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21 March 2018

Mr John Pierce AO  
Chairman  
Australian Energy Market Commission  
PO Box A2449  
SYDNEY SOUTH NSW 1235

Submitted online via: [www.aemc.gov.au](http://www.aemc.gov.au)

Dear Mr Pierce

**Request for rule change – strengthening protections in the National Energy Retail Rules for customers in financial hardship**

The Australian Energy Regulator (AER) is pleased to submit the attached rule change proposal to the Australian Energy Market Commission (AEMC). Our rule change proposal aims to strengthen current retailer obligations in Part 3 of the National Energy Retail Rules (Retail Rules) to ensure hardship customers are adequately protected under legislation.

In order for the requirements around hardship to be effective, it is vital that the minimum requirements specified in the National Energy Retail Law (Retail Law) are not only included in hardship policies, but applied consistently to all customers experiencing payment difficulties.

Since the Retail Law and Retail Rules commenced in 2012, we have worked with retailers to ensure compliance with these hardship obligations. Our recent monitoring, compliance and enforcement work in this area has shown that there are significant issues with the application of the hardship protections by retailers to customers experiencing payment difficulties. The outcomes of our 2017 Hardship Review and recent performance data submitted by retailers to the AER has indicated that discrepancies exist between retailer commitments in hardship policies and what occurs in practice. This disconnect can have a significant impact on customers experiencing payment difficulties and their ability to access and successfully complete hardship programs.

We consider that the general and principles-based nature of many hardship policies is contributing to some poor customer outcomes and, in particular, to customers most in need of assistance not always being able to access it. Many policies do not appear to

sufficiently align with the minimum requirements and do not provide adequate guidance to customers to assist in their understanding of their rights and entitlements.

Our rule change proposal aims to address the issues above by proposing amendments to the hardship provisions, specifically broadening Rule 75 of the Retail Rules to allow for the development of a Customer Hardship Policy Guideline. We consider that a Guideline will provide a single point of reference to industry regarding how the minimum requirements should be applied, and enable clearer oversight of retailer compliance with the hardship obligations.

In developing this rule change proposal, we have been mindful of the broader societal focus on energy affordability, in particular the impact of recent increases in energy prices on customers' abilities to pay their bills. It is well-recognised that in the current climate the number of customers requiring hardship assistance is increasing and it is critical that all customers requiring information and assistance receive it in a timely and effective way.

If you would like to discuss any aspects of our proposal, please contact Jacqueline Thorpe on (03) 9290 1994.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'P. Conboy', is positioned below the 'Yours sincerely' text.

Paula W. Conboy

Chair

# Strengthening protections in the National Energy Retail Rules for customers in financial hardship

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## Name and address of rule change proponent

Australian Energy Regulator

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Melbourne VIC 3001

AER reference: 63582

AER contacts: Jacqueline Thorpe, 03 9290 1994

## 1. Introduction

### 1.1. Request for rule change

In accordance with Part 10, Division 4 of the *National Energy Retail Law* (**Retail Law**), the Australian Energy Regulator (AER) requests the Australian Energy Market Commission (AEMC) make changes to Part 3 of the National Energy Retail Rules (**Retail Rules**).

The Retail Law sets out the minimum requirements retailers must include in hardship policies to assist customers in financial difficulties. These requirements include proactive identification for early entry to hardship programs, flexibility in payment methods and other measures such as identification of appropriate government concessions. However, our compliance and enforcement work has identified problems with how the minimum requirements are practically applied.

We are proposing amendments to broaden Rule 75 of the Retail Rules to allow for the development of a Customer Hardship Policy Guideline (**Hardship Guideline**). The Hardship Guideline will provide a single point of reference to industry on how the hardship obligations are applied and enable clearer oversight on retailers' compliance with the minimum requirements in the Retail Law.

The Hardship Guideline will provide additional guidance to industry on hardship approval processes and the application of the minimum requirement under the Retail Law. These may take the form of standard statements and would commit retailers to specific actions that mirror the minimum requirements for hardship policies. Consistent, action-based hardship policies would have a number of benefits including: removing ambiguity over how the minimum requirements are to be applied, provide customers with a clear understanding of their entitlements and assist our role in monitoring and enforcing compliance with these obligations.

As required by section 249 of the Retail Law, we have included a description of the proposed changes to the Retail Rules, a substantive assessment of the nature and scope of the existing issues with the current rules and how the rule change request addresses each of the issues identified. We also include an explanation of how the proposed rule change contributes to the National Energy Retail Objective (**NERO**).

### 1.2. Background to the rule change request

Our recent compliance and enforcement work, industry reporting and compliance trends with respect to customer hardship has formed the basis for our rule change request. In order for the requirements around hardship to be effective, it is vital that the minimum requirements specified in the Retail Law are not only included in retailer hardship policies but applied in

practice. The commitments made to customers in the policies should be reflected in the day-to-day operation of the business, and the minimum requirements mirrored in the assistance provided to customers. We are concerned this is not always the case and leads to poor customer outcomes.

