

Submission to the Australian Energy Regulator's Review of payment difficulty protections in the NECF

Date of submission: 26 June 2024

About Financial Counselling Victoria and the financial counselling sector

Financial Counselling Victoria (FCVic) is the peak body and professional association for financial counsellors in Victoria. We provide resources and support to financial counsellors and their agencies who assist vulnerable Victorians experiencing financial difficulty. We work with governments, banks, utilities, debt collection and other stakeholders to improve approaches to financial difficulty for vulnerable Victorians.

Financial counselling is a free, confidential, and independent service. It provides vital help for people experiencing, or at risk of, financial hardship. Financial counsellors are uniquely qualified professionals, specially trained to deal with complex financial matters. They assist more than 23,000 Victorians each year – including people impacted by catastrophic natural disasters, newly arrived migrants and refugees, and more than 3,800 family violence victim-survivors.

About this submission

We welcome the opportunity to provide a submission to the Australian Energy Regulator's Review of payment difficulty protections in the NECF.

Our submission is informed by what our members have told us about the needs and experiences of vulnerable clients within the Victorian energy market. We give special thanks to the members of the FCVic Utilities Working Group for sharing their expertise, experience with the most vulnerable consumers, and recommendations for regulating essential services and ensuring that they are fair for all.

Further questions about this submission can be sent to [REDACTED].

Our commentary and recommendations

We note that the Victorian energy market operates under a different set of state-based consumer protections rather than the NECF, and as such, the context of our commentary and recommendations is most relevant to Victorian experiences through the Victorian Payment Difficulty Framework rather than national experiences.

However, we understand that consumer experiences of high energy costs and poor hardship practices are universal. Our submission is written to support opportunities to

ensure that nationally and consistently, consumer interactions with the energy market are improved and the most vulnerable consumers are protected.

Question 3. How adequate, effective and appropriate is the current eligibility framework for payment difficulty protections? and Question 4. How could the framework better support early identification of consumers experiencing payment difficulty?

We believe that s44 of the National Energy Retail Law should be updated to provide more comprehensive minimum requirements for customer hardship policies, which individual energy companies should still be required to present to the AER for final approval.

Identifying vulnerable consumers requiring hardship assistance

At a minimum, processes to proactively identify and contact customers who may require hardship assistance should include recognition of factors including:

- Demographic factors such as disability, cultural background, languages spoken
- Experiences including family violence, natural disasters, chronic health conditions
- Evidence of financial and psychological stress, including through avoidance behaviours and language
- Income levels and payment types
- Current balance on the energy account
- Evidence of drastically reduced energy usage

The first two dot points are self-explanatory in terms of how these factors may add to a customer's vulnerability and contribute to their need for financial assistance. We provide further detail on the final four points below.

Evidence of financial and psychological stress

Financial counsellors report that people experiencing financial and psychological stress can exhibit different behaviours – not all customers will directly say that they cannot afford a payment, and the retailer's customer service representative may need to be more proactive in gently and compassionately asking if the customer requires assistance in meeting payments.

There should be an awareness that avoidance behaviours (e.g. avoiding bills, phone calls, and attempts at communication) can occur when an individual cannot see a solution to a problem. There is then an onus on the retailer to be proactive in offering solutions that are realistic and actionable, to assist the customer in resolving their situation.

Income levels and payment types

We recommend that where consumers have applied for concessions on their account, have previously received government relief grants or payments (e.g. the 'Utility Relief Grant Scheme' in Victoria and other similar schemes in other states and territories), or have chosen to pay their account through mechanisms like Centrepay, then it should be

taken for granted that the individual should be eligible for ongoing payment difficulty protections without requiring further evidence.

Financial counsellors have reported that some clients are using 'Buy Now Pay Later' (BNPL) lines of credit to pay their utility bills, and that it is a reliable indicator of financial stress. Where BNPL is being used to pay utility bills, we recommend that this be noted as an early identifier of payment difficulty.

We note that currently the problem is often that retailers view Centrepay and BNPL as payment methods. We argue that use of these financial products is evidence of a payment plan designed to assist consumers in financial hardship, which should therefore be eligible for payment difficulty protections.

Current balance on the energy account

Further, we suggest that the current balance on the energy account should be a trigger point for the retailer to proactively contact the consumer and commence a discussion about any entitlements that the consumer may be entitled to under payment difficulty protections.

We note that account balances may vary depending on the number of residents in the household, account type, energy plan and other factors, and so a 'typical account balance' will look different to different households. We suggest that given the amount of data on energy usage and payment frequency available to retailers, that a general rule for triggering payment difficulty protections may be where a household has missed payments for two invoices (if billed monthly) or one payment cycle (if billed less frequently – e.g. quarterly).

