



THIRTY-SEVENTH PARLIAMENT

REPORT 13

REPORT OF THE

STANDING COMMITTEE ON ENVIRONMENT AND

PUBLIC AFFAIRS

IN RELATION TO

A PETITION ON

CONSUMER UTILITY HARDSHIP

IN WESTERN AUSTRALIA

Presented by Hon Sheila Mills MLC (Chair)

April 2008

STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“1. Environment and Public Affairs Committee

- 1.1 An *Environment and Public Affairs Committee* is established.
- 1.2 The Committee consists of 5 members.
- 1.3 The functions of the Committee are to inquire into and report on -
 - (a) any public or private policy, practice, scheme, arrangement, or project whose implementation, or intended implementation, within the limits of the State is affecting, or may affect, the environment;
 - (b) any bill referred by the House; and
 - (c) petitions.
- 1.4 The Committee, where relevant and appropriate, is to assess the merit of matters or issues arising from an inquiry in accordance with the principles of ecologically sustainable development and the minimisation of harm to the environment.
- 1.5 The Committee may refer a petition to another committee where the subject matter of the petition is within the competence of that committee.
- 1.6 In this order “**environment**” has the meaning assigned to it under section 3(1), (2) of the *Environmental Protection Act 1986*.”

Members as at the time of this inquiry:

Hon Sheila Mills MLC (Chair)
(from 14 November 2007)

Hon Paul Llewellyn MLC

Hon Bruce Donaldson MLC
(Deputy Chairman)

Hon Robyn McSweeney MLC

Hon Kate Doust MLC

Hon Louise Pratt MLC (Chair)
(until 29 October 2007)

Staff as at the time of this inquiry:

Mark Warner, Committee Clerk
(until 14 November 2007)

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EXECUTIVE SUMMARY AND FINDINGS FOR THE
REPORT OF THE STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS
IN RELATION TO
A PETITION ON CONSUMER UTILITY HARDSHIP IN WESTERN AUSTRALIA

EXECUTIVE SUMMARY

- 1 On 18 October 2006 the Standing Committee on Environment and Public Affairs (**Committee**) resolved to report separately on its inquiries into petition number 22 regarding consumer utility hardship.
- 2 The inquiries into this petition were conducted intermittingly over a period of time because of the Committee's various commitments, and different avenues of inquiry, and because of the interrelated reviews and inquiries referred to below.
- 3 During the course of its inquiries the Committee became aware that the Economic Regulation Authority (**Authority**) was conducting a review of the Code of Conduct for the Supply of Electricity to Small Use Customers.¹
- 4 The Committee noted that the State Government established a Ministerial inquiry into the affordability of bottled liquefied petroleum gas (**LPG**) in Western Australia (**WA**) on 13 July 2006. Hon Francis Logan MLA, Minister for Energy, tabled the report of that inquiry in Parliament on 30 August 2007.²
- 5 The Committee noted that the Government had established an Interagency Working Group³ to examine and report to Government on ways in which government agencies, government-owned utilities, and welfare agencies can improve the delivery and coordination of essential utilities services to the community's most disadvantaged individuals and families⁴ (see paragraph 4.5 on page 9 below).
- 6 The Committee noted that the Interagency Working Group released an issues paper on utility hardship in December 2007 for broad public consultation.

¹ Proclamation, *Government Gazette*, No 4, Perth, 8 January 2008, pp43–76.

² Report to the Minister for Energy, Hon Francis Logan, MLA, *Inquiry into the Affordability of Bottled Liquefied Petroleum Gas (LPG) for Household Use in Western Australia*, June 2007. http://www.energy.wa.gov.au/2/3225/64/lpg_inquiry.pm (viewed on 10 March 2008).

³ Has also been referred to as the *Government Utilities Essential Service Hardship Roundtable*.

⁴ http://www.energy.wa.gov.au/2/3243/64/utility_hardshi.pm (viewed on 10 March 2008).

- 7 The Committee was particularly mindful of the need to avoid duplicating the work of the Interagency Working Group.
- 8 On 20 February 2008, the Committee resolved to prepare and table a report to progress petition number 22, and to provide input into the Interagency Working Group's final report.
- 9 The Committee finalised this petition on 2 April 2008.

Committee Findings

Finding 1

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The Committee believes that the tabling of the petition in the Legislative Council, raised awareness within Government of Consumer Utility Hardship as an issue requiring a concerted policy response, and that the Committees inquiries into the petition helped influence the Minister for Energy's decision to establish the Interagency Working Group.

Finding 2

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The Committee finds that restricting water supply does amount to an inconvenience to the consumer but that it appears to be an effective method for ensuring dialogue commences between the consumer and the Water Corporation. The Committee noted that a similar capacity for restricting supply is not readily available to the electricity and gas utilities.

Finding 3

Page 22

The Committee believes that the utilities should be encouraged to maintain financial hardship and disconnections data to the same uniform standard. The Committee believes that maintaining such data should not be onerous or time consuming.

Finding 4

Page 25

The Committee believes that the recent practice of the Economic Regulation Authority to maintain and record disconnection rates for WA is an important initiative that will identify higher or lower trends in disconnection rates. The Committee believes that the continued publication of annual data (statistics) should provide incentives for all stakeholders to keep the number of disconnections as low as is reasonably practical.

REPORT OF THE STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

IN RELATION TO

A PETITION ON CONSUMER UTILITY HARDSHIP IN WESTERN AUSTRALIA

1 REFERENCE AND PROCEDURE

1.1 On 15 November 2005, Hon Sally Talbot MLC tabled a petition in the Legislative Council [TP#1001] containing 180 signatures requesting the Legislative Council to examine and address utility consumer hardship by:

1. *Assessing the extent, nature, underlying causes and cost of utility hardship in Western Australia, including examining situations where consumers are disconnected or restricted on account of being genuinely unable to afford their utility bills.*
2. *Reviewing recent studies and relevant policies and practices both in Australia and overseas dealing with utility debt.*
3. *Assessing the impact on consumer hardship of the policies and practices of Western Australian Utilities, Government departments and agencies.*
4. *Recommending changes to the policies, programs, regulations and practices of Utilities, the Economic Regulation Authority, the Energy Ombudsman, and Government departments and agencies, to mitigate consumer utility hardship.*⁵

1.2 In accordance with Standing Order 134(i), the petition stood before the Standing Committee on Environment and Public Affairs.

1.3 The Committee conducted preliminary inquiries into the matters raised in the petition by gathering background information, including writing to the principal petitioner, the

⁵ Hon Sally Talbot MLC, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 15 November 2005, p7195.

tabling member, the Minister for Consumer Protection, the Minister for Water Resources, the Minister for Energy and the Energy Industry Ombudsman.⁶

- 1.4 The Committee received a submission from the principal petitioner, the Western Australian Council of Social Services (WACOSS), and a submission from the tabling member.
- 1.5 The Committee held public hearings and took evidence from Ms Kate Mills and Ms Irina Cattalini, Senior Policy Officers, Consumer Utilities Project, WACOSS, on 31 May 2006.⁷
- 1.6 The Committee held public hearings with representatives from Alinta⁸ and the Water Corporation⁹ on 27 September 2006.
- 1.7 The Committee also held public hearings with representatives from Synergy¹⁰, Horizon Power¹¹ and the Energy Industry Ombudsman¹² on 3 October 2006.
- 1.8 The Committee held further hearings on Wednesday 1 November 2006, with Ms Lyndsey Fitzgerald from Jacaranda Community Centre¹³, and with Mr John Berger and Mrs Jessie Kapitola from Anglicare¹⁴.

Evidence and Reports

- 1.9 All transcripts of evidence were given in public, and all of the Committee's reports and relevant Government responses are available from the Parliament of WA website at <http://www.parliament.wa.gov.au>. Committee reports can be purchased from the State Law Publisher and are also available at the Alexander Library and other selected libraries.

⁶ The Gas Industry Ombudsman was registered as a company by the Australian Securities and Investment Commission on 12 May 2004.

⁷ Ms Kate Mills and Ms Irina Cattalini, Senior Policy Officers, Western Australian Council of Social Service, *Transcript of Evidence*, 31 May 2006.

⁸ Mr Donald MacKenzie, General Manager, Energy Markets, Alinta Limited, *Transcript of Evidence*, 27 September 2006.

⁹ Mr Peter Andersen, Receivables and Business Support Manager, Water Corporation, *Transcript of Evidence*, 27 September 2006.

¹⁰ Mr Graham McGinnity, Manager Revenues Services, Mr Andrew Gaspar, Head of Stakeholder Relations, Mr Craig Butler, Coordinator, Credit Management, Synergy, *Transcript of Evidence*, 3 October 2006.

¹¹ Mr Craig Young, Manager Sales and Services, Horizon Power, *Transcript of Evidence*, 3 October 2006.