The AER's *Annual Report on Compliance and Performance of the Retail Energy Market 2016-17*<sup>1</sup> showed high numbers of customers not completing hardship programs or entering these programs with high levels of debt. These figures raise questions regarding retailers' capacity for early identification of hardship customers and the quality of assistance provided by retailers to these customers.

Our 2015<sup>2</sup> and 2017 Hardship Reviews showed a wide variation in the quality of customer hardship policies. Many hardship policies lacked specific action statements to give effect to the minimum requirements under section 44 of the Retail Law and were difficult to navigate, were inconsistent and generally not clear. This may lead to inconsistencies in how policies are applied in practice. We also observed discrepancies between a retailer's hardship policy as stated on its website or on customer publications and the application of the policy at an operational level.

Our recent enforcement action against Origin Energy (Origin) for allegedly failing to maintain and implement its hardship policy under section 43(2)(c) of the Retail Law provides an example of the discrepancy that can exist between a retailer's hardship policy and its application.

The issues outlined above have led the AER to develop this rule change proposal. We consider that further guidance to industry is required through the development of a Hardship Guideline, including the development of standard statements to be included in retailer hardship policies. These initiatives will strengthen the existing protections for customers experiencing payment difficulties.

## **2. Current rule**

### **2.1 Discussion of the current rule**

Part 3 of the Retail Rules and Division 6 of the Retail Law sets out the obligations on retailers to identify and assist customers having difficulties managing the costs of their energy service. Section 43 requires retailers to develop, maintain and implement a hardship policy for their residential customers. Section 44 sets out the minimum requirements that customer hardship policies must contain.

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<sup>1</sup> Full report: <https://www.aer.gov.au/retail-markets/performance-reporting/annual-report-on-compliance-performance-of-the-retail-energy-market-2016-17>

<sup>2</sup> The AER review of energy retailers' customer hardship policies and practices 2015 can be accessed here: [https://www.aer.gov.au/system/files/AER%20Review%20of%20energy%20retailers%27%20customer%20hardship%20policies%20and%20practices%202015\\_0.pdf](https://www.aer.gov.au/system/files/AER%20Review%20of%20energy%20retailers%27%20customer%20hardship%20policies%20and%20practices%202015_0.pdf)

These are:

- processes to identify residential customers experiencing payment difficulties due to hardship, including identification by the retailer and self-identification by a residential customer; and
- processes for the early response by the retailer in the case of residential customers identified as experiencing payment difficulties due to hardship; and
- flexible payment options (including a payment plan and Centrepay) for the payment of energy bills by hardship customers; and
- processes to identify appropriate government concession programs and appropriate financial counselling services and to notify hardship customers of those programs and services; and
- an outline of a range of programs that the retailer may use to assist hardship customers; and
- processes to review the appropriateness of a hardship customer's market retail contract in accordance with the purpose of the customer hardship policy; and
- processes or programs to assist customers with strategies to improve their energy efficiency, where such processes or programs are required by a local instrument; and
- any variations specified or of a kind specified by the AER; and
- any other matter required by the Rules.

Section 75(1) of the Retail Rules (see **Attachment A** for an extract of the current rule) requires the AER to determine hardship program indicators against which the performance of retailers and the implementation of their hardship policies are measured.

The hardship program indicators must cover:

- entry into hardship programs;
- participation in hardship programs;
- assistance available to and assistance provided to customers under customer hardship policies.

The hardship program indicators are contained within the *AER's Performance Reporting Procedures and Guidelines* and form part of a broader package of indicators designed to test retailer performance in a number of key areas. We are currently consulting on these indicators and our rule change proposal is consistent with this process.

The current hardship indicators measure retailer performance against certain specific criteria related to hardship customers, such as the number of customers on its hardship program

and the average level of debt of these customers. The AER reports on the performance of retailers against the hardship indicators as part of retail market performance reports.

Under Section 45 of the Retail Law, the AER approves hardship policies if the minimum requirements are met and the overall purpose of Division 6 is achieved – to assist customers experiencing payment difficulties due to hardship and to assist those customers to better manage their energy bills on an ongoing basis.

The AER has previously issued guidance<sup>3</sup> to retailers on the information to include in their customer hardship policies, or to submit as supplementary information to the AER, when seeking approval of their customer hardship policy (or variation). This guidance is not enforceable and is for general guidance purposes only.

### **3. Statement of issues**

#### **3.1 Nature and scope of issues**

Our rule change proposal aims to address the issues we have observed in the application of these existing hardship protections by retailers.

The outcomes of our recent compliance, enforcement and monitoring work in the area of hardship supports the need for additional guidance to industry via the development of a Hardship Guideline and is the basis for our rule change proposal. We have summarised the relevant performance data, the outcomes of the 2017 Hardship Review and the recent Origin Energy enforcement matter that have led us to form this view.

