Power, markets & exclusion

Assessing the effectiveness of social protections in deregulated markets: An Electricity Case study from Victoria

Financial & Consumer Rights Council Victoria Inc.
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Financial and Consumer Rights Council

The Financial and Consumer Rights Council Inc. is a non-profit, membership-based organisation which works to ensure that all people, particularly low income and vulnerable consumers, have access to fair treatment as consumers in the market place.

FCRC, formerly the Consumer and Financial Counselling Association of Victoria (CAFCA) is the peak body for Financial Counselling and Consumer Support services in Victoria.

As a non-profit, membership-based organisation, the Council was formed to fulfil two functions: to promote the interests of vulnerable consumers and to provide a support network for its members, who work in the areas of law reform, poverty alleviation, community education and social policy.

The Council promotes the interests of consumers by lobbying for legislative reform and changes in both government and commercial practices, by monitoring inequities and providing input into government policy on a wide range of issues. The Council mechanism for policy development is through extensive consultation with caseworkers undertaking financial counselling and consumer support work across Victoria. FCRC has formal representation on a number of Government and regulatory committees.
## Glossary of Terms

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ESC</strong></td>
<td>Essential Services Commission – independent Regulator</td>
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<td><strong>Franchised Customers</strong></td>
<td>Customers supplied under regulated terms and conditions prior to full retail competition</td>
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<td><strong>Safety Net</strong></td>
<td>Legislative, regulatory tools and programs to assist disadvantaged customers maintain electrical supply</td>
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<td><strong>URGS</strong></td>
<td>Utility Relief Grant Scheme</td>
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<tr>
<td><strong>Retrofit</strong></td>
<td>Remedial work to improve thermal qualities of housing and appliance efficiency</td>
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<td><strong>EWOV</strong></td>
<td>Energy and Water Ombudsman Victoria</td>
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<td><strong>FRC</strong></td>
<td>Full Retail Competition</td>
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<tr>
<td><strong>Tariff</strong></td>
<td>Price schedule set in relation to different levels of consumption</td>
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<td><strong>Retail Code</strong></td>
<td>Regulatory instrument prescribing the terms and conditions of supply to residential electricity customers</td>
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<td><strong>Standing Offer</strong></td>
<td>Regulated safety net tariff retailers are obliged to offer residential customers</td>
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<td><strong>Market Contract</strong></td>
<td>Less-regulated supply contracts, provided by competing retailers</td>
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<tr>
<td><strong>Deemed Contract</strong></td>
<td>Transitional contract created for FRC to provide contractual coverage for customers who have not moved or switched</td>
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<tr>
<td><strong>Sunset</strong></td>
<td>Legislation that provides, in advance, for the expiry of a piece of legislation</td>
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<tr>
<td><strong>Dual Fuel</strong></td>
<td>Combined gas and electricity billing</td>
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<tr>
<td><strong>Bill Smoothing</strong></td>
<td>Payment of predetermined instalments of equal amounts at set intervals</td>
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<tr>
<td><strong>Slamming</strong></td>
<td>When a retailer transfers a customer to itself without the customer's explicit informed consent</td>
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<tr>
<td><strong>Concessions</strong></td>
<td>Financial rebates provided by government to disadvantaged customers</td>
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<tr>
<td><strong>DOI</strong></td>
<td>Department of Infrastructure</td>
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<tr>
<td><strong>SECV</strong></td>
<td>State Electricity Commission of Victoria</td>
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<td><strong>SCC</strong></td>
<td>Shortened Collection Cycle</td>
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<td><strong>CSO</strong></td>
<td>Community Service Obligation</td>
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<td><strong>FCRC</strong></td>
<td>Financial &amp; Consumer Rights Council Victoria</td>
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<tr>
<td><strong>POLR</strong></td>
<td>Provider of last resort</td>
</tr>
</tbody>
</table>
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Summary</td>
<td>6</td>
</tr>
<tr>
<td>1. Recommendations</td>
<td>7</td>
</tr>
<tr>
<td>1.1 Tackling Disadvantage</td>
<td>7</td>
</tr>
<tr>
<td>1.2 Disadvantage in the Market</td>
<td>7</td>
</tr>
<tr>
<td>2. Summary of Findings</td>
<td>9</td>
</tr>
<tr>
<td>2.1 Fuel Poverty and Socio-Economic Disadvantage</td>
<td>9</td>
</tr>
<tr>
<td>3. Introduction</td>
<td>13</td>
</tr>
<tr>
<td>3.1 Methodology</td>
<td>13</td>
</tr>
<tr>
<td>3.2 Current Research</td>
<td>14</td>
</tr>
<tr>
<td>4. Background</td>
<td>16</td>
</tr>
<tr>
<td>4.1 FCRC policy context</td>
<td>16</td>
</tr>
<tr>
<td>4.2 Structure of report</td>
<td>16</td>
</tr>
<tr>
<td>5. Overview of Safety Net</td>
<td>17</td>
</tr>
<tr>
<td>5.1 Disadvantage</td>
<td>17</td>
</tr>
<tr>
<td>5.2 Fuel Poverty</td>
<td>18</td>
</tr>
<tr>
<td>6. Discussion of Findings and Case Studies</td>
<td>22</td>
</tr>
<tr>
<td>6.1 Electricity Industry Act 2000</td>
<td>22</td>
</tr>
<tr>
<td>6.2 Retail Code and Minimum Standards Framework for FRC</td>
<td>23</td>
</tr>
<tr>
<td>6.3 Full Retail Competition</td>
<td>35</td>
</tr>
<tr>
<td>6.4 Performance reporting</td>
<td>38</td>
</tr>
<tr>
<td>7. Conclusion</td>
<td>44</td>
</tr>
<tr>
<td>Bibliography</td>
<td>45</td>
</tr>
</tbody>
</table>
Executive summary

The Financial and Consumer Rights Council (FCRC) seeks to provide a voice for Victorian consumers of essential services, in particular customers affected by fuel poverty. Fuel poverty affects consumers who experience periods where they are unable to pay their utility bills and hence face the risk of accumulating debt and/or having essential services disconnected. They may also be forced to forego other essential household items in order to secure electricity or gas supply. It is the view of FCRC that the cost of essential services to domestic households should be determined by a consumer’s capacity to pay, as access to essential services is a fundamental right of citizenship.

The term ‘safety net’ is used by FCRC to describe the set of legislative and regulatory tools intended to maintain electrical supply to vulnerable sections of the community. This project provides a critique of the current safety net by examining the experience of the fuel poor – as evidenced through financial counselling casework – since the introduction of full retail competition in electricity.

The report finds, that notwithstanding the existence of the current safety net, substantial numbers of households are disconnected, threatened with disconnection and/or possess arrears that cannot be paid without detrimental welfare outcomes. As utility payments are prioritised by most households, disconnection of this essential service represents a household without options and in extreme circumstances. FCRC believes that the legislated demise of the obligation to offer that forms the basis of the current safety net will result in a significant proportion of Victorian households experiencing disconnection and subsequent reconnection difficulties.

Accordingly, FCRC argues that the current obligation to supply should be made permanent, and be supported by the insertion of a ‘social’ objective into the Essential Services Commission Act 2001 equal to the current ‘economic’ objective. Such a legislative framework would support the retention of the current Retail Code modified to incorporate the development of a legally binding ‘hardship’ guideline that contains protocols for determining incapacity to pay. A hardship guideline would provide legal rights to customers with demonstrated incapacity to pay, preventing disconnection and inappropriate legal action.

After eight years ‘self-regulation’ has failed to ensure fundamental consumer protections and this failure has established the need for formal legal rights as a necessary condition to guarantee essential supply to vulnerable households. A hardship guideline would function to prescribe the structure of tariffs and tariff rates to ensure affordability. Furthermore a hardship guideline could be linked to a hardship program, in which a whole of government response would foster broad scale energy efficiency retrofit programs, and secondly, bring about reform of tenancy laws which are currently so disadvantageous to tenants as consumers of energy. FCRC notes that these changes would bring the energy sector into closer alignment with the Victorian government’s commendable proposals for reform of the water sector.
1. Recommendations

1.1 Tackling Disadvantage – A Fuel Poverty Alleviation Strategy

A whole of government approach (or ‘triple bottom line’) is required to address the systemic causes of fuel poverty. Its elimination would have benefits including economic savings (through energy efficiency), and greenhouse gas abatement. Significant costs are borne by the wider community while it is not addressed.

Mandatory action to include:

- Prohibiting disconnection for incapacity to pay;
- Applying minimum 5 star energy efficiency rating to all housing;
- Applying minimum 5 star rating to all appliances;
- Providing for in-built heating in tenancies;
- Banning day rate hot water heaters, and developing major retrofit program to replace existing stock;
- Re-establishing the Home Energy Advisory Service to undertake retrofits of homes;
- Linking the value of the winter energy concession to a base rate plus lifecycle and/or special needs eg large families, or ill health;
- Increasing the value of winter energy concessions to residents in properties that fail to conform to 5 star minimum standards;
- Developing URGS to assist people experiencing chronic fuel poverty;
- The insertion of social and environmental objectives along side the economic objectives in the Essential Services Commission Act

1.2 Fuel Poverty and the market

Without an obligation to maintain supply to customers experiencing hardship, retailers are unlikely to do so on fair and reasonable terms. FCRC strongly maintains that the obligation to supply is an absolute right. The Council also believes that the existing safety net requires revision as current arrangements penalise disadvantaged households by placing a premium on their access to supply.

Between 1990 and 2000 the rate and severity of poverty in Australia increased significantly. Experience of market forces and the knowledge that not all customers are treated equally leads us to conclude that markets operate to exacerbate socio-economic disadvantage. Government has the option of eliminating fuel poverty in order to create a market with more equal customers. This would act to enhance competition and undermine product differentiation predicated on the basis of market segmentation of customers (which reflects the degree of market power held by individual customers).

