

17 January 2024

Dear Retailer

## Outcome of AER hardship compliance review

Last year, the AER issued compulsory notices under section 206 of the National Energy Retail Law (**Retail Law**) as part of a review of several retailers' (the **Selected Retailers**) compliance with hardship obligations under the Retail Law and National Energy Retail Rules (**Retail Rules**) (the **Notices**).

The purpose of this letter is to:

- set out the key findings of the review and encourage retailers to review their internal hardship practices and procedures accordingly, and
- encourage retailers to undertake a proactive review of their customer hardship policy, noting the AER's current compliance focus in this area.

## Compulsory Notices

This compliance review was a key project under the AER's 2022-23 Compliance and Enforcement Priority of '*ensuring effective identification of hardship customers*'. Effective hardship policies and practices are critical to ensuring customers can access the protections they are entitled to.

The Selected Retailers were required to provide policy documents and a sample of calls with customers who were placed onto payment plans.

We assessed the Selected Retailers' practices around the initial stages of identifying hardship customers and offering and applying payment plans, with a focus on:

- **identifying** residential customers experiencing payment difficulties due to hardship,
- **informing** these customers of their hardship policy, and
- **offering** and **applying** payment plans having regard to a customer's **capacity to pay**.

Our review identified varying compliance rates by the Selected Retailers across these focus areas, including the following areas of concern:

- inadequate processes to effectively identify customers experiencing payment difficulties and inform them of the retailer's customer hardship policy,
- trends of retailers using non-hardship payment arrangements as a first response for customers despite hardship indicators being present, and
- inadequate consideration of a customer's capacity to pay when setting the parameters of payment arrangements.

These findings are set out in greater detail at **Attachment A**. We strongly encourage you to review your internal hardship practices and procedures considering these findings.

## Upcoming compliance review

The AER will soon be repeating this review process as part of our [AER Compliance & Enforcement Priorities 2023-24](#) work to *'improve outcomes for customers experiencing vulnerability, including by improving access to retailer hardship programs and payment plan protections'*. Where non-compliance is identified, the AER will consider further investigation and possible enforcement action.

We are currently analysing key hardship metrics within the AER's Retail Performance Data and other intelligence sources to identify compliance concerns with retailer hardship obligations. This will inform the subject area of the next review and the retailers selected to participate.

## Focus on retailers' customer hardship policies

Another focus area for the AER is on improving retailers' customer hardship policies, which are vital in setting out how retailers identify and support customers experiencing payment difficulties.

Since July 2023, we have reviewed the customer hardship policies of several retailers. We have also recently approved Origin Energy's varied customer hardship policy. We engaged with Origin Energy to ensure its policy incorporated important protections. This included that customers who have outstanding debts when leaving Origin's hardship program because they are transferring to another retailer or no longer require energy supply from Origin Energy have access to an arrangement for the repayment of that debt and that such arrangements will be offered by Origin Energy in a manner consistent with the hardship policy.

We consider that many current customer hardship policies can be improved and encourage you to undertake a proactive review of your policy to ensure it is consistent with the [AER Customer Hardship Policy guideline](#) requirements and includes the protections noted above. If updates are required, please submit your policy with changes tracked to the email address below for AER approval.

Should you wish to discuss any of the above or have concerns about your compliance, please contact us at [retailcompliance@aer.gov.au](mailto:retailcompliance@aer.gov.au).

Yours sincerely



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Compliance and Enforcement

## Attachment A – assessment of key issues from Selected Retailers’ responses to the Notices

### **1) Identifying customers experiencing payment difficulties due to hardship**

Facilitating access to hardship programs is the cornerstone of retailers’ hardship obligations. We have concerns that some of the selected retailers did not adequately identify customers experiencing payment difficulties.

