



# Hardship Guideline

## Issues Paper

December 2018

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# 1. Overview

## 1.1 The Australian Energy Regulator

The Australian Energy Regulator (**AER**) is the independent Australian Government agency responsible for the regulation of wholesale and retail energy markets, and energy networks, under national energy legislation and rules. We work to make all Australian energy consumers better off, now and in the future.

We protect the interests of household and small business consumers by enforcing the National Energy Retail Law (**Retail Law**) and National Energy Retail Rules (**Retail Rules**) in New South Wales, South Australia, Tasmania, the ACT and Queensland. We monitor and report on the conduct of market participants and the effectiveness competition.

## 1.2 Purpose of this consultation

We are currently developing a Hardship Guideline (**Guideline**) in accordance with new Retail Rule 75A. The purpose of the Guideline is to create binding, enforceable obligations on retailers to strengthen protections for consumers in hardship.

Rule 75A requires us to specify within the Guideline the processes, timeframes and requirements retailers must comply with in connection with the approval or variation of their hardship policies by the AER.<sup>1</sup> It also requires the Guideline to specify standardised statements that retailers must include in their hardship policies.<sup>2</sup>

To assist us to develop the Guideline, we would value stakeholder input on some key issues. Information received in response to the consultation questions in this issues paper will inform the development of the Guideline and our understanding of stakeholder views regarding the impact of any requirements we prescribe.

### 1.2.1 Consultation timeline and milestones

To develop the Hardship Guideline, we:

- are consulting with a broad range of interested parties on the details of the Hardship Guideline. This issues paper is the first step in formally seeking stakeholder views on the Guideline, and
- have finalised initial complementary consultation on the proposed standardised statements that retailers must include in their hardship policies under Retail Rule 75A(2)(b).<sup>3</sup> The standardised statements will inform customers of how the retailer will comply with the minimum requirements under section 44 of the Retail Law, and provide guidance to customers on their rights, and retailer obligations, under the hardship protections.<sup>4</sup> The standardised statements will form part of the Hardship Guideline and have been subject to early consultation to meet a broad range of stakeholder interest and because they will bring about a range of important improvements to hardship policies.

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<sup>1</sup> Rule 75A(2)(a) of the Retail Rules

<sup>2</sup> Rule 75A(2)(b) of the Retail Rules

<sup>3</sup> See AER website, Standardised Statements for use in customer hardship policies 2018, <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/standardised-statements-for-use-in-customer-hardship-policies-2018>

<sup>4</sup> Rule 75A(2)(b) of the Retail Rules

The indicative timeline and milestones for finalising the Hardship Guideline, including the standardised statements, are shown in **Table 1**, with the red box indicating this consultation. These timelines may be subject to change. Consultation on the draft Hardship Guideline will be subject to the retail consultation procedure in the Retail Rules.<sup>5</sup>

We encourage interested parties to stay informed about this consultation process by subscribing to notifications via the AER website, at <https://www.aer.gov.au/newsletter/subscribe>.

**Table 1: Hardship Guideline consultation and implementation timelines**

Date	Milestone
8 November 2018	AER consultation on draft hardship standardised statements commences
15 November 2018	AEMC issues final hardship rule
7 December 2018	AER consultation on standardised statements issues paper closed
10 December 2018	AER consultation on Hardship Guideline issues paper commences
14 January 2019	AER consultation on Hardship Guideline issues paper closes
February 2019	AER consultation on draft Hardship Guideline (including standardised statements) – anticipated
By 1 April 2019	Final AER Hardship Guideline published
Within two months of Hardship Guideline publication	Retailers with existing hardship policies must submit to the AER updated hardship policies that comply with the Hardship Guideline
Within two months of submission by retailer	AER must approve compliant hardship policies
Within two months of AER approval	Retailers must implement approved hardship policies

### 1.2.2 How to respond to this issues paper

We would like to hear your views on the consultation issues in this paper. We are especially seeking responses to the questions in **Section 3**. We encourage views from a broad range of stakeholders and interested parties, including consumers, consumer advocates, industry and representatives, academics and other experts.

We are flexible in how you provide your comments and feedback to the issues raised in this paper.

If providing a written submission, please email your response to [AERConsumerandPolicy@er.gov.au](mailto:AERConsumerandPolicy@er.gov.au) with the subject line '*Hardship Guideline issues paper submission*' by **Monday 14 January 2019**.

<sup>5</sup> Rule 173 of the Retail Rules

If you would like to provide your views through other means than a written submission, please contact us at [AERConsumerandPolicy@aer.gov.au](mailto:AERConsumerandPolicy@aer.gov.au) to set up a time prior to **Monday 14 January 2019** to discuss your views, or make other arrangements.

