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Investigation of the management of financial debts for the sale and supply of electricity and water to members of Coober Pedy's Aboriginal Community | July 2021

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Investigation of a complaint under section 13(2)  
of the *Ombudsman Act 1972* concerning the  
District Council of Coober Pedy

Ombudsman ref: 2018/04687

#### Contacting Ombudsman SA

Our business hours are  
9.00am - 5.00pm, Monday to Friday

Level 8  
95 Grenfell Street  
Adelaide SA 5000

PO Box 3651  
Rundle Mall SA 5000

Telephone 08 8226 8699

Facsimile 08 8226 8602

Toll free (outside metro area) 1800 182 150

[www.ombudsman.sa.gov.au](http://www.ombudsman.sa.gov.au)

**This report includes the stories and names of members of the Aboriginal Community in the District Council of Coober Pedy.**

**Aboriginal and Torres Strait Islander people should be aware that this report may contain the names of deceased persons.**

## Introduction

This is an investigation of the District Council of Coober Pedy (**the council**) and its actions as the electricity and water supplier to the district of Coober Pedy.

Coober Pedy is a town located over 800 km north of Adelaide in northern South Australia.

The community of Coober Pedy has been described as small but ethnically diverse.

The Australian Bureau of Statistics 2016 Census recorded a population of 1,762 people. Aboriginal and Torres Strait Islander people made up 17.1% of the total population. Whereas, Aboriginal and Torres Strait Islander people made up 3.3% of the total Australian population.

The council is the local government authority for Coober Pedy and its surrounding area.

In addition to the regular functions of a local government authority, the council provides essential services such as electricity and water retail services to the district. The council is responsible for the sale and supply of those services. The council also connects customers to their electricity and water supply, maintains those connections, and bills customers for their electricity and water usage.

The council's electricity and water bills contain information such as the amount that is due, the due date for payment and consumption charges for that billing period. The 'amount due' stated on a bill may be higher than just the consumption charges for that particular billing period. This could occur if there is an outstanding amount that has not been paid by a customer from previous billing periods.

The council is permitted to disconnect a customer's electricity or restrict water supply for non-payment of a bill. However, prior to doing so, the council must have contacted the customer and provided a written reminder notice. If payment is still not made by a customer, the council must then provide a written disconnection warning stating the intention to arrange for a disconnection in five business days.

To comply with these requirements, the council's practice has been to send the customer an 'overdue notice'. If payment is not made, the council then sends an 'urgent payment letter' or, alternatively, if the customer has been making payments by instalments, the council sends an 'increase payment letter' requiring the instalments to be increased. If payment still is not made, a 'final notice' letter is sent to the customer before the council issues a disconnection notice at the relevant property.

It is relevant to note that some customers may not be in a position to pay their bills due to circumstances of financial hardship. If a customer was to experience long term or ongoing financial hardship, they may quite easily continue to accumulate a debt over time.

### *My investigation*

In 2018, the Aboriginal Legal Rights Movement (**ALRM**) wrote to me, on behalf of an extensive list of members of Coober Pedy's Aboriginal community (**the community members**). ALRM held concerns about the actions of the council in its capacity as the supplier of electricity and water.

ALRM explained that the vast majority of the community members who approached ALRM are Centrelink clients, many of whom live in what can be described as circumstances of poverty. These community members had accumulated considerable arrears in relation to their electricity and water services.

It was alleged that the debts had accumulated in circumstances where the community members could not understand the information contained in their bills, the extent of their debt or the effect of any payments they have made towards the amount that was due.

ALRM's concern was that the council had sought payment of the arrears in an inappropriate manner. In particular, that the council took action that was contrary to its Electrical Retail and Distribution Licence (**the Electricity Licence**) and Water Industry Retail Licence (**the Water Licence**). Concern was also raised that the council had failed to properly apply its Hardship Policy for Electricity Customers (**the Electricity Hardship Policy**) and Hardship Policy for Water Customers (**the Water Hardship Policy**).

ALRM also told me that a number of the community members felt they were pressured into payment arrangements to pay off their debt. This included arrangements where a community member's extended family would also make payments towards the debt.

A number of the community members are Antakirinja Matu-Yankunyjtjara people, who hold Native Title in the Coober Pedy region. Members of the Antakirinja Matu-Yankunyjtjara Aboriginal Corporation RNTBC (**AMYAC**) are the beneficiaries of the Antakirinja Matu-Yankunyjtjara Indigenous Community Trust (**AM-Y ICT**), which is a charitable trust managed by Perpetual Trustees. ALRM contended that many community members were pressured to request payments from the AM-Y ICT towards their electricity and water debts.

In response to these concerns I commenced an Own Initiative Investigation using my powers under section 13(2) of the *Ombudsman Act 1972*.

My investigation focussed on answering the following questions:

- Whether the council acted in a manner that was contrary to the Electricity Retail and Distribution Licence and the Water Industry Retail Licence
- Whether the council acted in a manner that was contrary to the Hardship Policy for Electricity Customers and the Hardship Policy for Water Customers
- Whether the actions of the council in relation to payments from the AM-Y ICT towards electricity and water debts was unjust, unreasonable or wrong.

### ***An evolving council***

The issues identified in my investigation have occurred during a turbulent period of time at the council. Since late 2014 there has been a high turnover in the position of the Chief Executive Officer at the council. Several individuals have acted in that role during that time. In addition, the Chief Executive Officer who was appointed in 2016 resigned in 2018.

The council was placed into administration on 25 January 2019 on the recommendation of the Minister for Transport, Infrastructure and Local Government. The council's elected body was suspended, and an administrator was appointed for a period of 12 months. The period of administration has been extended to the conclusion of the next local government periodic elections in November 2022.

This period of change has thus made it difficult for the administration to respond to my enquiries about the actions and decisions of council staff who are no longer present.

The first substantive response to my investigation by the council was provided to me prior to the appointment of an administrator, and also prior to the appointment of the council's current Chief Executive Officer, Mr Dean Miller.

In more recent correspondence with the council, Mr Miller has detailed how the previous actions and decisions of the council have placed a significant financial burden on the current administration, and its ability to become financially stable.

### *Cooperation with ESCOSA*

My investigation has included extensive communication and enquiries with the Essential Services Commission of South Australia (**ESCOSA**). ESCOSA is responsible for licensing and monitoring the council in relation to its electricity and water supply.

In response to enquiries from my Office, ESCOSA commenced a dialogue with the council, and identified issues in the council's practices and application of the electricity and water licences. ESCOSA has worked with the council to implement many changes that address the issues identified by my investigation.

ESCOSA has also conducted an audit of the council's processes and procedures for the supply of electricity and water, and will continue to monitor the council's regulatory compliance.

My communications with ESCOSA throughout my investigation have been instrumental in addressing many of the concerns raised in the investigation, whilst continuing to progress the investigation.

### *Investigation and procedural fairness*

In February 2020 I issued a provisional report. I provided my provisional report to the Chief Executive Officer at the council, as well as the council's administrator. I also provided my provisional report to ALRM and ESCOSA for their feedback and comments.

On 11 March 2020, ALRM's financial counsellor Mr Ralph Coulthard arranged a community meeting in Coober Pedy to discuss my provisional report with the community. Eight community members attended that meeting.

ALRM also provided my provisional report to the AMYAC Board for their feedback and comment. The AMYAC Board manages Native Title rights and obligations for the Antakirinja Matu-Yankunytjatjara people in the Coober Pedy Region

I received extensive responses to my provisional report from all parties. After considering the responses at great length, I decided to conduct additional investigation of several issues, which expanded some areas of my investigation.

While my investigation has been broad and quite protracted, I want to acknowledge the positive responses from the council's Chief Executive Officer, Mr Miller. Mr Miller has explained measures that have been undertaken by the council during the course of my investigation to address the many issues and concerns that have been identified.

I acknowledge that Mr Miller has taken the helm of a council that has been in dire financial circumstances for an extended period of time. Nonetheless, I have been concerned about the experiences that have been described to me by the community members. My conclusions from this investigation highlight administrative errors by the council that have had a drastic and significant impact on the Aboriginal community in Coober Pedy.

I thank the community members for sharing their experiences with me.

I provided my revised provisional report to Mr Miller and the council's Administrator, ALRM and ESCOSA. I also provided my revised provisional report to the AMYAC Board and the AM-Y ICT.

I received responses from all of the parties. ALRM and ESCOSA both informed me that they did not have further comments to make on my report.

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Mr Miller advised me that he agreed with the recommendations that I have made at the end of my report, and provided additional comments about two of my recommendations.

The AMYAC Board expressed concern about my provisional conclusion about the actions of the council in relation to payments from the AM-Y ICT. The AM-Y ICT also requested that I reconsider my position on this point.

I carefully considered the responses from the AMYAC Board and AM-Y ICT. I am appreciative of the additional information and context provided by those responses. However, I am not persuaded to alter my conclusions or recommendations.

I have addressed the responses to my provisional report and revised provisional report where I consider necessary throughout this report.

I have formed a final view that the council acted in a manner that:

- was contrary to conditions within the council's Licences and, therefore, contrary to law
- failed to ensure customers are informed of the impact of any payments made under Hardship Agreements (and other such payment arrangements), and therefore acted in a manner that is wrong
- was contrary to the council's Hardship Policies and therefore acted in a manner that is unreasonable, unjust and wrong
- was also contrary to section 27 of the *Water Industry Act 2012* and therefore, contrary to law.

I have been unable to conclusively determine (based on the evidence available and civil standard of proof) whether the actions of the council in relation to payments from the AM-Y ICT towards electricity and water debts was unjust, unreasonable or wrong. The evidence before me was very finely balanced, and I stress that despite my conclusion, I recognise the experiences of the community members and the impact this has had on their interactions with the council.

I acknowledge that the council administration has taken many steps to address the issues raised in my report. I am hopeful that this progress and implementation of my recommendations will strengthen the council's ability to respond to these issues appropriately in the future.

My report lists seven recommendations.

Six recommendations have been made to the council. I have also made a recommendation to the State Government. My recommendations are listed at the end of my report.

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## Investigation

The investigation involved:

- assessing the information provided by the Aboriginal Legal Rights Movement
- seeking a response and records from the council for each community member that was identified by the Aboriginal Legal Rights Movement
- seeking information and a number of responses from the Essential Services Commission of South Australia
- meeting with the Essential Services Commission of South Australia to discuss my investigation
- interviewing community members
- considering:
  - the *Electricity Act 1996*
  - the *Water Industry Act 2012*
  - the *Water Industry Regulations 2012*
  - the *Local Government Act 1999*
  - the *Essential Services Commission Act 2002*
  - the *Electrical Retail and Distribution Licence*, District Council of Coober Pedy
  - the *Water Industry Retail Licence*, District Council of Coober Pedy
  - the council's Hardship Policy for Electricity Customers
  - the council's Hardship Policy for Water Customers
  - the *Energy Industry Guideline No. 4 - Compliance Systems and Reporting*, September 2013, Essential Services Commission of South Australia
  - the *Water Industry Guideline No 1 - Compliance System and Reporting*, July 2016, Essential Services Commission of South Australia
  - the *Water Retail Code - Minor and Intermediate Retailers*, March 2015, Essential Services Commission of South Australia
  - the Essential Services Commission of South Australia, Compliance Review - District Council of Coober Pedy, Report - Water and Electricity, January 2021
- preparing a provisional report and seeking the views of the parties
- considering the responses to my provisional report made by:
  - the Essential Services Commission of South Australia
  - the District Council of Coober Pedy
  - the Aboriginal Legal Rights Movement and community members
  - the Antakirinja Matu-Yankunytjatjara Aboriginal Corporation Board
- making additional enquiries with the parties in response to my provisional report
- seeking additional responses and records from the council
- preparing a revised provisional report and seeking the views of the parties
- considering the responses to my provisional report made by:
  - the Essential Services Commission of South Australia
  - the District Council of Coober Pedy
  - the Aboriginal Legal Rights Movement and community member, [REDACTED]
  - [REDACTED]
  - the Antakirinja Matu-Yankunytjatjara Aboriginal Corporation Board
  - the Antakirinja Matu-Yankunytjatjara Indigenous Community Trust
- preparing this final report.

## Standard of Proof

My investigation uses an evidentiary standard of proof.

The standard of proof I have applied in my investigation and report is on the balance of probabilities.

However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld.

That decision recognises that greater care is needed in considering the evidence in some cases.<sup>1</sup> It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved.

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<sup>1</sup> This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

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## The council as retailer of electricity and water

### *Electricity*

The majority of electricity retailers in South Australia are connected to the national electricity market (**NEM**) and are regulated by the Australian Energy Regulator.

However, some South Australian electricity retailers and distributors are not connected to the NEM, and these retailers are instead regulated by the Essential Services Commission of South Australia (**ESCOSA**).<sup>2</sup>

The District Council of Coober Pedy (**the council**) is one such electricity retailer that is not connected to the NEM. Instead, the council acts as the retailer of electricity to the area. Energy has historically been supplied by Energy Generation Pty Ltd to the council, which is then distributed by the council to the community.

The council receives subsidies from the South Australian Government under the Remote Areas Energy Supplies (**RAES**) scheme. The scheme subsidises the difference between costs incurred by the council in purchasing and distributing electricity to the town and the revenue collected from residents. The subsidies exist to make electricity supply viable and affordable in regional areas.

### *Water*

Water and sewerage retail services are not regulated nationally. ESCOSA operates as the economic regulator in South Australia,<sup>3</sup> and the council functions as the retailer of water to the district of Coober Pedy.

### *Licences to provide retail services for electricity and water*

In South Australia, a person must not provide a retail service in relation to electricity or water without a licence.<sup>4</sup>

Electricity and Water Licence applications are made to ESCOSA.<sup>5</sup> If ESCOSA determines it is appropriate to issue a licence, the entity is then licensed to provide services or carry on operations or activities in accordance with the terms and conditions of the licence.<sup>6</sup> It is an offence for an entity to contravene a condition of its licence.<sup>7</sup> Among other functions, ESCOSA monitors and enforces compliance with the relevant licence.

The council is licensed to operate the Coober Pedy district's electrical distribution networks and retail electricity to customers for consumption, within the council's boundary.<sup>8</sup> The council is separately licensed for the sale and supply of water within the council's boundary.<sup>9</sup>

### *A quick review of some of the issues faced by the council as an electricity and water retailer*

The council has publicly experienced difficulties maintaining financial viability. It is worthwhile noting that a previous investigation undertaken by me concerned the council's negotiations and execution of a power purchase agreement with Energy Generation Pty Ltd. As a result of

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<sup>2</sup> *Electricity Act 1996*.

<sup>3</sup> *Water Industry Act 2012*.

<sup>4</sup> Electricity Act, section 15; Water Industry Act, section 18(1).

<sup>5</sup> Electricity Act, section 16; Water Industry Act, section 19.

<sup>6</sup> Electricity Act, section 18; Water Industry Act, section 22.

<sup>7</sup> Electricity Act, section 25; Water Industry Act, section 27.

<sup>8</sup> Electricity Retail and Distribution Licence (**Electricity Licence**).

<sup>9</sup> Water Industry Retail Licence (**Water Licence**).

that investigation, I identified an extensive list of errors by the council's elected body and the council administration.

I concluded that the council had committed maladministration in public administration and recommended that the council be placed under administration. That subsequently occurred and the administrator continues to remain in place of the elected body.

Further to this, the Auditor General completed his own examination of the council in 2018 and, among other matters, the Auditor-General noted<sup>10</sup>:

- the council had considerable issues with its record keeping practices and compliance with the *State Records Act 1997*
- the council has incurred significant debt through loans and does not have the capacity to generate additional cash to repay those debts
- the council's provision of electricity and water supply are significant components of the council's operations and expose the council to operational and financial risk. Therefore, it is critical that the council has 'appropriately qualified and experienced personnel' to:
  - manage and oversee the operations and manage its risks effectively
  - develop and implement accounting systems and records, as well as records of non-financial data, to capture and promptly report on the council's financial operation and performance
  - analyse financial information related to the electricity and water functions of the council so as to identify emerging financial risks and then identify and implement appropriate risk mitigation strategies.
- although the council's electricity and water functions expose the council to financial risk:
  - the council should have been protected from the impact of the financial risks associated with its electricity supply function due to the subsidies received through the RAES scheme. However, this was dependent on the council effectively implementing quarterly and annual budgeting and reporting required under the scheme.
  - mitigating the financial risks associated with the council's water supply function required the council to understand the revenues and expenses associated with that function and to understand water production costs.

The Auditor-General found that an absence of regular and proper financial analysis and reporting by the council 'meant the Council did not understand its financial situation until it was forced to incur significant and unplanned borrowings to respond to the emerging financial crisis. The Council incurred significant borrowings without assessing its capacity to repay the outstanding debt and the impacts on its long-term financial sustainability.'<sup>11</sup>

The Auditor-General formed the view that it is 'unreasonable to expect the Council to meet its current financial obligations and continue to provide essential services with its existing governance and financial arrangements'.<sup>12</sup> The Auditor-General noted that the council's borrowings are significant and to repay those debts the council will need to generate additional revenue to accumulate cash. The council has however, limited capacity to generate additional revenue.

The Auditor-General noted that the council has difficulty in doing so due to problems recovering debt owed by ratepayers and utility users.<sup>13</sup>

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<sup>10</sup> Report of the Auditor-General, *Examination of the District Council of Coober Pedy*, Report 10 of 2018, Auditor-General's Department (**Report of the Auditor-General**).

<sup>11</sup> Report of the Auditor-General, 6.

<sup>12</sup> Report of the Auditor-General, 6.

<sup>13</sup> Report of the Auditor-General, 7.

This issue has also been expressed by Mr Miller. In responding to my investigation, Mr Miller commented that the council does not believe that the current allowance for bad debts under the RAES Scheme is sufficient to fully recover all electricity debts owed by electricity customers. Mr Miller's response is considered in more detail later in my report.

## The Electricity and Water Licences

ESCOSA has issued Electricity and Water Licences to the council.

The Electricity and Water Licences contain conditions that cover a range of areas relevant to the sale and supply of electricity and water to the district of Coober Pedy. The Licences also refer to governing legislation and relevant retail codes, which collectively provide a regulatory system for the sale and supply of electricity and water.

Below, I refer to conditions within the Electricity and Water Licences that are of particular relevance to this investigation.

### *Payment Difficulties*

Condition 32 of the Electricity Licence provides that, where a customer informs the council in writing or by telephone that they are experiencing payment difficulties, the council must advise the customer of instalment plan options and, where appropriate provide information on independent financial and other relevant counselling services.

The Water Licence requires compliance with any applicable industry code made by ESCOSA.<sup>14</sup> There are two water retail codes created by ESCOSA. The code applicable to the council is the Water Retail Code - Minor and Intermediate Retailers (**Water Retail Code**).<sup>15</sup>

Clause 5.4.1 of the Water Retail Code requires that the council must offer at least the following payment options to residential customers:

- payment in advance facilities
- flexible payment arrangements under which residential customers are given more time to pay a bill or to pay arrears (including any restriction, disconnection, or restoration charges).

### *Content of Bills*

In addition, the council's Electricity Licence requires that each electricity bill issued to a customer must itemise the following:<sup>16</sup>

- all charges for electricity sold by the council to the customer
- any other charge relating to the sale of electricity to the customer by the council at the supply address (including special meter readings, account application fees, public lighting, fixed charges for special purpose electricity sales)
- the date of the last meter reading or estimate and the number of days since the previous reading or estimate
- the meter readings, metering data or estimates for the bill
- consumption, or estimated consumption, in units used (eg kWh)
- the pay by date
- the telephone number for billing, payment enquiries and instalment payment options
- a 24 hour contact telephone number for faults and emergencies
- the customer's supply address and any other relevant address
- the customer's name and account number
- the amount of arrears or credit
- the amount of any security deposit provided by the customer
- a reference to the availability of any concessions.

<sup>14</sup> Water Licence, condition 6.3(a).

<sup>15</sup> Letter from ESCOSA dated 17 July 2018.

<sup>16</sup> Electricity Licence, condition 24.4.

There are no particular requirements under the Water Industry Act in relation to water billing. However, the Water Licence requires the council to comply with any industry code relating to the provision of pricing information,<sup>17</sup> and the Water Retail Code created by ESCOSA provides guidance in relation to the content of the council's water bills.<sup>18</sup>

The Water Retail Code provides that the council must prepare a bill so that a customer can easily verify that the bill conforms to their customer sale contract (where relevant) and must include at least the following on each bill:<sup>19</sup>

- the customer's name and account number
- the customer's supply address and any relevant other address
- the pay-by date, which must not be less than 12 business days after the date the council sends the bill to the customer, unless otherwise agreed with a customer
- the amounts due to the council
- the relevant fees, charges and tariffs applicable to the customer, separately itemised
- the amount of any government concessions or rebates applicable to the customer, separately itemised for each service
- the amount of any government imposed charges or levies and details of the charge or levy
- a list of the available payment methods
- the telephone number for billing, payment enquiries and instalment payment options and information about help that is available if the customer is experiencing difficulties in paying
- a 24-hour contact telephone number for faults, emergencies and force majeure events<sup>20</sup>
- the amount of arrears or credit, and the total of any payments made by the customer since the last bill was issued
- for retail services that are metered:
  - the date of the last meter reading or estimate for relevant retail services and the number of days since the previous reading or estimate, or enable the calculation of the number of days the bill covers
  - the estimated date of the next meter reading
  - the meter readings, metering data or estimates for the bill for retail services
  - consumption, or estimated consumption, for water service units (kilolitre(kL))
- for bills used to residential customers, a reference to the availability of relevant government concessions and rebates
- any other information prescribed by applicable regulatory instruments.