We recommend this time-based, invoice-frequency approach over a set dollar amount approach, especially as the value of a dollar amount will vary greatly over time as costs for energy continue to increase. We have seen in Victoria how quickly the \$55 payment difficulty threshold becomes obsolete when this can be the cost of two weeks of energy usage in a standard household.

This proactive early engagement with consumers will help to address the risk of consumers running up extremely high energy debts which will be difficult to address, noting that data from the National Debt Helpline is showing that the average utility debt for callers is over \$2,600¹.

As a further point, we suggest that there could be limits placed on the level of debt that can be accrued on energy bills. One financial counsellor noted – *"I have seen many examples in my previous casework of clients accruing energy bills in excess of \$10,000 they were never going to be able to pay off."*

Evidence of drastically reduced energy usage

Further, we suggest that retailers should be obliged to monitor where consumers energy usage rates dramatically decrease beyond what may be typical through standard cost-saving mechanisms. Financial counsellors report that their clients in financial hardship

¹ Consumer Action Law Centre, *Energy Assistance Report 4th Edition* June 2024

will choose to not use energy to manage their energy bills – often to dramatic levels which are impacting on overall health and wellbeing.

While we acknowledge that many households may undertake energy conservation to some degree, when it becomes evident that people are choosing to not use heating in a badly-insulated home in winter, then this becomes a human rights issue around fuel poverty. Retailers have a role to play in using their data to identify when this is happening and proactively reaching out to consumers to understand their usage patterns and find ways to address this experience of fuel poverty.

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

Financial counsellors have noted that the primary issue with current protections and frameworks is the lack of public knowledge of their existence. Practically speaking, it is difficult for consumers to enforce their rights and protections, when they don't know these exist.

While consumers represented by financial counsellors and other consumer advocates are well-supported to exercise their rights, the quality of experiences of those who are unrepresented appears to vary.

Charlie has a valid concession card, but because the name on his energy account was slightly different to the name on his concession card (e.g. Charlie vs Charles), the retailer refused to add his concession. A financial counsellor helped Charlie to make a complaint to the Ombudsman, and through this, got the energy retailer to change the name on the account so that he could get the concession rate, backdated a year.*

This is one example of many – it is clear to financial counsellors that unassisted consumers receive significantly different outcomes to those who are assisted by experienced consumer advocates. This speaks to the inadequacy of existing retailer hardship arrangements in consistency and universality as everyone should have access to the same protections and rights regardless of whether they are represented by financial counsellors or not.

The framework can certainly be strengthened to require all customers get the same information about and offers of hardship options and treatment by energy companies as they would if they were represented by a financial counsellor as part of a customer empowerment model.

Case Study: Retailer overcharge error, resolved by a financial counsellor

Ms. K is a single mother of two children, living in a small mortgaged property. She works part time and is also the recipient of a small Centrelink payment and a concession card. Like many people on restricted incomes, she is an excellent money manager and is very aware of her finances.

However, she had consistently high energy bills and was unsure as to why they were so high. There was an accumulating large energy debt which was concerning her, and the retailer was constantly pushing her to increase her repayments to pay the debt without offering other options. However, she simply could not afford to pay what they were asking her to do so.

Ms. K's financial counsellor found that the retailer had not proactively advised the customer about the Utility Relief Grant and the Excess Electricity Concession, despite her eligibility. Additionally, the financial counsellor investigated all of Ms. K's energy bills and found that between 2015 and 2020, her plan had changed to Peak charges only when she had originally been receiving charges for both Peak and Dedicated circuit. This was clearly an error on the part of the energy provider.

The financial counsellor advocated for the energy provider to recalculate all bills from July 2015 until November 2020, with all the overcharges at the higher peak rate to be credited back to Ms. K. This has resulted in a credit to the customer of \$2,771 which cleared the debt to her energy company and reduced the stress and anxiety she had been under for a long period of time.

Improving awareness of protections

Options for improving public awareness of these protections should include required messaging to be included on all billing (paper or digital) and correspondence. This messaging should include requirements to list Ombudsman schemes (which is not currently a requirement in Victoria), clearer communication on best offer messaging, and proactive communication about different government relief schemes and concessions that may be available.

At the same time, we need to understand that inclusion of information on billing and correspondence is not sufficient in and of itself, given the complexity of charges on a standard energy bill. Efforts to improve transparency should include proactive community engagement and education teams embedded within retailers, responsible for working hand-in-hand with customer hardship teams and a dedicated customer advocate role, to assist consumers to understand and access their rights.

