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Title:

Financial hardship assistance behind the scenes: insights from financial counsellors

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Keywords:

Financial hardship; essential services; hardship assistance; financial counsellors; vulnerable consumers

Abstract:

Financial hardship, in a credit society such as Australia, can affect almost anyone. To protect consumers from the negative impacts of financial hardship — which can include the stresses of enforcement action and disconnection from essential services — legal protections have been incorporated into the regulatory frameworks for the consumer credit, energy, water and telecommunications sectors. In this article, we outline the findings of our study, which used a survey of financial counsellors around Australia and focus group interviews with Victorian

financial counsellors to examine how these legal protections are being implemented by service providers in these four sectors. Our findings highlight a tendency on the part of service providers to take a generic, one-size-fits-all approach to compliance with these legal protections that prevents them from effectively assisting consumers struggling with debt. We discuss the particular shortcomings of this approach in the context of consumers living on low incomes — especially Centrelink incomes — and outline the policy implications of our findings for assisting these vulnerable groups.

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Financial hardship assistance behind the scenes: insights from financial counsellors

Introduction

Particularly since the global financial crisis, there has been significant attention paid to the problem of financial hardship, where a consumer takes on payment obligations under a contract, but becomes unable to meet them when they fall due. This use of the term 'financial hardship' is specific to the context of debt default and payment difficulty in Australia's consumer credit, energy, water and telecommunications sectors (for example, see ABA 2015: 1–2; Communications Alliance 2014: 6; FCRC 2014: 8). Financial hardship is therefore distinct from the separate problem of poverty, even though falling into arrears on mortgage, rent and utility payments has been used as an indicator of deprivation (Whelan 1993; Whelan 1994; Whelan et al. 2001) and financial stress (Saunders & Wong 2009; Phillips & Nepal 2012) in Australian and overseas research on poverty and social exclusion. Financial hardship encompasses many situations, from falling behind with mortgage repayments to failing to make the minimum monthly repayment on a credit card, or being unable to pay a utility bill. Whatever form it takes, financial hardship has a high social cost; as several studies show, falling behind with debt can have negative impacts on mental or physical health (Brackertz 2012: 24–5; Turunen & Hiilamo 2014); and personal relationships (Wesley Mission 2009: 64–75). Where inability to pay leads to the disconnection of a consumer's energy service or restriction of their water supply (CALC 2015a: 39–41) — or debt enforcement proceedings in the courts (Pleasence et al. 2008) — the impacts on wellbeing can be even more serious, and may be accompanied by costs that make it more difficult for the consumer to get out of debt. Finally, financial hardship places a significant burden on the community sector, fuelling demand for financial counselling services (CALC 2015a: 42–4) and creating demand for emergency relief services when consumers struggling with debt are left with insufficient income for basic necessities (Engels et al. 2009: 31, 55–7, 59).

To safeguard against these and other negative impacts of financial hardship, legal protections have been incorporated into the regulatory frameworks for the consumer credit, energy, water and telecommunications sectors. However, figures on utility disconnections suggest that these legal protections may not be achieving their ultimate objective of enabling consumers to avoid disconnection and enforcement action: in Victoria, New South Wales and South Australia, the numbers of energy disconnections actually increased between 2008–09 and 2012–13 (ESC 2014: 31). Furthermore, recent inquiries by Victorian and national energy regulators (ESC 2016; AER 2015) and a small number of empirical studies by Australian community organisations and others indicate that although service providers across these four sectors are generally complying with the letter of the legal protections, overall the quality of assistance being provided to consumers in financial hardship falls short of good practice, and fails to provide them with the flexibility they need (Levin & Guthrie 2014; Chester 2013; GA Research 2013; Hall & Partners/Open Mind 2011).

The issues highlighted by these inquiries and empirical studies demonstrate a need for further research into how the legal hardship protections are being implemented across the consumer credit, energy, water and telecommunications sectors in all Australian states and territories. We sought to address this need by carrying out an empirical study into the views of financial counsellors on the hardship practices of these four sectors. This study combined a survey of financial counsellors around Australia with focus group interviews with financial counsellors employed by two Victorian community organisations. In our view, the work of financial counsellors in providing advice and advocacy services to consumers in financial hardship gives them a particularly comprehensive view of hardship practice behind the scenes, as borne out in previous empirical research by community organisations on the hardship practices of service providers (FCA 2015; FCRC 2014; Levin & Guthrie 2014).

In the first part of this article, we set out the policy context underpinning the provision of hardship assistance across our four target sectors, and outline the theoretical basis of our research by reference to the Australian and international literature on the expansion of consumer credit use and the growing financialisation of contemporary life. In the second part, we describe the methodology that we employed to carry out our study. In the third and fourth parts, we set out our findings and analyse them in the context of the existing research on financial hardship. Our findings highlight a tendency on the part of service providers to take a generic, one-size-fits-all approach to compliance with the legal hardship protections that prevents them from adequately engaging with consumers struggling with debt. We argue that changes in company culture are needed to acknowledge that in a credit society such as Australia, financial hardship can happen to almost anyone, and hence that investment in effective hardship assistance is a necessity, not an optional extra, for providers of services that are considered essential for full social and economic participation. We draw particular attention to the ways in which these service providers are failing to assist people living on low incomes — especially Centrelink incomes such as the Newstart Allowance — whose vulnerability to financial hardship cannot be addressed solely though changes to company policy, but requires more far-reaching public policy change.

Hardship protection in a credit society

Our research takes place in the context of a dramatic expansion in the use of consumer credit from the 1980s onwards, in a process that was described by Sullivan, Warren and Westbrook as the 'development of a credit society' (2000: 109). In Australia and other developed countries, new and diverse forms of consumer credit — from home mortgages to personal or car loans to credit cards — are increasingly utilised for accessing not only 'symbolic expressions of status' (Ramsay 1995: 181), but also everyday necessities including accommodation, food, household goods and transportation (Wilson 2012: 508–10). This has resulted in a record rise in household debt: according to Australian Bureau of Statistics figures, the amount of debt that Australian households owed in 2013 was almost 1.8 times the amount of disposable income that they had received that year, while in May 2014, levels of household debt reached their highest level in 25 years (ABS 2014a). Three quarters of this household debt consists of loans over owner-occupied and investment properties (ABS 2014b). However, many consumers are also juggling other types of debt, including amounts owing on credit cards, or unpaid bills for energy, water, phone and internet services.

