



Retail Energy Consumer Protections Comparison Table for NEM Jurisdictions

Survey about “Best Practice”

Consumer Action Law Centre (**Consumer Action**) has obtained funding from the Advocacy Panel to update the Electricity Retail Consumer Protections Comparison Table for NEM Jurisdictions (the **Comparison Table**), which was first published by the Consumer Law Centre Victoria in 2004. The Comparison Table now incorporates updates to the energy consumer protection laws and regulations in all NEM jurisdictions since 2004, and will be an important advocacy tool for the community sector in relation to the current work of the MCE’s Retail Policy Working Group which is considering options for a national consumer protection framework.

The Comparison Table includes a column labelled “current best practice”, which identifies the jurisdiction which has the best practice for each retail consumer protection. After publication of the initial Comparison Table, there was some disagreement about the “best practice” identified. Considering that the Comparison Table has been fundamental to the development of the national framework, we would like to consult more broadly with community advocates about “best practice”, especially in relation to protections dealing with consumers experiencing financial hardship. Accordingly, we have developed this short questionnaire aimed at further understanding “current best practice”.

Generally, it is Consumer Action’s view that “best practice” means the best outcome for all market participants, focusing on the outcomes for customers. Consumer Action also considers whether the approach encourages industry participants to develop customer service standards that are beneficial to consumers, in addition to what is required by the regulation. In the final document, we will include a statement that the opinion about “current best practice” is that of Consumer Action and does not necessarily represent the community sector generally, but was informed by consultation.

Best Practice generally

1. What do you view that the term “best practice” means? Best outcome for consumers, or best outcome for all participants (ie, fair for industry and consumers)?

Care Inc was established in 1983 to provide financial counselling and related services to low to moderate income consumers experiencing problems with credit and debt. It has added a number of services over the years, for example a No Interest Loan Scheme and hosting the Consumer Law Centre of the ACT. The clients and their needs are still however at the centre of Care’s operating model. With that as background, ‘best practice’ for us means

ensuring that vulnerable and disadvantaged consumers are able to access markets on safe and fair terms. That is more likely to be achieved where the needs of vulnerable and disadvantaged consumers are specifically considered in policy and regulatory reform. Such consideration should ensure products and services do not exclude low income and disadvantaged consumers from participation or exacerbate the various forms of hardship they experience and that when problems do arise there are accessible and reliable procedures for addressing those problems.

Pre-payment meters

2. Would “best practice” amount to a ban on pre-payment meters (ie, Victoria requires retailers to obtain approval from the Commission which has not been forthcoming) or regulation of the use of pre-payments that consider the rights of consumers (as arguably the SA and ACT pre-payment codes do – see the Comparison Table for more information).

No evidence of which we are aware has been produced to suggest that pre-payment meters are intended to target other than the lower income end of the market. Energy per unit costs more using a pre-payment meter and, rather than encouraging more thoughtful consideration of possible inter-relationships between financial hardship and utility usage, responsibility for maintaining connection is shifted to the consumer. The euphemism ‘self-disconnection’ is a market response to serious social issues of affordability and exclusion, in the absence of clear guidance and ongoing commitment from the state (meaning all levels of government in Australia) to tackling those issues.

Codes might provide a framework for ensuring products like pre-payment meters are delivered safely and appropriately if there were proper policy and regulatory guidance from governments as a foundation on which those codes might be constructed. Unfortunately there is no such policy or regulatory guidance, because the driver – the roll-out of a national, ‘competitive’ market provides insufficient opportunity for the issues to be raised to the appropriate level of priority. In that environment there is no safe or appropriate way to roll-out pre-payment meters and Care’s view is that currently they should be banned. As that view has not been supported in the ACT, when the product arrives we will issue warnings to our clients about the potential dangers of taking up pre-payment meters.

Payment plans

3. What do you see are the strengths of the ACT model for the order of payment plans (including the order of debt waiver), through the Essential Services Consumer Council? What do you see as the weaknesses of this approach? Would this model be transferable to the national framework?

