and/or fixtures and appliances) can make real improvements in reducing energy bills and addressing longer term payment difficulty while supporting household health and wellbeing.

To be meaningful for people experiencing payment difficulty energy efficiency assistance must go beyond assessment or advice. It must link to measures which can meaningfully improve actual outcomes for the consumer, while maintaining their health and wellbeing. This means ensuring assessments or advice being connected to appliance swap programs, free or subsidized upgrades, links to energy efficiency schemes to replace hot water or electrify, or other specialized programs. Without this, energy efficiency advice is ineffective at helping households reduce their energy bills. This is because:

- People experiencing payment difficulty have often already cut back on their energy use to an unhealthy minimum.[36] Behaviour change advice to these households should be about how to ensure more healthy energy usage, with tangible assistance to access improvements to fixtures and appliances/weather sealing/insulation to enable this.

- Affordability issues underly most payment difficulty (even if there are other factors involved) meaning that households can't afford to implement energy saving measures beyond behaviour change that is most likely to exacerbate their circumstances.

- A high percentage of people experiencing payment difficulties are renters,[37] which limits what action they can take.

As the AER has previously found, there is a widening gap between households who can reduce their energy use and those who can't. Addressing this gap wherever possible is vital to address energy affordability issues.

No mandated timeframes to repay debt

As noted above, capacity to pay must be at the heart of all payment plans.

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36 PIAC's research found that 62% of respondents already use as little energy as they can, even if that impacts their wellbeing. See pages 48-49 for more information.

37 PIAC's research found that 38% of respondents were in private rental (compared to the state average of 27%) and 15% were in social housing (compared to the NSW average of 4%). See page 9-10 for more information.

$300 in debt can be accumulated in less than a single quarterly bill, and for many households a single monthly bill. Retailers should not have the discretion to initiate an action with such harmful consequences for the consumer for debt equivalent to less than a single bill.

Debt triggers should remain for assistance and we support ongoing work to determine how effective triggers should be set for offers of assistance, steps escalating assistance, and initiation of a 'review of the customer relationship'. Debt triggers to initiate a disconnection process have merit, but should trigger a retailer request to a third party, and demonstration that all appropriate steps have been taken. We also note our recommendations on the value of human intervention at the point of disconnection (however it is initiated).

More steps needed ahead of a disconnection

Whilst the Victorian PDF disconnection safeguards are a step in the right direction, as noted above, more needs to be done to protect vulnerable households from the impacts of disconnection threats and action.

Disconnections should not occur without human intervention. We highlight the example of Catalonia as a demonstration of potential improvements which mitigate the harm to the household and provide an effective pathway to assistance.

Given the harms caused by disconnection, it should not simply be up to retailers to decide whether a disconnection should occur. There should be significant compliance and enforcement steps before initiation of disconnection to ensure retailers have demonstrated they have taken all possible steps before a disconnection (or threat) is able to proceed.

Question 8. What are the costs and benefits of potential changes to the framework?

Energy is an essential service and the implication of this is that regardless of their capacity to afford the energy they need, people must continue to use it to sustain their health and wellbeing. This must be restated as any relative consideration of the costs and benefits of changes to the framework must prioritise better outcomes for consumers in protecting their access to the energy they need to sustain their health and wellbeing. Consideration of the potential impact on retailing businesses is relevant after the fact, not an equal consideration to be weighed against consumer outcomes.

It is also important to note the starting point, which is a significant 'cost' burden that failures of the current framework shifts from retailers to other parties, such as:

- To the individual/household who use less energy than they need to sustain their health, cut back on other essentials, and take on debt.

- To the community sector as people experiencing payment difficulty rely on community services – often run by volunteers – such as food banks and welfare organizations.

- To jurisdictional governments. Many jurisdictional governments in the NEM provide rebates and crisis supports to help households pay down their energy debt and avoid disconnection. Often these supports are wholly or in part absorbed by retailers not fulfilling their obligations (such as by leaving consumers on more expensive deals).

- Into the health system as people go without the energy they need to support their health and well-being, go without food and medicine and/or medical appointments, impacting health, mental health, the costs of which are not only borne by the individual and their family but also eventually by the health system.

The benefits of a more effective framework will necessarily involve some ‘internalization’ of these costs.

When considering the relative cost impact of addressing these failures on retailers, the AER must be transparent in assigning a relative weight to how that cost burden will be regarded. It cannot be equivalent.

A human intervention

The introduction of door-knock initiatives, such as 'Knock to Stay Connected' – explored in detail in our forthcoming report ‘Home visit for households at risk of a disconnection’ – is seen as a generally positive step but must be implemented in a way that is motivated by helping the household. This assistance should be aimed not only at avoiding a disconnection, but at helping them address underlying issues in a manner that is sensitive to their situation.

This initiative should never be undertaken by a retailer or their agent, to mitigate against the risk of it becoming a threatening measure of ‘debt collection’.

“I think [Knock to Stay Connected] could definitely go either way. Like, someone could find it as a form of harassment, having someone rock up at their front door, you know, wanting to know what's going on. But in the same sense, it could also be welcome because then it could open those doors for support and for them to try and get on top of their situation with their power bills. I think it could be good depending on the person's circumstances definitely as to whether it would be welcomed or not.”

Financial Counsellor, The Salvation Army (2)

Longer notification period

The research reveals that a factor in avoiding a disconnection is having a longer time between being notified that a disconnection will occur and the date on which the disconnection will occur.

Helping households who are disconnected to reconnect quickly again

The research showed 79% of households do not reconnect on the same day. Barriers to reconnecting include not having the money to reconnect. PIAC advocates for fees associated with disconnection (such as reconnection fees) to be abolished, as they simply make an unaffordable situation worse. Retailers should accept small, good-faith payments or even getting in touch with the provider as an indicator of a good-faith commitment to reconnect.