This expansion in the use of consumer credit is symptomatic of what Berry (2015) describes as the progressive financialisation of contemporary life. This phenomenon encompasses a number of interconnected trends, including (512):

> [F]irst, the increased role and power of the finance sector in the economy; second, a reorientation of private economic actors' goals towards short-term financial returns; third, a greater degree of interaction between individuals and financial services; and, fourth, the personalisation of financial risks as collectivised financial mechanisms are dismantled.

The fourth trend in particular has been the subject of extensive analysis by Hacker, who argues that individuals and their families in the United States have increasingly become the bearers of economic risk that was formerly borne by governments as providers of social insurance against the impacts of unemployment, illness, disability and old age (2008: 5–7, 36–60). Quiggin and others have argued that a similar 'risk shift' has taken place in Australia (Marston, Moss & Quiggin 2010), driven by neoliberal reforms enabling the reduction in security of employment for workers over the life course and the erosion of the social safety net for carers, the unemployed, people with disabilities and the elderly — for example, through the tightening of eligibility requirements for recipients of the Centrelink Parenting Payment and the Disability Support Pension (ACOSS 2012: 44–52), and the relative decline in the value of the Newstart Allowance over time (Denniss & Baker 2012: 1, 5). For people reliant on these types of social security incomes, consumer credit — particularly in the form of small-amount, short-term loans from fringe lenders (Banks et al. 2012: 32–4) — has taken on the additional role of supplementing incomes that are widely regarded as inadequate to meet the rising cost of living (ACOSS 2012; Dennis & Barker 2012). Even older people living on the Age Pension, who were previously considered less likely to be indebted according to the 'life cycle model of consumption' (La Cava & Simon 2005), or unlikely to use credit in the first place because of their comparatively conservative borrowing habits, are accruing higher levels of debt into retirement to meet medical and other essential expenses (Gibson & Rochford 2008: 74, 76–7). In this context, the concept of 'financial inclusion' has emerged as both a strategy for increasing economic participation by people on low incomes and a component of the growing emphasis on individual self-reliance accompanying the ongoing retrenchment of social welfare (Berry 2015). In Australia, financial inclusion requires access to 'a moderate amount of credit' (Connolly 2014: 8) — and, as Wilson stipulates, 'safe and affordable credit' from a mainstream lender (2012: 502).

Given the ubiquity of consumer debt, it is difficult to ascertain the proportion of Australians who may, at any given time, be experiencing some form of financial hardship. However, in the five years following the global financial crisis, ombudsman services for the financial services, energy, water and telecommunications sectors reported spikes in the numbers of consumer disputes involving inability to pay (for example, see FOS 2012; EWOV 2011: 7, 22; EWONSW 2012: 2–3; TIO 2012: 17), while in 2014, Dun & Bradstreet published figures indicating that the number of consumers deemed more likely to default on their credit contracts is on the rise. These developments suggest that amidst rising costs of living — which, as measured by the Consumer Price Index, went up by 34 per cent between 2000 and 2011 (ACOSS 2011: 4–5) — growing numbers of Australians are finding it a struggle to meet their housing, energy, water and telecommunications needs.

The primary way in which policymakers have responded to these developments is by putting in place the legal hardship protections introduced at the beginning of this article. These protections, which are analysed in detail by Ali et al. (2015), include the right to seek an alternative payment arrangement known as a hardship variation in section 72 of the National Credit Code. Section 72 provides consumers who have applied for a hardship variation with a temporary reprieve from enforcement action until the credit provider has responded to the application in accordance with a prescribed process. Other hardship protections are contained in a range of regulatory codes (such as Victoria's Energy Retail Code, or the national Telecommunications Consumer Protections Code) and legislation (such as the National Energy Retail Law, which has now been enacted in most Australian states and territories). These protections require service providers to publish and implement hardship policies comprising a minimum range of assistance for all consumers experiencing payment difficulties, and, in the case of energy and water companies in most states and territories, additional levels of assistance for consumers assessed as being eligible for entry into a 'hardship program'. Consumers participating in a hardship program are also entitled to special protections from disconnection or supply restriction.

Hardship assistance under any of these legal protections usually involves a variation to the timing of repayments due under the consumer's contract, such as a moratorium on repayments, or a payment plan allowing the consumer to make repayments in smaller instalments over a longer period of time. In the energy and water sectors, the legal hardship protections may also require service providers to offer other forms of assistance, such as an energy or water efficiency audit, or assistance with the replacement of inefficient appliances.

Service providers may also, at their discretion, offer measures that effectively reduce the amount of the consumer's debt, either by way of an incentivised payment plan that matches repayments made on time with money credited to the consumer's account, or through whole or partial debt waiver.

Financial counsellors play an important role in assisting Australian consumers to make use of these legal protections. Financial counsellors are mostly employed by not-for-profit community organisations, although some work in community legal centres and government agencies. They provide their services free of charge, either through case work with clients of community agencies, or over the phone. Much of the case work of financial counsellors requires them to provide consumers with advice on managing debt (especially credit card or utility debt); assist them with accessing concessions and grants; and negotiate directly with creditors on their behalf — for example, to arrange entry to a hardship program, a payment plan or a debt waiver (Brackertz 2012: 5; Mahmoudi et al. 2014: 2, 13–14).

Method

Our study into the views of financial counsellors on hardship practices in the consumer credit, energy, water and telecommunications sectors was carried out between July 2015 and April 2016. The study received ethics approval in April 2015.