- Notably, some policies and conversations suggested retailers placed an over-reliance on customers to self-identify as experiencing payment difficulties due to hardship.
- To prevent this, we noted that some retailers have proactive systems in place to identify customers who may be experiencing payment difficulties due to hardship. Such systems effectively identify a range of hardship indicators and promptly alert agents to contact the identified customers.
  - Some of these systems then send identified customers correspondence outlining all payment arrangement options available to them and encouraging customers to contact the retailer to set up a payment plan. However, we note that retailers should design such automated proposals in a way that does not pressure customers into accepting unaffordable payment arrangements.
- Alongside these proactive systems, retailers should ensure agents are appropriately trained to handle customers experiencing payment difficulties due to hardship. In the Notice responses, there were positive examples of retailers providing regular training on how agents should act on hardship indicators in an appropriate and timely manner to best help manage payment difficulties.

### **2) Informing customers experiencing payment difficulties due to hardship about the retailer’s hardship policy**

We found variable rates of compliance with the requirement for retailers to inform customers experiencing payment difficulties due to hardship of the retailer’s hardship policy.

- Notably, we had concerns with practices of agents only offering these customers payment extensions or short-term payment arrangements and not informing customers of the retailer’s hardship policy.
  - Where agents fail to inform customers experiencing payment difficulties due to hardship of the retailer’s hardship policy, the customer may be denied a more affordable payment plan, and access to important hardship protections provided under the retailer’s hardship policy.
- Further, customers were not always informed about government assistance schemes. Retailers should ensure that there are appropriate

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prompts for agents to determine whether a customer is receiving all government rebates they are eligible for in a timely manner.

- Last, we noted some concerns around hardship customers being sent automated written correspondence that was outdated and did not adequately address the customer’s payment difficulties. Retailers should ensure that all information and correspondence provided to customers is correct, up-to-date and encourages open communication to assist the identification of hardship.

### **3) Offering and applying payment plans**

Ensuring customers are offered and placed on appropriate payment plans is a fundamental component of the hardship requirements.

- We had concerns with some retailers using non-hardship payment plans as the first response for customers despite hardship indicators suggesting customers should be placed onto a hardship payment plan. Customers should not simply be provided an extension or placed on a short-term payment plan where they may be experiencing payment difficulties due to hardship, instead a holistic consideration of the customer’s individual circumstances is required.
  - Payment extensions or short-term payment plans generally do not help customers who are experiencing payment difficulties manage their debt or usage as the plans often involve higher instalments over shorter periods of time.
  - These extensions or plans could also increase the risk of payment plan cancellation due to customers being unable to afford payment plan instalments which could limit a customer’s eligibility for a retailer’s hardship program and potentially risk de-energisation.
- Further, we noted some referrals to hardship programs, which triggered associated assessments such as government rebates, capacity to pay calculations, were only triggered if a payment plan exceeded a specific time-period. Retailers should consider a customer’s circumstances on a case-by-case basis to determine if a hardship referral and the associated assessments would benefit customers with shorter term payment plans as well.

### **4) Considering a customer’s capacity to pay**

Our final assessment area focus was whether retailers had sufficient regard to a customer’s capacity to pay when establishing payment plans.

- We had concerns with some conversations where agents may have inadvertently pressured customers into accepting payment

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arrangements that may not be affordable or sustainable. This may be avoided by retailers adopting the following approach:

- Agents asking customers *what they can afford* to pay as a starting point, rather than proposing specific plans or instalment amounts at the outset of capacity to pay conversations.
- If a retailer uses automated systems to calculate instalment amounts, agents emphasising that such calculations are flexible and customers do not have to agree to that instalment amount if they cannot afford it.
- We also noted some policies which suggested that the calculation of a customer’s capacity to pay was considered only for hardship payment arrangements. Under the hardship requirements, this assessment should be considered when establishing payment plans for customers experiencing payment difficulties due to hardship.
- However, we also noted good practice by some retailers which involved a holistic approach to the consideration of a customer’s capacity to pay, with some policies and calls indicating comprehensive budget assessments are undertaken to consider broader living expenses to best determine affordability of a payment arrangement.