1 It could include for example percentage of income payment, highly discounted rates, or free electricity for non-discretionary usage, and higher priced electricity for discretionary consumption.
Alternatively, disadvantaged customers should be able to exit the market and gain supply under regulated tariffs, terms and conditions. There are a number of schemes that could be appropriate. Any such ‘provider of last resort’ scheme however should be integrated into a fuel poverty alleviation strategy.

It is imperative that tariffs are designed to provide for equity and to discourage excessive consumption. Low standing charges and inclining block tariffs need to be mandatory, with the first block of consumption – the non-discretionary being absolutely affordable. Other charges, such as excluded services should be tightly regulated.

It is recommended that:

- A hardship guideline be developed as a formal legal instrument (as per other guidelines issued by the ESC). The proposed guideline should include protocols for determining incapacity to pay, designation of appropriate tariff structures and prices, debt forgiveness and participation in retrofit programs;

- Prepayment meters be proscribed as they do not ensure the maintenance of supply.

- Sale of utility debts to third parties and credit referencing be proscribed.
2. Summary of Findings

2.1 Fuel Poverty and Socio-Economic Disadvantage

1. Fuel poverty results from limited and/or intermittent income; poor thermal efficiency of housing and/or inefficient or inappropriate appliances; lifecycle stage; consumption needs; tariff structures.

2. Housing affordability, especially private rental costs, competes with payment of utility bills. The costs of private transport, education and medical expenses are other essentials taking an increasing share of household budgets and contributing to the cash flow problems that manifest as an inability to maintain utility payments. Increasingly households are resorting to the use of credit to provide for day-to-day household expenses and this is not sustainable for low to medium income households. Some households pay more to service their debt than for housing costs.

3. ‘Noisy’ debts, in which there is the immediate threat of repossession or withdrawal of service act to re-order the payment priorities of households. Findings indicate that energy retailers are increasingly adopting ‘noisy’ tactics such as legal action to ensure payment over other essential expenditure.

4. End costs of electricity for a customer on the General Domestic tariff have risen by an average of 3% between 1991 and 2003. For a rural household with off peak electric hot water the increase was as much as 24%.

5. The majority of the utility casework undertaken by financial counsellors relates to hardship.

6. Clients frequently encounter long waiting times to access financial counselling services, however other types of community and welfare services assist with utility matters and many of these relate to actual or imminent disconnection.

Electricity Industry Act 2000

7. The Electricity Industry Act 2000 created the ‘standing offer’ as a safety net in that the incumbent retailers are obliged to offer supply to former franchised customers. The tariffs that comprise this ‘provider of last resort’ (POLR) scheme are artificially made more expensive than market tariffs. Therefore access is dependent on payment of a premium over and above what is paid in the market. Accordingly, this POLR can be characterised as a residual market.

8. The deemed/standing offer tariffs are subject to a sunset provision and from 1st January 2005 there will be no obligation to supply.

\footnote{POLR is not to be confused with the Retailer of Last resort (ROLR) which concerns the unplanned exit of a retailer from the market, or with the Victorian ‘default’ retailer which concerns the taking of supply without a formal contract.}
Retail Code

9. The Retail Code describes the rights and obligations of customers and retailers. Experience demonstrates that such prescribed rights and obligations are fundamental to ensure a household’s access to supply on fair and reasonable terms. The current Retail Code generally satisfies this objective.

10. The Retail Code provides a legal right to retailers to payment in full (ie debt recovery) but there is no corresponding right for customers in hardship to seek debt waiver or be supplied under terms that are affordable. The Code acknowledges hardship however as ‘capacity to pay’ is not defined and protocols have been left to self-regulation the conflict between debt recovery and hardship is not reconciled.

11. The requirement to assess ‘incapacity to pay’ is widely and routinely contravened by retailers.

12. Without an obligation to maintain supply, the voluntary measures (self-regulation) adopted by retailers to assist disadvantaged customers have resulted in the development of payment options rather than comprehensive and accountable hardship policies and practices.

13. Instalment plans negotiated by financial counsellors are increasingly set at affordable levels although this typically results in the customer accumulating further debt.

14. Debt waiver is exceptional and generally provided in circumstances where there is a conduct issue on the part of the retailer.

15. Electricity accounts are disconnected for less than a day to a few days in the majority of cases. Cases of longer periods of disconnection tend to be for months rather than days. This later group often fail to achieve reconnection and the problem becomes hidden. Without other options households sacrifice gas supply in order to keep electricity connected. Maintenance of gas supply is sensitive to electricity price changes.

16. The Retail Code condones retailer strategies aimed at recovery of debt and precovery (insurance) in the event of payment default. These strategies act to protect the cash flow of the retailer but exacerbate fuel poverty.

17. Direct debit payment arrangements, while commonly sought by retailers, do not guarantee payment, and often result in additional costs and hardship for the customer.

18. Retailers can be difficult to contact. The three incumbent retailers - host retailers - AGL, TXU and Origin have all used answering machines or call back services for customers telephoning with hardship or disconnection issues.

19. Customers paying by Easyway who are entitled to concessions are required to pay the full amount and apply to reclaim the concession from the retailer.

20. Shortened collection cycles exacerbate the hardship of a customer where the problem is one of chronic fuel poverty.

21. Energy efficiency information is not commonly provided by retailers, and free audits are unknown.
Full Retail Competition

22. Generally customers are unaware that they void their deemed contract when relocating. This particularly affects renters who are highly mobile and unaware that further switching (from a market contract) may attract termination fees.

23. Some customers experiencing hardship are particularly responsive to certain types of marketing that promise upfront savings or discounts.

24. Door to door marketing, and telemarketing to a lesser extent appear to be more prevalent in low income metropolitan neighbourhoods.

25. Customers switch retailers without regard to the actual tariff.

26. Customers frequently fail to recall the name of their supplier or new supplier.

27. It is common for bills not to arrive for extended periods, resulting in large bills and considerable hardship.

28. Customers frequently believe they have switched retailers when they have not been transferred. It is unclear whether this is due to technical glitches or the customer is not informed by the new/old retailer that they are being rejected (either blocked for debt or credit reference). Some customers are being disconnected as a consequence of the confusion.

29. Some customers with debt are switching retailers.

30. Some customers are switching retailers in order to avoid payment of arrears.

Energy and Water Ombudsman Victoria

31. Financial counsellors are satisfied with the EWOV’s handling of non-hardship complaints.

32. The EWOV has the jurisdiction to address the conflict between the retailers’ defined rights to recover debt and the un-defined entitlement of customers to avoid disconnection in situations of incapacity to pay by developing, for example a means of determining incapacity to pay and by regularising the use of debt waiver.

33. Customers disputing retailer decisions involving ‘incapacity to pay’ are frequently unable to enforce their rights by recourse to EWOV.

34. The practice of the EWOV scheme to refer enquiries back to the retailer twice (there must be an initial contact and subsequent contact with a senior person within the retailer) before hearing a complaint dramatically reduces the number of enquiries, particularly hardship cases, that are handled by EWOV as complaints.

35. Frequently hardship referrals made by financial counsellors are also being referred back to the retailer without assistance from the EWOV.

36. EWOV reporting in relation to affordability and hardship is inadequate.

Government safety net

37. In 1992 government recognition of fuel poverty was withdrawn and it has not been re-stored since the change in government. The multiple
causes of fuel poverty require a whole of government approach to policymaking. Without an acknowledgement of fuel poverty and a commitment to redressing it, financial counsellors have an unnecessarily limited and remedial role that hampers advocacy and action to eliminate fuel poverty.

38. The operation of the URGS alone is insufficient to address widespread chronic fuel poverty. The URGS should be complemented by a state wide retrofit scheme.

39. Retailers appear ambivalent towards URGS and often fail to promote it.

40. Financial counsellors frequently push the boundaries of the URGS criteria because there is no other means to address chronic fuel poverty.

41. Lack of appropriate housing and appliance standards results in higher than necessary consumption. State concessions and federal rental subsidies are undermined by the shifting (and inflating) of costs from landlord to tenant.

42. The value of the winter energy concession reduces as consumption rises. In order to preserve the value of the concession, growth in consumption levels must be addressed.

43. Lack of regulation regarding pricing structures results in low consumption users paying a higher cost for the least discretionary component of consumption.

44. There is a significant problem with double handling of households in fuel poverty that undermines taxpayer and community contributions, eg. lack of maintenance in public housing requires emergency relief to pay utility bills, or referral to financial counsellors who may then refer to another service.

45. The ESC does not adequately report on affordability/hardship issues although some improvements are mooted. Hardship is recognised as an issue but does not appear to have the status of a 'systemic' issue and there is no formal strategy to address the issue. This may mean the ESC is contravening objective s8(f) of the Essential Service Commission Act 2001 which states the ESC will work: “to ensure that users and consumers (including low-income or vulnerable customers) benefits from the gains from competition and efficiency”.
3. Introduction

As of January 2002 residential electricity customers are able to request supply from competing electricity retailers. Although a market – full retail competition - was established, the Victorian government effected a legislative “obligation to offer” through the provision of standing offer tariffs. Through the independent electricity regulator, the Essential Services Commission, it provided the terms and conditions of supply for the “standing offer”3 and minimum standards of consumer protection for domestic competition generally. These provisions are embodied in the Retail Code. Government also preserved a range of government funded community service obligations (CSOs) to assist disadvantaged customers maintain supply. CSOs have a formal role in the operation of the Retail Code. FCRC describes this set of legislative tools and related programs as the safety net which comprises:

- the formal obligation to supply (standing offer);
- price caps;
- protection of the Retail Code;
- provision of community service obligations;
- access to advocacy and complaint mechanisms.

The purpose of this research project is to analyse and critically review the FRC safety net, focusing on the *Electricity Industry Act 2000* and the Retail Code.

3.1 Methodology

This research analyses and critically reviews the operation of the safety net implemented by government for full retail competition in electricity.

While it is desirable from a policy perspective to quantify the changes that may be occurring with the introduction of competition, FCRC acknowledges that examination of the casework of its members alone cannot fulfil that function. Moreover, data collected by financial counselling services is not standardised which severely limits comparative and/or quantitative analysis of data.

