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## **Guidance on AER approval of customer hardship policies**

December 2010

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Enquiries about the currency of these guidelines should be addressed to:

Australian Energy Regulator  
GPO Box 520  
Melbourne Vic 3001

Tel: (03) 9290 1444

Fax: (03) 9290 1457

Email: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

## **Contents**

<b>1</b>	<b>Introduction .....</b>	<b>1</b>
<b>2</b>	<b>Background and hardship obligations .....</b>	<b>3</b>
<b>3</b>	<b>Consideration of the customer hardship policy minimum requirements .....</b>	<b>6</b>
<b>4</b>	<b>Process for approving customer hardship policies.....</b>	<b>13</b>
<b>5</b>	<b>Customer hardship policy governance and compliance .....</b>	<b>17</b>
<b>A.</b>	<b>Customer hardship policy approval submission checklist.....</b>	<b>19</b>

# 1 Introduction

The Australian Energy Regulator (AER) is an independent statutory authority that is administratively part of the Australian Competition and Consumer Commission (ACCC). It currently monitors the wholesale electricity and gas markets and is responsible for compliance with and enforcement of the National Electricity Law and Rules and the National Gas Law and Rules. It also regulates electricity networks in the National Electricity Market (NEM) and gas pipelines in jurisdictions other than Western Australia.

The Ministerial Council on Energy (MCE) has developed a National Energy Customer Framework (Customer Framework) for electricity and gas distribution and retail regulation. The new Customer Framework is set out in the National Energy Retail Law (Retail Law), National Energy Retail Rules (Retail Rules) and National Energy Retail Regulations (Retail Regulations).<sup>1</sup> The AER will have a wide range of functions under the Customer Framework including in relation to the approval of energy retailers' customer hardship policies.<sup>2</sup>

This document *Guidance on AER Approval of Customer Hardship Policies* (Guidance) provides guidance to retailers on the kind of information to include in their customer hardship policies, or to submit as supplementary information to the AER, when seeking approval of their customer hardship policy (or variation). The information set out in this document will assist retailers to demonstrate that their policy satisfies all the minimum requirements and obligations specified in the Retail Law and Rules. It may also assist retailers who do not have a customer hardship policy in place to develop their policy in accordance with the Retail Law and Rules.

This Guidance provides information on the process retailers should follow when submitting customer hardship policies (or variations to those policies) to the AER for approval. It outlines the general approach the AER will take to reviewing, assessing and approving customer hardship policies, including those customer hardship policies already in operation and where approval has previously been granted by a jurisdictional regulator. It provides guidance to retailers on the kind of factors and information the AER will look at, in having regard to the principles set out in the Retail Law, when it considers whether to approve a customer hardship policy.

This document provides guidance only and does not replace the obligations in the Retail Law and Rules. Retailers should review the obligations in the Retail Law and Rules, as well as the guidance contained in this document, when preparing their customer hardship policies.

This document does not limit the assistance retailers can provide to customers under their customer hardship policies and programs. When seeking approval of their customer hardship policies, retailers are not obliged to provide all of the information described in this document. Retailers can also choose to provide material that is not

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<sup>1</sup> Information on the development of the Customer Framework, including the Retail Law, Rules and Regulations, can be found on the MCE's website at:  
<http://www.ret.gov.au/Documents/mce/emr/rpwg/default.html>

<sup>2</sup> It is currently understood that the AER may not undertake this role in Western Australia, the retail electricity market in the Northern Territory and some retail gas markets.

specified in this document. Rather, this Guidance presents the AER's view on the kind of material or information that would help satisfy the AER that a customer hardship policy meets the obligations in the Retail Law and Rules.

Unless explicitly defined, terms used in this document have the meanings given in the Retail Law and Rules. If the terms are not defined in the Retail Law and Rules, they have their ordinary meaning.

## 1.1 Call for submissions

The AER invites comments on this draft Guidance. Any responses or comments received will inform the AER in developing its final *Guidance on AER Approval of Customer Hardship Policies*.

Responses and comments can be sent electronically to: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au), or by mail to:

General Manager  
Markets Branch  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

The closing date for any responses or comments is **25 February 2011**.

