
DSDBI CONSULTATION PAPER REFORMS TO RETAIL REGULATION 2014 AND PLANNED OUTAGES

Joint consumer group submission

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Joint consumer submission to DSDBI Consultation Paper *Reforms to Retail Regulation 2014 and Planned Outages*

We welcome the opportunity to respond to the *Draft Consultation Paper – Reforms to Retail Regulation 2014 and Planned Outages* (Consultation Paper) released on 28 February 2014.

Increases to the Wrongful Disconnection Payment (WDP)

We strongly support the Minister's proposal to increase the wrongful disconnection payment (WDP) from \$250 per day off supply to \$500, and an increase to the prescribed cap from \$3,500 to \$5,000. We believe that this will deter industry from wrongfully disconnecting customers from supply.

Additionally, regular public reporting of the number of wrongful disconnection payments made per month, in total and disaggregated by retailer, would provide a further strong incentive for retailers to take more care to abide by the Energy Retail Code when threatening or undertaking a disconnection for non-payment.

Impacts of disconnection

The gravity of disconnection needs to be considered in this policy discussion. Low income and vulnerable people are more likely to be disconnected, and suffer the severe consequences disconnection brings.¹ The Consumer Utilities Advocacy Centre (CUAC)'s 2011 research [Wein, Paen, Ya Ang Gim: Victorian Aboriginal Experiences of Energy and Water](#) highlighted the potentially serious consequences of disconnection and restriction for health, wellbeing and safety. Directly, lack of energy for cooling exposes consumers in hot regions, and elsewhere during heatwaves, to heat stress and heat-related illness.² This is of greatest concern for the very young, older people, and those with illnesses or medical conditions that render them sensitive to high temperatures. Similarly, a lack of energy for heating may contribute to illness associated with low temperature, a particular concern for some older people and those with mobility constraints. Less directly, disconnection can affect health through poorer nutrition (due to lack of energy for cooking and refrigeration). There are also safety risks associated with the use of fire and candles as alternative sources of heating, cooking and lighting. Stress, anxiety and depression can also result from having no energy supply and being unable to provide for the family.

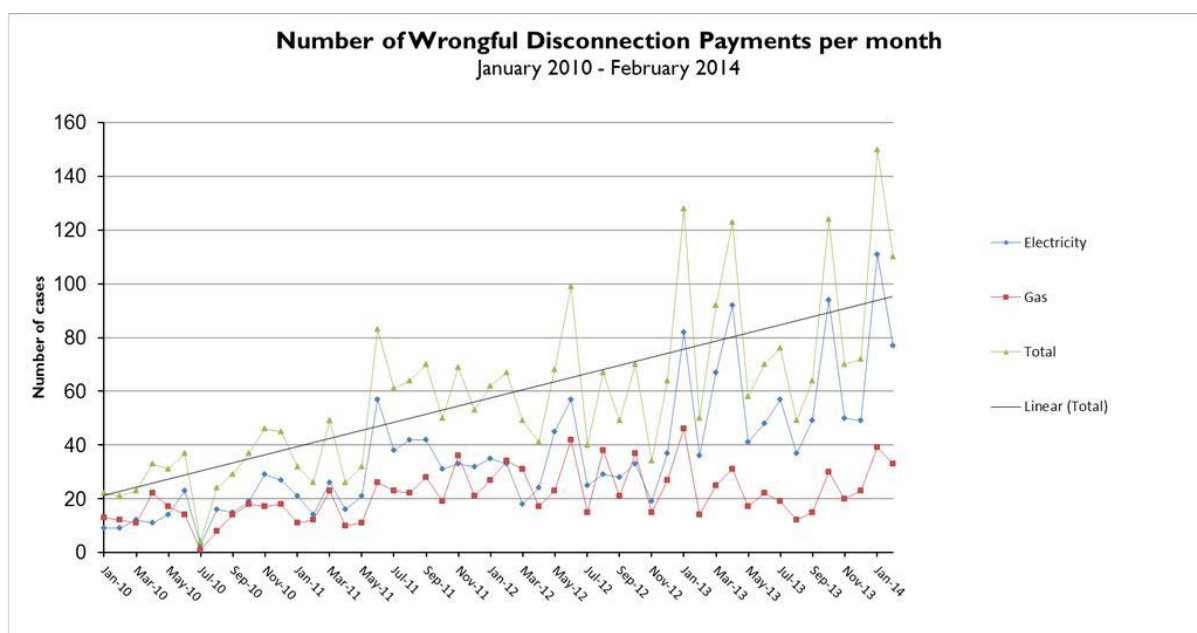
¹ See for example Lynne Chester, *The Impacts and Consequences for Low-Income Australian Households of Rising Energy Prices* (October 2013), at 85-101.