##### **3.1.1 Performance reporting findings**

Our 2016-17 *Annual Report on Compliance & Performance of the Retail Energy Market* includes retailer reports of the:

- number of customers on each retailer's hardship program;
- payment methods used by these customers;
- average debt level of customers on hardship programs, and
- reasons for customers exiting hardship programs.

The latest report showed concerning trends including high-energy debt levels, a fall in the number of customers successfully exiting hardship programs and higher overall electricity disconnections.

##### *Increased debt levels*

The report revealed high levels of energy debt held by both hardship and non-hardship customers. In the relevant period, the average debt when customers started receiving hardship assistance increased in all jurisdictions (except Tasmania). In South Australia, the debt increased by \$326; by \$213 in New South Wales and \$47 in Queensland. In addition, three percent of non-hardship electricity customers were repaying an average debt of \$690.

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<sup>3</sup> Guidance on AER approval of customer hardship policies can be accessed here:

<https://www.aer.gov.au/system/files/Final%20Guidance%20on%20AER%20approval%20of%20customer%20hardship%20policies%20-%20May%202011.pdf>

Our performance data for the first quarter of the 2017-18 financial year<sup>4</sup> indicates that there is still high levels of energy debt for customers not receiving assistance via hardship programs. For example, in South Australia the average residential electricity bill debt is \$919.

#### *Low numbers of customers receiving hardship assistance*

Despite the high levels of energy debt across most jurisdictions, the proportion of customers on hardship programs remains low. Most jurisdictions reported less than one in 100 electricity customers receiving hardship assistance. Participation rates are largely unchanged from last year.

#### *Fewer customers successfully completing hardship programs*

The report showed fewer customers successfully completing, or exiting the hardship program with the retailers agreement, than in the previous year. For those customers on hardship programs:

- only 27 per cent of electricity customers exiting hardship programs did so successfully; and
- only 20 per cent of gas customers exiting hardship programs did so successfully.

Only around one in four customers who exited the retailer hardship program did so by repaying the debt owed in the time allocated, and many customers simply remained on the hardship program for an extended period.

In addition, the number of customers exiting a hardship program due to exclusion<sup>5</sup> significantly increased from the previous year, from 46 to 57 customers per 100 for both gas and electricity.

#### *Increased overall electricity disconnections*

The report showed an additional 1083 electricity customers were disconnected for non-payment in the 2016-17 period compared to the previous financial year.

The total number of electricity disconnections across the eastern states (excluding Victoria) increased from 63,843 to 64,926 over the last reporting period. Queensland recorded the highest increase (up 16 per cent) of electricity users disconnected for non-payment<sup>6</sup>.

The proportion of disconnected electricity customers who had been on a payment plan in the previous 12 months also increased to 36 per cent of disconnections.

Data from the first quarter of the 2017-18 financial year showed a continuing trend with higher disconnection rates when compared with the same period last year.

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<sup>4</sup> Data submitted under the AER's Retail market performance reporting guidelines (June 2012) for the period 1 July – 30 September 2017.

<sup>5</sup> Retailers report to the AER the number of customers exiting their hardship programs for each of the following reasons: customer successfully completed the program or exited with the agreement of the retailer; customer transferred, switched or left the retailer and customer was excluded or removed from the program for failing to meet the requirements.

<sup>6</sup> The AER recently conducted compliance audits of a select number of retailers to examine practices regarding disconnections. The audits have allowed us to identify any deficiencies in the systems and processes of retailers, and provide retailers with the opportunity to fix and improve the quality of their compliance system.



### **3.1.2 AER 2017 Hardship Review outcomes**

#### **Review approach**

Our 2017 Hardship Review assessed whether retailers were identifying, engaging with, and providing appropriate hardship assistance to their customers in line with the minimum requirements under the Retail Law. We sought information from retailers on the operation of their hardship policy and sought evidence regarding its implementation.

The information gathered from retailers allowed us to make both a qualitative and quantitative assessment of the effectiveness of a retailer's application of the minimum requirements, and whether the commitments made by a retailer in its policy reflected what was occurring in practice.

The review focused on retailers with 100 or more hardship customers. The first stage of the review assessed retailers hardship performance reporting data<sup>7</sup> submitted in Q3 2016-17<sup>8</sup> as well as reports from ombudsman schemes.

Nine retailers were selected and the following information sought:

- Practices and processes for pro-actively identifying customers for referral to the hardship program.
- Links between the billing/credit department and the hardship team.
- Any conditions for entry or re-entry to the hardship program (and what kind of conditions may apply).
- Training offered to staff in relation to the hardship program and engaging with customers experiencing financial difficulties.
- Initiatives (such as incentive payment schemes) offered to customers on the hardship program.
- Number of customers successfully participating in the hardship program.
- Number of customers not on the hardship program disconnected with debts over \$1000 in the last financial year.
- Number of customers not on the hardship program but with a debt over \$1000 for more than 12 months.

