

## New Reg: Towards Consumer-Centric Energy Network Regulation

### AusNet Trial – AER Staff Guidance Note 7: Customer Hardship – 29 August 2019

To facilitate the process of negotiation between AusNet Services (AusNet) and its Customer Forum (Forum), AER staff will prepare guidance notes that set out the boundaries of the National Electricity Rules (NER) and the AER's guidelines for the topics in scope of the negotiation.

AER staffs' view on which topics should be in scope is set out in the second guidance note. This view recognised that the Forum has a limited time to familiarise itself with the issues, direct relevant customer research, and prepare itself for negotiations.

While AER staff will not be preparing guidance notes for those topics that are out of scope, the Forum may still consider and discuss other topics with AusNet's customers. We encourage such discussions and would be interested in customer preferences regarding those topics.

#### Overview

In Victoria, the current framework for **customer hardship** is being replaced. New regulation, which is due to commence on 1 January 2019, is designed to remove ambiguity surrounding the status and eligibility of customers to hardship programs by replacing the term "*Hardship Customer*", and referring instead to residential customers who may be *anticipating or facing payment difficulties*.<sup>1</sup> These words are to be given their natural and ordinary meaning wherever possible.<sup>2</sup>

The new regime will apply during the relevant regulatory period. More information about the changes to the *Energy Retail Code* and the Hardship Inquiry can be found in **Appendix A**.

The Essential Services Commission (ESC) found the existing definition of "hardship customer" under the *Electricity Retail Code*:

*a residential customer, of a retailer, who is identified as a customer experiencing financial payment difficulties due to hardship, in accordance with the retailer's customer hardship policy*<sup>3</sup>

gave retailers too much scope to set the criteria to apply to assessing a potential hardship customer.<sup>4</sup>

#### What is AusNet proposing?

In its May meeting, the Forum asked AusNet to consider the extent to which it, as a distribution business, could assist hardship customers.

AusNet has conducted consultative workshops with the Customer Forum to generate consensus about how it may assist customers affected by hardship. AusNet notes that the principal responsibility for supporting hardship customers still lies with energy retailers,<sup>5</sup> but

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<sup>1</sup> Energy Retail Code (Vic), 1 January 2019, cl.71

<sup>2</sup> Energy Retail Code (Vic), 1 January 2019, cl.73

<sup>3</sup> Energy Retail Code (Vic), Cl.3, "Hardship Customer"

<sup>4</sup> Essential Services Commission 2017, *Payment Difficulty Framework, Final Decision*, 10 October 2017, p.12

<sup>5</sup> AusNet Services, 2018, Customer Hardship Arrangements: Presentation to the Customer Forum, slide 16

acknowledges that it may be able to facilitate the experience of these customers through more active and visible programs, in this respect it has nominated:

- energy literacy programs;
- providing assistance, such as encouraging the use of “my home energy portal”, to monitor / manage energy use; and
- participating in collaborative platforms, such as the Thriving Communities Partnerships, together with retailers, to advance customer support frameworks.<sup>6</sup>

### **What are the boundaries of negotiation customer hardship?**

Hardship arrangements are legislatively the responsibility of retailers, either under the *National Energy Retail Law and Rules*<sup>7</sup> or, in the case of Victoria, under the relevant state energy legislation, the *Electricity Industry Act (Victoria)*.<sup>8</sup> A summary of the current arrangements for hardship customers is set out in **Appendix A**.

In previous revenue proposals, DNSPs have not demonstrated how expenditure for customer hardship is required to achieve the expenditure objectives or reflects the expenditure criteria. As a result, in distribution determinations previously made by the AER, the National Electricity Rules have not permitted it to include an allowance for customer hardship.

### **What might the Forum potentially focus on?**

Despite the above, the Forum can still have an impact by focusing on opportunities that have no financial impact on AusNet’s revenue proposal but which would provide some form of support to customers experiencing financial difficulty paying their electricity bills. The Forum might identify opportunities for AusNet to provide improved outcomes for hardship customers, potentially at a negligible cost to AusNet, or which do not involve any additional costs to customers. This could also take the form of initiatives that complement existing services provided by retailers for vulnerable customers. However the Forum should avoid duplicating existing retailer services. For instance, a payment plan scheme, appliance replacement scheme, or field audit scheme may not be appropriate, because retailers typically operate these, in accordance with their customer hardship responsibilities.<sup>9</sup>

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<sup>6</sup> AusNet Services, 2018, Customer Hardship Arrangements: Presentation to the Customer Forum, slide 16

<sup>7</sup> National Energy Retail Law (Cth); and National Energy Retail Rules (Cth)

<sup>8</sup> Electricity Industry Act 2000 (Vic)