The AER prefers that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will therefore be treated as public documents unless otherwise requested, and will be placed on the AER's website ([www.aer.gov.au](http://www.aer.gov.au)). Parties wishing to submit confidential information are asked to:

- clearly identify the information that is subject of the confidentiality claim
- provide a non-confidential version of the submission for publication, in addition to the confidential one.

The AER does not generally accept blanket claims for confidentiality over the entirety of the information provided and such claims should not be made unless all information is truly regarded as confidential. The identified information should genuinely be of a confidential nature and not otherwise publicly available.

In addition to this, parties must identify the specific documents or relevant parts of those documents which contain confidential information. The AER does not accept documents or parts of documents which are redacted or 'blacked out'.

For further information regarding the AER's use and disclosure of information provided to it, please refer to the *ACCC–AER information policy: the collection, use and disclosure of information* on the AER website under 'Publications'.

## 2 Background and hardship obligations

Under the Retail Law, retailers must develop, seek approval of, maintain and implement a customer hardship policy.<sup>3</sup> The purpose of a retailer's customer hardship policy is to identify customers experiencing payment difficulties due to hardship and to assist those customers to better manage their energy bills on an ongoing basis (Purpose).<sup>4</sup>

Retailers must submit their customer hardship policies to the AER for approval within three months of being granted a retailer authorisation to sell energy.<sup>5</sup> In the event that a retailer chooses, or is required, to vary its customer hardship policy, these amendments must also be approved by the AER.<sup>6</sup>

### 2.1 Minimum requirements for retailers' customer hardship policies

In order for a retailer's customer hardship policy to be approved, the AER must be satisfied that the policy contains the following minimum requirements as outlined in the Retail Law:<sup>7</sup>

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

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<sup>3</sup> s. 43(2), National Energy Retail Law

<sup>4</sup> s. 43(1), National Energy Retail Law

<sup>5</sup> s. 43(2)(a), National Energy Retail Law

<sup>6</sup> ss. 43(3)-(5), National Energy Retail Law

<sup>7</sup> s. 44, National Energy Retail Law

- (i) Any other matters required by the Rules.

The AER must also be satisfied that the retailer's customer hardship policy will, or is likely to, contribute to the achievement of the Purpose.<sup>8</sup>

## **2.2 Regulatory guidance for approving customer hardship policies**

The Retail Law also requires the AER, when considering whether to approve a retailer's customer hardship policy (or variation), to have regard to the following principles:<sup>9</sup>

- (a) That the supply of energy is an essential service for residential customers
- (b) That retailers should assist hardship customers by means of programs and strategies to avoid disconnection solely due to an inability to pay energy bills
- (c) That disconnection of premises of a hardship customer due to inability to pay energy bills should be a last resort option, and
- (d) That residential customers should have equitable access to customer hardship policies, and that those policies should be transparent and applied consistently.

## **2.3 How the AER intends to have regard to these principles**

In having regard to the above principles, some things the AER may consider when reviewing a retailer's customer hardship policy (or variation) for approval, include:

- How the policy gives effect to the general principle that the disconnection of a customer due to hardship or an inability to pay their energy bills will be a last resort option<sup>10</sup>
- How the policy reflects an understanding that energy is an essential service and that disconnection from these essential services can have significant impacts on members of the household
- How the policy explains to customers that the retailer's hardship programs and strategies are aimed at assisting customers to better manage their ongoing energy bills and avoid disconnection
- Whether the policy is written in plain language and is clear and easy for customers to understand
- Whether the policy explains how customers can access the program and the retailer's commitments to its customers on the program, in particular the services and assistance that these customers will be offered

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<sup>8</sup> s. 45(1), National Energy Retail Law