#### **Observations**

While we did not observe widespread non-compliance by retailers with the Retail Rules or Retail Law when conducting this review, most retailers had deficiencies in at least one aspect of their policy.

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<sup>7</sup> For example, debt levels of non-hardship customers, average debt on entry to hardship programs, number of hardship program participants, and disconnections for non-payment.

<sup>8</sup> Data submitted under the AER's Retail market performance reporting guidelines (June 2012) for the period 1 January – 31 March 2017.

The Hardship Review showed that some retailers were unable to report on the implementation of their policy, and were unable to provide basic information on the assistance they had provided to customers. This made it challenging to assess whether these retailers were maintaining and implementing their policies in accordance with the Retail Law<sup>9</sup>.

The key findings from the Hardship Review are summarised below:

### *1. Early identification and access to hardship programs*

We observed that pro-active identification practices for customer referral to hardship programs are different for each retailer, as retailers use a number of pathways to facilitate this referral. As a result, there is no consistency as to how and when a customer may be identified as requiring hardship assistance.

Retailers reported high numbers of non-hardship customers disconnected with debts over \$1000, and high numbers of non-hardship customers with average debts over \$1000 for more than 12 months. This raises questions about the adequacy of retailers' processes for early identification of customers in financial difficulties.

In addition, some retailers are placing conditions on customers prior to re-entering a hardship program. This can involve requiring a certain number of instalments to be paid or an upfront payment from the customer before they can be accepted back into the hardship program.

Higher energy prices have seen more customers experiencing payment difficulties and we would expect to see a higher participation rate in retailer hardship programs. Participation remains low at one in a 100 customers - raising issues about the adequacy of a retailer's processes for early identification and assistance.

### *2. Systems and processes of retailers*

Many retailers surveyed reported a high number of customers unsuccessfully participating in the hardship program (for example, missing payments on a payment plan) in comparison to those successfully participating.

For example, one retailer reported that out of the 3089 customers registered on its hardship program as of 30 June 2017, 1724 were successfully participating in the hardship program and 1365 (more than 40%) were defined as unsuccessfully participating.

This finding raised concerns regarding whether the types of payment plans offered are realistic and based on a customer's capacity to pay<sup>10</sup>. Consumer groups have consistently raised concerns that hardship customers are pressured into payment plans that are not affordable which leads them to fall behind in payments, and ultimately get excluded from hardship programs and be at risk of disconnection<sup>11</sup>. Our view is that payment plans that do not fully take into account a customer's circumstances lead to poor customer outcomes, and

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<sup>9</sup> Section 43(2)(c) of the Retail Law.

<sup>10</sup> Rule 72(1)(a) of the Retail Rules require that a payment plan for a hardship customer must be established having regard to the customer's capacity to pay, any amounts owed by the customer, and the customer's expected energy consumption over the coming 12 months.

<sup>11</sup> *AER review of energy retailers' customer hardship policies and practices 2015*, page 23.

could be contributing to the high number of customers unsuccessfully participating in hardship programs.

We are aware that the number of customers needing hardship assistance is increasing and this presents challenges for retailers. However, for many customers experiencing payment difficulties a realistic payment plan is the first step in maximising their capacity to pay their arrears and future consumption, and reducing the likelihood of escalating energy debt.

### *3. Evidence to support a hardship policy's implementation*

Many retailers were unable to provide basic information on how their hardship policy is applied in practice. For example, one retailer stated that it offers energy efficiency audits to its hardship customers but could not provide data as to how many customers were offered an audit in the 2016/17 financial year. It is challenging to assess the effectiveness of retailer hardship policies without evidence in support of their implementation.

In contrast, some retailers did provide evidence that their hardship policy was being implemented in practice. However, the practical application of the commitment was in our view insufficient in giving effect to the minimum requirement. For example, one retailer reported that it waived administrative charges for its hardship customers, but in the 2016/17, financial year only waived the charges of six customers.

#### **3.1.3 Enforcement - Origin investigation**

Our enforcement and compliance work has shown the importance of specific commitments in hardship policies and that general policies offer customers a lower level of protection. In November 2017, we issued Origin with two infringement notices, one for allegedly failing to maintain and implement its hardship policy under section 43(2)(c) of the Retail Law (the other for an alleged wrongful disconnection). We alleged that Origin breached its hardship policy by failing to offer a customer hardship assistance in accordance with its policy which stated *'if we're on the phone with a customer who seems to be experiencing hardship, then we'll transfer them to the Power On team right away'*<sup>12</sup>.

The Origin matter illustrates the disconnect between the commitments made to customers in hardship policies, and what occurs in practice. Many of the currently approved policies contain these types of commitments and it is often difficult to assess whether these are being applied consistently. We are of the view that best practice in hardship requires specific and actionable commitments, which would facilitate greater oversight of these policies by all parties.

