



15 April 2016

**By email:** [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

Attention: Sarah Proudfoot  
General Manager  
Retail Markets Branch  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

Dear Ms Proudfoot,

### **Submission to the AER Draft Sustainable Payment Plan Framework**

The Consumer Action Law Centre (**Consumer Action**) is pleased to provide comment on the AER Draft Sustainable Payment Plan Framework (the **draft framework**).

Consumer Action has participated in the formal and informal consultation with the AER in the development of the draft framework and are pleased with its progress. We are particularly supportive of the AER's intention to "improve outcomes for energy customers who are experiencing financial issues and/or have a debt with their energy retailer". We consider the principles developed by the AER would comprise good practice for retailers dealing with customers experiencing financial difficulty, and customers in general. We have provided comments on various aspects of the framework below.

#### ***Enforceability and Publication***

We question the enforceability of the guideline—the effectiveness of a regime is greatly undermined if it is not enforceable. Some retailers are delivering enhanced support for customers in financial difficulty as an innovative approach to customer service—we applaud the efforts of these retailers, and support ongoing improvements to their process. Others, however, are focused on transactional relationships, 'earning and burning'. This approach may result in a profitable customer base, but the impact for customers who are seen as unprofitable, or loss-making, can be damaging. The voluntary nature of the guideline may result in these businesses continuing this practice, for in a profitable transactional environment, they are not incentivised to adopt a culture of caring.

Businesses that do not adequately support customers need to be exposed and held to account. The complexity of the energy market and the large number of authorised retailers means that poor conduct and poor customer service is often hidden. There is no singular indicator accessible to consumers for what a 'good' energy retailer looks like, particularly in relation to provision of hardship support.

Without the ability to enforce the guidelines, we consider that the publication of those retailers who have committed to the guidelines is a positive step. The AER could host this list on its website (additionally, retailers could promote it on their own website, with AER approval). Promotion through social media and other means will further benefit both consumers and consumer advocates, to identify which retailers have a more holistic approach to its customer base, and which are prepared to work proactively with those experiencing financial difficulty. We also consider there is an opportunity for the retailers to subject themselves to some sort of independent compliance framework. The Australian Energy Council would be well placed to co-ordinate this.

To enhance the guideline's value and effectiveness, we further encourage the AER to consider *publicly listing* poor performers, those who do not meet the conditions of the guideline. This will confirm to consumers why their experience with their retailer does not stack up, and will encourage consumers to shop around. The AER should ensure any information about retailers and the guideline includes a clear reference to *Energy Made Easy* to facilitate this. Unwillingness to abide by the guidelines further indicates a retailer's disregard for consumers and the regulatory regime. Consumers have a right to know which these retailers are.

### ***Retailers suggesting customers switch***

We accept the AER's basis for not including more specific obligations in relation to 'Retailers suggesting customers switch'. At Consumer Action we see evidence of retailers asking customers in financial difficulty to switch to other retailers, despite it not being in the customer's interest to do so. This can have dire impacts on consumers who should be proactively assisted through a hardship program, and supported over the longer term. We acknowledge the principles and consider that retailers who are abiding by those principles will not engage in this behaviour. We urge the AER to ensure that it is attune to the market behaviour of retailers to ensure that those retailers engaging in this behaviour are not considered to be meeting the conditions of the guideline, and that this is publicised.

### ***What can you afford?***

Our casework experience is that retailers are exceptionally poor, or unwilling, to understand a customer's capacity to pay. This is evidenced by payment plans that are too high, the requirement for upfront payments etc.<sup>1</sup> We note that in the earlier draft of the framework the AER had included questions from Consumer Action's submission to the ESC hardship inquiry<sup>2</sup>. These questions provided a clear insight into the financial situation of a customer, without referring to finances and can be less confronting for a consumer.

For example:

*Are you in receipt of Centrelink? Do you live in public housing? Do you rent? Are there pressing health or financial issues? Has your living situation changed? Is someone assisting you?*

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<sup>1</sup> Consumer Action Law Centre, Problems with Payment, July 2014. [http://consumeraction.org.au/wp-content/uploads/2014/07/Problems-with-Payment\\_July-2014.pdf](http://consumeraction.org.au/wp-content/uploads/2014/07/Problems-with-Payment_July-2014.pdf)

<sup>2</sup> Consumer Action Law Centre, Submission to Essential Services Commission's Energy Hardship Inquiry Draft Report, October 2015. <http://consumeraction.org.au/wp-content/uploads/2015/10/Consumer-Action-submission-to-ESC-Hardship-Inquiry-Draft-Report-October-2015-FINAL.pdf>

These questions came directly from our experienced financial counsellors who determined these an effective means of assessing what likelihood a customer has of paying for various bills.