As financial counsellors have stated, currently the use of scripting and recordings for tick box and compliance purposes is *not* the same as walking a consumer through the information and ensuring consumers are properly informed.

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

All situations are individual and personal in nature, and we recognise the difficulty of shaping an overarching framework that is necessarily responsive to the needs of all individual situations.

Proactive onus on the retailer

We recommend that a general principle that should be included in any framework should be related to placing the onus of assistance on the retailer rather than the consumer – for the retailer to be proactive about providing hardship assistance, rather than relying on the consumer to actively request assistance. This would involve all retailers to do, amongst other things:

- identify and contact customers who may require hardship assistance per the factors identified in our response to Q3 and Q4
- be consistent in how ‘best offers’ are applied – we recommend that any plan changes are applied from the first day of the current billing cycle
- vary payment plan periods beyond a standard two years, in response to individual incomes and debt levels
- create flexible supports and options that better respond to systemic hardship rather than just short-term hardship – including options like separating arrears from current accounts for payment plan purposes
- understand that in certain circumstances, evidentiary documentation around experiences requiring hardship may not be able to be produced – e.g. family violence or natural disasters
- ensure that where family violence has been disclosed, that debts are not sent onto debt collectors (financial counsellors see debt collectors chasing debts in ways that place victim-survivor safety at risk)
 - further, given that family violence may not be identified until after a debt has gone to collections, retailers should be required to proactively seek out debt collection companies that have good policies and staff training around FV, and ensure that their contracts with these debt collectors include clauses to ‘buy back’ debts where FV is later identified
- remove any ‘poverty premium’ products from their range, e.g. where people are charged more if they choose not to direct debit their payments
- proactively assist consumers to apply for any valid concessions or relief schemes
- genuinely consider debt waivers in extenuating circumstances, including for women and children experiencing family violence as a crucial step in their financial recovery

We note on the last point above that while in Victoria, retailers are financially incentivised to assist consumers to apply for the Utility Relief Grant Scheme, there are many reports of retailers who make it difficult for consumers to access the scheme.

Reports from Financial Counsellors

[Energy retailer] are refusing to complete the URGS (Utility Relief Grant Scheme) form with clients over the phone, even though they are required to do so by the Energy and Water Ombudsman Victoria and Essential Services Commission. They insist on sending the forms out to the client to complete themselves.

[Energy Retailer] cold-called me and told me that they had a client who needed me to complete the URGS for them right there and then. This client wasn't even a client of [financial counselling service], they just happened to live in the same suburb. The representative argued that it was my job to assist vulnerable people, not their job.

Implementing minimum training standards

We recommend that there should be designated financial hardship teams in retailers who sit separately to payments and collections teams. These hardship teams should have mandated training on trauma-informed care, vulnerabilities such as family violence, referral pathways, and more. There should be designated access to these teams for financial counsellors.

The training for these hardship team employees should be standardised across the industry to ensure a consistent response regardless of the retailer. It should be delivered by those who are experts in the field and are already working with vulnerable consumers, such as financial counsellors. The type of training, requirements around the expertise of trainers, and the frequency of training could be set out in the framework.

We believe that improved and mandated training for a dedicated financial hardship team will better address some of the issues reported by financial counsellors which reflect extreme and unrealistic demands on payment plans by retailers, as well as unfair referrals onto debt collectors.

Case Study: Unrealistic payment plans

Jean* is on a Disability Support Pension, living in private rental accommodation. She has \$1,500 in arrears on her energy account due to financial hardship and is currently paying \$40/fortnight on a payment plan with her energy provider. She has already accessed the Utility Relief Grant Scheme, and the Victorian Government's Power Saving Bonus to reduce her arrears.

She is being pressured by the provider to pay more, which she cannot afford. Jean is upset, frustrated, and is experiencing significant stress and anxiety.

Aligning systems for automatic identification of concessions

Currently, between 7-22 per cent of Victorians who are eligible for utility relief concessions are not receiving these concessions². The current application process is highly manual, inefficient, and outdated. The process is expensive for retailers, difficult to

² Consumer Policy Research Centre, *Mind the Gap - Identifying the gap between energy concession eligibility and concessions received*, November 2022

navigate for consumers, and relies on people being proactive in keeping information up-to-date with multiple service providers.

We suggest that rather than requiring proactive application for concessions and relief schemes by consumers, the energy sector should work on alignment of systems with government services. If all people receiving Centrelink payments were able to have their energy concessions applied automatically due to systems integration, it would ensure that all those who are eligible, will receive their concession automatically. This integration should be regularly updated and reviewed to capture changes to Centrelink or health care entitlements.