The study sought to address a number of research questions drawing upon the literature cited above; as well as the findings of the existing empirical studies on financial hardship in Australia (Levin & Guthrie 2014; Chester 2013; GA Research 2013; Hall & Partners/Open Mind 2011); and research on creditor and debtor approaches to financial hardship in the United Kingdom (Dominy & Kempson 2003). We sought to investigate how service providers in the consumer credit, energy, water and telecommunications sectors were implementing the legal hardship protections introduced at the beginning of this article, and in particular, what forms of assistance they were providing to consumers in accordance with these protections, which give service providers considerable discretion to determine whether to provide assistance, and if so, in what form (ESC 2016: 39). We also sought to examine the key factors that placed consumers at risk of financial hardship, and to identify the major barriers that they faced to accessing appropriate assistance under the legal hardship protections. Finally, we sought to compare our four target sectors in terms of the overall effectiveness of their hardship policies and practices. In order to address these research questions, we designed an empirical study in consultation with community organisations that had expertise in the provision of financial counselling services. The study had two components: a survey and a series of focus group interviews.

Survey

The survey component of the study sought to address the abovementioned research questions through a series of quantitative multiple choice questions, and a small number of questions that provided respondents with opportunities to give qualitative comments. The survey used questions about respondents' case work to provide context for their views on the effectiveness of the legal hardship protections. Other questions concerned the forms of hardship assistance being provided to the respondents' clients; and their assessment of the major barriers that their clients faced to accessing appropriate assistance.

The survey was executed online using the SurveyMonkey platform. The sampling strategy was purposive, with the sample group consisting of financial counsellors working across all Australian states and territories. Recruitment of the sample was conducted with the assistance of the peak national body for Australian financial counsellors and the financial counselling associations of each state and territory. Recruitment began in July 2015, when the financial counselling associations sent out a recruitment package containing a link to the survey to all of their member financial counsellors. Two Victorian community organisations that provided financial counselling services also sent out the recruitment package directly to their employees. Our estimate is that the survey was sent out to approximately 945 financial counsellors around Australia. The survey was closed in September 2015 after receiving 179 responses, constituting an uptake rate of approximately 19 per cent.

To ensure informed consent, the recruitment package contained a plain language statement explaining that participation in the study was voluntary, and that respondents' comments would remain fully anonymous. Because the sample consisted of professionals employed by a limited number of organisations in the same field, respondents were given the option of indicating that they did not wish to be quoted directly in our published research if they were concerned that this could lead to them being identified. A total of 16 per cent of respondents indicated that they did not consent to be quoted directly.

Focus group interviews

The second component of the study comprised three focus group interviews with a much smaller sample of financial counsellors employed by the same two Victorian community organisations that had assisted with the recruitment of respondents for our survey. These interviews were intended to address the abovementioned research questions by allowing groups of financial counsellors to narrate their subjective experiences of assisting clients in financial hardship without the constraints imposed by a predominantly multiple choice survey. The interviews were loosely guided by sets of open-ended qualitative questions that invited participants to discuss issues including the accessibility of hardship assistance; the range and appropriateness of the options that were being provided to their clients; and policy changes that could ensure better protection for financially disadvantaged consumers.

Recruitment of the sample was conducted by the participating organisations, which forwarded a recruitment package comprising a plain language statement and consent form to all of their employee financial counsellors. Participants were required to sign the consent form to ensure that they consented to the interviews being audio recorded and, like the survey respondents, were given the option of indicating if they did not wish to be quoted directly.

The focus group interviews took place at the offices of the participating organisations between November 2015 and April 2016, and were facilitated by a member of the research team. The first interview (focus group 1) was held in the Melbourne CBD, and involved a sample of five financial counsellors; the second (focus group 2) took place in a regional town of Victoria, and involved seven financial counsellors; the last (focus group 3) took place in an outer suburb of Melbourne and involved five financial counsellors. Each interview went for a total of 90 minutes.

The interviews were audio recorded and transcribed by a professional transcription company. To protect their confidentiality, participants were de-identified and given generic identifiers in the transcripts. The research team did not employ any software to analyse the transcripts, opting instead to read the individual transcripts and identify the major themes and issues that emerged both within and across all transcripts.

Survey findings

Case work of financial counsellors

Respondents were asked a series of questions designed to provide a snapshot of the demographics of their clients, and the types of debt with respect to which their clients were most likely to seek assistance.

Over 80 per cent of respondents said that more than half of their clients were female, while 76 per cent indicated that more than half of their clients relied entirely on a Centrelink income. These results are consistent with research by Brackertz (2012: 11–12) indicating that women and people on a social security income make up the majority of the clients of financial counsellors. For 67 per cent of respondents, less than a quarter of their clients spoke a language other than English at home.

Clients of respondents were most likely to have sought assistance with energy bills, with 95 per cent of respondents saying that they assisted clients with this type of debt 'very frequently' or 'frequently'. A similarly high proportion of respondents — 86 per cent — said that they 'very frequently' or 'frequently' assisted clients with credit card bills, followed by phone or internet bills (79 per cent), personal or car loans (72 per cent), water bills (63 per cent), and payday loans (62 per cent). Only 45 per cent of respondents said that they 'very frequently' or 'frequently' assisted their clients with mortgage repayments.

Respondents were asked to estimate the proportions of their clients who had, in the previous 12 months, received hardship assistance from each of our four target sectors. Their clients were most likely to have received hardship assistance from an energy company (with 79 per cent of respondents saying that more than half of their clients fell into this category), followed by a bank or other credit provider (70 per cent). Far fewer respondents said that more than half of their clients had received hardship assistance from a water company (41 per cent) or a telecommunications company (42 per cent).

Hardship assistance behind the scenes

Respondents were asked about the frequency with which particular forms of hardship assistance were offered by banks or other credit providers, energy and water companies, and telecommunications companies.

