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Dear Colleagues

### **Guidance on AER approval of customer hardship policies**

The Australian Energy Regulator (AER) today published its final *Guidance on AER approval of customer hardship policies* ('Guidance'). Under the National Energy Retail Law (Retail Law), the AER will be required to approve retailers' customer hardship policies. The Ministerial Council on Energy (MCE) has agreed that jurisdictions will work towards a common target date of 1 July 2012 for commencement of the Retail Law.

The Guidance provides retailers (and other stakeholders) with information on:

- the factors the AER will consider in deciding whether to approve a retailer's hardship policy
- how the approval process will work for new and existing retailers
- what retailers may submit to help satisfy the AER that their customer hardship policy contains all the minimum requirements specified in the Retail Law and Rules.

Under the Retail Law, new entrant retailers will be required to submit their hardship policies to the AER for approval within three months of being granted an authorisation to sell electricity and gas. Existing energy retailers, who will be transitioned to authorised retailers under the Retail Law, will be required to have an AER approved customer hardship policy in place for commencement of the Retail Law.<sup>1</sup> To ensure this requirement is met, retailers will be required to submit their customer hardship policy to the AER for approval by **1 December 2011**. The AER intends to commence detailed discussions with retailers on the submission and approval of their customer hardship policies from September 2011.

The AER published a draft version of the Guidance for consultation in December 2010 and received nine written and two informal submissions.<sup>2</sup> A summary of the key issues raised, our response, and how suggestions have been reflected in the final Guidance is set out in attachment **two** to this letter.

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<sup>1</sup> See Ministerial Council on Energy Standing Committee of Officials Bulletin No, 190.

<sup>2</sup> Attachment one to this letter is a list of organisations who provided a written submission to the draft Guidance. Copies of the draft Guidance and submissions are available on the AER's website.

The final Guidance, informed by the submissions received to the draft and discussions with the AER's Customer Consultative Group, is available on the AER's website:  
<http://www.aer.gov.au/content/index.phtml/itemId/741773>.

For any questions regarding the Guidance or approval of customer hardship policies, please contact Angela Bourke on 03 9290 1910.

Yours sincerely

Tom Leuner  
General Manager, Markets  
Australian Energy Regulator

## **Attachment one – list of respondents to draft Guidance**

- AGL
- Care Inc.
- Consumer Utility Advocacy Centre
- Ergon Energy
- Energy Ombudsman of NSW
- Energy Ombudsman of Victoria
- Origin Energy
- Tasmanian Council of Social Services
- Victorian Council of Social Services

## Attachment two – summary of key issues raised in submissions

Stakeholder comment	AER response
<b>Identifying customers experiencing payment difficulties</b>	
<p>Several stakeholders noted that training was critical to appropriately identifying, advising, responding to and dealing with customers experiencing hardship. This is particularly so for retailers' call centre staff as the first 'point of call' for many customers experiencing hardship. Stakeholders suggested that information on staff training be included as a factor the AER may consider when approving customer hardship policies.</p>	<p>We agree that staff training by retailers assists in the identification and assistance of hardship customers. In assessing whether or not a customer hardship policy satisfies the requirements set out in the Retail Law, we have included any commitments that the retailer has made to conduct appropriate staff training as an additional factor we may consider, see section 3.4(b) of the Guidance.</p>
<p>Many stakeholders emphasised the need for 'self identification' to operate in conjunction with retailer mechanisms to identify hardship customers. Stakeholders noted concern for prepayment meter (PPM) customers experiencing hardship, who have little ongoing contact with their retailer. Stakeholders also suggested that retailers should identify and respond to 'at risk' customers early on; and provide them with an opportunity to communicate financial difficulties. One stakeholder suggested that hardship policies should address how retailers communicate with customers of culturally and linguistically diverse backgrounds who are experiencing hardship.</p>	<p>The Guidance discusses the identification of customers experiencing hardship and providing an early response at sections 3.6. The identification of PPM customers experiencing hardship is discussed separately at section 3.7. The AER has included further information here to provide additional clarification, see section 3.7(a). Consideration of how retailers publicise and promote customer hardship policies to customers from culturally and linguistically diverse backgrounds is already included in the Guidance at section 2.8(j).</p>
<b>Early response by retailers</b>	
<p>Stakeholders again highlighted the importance of staff training, and noted that early identification ensures that hardship customers can receive support and assistance as soon as possible.</p>	<p>As noted above, we have included provision in the Guidance on retailer's commitment to staff training, see section 3.4(b).</p>