Underpinning the ACT model is the fact that it has been developed locally, with local needs in mind. As an example of relevant local considerations, Canberra’s climate experiences seasonal extremes that are less common in other Australian cities. Very cold winters and very hot summers impact utility usage and resultant costs. We also have other local peculiarities, including:

- *a highly dispersed urban area, poorly connected by public transport,*
- *a relatively high proportion of public housing accommodation, dominated by older, poorly sited and maintained stock and*

- *the highest average per capita incomes and levels of personal debt in the country.*

Factors such as these mean that poverty can be felt quite differently in the ACT.

The approach delivered through the ESCC reflects not only the development and expression of a community's values over time it also provides practical responses to real concerns. If a disabled pensioner in poorly maintained public housing accommodation in the Tuggeranong Valley clocks up a huge bill trying to keep his house warm by using the hopelessly energy inefficient (and only) heater available in the home, allowing that person to be disconnected might not only be unfair, it might be fundamentally unsafe.

National market processes have not only struggled to recognise the potential significance of local approaches, localised rules are often characterised as a weakness.

Strengths and weaknesses of the ESCC approach:

- *The option to waive debt through the application of a Community Service Obligation payment from ACT Government is the overwhelming strength of the scheme. Although waiver is rarely the first option applied, its availability ordered by Council, informs and ensures a humane approach for those unable to pay for usage costs. More than any other factor the waiver capacity has provided incentive to industry to develop more proactive approaches to disadvantage internally. The prior lack of that incentive matched poor or non-existent provider policies for dealing effectively with hardship. The flexibility to apply waiver in other ways, for example as an incentive to establishing and maintaining payment over a period of time, can be vital in rebuilding a consumer's confidence and capacity.*
- *The downside of the waiver approach is that it quantifies the amount spent by the community so clearly. Whereas that can and should be a driver for better energy and social policy development the risk is that it exposes the scheme to pressure during periods of cost cutting. It would also make the migration of the approach to other larger jurisdictions more difficult, because of the sums involved. Ironically recognition of the value of local responses to and management of disadvantage might make the costs easier to spread and manage.*
- *Care has had a significant stake in the development and evolution of the ESCC. The agencies cross refer regularly. One of Care's current financial counsellors and its previous senior counsellor are current ESCC members. We are not surprisingly strong supporters of the ESCC model. Care would however support a distinction being made between 'hardship applications' and 'complaints'. At the moment hardship matters are received and processed as complaints. We would also support a less formal initial hearing process for hardship applicants often described by applicants as intimidating.*

4. What do you see as the strengths of other models which require retailers to offer payment plans if the customer is experiencing payment difficulties? What do you see as the weaknesses of this approach?

Care is not able to comment in detail on approaches in other utility markets. In other consumer markets however, there is considerable evidence of what

works and what does not. For example, the Uniform Consumer Credit Code (UCCC) approach to hardship variations has failed to ensure that credit providers connect with the hardship being reported by consumers and provide response – and not just positive or negative response but any response at all. Significantly, the arrival of the revised Code of Banking Practice and the continued development of best practice thinking through the Banking and Financial Services Ombudsman have started to address some of what is missing from the UCCC. Members of BFSO and Banking Code signatories carry extra responsibilities to respond to consumers reporting hardship, including if the answer is to reject a request, to give reasons for the rejection.

Another market replete with problems but less evidence of improvement is telecommunications. The largely discredited code development process has produced and revised a lengthy credit management code that fails to provide any benchmark for reasonable response to consumers in financial difficulty.

Elements that seem to work include:

- requirements to receive and consider consumer hardship reports, through a clearly identified and easily accessible process,*
- no threat of disconnection while a hardship request is being considered (or an arrangement is in place),*
- an obligation to respond, having regard to the information the consumer has provided,*
- reasons for decision and*
- details on how to object, complain or request review.*

The only way to ensure obligations are taken seriously is to deliver a credible threat of sanction if they are not.

5. Does the existence of the wrongful disconnection payment in Victoria (which is paid where the retailer breaches its obligation to offer a payment plan) improve the model? What, if any, are problems with the wrongful disconnection payment?

Refer to the response to question 4 above, in relation to the existence of credible threats of sanction for non-compliance with obligations.