² See also MS Australia, [Keeping Cool Survey- Air Conditioner Use by Australians with MS](#)

Rising disconnections and WDP

We are concerned with the upward trends in disconnections. Victoria's WDP regime came into force in December 2004. When it was first introduced, the rate of disconnection for electricity and gas fell. The rate of disconnection reached a low in 2005-06; however, it has been steadily increasing since and is now approaching the rates experienced in the late 1990s.³ In 2012-13, the rate of residential electricity disconnection in Victoria was 1.07 per 100 customers. Compared with disconnection rates in other jurisdictions, Victoria had the second highest disconnection rate of those reported.⁴ In 2012-13, the number of electricity disconnections increased by 6 per cent, up to 1.07 per 100 customers. In total, 25,254 residential electricity customers were disconnected for non-payment (up from 23,805 in 2011-12). Gas disconnections fell in 2012-13, down to 0.90 per 100 customers from 1.13 per 100 customers in 2011-12. In total, 16,979 gas customers were disconnected in 2012-13.⁵ The Essential Services Commission (Commission) has expressed concern with the rising trends in disconnections.

Data from the Energy and Water Ombudsman (Victoria) (EWOV) reveal an upward trend in the number of WDP cases (See graph below for the period January 2010 – February 2014).



During October to December 2013, EWOV opened 589 standalone WDP investigations. This was 41 per cent more than in the October to December 2012 quarter. Out of this, 197 WDPs were paid and another 68 were paid without an admission of a breach.⁶

³ Essential Services Commission, *Energy Retailers Comparative Performance Report — Customer Service 2012-13*, Melbourne, Revised January 2014, at 30.

⁴ Essential Services Commission, *Energy Retailers Comparative Performance Report — Customer Service 2012-13*, Melbourne, Revised January 2014, at 31.

⁵ Essential Services Commission, *Energy Retailers Comparative Performance Report — Customer Service 2012-13*, Melbourne, Revised January 2014, at 28.

⁶ <http://www.ewov.com.au/publications-and-media/res-online-no.6-february-2014/most-common-issues/credit>

Causes of the increase in disconnections and wrongful disconnections

The increase in disconnections and wrongful disconnections has a number of causes.

The cumulative effects of ever increasing energy bills over a sustained period of time has compounded the circumstances of vulnerable households and exposed many more households to actual and imminent disconnection. The affordability of essential services for low-income households has become a significant issue in Australia. While living costs are improving on average, different types of goods and services change in price in different ways. Typically, manufactured goods (such as clothes and electrical appliances) and discretionary services (such as air tickets and hotel room rates) decrease in price over time while resource-type goods (such as energy, water, and food) and basic essential services (such as health and education) increase. Because lower-income households spend a greater proportion of their money on basic essentials and a relatively small proportion on discretionary items, price reductions for the latter cannot offset price increases for the former and their overall cost of living increases while those with average and higher incomes are better off.⁷

Corresponding with the increase in electricity disconnections reported by the Commission in 2012-13, overall participation in retailers' hardship programs also increased in 2012-13. In 2012-13, 24,356 residential electricity and gas consumers accessed retailers' financial hardship programs. This number was up on the 2011-12 figure of 18,879 (or 0.46 per cent). Of those customers who exited the program during the year, 59 per cent left because they did not comply with the program's requirements, up from 48 per cent in 2011-12 and 53 per cent in 2010-11. Of all previous participants on hardship programs, 3.8 per cent were disconnected (down from 4.7 per cent in 2011-12), while 46 per cent of those customers were reconnected within seven days. The number of Utility Relief Grants approved increased in 2012-13. The total value of grants for electricity customers was \$6.35 million. Total government expenditure on concessions also increased in 2012-13, up 13 per cent to \$231 million from \$204 million in 2011-12.⁸

The fact that 59 per cent left the hardship program because they did not comply with the program's requirements could suggest that the hardship program did not provide adequate support to customers or that the customer's capacity to pay was not considered (e.g. payment plan may be unaffordable).

Data from EWOV indicates that credit (capacity to pay) issues increased by 19 per cent in 2012-13 compared to 2011-12. Nearly half of the credit issues customers complained about (i.e. 6,134 out of 12,245) related to supply disconnection and restriction. This was followed by debt collection as the main issue for 3,664 customers (up 25 per cent) and payment

⁷ G Duffy & I Macmillan, *The Relative Price Index: The CPI and the implications of changing cost pressures on various household groups (Australia, September quarter 2013, CPI-aligned model, Second Release, FINAL REPORT)*, St Vincent de Paul Society, Melbourne, 2014

⁸ Essential Services Commission, *Energy Retailers Comparative Performance Report — Customer Service 2012-13*, Melbourne, Revised January 2014, at 14.

difficulties as the main issue for 2,434 customers (up 29 per cent).⁹ According to EWOV, '[f]acing rising industry cost pressures, some energy retailers have increased their use of disconnection, or the threat of disconnection, as a means of collecting debt. Others are on-selling debt.'¹⁰

Poor industry practice may contribute to the rising disconnections. This includes a failure to early identify and pro-actively identify customers who may be experiencing payment difficulties and not adhering to the procedures required before disconnection.