¹² Ms Deirdre O' Donnell, Energy Ombudsman, Office of the Energy Ombudsman, *Transcript of Evidence*, 3 October 2006.

¹³ Mrs Lyndsey Fitzgerald, Coordinator, Jacaranda Community Centre Inc., *Transcript of Evidence*, 1 November 2006.

¹⁴ Mr John Berger, General Manager, and Mrs Jessie Kapitola, Coordinator, Regional Emergency Relief Service, Anglicare, *Transcript of Evidence*, 1 November 2006.

2 VERIFIABLE STATISTICS, POVERTY MEASUREMENTS AND FINANCIAL HARDSHIP

- 2.1 The Committee recognised from the outset the importance of reliable data to measure the cause of particular problems and to measure the effects of interventions that may be implemented to alleviate those problems.
- 2.2 The Committee acknowledged the difficulty involved in obtaining reliable data if consistent recording mechanisms are not in place. The Committee also recognised the need for a uniform method of interpreting the data once collected, and referred to the example of relative and absolute poverty, as an ongoing and contested measurement of poverty in Australia.¹⁵
- 2.3 Relative poverty ties the definition of poverty to 50 per cent of median disposable income. Critics of this approach argue that relative poverty merely measures income inequality. Under this method of measurement, substantial wage increases to the already higher salary earners, has the effect of inflating the number of people deemed to be living in poverty.
- 2.4 Absolute poverty exists when people have insufficient means to provide the basic necessities such as accommodation, food and clothing.
- 2.5 The Committee noted that ‘financial hardship’ is the term used by WACOSS, a number of government agencies, and is the term used throughout the utility services industry.
- 2.6 While giving evidence, Ms Kate Mills from WACOSS provided the following definition of financial hardship:

*Financial hardship in the context of utilities refers to the state of financial disadvantage that results in a residential customer being unable to pay an outstanding amount, as required by the retailer, without compromising their ability to meet basic living needs such as food, clothing and accommodation.*¹⁶

- 2.7 Both Synergy and Horizon Power’s Hardship Policies provide the following similar definition of Financial Hardship:

For the purposes of this policy, residential customers who are experiencing ‘Financial Hardship’ are defined as those residential

¹⁵ For opposing views on the most appropriate method for measuring poverty see, Ann Harding, Rachel Lloyd and Harry Greenwell, *Financial Disadvantage in Australia 1990 to 2000: the persistence of poverty in a decade of growth*, the Smith Family, NSW, 2001; Kayoko Tsumori, Peter Saunders and Helen Hughes, ‘Poor Arguments: a response to the Smith Family report on poverty in Australia’, *Issue Analysis*, 21, 16 January, 2002.

¹⁶ Ms Kate Mills, Senior Policy Officer, Western Australian Council of Social Service, *Transcript of Evidence*, 31 May 2006, p2.

customers that are unable to pay the bill without affecting the customer's ability to meet basic living needs (such as rent and food) due to prolonged disadvantage.¹⁷

2.8 The Committee acknowledged that absolute poverty and/or financial hardship are a reality even during times of high economic growth and low levels of employment. The Committee noted that there are a range of complex, and sometimes interrelated factors, that contribute to people experiencing financial hardship. The Committee is of the view that those factors are best tackled by carefully designed social policies which are beyond the remit of its inquiries into this petition.

3 ISSUES RAISED BY THE PRINCIPAL PETITIONER AND TABLING MEMBER

3.1 In their submission to the Committee WACOSS began by referring to the issues of essential services, affordability and disconnection with the following:

Electricity, water and gas are essential services for all Western Australian households, and these services must be accessible and affordable for consumers. Unfortunately, there are many indicators that show a significant proportion of households can not always afford to access these services, and often do at the expense of other vital needs, such as food, rent, medicines, travel, and school costs. Others miss out altogether and are disconnected from supply, resulting in further social detriment.¹⁸

3.2 In her letter to the Committee Hon Dr Sally Talbot MLC submitted three main points for the Committee to consider which were:

- *disconnection from essential services as a result of being unable to pay utility bills is a reality faced by consumers across Australia. Ensuring that every citizen has access to essential services is a challenge for all Governments;*
- *a key determinant in the payment of utility bills is affordability; and*
- *the Committee to review initiatives implemented by other State Governments as a means of improving the provision of essential services in Western Australia.¹⁹*

¹⁷ http://www.synergyenergy.com.au/PDF_Documents/Support_Documents/Synergy_Hardship_Policy.pdf (viewed on 10 September, 2007).

¹⁸ Letter from WACOSS, 19 December 2005, p2.

¹⁹ Letter from Hon Sally Talbot MLC, 22 December 2005, pp1-2.

- 3.3 Dr Talbot stated that “*the Victorian Government has prohibited the charging of late payment fees by gas and electricity companies to household and small business customers*”.²⁰
- 3.4 WACOSS referred to compromised access to essential services and cited Energy Ombudsman statistics in relation to complaints as an example. However WACOSS appears to have overstated the number of people facing hardship from that particular example.
- 3.5 In response to WACOSS’s submission, the Energy Ombudsman provided the following:

*In the third paragraph of its submission WACOSS refers to Energy Ombudsman statistics for October and November 2005 which show 63 percent of complaints related to billing. Although the percentage quoted is correct, WACOSS then infers that all these complaints relate to inability to pay but this is not the case. Of the 63 percent, only 11 percent or 9 complaints related to actual disconnections and 8 percent or 6 complaints were classified as difficulty in payment. A third of all billing complaints were about disputed bills. Given the low number of complaints I think it would not be justified to rely on these figures as an indicator of the general level of utility consumer hardship in the community. However, information from other sources, including WACOSS itself, may assist in quantifying the general level of hardship.*²¹

- 3.6 WACOSS also provided another indicator of hardship with the following:

Information provided to WACOSS by Western Power in August 2005 indicates that under the Hardship Policy Western Power have assessed:

- *13,168 customers as experiencing ‘payment difficulty’; and*
- *605 customers as being in ‘financial hardship’.*²²

- 3.7 WACOSS provided information about emergency relief agencies payments to utilities to prevent disconnection of services. The main findings provided by WACOSS as of December 2005 were:

²⁰ *Ibid*, p2.

²¹ Letter from Ms Deirdre O’ Donnell, Energy Ombudsman, 26 April 2006, p1.

²² Letter from WACOSS, 19 December 2005, p2.

- *in the past twelve months Emergency Relief (ER) agencies have paid approximately \$1.34 million to the utility services providers to prevent disconnection or restriction of supply to low-income and disadvantaged consumers, which is an increase of \$108,000 each year since 1998;*
- *of the agencies surveyed, 81% of them advised that up to half of their clients were having difficulty paying their utilities bills, they had to turn away 217 others requiring assistance because the agency's funding ran out.*²³

3.8 While giving evidence, WACOSS informed the Committee that it had commenced the consumer utilities project in March 2005, with funding through the Department of Consumer and Employment Protection. The consumer utilities project was established to work with consumers directly and with representative organisations to achieve better outcomes in the provision of essential services.

3.9 The Committee was mindful of the need to avoid any overlap or duplication with WACOSS as the following exchange during the initial hearing in May 2006 demonstrates:

***Hon BRUCE DONALDSON:** If the committee were to pursue this inquiry, what role do you see the committee playing? I noticed in the budget on page 44 of that first number 1, the utilities project advocacy. It says that the government has funded WACOSS to the amount of \$200 000 to establish a utility consumers policy project. Is there any likelihood we would be perhaps duplicating your efforts? I want to understand exactly our role in this?*

***Ms Mills:** With regard to funding for our project, we see WACOSS's role in terms of consumer representation and advocacy. That is one role in the whole process of utility reform. There are a number of key players within government. Perhaps one of the things that we have identified over the past 12 months or so that we have been operating the project is that there are at times policy vacuums or, as the chairperson pointed out earlier, the difference between the way the Essential Services Commission in Victoria may operate compared to our Economic Regulation Authority means that the social issues, and the issues that we are particularly raising here today about financial hardship, might not be picked up by Parliaments or government. It is*

²³ *Ibid*, p2.

