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Lodged online: [AERConsumerandPolicy@aer.gov.au](mailto:AERConsumerandPolicy@aer.gov.au)

Dear Ms Proudfoot,

**RE: Submission on AER's standardised statements for use in customer hardship policies**

As the peak body for the health and community services sector in South Australia, the South Australian Council of Social Service (SACOSS) has an established history of interest, engagement and provision of proposed advice on the necessary market mechanisms and policy for essential services, including electricity. SACOSS would like to thank the Australian Energy Regulator (AER) for providing us with the opportunity to comment on its Issues Paper on Standardised Statements for use in customer hardship policies, dated November 2018 (the Issues Paper).

We refer to our previous submissions to the Australian Energy Market Commission (AEMC) on the AER's Hardship Rule Change Proposal,<sup>1</sup> and also to our June 2018 *Report on the Effectiveness of Supports for Customers Experiencing Payment Difficulties under the NECF*.<sup>2</sup> Both our submissions and June 2018 Report

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<sup>1</sup> SACOSS, Submission to the AEMC on the National Energy Retail Rules Amendment (Strengthening protections for customers in hardship) Rule 2018, 28 June 2018

[https://www.sacoss.org.au/sites/default/files/public/documents/Submissions/Utilities%20Submissions/180628\\_SACOSS\\_Submission\\_AEMC\\_Hardship\\_Policy\\_Rule\\_Change.pdf](https://www.sacoss.org.au/sites/default/files/public/documents/Submissions/Utilities%20Submissions/180628_SACOSS_Submission_AEMC_Hardship_Policy_Rule_Change.pdf) and

SACOSS, Submission to the AEMC Draft Rule Determination: National Energy Retail Amendment (Strengthening Protections for Customers in Hardship) Rule 2018, 18 October 2018

[https://www.sacoss.org.au/sites/default/files/public/documents/Submissions/Utilities%20Submissions/181018\\_SACOSS\\_Submission\\_AEMC\\_Hardship\\_Policy\\_Draft\\_Rule\\_Determination.pdf](https://www.sacoss.org.au/sites/default/files/public/documents/Submissions/Utilities%20Submissions/181018_SACOSS_Submission_AEMC_Hardship_Policy_Draft_Rule_Determination.pdf)

<sup>2</sup> SACOSS, Report on the effectiveness of supports for customers experiencing payment difficulties: strengthening protections for customers under the NECF, June 2018 see link:

[https://www.sacoss.org.au/sites/default/files/public/documents/Reports/180629\\_SACOSS\\_Report\\_Effectiveness\\_Of\\_Supports\\_0.pdf](https://www.sacoss.org.au/sites/default/files/public/documents/Reports/180629_SACOSS_Report_Effectiveness_Of_Supports_0.pdf)

supported the AER's rule change request to allow for the development of a binding customer hardship policy guideline. SACOSS commends the AER for initiating the rule change request and strongly supports the AEMC's Rule Determination<sup>3</sup> and more preferable Rule (the New Rule). However, whilst we support the New Rule, we believe more work is needed to ensure retailers are complying with their consumer protection obligations under the *National Energy Retail Law (South Australia) Act 2011*<sup>4</sup> (Retail Law) and the *National Energy Retail Rules Version 14*<sup>5</sup> (Retail Rules) to all small customers, not just hardship customers.<sup>6</sup> We welcome the AEMC's forthcoming review into how retailers support the broader group of customers experiencing payment difficulties, and how those obligations operate with hardship obligations.

## Overview

The AER's Issues Paper represents the first step in 'seeking stakeholder views on standardised statements that the AER considers should be included in all retailer customer hardship policies'.<sup>7</sup> SACOSS appreciates the opportunity to provide written comment on the AER's Draft Standardised Statements, and we look forward to further, more in-depth consultation opportunities. We believe the form and content of the statements will be pivotal in ensuring greater access and more meaningful supports for customers experiencing payment difficulties due to hardship, and we urge the AER to consider face to face workshops with retailers, consumer organisations, representatives from the Essential Services Commission of Victoria (ESC Vic), and the AER to share knowledge and discuss perspectives. We understand the tight time frames imposed on the AER, with March 2019 being the expected date for publishing the final AER Hardship Guideline, but we strongly counsel the AER against finalising the development of the statements without more in-depth consultation.

SACOSS acknowledges the AER's specific consultation questions contained in the Issues Paper, however we have decided to frame our submission in two parts. In the first part of our submission we will make some broad comments about matters we believe the AER should take into consideration when developing the standardised statements (both the statements dealing with the minimum requirements and the guidance statements), including the scope, form and structure of the statements. The second part of our submission will make specific comments on the AER's Draft General Statement, and the AER's statements dealing with the first two minimum requirements, namely identification and early response. We will provide overarching comments on the remaining statements dealing with supports, but are hopeful that we will be afforded the opportunity to provide more feedback on the form of these statements, in future consultations.

In support of this submission, SACOSS has attached the following documents:

- A flow chart illustrating the structure of the process of identification of hardship customers (**Attachment A**)
- A table containing **draft** standardised statements prepared by SACOSS, as a starting point for the purposes of discussion (**Attachment B**).

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<sup>3</sup> AEMC, Rule Determination: National Energy Retail Amendment (Strengthening Protections for Customers in Hardship) Rule 2018 No. 6, 15 November 2018

<sup>4</sup> See National Energy Retail Law (South Australia) Act 2011 at [https://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20\(SOUTH%20AUSTRALIA\)%20ACT%202011\\_a.spx](https://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20(SOUTH%20AUSTRALIA)%20ACT%202011_a.spx)

<sup>5</sup> See National Energy Retail Rules Version 14 at: <https://www.aemc.gov.au/regulation/energy-rules/national-energy-retail-rules/current>

<sup>6</sup> Note section 205 of the Retail Law which requires the AER to perform its regulatory powers in a manner that is 'compatible with the development and application of **protections for small customers**, including (**but not limited to**) protections relating to hardship customers'.

<sup>7</sup> AER, Issues Paper, November 2018, p. 4

## **Broad observations for the consideration of the AER in the development of the Standardised Statements**

In order to provide our views on the AER's draft standardised statements, SACOSS considers it is necessary to first examine:

- the scope of the AER's role in developing the standardised statements, in accordance with the New Rule 75A
- the overarching framework for the statements, including statements on principles, purpose (guidance statements), identification, support (minimum requirements) and implementation (retailer's action statements), and the importance of linking statements to relevant performance indicators
- how the broader customer protection framework under the NECF informs the development of statements dealing with processes to identify hardship customers, and the importance of the process of identification in ensuring access to support
- the importance of consultation with the Essential Services Commission of Victoria (ESC Vic) on the development of the standardised statements.

### **The scope of the AER's role in developing the standardised statements**

The AEMC issued its Final Determination and New Rule on the *National Energy Retail Amendment (Strengthening Protections for customers in hardship)* Rule on 15 November 2018 (the New Rule). Relevantly, for the purposes of a discussion on the form of the standardised statements, the New Rule 75A provides for the following (our emphasis):

#### ***75A Customer hardship policy guideline***

*(1) The AER must, in accordance with the retail consultation procedure, develop, maintain and publish a customer hardship policy guideline.*

*(2) The customer hardship policy guideline must specify:*

*(a) processes, timeframes and requirements to be complied with by retailers in connection with the approval (or variation) of their customer hardship policies by the AER;*

*(b) standardised statements that retailers must include in their customer hardship policies that:*

*(i) inform their customers of how the retailer will comply with the minimum requirements as set out in section 44 of the Law; and*

*(ii) provide guidance to customers on their rights, and retailer obligations, with respect to Part 2, Division 6 of the Law.*

Therefore, in accordance with the New Rule, the AER must 'develop, maintain and publish' a customer hardship policy guideline that specifies standardised statements **retailers must include** in their hardship policies. These standardised statements must:

- 'inform their customers of how the retailer will comply with the minimum requirements as set out in section 44 of the Law', and
- 'provide guidance to customers on their rights, and retailer obligations, with respect to Part 2, Division 6 of the Law (Guidance Statements).