<sup>9</sup> Electricity Industry Act 2000 (Vic), s43C

## Appendix A: Hardship customer arrangements

In Victoria, the average estimated annual residential energy bill (standard offer) rose approximately 5 per cent over the year 2016-17<sup>10</sup> and this has had consequences for residential customers, in particular:

- the average number of participants in hardship programs rose for the fourth year in a row;<sup>11</sup>
- more customers were submitting to hardship programs than at any time previous;
- those customers, that are existing members of hardship programs typically now owe debt in excess of \$1500 to their retailers;<sup>12</sup> and
- the number of participants who were excluded from hardship programs for not meeting the program's requirements has continued to rise every year since records commenced, and most alarmingly this figure rose 46 per cent between 2015-16 and 2016-17<sup>13</sup>.

### Victorian Energy Hardship Inquiry and the New Payment Difficulty Framework

In February 2015, the ESC received terms of reference from the Victorian Minister for Finance, in consultation with the Minister for Energy and Resources, to conduct an inquiry and report on financial hardship program best practice for energy retailers.<sup>14</sup> The Victorian Government sought confirmation that disconnection effectively remained the last resort and that the regulatory framework supported this outcome.<sup>15</sup>

This inquiry concluded that individual experiences of customers facing payment difficulties varied significantly, in terms of:

- the assistance provided;
- when that assistance was provided; and
- when that assistance was withdrawn.<sup>16</sup>

As a consequence, the treatment of these customers was largely dependent upon the retailer that customer was with.<sup>17</sup> Some customers were found to have been receiving acceptable assistance, some customers received limited assistance and some customers were receiving no assistance at all.<sup>18</sup> As a consequence, the ESC concluded it was not possible to say that retailers' assistance met community and government expectations surrounding equity and transparency and more appropriately, that customers were only being disconnected by retailers as a 'last resort'.<sup>19</sup>

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<sup>10</sup> Essential Services Commission 2017, Victorian Energy Market Report 2016-17, p.1

<sup>11</sup> Essential Services Commission 2017, Victorian Energy Market Report 2016-17, p.51

<sup>12</sup> Essential Services Commission 2017, Victorian Energy Market Report 2016-17

<sup>13</sup> Essential Services Commission 2017, Victorian Energy Market Report 2016-17, p.51

<sup>14</sup> Essential Services Commission 2017, *Payment Difficulty Framework, Final Decision*, 10 October 2017, p.1

<sup>15</sup> Victorian Government 2015, Terms of Reference – Inquiry into best practice financial hardship programs of retailers, 4 February 2015

<sup>16</sup> Essential Services Commission 2017, *Payment Difficulty Framework, Final Decision*, 10 October 2017, p.10

<sup>17</sup> Essential Services Commission 2017, *Payment Difficulty Framework, Final Decision*, 10 October 2017, p.10

<sup>18</sup> Essential Services Commission 2017, *Payment Difficulty Framework, Final Decision*, 10 October 2017, p.11

<sup>19</sup> Essential Services Commission 2017, *Payment Difficulty Framework, Final Decision*, 10 October 2017, p.11

The inquiry found that the root cause of this was the regulatory design, which gave retailers significant discretion about when and how they ought to assist customers experiencing payment difficulties.<sup>20</sup>

The ESC has responded by introducing a new Part 3 to the Energy Retail Code (Retail Code), which comes into operation on 1 January 2019. These reforms responded to the following problem:

*Customers anticipating or in payment difficulty have not been gaining equitable access to predictable, consistent and effective assistance. Therefore, disconnection may not have been occurring as a last resort.*<sup>21</sup>

In attempting to rectify this they sought to create a regulatory framework that ensured those persons anticipating or experiencing payment difficulty could obtain equitable access to predictable, consistent and effective assistance.<sup>22</sup>

AusNet has pointed out in its materials that distribution networks continue to have a very limited role in programs to protect hardship customers,<sup>23</sup> however the Customer Forum are interested in looking at ways that AusNet can have a positive impact on customers who are experiencing hardship within their network.

The ESC is responsible for the regulation of energy retailers in Victoria. The ESC also has certain responsibilities for other energy matters. Its objectives are set out under section 10 of the *Electricity Industry Act* as being:

- a. To the extent that it is practicable to do so, to promote a consistent regulatory approach between the electricity industry and the gas industry;
- b. To promote the development of full retail competition; and
- c. To promote protections for customers, including in relation to assisting customers who are facing payment difficulties<sup>24</sup>

#### Current Services Provided by Retailers in the Customer Hardship Space

The ESC currently has responsibility for the monitoring and approval of retailers' hardship policies in Victoria, the AER has a similar role in assessing retailers' customer hardship policies for those retailers that are subject to the national retail framework, including the *National Energy Retail Law* and the *National Energy Retail Rules*. We maintain a register of compliant hardship policies and this can also be viewed [here](#).

