

Summary – Stakeholder Workshop on draft *Customer Hardship Policy Guideline*

Hosted by the Australian Energy Regulator (AER) in Melbourne on 25 February 2019

This workshop was facilitated by Julie Sheather, an independent facilitator.

The purpose of the Workshop was to provide an opportunity for stakeholders including consumer advocates, retailers, ombudsman schemes and other experts to provide early comments on the AER's draft *Customer Hardship Policy Guideline* (**the Guideline**).

This workshop formed part of the AER's consultation on the draft Guideline under rule 173 of the National Energy Retail Rules (**the Rules**). 32 organisations participated in the Workshop. A list of organisations that participated in the Workshop is at **Attachment A**.

Welcome and objectives

Julie Sheather welcomed participants and outlined the arrangements for sharing information at the Workshop (including that the views expressed today would be summarised, attributed to organisations where needed, circulated in draft form to participants and published on the AER website).

Participants were invited to open the discussion by identifying their objectives for the workshop. Participants variously indicated they were interested to:

- have a shared vision of what a successful hardship program looks like
- ensure the first point of customer contact is aware of the Hardship Guideline and the support offered
- ensure all customers are dealt with in a suitable way, and that any customer who needs support from a hardship program can access it
- acknowledge the realistic considerations and practical issues retailers face when seeking to engage some customers in a hardship program
- move from a subjective assessment of what 'hardship' is, to objective standards about what works well for customers and what well works for retailers
- acknowledge the role of customer representatives and ensure retailers engage with representatives when customers request this
- ensure issues about access to and exclusion from hardship programs are addressed, and
- relatedly, acknowledge customer access to financial counsellors is limited and there is a need for retailers to accept self-advocacy.

Opening Address by Paula Conboy, AER Chair

AER Chair, Paula Conboy, outlined the outcomes the AER is seeking to achieve for customers and the market through the new Guideline, and the impetus for the [AER's rule change proposal](#). This includes to address the concerning customer detriment in the market today, as evidenced by the AER's recent annual performance reporting data.

For example, customers are entering hardship programs with a greater amount of electricity debt and an increased proportion of customers had significant debt at over \$2500, when comparing retailers' performance in 2016-17 to 2017-18. Ms Conboy noted there is a pressing need for retailers to step up and lead this change, and to move discussions about 'hardship' away from being debt-focused, toward a customer-centric mindset.

Ms Conboy confirmed it is an AER priority to protect customers who are unable to safeguard their own interests, and the AER will be closely watching compliance with the Guideline once it is adopted. Ms Conboy noted that civil penalties will be attached to the final Guideline and are scheduled to come into force this year.

Questions and comments from the floor

Energy Aid identified the need for the role of consumer advocates to be recognised and financed. Energy Aid asked whether penalties secured by the AER through enforcement or investigation actions are retained by the AER, or are they put into consolidated revenue. Energy Aid asked if funding for financial counsellors could flow from civil penalties, infringement notices and other amounts that may be obtained by the AER through enforcement or investigation action against retailers. Ms Conboy noted that money from civil penalties currently goes to consolidated revenue, and this is something that could be further considered.

South Australian Financial Counsellors Association (SAFCA) noted the federal Opposition's announcement regarding increasing the number of financial counsellors through a levy on financial institutions, stating SAFCA would like to see a similar levy applied to all credit providers, including energy companies.

Overview of the draft Hardship Guideline - Bronwen Jennings, Director - AER Consumer Policy

Ms Jennings provided an overview of the draft Guideline and its objective (which is to strengthen protections for customers experiencing hardship). She highlighted the importance of the consultation process in capturing a diverse range of views, and outlined the process undertaken to date. Ms Jennings outlined the next steps to finalise the Guideline by 1 April 2019, and noted submissions are due 4 March 2019. Ms Jennings noted the Workshop will provide an opportunity for stakeholders to provide feedback on the draft Guideline either alongside or in place of a formal submission.