### *Disconnection of electricity supply<sup>21</sup>*

Condition 38.2 of the council's Electricity Licence provides that a customer's electricity may be disconnected if the customer has not:

- paid a bill
- agreed to an offer of an instalment plan or other payment option to pay a bill
- complied with any obligations to make payments in accordance with an agreed instalment plan or other payment option relating to the payment of bills
- allowed the council access to their property in order to read the meter, for three consecutive billing cycles
- paid a security deposit or provided a bank guarantee.

<sup>17</sup> Water Licence, condition 7.1(a).

<sup>18</sup> Letter from ESCOSA dated 17 July 2018.

<sup>19</sup> Water Retail Code - Minor and Intermediate Retailers (**Water Retail Code**), clause 5.1.5.

<sup>20</sup> A 'force majeure event' is an event beyond the control of either party to a contract that would prevent or hinder the ability to perform that contract.

<sup>21</sup> The Water Licence and Water Retail Code also contain provisions concerning the restriction, discontinuance or disconnection of a customer's water supply. However my investigation has not had cause to specifically consider this.

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However, prior to disconnecting electricity, the council must have 'used its best endeavours' to contact the customer personally by either telephone, mail, email or other method approved by ESCOSA.<sup>22</sup> The council must also have given the customer a reminder notice and then a written disconnection warning stating its intention to disconnect in 5 business days.<sup>23</sup> I have already noted the steps that appear to be taken by the council in such circumstances.

If a disconnection arises specifically due to a customer's failure to pay a bill, the council must have offered the customer an alternative payment option where the customer may make payments by instalment.<sup>24</sup>

Condition 34 of the Electricity Licence provides that payment by instalments may include payments made in advance towards future bills or an interest free instalment plan, under which the customer is given more time to pay a bill or arrears.

The council does not have to offer an instalment plan if the customer has had two instalment plans cancelled in the last 12 months due to non-payment. If an instalment plan is offered by the council, the council must take into account information from the customer about their usage needs and capacity to pay.

In circumstances where the council proceeds with disconnecting a customer's electricity, condition 40 of the Electricity Licence provides that the council must not disconnect a customer's electricity 'on a Friday, on a weekend, on a public holiday or on the day before a public holiday, except in the case of a planned interruption'.

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<sup>22</sup> Electricity Licence, condition 39.1(a).

<sup>23</sup> Electricity Licence, condition 39.1(b) and (c).

<sup>24</sup> Electricity Licence, condition 39.1(d).



## The Electricity and Water Hardship Policies

A hardship policy, broadly speaking, is a document designed to provide guidance about how to manage customers who may be experiencing difficulty making payments towards their bills due to financial hardship.

In relation to the sale and supply of water, the Water Industry Act and Water Retail Code provides that the council must adopt a customer hardship policy.<sup>25</sup> Under the Water Industry Act, it will also be a condition of the water licence that the council is to comply with its customer hardship policy.<sup>26</sup>

There is no such equivalent requirement for a customer hardship policy under the Electricity Act. However, the council has adopted an Electricity Hardship Policy which mirrors its Water Hardship Policy.

My investigation concerns the Hardship Policies that were in place at the time that I commenced my investigation.<sup>27</sup>

Both Hardship Policies stated:

District Council of Coober Pedy is committed to assisting residential customers of [Electricity and Water services who] are experiencing financial hardship, to manage their payments in a manner that best suits the customer, and ensuring they remain connected to a retail service.

The purpose of this policy is to identify residential customers who are experiencing payment difficulties due to hardship, and assist those customers to better manage their bills on an ongoing basis.

Both Hardship Policies provided:

- a residential customer experiencing financial hardship is someone identified by themselves, the council, an accredited financial counsellor or a welfare agency as 'having the intention, but not the financial capacity, to make required payments'<sup>28</sup>
- there are two types of financial hardship; ongoing and temporary. Depending on the type of hardship being experienced 'hardship customers will have different needs and will require different solutions'<sup>29</sup>
- customers identified as experiencing ongoing hardship are generally those on low or fixed incomes. These customers may require ongoing assistance<sup>30</sup>
- the extent of the person's hardship is determined by either the council's assessment process or an external body such as an accredited financial counsellor.<sup>31</sup> The council will take into account, among other things, whether the customer is a Centrelink client, whether the customer's payment history indicates that they have had difficulty meeting their bills in the past and whether the customer has identified their position regarding their ability to pay<sup>32</sup>
- the council will ensure staff are appropriately trained in dealing with hardship customers so that staff are able to; 'treat customers with respect and without making value judgements', identify hardship customers early, establish payment plans based on a

<sup>25</sup> Water Industry Act, section 37; Water Retail Code, clause 3.5.1.

<sup>26</sup> Water Industry Act, section 37(4); ESCOSA clarified this was not in the licence but considers it have been a 'deemed condition' as required by legislation and covered as a requirement for the licences to adhere to legislation. ESCOSA will update the licences in future to ensure that it is a clear condition in the licence.

<sup>27</sup> Both hardship policies have since been updated with the assistance of ESCOSA.

<sup>28</sup> Hardship Policies, clause 6.

<sup>29</sup> Hardship Policies, clause 7.

<sup>30</sup> Hardship Policies, clause 8.

<sup>31</sup> Hardship Policies, clause 10.

<sup>32</sup> Hardship Policies, clause 11.

- hardship customer's capacity to pay, and understand processes for referral to an accredited financial counsellor or welfare agency for assistance<sup>33</sup>
- the council will 'engage in discussion with the hardship customer to determine a realistic payment option in line with the customer's capacity to pay',<sup>34</sup> and will work with a hardship customer's financial counsellor to determine a payment arrangement and instalment amount that best suits the customer and their individual circumstances<sup>35</sup>
  - every hardship customer has the right to 'be treated respectfully on a case-by-case basis and have their circumstances kept confidential', and to 'negotiate an amount they can afford to pay on a payment plan or other payment arrangement'<sup>36</sup>
  - a customer will not be charged a reconnection fee if they are experiencing financial hardship and should have been identified as eligible for the Hardship Policies, so long as the customer agrees to participate in a hardship agreement upon reconnection<sup>37</sup>
  - the council, at no charge, will provide hardship customers with information on how to reduce usage and improve electricity and water efficiency, which may include referral to relevant government electricity and water efficiency programs<sup>38</sup>
  - the Hardship Policies do not limit or prevent the council from 'waiving any fee, charge or amount of arrears for the provision of retail services to customers who are experiencing financial hardship'.<sup>39</sup>

A number of the provisions within the Water Hardship Policy are also reiterated within the Water Retail Code. For example, the council must advise a customer of its Hardship Policy where:

- the residential customer informs the council in writing, by telephone or in person that they are experiencing payment difficulties
- a recognised welfare agency or accredited financial counsellor informs the council that the customer is experiencing payment difficulties due to hardship
- the council's credit management processes indicate or ought to indicate to the council that non-payment of a bill or bills for retail services is due to the customer experiencing payment difficulties due to hardship.<sup>40</sup>

During my investigation, I was advised by ESCOSA that the council's Hardship Policies were not compliant with relevant legislative requirements and regulations. After addressing this issue with the council, ESCOSA has more recently approved an updated Hardship Policy for both electricity and water that is compliant with relevant legislation and regulations.

My investigation has had to balance my considerations of whether the council acted in compliance with the Hardship Policies, with the knowledge that the Hardship Policies were not actually compliant with the relevant legislation and regulations.

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<sup>33</sup> Hardship Policies, clause 37.

<sup>34</sup> Hardship Policies, clause 15.

<sup>35</sup> Hardship Policies, clause 16.

<sup>36</sup> Hardship Policies, clause 35.

<sup>37</sup> Hardship Policies, clause 14.

<sup>38</sup> Hardship Policies, clause 22.

<sup>39</sup> Hardship Policies, clause 40.

<sup>40</sup> Water Retail Code, clause 3.5.2(c).

## The Antakirinja Matu-Yankunytjatjara Aboriginal Corporation and the Antakirinja Matu-Yankunytjatjara Indigenous Community Trust

The district of Coober Pedy is located within the traditional lands of the Antakirinja Matu-Yankunytjatjara and Yankunytjatjara people.

On 11 May 2011 the Federal Court made a Consent Determination recording the Antakirinja Matu-Yankunytjatjara People's non-exclusive Native Title rights and interest to 78,672 sq metres of land and waters in the north-west region of South Australia.<sup>41</sup> This included land in and around Coober Pedy.

The Antakirinja Matu-Yankunytjatjara Aboriginal Corporation RNTBC (**AMYAC**) is the registered Native Title body corporation for Native Title held in accordance with the Antakirinja Matu-Yankunytjatjara Native Title Consent Determination.

AMYAC's predominant role is to manage Native Title rights and obligations in the Coober Pedy region. It is governed by a Board that is elected by AMYAC members at an Annual General Meeting (**the AMYAC Board**).

A person is eligible for AMYAC membership if they are an adult Aboriginal person who is a member of the Western Desert Cultural Group and are connected with the Antakirinja Matu-Yankunytjatjara Native Title area, in accordance with Western Desert traditional law and custom.<sup>42</sup>

AMYAC and its members are the beneficiaries of the Antakirinja Matu-Yankunytjatjara Indigenous Community Trust (**AM-Y ICT**), which is a charitable trust managed by Perpetual Trustees.

The AM-Y ICT's role is to manage Native Title compensation payments for charitable purposes.

In responding to my revised provisional report, the AM-Y ICT provided additional information about the charitable objects and purposes of the Trust:

...the charitable objects and purposes of the Trust are as follows, to the extent that in doing so is charitable at law or is incidental or ancillary to an object that is charitable at law:

1. the relief of poverty, sickness, suffering, destitution, misfortune and helplessness of the Community;
2. to provide grants, scholarships, bursaries and other assistance (financial or otherwise) for the education, including vocational training and economic and enterprise training of the members of the Community;
3. to promote health in the Community;
4. to provide for the needs of the elderly and infirm members of the Community;
5. to provide cultural and heritage benefits to the Community;
6. to provide grants and other assistance for the protection and preservation of the natural environment;
7. to provide transport and communication services to the Community;
8. to provide for the long-term needs of future generations of members of the Community;
9. to promote, protect and maintain the traditional laws and culture of the Community;
10. to provide assistance to the Community for housing programmes;
- 12.[sic]to provide funding for or to implement Community projects, Community facilities and Community activities for the furtherance of these charitable objects and purposes;

<sup>41</sup> *Lennon on behalf of the Antakirinja Matu-Yankunytjatjara Native Title Claim Group v The State of South Australia* [2011] FCA 474.

<sup>42</sup> Antakirinja Matu-Yankunytjatjara Aboriginal Corporation Membership Application form.

## The AM-Y ICT Emergency Hardship program

AMYAC members may receive up to \$1,500 per year for 'Emergency Hardship', which may be provided in relation to, among other things, 'access to clean water, functioning sewerage and electricity services'.<sup>43</sup>

In its response to my revised provisional report, the AM-Y ICT provided the following additional information about the Emergency Hardship program:

The AM-Y ICT provides services to members under the Emergency Hardship programme in addition to for [sic] the following programmes:

- Health and Medical,
- Serious Family Illness and Emergency,
- Funeral Program,
- Elders Funding,
- Lore and Culture on Country,
- Scholarship Program,
- Education Program (for over 30s),
- Business Development Program, and
- Other assistance to members at the discretion of the Trustee.

With beneficiaries including 900 adult members of the AM-YAC plus their dependants, the AM-Y ICT provided 1,614 small grants to AM-YAC members during the 2020 financial year with a value exceeding \$1.13m.

The aim of the Emergency Hardship Program is to provide benefit to assist those AM-YAC members who are suffering from a situation of 'extreme hardship'. Support can include any purpose deemed by the Trustee to constitute relief of extreme poverty including extreme homelessness or detrimental living conditions. During the 2020 financial year, the Emergency Hardship program received 450 applications from members.

The AM-Y ICT explained the critical importance of the Emergency Hardship program for some community members:

AM-YAC members that reside in Coober Pedy (and other South Australian regional towns) who's [sic] only regular income is a Centrelink benefit are at particular risk of financial hardship. The risks of exacerbating financial hardship and disadvantage in the AM-YAC community are increased if the AM-YAC member is unable to maintain access to essential utilities including electricity and water, particularly during summer months. It is not just the account holder, but often the extended family of the account holder that may also be affected.

My investigation has observed that the Emergency Hardship program can provide financial assistance to community members to access clean water and electricity. The AM-Y ICT has explained:

It has been the policy of the Trustee to support members living in Coober Pedy with payment of overdue electricity and water accounts where services have been disconnected, or where disconnection is imminent. To qualify for assistance, the Trustee requires the AM-YAC member to provide a letter of support for the application from a social support service or medical practitioner, and agreement that [sic] to enter, or have already entered a payment plan that is fair and reasonable given their regular income from Centrelink or other source...

It is apparent from the information provided to my investigation that a number of community members have sought payments from the AM-Y ICT Emergency Hardship program towards electricity and water debts with the council. However, it is alleged that the council has been pressuring community members to seek the Emergency Hardship payments provided by the AM-Y ICT.

<sup>43</sup> <<https://amyac.com.au/trust/rules>>.

### Hardship Agreements and payments from the AM-Y ICT

The council provided my investigation with several templates that were used by staff, when arranging and calculating Hardship Agreements with its ratepayers towards electricity and water debts.

Up until September 2017, the Hardship Agreement template stated as follows:

<b>Date:</b> _____
<b>NAME:</b> _____
<b>Allotment:</b> _____
<b>Assessment #: A</b> _____
<b>Arrears: \$</b> _____
<b>AGREEMENT:</b> _____ _____ _____ _____ _____
<b>Account Holder Signature:</b> _____
<b>Council Employee:</b> _____
<b>FAILURE TO COMPLY WITH THIS AGREEMENT WILL RESULT IN THE DEBT BEING HANDED OVER TO COUNCIL'S COLLECTION AGENCY. ALL RECOVERY COSTS INCURRED BY THE DISTRICT COUNCIL OF COOPER PEDY WILL BE APPLIED TO YOUR RATES ACCOUNT.</b>

Information specific to the individual financial agreement between the community member and the council was written in the space provided under 'AGREEMENT'. It is noted that the agreement expressly stated that a failure to comply with the payment agreement would result in the community member's debt being referred to the council's debt collection agency. Any costs associated with recovery proceedings would be added to the community member's electricity and water account.

My investigation has seen a slightly different disclaimer on some older Hardship Agreements, stating instead:

**FAILURE TO COMPLY WITH THIS AGREEMENT WILL RESULT IN DISCONNECTION WITH OUT FURTHER NOTICE**

The Hardship Agreement was updated in around October 2017. The template stated:

**Hardship Agreement**

Date: \_\_\_\_\_

NAME: \_\_\_\_\_ Allotment: \_\_\_\_\_

Water Assessment #: \_\_\_\_\_ Arrears: \$ \_\_\_\_\_

Electricity Assessment #: \_\_\_\_\_ Arrears: \$ \_\_\_\_\_

*I have arranged for AMYAC to pay \$1,500 off my existing Electricity Debt.*

- I agree to pay \$ \_\_\_\_ per week towards my existing Electricity Debt - ES \_\_\_\_\_
- I agree to pay \$ \_\_\_\_ per week towards my existing Water Debt - WS \_\_\_\_\_

**These payments will be arranged by me as a weekly Payroll deduction from my Employer \_\_\_\_\_ commencing \_\_\_\_\_ OR from my completed Centrelink Centrepay deduction form.**

I understand my Electricity Meter will be read monthly and my Bill must be paid in full otherwise the Electricity will be disconnected. This will assist you in preventing another large debt occurring.

Account Holder Signature: \_\_\_\_\_  
Council Employee: \_\_\_\_\_

**FAILURE TO COMPLY WITH THIS AGREEMENT WILL RESULT IN THE DEBT BEING HANDED OVER TO COUNCIL'S COLLECTION AGENCY.  
ALL RECOVERY COSTS INCURRED BY THE DISTRICT COUNCIL OF COOBER PEDY WILL BE APPLIED TO YOUR RATES ACCOUNT.**

The updated template included reference to payments being arranged directly from a community member's employer.

The council's Hardship Agreement also included an express acknowledgement by the person signing the document that they had arranged for AMYAC to pay \$1,500 of their existing Electricity debt.

It is noted that not every ratepayer in the district of Coober Pedy would be eligible to seek an Emergency Hardship payment from the AM-Y ICT, nor would I anticipate that every AMYAC member would seek emergency financial assistance from the AM-Y ICT.

The council also provided my investigation with a document titled 'Hardship Agreement Calculations'. From reviewing the council's records, it would appear that this document template was used by council staff to calculate possible payment arrangements for electricity and water debt.

As of February 2018, that document appeared as follows:

<u>Hardship Agreement Calculations</u>	
<u>Electricity</u>	
<u>Consumption x 2 Months</u>	
\$	Add
\$	
\$	
\$	
\$	
\$	
\$	<u>Annual Usage Divide by 6 for Average Bill</u>
	<u>Average Bill</u>
\$	<u>- Each 8 weeks</u>
	Consumption per F/N
\$	<u>- Average Bill x 6</u>
\$	<u>- Divided by 26 F/N payments</u>
	<u>AMYAC Payment?</u>
	<b>\$1,500 To be Confirmed by AMYAC Trustees</b>
	<u>Debt Recovery per F/N</u>
\$	<u>- Debt Total</u>
\$	<u>- Less \$1,500 AMYAC Payment</u>
<u>#VALUE!</u>	
<b>#VALUE!</b>	Debt Divided by 26 F/N payments
	<u>Recommendation</u>
\$	<u>- Consumption per F/N</u>
<b>#VALUE</b>	<u>Debt Recovery per F/N</u>
<b>#VALUE</b>	<u>per F/N</u>
<u>Currently Paying: \$ _____ per F/N</u>	
Need to increase their payment by \$ _____ per F/N	
Advised to seek an assessment by a Financial Councillor to advise the maximum affordable payment per F/N by the client.	
<b>Date:</b>	
<b>Client Signature:</b>	

I note at the outset that the council has informed me that current templates do not include any reference to seeking financial assistance from AMYAC or the AM-Y ICT.

However, it is apparent that a former iteration of the council administration created and used documents that made express reference to customers, who were experiencing financial hardship, seeking payments from the AM-Y ICT to pay off electricity and water debts.

I asked the current council administration if it was able to clarify when or why those references may have been inserted into the council's documents.

The council's Chief Executive Officer, Mr Miller stated:

I am unable to find any records that indicate the start or finish date of any alleged practice of suggesting AM-Y ICT make payments for electricity or water on behalf of community members.

...

In previous administrations, the payment arrangement form referred to AMYAC payments. This has not been the case since March 2019.

To the council's knowledge, the council has never had any formal or informal policy or practice about advising or requesting members to make a claim for Native Title payments.

...

The staff responsible for inserting these sentences into the hardship agreement template are no longer working for Council and we do not know their motivations for including such a sentence. We have reviewed Council documents, including Council meeting agendas and minutes, but could not find any documentation on this issue.

My investigation uncovered a historical File Note created by a council officer, which had appeared to suggest that there may have been some arrangement or understanding between the council and AMYAC about emergency finance payments being made to the council from the AM-Y ICT, for AMYAC Members experiencing financial hardship.

However, in responding to my provisional report the AMYAC Board advised:

AMYAC has never had an arrangement with the Council, formal or otherwise, to assist with members' water and electricity bills in arrears. Rather, any encouragement or pressure on AMYAC members to apply to AM-Y ICT for assistance was unilaterally on the part of the Council.

Further, in responding to my revised provisional report, the Trust Manager of the AM-Y ICT stated:

I confirm that there is no current arrangement between the AM-Y ICT and the [council] to cover electricity and water accounts of AM-YAC members that are disconnected or at risk of disconnection, and to my knowledge there hasn't been since commencing my employment with Perpetual in May, 2018...



## The community members

It is nationally recognised that Aboriginal and Torres Strait Islander people experience widespread socioeconomic disadvantage, health inequality as well as poor social and emotional wellbeing. This may, in turn, have negative impacts on employment, income, living conditions and opportunities.<sup>44</sup>

Statistically, Aboriginal and Torres Strait Islander people experience higher rates of unemployment, lower incomes and are more likely to receive a government pension or allowance as their main source of income.<sup>45</sup>

Those who live outside of major cities and in remote areas, are more likely to live in social housing, housing that does not meet acceptable standards and to live with overcrowding.

Aboriginal and Torres Strait Islander people who live in remote areas are also more likely to speak traditional language.<sup>46</sup>

The Australian Human Rights Commission recognises that the following human rights and freedoms are particularly relevant to Aboriginal and Torres Strait Islander Peoples:<sup>47</sup>

- the right to an adequate standard of living, including adequate food, clothing and housing
- the right to the highest attainable standard of physical and mental health.

The Australian Government's Institute of Health and Welfare has reported that:

- a safe, secure home with working facilities is crucial to overall health and wellbeing<sup>48</sup>
- having an adequate level of income, and access to assistance when in need, are essential components in the measurement of individual and household wellbeing<sup>49</sup>

The Institute of Health and Welfare has also reported:<sup>50</sup>

For Aboriginal and Torres Strait Islander Australians, wellbeing encompasses not only the wellbeing of the individual, but also the wellbeing of the community ... as a group, Indigenous Australians still experience widespread social and economic disadvantage.

ALRM has provided an extensive list of names of community members who raised concerns about the council's actions in relation to their electricity and water accounts. ALRM also provided information about the individual circumstances of many of those community members.