*about putting these policy issues on the agenda and increasing their prominence.*²⁴

- 3.10 The Committee noted that WACOSS secured another \$510,000 over three years to continue the consumer utilities project. This amounts to \$170,000 each year commencing in the 2006-07 budget.²⁵
- 3.11 WACOSS has direct access to the issues of low income and disadvantaged consumers through regular and ongoing contact with the community services sector. During the hearing Ms Cattalini provided the following information about the project:

*We operate a telephone hotline, training delivery programs and a consumer reference group that includes representatives from the emergency relief sector, unions, financial counsellors and community legal centres. These agencies provide us with policy information and direction in relation to our work and look to us to represent the issues of their clients on utility issues.*²⁶

- 3.12 Ms Mills provided the following comments about financial hardship:

*There are two key aspects of financial hardship in a context of utilities: one stems from general social hardship related to the cost of living, the impacts of poverty, living with a disability, low income and/or distinct types of disadvantage. The other is related to the behaviour, policy and consumer protection regulation of utilities, which can have a direct impact on utility hardship. For, example, credit management practices can directly impact on debt spiral and put people into financial hardship.*²⁷

- 3.13 Ms Mills went on to state that:

To date no comprehensive analysis has been undertaken in Western Australia regarding the incidence of hardship caused by the action of utilities. However, information is available, both anecdotal and statistical, that indicates a significant proportion of Western Australians struggle to pay for essential services and are

²⁴ Ms Kate Mills and Ms Irina Cattalini, Senior Policy Officers, WACOSS, *Transcript of Evidence*, 31 May 2006, pp4–5.

²⁵ Budget Statements, 2006-07 Budget Paper No 2 Vol 1, presented to the Legislative Assembly on 11 May 2006, p179.

²⁶ Ms Kate Mills and Ms Irina Cattalini, Senior Policy Officers, WACOSS, *Transcript of Evidence*, 31 May 2006, p1.

²⁷ *Ibid.*

*detrimentally impacted on when they are unable to pay; for example, by restrictions, disconnections and late payment penalties.*²⁸

- 3.14 WACOSS encouraged a closer examination of the gaps regarding utility hardship policy in Western Australia, and stated that significant progress has been made on these issues in other states and overseas. Ms Mills continued:

*For example, Victoria is addressing these policy issues via the Committee of Inquiry into the Financial Hardship of Energy Consumers; the New South Wales government has established the Interagency Working Group to review the programs of energy retailers to assist households that are having trouble paying their electricity bills; and the UK has developed programs to address fuel poverty and a UK-connect policy that aims to prevent disconnection from water supply.*²⁹

4 MINISTERIAL RESPONSES TO THE PETITION

- 4.1 The Committee wrote to the Minister for Energy, Hon Francis Logan MLA, for comment on the petition and the submission from WACOSS.

- 4.2 The Minister for Energy acknowledged that the average cost of residential electricity bills has risen in the past ten years, but then goes on to say that electricity tariffs have remained unchanged over that period. He made the point that “*increased electricity bills can generally be attributed to increased levels of consumption as a result of consumers choosing to install energy intensive air conditioners and other electrical goods*”.³⁰

- 4.3 The Minister for Energy continued:

I am supportive of the Committee examining initiatives implemented by other State Governments and overseas as a means of dealing with utility debt in Western Australia. An example of work already being done in this area is in Aboriginal communities that are currently trialling the use of pre-payment electricity meters. Pre-paid meters are beneficial to consumers facing financial hardship as they provide an alternative to large, infrequent utility bills and can assist consumers to budget for their electricity usage. In trials in other Australian States pre-paid metering has also led to an increased

²⁸ *Ibid*, p2.

²⁹ Ms Kate Mills and Ms Irina Cattalini, Senior Policy Officers, WACOSS, *Transcript of Evidence*, 31 May 2006, p2.

³⁰ Letter from Hon Francis Logan MLA, Minister for Energy, 1 May 2006, p1.

*awareness of consumption and a decrease in electricity use and costs.*³¹

- 4.4 The Minister for Energy provided the following comment in relation to an assessment of the issues by the Committee:

*In the submission of the principal petitioner it is suggested that the policies and practises of Western Australian utilities, Government departments and agencies that impact on consumer hardship are assessed. I would propose that this assessment is completed in partnership with the relevant agencies to ensure that any recommendations made will not unduly impact on other priorities of Government.*³²

- 4.5 On 15 June 2007, the Committee received another letter from the Minister for Energy which provided information about the Government Utilities Essential Service Hardship Roundtable. The letter began:

*As you may be aware, with the cooperation of relevant Ministerial colleagues, I have initiated through the Office of Energy a Government Utilities Essential Service Hardship Roundtable. It will comprise senior representatives of the Office of Energy, Department of Community Development, Department of Housing and Works, Water Corporation, Synergy, Horizon Power, the Department of Premier and Cabinet and Department of Treasury and Finance. Mr Rolando Custodio, Director-Industry and Community of the Office of Energy will Chair the Roundtable.*³³

*The Roundtable is to report to Government on ways in which essential service utilities, welfare agencies and Government agencies can further improve the delivery and coordination of essential services to the community's most financially and socially disadvantaged families.*³⁴

- 4.6 The Committee noted the Minister for Energy's comments about the need for any assessment to be conducted "in partnership with the relevant agencies" and the Minister's subsequent action of establishing the Government Utilities Essential Service Hardship Roundtable.

³¹ *Ibid.*

³² *Ibid*, p2.

³³ Letter from Hon Francis Logan MLA, Minister for Energy, 15 June 2007, p1.

³⁴ *Ibid.*

- 4.7 The Committee also noted that the Government Utilities Essential Service Hardship Roundtable is now referred to as the Interagency Working Group.

Committee Findings

Finding 1

The Committee believes that the tabling of the petition in the Legislative Council, raised awareness within Government of Consumer Utility Hardship as an issue requiring a concerted policy response, and that the Committees inquiries into the petition helped influence the Minister for Energy's decision to establish the Interagency Working Group.

- 4.8 The Minister for Water Resources, Hon John Kobelke MLA, provided the Committee with a response from the Water Corporation to WACOSS's submission.³⁵ The response to the submission outlines how the Water Corporation provides assistance to customers who are experiencing difficulties paying their accounts.³⁶ It also details the Water Corporation's debt recovery process.

- 4.9 The then Minister for Consumer Protection, Hon Michelle Roberts MLA, informed the Committee that:

I am advised by the Department of Consumer and Employment Protection (Consumer Protection) that as utility services have historically been provided by government agencies, the State Ombudsman has dealt with utility complaints, including billing issues. As a result, Consumer Protection has not undertaken research into utility hardship issues.³⁷

- 4.10 The then Minister for Consumer Protection continued by outlining some practical initiatives undertaken by the Department of Consumer Protection:

Consumer Protection has worked collaboratively to enable WACOSS to develop the capacity to assist consumers with utility hardship, specifically to:

- *provide advice to consumers about how to address utility hardship, such as providing details about the Energy Ombudsman Scheme in relation to gas and electricity*

³⁵ Letter from Hon John Kobelke MLA, 5 May 2006.

³⁶ *Ibid*, the attached response is titled "Water Corporation Response to WACOSS Submission to the Standing Committee on Environment and Public Affairs", April 2006.

³⁷ Letter from Hon Michelle Roberts MLA, Minister for Consumer Protection, 19 April 2006, p1.

disputes and the Department of Water in relation to complaints against water service providers;

- *train staff of non-government organisations throughout Western Australia that provide advocacy services about the mechanisms to address utility hardship; and*
- *represent consumers in government consultative forums regarding utilities, such as during the establishment of the Energy Ombudsman scheme.*³⁸

4.11 The then Minister for Consumer Protection also stated that the Department of Consumer Protection provided direct input into the establishment of consumer protection mechanisms during the reforms of the gas and electricity industries and is an active participant in proposals to establish a Water Industry Ombudsman.

4.12 Finally, the then Minister for Consumer Protection stated that the Department provides direct representation on the Economic Regulation Authority's Consumer Consultative Committee.³⁹

5 REFORM AND REGULATORY FRAMEWORK IN WA

5.1 In January 2003, the WA Government commenced reforming the State's electricity industry. The intention was to create a competitive electricity market to encourage private sector investment, improve reliability of supply and place downward pressure on prices.

5.2 The key components of that program include:

- the restructure of Western Power into four Government owned entities;
- the establishment of a wholesale electricity market;
- the development of a strong and independent regulatory framework including measures to protect smaller customers in the new market;
- reduction in the contestability threshold to 50 megawatt hours; and
- the facilitation of sustainable energy options.⁴⁰

5.3 The *Electricity Corporation Act 1994*⁴¹ established a corporation with the function of supplying electricity, and with functions necessary for and related to that purpose;

³⁸ *Ibid*, p2.

³⁹ *Ibid*.

⁴⁰ <http://www.eri.energy.wa.gov.au/> (viewed on 17 May 2007).

made provision for access to the corporation's transmission and distribution systems; and established how new generation will be sought by the corporation.

5.4 The *Electricity Act 1945*⁴² made provision as to the examination and licensing of persons in respect of their competency to carry out works relating to electricity, and the examination, prohibition or approval of electrical appliances; repealed the *Electricity Act 1937*⁴³; and for other relative purposes.