Due to timing constraints, late submissions will not be considered.

### **1.2.3 Publishing of submissions**

We prefer that all submissions be publicly available to facilitate an informed and transparent consultative process. Unless marked confidential, all responses will be published on our website, [www.aer.gov.au](http://www.aer.gov.au). If you wish to submit confidential information you should:

- clearly identify the information that is the subject of the confidentiality claim
- provide a non-confidential version of the submission in a form suitable for publication.

For further information regarding our use and disclosure of information provided to us, see the [ACCC/AER information policy \(July 2014\)](#), which is available on our website.

We will publish a summary of submissions alongside the draft Guideline.

If you have any questions on this issues paper or about providing submissions, please send an email to: [AERConsumerandPolicy@aer.gov.au](mailto:AERConsumerandPolicy@aer.gov.au) with the subject line '*Hardship Guideline issues paper*'.

## 2. Background and context

Ensuring the hardship protections in the Retail Law and Retail Rules work in consumers' best interests, and that retailers comply with the hardship obligations is a key priority for the AER.<sup>6</sup>

Our monitoring, compliance and enforcement actions in this space have shown that there are significant issues with the application of the current hardship protections by retailers for customers experiencing payment difficulties. In particular, our 2017 Hardship Review and retailer performance data indicated that discrepancies exist between retailer commitments in hardship policies and what occurs in practice. This disconnect can have a significant impact on customers experiencing payment difficulties and their ability to access and successfully complete hardship programs.

Our findings from the Hardship Review highlighted that the general and principles-based nature of many hardship policies is contributing to poor customer outcomes. Of particular concern is that customers most in need of assistance via a hardship program are not able to access assistance, or are not able to access assistance in a timely manner. Many policies do not appear to sufficiently align with the minimum requirements under the Retail Law. Concerningly, many policies fail to provide adequate guidance to customers to assist them to understand of their rights and entitlements, and some of the measures retailers currently use to help customers are not as effective as they could be.

Stemming from the findings of the Hardship Review, we submitted a rule change proposal to the Australian Energy Market Commission (**AEMC**) in March 2018.<sup>7</sup> The rule change proposal sought the creation of a binding, enforceable AER Hardship Guideline to address three issues:

1. retailers should consistently apply the minimum requirements of their hardship policies at the customer level, to address the problem that the level of assistance given to customers experiencing payment difficulties can differ depending on their retailer;
2. retailers should provide specific, actionable statements in their hardship policies to address the current problem that the general nature of most hardship policies means that customers do not have clarity about their rights and entitlements when they are experiencing payment difficulties; and
3. retailers should provide specific, actionable statements in their hardship policies so that the AER is able to assess and determine whether the retailer is meeting their hardship obligations under the Retail Law.

Our rule change request proposed that the AER develop standardised statements for inclusion in retailer's hardship policies. These standardised statements would reflect the minimum requirements in section 44 of the Retail Law and would provide a clear and uniform set of commitments that a customer is entitled to under a retailer's hardship policy. In addition to the standardised statements, we also proposed that the Guideline be a single point of reference regarding retailers' hardship obligations, and include information on

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<sup>6</sup> AER, *Strategic Statement*, August 2017, <https://www.aer.gov.au/system/files/AER%20Strategic%20Statement%20August%202017.PDF>

AER, *Statement of Intent 2017-18*, <https://www.aer.gov.au/publications/corporate-documents/aer-statement-of-intent-2017%E2%80%9318>

<sup>7</sup> AER, *Request for rule change – strengthening protections in the National Energy Retail Rules for customers in financial hardship*, 21 March 2018, <https://www.aemc.gov.au/sites/default/files/2018-05/RRC0017%20Rule%20change%20proposal.pdf>

processes, timeframes and requirements for the approval or variation of retailers' hardship policies.

## 2.1 Relevant rules

After considering the proposed rule, the AEMC made new Retail Rules 75A and 75B in November 2018 (provided at **Appendix 2**).<sup>8</sup>

Rule 75A requires the AER to develop a Hardship Guideline that specifies:

- the processes, timeframes and requirements to be complied with by retailers in connection with the approval or variation of their hardship policies by the AER<sup>9</sup>; and
- standardised statements that retailers must include in their hardship policies.<sup>10</sup> The standardised statements will inform customers of how their retailer will comply with the minimum requirements in section 44 of the Retail Law, and provide guidance to customers on their rights under the hardship protections, and retailer's hardship obligations under the Retail Law.