Early intervention measures that ensure affordable payment plans prior to consumers being placed on a hardship program are not being introduced to many consumers. Consumer Action's financial counsellors regularly receive calls from clients who have been placed on unsustainable payment plans that do not consider capacity to pay, or alternatively require up-front payments prior to commencing a payment plan. Further details of these issues will be released in a forthcoming report by Consumer Action, however we include the below case study to demonstrate the implications of this regulatory failure and as an insight into broader affordability issues.

M is 37 years old, and currently unemployed. She receives the sole parent pension, is in private rental accommodation, and has been a Retailer A customer for a year.

M has a \$3500 energy debt with Retailer A. To help manage her bills better, she went on a \$40 per fortnight payment plan. M told Retailer A she couldn't afford this amount, and although they weren't happy about it, they allowed her to pay \$30 per fortnight. She struggled to afford this lesser amount as well, and she just paid whatever she could.

Retailer A sent M a disconnection notice, saying that they wanted the total overdue amount to be paid. M told them she couldn't afford to pay the full amount. Retailer A then told her that she had to pay \$140 per fortnight. They told her this amount would only cover her consumption, not the debt accrued.

M again told Retailer A that she couldn't afford it. In response, Retailer A referred her to a financial counsellor, and she is still waiting on an appointment.

Ref: Consumer Action financial counselling case intake.
For further information please contact Consumer Action directly.

Reconnection fees may exacerbate the financial situation of customers experiencing payment difficulties. Finally, the lack of monitoring and enforcement may also be a factor. The last compliance report issued by the Commission was for the period 2010-11. We believe

⁹ EWOV 2013 Annual Report, at 18, 20, 24.

¹⁰ EWOV 2013 Annual Report, at 24.

that regular compliance auditing would help to improve industry standards around customer service, hardship, and lead to a reduction in disconnections and wrongful disconnections.

The growth in WDPs may be evidence that retailers are increasingly viewing WDPs as a cost-effective way to collect a large debt or a more efficient cost than improving customer service standards. The proposal to increase the daily rate and the cap is a strategic response to these dynamics.

Additional options to reduce disconnections and wrongful disconnections

In addition to more regular compliance audits, improving the public reporting of disconnection and wrongful disconnection data will also help improve compliance. Public reporting could be improved through more granular reporting of data – such as monthly totals disaggregated by retailer – and the identification of retailers that have significantly contributed to systemic issues and key complaints categories such as billing, credit, disconnections (wrongful or otherwise), marketing, and so on. Guidance could also be provided to industry on systemic issues through EWOV guidelines and binding decisions. These measures, together with more frequent reporting (e.g. quarterly), would encourage industry to improve, better inform consumers about the customer service standards of competing retailers, and more generally boost public confidence in the way the market is operating and being monitored. In addition, having a forum for ongoing dialogue between consumers, industry, the Commission and EWOV about industry and market trends would be beneficial.

Fixed Term Contracts

We welcome the Minister's interest in improving the situation for consumers who sign up to fixed term market contracts that allow for price increases during the life of the contract. However, addressing the nomenclature of the contracts is only a partial, and in our view insufficient, solution. Rather, we believe that fixed period contracts should come at a price that cannot be increased for the life of the contract. This will not only prevent consumers from being misled, but will improve competitive pressure in the market and the market's efficiency.

Consumers who sign a contract expect the terms and conditions of that contract, including prices, to remain the same over the life of the contract – that is the point of the contract. These expectations are reflected in CUAC's 2012 research,¹¹ in which an overwhelming majority of surveyed Victorian respondents stated that it was unfair (86 per cent) that retailers can increase the price a customer is charged during a fixed term contract and supported a change to the regulation to remove the ability of retailers to vary prices during a fixed term contract (94 per cent). These expectations are also enshrined in the Australian Consumer

¹¹ [Fixing up Fixed Term Contracts for Energy Customers: What are Consumers Saying?](#)

Law, which considers that unilateral variation clauses in consumer contracts are likely to be unfair contract terms and thus void (section 25(g)).

To date, there has been only one relevant court outcome. In *ACCC v Bytecard*, the court held that a term was unfair because it entitled Bytecard to unilaterally vary the amount payable under an existing contract without providing:

- prior notice;
- an opportunity to negotiate carried terms; or
- for consumers whose contract had not yet expired, a right to terminate to avoid the obligation to pay the varied amount.

This case suggests that something beyond notice to the customer is required for a unilateral price variation contract term to be considered fair—in this case, an ability to negotiate. The Energy Retail Code does not give consumers an ability to negotiate on the detailed terms and conditions of a consumer contract, and a consumer does not have the right to terminate (without penalty) to avoid paying a varied price.