5.5 The *Electricity Industry Act 2004*⁴⁴ governs the operation and regulation of the Western Australian electricity industry and:

- *establishes an independent licensing regime;*
- *provides for the development of an Electricity Networks Access Code;*
- *grants the heads of power to develop measures to protect customers in the new market such as the Customer Service Code, Electricity Ombudsman and standard customer contracts;*
- *confers a number of electricity related functions upon the Economic Regulation Authority, which include responsibility for the licensing and access regime, providing advice to Government on electricity tariffs, and electricity market surveillance; and*
- *provides for the establishment of a Western Power Network extension and expansion policy.*⁴⁵

5.6 The Code of Conduct for the Supply of Electricity to Small Use Customers (**Code of Conduct**)⁴⁶ was approved by the then Minister for Energy on 31 December 2004. The Code of Conduct was developed in collaboration with the Electricity Reform Consumer Forum.

5.7 The Code of Conduct regulates and controls the conduct of retailers, distributors, and electricity marketing agents.

⁴¹ Act No 86 of 1994.

⁴² Act No 19 of 1945.

⁴³ Act No 45 of 1937.

⁴⁴ Act No 5 of 2004.

⁴⁵ http://www.energy.wa.gov.au/2/3198/64/electricity_leg.pm (viewed on 26 April 2007).

⁴⁶ Proclamation, *Government Gazette*, No 253 (Special), 31 December 2004, pp7173-7212.

- 5.8 It is intended to protect the interests of customers who generally have little or no market power. For that reason, the Code of Conduct only applies to customers who consume no more than 160 megawatt hours of electricity per annum (which equals an annual electricity bill of \$28,000).
- 5.9 Matters addressed under the Code of Conduct include electricity marketing, billing, connection, payment difficulties and financial hardship, disconnection, reconnection, pre-payment meters in remote communities, information and communication, customer service charters, dispute resolution, record keeping and compensation payments to customers for breaches of the Code of Conduct.⁴⁷
- 5.10 The Economic Regulation Authority (**Authority**) was established as the independent economic regulator for WA on 1 January 2004 under the *Economic Regulation Authority Act 2003*.⁴⁸ The Authority oversees regulation and licensing in the State for the gas, electricity, water and rail industries and undertakes inquiries into matters referred to it by the State Government.
- 5.11 The Committee noted that the Authority is independent of both industry and Government, and is not subject to State or Ministerial direction in relation to regulatory functions.
- 5.12 One of the Authority's functions is to monitor, enforce, amend and replace the Code of Conduct. It is also required to conduct a review of the Code of Conduct as soon as practicable after (a) the first anniversary of its commencement; and (b) the expiry of each 2 yearly interval after that anniversary.⁴⁹
- 5.13 In August 2006 the Authority established the Electricity Code Consultative Committee (**ECCC**) to advise it on industry issues and to review the Code of Conduct. The inaugural membership of the ECCC was announced on 1 September 2006 and included representatives from the utilities industry, WACOSS, the Office of Energy, Chamber of Commerce and Industry, Consumer Credit Legal Service and the Department of Consumer and Employment Protection.
- 5.14 A copy of the ECCC report to the Authority and a draft of the proposed changes to the Code of Conduct were readily available from the Authority's website.⁵⁰ The Code of Conduct was gazetted on 8 January 2008,⁵¹ and following several minor amendments the current Code of Conduct was gazetted on 26 February 2008.

⁴⁷ <http://www.eri.energy.wa.gov.au/3/3087/3073/codes.pm> (viewed on 17 May 2007).

⁴⁸ Act No 67 of 2003.

⁴⁹ Part 6 of the *Electricity Industry Act 2004*.

⁵⁰ http://www.era.wa.gov.au/3/423/51/code_of_conduct.pm (viewed on 17 May 2007).

⁵¹ Proclamation, *Government Gazette*, No 4, Perth, 8 January 2008, pp43–76.

6 EVIDENCE FROM THE MAIN UTILITIES IN WA

- 6.1 The Committee noted the petitioners' request for the Legislative Council to assess the extent of utility hardship in Western Australia.
- 6.2 The Committee wrote to the Water Corporation, Alinta, Synergy and Horizon Power seeking information about the existence of 'financial hardship data', and the number of disconnections, in order to compile some evidence about the 'extent' of the utility hardship problem in WA.
- 6.3 The Committee received responses from the utilities and noted the following from the Water Corporation which stated that:

The Water Corporation does not have an official procedure to assess customers who are having difficulty paying their account. However, it does, on an individual basis, provide flexible and tailored options for customers to pay their account over an extended period.⁵²

- 6.4 The Committee acknowledged the Water Corporation's particular debt recovery practices, and the fact that it cannot disconnect water supply because of health reasons. It can however restrict water flow and both these issues are demonstrated in the following exchange between Hon Louise Pratt MLC, the then Chair of the Committee, and Mr Peter Andersen from the Water Corporation in September 2006.

CHAIR: *Do you have any information on how the Water Corporation manages these issues in comparison with other utilities, in a general sense?*

Mr Andersen: *Generally, I think we are much more flexible. Our recovery policy, as outlined in the documents sent back to the committee, is that we will send out an account with "30 days". Fourteen days after that we may send a reminder. After that, for normal owner-occupied properties, we will send a warning of restriction notice. If that is ignored, we will send an intention to restrict notice after another 14 days. If that does not get the customer to engage with us, we will actually do a property visit. We will have one of our people go out there, knock on the door and say, "Look, Paul, you haven't paid your account. Is there some reason you haven't paid your account? We can put you into a payment arrangement. Let's do that now and we can avoid restriction." If the customer is not home, we leave a card attached to his front door, inviting him to call our call centre. Only after all those measures are taken will we restrict a person. I would like to point out that we do*

⁵² Letter from Dr Jim Gill, Chief Executive Officer, Water Corporation, 20 September 2006, p1.

*not disconnect customers. We restrict their water flow to 2.3 litres per minute, which is enough for boiling the kettle, running a bath or flushing the toilet, but obviously it causes inconvenience. What that does is get people on the phone straightaway, and they say, "Okay; I'm prepared to make a payment arrangement now." It gets us talking to the customer.*⁵³

Committee findings

Finding 2

The Committee finds that restricting water supply does amount to an inconvenience to the consumer but that it appears to be an effective method for ensuring dialogue commences between the consumer and the Water Corporation. The Committee noted that a similar capacity for restricting supply is not readily available to the electricity and gas utilities.

- 6.5 The electricity utilities are required to have a hardship policy under the legislated 'Code of Conduct', yet the other utilities do not.
- 6.6 Following the deregulation of the Gas Industry in May 2004 a number of customer protection mechanisms have been developed, including the Gas Industry Ombudsman, the Gas Marketing Code of Conduct and the Regulations for Customer Contracts.
- 6.7 The following is an extract from the opening comments by Mr Donald MacKenzie of Alinta to the Committee on 27 September 2006:

*In terms of the number of complaints we get per month about customer bills and things like that, you should realise that each day we send out about 9 000 bills or customer accounts, and we are probably getting about six or seven complaints a month as a consequence of that.*⁵⁴

- 6.8 The Committee noted, during its preliminary enquiries, the need for utilities to have good practices that encourage consumers to report financial difficulty as early as possible.
- 6.9 The Committee wished to highlight the response by Mr MacKenzie, to the question by the then Chair, Hon Louise Pratt MLC, because it demonstrates the difficulties utilities have in separating the genuine 'hardship' cases, from those who for whatever reason do not want to pay:

⁵³ Mr Peter Andersen, Receivables and Business Support Manager, Water Corporation, *Transcript of Evidence*, 27 September 2006, p2.

⁵⁴ Mr Donald MacKenzie, General Manager, Energy Markets, Alinta Limited, *Transcript of Evidence*, 27 September 2006, p1.

CHAIR: Thank you very much. I will begin with some opening questions and the committee will follow with other lines of inquiry. Clearly utilities rely on customers contacting them to inform them about difficulties with making payments. What measures has your utility put in place to create an engaging and respectful environment that encourages customers to report financial difficulties at the earliest possible stage?

Mr MacKenzie: I think that is an area where we recognise we could probably improve. A lot of the steps we are taking in terms of our business process improvement are working through what we term customer life cycles, so we try to engage with the customers at an early point. To my mind there are different types of customers. There are those who are genuine "can't pay" and there are the "won't pay". For us, one of the major difficulties is trying to sift through the "won't pay" to get to the "can't pay" so that we can guide the "can't pay" towards those who are actually in a strong position to help them. Utilities traditionally are only about 2 per cent or 3 per cent of customers' outstanding accounts. They may owe \$10 000, but they owe us \$200. We do not believe we can help them on our own. We try to engage with the customer and get them through to financial counsellors as soon as possible because that is really where the problem begins and ends.⁵⁵

6.10 The following exchange provides more information about the difficulty of identifying 'hardship' cases and also raises the issue of disconnections:

Hon KATE DOUST: I come back to Hon Bruce Donaldson's question about disconnections. Is it possible to get a breakdown on those figures, to distinguish between the disconnections related to cases of hardship, and those related to people who simply would not pay?

