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Energy Hardship Review
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne Victoria 3000

Submitted by email: energyhardshippreview@esc.vic.gov.au

INQUIRY INTO THE FINANCIAL HARDSHIP ARRANGEMENTS OF ENERGY RETAILERS

Origin Energy Limited (Origin) welcomes the opportunity to comment on the Essential Services Commission's (ESC's or Commission's) approach paper in relation to its inquiry into the financial hardship arrangements of energy retailers.

Through our Power On program, Origin helps customers who are identified as experiencing payment difficulties due to financial hardship. First introduced in 2005, we refreshed the Power On program in 2014 to meet customer needs better by:

- developing a vulnerable customer strategy that aims to understand and identify the causes of vulnerability and potential solutions to assist our customers;
- improving the effectiveness of our policy by introducing a number of flexible payment options and services;
- encouraging our customers to make behavioural changes to achieve better longer term outcomes; and
- refreshing our policy by making it clearer and easier to understand by being explicit about our commitments and those of our customers.

The Power On program is intended to keep the customer engaged and working towards sustainable bill management. We believe it allows us to best assist a hardship customer to regain control through helping them to work towards sustainable energy use and repayment of their energy account debt. Administered by our specially trained Hardship Team and grounded in the concepts of respect, empathy and sensitivity, the Power On program allows us to work with a customer to determine their capacity to pay and then tailor a payment plan to their individual circumstances. While on the Power On program, a customer is not subject to the normal credit and collections processes and is quarantined from disconnection.

In addition to establishing a payment plan, the Origin Hardship Team provides the following additional information and services to the customer to help them manage their energy costs in line with their financial situation: concessions and grants information; direct enrolment of the customer in Centrepay; ensuring the customer is on the most appropriate product offer; referral to external support agencies; referrals to financial counsellors; and energy efficiency audits.

Origin understands the need for a strong connection with the community so in addition to our engagement with individual customers, we engage extensively with community and welfare organisations to promote our Power On program. We seek to include local councils, media and community groups along with broader community agencies to ensure we cover a wide range of culturally and linguistically diverse customers. We also regularly distribute Power On brochures at community events and to a variety of welfare agencies across Victoria and the rest of the country to promote self-identification.

The strength of our Power On program has been recognised by financial counsellors across Victoria as Origin was recently ranked the industry leader in handling customers' financial hardship issues.¹

¹ Financial and Consumer Rights Council 2014, *Rank the Energy Retailer*, August 2014.

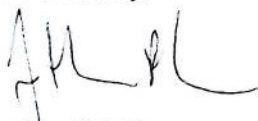
The ESC's approach paper explains that this review has been prompted by an increasing number of disconnections of energy customers in Victoria and uncertainty around the reasons for these disconnections. Origin agrees that it is in the long term interest of Victorian consumers that retailers adopt best practice in their hardship and disconnection procedures. We therefore support a review of the regulatory framework and retailers' policies, practices and procedures to assess whether the former promotes, and the latter represent, best practice. While this may go some way to addressing the increasing number of disconnections, we suggest this review would be enhanced if it also examined the underlying causes of disconnection and lack of engagement with retailers by certain customers. A holistic review that considers the regulatory framework and retailer hardship programs alongside the drivers of why customers are unable to pay their energy bills in full and on time and the opportunities to promote early customer engagement is likely to provide greater insights into what improvements are necessary to the regulatory framework and how all stakeholders can work to assist customers to pay their bills.

The remainder of this submission details Origin's views on each section of the ESC's approach paper as follows:

- the Commission's approach – we suggest a more streamlined set of principles and provide examples of indicators for each principle;
- the regulatory framework – we consider the existing regulatory framework appropriately sets the minimum standard and allows for innovation in retailer's hardship programs but note there is scope to improve the clarity of some regulatory requirements without increasing the regulatory burden to retailers;
- performance and compliance – we consider the ESC's current range of performance indicators and its practices in obtaining information on these indicators remain effective and appropriate but suggest some improvements to the analysis and commentary that accompany its reporting;
- best practice – we support a regulatory framework that promotes best practice and the ESC developing best practice guidance for industry; and
- benchmarking – we discuss the practical issues with benchmarking.

Should you have any questions or wish to discuss this information further, please contact Lillian Patterson on lillian.patterson@originenergy.com.au or (02) 9503 5375.