The report utilises existing research and commentary, including reports of the Essential Services Commission (ESC), Department of Human Services and the Energy and Water Ombudsman Victoria. Legal opinion was sought to assist in forming a view regarding the operation of the Retail Code and associated mechanisms. The report also relies on consultations with financial counsellors.

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3 And for the ‘deemed’ tariff – a transitional tariff arrangement. All residential customers were placed on this at the outset of competition. Customers are expected to leave the deemed and choose between a standing offer and a market contract.
A qualitative research approach is utilised in consultations. Financial counsellors draw on more than 20 years of casework experience which enables them to characterise problems and issues confronting their clients and to provide an overview of the implications of utility practices. Financial counsellors were invited to submit case studies to illustrate specific issues relating to the introduction of full retail competition. Financial Counsellors from 14 metropolitan, regional and rural services were interviewed in depth via telephone or face to face. Participants were asked a series of open ended questions in order to illicit information about utility issues presenting in casework and outcomes of casework interventions. Using open ended questions to illicit information is a standard qualitative research approach.

Consultations:
Financial counselling agencies ranged from agencies with a sole financial counsellor to agencies employing up to five financial counsellors. The clients assisted by agencies in respect of utilities matters and the experience of the individual agencies was therefore proportional.

Confidentiality and ethics:
Financial counselling agencies are required under the Privacy Act to ensure the confidentially of clients. Undertakings were provided that case studies referred to in the research would not contravene the confidentially of clients.

The research design required that financial counselling agencies participating in the research would not be identified. The findings and recommendations contained in this report represent the views and policy position of the Financial Counselling and Consumer Rights Council and are not necessarily the views of participant agencies.

Limitations:
Financial counsellors carry waiting lists of up to several weeks for appointments because of the limited number of services across the state. Clients in hardship may present at different types of services, such an emergency relief agencies or community health centres, or they may go unassisted. In addition, DHS data indicates that financial counselling service client demographics are not representative of two particular groups: people over the age of 65 years, and people from non-English speaking backgrounds.

Some issues, such as exclusion from market contracts, will not necessarily present in casework and alternative methodological approaches are required to obtain such data.

3.2 Current research

The short period in which there has been competitively provided energy to households anywhere, means that the literature is limited. There are few post
implementation studies. The Victorian regulator, the Essential Services Commission undertook an initial examination of the effectiveness of FRC (ESC 2002), likewise the UK regulator Ofgem undertakes yearly reviews (see for example Ofgem 2002). The specific impact on households in the UK was studied by Otero and Waddam Price (1999), Baker (2001), Brigham and Waterson (2003) and Giulettti, Waddam and Waterson (2000), Boardman (2001, 2002) and in Victoria by Sharam (2003a). The National Consumers Council in the UK has produced important conceptual work on the existence and operation of disadvantage in markets (NCC 1977, 2000). In addition, the University of Newcastle upon Tyne (2000) and Conaty and Bendle (2002) have tracked service withdrawal/denial within competitive markets.

With a history of discrimination (redlining) in markets, particularly in the credit and insurance sectors, the US models for electricity competition at the household level have attempted to address the potential for economic discrimination by adopting specific anti-redlining legislation. There have been a number of US contributions to discussion of economic discrimination in markets, market segmentation and the problems of residual markets (Colton 1995a, 1995b, 1995c, 1996, 1997, 1999a, 1999b, 2000, Coyle 2000, and Rosen, Sverrisson and Stutz 2000). Residual markets have also been examined by Alwitt and Donley (1996), Sharam and Gregory (2002) and Sharam (2003b). Price discrimination was examined by Carver (1995) and Ernst (1994). Market segmentation is extensively covered in marketing literature (Hallberg 1995; Berry and Linoff 1997; Clancy and Shulman 1991; McDonald and Dunbar 1995; Stewart 1996). In the telecommunications industry, segmentation is subject to a debate on the “digital divide” (Cooper 2000, Kahl 1997, National Telecommunications and Information and Administration 1999).


In Victoria, Dufty (1995), Benvenuti and Walker (1995), Romeril (1998), Kliger (1998) tracked the increasing hardship of low-income households in the pre-competition period as the utilities focused solely on commercial objectives. Frameworks Consulting (1997) conducted a review of the safety net for the Victorian Department of Human Services, although this focused on the operation of the URGS.
4. Background to Project

In June 2002, the Department of Natural Resources and Environment (now the Department of Infrastructure) provided funding to FCRC for a research and training project in order to assist FCRC address consumer protection issues in the newly competitive energy markets and to inform and advise government of consumer protection issues. FCRC undertook to deliver:

- Input into the Essential Services Commission’s (ESC) 2003 Review of the Retail Code;
- A report to the DNRE’s review of the consumer protection provisions contained in the Electricity Industry Act 2000;
- Minimum of six training sessions with financial counsellors.

This report comprises the second deliverable.

4.1 FCRC policy context

Utilities attract attention not simply because they are regarded as essential services but because in themselves they are capable of generating significant inequity and disadvantage (Kiers 1983, McColl-Kennedy and Dann 1989). FCRC is principally concerned about a private, competitive, essential services industry having a negative affect on people living on low incomes. Previous FCRC research Switched Off, Powerless in a Privatised State and Unfair Deal demonstrated the negative impacts on vulnerable customers of market based utility service provision.

FCRC policy

- regards access to essential services as a fundamental right of citizens and the obligation of government to ensure; and
- maintains there should be no disconnection or restriction of supply of energy or water for people willing but unable to pay due to financial hardship

4.2 Structure of the report

Section one introduces the purpose of the report, the methodologies used, and current research in the area. Recommendations are listed in section two. Section three provides the background to the project, and why utility policy is relevant to financial counsellors. Section four provides a detailed description of the safety net and fuel poverty. Section five details the findings of the report with an extensive examination of key legislation and regulatory tools. Case studies are provided to illustrate issues. Conclusions are drawn in section six.
5. Overview of the Safety Net

On January 13th 2002, the Victorian government opened the household and small business customer segments to full retail competition (FRC). Households are now able to contract for supply from competing licensed retailers.

In opening the market to the household level, the government introduced legislation (now s35 Electricity Industry Act 2000) providing for a transitional tariff (the deemed tariff) and a safety net tariff (the standing offer). The ESC became responsible for prescribing the terms and conditions of deemed and standing offer tariffs, and establishing the ‘minimum standards (of consumer protection) for FRC’. The ESC is the independent energy regulator, an office charged with a number of obligations, the primary one being to “protect the long term interests of Victorian consumers with regard to price, quality and reliability of essential services” (Essential Services Commission Act 2001). In fulfilling its task the ESC developed the Retail Code – a legally binding instrument - detailing the rights and responsibilities of both customers and retailers, and the Minimum Standards Framework for FRC – a position paper - detailing the Commission’s formulation of the role of consumer protection in the competitive market.

The government has reserve pricing powers which it can use to override the prices set by retailers for the deemed and standing offer tariffs. The prices for the deemed/standing offers have been reviewed by government and as a consequence are subject to a price cap or maximum price.

Initially the deemed and standing offer provisions were to sunset (expire) on 31st of December 2003. The consequence of this sunset provision is to remove any obligation on retailers to supply households and render the reserve pricing power and the Retail Code redundant. The first review of the effectiveness of FRC, completed in September 2002, found that the market could not be regarded as ‘effective’. Consequently, the sunset was deferred for a year.

The government also maintained a pre-existing set of community service obligations (CSOs) which are funded by government and delivered by the retailers. These are the winter energy concession, service to property charge (supply cap) concession, multiple sclerosis concession, life support concession and the Energy Relief Grant Scheme. In addition, although not regarded as CSOs is government funding of independent financial counselling and emergency relief services.

Customers can access a private alternative dispute resolution scheme (Energy and Water Ombudsman Victoria) to make complaints. The ESC is required to periodically review the effectiveness of FRC and publicly report on industry performance.

5.1 Socio-Economic Disadvantage

The following snapshots are taken from the VCOSS 2003 submission to the Senate Community Affairs Committee Inquiry into Poverty and Financial Disadvantage:
- Poverty and income inequality rose in the 1990s - while incomes of the top one-fifth of households increased by almost 14 per cent, the incomes of the bottom one-fifth of households grew by only 1.5%.
- 2.4 million, or 13.3% of Australians do not have enough money to meet basic needs such as housing, clothing and food. More than 30,000 working households went without meals in 2000 due to money shortages; almost 170,000 could not pay utility bills and 30,000 could not afford to heat their homes.
- Over 702,000 Australian households, or 10%, spend more than 30% of their income on housing.
- 30% of households have a combined annual income of less than $20,000.

The National Council of the St Vincent de Paul Society (NSW) in its submission to the Poverty Inquiry noted that the cost of education, health, medical, dental, and urban transport fares had recently increased by 173 %, 98 %, 137 %, 113.5 % and 134 % respectively over the CPI. This a considerable additional burden on top of increases in housing costs. In research undertaken for the Social Policy Research Centre Saunders noted expenditures outstripping incomes and questioned “how this dis-saving is financed and whether it can be sustained” (Saunders 2003:iii).

Financial counsellors’ client base is characterised by disadvantage. The financial counsellors consulted for this report encountered 4 approximately 2500 clients over the past year presenting with an energy issue and 95% of these were hardship cases. Utility matters comprised approximately 62% of all cases seen. However, utilities will generally be present as a secondary issue where a client presents for other reasons.

Financial counsellors advocate on behalf of consumers seeking assistance in circumstances of incapacity to pay. Over 95 per cent of clients in this group are in receipt of Centrelink income assistance or are low-income. As a general rule, these clients are unemployed, have casual or intermittent employment, disabilities, mental health issues, are young or aged. These client groups traditionally have a negligible surplus income. FCRC notes that approximately 40% of Victorians claimed an energy concession in 2002 5. Public tenants are overly represented as clients although low-income private renters comprise the majority of clients. Lack of housing affordability is a key contributor to utility payment problems.