<sup>9</sup> s. 45(3), National Energy Retail Law

<sup>10</sup> s. 47, National Energy Retail Law

- Whether the policy explains any expectations the retailer has as to how its customers will participate in the hardship program and any obligations that these customers must meet in order to remain on the program
- How the retailer promotes and publicises (or intends to promote and publicise) their customer hardship policy, including information on the activities it undertakes to promote the existence of its customer hardship policy to its customers, particularly those from culturally and linguistically diverse backgrounds; the general public; and other third party or welfare agencies, etc
- How retailers will inform customers of their customer hardship policy, where it appears that non-payment of an energy bill is due to the customer experiencing payment difficulties due to hardship<sup>11</sup>
- How retailers will inform customers, as soon as is practicable after the customer is identified as a hardship program customer, of the existence of the customer hardship policy,<sup>12</sup> and
- Whether the policy sets out that the retailer will provide hardship program customers with a copy of the customer hardship policy on request and at no cost.<sup>13</sup>

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<sup>11</sup> s. 46, National Energy Retail Law

<sup>12</sup> r. 71(1), National Energy Retail Rules

<sup>13</sup> r. 71(2), National Energy Retail Rules



### **3 Consideration of the customer hardship policy minimum requirements**

As set out at section 2.1, the Retail Law specifies the minimum requirements that a retailer's customer hardship policy must contain.<sup>14</sup> The section below provides guidance as to what information retailers could include in their policies (or in supplementary information provided to the AER) to assist the AER in its assessment of a customer hardship policy.

This guidance is provided having regard to the factors that the AER is required to consider under section 45 of the Retail Law.

#### **3.1 Processes to identify customers experiencing payment difficulties**

The Retail Law requires retailers to have processes in place to identify customers experiencing payment difficulties due to hardship, including identification by the retailer and self-identification by a residential customer.<sup>15</sup>

In assessing whether a proposed customer hardship policy contains this minimum requirement, some factors the AER may consider include:

- How the retailer will identify customers experiencing payment difficulties for inclusion in their hardship program, including the processes the retailer has in place so that it can identify customers and the processes in place to enable a customer to self identify
- Any eligibility criteria that the retailer applies to customers seeking to enter the hardship program
- Any application processes or procedures that customers are required to complete in order to join the hardship program
- Any circumstances where customers may be denied access to the hardship program
- Any arrangements the retailer has in place for third party and welfare agencies to contact the retailer on behalf of customers experiencing payment difficulties to help identify customers in need of hardship assistance
- Examples of any indicators, factors or circumstances that a retailer may typically look for to help identify when a customer is potentially experiencing payment difficulties or hardship, and

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<sup>14</sup> s. 44, National Energy Retail Law

<sup>15</sup> s. 44(a), National Energy Retail Law

- Any commitment from the retailer for dealing empathetically, respectfully and fairly with customers experiencing payment difficulties to encourage customers in hardship to self-identify.

Retailers may also wish to provide the AER with any other relevant supporting information they consider appropriate.

Retailers that offer prepayment meter (PPM) market retail contracts are also required to have processes in place that allow them to identify customers who may be experiencing payment difficulties. This includes when the customer informs the retailer in writing or by telephone that they are experiencing payment difficulties or where the retailer's management system identifies that the customer is regularly self-disconnecting.<sup>16</sup> Where a PPM customer is identified as experiencing payment difficulties, retailers are required to contact them (as soon as is reasonably practicable) to offer assistance.

Where relevant to the circumstance of the retailer, the AER will also consider whether a customer hardship policy provides information on the assistance available to PPM customers,<sup>17</sup> such as:

- The offer to make immediate arrangements to replace the prepayment meter with a standard meter at no cost;<sup>18</sup>
- Alternative retail contracts that may be offered to the customer;<sup>19</sup>
- Information about, and referral to, any government funded energy charge rebate, concession or relief scheme;<sup>20</sup> and
- Any available financial counselling services.<sup>21</sup>

### 3.2 Processes for early response by the retailer

The Retail Law requires retailers to have processes in place for an early response in the event that a residential customer is identified as experiencing payment difficulties due to hardship.<sup>22</sup>

In assessing whether a proposed customer hardship policy contains this minimum requirement, some factors the AER may consider, include:

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<sup>16</sup> r. 141, National Energy Retail Rules. This Rule refers to where the retailer's management system identifies 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>17</sup> r. 141(2)(f), National Energy Retail Rules