Yours sincerely,



Jonathan Briskin
General Manager, Retail Customer Operations
(03) 8635 3262 – jonathan.briskin@originenergy.com.au

The Commission's approach

Q1. Are the principles of effectiveness, flexibility, consistency, efficiency and proportionality, transparency and clarity, and accountability (of all stakeholders) the most relevant principles for this inquiry? Are there other principles that should be included or used? Should some principles be given greater weight?

The ESC's primary objective for this review is "to provide confidence that energy customers who cannot pay their bills in full and on time get the assistance to which they are entitled from their energy retailer".² To guide its inquiry, the ESC needs principles that clearly and simply connect back to this primary objective and provide transparent and measurable assessment criteria. Principles should also be balanced—that is, they should be equally weighted—and unique.

While the principles proposed in the approach paper are each relevant, we consider the core principles that should guide the ESC's inquiry are:

- effectiveness;
- accountability; and
- transparency and clarity.

These core principles can be clearly defined, do not overlap and are of equal importance. In Table 1 below, we propose definitions for these core principles. Having clearly defined principles is critical for this review.

Origin's suggested approach does not imply that the ESC's other proposed principles of flexibility, consistency, and efficiency and proportionality are not relevant considerations. They are, in fact, quite important factors. We consider, however, that these elements are more relevant for assessing how effective a retailer's hardship program is meeting the core principles. For example, the degrees of flexibility and proportionately in a retailer's hardship program are key elements in considering its effectiveness.

Having more principles does not necessarily lead to a more comprehensive assessment; in fact, it can inadvertently introduce its own challenges. For example, the principles proposed by the ESC have some inherent tensions and conflicts. It is unclear how the ESC would reconcile the tension between flexibility and consistency, for example. While the regulatory framework supports retailers adopting varied approaches to meeting their legal obligations, it also requires that retailers provide consistent outcomes for customers in financial hardship. In our view, balancing these considerations under a single 'effectiveness' banner is more constructive than separating out the assessment against two separate principles (flexibility and consistency). This more holistic assessment approach allows the ESC to focus on the core principles while recognising the different approaches retailers may take in delivering hardship programs to meet the overarching objective.

The main thing is for the relevant principles to be clearly defined and well articulated so all stakeholders understand the priorities and importance the ESC is placing on its assessment criteria. For instance, we would be concerned if the ESC chose to weight the principle of consistency above that of flexibility. Origin's hardship program is based on the concept of case management, which allows us to assist customers based on their individual circumstances. In our view, it would be inefficient and impractical for retailers to develop a one-size-fits-all hardship policy and process that would allow for consistency but not flexibility. We consider these trade-offs should be considered at the assessment level, not the principles level.

² Essential Services Commission 2015, *Inquiry into the financial hardship arrangements of energy retailers: Our approach*, March 2015, p. 1.

Table 1: Proposed principles

Principle	Definition	Examples of elements and indicators
Effectiveness	The ability of the regulatory framework to deliver the objective of providing confidence that energy customers who cannot pay their bills in full and on time get the assistance to which they are entitled from their energy retailer	<p>An effective regulatory framework should allow retailers to adopt varying and innovating hardship policies and approaches (flexibility)</p> <p>An effective regulatory framework should be clearly articulated with limited scope for different interpretations to ensure obligations are consistently understood and applied across retailers (consistency)</p> <p>An effective regulatory framework should recognise that a retailer's ability to deliver a hardship program should balance the cost against the benefit (efficiency and proportionality)</p>
Accountability	The ability to recognise individual responsibilities so that different stakeholders are aware of their obligations to accept responsibility and account for their actions	<p>The regulatory framework should acknowledge the responsibilities and accountabilities of:</p> <ul style="list-style-type: none"> • retailers to deliver hardship programs to their customers in line with their legal obligations (flexibility, consistency, and efficiency and proportionality) • regulators and policy makers to set an appropriate regulatory framework and conduct compliance and reporting activities fairly and equitably (flexibility, consistency, and efficiency and proportionality) • customers to pay their energy bills and engage with their retailer when they are experiencing financial difficulties that can make it difficult to pay their bills in full (flexibility, consistency, and efficiency and proportionality)
Transparency and clarity	The ability to easily identify, access and understand necessary information, including legal obligations and retailers' hardship policies and programs	<p>A transparent regulatory framework should clearly define the different obligations for different stakeholders, e.g.:</p> <ul style="list-style-type: none"> • the minimum standard of conduct for retailers, ensuring it is not open to varied interpretations and that compliance activities are transparent and clearly communicated by both retailers, regulators and policy makers • customers need to be able to easily find and understand information from their retailer (consistency) <p>A clear regulatory framework should acknowledge there are a number of traditional and emerging channels to deliver information to customers (flexibility)</p>