Mr MacKenzie: I wish it was that easy, but how do you actually find that out?

Hon KATE DOUST: For those with hardship, would you not have some sort of record of system of payment that would demonstrate that it was a hardship situation, rather than simply a total refusal to pay? Do you keep those sorts of records?

Mr MacKenzie: People who go on payment plans very rarely get disconnected. It is not that common, because they are the people who

⁵⁵ Ibid, p2.

choose to engage with you and work with you. If we can actually engage with a customer, then the chances of that leading to a disconnection drop dramatically. That is one of the things we are trying to do, going forward - to recognise the fact that we need to engage with the customer more closely. From a cultural perspective, we come from a state government background, where we treated customers with the "one size fits all" mentality. We are trying to change culturally to become a retailer, but we are also trying to treat customers more and more as individuals. The only way for us to do that is to start to engage customers and call people up and say, "Kate, you haven't paid your bill. What is wrong; what can we do to help you? Are you aware of the payment options we have? You owe us \$250 now, but we can roll that over 12 months as a payment plan. You will be able to budget for it. You will not get a big winter bill any more, because it will be smoothed over the course of a year. Can we work with you?" Once we open up that conversation, we are more likely to get a situation that the customer and us will both find satisfactory.

Hon KATE DOUST: *Based on these figures, would it be your view that the bulk of these disconnections would in fact be the won't pays? If you are saying that those in hardship tend to go down the path of a payment plan, and do not actually get disconnected -*

Mr MacKenzie: *Can I take that on notice as well, please?*

Hon KATE DOUST: *I am just interested in seeing what the number breakdown is for this.*

Mr MacKenzie: *I am personally not close enough to that, but it will be largely anecdotal, rather than any hard statistic, because, ultimately, the people who can probably answer that best are people like WACOSS and others, who actually deal with that segment of society on a more regular basis, and have more exposure to all the financial details.⁵⁶*

- 6.11 Alinta provided the Committee with information following the hearing and confirmed that the reconnection fee is \$40 and that during the first nine months of 2006, 6,775 customers were charged that fee.⁵⁷
- 6.12 Alinta provided the following table showing customer payment methods as at October 2006:⁵⁸

⁵⁶ *Ibid*, pp3-4.

Payment Method	Number
Direct Debit and Bill Smoothing	21,000
Centrepay Deduction Authority	5,000
Australia Post	200,000
BPay and Credit Card	286,000
Other	38,000

- 6.13 Alinta provided further information about disconnections and stated that around 2,200 customers each year do not or cannot adhere to the payment plans offered and disconnection is carried out as a last resort.
- 6.14 Alinta confirmed that 99 per cent of disconnections are of residential properties and gave a percentage breakdown of the top ten suburbs in metropolitan Perth.⁵⁹
- 6.15 The Committee noted with interest the capacity for some utilities to establish good practices of recognising and separating the ‘financial hardship’ cases from the recalcitrant late-payers. The Committee also noted that Synergy seems to be well advanced in recording that data which could greatly assist in documenting future trends.
- 6.16 The following exchange highlights Synergy’s recent efforts to separate those experiencing payment difficulties (**PD**) and those in a more long-term state of financial hardship (**FH**). It also demonstrates the capacity to record that data.

***The CHAIR:** In the data you have provided to us you have referred to the number of people experiencing difficulty paying their bill and to the number of disconnections. Is your utility able to separate people experiencing genuine hardship from those who simply do not pay? I think you provided us with the numbers for hardship versus those who do not pay. Can you explain how you make that separation? How do you define those who are in hardship versus those who simply will not pay?*

⁵⁷ Letter from Mr Donald MacKenzie, General Manager Alinta AGL, 27 October 2007, p1.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

Mr Butler: *That is one of the big problems we face every day when someone rings up. It is separating those who are not going to pay and do not want to pay from those who are having difficulties and who need help. Since the introduction of the code of conduct with ourselves and our contact centre of 90-odd staff, customers will say that they cannot pay and the staff have a number of guidelines. It may be a short-term problem where we would class someone as having a payment difficulty or it may be a longer-term problem. They would be classed as having financial hardship. We established codes, which we have been recording into our computer database. It goes back about 12 months, but really only from April, when the contact centre restarted using the codes in a lot more detail. We have identified those with payment difficulty. Prior to that, we could not separate them.*⁶⁰

Mr McGinnity: *I will add to that little bit. On page 4 we talk about the number of customers disconnected through payment difficulty or financial hardship. The people who put this together have linked all that together and there is a clear distinction between what we call financial hardship - those are long-term customers who never really get out of that spiral. I think we could probably drill that down further and split the payment difficulty and the financial hardship cases. That has being linked and I know we could do it. It states there that there were about 3 000 customers disconnected in those PD and FH categories. There are about 500 cases under financial hardship. Many of our customers might not contact us. Once they are disconnected, they do contact us. We may assess them as financial hardship there and then. They were not assessed as financial hardship prior to disconnection. I think that needs to be spelt out.*⁶¹

- 6.17 The issue of disconnection and re-connection fees also came up during the hearing with Synergy's representatives:

Hon BRUCE DONALDSON: *I notice in the figure on page 4 that the number of disconnections has more than doubled to 1 January. What is the reconnection fee?*

Mr McGinnity: *It is \$27.50. The code of conduct came in in January 2005. I think it took quite a few months to train people to assess*

⁶⁰ Mr Craig Butler, Coordinator Credit Management, Synergy, *Transcript of Evidence*, 3 October 2006, p2.

⁶¹ Mr Graham McGinnity, Manager Revenue Services, Synergy, *Transcript of Evidence*, 3 October 2006, p2.

customers correctly. You will probably find that it will increase again this year because we have got better at our assessments. The more that are assessed, the more the numbers will go up. Financial hardship was at this level in January 2005 - a lower level - and there is a lot more emphasis on it now.

The CHAIR: You have been really good at documenting the PD and FH customers. What proportion of disconnections do they represent compared with connections overall?

Mr McGinnity: I would say one per cent of PD and FH customers would be disconnected.

The CHAIR: What proportion are they of your overall number of disconnections?

Mr Gaspar: Do you want us to take that question on notice?

The CHAIR: Yes. We are interested to know.⁶²

6.18 Mr Craig Young of Horizon Power informed the Committee that Horizon uses some of the infrastructure from both Synergy and Western Power.

6.19 The Committee noted that Horizon would be prepared to report the number of people experiencing 'financial hardship' on a regular basis:

Hon PAUL LLEWELLYN: Can I get this straight: Synergy is providing your credit management services and so on?

Mr Young: That is correct.

Hon PAUL LLEWELLYN: What other services is it providing?

Mr Young: We have approximately 230 employees and when the structure was set up there were a number of areas in which there was a view to economy of scale in utilising the existing infrastructure. Metering services are provided by Western Power, but our contact centre is Synergy's contact centre. We utilise that contact centre. If one of our customers walks into a regional centre in Karratha, for argument's sake, a business services officer there can talk and interact with that customer and provide a personalised service. However, in terms of drilling down on a number of issues, whether it be credit or an inquiry of similar context, it goes through to the contact centre and/or the credit management centre by phone.

Hon PAUL LLEWELLYN: *So if there was some kind of centralised information system to record utility hardship, it would be possible for you to put information into that system because you are using Synergy's arrangement?*

Mr Young: *Yes, it would be possible. We have to take a look at any relevant legislation with respect to ring fencing and so forth. I am not suggesting there is anything that would get in the way of that, because it sounds like a good initiative, but we would have to take into account ring fencing.*

Hon PAUL LLEWELLYN: *The logic is that there are quite a number of utilities - gas, water, electricity, and, to some extent, telecommunications. People experience hardship across those utilities and to get some sense of the level of hardship the company would want to be able to pull the information together.*

Mr Young: *It would be a data pull of some description.*

Hon PAUL LLEWELLYN: *Yes, so it would contribute to a good understanding of how hardship is working and how to resolve it so that one utility is not pulling against the interests of another utility.*

Mr Young: *From a practical perspective, yes. In terms of the way we are structured at this juncture, that could certainly be looked at. As I say, we would have to look at all relevant legislation and so forth to make sure it fits.⁶³*

- 6.20 The Committee noted that only Alinta appear to oppose some form of centralised recording system, which was stated during the following exchange.

Hon PAUL LLEWELLYN: *You have said that you are redesigning your process for assessment in dealing with hardship and one of the problems of utility hardship is the difficulty of quantifying the extent across the community. Would Alinta support a more centralised reporting system that requires each utility to record the number of people experiencing financial hardship, geological location and the number of disconnections to a state database so there is a coordinated approach to it?*

⁶² *Ibid.*

⁶³ Mr Craig Young, Manager Sales and Service, Horizon Power, *Transcript of Evidence*, 3 October 2006, p5.