Making information accessible - Dr Yvette Maker, Senior Research Associate, Melbourne Social Equity Institute (University of Melbourne)

Dr Maker outlined two recent projects undertaken by the Melbourne Social Equity Institute concerned with improving access and support for customers with cognitive disabilities to engage in consumer transactions. Firstly, [Thanks a Bundle](#), which aims to increase awareness among telecommunications suppliers of their legal obligations to customers with cognitive disabilities. The project assessed the extent to which telecommunications retailers' online information complied with relevant obligations under consumer law and human rights provisions, and developed practical guidance to assist retailers to improve the accessibility of their websites and develop better avenues for customers with cognitive disabilities to seek assistance. Secondly, an initiative undertaken with the Thriving Communities Partnership

worked with people with cognitive disabilities and other stakeholders to identify changes utility and telecommunications retailers could make to their processes to ensure easier access to assistance and support for customers with cognitive disabilities. This will be published on the [Melbourne Social Equity Institute website](#) in April 2019.

Both projects are designed to equip retailers to take a proactive approach to accessibility and issues related to hardship by focusing on ‘a fence at the top of the cliff, rather than an ambulance at the bottom’. They promote an approach that treats all consumers as rights-holders and focuses on facilitating access to goods and services rather than protecting so-called ‘vulnerable’ consumers. The research’s practical recommendations for retailers included advice on effective communication with a wide range of customers, information on meeting web accessibility requirements, and template ‘Easy English’ factsheets on topics like ‘signing up for a service’, ‘cost and how to pay’ and ‘what to do when you can’t pay’ that retailers can easily tailor to their content.

The Consumer Perspective – Fiona Hawthorne, Queensland Council of Social Service (QCOSS)

Ms Hawthorne provided a case study setting out the key issues for customers experiencing payment difficulties.

She outlined the changes to the Rules and retailer hardship policies which QCOSS considers are needed to ensure a positive journey and outcomes for customers experiencing payment difficulties.

To illustrate that hardship is a continuum, Ms Hawthorne shared the case study story of ‘Bob’, a 49 year old injured worker and father, who was not offered hardship assistance when he contacted his retailer about being unable to pay his bill. Instead, Bob was offered a \$60 per fortnight payment plan, which – after other essential living costs like rent – left him and his son \$40 per fortnight to live on.

Highlighting the importance of early identification and appropriate support, in the case study, Bob was advised he would face disconnection if he did not make a payment. Ms Hawthorne noted the retailer’s response undermined Bob’s trust in the retailer and the market. She also noted the importance of recognising that, when customers are struggling, they choose to go to someone they trust for help, and in QCOSS’ experience, this trusted source is not currently their retailer.

Developing a new Hardship Guideline – Ben Barnes, Director Retail Policy, Australian Energy Council (AEC)

Mr Barnes provided an overview of the retailer perspective, and highlighted the need to focus on what hardship policies are meant to achieve, and the intended audience for the policy.

He noted that, currently, hardship policies are drafted for an ‘AER-audience’, and agreed there is a need to make policies more useable and customer-friendly. Mr Barnes set out that the AEC considers that hardship policies should communicate what retailers will do for the customer and what the customer will do for the retailer. He noted this is important as, without customer engagement, retailers are limited in the support they can provide to customers.

Mr Barnes noted retailers are keen for the Guideline to retain flexibility for retailers to develop tailored hardship programs, be less focused on compliance, and should confine these to the standardised statements. He suggested the Guideline should include case studies or scenarios to illustrate its intended use and interpretation. He noted retailers are required to provide assistance to customers outside of hardship programs, and supported a staged approach incorporating the different levels of assistance that retailers offer.

Comments and questions from the floor

Public Interest Advocacy Centre (PIAC) commented that a good hardship policy has the potential to not only speak to customers, but also to be a useful resource for the retailer by informing staff about what is expected. PIAC also commented that a successful Guideline should be about early identification processes requiring retailers to offer information and assistance to customers before they are identified as being in hardship.

The AEC queried how public the staff training documents should be, and the tension around who the policy is for (e.g. AER, customers or retailer staff members).