Consumer credit sector

The results for forms of hardship assistance provided by banks and other credit providers are set out in Table 1. As Table 1 shows, a temporary reduction in repayment amounts (similar to an instalment plan, and typically accompanied by an extension in the term of the loan) was the most common form of hardship assistance in the consumer credit sector, with 58 per cent of respondents saying that this option was offered to their clients 'very frequently' or 'frequently'. Close behind was a moratorium or freeze on repayments, which was offered 'very frequently' or 'frequently' according to 56 per cent of respondents. The other forms of hardship assistance shown in Table 1 were offered significantly less often, among them whole or partial debt waiver, which was offered ‘rarely’ or ‘very rarely or never’ according to 41 per cent of respondents.

Table 1: Comparing how often forms of hardship assistance are offered by banks and other credit providers

Energy and water

The results for forms of hardship assistance provided by energy and water companies are set out in Table 2. A payment plan or instalment plan was the most frequently provided option, both in the energy sector (with 84 per cent of respondents saying it was offered ‘frequently’ or ‘very frequently’) and in the water sector (with 64 per cent of respondents saying the same). The next most commonly offered option was the extension of time to pay a debt, with 71 per cent of respondents saying it was offered ‘frequently’ or ‘very frequently’ by energy companies, and 60 per cent saying the same for water companies.

Nearly all respondents — 90 per cent — said that whole or partial debt waiver was only offered ‘rarely’ or ‘very rarely or never’ by both energy and water companies, which, when compared to the results in Table 1, suggests that banks and other credit providers are more likely to waive the debt of a consumer in hardship.

Table 2: Comparing how often forms of hardship assistance are offered by energy and water companies

Telecommunications

The results for forms of hardship assistance provided by telecommunications companies are set out in Table 3. A comparison of the results in Table 3 with those contained in Tables 1 and 2 shows that overall, all forms of hardship assistance are provided less frequently in the telecommunications sector than in the energy and water sectors.

Table 3: Comparing how often forms of hardship assistance are offered by telecommunications companies

Comparing our target sectors

Respondents were asked to identify what they considered to be the three biggest barriers to their clients accessing appropriate hardship assistance from banks or other credit providers, energy and water companies, and telecommunications companies. The results for these questions are set out in Table 4. On average across all sectors, inappropriate arrangements for customers in long-term financial hardship were considered to be the biggest barrier, followed closely by unaffordable payment arrangements, and lack of support for customers who try to self-advocate.

Table 4: Biggest barriers to accessing appropriate hardship assistance

In their qualitative comments, respondents elaborated on these barriers, highlighting problems with the accessibility of hardship assistance across all sectors:

> My biggest issue has been trying to communicate with hardship departments in various companies. I have found staff to be patronising, rude, and refusing to understand that a client does not have the money to make the payments they expect unless they give up on basic needs such as food and transport and clothing or heating. (Tasmania)

> Individuals are encouraged to self-advocate but most organisations are not helpful until a financial counsellor or welfare advocate gets involved. (Western Australia)

> Often clients enter into unrealistic payment arrangements because they feel 'forced' into accepting it. Unfortunately, by the time they get to us, the company doesn't want to negotiate anymore and they are disconnected with debt collectors involved. (Victoria)

Other comments emphasised the difficulty of assisting consumers on low incomes, particularly Centrelink incomes:

> Centrelink income has not kept up with the cost of living…People on Newstart are expected to find work, however they struggle to afford a place to live[,] let alone afford a car to assist them in finding work. (Victoria)

> Unaffordable private rentals, 10-year waiting lists for public housing…and insufficient government payments seem to be the main contributors to financial

> hardship... Those who can manage on low incomes [live] meanly or borrow routinely for everyday expenses. (Western Australia)

Respondents were asked to rate the consumer credit, energy, water and telecommunications sectors on the overall effectiveness of their hardship policies and practices on a scale between 1 (indicating very poor practice) to 10 (indicating outstanding practice). The water sector was rated as the most effective, receiving a weighted average rating of 7 out of 10, with 44 per cent of respondents rating it between 7 and 10 out of 10. The consumer credit sector came in second with a weighted average rating of 6 out of 10, followed by the energy sector, which received a weighted average rating of just below 6 out of 10. The telecommunications sector came in last with a weighted average rating of 4 out of 10, and with by far the largest proportion of respondents —38 per cent — giving it a rating of between 1 and 2 out of 10 (compared to only 3 per cent of respondents who said the same in relation to the water sector).

Focus group interview findings

Problems with accessibility of hardship assistance

Participants were unanimous in saying that unless they had the support of an advocate, their clients found it difficult to access hardship assistance from service providers across all four of our target sectors. They were sceptical about the idea that requirements for energy and water companies to publish hardship policies on their websites had improved awareness of hardship assistance among their clients. They stressed that these policies were often difficult to locate, and that usually, even those consumers who understood that they could ask their service provider for assistance had little idea of the extent of their entitlements:

> The clients seem to think it's a huge favour… that this is [an] indulgence by the bank instead of a consumer right ... (Participant 3, focus group 1)

Participants agreed that even when consumers managed to contact their service provider about their debt, service providers were reluctant to engage with them, and often failed to put them through to a specialist hardship department unless expressly asked:

> They'll ring [energy company] and just talk to the customer service and of course they're not going to get anywhere. You say, well there's a hardship department. Sometimes [the companies] don't let them know that. (Participant 6, focus group 2)

Participants expressed frustration that instead of engaging with consumers directly, service providers preferred to refer them to a financial counsellor, whether to confirm their eligibility for entry to a hardship program or assess their capacity to make repayments under a payment plan, or to assist with more straightforward matters such as applying for a utility relief grant. One participant suggested that some of the bigger banks were better at assisting consumers trying to self-advocate, but only in instances of short-term hardship. Most participants agreed that utility companies, which received many more calls a day, tended to involve a financial counsellor as soon as a consumer had trouble covering their usage:

> Sometimes they just want to hear it from somebody else. They don't trust the client and they want to have it from a financial counsellor. (Participant 2, focus group 1)

> [T]hey should be dealing with this, a lot of the financial hardship problems in-house… it puts the client under an extra stress having to contact someone else… (Participant 3, focus group 1)

Problems with appropriateness of alternative payment arrangements

Participants were concerned that particularly in the energy, water and telecommunications sectors, there continued to be insufficient separation between the hardship and collections functions of service providers, meaning that when negotiating an alternative payment arrangement with a consumer, service providers focused on collecting the debt in the shortest possible time.