<sup>18</sup> r. 141(2)(c), National Energy Retail Rules

<sup>19</sup> r. 141(2)(d), National Energy Retail Rules

<sup>20</sup> r. 141(2)(e), National Energy Retail Rules

<sup>21</sup> r. 141(2)(g), National Energy Retail Rules

<sup>22</sup> s. 44(b), National Energy Retail Law

- Whether the policy sets out how the retailer will provide an early response to its customers once they are identified as being in hardship, including any processes it has in place, and
- Whether the policy includes information on what the customer can expect from the retailer once they are identified as experiencing payment difficulties due to hardship, including the timeframes within which a retailer will usually respond and provide assistance.

Retailers may also wish to provide the AER with any other relevant supporting information they consider appropriate.

### 3.3 Flexible payment options

The Retail Law requires retailers to offer customers experiencing hardship, flexible payment options for the payment of their energy bills, including payment plans and Centrepay.<sup>23</sup>

In assessing whether a proposed customer hardship policy contains this minimum requirement, some factors the AER may consider, include:

- Whether the policy clearly sets out that there is a range of flexible payment options available. Details on the types of options that may be offered to customers could be included (for example, the types of payment plans available)
- Whether the policy clearly sets out that Centrepay is available upon request. Retailers may also provide a description of Centrepay and information on who is eligible to use this service or where customers can get further information on this payment method
- Whether the policy includes information on how the retailer will discuss the range of payment options available with the customer and work with the customer to agree which is most appropriate for their circumstances
- Whether the policy advises that when establishing a payment plan, the retailer will:
  - have regard to the customer's capacity to pay, any arrears owing and the customer's expected energy consumption needs over the following 12-month period<sup>24</sup>
  - set out for the customer all the relevant details of the plan,<sup>25</sup> and

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<sup>23</sup> s. 44(c), National Energy Retail Law

<sup>24</sup> r. 72(1), National Energy Retail Rules

<sup>25</sup> r. 72(2), National Energy Retail Rules

- inform customers how it will monitor their payment plans, where applicable, and the circumstances under which a customer’s payment plan may be cancelled
- Information on the full range of payment options available and any details of how the retailer will agree with the customer the most appropriate payment option for their circumstances, and
- Information on how the retailer will assess and establish customers’ capacity to pay and take that into consideration when agreeing a payment plan.

Retailers may also wish to provide the AER with any other relevant supporting information they consider appropriate.

### **3.4 Identifying appropriate government concession programs and financial counselling services**

The Retail Law requires retailers to have processes in place to identify and notify customers of any appropriate government concession programs and financial counselling services.<sup>26</sup>

In assessing whether a proposed customer hardship policy contains this minimum requirement, some factors the AER may consider, include:

- Whether the policy explains how the retailer will check the customer’s eligibility for applicable government concessions and other assistance programs and notify the customer of these programs
- Whether the policy includes information on any assistance the retailer will provide to assist customers in applying for appropriate government concessions and assistance programs, and
- Whether the policy includes information on how retailers will identify and notify customers of financial counselling services that may further assist the customer.

Retailers may also wish to provide the AER with any other relevant supporting information they consider appropriate.

### **3.5 Programs that the retailer may use to assist hardship customers**

Section 44(e) of the Retail Law specifies that retailers’ customer hardship policies must contain ‘an outline of a range of programs that the retailer may use to assist hardship customers’.

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<sup>26</sup> s. 44(d), National Energy Retail Law

In assessing whether a proposed customer hardship policy contains this minimum requirement, some factors the AER may consider, include:

- Whether the policy clearly sets out the details of the range of programs and initiatives available to assist customers under the retailer’s customer hardship policy
- Whether the policy explains how the retailer will discuss and agree with the customer which program(s) or form(s) of assistance is most appropriate for their circumstances
- Any responsibilities and/or requirements expected of customers when participating in the hardship program, and
- The circumstances under which a customer would be removed or excluded from the hardship program.

Retailers may also wish to provide the AER with any other relevant supporting information they consider appropriate.