The scope of the AER's role in developing standardised statements of the minimum requirements depends upon an interpretation of the phrase 'inform their customers of how the retailer will comply with the minimum requirements'. It is worth noting that the construction of Rule 75A(2)(b)(i) has changed from the Draft Rule.<sup>8</sup> The AEMC has provided some guidance on the reason for the change:

*'rule 75A(2)(b)(i) has been amended to better reflect the role of the AER in developing standardised statements and that it is the role of retailers to inform their customers as to how they will comply with, and implement, their hardship obligations'.<sup>9</sup>*

SACOSS is somewhat confused by this explanation. The AEMC's new Rule 75A(2)(b)(i) provides for the AER to develop statements that 'inform the customer of how the retailer will comply' with the requirements, but the explanation for the change indicates the AEMC considers it is the retailer's role to 'inform the customer as to how they will comply with, and implement, their hardship obligations'. In the face of this uncertainty, SACOSS has looked to the broader content of the AEMC's Final Determination for additional guidance. In paragraph 3.3.4 of its Rule Determination, the AEMC does provide further explanation of its reasons for the change noting:

*'...that the NERL places the onus on the retailer to develop hardship policies that meet the minimum requirements. From this, the Commission agrees the wording of the draft rule could be construed as allowing the AER to prescribe how a retailer will develop its policies beyond the extent of the minimum requirements under the NERL. As noted earlier, it is the Commission's intent that the standardised statements would reflect only the minimum requirements, and therefore allow the retailer flexibility in how it develops its programs. From this, the Commission has amended the wording of rule 75A(2)(b)(i) to specify that the standard statements are designed to inform customers of how the retailer will comply with the minimum requirements under the NERL.'<sup>10</sup>*

It is the AEMC's view that 'this change places the onus on the retailer to comply with the NERL, while also allowing the AER to ensure consistent and actionable standard statements are included in a retailer's policy.'<sup>11</sup>

New Rule 75B(1)(c) further assists with an interpretation of Rule 75A(2)(b)(i). Rule 75B(1)(c) requires that a retailer's customer hardship policy submitted to the AER must contain 'clear and specific **statements of the actions** the retailer will take to **meet** the minimum requirements for a customer hardship policy in section 44 of the Law' (our emphasis). In providing reasons for its decision to include New Rule 75B(1)(c), the AEMC stated that it considered 'consistency across policies is an important outcome of this rule change, however retailers should have flexibility in how they **implement** their minimum requirements to best suit their customers. Therefore, the more preferable final rule includes a requirement that a retailer must include clear and specific statements of the actions they will take to meet section 44 of the NERL.'<sup>12</sup>

Therefore, under the New Rule, the AER must develop standardised statements that inform customers of **how** retailers will comply with the minimum requirements, and the retailer must develop clear and specific

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<sup>8</sup> Draft Rule 75(2)(b)(i) provided for standardised statements 'to give effect to' the minimum requirements. It appears the change in wording of Rule 75A(2)(b)(i) may have been made in response to a submission from Origin Energy which expressed 'concern that the Commission's draft rule altered the intent of the NERL by allowing the AER to determine how a retailer 'gives effect' to the retailer's requirements under the NERL. In their view this is the retailer's role.' AEMC, Final Rule Determination, p. 19

<sup>9</sup> AEMC, Rule Determination National Energy Retail Amendment (Strengthening Protections for Customers in Hardship) Rule 2018, 15 November 2018, p.iii

<sup>10</sup> AEMC, Rule Determination National Energy Retail Amendment (Strengthening Protections for Customers in Hardship) Rule 2018, 15 November 2018, p. 21

<sup>11</sup> Ibid, p.21

<sup>12</sup> AEMC, Rule Determination: National Energy Retail Amendment (Strengthening Protections for Customers in Hardship) Rule 2018 No. 6, 15 November 2018, p. iii, iv



statements of actions it will take to meet (or implement) the minimum requirements. The AEMC refers to this as a 'two part approach', it states that the (our emphasis):

*'two part approach to what retailers must include in their policies supports both consistency and flexibility:*

*1. The AER will be required to develop standardised statements that reflect only the minimum requirements under the NERL. This will ensure consistent and clear policies that customers and their advocates will be able to understand.*

*2. Retailers will then be required to provide clear and specific statements of the actions they will take to meet those minimum requirements. These statements allow the retailer to include information about how they will specifically implement their minimum requirements, to best suit their customers. The AER will then be able to assess whether those statements meet the purpose of hardship policies under section 43 of the NERL when approving the policy.<sup>13</sup>*

The AER's Issues Paper envisages the standardised statements developed by the AER will be 'expressed as clear and specific statements of action that will allow the AER to monitor and enforce hardship policies effectively; they will not place additional obligations on retailers beyond the existing requirements' they will be 'required to be inserted into hardship policies to indicate what specific actions and assistance a retailer will take to identify and assist hardship customers'.<sup>14</sup>

Having regard to the AEMC's reasons in its Rule Determination, as well as the AER's functions and powers under the Retail Law,<sup>15</sup> SACOSS considers it is consistent with the New Rule for the AER to have the scope to develop standardised statements of the minimum requirements that clearly set out processes to achieve the purposes of the hardship policies (including both identification of hardship customers and supports for those customers). SACOSS submits that there is nothing in the wording of Rule 75A(2)(b)(i), or the AEMC's Rule Determination, which would limit the AER from developing standardised statements 'as clear and specific statements of action', in line with the AER's vision expressed in its Issues Paper.

We therefore believe the AER's standardised statements should outline the processes the retailer is bound to implement (including actions), and the retailer's 'statements of actions' should outline how it will implement those processes.

### **The overarching framework for the statements**

Having regard to the Retail Law, the New Rule, the AEMC's Determination and the AER's Issues Paper, SACOSS considers a framework for the development of the standardised statements, guidance statements and retailer's action statements could be expressed in the following way:

- **Principles underpinning the policy** (guidance statement of section 45(3))
  - **Purpose of the policy**, being the outcomes or goals the Policy aims to achieve (guidance statement of sections 43(1) and 47)
    - **Objectives of the Policy** (standardised statements of the minimum requirements outlining the steps to achieve the purposes of 'identification' and 'ongoing supports', developed by the AER)

<sup>13</sup> AEMC, Rule Determination, November 2018, p. 20

<sup>14</sup> AER, Issues Paper, November 2018, p. 12

<sup>15</sup> Including the AER's broad functions and powers under section 204, as well as its approval powers under section 45 and its powers to review hardship policies under section 43(3).

- **Measurability** (linking, where possible, the standardised statements to the Hardship Program Indicators and other relevant indicators contained in the *AER (Retail Law) Performance Reporting Procedures and Guidelines April 2018*<sup>16</sup>)
  - **Actions** necessary to achieve the purpose and implement the objectives (retailer statements made in accordance with Rule 75B(1)(c) and approved by the AER in accordance with section 45)

The Guidance Statements of the *principles* and *purpose* fall within the scope of the AER's power under Rule 75A(2)(b)(ii), the *objectives* to achieve the purpose are contained within the AER's standardised statements of the minimum requirements (Rule 75A(2)(b)(i)) and the *action* statements to achieve the purpose and implement the objectives are developed by the retailer (Rule 75B(1)(c)). SACOSS submits the principles, purpose, objectives and actions provide a framework for the development of all the standardised statements, and all statements should be linked to existing performance indicators to assist with monitoring and compliance of retailer's obligations under the policy.

Therefore, to phrase it in another way, SACOSS considers the AER's **General (or Guidance) Statements** should outline the:

- Principles underpinning the Policy (section 45(3))
- Purposes / outcomes of the Policy (section 43(1):
  - Identification of hardship customers
  - Ongoing supports for hardship customers
  - Disconnection of a hardship customer for not paying a bill is a measure of last resort (section 47)
- Additional Guidance Statements should also advise residential customers that:
  - customers have a right to be informed of the hardship policy if it 'appears' to the retailer that they have not paid their bill because they are experiencing payment difficulties due to hardship (section 46), and
  - retailers must, as a minimum, offer and apply the supports outlined in the policy to hardship customers. If retailers don't, they may face civil penalties (section 43(2)(c)).

We believe the AER's **standardised statements of the minimum requirements**, should be framed as objectives, or steps to achieve each of the purposes:

- Objectives (steps) to achieve the purpose of identification (standardised statements of statements to achieve identification of hardship customers in line with section 44(a)), including:
  - processes for self-identification, and
  - processes for retailer identification.
- Objectives (steps) to achieve the purpose of providing early and ongoing supports (standardised statements of processes to meet the minimum requirements in sections 44(b)-(i))

The **objectives should be measurable** and align with the AER's performance reporting indicators (including Hardship Program Indicators and other indicators as relevant). As previously identified by the AER and referred to by the AEMC, the AER's performance report findings highlighted a number of problems with the effectiveness of retailers hardship policies, including 'increasing levels of energy debt on entry into hardship

<sup>16</sup> AER (Retail Law) Performance Reporting Procedures and Guidelines, see link: [https://www.aer.gov.au/system/files/AER%20%28Retail%20Law%29%20Performance%20Reporting%20Procedures%20and%20Guidelines%20-%20April%202018\\_0.pdf](https://www.aer.gov.au/system/files/AER%20%28Retail%20Law%29%20Performance%20Reporting%20Procedures%20and%20Guidelines%20-%20April%202018_0.pdf)



programs which may indicate that retailers are not proactively identifying customers who may be facing payment difficulties'.<sup>17</sup> SACOSS agrees that debt on entry would be one of the performance indicators by which the success of identification processes, and the implementation of those processes, could be measured. SACOSS submits the hardship program indicators<sup>18</sup> relevant to measuring whether the processes (or steps) are working to achieve the outcome of **identification** are:

- S4.1. Number of customers on a retailer's hardship program
- S4.3. Average debt upon entry into the hardship program
- S4.4. Levels of debt of customers entering the hardship program
- S4.5. Average debt of hardship program customers
- S4.6. Age of debt for customers on the hardship program

Also relevant to an assessment of whether identification processes are working effectively, are the indicators relating to 'handling customers experiencing payment difficulties',<sup>19</sup> disconnection,<sup>20</sup> and concessions.<sup>21</sup> As far as is relevant, definitions of words used within the standardised statements should also align with those used in the AER's *Retail Performance Reporting Procedures and Guidelines* (for example, the definition of 'energy bill debt').<sup>22</sup>

The retailers would then **draft statements of actions to implement the objectives** (as contained in the AER's standardised statements); the retailer's statements must align with the principles and work to achieve the outcomes (sections 45(1) and 45(3)). SACOSS envisages the AER developing the processes, and the retailer identifying the actions required for implementation of those processes.<sup>23</sup>