We note that it is uncertain whether the unfair contract term provisions in the Australian Consumer Law (ACL) apply to energy contracts regulated by the Energy Retail Code (see the discussion in the AEMC's consultation paper on Retail Price Variations in Market Retail Contracts). This is because of section 26(1)(c) of the ACL, which provides that contract terms that are expressly permitted by another state or territory law are not affected by the prohibition on unfair contract terms. In other types of consumer contracts with regular price variations, for example 'variable rate home loans', not only is there clear marketing that the price will change (i.e. use of the term 'variable') but there is also other legislation that expressly permits variation, i.e. the National Credit Code. The Energy Retail Code requires notice to a customer when there is a price variation, but does not appear to expressly permit a price variation for market contracts. CUAC's research (noted above) also points to the fact that consumers have very low understanding about the way in which prices can be increased in a fixed-period contract.

This research also suggests that consumers' expectations do not rely on a contract being called "fixed": they rely on the existence of a specified period in the contract for which they agree to certain terms and conditions. This includes both contracts of a fixed term and contracts with a specified benefit period (where the duration of the benefit period may differ for the duration of the contract, e.g. the former may be for two years, the latter month-to-month).¹² While these contracts are often referred to in the energy industry and by policy-makers as "fixed term" contracts, their problems rest not with their name, but their nature.

¹² We note that the creation of 'fixed benefit period contracts' appears to be solely designed to avoid the protections in the Energy Retail Code relating to informing consumers when a fixed period contract is about to expire (clause 24.3). This protection is designed to inform consumers about the expiration of benefits associated with a contract, and encourage them to shop around and consider energy offers from their existing or a new retailer. By creating a fixed benefit period contract, a retailer does not have to comply with clause 24.3 and, as such, the consumer is less likely to exercise their competitive pressure. This is a very poor outcome for effective competition.

CUAC and the Consumer Action Law Centre have described the problems with fixed term contracts that allow unilateral price variation at length in their [Unilateral Price Variation & Market Retail Contracts Rule Change Request](#) to the Australian Energy Market Commission, currently undergoing consideration. The problems include inefficient risk allocation, information asymmetry, non-optimal pricing, reductions of trust in the market and perceptions of fairness, and higher or needlessly borne search and transaction costs.

Prohibiting the use of the term “fixed” when retailers market fixed term market contracts that allow for price increases during the life of the contract would partially, but in our view insufficiently address these problems.

Requiring explicit informed consent to the specific terms and conditions that allow for price increases during a fixed term contract would be a further improvement, especially if coupled with the requirement for such contracts to be explicitly marketed as “variable”. However, if the consent is required only late in the search and selection process (e.g. as the final step before signing), such a requirement would do little to reduce consumers’ search costs. Incremental revelations of conditions are analogously deleterious to consumers as incremental revelations of charges, a practice known as ‘drip pricing’ to which the Australian Competition and Consumer Commission has recently turned its attention.¹³

Consumer advocates believe that a more complete solution to the problems recognised by the Minister would be to amend the National Energy Retail Rules (and the Energy Retail Code) to ensure that under fixed term contracts (plans and benefit periods), energy retailers are prevented from unilaterally varying the retail tariff. As such, we encourage the Minister to support the proposed Rule Change currently under consideration by the AEMC and further to implement any recommendations that come from the AEMC's analysis throughout the Rule change process, into Victorian legislation and regulations. Any modifications to the Energy Retail Code as a result of this specific consultation (the subject of this submission) should be seen as interim measures only, should they not go the extent of banning unilateral price variations under fixed term contracts.

Economic analysis commissioned as part of the Rule Change project concluded that if the rules were changed to ban raising prices during fixed term contracts:

- Consumers would be less likely to choose levels of consumption that differ from the socially optimum level, as their expectations would more closely match reality
- Consumers would very likely have greater welfare, especially those who are unable to adjust their usage over the term of a contract (due to e.g. lack of upfront capital or already low usage)
- Energy retailers would be more likely to take greater steps to manage their risk of cost rises

¹³ <http://www.accc.gov.au/media-release/accc-2014-compliance-and-enforcement-policy-promises-action-on-drip-pricing>

- Consumers may be more likely to switch retailers, as search costs would be reduced (simpler to understand whether or not terms and conditions allow for price variation) and trust is improved.

Lower search costs would reduce a significant barrier to switching. Further, we believe that risks should fall on the party that is most willing and able to manage them; that is, the retailer rather than the consumer. It would be more efficient and equitable for retailers' 'fixed term' products to be operated with truly fixed terms and conditions, so that retailers bear the risks and consumers have certainty in the contracts they sign. We recognise that such a change means that retailers will be bearing greater risk with respect to their cost changes (compared to currently, where consumers bear *all* the risk). We fully expect retailers to add a premium to fixed term contract prices to manage this risk. This will lead to more efficient outcomes: retailers face lower costs managing the risks than consumers, competition in the marketplace will give retailers incentives to minimise the risk premium, and consumers will sign contracts knowing the actual price they will pay (instead of a lower price that will unexpectedly change and end up higher anyway).