This matter also illustrates the importance of being able to link a retailer's conduct to specific action statements in its hardship policy. Origin's hardship policy did contain a specific commitment to customers experiencing payment difficulties; however, we have observed that other policies are more subjective and principles-based.

During our investigation of this matter, we found that if a policy contains general principles as opposed to clear commitments, it can be difficult to determine whether a retailer has in fact acted in accordance with its hardship policy.

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<sup>12</sup> Origin Hardship Policy – Power On Program (29 August 2014), page 3.

In addition, the presence of subjective phrasing in a hardship policy (such as ‘we believe’) can lead to differing interpretations of a retailer’s obligations and difficulties when enforcing potential breaches of the hardship provisions.

### **3.2 Issues to be addressed by the rule change proposal**

Performance reporting data from 2016/17, outcomes from the Hardship Review and the Origin investigation illustrate the significant issues with the application of the hardship protections by retailers to customers experiencing payment difficulties. Whilst retailers commit to assisting customers in their hardship policies, it is evident that there are discrepancies between these commitments and what occurs in practice.

We consider that a contributing factor is the general and principle-based nature of most hardship policies. As discussed above, many hardship policies contain only vague commitments that do not align with the minimum requirements sufficiently, or oblige the retailer to act in a certain way. The generalised nature of most policies also makes it difficult for customers to understand what their rights and entitlements are under the Retail Law and may therefore offer little protection to customers experiencing payment difficulties.

Hardship policies in their current form can also result in ambiguity regarding how the minimum requirements are applied, and the level of assistance that should be provided to customers to satisfy these requirements. In practice, the retailer, the AER and the customer could each have a different interpretation and expectation of how a particular hardship policy should assist a customer in financial difficulty.

Our view is general hardship policies can result in a range of issues that can be addressed by providing binding guidance to industry, including:

1. Inconsistent application of the minimum requirements in a retailer’s hardship policy.
2. Customers unclear about their rights and entitlements when experiencing payment difficulties.
3. Difficulties in assessing a retailer’s compliance with the hardship obligations.

Each of these issues is explained in more detail below:

#### **1. Application of a retailer’s hardship policy at a customer level**

As our Hardship Review illustrated, there can be a significant gap between retailer hardship processes and practices and the quality of the application of a policy at a customer level. We observed that customers experiencing payment difficulties are not receiving a consistent level of assistance, and the implementation of their rights and entitlements under the Retail Law can differ depending on their retailer.

By way of example, the Hardship Review showed that customers currently experiencing, or at risk of experiencing, payment difficulties may not be pro-actively identified as requiring hardship assistance by their retailers. We observed that some retailers use sophisticated processes such as predictive modelling to identify customers likely to experience payment difficulties, whilst others rely on customers missing a set number of scheduled bill payments before referring them to the hardship program. Early identification of customers maximises opportunities for effective intervention to help customers overcome and manage their

financial difficulties – however, there is no uniformity across industry as to when this intervention occurs.

Whilst we are aware that retailers have systems and processes to support the implementation of their policies, it is evident that the general quality of the policies does not commit the retailer to act in a certain way. As such, there is uncertainty as to how a policy should operate and what a retailer's obligations are when engaging with customers.

The statement in Origin's hardship policy (discussed above) '*if we're on the phone with a customer who seems to be experiencing hardship, then we'll transfer them to the Power On team right away*' provides a good example of a specific commitment made to hardship customers that requires the retailer to act or respond in a certain way. The basis for our rule change proposal is to provide further guidance in the form of a Hardship Guideline including standard statements to address the issues around clarity and consistency of retailer application of the minimum requirements.

## 2. Customers are unclear about their rights and entitlements when experiencing payment difficulties

Hardship policies are consumer-facing documents and should clearly explain to customers how they can access a retailer's hardship program and the services and assistance the customer will be offered.

We consider the general nature of most hardship policies means that they may not provide customers with sufficient clarity around their rights and entitlements under the Retail Law and Retail Rules. Our review of retailer hardship policies has shown that many policies do not contain specific statements as to how a retailer will act or respond, or what assistance a customer is entitled to by law (as opposed to what initiatives happen to be offered by that retailer).

As discussed above, hardship policies are often worded subjectively and this may contribute to a customer being uncertain as to the level of assistance they will receive. Subjective wording may also result in a customer's protections under the Retail Law being minimised. For example, depending on the wording of a policy a customer may only be offered assistance from a retailer if the call centre agent 'believes' or 'thinks' that the customer is experiencing difficulties paying their bills due to hardship. Therefore, hardship policies with subjective wording may not assist a vulnerable customer having difficulty paying their bills if the agent they speak to does not believe that they might be suitable for the hardship program.

## 3. Difficulties in assessing a retailer's compliance with the hardship obligations

The general nature of hardship policies makes it difficult for the AER to assess and determine if one or all of the minimum requirements are being applied. It can be challenging to link a retailer's conduct to a specific failing of their policy.