Rule 75B requires a retailer to submit to the AER a hardship policy or variation that:

- complies with the Hardship Guideline;
- includes the standardised statements; and
- contains clear and specific statements of the actions the retailer will take to meet the minimum requirements for a hardship policy under section 44 of the Retail Law.<sup>11</sup>

Rule 75B also provides timing for retailers to submit a hardship policy to the AER and implement the approved policy, in the event the AER amends the Hardship Guideline.<sup>12</sup> It also contains timing for the AER to approve a submitted hardship policy or variation.<sup>13</sup>

## 2.2 Proposed civil penalties

As stated in its rule determination, the AEMC, jointly with the AER, will recommend to the COAG Energy Council that Retail Rules 75B(1) and 75B(2) be made civil penalty provisions.<sup>14</sup>

We consider this will go a significant way to preventing retailers operating in the market without an AER-approved hardship policy for an indefinite period. Reform is required as there are currently no timeframes in the Retail Law governing when a retailer must have an approved policy in place. Unless there is agreement between the AER and the retailer as to the form and contents of a hardship policy, the retailer may continue to operate without a policy having been approved. This creates a risk that a new retailer may not have in place an approved policy for an indefinite period, but not be in breach of any provisions under the Retail Law or subject to enforcement options.

If implemented, the proposed civil penalties will effectively place a six month timeframe on retailers to obtain an AER-approved and Guideline-compliant hardship policy where the retailer is:

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<sup>8</sup> AEMC, *Rule determination, Strengthening protections for customers in hardship*, 15 November 2018.

<sup>9</sup> Rule 75A(2)(a) of the Retail Rules

<sup>10</sup> Rule 75A(2)(b) of the Retail Rules

<sup>11</sup> Rule 75B(1) of the Retail Rules

<sup>12</sup> Rule 75B(2) of the Retail Rules

<sup>13</sup> Rule 75B(3) of the Retail Rules

<sup>14</sup> AEMC, *Rule determination*, pages 45-46.



- a new retailer, or
- a retailer that has updated its hardship policy in the event the AER amends the Guideline.

## 2.3 Timing of implementation

We will publish the Hardship Guideline by 1 April 2019. After 1 April 2019, new retailers will have to submit their Guideline-compliant hardship policies within three months of being granted a retailer authorisation. We must then approve the compliant hardship policy within three months of it being submitted. The new retailer must implement the approved policy as soon as practicable after AER approval. The transitional arrangements for current retailers are provided in **section 2.3.1** below.

### 2.3.1 Transitional arrangements

Retailers with an existing approved hardship policy will have to submit to the AER updated hardship policies in accordance with Retail Rule 75B(1) two months after we publish the first Hardship Guideline. We must then approve the hardship policies two months after they are submitted to us. Retailers must implement and publish on their websites their approved hardship policies within two months of approval.<sup>15</sup> In practice, this means that all current retailers will have their updated, compliant hardship policies implemented no later than 2 October 2019.

## 2.4 Scope of the Hardship Guideline

The new rule 75A sets out the scope of the arrangements we are able to include in a Hardship Guideline. The Hardship Guideline must include the standardised statements and the processes, timeframes and requirements in connection with the approval of a retailer's hardship policy by the AER. While stakeholders and interested parties may wish the AER to provide a range of measures in the Guideline, we are bound by the scope of the rule.

We consider that the combination of a binding, enforceable Hardship Guideline and requirements for retailers to include in their hardship policies the standardised statements and the actions they will take to comply with the minimum requirements will bring about much-needed improvements to hardship protections for customers by:

- creating consistency across retailers on the application of the minimum requirements of a hardship policy
- providing clear guidance to customers as to their rights under the hardship protections, and a 'one-stop-shop' for retailers' hardship obligations under the Retail Law, and
- improving the AER's ability to monitor and enforce the Retail Law and Rules by being better able to determine whether retailers' conduct is in accordance with the actionable statements within their hardship policies.

We acknowledge that in developing the Hardship Guideline we will not be able to address all of the broader issues that have been identified, including in our experience approving retailers' hardship policies. We are mindful that, working within the scope of the final rule, a range of changes to hardship arrangements that stakeholders may desire are unlikely to be able to be included in the Guideline. For example, during the AEMC's rule change consultations, a range of interested parties provided views about broader issues including some longer-term improvements that could be made. These include:

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<sup>15</sup> Schedule 3, Part 11 of the Retail Rules