Connected to this recommendation, we believe that the energy sector can play a role in proactive advocacy to governments about the needs of vulnerable Australians, sharing de-identified data about levels of energy hardship experienced by their customers to inform government decisions about increases to social security payments and other concessions.

Understanding of the role of financial counsellors

Financial counsellors are accredited professionals who are trained to assist clients in financial hardship. This can include negotiating on behalf of clients with retailers on accounts in arrears. However, inconsistencies in frontline worker training across different retailers can occasionally mean that the professional role of financial counsellors is not recognised and third party authorisations not accepted. This then results in poor experiences for an already-vulnerable client.

Per our earlier recommendation on minimum training standards, we recommend that retailer processes and training for personnel should include comprehensive information on the role of financial counsellors, to ensure that the most vulnerable consumers are supported and have access to professional representation.

Industry contributions to financial counselling

Additionally, we note that industry practices are a significant contributor to the workload of financial counsellors – for every consumer who is not well supported by a retailer's hardship practices, there's potentially significantly more work required by a financial counsellor. Recognising this, there have been a number of energy retailers who have signed on as contributors to the Financial Counselling Industry Fund (FCIF), to contribute funds to a sector that they create work for.

We recommend that all energy retailers should be required under the framework to financially contribute to FCIF, recognising the work they create for financial counsellors through their poor practices. The amount to be contributed can be scaled depending on the size of the retailer, the number of customers they have, the number of complaints they receive, and any other relevant factors.

Question 7. How could the framework better ensure that disconnection is a last resort?

In a country which is a signatory to the Universal Declaration of Human Rights, which states "Everyone has the right to a standard of living adequate for the health and well-

being of himself and of his family”, we must recognise that **access to energy is a human right** and is essential to maintaining a standard of living in our modern society.

As such disconnection must *truly* be a last resort – if enacted at all.

Excerpt from *Staying Connected: A Survey of Utility Payment Difficulties*

“For some people, staying connected to utilities means that they have had to do many things to prevent disconnection. They may have had to go without necessities, ask for a deferment of payment or obtain material aid. As a consequence, disconnection rates alone are not always an accurate indication of fuel poverty.”

Authored by Heather Neilson, Good Shepherd Youth and Family Service

The quote above is from a paper originally published in 2001. Unfortunately, it is clear that the same issues with utility affordability and hardship approaches have not progressed or improved in over 20 years.

Expand Retailer of Last Resort scheme

Being conscious of the commercial drivers for most retailers, we suggest that the existing ‘Retailer of Last Resort’ scheme be expanded to address instances of not only retailer failure, but also instances where consumers are at risk of disconnection due to energy debts. If there is no retailer willing to take on supplying energy to a consumer, then government-funded energy services must step in to ensure that it is continuing to meet its obligation to its most vulnerable people.

Retailer obligations to engage

Before it reaches the point of the Retailer of Last Resort, we also recommend that there should be obligations on retailers to continue engagement with the consumer, working with them to find ways to manage the energy debt and maintain service connection. This should include requirements to notify consumers (and receive confirmation that the notification has been received and understood) when:

- payment matching arrangements or payment plans are coming to an end
- debts are being assigned or sold onto debt collectors
- a decision has been made to cease providing services to the consumer

In the above circumstances, there should be considerations in the framework around minimum timeframes and referrals onto the ‘Retailer of Last Resort’ – for instance, a minimum of a month’s notice may be required to allow the consumer to seek financial or legal support from a financial counsellor or a community lawyer on their account and their options.

Applications for approval to disconnect

We also propose that before disconnection is enacted, that the retailer should be obliged to apply to the relevant state ombudsman scheme for permission to disconnect a consumer. The ombudsman schemes should be funded accordingly, to assess and

manage disconnection requests and to liaise with the Retailer of Last Resort or a government-funded energy service to ensure continued service for a consumer.

On a related note, there should also be prohibitions on retailers on using the threat of disconnection as a negotiation tactic. Financial counsellors report that retailers use the threat of disconnection to get consumers to agree to unaffordable payment plans.

Case Study: Threat of disconnection

Dani*, a family violence victim-survivor, is in arrears on her utility bills. Her utility provider has demanded an extreme repayment plan from Dani of \$600 a fortnight, representing 100% of her income from Centrelink.

While Dani refused this payment plan, she was particularly worried about the consequences. She said, “if I comply, I can’t pay bills, rent or eat – if I refuse, I’ll be facing disconnection, debt collectors and legal action”.