In Victoria, the Electricity Supply Act, particularly Division 6, prescribes the framework for hardship policies. Its objectives are to:

- (a) recognise that financial hardship may be suffered by domestic customers; and
- (b) promote best practice in electricity service delivery to facilitate continuity of electricity supply to domestic customers experiencing financial hardship.<sup>25</sup>

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<sup>20</sup> Essential Services Commission 2017, *Payment Difficulty Framework, Final Decision*, 10 October 2017, p.11

<sup>21</sup> Essential Services Commission 2017, *Payment Difficulty Framework, Final Decision*, 10 October 2017, p.21

<sup>22</sup> Essential Services Commission 2017, *Payment Difficulty Framework, Final Decision*, 10 October 2017, p.20

<sup>23</sup> AusNet Services, 2018, Customer Hardship Arrangements: Presentation to the Customer Forum, slide 8

<sup>24</sup> Electricity Industry Act 2000 (Vic), s10

<sup>25</sup> Electricity Industry Act 2000 (Vic), s42

It is an implied term of an energy retailer's licence that they create and maintain an approved hardship policy.<sup>26</sup> The required contents of an approved hardship policy are set out under Clause 71B of the *Energy Retail Code (Retail Code)*.<sup>27</sup>

### Services Provided by Retailers in the Customer Hardship Space after 1 January 2019

The ESC will remain the responsible regulator under the new Payment Difficulty Framework established under the new Part 3 of the Retail Code. The purpose of this Part 3 is to:

*Set out minimum standards of assistance to which residential customers anticipating or facing payment difficulties are entitled, so that disconnection of a residential customer for not paying a bill is a measure of last resort.*<sup>28</sup>

This new regime establishes:

- minimum assistance measures to help prevent people falling into arrears;<sup>29</sup>
- an entitlement for those persons in arrears to assistance to pay for their energy use, repay their arrears and lower their energy costs;<sup>30</sup>
- new minimum requirements for the content of financial hardship policies and the requirement for their approval;<sup>31</sup>
- mandatory requirements on retailers to provide information about assistance<sup>32</sup>
- additional obligations on retailers to take a customer's circumstances into account and to act fairly and reasonably in the circumstances.<sup>33</sup>

Under the new Standard Assistance regime in Division 2 retailers are required to take steps to help prevent residential customers falling into arrears, to assist in this respect, retailers must allow customers access to at least three of the following:

- (a) to ability make payments of an equal amount over a specified period;<sup>34</sup>
- (b) options for making payments at different levels;<sup>35</sup>
- (c) to ability to extend by a specified period the pay-by date for a bill for at least one billing cycle in any 12 month period;<sup>36</sup> and

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<sup>26</sup> Electricity Industry Act 2000 (Vic), s43. *This policy is approved by the Essential Services Commission*

<sup>27</sup> [Energy Retail Code \(Vic\), Version 11B, 1 July 2018, cl.71B](#)

Some matters that the ESC requires in a compliant hardship policy include:

- That the policy should create options for hardship customers, including payment options and details of how hardship customers will be assisted under payment plans or similar options; (Cl.71B(2)(d))
- Details of processes that the retailer will use to work with the hardship customer and/or a financial counsellor to assess appropriate options for the customer (Cl.71B(2)(e));
- Fair and reasonable payment options, with fair and reasonable instalment intervals, that accommodate the particular needs of the individual customer and the monitoring thereof (Cl.71B(2)(f));
- Details about field audit arrangements that the retailer may offer (Cl.71B(2)(g));
- Details about when the retailer will provide assistance to hardship customers to replace appliances (Cl.71B(2)(h)); and
- Details about how participation in a hardship program will cease (Cl.71B(2)(i)).

A link to the current Retail Code can be found [here](#).

<sup>28</sup> Energy Retail Code (Vic), 1 January 2019, cl.71

<sup>29</sup> Energy Retail Code (Vic), 1 January 2019, pt 3 div 2

<sup>30</sup> Energy Retail Code (Vic), 1 January 2019, pt 3 div 3

<sup>31</sup> Energy Retail Code (Vic), 1 January 2019, pt 3 div 4

<sup>32</sup> Energy Retail Code (Vic), 1 January 2019, pt 3 div 5

<sup>33</sup> Energy Retail Code (Vic), 1 January 2019, pt 3 div 6

<sup>34</sup> Energy Retail Code (Vic), 1 January 2019, cl.76(2)(a)

<sup>35</sup> Energy Retail Code (Vic), 1 January 2019, cl.76(2)(b)

<sup>36</sup> Energy Retail Code (Vic), 1 January 2019, cl.76(2)(c)