In responding to my provisional report, ALRM emphasised that the list of community members is not exhaustive, as many community members were reluctant to formally join as complainants due to shame factors. The AMYAC Board have advised the same.

<sup>44</sup> Australian Government, Australian Institute of Health and Welfare, *Australia's Welfare 2019 in Brief* (2019) (**Australia's Welfare in Brief**).

<sup>45</sup> <<https://www.aihw.gov.au/reports/australias-welfare/australias-welfare-2017-in-brief/contents/indigenous-australians>>.

<sup>46</sup> <<https://www.aihw.gov.au/reports/australias-welfare/australias-welfare-2017-in-brief/contents/indigenous-australians>>.

<sup>47</sup> Australian Human Rights Commission, Information sheet: *Human Rights and Aboriginal and Torres Strait Islander Peoples*.

<sup>48</sup> *Australia's Welfare 2019 in Brief*, 62.

<sup>49</sup> *Australia's Welfare 2019 in Brief*, 65.

<sup>50</sup> *Australia's Welfare 2019 in Brief*, 59.

During the course of my investigation I interviewed several community members in order to hear their experiences first hand.<sup>51</sup> I have also considered the council's records relating to each of the community members who have been named by ALRM.

To provide context to this investigation, I have set out the circumstances relating to each of the community members below.

██████████

The council's records indicated that ██████████ accumulated arrears of around \$6,000 on her electricity and water accounts.

It appears that ██████████ may have been making regular payments to the council under a payment agreement however, in January 2017 she was requested to increase her payment to the council to \$150 per fortnight, or face disconnection of her electricity and water.

In April of the same year, the council sent another letter to ██████████, requesting an increase in her payments to \$200 per fortnight. It appears that ██████████ electricity and water account was disconnected in 2018 due to a failure to make payments.

The AM-Y ICT made a payment of \$1,500 towards ██████████ accrued arrears and therefore, ██████████ electricity was reconnected. ██████████ explained to ALRM that she felt pressured to obtain the payment from the AM-Y ICT. A council File Note recorded that ██████████ would be required to enter into a Hardship Agreement whereby she paid \$200 per fortnight to cover her electricity consumption and an additional \$126 per fortnight to reduce the amount owed.

ALRM explained that ██████████ lives on \$60 per fortnight after bills and rent.

██████████

The council's records indicated that in January 2016, ██████████ had accumulated electricity and water arrears of approximately \$3,400. ██████████ entered into a payment agreement requiring him to make payments of \$110 per fortnight in relation to his electricity and water arrears.

In around April 2016, ██████████ received a request from the council to increase his fortnightly payment to \$210. In September 2016, the Umoona Community Council wrote to the council to explain that ██████████ was experiencing financial hardship and could not afford to pay \$210 per fortnight, and felt pressured to agree to this amount. It was explained that ██████████ received a [Centrelink payment] and after making a \$110 fortnightly payment to the council and other requisite deduction, he was left with only \$124.00 for food and petrol.

By 2018, ██████████ had electricity and water arrears of approximately \$7,600.

██████████ appears to have entered into a Hardship Agreement requiring him to make payments of \$295.80 per fortnight in relation to a combined electricity and water arrears, on top of combined payments from Centrepay of \$383.11 per fortnight.

<sup>51</sup> Interviews held on 23 July 2019.

██████████ is a traditional Yankunytjatjara man. I have been told that ██████████ has limited English, for example his English vocabulary does not include words such as concession, rebate, grant and 'assistance program'.

██████████ had accrued arrears on his electricity account of approximately \$12,000. ALRM informed me that on one occasion in January 2018, ██████████ had his electricity disconnected on a day of extreme heat. The information from the council indicated that ██████████ electricity was disconnected on 11 January 2018. The temperature in Coober Pedy on that day reached 42 degrees Celsius.

██████████ attended a meeting<sup>52</sup> at the council with:

- ██████████ case manager, Stronger Families Program, Aboriginal Family Support Services Inc.
- a financial advisor for the Department for Child Protection
- the council's finance officer
- the council's (former) Chief Executive Officer

██████████ was not asked if he wanted an interpreter to be present at the meeting. The meeting was held to discuss ██████████'s outstanding electricity debt. Another person at the meeting described the council pressuring ██████████ to apply for monetary assistance from the AM-Y ICT; ██████████ was first asked if he was an AMYAC Member and upon learning that he was a member, the council stated ██████████ could apply for an emergency grant towards his electricity debt.

It was alleged that the council asked many questions about who was residing in ██████████ house; ██████████ [family members] resided in the house. It was also alleged that the council adjourned the meeting so that ██████████ [family members] could attend the council offices. Upon resuming the meeting, ██████████ [family members] were allegedly asked 'why aren't you helping ██████████ to pay the bills?' and were provided with Centrepay forms so that the council could arrange Centrelink deductions towards ██████████ electricity debt.

██████████ case manager from Aboriginal Family Support Services was reportedly asked to leave the meeting when she interjected to support ██████████.

It was explained to the council that ██████████ [family member] could not read. It was alleged that one of the council employees present asked why [they] could not read? Did [they] not go to school? It is reported that ██████████ [family member] was greatly embarrassed by this interaction.

It is alleged that one of the council employees asked whether ██████████ [family members] were members of AMYAC, and whether they could arrange a financial contribution from the AM-Y ICT towards ██████████ electricity debt. ██████████ also recalled being told during the meeting that he should go out and live in the bush, and that he did not deserve to have a home with electricity.

██████████ entered the following Hardship Agreement:

- ██████████ would pay \$140 from his Centrelink payments via Centrepay per fortnight
- ██████████ [family member] would pay \$130 via Centrepay per fortnight
- ██████████ [family member] would pay \$200 via Centrepay per fortnight

██████████ also had a payment of \$1,500 made on his behalf by the AM-Y ICT.

<sup>52</sup> Information about ██████████ experiences has been corroborated by a statutory declaration from a case manager for the Stronger Families Support Program of the Aboriginal Family Support Services Inc.

The Hardship Agreement was signed by ██████████, [family members], and a council employee. The Hardship Agreement stated that ██████████ understood that his Electricity Meter will be read monthly and that his Bill must be paid in full otherwise the Electricity will be disconnected. It is unclear if this means payments towards future electricity bills, or payments towards ██████████ electricity debt.

I interviewed ██████████ with an interpreter present and ██████████ explained to me that:

- he lives in a three bedroom home. [family members] are currently living with him. He runs the usual electrical appliances such as a toaster, kettle, fridge, television, air conditioner and lights.
- he has no understanding of how the arrears grew overtime.
- he contacted the council to discuss the arrears. He was not offered an interpreter.
- the woman he spoke to at the council was 'cheeky'. I asked what ██████████ meant by that and he explained 'no good'. The interpreter explained that it meant the council employee 'talked rough'; she talked in an 'angry way'. The interpreter and ██████████ agreed that when community members are spoken to in such a way by council staff, it makes people scared to go in and talk to the council about their bills or financial circumstances.
- he understood that he had been making regular payments each fortnight, but he did not know whether those payments were part of a Hardship Agreement with the council. ██████████ explained that the \$140 he paid each fortnight was a lot of money because he lives on a [Centrelink payment]. After rent and other expenses ██████████ only has \$75 left each fortnight.
- when his electricity has been disconnected in the past, ██████████ has been unable to keep food in the house so instead he goes 'out bush'. To keep warm ██████████ has made a camp fire in the back yard. In order to get the electricity reconnected, ██████████ has asked friends and family members for money. The council did not know where the money came from; 'so long as they get their money'.
- he doesn't understand the bills that the council send him. He only sees the amount that is due and does not understand why the amount grows when he is making regular payments. He has asked friends and family to try and explain the bills to him because he doesn't feel comfortable asking the council; 'if the lady is being cheeky, being snappy and cheeky, that means like being angry. You feel embarrassed being in there too. It's like they are talking down to you ...'.

ALRM provided an affidavit from ██████████, which stated that he felt bullied and pressured into signing documents where he did not have time to read and understand them. He did not give permission for the council to contact AMYAC as his case worker was already contacting AMYAC on his behalf.

He was not aware that he was agreeing to his electricity metre being read monthly and for his debt to be paid in full, otherwise his electricity would be disconnected. He stated that he was not provided with an opportunity to work with his case worker and financial advisor on what he could afford.

██████████ stated that [a family member] contributed on payment towards the electricity debt from [their] Centrepay dedication, but [their] Centrelink was then cut off. As a result, [they] did not make any more payments towards the electricity debt.

██████████ presented to the council in February 2018 after receiving a disconnection notice in relation to his electricity supply. The Debt Recovery Officer of the council, explained to ██████████ that the agreement he had signed in January 2018 with [a family member] had been broken and that ██████████ was required to pay \$400 before March 2018.

██████████ and ██████████

██████████ receives a [Centrelink payment]. ██████████ had entered into a Hardship Agreement in relation to electricity arrears of approximately \$5,000. It appears at one point she also had water arrears of approximately \$800 however, the Hardship Agreement did not take that into account.

Since 2015, ██████████ has had Centrepay deductions of \$100 per fortnight made to the council in relation to her electricity account.

It appears that ██████████ entered into a Hardship Agreement in March 2018 where she was required to pay \$200 per fortnight via Centrepay and [a family member] was required to pay \$50 per week from [their] wage. A notation made by the council stated that two payments of \$1,500 by the AMYAC Trust were 'to be confirmed'.

Several notations made by the council also stated:

*Hardship Agreement: -*

██████████ \$200 F/N Electricity - Centapay

[Family member] \$50 Weekly Direct Debit - ██████████ Wage.

██████████ now lives with ██████████ at his property. ██████████ has his own electricity arrears which he is making payments towards and ██████████ is continuing to make payments in relation to her own arrears.

I interviewed both ██████████ and ██████████ together. During the interview the following information was provided to me:

- ██████████ lives in a two bedroom flat, it is just the two of them living there. He has previously had other visitors stay with him; the last visitor contributed \$100 a fortnight for expenses which assisted with utility bills.
- neither ██████████ or ██████████ properly understood their bills or why their arrears continued to increase. ██████████ explained 'when they send the electricity bill out to us ... it's gone up'. ██████████ stated that he has seen the council doing the meter reading at his house and that he believes the council records a higher reading than those that are on the meter and that this explains why his electricity bills keep getting bigger.
- ██████████ account is in arrears of approximately \$5,000 now however, he was, at one stage, in arrears of \$12,000.
- ██████████ explained that he went to the council to talk about the accumulating arrears. He 'talked to the lady in the front'. ██████████ explained that he receives a [Centrelink payment] but that he informed the council he wanted to pay \$350 a fortnight under an agreement. He says he came up with this amount himself as he wanted to get the amount paid down.
- ██████████ explained that she also receives a [Centrelink payment]. She stated, 'what they did to me, I had to have a meeting ... Me and [a family member], we had to go in there, into the meeting room with the lady there, and they told me you've got to make an agreement, you know, an agreement to do your electricity and your water. So we had to do that. And that lady said we can ring AMYAC for you to pay it down. So they did that'. ██████████ explained that she was happy for the council to do that to get the amount paid. She was in arrears of approximately \$15,000.
- ██████████ explained that, for her, the problem is the amount she has to pay under a Hardship Agreement; 'I don't think its ok for them to take all our money because we can't

even buy food or anything for ourselves you know ... they don't even leave us not much ... all our money on electricity and water. It's not fair'. I asked ██████████ whether she had discussed this with the council and she stated 'no, I wouldn't explain it to them because they would turn around and say well we are still going to disconnect it anyhow ... they're going to say that. They talk really cheeky you know ... they will still disconnect it whether you like it or not. They don't give us a chance you know'.

- I asked what ██████████ meant about the people at the council talking 'cheeky' and she said 'they shouldn't talk like that'.
- ██████████ and ██████████ agreed that although they have attended the council chambers to discuss their accounts, it isn't a good feeling. ██████████ said 'it makes you feel no good ... out of place'. ██████████ agreed, 'especially when you go up there to council ... up there, when they say that there, it does mean you are out of place'.

██████████

██████████ allegedly felt pressured to access payments from the AM-Y ICT.

The council's records indicated that ██████████ moved in with her partner, and that a File Note recorded that any usage before that date was the debt of her partner.

The council's records indicated that ██████████ and her partner's electricity was disconnected. ██████████ requested she be placed under a Hardship Agreement so that the electricity could be reconnected and that as part of the agreement the AM-Y ICT would make a payment towards the amount owed. However, the council had explained that this could not occur as the AM-Y ICT could not make a payment towards ██████████ partner's debt.

It appears that the council then arranged to have the electricity account placed into ██████████ name, who was eligible to receive the AM-Y ICT payment. It appears that during the negotiations, the electricity may have been disconnected due to non-payment by ██████████ however, the account was still held in ██████████ partner's name at the time. ██████████ has alleged that the disconnection occurred on a Friday afternoon.

██████████

From the council's records, it appears that ██████████ accumulated arrears of approximately \$7,000 as far back as the year 2016. ██████████ entered into an agreement with the council that year in relation to making fortnightly Centrepay payments of \$380.

There is no evidence of any further discussions between the council and ██████████ concerning payment options, such as instalment plans or other such agreements. However, it appears that ██████████ usage increased significantly over time.

██████████

██████████ had accumulated arrears of approximately \$1,500 in 2017. The council's records are unclear as to whether ██████████ had entered into a Hardship Agreement.

It appears that she had arranged for Centrepay deductions to be made several years earlier, however I have not been able to glean anything further from the records provided to my investigation.

██████████ had been making Centrepay payments of \$100 since the year 2014.

It appears that by February 2015, ██████████ Centrepay payments had resulted in her water and electricity accounts being in credit. She requested and received a refund from those accounts, totalling \$1,236.38.

It appears, however that ██████████ electricity was disconnected in late 2016 for non-payment towards a debt of \$1,000. The council's records do not contain any evidence of the council discussing payment plans or other arrangements with ██████████.

I have been told that ██████████ receives a [Centrelink payment] of \$500.00 per fortnight. Of that amount, she pays \$235.00 per fortnight towards her electricity and water debt. She also pays rent to the SA Housing Trust. After those payments are made, she is left with only \$100.00 per fortnight for food and all other expenses. ██████████ stated that her payment towards her last electricity bill prior to March 2020 required her to pay \$200 towards that bill, which left her with no income for that fortnight after payment towards rent and debt.

██████████ partner, ██████████, who also receives [a Centrelink payment], is now living with ██████████ and contributing a further \$100.00 per fortnight towards her electricity and water account.

As of April 2020, ██████████ debt to the council for electricity and water had reduced to \$632.99, yet she states that she continues to pay a total of \$335.00 per fortnight to the council and that the council is aware of this.

██████████ and ██████████

██████████ had accrued arrears of over \$5,000.

██████████ had a payment arrangement in place; the council's records show that ██████████ had arranged for Centrepay payments to be made to the council since at least 2014 and in 2017. ██████████ also had payroll deductions of \$100 per fortnight made to the council.

██████████ electricity was disconnected in early 2018 after no payroll deductions had been made over the Christmas period.

When ██████████ spoke to ALRM, she explained that she is not eligible to receive benefits from the AM-Y ICT but her partner, ██████████ is. ██████████ explained that the council had encouraged her and ██████████ to have the account put in joint names; her electricity would then be reconnected and doing so would make it easier for ██████████ to receive a payment from the AM-Y ICT, which could be put towards ██████████ accrued arrears.

██████████ Hardship Agreement payments were increased to \$150 per fortnight in 2018.

A File Note confirms that the former Chief Executive Officer of the council agreed to reconnect the electricity in ██████████ name on the basis that ██████████ would continue with payments [they] had been making of \$150 per fortnight to cover consumption, and ██████████ would be responsible for paying the balance of her debt.

██████████

The council's records indicated that in 2013, ██████████ had accrued a combined electricity and water arrears of approximately \$11,000. However, it appears she paid this amount off over time. The council's records do not indicate that ██████████ had entered into a Hardship Agreement.

ALRM explained that ██████████ pays \$150 per week towards her electricity account but that she has not been identified by the council as being eligible for a Hardship Agreement. It appears that ██████████ regular payments were made through Centrepay.

██████████ electricity bills have recorded her average daily consumption as approximately \$30.00 and ██████████ is allegedly confused as to how her consumption could be so high.

██████████

The council's records indicated that ██████████ entered into a Hardship Agreement in July 2016, whereby ██████████ agreed to pay \$140 per fortnight to pay of a combined electricity and water debt of \$1,541.51.

The records indicate that ██████████ arrears did not deplete throughout 2017 and 2018. By July 2018, ██████████ had accumulated arrears of approximately \$1,000. It didn't appear there was any evidence of any further discussions between the council and ██████████ about payment arrangements.

██████████

ALRM explained that ██████████ had an average daily electricity consumption of \$17.74 at the beginning of February 2018, which had increased to \$89.57 by the end of February 2018. ██████████ says she does not understand the increase, given the electrical appliances she uses in her home.

The council's records contain notations for a Hardship Agreement Calculation, recording that ██████████ did not have an amount owing in relation to her water account but had electricity arrears of approximately \$5,000. It was recommended that she make payments of \$436.10 to cover consumption and debt recovery.

The Hardship Agreement Calculation also included the following notes:

*[Family member?] To contribute \$140 F/N?*

██████████

I was told that ██████████ electricity was disconnected on a Friday in summer; ██████████ was away at the time and it is alleged that her fridge exploded as a consequence of the disconnection. It was alleged that in discussing payment agreements with her, the council encouraged her to seek payments from her partner, and to arrange for her employer to make direct payments towards her arrears.



The council's records indicated that:

- the council intended to enter into a 'combined debtor or hardship agreement' with ██████████ in relation to electricity and water accounts, whereby payments would be made by 'Centrepay and/or direct debits from the bank from her weekly wage ...'. Other council records indicate that this arrangement was not entered into.
- the council had attempted to enter into several Hardship Agreements with ██████████ however, it appears that these were not formally agreed to. I note that one agreement proposed that ██████████ make payments of \$455 per fortnight for her combined water and electricity arrears.
- ██████████ electricity was disconnected on 2 February 2018 for a failure to make payments. ██████████ had, at the time, accrued arrears of \$8,687.32.
- the day of disconnection fell on a Friday.

██████████ also stated that she was asked to obtain a \$5,000.00 hardship payment from the Native Title Trust to pay her electricity debt. ██████████ states that she explained that she was not entitled to that money as she does not belong to that Native Title group and is [from another Native Title group]

ALRM have also stated that ██████████ was very distressed when the council's former Chief Executive Officer told ██████████ [young family member] that [they] would need to get used to being in the dark if she (██████████) would not sign an agreement to pay \$450.00 per fortnight. Shortly after this exchange ██████████ went to Adelaide to have dental treatment for [a family member] and returned to find the power switched off and, amongst other things, rotting meat in her refrigerator.

██████████ stated that she has previously made complaints to the council about being charged \$5.00 per page for an itemised electricity account. ██████████ first recalled this occurring in or about 2014/15. She recalled speaking to a council officer and was required to pay \$15.00 for three pages of an account.

██████████ also stated that within a year of moving to Coober Pedy, she was told by the council that she had incurred a debt of about \$17,000.00. ██████████ stated she did not understand how her debt for electricity had extended to that amount. She was told that she had to tally the wattage with the metre reading, but this did not make sense to her. She thought that a rough estimate would have put her account at the time at about \$400.00 when it was far in excess of that. A real estate agent suggested to her that perhaps the excessive amount of the electricity account could be due to faulty wiring. She was told by the council that she should check to make sure that someone was not running extension cords from her home and stealing power from her. She checked this and there was no possibility that this was the case.

She was more recently advised by the council that she owes about \$10,000.00 together for water and power. She is currently employed and has an automatic debit of \$100.00 for electricity and \$50.00 for water that she pays to the council.

In responding to my revised provisional report, ALRM told me that ██████████ has managed to decrease her debt even further, due to ██████████ commitment to paying off her debt. However, ██████████ has stated that all of her income is spent on bills and [family members]; she is not able to save money.

██████████

The council's records indicated that ██████████ had accumulated electricity arrears of over \$5,000. It appears that ██████████ lived with her partner, ██████████.