Our review of retailer hardship policies has shown that many contain a principles-based approach to assisting customers in hardship, instead of action-based commitments. We consider this can lead to uncertainty as to what assistance a customer is entitled to, and the retailer's obligations in this area.

Additionally, during the Hardship Review some retailers were unable to provide evidence of how they had applied the minimum requirements, and the specifics of the assistance provided to customers in its hardship program. This lack of oversight can present challenges when assessing the effectiveness of a retailer's measures in assisting customers to reduce their overall consumption and energy costs.

## **4. How the proposed rule would address the issues**

Our proposed changes aim to resolve issues identified with the application of the current requirements for hardship policies under the Retail Law. These are summarised in Table 1 and in more detail in the Statement of Issues section. We consider the generalised nature of current policies and lack of specific commitments has led to inconsistent application of the minimum requirements under the Retail Law. We are concerned that customers experiencing payment difficulties are not getting the full protections of the Retail Law in cases where policies are worded subjectively and where retailers do not have clear obligations to act or respond in a certain way.

### **4.1 Proposed rule**

Our proposed rule change would amend Rule 75 of the Retail Rules to create a Hardship Guideline. The Guideline would include hardship indicators that cover customer entry, participation and the assistance provided under hardship programs.

As the basis for our proposal is to provide further guidance, the proposed rule also provides for the inclusion of information on:

- processes, timeframes, time limits and requirements for approval or variation of customer hardship policies
- processes for the variation of existing customer hardship policies
- the possible development of standard statements for the purpose of giving guidance to consumers on their rights and obligations under the Retail Law or the Retail Rules
- any further guidance on, or examples of, statements that the AER considers meet the minimum requirements in section 44 of the Retail Law.

Our proposed rule change broadens current provisions in Rule 75 to create a single Hardship Guideline that would be binding on industry. We would anticipate public consultation on the Hardship Guideline in accordance with the retail consultation procedure<sup>13</sup>. Submissions from stakeholders and consumer research (to be commissioned) will inform what is included in the final Hardship Guideline.

The proposed rule is at **Attachment B**.

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<sup>13</sup> Rule 173 of the National Energy Retail Rules.

## 4.2 How the proposed rule will address the issues identified

**Table 1: Summary of issues and benefits of the proposed changes**

	Issues	Customer detriment	Benefit
1	Application of a retailer's hardship policy at a customer level.	Customers do not receive assistance with managing their energy service, exacerbating financial hardship.	<p>A Hardship Guideline would create a single reference point for customer hardship obligations.</p> <p>Standard statements would improve the overall quality of hardship policies: promote greater consistency in the provision of hardship assistance to individual customers.</p> <p>A Hardship Guideline would improve our ability to monitor and enforce the hardship obligations under the Retail Law and Rules.</p>
2	Customers unclear about rights and entitlements	Customers may not request assistance, or delay asking for assistance, as policies are general and do not give a clear description of a customer's rights under a policy.	A Hardship Guideline would contain consumer guidance including the development of standard statements to help customers more easily understand their entitlements under a retailer's hardship policy.
3	Difficulties in assessing whether a retailer is meeting the hardship obligations under the Retail Law	Overall quality of hardship policies varies from retailer to retailer. Potential for poor customer outcomes.	<p>A Hardship Guideline would create a single reference point for customer hardship obligations. This would allow the requirement under the Retail Law to be set out in a single document providing greater clarity to industry about how to translate these requirements into practice.</p> <p>A Hardship Guideline with standard statements that reflected the minimum requirements would improve the overall quality of hardship policies and promote greater consistency in the provision of hardship assistance to customers.</p> <p>A Hardship Guideline would improve our ability to monitor and enforce the hardship obligations under the Retail Law and Retail Rules.</p>

#### **4.2.1 Creation of an enforceable guideline**

Issue 1 – Application of a retailer’s hardship policy at a customer level.

Issue 3 – Difficulties in assessing whether a retailer is meeting the hardship obligations under the Retail Law.

The key benefit of the proposed Hardship Guideline is that it constitutes a single point of reference for industry on all the hardship obligations under the Retail Law and Rules. As part of the guideline development process, we would consult on its proposed content including processes for approval and variation of hardship policies and the development of standard statements.

We consider a binding guideline will help to achieve a consistent approach across retailers in relation to hardship policies, provide clarity on how the minimum requirements are to be applied and improve the overall quality of policies. Greater consistency across retailers will also assist our monitoring of compliance with these obligations.

#### **4.2.2 Additional guidance to industry including development of standard statements**

Issue 1 – Application of a retailer’s hardship policy at a customer level.

Issue 2 – Customers unclear about rights and entitlements

Issue 3 – Difficulties in assessing whether a retailer is meeting the hardship obligations under the Retail Law.