#### **Processes for identification of hardship customers must be placed within the context of the customer protection framework under the NECF**

As we have previously submitted to the AEMC, the development of standardised statements dealing with the processes of retailer identification and self-identification<sup>24</sup> represents a significant opportunity to ensure retailers' processes are broad and inclusive, allowing for equitable access to hardship supports, in line with the principles under the Retail Law.<sup>25</sup> We believe the standardised statements around identification of hardship customers will be central to the success, or otherwise, of retailers' hardship programs. As the AEMC has observed, 'it is the processes of identification and early response that create effective mechanisms to support hardship customers'.<sup>26</sup>

The first minimum requirement provides that retailers must include 'processes to identify residential customers experiencing payment difficulties due to hardship, including identification by the retailer and self-identification by a residential customer'. SACOSS agrees with the AEMC that in order to identify hardship customers, retailers need to ensure the initial step in the retailer-identification process is sufficiently broad.<sup>27</sup> We believe the AER's standardised statements dealing with identification, **must be developed**

<sup>17</sup> AEMC, Rule Determination, November 2018, p. 2

<sup>18</sup> AER (Retail Law) Performance Reporting Procedures and Guidelines April 2018, pp. 33-34

<sup>19</sup> AER (Retail Law) Performance Reporting Procedures and Guidelines April 2018, pp. 18-23

<sup>20</sup> AER (Retail Law) Performance Reporting Procedures and Guidelines April 2018, pp. 27-29

<sup>21</sup> AER (Retail Law) Performance Reporting Procedures and Guidelines April 2018, p. 30

<sup>22</sup> See SACOSS' Draft Suggested Statements, where we include reference the 'energy bill debt' definition from the AER's Retail Law Performance Reporting Procedures and Guidelines.

<sup>23</sup> See Rule 75B(1)(c) of the Retail Rules – 'clear and specific statements of the actions the retailer will take to meet the minimum requirements...'

<sup>24</sup> In line with section 44(a) of the Retail Law

<sup>25</sup> Section 45(3)(d) of the Retail Law

<sup>26</sup> AEMC, Draft Rule Determination, p. 21

<sup>27</sup> AEMC, Draft Rule Determination, p.21

within the broader context of the protections for all residential customers established under the National Energy Customer Framework<sup>28</sup> (NECF). SACOSS submits the initial step in the retailer-identification process needs to encompass the proactive identification of all customers experiencing payment difficulties.

The COAG Energy Council has stated that the NECF was developed 'in recognition that energy is an essential service for all Australians and provides strong national protections'.<sup>29</sup> The consumer protections provided for under the NECF apply to *all residential customers*, with the framework identifying broad supports for customers experiencing payment difficulties, and additional (minimum) supports guaranteed for customers experiencing payment difficulties due to hardship (or hardship customers). In this way, the NECF establishes a distinction between 'customers experiencing payment difficulties' and 'customers experiencing payment difficulties due to hardship' (or hardship customers). Hardship customers form *part* of the broader group of customers experiencing payment difficulties, but are provided with additional supports if identified by the retailer, in accordance with its hardship policy, as being in hardship.

SACOSS submits this broader customer protection framework *informs* the process of identification and access to hardship supports, and therefore placing retailers' hardship obligations in the context of the broader framework is essential in formulating the standardised statements dealing with identification.

We believe that it is simply not possible for the retailer to have a process for identifying hardship customers, without first having a process for identifying *all* customers experiencing payment difficulties. To be clear, retailers are obliged, at law, to provide all customers who are having trouble paying their bills with supports. This obligation includes identifying customers experiencing payment difficulties, and offering those customers a payment plan<sup>30</sup> (as well as other supports). Therefore, there is an *existing* obligation on retailers to identify all customers who are struggling to pay their bills. SACOSS is not suggesting the retailer be subject to additional obligations outside of the law or rules, we are suggesting that the processes for identifying hardship customers must necessarily feed into, or link with, the processes for identifying customers experiencing payment difficulty. To develop a process for identification of hardship customers in isolation, would operate to defeat the intention of the legislature by fragmenting the customer protection framework, resulting in limited access to supports and reduced protection from disconnection for all residential customers.

Therefore, if retailers are complying with their obligations at law, then they should have processes for identifying the broad group of customers experiencing payment difficulties. There is no definition for 'customers experiencing payment difficulties' under the NECF, and we submit that it should be interpreted in accordance with its natural and ordinary meaning. SACOSS submits a simple analysis of energy bill debt or payment patterns would trigger the obligation under the law for the retailer to contact a residential customer and offer support. **This then, comprises the first step in the process of retailer-identification of hardship customers.**

SACOSS notes the AEMC has stated that (our emphasis) 'it is a matter for the AER to ensure retailers are meeting their obligations to support all customers facing payment difficulties. This may be addressed by the Hardship Guidelines as part of a retailer's role in the early identification of hardship customers.'<sup>31</sup> We believe the AEMC's statement supports our submission that achieving a retailer's clear obligation to identify

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<sup>28</sup> The NECF is underpinned by the *National Energy Retail Law (South Australia) Act 2011*, the National Energy Retail Regulations 2012, The National Energy Retail Rules, the National Electricity Rules and the National Gas Rules

<sup>29</sup> COAG Energy Council, 1 July 2012 <http://www.coagenergycouncil.gov.au/publications/national-energy-customer-framework>

<sup>30</sup> Section 50(1) of the Retail Law (see also section 51 and Rules 72, 33(3), 34(2))

<sup>31</sup> AEMC, Rule Determination: National Energy Retail Amendment (Strengthening Protections for Customers in Hardship) Rule 2018 No. 6, 15 November 2018, p. 40



all customers experiencing payment difficulties, is the first step in the process of identifying hardship customers.

To illustrate our submission, we have attached a simple flow chart dealing with the process of identification, encompassing both self-identification and retailer identification (Attachment A). The process of self-identification is simply triggered by the customer telling the retailer they are having trouble paying their bills. The retailer is then obliged to offer appropriate supports, either hardship supports if identified as a hardship customer, or broad supports guaranteed for customers experiencing payment difficulties under the NECF.

The approach outlined in our Flow Chart would allow for consistency in the processes of identification of hardship customers across retailers, which was one of the aims of the Rule Change proposal and is consistent with the AEMC's statement that 'the more preferable rule will result in improved identification of customers facing payment difficulty due to hardship'.<sup>32</sup>

### **Consultation with the Essential Services Commission of Victoria**

SACOSS strongly supports the AER consulting with the ESC Vic on the development of the standard statements to not only ensure consistency (as far as possible) across the NEM, but also to share knowledge and insights into how best to ensure customers are engaged and meaningful supports are provided. SACOSS acknowledges the ESC Vic was not constrained by the NECF in the development of its Customer Payment Difficulty Framework (PDF), and therefore had the scope to comprehensively review its framework of supports for customers experiencing payment difficulty. However, we believe that through extensive consultation,<sup>33</sup> revision and development of the PDF over several years, the ESC Vic has acquired knowledge and experience which SACOSS submits is transferable to the AER's development of the standardised statements.

For example, in relation to identifying and supporting customers experiencing payment difficulty, the ESC Vic found that 'payment difficulty is too varied and too complex to be fully dealt with by any single set of rules', and therefore the amended code does not apply a detailed set of rules for how identification is to be achieved or supports delivered. Rather, the PDF 'deliberately places responsibility on retailers to judge the most effective way of delivering customers entitlements to assistance in a way that best meets the framework's objectives'.<sup>34</sup> The ESC Vic consulted retailers and issued a guidance note to inform retailers how it expects them to exercise their judgment when supporting customers experiencing payment difficulty.

The issues facing Victorians are the same as those facing customers in the rest of the NEM, and we believe the AER would benefit from drawing on the experience of the Victorian Regulator, not only in terms of the content of the guideline, but also in terms of the dialogue and response from retailers in the development of the PDF.

### **AER's Draft Statements**

SACOSS will provide specific comment on the AER's Draft General Statements and the standard statements dealing with the first two minimum requirements, below. SACOSS has also prepared a table with some suggested alternative statements for the purposes of discussion (see Attachment B).

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<sup>32</sup> AEMC, Rule Determination, November 2018, p. 9

<sup>33</sup> Note SACOSS' November 2016 'Review of the AER's and ESC's Frameworks for Customers Facing Payment Difficulties' which undertook a detailed analysis of the ESC Vic's original proposal to address the inadequacies of supports for customers experiencing payment difficulties:

[https://www.sacoss.org.au/sites/default/files/public/documents/Reports/161101\\_EnergyPaymentDifficultiesFrameworksReport\\_Final.pdf](https://www.sacoss.org.au/sites/default/files/public/documents/Reports/161101_EnergyPaymentDifficultiesFrameworksReport_Final.pdf)

<sup>34</sup> See ESC Vic's Payment Difficulty Framework, Final Decision, 10 October 2017, page xiv

## SACOSS' assessment of the AER's Draft General Statement

The AER has provided the following Draft General Statement:

*This policy applies to all residential customers experiencing difficulties paying their energy bills due to hardship.*

*This policy:*

- 1. Explains how we can help you manage your energy costs*
- 2. Helps us take your circumstances and needs into account when determining how we can assist you, and*
- 3. Explains your rights and responsibilities as a customer in our hardship program.*

*If you have a financial counsellor you can ask them to contact us on your behalf.*

Under New Rule 75A(2)(b)(ii), the AER must develop, maintain and publish a hardship policy guideline that specifies standardised statements retailers must include in their customer hardship policies to 'provide guidance to customers on their rights, and retailer obligations, with respect to part 2, Division 6 of the Law' (the Guidance Statements).