Ethnic Communities' Council NSW (ECC) commented on the work of the Melbourne Social Equity Institute which resonates with work the ECC had undertaken around the needs of Culturally and Linguistically Diverse (CALD) communities. The ECC noted it has guidelines about engaging with CALD communities and that this is an important resource retailers can use. ECC noted this is important as 22 percent of people in Australia speak a language other than English at home. The ECC also supported thinking not only about 'Plain English' but also 'plain other languages', and noted it is important to bear in mind that written communication is not the only way to engage with customers.

Dr Maker agreed there is a need for multiple channels for information and interaction: videos, fact sheets, a physical space to walk into and talk to someone, and developing relationships are all important in customer communication.

Discussion area 1 – customer rights and standardised statements

During this discussion session, Workshop participants were asked to consider, discuss in groups and report back on three questions related to whether the draft guideline strikes the right balance to achieve its objectives, whether it meets customer needs, and implications for retailers.

Does the Draft Guideline strike the right balance to achieve its objectives (i.e. to strengthen protections for customers experiencing hardship)?

There was general agreement that the draft Guideline is likely to improve outcomes for customers experiencing payment difficulties due to hardship. Participants generally agreed there was a shared awareness of the issues both retailers and customers are currently facing. Some noted that the Guideline is not a 'silver bullet' to address all of the consumer detriment issues, and could be bolstered by additional practical information and other changes that are outside the scope of the Guideline. The AER noted that these are outside the scope of the Guideline itself but could be considered as supporting materials.

The Energy and Water Ombudsman NSW (NSW) considered that the current draft of the Guideline was positive, and had brought the standardised statements and Guideline into alignment. EWON was interested in seeing some internal mechanisms within the Guideline to monitor compliance.

The ECC considered that the Guideline needs more structure, and should include automatic triggers for a retailer response, but acknowledged the AER is constrained by the requirements of the law.

PIAC considered that the draft Guideline should go further, and suggested there needs to be a clear objective trigger for assistance from retailers, reflecting the need to provide support to customers *before* the customer is in hardship.

Other participants agreed that there was a need for increased proactivity on the part of retailers to get customers access to programs. Some acknowledged the difficult tension between the law and the objectives that the Guideline is trying to achieve, and the practical realities.

A number of consumer advocates were concerned the Guideline does not include a statement about protection from disconnection for hardship customers, and considered that a statement informing customers of this right should be included in the final Guideline.

The AEC noted it would like to see greater emphasis on mutual rights and responsibilities in the Guideline. Some retailers commented that the standardised statements should be flexible, particularly if combined with training requirements.

Retailers were otherwise generally supportive of the draft Guideline, and acknowledged the challenges associated with the Guideline in meeting both its regulatory purposes and focusing on the customer.

Does the Guideline meet customer needs?

Participants considered that, in some places, more context was needed to describe how the Guideline will impact on customers. Some retailers queried how they can identify customers who do not know they need help, so that they can improve access to their programs through early identification of customers experiencing hardship.

Some consumer representatives considered that financial counsellors and other advocacy groups feel consumers need a 'magic word' to get their clients onto retailer hardship programs, however this is not a workable or accessible arrangement for customers. SAFCA noted the difficulties that arise when retailers operate across jurisdictions, noting that call centre staff do not always know about which concessions apply in each state.

What are the implications for retailers? What will need to change?

Retailers generally considered the Guideline contained measures that will assist customers. They broadly agreed that the requirement to communicate with customers will be challenging to implement in circumstances where customers cannot be contacted or when they disengage from contact with the retailer.

Retailers noted that if the customer does not engage with them, communication breaks down and the customer is less likely to participate in or complete a hardship program. Some retailers indicated that, when it becomes difficult to contact a customer after a customer enters the hardship program, they often never hear from them again (some retailers noted this occurs among about 40 percent of customers who sign up to hardship programs). Relatedly, a number of retailers acknowledged that staff training can be improved, and will need to improve, under the new Guideline.

Some retailers were concerned that if a 'trigger amount' for entry to hardship programs was introduced along the lines of Victoria's Essential Services Commission Payment Difficulty Framework (currently \$55), then all staff would require training, as opposed to just specialised staff.