The proposed rule contemplates the development of additional guidance for customers, including standard statements. We will develop these statements in conjunction with industry and informed by consumer research. These statements would reflect the current minimum requirements as set out in Section 44 of the Retail Law and provide a clear and uniform set of commitments a customer is entitled to receive under a retailer’s hardship policy. By way of example, the statements would set out a customer’s entitlements under the Retail Law such as:

- requesting access to a retailer’s hardship program if they are having difficulties, or anticipate difficulties paying their energy bill;
- under a retailer’s hardship program they can expect to receive;
  - flexible payment options
  - advice on how to reduce energy usage
  - advice on payment plans, concessions and payment options including Centrepay.

Retailers are able to determine how to implement these minimum requirements but the intention is that these statements would allow customers to work out what assistance a retailer will provide under its policy.



Retailers will be able to set out how they will implement these standard statements, again providing greater clarity for customers around individual retailer policies. This should act as an incentive for retailers to commit resources to at least the minimum requirements. Standard statements would also improve our ability to monitor compliance with the hardship obligations under the Retail Law.

Due to the issues observed with implementation of hardship policies (discussed in Section 3) and the importance of these protections to energy customers, we propose that this rule is a civil penalty provision.

## **5. National Energy Retail Objective (NERO)**

Section 236 of the Retail Law states that the AEMC may only make a rule if it is satisfied that the rule will or is likely to contribute to the achievement of the NERO. The NERO is set out in Section 13 of the Retail Law, which is to ‘promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of the supply of energy’.

We consider that the rule change via the development of a Hardship Guideline will provide clarity to industry on how the requirements in the Retail Law are applied. This over time will improve the quality of hardship policies and the consistency in how these policies are applied. This in turn will ensure customers experiencing hardship receive the required assistance in a clear and consistent way maximising the opportunity for the customer to be able to pay the costs of their energy bill. The proposal will also give the AER greater visibility of the implementation of a retailer’s hardship program.

The rule change proposal will contribute to the achievement of the NERO by providing businesses with clear guidelines for the development and implementation of their hardship policy. As such, we can more accurately direct our compliance work to those customers requiring hardship assistance, and to working with these customers to better support them while they are on the hardship program. Such an approach is in the long-term interests of consumers, especially the vulnerable.

## **6. Expected benefits and costs associated with the proposed rule**

### **6.1 Retailers**

The proposed rule change does not expand the current obligations but seeks to provide clarity via the Hardship Guideline on how these obligations are to apply in practice. This should generate efficiencies in how retailers manage their hardship policies and promote consistency in the quality and application of its customer hardship policy obligations.

By creating a single point of reference, that contains the relevant hardship obligations and required protections, retailers will gain a greater level of clarity in relation to their hardship responsibilities as required under the Retail Law. The Hardship Guideline would set out hardship approval processes, customer guidance in the form of standard statements, and monitoring and reporting obligations. We will consult with stakeholders on the form and content of the Hardship Guideline.

The proposed development of standard statements will also result in retailers adopting a more consistent approach in their engagement with vulnerable customers. Benefits will be realised across industry, as hardship policies will include uniform, standard statements in retailer hardship policies. Accordingly, the AER (and customers') confidence in the quality and management of hardship policies will increase as the standard, consistency and operation of industry hardship policies improves.

Given the spectrum of hardship policies currently in place across businesses, we anticipate that initial implementation costs associated with the proposed rule will vary. However, we expect that businesses may incur costs relating to any necessary systems changes, staff training and associated changes involved in implementing policies, systems and procedures.

## **6.2 Customers**

As energy costs continue to rise, the number of customers experiencing financial hardship has increased. The proposed rule change requiring the development of a Hardship Guideline will ensure customers receive the appropriate level of information, protection and assistance in accordance with the Retail Law.

The Hardship Review demonstrated that while the Retail Law sets out the minimum level of assistance a customer should receive from a retailer; this does not often clearly translate to the practical operation of that retailer's hardship policy. What can appear as comprehensive protections and assistance in writing may not appear in the practical operation of that policy within a retailer's business – resulting in poor outcomes for customers.

The rule change proposal – requiring the AER to make a Hardship Guideline – will strengthen the operation of the Retail Law by clarifying what customers can expect from a retailer's hardship policy. This will mean customers can easily determine what their rights are in respect of hardship, access those rights and make informed decisions in relation to their energy supply.

The rule change will also allow the AER to readily monitor, report on and enforce compliance with hardship policies. This will have a significant flow on effect where benefits to customers will include, among other things:

- improved access to hardship programs (including enhanced referral processes) and increased ability of customers to successfully participate in, and complete, hardship programs;
- better management of customer energy debt – to lower incidences/risk of energy disconnection; and
- the provision of better-quality assistance to customers in order to reduce their overall energy consumption.