The council provided a lengthy File Note that was written by a council employee in late 2017. The File Note recorded conversations about ██████████ electricity being disconnected, I have quoted excerpts from that File Note to explain what is recorded to have transpired at that time:

#### **File Note 19 October 2017**

*At 1:45pm ██████████ had her employer... (as an advocate) phones me with ██████████. Requesting what needs to be done to get the Electricity reconnected. I confirmed the details I had spoken to ██████████ on 10/10/17 which she was going to apply to AMYAC to have her outstanding Debt paid in full before any reconnection could take place. I explained the previous agreement of \$100 per week direct debit was ceased on 24/08/17. This amount was not covering her recent high consumption of at least \$150 per week on average. This continued to add to her outstanding debt.*

*I suggested she follow up on getting AMYAC to pay the outstanding debt as there will be no reconnection until the debt is paid in full. Then arrange with her partner ██████████ to go to Centrelink and set up a regular Centrepay amounts to be deducted from their payments to cover their fortnightly forecaster consumptions of \$3000 via [Centrelink payments].*

*At 2:30pm ██████████ had ██████████... (act as an advocate) phone me with ██████████ and her partner ██████████ (██████████)...*

*She asked what can be done to get the electricity reconnected as there are [young family members] in the house..*

*I explained that the electricity bill will not be reconnected until the outstanding debt ... for over \$9000 is paid in full.*

*██████████ will contact the trustees to pay half next week and arrange for [a family member] to go to Centrelink and arrange for payments of \$150 per fortnight towards the electricity account. And then she said it will be connected tomorrow. I said not until there is a meeting with all the paperwork from AMYAC and Centrelink Centrepay lodgement forms and a direct debit is confirmed to show a capacity to pay and only then it is up to the CEO's decision as we cannot continue to allow people to be in debt.*

*At 3:39pm ██████████ phone to confirm what papers she needed to reconnect the Electricity. Once again I explained she needed the confirmation from AMYAC to pay the outstanding debt of \$9000 and Centrelink lodgement forms and/or a Direct Debit confirmation from the bank for regular deductions for at least regular payments of \$3000 between her and her partner as evidence as a capacity to pay the forecasted consumption per fortnight. When she her information ready to come up to Council for meeting with the CEO to discuss the reconnection of electricity.*

*At 4pm... the electricity officer commented that ██████████ had spoken to her at the bank at 10am about getting AMYAC to pay her Electricity Bill. Then later on at 3pm she phoned ... to find out what she needed to get her electricity back on.*

*██████████ is obviously trying to get her electricity reconnected but unless she can provide evidence that the debt will be paid and she has the capacity to pay her forecasted consumptions there will not be any reconnection allowed.*

*I spoke to the CEO regarding the events of the day and she is adamant that unless the debt is paid first there will not be any reconnection of Electricity.*

It would appear that ██████████ electricity account was reconnected on the basis that AMYAC would contribute a significant financial contribution towards the debt, and that it

was originally envisaged that AMYAC would make a payment towards the debt of \$6,000 however this did not eventuate.

An agreement was in place from December 2017 requiring [REDACTED] to contribute \$450 per fortnight to her electricity debt.

It appears [REDACTED] was making regular payments but the payments were not covering her usage. A Hardship Agreement dated 16 March 2018 reiterated that [REDACTED] will make fortnightly payments of a minimum of \$450, including Centrepay payments made by [REDACTED] and her partner. The Hardship Agreement also noted that both [REDACTED] and [REDACTED] will arrange for AM-Y ICT payments of \$1,500 towards the amount owed.

There are numerous File Notes which document the considerations of the employee who arranged the Hardship Agreement with [REDACTED]. It is documented that the payments were calculated based on:

- payments being made from the AM-Y ICT to both [REDACTED] and her partner (which was noted 'To be Confirmed by AMYAC Trustees')
- [REDACTED] average consumption and a forecasted payment (including a forecasted increase in electricity usage over summer)
- the amount that would need to be paid fortnightly to pay off [REDACTED] electricity debt within 12 months

[REDACTED]

The council's records indicated that in February 2018, [REDACTED] had accumulated electricity and water arrears of \$4,611.85. I have reviewed a Hardship Agreement Calculation which indicated that [REDACTED] was paying \$50 per fortnight from Centrepay towards her debt. The document stated:

Need to Increase their Centrepayments by \$180 per F/N to \$230 per F/N

This calculation appears based on the estimated amount that [REDACTED] would need to pay per fortnight to meet her ongoing consumptions and pay off her debt within 12 months. This calculation was based on [REDACTED] receiving financial assistance of \$1,500 from the AM-Y ICT to pay towards her arrears.

It does not appear that [REDACTED] was provided an opportunity to discuss any of the above calculations. On 26 February 2018, the council sent a letter to [REDACTED], stating that she would need to increase her Centrepay payments to a minimum of \$230 per fortnight, to commence no later than Monday 5<sup>th</sup> March 2018.

A notation made on a council File Note refers to payments towards that debt being revised to \$115 per week. The reason for this is not known.

[REDACTED]

[REDACTED] entered into a Hardship Agreement in August 2018, for a combined electricity and water arrears of approximately \$1,000. The agreement referred to [REDACTED] making payments of \$150 per fortnight.

The council's records contain an email from [REDACTED] employer asking that \$300 be transferred from the employer's electricity account to help pay [REDACTED] electricity and water arrears. The email also indicated that [REDACTED] would be making additional payments of \$75 per week directly from her employment payments.

██████████ and ██████████

The council's records indicated that in 2017, ██████████ electricity account was in arrears of \$10,051.90 and her water account was in arrears of \$1,579.44. It appears that there may have been some arrangement for ██████████ to make payments to her accounts via Centrepay, however her accounts were disconnected several times in early 2017 due to not making regular payments. The accounts were disconnected in August 2017. There were two payments of \$100 to pay off ██████████ water debt in August 2017 and April 2019 but there was otherwise no further action on those accounts.

A file note from January 2018 suggests that ██████████ requested that the council reconnect her electricity. At that time, the council advised ██████████ that her electricity account would not be re-instated until she had paid off her outstanding electricity and water debts. ██████████ was advised that AMYAC may be able to provide financial assistance. It does not appear that the council attempted to arrange a Hardship Agreement with ██████████ at that time.

In March 2019, ██████████ opened an electricity account. It appears that since August 2019, ██████████ has contributed fortnightly payments via Centrepay towards ██████████ account.

In June and September 2019, the council sent two letters to ██████████ about the outstanding electricity and water debts. The letters explained that if she did not pay the outstanding debts within 14 days, the debt would be referred to the council's debt collections agency. On this occasion, the council's letters did note that ██████████ could contact the council or other financial service providers if she was experiencing financial hardship.

ALRM has told me that due to the long history of the Aboriginal community feeling that they cannot effectively communicate or negotiate with the council, ██████████ did not approach the council about its debt recovery letters. ██████████ was subsequently charged legal fees for debt recovery services. It is not clear whether anything further may have occurred in relation to that debt recovery action.

██████████

██████████ asked to be interviewed for this investigation. She was not among the names initially provided to me by ALRM however, she wished to share her experience with me.

██████████ explained that she is currently in arrears of \$19,500. She stated 'I don't know how it got up that high because going back I was in front nearly over \$1000 each time. I used to ring up and, ██████████, would say you are credit, credit, what you want to do with it? ... and it just went like that. In three months I got an electricity paper saying \$2,000 I'd used up, just in three months'.

██████████ has a job and continuous income however, she has gone from being ahead with her bills to significant arrears accumulating over a couple of years. ██████████ wondered if the power agreement entered into by the council had contributed to power bills suddenly being so high. She is confused because, although she has [young family members] living with her, everybody is [attending education] during the day and at night she has implemented power saving techniques.

As the arrears grew, ██████████ said the council did not contact her. Only a week prior to the interview with me, she received a final notice requiring her to pay the full outstanding

amount or enter into a payment agreement that would require significant fortnightly repayments. Otherwise, ██████████ faced disconnection.

██████████ was extremely stressed about the amount due and confused at how it could keep accumulating for so long without the council contacting her until recently; 'they sent me out the thing was getting higher and higher but they never made an agreement for me to come and put extra money on it, only just recently now but I can't understand that it went that high over four or three thousand or something, they could have contacted me and said '██████████ can you put extra money on ...'.

██████████ explained that a payment agreement had been in place for some time where she paid \$140 per fortnight and [a family member] paid \$120 per fortnight, but 'I can't understand why they couldn't contact me and say ██████████ your electricity has gone higher, come here and make another agreement or chuck another \$70 or something, I would have agreed with that but they got it that high and now they expect me to pay the whole lot too cause they said they was going to disconnect it and when they disconnect it they wouldn't turn it back on until the full price was paid. Now I've got a sick [person] that needs [their] medication in the fridge and I've got [family members] that need to [attend education], you know food and ... [family members], but [they are] real sick and I got [young family members], well [more family members] at the moment ... and only a three bedroom house ...'.

In relation to the proposed fortnightly repayments under an amended agreement, the council was proposing that ██████████ pay \$565 per fortnight. ██████████ explained, 'when I looked at that I said 'oh my goodness' that will take all of my pay and I'll have nothing, then I will be going around to different agencies'. She expanded, 'when all my other bills go out I end up with \$705 but if that comes out of that \$700 that's not going to help me get by and I'll be going through depression, stress, I'll be running around trying to put food on the table, trying to get [food for family members], for my licence, you know when it runs out and rego, things like that, they don't understand. Surely they are in the same boat you know, they've got to pay for their stuff that they need to pay ...'.

██████████ explained that when she received the final notice she immediately felt her depression returning, she had to run around to several services, got a letter of support in relation to [a family member's] illness and then went to the council. She said she then received the letter from the council requiring her to make payments of \$565 per fortnight.

██████████ said that she explained to the council that she couldn't make such high payments at the moment, that she had other debts to repay until October and then after that date she may be able to make further contributions to her council debts but 'they're not really listening to me. Like they just want that money, just like that. And I said, I've got a sick [family member] and I keep [their] medication and [other family members] and I keep explaining and explaining myself to them ...'.

When ██████████ said she first went into the council to discuss the matter with them she had to ask to be taken to a room so that she could talk privately, without other people hearing. However, the next time ██████████ attended the council, the employee discussed the matter at the desk in front of other residents. I asked ██████████ about her experience in talking with the council, she explained, 'Well, when I'm trying to tell my side of the story it's just like they're not really listening to what I'm going through. It's just like it's all about them ... we need this money, we need this money'.

██████████ explained that she already practised energy saving techniques in her home; she had researched them herself, the council did not ever discuss this with her. Although she has had numerous family members live in her house over the years, she is still confused at how high the electricity bills have been.

██████████ explained that really, she does not understand the bills, only the amount due. It is confusing to her that she has been making regular payments but the arrears continue to increase; there is nothing on the bill or provided by the council that explains how her regular payments have impacted on the amount owed.

The council allegedly asked ██████████ if she had family members who could also make payments; 'it made me feel angry because, you know what, [family members] that stay in my house, they was paying for electricity but they got their own debts ... I said that I can't just go and get money off [family members]. It feels, it makes me feel bad to go and ask family for money ... they think you're earning enough money to pay for things but it's not, it's not. And it makes me feel ashamed when they say 'go and ask your family if anybody in your family can help you'. And you know how it makes you feel when you pick the phone up and you ask, even if I asked [a family member] for a loan, I'd get really shaky ...'.

██████████ says the council has not referred her to a financial counsellor or suggested she speak to one. ██████████ said she approached Aboriginal Family Support Services (AFSS) herself for assistance however, AFSS did not currently have a financial counsellor to provide specific financial assistance.

I asked ██████████ if there was anything she thought the council could have done to assist her, ██████████ submitted; 'I would like them ... to let me know that if things go up that high, to contact me straight away. Don't wait until it's high and I'm struggling trying to pay that off. They know my contact number. They know where I work. They know all those things. They know who I am ... don't go writing letters saying here you've got to pay this, we want you to pay that. Make an arrangement for me to come and have a meeting and we'll sort this thing out before it got to high ...'

██████████ emphasised the extreme stress this has had on her; 'They are not listening. They just want me to pay that \$565 every fortnight. And when I've got to feed [family members], put medication in ... pay for [a family member's] medication and things like that because I don't get no health care card or anything ... and I pay full price to register my car ... [family members and education], I can't even buy them clothes cause, you know, I'm paying bills. I have to go to Salvation Army and get clothes ... I chucked all my medication away but now ... if they keep harassing me about this I'll be back on those medications again. Then it will be suicide ... I'll be thinking of things like that ... they don't understand how they put families through these things ... you know, we've got problems but I'm trying my best to make an agreement saying wait until October ... I'll contribute a bit more then ... it feels like they are just picking on me ... and I can't sleep because I'm tossing and turning and I think I better get up early and do something because they might just turn my electricity off without noticing'.

██████████

The council's records indicated that in 2015, ██████████ arranged for Centrepay deductions to be made in relation to her electricity bills, paying \$125.00 per fortnight. In 2016, ██████████ received a notice of disconnection of her electricity for breaking that payment agreement. She had arrears of \$407.90 and was charged a \$35.00 reconnection fee. ██████████ arranged for Centrepay deductions of \$150.00 per fortnight to be made in relation to her electricity bills in the year 2016. The arrears were paid off by ██████████ that year.

However, in January 2017 ██████████ began to accumulate further electricity arrears, which escalated throughout 2018. The council's records do not contain evidence of a recent Hardship Agreement or other payment plans in relation to the new arrears. ██████████ had accumulated arrears of approximately \$6,500 by July 2018.

██████████ and ██████████

The council provided me with documents for an electricity account that appears to be in ██████████ name. In 2016, that account was approximately \$14,800 in arrears. ██████████ appeared to have entered a Hardship Agreement whereby she would pay \$510 per fortnight towards her account.

ALRM have advised that ██████████ undertook carer responsibilities for ██████████. It appears that ██████████ arranged to make fortnightly Centrepay contributions to the electricity account from a [Centrelink payment]. The council's documents indicate that ██████████ contributed \$150 per fortnight as of 2016.

It appears that the account may have been disconnected in July 2017. At that time, there was \$14,057.76 in arrears. There was one further payment from Centrepay to the account in the sum of \$283.72 in August 2017.

██████████

Copies of ██████████ bills show that ██████████ electricity and water arrears rose by approximately \$5,000 in the year 2015.

██████████ had accumulated arrears of approximately \$12,500 by the year 2018. A Hardship Agreement created in February 2017 stated that ██████████ would make payments of \$250 per fortnight via Centrepay.

██████████

The council's records indicated that as of August 2016, ██████████ electricity account was \$2,488 in credit. ██████████ requested two refunds of money from her electricity account, \$1,500 in August 2016 and \$1,259.26 in February 2017. It is unclear why ██████████ had a significant sum of money in credit on her account.

In 2018, ██████████ had accumulated combined electricity and water arrears of over \$1,600.

It appears that ██████████ also had existing arrears of approximately \$2,000 from a previous property which was added to her current account. However, I have also been provided with a transaction listed which stated that the amount of \$2,155.97 was added to her account. The charge was described as 'previous debt reinstated' and the description stated 'WAS WRITTEN OFF'. It is therefore unclear if the council reinstated a debt that it had previously decided to write off.

Meeting notes from May 2018 indicate that ██████████ was making payments towards her debt under an agreement, but that the payments needed to be increased to \$400 per fortnight. Centacare spoke to the council on ██████████ behalf and it appears it was agreed that ██████████ payments towards her debt would be increased to \$200 per fortnight, and [a family member] would also make payments towards that debt of \$200 per fortnight.

A request was also made to AMYAC for a payment of \$1,500 from the AM-Y ICT however, ██████████ did not have a sufficient amount in trust for that payment to be made in that financial year. In July 2018, Centrepay forms were also lodged for payments of \$200 per fortnight towards electricity payments and \$100 per fortnight towards water payments.

██████████

In 2018, ALRM explained that ██████████ had allegedly been disconnected from the electricity supply since December 2017.

The council's records indicated that ██████████ was issued a disconnection fee on 10 August 2017. Prior to that, ██████████ had been making payments of \$100 per week under a Hardship Agreement. However, he had failed to make recent payments and was consequently disconnected.

It appeared that ██████████ may have been reconnected after entering into a Hardship Agreement in March 2018, which was created for combined water and electricity arrears of approximately \$2,900. The Agreement required payments of approximately \$180 per fortnight to the council. The agreement also stated that ██████████ would obtain a \$1,500 payment from the AM-Y ICT.

██████████

The council's records indicated that ██████████ had accumulated water arrears of approximately \$2,200. ██████████ did not have a Hardship Agreement in place but had been making significant Centrepay payments per fortnight in relation to both water and electricity.

██████████ explained to ALRM that she was concerned that her regular payments had increased from \$175 to \$340 in 12 months. The council's records indicated that the Centrepay payment increased again to \$470 per fortnight when ██████████ had combined electricity and water arrears of approximately \$3,700.

██████████ and ██████████

In May 2018 ██████████ and ██████████ had accumulated electricity arrears of almost \$12,500. A Hardship Agreement created in March 2017 recorded that ██████████ and ██████████ would make payments towards that debt of \$385 per fortnight.

This was in addition to Centrepay payments being made by ██████████ and ██████████ at an amount of \$140 each per fortnight.

██████████

The council's records indicated that ██████████ had accrued arrears of approximately \$12,000. A File Note stated that a 'hardship meeting' would be needed where it would be proposed that ██████████ make fortnightly payments of \$460 to cover the amount owed and her current consumption. It is unclear whether this meeting went ahead.



██████████

██████████ had accumulated electricity arrears of over \$11,500. In June 2018 a council File Note recorded an issue relating to a \$7,000 payment for bond, due to an incorrect reference number being used. It is unclear whether this was resolved.

The File Note also stated that ██████████ high electricity usage is not being covered by her regular Centrepay payments of \$200 per fortnight to her electricity account.

██████████

██████████ had accumulated arrears of over \$5,000 in April 2018. A File Note records that in May 2018 ██████████ was making payments of \$130 per fortnight towards that debt, and that the council wanted to meet with ██████████ to advise her to see a financial counsellor in order to determine an affordable payment arrangement for her.

Hardship Agreement calculations proposed that ██████████ payments be increased to \$348.38 per fortnight. It appears that ██████████ did not enter into this Hardship Agreement.

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## Information from the AMYAC Board

ALRM provided the AMYAC Board with a copy of my provisional report for its consideration and comments.

The AMYAC Board commented on the allegation that the council had engaged in a practice of pressuring AMYAC members to seek financial assistance from the AM-Y ICT towards an electricity or water debt.

The AMYAC Board explained that the actions by the council, which had been identified within my provisional report, have had a negative impact on the financial situation and wellbeing of many AMYAC members.

Further, the AMYAC Board stated that many AMYAC members were reluctant to participate in my investigation due to the deeply personal nature of the subject matter within the report's scope, and due to the pressure already felt by community members in relation to this topic. It was stated that for this reason, the findings of my provisional report do not fully reflect the extent of the socio-economic harm that has been caused to AMYAC members by the council's actions.

The AMYAC Board also wished to further highlight the impact on both the AMYAC and the AM-Y ICT that has been felt by the council's actions. AYMAC stated:

...The pressure that the council has put on AMYAC members to seek payment from AM-Y ICT towards their electricity and water bills in arrears has placed strain on AMYAC and AM-Y ICT's organisational capacity and management of its finances. Such action has furthermore placed strain on the continuing relationships between AMYAC, AM-Y ICT and AMYAC members, and has consequently damaged AMYAC and AM-Y ICT's reputation within the AMY community.

## The council's responses to my investigation

### *Council administration - 2018 and 2019*

The first substantive responses to my investigation were provided by the council during a period of turbulence at the council. The council did not have a Chief Executive Officer and Mr Colin Pitman was acting in that position. At that time, I experienced difficulty in obtaining particular information from the council.

The council was able to provide extensive records relating to the community members' electricity and water bills over approximately five years. However, the council did not provide any meaningful response to my request for information about its processes, procedures or actions that had been taken by the council. Accordingly, I had only limited insight into the council's position for an extensive period of my investigation.

In an effort to obtain some form of context to the actions taken by the council as electricity and water supplier, I considered the Auditor-General's report which includes submissions made by the council to the Auditor-General's investigation. That report was published in 2018.

In making submissions to the Auditor-General, the council accepted that its current level of accumulated indebtedness, including unpaid water and electricity bills, was extremely high. The council acknowledged that the cumulative debt reflects to some extent the lack of due diligence by the council in seeking to recover the electricity and water debts, and the general inability of the council to recover the debts because of the 'socio economic aspect of a section of the community'. The council had also stated:

...Many in the community use the hardship clauses of the council's policy as a shield to meeting their financial responsibilities. The current council accepts the reduction in debt is slow and intends to elevate the debt repayment through further service level reductions and further austerity programs and a generally compassionate but firm response to community debt recovery ...

Tenders for a new debt collection agency have been called and Kemps have been appointed in a positive attempt to recover some of the debt.

...

... Coober Pedy is one of the poorest community townships in the state, with a high percentage of poor families. The hardship policy and the ESCOSA rules present a significant challenge to collect all outstanding amounts and arrangements to pay are often not adhered to with outstanding payments quickly escalating beyond the individual's capacity to pay.

... The income for water and power is regulated by ESCOSA and the operating rate income potentially regulated by ESCOSA by rate capping legislation will not allow for debt recovery ...<sup>53</sup>

To the council's credit at that time, I note that at the commencement of this investigation, the council reconnected community members who were disconnected at that time for non-payment of bills and, as I understand it, entered into Hardship Agreements with those individuals.

It was my understanding that the community members have remained connected and will continue to do so, pending the finalisation of my investigation. This is consistent with the Hardship Policies which envisage that, if the council has failed to comply with the requirements of the Hardship Policies, a customer's service will not be restricted.<sup>54</sup>

<sup>53</sup> Report of the Auditor-General, Appendix 3.

<sup>54</sup> Hardship Policies, clause 19.

I was also advised by ESCOSA that in December 2018, it had advised the council to immediately cease disconnection or restriction of electricity and water services until the council had adequate consumer protections in place to support customers facing financial hardship.

### ***Council administration - 2020***

The council's current Chief Executive Officer, Mr Miller commenced his position in October 2019.

I provided Mr Miller with my provisional report in February 2020. Mr Miller responded to that report in April 2020.

In responding, Mr Miller outlined steps that had been taken by the council to address the issues that have been identified during my investigation, which had included:

- updating the council's Hardship Policies
- developing a draft Debt Collection Policy
- moving to quarterly billing for water and electricity, which will free up staff to provide a more personalised service for customers
- adopting a more diligent approach to debt collection, resulting in earlier contact with customers with overdue accounts
- engaging a new debt collection agency with regular contract management meetings
- an annual review of debts and write-offs of large uncollectible debts
- significantly increasing the provision for doubtful debts
- commencing negotiations with the Remote Area Energy Supplies representatives to fund the write-off of historic bad debts
- providing free home energy assessments
- providing energy-savings information with customers' bills
- updating the council's bills to comply with legislative requirements
- substantive effort in the last 12 months in the community to build trust in the council.