Principle	Definition	Examples of elements and indicators
		A transparent regulatory framework should be clear about retailers' reporting requirements and the intended purpose of that information to avoid onerous regulatory obligations (efficiency and proportionality)

Regulatory framework

- Q2. Does the regulatory framework need to be improved to support customers who are unable to pay their energy bills in full and on time? If so, what improvements are needed? Are certain aspects of the framework ambiguous, unnecessary or ineffective? Are there other regulatory frameworks offering good examples that the Commission should examine?
- Q3. What incentives could be introduced to the regulatory framework to promote innovation in assisting customers who are unable to pay their bills in full and on time?
- Q4. Does the regulatory framework provide sufficient flexibility and discretion for energy retailers to assist customers in financial hardship effectively? Should the Commission's Code and guidelines be more or less prescriptive in order to facilitate best practice and promote innovation by retailers? If so, what should be changed and how?

Areas for improvement

Origin appreciates the efforts that have been made to better align the Victorian regulatory framework with the National Energy Customer Framework (NECF) overseen by the Australian Energy Regulator (AER). However, we consider the existence of two regulatory frameworks for hardship across the east coast states creates an additional and unnecessary regulatory burden, especially as our Power On program is available to all hardship customers irrespective of the state in which they live. Notably, the AER completed an in-depth review of hardship policies and practices in NECF states only four months ago.³ Acknowledging that NECF extends beyond just hardship issues, an aspirational improvement for the regulatory framework would be to adopt NECF in Victoria.

Irrespective of whether it is NECF or the existing regulatory framework, Origin considers the framework should set a well defined and clear minimum standard of conduct that provides retailers with an appropriate level of flexibility and discretion around the hardship program they offer to customers. Should the existing framework be retained, Origin does not consider the current level of prescription requires amendment as retailers are already working to continually improve their hardship programs in their interests of their customers. Our recent Power On refresh demonstrates our commitment to continually improving our hardship program; for example, we have extended the energy audit program to include telephone audits.

Origin would, however, recommend improving the clarity of the existing obligations to promote a consistent understanding of the current minimum requirements across stakeholders. Our experience to date shows interpretations differ across stakeholders. By way of example, the rise in the number of wrongful disconnection complaints lodged with the Energy and Water Ombudsman (EWOV) indicates the need for improved clarity of the regulatory framework to ensure: (1) customers and their representatives are clear on their rights; (2) retailers are clear on their obligations; and (3) EWOV has a clearly defined set of requirements against which it conducts its investigations. Two particular areas where clarity around current minimum requirements could be improved are the definitions of 'best endeavours' and 'capacity to pay'. We note this improved clarity should still recognise process

³ Australian Energy Regulator 2015, *Review of Energy Retailers' Customer Hardship Policies and Practices*, January 2015.

improvements that will occur above this minimum requirement and allow retailers discretion in its hardship processes to manage their customers flexibly.

- The Energy Retail Code (the Code) does not define best endeavours but the ESC's *Operating Procedure – Compensation for Wrongful Disconnection* gives interpretative guidance on a retailer's requirement to use best endeavours to contact a customer with payment difficulties.⁴ This guidance, however, refers to what best endeavours "could require", which still creates some ambiguity; for example, in the situation where registered post is sent but may not be received by the bill holder. To remove this uncertainty, Origin recommends that the ESC defines in the Code what the minimum retailer requirements are that satisfy best endeavours.
- Clause 72(1)(a) of the Energy Retail Code requires that the retailer must have regard to the customer's capacity to pay when establishing a payment plan for a hardship customer.⁵ Origin views capacity to pay as an ongoing discussion between the retailer and customer that cannot happen in a single conversation. In practice, a capacity to pay assessment occurs over a number of conversations as the customer develops greater comfort to discuss their situation. As a hardship customer often has financial difficulties that extend beyond their energy bills, a capacity to pay assessment can only be made on the information the customer is willing to make available to the retailer. This relates to the issue of what is considered reasonable for a retailer to ask a customer in relation to their capacity to pay. Origin would like to see the Code provide greater detail around the minimum requirements for capacity to pay assessment; for example, by outlining the minimum steps a retailer should include in an assessment. Any specified process must recognise that an assessment is dependent upon the information provided by the customer and that respectful interaction with the customer is key to continued positive engagement.