According to participants, this had a twofold effect. First, alternative payment arrangements provided to consumers tended to be very short-term. The consensus was that three months was the default period for any arrangement, after which the consumer had to re-engage with the service provider to seek an extension of the arrangement if they were unable to return to their normal payment schedule. For some service providers, the standard period was even shorter, with one participant mentioning major banks that granted moratoriums of a couple of weeks, and then refused to re-engage with the consumer because they had 'already had hardship'. Participants stressed that such short-term arrangements were unrealistic, as even consumers on middle incomes often required a longer period of six months, or ideally, 12 months, to resolve their financial difficulties — for example, by finding employment, selling an asset or finalising a property settlement.

Secondly, service providers' focus on debt collection contributed to the prevalence of payment arrangements that were unaffordable in light of the consumer's actual capacity to pay. Most participants cited examples of consumers agreeing to payment plans that left them with insufficient income to pay for food and other necessities — or put them at risk of being returned to the usual debt collection and disconnection processes if they missed scheduled repayments:

> [W]e've got two types of clients… the polite ones basically will just agree to anything to get them off the phone. They're the most vulnerable, because… they think they're going to be disconnected and …then they end up just being set up to fail, because they can't make a payment. (Participant 4, focus group 1)

> Our clients, being as vulnerable as they are… they'll agree to anything, whether they can afford it or not. (Participant 2, focus group 3)

> [A]fter a month of no [payments], the payment plan is cancelled. After three broken payment plans, you're out. (Participant 4, focus group 2)

Participants agreed that when assessing capacity to pay, staff of service providers frequently showed a lack of understanding of the realities of living on a low income. Most felt that in the context of essential services such as energy and water, service providers had to be prepared to accept repayment amounts that would not cover usage 'if that's what the customer's capacity is':

> [S]ometimes you're having these arguments with utility companies about $10 here or there and the position of the utility company is that $10 here or there isn't a big thing. But if…you've got everyone thinking $10 here or there, there's nothing left for food. So there's that lack of nuance about how much a dollar is worth to someone. (Participant 2, focus group 1)

> The response of the energy companies has been, well you need to cut down your consumption. The problem is… there are a whole lot of factors that mitigate against people being able to [reduce] their consumption. (Participant 1, focus group 3)

> Sometimes the debt's going to accrue with utilities. If you want to enter that market there are people out there who can't afford to pay. That's the price you have to pay as a company. (Participant 2, focus group 1)

Participants drew attention to the particular vulnerability of consumers living on Centrelink incomes, suggesting that the only appropriate arrangement for this group was waiver of the debt, rather than a payment plan or a short-term extension:

> [T]he Newstart Allowance is not actually enough even to buy food and pay for essential services, let alone make any repayment of debt. (Participant 4, focus group 1)

> [A]ccess to these services is a human right: energy, water, electricity, even telecommunications. People have a right to be connected. But the price of the service delivery goes up and there's very little concern about the bottom end of the scale and about their right to the access of service. (Participant 2, focus group 1)

Poor understandings of financial hardship as a problem

Although participants agreed on the need for hardship arrangements to take into account the needs of the most vulnerable, they also stressed that financial hardship was a problem that ran 'right through the spectrum of class'. Participants felt that judgmental attitudes towards consumers in financial hardship — which were particularly prevalent in the telecommunications sector — failed to take into account that financial hardship could happen to almost anyone:

> Each and every one of us will probably find ourselves in circumstances whereby we need to access hardship … it is actually important for everyone in society. (Participant 4, focus group 1)

Discussion

Our findings confirm that there is significant variation in the manner in which service providers in the consumer credit, energy, water and telecommunications sectors are implementing the legal hardship protections, with hardship practice in the telecommunications sector considered to be the least effective overall. Within each sector, too, the financial counsellors taking part in our study provided numerous examples of service providers that stood out because of their particularly good, or inadequate, hardship practice. This level of variation is consistent with previous surveys of financial counsellors, which found that smaller operators within the energy sector performed worse across all indicators of hardship practice (FCRC 2014: 6), while in the consumer credit sector, even the same banks did not always deliver consistent outcomes to consumers in similar circumstances (FCA 2015: 15).

Overall, however, our findings highlight problems with hardship practice that run across all of our four target sectors. In our view, these problems can be traced to a tendency on the part of service providers to take a generic, one-size-fits-all approach to compliance with the legal hardship protections.

Service providers are failing to adequately engage with consumers in hardship

This approach is evident in service providers' reluctance to engage at an individual level with consumers trying to self-advocate. Particularly in the energy and water sectors, service providers' efforts to inform consumers about their rights in case of hardship remain limited to generic information on the back of bills, and company hardship policies that, being difficult to locate and couched in technical terms and legalese, are inappropriate for consumers with varying literacy levels and a preference for personalised communication (Ali et al. 2015: 48–50; AER 2015: 25–6). Some of these hardship policies may not even be complying with the legal requirements: for example, under clause 71(3)(b) of Victoria's Energy Retail Code, energy companies must publish details of their hardship policy on their website 'in a way that is easy for a customer to access'. Yet even those consumers who manage to overcome the logistical and psychological barriers to identifying themselves as in need of hardship assistance (AER 2015: 11) may be actively or inadvertently blocked from accessing such assistance by customer service or collections staff with an inadequate understanding of the service provider's obligations under the legal hardship protections, and even less understanding of the experience of struggling with debt.