SACOSS does not believe the current general statements drafted by the AER meet this requirement under the Rules. At no point are retailers' **obligations** referred to in the draft general statement. Customers have rights, and retailers have significant obligations under the law. This needs to be acknowledged and stated in the policy.

As SACOSS has outlined earlier, we submit Guidance Statements should be developed which inform customers of the fundamental principles underpinning their rights and retailers' obligations, and also advise customers of the purpose of the hardship policy, as outlined below:

Principles underpinning the Hardship Policy:

- The supply of energy is an essential service for residential customers (section 45(3)(a)).
- Retailers must assist hardship customers by means of programs and strategies to avoid disconnection, solely due to an inability to pay bills (section 45(3)(b)).
- Disconnection of hardship customers due to an inability to pay bills should be a last resort option (section 45(3)(c)).
- Residential customers should have equitable access to hardship policies (section 45(3)(d)).
- Hardship policies should be transparent and applied consistently (section 45(3)(d)).

Purpose of the Hardship Policy to:

- identify residential customers experiencing payment difficulties due to hardship,
- assist those customers to better manage their energy bills on an ongoing basis, and
- ensure disconnection of hardship customers for not paying their bill is a measure of last resort (section 47).

SACOSS notes the AER's General Statements regarding the purpose of the policy do not mention identification of hardship customers, or protection of hardship customers from disconnection.

SACOSS has further comment in relation to each of the AER's three identified purposes, below:



***'Explains how we can help you manage your energy costs'***

SACOSS submits the use of the word 'can' does not convey the strength of the obligations on retailers to provide support to hardship customers under the law. SACOSS suggests the statement could read 'explains what we **must** do to help you manage your energy bills' (on an ongoing basis). Noting that retailers must 'maintain and implement' the hardship policy, or face civil penalties (section 43(2)(c)).

***'Helps us take your circumstances and needs into account when determining how we can assist you'***

SACOSS submits the policy 'ensures' the retailer takes the customer's circumstances and needs into account, rather than 'helps'.

***'Explains your rights and responsibilities as a customer in our hardship program'***

SACOSS submits the AER's reference to customers' 'rights and responsibilities' does not fall within the scope of Rule 75A(2)(b)(ii), which requires the AER to provide guidance on customers **rights**, and retailer's **obligations** under Division 6 of the Law. Notably, Division 6 does not contain any reference to customers having *responsibilities*; to the contrary, Division 6 outlines the AER's powers and responsibilities, and retailers' obligations to hardship customers. The purpose of the consumer protection framework is to ensure retailers comply with their clear obligations to support customers who are having trouble paying their bills, and to ensure those customers can access their legal rights to support.

In terms of providing statements which explain customers' responsibilities, SACOSS acknowledges hardship customers need to be aware of the importance of meeting their payments under a payment plan, in order to ensure they are protected from disconnection. However, a statement covering compliance with payment arrangements would more properly be dealt with in a standardised statement covering payment plans. Importantly, a related statement should also be included informing customers of their *right* to have a payment plan established **having regard to their capacity to pay**, and that if retailers fail to do this, they may face civil penalties (Rule 72).

***'If you have a financial counsellor you can ask them to contact us on your behalf'***

This statement does not reflect the purpose of the policy. SACOSS is concerned this statement may reinforce current (we would suggest unlawful) retailer 'gatekeeping' behaviour. SACOSS has been advised by our membership organisations that many customers experiencing extreme disadvantage are refused entry into retailers' hardship programs unless represented by a financial counsellor. It is worth noting that the majority of customers experiencing payment difficulty do not have access to financial counsellors. SACOSS believes more emphasis should be placed on ensuring retailers **proactively contact customers experiencing payment difficulties** to determine what level of supports those customers require, in line with their obligations under the law.

Further, minimum requirement 44(d) places an express obligation on retailers to include processes in their hardship policies which '**identify appropriate government concession programs and appropriate financial counselling services and to notify hardship customers of those programs and services**'. It is up to the retailer then, to identify hardship customers and undertake to **link those customers with financial counselling services**. It is not the responsibility of customers, or financial counsellors, to ensure access to supports. The onus is clearly on the retailer.

Once again, SACOSS does not consider this general statement provides guidance of rights or retailer obligations under Division 6.

**SACOSS' assessment of the AER's Standard Statement No.1 – processes to identify residential customers experiencing payment difficulties due to hardship, including identification by the retailer and self-identification by a residential customer**

The AER has developed the following standardised statement to deal with the process of identification of hardship customers.

*We will tell you about our hardship program and how it might help you if:*

- *you tell us you are having difficulties paying your bill*
- *you are referred to our hardship program by a financial counsellor or other community worker*
- *we think you may be experiencing financial hardship*

SACOSS strongly submits these statements dealing with processes for self-identification and, in particular, retailer identification are inadequate. We believe the focus of the statements dealing with identification need to be on the retailer's obligation to proactively identify hardship customers.

Identifying residential customers experiencing payment difficulties due to hardship is a process which will determine the entitlements a customer can expect to receive. If the retailer identifies the customer as a hardship customer, the customer will receive hardship supports (as outlined in the policy). If the customer is not identified as a hardship customer by the retailer, then they are entitled to receive supports for customers experiencing payment difficulties (including payments plans and protections associated with complying with a payment plan). These are different levels of supports, but either way it is worth noting that **all residential customers** are entitled to supports if they are having trouble paying their bills.

The process of identification of hardship customers, particularly retailer identification, is the key to ensuring early access to tailored supports, allowing for customers to pay for their energy use, repay arrears, lower energy costs and avoid disconnection. None of the issues identified by the AER as part of its hardship review, performance reporting or enforcement action will be addressed if retailer identification processes fail to ensure equitable access to hardship supports.

As outlined earlier in this submission, SACOSS strongly supports the AER developing standardised statements containing clear retailer-identification<sup>35</sup> processes which, as an initial step, identify the broader group of customers experiencing payment difficulties (through a simple analysis of energy bill debt data), and then, using trained staff, proactively contact customers to discuss *individual circumstances*<sup>36</sup> and offer equitable access to hardship supports, in line with their policy. We have attached a simple flow chart (Attachment A) illustrating our position. SACOSS refers the AER to the following suggested identification process for discussion:

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<sup>35</sup> Noting that hardship policies will also require processes for self-identification by a residential customer in line with section 44(a) of the Retail Law

<sup>36</sup> SACOSS refers to PIAC's recent Disconnection Report, *Close to the Edge* (November 2018), where factors such as: Medical problems and experiences of disability. • Having experienced periods of homelessness (or having someone in the household who has been in that situation). • Relationship breakdowns and sole parenthood. • Complex household situations, including having both family groups and unrelated people living in the same household. • Being a victim of crime, including domestic violence. • Being unable to fix problems leading to higher energy bills, all contribute to being at risk of disconnection. These factors may be relevant for retailers to consider in understanding a customer's individual circumstances (but are not exhaustive), these factors should not be listed in the standardised statements, but should be identified in training of staff.



**Process for Self-identification (section 44(a))**

We will immediately refer you to our *hardship team* to discuss your *individual circumstances*<sup>37</sup> and determine the best supports for you, if:

- you tell us you are having difficulties paying your bill, or
- you are referred to us by a financial counsellor or other community worker.

**Process for Retailer identification (section 44(a))**

If you:

- have an *energy bill debt*,<sup>38</sup> or
- we otherwise believe you:
  - are experiencing repeated difficulties in paying your bill, or
  - you require payment assistance,<sup>39</sup>

our *hardship team*<sup>40</sup> (or specially trained staff) will make *personal contact*<sup>41</sup> with you within [number of days] to have a *conversation*<sup>42</sup> about your *individual circumstances* and determine the best supports for you.<sup>43</sup>

We have provided more *specific comment* in relation to the wording of the AER's draft standard statements, below.

**'We will tell you about our hardship program'**

The retailer should commit to immediately referring the customer to trained staff in the hardship team to have a meaningful conversation about the customer's individual circumstances, not simply '*tell the customer*' about its hardship program. Telling the customer about the hardship program does not comprise identification. The AER has previously indicated that clear action statements are required to better support compliance and enforcement action. SACOSS does not consider this statement reflects an enforceable commitment. SACOSS refers the AER to our draft suggested statements, including our comments around respectful conversations (adopting the principles from the SPPF), noting that all retailers are under an obligation to establish payment plans for all customers experiencing payment difficulties (not just hardship customers) and should therefore be having these conversations with all customers in any event. It is worth

<sup>37</sup> Staff should be trained to discuss 'individual circumstances' and guidance may be provided to the retailer in line with the ESC Vic's approach.

<sup>38</sup> Where the customer does have an energy bill debt, the retailer will have sent reminder notices which should include information on supports available including hardship supports. 'Energy bill debt' should be defined in line with the definition in the AER's *Retail Law Performance Reporting Procedures and Guidelines*.

<sup>39</sup> This statement borrows from the language used in Section 50(1)(b) of the NERL. The importance of maintaining consistency in identification of customers experiencing payment difficulties is paramount in ensuring all customers have access to supports, and comprises the first essential step in identifying hardship customers.