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4 Some provided the number of clients they personally saw while others provided the total seen by the agency, therefore extrapolation simply by number of agencies or by number of financial counsellors, to get a total for the sector, is not possible.
5 Total number of households in receipt of electricity concession (740,330) according to 2003-04 Victorian government budget paper no.3, compared with total number of households in Victoria (1,838,000) according to the ABS (Australia Now, Cat. no. 4102).
5.2 Fuel Poverty
In order to gain insight into the operation of the safety net it is necessary to understand the causes and characteristics of fuel poverty.

Fuel poverty arises when inadequate income; poor thermal efficiency of housing; inefficient appliances; needs, life cycle stage; and tariff structures intersect (Kiers 1983, Backman et al 1987, Date Rate Working Party 1991, Deasey and Montero 1983, Kymantis 1986, Mills 1988, Kliger 1998, Reark Research 1996, Neilson c2001, Dept of Industry, Technology and Resources 1985). Deasey and Montero state that “[fuel poverty, or fuel hardship, is a term originating the United Kingdom to cover the problems which arise from people’s inability to meet their basic needs for energy” (Deasey and Montero 1983:5). These problems are primarily under-consumption, disconnection from supply, the prioritisation of utility payments over other essentials and the accumulation of debt.

Traditionally, electricity customers in Victoria have been provided with three months credit, as metered consumption forms the basis of customer charges. By definition it means all customers accrue a debt. For some of the fuel poor, payment cannot be made when due. Fundamental mismatches between income and expenditure can mean even small changes in circumstances or charges can precipitate a financial crisis (Benvenuti and Walker 1994, Romeril 1998, Neilson c2001). There are typically two groups of fuel poor who struggle with debt. The first are those who have an outright incapacity to pay. The second are those who have an inability to pay within the specified period (Dufty 2003). Therefore, customers who experience fuel poverty require flexible payment arrangements in order to juggle competing demands for their scarce financial resources, and in some cases recourse to debt forgiveness if disconnection is to be avoided (Kliger 1998). The provision of credit is therefore instrumental in maintaining supply to the fuel poor. On the other hand, many policies such as the imposition of security deposits are counter productive to the maintenance of supply (Benvenuti and Walker 1995, Kiers 1983).

Low-income households spend a higher proportion of their household expenditure on essential items like energy than do wealthier households (Kiers 1983, Deasey and Montero 1983, Sieman 1995, Ernst 1996, Lawrence 2002). The Victorian Utility Consumption Survey found that the average non-concession household in their survey spent 32% more than an aged/service pensioner household ($576pa compared with $765pa) (Roy Morgan Research 2002). Detrimental levels of rationing are common amongst the fuel poor (Kiers 1983, Backman et al 1987, Sieman 1995, Kliger 1998, Neilson c2001, Mills 1988). Customers also deny themselves other essentials such as food in order to pay electricity bills and maintain supply (Mills 1988, Kliger 1998, Neilson c2001).

The income security policies of government, whether it be Commonwealth pension or benefit payments, private rental housing subsidies, provision of public housing or state based utility concession programs, are undermined by the absence of standards for housing and appliances, regressive tariff structures, and debt and disconnection policies (Kiers 1983, Siemon 1995).
Energy inefficient housing stock and inefficient appliances such as space and hot water heaters have been identified as major contributors to the high energy costs borne by some households (Kiers 1983, Backman et al 1987, Mills 1988, Senate Standing Committee on Industry, Science and Technology 1992, Sieman 1995, Kliger 1998). Such housing locks domestic users into unnecessary consumption and expenditure on energy bills. Tenants have little ability to overcome the problem of the ‘split incentive’ in which landlords avoid capital expenses by installing cheap appliances that have high running costs (Mills 1988, Deasey and Montero 1983, Backman et al 1987, Day Rate Retrofit Working Group 1991). The benefit of ‘retrofitting’ to overcome poor performance was the rationale for the establishment of the Home Energy Advisory Service in the late 1980s (Dept of Industry, Technology and Resources 1985).

Fuel poverty is also related to household size and lifecycle stage. Consumption of electricity and gas relative to income is intensified for some customers because their lifestyle revolves around their home. Families with children (especially single parent families), households with an illness or disability, and households with persons at home during the day such as the aged and unemployed are captive to low income and high heating needs (Kiers 1983, Backman et al 1987 Deasey and Montero 1983, Mills 1988). More recently, Waters (2001) has directly linked housing conditions with health inequities. To some extent, these issues are recognised in the structure of state concessions and Commonwealth child endowment and family tax rates.

Electricity pricing structures have a significant distributional or welfare impact (Deasey and Montero 1983, Kiers 1983, Backman et al 1987 and Sieman 1995). Upfront charges, such as supply or service to property charges, lift the average price per kilowatt hour for those with low volumes of consumption whilst working to lower the average for high volume users. In 1991 it cost someone consuming 2,500 kwh per annum 9% more on a unit basis than someone using 6,000 kwh per annum. After the Victorian government doubled the supply charge and increased the tariff by 10% in 1992/93, the per unit cost differential for someone using 2500 kwh compared to 6000 kwh was 15%. In 2003 the differential is 16%-20% for general domestic customers on deemed tariffs.

Sharam (2003b) states that on average, residential consumers of electricity in Victoria on the general domestic tariff experienced a 3% real increase in the cost of their annual consumption in the period 1991 to 2003. For residential customers who had also had off-peak electric hot water heating (Y6/T6 tariffs) the increase averaged 8.2%. However low-volume users, who correlate strongly with low-income households, fared badly. For a low-volume TXU customer with off-peak hot water the increase was 24%. High volume Citipower customers were the only off-peak hot water customers to obtain savings (6.1%), although this still only represents savings of about half a percent per year. For those

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4 The HEAS was axed by the Kennett government in 1993
without off-peak hot water, the biggest saving also went to high volume users in Citipower (5.5%).

Kiers argued that “the impact of any tariff structure is dependent upon the social correlates of energy consumption” (Kiers 1983:4) Sieman (1995) emphasised the price sensitivity of low-income households in. In terms of equity there is no perfect tariff structure. Kiers argued for ‘lifeline’ tariffs that minimised or removed up front charges, and provided an initial block of energy that was inexpensive. Pricing signals that discourage consumption however were recognised as penalising large families and others with high consumption needs. Kiers proposed that additional income support would be appropriate in these cases (Kiers 1983).
6. Discussion of Findings & Case Studies

6.1 The Electricity Industry Act 2000

S35 of the Electricity Industry Act 2000 created deemed contracts, as the transitional tariff onto which all franchised customers were transferred on the first day of competition. Switching to a new supplier or moving dwelling voids the deemed contract. S35 also obliges each of the pre-competition incumbent retailers (ie the host or local retailers) to offer the ‘standing offer’, upon request, to any of its former franchise (ie pre-competition customers) who remain within their former franchise territory. The standing offer acts as a safety net tariff. Non-host retailers do not have any obligation to supply.

The Victorian government recognised that some customers would be disadvantaged in the market – the fuel poor, rural customers and other low-margin customers – would not be regarded as attractive by retailers and hence at risk of not being able to obtain supply (exclusion from the market). FCRC’s close observation of other essential service markets - credit, banking and telecommunications - supports the contention that disadvantaged customers are likely to be subject to exclusion or exploitation. Moreover the price sensitivity and other characteristics of these customers may make some of them especially vulnerable to exploitation.

The standing offer tariff is intentionally more expensive than policy makers believe the market will deliver. This additional amount known as the ‘headroom’ is also a feature of the deemed tariff. Headroom is intended to provide an incentive for retailers to compete in the market and in doing so bring prices down to a cost reflective basis.

FCRC believes it is illogical that customers with a demonstrated inability to pay should pay a higher price in order to secure access to supply. While there is a formal right of supply, pricing this essential service out of the reach of vulnerable customers means that in practice the right of supply does not exist.

The deemed/standing offers are currently priced to include the risk of default and/or late payment by some customers. That is, the risk posed by some customers is spread over all the customers on these tariffs. This raises the issue as to why debt waiver is not mandatory and why retailers can levy additional fees against those customers experiencing hardship given that compensation for ‘bad’ debt is in effect funded by other customers.

Over time, assuming the market is effective and attractive (ie profitable) customers migrate to market contracts, disadvantaged customers will be left on the deemed/standing tariff which will become a residual market (market of last resort). This type of arrangement is a type of ‘provider of last resort’ (POLR). POLR schemes formalise the residual market. Formal residual markets are criticised because without the cross-subsidies from more profitable customers the service becomes more expensive and benefits diminish (Colton 1997).
6.2 The Retail Code and the Minimum Standards Framework

The *Electricity Industry Act 2000* provided the Essential Services Commission with the responsibility for determining the terms and conditions of supply for deemed and standing offer customers. The ESC undertook this exercise in conjunction with developing the minimum consumer protection standards for FRC. In practical terms the ESC revised the existing Sale and Supply Code, altering it to reflect market rather than monopoly provision. The Retail Code generally functions well to protect customers, being in large part the legacy of more than two decades of negotiation between customer/advocates, industry and government.

In developing the minimum standards for FRC the ORG (now the ESC) said “Customers need to have manageable payment cycles so as to avoid debt, and retailers need to be proactive and flexible in their management of customers’ bill payment” (ORG 2000:25). The ORG/ESC framework places certain onuses on customers and retailers. For the customer it is the “obligation to advise retailers where they do not believe they are able to pay an existing account in a timely manner” (ORG 2000:29). For retailers it is more extensive, and can be summarised as

- Providing information to customers prior to the accumulation of debt;
- Developing the capacity to identify customers in financial difficulty and being “receptive and helpful” to these customers;
- Effectively assessing the capacity to pay;
- Advising customers of the availability of energy efficiency advice and financial counselling services; and
- Viewing disconnection as a last resort.

In addition the ORG/ESC assumed that the Energy Relief Grant Scheme was or would be broader in its scope.