AEC noted its concerns about the meaning of 'successful completion' of a hardship program, commenting that if the customer cannot pay off both their outstanding debt and current usage then they cannot successfully complete. There was general concern amongst retailers about customers who stop engaging with the retailer, and the need for the hardship program to be a partnership, in which both the retailer and the customer must participate. Several indicated they consider there is a need for the hardship program to be a partnership, in

which both the retailer and the customer must participate and have reciprocal responsibilities to each other – rather than focused on retailer responsibilities to customers.

Consumer advocates were of the view that the Retail Law and Retail Rules primarily refer to retailer obligations to customers experiencing payment difficulties due to hardship, and customer obligations should not be given the same weight in the Guideline as those of the retailer.

Some retailers indicated they had not undertaken any research or used their commercial systems to identify why customers sometimes stop engaging, or to look at alternative/innovative ways of keeping customer engaged (e.g. exploring app communication or other options that would enable communication for some customers where they are having to move home or change mobile phone numbers).

Other retailers noted they would need to consider if adequate staff training could be implemented within the timeframes set out in the Rules (this was discussed again later, see p. 7).

Origin noted that it was unclear how any transitional arrangements would be dealt with, e.g. to 'grandparent' customers who are currently in hardship programs. Origin noted this had not been addressed in the Rules and should be in the Guideline or AER Notice.

Discussion area 2 – Bringing the Guideline to life: a detailed look at implementation issues and opportunities

The second roundtable discussion focused on each chapter of the draft Guideline, and provided an opportunity for stakeholders to raise any key issues that may need to be addressed before implementing the final Guideline, focusing on four key areas: retailer responsibilities, communication of customer rights, approvals processes, and the standardised statements.

Retailer responsibilities – what will need to change?

Consumer advocates generally considered the Guideline to be an impetus for retailers to improve the training they provide to front-line staff. A number of consumer representatives were of the view that improved retailer training of their front-line would help customers experiencing payment difficulties be identified and offered the appropriate level of assistance.

Most consumer advocates raised concerns about the use of the term 'hardship', noting the term can be a barrier to engagement as customers might not self-identify as being in 'hardship' (it was acknowledged that the term is defined by the law but that retailers generally have flexibility to choose appropriate customer-friendly language for their customer-facing communications, provided these remain compliant with the Law, Rules and Guideline).

Retailers were generally of the view that customer engagement is a key factor in successful completion of hardship programs, and there should be greater emphasis on customer 'obligations' in the Guideline. Retailers suggested that the assistance they offer to customers is sometimes practically limited by a lack of customer engagement, and provided an example of some customers not being able to be contacted by the retailer once they have been accepted onto a hardship program, making ongoing participation difficult.

Consumer advocates again considered that retailers have the primary responsibility to identify and assist customers experiencing payment difficulties due to hardship in a timely manner, and in a way that promotes customer engagement. It was raised it is important for retailers not to require engagement from customers on the retailer's own terms without consideration of the customer's circumstances, as this can result in increased disengagement.

Some participants offered views that the final Guideline could clarify some issues. For example, some participants are interested to define what 'act fairly and reasonably' means in clause 27 of the Guideline. Both retailers and consumer groups suggested some parts of the Guideline could be supported by additional footnotes, e.g. in relation to areas of best practice, including communicating with CALD communities.

Communication of customer rights

Several participants offered views about the customer communication requirements proposed in the draft Guideline.

Some stakeholders preferred the Guideline to be 'agnostic' as to how information should be provided to customers, recognising that not all customers have access to or use certain methods of communication.

Consumer advocates were of the view that retailers need to be doing more to ensure customers in hardship are receiving information when they need it from their retailers, and considered the communication requirements in the Guideline would help break down the barriers to self-identification.

An ombudsman service noted that this aspect of the Guideline could be improved if a customer's right to seek external dispute resolution was clearly expressed in the final Guideline, including in the standardised statements.

Approval processes and timeframes for compliance

There was general agreement that the rule provides for very short timeframe for implementation of and compliance with the Guideline. In particular, retailers noted they are working towards other 1 July 2019 implementation deadlines in the retail energy market. Consumer advocates generally supported the timeframes for implementation, noting these issues are urgent for consumers and there has been sufficient notice to retailers to commence preparation.