### **3.6 Processes to review the appropriateness of hardship customers’ market retail contracts**

The Retail Law requires retailers to have processes in place to review the appropriateness of a hardship customer’s market retail contract in accordance with the purpose of the customer hardship policy.<sup>27</sup>

In assessing whether a proposed customer hardship policy contains this minimum requirement, some factors the AER may consider include:

- Whether the policy includes information on the circumstances under which a retailer will review the appropriateness of a hardship customer’s market retail contract, particularly where customers are on a market retail contract that does not allow Centrepay as a payment option<sup>28</sup>
- Whether the policy explains how the retailer will discuss with the customer the range of alternative retail offers and contracts available and work with the customer to agree which is most appropriate for their circumstances
- Whether the policy specifies that any alternative retail contract offered must make Centrepay available as a payment option;<sup>29</sup> and if there is no alternative contract considered to be more appropriate, that the retailer will make Centrepay available as a payment option under the customer’s existing market retail contract,<sup>30</sup> and

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<sup>27</sup> s. 44(f), National Energy Retail Law

<sup>28</sup> r. 74(4), National Energy Retail Rules

<sup>29</sup> r. 74(6), National Energy Retail Rules

<sup>30</sup> r. 74(7), National Energy Retail Rules

- Whether the policy explains to customers that there is no charge for the review, for any transfer to an alternative retail contract or any early termination charge or other penalty for the early termination of the customer's previous customer retail contract.<sup>31</sup>

Retailers may also wish to provide the AER with any other relevant supporting information they consider appropriate.

### **3.7 Strategies to improve energy efficiency**

The Retail Law requires retailers to have processes or programs in place to assist customers with strategies to improve their energy efficiency, including any processes or programs required by a local instrument.<sup>32</sup>

In assessing whether a proposed customer hardship policy contains this minimum requirement, some factors the AER may consider, include:

- Whether the policy includes details of any processes or programs the retailer is required to offer, under a local instrument, to assist customers with strategies to improve their energy efficiency
- Whether the policy includes information on any other programs and processes the retailer has available to customers, to assist with strategies to improve their energy efficiency, and
- Whether the policy explains how the retailer will discuss and agree with the customer the programs, processes or strategies to improve their energy efficiency that are most appropriate for their circumstances.

Retailers may also wish to provide the AER with any other relevant supporting information they consider appropriate.

### **3.8 Any variations specified by the AER**

Section 43(3) of the Retail Law states that if the AER forms the view that a retailer's customer hardship policy requires review, the AER may direct the retailer to review the policy and make variations in accordance with any requirements set out by the AER. The retailer must then vary the policy in accordance with the AER's requirements.

This power is independent of the initial approval process and can be triggered at any time the AER forms the view that the retailer's customer hardship policy requires review.

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<sup>31</sup> r. 74(8), National Energy Retail Rules  
<sup>32</sup> s. 44(g), National Energy Retail Law

In assessing a customer hardship policy for approval, the AER will consider whether the proposed policy incorporates any requirements and variations that have been specified by the AER and notified to the retailer.

Further information on the process for reviewing and varying customer hardship policies is provided in section 4.

### **3.9 Other hardship obligations**

The Retail Law and Rules specify a number of other obligations with regard to customers experiencing hardship and payment difficulties. When considering whether to approve a retailer's customer hardship policy, the AER must not only be satisfied that the minimum requirements are contained in the policy but that the customer hardship policy will (or is likely to) contribute to the achievement of the Purpose.

In assessing a customer hardship policy for approval, the AER may also consider whether information on the following obligations is included in the policy:

- That any late payment fees applied under a retail contract with a hardship customer will be waived,<sup>33</sup> and
- That a retailer cannot require a residential customer to provide a security deposit if the customer is identified as a hardship customer by the retailer, or the customer advises the retailer that they were identified as a hardship customer by another retailer, in relation to any premises.<sup>34</sup>

Retailers may also wish to provide the AER with any other relevant supporting information they consider appropriate.