- the need for a shared understanding of what ‘hardship’ means, or preferred use of another term to describe ‘financial hardship’. While the Retail Law includes a definition of ‘hardship customer’, it does not contain a definition of ‘hardship’.<sup>16</sup> Stakeholders noted that this contributes to inconsistent identification across retailers of customers facing payment difficulties due to hardship.<sup>17</sup> In addition, stakeholders noted the use of the word ‘hardship’ in the Retail Law may not resonate with customers who may need assistance via a retailer’s hardship program
- the Retail Law distinguishes residential customers facing payment difficulties *due to hardship* from those facing payment difficulties, meaning that customers facing payment difficulties may receive inconsistent levels of assistance depending on their retailer’s definition of ‘hardship’
- consideration of whether hardship protections should be expanded to apply to small business customers
- the need for the regulatory framework to accommodate that customers can move in and out of hardship, depending on their circumstances, and
- currently, an authorised retailer is able to sell to residential customers in the market without an AER-approved hardship policy in place. We note and support the AEMC’s recommendation to the COAG Energy Council that the Retail Law be amended to address this gap.<sup>18</sup> In addition as outlined in **section 2.2**, the recommendation that Rules 75B(1) and 75B(2) be civil penalty provisions will go some way to addressing this issue by effectively placing a six month timeframe on a retailer to obtain an AER-approved hardship policy.

We acknowledge these are important issues. We continue to work with stakeholders and other organisations to assess when and how the regulatory framework can be continuously improved to ensure effective hardship protections for energy customers.

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<sup>16</sup> Schedule, National Energy Retail Law, Part 1, Division 1, section 2.

<sup>17</sup> AEMC, Draft rule determination, *Strengthening protections for customers in hardship*, 6 September 2018, pages 20-21.

<sup>18</sup> AEMC, Rule determination, page 35.

### 3. Issues for comment

This section sets out the issues we have identified as requiring further detail and input in developing the Guideline.

We seek stakeholder comment on four key consultation issues:

1. How should the Guideline best ensure that consumers are effectively informed about their rights?
2. How should the Guideline support consistent application of the Retail Law minimum standards?
3. How should the Guideline support consumers most in need of hardship assistance to receive it?
4. How should the Guideline facilitate more customers completing hardship programs successfully?

#### 3.1 How should the Guideline best ensure that consumers are effectively informed about their rights?

For consumers to participate effectively in markets, they need to be aware and informed of their rights, and be protected at times that they are unable to safeguard their own interests.

Our 2017 Hardship Review found that the general nature of most retailers' hardship policies did not provide customers with sufficient clarity around their rights and entitlements with regards to hardship under the Retail Law and Rules. From the Hardship Review, we observed that many retailers' hardship policies did not contain specific statements as to how retailers would act and respond in specific circumstances, or what assistance a customer is entitled to under the Retail Law.

We are concerned that – without specific requirements in place – consumers will not be able to readily access information about hardship programs and their rights.

The Retail Law and Rules currently contain a number of provisions requiring retailers to communicate with customers about their hardship policy in specific circumstances. For example, a retailer is required to:

- publish its AER-approved hardship policy on their website<sup>19</sup>
- inform a hardship customer of the existence of the retailer's hardship policy as soon as practicable after the customer is identified as a hardship customer<sup>20</sup>
- inform a residential customer of the retailer's hardship policy where it appears to the retailer that non-payment of an energy bill is due to the customer experiencing payment difficulties due to hardship<sup>21</sup>
- provide information to a small customer about the retailer's hardship policy if a customer with a prepayment meter market retail contract informs the retailer that the customer is experiencing payment difficulties,<sup>22</sup> and

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<sup>19</sup> Sections 43(2)(b) and 43(3)(b)(iii) of the Retail Law; rules 75A(3)(b) and 75B(2)(b) of the Retail Rules

<sup>20</sup> Rule 71(1) of the Retail Rules

<sup>21</sup> Section 46 of the Retail Law

<sup>22</sup> Rule 141(2) of the Retail Rules

- provide information to a customer about the retailer’s hardship policy if a retailer’s management system identifies to the retailer that a small customer has self-disconnected three or more times in any three month period for longer than 240 minutes on each occasion.<sup>23</sup>

While these provisions provide the circumstances in which a retailer must inform a customer of its hardship policy, we consider *what* information the customer is given and *how* it is given are also important and are key to meaningful compliance with the law and achieving better consumer outcomes.<sup>24</sup>

The new Retail Rules 75B(1)(b) and 75B(1)(c) require retailers to include the standardised statements in their hardship policies and clear and specific statements of the actions they will take to meet the minimum requirements of a hardship policy. The adoption of standardised statements will go a significant way to addressing the current information gap, by providing retailers with specific actions and giving consumers clear information about their entitlements under the hardship protections. Additional and complementary improvements to accessibility of information are needed so that customers experiencing financial hardship have the best chance of successfully completing a program.