Our findings indicate that service providers are relying excessively on financial counsellors to guide consumers through this process, thus avoiding the cost of investing in additional staff and relevant training to perform the role of engaging with individual consumers and identifying appropriate solutions to their payment difficulties. The involvement of financial counsellors early in the process may, at first glance, appear to be a positive thing. Consumers surveyed by Brackertz indicated that the involvement of a financial counsellor made a significant difference to the resolution of their debt problems (2012: 15), while most financial counsellors surveyed by Financial Counselling Australia (2013: 16) and Financial and Consumer Rights Council (2014: 16–17) felt that consumers who self-advocated did 'not often' obtain the same outcomes from banks or energy companies as consumers represented by a financial counsellor. Yet these findings mainly serve to highlight the disadvantage experienced by the majority of consumers in hardship, who, as several studies have shown, are unlikely to seek the advice of a professional advocate (Schetzer 2008: 55–62; Wesley Mission 2009: 26). This is the result of numerous factors; consumers may spend weeks on a waiting list before obtaining an appointment with a financial counsellor (AER 2015: 18), and may be reluctant to disclose their difficult personal circumstances to another person. Hence a blanket requirement to consult with a financial counsellor could cause some consumers to disengage from the hardship process altogether. Furthermore, by relying on financial counsellors to do the work of engaging with consumers at an individual level, service providers add to the burden on financial counselling services, which are not funded by industry, and have recently been affected by cuts to the Commonwealth Financial Counselling Program. For example, a 2015 survey commissioned by the Consumer Action Law Centre ('CALC') showed that on average, financial counsellors are spending 43 per cent of their time on assisting clients with energy issues, and particularly on negotiating affordable payment plans and accessing hardship programs (CALC 2015b: 6). This results in a situation where community organisations that provide financial counselling services are effectively 'picking up the tab for a failure in customer service' (CALC 2015a: 43).

Generic, one-size-fits-all solutions are setting consumers up to fail

Even when they do offer hardship assistance to consumers trying to self-advocate, service providers are favouring generic solutions that fail to take the consumer's individual circumstances into account. Our survey confirms that hardship assistance across our four target sectors usually means a payment plan, a loan extension or an instalment plan. Other forms of assistance requiring a direct investment by the service provider — such as debt waiver, incentivised payment plans, home energy or water efficiency audits, or financial assistance with appliance replacement — are far more rarely provided. It is therefore concerning that according to the financial counsellors taking part in our study, the payment plans being provided to their clients are often so inflexible and ill-adapted to their capacity to pay that their clients are essentially being set up to fail.

As our findings suggest, this stems from a general tendency among service providers to prioritise recovery of the maximum amount of debt in the shortest possible time over keeping consumers connected to essential services, or assisting them to avoid enforcement action and its associated stresses. When negotiating payment plans with consumers on low incomes, service providers frequently insist on repayment amounts that do not leave the consumer with enough income to cover basic living costs. This problem of unaffordable payment plans has already been highlighted by other studies (Hall & Partners/Open Mind 2011: 25–6; Chester 2013: 54; CALC 2014: 6, 30; Levin & Guthrie 2014: 45–6). It is compounded by the fact that once a payment plan is in place, service providers often refuse to accept anything smaller than the negotiated repayment amount, even if this is all the consumer can pay at the time (Hall & Partners/Open Mind 2011: 21). If the consumer is unable to meet a certain number of scheduled repayments, they can find themselves at risk of being disconnected, or being returned to the service provider's debt collection processes (CALC 2014; CALC 2015a). For example, out of all Victorian consumers disconnected from their electricity or gas services in 2012–13, 28 per cent had been on a payment plan (ESC 2014: 38–9).

Policy implications

Our findings have a number of implications, both for the company policies of service providers, and also for public policy. First, they indicate the need for companies to move away from their generic, one-size-fits-all approach to implementing the legal hardship protections, which allows them to comply with the letter of these protections without achieving good practice. This requires recognition that in a credit society such as Australia, financial hardship can happen to almost anyone — including middle class, tertiary-educated property owners who would meet the criteria for the 'model consumer' envisaged by the legal hardship protections (see Ali et al. 2016: 80, 95). This was first recognised by Sullivan, Warren and Westbrook in their seminal study on consumer bankruptcy in the United States, which found that most debtors filing for bankruptcy represented 'a fair cross-section of the American middle class' (2000: 3). In Australia, too, an increasing proportion of people becoming bankrupt or entering into personal insolvency or debt agreements are coming from higher status occupations, with higher levels of personal and household incomes, realisable assets and rates of property ownership (Ramsay & Sim 2010: 293–8). The individualisation of economic risk (Hacker 2008; Marston, Moss & Quiggin 2010) and the impacts of financialisation (Berry 2015) — particularly in the form of burgeoning household debt — are the major factors contributing to this. As Sullivan, Warren and Westbrook (2000: 22) write:

> [C]onsumer debt has lowered many middle-class families' threshold for financial collapse. High consumer debt loads increase families' vulnerability to every other problem — job, medical, divorce, housing — that befalls them.

In other words, in a context where most consumers are using credit to pay not only for luxuries or optional extras, but also everyday living costs, it is inevitable that some will fall behind if they experience an unexpected interruption in cash flow. Financial counsellors taking part in our study were adamant that investing in processes that effectively assist these consumers to reduce their arrears and return to their usual repayment schedule does not amount to a 'favour' or 'indulgence' by service providers. Rather, it is in the best interests of service providers themselves, who benefit from retaining the client relationship.