Mr Miller also accepted my provisional recommendations and listed a number of additional improvements that the council intended to action.

I commend the council for taking the above steps and for working to address the issues arising from my investigation.

Notwithstanding the above, the responses that I received to my provisional report necessitated a further response from the council about a number of additional issues.

Mr Miller's subsequent response provided a more detailed explanation of the council's financial circumstances. It was also stressed that the council is faced with the responsibility of trying to save an institution that is in financial administration, while also undertaking best efforts to support community members who may be experiencing financial hardship.

Mr Miller explained:

As you are aware, or should be aware, Council is on its knees financially with \$10 million in debt, and this is partly caused by a lack of debt recovery over many years. The ... (RAES) Scheme does not fully fund bad debts, and therefore, the ratepayers end up footing much of this expense through the general rates.

Council's weighted average interest expense for the last 6 years is 3.6 per cent. This means that for every dollar of revenue that the council cannot collect from either the customer or RAES, almost \$1.04 is not available to spend on programs to reduce socio-economic disadvantage in the town.

Electricity arrears have averaged \$915,000 over the last 6 years. This has cost ratepayers about \$200,000 in lost interest alone over that period...

...

Every dollar of unpaid bills not recoverable from RAES is borne by ratepayers...

Mr Miller provided further information about the ethical dilemma facing the current council administration. Mr Miller's comments included the following information:

- there is a large number of people on financial welfare who have high electricity bills and accumulated debt
- it is extremely difficult for the council to be able to collect unpaid debts, especially electricity debts
- the financial burden ends up being shifted onto other Coober Pedy Ratepayers, as well as State taxpayers through the RAES scheme
- customers have expressed concern that their electricity bills should not be that high due to limited electricity appliances in their home
- the council offers a free energy audit of a customer's home, but this offer is not always accepted by customers.

Mr Miller also explained that:

...The organization has made remarkable gains recently in transforming the organization particularly in the areas of governance and finance. There is still a long way to go. Please take into account that we are under enormous pressure with limited funds trying our best to respond to significant requests for information from your office, ESCOSA, the auditors, Grants Commission and the Local Government Finance Authority just to name a few.

I appreciate that Mr Miller bears responsibility to not only address the issues raised by my investigation, but also to try and save the council from the brink of financial crisis.

In its recently published Compliance Review Report of the District Council of Coober Pedy (**compliance review report**), ESCOSA noted:<sup>55</sup>

Customers who are unable to pay outstanding bills and meet ongoing consumption costs may accumulate unmanageable debts, impacting the [council's] financial viability and provision of services. In addition, allowing bills to accumulate exacerbates customer difficulties in repaying debt and can result in greater challenges to recover financially and to discharge the current debt, while meeting the costs associated with ongoing consumption. For this reason, and balancing these interests, [ESCOSA] considers that restriction and disconnection may be used, in appropriate circumstances, as one of the measures to manage debt.

[ESCOSA] considers that restriction and disconnection is a measure of last resort and it encourages the [council] to engage with customers at risk of restriction or disconnection to discuss flexible payment arrangements and participation in the [council's] hardship program (if appropriate).

In addition, it has been very apparent to me that previous practices of the council over many years have further exacerbated tensions that exists between the council and community members.

While my investigation cannot mend all issues, I am hopeful that ongoing action by the council to address the issues that have arisen in my investigation may bridge some of the tension that exists.

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<sup>55</sup> Essential Services Commission of South Australia, Compliance Review - District Council of Coober Pedy, January 2021, page 7.

## ESCOSA

Given ESCOSA's role in licensing and monitoring the council as an electricity and water service provider, I informed ESCOSA at the commencement of my investigation of the concerns that had been raised by ALRM and potential issues that I had identified in the records provided to me by the council.

ESCOSA consequently commenced a compliance review in order to determine:<sup>56</sup>

- whether the council had breached Licence conditions.
- what policies and procedures the council had in place to support customers who:
  - wish to make a complaint about their energy and water services or,
  - are experiencing financial difficulties or are accruing significant debt.
- whether there were any deficiencies in the council's policies as they may relate to the Electricity and Water Licences.
- what action should be taken by ESCOSA to ensure the council addresses any issues that are identified and to ensure future compliance with the Licences.

ESCOSA's compliance review was undertaken over the course of my investigation, commencing in October 2018 and concluding in January 2021. This process included an interim review of the council's implementation of updated processes and procedures in October 2019, a desktop review of the council's compliance systems, documentation, controls and processes in April 2020, and an external review undertaken by KPMG in November 2020.

Many of the issues identified and actioned by ESCOSA have been directly relevant to my investigation. Thus, my considerations in this investigation have deferred on many occasions to the information and advice that I have received from ESCOSA.

ESCOSA kept me informed of its progress as it worked closely with the council to address matters that were identified by ESCOSA as warranting reform and improvement. This has in turn been critical in ensuring that the most pressing issues in my investigation could be expedited.

A summary of matters discussed during my communications with ESCOSA is provided below.

1. ESCOSA identified that the council's bills did not include all of the information required by the Electricity and Water Licenses and the Water Retail Code.

ESCOSA suggested that the council update its bill template. Amendments to the council's billing template have focused on including previous and current meter reading dates so that customers can identify the relevant billing period, information about eligibility for concessions.

ESCOSA conducted a desktop review of the electricity and water bills produced by the council as part of the billing run in January 2020. ESCOSA found that the electricity bill is compliant against relevant regulatory documents, however the water bill was only partially compliant. ESCOSA communicated this view to the council and expected the council to rectify the problem and to record and report this matter as part of its annual compliance reporting.

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<sup>56</sup> Letter from ESCOSA dated 15 November 2018.

ESCOSA's compliance review report found that the council's tax invoices now generally meet the requirements of the Electricity Licence and the Water Retail Code.

ESCOSA's Findings and Recommendations from the compliance review included:

The [council] is to update its bills to include 24-hour system faults and the date of the next meter read and provide a sample bill to [ESCOSA], which includes this information by **31 March 2021**.

The [council] is to investigate options for providing details of previous payments made by customers towards bills and provide details of these options and costs to [ESCOSA] by **28 May 2021**.

2. ESCOSA identified that the council was not using an appropriate Water Hardship Policy, which should have been drafted in accordance with the Minister's intent under the Water Industry Act. With the assistance of ESCOSA, a new policy was drafted by the council titled 'Hardship Policy for Residential Electricity, Water and Sewerage Service Customers'.

ESCOSA advised that while the Hardship Policy is only required by the Licences to be applied to residential water and sewerage customers, the council has adapted its policy to also apply to electricity customers.

ESCOSA formally approved the updated Hardship Policy on 24 September 2019.

ESCOSA's compliance review report stated that the current Hardship Policy meets all requirements under the Water Industry Act, Electricity Act, conditions within the relevant Licences, and associated ESCOSA Codes and Guidelines. The review also found that the policy has been implemented by the council.

The Hardship Policy is accessible on the council's website. However, ESCOSA's compliance review report suggested that more detailed information about financial hardship, flexible payment arrangements and payment options was required to be accessible on the council's website. The following recommendation was issued by ESCOSA:

The [council] must update its website to display the Hardship Policy in a prominent location and advise [ESCOSA] of this update by **26 February 2021**.

The Hardship Policy and information for people experiencing financial hardship is now accessible on the council's webpage under the 'payments tab'.

3. ESCOSA identified that the council did not have communication material which focused on assisting customers to manage electricity and water consumption or debt. ESCOSA suggested that the council create fact sheets that could be provided to customers relating to efficient energy use, and how customers may approach the council if payment difficulties or circumstances of financial hardship arise.

ESCOSA stated that the council has more recently provided it with copies of pamphlets and information that it will include with bills to assist customers to manage electricity and water consumption or debt. ESCOSA is satisfied that the content is appropriately targeted to consumers of essential services. The pamphlets include energy efficiency information available from the SA Government's Energy Advisory Service, as well as water saving tips for customers. In addition, the council has also included information on its bills relating to steps that customers can take when they are experiencing financial hardship.

ESCOSA's compliance review report also suggested that the council may benefit from additional information materials about financial hardship and the council's debt management policies. The compliance review report included the following recommendation:

The [council] must create a fact sheet on options for hardship, payment difficulties and payment options based on the hardship and debt management policies, and provide this material to [ESCOSA] by **30 April 2021**.

4. The council sought advice from ESCOSA about circumstances where a financial counsellor may notify the council of a customer's capacity to pay, and the amount is lower than that required to cover the council's calculated amount.

To address this, the council has implemented a policy change to extend the time period over which existing debt is to be recovered to greater than 12 months. The purpose is to reduce the periodic amounts payable by the customer to meet the recommendation of the financial counsellor and still receive a payment that will ensure that the customer pays off their debt, albeit over a longer period of time.

5. ESCOSA has taken steps to assist the council in identifying financial counselling services that could be utilised by customers.

In addition, ESCOSA's compliance review report suggested that additional materials should be created by the council to ensure that there is adequate information for customers about the following:

- hardship/debt recovery policies
- bill payments and meter readings
- outages, faults, and emergencies
- products, plans, and pricing
- RAES scheme, and
- government concessions.

ESCOSA required the council to make this additional information available on the council's website by 30 April 2021.

6. ESCOSA identified that the council's Customer Complaints Policy was unsatisfactory, and that the council may not have been applying the policy.

ESCOSA advised that the council had originally updated its policy, and ESCOSA had approved the council's updated Enquiry, Complaint & Dispute Resolution Procedure prior to the council being placed under administration. However, that approved version of the document was not implemented.

ESCOSA has now approved an updated version of the Customer Complaints Policy, which is available on the council's webpage.

The council's updated procedures include information regarding the escalation of unresolved electricity and water complaints to the Energy and Water Ombudsman SA (**EWOSA**). ESCOSA confirmed that the council joined the EWOSA scheme on 7 March 2019. EWOSA facilitates the resolution of disputes between energy and water consumers and the providers of those services. The council's membership in the scheme ensures that an alternative dispute resolution body is available to customers in relation to complaints about the council's electricity and water services.



7. ESCOSA identified that the council's training materials for staff appeared to lack sufficient detail to ensure that policies and procedures are adhered to by staff. The council was asked to implement procedures for staff in relation to billing, financial hardship, debt recovery, water restrictions and electricity disconnection. ESCOSA identified that it would be beneficial for the council to implement a training program in order to ensure that staff are sufficiently trained to assist customers with enquiries, complaints, payment difficulties or financial hardship.

The council has developed procedure checklists to assist with the electricity disconnection process and water restriction process. It advised ESCOSA that an additional staff member had been trained in the disconnection process via one to one training over a two month period (aligned with the billing period at that time).

ESCOSA's compliance review report made recommendations to create and implement additional checklists and procedures, in order to mitigate risks from staff turnover. ESCOSA required the council to submit the final checklists and procedures to ESCOSA by 28 May 2021.

8. The council has provided ESCOSA with policy and process documentation to assist its staff with the management of disconnections and restrictions. ESCOSA's compliance review report summarises its assessment of various letter and notice templates that are to be used by the council when providing notice of possible restriction or disconnection of services. One of the recommendations from this review has included additional information being provided within the 'reminder notice', to ensure that it is clear what happens if an invoice is not paid, and to provide options for flexible payment arrangements.
9. ESCOSA has also provided feedback to the council on its Debt Recovery Policy and worked with the council to finalise that document. ESCOSA's compliance review report indicated that the council's current Debt Recovery Policy required additional amendments prior to being compliant with relevant Regulatory framework.

ESCOSA issued the following Finding and Recommendation within its report:

The [council] should not carry out any restrictions or disconnections for non-payment of debt until its Debt Recovery Policy is submitted to [ESCOSA], to evidence compliance with the regulatory framework. The [council] must provide the updated Debt Recovery Policy to [ESCOSA] by **31 March 2021**.

ESCOSA also advised me that the council had reached a policy decision to increase the council's revenue. Doing so will include an increase in water pricing. At the council meeting on 17 December 2019, the council increased water usage charges effective 30 December 2019. The council communicated this change to consumers via letter and further advised that fixed water supply charges would be reviewed at the time of preparing the 2020/21 annual budget. The council advised consumers that the increases are consistent with the principles outlined in the National Water initiative which the council must comply with under the ESCOSA's water Price Determination for Minor and Intermediate Retailers.

ESCOSA has noted that the council must satisfactorily demonstrate, to both ESCOSA and customers, that it is acting in a manner that is prudent and efficient, including in relation to how the council engages with customers about any pricing changes. I understand that ESCOSA will be monitoring the actions of the council, including whether any payment difficulties or financial hardship arises as a result of the proposed price increases, and ESCOSA would take appropriate action if it were considered necessary to do so.<sup>57</sup>

<sup>57</sup> Letter from ESCOSA dated 17 October 2019 and Letter from ESCOSA dated March 2020.

I am encouraged by the guidance provided to the council by ESCOSA through this process and by the steps taken by the council to make meaningful improvements. ESCOSA's responses to my provisional report reflected the ongoing commitment that has been shown by the council to work with ESCOSA to address the issues that have been identified during my investigation and ESCOSA's own compliance review.

However, ESCOSA had also stated that it nevertheless remained concerned about the council's compliance and responsiveness capacity. For example, on 18 December 2019, ESCOSA posed a number of questions to the council, seeking further information and evidence to prove that it is acting in a manner that is prudent and efficient, in relation to the proposed costs. ESCOSA was concerned that the council did not provide a response until 11 March 2020, following escalation of the enquiries to the council's Chief Executive Officer.

It appears that in more recent times, ESCOSA has had greater success working with the council. In responding to my revised provisional report, ESCOSA provided the following comments in relation to the recommendations from ESCOSA's compliance review:

...As you are aware, [ESCOSA] continues to liaise with the council to implement the recommendations made in its report. I am pleased to advise that the council appears to be genuinely engaging in that process and improvements are being made...

While the above information illustrates some of the council's progress since my investigation commenced, the administrative errors that have been identified throughout my investigation are of sufficient seriousness to justify my full consideration.

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## Consideration

1. As a starting point, I accept that when an electricity or water customer receives a bill, it is expected that the customer pays the amount that is due by the due date.
2. However, due to varying circumstances, some customers may not always be able to pay the amount that is owing by the due date. Consequently, payment by instalment arrangements exist.
3. The Hardship Policies accept that some customers may not be able to pay their bills due to circumstances of financial hardship and that this hardship may be something that is experienced by a customer long-term. The Hardship Policies allow for a payment arrangement to be put in place so as to ensure that customers are making regular payments towards their accounts while staying connected to their electricity or water supply.
4. On the other hand, the Licences recognise that the council may require a mechanism by which a customer's electricity or water supply can be disconnected or restricted for the non-payment of bills. Although this mechanism exists, many steps must be taken prior to any disconnection or restriction taking place. Given the impact that a disconnection or restriction has on a person's living conditions, in my view, it is appropriate that a fair and comprehensive process is required before a disconnection or restriction may be effected.
5. At the core of this investigation is the very serious concern that Aboriginal community members of Coober Pedy have been allowed to accumulate considerable debts in relation to their electricity and/or water accounts. This in turn has had a significant impact on their quality of life. These debts appear to have accumulated over several years until the council determined that action needed to be taken to recover the amounts owed and any ongoing usage of customers.
6. I am mindful that the council's approach to both its application of the Licences and Hardship Policies may not have been specific to the Aboriginal community of Coober Pedy. However, I am acutely aware that any action taken by the council arguably had a more substantial impact on the Aboriginal community than others, given the vulnerabilities that are recognised as being specific to Aboriginal and Torres Strait Islander Peoples.
7. Community members have been informed by the council that they face disconnection unless they either pay the amount that is owed in full or they enter into a payment agreement that has been calculated by the council. Paying an account in full has not been an option for the community members who have provided information to this investigation; the majority of the community members are Centrelink clients already living in what has been explained as circumstances of poverty, and the arrears that have accumulated have been considerable.
8. Some community members have faced disconnection of their services for non-payment of a Hardship Agreement that has already been entered into. In those circumstances the council requires either the full amount due to be paid or the customer to agree to an increase in their regular payments. For many community members, neither option is feasible. In other cases, community members have not been placed under Hardship Agreements when it appears they should have been.
9. In order to form a view as to whether the actions of the council have been appropriate, my investigation has considered those actions in the context of the council's Licences and Hardship Policies.

10. I have then focused on the allegations concerning actions by the council against the community members. This includes allegations of being pressured to apply for Native Title payments towards their electricity and water debts and arranging third party agreements towards debt repayments.
11. I reiterate that the actions that are being considered by my investigation relate to allegations of conduct by former employees at the council, and may not reflect the actions of the current administration. However, I consider that it is necessary to properly investigate the allegations made to ensure that any actions that may be necessary to improve public administration and public perception of the council have been thoroughly investigated and explored.
12. I have set out my consideration of these issues below.

## Whether the council acted in a manner that was contrary to the Electricity Retail and Distribution Licence and the Water Industry Retail Licence

13. It is an offence under the Electricity Act for the council to contravene the conditions within its Electricity Licence. Section 25 of the Electricity Act states:
- 25 - Offence to contravene licence conditions**
- (1) An electricity entity must not contravene a condition of its licence.  
Maximum penalty: \$1 000 000.
- (2) An offence against subsection (1) may be prosecuted as an indictable offence or a summary offence at the discretion of the prosecutor but, if prosecuted as a summary offence, the maximum penalty that may be imposed for the offence is a fine not exceeding \$20 000.
14. It is an offence under the Water Industry Act for the council to contravene the conditions within its Water Licence. Section 25 of the Electricity Act states:
- 27 - Offence to contravene licence conditions**
- (1) A water industry entity must not contravene a condition of its licence.  
Maximum penalty: \$1 000 000.
- (2) An offence against subsection (1) may be prosecuted as an indictable offence or a summary offence at the discretion of the prosecutor but, if prosecuted as a summary offence, the maximum penalty that may be imposed is a fine not exceeding \$20 000.
15. The legislative scheme clearly envisages that the council must comply with the Electricity and Water Licences.

### *Information contained in the council's bills - impact of payments towards debt*

16. ALRM expressed concern that the council's bills did not provide community members with a way to understand how any payments made to the council may impact on accumulated debt.
17. The interviews that I have undertaken during this investigation, and the information provided to me by ALRM, demonstrated that there is widespread difficulty amongst the community members to comprehend the council's bills, and the impact of any payments they have been making to the council.
18. At the commencement of my investigation, both the electricity and water bills showed 'an amount due' for the bill, which was a total amount that was due on the relevant electricity or water account. There was also a figure for 'balance brought forward', being the total of any payments made or owed by the customer since the last bill was issued.
19. I have noticed that accounts that are significantly in arrears will generally show the entirety of the debt within the 'amount due' on any given bill.
20. Conversely, during my investigation, I noticed some records that showed 'amount due' as a figure that was written in the negative. The council explained that this occurred when an electricity or water account was in credit.
21. During my investigation, I was made aware of a community member who had been making payments of \$200 each fortnight for their electricity. The council advised that the electricity account has always been in credit. It is unclear why this payment arrangement was set up. That community member passed away. At the time of their passing, the community member's electricity account was \$5,296.66 in credit. The credit from that account was later distributed [REDACTED]

22. I also note council records indicate that ██████ debt increased by several thousand dollars after a debt from a previous account was added. The circumstances of the debt are particularly unclear, as the description of that amount was that it was a previously written off debt that had been reinstated to her account. Other times, ██████ account was in credit and council records show that she requested refunds from her account when it was in credit.
23. It is apparent that limited information contained within the council's bills, about payments made by community members towards their bills, is likely to lead to limited oversight over an electricity account or financial payments.
24. I have considered whether the council's bills should include additional information. In doing so I have taken into account what is required by the Licences and practices elsewhere.
25. Condition 24.4 of the Electricity Licence requires a customers' bill to include information about 'the amount of arrears or credit', which would appear to be satisfactorily met by the information that I have described above.
26. ESCOSA has advised that it is of the view that it would be beneficial for the council's electricity and water bills to include additional information or, at the very least, for additional information to be provided to customers who enter into payment instalment plans or Hardship Agreements. Given my considerations above, and the apparent extent of the confusion relating to bills, I agree.
27. I consider it good administrative practice that all customers, under any form of payment agreement, are provided with clear information demonstrating the impact payments have had on their debt accrued arrears. ESCOSA has advised that it supports this view.
28. It has been explained to me by ESCOSA that, if additional billing requirements were to be included in the Licences, ESCOSA would be required to undertake a consultation process with the council and the community, and any changes that resulted would most likely lead to additional costs to the council, which would most likely be borne by customers. It is not clear to me why this cost would ultimately be borne by the customer. Nonetheless, I previously queried what additional costs may be involved with adding additional information onto the bills. ESCOSA advised that:

The costs associated with implementing additional information on bills is the development and implementation costs associated with upgrading billing system software to accommodate any proposed changes. Most small providers use off-the shelf billing systems that produce bills in a predetermined format. While we understand that some content may be customisable, bespoke changes to the standard format will generally require fee for service systems development work to be undertaken by the software provider. The costs associated with the work are generally aligned to the complexity of changes required.

[ESCOSA] acknowledges that relevant billing information is important and is considering the matter as part of its Inquiry into regulatory arrangements for small-scale and off-grid water, gas and electricity services.
29. Based on the above information, I consider that the council's Electricity Licence may not have expressly required additional information to be provided about the impact of a payment towards a customer's debt. However, for the reasons provided above, I am of the view that this information needs to be stated within the council's bills.
30. There are slightly different requirements for billing of water services.