S12.1(a) of the Retail Code, finalised in October 2000, states that the offer of an instalment plan is required to reflect the customer’s consumption needs and capacity to pay. Despite this the ORG “concluded that it is not appropriate to require businesses to waive bad debts” (ORG 2000:34). s13.2 of the Retail Code stipulates that a customer should not be disconnected “through lack of sufficient income” until s11.2 has been complied with. S11.2 requires the retailer to offer the customer an instalment plan, information on concessions, the ERGS7, energy efficiency advice and financial counselling services. However, where a customer is unable to meet instalment plan payment obligations on two occasions in the previous 12 months, this requirement on the retailer is void.

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7 Energy relief grant scheme (ERGS), now called the utility relief grant scheme (URGS)
Legal opinion sought by FCRC confirmed that the Retail Code provides retailers with the legal right for payment in full (and hence to debt recovery) but that the Retail Code imposes upon retailers a requirement to assess capacity to pay. Debts cannot be enforced until such an assessment occurs. Instalment plans moreover must reflect the capacity to pay. The Retail Code is silent on how capacity to pay can or should be determined by retailers. As examined shortly the experience of financial counsellors suggests that the requirement to assess ‘incapacity to pay’ is widely and routinely contravened by retailers, and that customers disputing decisions involving ‘incapacity to pay’ are frequently unable to enforce their rights by recourse to EWOV.

The premise of the Retail Code is that there are a range of measures providing retailers with a “suite of payment management options” (ORG 2000:25) that address hardship. The ORG provides a flowchart in its Minimum Standards Framework for Full Retail Competition (2000:26) (figure 1) which describes the timing and nature of interventions in cases of identified hardship. This payment management chart has four steps that detail how the safety net is operationalised. In the following section we use this flow chart as the point of reference to review the safety net. The experience and knowledge of financial counsellors is used here to highlight problems with this model. Case studies are used to illustrate issues and problems.

There are four steps in the process: provision of customer charter; recognition of payment difficulties; presentation of options; disconnection for non payment.

**Step 1 is the provision of the customer charter** that includes basic information. A customer at the point of connection or reconnection may be asked to provide a refundable advance (bond). Research findings indicate that if a customer is experiencing chronic fuel poverty, the requirement to provide a refundable advance (bond) merely increases their financial stress. The bond may protect the retailer from potential losses however it inherently adds to the likelihood that the customer will default. Refundable advances are like maximum tariffs and high standing charges in that they act as ‘pre-covery’ mechanisms for the retailer: each is a form of insurance against potential default. High reconnection fees (and the proposed late payment fees) act in the same way except that these are ‘recovery’ forms of compensation.

**Step 2 occurs when the customer or the retailer recognises the customer is having payment difficulties, and an assessment of capacity to pay is made.**
Capacity to pay is determined as part of the negotiation over instalment plans (see below).

**Step 3 is provision of options to customers.**
According to the flow chart this comprises instalment plans, independent financial counselling advice, application for URGS, and other options at retailer discretion.
Figure 1
Payment Management
Instalment Plans

Instalment plans are viewed by many customers as a useful budgeting tool. Low-income customers are generally conscious of their expenditure limitations and most manage to make their utility payments.

In cases of hardship, many instalment plans made between the customer and the retailer – when the customer has not had advice from an advocate - fail as the retailer bases the plan on recovery of debt within a 12 month period or less. The majority of financial counsellors interviewed reported a trend in successfully negotiating instalment plans that they regarded as affordable for a client. This has generally occurred as a result of the ‘capacity to pay’ provision of the Retail Code and/or the threat of further referral and intervention of the EWOV. However, in a majority of cases such instalment plans involved the continuing accumulation of arrears because the rate of repayment does not cover future consumption. Moreover, existing debt is not generally waived. The exercise therefore simply ensures against disconnection action in the short term. Debt waiver by retailers is rare and generally provided in cases where the retailer’s own conduct is an issue (eg failure to bill a customer).

Financial counsellors reported that their own assessment of capacity to pay was almost always rejected by retailers and that typically retailers either sought instalment plans based on recovery of debt and forward consumption or they bid up the fortnightly amounts initially proposed by the financial counsellor. In many cases the debt recovery period was less than 12 months. It is also common for retailers to agree to a plan but reserve the right to review it after a few months, at which time the negotiations would start again. The assessment of ‘capacity to pay’ by retailers’ was regarded by financial counsellors interviewed as ignoring the customer’s need for flexibility.

Financial counsellors commonly experienced retailers being highly judgemental about customers’ payment problems and insensitive to people’s needs. A majority felt that retailers focussed on breaches of plans in order to demonstrate the customer’s conduct or unwillingness to pay rather than acknowledging incapacity to pay. Financial counsellors reported that customers were treated differently by retailers when they did not have an advocate.

A minority of customers had negotiated ‘arrange and save’ type plans. One financial counsellor reported a case in which the reward was subject to review by the retailer rather than guaranteed. Moreover, there was concern that if payments could not be maintained by the customer, indebtedness was aggravated.

The continuing accumulation of debt (the corollary of ‘affordable’ payments) should be seen in the context of the sunset clause on the obligation to offer under the Electricity Industry Act 2000. Once this protection ends retailers can disconnect these customers and refuse further supply. Retailers have presumably orientated their credit management in anticipation of the sunset provision.
They would therefore be seeking to avoid adverse publicity about harsh credit practices and disconnection rates in the period prior to the cessation of the obligation to supply.

**Case study 1**

Ms C was 18 years old and had lost her job 6 weeks previously. She had no income in that time. She was living with her boyfriend however he vacated their rented house at short notice leaving $700 monthly rental and unpaid bills. Ms C then planned to sub-let to a new tenant.

She was not eligible for an URG because one had been previously granted. Financial counsellor contacted electricity retailer to negotiate instalment payments. Retailer requested $45 per fortnight to accommodate arrears and consumption. Financial counsellor advised that client was under 21 years of age and on limited Centrelink payment rate and could not afford $45. The financial counsellor provided details client income & expenses and outstanding debts.

Retailer then suggested payments of $35 pf to be reviewed after 3-month period. Said they would not disconnect during this period if payments maintained. If a payment was missed they would act to disconnect. After 3 months they would consider waiving a proportion of existing debt carried.

Financial counsellor asked how much of current debt would be forgiven after 3-month payment of $35 however the retailer would not commit to a figure: only that they would re-assess after 3 months. Financial counsellor stated that $35 per fortnight was too expensive and the arrangement would fail. Suggested $25 per fortnight was more affordable. Retailer agreed to $30 per fortnight.

Client fell behind in payments and obtained financial assistance from youth service that paid $200 toward debt. Client paid out the remainder from a Centrelink advance payment.

**Advice of a financial counsellor**

S11.2 (1) of the Retail Code provides that in the assessment of capacity to pay, the retailer can take into account advice from a financial counsellor. This however does not provide financial counsellors with any formal right to have their assessment accepted.

S11.2 (2) of the Retail Code places an obligation on the retailer to provide the customer with documentary evidence of the retailer’s assessment if requested. Where financial counsellors have tested this provision the retailer has conceded to the initial instalment plan proposal put by the financial counsellor in lieu of providing a written assessment.
Utility Relief Grant Scheme (URGS)

URGS is available on a once-off basis to customers who are unable to pay their utility bill due to a temporary financial crisis. A second grant is sometimes made although the circumstances must differ from the first application and it cannot be made within 12 months of the first grant. The scheme is orientated to crisis.

Findings indicated that financial counsellors were uniformly dissatisfied with the operation and scope of the URGS scheme. The scheme came in for criticism because of its failure to recognise fuel poverty as a chronic on-going problem in peoples’ lives. The criteria for application for URGS is regarded as far too narrow, excluding a majority of clients from access to the scheme. Some financial counsellors questioned the complexity of the application forms citing the need for simplification if clients were to successfully submit their own applications.

Much of the data collected was considered inappropriate given the grounds for application. Some exclusions were highlighted, such as where customers had changed dwelling or contract. The value of providing part grants was questioned as this left the client with debt and still facing potential disconnection. Financial counsellors felt that the policy intent of part grants was to require applicants to provide proof, in the form of co-payment, of their goodwill despite evidence of incapacity to pay.

The Department of Human Services (DHS) does not reply directly to financial counsellors who have lodged applications on behalf of clients, as the current practice is to write directly to the client. Financial counsellors report that in cases where an application is declined or only part payment is approved clients are often disinclined to re-present for further assistance and are consequently at risk of disconnection.

Case studies reveal ambivalence on the part of retailers who appear reluctant to ensure customers apply if they are eligible. Retailers are required to provide an application number before an application can be lodged and consequently maintain effective control over who applies. One service reported that the incumbent electricity retailer simply refused to provide application forms to customers who were not health care card holders. Conversely, some retailers actually require an URGS application to be lodged as part of their hardship policy, although the customer may not be eligible. One financial counsellor was told by a retailer that the reason retailers are reluctant to facilitate customer take up of URGS was the impost they incurred for call centre staff to organise an URGS application.

Generally financial counsellors considered that the URGS scheme was not promoted adequately.

Financial counsellors reported that:

- It was often difficult to obtain an URGS for people experiencing greatest hardship;
- Financial counsellors utilise the URGS process to ‘buy time’ for the client (knowing that they are not eligible);
- Financial counsellors report that they frequently contrive details of client hardship in order to qualify for URGS assistance;
- Other financial counsellors reported that they decline to contrive hardship circumstances in order to meet criteria as it does not aid reform;
- Applications which would not necessarily succeed were submitted to ensure cases appear in DHS statistics (signalling unmet need);
- Increasingly financial counsellors advise clients not to make an application when the debt is modest as this will deny the client the opportunity to use URGS on another occasion when arrears may be more problematic. This extends to suggesting clients accrue more debt prior to lodging an application;
- Financial counsellors report that some clients are aware that an URGS application can buy them time and prevent disconnection;
- Other welfare and community workers assist with URGS applications. The knowledge and experience of financial counsellors was not generally shared with other welfare workers.