While financial hardship can happen to almost anyone, empirical research in the United Kingdom has for a long time employed indicators of lifestyle deprivation — including falling into arrears on mortgage, rent, electricity and gas payments, or going into debt to meet routine expenses — to measure poverty defined as 'exclusion arising from lack of resources' (Whelan 1994: 52; see also, Whelan 1993: 90–1; Whelan et al. 2001: 359–60). As Whelan et al. (2001) showed, in affluent countries, such indicators provide a more useful measure of identifying deprived households by comparison to relative income-based poverty lines, as some people whose incomes fall below the average are still able to maintain an adequate standard of living (for example, because their situation is only temporary, or because they have existing assets and savings) (358). At the same time, in Australia, there are particular groups of consumers — carers receiving the Parenting Payment, and those who are unemployed and reliant on the Newstart Allowance — who are most likely to fall below the 50 per cent of median income poverty line (ACOSS 2016: 24, 27–9) and who experience more measures of deprivation, financial stress and social exclusion (including inability to pay electricity, water or gas bills on time) than other Australians (Saunders & Wong 2009: 45–6; Philips & Nepal 2012: 10, 15–16). For consumers in these groups, their difficulties with debt are a direct consequence of having incomes that are insufficient to cover the rising cost of living (ACOSS 2012; Dennis & Barker 2012). Financial counsellors taking part in our study stressed that providers of essential services — which include electricity, gas and water, and in some circumstances, telecommunications (Ali et al. 2015: 34–5; Communications Alliance 2014: 6) — had to be prepared to accept lower repayments from consumers that fell into these groups as part of the cost of doing business, even if those amounts did not cover the consumer's usage, if that was all that the consumer could afford.

In particular, as Nelthorpe and Digney (2011) show in their work on the Bulk Debt Negotiation Project, there is a small group of consumers for whom the only realistic response is the waiver of any existing debt. This group consists of consumers with no significant assets and a likelihood of remaining on a Centrelink income for the foreseeable future. Consumers in these circumstances are considered to be judgment-proof, and in Victoria, they are legally protected from being sued for debt recovery (Nelthorpe & Digney 2011: 1, 18–19; see also, CALC 2012: 19–20). Hardship arrangements such as short-term moratoriums are of little benefit for judgment-proof consumers, as their financial difficulties are unlikely to be resolved at the end of the reprieve period, while payment plans allowing them to make repayments below usage may allow their arrears to build indefinitely. While some service providers increasingly accept that waiving the debt of judgment-proof consumers makes commercial sense (Levin & Guthrie 2014: 54), financial counsellors continue to expend significant resources negotiating with other service providers — particularly telecommunications companies — that persist in subjecting these consumers to the stresses of debt collection, failing to acknowledge that they simply cannot pay. This is commercially futile, incurring 'significant costs in terms of staff resources and time — for very little gain' (Nelthorpe & Digney 2011: 2).

The question of what constitutes an appropriate policy response in these cases centres upon two considerations. The first of these is the need to ensure that any forms of assistance offered by service providers — rather than reflecting a one-size-fits-all approach that favours consumers experiencing short-term debt problems — are appropriate to the circumstances of the individual consumer. Such circumstances include the consumer's capacity to pay, their consumption needs, their overall financial situation, and any specific vulnerability, such as long-term reliance on a Centrelink income, low literacy, long-term or chronic illness or disability, or family violence. The other consideration is the need to ensure that consumers in similar circumstances receive consistent outcomes, regardless of whether they are represented by a financial counsellor. An additional issue highlighted by the Victorian Essential Services Commission in its recent inquiry into hardship practice in the energy sector is that detailed assessments of an individual consumer's capacity to pay — while arguably necessary to ensure that alternative payment arrangements are genuinely affordable — may involve requests for personal information and documentation that can be perceived as intrusive and onerous, potentially deterring some consumers from seeking assistance (ESC 2016: 45–7). CALC, in its submissions to the inquiry, suggested that service providers could minimise the need for detailed inquiries into consumers' personal circumstances by call centre staff by using triggers that would automatically render a consumer eligible for more intensive forms of assistance (for example, via entry into a hardship program), and that would prevent their debts from being referred to external debt collectors (CALC 2015b: 21; CALC 2015c: 8). Such triggers could include having a high level of arrears, or relying on a Centrelink income — information that the service provider would already have in the form of the consumer's payment history and details about their concession entitlements. CALC has also suggested measures such as imposing a cap on repayments by consumers whose income comes entirely from Centrelink (CALC 2015a: 45; CALC 2015c: 8); placing the decision to disconnect a consumer into the hands of an independent panel or arbiter (CALC 2015a: 46–7; CALC 2015c: 6, 8, 12–13); and introducing a fast-track debt waiver process for judgment-proof consumers across the energy sector (CALC 2015b: 14).

The next question is how to implement any of these possible responses across our four target sectors. Research by consumer advocacy organisations has noted that banks in particular have recently introduced sector-wide initiatives to improve the accessibility of hardship assistance for consumers who need it, including clearly visible information on their websites about applying for a hardship variation under section 72 of the National Credit Code, additional staff training, and improved referrals to hardship teams (Levin & Guthrie 2014: 5, 19–21, 32; FCA 2015: 24). Such voluntary initiatives, which could be described as examples of what Wilson (2008) calls 'values-driven innovation' in company culture and practice, are promoted by industry as 'likely to be more effective and less tokenistic than externally imposed regulatory regimes' (Wilson 2008: 258). Yet the reputational benefits and ensuing competitive advantages of engaging in such initiatives are generally not a significant motivating factor for providers of essential services, which are in a substantially stronger bargaining position relative to their consumers (Howell 2008: 80–1; see also, Wilson 2008: 266, 268). In the area of hardship practice, the effectiveness of competition as a consumer protection mechanism is especially limited, as consumers do not 'shop around' for service providers on the basis of their hardship policies (Ali et al. 2015: 48; see also, CALC 2015b: 3, 16). There are also cost incentives for service providers to limit access to hardship assistance (ESC 2016: 28–9), especially for consumers whose incomes are insufficient to cover their consumption needs. Hardship practice is therefore an area where in the absence of strong regulation, as George et al. (2014) stated in their evaluation of regulatory approaches in the UK, the interests of consumers can easily become 'stranded between regulators, government and companies, with especially serious implications for people in vulnerable circumstances' (14). Yet currently, the legal hardship protections introduced at the beginning of this article leave service providers with the ultimate discretion as to whether and how to assist a consumer — for example, by granting an application for a hardship variation, or allowing entry to a hardship program — leaving little scope for regulators to enforce any minimal standards for hardship practice (for example, see ESC 2016: 30, 50–2).