Retail Rule 75A(1) requires the AER to develop a Hardship Guideline. To achieve this, it is relevant to consider the following objectives and market outcomes:

- customers should be able to readily access information and ask questions about a retailer’s hardship program if they are facing or potentially facing payment difficulties due to hardship. This assistance should also be open to the customer’s advocate or representative, if they choose to have one.
- a hardship policy should be a ‘consumer friendly’ one-stop-shop document that provides information about a retailer’s hardship program, a customer’s entitlements and the retailer’s obligations in an easily accessible and understandable way. Information should be made available in a way that acknowledges that some customers may not identify themselves or feel comfortable identifying themselves as experiencing financial hardship.
- a hardship policy and supporting information should be capable of communicating with diverse audiences, including culturally and linguistically diverse communities, customers with cognitive disabilities, and those without internet access. In developing their hardship policies, individual retailers should give particular consideration to the needs of the market they are serving, and develop innovative ways of serving this market.

We consider these problems will be best addressed by including in the Guideline requirements that retailers:

- *online materials* – include in their hardship policies that hardship materials will be presented in an accessible way and available via an appropriately named and clearly marked URL/hyperlink from the retailer’s homepage. To achieve accessibility, it will be relevant for retailers to consider if their online materials are easily reached, readable and navigated. Content should be designed for clarity and readability, using ‘white space’, high contrast, key information up front, and other approaches to maximise accessibility.

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<sup>23</sup> Rule 141(2) of the Retail Rules

<sup>24</sup> The AER’s behavioural insights work during the development of the Retail Pricing Information Guidelines and Benefit Change Notice Guidelines explored the how customer communications can take account of behavioural biases and encourage consumers to take action in specific circumstances. See <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/retail-pricing-information-guidelines-2018/final-decision> and <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/benefit-change-notice-guidelines-june-2018/final-decision>.

- *contact points* – include in their hardship policy the contact details for informed and appropriately trained personnel to handle hardship queries.
- *customer summary* – include alongside their hardship policies a shorter (equivalent of one A4 page) accessible and ‘consumer friendly’, jargon-free summary document outlining key consumer information regarding their hardship policy. This could also include an ‘easy English’ version for customers with cognitive impairments.
- *general accessibility* – include in their hardship policies that the information they will provide to customers about their hardship programs will be clear and readily accessible both online and offline. Retailers should include in their hardship policy how they will effectively communicate their hardship policy to customers without internet access.
- *CALD accessibility* - include in their hardship policies effective, best practice methods for communicating with culturally and linguistically diverse communities, including through the use of translation services, where this is needed to meet the Guideline’s objectives.
- *jargon-free* – hardship policies must be written in simple, plain English, avoiding jargon and should be visually accessible. Visual accessibility could include the use of graphics, tables or flow charts.
- *customer representatives* – where a customer has elected to be represented by a third party or advocate, include in their hardship policies that they will communicate with the customer’s representative as they would the customer (noting a retailer cannot require a customer to be represented).

We consider these measures, combined with the requirements for retailers to include the standardised statements and clear statements of actions, and the binding nature of the Guideline, will address the current problem that customers are not aware of their rights and entitlements under the hardship protections, and retailer obligations under the Retail Law and Rules.

#### Specific questions for consultation

1. What is the current consumer and consumer advocate experience of accessing information about retailer hardship policies and programs?
2. Are there any serious practical impediments or barriers to implementing the changes described? If so, how could these be overcome?
3. In relation to the problems described in section 3.1, are there other steps that retailers could take to achieve the intentions of the hardship obligations?
4. Are there other risks or considerations should we be aware of?

### 3.2 How should the Guideline support consistent application of the Retail Law minimum standards?

The Hardship Review found there can be a significant gap between retailers’ hardship processes and practices and the quality of the application of a policy at the customer level. Concerningly, we have observed that customers experiencing payment difficulties are not

receiving a consistent level of assistance and access to hardship programs, and access to their rights and entitlements under the Retail Law can differ depending on their retailer.

The consumer detriment arising from this lack of access and consistency can be compounded when consumers are not aware of their entitlements under the law and the retailers' policy (this is addressed in **section 3.1**).

Under section 44 of Retail Law, a retailer's hardship policy must contain, at a minimum, the following requirements:

- processes to identify residential customers experiencing payment difficulties due to hardship, including identification by the retailer and self-identification by a residential customer
- processes for the early response by the retailer in the case of residential customers identified as experiencing payment difficulties due to hardship
- flexible payment options (including a payment plan and Centrepay) for the payment of energy bills by hardship customers
- processes to identify appropriate government concession programs and appropriate financial counselling services and to notify hardship customers of those programs and services
- an outline of a range of programs that the retailer may use to assist hardship customers
- processes to review the appropriateness of a hardship customer's market retail contract in accordance with the purpose of the customer hardship policy
- processes or programs to assist customers with strategies to improve their energy efficiency, where such processes are required by a local instrument any variations specified or of a kind specified by the AER, and
- any other matter required by the Rules.