(d) to pay for energy use in advance.<sup>37</sup>

The new Tailored Assistance regime in Division 3 applies to residential customers who are in arrears. These persons are entitled to minimum standards of flexible and practicable assistance to allow them to pay for their on-going energy use, repay their arrears and lower their energy costs.<sup>38</sup> Some tailored assistance measures that a retailer may be required<sup>39</sup> to provide to a customer in arrears include:

- to repay their arrears over not more than 2 years by payments at regular intervals of up to one month;<sup>40</sup>
- advice from the retailer about payment options that would enable a customer to repay their arrears over not more than 2 years;<sup>41</sup>
- specific advice about the likely costs of a customer's future energy use and how this cost may be lowered;<sup>42</sup>
- specific advice about government and non-government assistance that is available;<sup>43</sup> and
- practical assistance to help lower energy costs including information about more appropriate tariffs, assistance based on energy use patterns and progress reports on the customer's energy cost reduction.<sup>44</sup>

In addition to the above, to be approved by the ESC, new Financial Hardship policies will now be required to integrate matters under Division 3 "Tailored Assistance" as well as the matters noted above under Section 43C of the Electricity Industry Act as well as any additional matters covered by guidelines and guide notes published by the ESC.<sup>45</sup>

Furthermore, new communication obligations also create additional requirements on retailers to share useful information on energy use, payment history, tariffs and ways of reducing the cost of a customer's energy consumption with customers facing payment difficulty, in a way that assists them to propose payment arrangements that are manageable and take practical action that will enable them to resolve their payment difficulty.<sup>46</sup>

Finally and perhaps most importantly, disconnection is to remain a last resort and should only be contemplated in circumstances where:

- a retailer has complied with all of Part 3 of the Retail Code; met the requirements for reminder and disconnection warning notices; and used best endeavours to contact the customer and provide information about assistance available to the customer; and

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<sup>37</sup> Energy Retail Code (Vic), 1 January 2019, cl.76(2)(d)

<sup>38</sup> Energy Retail Code (Vic), 1 January 2019, cl.77 & 78

<sup>39</sup> *What services are available will depend on whether the customer is currently continuing to pay the full cost of their on-going energy use under clauses 79(2) and (3)*

<sup>40</sup> Energy Retail Code (Vic), 1 January 2019, cl.79(a)

<sup>41</sup> Energy Retail Code (Vic), 1 January 2019, cl.79(b)

<sup>42</sup> Energy Retail Code (Vic), 1 January 2019, cl.79(c)

<sup>43</sup> Energy Retail Code (Vic), 1 January 2019, cl.79(d)

<sup>44</sup> Energy Retail Code (Vic), 1 January 2019, cl.79(e)

<sup>45</sup> Energy Retail Code (Vic), 1 January 2019, cl.85

<sup>46</sup> Energy Retail Code (Vic), 1 January 2019, cl.87; and

Essential Services Commission 2017, *Payment Difficulty Framework, Final Decision*, 10 October 2017, p.79

- The customer has failed to make a payment; has not proposed a revised payment arrangement and has refused to take reasonable action towards paying for their energy use and repaying their arrears.<sup>47</sup>

### Other Jurisdictions

In New South Wales, energy distribution businesses are required to produce and maintain hardship policies relating to their special powers for bush fire prevention under Part 5, Division 2A, *Electricity Supply Act 1995*. However, these provisions primarily relate to the distribution businesses' limited rights to give written directions to land owners in bush fire prone areas, requiring them to reduce vegetation or associated risks around energy infrastructure. These hardship requirements typically create requirements for flexible payment arrangements for hardship customers, in circumstances where a network business needs to undertake works, where the customer has failed to comply with a direction under Part 5, Division 2A.<sup>48</sup>

These policies have some limited similarities to hardship policies that retailers are required to create and maintain, particularly in respect of creating requirements for such matters as payment plans<sup>49</sup>, however their application to a distribution business in Victoria is very limited, because of their very specific subject matter.

In the United Kingdom distribution businesses have a responsibility to empower and protect customers in vulnerable circumstances. This is undertaken through licence obligations and other legal requirements, including through the creation of a priority service register, incentive schemes and the *Equality Act*<sup>50</sup>. The schemes that have resulted from these programs may provide a better reference point for what is good Customer Hardship performance.<sup>51</sup> There are no similar requirements in Victoria.

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<sup>47</sup> Essential Services Commission 2017, *Payment Difficulty Framework, Final Decision*, 10 October 2017, p.80

<sup>48</sup> Electricity Supply Act (NSW), s53I

<sup>49</sup> Electricity Supply Act (NSW), s53I

<sup>50</sup> Equality Act 2010 (UK)

<sup>51</sup> Please refer to *Office of Gas and Electricity Markets, Vulnerable Customers in the Energy Market, 2018, p.46*, for further information