Ultimately, we recognise that changes in company culture cannot compensate for structural factors that place these very vulnerable groups at particular risk of financial hardship. As outlined in the first part of our article, these factors include the erosion of the social safety net for groups including carers, the unemployed, people with disabilities and the elderly (Hacker 2008; Marston, Moss & Quiggin 2010; ACOSS 2012; Denniss & Baker 2012; Gibson & Rochford 2008), which, in combination with the progressive financialisation of everyday life (Berry 2015), has placed consumers in these groups at greater risk of falling behind with debt. There are limits to the extent to which the law regulating the provision of consumer credit, energy, water and telecommunications services by companies is capable of addressing these structural factors: as stated by the Victorian Essential Service Commission in its recent financial hardship inquiry, the regulation of such services 'cannot solve wider causes of payment difficulty' (ESC 2016: 44). The assurance of an adequate standard of living — for example, by guaranteeing access to essential services for people whose incomes are too low to cover their increasing cost — is first and foremost the province of governments, not companies, which have commercial incentives to discontinue supply to consumers who cannot pay, and which do not generally account for the social costs of disconnection (ESC 2016: 3, 29). Rather, the problem of financial hardship needs 'to be tackled at source, by the raising of living standards' through changes to the law surrounding the provision of social welfare (Goode 1978: 98–100).

We therefore add our support to other measures proposed by community organisations conducting research in the area of financial disadvantage. The most important of these measures, from the perspective of alleviating deprivation, would be an increase in the Centrelink payment rate, particularly for the Newstart and Youth Allowances (Banks et al. 2012: 86; ACOSS 2012: 9–12; Denniss & Baker 2012: 5–7). Another measure that would foster financial inclusion by reducing reliance on fringe credit products is additional funding for safe alternative forms of credit for consumers on low incomes, including no-interest and low-interest loan programs and other microfinance schemes (Corrie 2011: 120–1; Banks et al. 2012: 89; Good Shepherd Australia New Zealand & Goulburn Valley FamilyCare 2015).

Conclusion

Financial hardship, in a credit society such as Australia, is a problem that can happen to almost anyone. It is therefore important that there be adequate protections to allow consumers who are temporarily unable to meet their debt obligations to restore their financial position, and to avoid being disconnected from services that are considered essential to full social and economic participation. In this article, we draw on the views of financial counsellors to show that in their approach to implementing the legal hardship protections currently in place, service providers in the consumer credit, energy, water and telecommunications sectors are failing to achieve this objective.

By favouring payment plans calculated to maximise the amount of debt recoverable within a short period of time, service providers undermine the effectiveness of the legal hardship protections, even in the case of middle class consumers experiencing temporary payment difficulties. The situation is far more serious in the case of consumers living on low incomes, particularly Centrelink incomes, who continue to fall through the gaps in protections that envisage a relatively high level of awareness of consumer rights, and an ability to repay arrears and cover usage after an unrealistically short period. These consumers would be assisted by a shift in the culture surrounding hardship practice to include, for providers of essential services, a commitment to keeping consumers connected even in cases of long-term inability to cover usage. Such a cultural change would need to be underpinned by reforms to strengthen the legal hardship protections themselves. Yet more far-reaching public policy changes — especially changes to Australia's Centrelink payment rates, and increased funding for low-interest and low-interest loan schemes — are necessary if these vulnerable consumers are to have meaningful protection from what is currently a very high risk of financial hardship.

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Table 1: Comparing how often forms of hardship assistance are offered by banks and other credit providers

	Rarely, or very rarely or never	Sometimes	Frequently or very frequently
A moratorium or freeze on repayments	11%	34%	56%
A temporary reduction in repayment amounts	6%	36%	58%
A permanent reduction in repayment amounts	36%	39%	24%
Capitalising or capping arrears	39%	48%	13%
Consolidation of loans	82%	17%	1%
Interest-only repayments on a loan	47%	38%	16%
Whole or partial debt waiver	41%	39%	20%

Table 2: Comparing how often forms of hardship assistance are offered by energy and water companies

	Rarely, or very rarely or never		**Sometimes**		**Frequently or very frequently**	
	Energy	Water	Energy	Water	Energy	Water
An extension of time to pay a debt	6%	5%	23%	35%	71%	60%
A payment plan or instalment plan	1%	7%	15%	29%	84%	64%
An incentivised or matched payment plan	49%	59%	39%	21%	12%	20%
Personalised assistance with energy efficiency (for example, home audits of energy or water use, or assistance with appliance replacement)	75%	76%	18%	14%	7%	10%
Whole or partial debt waiver	90%	90%	7%	7%	3%	3%

Table 3: Comparing how often forms of hardship assistance are offered by telecommunications companies

	Rarely, or very rarely or never	Sometimes	Frequently or very frequently
An extension of time to pay a debt	25%	38%	36%
A payment plan or instalment plan	27%	46%	26%
An incentivised or matched payment plan	93%	5%	2%
Whole or partial debt waiver	86%	13%	1%

Table 4: Biggest barriers to accessing appropriate hardship assistance

	Banks and other credit providers	Energy and water companies	Telecommunications companies	Average
Unaffordable payment arrangements	47%	62%	60%	56%
Inappropriate arrangements for customers in long-term financial hardship	65%	57%	53%	58%
Arrangements that cannot be modified if the customer's circumstances change	16%	8%	19%	14%
Lack of accessible information about seeking help with financial hardship	24%	29%	21%	25%
Late identification of customers in financial hardship	30%	37%	30%	32%
Lack of support for customers who try to self-advocate	63%	46%	47%	52%
Inadequate training of staff who deal with customers in financial hardship	27%	27%	38%	31%
Negative attitudes towards customers in financial hardship	25%	25%	38%	29%
Other	6%	8%	8%	7%