While many retailers have effective hardship policies in place, it is the way each retailers' policies are interpreted and applied by employees and agents of the retailer (and the systems each retailer builds to support hardship programs) that will have the most direct impact on consumers. These systems of support include early identification, ongoing dialogue and check in points with the consumer, and ways of communicating constructively with both the affected consumer and their representative (if they choose to have one).

For example, customers experiencing payment difficulties may encounter different levels of proactivity depending on their retailer identifying them as potentially requiring hardship assistance. We observed that some retailers use sophisticated processes such as predictive modelling to identify customers likely to experience payment difficulties, while others rely on customers missing a set number of scheduled bill payments before referring them to the hardship program. Early identification of customers maximises opportunities for effective intervention to help customers overcome and manage their financial difficulties – however there is no uniformity across industry as to when this intervention occurs.

Whilst we are aware that retailers have systems and processes to support the implementation of their policies, it is evident that the general quality of retailers' hardship policies does not currently commit or guarantee the retailer will act in a certain way or live up to those obligations. As such, there is currently uncertainty as to how a policy should operate and what a retailer's obligations are when engaging with customers. We consider this uncertainty will partly be addressed by retailers including the standardised statements and

statements under Retail Rule 75B(1)(c) in their hardship policies. To support this, we consider the Guideline should include requirements that retailers' hardship policies will:

- describe the types of systems the retailer has in place to assist in early identification and assistance for customers experiencing hardship
- identify that the retailers' hardship personnel have undergone dedicated hardship training before handling hardship enquiries, and are able to answer questions
- identify that the retailers has systems in place to support the delivery of the retailers' obligations under the law, rules, the Guideline and their own hardship policy
- state that the retailer regularly reviews its hardship personnel training.

#### Specific questions for consultation

5. What is the current consumer and consumer advocate experience of application of retailer hardship policies and Retail Law minimum standards?
6. Are there any serious practical impediments or barriers to retailers implementing the changes described? If so, how could these be overcome?
7. Are there other risks or considerations should we be aware of?

### 3.3 How should the Guideline support consumers most in need of hardship assistance to receive it?

The Hardship Review and our experience approving retailer's hardship policies raised concerns that consumers most in need of hardship assistance are not always receiving it, or are not receiving it in a timely manner. We discuss the issues relating to early identification of customers facing payment difficulties and barriers to entry or re-entry to a hardship program in **sections 3.3.1 and 3.3.2** respectively.

#### 3.3.1 Improving the early identification of customers facing payment difficulties

Where early identification of customers facing payment difficulties occurs, this maximises opportunities for effective intervention to help customers overcome and manage these difficulties in the short term. This ensures that customers in need of assistance through retailers' hardship programs are able to receive help in a timely manner before difficulties grow or escalate.

Both the Hardship Review and our *2016-17 Annual Report on Compliance & Performance of the Retail Energy Market* revealed concerning trends about the adequacy of retailers' current processes for early identification of customers facing payment difficulties. For example:

- The AER Hardship Review found that retailers reported high numbers of non-hardship customers disconnected with debts over \$1,000, and high numbers of non-hardship customers with average debts over \$1,000 for more than 12 months.
- The 2016-17 report revealed that despite high levels of debt across most jurisdictions, the proportion of customers on hardship programs remained low. Most

jurisdictions reported less than one in 100 electricity customers receiving hardship assistance. Participation rates were largely unchanged from 2015-16.<sup>25</sup>

- The 2016-17 report showed an additional 1,083 electricity customers were disconnected for non-payment in the 2016-17 period compared to the previous financial year. The total number of electricity disconnections across the eastern states (excluding Victoria) increased from 63,843 to 64,926 over the last reporting period. The proportion of disconnected electricity customers who had been on a payment plan in the previous 12 months also increased to 36 per cent of disconnections.<sup>26</sup>

The proposed standardised statements 1 and 2 will assist in addressing this issue by requiring retailers to put in their hardship policies actionable statements on how the retailer will comply with requirements to have processes to identify and respond early to customers experiencing payment difficulties due to hardship.

To support this and assist in the early identification of customers in financial difficulty, we consider the Guideline should require retailers to note in their hardship policies:

- that they will ensure appropriate training of staff to identify customers facing payment difficulties due to hardship and to specifically deal with customers facing financial hardship
- a short description of their process for assessing the eligibility of a customer for their hardship program. This could be a short, readily understood graphic or flow chart that will help customers understand the steps involved.