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31. Clause 6.1 of the Water Licence requires the council to comply with all applicable laws and any technical or safety requirements or standards in regulations under the Water Industry Act. This includes compliance with the Water Retail Code.
  32. Clause 5.1.5(k) of the Water Retail Code requires the council to include: 'the amount of arrears or credit, and the total of any payments made by the customer since the last bill was issued'.
  33. When I commenced my investigation, the council's water bills did not appear to include this information.
  34. ESCOSA provided its view below, and information about its discussion with the council:

[ESCOSA's] position is that the current bills do not separately identify the total of any payments made towards the current bill since the last bill was issued. This is therefore a further matter of non-compliance, which has been brought to the council's attention...

Given the terms of the council's current bill format, a customer would need to refer to both the current and previous bill to understand the impact of payments made. While this is not ideal, [ESCOSA] understands that this due [sic] to limitations in the council's billing system, Synergy Soft. Synergy soft has advised the council that the billing system does not have the ability to produce a bill in this format without undertaking system modifications.

...

Noting the current limitations of the billing system, [ESCOSA] is of the view that providing the information to customers separately may be the most practical option in the short term.

In terms of frequency, providing a payment summary statement at the time meters are read would allow for payment to be reconciled against current consumption. However, [ESCOSA] recognises that more frequent information may assist customers to manage their payment schedule. [ESCOSA] has put to the Council that a pragmatic approach which would address the compliance issue in the short-term (pending software updates) would be for the Council to provide this information aligned to the billing cycle and more frequently on request.

35. It would appear that this issue was addressed further within ESCOSA's compliance review report. Noting the council's current Software limitations, ESCOSA stated:

[ESCOSA] acknowledges the difficulties concerning system requirements for adding previous payments to the tax invoice; however, the invoice is non-compliant without it. In that context, [ESCOSA] does not consider that ongoing non-compliance with this obligation is satisfactory in the absence of a detailed assessment.

[ESCOSA] is cognisant that in complying with regulatory obligations, there is an inherent trade-off between costs and benefits. This means that the cost to comply with a regulatory obligation may outweigh the benefit that the consumer protection provides.

In this case, however, the [council] has not demonstrated to [ESCOSA] the cost to achieve compliance with this requirement. While the current billing system may not be able to achieve this function, the [council] can investigate the implementation of a new billing system or alternative solution that achieves the regulatory intent. That intent being the provision of transparent information to consumers on payments made towards electricity and water bills.

...

36. As stated earlier in this report, ESCOSA issued a recommendation that the council was to investigate options for providing details of previous payments made by customers towards bills and provide details of these options and costs to ESCOSA by 28 May 2021.

37. In light of the above information, I am of the view that, by failing to ensure customers are informed of the impact of any payments made under Hardship Agreements (and other such payment arrangements), the council has acted in a manner that is wrong under section 25(1)(g) of the Ombudsman Act.

*Information contained in the council's bills - compliance with Licences*

38. My investigation noted that the Electricity Licence (and indeed, the council's electricity bills) did not include consumer information that is required under section 24(2)(da) of the Electricity Act, including:
- electricity consumption in the last 12 months
  - the council's daily charges for electricity during the billing period
  - how the customer may obtain advice about reducing consumption.<sup>58</sup>
39. The council could not be expected to include that information within its electricity bills if the Licence that was issued by ESCOSA did not include mandatory conditions.
40. In responding to my provisional report, ESCOSA stated that:
- the council's Electricity Licence was first issued in 1997
  - section 24(2)(a) of the Electricity Act was introduced in 2004
  - ESCOSA issued a new combined licence to the council in 2007, however the mandatory consumer data under section 24(2)(a) of the Electricity Act was not included
  - the consumer information conditions were not included in the council's Electricity Licence that was issued in 2007 because there was no competing energy provider in Coober Pedy.
41. ESCOSA has also stated that:
- [ESCOSA] agrees that there is benefit in providing consumers with comparative information, and will pursue this issue further with the Council. A positive outcome may be achieved by the Council agreeing to take appropriate steps to provide such information without the need for regulatory requirements; absent that, it may be necessary to amend the licence using the scheme under section 27 of the Electricity Act...
42. Encouragingly, with the assistance of ESCOSA, the council recently updated its Electricity and Water bill templates to include:
- previous and current meter reading dates in order to allow customers to identify the billing period to which the bill relates
  - the number of days between meter readings
  - information about eligibility for concessions
  - information about financial hardship options, including contact details for Anglicare SA, Uniting Country SA and Centacare Catholic Country SA
  - information on interpreter services.
43. The additional information contained in the updated bills will undoubtedly be of assistance to community members as well as all other customers of the Coober Pedy district. I commend the council for taking this action and ESCOSA for its guidance to the council during this process.
44. ESCOSA advised that when it commenced its compliance review, the council's water bills omitted key consumer protection information and did not otherwise comply with ESCOSA's regulatory requirements.

<sup>58</sup> Electricity Act, section 24(2).



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45. I have noted that (in addition to my comments above) clause 5.1.5 of the Water Retail Code requires the council's bills to include:
- the telephone number for billing, payment enquiries and instalment payment options and information about help that is available if the customer is experiencing difficulties in paying
  - a reference to the availability of relevant government concessions and rebates
  - the amount of any government concessions or rebates applicable to the customer separately itemised for each service
  - the number of days since the previous meter reading or estimate, the estimated date of the next meter reading, and meter reading estimates or data for the bill.
46. The council's water bills that I reviewed at the commencement of my investigation did not include that information.
47. In responding to my provisional report, ESCOSA advised that the council's bills had been updated, however as of January 2020, the council's water bill was only partially compliant.
48. Despite the encouraging steps that have been taken by the council in relation to its bills, I am of the view that the water bills omitted essential information required under the Water Retail Code (and by extension, the Water Licence).

#### *Disconnections of electricity*

49. ALRM raised concern that some community members may have had their electricity disconnected by the council in circumstances that were contrary to the council's Electricity Licence. Concerns were not raised about the improper restriction, discontinuance, or disconnection of water supply.
50. The council may disconnect a customer's electricity in several circumstances including, when a customer has not paid a bill or not complied with any payment obligations under a payment agreement.<sup>59</sup>
51. Under condition 39.1(d) of the Electricity Licence, when the council is intending to disconnect a customer due to the non-payment of a bill, the council must have offered the customer an alternative payment option under which the customer may make payments by instalments.<sup>60</sup> However, the council does not have to offer an instalment plan if the customer has had two instalment plans cancelled in the previous 12 months due to non-payment.
52. It appears that the Hardship Agreements are consistent with the description of an instalment plan under the Electricity Licence.<sup>61</sup>
53. I have considered the information provided to me in order to determine whether community members, who had their electricity disconnected by the council for non-payment of a bill, were:
- offered an instalment plan, including a Hardship Agreement or some other payment arrangement, prior to the disconnection
  - not offered an instalment plan or other arrangement because the customer had two payment arrangements 'cancelled' in the previous 12 months.
54. In some cases it was evident that the council had offered a payment arrangement to the community member prior to a disconnection.

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<sup>59</sup> Electricity Licence, condition 38.

<sup>60</sup> Electricity Licence, condition 39.1(d).

<sup>61</sup> Electricity Licence, condition 34.1.

55. However, the records indicate that the following community members were disconnected in breach of condition 39.1(d) of the Electricity Licence:
- [REDACTED] was disconnected in October 2017 for non-payment of a bill.<sup>62</sup> Although a previous payment agreement appears to have been in place and ceased in August 2017,<sup>63</sup> there is no record indicating that a second agreement was also 'cancelled' 12 months prior to the disconnection. Similarly, there is no record indicating that the council offered a fresh payment agreement to [REDACTED] prior to the disconnection.
  - [REDACTED] was disconnected in August 2017. It appears that a prior Hardship Agreement was in place.<sup>64</sup> There is no record of that agreement or any other agreement having been cancelled in the 12 months prior and there is no record of the council offering an instalment plan or other agreement prior to the disconnection.
  - [REDACTED] was disconnected in December 2016. There is no record of her being offered an instalment or payment plan prior to the disconnection and no record of two agreements being cancelled in the 12 months prior.
  - [REDACTED] was disconnected in December 2016. There is no record of her being offered an instalment or payment plan prior to the disconnection and no record of two agreements being cancelled in the 12 months prior.
  - [REDACTED] was disconnected in July 2016. Other than a Hardship Agreement that appeared to be in place at the time, there is no record of the council offering an alternate payment arrangement prior to the disconnection and no record of the cancellation of two arrangements in the 12 months prior.
  - [REDACTED] was disconnected in August 2016 for a 'broken agreement'. Although a Hardship Agreement appears to have been in place at the time, there is no record of the council offering any other instalment plan or arrangement prior to the disconnection and no record of two prior cancellations of arrangements in the previous 12 months.
  - [REDACTED] was disconnected in August 2016. It appears that a Hardship Agreement was in place prior and [REDACTED] was making payments via Centrepay. However, there is no record of any instalment plan or fresh Hardship Agreement being offered prior to the disconnection and no record of two agreement cancellations in the previous 12 months.
56. The Electricity Licence also provides that the council must not disconnect a customer's electricity on a Friday, weekend, public holiday or the day before a public holiday.<sup>65</sup>
57. The council's records demonstrate that:
- [REDACTED] was disconnected on Friday 2 February 2018
  - [REDACTED] received a notice from the council on 23 February 2018 stating that the council would disconnect her electricity service on Friday 9 March 2018. The records are unclear in relation to whether [REDACTED] was actually disconnected on that date, instead it appears that the account may have been transferred to her partner's name and potentially the disconnection occurred under [their name] on that date. Nevertheless, it is evident that the council intended to undertake a disconnection on a Friday.
58. Disconnecting a customer on a Friday is contrary to condition 40.1(e) of the Electricity Licence.
59. In undertaking its compliance review, ESCOSA noted that the council did not have a policy or procedure in place relating to the disconnection, restriction, and reconnection

<sup>62</sup> [REDACTED] Transactions, Electricity Account, [REDACTED].

<sup>63</sup> File Note, dated 19 October 2017.

<sup>64</sup> Hardship Agreement, dated 28 April 2016.

<sup>65</sup> Electricity Licence, condition 40.1(e).

of essential services. Instead it appeared that the council staff were relying on a series of late payment and disconnection notices to guide them in the procedure to be followed. Consequently, ESCOSA has required the council to implement a policy and procedures specifically dedicated to disconnections, restrictions, and reconnections so that the council's actions are consistent with the Electricity and Water Licences.

60. These documents have now been drafted and are considered by ESCOSA to be suitable. I have also considered the council's new policies and procedures and agree with ESCOSA's view.
61. Once again, I am encouraged by the recent action taken by the council in relation to its 'disconnection' policies and procedures.
62. However, on the information I have identified above, I am of the view that the council disconnected numerous community members in a manner that was contrary to conditions 39.1(d) and 40.1(e) of the Electricity Licence.

### ***Annual returns and compliance reports***

63. The Electricity Licence requires the council to submit an annual return to ESCOSA.<sup>66</sup> The annual return should include a report of any non-compliance with regulatory obligations that occurred throughout the year, and any measures taken to rectify the non-compliance.<sup>67</sup> In addition, the Electricity Licence requires the council to make an immediate breach report if there has been non-compliance with a condition of its licence.<sup>68</sup>
64. The Water Licence requires the council to:
  - comply with any applicable industry code or rule made by ESCOSA,<sup>69</sup> and
  - monitor and report to ESCOSA on its levels of compliance with any applicable industry code or rule provisions and minimum service standards.<sup>70</sup>
65. Water Industry Guideline 1 requires the council to submit an annual compliance report, detailing all non-compliances with regulatory obligations which occurred during the reporting year<sup>71</sup>.
66. Both the Water Licence and Water Industry Guideline 1 require the council to submit a breach report if there has been a material breach of the Water Industry Act,<sup>72</sup> or any industry code or industry rule made by ESCOSA.<sup>73</sup>
67. ESCOSA has advised that it reviews all of the annual returns it receives and follows up any matters that are reported which require further investigation. ESCOSA may require the licensee to address any deficiencies by a number of means including by a formal audit, obtaining administrative undertakings relating to corrective action and, in serious cases, seeking disciplinary or criminal sanctions from the Court.
68. Noting my concerns about the council's electricity and water bills above, I asked ESCOSA about the council's annual compliance reporting.

<sup>66</sup> Electricity Licence, condition 10.

<sup>67</sup> Electricity Licence, condition 10.2(e); *Energy Industry Guideline No. 4 - Compliance Systems and Reporting*, September 2013, Essential Services Commission of South Australia.

<sup>68</sup> Electricity Licence, condition 8; Letter from ESCOSA, 17 July 2018.

<sup>69</sup> Water Licence, condition 6.3(a).

<sup>70</sup> Water Licence, condition 6.3(c).

<sup>71</sup> *Water Industry Guideline 1 - Compliance System and Reporting*, July 2016, Essential Services Commission of South Australia (**Water Industry Guideline 1**) clause 3.6.

<sup>72</sup> Water Licence, condition 6.2; Water Industry Guideline 1, clause 3.4.

<sup>73</sup> Water Licence, condition 6.3(d) Water Industry Guideline 1, clause 3.4.

69. During my investigation, ESCOSA noted:
- the 2016/2017 annual return had been provided, and the council had not reported any complaints or issues with non-compliance for customer billing for that period
  - the 2017/2018 annual return had not been provided on time
  - the 2018/19 water annual compliance report was provided substantially after its due date; it was due to be provided by 30 November 2019 and was not provided until 11 March 2020 after escalation of this issue to the council's Chief Executive Officer.
70. ESCOSA's compliance review report also noted that the council's 2018/19 report listed a number of licence obligations that were reported to be compliant by the council during that period of time, however the council's compliance review documented that the council was not compliant.
71. ESCOSA has indicated within that report that it will be closely monitoring the council's compliance with its licences during the next annual compliance reporting process, and has issued a recommendation that the council must set up processes to ensure that its annual compliance reports are completed by their due dates.
72. Given my considerations above of:
- the apparent breaches of the Water Retail Code and the Water Licence in relation to customer billing, and
  - apparent breaches of the Electricity Licence in relation to the disconnection of electricity supply,
- I am of the view that the council failed to report non-compliance to ESCOSA as required by the Licences.

## Final Opinion

In light of the above, I am of the view that the following actions of the council were contrary to conditions within the council's Licences:

- the omission of particular information within the water bills that is required under the Water Retail Code (and by extension, the Water Licence)
- disconnecting numerous community members for non-payment of a bill without the council offering an instalment plan and without the community member having had two payment arrangements cancelled in the previous 12 months
- disconnecting a community member on a Friday
- failing to report non-compliance to ESCOSA as required by the Electricity Licence and Water Licence.

As stated above, the legislative scheme under the Electricity Act and the Water Industry Act envisages that the council must comply with the conditions of both the Electricity Licence and the Water Licence.<sup>74</sup> On this basis, I am of the view that the council has acted in a manner that appears contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

In addition, by failing to ensure customers are informed of the impact of any payments made under Hardship Agreements (and other such payment arrangements), I am of the view that the council acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

<sup>74</sup> Electricity Act, section 25; Water Industry Act, section 27.

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## Whether the council acted in a manner that was contrary to the Hardship Policy for Electricity Customers and the Hardship Policy for Water Customers

73. When considering the actions taken by the council, I have remained mindful of clause 35 of the Hardship Policies which provides:

Every residential customer experiencing financial hardship has the right to:

- Be treated respectfully on a case-by-case basis, and have their circumstances kept confidential.
- Receive information about alternative payment arrangements, this customer hardship policy, and government concessions, rebates, grants and assistance programs.
- Negotiate an amount they can afford to pay on a payment plan or other payment arrangement.
- Consider various payment methods, and receive written confirmation of the agreed payment arrangement within 10 business days.
- Renegotiate their payment arrangement if there is a change in their circumstances.
- Receive information about free and independent, accredited financial counselling services.
- Receive a language interpreter service at no cost to the customer.
- Be shielded from legal action and additional debt recovery costs, whilst they continue to make payments according to an agreed payment arrangement.
- Not have retail services restricted or disconnected as long as they have agreed to a payment arrangement and continue to make payments according to an agreed plan.

74. In addition, clause 36 of the Hardship Policies states that the council will ensure customers have 'equitable access to this customer hardship policy, and that this policy is applied consistently'.

75. When I enquired about the circumstances under which the council utilises the Hardship Policies, the council's former Acting Chief Executive Officer, Mr Pitman explained:<sup>75</sup>

The Hardship Agreement was used when the client wanted to Connect Electricity if they had a Debt outstanding or if a client had been disconnected for Non Payment. Some clients also applied for a Hardship Agreement to pay their increasing debt if their usage was higher than their payments causing their debt to increase.

76. Mr Pitman also submitted:

- when a customer presents at the council with an enquiry relating to their debt, the outstanding amount is confirmed. If the customer wants to make a payment arrangement, an appointment is made for the customer to speak to the CEO or meet with the Debt Recovery Officer, with a support person such as 'their spouse, partner, case worker or financial counsellor'. The discussion will include what steps are required to have the customer's supply connected.

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<sup>75</sup> Response from Mr Colin Pitman provided on 24 August 2018.

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*Failure to offer Hardship Agreements or take action at an earlier opportunity*

77. The purpose of the Hardship Policies is 'to identify residential customers who are experiencing payment difficulties due to hardship, and assist those customers to better manage their bills on an ongoing basis'.
78. A customer experiencing financial hardship is defined as being a customer who:
- has the intention but not the financial capacity to make required payments in accordance with the council's payment terms<sup>76</sup>
  - may have ongoing or temporary financial hardship<sup>77</sup>
  - will generally be experiencing ongoing financial hardship if on a low or fixed income.<sup>78</sup>
79. It is recognised by the Hardship Policies that those customers identified as experiencing 'ongoing' hardship may require ongoing assistance.<sup>79</sup>
80. A customer may be identified as experiencing financial hardship by identifying themselves, by being identified by accredited financial counsellors and welfare agencies, or by being identified by the council itself.<sup>80</sup>
81. The Hardship Policies provide that council staff will receive appropriate training. Given that the council is required to identify relevant customers, council staff should be sufficiently trained in understanding the indicators for a customer who is likely suffering from financial hardship.
82. Once a customer is identified as experiencing financial hardship, the council is required to offer the customer 'flexible and frequent payment options that have regard to the hardship customer's usage, capacity to pay and current financial situation'. The payment options include:<sup>81</sup>
- an interest free payment plan under the Hardship Policy
  - payments made via Centrelink's Centrepay Service
  - an 'other arrangement' under which the customer is given more time to pay a bill or to pay in arrears.
83. In this report I have referred to those payment options as Hardship Agreements.
84. Having considered the council's records, it appears to me that numerous community members who are evidently suffering from financial hardship, should have been identified by the council as such but were not, and consequently were not offered a Hardship Agreement, or were only offered a Hardship Agreement after they had already accumulated significant debt. In particular, I note:
- ██████████ had accrued arrears of approximately \$2,500 in May 2018. ██████████ is a Centrelink client. The records illustrate that ██████████ arrears grew over the years 2017 and 2018. ██████████ made a significant payment of \$150 per week towards her electricity via Centrepay however, the arrears continued to grow. There is no record of a Hardship Agreement having been offered by the council or created.

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<sup>76</sup> Hardship Policies, clause 6.

<sup>77</sup> Hardship Policies, clause 7.

<sup>78</sup> Hardship Policies, clause 8.

<sup>79</sup> Hardship Policies, clause 8.

<sup>80</sup> Hardship Policies, clause 6.

<sup>81</sup> Hardship Policies, clause 13.

- ██████████ had accrued electricity arrears of almost \$2,000 and approximately \$2,200 for water in May 2018. ██████████ is a Centrelink client. The records illustrate that ██████████ had an ongoing history of difficulty in paying her bills despite making regular payments. The arrears accumulated over several years, at some stages exceeding \$5,000 and never dropping below \$1,000. ██████████ made considerable fortnightly payments of approximately \$470 per fortnight via Centrepay. However, there is no record of a Hardship Agreement having been offered by the council or created.
  - ██████████ had accrued arrears of \$6,465.63 in July 2018. ██████████ is a Centrelink client who had Centrepay payments set up in relation to her electricity account in 2016. The records indicate that ██████████ has an ongoing history of difficulty in paying her bills; in 2016 ██████████ paid off arrears of approximately \$3,000 under a Hardship Agreement. By January 2017 ██████████ had begun to accumulate arrears again which continued to rise through 2018. There is no record of a Hardship Agreement having been offered by the council or created in relation to the 2017/2018 debt.
  - ██████████ had accrued arrears of almost \$5,500 in April 2018. ██████████ is a Centrelink client. The records indicate an ongoing history of difficulty in making payments. ██████████ arranged for Centrepay payments of \$130 per fortnight to be made towards her electricity account. However, the arrears continued to accumulate over time. The council created a File Note in May 2018 that contained Hardship Agreement calculations and a notation stating that when ██████████ 'comes into the office' she was to be advised to meet with a financial counsellor. However, there is no record of the council ever offering the Hardship Agreement to ██████████ or ██████████ entering into such an agreement.
  - ██████████ had accrued arrears of approximately \$1,300 in May 2018. ██████████ is a Centrelink client. ██████████ had Centrepay payments of \$100 set up in 2014. Despite this, between 2016 and through 2018 her arrears continued to accrue. There is no record of a Hardship Agreement having been offered by the council or created.
  - ██████████ had accrued arrears of approximately \$3,700 in May 2018. ██████████ is a Centrelink client. In 2014 ██████████ arranged for Centrepay payments of \$200 to be made towards his electricity account. However, by 2018 the amount owed had accumulated. There is no record of a Hardship Agreement having been offered by the council or created
  - ██████████ had accrued arrears of \$11,631.34 in 2017. ██████████ had previously arranged Centrepay payments to be made towards her electricity account, yet, when she contacted the council in January 2018 about her debt, there is no record of a Hardship Agreement having been offered by the council or created.
85. It is clear that these community members were eligible to enter into a Hardship Agreement under the Hardship Policies. They are all Centrelink clients and considered to be on low incomes. The Hardship Policies recognise that being a Centrelink client is a relevant identification factor for financial hardship.<sup>82</sup>
86. It is also evident from the council's records that these community members each have histories of ongoing difficulties in paying their bills which, in itself, is indicative of 'ongoing' financial hardship. The community members had payments via Centrepay arranged, indicating a willingness to make regular payments. However, there is no evidence that the Centrepay payments formed part of a formal Hardship Agreement with the council.
87. I also consider that the accumulation of such significant debts should have, in itself, indicated to the council that the community members were experiencing financial

<sup>82</sup> Hardship Policies, clause 11.

difficulties. Had the council considered its records or made relevant enquiries with the community members, particularly at the early stages of any arrears accumulating, it would have been apparent to the council that these community members were eligible to enter into Hardship Agreements.