There was general interest among participants about how the impact of the Guideline will be measured over time, once it is implemented.

Standardised statements

Some retailers and consumer advocates noted that the current standardised statements language may not be accessible to all customers.

One retailer considered the language of the standardised statements to be complicated and supported the AER's noted intention to review the standardised statements to make them more customer-friendly before the final Guideline is published.

Consumer advocates noted that the standardised statements should also explain the options to customers who have been excluded from a retailer's hardship program and reference protections from disconnection while participating in hardship programs.

Stakeholder wrap-up

Having discussed the issues above and reported back to the workshop on key items from each table, each participant was asked to independently nominate which issues (up to three) were a priority for resolving as part of the AER's final consultation, and which issues had least importance. 'Voting' was undertaken using colour-coded stickers against the issues raised and discussed earlier during the workshop.

The key issues of most importance to participants, in descending order of importance, included:

1. Ensuring the strengthened protections for customers in the Guideline 'filter down' to retailer front-line staff through training
2. The application of the Guideline to all customers experiencing payment difficulties rather than customers experiencing 'payment difficulties due to hardship'
3. Recognition of the mutual responsibility of retailers and customers, especially the responsibility of customers to maintain engagement with their retailer
4. Clarifying the role of customer advocates in the Guideline to ensure advocates are supported in helping customers who are not willing or able to engage with their retailer
5. Ensuring there are appropriate triggers in the Guideline to enable early identification of customers experiencing debt, recognising that there is no 'magic word' that leads to entry to hardship programs (but an objective 'debt trigger' dollar amount could assist this)
6. Include in the Guideline conditions of (re)entry to hardship programs
7. Supporting best practice by providing footnote links in the Guideline to encourage retailers to go beyond the minimum requirements in the support and assistance offered to customers
8. Include a requirement for retailers to inform customers about the circumstances in which disconnection may occur (i.e. not while they are on a hardship program), and
9. Clearly define what 'success' means in terms of hardship program completion.

Those regarded as least important were:

- Defining hardship (or adding to the current definition in the Law)
- Further clarification of how a 'transitional period' would be applied
- Retailer staff and call centres need to be able to inform customers about different concessions, including where retailers operate in different jurisdictions
- Providing more explanatory information in the Guideline about how retailers should interpret 'fair and reasonable' (clause 27 of the draft Guideline)
- Clarifying how recently approved hardship policies would be treated under the new Guideline
- Addressing the limitations imposed on the Guideline by the Retail Law, and
- Addressing concerns about timing for the implementation of the Guideline.

AER summary and next steps - Angela Bourke, a/g General Manager, Consumer and Markets Branch, AER

Ms Bourke provided a summary of the Workshop, and raised that government, retailers and consumer advocates need to work together to ensure better outcomes for customers. Ms Bourke reiterated that retailers need to be doing more to support and assist customers experiencing payment difficulties due to hardship, and the AER expects retailers to improve their hardship policies and comply with the intent and purpose of the Guideline.

Ms Bourke noted that the consultation on the draft Guideline closes on 4 March 2019.

Attachment A –Workshop participants

1st Energy
ActewAGL
Australian Energy Market Commission (AEMC)
AGL
Australian Energy Council
Brotherhood of St Laurence
COTA Queensland
Energy Aid
Energy and Water Ombudsman NSW (EWON)
Energy and Water Ombudsman Victoria (EWOV)
Energy Australia
Energy Locals
Ergon Energy
Ethnic Communities' Council of NSW
Good Shepherd Microfinance
Locality Energy
Lumo Energy
Melbourne Social Equity Institute
Next Business Energy
NSW Council of Social Service (NCOSS)
Origin Energy
Powerclub
Public Interest Advocacy Centre (PIAC)
Queensland Council of Social Service (QCOSS)
Red Energy
SA Financial Counsellors Association (SAFCA)
Simply Energy
South Australian Government
Sumo Energy
Tango Energy
Tasmanian Council of Social Service (TASCOSS)
Victorian Council of Social Service (VCOSS)