We consider these measures, combined with the requirements for retailers to include the standardised statements and clear statements of actions, as well as the binding nature of the Guideline, will assist in addressing concerns about retailers processes for early identification of customers experiencing payment difficulties.

### **3.3.2 Addressing unreasonable conditions on entry or re-entry to a retailer's hardship program**

The AER's role in considering and approving retailers' hardship policies has provided direct experience of the range of proposed hardship policy statements that do not meet the purpose of section 43(1) of the Retail Law.<sup>27</sup> Notably, we have encountered proposed hardship policies that contain conditions on customers entering or re-entering a hardship program that, if applied, could prevent a customer in financial difficulty from receiving assistance. We consider this is contrary to the intentions of the law and rules, and should be addressed in the Guideline.

To further illustrate, retailers have submitted draft hardship policies to the AER that purport to:

- deem a customer ineligible to enter the retailer's hardship program if the customer's energy account is estimated or back-billed, or if the customer has previously defaulted on a payment arrangement

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<sup>25</sup> AER, 2015-16 *Annual Report on Compliance & Performance of the Retail Energy Market*, November 2016, [https://www.aer.gov.au/system/files/201516%20AER%20Annual%20Report%20on%20the%20Performance%20of%20the%20Retail%20Energy%20Market\\_1.PDF](https://www.aer.gov.au/system/files/201516%20AER%20Annual%20Report%20on%20the%20Performance%20of%20the%20Retail%20Energy%20Market_1.PDF), page 34.

<sup>26</sup> AER, 2015-16 *Annual Report on Compliance & Performance of the Retail Energy Market*, pages 46-47.

<sup>27</sup> Under section 43(1) of the Retail Law, the purpose of a retailer's hardship policy is to identify residential customers experiencing payment difficulties due to hardship and to assist those customers to better manage their energy bills on an ongoing basis. In approving a retailer's hardship policy, the AER must be satisfied that the policy meets this purpose and the minimum requirements under section 44 of the Retail Law.



- require a customer to attend financial counselling or submit to an energy audit as a condition to entering the retailer’s hardship program
- require customers who have exited a hardship program to pay a certain number of instalments on their debt or an upfront payment before they can be accepted back into a hardship program.

While retailers are able to determine eligibility to their hardship programs within the scope of the law and rules, we consider the above examples do not support the purpose of a hardship policy, which is to assist customers in financial difficulty to better manage their bills on an ongoing basis.

To ensure hardship policy do not include conditions to entry or re-entry to a hardship program that are contrary to the intention of the Retail Rules, we consider the Guideline should contain provisions that make it clear that hardship policies cannot include:

- exclusionary or blanket statements that prevent entry or re-entry into a hardship program, particularly where the retailer states they will determine customer eligibility to a hardship program on a case by case basis
- conditions to entry or re-entry to a hardship program that are reliant on a customer meeting a certain obligation, such as attending financial counselling or being represented by third party such as a financial counsellor, submitting to an energy audit, or paying a certain number of instalments on their debt.

We also consider the Guideline should include a requirement on retailers to include in their hardship policies:

- that they will have internal complaints handling and dispute resolution processes specifically for hardship customers.

#### Specific questions for consultation

8. What is the consumer and consumer advocate experience of accessing retailers’ hardship programs on behalf of customers?
9. Are there any serious practical impediments or barriers to implementing the changes described? If so, how could these be overcome?
10. Are there other risks or considerations should we be aware of?

### 3.4 How should the Guideline facilitate more customers completing hardship programs successfully?

Our Hardship Review found that many retailers reported high numbers of customers are unsuccessfully completing hardship programs. For one retailer, the number of customers unsuccessfully completing their hardship program was as high as 40 per cent. This raises serious concerns about the effectiveness of retailers’ hardship policies and programs, particularly whether payment plans offered by retailers reflect a realistic assessment the customer’s capacity to pay.

Our 2016-17 *Annual Report on Compliance & Performance of the Retail Energy Market*<sup>28</sup> showed fewer customers successfully completing, or exiting the hardship program with the retailer's agreement, than in the previous year. Of the customers on hardship programs, only 27 per cent of electricity customers and 20 per cent of gas customers exited hardship programs successfully. Only around one in four customers who exited the retailer hardship program did so by repaying the debt owed in the time allocated. Many customers simply remained on the hardship program for an extended period.

We consider that the new requirement under Retail Rules 75B(1)(b) for retailers to include standardised statements in their hardship policies, combined with a binding, enforceable Hardship Guideline, will assist in increasing the number of participants successfully completing retailer hardship programs. In particular, standardised statements 2 and 3 provide actionable statements that retailers:

- will inform hardship customers of a suitable payment amount that considers their capacity to pay (standardised statement 2), and
- when agreeing a payment plan with the hardship customer, will take into account how much the customer is able to pay, and how much they already owe (standardised statement 3).