We consider that these questions are less intrusive and should be reinstated and prescribed as a requirement *before* asking a customer what they can afford, this will prevent customers from over committing to payment plans, and will prevent retailers from failing to understand the customer's circumstances (and subsequently promoting an unaffordable payment plan).

We encourage the AER to reconsider how to incorporate this obligation.

### ***Debt collection***

We consider that there is an opportunity to oblige retailers to only engage debt collection agencies that adopt principles of empathy, respect and consistency. Consumer Action assists a number of clients who are experiencing unacceptable treatment by debt collection agencies, appointed by energy retailers. Recent examples include those who have been referred, aggressively, for bankruptcy as a form of debt collection, where a property is pursued to recover an energy debt of less than \$10,000. The social consequences (homelessness) of this activity is unconscionable.

We are working with a number of energy retailers to influence the approach of those retailers engaged in such activity, but consider that it is the debt collection agencies themselves who are advising on certain approaches. On this basis, we consider that a focus on addressing retailer / debt collection relationships to adopt good practice, should be a priority issue for the AER.

### ***Measuring the impact - Super complaints***

We consider there is an opportunity for the AER to include a super complaint provision in its repertoire of inputs to market information, to enhance relations with stakeholders, and to measure the impact of the guideline.

We have raised this with the AER previously and consider it timely in the context of financial hardship, and a non-enforceable guideline. In its report on consumer policy, the Productivity Commission canvassed the establishment of a 'super complaints' mechanism, which has been used in the UK since 2002<sup>3</sup>. Under the UK provision, a designated consumer body notifies the UK Office of Fair Trading and other relevant regulators about a consumer problem. The super complainant is required to set out its reasons why the problem is significantly harming consumers' interests. The regulator must then publish a reasoned response within 90 days. Super-complaints include details of market features harming consumer interests and documented facts and evidence, and are designed to provide consumer bodies with authority in ensuring consumer detriment is appropriately investigated. The process offers complaints to be "fast-tracked" so that issues raised by consumer bodies are given due consideration within a fixed time.

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<sup>3</sup> Productivity Commission, *Review of Australia's Consumer Policy Framework*, available at: <http://www.pc.gov.au/projects/inquiry/consumer/docs/finalreport>, page 218.

We note that the super-complaint mechanism is not intended for complaints about matters that can be handled directly by existing enforcement powers, particularly single-firm conduct. It instead provides a 'fast-track' system for certain consumer bodies to bring market features harming the interests of end consumers to the regulator's attention<sup>4</sup>. The super-complaints mechanism is therefore another means of ensuring that analysis of demand side or consumer problems takes place as part of an effective competition regime.

We consider that of course the AER could also implement a super complaints program across the entirety of its regulatory responsibilities.

### **Launch**

We support a launch date of June 2016. We note the invitation to retailers to indicate whether they would be ready to go live with this process in June 2016, and hope that the AER will consider, but not concede the arguments against retailer readiness. Any retailers who have not maintained currency with the AER process, and do not have a baseline of good customer service, should be incentivised to move quickly to put this into place. The AER should further seek to publish its first list of committed businesses within three months of the 'go live' date.

If you have any further enquiries in relation to this submission, please do not hesitate to contact Janine Rayner, Senior Energy Policy Officer, directly at [janine@consumeraction.org.au](mailto:janine@consumeraction.org.au) or on 8554 6943.

Yours sincerely,

**CONSUMER ACTION LAW CENTRE**



Gerard Brody  
Chief Executive Officer



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Senior Energy Policy Officer

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<sup>4</sup> Office of Fair Trading, *Super-complaints: Guidance for designated consumer bodies*, July 2003. Secretary of State for Trade and Industry, Ms Patricia Hewitt, Enterprise Bill: Second reading, Hansard Commons Debates (UK), 10 April 2002, Volume No. 383, Part No. 125, Column 48