Mr MacKenzie: We are fundamentally opposed to that. We would be better off using the amount of effort required to do that to help those in genuine need. Monitoring is useful in that whatever we measure, we manage. We are happy to provide details of disconnections and a breakdown of where they are but to actually understand each individual circumstance and why they were disconnected is beyond the scope of what we can do. Making assessments of who is in genuine hardship and who is not is fundamentally very difficult. We are not in a position to do that. I am not even sure that the government is in a position to do that. There are initiatives around which try to get to those in need. It is how we get to those in need that is certainly the challenge. We are happy to play a part in that. I am sceptical about whether central government agencies necessarily achieve that objective. Ultimately the people who are best placed to do that are the agencies on the ground that deal with customers face to face.⁶⁴

- 6.21 Alinta, Synergy and Horizon Power do maintain records (**data**) of the number of disconnections, but their written responses to the Committee, indicate that there is no uniform standard.

Committee Findings

Finding 3

The Committee believes that the utilities should be encouraged to maintain financial hardship and disconnections data to the same uniform standard. The Committee believes that maintaining such data should not be onerous or time consuming.

7 EVIDENCE FROM THE ENERGY OMBUDSMAN

- 7.1 The Committee heard evidence from the then Energy Ombudsman, Ms Deirdre O'Donnell, who provided the following information in her opening statement.

Ms O'Donnell: As Energy Ombudsman I am very pleased to have the opportunity to talk about the important issue of hardship. We have almost finished our first full year of taking electricity complaints. In the period 22 September 2005 to the end of the financial year, we received 543 complaints about electricity. That is the first bunch of data I have that is really useful. The committee would be aware from statistics provided earlier by the Western Australian Council of Social Service that the proportion of complaints that the Energy Ombudsman

⁶⁴ Mr Donald MacKenzie, General Manager, Energy Markets, Alinta Limited, *Transcript of Evidence*, 27 September 2006, p7.

*receives relating to billing matters is reasonably high. Over the past nine or 10 months of operation it was 57 per cent. That figure is consistent with those provided by all other ombudsmen in the eastern states, whether they be telecommunications or energy ombudsmen. Two-thirds of the complaints industry ombudsmen receive are about billing. Western Australia is performing in accordance with the rest of the country. It is always of interest to see how we are tracking. In that reporting period, of the 543 complaints about electricity, 31 related to disconnections. That was 10 per cent of the billing issues, a small part of the overall picture.*⁶⁵

- 7.2 The Committee noted with much interest the good working relationship between the Energy Ombudsman, the utilities and the peak consumer organisations. The Committee also recognised that the Ombudsman had only been in this particular role for one year at the time of the hearing as at October 2006.

- 7.3 Ms O'Donnell stated:

*As Energy Ombudsman I do not yet have a sense of or concerns about hardship-related matters in a consumer protection sense. Because I am an important part of the consumer protection framework, it is very high on my radar and it is really important that I monitor that. To that end, in the first year of our operations as electricity ombudsman, talking about electricity complaints, we have worked hard with both the peak consumer organisations and the energy suppliers to put our expectations on the table and ensure that the standards that apply in the eastern states under the energy ombudsmen there are known to the Western Australian players and are seen as best practice industry benchmarks. At this stage of my operations as Energy Ombudsman, I am optimistic but I think it will be another year before I am able to give the committee a better indication of hardship, based on data. Although the issue of disconnection may affect a very small proportion of the people who complain to me, it is obviously the most significant detrimental outcome that can occur to a consumer in a billing dispute with a service provider, and for that reason those issues receive very high attention from my staff.*⁶⁶

⁶⁵ Ms Deirdre O'Donnell, Energy Ombudsman, Office of the Energy Ombudsman, *Transcript of Evidence*, 3 October 2006, p1.

⁶⁶ *Ibid.*

7.4 The Committee noted that the Authority published the first quantitative disconnections figures for WA in April 2007.⁶⁷

7.5 The data covered the 2005/06 year and the Annual Report stated that:

... the proportion of customers who were disconnected for failure to pay a bill varied between 1.13% (Synergy and Western Power combined) and 2.71% (Horizon) with an average across the State of 1.16%.⁶⁸

7.6 The Committee noted that for the 2005/06 year, WA had the highest number of disconnections per 100 residential and non-residential customers across five states of Australia. WA was closely followed by South Australia on 1.13 per cent, New South Wales on 0.86 per cent, Tasmania on 0.51 per cent and Victoria had the lowest number with 0.22 per cent.⁶⁹

7.7 The Authority published the second set of disconnection figures for the 2006/07 year in January 2008.⁷⁰ The Committee noted the difficulty in identifying specific trends between the two reported years at this early stage in data collection for WA. That difficulty is highlighted with the following comment by the Authority in the 2006/07 Annual Performance Report:

It is not possible in this report to compare the Code of Conduct performance data for 2005/06 with the 2006/07 data because the 2005/06 data for Synergy and Horizon Power (the successor entities to Western Power Corporation) only covers the 3 months to 30 June, whereas the 2006/07 data covers 12 months. The 2005/06 data has been retained to provide a point of reference for the 2006/07 data and to provide a breakdown of the whole of State data for some performance indicators. The 2007/08 report will exclude the 2005/06 data set for individual retailers, but it will retain the whole of State data where relevant.⁷¹

7.8 The Committee acknowledged that for the year 2006/07 WA again had the highest number of disconnections per 100 residential customers across five states of Australia. WA recorded 0.97 per cent and was followed by New South Wales on 0.87 per cent,

⁶⁷ Economic Regulation Authority, *2005/06 Annual Report – Code of Conduct (For the Supply of Electricity to Small Use Customers)*, Perth, April 2007.

⁶⁸ *Ibid*, p5.

⁶⁹ *Ibid*, p6.

⁷⁰ Economic Regulation Authority, *2006/07 Annual Performance Report – Electricity Retailers*, Perth, January 2008.

⁷¹ *Ibid*, p3.

South Australia on 0.76 per cent, Tasmania on 0.47 per cent and Victoria on 0.33 per cent.⁷²

Committee Findings

Finding 4

The Committee believes that the recent practice of the Economic Regulation Authority to maintain and record disconnection rates for WA is an important initiative that will identify higher or lower trends in disconnection rates. The Committee believes that the continued publication of annual data (statistics) should provide incentives for all stakeholders to keep the number of disconnections as low as is reasonably practical.

7.9 The Committee noted with particular interest Ms O'Donnell's views on the need for 'flexible payment arrangements':

Ms O'Donnell: It is fundamental that a scheme for flexible payment arrangements is available. That is something we have already had a lot of discussions with in respect of Synergy. I cannot emphasise often enough the importance of flexible payment arrangements. I know that there are many advocates within Synergy of that same method of doing business; namely, get the money in small doses regularly, make sure the arrangements are flexible and make sure they are focused on the customer and not on credit management debt recovery objectives, which can become very cruel and heartless. In New South Wales they also put as a very important principle that consumers must be protected from disconnection and debt recovery action when they are in a hardship program. I think that is a very good principle because if people are going through a hardship program due to a range of other factors in their lives, my staff will see that. It is issues with electricity; it is issues with water; it is issues with telecommunications. It is part of a continuum and they escalate. Once someone is in a hardship program within an energy company, they need to be protected from disconnection or debt recovery until they re-establish themselves.

The CHAIR: Do you have a mandate as Ombudsman to drive policy in that area?

Ms O'Donnell: No, but what the ombudsman can do here and what ombudsmen do in the other states is, as I said, through business intelligence and through commentary on key issues with our consumer protection mandate, to make sure that the focus of the

⁷² *Ibid*, p5.

companies is on those issues. In the past year most of my discussions with the energy providers have been around credit management practices, good clear billing information and flexible payment arrangements. That is what I did as telecommunications industry ombudsman and that is what I would imagine the next ombudsman after me will do. Those three planks do not just go away. It is part of our core business to constantly keep their attention on those sorts of issues and to set standards by forming views, as I have done, for putting best practice statements out there. That can help influence policy, but we do not make it.

- 7.10 The then Energy Ombudsman spoke about the pre-emptive work of the Committee and then on the need to establish ‘best practice’.