Making a distinction between a fixed term contract that does not allow tariff changes with a fixed term contract that does allow tariff changes may not be efficient. There is a risk that the full suite of anticipated benefits articulated above is not attained. In the event of a tariff change, consumers may still be confused as to why their contract which is fixed allows price changes as it is unlikely they will remember that they gave their explicit informed consent to the term and condition allowing this upfront. While specifying the exact terminology which a retailer can use to market fixed term contracts with variable prices may be easier for consumers to understand than merely prohibiting the term 'fixed' (and much more transparent than the current situation), this is only a partial solution to the problem, and it still does not address the key concerns we have outlined above.

We firmly believe that prohibiting price changes for all fixed term contracts is the best way to fully address this issue and enhance consumer protections (and benefit the market overall).

With regard to DSDBI's question as to whether the protections in the ACL regarding misleading and deceptive conduct are sufficient to guard against consumer confusion when entering into fixed term, variable price contracts, we note that the ACCC has begun legal action against AGL Energy for misleadingly marketing energy 'discounts' when it has subsequently increased the base price from which those discounts are calculated.¹⁴ We welcome this sort of action.

Whether this matter is successful, however, is yet to be seen. Even if successful, it's not clear that unclear marketing in the energy industry will stop. For example, we commonly see evergreen contracts marketed as 'no contract', which is ostensibly false—just because there is no fixed term for a contract, that does not mean that contractual requirements are not imposed on both parties.

¹⁴ <http://www.accc.gov.au/media-release/accc-takes-action-against-agl-south-australia-for-alleged-false-or-misleading-representations>

Moreover, even if this sort of enforcement action did improve marketing messages by energy retailers, it will not deal with the underlying issues—that of allowing energy retailers to unilaterally change the price of the contract. As outlined above, the ability to unilaterally change the price can not only mislead consumers but can have real and significant negative impacts on efficiency and effective competition in the market.

Backbilling

We strongly support the Minister's proposal to create additional incentives for retailers to minimise billing delays by reducing the amount of time (from nine months to three months) that a retailer can recover amounts undercharged where a customer has not received an energy bill.

The Consultation Paper has highlighted the significant impacts billing delays have on customers. Not only do customers (in particular low income and vulnerable customers) find it difficult to pay off a larger bill amount resulting from the billing delay, but billing delays also prevent customers from monitoring their usage and inhibit their ability to budget for future bills.

Billing is the most complained about issue at EWOV and accounted for 53 per cent of issues customers raised with EWOV in 2012-13. In 2012-13, 40,927 energy and water customers raised billing as their main issue, 26 per cent more customers than in 2011-12. 77 per cent of billing issues were about electricity, 19 per cent were about gas and 4 per cent were about water. A small number related to dual fuel accounts. 6,364 customer raised billing delay as an issue; 40 per cent more than in 2011-12. 5,169 customers raised backbilling as an issue; 46 per cent more than in 2011-12.¹⁵ Almost 65 per cent of EWOV billing delay cases in 2012-13 were about the billing system problems of one large energy retailer, which changed its system at the beginning of September 2012. A technical issue with the billing system changeover meant the retailer was unable to send bills to thousands of customers.¹⁶ A number of systemic cases reported in EWOV's systemic report for 1 July 2012-20 June 2013 concern billing. For e.g. (1) SI/2011/80, EWOV identified via its case handling, instances of customers who experienced significant billing delays and then received backbilling in excess of nine months, without advice for payment assistance for the accumulated arrears. It was unclear how many customers this had impacted; (2) SI/2012/106 EWOV identified via its case handling, multiple instances of customers encountering lengthy billing delays with an energy retailer. The issue initially impacted 50,000 Victorian customers.¹⁷

Complaints reported by the electricity retailers rose to 6.6 per 100 customers in 2012-13 from 4.6 per 100 in 2011-12. Gas related complaints increased to 3.1 per 100 customers in 2012-13 from 1.5 per 100 in 2011-12. The majority of complaints related to billing issues (62 per cent for electricity, 59 per cent for gas). EnergyAustralia reported a significant increase in the number

¹⁵ EWOV 2013 Annual Report, at 18, 20.

¹⁶ EWOV 2013 Annual Report, at 22.

¹⁷ http://www.ewov.com.au/_data/assets/pdf_file/0014/9320/CEO-Report-Energy-Closed-2013.pdf

of complaints in 2012-13 which is attributed to problems with the introduction of a new billing system.¹⁸

Given the number of billing complaints, we believe that there is a need for additional measures to encourage retailers to issue bills promptly to their customers.

Additional questions for stakeholders

The three month restriction should apply to *all* billing delays and undercharging and not just when a retailer's billing system is upgraded. Customers should not be penalised for the failure of their retailer to issue timely bills or for a breakdown in any of the business-to-business processes governing the relationship between a retailer and distribution business.

We are of the view that the three month period should commence from the date the retailer issues a bill that contains the amount undercharged as opposed to starting from the date the retailer notifies the customer of a billing delay. The former would create an incentive for a retailer to issue an accurate bill as soon as possible.