The proposed development of standard statements will also clearly set out customer rights in respect of hardship – allowing customers to easily understand their entitlements under a retailer's policy. The current absence of specific actions a retailer will take to assist hardship customers carries significant consumer detriment and a lack of awareness of their

entitlements to participate in a hardship program. This may discourage customers from requesting assistance from their retailer.

Together, these improvements will raise the overall level of support provided to vulnerable customers in the long term – as discussed in section 5, the rule change contribution to the NERO.

### **6.3 Australian Energy Regulator**

Strengthening the obligations on retailers to implement and maintain its hardship policy will allow the AER to more effectively monitor retailer hardship policies. This will result in customers in financial difficulty receiving the assistance they need to meet their energy costs.

The proposed rule change is designed to resolve issues identified with the current rules, which relate primarily to difficulties in assessing whether retailers are applying the minimum requirements as set out in the Retail Law. Our Hardship Review demonstrated that whilst some policies met the minimum requirements on paper, many commitments made to hardship customers were not being realised in practice.

Establishing a Hardship Guideline as a single point of reference for all hardship obligations generates significant benefits for the AER. The proposed guideline would permit consultation on a range of additional requirements, including processes for approving and varying policies. Importantly, the creation of a single, enforceable guideline would improve our ability to monitor and enforce hardship obligations in accordance with the Retail Law and Retail Rules.

The proposed development of standard statements in retailer hardship policies will assist with our compliance and enforcement work. The absence of action statements indicating what a retailer will do to assist a customer in hardship can result in hardship policies being difficult to enforce. Work to date has shown the importance of hardship policies having specific commitments that reflect the minimum requirements. Many current hardship policies contain general statements or are principles-based – making enforcement of Section 43 of the Retail Rules problematic. Where enforcement action is difficult to instigate, there is less incentive for industry to treat compliance with hardship obligations as a high priority.

The proposed rule change will allow for greater visibility of retailer hardship policies, permit an increased deterrence of breaches and allow the AER to take appropriate action when necessary.

More broadly, the benefits of the proposed rule change will complement other compliance work the AER is undertaking in relation to hardship. Specific work underway includes:

- engaging with retailers to remediate current deficiencies in hardship policies, with a view to requiring those retailers to vary their policies in accordance with AER direction; and,
- requiring some retailers to undertake an audit around compliance with hardship provisions of the Retail Rules and Retail Law.

We propose undertaking a research project to examine gaps in retailer hardship policies, and suitable standard statements to be included in hardship policies and revised hardship indicators.

## **7. Implementation**

In developing a Hardship Guideline, we will work with stakeholders on its scope and content in accordance with the retail consultation procedure. Timing of this consultation will be determined by the date of release of the new rule.

## **8. Scope**

Our proposed changes are limited to Part 3 of the Retail Rules to improve the development and implementation of hardship policies for the benefit of vulnerable customers.

## Attachment A – Current rule

### 75 Hardship program indicators

- (1) The AER must, in accordance with the retail consultation procedure, determine hardship program indicators.
- (2) The hardship program indicators must cover the following:
  - (a) Entry into hardship programs;
  - (b) Participation in hardship programs;
  - (c) Assistance available to and assistance provided to customers under customer hardship policies.
- (3) The AER may from time to time amend the hardship program indicators in accordance with the retail consultation procedure.
- (4) In this rule:

**Hardship program** means a program outlined in a customer hardship policy (as referred to in section 44(e) of *the Law*).

## Attachment B – Proposed new rule

### 75 Customer Hardship Policy Guideline

- (1) This rule has effect for the purposes of section 44(i) of *the Law*.
- (2) The AER must, in accordance with the retail consultation procedure, make customer hardship policy guidelines.
- (3) The customer hardship policy guideline must specify:
  - (a) hardship program indicators that cover the following:
    - (i) entry into hardship programs;
    - (ii) participation in hardship programs;
    - (iii) assistance available to and assistance provided to customers under customer hardship programs
- (4) The customer hardship policy guideline may specify:
  - (a) Processes, timeframes, time limits and requirements to be complied with in connection with the approval or variation of customer hardship policies;
  - (b) any matter that the AER considers necessary for inclusion in the customer hardship policy guidelines, having regard to the purpose of the customer hardship policies under section 43(1) of *the Law*, including:
    - (i) standardised statements to give effect to the minimum requirements as set out in Section 44 of the Retail Law for the purpose of the guidance of consumers on their rights and obligations under *the Law or the Rules*;
    - (ii) guidance on, or examples of, statements that that the AER considers meet the minimum requirements in section 44 of *the Law*;
    - (iii) the matters that the AER considers must be contained in customer hardship policies submitted under section 43(2) of *the Law*.
- (5) A retailer's customer hardship policy submitted to the AER under section 43(2) must contain any matter specified in the customer hardship policy guidelines as a matter that must be contained in a customer hardship policy.
- (6) The AER may from time to time amend the customer hardship policy guideline in accordance with the retail consultation procedure.