An additional benefit of removing the ambiguity in the regulatory framework is further promoting innovation. Under a clear, well articulated framework, retailers have a solid understanding of the minimum requirements on which to build and evolve their hardship programs. Retailers have a strong commercial incentive to improve and innovate. We are continually working internally and with the broader community, particularly with our community partners, to devise, test and roll out new processes and practices that enhance customers' engagement and assist them to pay their bills. In Origin's view, we want our hardship customers to engage early and on an ongoing basis so that we can empower them to take control of their energy bills through sustainable energy use and repaying their energy account debt. We are willing to trial any means to improve our overall customer experience and deliver an improved hardship program. As retailers already have an incentive to innovate, Origin does not believe the regulatory framework itself needs a requirement for retailers to innovate.

When investigating ways to improve the clarity of the regulatory framework, the ESC needs to make sure it does not inadvertently constrain retailers' ability to take a flexible approach to their hardship programs. The regulatory framework should continue to recognise different forms of assistance are dependent on customers' diverse circumstances and that hardship customers must be assessed on a case-by-case basis. We also ask that when considering improving clarity, the ESC should seek to avoid an unnecessary increase in regulatory burden to retailers.

Acknowledging shared responsibilities

The regulatory framework needs to balance stakeholder responsibilities by recognising customer accountabilities. One of the key difficulties faced by retailers is customer engagement. There are a number of unintentional and intentional reasons why customers do not engage with retailers. If a customer does not engage with a retailer, it is difficult for a retailer to assist them. In addition,

⁴ Essential Services Commission 2012, *Operating procedure compensation for wrongful disconnection*, April 2012, p. 12.

⁵ Essential Services Commission 2015, *Energy Retail Code Version 11*, January 2015.

customer engagement cannot be a one-off; it needs to occur on an ongoing basis, particularly if a customer's circumstances change. This involves both customer and retailer initiation.

As part of its review, we strongly encourage the ESC to investigate the reasons why consumers do not engage with retailers and make some recommendations as to what customers, consumer groups, retailers and other key stakeholders can do to address these challenges. Proactive communication from the consumer's side can be just as important as retailer engagement; a positive experience and constructive outcome requires cooperation and engagement from both sides.

Performance and compliance

- Q5. How could the Commission better monitor the overall effectiveness of the hardship assistance provided by energy retailers?
- Q6. Are there better indicators the Commission could use to assess the overall outcomes for customers in financial hardship?
- Q7. Can the Commission improve how it monitors and enforces energy retailers' compliance with the regulatory obligations? If so, how?

While Origin considers the ESC's current range of performance indicators and its practices in obtaining information on these indicators remain effective and appropriate, we propose some improvements around the ways the ESC presents the analysis and commentary accompanying its indicator assessment and reporting.

Stakeholders would benefit from the ESC's analysis and commentary being more holistic in nature, looking at the interrelationship between indicators and the drivers behind the indicators. For example, discussions around disconnections should also explore the relationship to customer admissions into hardship programs. Retailers will only disconnect a customer as a last resort. If a customer is having trouble paying their bills, Origin makes numerous attempts to engage with them to discuss their situation prior to disconnection. Our engagement includes sending bills, reminder notices, disconnection warnings, telephone calls, SMS, emails and personal visits if required. In our experience, however, even after following a rigorous, proactive process to contact a customer prior to a disconnection, there are some instances when the first time we have been able to converse with that customer is when they contact us to be reconnected. This conversation can often result in that customer being placed in the hardship program. These experiences highlight the importance of the ESC investigating the reasons why customers do not engage with retailers, as identified in the previous section.

Additionally, this holistic reporting should examine how hardship customers come to be in a position where they cannot afford to pay their bills, which is linked to affordability issues. Drawing out observations about hardship customers and the root causes of their hardship supports the assessment of retailer performance and compliance and provides valuable insights to policy makers. For example, while the number of hardship program participants that are concession cardholders is reported, this should also explore the link between their energy debt and general affordability issues, such as the level of the pension or the level of government assistance through the Utility Relief Grant Scheme (URGS). We discuss this further in a later section of the submission.