<sup>40</sup> Define 'hardship team' to mean staff who are trained in SPPF 'Good Practice Principles'

<sup>41</sup> Define 'personal contact' – e.g. number of phone calls, personal visits, expected conduct of retailer

<sup>42</sup> Define 'conversation' to align with guidance around 'capacity to pay' conversations in the SPPF, noting that the SPPF applies to all customers experiencing payment difficulties, not just hardship customer, if the retailer has signed on.

<sup>43</sup> Either more tailored hardship supports, or supports for customers experiencing payment difficulty (some of these supports overlap).



noting the obligation to 'offer and apply' payment plans to all customers having trouble paying their bill is a civil penalty provision.

***'We think you may be experiencing financial hardship'***

SACOS submits the retailer should not, at this stage, be making a determination as to whether it 'thinks' a customer is experiencing 'financial hardship'. As outlined earlier in our submission, SACOSS submits it not possible for a retailer to identify a hardship customer without a staff member having a conversation with that customer. A customer's *individual circumstances* must be taken into account in a determination of hardship. It is possible for a retailer to identify a customer experiencing payment difficulties, by simply analysing credit management information. If a customer has an energy bill debt<sup>44</sup>, or if the customer consistently pays their bill after the due date, then it is reasonable to assume that customer is having difficulty paying their bill.

Customers should be contacted by the hardship team for identification as a hardship customer (or otherwise) as soon as a retailer identifies that a customer is experiencing payment difficulties (as evidenced by debt or payment patterns). SACOSS submits the AER's statement of 'we think' does not adequately deal with retailer identification of hardship customers. This conclusion is supported by the AER's Issues Paper which states:

*∴ we have observed that some hardship policies are worded subjectively and may minimise a customer's protections under the Retail Law, further contributing to customer uncertainty. For example, depending on the wording of a hardship policy, a customer may only be offered hardship assistance if a call centre agent 'believes' or 'thinks' a customer is experiencing payment difficulties due to hardship'.<sup>45</sup>*

SACOSS is concerned the AER has developed a standard statement which mirrors an example of a statement it has previously identified as deficient, and which 'may minimise a customer's protections under the Retail Law.'

***'You are referred to our hardship program by a financial counsellor or other community worker'***

SACOSS has provided comment earlier in this submission on specifically referencing financial counsellors within standardised statements, which we believe may embed discriminatory retailer practices. However, we understand that some customers may have access to financial counsellors, or community workers, and therefore cautiously support this statement as a step in the process of self-identification (not retailer-identification).

***SACOSS' assessment of the AER's Standard Statement No.2 – Processes for the early response by the retailer in the case of residential customers identified as experiencing payment difficulties due to hardship (section 44(b))***

The AER has provided the following draft standardised statement dealing with processes for the early response by the retailer to hardship customers.

*We will recommend that you speak to a staff member about entry into our hardship program if:*

- *your payment patterns show late payments and requests for payment extensions*
- *we have issued disconnection warning notices on your account*

<sup>44</sup> 'energy bill debt' (being an amount owed to a retailer that has been outstanding for 90 days or more) defined in AER (Retail Law) Performance Reporting Procedures and Guidelines, April 2018, p.18

<sup>45</sup> AER, Issues Paper, November 2018, p.10

- you have applied for or used relief grant or other emergency assistance to pay your bills,
- you mention personal circumstances (e.g. death, illness, family violence, unemployment) that suggest
- hardship support may be needed

Our staff member will talk to you about your individual circumstances and eligibility for the hardship program.

*[Retailer can insert its timeframes for assessing a customer's application for hardship assistance]*

If you are accepted onto our hardship program, we will tell you

- whether you are on the most suitable plan for your circumstances or if there is a plan that may better suit your needs
- concessions and rebates you may be able to receive
- how you can reduce your current and future energy use
- a suitable payment amount that considers your capacity to pay
- whether you can use Centrepay as a payment option.

We will send you information confirming the details of your agreed payment arrangement and the contact details for our hardship team. We will send you a copy of our hardship policy at no cost if you ask for it.

SACOSS submits the AER has **mistakenly conflated the first minimum requirement and the second minimum requirement**. We submit the second minimum requirement provides for processes for early response where the customer **has already been identified as a hardship customer** in accordance with the first minimum requirement. Processes to identify hardship customers should be separate from processes to respond quickly to the needs of hardship customers with appropriate supports.

SACOSS further submits that listing criteria against which the retailer will refer a customer to its hardship team, may operate to limit access to hardship supports. It is commonly accepted that the factors which may lead to payment difficulty and hardship are too varied and complex to be listed. The onus is on the retailer to provide appropriate supports to residential customers, taking into consideration their individual circumstances.

SACOSS considers the examples provided by the AER may be better referenced in training retailers around engaging with customers, and having respectful conversations about their *individual circumstances* and potential indicators of hardship (which should not be prescriptive). SACOSS believes it is important to, once again, point out retailer's obligations under the law to offer payment plans to customers it believes are having trouble paying their bills.<sup>46</sup> In circumstances where the retailer is a signatory to the Sustainable Payment Plans Framework<sup>47</sup>, the retailer should be engaging and supporting the customer at the very outset, enhancing the customer's sense of control and agency early in the process.<sup>48</sup> This obligation applies to all customers experiencing payment difficulties, including customers the retailer then identifies as experiencing hardship.

We believe standardised statements dealing with this minimum requirement (section 44(b)) should provide processes outlining retailers' commitments to ensure payment plans and other supports are in place within a **specified number of days** of being identified as being in hardship.

For example:

<sup>46</sup> Section 50(1) of the Retail Law

<sup>47</sup> <https://www.aer.gov.au/system/files/AER%20Sustainable%20payment%20plans%20framework%20-%20Version%201%20-%20July%202016.pdf>

<sup>48</sup> SACOSS, *Review of the AER's and ESC Vic's Frameworks for Customers Facing Payment Difficulties*, November 2016, p6



Once you are identified as a hardship customer, we will:

- immediately discuss the supports available to you, as outlined in this policy
- ensure appropriate supports are in place, or are in the process of being put in place, within [number] of business days.

***'We will recommend that you speak to a staff member about entry into our hardship program'***

SACOSS submits the retailer should not be 'recommending' the customer to 'speak to a staff member' about entry into the retailer's hardship program, it is up to the retailer to contact the customer and provide the customer with appropriate supports. The onus needs to be placed on the retailer to make personal contact with the customer to identify, or otherwise, that customer as a hardship customer. A 'recommendation' does not satisfy the retailer's clear, positive obligation to identify and support.

***'we have issued disconnection warning notices on your account'***

SACOSS submits that if the retailer is complying with its obligations under the NECF, contact should have been made with the customer to discuss their individual circumstances, and customers should have been proactively offered supports by the retailer, prior to the issuing of disconnection notices. We believe this statement reinforces the unhelpful (and we would submit, unlawful) practice of retailers using disconnection notices as a method of engaging with customers. We submit this statement does not reflect the minimum requirement which provides for early response by the retailer, and operates to defeat the purpose of the customer protection framework to ensure early identification and ongoing support to avoid disconnection.

***'Retailer can insert its timeframes for assessing a customer's application for hardship assistance'***

SACOSS does not support the statement referring to 'timeframe for assessing a customer's application for hardship assistance'. We submit the onus is being mistakenly placed on the customer to apply for assistance to which the customer is entitled under the law and rules. The customer is not making an application for hardship assistance – the retailer is identifying the hardship customer in order to provide appropriate assistance. The obligation is on the retailer to ensure it has adequate identification processes. Referring to an 'application' for hardship assistance is not in line with the meaning and intent of the law. The onus is being mistakenly placed on the customer, whereas the onus under the law is clearly on the retailer.

SACOSS considers there should not be an 'application process' at all, and the minimum requirements do not envisage one. We, once again, express the importance of making access to hardship supports inclusive and equitable. Specially trained staff should be able to easily identify the level of assistance a customer is entitled to on the basis of a meaningful conversation about the customer's individual circumstances.

***'If you are accepted onto our hardship program, we will tell you'***

SACOSS submits the standardised statements dealing with early response should include clear time frames within which the retailer will ensure supports are in place. The customer can then rely on those time frames, and the AER can more easily ensure compliance. SACOSS refers the AER to clause 80 of the ESC Vic's PDF for examples of statements including time frames upon which Victorian energy customers can rely (our emphasis):

**80 Information about assistance available**

*(1) A residential customer who has not paid a bill by its pay-by date and who contacts the retailer is entitled to be given by the retailer information about the assistance to which the customer is entitled under this Division and how to access it.*

*(2) A residential customer who has not paid a bill by its pay-by date and who has arrears of more than \$55 (inclusive of GST) is entitled to **be contacted by the retailer, within 21 business days** after that pay-by-date, and given information about the assistance to which the customer is entitled under this Division and how to access it.*

*(3) The retailer must allow the customer no less than **6 business days** to consider the information given under subclause (1) or (2), request further information, and put forward a payment proposal under clause 81.*

**Observations about the remainder of the standardised statements**

SACOSS has made the following observations about the AER's remaining draft standardised statements, and we welcome the opportunity to discuss these further.