With the prevalence of smart meters, the more frequent availability of meter data, and the potential for monthly billing, we envisage that the meter reading settlement processes and business-to-business processes would run more expeditiously. Therefore, we are of the view that a three month backbilling restriction should not impact businesses significantly.

Issues for Victorian Solar Customers

We also contend that the restriction on backbilling should explicitly apply only to debits, not credits. Otherwise the proposal could adversely impact the 150,000+ solar customers in Victoria.

Among the Alternative Technology Association (ATA)'s 2,500 Victorian members, the most common experience of delayed bills is with consumers who have solar panels. Typically this involves the retailer not sending out a bill for many months, and often in excess of 12 months, after system installation; or even where a system may have been installed for many months or even years.

In the context of the Minister's proposal, the result of delayed bills for solar customers plays out in two main ways:

1. For those solar customers for whom the value of their FiT credit outweighs the value of their energy purchased from the grid, the retailer ultimately owes the solar customer money – whether that be three months, six months or even 12 months (and longer) down the track.

¹⁸ Essential Services Commission, *Energy Retailers Comparative Performance Report — Customer Service 2012-13*, Melbourne, Revised January 2014, at 51-52.

2. For those solar customers for whom the value of their FiT credit is less than the value of their energy purchased from the grid, this means that the solar customer still owes the retailer money (but not as much as they otherwise would have if they did not have solar on their roof).

For solar customers under scenario 1, they do not want the settlement of their retail bill to only go back as far as a maximum of three months – as this will mean they miss out on being remunerated the value of FiT credits they are owed from more distant billing periods.

For solar customers under scenario 2, this issue does not apply as they would still be 'in arrears' for the billing period prior to the three month limit.

From a risk management perspective, a retailer who has a significant number of solar customers under scenario 1 could easily game the proposed legislation by purposefully delaying the issuing of bills to reduce the quantum of FiT credits down to three months only. This could be an effective cash flow strategy for a retailer, at the expense of legitimate payments owed to solar customers.

Should this occur, the solar customer would then need to go to EWOV to prove that they are owed FiT credits beyond three months previous, and would require AMI meter data to justify their case – data that is still widely un-accessible (or difficult to access) for the majority of Victorian electricity consumers.

Taking all of this into account, the proposal to reduce the backbilling period from nine to three months needs to take account of situations where the retailer owes payments to a solar customer (or in principle, any other customer) beyond three months previous.

The simplest way to ensure that outstanding FiT credits are not compromised would be to specifically limit the proposed reduction to three months to energy imported from the grid to the customer – i.e. not to exported energy from the customer to the grid.

Energy Efficiency Audits

We support the Minister's proposal to require retailers to offer free home energy efficiency audits to hardship customers.

If undertaken appropriately energy audits have the potential to:

1. improve a householder's control over their energy usage and energy bills, and
2. identify energy efficiency improvements, which need to be made to the home

The evaluation of Kildonan UnitingCare's energy audit program for hardship customers shows that for many households, significant monetary and energy savings can be made via low

cost measures and behaviour change even in the absence of appliance replacement and retrofitting.¹⁹

We note the Energy Retail Code v10a (Clause 11.3 Energy efficiency field audits) currently instructs retailers to 'consider' conducting an energy efficiency field audit.

11.3 Energy efficiency field audits

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

Additionally, the Electricity Industry Act 2000 and the Gas Industry Act 2001 both stipulate (in Sections 43 and 48G respectively) that energy retailers' financial hardship policies must include "provision for the auditing of a domestic customer's [electricity or gas] usage (whether wholly or partly at the expense of the licensee)"

However, under current arrangements, only four retailers undertook energy field audits in 2012-13 and amongst them provided 524 energy audits at no cost to the customer.²⁰

To meet the Minister's objectives we believe that a means to further oblige retailers to deliver energy efficiency field audits, would be to rephrase this clause to state "A retailer must conduct an energy efficiency field audit...." All customers experiencing hardship will benefit if **all** retailers offered free energy efficiency audits to them. Even consumers with demonstrably low usage (for their household size) can benefit from an audit – in some cases, auditors can reassure people who under-consume to their detriment that they can use, for example the heater, lights, stove, or kettle more without an adverse cost impact. We note that the focus groups conducted by Deloitte as part of the AMI Customer Impact Study (Phase 2) revealed that many consumers falsely believe that kettles, toasters, and mobile phone chargers are significant cost drivers of energy bills.²¹

The impending closure of the Commonwealth funded HESS program strengthens the imperative for retailers to offer free home energy audits to hardship customers. The HESS program, delivered by Kildonan Uniting Care (home visit component) and Good Shepherd (loans component) has revealed the high level of interest in, and need for, appropriately delivered home energy advice.

To ensure their effectiveness and appropriateness for the target audience, guidelines should be developed for the content and delivery of home energy audits, in consultation with both energy retailers and community service organisations.