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<sup>33</sup> r. 73, National Energy Retail Rules

<sup>34</sup> r. 40(3), National Energy Retail Rules

## 4 Process for approving customer hardship policies

### 4.1 Customer hardship policy approval

Within three months of being granted an authorisation, retailers must submit their customer hardship policies to the AER for approval.<sup>35</sup> For retailers operating in more than one jurisdiction, the approval of a policy will be considered on a national basis, unless:

- Jurisdictional obligations vary. For example, where a local instrument requires a customer hardship policy to include programs or processes to assist customers with strategies to improve their energy efficiency, or
- Retailers advise that certain elements of their policy differ across various jurisdictions.

In these cases, retailers should provide further details to the AER of any jurisdictional variations in their customer hardship policies when submitting them for approval.

The AER will contact the retailer in instances where further information or clarification on any matter relating to the approval of their customer hardship policy is required.

Section 45 of the Retail Law states that the AER must approve a retailer's customer hardship policy if it is satisfied that the policy contains the minimum requirements and will (or is likely to) contribute to achieving the purpose specified in the Retail Law. The AER will notify retailers in writing when their customer hardship policy has been approved.

### 4.2 Customer hardship policies requiring review or variations

Where the AER is not satisfied that a retailer's customer hardship policy contains the minimum requirements or that it will achieve the purpose prescribed in the Retail Law, the AER will not approve the policy in the form submitted by the retailer.

In these instances, the Retail Law specifies that the AER may:<sup>36</sup>

- Indicate to the retailer in what respects it considers the customer hardship policy (or variation), as submitted, to be deficient and request the retailer to submit another customer hardship policy (or variation to the policy), or
- Approve the customer hardship policy (or variation) with alterations agreed to by the retailer so that the AER is satisfied that the customer hardship policy will contain the minimum requirements and will (or is likely to) contribute to the achievement of the Purpose.

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<sup>35</sup> s. 43(2), National Energy Retail Law

<sup>36</sup> s. 45(2), National Energy Retail Law



Section 43(3) of the Retail Law also states that if the AER forms the view that a retailer's customer hardship policy requires review, the AER may direct the retailer to review the policy and make variations in accordance with any requirements set out by the AER. The retailer must then vary the policy in accordance with the AER's requirements and submit it to the AER for approval.<sup>37</sup>

In these instances, the AER will contact the retailer to:

- Advise that a review or amendment of their customer hardship policy is required
- Explain the reasons for the review and in what respects the AER considers the customer hardship policy to be deficient
- Advise of the timeframes within which the retailer must complete the review and resubmit an amended customer hardship policy to the AER for approval
- Where applicable, advise of any directions, requirements or variations that the AER has specified must be incorporated into the amended customer hardship policy (as provided for under sections 45(2) and 43(3) of the Retail Law)
- Where applicable, advise that the AER will approve the customer hardship policy with alterations where the retailer agrees to the alterations (as provided for under section 45(2)(b) of the Retail Law) so that the AER is satisfied that the relevant requirements are met, and
- Explain whether the retailer is required to resubmit their entire customer hardship policy or just the amendment(s) or sections that have been varied.

### **4.3 Customer hardship policies already approved by jurisdictional regulators**

Retailers operating in Victoria are already required to have in place customer hardship policies that have been approved by the jurisdictional regulator, the Essential Services Commission of Victoria (ESCV). It is possible that those customer hardship policies already approved under the existing Victorian framework<sup>38</sup> will be compliant with the hardship provisions in the Retail Law given the general consistency across these obligations.<sup>39</sup>

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<sup>37</sup> s. 43(3)(b), National Energy Retail Law

<sup>38</sup> Essential Services Commission (Victoria), Guideline No 21: Energy Retailers' Financial Hardship Policies, April 2007. <http://esc.vic.gov.au/NR/rdonlyres/6B9B49B3-E13B-4B36-ADD2-64D7695E8F1D/0/GuidelineNo21.pdf>

<sup>39</sup> The AER notes, however, that there are some differences between the existing Victorian hardship obligations and those in the Retail Law, the full extent and significance of which will be assessed on commencement of the NCEF in Victoria.