SACOSS believes statements that place obligations on customers which are not contained in the law or rules should not be included in the AER's standardised statements. For example, the AER has provided the following statements:

- 'you also need to let us know if you have new contact details, if you do not do that, we may consider removing you from the hardship program' (section 44(c))
- 'if you find out you are eligible for these programs, please let us know immediately' (section 44(d))

These statements do not reflect hardship customers' rights or retailers' obligations under Division 6 and we submit do not fall within the scope of the AER's standardised statements under the New Rule.<sup>49</sup> The retailer may consider including these statements within its own processes (subject to AER approval), but they should not be included in the standardised statements.

SACOSS submits that in order to address the issues identified by the AER in its hardship inquiry and performance report, the standardised statements developed by the AER need to clearly reflect the law and rules, and should contain specific commitments upon which customers can rely. Particular phrases, for example a customer's 'capacity to pay'<sup>50</sup> should be more fully explained (perhaps in a definitions section) so customers have consistent expectations across retailers. It should also be clearly explained to customers that retailers may face civil penalties if they fail to comply with their obligations.

In addition, SACOSS submits that section 44(i), which provides that a hardship policy must contain 'any other matter required by the Rules', necessarily incorporates all retailers' obligations to hardship customers under the Rules, into the minimum requirements. Therefore, we believe 'standardised statements' of all retailers' obligations to hardship customers under the Rules should be developed by the AER (including the obligations under Part 2<sup>51</sup>, Part 3 and Part 6<sup>52</sup> of the Retail Rules). SACOSS has outlined the relevant Rules and suggested standard statements in our attached table of Draft Statements (Attachment B).

<sup>49</sup> It may fit within the scope of the retailer's action statements, but the AER would then need to ensure it achieved the purpose and aligned with the principles under the Retail Law.

<sup>50</sup> Rule 72 of the Retail Rules

<sup>51</sup> Specifically Rule 33 and Rule 40, both of which are civil penalty provisions.



## Summary of Submissions

In summary, SACOSS is seeking the AER consider the following submissions in relation to the development of the standardised statements:

- The AER undertake further in-depth consultation on the standardised statements, including face to face workshops with retailers, consumer organisations, representatives from the Essential Services Commission of Victoria (ESC Vic), and the AER to share knowledge and discuss perspectives.
- The AER's standardised statements should outline the processes the retailer is bound to implement under the law and rules (including actionable commitments), and the retailer's 'statements of actions' should outline how it will implement those processes
- SACOSS considers a hardship policy framework should be adopted to guide the development of the standardised statements, which establishes the principles, purposes, measurable objectives and actions contained in the policy, in line with the law and rules.
- The AER's standardised statements dealing with identification, must be developed within the broader context of the protections for all residential customers established under the National Energy Customer Framework<sup>53</sup> (NECF). The initial step in the retailer-identification process needs to encompass the proactive identification of all customers experiencing payment difficulties, in order to be effective.
- The Guidance Statements should be developed to inform customers of the fundamental principles underpinning their rights and retailers' obligations, and also to advise customers of the purpose of the hardship policy
- The process of identification of hardship customers, particularly retailer identification, is the key to ensuring early access to tailored supports, allowing for customers to pay for their energy use, repay arrears, lower energy costs and avoid disconnection.
- Processes to identify hardship customers should be separate from processes requiring the retailer to respond quickly to the needs of hardship customers with appropriate supports.
- Statements that place obligations on customers, which are not contained in the law or rules, should not be included in the AER's standardised statements.
- In order to address the issues identified by the AER in its hardship inquiry and performance report, the standardised statements developed by the AER need to clearly reflect the law and rules, and should contain specific commitments upon which customers can rely.
- 'Standardised statements' of all retailers' obligations to hardship customers under the Rules should be developed by the AER (including the obligations under Part 2<sup>54</sup>, Part 3 and Part 6<sup>55</sup> of the Retail Rules) given those obligations are incorporated into the minimum requirements by virtue of section 44(i).

We thank you in advance for consideration of our comments. If you have any questions relating to the submission, please contact Jo De Silva via [jo@sacoss.org.au](mailto:jo@sacoss.org.au) or 08 8305 4211.

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<sup>52</sup> Specifically Rule 111(2) which deals with de-energisation of premises for hardship customers.

<sup>53</sup> The NECF is underpinned by the *National Energy Retail Law (South Australia) Act 2011*, the National Energy Retail Regulations 2012, The National Energy Retail Rules, the National Electricity Rules and the National Gas Rules

<sup>54</sup> Specifically Rule 33 and Rule 40, both of which are civil penalty provisions.

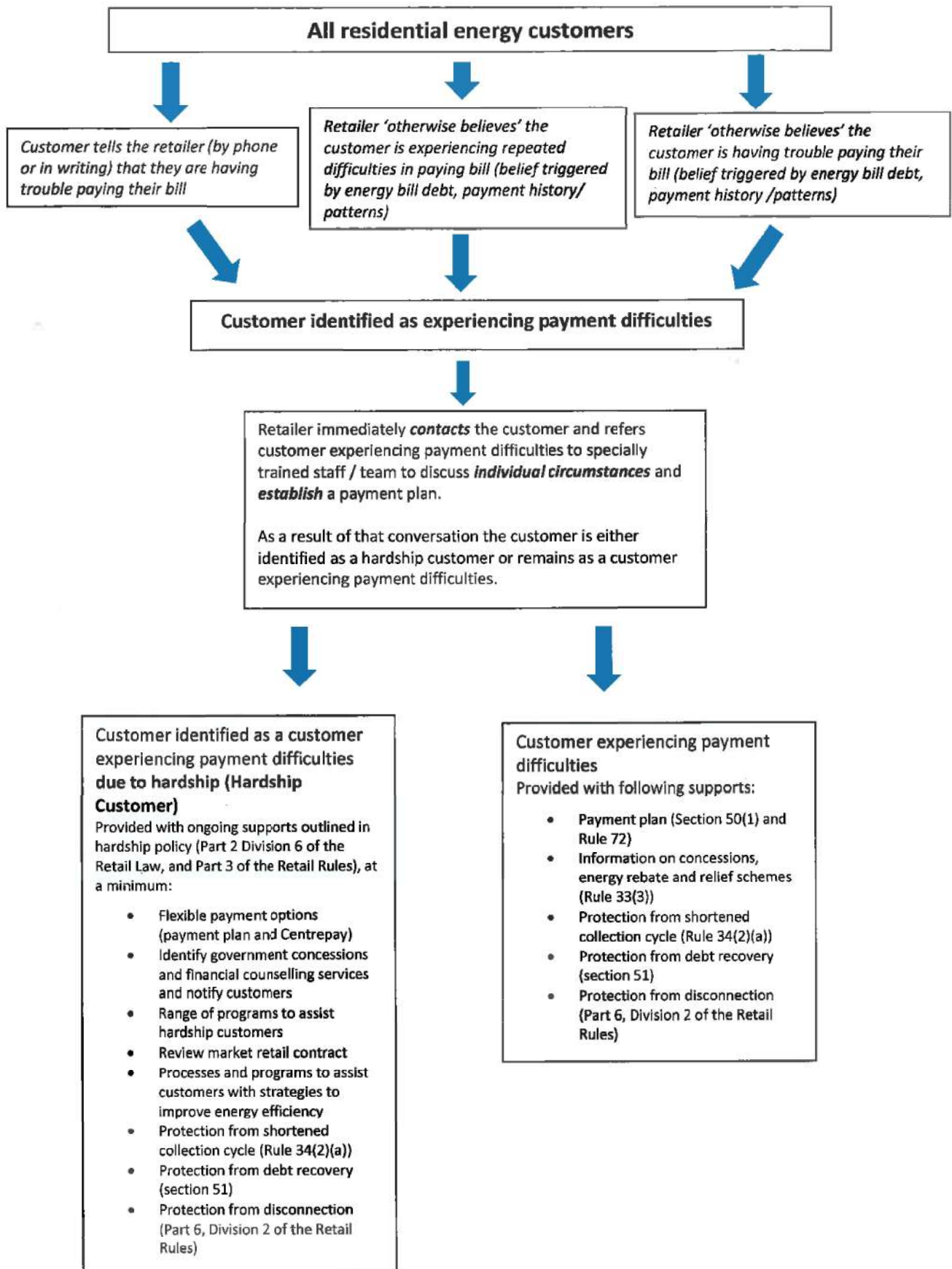
<sup>55</sup> Specifically Rule 111(2) which deals with de-energisation of premises for hardship customers.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'RWomersley', written in a cursive style.