There may also be value in reporting case studies across different retailers. This should include negative case studies to give stakeholders examples of non-compliant practices to avoid but also positive case studies to give stakeholders examples of innovative practices that retailers could look to incorporate into their own hardship programs. Case studies can also support observations on trend analysis, which can have both negative and positive explanations. For example, an increasing number of hardship program participants may indicate an increase in the number of customers

experiencing payment difficulties or it may indicate retailers' improvements in identifying these customers and assisting them via hardship programs.

Best practice

- Q8. Are energy retailers currently providing best practice assistance to customers who are unable to pay their energy bills in full and on time? What evidence is available to support this view?
- Q9. Should retailers' hardship practices be more transparent? If so, how can transparency be improved?
- Q10. What else could we learn from practices by firms operating in other jurisdictions and industries, nationally and internationally about best practice in hardship assistance?
- Q11. Are there any other themes of best practice that we have not covered in chapter 5? Do some themes require higher priority in the regulatory framework administered by the Commission?

Origin supports the ESC reviewing the current regulatory framework and retailers' policies, practices and procedures to assess whether the former promotes, and the latter represent, best practice. In our view, a robust regulatory framework should:

1. set clear minimum requirements and compliance assessment criteria; and
2. provide guidance on what best practice looks like.

As noted in the approach paper, the *Electricity Industry Act 2000 (Vic)* and *Gas Industry Act 2001 (Vic)* along with other supporting regulatory elements require retailers to implement a financial hardship policy that is approved by the ESC and must include:

- flexible options for paying energy bills (payment plans);
- a provision for auditing a customer's energy usage;
- flexible options for replacing household electrical and gas equipment; and
- processes for the early response by both retailers and customers experiencing financial difficulty.⁶

Our comments above identify some improvements to how the ESC assesses compliance against the existing regulatory requirements, which we consider are appropriate and fit for purpose.

Regarding hardship policy best practice, we welcome the ESC reviewing retailer best practice. In our view, best practice assessments provide the most value to industry in the form of best practice guidance. Developing detailed guidance against each of the best practice themes would give retailers a framework against which they could self-assess their own hardship programs. This would allow them to identify and understand areas of deficiency and opportunities for improvements to better meet customer needs. This approach is similar to that taken in the AER's *Review of Energy Retailers' Customer Hardship Policies and Practices*, which gave observations, including examples of interesting or innovative practices by particular retailers, for each of its three focus areas.⁷ Origin supports the following themes set out in the approach paper for retailer best practice: early identification, resource efficiency, availability of useful information, partnerships, sensitive and flexible approach, program review and organisation-wide support.⁸

We would caution the ESC against using this best practice work as an ongoing regulated assessment framework, such as the proposed benchmarking framework, as best practice is constantly evolving.

⁶ Essential Services Commission 2015, *Inquiry into the financial hardship arrangements of energy retailers: Our approach*, March 2015, p. 24.

⁷ Australian Energy Regulator 2015, *Review of Energy Retailers' Customer Hardship Policies and Practices*, January 2015.

⁸ Essential Services Commission 2015, *Inquiry into the financial hardship arrangements of energy retailers: Our approach*, March 2015, pp. 47-55.

Setting a static view of what constitutes best practice could prevent further innovation in retailers' hardship programs. Restricting retailers' flexibility and innovation would be a suboptimal outcome for customers and retailers alike.

In relation to the transparency, this is addressed in the current regulatory framework through the requirement for ESC approval of hardship programs. These approved programs are then made publicly available through retailers' websites. Requiring greater transparency of the actual practices or processes that retailers undertake when engaging with an individual customer suggests a need for transparency around how customers are assessed for a hardship program and hence some form of consistent application of hardship assessment criteria and outcomes. This is contrary to the need for flexible individual case assessments that match hardship assistance to each customer's personal circumstances and level of financial hardship. We would also want to avoid a situation where customers could make a self-assessment of their situation and then having decided they may not qualify for a hardship program, may not approach their retailer to discuss their bill.

Benchmarking

Q12. What other matters should the Commission take into account when designing a benchmarking framework for assessing the effectiveness of retailers' hardship programs?