Once the National Energy Retail Law and Rules are in operation in Victoria, these retailers will be required to seek AER approval of their customer hardship policies.<sup>40</sup>

## 4.4 Approving customer hardship policy variations

Retailers may vary their customer hardship policies independently of a direction or requirement specified by the AER (see section 4.2). In the event that a retailer chooses to vary, or amend, all or part of its customer hardship policy, the retailer will be required to resubmit their policy to the AER for approval.<sup>41</sup> The Retail Law specifies that varying a customer hardship policy extends to replacing a policy with another customer hardship policy.<sup>42</sup>

When submitting a varied customer hardship policy (or variations) to the AER for approval,<sup>43</sup> retailers should follow the process outlined in section 4.1. In addition, retailers should clearly indicate the sections of the policy that have been varied or amended from the previously approved policy and set out the reasons for the proposed change(s).

Varied customer hardship policies are not to be implemented until the retailer has received approval from the AER. The AER will contact the retailer should further information or clarification be required.

The AER will notify the retailer in writing when the variation(s) has been approved. Once approved, the varied policy must be published on the retailer's website.<sup>44</sup>

Where the AER is not satisfied that a retailer's proposed variation(s) or amended customer hardship policy contains the minimum requirements or that it will achieve the purpose prescribed in the Retail Law,<sup>45</sup> the AER will not approve the policy and will follow the same process outlined in section 4.2.

A variation is not defined in the Retail Law or Rules. The AER considers that not all changes to a policy will constitute a variation for the purposes of section 43(4) of the Retail Law. Where a change made by a retailer to its customer hardship policy does not affect the treatment that a hardship customer will receive under the policy, the AER considers that this will not constitute a variation requiring AER approval under section 43(4). Examples of such changes that will not require AER approval include: changes to retailer contact details, and updates to information contained in the customer hardship policy to reflect changes to jurisdictional energy concessions and/or energy efficiency schemes. The AER recommends that retailers should check with the AER whether a proposed change will constitute a variation. Queries

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<sup>40</sup> This will be subject to any requirements that may be included in jurisdictional application legislation.

<sup>41</sup> s. 43(4), National Energy Retail Law

<sup>42</sup> s. 43(5), National Energy Retail Law

<sup>43</sup> Customer hardship policies should be submitted to the contact details set out in section 4.5.

<sup>44</sup> s. 43(4), National Energy Retail Law

<sup>45</sup> s. 45(1), National Energy Retail Law

regarding whether a change to a customer hardship policy requires approval from the AER should be directed to the contact details provided at section 4.5.

## **4.5 Contact details**

Customer hardship policies and any variations should be sent to the AER for approval either electronically to [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au), or by mail, addressed to:

General Manager  
Markets Branch  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

If sent electronically, the subject of the email should state "Customer Hardship Policy Approval – attention Markets Branch".

Any queries regarding the approval of a customer hardship policy or the AER's process for approving a customer hardship policy should also be directed to the contact details above.

## **4.6 Publication of approved customer hardship policies**

Retailers must publish their approved policy on their website as soon as practicable.<sup>46</sup>

The AER may undertake a check of retailers' websites after it has approved the customer hardship policy to see if the policy has been published.

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<sup>46</sup> s. 43(2)(b), National Energy Retail Law

## 5 Customer hardship policy governance and compliance

### 5.1 Policy governance

Once a retailer's customer hardship policy has been approved by the AER, the retailer must ensure that it is implemented and maintained.<sup>47</sup>

When developing their customer hardship policies and preparing them for approval, retailers may also wish to consider how they will ensure that they have appropriate governance and compliance procedures in place to ensure that their approved customer hardship policies are adequately implemented and maintained in accordance with this obligation in the Retail Law.

Retailers may also consider any arrangements, processes or procedures they have in place to periodically review their customer hardship policies to ensure that they remain appropriate and will (or are likely to) contribute to the achievement of the purpose prescribed in the Retail Law.