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

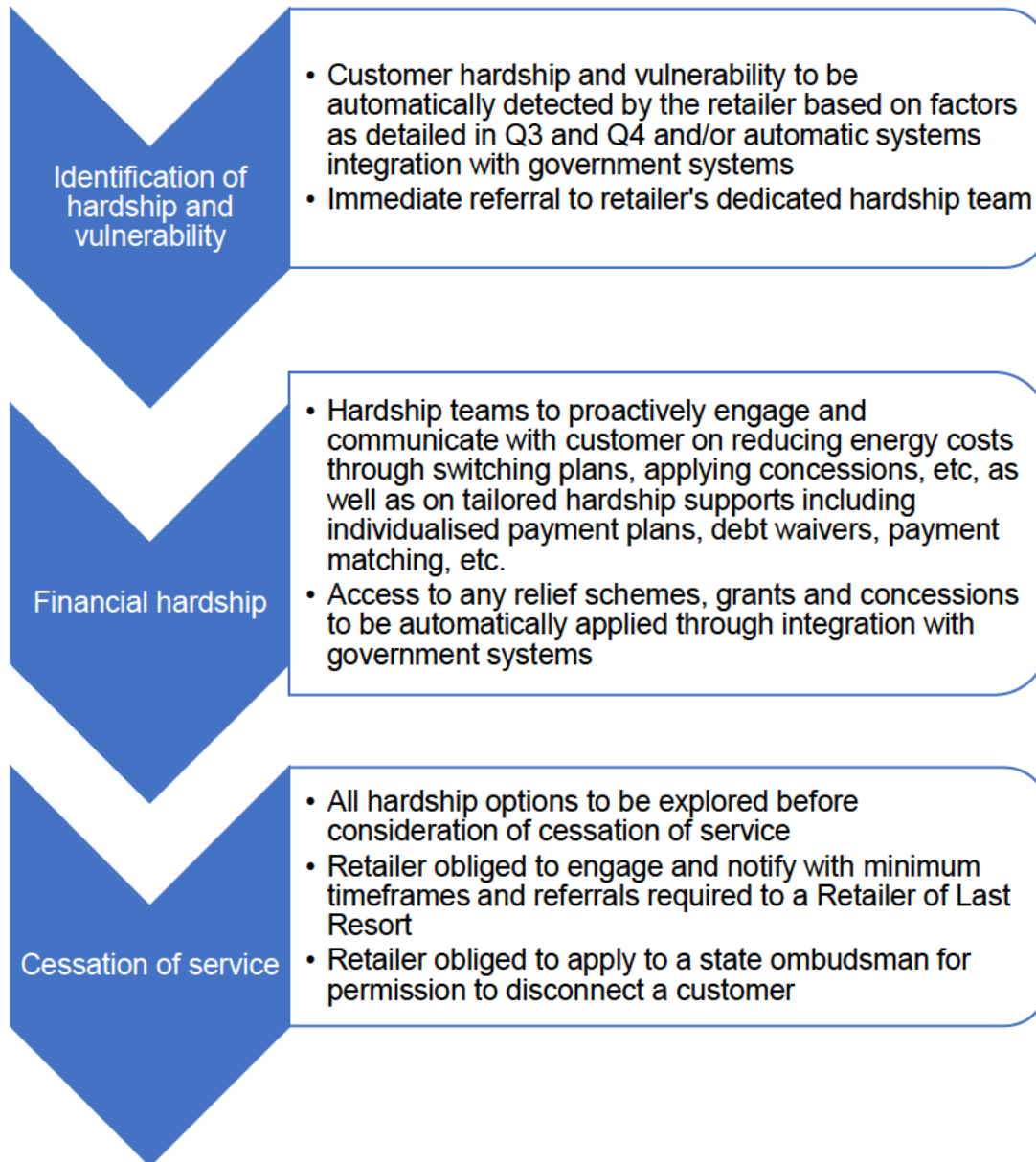
We recognise that a number of our recommendations represent government and regulatory financial investment, as well as potential financial cost to retailers.

However, when the top energy companies in Australia regularly record multi-million dollar profits annually, we posit that our recommended reforms will not represent a significant burden on the retailers when considering the outsized positive impact it will have for the most vulnerable.

Additionally, financial counsellors note that the cost of changes to the framework and the enforcement of human rights through access to energy cannot be measured in purely economic terms. The health and wellbeing cost of inadequate heating and cooling is immense – not only to individual consumers, but in the long-term, to the health and medical system.

Summary

To capture some of the recommendations in this submission, we suggest that a vulnerable customer experiencing financial hardship may experience a 'customer journey' as follows:



Thank you for the opportunity to provide this submission to the AER's Review of payment difficulty protections in the NECF on behalf of Victorian financial counsellors who each year, assist over 23,000 vulnerable people experiencing financial hardship.