The above is of interest in the light of the following statement from the ESC’s 2002 performance report:

DHS advised that a percentage of customers who have either requested or have been offered a Utility Relief Grant by the retailers appear not to follow through with their application to DHS mainly because they do not meet the eligibility criteria and decide not to proceed with their application. A large number of applications are also received from customers who do not meet the criteria but were offered an application by the retailer as the customer was either in hardship or was having difficulty paying their outstanding bill. DHS considers that retailers should be providing more accurate information to potential URG applicants. These issues may have an impact on the capacity of customers to pay their bills and avoid disconnection of supply. Further discussions will occur with DHS and retailers in the review of performance indicators to measure disconnection and related practices (ESC 2003:17).

Case study 2

Ms B is a Disability Support Pensioner. She has several children at home studying. They live in rented accommodation since their father left and they lost the family home. Ms B has high bills because the children need heating while they study. Ms B has high winter energy needs although she cannot afford to pay for this additional heating. She is not eligible for URGS.

Case study 3

Family disconnected for arrears of $750, accumulated in the immediate
period after retrenchment. The customer was unaware of the availability of URGS. Retailer informed financial counsellor that the customer “must have forgotten” they had been informed of the URGS by the retailer.

Case study 4

Customer had debt of between $100-$150. When she contacted the retailer, they were insistent that she go onto an instalment plan. While the retailer asked her if she needed an URGS they actively discouraged her from applying for one.

The URGS has a fundamental role in addressing fuel poverty however it should be complemented by a retrofit program, such as the former Home Energy Advisory Service. The Victorian government currently spends approximately $80m on concessions and URGS, as well as $52m on rural network subsidies (non-means tested) which provide temporary income assistance, without addressing the systemic causes of fuel poverty.

Energy efficiency advice

The Retail Code (s11.2(4)) stipulates that in addition to seeking assistance from a financial counsellor, customers experiencing hardship should be provided with energy efficiency advice. In addition, s11.3 states that retailers are required to consider a field audit as a means of addressing payment difficulties. A majority of financial counsellors interviewed reported that this did not occur. While they believed assistance could be useful, they reported that telephone advice was not likely to be provided by retailers and that such advice was often not immediately relevant to the client’s circumstances. It was stated that although many customers would like their appliances checked, retailers refer them to private fee for service auditors.

Few financial counsellors inquire after the condition of their clients housing and appliances. Some however specifically address the issue as a means to gain affordable Easyway payment plans.

Client attempts to exercise their rights as tenants to have heaters and hot water services repaired were frequently unsuccessful although in some cases when a financial counsellor intervened such repairs were carried out. This issue was reported as being as frequent for the Office of Housing as it was for private rental. One service reported that they “requested and requested” repairs by the Office of Housing with little success and had had “no luck” with private rental repairs. It indicated that some tenants do not pursue their tenancy rights because the affordable end of the private rental market is so tight that tenants do not want to jeopardise their tenancy. Moreover, it was reported that the standard of appliances in private rental is so routinely poor, few people have expectations about performance.

Failure to conduct repairs in public housing, and the lack of minimum building and appliance standards in private rental frequently results in intervention and
referral by various agencies with subsequent double handling and at substantial cost to the taxpayer.

Energy efficiency advice may assist in reducing future bills however it does not constitute a form of assistance once the customer has accrued debts. Despite the limitations of advice there are occasions when some simple questions from the retailer could provide valuable information to the customer.

Case study 5

Mr A is a young person on Austudy and works part-time. He rents an all electric flat. His first electricity bill was excessive at $327. He immediately contacted the retailer. He was asked to agree to an instalment plan of $85 per fortnight in order to pay the arrears. The next bill was $410 although he had consciously restricted his consumption. The retailer then suggested he move dwelling.

The likely culprit in this case was probably a day rate hot water service, which could be turned off until hot water was required. All electric flats are likely to have this technology. In such cases the retailer need simply ask the customer a couple of questions to investigate the cause or the retailer could check their own records to determine the account turnover and payment history of the address.

Shortened Collection Cycles

Shortened Collection Cycles (SCC) while intended to protect the retailers’ cash flow and reduce the extent of debt accumulation, reduce the customer’s flexibility in juggling other expenditures and this exacerbates the stress the household is under.

For customers with limited fixed incomes but with a capacity to meet bills, SCC is regarded as a choice they could exercise to assist household budgeting.

Other options at the retailer’s discretion

- Direct debit

There is a considerable degree of pressure placed upon customers to pay by direct debit where they have accrued debt or have poor payment histories. This is frequently resited by financial counsellors because of the cost of bank charges associated with default. While the client may agree to direct debit when faced with disconnection they can and do change their priorities when other essential expenditure is required.

Some retailers suggest Centrepay and the response by financial counsellors is mixed. Some believe it reduces the client’s flexibility to juggle other needs while others view Centrepay a guarantee that supply will continue.
Case study 6

Ms G is a Supporting Parent on a benefit in private rental. She agreed to an instalment plan of $40 per fortnight to be paid by direct debit in order to avert disconnection of service for arrears. Ms G frequently did not have $45 in her bank account\(^8\) and was penalised by the bank for payment reversals. She cancelled the direct debit arrangement. The retailer then direct debited $400 from her bank account. This was her entire weekly Centrelink payment – and it left her without any funds to live on.

Two days later the financial counsellor asked the retailer to re-deposit $400, which they did. The financial counsellor then negotiated payment of $25 per fortnight. Five days later a contractor came to the house to disconnect supply. Ms G contacted a financial counsellor for intervention however the financial counsellor was unable to negotiate with the contract agent. The agent stated that he required part payment or receipt to avert disconnection. Ms G telephoned a friend who paid $50 directly to the retailer’s representative. The retailer advised the financial counsellor they could not cancel disconnection action / agent on the spot.

- Hardship and call centres

Each of the three incumbent retailers – to whom the current obligation to supply applies - were cited as making it difficult for both customers and financial counsellors to contact the company to discuss hardship issues. One service described accessing the URGS or credit management section without a direct number as a nightmare. Financial counsellors reported encountering answering machines. This presents difficulties for clients without telephones or who have to travel considerable distance to appointments. In some cases calls were returned late or not at all. Privacy provisions were also seemingly being used to avoid negotiation although agencies responded by automatically ensuring they had the client’s authorisation.

Only one financial counsellor reported being made aware through their casework of a retailer having a hardship policy. Generally financial counsellors were unaware of the existence of such policies. As one caseworker put it, “I’m not clear what they are”. Another financial counsellor always made a point of asking for the policy when negotiating with the retailer, although this did not necessarily elicit a positive response. Hardship policies are not universal across the energy retailers and the benefit to customers where they exist has not been examined. Energy retailers have had many years in which to develop hardship policies, and have been under some pressure to do so. Failure to do so can be considered a manifest failure of self-regulation. It contrasts with the formalisation of credit management guidelines under the Retail Code. The appropriate response of the ESC at this point would be to adopt a formal hardship guideline, providing legal entitlement to customers to ensure access to supply in cases of inability to pay.

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\(^8\) Banks usually require a minimum account balance of $5
Step 4 is disconnection for non-payment

Disconnection
Disconnection rates increased with the advent of competition suggesting harsher credit management practices, however financial counsellors generally believe that the credit management practices of the retailers are similar to prior to FRC (with caveat that it was never good). The explanation for the surge in disconnections may actually lay in the impact of price increases. As noted in EWOV and ESC reports, gas disconnections were particularly pronounced. The experience of financial counsellors is that households, where the option exists, sacrifice their gas supply when they cannot maintain both electricity and gas. Electricity price rises directly impact on the ability of some customers to maintain gas supply. Rural financial counsellors noted that the substantial increases in rural gas and electricity prices in 2002 and again in 2003 had put considerable strain on low-income households.

Financial counsellors report that it is increasingly common for customers to face disconnection for relatively small arrears. In the majority of disconnection cases households went without electricity for a few days at most, although they may go off gas supply for some time. Financial counsellors noticed that where customers had been disconnected from electricity for more than a few days they tended to stay off for considerable periods. Moreover, once households were at this stage they tended not to seek help as they believed their options were exhausted.

Case study 7

Mr D is a middle aged, long term unemployed man surviving on social security. He lives alone in private rental accommodation. Mr D experienced additional financial hardship due to the breakdown of his relationship. He had accumulated arrears and was on an instalment plan however failed to maintain payments. He had arrears of $250. The retailer disconnected him despite Mr D explaining his circumstances. The retailer did not inform him of URGs. He was off supply for two weeks before a social worker referred him to a financial counsellor.

Financial counsellor arranged immediate reconnection pending URG application. The URG application was successful.

Another case prompted the financial counsellor to reflect on why it appeared that men were more likely to stay disconnected from gas and electricity for extended periods. In this specific case the man stated that he felt that he had no rights.

Case study 8

Mr E is a single man living alone. He had been off gas supply for three months and off electricity for two. He was prompted to
approach his water provider regarding his circumstances because of his concern that his animals would suffer without water. The water company referred him to a financial counsellor.

The Retail Code prohibits disconnection for arrears less than a specified amount. The actual amount is confidential⁹. Nevertheless attempts at debt recovery, involving threatened disconnection for amounts less than this amount have occurred.

**Case study 9**

Gas retailer sent telegram style disconnection warning for arrears under the allowable amount. Payment was demanded within 2 working days. Customer was experiencing financial hardship. The amount was so small she was not eligible for URGS.

Financial counsellors interviewed observed that retailers are increasingly adopting credit management techniques that replicate those of the finance industry. This includes use of legal threats, and selling of debt to debt collection houses.

**Case study 10**

Mr I is a single man with mental health issues who receives a Disability Support Pension and lives in private rental accommodation. Mr I had been left with rent arrears and bills of $240 for electricity and $118 for gas after his co-tenants vacated at short notice without contributing their share of costs. He had no support to call on as his aged parents had recently died.

A social worker applied for an URG on behalf of Mr I who was moving into cheaper accommodation and wanted to transfer gas and electricity services to the new address. However the URG was declined as it did not meet criteria. Mr I immediately received a letter from Dunn & Bradstreet debt collectors threatening legal action for the recovery for the outstanding gas arrears.