### 5.2 Hardship compliance and performance audits

Under the Retail Law, the AER may conduct hardship compliance and performance audits.<sup>48</sup>

The AER may audit a retailer's compliance with their hardship obligations<sup>49</sup> or the implementation of a retailer's approved customer hardship policy.<sup>50</sup> The Retail Law also allows the AER to conduct performance audits in respect of the performance of retailers with reference to the Hardship Program Indicators.<sup>51</sup>

Retailers will also be required to report data against the Hardship Program Indicators determined by the AER, in the form and manner specified by the AER's *Performance Reporting Procedures and Guidelines*.<sup>52</sup>

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<sup>47</sup> s. 43(2)(c), National Energy Retail Law

<sup>48</sup> The AER's approach to conducting these audits was considered in the issues paper "Approach to compliance with the National Energy Retail Law, Rules and Regulations" (see link below). The AER proposed to conduct combined hardship compliance and performance audits.  
<http://www.aer.gov.au/content/index.phtml/itemId/736894>

<sup>49</sup> ss. 275 and 283, National Energy Retail Law

<sup>50</sup> s. 275, National Energy Retail Law

<sup>51</sup> s. 283, National Energy Retail Law

<sup>52</sup> ss. 282(a) and 286(2), National Energy Retail Law

### 5.3 AER's approach to compliance under the Customer Framework

Under the Customer Framework the AER will monitor, investigate and enforce compliance by regulated entities—primarily energy retailers and distributors<sup>53</sup>—with the Retail Law and Rules, and report to stakeholders on compliance.<sup>54</sup>

These functions will be underpinned by a framework for auditing and compliance reporting as set out in *AER Compliance Procedures and Guidelines*.

The AER has also prepared a Statement of Approach that explains our proposed approach to monitoring compliance and investigating possible breaches of the Retail Law, Rules and Regulations, and how we propose to determine the appropriate response to any breaches we identify through our enquiries and investigations.

The AER's approach to monitoring retailers' compliance with the hardship obligations in the Retail Law and Rules will fall under the approach to compliance set out in these documents.

The AER is currently consulting on these documents which are available on the AER's website.<sup>55</sup>

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<sup>53</sup> Section 2 of the National Energy Retail Law defines a regulated entity as a retailer, distributor or other person identified in the National Energy Retail Rules as a regulated entity.

<sup>54</sup> s. 204, National Energy Retail Law

<sup>55</sup> <http://www.aer.gov.au/content/index.phtml?itemId=736894>

## A. Customer hardship policy approval submission checklist

Before retailers submit their customer hardship policy to the AER for approval, they may use the checklist below to review whether their customer hardship policy (and any supporting documentation) includes the following information:

	Requirements	Included in customer hardship policy	
3.1	<i>Identifying customers experiencing payment difficulties</i>	Processes to identify customers eligible for inclusion in the hardship program including: <ul style="list-style-type: none"> <li>▪ Self identification</li> <li>▪ Retailer identification</li> </ul>	
3.2	<i>Early response</i>	Processes in place for early response	
3.3	<i>Flexible payment options</i>	Flexible payment options that may be offered, including: <ul style="list-style-type: none"> <li>▪ Payment plans</li> <li>▪ Centrepay</li> </ul>	
3.4	<i>Government concession programs and financial counselling services</i>	Processes in place to identify and notify the customer of: <ul style="list-style-type: none"> <li>▪ government concessions programs, and</li> <li>▪ financial counselling services</li> </ul>	
3.5	<i>Programs used to assist hardship customers</i>	Programs and initiatives that are on offer to hardship customers	
3.6	<i>Processes to review market retail contracts</i>	Processes for reviewing the appropriateness of hardship customers' market retail contracts to ensure Centrepay available	
3.7	<i>Strategies to improve energy efficiency</i>	Processes or programs to assist customers with strategies to improve their energy efficiency, including <ul style="list-style-type: none"> <li>▪ those required by a local instrument</li> <li>▪ others offered by the retailer</li> </ul>	
3.9	<i>Other hardship obligations</i>	Hardship customers will not be charged late payment fees.	
		Hardship customers will not be required to pay a security deposit	
		Communication and promotion of the customer hardship policy to residential customers	
		Disconnection of a hardship customer's premises is a last resort option	