¹⁹ J Borrell & S Lane, *Kildonan UnitingCare Energy Audit Program Evaluation (2004–2006 data)*, Kildonan UnitingCare, 2009

²⁰ Essential Services Commission, *Energy Retailers Comparative Performance Report — Customer Service 2012-13*, Melbourne, Revised January 2014, at 15.

²¹ Deloitte, *Advanced Metering Infrastructure Customer Impacts Study – Stage 2 (Final Report)*, Department of primary Industries, 2012 (pp. 75–80)

Additionally, the obligation to conduct energy audits must include an obligation to help the customer *respond* to the findings of the audit – including documenting where there are barriers to respond, and efforts to address these barriers. This is discussed further below.

The DSDBI should also collect the de-identified information from the home audits in a centralized database with a view to developing a better understanding of the energy efficiency of the dwellings of people in energy hardship.

The limitations of energy audits

However for many others, while energy audits are still helpful, their effectiveness is limited by barriers they face in implementing the audit's recommendations:

Those with the lowest incomes have more barriers preventing lower household energy use than those with relatively higher income levels. Predominant barriers to reducing energy consumption are being unable to afford energy saving appliances or household repairs/improvements (which is most problematic for renters), the need for health-related use of heating and cooling and life support equipment, and the presence of children. Households are loathe to cut heating or cooling too much in case it affects the health of children or exacerbates existing health vulnerabilities.²²

Other ways of reducing pressure on hardship customers

The obligation to offer home energy efficiency audits should be accompanied by a collaborative response by industry, government, and the community sector to help the most disadvantaged consumers respond to the findings of the audit: for example, to upgrade inefficient appliances (such as fridges, and lighting), or fixtures (such as hot water, heating and cooling) in line with the audit recommendations.

We note that retailers have an obligation to facilitate access to energy efficient replacement appliances for hardship customers where warranted.²³ However very few retailers actually do; and there are serious questions as to whether those that are provided are of much help. According to the Commission, only two retailers provided replacement appliances between 2010–11 and 2012–13, with one providing 24 in that period and the other providing around 1,200. Significantly, the number of appliances provided fell to 142 in 2012–13, from 513 in 2010–11 and 580 in 2011–12, primarily because light globes were excluded from the count from January 2013.²⁴ (The Commission also notes that the data may still include standby power controllers, and that these low-value items will be reported separately in future years.)

²² Lynne Chester, *The Impacts and Consequences for Low-Income Australian Households of Rising Energy Prices (October 2013)*, at 122.

²³ Electricity Industry Act 2000 s43 2(c); Gas Industry Act (2001) s48G 2(c).

²⁴ Essential Services Commission, *Energy Retailers Comparative Performance Report — Customer Service 2012-13*, Melbourne, Revised January 2014, at 15.

Without a program to facilitate upgrades to appliances and fixtures for the lowest-income households, an audit will tell them why their bills are so high but not offer any solution.

We highlight the obligation in the Electricity and Gas Industry Acts' requirements for energy retailers' "Financial Hardship Policies" (in sections 43 and 48G respectively) which at 2 (c) states that hardship policies must contain:

flexible options for the purchase or supply of replacement electrical equipment designed for domestic use from the licensee or a third party nominated by the licensee

In mandating energy audits for hardship customers, an energy efficiency upgrade program to respond to audit findings and mitigate high consumption caused by energy efficiency problems in a household must include an appliance replacement component. Expenditure could be managed by having a maximum amount of expenditure per household that would effectively address the one or two large items causing highest consumption, such as heating, refrigeration, hot water, or insulation.

The upgrade measures would be delivered based on the recommendations of the audit. Where more expensive upgrades to fixtures or the building envelope are needed, co-contribution from a government fund and the household may be required. For low-income owner-occupiers, their co-contribution could be deferred and paid back over time or via their home equity. For tenants, payment for fixtures should be sought from landlords.

In assessing the cost impact of such an energy efficiency upgrade program on government and industry it is also essential to take into account the benefits of such an upgrade. These benefits are likely to include:

- A reduction in state energy concession costs. Households who receive an energy efficiency upgrade will reduce their energy consumption, leading to a reduction in energy bills. For those households with a concession entitlement, it will also reduce the amount of energy concession payable.
- Reduced costs to energy retailers caused by customer debt and management of hardship customers. Lower bills reduce hardship. Dealing with hardship customers and debt is a significant cost to energy retailers. Water retailers have found a positive business case for spending money up front on hardship customers to help them stay out of hardship going forward. We expect a similar business case exists for energy retail.

The energy efficiency upgrade program should be jointly funded by energy retailers, and the state government. Where possible should also leverage funding from other sources such as the VEET scheme.

The One Million Homes Alliance

A number of the responding organisations are members of the One Million Homes Alliance, which promotes comprehensive solutions to home energy efficiency in Victoria.

The One Million Homes Alliance is a coalition of Victorian-based consumer, social welfare, energy and environmental organisations that came together in 2009 to advocate for significant investment to improve the long-term energy and water performance of Victoria's existing housing stock, as a response to rising energy prices, greater bill-payment hardship, and the need for more efficient homes.