Considering the serious impact of some current practices, we consider it will be necessary for the Guideline to set out appropriate and good practice in this area. The Guideline could include a requirement that retailers specify in their hardship policies the steps they actively take to support customers to complete hardship programs, and recommendations that retailers include in their hardship policies:

- the adoption of the AER's Sustainable Payment Plans Framework as a good practice framework for assessing customers' capacity to pay, or other relevant authoritative guidance,<sup>29</sup> and
- a note to the effect that, in offering flexible payment options to hardship customers, the retailer will consider whether debt waivers or payment matching are appropriate.

#### Specific questions for consultation

11. What is the consumer and consumer advocate experience of customers' completion of hardship programs?
12. Are there any serious practical impediments or barriers to implementing the changes described? If so, how could these be overcome?
13. What other Guideline requirements would assist in improving the rate of customers successfully completing hardship programs?

<sup>28</sup> AER, 2016-17 *Annual Report on Compliance & Performance of the Retail Energy Market*, November 2017, <https://www.aer.gov.au/system/files/AER%20Performance%20Report%20on%20Compliance%20%26%20Performance%20of%20the%20retail%20energy%20market%202016%E2%80%9317.pdf>

<sup>29</sup> The AER's Sustainable Payments Plan Framework is intended to improve the quality of conversations retailers have with their customers about payment plans, while still allowing flexibility and encouraging retailers to offer extra assistance to customers. Its aim is to achieve better outcomes by helping customers and retailers agree to payment plans that are affordable and sustainable. More information is at <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/aer-sustainable-payment-plans-framework>.

# Appendix 1: Consultation questions

## **Section 3.1: How should the Guideline best ensure that consumers are effectively informed about their rights?**

1. What is the current consumer and consumer advocate experience of accessing information about retailer hardship policies and programs?
2. Are there any serious practical impediments or barriers to implementing the changes described? If so, how could these be overcome?
3. In relation to the problems described in section 3.1, are there other steps that retailers could take to achieve the intentions of the hardship obligations?
4. Are there other risks or considerations should we be aware of?

## **Section 3.2: How should the Guideline support consistent application of the Retail Law minimum standards?**

5. What is the current consumer and consumer advocate experience of application of retailer hardship policies and Retail Law minimum standards?
6. Are there any serious practical impediments or barriers to retailers implementing the changes described? If so, how could these be overcome?
7. Are there other risks or considerations should we be aware of?

## **Section 3.3: How should the Guideline support consumers most in need of hardship assistance to receive it?**

8. What is the consumer and consumer advocate experience of accessing retailers' hardship programs on behalf of customers?
9. Are there any serious practical impediments or barriers to implementing the changes described? If so, how could these be overcome?
10. Are there other risks or considerations should we be aware of?

## **Section 3.4: How should the Guideline facilitate more customers completing hardship programs successfully?**

11. What is the consumer and consumer advocate experience of customers' completion of hardship programs?
12. Are there any serious practical impediments or barriers to implementing the changes described? If so, how could these be overcome?
13. What other Guideline requirements would assist in improving the rate of customers successfully completing hardship programs?

## Appendix 2: National Energy Retail Rules 75A and 75B

### 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*.
- (3) The AER may, from time to time, amend the customer hardship policy guideline in accordance with the retail consultation procedure.

### 75B Customer hardship policies

- (1) A retailer's customer hardship policy (or variation) submitted to the AER must:
  - (a) comply with the customer hardship policy guideline;
  - (b) include the standardised statements referred to in rule 75A(2)(b); and
  - (c) 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*.

#### Note 1:

Section 44 of *the Law* sets out the minimum requirements for a customer hardship policy. Section 44(i) of *the Law* permits the Rules to expand the minimum requirements for customer hardship policies.

- (2) A retailer must:
  - (a) submit a customer hardship policy (or variation) in compliance with subrule (1):
    - (i) in accordance with section 43(2) of *the Law*; and
    - (ii) within 3 months of any amendment to the customer hardship policy guideline made by the AER under rule 75A(3); and

- (b) implement and publish the customer hardship policy (or variation), as approved by the AER, on the retailer's website as soon as practicable after it has been approved.
- (3) The AER must approve, subject to section 45 of *the Law*, a customer hardship policy (or variation) that complies with subrule (1) within 3 months:
- (a) of the AER receiving a customer hardship policy for approval under section 43 of *the Law*; and
  - (b) of the AER receiving a customer hardship policy for approval under subrule (2)(a)(ii).