6. What do you see as the appropriate number of instalments under an instalment plan? Does this depend upon the amount of the debt, or should there be a minimum number of instalments?

There is no simple answer to this question. Instalment plans may fail for a variety of reasons, including:

- a lack of consumer commitment to the plan*
- unrealistic or unaffordable expectations in the plan or*
- further adverse changes in circumstances.*

Better than hard and fast rules regarding numbers of plans that might be accepted or even considered would be some guidance for second or subsequent proposals. For example, some explanation might be required relating to the failure of the previous plan(s) and the reasons why the new plan is expected to work when what went before did not.

In Care's experience meaningful engagement between consumer and provider is what makes instalment plans work. We also note that ESCC ordered instalment plans are subject to regular review. The Council normally

meets with consumers working on plans every 3 to 6 months to review effectiveness and affordability.

Payment difficulties and hardship policies

7. Do you see the new Victorian requirement that energy retailers have hardship policies as indicating “best practice”? What do you see as the strengths and weaknesses of the Victorian approach on what must be included in hardship policies?

We refer again to our response to question 4. The existence of policies, procedures or codes are not themselves evidence of a commitment from the industry or individual providers that have developed the processes. Other factors, like whether the processes are accessible, reliable, offer timely and useful responses, are subject to review, can be enforced and so on are critical in confirming genuine commitment.

Cooling-off requirements

8. In your view, what are the minimum requirements for consumer to be adequately made aware and able to access cooling-off rights? Do you think the Queensland model of making the FTA form requirements¹ applicable for all energy contracts whether or not the FTA would apply (expressed like this to expand the otherwise limited cooling-off in that jurisdiction), offers the best arrangement to benefit consumers?

Care is unable to comment on the Queensland approach or its effectiveness. We would however question the appropriateness of imposing any hurdles in accessing cooling off period rights. Marketing is increasingly unsolicited, particularly prevalent in the exponential growth in tele-marketing. In a regulatory environment that has refused to respond to consumers’ overwhelming wish to be shielded from such marketing, it is in our view vital that cooling off periods are:

- *universally available,*
- *not possible to waive or avoid,*
- *clearly, prominently and effectively communicated to consumers and*
- *easily accessible and enforceable.*

Cooling off periods should not be considered as a substitute for effective regulation, monitoring, compliance and enforcement in respect of unconscionable conduct.

Access to meter

9. Most of the retail codes or legislation deal with the situation where the retailer or distributor cannot access a meter and consequently cannot provide an accurate bill. The NSW provisions are most prescriptive regarding what is to occur with billing and Queensland’s Electricity Code now includes a requirement to ensure that the retailer or distributor take proper measures to endeavour to contact the customer at the relevant time in order to facilitate meter access. When looking at these provisions together with the remaining jurisdictions which would you nominate as providing the overall best

¹ The FTA requires provision of a pro-forma form for consumers to use to exercise their cooling-off rights.

protection for consumers? You should also indicate if you think a combination of requirements is most appropriate.

Not able to offer comment.

Bill smoothing

10. Victoria is the only jurisdiction that has specific requirements for bill smoothing. Do you think that retail energy code should provide for bill smoothing arrangements?

Care is unable to comment on the specific arrangements in Victoria. In a jurisdiction like the ACT however, where seasonal variations in the costs of utility usage can be dramatic, we recognise there are real potential benefits for lower income consumers in the availability of bill smoothing options. Some of those options do exist in the ACT, with consumers able to opt for standard payment arrangements over the year, based on historical usage and cost patterns.

Disconnections

11. The various jurisdictions differ according to notice timeframes for disconnections, time of day restrictions for when disconnections can occur and prerequisites or circumstances when disconnections are prohibited. Please nominate the jurisdiction that, in your view, provides the best protections for consumer in each of these areas.

We are not in a position to judge between jurisdictions.

Other matters

12. Are there any other areas of retail consumer protection best practice that you would like to raise?

As noted in our response to Question 1, Care emphasises the current dysfunction in national market processes that exclude or read down consumer protection imperatives. It is an issue that should receive proper consideration in the course of the Productivity Commission's review of Consumer Policy Framework.

Thank you for your participation.