88. Had the community members been:
- identified at an earlier time to have been entitled to a Hardship Agreement, offered Hardship Agreements; and
  - provided with the opportunity to enter into Hardship Agreements, they would have had the opportunity to make regular payments towards their accounts and potentially avoided a further accumulation of debt.
89. In responding to my provisional report, the AM-Y ICT echoed my sentiments above, stating:
- It is indeed a concern of the Trustee that some AM-YAC members have applied for assistance with payment of accounts to the [council] for amounts that are in some cases many thousands of dollars. One must question how this has been enabled to happen without earlier intervention...
90. The council would have had oversight of the circumstances relating to each of the community members' accounts and the possibility of assisting the community members to better manage both their usage and any arrears.
91. It is unclear to me why these community members were not identified by the council or offered Hardship Agreements, particularly when the Hardship Policies require:
- staff to be trained in the early identification of Hardship Customers
  - that there will be equitable access to the Hardship Policies, and they will be applied consistently.
92. I consider that the council's failure to identify community members that may be eligible for a Hardship Agreement, either at an early stage prior or at all, resulted in:
- an accumulation of significant financial debt for the community members; and
  - an inability to pay off that debt.
93. This in turn has led to:
- a lack of trust in the council;
  - feelings of hopelessness; and
  - significant amounts of stress for the community members.
94. In light of the above, I am of the view that the council's failure to identify these community members and offer Hardship Agreements, was contrary to the Hardship Policies and consequently unreasonable within the meaning of section 25(1)(b) of the Ombudsman Act.

### ***Significant repayments***

95. The council's records indicate that the council has offered and entered into Hardship Agreements with numerous community members. However, the payments calculated by the council under those agreements are significant and often oppressive, particularly in the context of the community members' financial circumstances.



96. The Hardship Policies provide:
- the council will engage with the customer to determine a 'realistic payment option in line with the customer's capacity to pay'<sup>83</sup>
  - the council will work with a customer's financial counsellor to determine payment arrangements that best suit the customer and their individual circumstances<sup>84</sup>
  - customers have the right to negotiate an amount they can afford to pay.<sup>85</sup>
97. The records indicate the following Hardship Agreements were entered into:
- [REDACTED] is a Centrelink customer. [REDACTED] has explained that she receives a [Centrelink payment]. A Hardship Agreement created in March 2018 required [REDACTED] to make payments of \$200 per fortnight via Centrepay in addition to other payments made by [a family member] and AMYAC. This was in relation to electricity arrears of approximately \$5,000. [REDACTED] says that she struggles to live on the money remaining after her payments to the council and other living expenses.
  - [REDACTED] is a Centrelink customer. It appears that a Hardship Agreement required payments of \$295.80 per fortnight in relation to combined electricity and water arrears in addition to Centrepay payments of \$383.11 per fortnight. This was in for a combined electricity and water arrears of approximately \$7,600.
  - [REDACTED] is a Centrelink customer. [REDACTED] made payments of \$150 per fortnight via Centrepay and in a Hardship Agreement discussion File Note created in March 2018, it is noted that she also made payments of \$150 per fortnight via her payroll.
  - [REDACTED] is a Centrelink customer. Hardship Agreement calculations for May 2018 indicate that she was required to increase Centrepay payments to \$230 per fortnight in addition to making payments of \$115 per fortnight. [REDACTED] electricity arrears were over \$5,000.
  - [REDACTED] is a Centrelink customer. It appears she was required to make payments of \$460 per fortnight in addition to an AMYAC Trust payment and Centrepay payments. This was in relation to arrears of approximately \$12,000.
  - [REDACTED] is a Centrelink customer. [REDACTED] had accumulated arrears of over \$5,000. A Hardship Agreement and a File Note dated March 2018 recorded that [REDACTED] was required to make payments of \$450 per fortnight in addition to a \$100 payment from her employer, \$100 per fortnight Centrepay, AMYAC Trust payment and a fortnightly payment by her partner.
  - [REDACTED] is a Centrelink customer. He had accumulated arrears of approximately \$12,000. Under a Hardship Agreement, [REDACTED] was required to make payments of \$140 per fortnight via Centrepay, in addition to payments made by [family members].
  - [REDACTED] and [REDACTED] accumulated electricity arrears of nearly \$12,500 and were required to make payments of \$385 per fortnight in addition to Centrepay payments of \$280 per fortnight and an AMYAC payment.
  - [REDACTED] accumulated arrears of \$12,372.84. Under a Hardship Agreement she was required to pay \$250 per fortnight via Centrepay
  - [REDACTED] had combined water and electricity arrears of approximately \$2,900. He was required to make payments of \$180 per fortnight in addition to obtaining a \$1,500 payment from AMYAC.

<sup>83</sup> Hardship Policies, clause 15.

<sup>84</sup> Hardship Policies, clause 16.

<sup>85</sup> Hardship Policies, clause 35.

98. The council submitted that Hardship Agreement calculations are calculated in the following manner:
- The fortnightly payments are calculated as an average consumption annually plus the Debt total divided by 26 fortnightly payments to be paid over a year which ensures the Electricity was not disconnected.
- ...
- If they [sic] client could not afford the calculated payments they are advised to speak with a Financial Councilor [sic] to have their capacity to pay their debt assessed.
- ...
- After the assessment is received [by the] Council the Hardship Agreement is entered into with the amount advised by the Financial Councilor [sic].
99. The calculations are made with an aim of having debts repaid within 12 months. However, the community members I have identified had accrued considerable arrears over time. Therefore, any calculations made in relation to their debts have resulted in significant fortnightly payment amounts. Given that the community members are already living on limited incomes, it is evident that these agreements are unrealistic and not in line with the community members' capacity to pay.
100. In addition, my investigation noted circumstances whereby community members entered Hardship Agreements, but were later issued with letters requesting that they increase their fortnightly payments, or face possible disconnection of their electricity and water. It was not apparent from these letters whether the community member could renegotiate the payment agreement.
101. What is more, only a few records indicate that the council had recommended to a community member that they seek the assistance of a financial counsellor. Had the council done so, the community members may have had assistance in negotiating a payment amount more suitable to their financial circumstances and capacity to pay.
102. I have been informed by ALRM that a financial counsellor that may be able to provide such assistance has not operated in Coober Pedy for some time. Although this was the case, I am mindful that that the Hardship Policies provide that council staff must be trained in understanding the processes for referral to an accredited financial counsellor or welfare agency.<sup>86</sup> In my view, the council could and should have taken action to identify a financial counsellor or welfare agency that may be able to assist. This should have included the council contacting services in other towns or state wide for assistance.
103. Encouragingly, I note that ESCOSA has been assisting the council to identify relevant services that offer a financial counsellor so that the council may refer customers appropriately.
104. ESCOSA has more recently advised that the council's bills now contain contact information for financial services for Anglicare SA and Uniting Country SA (who both provide services via telephone) and Centacare Catholic Country SA (who provides part-time in person financial counselling services at the Red Cross building in Coober Pedy).
105. In addition, ESCOSA has advised that the council has implemented a new policy to extend the time period over which existing debt is to be recovered, to a period greater than 12 months.

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<sup>86</sup> Hardship Policies, clause 37.

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106. Notwithstanding the improvements above, it is evident that the community members I have identified were not able to negotiate a payment amount that they could afford to pay. Instead, it appears they were provided with the council's calculated Hardship Agreement and essentially had to either enter into that agreement or face disconnection. In some cases, it is evident that community members did not wish to enter into the agreements proposed to them based on the payment amount that was required under that agreement. I am mindful that most community members were likely not aware at all that under clause 35 of the Hardship Policies they had a right to negotiate, or did not feel they were in a position to do so.
107. Community members have informed me of the significant stress that the Hardship Agreement repayments have caused them. I have been advised of how little money is left each fortnight for the community members to live off. This is concerning given the already strained financial circumstances the community members have described that they are living under. I have been advised of the embarrassment and shame associated with the agreements entered into as well as the powerlessness experienced by community members when meeting with and dealing with the council.
108. It appears that the council elected to recover arrears through a Hardship Agreement process rather than the separate debt collection process. This appears to be consistent with the Hardship Policies which provide that any debt recovery process will be suspended while negotiations are in place to reach a Hardship Agreement,<sup>87</sup> and debt recovery proceedings will not be commenced if a customer agrees to a Hardship Agreement or if the council has failed to comply with the requirements of the Hardship Policies.<sup>88</sup>
109. However, the records I have been provided indicate that there was clearly opportunity for the council to have identified and entered into Hardship Agreements with the community members at a much earlier stage. It is unclear to me why the council did not. Had the council done so, the community members' debts would have undoubtedly been less significant and the payments under the Hardship Agreements would have been more realistic. The council also would have been in a better position to manage the accumulation of arrears, as well as any ongoing usage.
110. It is evident that the council was attempting to recover money owed to it, which is understandable given what is now known about the council's financial position. Although the Auditor-General has found that the council would need to generate monies in order to repay its own debts, I am mindful that the Auditor-General also noted that the council would have been protected from financial risk in relation to its electricity functions, had the council complied with requirements under the RAES scheme. The council's failure to do so should not be to the detriment of the community members.
111. Instead, it appears that the council's misapplication of the Hardship Policies allowed significant debts to accumulate over time. When the council finally determined it was necessary to recover the amounts owed, the council sought to do so by entering into Hardship Agreements that required significant and unreasonable payments to be made by the community members.
112. It is unclear to me why this course of action was taken by the council, particularly given that the Hardship Policies require:
- the council to take into account a customer's capacity to pay in order to create realistic payment arrangements
  - that a customer has the right to negotiate the payment arrangement and to do so with the assistance of a financial counsellor.

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<sup>87</sup> Hardship Policies, clause 33.

<sup>88</sup> Hardship Policies, clause 34.

113. I am mindful of the significant and serious impact that the payment arrangements have had on the community members and that given the already strained financial circumstances of the community members, that the payment arrangements have only caused them further hardship.
114. In light of the above, it is my view that the payment arrangements made by the council under the Hardship Policies, in relation to the community members identified by me, were contrary to the Hardship Policies and consequently, were both unreasonable and unjust within the meaning of the section 25(1)(b) of the Ombudsman Act.

***Failure to inform customers of energy saving techniques***

115. The Hardship Policies state that the council will provide hardship customers with information on how to reduce their usage and improve electricity and water efficiency, which may include referring the customer to relevant government efficiency programs. This information is to be provided at no charge to the customer.<sup>89</sup>
116. I have not been provided with any indication that the council has ensured that information of this kind has been provided to community members who have been identified as hardship customers.
117. Instead some community members' bills indicate that they have experienced extended periods of high consumption. For example, in 2015 alone ██████████ electricity arrears rose by approximately \$5,000 and ██████████ increased by nearly \$6,000. In 2018, ██████████ was charged approximately \$1,800 each billing cycle for electricity consumption and ██████████ had accumulated water arrears of almost \$900.
118. ESCOSA has noted that there are many benefits to customers understanding why their electricity usage may be increasing, as well as understanding how to reduce that usage. The South Australian Government's Energy Advisory Service provides free and independent information. There are also State and Federal Government schemes aimed at assisting customers. ESCOSA has explained that unfortunately remote areas are often not targeted by businesses that operate under programs and schemes that offer products or in-home services. However, ESCOSA agrees that it would be beneficial for the council to investigate ways in which it can disseminate information about reducing usage to customers.
119. With ESCOSA's assistance, the council has now created fact sheets about energy efficiency that will be included in the council's billing information packs. This is encouraging.
120. However, on the information before me, it is my view that the council's failure to provide such information to customers previously, was contrary to the Hardship Policies and therefore was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

***Hardship Customers Charged Disconnection Fees***

121. The Hardship Policies provide that the council will not charge a customer a reconnection fee if:
- the customer is experiencing financial hardship and should have been identified as eligible for the hardship policy
  - the customer has agreed to participate in the hardship program when reconnected.

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<sup>89</sup> Hardship Policies, clause 22.

122. In her discussions with ALRM, ██████████ had expressed concern that she had been charged a \$300 electricity reconnection fee after being disconnected, despite entering into a Hardship Agreement.
123. It appears that the electricity account was originally in ██████████ name and the electricity service was disconnected for non-payment in February 2018. A File Note records that the electricity was reconnected in March as there was an agreement between ██████████ and the Chief Executive Officer at the time, that the electricity would be reconnected in ██████████ name. There is a notation stating that a \$335 bond was required for the new connection and a bill issued in April 2018 includes a connection fee of only \$40.
124. It appears that ██████████ concern about a \$300 fee may be in relation to the bond for the new connection rather than a reconnection fee. It does not appear to me to be unreasonable that the council charged a reconnection fee in these circumstances as the reconnection was, in reality, a new connection to an account in ██████████ name.
125. Concern has been raised that ██████████ was charged a reconnection fee when she should have been identified as eligible for a Hardship Agreement and consequently the reconnection fee should have been waived.
126. A bill issued in February 2018 records a disconnection fee of \$40. A 'Hardship Meeting for reconnection' was held on 13 March 2018 and ██████████ was reconnected on 30 April 2018. However, there is no record of a reconnection fee being charged. Therefore, the billing records indicate that, correctly, ██████████ may not have been charged a reconnection fee.
127. Accordingly, I do not consider that the council has erred under the Ombudsman Act in relation to the matters concerning reconnection fees that are before me.

### Third party agreements

128. ALRM expressed concern that many community members were pressured by council staff to enter into payment agreements requiring one or more of their family members (and in some cases other individuals) to make payments towards the community members' electricity and water accounts. These payments by third parties were to be made in addition to any payments that are required to be made by the community member under the agreement.
129. The information before me demonstrates that:
- ██████████ [family member] was required to contribute \$50 per fortnight under ██████████ Hardship Agreement<sup>90</sup>
  - a council File Note appeared to query whether ██████████ [family member] could contribute \$140 per fortnight under ██████████ Hardship Agreement<sup>91</sup>
  - ██████████ partner was to contribute \$150 per fortnight<sup>92</sup>
  - ██████████ was party to an arrangement whereby she paid \$150 from [their Centrelink payment] per fortnight towards ██████████ electricity account<sup>93</sup>
  - ██████████ [family member] was to contribute \$200 per fortnight and [another family member] was to contribute \$130 per fortnight<sup>94</sup>

<sup>90</sup> Handwritten council note, dated 29 March 2018.

<sup>91</sup> File Note from council records, provided to Ombudsman SA.

<sup>92</sup> Hardship Agreement calculations, dated 22 February 2018.

<sup>93</sup> Centrepay documents for ██████████

<sup>94</sup> Hardship Agreement, dated 12 January 2018.

- [REDACTED] has submitted that the council asked her if she had family members who would be willing to make contributions towards her arrears, but that this made her feel ashamed and she did not ask her family members
  - [REDACTED] [family member] was to contribute \$200 per fortnight.<sup>95</sup>
130. The above examples indicate that third parties were included in Hardship Agreements for community member's accounts, effectively making payments in addition to those made by the community member.
131. I asked the council about this. The current Chief Executive Officer stated:
- This practice must have been done by a previous employee. Council does not require a third party to sign an agreement. Only the account holder is required to sign an agreement and if a member of the family would like to help on the payment, then that is a matter for the customer and their family.
- ...
- Customer [sic] can only be accounts holders if the owner or agent confirms that they are a tenant. Council only enters into payment arrangements with account holders, not third parties.
132. It is comforting that it would appear the current administration does not condone third parties entering financial agreements with the council under a Hardship Agreement. Nevertheless, it is apparent that this was a practice of the council for some period of time.
133. I have considered whether such arrangements were permissible under either the Licences or the Hardship Agreements.
134. The Licences do not state that the council may encourage or require customers to seek payments from family members or other third parties.
135. The Electricity Licence and Hardship Policies indicate that a bill can be redirected to a third person, however this does not mean redirection of payment debt.
136. The Hardship Policies do not state that the council may encourage or require customers to seek payments from family members or other third parties.
137. In responding to my provisional report, ESCOSA provided the following information in relation to the ability to redirect a customer's bills (i.e. direct a bill to a different billing address) and also the practice of including third parties within a Hardship Agreement:
- ... A third party may assist a customer with their affairs but is not liable for the consumption at a supply address because they are not a party to the contract or responsible for the payment of the customer's council rates.
- ....
- While the Licences and Codes are silent on the inclusion of third parties in community members' Hardship Agreements, [ESCOSA] is of the view that it would be good practice to obtain the explicit informed consent of all parties for an arrangement of this nature.
138. In only one case have I noted that a third party signed a Hardship Agreement demonstrating their consent to make payments under that agreement - most of the time there were no signatures confirming other people signing on to the agreements.

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<sup>95</sup> Meeting Notes, May 2018.

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139. What is more, I am cognisant that the Hardship Policies require that the council takes into account a customer's capacity to pay and that any payments should be negotiated with the customer and based on an amount the customer can afford to pay. If a third party is considered necessary to assist in meeting the payment amounts calculated by the council, then the calculated payment amounts cannot be said to be an amount that the customer can afford to pay.
140. I accept that in some cases a customer may ask for a third party to make payments under their Hardship Agreement or towards their account more generally. However, in the cases before me, there is no record indicating that such requests took place. Instead, the records suggest that the council enquired with community members as to whether a family member or friend may be able to make regular contributions towards any arrears.
141. From the records, I am unable to determine whether the community members were pressured by the council to enter into third party payment arrangements. Without further evidence, I am unable to conclude whether an error has occurred on the part of the council in relation to that particular issue. However, I accept that the community members very likely perceived their conversations with the council to amount to pressure, particularly given:
- the concerns that some of the community members have raised with me in relation to how they perceive they have been spoken to by council staff
  - that the community members were faced with the choice of either entering into an agreement proposed by the council or be disconnected.
142. I also accept that having to ask a family member to make payments towards a debt can be a cause of shame and not something that people may elect to do unless they felt they had no other option. Further, I am mindful of the wider impact that involving third parties in the community members' Hardship Agreements may have on the broader community.
143. Most importantly, I consider that any payment amount that has been calculated to include a third party payment does not amount to a payment that the customer is able to pay. Such a practice is clearly contrary to the intention of the council's Hardship Policy.
144. Further, in my view, it was wrong to not seek the consent of the third parties which the policy clearly envisages. In addition, signing up a customer to a payment arrangement whereby they are effectively bound to get their family members to pay, in circumstances where there is:
- no consent of the third party, and
  - the community members' feel there is no choice
- in my view, is wrong.
145. In light of this, I am of the view that the inclusion of third parties in the community members' Hardship Agreements was contrary to the Hardship Policies and consequently wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

## Final Opinion

It is my view that the manner of the council's application of the Hardship Policies has been extremely concerning. The council's actions and inactions have allowed significant debts to accrue. In seeking to recover the amounts owed, the council has created Hardship Agreements that require oppressively high payments to be made by community members.

Consequently, this has caused further hardship to a section of the community already suffering from financial hardship as well as other socioeconomic disadvantages.

I have identified that the following particular actions of the council appear to contrary to the Hardship Policies:

- the failure to identify community members who were evidently eligible to enter into hardship discussions
- requiring significant payments from community members under Hardship Agreements
- the inclusion of third parties in the community members' Hardship Agreements
- the failure to provide community members with information relating to energy saving techniques.

In light of these considerations, I have formed the view that the council's application of its Electricity and Water Hardship Policies was unreasonable, unjust and wrong within the meaning of sections 25(1)(b) and 25(1)(g) of the Ombudsman Act.

In addition to the above, it is a condition of the Water Licence that the council complies with its Water Hardship Policy.<sup>96</sup> As noted earlier in my report, the legislative scheme under the Water Industry Act envisages that the council must comply with the conditions of its Water Licence.<sup>97</sup> Accordingly, I have formed the view that the council also acted in a manner that appears contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

<sup>96</sup> Water Hardship Policy, condition 14.

<sup>97</sup> Water Industry Act, section 27.