Energy and water efficiency measures can reduce cost of living pressures, help mitigate the impact of rising energy costs and increase the liveability of homes by making homes easier and cheaper to heat and cool to comfortable levels, and educate consumers to become smarter with energy and water consumption. In addition, investment in energy and water efficiency for residential building stock can reduce government concessions expenditure through reduced household utility bills.

The One Million Homes Alliance is committed to retrofitting low income households. The measures required include quality draught and weather sealing, roof insulation, and window treatments (internal window coverings and pelmets, and external shading). These are relatively low cost, high impact measures which are broadly required by low efficiency Victorian homes.

Funding these initiatives requires financing through:

- Direct government funding for the most disadvantaged Victorian households. Costs to government will be offset by energy concession savings and health care savings.**
- Low interest loans and energy performance contracts or similar, in which loan repayments are covered by energy savings achieved through energy efficiency improvements achieved by installed measures.**
- As mentioned previously, obligations on retailers to support installations of energy efficiency measures of their most disadvantaged customers.**

Other measures which incentivise or require owner investment in energy efficiency include:

- Minimum efficiency standards (particularly for rental properties)**
- Mandatory disclosure of efficiency performance of homes at point of sale and point of rental.**

Planned electricity network outages on hot days

We strongly support the Minister's proposal to prohibit non-essential planned network outages on very hot days because extreme heat puts many people – more than those ordinarily identified as vulnerable – at direct risk of adverse health impacts if they are unable to cool their environment. Lack of energy during extreme heat events also impacts those who rely on electricity to access fresh water.

During the 2009 Victorian heatwave that preceded Black Saturday, 374 more people died than the average for that period. In the recent Victorian heatwave, it was reported that as of 24 January 2014, there were 139 deaths in excess of the average expected between 13 -23 January. Most of the deceased were older people and those with chronic physical or mental illnesses, known to be vulnerable in extreme heat. Health professionals have recently publicly called for the Victorian government to review its strategies for managing heatwaves. They predict the final death toll from January's record-breaking period will again climb above what is normal for this period.

VCOSS' report into the impact of heatwaves, [Feeling the heat: heatwaves and social vulnerability in Victoria](#), released earlier this year, found that a number of social, medical, economic and built environment factors place people at higher risk of adverse health and wellbeing outcomes during periods of extreme heat. Many of these risk factors are highly likely to co-occur. People who are older or suffer from chronic health issues are most at risk, especially if they are unable to keep cool and hydrated. Also at greater risk are people who live in poor quality housing, as well as those who lack the capacity – for a range of social and personal reasons – to change their circumstances or behaviour in extreme heat events.

The following groups are at a significantly greater risk of suffering adverse effects from extreme and prolonged heat exposure in the home:

Those over 65 years old, especially:

- *In care homes*
- *Living alone or socially isolated*

Those taking multiple medications, particularly:

- *Anticholinergics*
- *Vasoconstrictors*
- *Antihistamines*
- *Diuretics*
- *Psychoactive drugs*
- *Antihypertensives*

The chronically unwell, including those with:

- *Heart conditions*
- *Diabetes*
- *Respiratory disease*
- *Renal insufficiency*
- *Parkinson's disease*

- Severe mental illness
- Impaired sweating, due to burns, skin or genetic disorders
- Conditions requiring community / ambulatory care (e.g. Hospital In The Home, home Continuous Positive Airways Pressure, dialysis)

Those unable to adapt their behaviour to keep cool, due to:

- Dementia
- Disability
- Being bedridden
- Being babies and the very young
- Substance abuse
- Being very overweight or obese
- Being a pregnant or breastfeeding mother

Those impacted by environmental factors, including:

- Aboriginal people, especially in remote areas
- Cultural and linguistically diverse people, who may have limited understanding of the impacts
- Other acutely unwell patients living in urban heat islands, such as the Melbourne Central Business District, where the temperature gradient across urban areas may be higher by several degrees Celsius due to reduction in green space, high building density and the nature of street surface coating material
- [People with] suboptimal housing conditions²⁵

In implementing the proposal, it is important to define what 'essential' and 'non-essential' means. Something would be 'essential' if there is a potential risk to life, health or safety of any person, or the environment or in the event of an emergency (e.g. fires, floods etc).

We support placing restrictions on days that are declared 'heat health alert days' by the Department of Health. There may also be merit in having an extreme weather threshold defined by the ambient temperature in degrees Celsius. However, in doing so, there is a need to consider that some of the groups vulnerable to heat-related health impacts people are much more vulnerable to heat than others. A lower threshold than the suggested 40° may well be more appropriate for them. The need for and level of an additional temperature-related threshold should be explored in consultation with the Department of Health.

We are also of the view that disconnections for non-payment should be prohibited on the same very hot days as non-essential planned network outages, for the same reasons.

²⁵ Western Australian Department of Health, *Health Vulnerable Population* – WA, 2010.