Q13. Which aspects of an energy retailer's hardship policies, practices and procedures should be given priority in the benchmarking framework?

The terms of reference for this inquiry request the ESC to develop a benchmarking framework for assessing and reporting on retailers' effectiveness in supporting customers in financial hardship. Origin is concerned about how the benchmarking framework is designed and what it is intended to achieve. Benchmarking tends to suggest there is a single solution to all customers' hardship and a single approach that should be taken by all retailers regardless of the customer's and retailer's circumstances. The concept of benchmarking does not sit well in the current regulatory framework, which is based on minimum standards of conduct while promoting retailer flexibility and discretion in the hardship programs they offer to customers.

As noted previously, hardship programs are constantly evolving. As a result, a benchmark framework risks dampening incentives to innovate beyond a certain point. In addition, given retailers are constantly improving their hardship programs, a benchmarking framework may not pick up on these advancements, which could lead to misleading benchmarking results.

The notion of a single solution set by a benchmark is also problematic as in practice what works for one retailer may not work for another retailer. For example, a large retailer is likely to have more resources available for its hardship policies and so may offer different hardship options compared with a second tier retailer with more limited resources. The same can be said for customer outcomes from benchmarking as what works for one customer may not work for another customer. An inflexible set of benchmarking rules would make it difficult for retailers to take into account the individual circumstances of a hardship customer.

Another practical concern we have with a benchmarking framework concerns measurement. The approach paper lists four components that would need to be covered in a benchmarking framework: options, identification, availability and review.⁹ A benchmarking framework requires hardship programs to be measured for each of these components. This is likely to be problematic, particularly in the case of identification where it would be difficult to assess whether retailers are effectively identifying customers who are, or may be, experiencing difficulties in paying their bills on time and in full due to financial hardship. For example, in the case where customers are identified as having

⁹ Ibid, pp. 60-1.

financial hardship only after they have been disconnected and seek reconnection, it would be difficult for the ESC to determine if the retailer is at fault or if the customer simply did not engage. This reiterates the importance of clearly defined accountabilities for all interested parties.

Integral to any new regulatory proposal is a consideration of its benefits versus its costs. As noted above, Origin sees little benefit to a benchmarking framework. This benefit is likely to come at the expense of significant cost. Establishing and administering a benchmarking framework is likely to require significant cost in terms of resources, time and effort from both the ESC and retailers. For retailers, this would likely mean a diversion of resources, time and effort that have been allocated to administering and improving our hardship programs, which would be a perverse outcome.

Additional question

Q14. Are there any other matters the Commission should consider to help customers who are unable to pay their bills in full and on time to avoid disconnection?

Origin notes there are a number of important issues and policies related to hardship policy that are not being considered as part of this review but that have important implications for retailers' ability to assist customers experiencing financial difficulties to pay their bills. We suggest a review of hardship needs to consider these issues. Examples include:

- **Affordability** – while the ESC notes energy affordability is outside the scope of this review, it must be recognised that hardship programs are not able to provide long-term financial assistance to customers who find themselves in chronic financial hardship. In our experience, there are different types of hardship customers; for example there are those who require temporary assistance due to a sudden change in their circumstances and there are those that are in chronic financial hardship where they cannot afford their ongoing usage and have little ability to pay their accumulated debt. Given hardship programs are intended to provide temporary assistance to customers who cannot afford their energy bills and although retailers provide information to assist customers to manage their ongoing usage, retailers face significant challenges assisting customers experiencing chronic hardship. Relatively low government assistance through grants and payments has resulted in an increasing number of customers finding themselves in this position. Addressing this issue is likely to require a broader government and community response.
- **URGS** – URGS is a useful form of assistance for eligible cardholders who are unable to pay their utilities bill. The approach paper notes that in 2013-14, for every 100 URGS forms retailers provided, the Department of Health and Human Services received 59 applications and approved 52 of these.¹⁰ In Origin's view, this is due to the complexity of the URGS form and the fact that responsibility for completing and sending it to the department is solely with the customer.
- **Holistic management of hardship customers** – if a customer is experiencing difficulties in paying their energy bills, they are likely to be facing difficulties in paying their other bills. There is no way that a retailer can understand a customer's overall difficulties and how it affects their capacity to pay.

¹⁰ Ibid, p. 36.