Ms O’Donnell: *Yes, and that is what we are looking for. The focus of the committee on that pre-emptive work is an excellent investment for WA. The more these issues are on the table and the more the suppliers know that we are looking at their performance, the better our chance of getting good customer service.*

The CHAIR: *We have heard evidence from a number of energy companies and they seem to have a varied approach to the way in which they deal with hardship issues. Synergy has a well-developed framework and that of other companies is varied. Do you have any insights on how you, as Ombudsman, tackle this issue and how we as a parliamentary committee might examine it? How do you bring everybody’s policy up to standard? What levers do we need to bring up to a high-quality benchmark across the board the capacity of these companies to respond to these issues?*

Ms O’Donnell: *A considered view by the committee on what would be best practice, based on what you observe in other states, would be very powerful. Having regard to parliamentarians in the east and the sorts of issues that have been brought to their attention, it seems to me that that would very clearly set a standard. It would certainly be useful.⁷³*

- 7.11 The Committee noted that those ‘best practice’ principles are to a large extent taken up in the ‘hardship policy’ applicable to the electricity utilities in WA. That policy is a requirement under Section 6.10 of the *Code of Conduct (For the Supply of Electricity to Small Use Customers)*.⁷⁴

⁷³ *Ibid*, p7.

⁷⁴ Proclamation, *Government Gazette*, No 253 (Special), Perth, 31 December 2004, p7171.

7.12 The Committee was interested in the Ombudsman's role in making 'binding determinations', and noted the following.

Hon ROBYN McSWEENEY: You said that you can make binding determinations. Does that mean that you could order the company to pay compensation, write off the debt and reconnect without a connection fee? Can you do that?

Ms O'Donnell: I have not needed to.

Hon ROBYN McSWEENEY: You have not needed to?

Ms O'Donnell: No. Nothing has escalated to that level of dispute yet.

Hon ROBYN McSWEENEY: However, if you had to tell them that they needed to pay compensation, you could do that?

Ms O'Donnell: Yes, up to \$20 000.

Hon ROBYN McSWEENEY: Has nobody written in - in a big way - and said that they must receive compensation because their electricity has been off for a week out in the bush and no action has been taken?

Ms O'Donnell: We have had complaints like that and we have negotiated with the company. Payments have been made, but nothing has had to go to that level. For an industry ombudsman, there are escalation levels. The more complex the complaint, in theory the more time it takes to resolve and the more it costs the energy supplier. You will go up to a certain level before you make a binding determination. The energy supplier will have already spent a lot of money in ombudsman costs, and then they will be hit with a binding determination. That is a terrific incentive.⁷⁵

8 INTERSTATE COMPARISONS IN AUSTRALIA

8.1 The Committee reviewed how utility hardship is managed in the Eastern States and noted from the outset that the government departmental structures vary across the State jurisdictions.

⁷⁵ Ms Deirdre O'Donnell, Energy Ombudsman, Office of the Energy Ombudsman, *Transcript of Evidence*, 3 October 2006, p8.

Victoria

- 8.2 The Committee noted that Victoria has a longer history of reforming its electricity, gas and water industries than most of the other States in Australia.
- 8.3 The State Electricity Commission of Victoria (**SECV**) was established in 1921 to supply electricity to Victoria. This role continued until 1993 when it was disaggregated into generation, transmission and distribution companies that were further split and privatised in the mid to late 90s.⁷⁶
- 8.4 The Electricity Supply Agreements with Portland and Point Henry aluminium smelters were retained by SECV, who under “Vicpower Trading” continues as the electricity supplier. SECV operates in the context of the National Electricity Market incorporating the States of Victoria, New South Wales, South Australia, Queensland and Tasmania.⁷⁷
- 8.5 In July 1994, the Victorian Government established a general regulator, the Office of the Regulator General (**ORG**) to regulate the restructured utilities.⁷⁸
- 8.6 The Essential Services Commission (**Commission**) commenced operations on 1 January 2002 as Victoria’s independent economic regulator of prescribed essential utility services supplied by the electricity, gas, ports, grain handling and rail freight industries. The Commission subsumed the ORG and its work builds on the regulatory foundation laid by that Office.
- 8.7 Since 1 January 2004 the Commission has also been responsible for the regulation of Victoria’s water and sewerage services.⁷⁹
- 8.8 In providing a background to the privatisation agenda for utilities in Victoria, Paul Fearon, Chief Executive of the Commission stated:

In Victoria public utilities have played an important part throughout much of the 20th century electrifying the State and exploiting significant brown coal and gas reserves. In time the energy and water utilities grew to be powerful and large organisations, wielding substantial political power. By the 1990’s the publicly owned, vertically integrated monopoly energy utilities were perceived by many as not generating maximum benefits for its citizens or customers. A number of weaknesses had emerged, such as poor

⁷⁶ <http://www.vicpower.com.au/> (viewed on 16 May 2007).

⁷⁷ *Ibid.*

⁷⁸ Dieneke Walker, *Regulation of Victoria’s Energy and Water Utilities: An analysis of the protection of consumers and the public interest*, The Consumer Law Centre of Victoria Ltd., Victoria, May 1995, p17.

⁷⁹ <http://www.esc.vic.gov.au/public/> (viewed on 16 May 2007).

*capital decisions, over-capitalisation of assets, low plant availability and inefficient work practices. This was a key impetus for the disaggregation of the Victorian energy sector by the Victorian government starting in 1993, the introduction of competition within the contestable retail and generation sectors, and the subsequent privatisation of the electricity and gas businesses from 1995.*⁸⁰

- 8.9 While all electricity and gas businesses previously in the ownership of the Victorian Government have been privatised, the Victorian Energy Networks Corporation (**VenCorp**) remains a Government owned entity. VenCorp was formally established under the *Gas Industry Act 1994*⁸¹ in December 1997 and plays a key role in Victoria's gas and electricity industries. Its initial functions included operating Victoria's gas transmission and distribution networks; developing and managing the Victorian Gas Market, and providing planning services to the gas industry. Responsibility for planning and augmenting Victoria's shared electricity transmission network passed from the Victorian Power Exchange (**VPX**) to VenCorp in June 1999.
- 8.10 The Department of Infrastructure is the lead provider of essential infrastructure in Victoria, with responsibility for transport, major development, information and communication technology (**ICT**), energy and security.⁸²
- 8.11 The Department of Sustainability and Environment is the lead agency in Victoria for the management of water resources across the State.⁸³
- 8.12 The Commission released a special report *Disconnections and Capacity to Pay*⁸⁴ in October 2004 partly in response to the public discussion about the extent of customer disconnections as a result of financial hardship.
- 8.13 The Committee noted with interest that the Commission and thus Victoria have compiled and maintained records of disconnection rates from at least 1984.⁸⁵
- 8.14 On 13 March 2005, the Victorian State Government announced the establishment of a Committee of Inquiry into Financial Hardship of Energy Consumers. The inquiry was in response to concerns raised by consumer and welfare groups, and the energy industry, about the need for a clear direction on the issue of consumer hardship.

⁸⁰ Paul Fearon, Chief Executive, Essential Services Commission, *Public Utility Regulation: A practitioners perspective*, Melbourne University Law School, Victoria, 23 January 2006, p3.

⁸¹ Act No 112 of 1994 (VIC).

⁸² http://www.dpi.vic.gov.au/dpi/vro/vrosite.nsf/pages/os_doi (viewed on 7 April 2008).

⁸³ <http://www.dse.vic.gov.au/dse/index.htm> (viewed on 7 April 2008).

⁸⁴ Essential Services Commission, *Disconnections and Capacity to Pay Report on Energy Retailers' Performance*, Melbourne, October 2004.

⁸⁵ *Ibid*, p51.

8.15 The following is extracted from the Energy and Water Ombudsman's (Victoria) 2006 resolution newsletter:

On 30 May 2006, the Committee's report was released, together with the Victorian Government's responses to it. The outcomes for all stakeholders are significant.