## Whether the actions of the council in relation to payments from the AM-Y ICT towards electricity and water debts was unjust, unreasonable or wrong

146. The existence of the AMYAC and the AM-Y ICT is a result of many years of hard work and struggle to be granted formal recognition as the Native Title landholders in Coober Pedy and the surrounding area.
147. Access to financial assistance from the AM-Y ICT is a right given to AMYAC members. An Emergency Hardship payment of \$1,500 from the AM-Y ICT can only be made once per year. Accessing the full amount towards an electricity or water debt may limit an individual's choice to prioritise that payment to other matters.
148. The council previously advised my investigation that between August 2017 and April 2018, \$19,049.31 was paid to the council from the AM-Y ICT.
149. ALRM expressed concern that the council had applied pressure to community members to contact AMYAC and seek a payment from the AM-Y ICT towards their electricity and water arrears.
150. The information about the community members, which I provided earlier in my report, included numerous examples where a community member met with the council to discuss a payment arrangement, and subsequently requested an Emergency Hardship payment towards their electricity or water debt from the AM-Y ICT.
151. In addition, information from the community members, as well as council documents, depict circumstances whereby community members were encouraged to enter or consider entering payment arrangements that would optimise the number of people who may be able to request a payment from the AM-Y ICT towards electricity or water arrears:
  - it was alleged that [REDACTED] and her partner [REDACTED] were encouraged by the council to amend their electricity account to be in both their names, as this would make it possible for a payment to be made from the AM-Y ICT towards the electricity debt; [REDACTED] was reportedly not eligible to receive a payment from the AM-Y ICT
  - [REDACTED] reported that during a meeting with the council, he was asked if he was an AMYAC member. He was then told that he could seek a payment from AMYAC towards his electricity debt. Council staff also asked who else resided at [REDACTED] home. The meeting with the council was reconvened so that [REDACTED] family could attend the meeting; the council subsequently asked [REDACTED] family if they were also AMYAC members and whether they could arrange a payment from AMYAC towards [REDACTED] electricity debt
  - it appears that [REDACTED] had her partner's electricity accounts placed into her name, as she was eligible for an AM-Y ICT payment, but her partner was not eligible
  - [REDACTED] Hardship Agreement dated March 2018 stated that [REDACTED] and her partner, [REDACTED] would arrange for payment of \$1,500 each to be paid from the AM-Y ICT towards [REDACTED] electricity debt.
152. ALRM also advised that [REDACTED] was previously asked by the council to obtain a \$5,000 hardship payment from a Native Title Trust. However, [REDACTED] was not eligible for that payment as she belongs to a different Native Title group.

153. The AMYAC Board has told my investigation that the pressure put on AMYAC members to seek payments from the AM-Y ICT towards their electricity and water bills in arrears placed strain on AMYAC and the AM-Y ICT's organisational capacity and management of its finances. This has furthermore placed strain on the continuing relationships between AMYAC, the AM-Y ICT and AMYAC members.
154. It is conceivable that if financial assistance is proffered by the council as a mechanism to pay off or significantly reduce a customer's financial debt, that this may place pressure on the community member to seek such a payment, and further pressure on AMYAC to arrange such a payment.
155. In addition to the circumstances described above, the council's records indicate that at some time between 2017 and 2018, the council's internal templates were amended to include reference to \$1,500 of financial assistance from the AM-Y ICT within the Hardship Agreement template and calculations.
156. The council's records also indicate that around 2017 and 2018, the council calculated AMYAC payments, as a matter of course, as part of its calculation of Hardship Agreements with community members.
157. The calculations also portrayed that where a community member did not seek or obtain a payment from the AM-Y ICT, the expected fortnightly payment to the council would be significantly higher. For example, a File Note written by a council officer in October 2017 stated:
- ...
- Should AMYAC agree to pay the outstanding debt the CEO may consider reconnection if there is regular Centrelink payments lodged by her partner of \$150 per fortnight and the regular deduction from the bank after her weekly pay deposit of \$1000 will need to continue as it ceased on 24/08/17.*
- My recommendation if there is no payment from AMYAC both ██████████ and her partner ██████████ will need to review their Centrelink payments to cover an amount of 175 x 53 weeks to pay the outstanding debt within a year.*
- ...
158. In addition, a Hardship Agreement Calculation for ██████████, dated May 2018, calculated that ██████████ electricity account was in arrears of approximately \$3,500. ██████████ was at that time contributing \$130 per fortnight to pay off that debt. It was calculated that if ██████████ obtained a financial payment of \$1,500 from the AM-Y ICT towards her debt, she would need to increase her fortnightly payments to the council by \$220, to \$350 per fortnight. Without seeking a payment from the AM-Y ICT towards her debt, ██████████ would be required to increase her fortnightly payments by \$276.07, to \$406.07 per fortnight.
159. I am troubled by what I have been told by the community members. It is apparent that many community members have felt that they were being pressured unfairly by the council to seek financial assistance from the AM-Y ICT.
160. Both ALRM and the AMYAC Board have also told me about the considerable shame associated with the issues raised in this investigation. I recognise the difficulty that community members may have experienced in sharing their stories with my Office.
161. Notwithstanding this, it remains difficult on the information provided to clearly determine whether, on the balance of probabilities, the council *has* applied pressure on community members to request an AMYAC payment towards their electricity and water debts.

162. Mr Miller has told me that:

To the council's knowledge, the council has never had any formal or informal policy or practice about advising or requesting members to make a claim for Native Title payments.

163. Due to staff turnover and the passage of time, it is difficult for my investigation to definitively ascertain from the council what occurred during this time, other than noting that the council's templates were amended to make reference to Emergency Hardship payments from the AM-Y ICT. It is concerning that this appears to be undertaken without any consultation with the AMYAC Board or AM-Y ICT.

164. However, the terms of the AM-Y ICT specifically envisage that the Emergency Hardship payment would be used to provide AMYAC members with:

- access to clean water functioning sewerage and electricity services
- air-conditioning to a member's home
- any other purpose deemed by the Trustee to constitute relief of extreme poverty including homelessness or detrimental living conditions.

165. The AM-Y ICT has confirmed that it has supported AMYAC members living in Coober Pedy with payment of overdue electricity and water accounts, where services have been disconnected or disconnection is imminent.

166. Mr Miller has also told me that, while he has been employed at the council, he has been approached by community members who would like to apply for a payment towards their electricity and water debt from the AM-Y ICT.

167. Based on the above, I am unable to decisively conclude, on the balance of probabilities, that the council pressured community members to request an Emergency Hardship payment from the AM-Y ICT, in such a manner that would lead me to conclude that the council acted in a manner that was unjust, unreasonable or wrong.

168. In responding to my revised provisional report, the AMYAC Board expressed concern about this position. The AMYAC Board provided the following information:

The board comments that it is their experience, both as AMYAC directors and as members of the community, that the Council has, and continues to, apply unfair pressure on community members to approach the Trust to seek assistance to pay their electricity and water debts.

We understand that many community members are reluctant to participate in the Report's investigations due to the deeply personal nature of its subject matter. We appreciate that this causes difficulty in obtaining sufficient information to determine whether the Council has applied unfair pressure on community members.

169. The AM-Y ICT, in responding to my provisional report, also stated:

...I appreciate your analysis and regard for the evidence, it is pleasing to see this has been documented for the purpose of rectifying a concerning situation between the conduct of the [council] and a vulnerable South Australian Aboriginal community that have a traditional cultural context. However, I would ask that you reconsider your conclusion... I believe the evidence contained within your report sufficient when paired with the assurance from the Trustee of the ICT that there is no 'arrangement' or correspondence between the [council] and the AM-Y ICT support such a conclusion, and a situation that is in desperate need of rectification.

170. I wish to state, unequivocally, that I believe every community member's experience as they have been told to me. I have carefully reviewed each and every person's set of circumstances. I am incredibly disheartened by what I have read and been told.

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171. It is apparent to me that members of Coober Pedy's Aboriginal community feel that they have been unfairly treated by the council. It is also apparent that any reference to the AM-Y ICT by council staff has the potential to make someone feel pressured into seeking an Emergency Hardship payment from the AM-Y ICT.
  172. This may suggest a lack of cultural understanding by the council staff who are communicating with community members about electricity and water debts.
  173. However, I cannot forgo the possibility that mentioning Emergency Hardship payments from the AM-Y ICT could also be a well-intentioned, albeit misguided, attempt to assist a ratepayer to address financial difficulties that they may be facing. It is particularly of relevance that the AM-Y ICT specifically envisages that the Emergency Hardship payments would be used for the exact circumstances that have been described in this report.

### **Final Opinion**

In light of my consideration above, I am unable to conclusively determine, on the balance of probabilities, that the actions of the council in relation to the payments from the AM-Y ICT was unjust, unreasonable or wrong.

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***Further comment***

174. Before finalising my views, I consider it necessary to make the following comments.
175. I appreciate that the council has a commitment to its ratepayers and ensuring that it is financially viable to provide basic and necessary services to its ratepayers, and that effective sale and supply of electricity and water is critical to sustaining financial viability.
176. I also acknowledge that:
- the council is entitled to recover money accrued from electricity and water arrears
  - the council's Hardship Payment documents no longer include reference to AMYAC payments.
177. However, I make it abundantly clear that I do not consider it is appropriate for a council to in any way suggest that a rate payer should seek financial assistance from a Native Title body as a means to managing a council debt or to have a necessary resource, such as a connection to electricity or water, reconnected.
178. In my revised provisional report, I stated that I was glad that Mr Miller had advised:
- Staff no longer suggest to customers that they use the AMYAC payments. Some customers do bring this up and use these funds to make a payment, but not at the suggestion of Council officers...
179. Yet, the AMYAC Board has recently provided me with information suggesting that in May 2021, a community member spoke to a council officer about an outstanding electricity bill. The community member had enquired if they could enter a deduction scheme to pay the outstanding bills, however they were advised by the council officer that the deduction scheme would not be available in the particular circumstances. The community member was reportedly asked whether they were an AMYAC member, and if so, suggested that they seek assistance from the AM-Y ICT. The community member stated that when they confirmed that they were an AMYAC member, the council officer directed them to the AM-Y ICT to seek assistance, and indicated that the council would not otherwise assist them.
180. It is possible that the council employee may have been genuinely trying to assist the community member, however, it is apparent to me that any suggestion by the council to obtain payment from the AM-Y ICT is perceived as an attempt to place undue pressure on the community to utilise the finances from the AM-Y ICT.
181. I strongly urge the council to take heed of my comments above.
182. As a final note, I include the following comments from the AM-Y ICT, which I consider emphasises the need for greater consideration of culturally informed communication with members of Coober Pedy's Aboriginal community:

I also add, that it is concerning that the [council] has not retained the services of a suitably qualified or experienced interpreter of Western Desert language, to assist [the council] and AM-YAC members during discussions regarding electricity and water accounts. English is a second and in some cases third language of AM-YAC members who are still connected with a traditional culture of the Western Desert. I can understand an AM-YAC member's feelings of intimidation, shame and pressure, when questioned about outstanding electricity and water accounts, which they may not fully comprehend in the first place due to literacy with the English language...

## Final Opinion - Summary

My final view is that:

1. The following actions of the council were contrary to conditions within the council's Licences:
  - the omission of particular information within the water bills that is required under the Water Retail Code (and by extension, the Water Licence)
  - disconnecting numerous community members for non-payment of a bill without the council offering an instalment plan and without the community member having had two payment arrangements cancelled in the previous 12 months
  - disconnecting a community member on a Friday
  - failing to report non-compliance to ESCOSA as required by the Electricity Licence and Water Licence.
2. The legislative scheme under the Electricity Act and the Water Industry Act envisages that the council must comply with the conditions of both the Electricity Licence and the Water Licence.<sup>98</sup> On this basis, I am of the view that the council has acted in a manner that appears contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.
3. By failing to ensure customers are informed of the impact of any payments made under Hardship Agreements (and other such payment arrangements), the council acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.
4. The following particular actions of the council appear to be contrary to the Hardship Policies:
  - the failure to identify community members who were evidently eligible to enter into hardship discussions
  - requiring significant payments from community members under Hardship Agreements
  - the inclusion of third parties in the community members' Hardship Agreements
  - the failure to provide community members with information relating to energy saving techniques.

In light of these considerations, the council's application of its Electricity and Water Hardship Policies was unreasonable, unjust and wrong within the meaning of sections 25(1)(b) and 25(1)(g) of the Ombudsman Act.
5. It is a condition of the Water Licence that the council complies with its Water Hardship Policy.<sup>99</sup> The legislative scheme under the Water Industry Act envisages that the council must comply with the conditions of its Water Licence.<sup>100</sup> Accordingly, the council also acted in a manner that appears contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.
6. I am unable to conclusively determine, on the balance of probabilities, that the actions of the council in relation to the payments from the AM-Y ICT was unjust, unreasonable or wrong.

<sup>98</sup> Electricity Act, section 25; Water Industry Act, section 27.

<sup>99</sup> Water Hardship Policy, condition 14.

<sup>100</sup> Water Industry Act, section 27.

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## Recommendations

Section 25(2) of the Ombudsman Act allows me to make recommendations to a relevant agency in circumstances where I have concluded that the agency has made an administrative error for the purposes of section 25(1) of the Ombudsman Act.

The purpose of my recommendations includes achieving improvements in public administration to ensure that the errors identified in my investigation are remedied and do not occur again.

In making recommendations, I consider any actions that have already been undertaken by the relevant government department or agency to address the issues raised in my investigation.

In my report, I have discussed the many encouraging steps that have been taken by the council under ESCOSA's guidance. Many of the actions by the council, to date, work to remedy a number of the errors I have identified in this investigation.

However, I am mindful that the council's misapplication of the Licences and Hardship Policies was evidently of a systemic nature. The actions taken by the council have had a significant impact on the community members who are already considered to be vulnerable. The hardship that has been further caused by the council's actions and inactions, to people already considered to live under vulnerable circumstances, cannot be ignored.

It is also apparent to me that there is a substantial breakdown in trust between the council and community members. I find this very concerning.

The community members appear extremely reluctant to engage with the council based on many years of limited transparency and clarity about the state of their debts, with catastrophic financial implications. The council is now also placed in a difficult position of managing the fallout from a council placed into involuntary administration.

The council inherited a legacy of previous practices that mishandled debts, failed to properly identify financial hardship circumstances, and failed to engage community members with payment arrangements that were realistic or focused on the individual's financial circumstances.

My proposed recommendations won't provide a quick fix to this situation.

That said, I have outlined seven recommendations below that are focussed on addressing the administrative errors that I have detailed in this report.

It is worth noting that in responding to my provisional report, the council expressed a commitment to implementing the proposed recommendations from my first provisional report.

My revised provisional report included additional proposed recommendations. In responding to my revised provisional report, Mr Miller stated:

I agree with all of the recommendations. They are sensible, fair and able to be implemented by Council.

ESCOSA also stated that it was of the view that my recommendations align with the recommendations that it made in its compliance review of the District Council of Coober Pedy. ESCOSA advised that recommendations from its own compliance review, and the recommendations from this investigation, seek to protect the long-term interest of the consumers and community of Coober Pedy.

To remedy the errors I have identified in my investigation, I make the following recommendations under section 25(2) of the Ombudsman Act:

### Recommendation 1

I understand that the council is seeking to arrange more information to be placed onto its bills. In the interim, I consider that it is of critical importance that electricity and water customers, who are currently making payments towards an electricity or water debt, have an awareness of how their payments to the council may be impacting on their debt.

I recommend that:

*When customers have entered into Hardship Agreements or any other kind of payment arrangement with the council, the council regularly provides those customers with information that demonstrates to the customers any payments they have made under that arrangement and the impact that those payments have had in relation to arrears/debts and ongoing usage.*

### Recommendation 2

The information above has highlighted circumstances where community members may not be aware of:

- what payment arrangement they currently have with the council; or
- which, or whose account their payment arrangement was contributing to.

Many of the Hardship Agreements that were provided to my investigation were also not signed by each of the parties to the Agreement.

I recommend that:

*The council review all Hardship Agreements currently in place to ensure that:*

- *all parties named within the agreements are aware of their current payment obligations and consent to those payment arrangements; and*
- *the payment arrangements are consistent with the council's Hardship Policy.*

### Recommendation 3

I am cognisant of the council's own financial difficulties and that the council is attempting to recover monies owed to it in relation to electricity and water accounts. I consider that the council's own debts cannot be attributed to the community members. I am also acutely aware of the extent of the financial hardship suffered by the community members and their capacity to actually meet the arrears/debts that have accumulated.

Clause 40 of the Hardship Policies provides that the council is not limited or prevented from waiving any fee, charge or amount of arrears for the provision of retail services to customers who are experiencing financial hardship.



Section 143 of the *Local Government Act 1999* provides that the council may write off any debts owed to it if the council has no reasonable prospect of recovering the debts. Prior to doing so the Chief Executive Officer must certify that reasonable attempts have been made to recover the debt.

It appears that the council's misapplication of the Hardship Policy over many years has resulted in arrears accumulating and in accounts not being properly managed.

In my first provisional report, I foreshadowed recommending that the council review the records of each of the community members' identified in this report, spanning between 2014 to date, with a view to considering whether part or all of each community members' electricity and water arrears/debts may be either waived or written off.

ALRM and the AMYAC Board advised that many community members did not wish to formally join as complainants due to shame factors, and therefore the current list of community members may not identify everyone. The council also indicated that it intended to review the record of all of its customers, not just those named in the report, to consider whether all or part of their arrears should be waived or written off.

Noting those comments, and the impact that my investigation may have more broadly in the Coober Pedy District, I recommend that:

*The council review the records of each of its customers, spanning between 2014 to present date, with a view to considering whether part or all of each community members' electricity and water arrears/debts may be either waived or written off.*

#### **Recommendation 4**

Although I am mindful that Coober Pedy is an ethnically diverse town, given the scope of my investigation, I recommend that:

*All council staff undertake cultural awareness training so that all staff are provided with skills in relation to building relationships with the Aboriginal community of Coober Pedy, improving communications with the Aboriginal community, and providing depth and awareness to the council's service delivery.*

#### **Recommendation 5**

I recommend that:

*The council undertake training of all relevant staff, from the front desk of the council to executive management, in relation to the application of the Hardship Policies, requirements under the Electricity and Water Licences, the council's function as electricity and water supplier to the Coober Pedy district more generally, and the council's debt recovery process and policy.*

**Recommendation 6**

In responding to my first provisional report, the council stated that it was committed to identifying ways to better communicate with the Aboriginal community.

I consider that there needs to be additional mediation and communication channels between the community members and the council to foster trust and greater working relationships, so that community members and the council can communicate effectively.

I recommend that:

*The council create an Aboriginal Engagement Plan that will outline how the council will build a respectful dialogue with Coober Pedy's Aboriginal community, and how the council will ensure that it has appropriate channels of communication for issues affecting the Aboriginal community to be openly discussed with the council.*

Mr Miller provided the following comments in responding to my proposed recommendation within the revised provisional report:

...in relation to **Recommendation 6**, Council had hoped to fund the creation of an *Aboriginal Issues Committee* in its 2020-21 Budget, but resources were not available. This is listed on page 36 of Council's 2020-21 Annual Business Plan as an unfunded legacy item. This action will be carried into the 2021-22 Annual Business Plan, resourced and implemented. Your recommendation of the preparation of an *Aboriginal Engagement Plan* is a great idea.

**Recommendation 7**

It is apparent that:

- the council has been unable for quite some time to manage its electricity and water retail services in a manner that is financially viable, given that the council is currently in administration due to historical issues
- the payment of debts for essential services in Coober Pedy have been, in effect, 'propped up' by a Native Title fund, with many community members otherwise not in a position to contribute financially towards their electricity debt
- the RAES scheme is clearly not sufficient to bridge the gap between the cost of distributing electricity and water to Coober Pedy residents and collecting revenue for those services.

In light of the above, I consider that alternative options for electricity and water supply to Coober Pedy should be considered.

I recommend that:

*The State Government reviews whether there are alternative options for the supply of electricity and water in Coober Pedy that would place less of an administrative and financial burden on the council.*

Mr Miller provided the following comments in responding to my proposed recommendation within the revised provisional report:

In relation to **Recommendation 7**, Council's Administrator and CEO met with senior Ministers of the State Government, including the Deputy Premier and Treasurer, in December 2019 to

discuss the inequitable situation in which Coober Pedy water customers pay three times the amount for water than their city counterparts. The State Government has rebuffed requests for an ongoing water subsidy. However, the Government and Council have agreed that Council would approach the private sector with a view to reducing costs and providing the necessary capital investment required to upgrade the water infrastructure. The first step in the process is to seek expressions of interest from suitably qualified operators. The second step is to undertake a full tender process with companies that were shortlisted as a result of the EOI process. Expressions of Interest will close on 2 July 2021. Council aims to have the process completed by December 2021. The process is not designed to necessarily provide a direct financial benefit to the Council, but to significantly reduce water prices and provide greater water security for the benefit of the long-suffering water customers. This will indirectly benefit Council because it will reduce the amount of large water debts occurring in the first place.

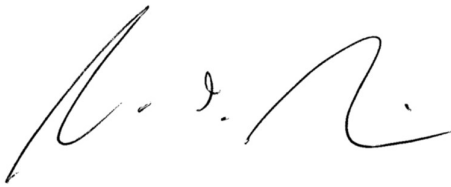
## Further action

In accordance with section 25(4) of the *Ombudsman Act 1972* the council should report to the Ombudsman by **16 October 2021** on what steps have been taken to give effect to the recommendations above; including:

- details of the actions that have been commenced or completed; and
- relevant dates of the actions taken to implement the recommendation.

In the event that no action has been taken, reason(s) for the inaction should be provided to the Ombudsman.

A copy of this report has been supplied to the Minister for Planning and Local Government as required by section 25(3) of the *Ombudsman Act 1972*.



Wayne Lines  
SA OMBUDSMAN

16 July 2021