

Australian Energy Regulator
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Standardised statements for use in customer hardship policies

The Australian Energy Council (the Energy Council) welcomes the opportunity to make a submission to the Australian Energy Regulator's (AER) issues paper on *standardised statements for use in customer hardship policies*. The AEC is the industry body representing 23 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses. Our members will comment on the detail of specific standard statements that could be problematic. This submission will focus on some high level matters raised by the issues paper.

The Energy Council is supportive of measures that assist customers to more easily understand their rights, and retailers' obligations, in relation to hardship. We understand that giving retailers' flexibility in how they create and apply hardship policies can create a lack of clarity, both for a consumer trying to understand what assistance they might be entitled to, and for the AER seeking to enforce compliance. On top of this, the range of different hardship policies and differences in approaches can increase the administrative burden on the AER and make compliance action difficult. For these reasons we are comfortable with the use of standard statements to give clarity to the minimum requirements that all retail hardship policies must include, provided they do not limit the flexibility that section 44 of the National Energy Retail Law (NERL) expressly grants retailers.

The AER's role in Hardship

In the AEMC's final determination in the *Strengthening Protections for Customers in Hardship Rule* change they acknowledged there was a risk that the standard statements would direct retailers' on how they give effect to the NERL. "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."¹ This highlights an important distinction that the role of the standard statements is to inform customers rather than determine how a retailer will give effect or implement its obligations under the NERL. This gives retailers greater ability to manage possible hardship customers throughout the customer life cycle.

¹ AEMC Rule Determination *National Energy Retail Amendment (Strengthening Protections for Customers in Hardship)* Rule 2018, page 21.

We understand the issues the AER has experienced in its administration of hardship policies and that consistency and efficiency improvements are needed. We are supportive of measures that avoid these difficulties. However we would caution against over-simplification of indicators in the standard statements that lead to specific actions by the retailer. Certain characteristics, such as the eligibility for concessions, while relevant indicators, do not always translate to a customer being put on a hardship program. A list of indicators that tries to be exhaustive also could lead to the standard statements effectively defining hardship. In its final determination the AEMC was careful to delineate the AER's power in relation to hardship as being one to review policies that originate from retailers' rather than to create and drive policies itself.

While we agree with the inclusion of definitive standard statements in certain circumstances, we believe they should be limited to obligations that are administrative, or where the Law does not intend to give retailers great flexibility in determining processes that meet the needs of their business and customer base. The intent of the NERL is to give retailers ownership over their hardship policies and procedures, and for the AER to ensure these policies meet the intent of the Law. Overly prescriptive standard statements could reverse this onus to the point where retailers are simply copying and implementing the AER's version of a hardship policy.

Where the retailer has the responsibility under the NERL, then the standard statement needs to be set at a higher level. The statement should assist the retailer in making it clear the assistance they will offer, rather than dictating what that assistance should be.

Issues with language

Our members have expressed some concern over specific uses of language in the draft statements. We understand the need for simplicity both to ensure customers understand clearly their rights in relation to hardship under the NERL and the need for the AER to enforce compliance. However we would caution against over-simplification. Retailers invest significantly in tailoring their language to be friendly and appealing for customers. Standard statements such as: "if you can't meet the payments we agreed as payment plan, or if your circumstances change, please contact us immediately on [X] so we can talk about this with you" could be softened to be less demanding of the customer. In addition, the standard statement on concession entitlements could be problematic. Retailers do not assess eligibility for concession programs but the statement: "if you find out you are eligible for these programs, please let us know immediately so we can help" might give a false impression that retailers can place customers on a concession program.

Maintaining balance

We believe at a high level that the standard statements released in the issues paper represent a reasonable balance between addressing the issues identified by the AER without eroding the flexibility afforded to retailers from the NERL. We also believe that the standard statements should be a stable document and this balance could be lost if the statements are continually altered. The AER should limit the scope of expanding the standard statements in future iterations. If the standard statements are added to year on year, there is a risk that the standard statements will direct retailers prescriptively on how to implement hardship policies. We would expect the first version of the standard statements to be sufficient to address the issues identified by the AER. Unless a change to section 44 of the NERL occurs we would not expect the hardship statements to develop and change over time.

The standard statements should, as much as possible, allow retailers to tailor their policies based on experience and their individual business circumstances. This allows retailers to develop new initiatives that may go beyond the standard statements and the minimum requirements in the NERL. We believe that retailers improve their hardship policies over time without being directed to do so by the regulator. While the AER may need to adjust its standard statements in the future if specific problems are identified, the statements should always seek to strike a balance between simplicity and flexibility. Stability in the standard statements is also critical to reduce the cost of compliance and prevent implementation errors.

We look forward to continuing to engage with the AER in the future to further improve hardship policies and compliance, to the benefit of consumers.

For any questions about our submission please contact Oliver Williams by email at Oliver.Williams@energycouncil.com.au or on (03) 9205 3111.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'B Barnes', written in a cursive style.

Ben Barnes
Director, Retail Policy
Australian Energy Council