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## Issues Paper – Hardship Guideline

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to the Australian Energy Regulator's ('AER') *Hardship Guideline Issues Paper*. 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. We note that this submission focuses on high level matters raised by the issues paper and that our members will comment on specific standard statements that could be problematic to them.

The AEC is supportive of measures that assist customers to more easily understand their rights and retailers' obligations in relation to hardship. We consider the Hardship Guideline will play an important role as a useful document to give guidance to retailers on how the AER will approve, or require, retailers to vary their hardship policies. A well-developed Hardship Guideline, containing the Standard Statements the AER has recently consulted on, should work towards improving clarity for customers about how retailers comply with the requirements set out in s44 of the National Energy Retail Law ('NERL'). In order to achieve this, we consider it is important to clearly delineate the role of the Standard Statements – as distinct from the Hardship Guideline – and to ensure that neither regulatory instrument exceeds or inverts the intent of s44 of the NERL.

## Standard Statements

As the AEC submitted in its response to the AER's standard statements consultation, we consider the standard hardship statements can give clarity to customers by:

1. delivering consistency in policies across different retailers; and
2. set the minimum requirements that all hardship policies must contain.

We consider further that this can be achieved without removing the flexibility expressly provided by s 44 of the NERL. It is clear to the AEC that the standard statements are the most appropriate place for binding provisions which must be complied with by all retailers. This ensures that while other elements of the hardship guidelines may speak to administrative issues, guidance material or aspirational outcomes, retailers clearly know what the core of their hardship policy must contain in order to meet the requirements of s 44 of the NERL.

## Hardship Guideline

A guideline is a useful regulatory tool to give guidance to retailers and sometimes customers, on the practical implications of legal obligations. However, the AER must ensure that the Hardship Guideline does not succumb

to 'regulatory creep' which goes beyond the intent of s 44 and 45 of the NERL or s 75A of the National Energy Retail Rules ('NERR'). The AEMC clearly acknowledged in its final determination that the intent of their rule change, and the creation of the Hardship Guideline, does not grant the AER additional powers than what it is granted under the NERL. While we accept that the AER has significant powers under s 44(h) and s 45, we maintain that the nature of the power is to approve, and vary, retailer policies that do not meet the requirements of s 44. If those requirements are met, the guideline cannot be used to push a retailer to implement a policy that goes beyond s 44. This should mean that the focus of the Hardship Guideline should be on giving advice to retailers as to the factors that may lead to the AER determining whether or not the retailer's Policy meets the purpose referred to in s42(1) of the NERL.

Provided the AER guideline clearly separates the standard statements and compulsory requirements from broader guidance material – or aspirational goals that are optional for retailers – we consider these conditions will be satisfied. The crux of this issue is that, retailers maintain the power under the NERL to develop and maintain their own hardship policies with the AER holding the power of approval under s45.

In our view, the suggested inclusion of mandatory obligations outside of the standard statements enacted by s75A of the NERR, goes beyond the remit of the AER in implementing this guideline. We would therefore encourage the AER to work towards providing a set of high level principles, or elements that they would look for, in undertaking their responsibilities of approving or rejecting a retailer hardship policy under s45.

### **Specific issues raised**

The discussion paper raises the possibility of adding features that are not currently a requirement of hardship policies. However, it is unclear whether the AER intends these to be binding requirements on all retailers. Specifically, the requirement for a 'customer summary' with an 'easy English' version and CALD accessibility fall under this category. We understand the AER will release a consultation on a draft Hardship Guideline prior to its implementation, but note that these recommendations raise questions about the scope of the Guideline and how it will interact with retailer's existing obligations under s44.

### **Conclusion**

It is important that the development of the Hardship Guideline balances the need to address issues identified by the AER in its Hardship Review and the AEMC in its rule change, with the risk of increased regulatory costs – which will ultimately be passed on to consumers. We are supportive of using the Standard Statements as the primary tool to achieve this and would caution against using the Hardship Guideline as a means to introduce a number of new requirements beyond those set out in s44 of the NERL.

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 Ben Barnes by email at [Ben.Barnes@energycouncil.com.au](mailto:Ben.Barnes@energycouncil.com.au) or on (03) 9205 3115.

Yours sincerely,



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