Ross Womersley  
Chief Executive Officer





## 'Attachment B'

### SACOSS' Draft Standardised Statements

Minimum Requirement / Guidance on customer rights and retailer obligations in Part 2, Division 6	Suggested Statement	Comments
Section 43(1)	<p>The purpose of this policy is to ensure we (the retailer) identify hardship customers and provide those customers with ongoing support to manage their energy bills.</p> <p>Or</p> <p>The purpose of this policy is to ensure hardship customers are identified and provided with our (the retailer's) ongoing support to help manage their energy bills.</p>	Guidance statement
Section 46	<p>If it appears to us (the retailer) that you have not paid your bill because you are experiencing payment difficulties due to hardship, we <b>must</b> inform you of our hardship policy.</p>	Guidance statement
Rule 71 <i>This is a civil penalty provision</i>	<p>If you are a hardship customer and you would like a copy of this policy, please let us know and we will send it to you free of charge.</p>	
Section 43(1) and section 43(2)(c)	<p>If you identify yourself, or we identify you, as experiencing difficulty paying your bills due to</p>	Guidance statement

Minimum Requirement / Guidance on customer rights and retailer obligations in Part 2, Division 6	Suggested Statement	Comments
	<p>hardship, we must provide you with the supports outlined in this policy.</p> <p>We will take into consideration your individual circumstances on a case by case basis in order to identify you as a hardship customer.</p>	<p>Section 43(2)(C) – retailer must ‘maintain and implement’ their hardship policy – <b>civil penalty provision</b></p>
<p><b>Section 45(3) and section 47</b></p>	<p>Principles underpinning this Policy:</p> <ul style="list-style-type: none"> <li>the supply of energy is an essential service</li> <li>we (retailers) must assist customers through programs and strategies to avoid disconnection solely due to an inability to pay energy bills</li> <li>disconnection of a hardship customer solely due to an inability to pay energy bills should be a <b>last resort option</b></li> <li><b>all residential customers</b> should have fair and equal access to hardship policies</li> <li>this policy must be transparent and applied consistently.</li> </ul>	<p>Guidance statement</p> <p>Section 47 requires retailers to give effect to the general principle that disconnection of hardship customers should be a last resort option</p>
<p><b>Section 43(1) and Rule 116(1)(d)</b></p> <p><b>Also Rule 107(2) (civil penalty provision) - provides that a breach of Rule 116(1)(d) attracts a civil penalty</b></p>	<p>If you are a hardship customer, we are obliged to help you manage your energy bills on an ongoing basis.</p> <p>This policy explains your rights to support and</p>	<p>Guidance statement</p> <p>Rule 116(1)(d) – prohibits disconnection where the customer is a hardship customer or residential customer and is adhering to a</p>





Minimum Requirement / Guidance on customer rights and retailer obligations in Part 2, Division 6	Suggested Statement	Comments
		<p><b>'energy bill debt'</b> (being an amount owed to a retailer that has been outstanding for 90 days or more) defined in AER (Retail Law) Performance Reporting Procedures and Guidelines, April 2018, p.18</p> <p>As noted by ESC Vic: <i>The new payment difficulty framework deliberately places responsibility on retailers to judge the most effective way of delivering customers entitlements to assistance in a way that best meets the framework's objectives. The amended code does not apply a detailed set of rules for how this is to be achieved. Payment difficulty is too varied and too complex to be fully dealt with by any single set of rules.</i><sup>1</sup></p> <p>ESC Vic decided to issue a guidance note to inform retailers how it expects them to exercise their judgement when supporting customers experiencing payment difficulty. ESC Vic consulted with retailers on the content of the guidance note.</p>

<sup>1</sup> See ESC Vic's Payment Difficulty Framework, Final Decision, 10 October 2017, page xiv

Minimum Requirement / Guidance on customer rights and retailer obligations in Part 2, Division 6	Suggested Statement	Comments
		<p>Identifying residential customers experiencing payment difficulties due to hardship is a decision which will determine the entitlements a customer can expect to receive. If the retailer identifies the customer as a hardship customer, the customer will receive hardship supports (as outlined in the policy). If the customer is not identified as a hardship customer by the retailer, then they are entitled to receive supports for customers experiencing payment difficulties (including payments plans and protections associated with complying with a payment plan). These are different levels of supports, but either way <b>all residential customers</b> are entitled to supports if they are having trouble paying their bills.</p>
<b>Self-identification (section 44(a))</b>	<p>you tell us you are having difficulties paying your bill, or</p> <p>you are referred to our hardship program by a financial counsellor or other community worker.</p>	
<b>Retailer Identification (section 44(a))</b>	If you:	(define energy bill debt in accordance with <i>AER (Retail) Performance Reporting</i> )



Minimum Requirement / Guidance on customer rights and retailer obligations in Part 2, Division 6	Suggested Statement	Comments
<p><b>Section 45(3)(d)</b></p>	<p>have an <i>energy bill debt</i>,<sup>2</sup> or we otherwise believe you are experiencing repeated difficulties in paying your bill, or you require payment assistance,<sup>3</sup> our <i>hardship team</i> (or specially trained staff) will make <i>personal contact</i> with you within [number of days] to discuss your <i>individual circumstances</i> and determine the best supports for you.<sup>4</sup></p> <p>We understand that financial difficulty can happen to anyone and we will apply the following principles in our engagement with you to create a foundation for a constructive ongoing relationship:</p> <ul style="list-style-type: none"> <li>• empathy and respect,</li> <li>• flexibility, and</li> <li>• consistency.</li> </ul>	<p><i>Procedures and Guidelines</i> – this definition will then align with the performance indicators relating to debt and disconnection)</p> <p>This aligns with the principle of equitable access to hardship policies in section 45(3)(d) (define <i>personal contact</i> – <i>number of calls etc. note ESC Vic’s hardship GSL for water businesses which requires multiple phone calls and home visits prior to restriction</i><sup>5</sup>)</p> <p>Set <i>time frame</i> – time frames should take into account time frames for reminder notices (importantly <b>PRIOR</b>) to disconnection notice.</p> <p>Our ‘hardship team’ (maybe find a better description of this team which will depend upon the retailer’s organisational structure)</p>

<sup>2</sup> Where the customer does have an energy bill debt, the retailer will have sent reminder notices which should include information on supports available including hardship supports.

<sup>3</sup> This statement borrows from the language used in Section 50(1)(b) of the NERL. The importance of maintaining consistency in identification of customers experiencing payment difficulties is paramount in ensuring customers have access to supports.

<sup>4</sup> Either hardship supports, or supports for customers experiencing payment difficulty (many of these supports overlap).

<sup>5</sup> <https://www.esc.vic.gov.au/sites/default/files/documents/454fcbdd-b465-48bd-9a17-2b3d3b8f7864.pdf>

See page 7 & 8

Minimum Requirement / Guidance on customer rights and retailer obligations in Part 2, Division 6	Suggested Statement	Comments
<p><b>Section 50(1)(b)</b></p>	<p>If our <i>hardship team</i> identifies you as a hardship customer, we will offer and provide you with the supports outlined in this policy.</p> <p>If you are <b>not</b> identified as a hardship customer by our <i>hardship team</i>, we are still <b>obliged to support you</b>. We must offer you a payment plan and other supports. Our team will discuss these with you, and ensure supports are in place within [number of days].</p>	<p>(repeat principles from SPPF)</p> <p>SPPF (if a signatory)?</p> <p><b>(Also note: Rule 33(4) which applies Rule 72, Rule 33(3), Rule 34(2)(a), Section 51, Rule 111(2) and Rule 116 for retailer obligations to customers experiencing payment difficulties)</b></p>
<p><b>Section 44(b)</b> Processes for the early response by the retailer in the case of residential customers identified as experiencing payment difficulties due to hardship</p>	<p>Once you are identified as a hardship customer, we will:</p> <ul style="list-style-type: none"> <li>• immediately discuss the supports available to you, as outlined in this policy</li> <li>• ensure appropriate supports are in place, or are in the process of being</li> </ul>	<p>Section 50(1)(b)</p> <p>This minimum requirement must provide for processes outlining an <b>early response ONCE</b> the customer is identified as a hardship customer.</p>

Minimum Requirement / Guidance on customer rights and retailer obligations in Part 2, Division 6	Suggested Statement	Comments
<p>Section 43(2)(c) - <i>civil penalty provision</i></p>	<p>put in place, within [number] of business days.</p> <p>As an energy retailer, we are obliged to offer and implement the following supports for hardship customers:</p> <p>Flexible payment options, including payment plans and Centrepay.</p>	
<p><b>Section 44(c)</b> Flexible payment options including payment plan and Centre pay</p>	<p>We must offer and apply payment plans for hardship customers.</p>	
<p><b>Section 50(1)(a)</b>  <i>This is a civil penalty provision</i></p>		
<p><b>Rule 72</b> Establishing payment plans - This is <i>a civil penalty provision</i>  See also section 50(2) – the retailer must comply with applicable requirements of the Rules relating to payment plans including how they are offered</p>	<p>Payment Plans: When setting up your payment plan, we must take into account:</p> <ul style="list-style-type: none"> <li>• your <i>capacity to pay</i> (how much you are able to pay)</li> <li>• your debt with us (how much you owe)</li> <li>• how much energy we expect you will use in the next 12 months.</li> </ul> <p>Once the payment plan is agreed with you, we will send you details of:</p> <ul style="list-style-type: none"> <li>• how long it will run</li> <li>• how many payments you need to make, and when you need to make them</li> </ul>	<p>Define '<i>capacity to pay</i>'</p> <p>Consider referencing the AER's SPPF where the retailer has signed on, detailing 'good practice principles'.</p>



Minimum Requirement / Guidance on customer rights and retailer obligations in Part 2, Division 6	Suggested Statement	Comments
Rule 72	<ul style="list-style-type: none"> <li>• how we calculated your payments.</li> </ul> <p>If we don't establish your payment plan taking these matters into account, we may face civil penalties.</p>	Need to ensure the payment plan is affordable and realistic.
Section 47 and section 45(3)(c)	<p>We will make every effort to ensure you meet the repayments in your payment plan.</p> <p>If you have missed a payment we will contact you [process including action statements and number of days].</p> <p>It is important that the payment plan is realistic and affordable for you. If you are repeatedly unable to meet your payments under the payment plan you may face disconnection.</p> <p>We commit to ensuring disconnection of hardship customers is a last resort option.</p>	General statement giving effect to the principles underlying Rule 72 and the AER's SPPF
Rule 111(2)(a), 111(2)(b) and 111(2)(c)	<p>If we offer you 2 payment plans<sup>6</sup> in the previous 12 months and you:</p> <ul style="list-style-type: none"> <li>• don't agree to either of them</li> <li>• agree to one, and not the other, but fail to comply with the payments in</li> </ul>	Guidance statement on principle that disconnection is a last resort option

<sup>6</sup> Established in accordance with the requirements under Rule 72.