- *The Government has published an Energy Consumer Hardship Policy Statement, which among other things states that the Government 'recognises that energy is an essential service, and as such, access is a prerequisite to social participation and adequate standards of living. For this reason legislation will be introduced, preventing consumers from being disconnected from their reticulated energy supply solely on account of their incapacity to pay (where they are participating in a retailer's best practice hardship program).*
- *The Essential Services Commission (ESC) will be responsible for monitoring and auditing energy retailers' compliance with 'best practice hardship policies' and will publicly report on retailer performance in this area.*
- *These developments have been reflected in new legislation — the Energy Legislation (Hardship, Metering and Other Matters) Act.*
- *The wrongful disconnection payment (WDP) legislation introduced by the Government in December 2004 will continue to operate.*
- *An additional \$4 million over two years is to be allocated to extend and expand access to the Utility Relief Grants Scheme.*
- *In response to the shortage of financial counsellors, \$600,000 is to be allocated over two years for the training of accredited specialist energy counsellors.*
- *An Energy Hardship Policy Working Group will be established to assist in further work related to implementing the Inquiry's recommendations.*
- *The local energy retailers (AGL, Origin Energy and TRUenergy) are to allocate \$8 for each of their safety net*

*customers over two years towards pilot programmes and enhancements to energy consumer hardship initiatives.*⁸⁶

- 8.16 The Committee for Melbourne Debt Spiral Prevention Project (**Project Committee**) recommended that energy and water retail businesses develop ‘hardship policies’ to assist customers experiencing financial hardship.
- 8.17 The Project Committee identified four main components to be included in an ‘optimal hardship policy’. These are:

***Information Provision:** where information about the retailer’s hardship policy should be transparent and accessible to customers and their representatives;*

***Operating protocols and customer engagement:** which comprise the core element of the policy and reflect how utility staff – in particular the Specialist Team – interact with customers and provide targeted assistance within a respectful environment;*

***Comprehensive staff training:** where all staff in direct customer contact are well versed in the company’s policy and are able to sensitively engage with customers according to the operating protocols; and*

***An energy water efficiency focus:** where retailers understand the importance of assisting customers in hardship to manage their consumption (a key contributor to cost), through the provision of energy and water efficiency advice where this is relevant.*⁸⁷

- 8.18 The Committee noted that these overarching principals are similar to and overlap to some extent with the three identified by the then WA Energy Ombudsman.
- 8.19 Similarities also exist with those advocated by the Energy and Water Ombudsman of NSW (**EWON**), Ms Clare Petre, and which are listed under best practice models in the *Consumer Directions*⁸⁸ article provided to the Committee by the WA Energy Ombudsman. These are:

- *The company must have a culture that acknowledges there are customers in need and that it is the right thing to do to assist them;*

⁸⁶ Energy and Water Ombudsman (Victoria) *Resolution*, 1 January 2006 – 30 June 2006, Issue No 22, p1.

⁸⁷ Committee for Melbourne, Debt Spiral Prevention Project, *Supporting Utility Customers Experiencing Financial Hardship: Guiding Principles*, Melbourne, June 2006, p3.

⁸⁸ Freya Purnell, ‘Helping customers in hardship’, *Consumer Directions*, July 2006, p5.

- *Staff at all customer points into a utility should be able to identify, recognise and deal appropriately with customers in hardship, preferably with a dedicated specialist team. “Whether it is the call centre, or the credit department, or the regulatory section that deals with Ombudsman enquiries, each of those sections have to understand what the philosophy is and be trained in it, and be able to train customers appropriately”, Petre says;*
- *Flexible payment arrangements should be available, and these plans must be reasonable, realistic and affordable. The ability to pay through options such as Centrepay for those receiving Centrelink benefits is important;*
- *Consumers must be protected from disconnection and debt recovery action while they are in a hardship program;*
- *The utility should assist with energy efficiency strategies. “A lot of the people in hardship are caught up in that cycle of debt. Their bills are always high, because they have inefficient appliances, they live in poor accommodation which has no insulation, so they’re always struggling. Companies are doing a lot more now to suggest low-cost ways of cutting down usage to help customers break that cycle”, Petre says; and*
- *Energy providers should have close links with community organisations, to refer people who may have broader needs than just assistance with paying their electricity.⁸⁹*

NSW

8.20 The following is taken from the Department of Energy, Utilities and Sustainability NSW’s website:

The Department of Energy, Utilities and Sustainability leads the NSW Government’s sustainable energy and urban water agenda. Our aim is for the people of New South Wales to have reliable, affordable and sustainable energy and urban water.⁹⁰

8.21 The Committee contacted the Energy and Water Ombudsman of NSW, Ms Clare Petre, to inquire about the comments contained in the article titled “*Helping*

⁸⁹ *Ibid.*

⁹⁰ <http://www.deus.nsw.gov.au> (viewed on 7 April 2008).

customers in hardship". The Committee enquiries related to the change in the way NSW energy retailers approach customers in financial hardship, with all now having hardship assistance programs in place.⁹¹ The Committee asked whether those assistance programs were the result of legislative requirements, or due to a cultural change within the utility organisations.

8.22 Ms Petre stated in her response that:

when EWON started in 1998 there were no customer assistance programs of any kind. Debt recovery was essentially done through the credit departments of the utilities, often with the following cycle:

bill - reminder notice - second reminder notice - phone call or field visit - disconnection - reconnection - cycle starts again.

EWON quickly became aware of the financial hardship for many customers and the high number of unrequested disconnections in NSW. We talked to the utilities, regulator etc about this. The establishment of the customer assistance programs was not mandated by government, but it was the result of a cultural shift in the utilities. They acknowledged that the old credit cycle was: expensive (late fees, disconnection fees etc did not meet the actual costs) were counterproductive for many customers who wanted to pay their bills but couldn't do so because of short, medium or long term financial problems adding to the hardship for many customers who were already in financial and personal hardship, and where there were often children involved, illness etc.

The utilities voluntarily expanded their payment options for customers, particularly with Centrepay. They also voluntarily set up special customer assistance units to identify and deal with customers in financial hardship. EWON hosted a forum for utility staff associated with these programs, and since then they have met regularly with each company hosting a meeting in turn. The companies have used these forums to share ideas and experiences re customer hardship, and have invited speakers such as community welfare workers, academics, and Centrelink to discuss issues of concern.

I think it is fair to say that there was resistance in some companies to the hardship programs, particularly from the traditional credit areas.

⁹¹ Freya Purnell, 'Helping customers in hardship', *Consumer Directions*, July 2006, p5.

There was scepticism that the hardship programs would work. But the hardship program supporters (including EWON) argued that good customer service is good business, and working with customers instead of chasing them would not only improve customer relations but save money as well (stop throwing good money after bad etc). This has proved to be the case, and customer assistance programs are now able to demonstrate a very clear and positive business case, where they are managing and bringing into the company many millions of dollars which might otherwise have been written off or only collected at great expense.

Even the greatest sceptics now acknowledge the benefit of the Centrepay system, where customers can make small regular payments straight from their Centrelink pensions. Although there is a commission payable by the utility to Centrelink, this payment option has proved incredibly valuable to customers and companies.

The customer assistance programs have been underway for some time (companies started at different times and some developed faster than others). While there was some reduction in disconnections, numbers still remained too high, so the Minister for Energy announced a review of hardship programs early this year. He set up a working group with representatives of industry, consumers, government (EWON was a member). The working group made a series of recommendations, and we understand that the government will regulate that no disconnection can occur unless a customer has been offered a reasonable payment plan. The government will also require more detailed reporting about disconnections both in electricity and gas. In this way, legislation will be overlaid on cultural change.⁹²

- 8.23 The Committee also asked Ms Petre, whether NSW has legislated for the “*best practice hardship programs*”, or if those best practice programs, are because of a cultural change within the utility organisations? Ms Petre stated that:

Essentially the best practice hardship programs are the result of cultural change within the utility organisations. The utilities agreed that there is not a lot of competitive advantage in relation to customers in financial hardship and that all companies will have a small but significant number of customers in this position. This shared view has led to cooperation through the hardship forums referred to above.

⁹² Letter from Ms Clare Petre, EWON, 23 October 2006, p1.

That said, the utilities have watched the development of various hardship programs very closely, and I think there has been both competition and pressure for companies to have the best possible program. They have all adopted minimum standards, eg protection from disconnection while the customer is in the program; long term arrangements for arrears, but they are also aware of 'extras' that are offered by some programs, and many companies have moved (or been gently pushed) to adopt these as well, eg matched payments, whereby the company matches a customer payment after the customer has made an agreed number of payments.

As a result of the review of hardship programs, I believe that the Minister will ask the utilities to develop a Code for best practice for customer hardship, so again, legislation will be overlaid on cultural change.⁹³

- 8.24 The Committee noted that the issue of full retail contestability of the electricity market is under consideration in WA.⁹⁴ The Committee has not examined the impact of competition on achieving a 'cultural change' or indeed best practice among the Eastern States utilities.

9 CONCLUSION

- 9.1 The Committee is of the view that the State Government should be well placed to encourage best practice in 'consumer utility hardship' among the various utility companies in WA. There are a number of initiatives, interstate policy and best practice examples, most notably in Victoria and NSW, for the government to draw on. The Committee believes that the Interagency Working Group appears to be a good forum for bringing the relevant stakeholders together to work collaboratively to achieve a 'best practice' outcome.
- 9.2 The Committee commends the Economic Regulation Authority for compiling and publishing the quantitative disconnection rates in WA for the 2005/06 and 2006/07 years. The Economic Regulation Authority has also published disconnection rates from four other States for the same two years. While acknowledging the need for caution in making Inter-state comparisons, over such a short time-span, the Committee is of the view that the regular recording of disconnection rates will be of significant benefit to industry, the consumer and to the State Government in the medium to long-term.

⁹³ *Ibid.*

⁹⁴ <http://www.energy.wa.gov.au/2/3240/64/mar.pm> (viewed on 31 March 2008).

Sheila Mills

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Chair

10 April 2008