**Case study 11**

Couple had accumulated arrears as a result of unemployment. At the time they had no income while waiting for benefits. The telephone had already been disconnected. They contacted the retailer and sought an URGs application however they were told that they would be given an URGs application only if they spoke to the utility relief worker and agreed to an instalment plan. When they made contact with the ‘utility relief worker’ they were informed they could not be immediately assisted and the worker would have to ring them back.

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⁹ Retailers are aware of what this amount is
- Concessions

While concessions are provided by the government and delivered on a fee for service basis by the retailers – and do not constitute an option at the retailer’s discretion - case studies reveal that this aspect of the safety net is compromised in the case of Easyway payment plans.

Several case studies involved customers who were eligible for winter energy concessions but were not receiving them. Customers paying by Easyway could only obtain the concession if they paid the amount in full and contacted the retailer to obtain a rebate. This arrangement means customers using Easyway are disadvantaged by choosing a payment that suits their needs and indicates the need for DHS and retailers to develop a new fairer arrangement.

Case study 12

Mr H was using Easyway and did not have any arrears. His plan was cancelled when he failed to make a payment on time and he was threatened with disconnection. Mr H had trouble meeting the payment however it turned out that not only were his bills were being overestimated but he was entitled to around $98 worth of concessions.

6.3 Full Retail Competition

In the previous section the operation of the safety net was examined with reference to the ESC’s schema. In the following section, specific findings in relation to the operation of the market are discussed.

The majority of financial counsellors interviewed report that the client profile presenting to them had not changed in that time and the main problem – hardship – remains the primary issue. For rural services, a notable lack of competition serves to reinforce a sense of business as usual. Financial counsellors are conscious of the complexity of FRC and the lack of public education that has accompanied it’s introduction.

Despite the above, FCR is having a major impact upon the client group typically seen by financial counsellors. Financial counsellors reported that they have a sizeable client group that has moved dwelling in this period (a high proportion being private tenants). These customers have moved off the deemed contract and onto either standing offer or market contracts. Sharam (2003a) found that around half of all switchers were people who had moved house, and that half again were ignorant of having entered the electricity market.

The movement off deemed contracts means financial counsellors are often required to devote significantly more time to clients as they frequently have no idea with whom they have a contract.

Findings include:

- Clients are switching to avoid payments of arrears;
- Customers in hardship are attracted to upfront rebates/discounts, however they are generally ignorant of the need to compare tariffs;
- Customers believe they have switched however transfers were not being effected, with the consequence that some were being disconnected by their original (host) retailer;
- Customers have moved house without understanding they have a market contract with the retailer, and are breaching these contracts;
- Aged pensioners in particular appear to believe that they are required to switch, and are treating unsolicited offers as something they need to respond to rather than as advertising;
- Customers have signed dual fuel deals however are still being issued with two separate bills;
- Some customers are being blocked for debt however others have successfully switched to new suppliers;
- Retailers frequently do not obtain explicit informed consent;
- Marketing programs, particularly door to door, seem to target low income metropolitan neighbourhoods;
- Retailers seek to have more than one name on the account, presumably to increase the chances of debt recovery;
- Direct debit is frequently linked to price benefits however little take up is occurring.

It is important to note that while the above observations raise the issue of customers moving frequently and incurring termination fees, no financial counsellor had actually had a client charged a termination fee. However if a client had abandoned a tenancy in rent arrears a termination fee would, in all likelihood, be sold to a debt collection house.

Financial counsellors report clients switching retailers after accruing arrears with their previous retailer. These customers were unaware of URGS and became ineligible once they switched.

It would appear that the most common form of inappropriate market behaviour over the past year has been improper marketing. Some financial counsellors could tell when door-to-door marketing campaigns had occurred because of the increase in clients who found themselves with contracts they did not believe they had agreed to or to which they had not given their explicit informed consent (a practice known as ‘slamming’).

A number of financial counsellors reported clients who were connected although not receiving bills. Upon enquiry, the old retailers were claiming the customer had switched. The new retailers however had no knowledge of the account. The hardship caused by slamming and/or failure to bill requires sensitive handling by the retailer and clients should not be penalised when it happens.

**Case study 13**

Customer was disconnected for non-payment. Retailer A sent the debt to a debt collection agency as they believed the customer had
switched. Customer disagreed, saying she had declined a telephone offer by retailer B although she did agree to receive written material. Retailer A disconnected the service although the customer also received a bill from retailer B.

Case study 14

Ms J notified her retailer that she was moving house and wanted this retailer A to supply her at her new address. Having moved retailer A informed Ms J that she was apparently already contracted for 3 years with retailer B. Ms J rang retailer B to clarify the situation and gain her NMI (meter identifier number) to give to retailer A. She was firstly given a sales pitch then when this was unsuccessful was told she “did not understand how the system works”. It took considerable time on the phone and Ms J experienced much rudeness from retailer B before Ms J’s suggestion that the contract was with the previous occupant rather than her was accepted.

Case study 15

Pensioner telephoned by retailer A and offered a $150 rebate if she switched that day. She took up the offer however she then became concerned and thought about cancelling under the 10 day cooling off period. The contract she received had information missing and charges were stated as GST inclusive while her existing tariff stated charges without GST. She found she could not compare the offers properly. She exercised her cooling off rights.

Case study 16

Ms K is a disability pensioner with 2 children, also receiving benefits, living with her. Retailer promotion offered $50 rebate (in the form of a fake $50 note). Ms K applied to take up offer however the retailer declined to sign her up.

Dual fuel / single bill offerings are one of the most obvious marketing strategies in the market. The current Retail Code makes no provision for a contract for dual fuel (ie supply of gas and electricity under a single contract and combined billing). The review of the Retail Code proposes a gap of 20 business days between disconnection of electricity and gas in the case of dual fuel contracts. Two main issues are of concern. Firstly, the proposed amendments to the Retail Code do not prevent disconnection of both fuels in cases where payment of one fuel has been made. Secondly, where a customer pays only a part payment and has no contract arrangement regarding the order in which fuels will be disconnected in the event of default, electricity has been nominated as the more essential and hence last fuel to be disconnected. Although financial counsellors accept this positioning of the two fuels they do not do so easily, recognising that both fuels are essential. The dependence on one or the other will depend on the time of year, the appliances and the needs of the household.
Dual fuel/single billing that does not involve bill ‘smoothing’ (that is, payments made on a regular and more frequent basis than actual billing) mean customers lose some of the flexibility of staggered bills/billing cycles. For customers with sufficient means this represents a potential gain in convenience with fewer bills. For customers with limited means it presents as a larger bill, although the payment period remains the same. This is likely to increase the risk of non-payment within the specified period. It appears that dual fuel offers are a key marketing strategy for customer acquisition. These deals generally offer price reductions or rebates as inducements to switch. Bill smoothing on the other hand requires careful monitoring to prevent excessive prepayment or underpayment.

Case study 17

Ms Z notified her electricity retailer that she was moving house. She was invited at this point to sign up to a dual fuel deal which she did as she was promised a cheaper tariff rate. As a pensioner Ms Z used Easyway at her old address for both gas and electricity, paying $100 per month for both. Credit of $400 on her gas was carried over to the new account. She had been sent a direct debit authorisation for bill smoothing however ignored it because she thought she was still on the Easyway and was waiting for a new payment book. The book did not come. Then after three months the dual fuel retailer demanded payment. The retailer was insisting that she pay $140 per month for ‘bill smoothing’ by direct debit, and that there be immediate payment for the outstanding electricity account. The retailer refused to use the available gas credit for the electricity despite it being a dual fuel account. Ms Z, whose first language is not English, argued that the retailer had agreed to Easyway. She also questioned why she should pay $140 when $100 had sufficed previously. The retailer was adamant. They told her that if she wanted Easyway she would need to pay a higher tariff. Ms Z was required to return to the standing offer tariff in order to access Easyway.

This case study clearly demonstrates discrimination against customers who wish to use specific payment types that suit their incomes. It shows how poorer customers can be left in the expensive residual market while wealthier customers opt out to cheaper tariffs.

6.4 Performance reporting, complaints, referrals and systemic issues

Retail license holders in Victoria are required to join a consumer complaints scheme approved by the ESC. Accordingly the electricity companies created what eventually became the Energy and Water Ombudsman (Victoria) (EWOV), an alternative dispute resolution scheme created under Corporations Law. Complaints or disputation relate to the rights and responsibilities of customers and retailers under the Retail Code, the Marketing Code of Conduct and other regulatory and legal instruments.

EWOV encourages the referral of hardship cases to the scheme (VCOSS 2003,
CUAC 2003). Customers can request assistance from EOV when the retailer fails to negotiate an instalment plan for the recovery of debt in accordance with the steps detailed in the Retail Code. This includes disputation about what constitutes capacity to pay.

On 9th of November, 2001 EOV convened a conference ‘Getting Connected’ to facilitate the development of ‘hardship’ policies by retailers as a response to the identification of the growing incidence of affordability issues in the casework of the EOV. The Ombudsman said at the conference:

the single biggest complaint issue to my office is billing. In the last year, 63% of electricity cases, 70% of gas cases and 52% of water cases, and within that category, the single biggest sub complaint issue is disputes about high bills. You will also see from our complaints statistics prepared for the Office of the Regulator-General’s performance reports, that 40% of our cases are about affordability. From January to June 2001, 7% of electricity, 26% of gas, and 7% of water cases, were about disconnection or restriction (McLeod 2001:6).

It was also stated that:

Since the EOV scheme began in 1996, it’s handled 10,000 cases involving affordability issues. More than 1,400 of these have been about disconnection and restriction of supply. The number and percentage of cases that the EOV is receiving about disconnection and restriction is increasing (Benvenuti 2001:109).

The ESC reported in 2002, a total 11,931 disconnections and reconnections in the same name, which comprised 49% of these disconnections. In addition they reported 97,790 customers on instalment plans (ESC 2003). The ESC said

While access and affordability is primarily a function of the price of electricity services, it is also affected by a range of other matters relating to the credit management policies of retailers. This includes the use of refundable advances (or security deposits), the availability of payment plans to assist customers having difficulty paying their bills, and procedures for disconnection and reconnection of customers for non-payment of bills...