Minimum Requirement / Guidance on customer rights and retailer obligations in Part 2, Division 6	Suggested Statement	Comments
	<p>the payment plan resulting in that payment plan being cancelled, or</p> <ul style="list-style-type: none"> <li>agree to both payment plans, but the plans have been cancelled due to non-payment,</li> </ul> <p>then you may face disconnection.</p>	
<p><b>Rule 32 and Rule 74</b></p> <p><b>Rule 74 is a civil penalty provision</b></p>	<p>If you would like to use Centrepay and are on a standard retail contract, we must allow you to use Centrepay.</p> <p>If you are on a market retail contract and Centrepay is an option under that contract we must allow you to use Centrepay.</p> <p>If you are on a market retail contract and Centrepay is not an option under that contract, we must review your market retail contract.</p> <p>If the review reveals that an alternative retail contract is more appropriate, we must transfer you to that alternative contract with your consent.</p> <p>The alternative customer retail contract must</p>	<p>Centrepay is a very important support, as recognised by the Rules. Customers need to be assisted to access Centrepay.</p>

Minimum Requirement / Guidance on customer rights and retailer obligations in Part 2, Division 6	Suggested Statement	Comments
	<p>make Centrepay available as an option</p> <p>If there is no alternative retail contract that makes Centrepay available, we must make it available to you under your existing contract.</p> <p><b>We must not charge you for the review, transfer, early termination charge or other penalty for early termination of your previous retail contract.</b></p>	
<p><b>Section 44(d)</b></p> <p><b>Rule 33(3) – this Rule is a <i>civil penalty provision</i></b></p> <p>Processes to identify concessions programs, financial counselling services and to notify customers of those programs and services.</p>	<p>Depending on which state you live in, you may have access to Government schemes, concessions and rebates that are designed to help with your energy bills. You may also have access to free financial counselling services.</p> <p>We will identify concessions programs and financial counselling services that are available for you.</p> <p>We will tell you about government funded energy charge rebate, concession or relief schemes that are available for you.</p> <p>We will also tell you about financial counselling services that are available for you.</p>	<p>Rule 33(3) - A retailer must provide information to a customer referred to in subrule (1) about the availability of government funded energy charge rebate, concession or relief schemes</p>



Minimum Requirement / Guidance on customer rights and retailer obligations in Part 7, Division 6	Suggested Statement	Comments
	<p>We will explain these programs and services to you so you understand how they can help you.</p> <p>If we don't tell you about these schemes and services we may face a civil penalty.</p> <p>AER's statement: 'If you find out you are eligible for these programs or services, please let us know immediately so that we can help you.'</p>	<p>[This is not a minimum requirement – there is no obligation on the customer to inform the retailer – the obligation is on the retailer to notify the customer – including this statement may confuse customers about their legal obligations]. SACOSS does not believe statements that place obligations on customers which are not contained in the Law or Rules should be included in the standardised statements. The retailer may consider including these statements within its own processes (subject to AER approval), but they should not be included in the standardised statements.</p>
<b>Section 44(e)</b>	<p>We have a range of programs that we use to assist hardship customers.</p> <p>[Retailer to include range of programs to it uses to assist hardship customers.]</p> <p>The purpose of this policy is to ensure we</p>	
<b>Section 44(f)</b>	<p>Outline of a range of programs that the retailer may use to assist hardship customers</p>	<p>The purpose of the hardship policy is to</p>

Minimum Requirement / Guidance on customer rights and retailer obligations in Part 2, Division 6	Suggested Statement	Comments
<p>Process to review the appropriateness of hardship customers market retail contract in accordance with <b>the purpose</b> of the hardship policy</p>	<p>assist you to better manage your bills on an ongoing basis. As soon as you enter our hardship program, we will discuss your energy usage and whether you are on the most suitable contract for your circumstances.</p> <p>If we agree you will benefit from changing to a new contract, we will explain it to you and get your consent to transfer you to the new contract at no cost.</p>	<p>identify hardship customers and to 'assist customers to better manage their bills on an ongoing basis'. (Section 43(1))</p> <p>Question whether to use the word 'plan' (as used in the AER's Draft Statements) which <b>may be confused with payment plan</b>.</p>
<p><b>Section 44(g)</b> Processes or programs to assist customers with strategies to improve their energy efficiency, where such processes or programs are required by local instrument</p>	<p>As soon as you enter our hardship program, we will tell you ways you can improve your energy efficiency (how much energy you use). This may vary according to which state you live in.</p>	<p>Retailer to provide further information about energy efficiency programs to assist customers.</p>
<p><b>Section 44(h)</b> Any variations specified or of a kind specified by the AER</p>		
<p><b>Section 44(i)</b> Any other matters required by the Rules <b>See below:</b></p>		

Minimum Requirement / Guidance on customer rights and retailer obligations in Part 7, Division 6	Suggested Statement	Comments
<p><b>Rule 33(2)</b> – payment plans</p>	<p>We are <b>not</b> obliged to offer you a payment plan if you:</p> <ul style="list-style-type: none"> <li>• have had 2 payment plans cancelled due to non-payment in the previous 12 months; or</li> <li>• have been convicted of an offence involving illegal use of energy in the previous 2 years</li> </ul>	<p>Rule 33 (2): 'However, a retailer is not required to offer a payment plan to a customer referred to in subrule (1) if the customer: (a) has had 2 payment plans cancelled due to non-payment in the previous 12 months; or (b) has been convicted of an offence involving illegal use of energy in the previous 2 years.'</p>
<p><b>Rule 33(3)</b> information about energy charge rebate, concession or relief schemes - this is a <b>civil penalty provision</b></p>	<p>We must provide you with information about energy charge rebate, concession or relief schemes.</p> <p>If we don't we may face a civil penalty.</p> <p>We must not place you on a shortened collection cycle without your consent.</p>	
<p><b>Rule 34</b> shortened collection cycle (protection from being placed on a shortened collection cycle – applies to all customers experiencing payment difficulties) – this is a <b>civil penalty provision</b></p>		
<p><b>Rule 40</b> Requirement for a security deposit</p>	<p>We cannot require you to provide a security deposit.</p>	



Minimum Requirement / Guidance on customer rights and retailer obligations in Part 2, Division 5	Suggested Statement	Comments
This is a <b>civil penalty provision</b> .		
<b>Rule 71</b> Retailer must communicate hardship Policy This is a <b>civil penalty provision</b> .		Outlined above
<b>Rule 72</b> Establishing payment plans This is a <b>civil penalty provision</b> .		Outlined above
<b>Rule 73</b> Waiver of late payment fee This is a <b>civil penalty provision</b>	We must not charge you any late payment fees. If we charge you a late payment fee we may face a civil penalty.	
<b>Rule 74</b> Centrepay This is a <b>civil penalty provision</b>	See statement on Centrepay obligations above	Outlined above
<b>Rule 76</b> Waiver of debt for hardship customers	We may waive fees, charges or arrears in accordance with this policy [retailer to set out policy].	'Nothing in this Part prevents a retailer from waiving any fee, charge or amount of arrears for the provision of customer retail services to a hardship customer in accordance with the retailer's customer hardship policy.'
<b>Section 51</b>	We must not commence debt recovery	

Minimum Requirement / Guidance on customer rights and retailer obligations in Part 2, Division 6	Suggested Statement	Comments
Prohibition against debt recovery proceedings	<p>proceedings against you if:</p> <ul style="list-style-type: none"> <li>• you are adhering to the terms of a payment plan</li> <li>• we fail to comply with the requirements of this policy</li> <li>• we fail to comply with the law and rules relating to assistance for hardship customers.</li> </ul>	This is an important protection for hardship customers under the Law and should be included in the Guideline
<p><b>Rule 111(2)</b></p> <p>Disconnection for not paying a bill</p> <p><b>Civil penalty provision</b> by virtue of Rule 107(2)</p>	<p>We must not disconnect you for failing to pay your bill.</p> <p><i>See statement above re: payment plans</i></p>	Where a customer is a hardship customer or a residential customer who has informed the retailer in writing or by telephone that the customer is experiencing payment difficulties, a retailer must not arrange for de-energisation of the customer's premises under subrule (1), unless the retailer has offered the customer 2 payment plans in the previous 12 months and: (a) the customer has agreed to neither of them; or (b) the customer has agreed to one but not the other of them but the plan to which the customer agreed has been cancelled due to non-payment by the customer; or (c) the customer has agreed to both of them but the plans have been cancelled due to non-payment by the customer.
<b>Rule 116(1)(d)</b>	We must not arrange for disconnection of	where the customer is a hardship customer or

Minimum Requirement / Guidance on customer rights and retailer obligations in Part 2, Division 6	Suggested Statement	Comments
Must not arrange for disconnection	your premises if you are adhering to a payment plan.	residential customer and is adhering to a payment plan under rule 33 or 72;
Part 8 – Pre-payment meter systems		Query including obligations in relation to pre-payment meter systems