<b>Flexible payment options</b>	
<p>Stakeholders considered that payment plans should be flexible and affordable by design. The AER should consider the retailer’s willingness to negotiate or revise a payment plan in response to a customer’s changing circumstances or where a customer still experiences difficulty paying. Stakeholders suggested that retailers’ hardship programs should:</p> <ul style="list-style-type: none"> <li>▪ Provide information on the advantages and disadvantages of the different types of payment options available</li> <li>▪ Include commitments to establish affordable payment plans through negotiation with the customer and to respect advice from financial counsellors about customers’ capacity to pay</li> <li>▪ Include regular reviews of customers payment plans (or other payment options) to ensure they remain appropriate</li> <li>▪ Provide arrangements for hardship program customers with changed circumstances and options for customers in special circumstances, including the circumstances in which a customer would be excluded or removed from a hardship program and information on customers’ responsibilities</li> <li>▪ Work in conjunction with other forms of assistance, including management of energy consumption</li> <li>▪ Include incentives for customers to pay their instalments and partial or complete debt waivers.</li> </ul>	<p>We support including a retailer’s commitment to reviewing and renegotiating payment plans as a factor that may be considered when approving hardship policies. We also support the inclusion of other factors suggested: that hardship policies could set out that retailers will discuss with customers the relative advantages and disadvantages of various payment options offered as well as how retailers will have regard to advice from financial counsellors (and others) regarding customers’ capacity to pay. Section 3.12 of the Guidance has been amended accordingly. We consider that these additions make provision for hardship program customers whose circumstances change over time. We do not consider it appropriate for the Guidance to specify or prescribe the types of assistance to be offered by retailers as part of their hardship policies and programs. Retailers have the flexibility to offer incentives and debt waivers as part of their flexible payment options.</p> <p>Section 2.8(f) of the Guidance has been clarified to include circumstances where a customer would be removed or excluded from participating in the hardship program (see also section 2.8 (1)) as well as to include the rights and obligations of both the customer and the retailer participating in the program.</p>
<b>Identifying appropriate concessions programs and financial counselling services</b>	
<p>Stakeholders noted that whilst hardship customers may be eligible for concessions or financial counselling services, eligibility should not be</p>	<p>Section 3.15 of the Guidance includes retailers providing details on how they will check customers’ eligibility for these services. Section</p>

<p>a pre-condition to entering into (or remaining on) hardship programs. It was also suggested that retailers could set out examples of the circumstances where they would refer customers to these services and that the policy should set out how they intend to comply with privacy legislation.</p>	<p>3.4(c) also suggests retailers include details of any eligibility criteria they apply to customers seeking to enter their hardship program. The AER notes that customers experiencing hardship may not always be eligible for concessions nor will it always be appropriate to refer them to financial counselling services. This should be determined on a case-by-case basis and as such should not automatically be a pre-condition to entering into (or remaining on) hardship programs.</p> <p>Retailers must comply with any applicable privacy obligations. The AER does not consider it necessary for retailers to detail how they intend to do this in their hardship policies. Retailers should, however, state how they will meet their privacy obligations in any documentation provided to customers about their hardship policy (see section 2.4 of the Guidance).</p>
<p><b>Programs used to assist hardship customers</b></p>	
<p>Stakeholders noted that not all programs and initiatives under hardship policies will be suitable for all customers. The policy should therefore set out how the retailer and the customer will agree which is most suitable for their circumstances. It should also include information on how customers will successfully leave the hardship program and return to regular billing and collection cycles. Finally, hardship policies should contain information on how customers can complain about decisions made regarding retailers' hardship programs and policies, and rights of appeal for customers.</p>	<p>The AER agrees it is important that customers understand their rights, and have information on circumstances under which they will successfully complete the hardship program and revert to normal billing and collection cycles. It should also clearly set out the circumstances under which customers might be removed or excluded from a hardship program as well as their right to complain or appeal these decisions. We have amended sections 2.8 (g), (h) and (i) and section 3.18(e) of the Guidance accordingly.</p>
<p><b>Reviewing market retail contracts</b></p>	
<p>Stakeholders suggested the AER provide more prescriptive detail in the Guidance regarding the information retailers should consider when</p>	<p>We have updated section 3.21(b) of the Guidance to suggest that retailers can provide examples of the types of information they will consider when reviewing the appropriateness of a hardship customer's</p>