Customers’ access to supply is determined by their ability to pay their bills using the payment options available from the business, therefore avoiding disconnection for non-payment (ESC 2003:9 and 16).

On the one hand the ESC maintains that affordability is a function of price however this is contradicted by suggesting customers need only to choose the right payment method in order to prevent the accumulation of arrears and disconnection. The definition provided by the ESC in its Performance Report is as follows: “affordability complaints include on payment difficulties, overcharging, prices, payment terms and methods and debt recovery practices”
(ESC 2003:30). This later definition fails to distinguish between customers who may have incapacity to pay and those who may for example have simply been overcharged. The ESC then uses the rate of disconnection and reconnection in the same name, and uptake of instalment plans as affordability indicators. Both the definitions used and the indicators are inappropriate as is the suggestion that incapacity to pay relates solely to management rather than other factors. In housing for example, the percentage of income devoted to housing is regarded as a benchmark of affordability (National Housing Strategy 1991) rather than the number of people who telephone housing providers to ‘complain’ that their rent or mortgage is too expensive. Nor is the number of housing evictions regarded as a proxy for calculating the price of housing in relation to income. In the context of the paucity of the existing indicators the ESC’s current review of performance indicators for hardship is welcome.

The following tables are reproduced from the ESC Performance Report 2002. This data reveals that in 2002 EWOV dealt with 1250 cases of which 947 cases related to ‘affordability’. The circumstances of these customers are not addressed in the report and no follow-up information is supplied as to the outcomes of the cases. The EWOV 2002 and 2003 Annual Reports do not report on ‘affordability’. Disconnections and cases of ‘high’ bills are reported however whether these relate to capacity to pay is not recorded as a matter of standard practice.

### Table 24

<table>
<thead>
<tr>
<th>Category</th>
<th>1998</th>
<th>% of total 1999</th>
<th>% of total 2000</th>
<th>% of total 2001</th>
<th>% of total 2002</th>
<th>% of total 02 v 01</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affordability</td>
<td>293</td>
<td>70%</td>
<td>210</td>
<td>62%</td>
<td>409</td>
<td>58%</td>
</tr>
<tr>
<td>Other Retail</td>
<td>124</td>
<td>30%</td>
<td>129</td>
<td>38%</td>
<td>259</td>
<td>42%</td>
</tr>
<tr>
<td>Total</td>
<td>417</td>
<td>339</td>
<td>705</td>
<td>925</td>
<td>1,250</td>
<td></td>
</tr>
</tbody>
</table>

* Local retailers only

### Table 25

<table>
<thead>
<tr>
<th>EWOV Consultations, Complaints &amp; Disputes 2002</th>
<th>AGLE</th>
<th>Pulse/AGLV</th>
<th>Citi-Origin</th>
<th>Origin**</th>
<th>TXU</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affordability</td>
<td>73</td>
<td>132</td>
<td>103</td>
<td>487</td>
<td>152</td>
<td>947</td>
</tr>
<tr>
<td>Other Retail</td>
<td>15</td>
<td>71</td>
<td>52</td>
<td>111</td>
<td>54</td>
<td>303</td>
</tr>
<tr>
<td>Total</td>
<td>88</td>
<td>203</td>
<td>155</td>
<td>598</td>
<td>206</td>
<td>1,250</td>
</tr>
</tbody>
</table>

** 58 Complaints received against Origin for former Citipower customers have been assigned back to Citipower. In its publications the EWOV has reported these against Origin.

The figures in the tables above exclude the category of enquiry: 947 cases regarding affordability’ proceeded to become level 1-3 complaints. Enquiries are matters that are:

a request for information or assistance which requires immediate or short-term handling by EWOV. An enquiry does not involve investigation with the company/authority although it may involve referral. Enquiries can usually be resolved within a day or two (EWOV 2002b:42).
The EWVOV’s 2002 Annual Report states that 838 billing cases were level 1-3 complaints\textsuperscript{10}. The billing category has 18 listed sub-groups, and includes all complaints in relation to billing not just those that may relate to affordability. The billing category is the category that appears most likely to capture the capacity to pay issue. During 2002 EWVOV undertook special research into the capacity to pay issue, and Resolution No 16 reports that 71% of electricity disconnection cases that proceeded to investigation status involved a capacity to pay issue. 23% of electricity disconnection enquiries also involved capacity to pay. This detail is welcome but the Council would also welcome reporting on capacity to pay in relation to instalment plans and the recovery of debt, and that such reporting be a standard feature of EWVOV’s public reporting.

The EWVOV 2003 Annual Report states (Figure 10) that 80% of all enquiries are referred back to the retailer or to someone higher in the retailer (up by 6% on the previous year). FCRC understands the rationale for referring customers back to retailers – such requirements are also placed on complainants in other industries – but given the essential nature of electricity and that hardship is a systemic problem this requirement is too onerous and arguably inappropriate. FCRC notes that:

- The mandatory EWVOV notice on disconnection bills does not alert customers to the requirement to have two contacts with their retailer prior to contacting EWVOV;
- That customers experiencing hardship are likely to be under duress within any negotiation with their retailer;
- Customers will generally have little or no knowledge of their rights;
- Advocacy services are frequently unable to see customers due to demand.

The relatively small number of level 1-3 complaints could indicate that retailers are addressing the concerns of customers subsequent to the contact with EWVOV. Alternatively customers could fail to recount the retailer. FCRC is concerned that the current arrangement could mean that vulnerable customers are subject to a revolving door; that their complaints are not being addressed; and that confidence in the complaints scheme is undermined. Financial counsellors interviewed related the number of cases they had taken to EWVOV and the number of referrals they made. On the basis of these numbers FCRC would anticipate its cases/referals to EWVOV would be reflected in higher numbers of reported level 1-3 complaints. However, FCRC has previously highlighted the limitations of its current data collection and acknowledges the data collected in the interviews with financial counsellors cannot be regarded as representative of the total cases of the sector. Nevertheless, the sample was of sufficient size to indicate the need for further investigation by FCRC.

\textsuperscript{10} The ESC reports on a calendar year and the EWVOV on a financial year
Table 21

<table>
<thead>
<tr>
<th>EWOV Disconnection Cases per 100,000 customers 1999-2002</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Electricity</strong></td>
</tr>
<tr>
<td><strong>1999</strong></td>
</tr>
<tr>
<td>Enquiry</td>
</tr>
<tr>
<td>Level 1</td>
</tr>
<tr>
<td>Level 2</td>
</tr>
<tr>
<td>Level 3</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

Non-hardship cases comprised a small proportion of cases taken or referred to EWOV by financial counsellors. In these cases financial counsellors were satisfied with the outcome. About a third of the financial counsellors interviewed had not taken any capacity to pay cases to EWOV. A quarter had taken less than a handful. The remaining majority however had referred cases extensively. A number of financial counsellors reported that they referred clients to EWOV in order to avoid imminent disconnection, obtain reconnection and to buy time for the client. Some financial counsellors request and/or receive verbal or written statements of outcomes from EWOV in general however, outcomes for cases taken or referred to EWOV by financial counsellors are not reported back to the financial counsellors. Where results for capacity to pay cases are known by the financial counsellor, the outcomes were mixed. Some financial counsellors had been unable to achieve an outcome of more assistance for the client other than an instalment plan based on repayment of debt over a 12 month period. In contrast, some debt waiver outcomes were achieved as a result of EWOV intervention. Financial counsellors reported that they were generally satisfied to achieve reconnection, avoid disconnection or obtain agreement to an instalment plan that the client could manage.

In cases where the intervention achieved a positive outcome for the client, the financial counsellor felt that the intervention was crucial. However, similar outcomes were also achieved by other financial counsellors without EWOV intervention. In general, financial counsellors stated that they should be able to achieve more judicious outcomes by referring clients to EWOV.

Reporting by the EWOV and the ESC could be improved by the provision of:

- Definitions of ‘affordability’ and ‘capacity to pay’
- Processes to determine capacity to pay/affordability
- data on the number of cases where retailers have forgiven debt
- value of debts
- value of debt waivers
- number of hardship cases that reappear at EWOV
- number of customers who present to EWOV after disconnection
- value of fortnightly instalments
- periods over which debt is recovered
- number of energy efficiency audits carried out
- number of cases involving lack of maintenance by private or public landlord
- data tracking the relationship between electricity supply and gas supply
- data tracking of disconnection in relation to price increases
- nature and extent of measures that may have been undertaken by retailers to address cause of fuel poverty.
- Long term data collection with statistics on the cost of consumption as a percentage of household income.

Interestingly ‘hardship’ was cited by EWOV as a ‘systemic’ problem reportable to the ESC only in its last Annual Report, despite considerable previous reporting on the issue. FCRC welcomes EWOV’s recommendation in Resolution No 16 that the various ESC Codes be reviewed in the light of (systemic) hardship. However, the Council disagrees with EWOV in relation to its recommendation that the ESC “develop a good practice guideline to provide practical assistance to companies and authorities when they are contacted by a customer with a ‘capacity to pay’ issue” (EWOV 2003:9). FCRC proposed a mandatory legal hardship guideline in Unfair Deal, having demonstrated the failure of self-regulation in the period prior to FRC. This research confirms retailers have not improved their handling of hardship issues since FRC and that accordingly customers in hardship should be entitled to legal protections to enable the maintenance of their supply. The development of legally enforceable hardship guidelines is supported by s8(f) of the Essential Services Commission Act 2001.
7. Conclusion

An obligation to supply at an affordable price is crucial if disadvantaged electricity customers are to have their electrical supply maintained. Disadvantaged customers require affordable rates and flexible payment arrangements, including access to debt waiver. Disadvantage could be mitigated by improving housing affordability; reducing consumption through energy efficiency; and appropriate tariff design. Competition, while potentially delivering benefits to some sections of the community will more likely than not exacerbate disadvantage, particularly if a residual market is permitted to develop. To this end the current ‘provider of last resort’ must be reformed.
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