<p>assessing a customer’s market retail contract.</p>	<p>market retail contract. We have not sought to prescribe what these examples might be in the Guidance.</p>
<p><b>Strategies to improve energy efficiency</b></p>	
<p>Several stakeholders supported the inclusion of energy efficiency initiatives for hardship customers, and noted that such initiatives are an important part of hardship policy. Some stakeholders also noted that these strategies may not be appropriate for all customers, particularly where they live in rental accommodation; are unable to afford the capital outlay; or where the customer already has low consumption levels.</p> <p>Stakeholders suggested the following strategies be included: free on-site energy audits and energy efficiency advice; appliance replacement programs (noting that retailers should actively assist customers to source more energy efficient appliances); referrals to government or community energy efficiency programs where customers are eligible; and referrals to ‘no interest’ loan schemes.</p>	<p>Section 44(g) of the Retail Law requires retailers’ customer hardship policies to have processes or programs to assist customers with strategies to improve their energy efficiency, where such processes or programs are required by a jurisdictional local instrument. As such, it is not appropriate for the Guidance to specify particular types of strategies and we consider that section 3.24 (as drafted) is broad enough to cover the specific strategies noted by stakeholders.</p> <p>We do see merit, however, in retailers’ policies clarifying they will assess a customer’s eligibility for any energy efficiency programs, prior to referring them to that program and have amended section 3.24(b) to reflect this.</p>
<p><b>Other hardship obligations and comments</b></p>	
<p>Other stakeholder suggestions for inclusion in the Guidance were:</p> <ul style="list-style-type: none"> <li>▪ A commitment from retailers regarding staff training on issues relating to financial hardship</li> <li>▪ Providing information on the rights and responsibilities of the customer and the retailer as well as internal and external dispute resolution processes</li> <li>▪ The circumstances in which the retailer will waive part or all of the customer’s bill and the impact of bankruptcy</li> <li>▪ Confirmation that the bulk of a retailer’s hardship policy and</li> </ul>	<p>Several stakeholder comments in this area have already been addressed above such as staff training, information on customers’ rights and obligations and complaints handling etc.</p> <p>We note that the purpose of the Guidance is not to place prescriptive requirements on retailers. The minimum requirements of a customer hardship policy are set out in the Retail Law. The role of the Guidance is to provide information to retailers on the factors the AER may consider when deciding whether to approve (or not approve) a retailer’s customer hardship policy. The Guidance itself is not intended to provide a definitive or prescriptive list of requirements that a</p>

<p>program are available to all customers, regardless of their geographic, jurisdictional or social circumstances</p> <ul style="list-style-type: none"> <li>▪ Retailers should provide hardship program customers with ‘second chances’</li> <li>▪ A definition of ‘hardship’</li> <li>▪ Consideration of industry ‘best practice’</li> </ul>	<p>retailer’s policy must include. For this reason, we have not included some of the suggested amendments to the Guidance.</p> <p>We also do not think it is appropriate to try to define ‘hardship’ as part of the Guidance. Customers may experience hardship for a variety of reasons or circumstances. The absence of a prescriptive ‘hardship’ definition helps to ensure that retailers have the flexibility to target their hardship policies and programs at those customers most in need of assistance.</p> <p>The AER recognises the benefits, to both customers and retailers, where retailers continue to work towards developing and improving their hardship policy so that it is as comprehensive, flexible and innovative as possible and so that it meets current ‘best practice’ standards. We have reflected this in section 5.4 of the Guidance.</p>
<p>Several stakeholders suggested that hardship policies should consist of two documents:</p> <ul style="list-style-type: none"> <li>▪ An hardship policy document, as approved by the AER, which covers all information requirements contained in the Guidance; and</li> <li>▪ A ‘consumer friendly’ document which contains information on the retailer’s hardship policy which is more accessible and easier for customers to understand.</li> </ul>	<p>The Retail Law specifies the minimum requirements that retailers’ customer hardship policies must contain. This policy must be submitted to the AER for approval and must be published on retailers’ websites. Retailers are also free to develop (and publish) a shorter, more accessible and ‘consumer-friendly’ document outlining key information regarding their hardship policy for their customers. Such a document may include (for example) information on: eligibility for the program; assistance available; rights and responsibilities of the retailer and customer under the hardship policy; where customers can access full policy details. This has also been reflected in the Guidance, see sections 2.4 and 4.7.</p>