



FINAL

Guidance on AER approval of customer hardship policies

May 2011

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1 Introduction

- 1.1 The Ministerial Council on Energy (MCE) has developed, through extensive consultation, National Energy Retail Law, Rules and Regulations for electricity and gas (energy) distribution and retail regulation.¹ This is the final stage in the transition to national regulation of the energy markets.
- 1.2 The *National Energy Retail (South Australia) Act 2011* and *Statute Amendment (National Energy Retail Law) Act 2011* received the Royal Assent on 17 March 2011. The MCE agreed on 10 December 2010 that jurisdictions would work towards a common target date of 1 July 2012 for commencement of the Retail Law and Rules.
- 1.3 The Australian Energy Regulator (AER) is an independent statutory authority that is administratively part of the Australian Competition and Consumer Commission (ACCC). The AER will have a wide range of functions under the Retail Law and Rules including the approval of energy retailers' customer hardship policies.²
- 1.4 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.
- 1.5 As advised in the MCE's Standing Committee of Officials Bulletin No. 190³ on 21 March 2011, all activities carried out by the AER prior to the commencement of the Retail Law and Rules (such as consultation, making instruments and decision making) will be supported by appropriate transitional provisions enacted by participating jurisdictions. This is to ensure instruments and decisions made by the AER as a result of these pre-commencement activities are validly made under the Retail Law and Rules and take effect on commencement of the Retail Law and Rules.
- 1.6 The MCE Standing Committee of Officials Bulletin also advises that retailers who wish to be authorised to sell energy under the Retail Law (including current energy retailers who will be transitioned to authorised retailers under the Retail Law) will be required to have an AER approved customer hardship policy in place for commencement of the Retail Law and Rules. To ensure this

¹ Information on the development of the Retail Law, including exposure drafts of the legislation, as well as the Retail Rules and Regulations to be made, can be found on the MCE's website at:

<http://www.ret.gov.au/Documents/mce/emr/rpwg/default.html>

² 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.

³ <http://www.ret.gov.au/Documents/mce/documents/2011bulletins/Bulletin-No-190-ImplementationoftheNationalEnergyCustomerFramework.pdf>

requirement is met, retailers will be required to submit their customer hardship policy to the AER for approval by **1 December 2011**. The AER intends to commence detailed discussions with retailers on the submission and approval of their customer hardship policies from September 2011.

- 1.7 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 may consider when deciding whether to approve a customer hardship policy. These factors have been considered and developed to support the principles the AER must have regard to, as set out in the Retail Law.
- 1.8 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.
- 1.9 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 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.
- 1.10 Unless explicitly defined, terms used in this document have the meanings given in the Retail Law and Rules. Terms not defined in the Retail Law and Rules have their ordinary meaning.
- 1.11 The AER may amend, update or revise the Guidance from time to time and will do so in consultation with stakeholders.

2 Background and hardship obligations

- 2.1 Under the Retail Law, retailers must develop, seek approval of, maintain and implement a customer hardship policy.⁴ 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).⁵
- 2.2 New entrant retailers who wish to be authorised to sell energy under the Retail Law must submit their customer hardship policies to the AER for approval within three months of being granted a retailer authorisation to sell energy.⁶ Existing energy retailers, who will be transitioned to authorised retailers under the Retail Law, will be required to have an AER approved customer hardship policy in place for commencement of the Retail Law and Rules on 1 July 2012.⁷ To ensure this requirement is met, retailers will be required to submit their customer hardship policy to the AER for approval by **1 December 2011**.
- 2.3 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.⁸
- 2.4 Once approved, retailers must publish their customer hardship policies on their websites (see section 4.24). Retailers should have a shorter, more accessible and 'consumer friendly' document outlining key information regarding their hardship policy for their customers, including (but not limited to):
- (a) The purpose and aim of the policy
 - (b) How to access the program and the assistance available
 - (c) The rights and obligations of both the customer and the retailer when participating in the program, and
 - (d) Relevant contact details, information on how the retailer will meet its privacy obligations and where customers can access the full details of the hardship policy.

Minimum requirements for retailers' customer hardship policies

- 2.5 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 specified in the Retail Law:⁹

⁴ s. 43(2), National Energy Retail Law

⁵ s. 43(1), National Energy Retail Law

⁶ s. 43(2)(a), National Energy Retail Law

⁷ http://www.ret.gov.au/Documents/mce/_documents/2011bulletins/Bulletin-No-190-ImplementationoftheNationalEnergyCustomerFramework.pdf

⁸ ss. 43(3)-(5), National Energy Retail Law

⁹ s. 44, National Energy Retail Law

- (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
 - (i) Any other matters required by the Rules.
- 2.6 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.¹⁰

Regulatory guidance for approving customer hardship policies

- 2.7 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:¹¹
- (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.

¹⁰ s. 45(1), National Energy Retail Law

¹¹ s. 45(3), National Energy Retail Law

How the AER intends to have regard to these principles

- 2.8 In having regard to the above principles, some factors the AER may consider when reviewing a retailer's customer hardship policy (or variation) for approval, include:
- (a) 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 option¹²
 - (b) 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
 - (c) 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
 - (d) Whether the policy is written in plain language and is clear and easy for customers to understand
 - (e) Whether the retailer has prepared a shorter, more accessible and 'consumer friendly' document outlining key information regarding their hardship policy for their customers (see section 2.4)
 - (f) 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
 - (g) 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. This may include any circumstances that may result in a customer being removed or excluded from participating in the hardship program, as well as any requirements that the customer must meet to be able to re-enter the hardship program
 - (h) Whether the policy includes information for customers on the retailer's internal complaints handling process and external dispute resolution schemes, in the event that the customer has a complaint about access to, or participation in, the hardship program
 - (i) Whether the policy explains how and when customers will be returned to regular billing cycles (and collection) after they have successfully completed the hardship program
 - (j) How the retailer promotes and publicises (or intends to promote and publicise) their customer hardship policy. This may include, for example, 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.

¹² s. 47, National Energy Retail Law

- (k) 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 hardship¹³
 - (l) 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,¹⁴ including the rights and obligations of both the customer participating in the program and the retailer, and
 - (m) 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.¹⁵
- 2.9 When assessing a retailer's customer hardship policy for approval, the AER may consider the circumstances of that retailer, for example, its business model and customer base.
- 2.10 Some retailers do not sell energy to residential customers. The Retail Law requires *all* authorised retailers to have an AER approved customer hardship policy in place. These customer hardship policies are required in respect of residential customers.¹⁶ Retailers who do not sell (and do not intend to sell) energy to residential customers should seek advice from the AER on the information required when submitting their customer hardship policy for approval. Queries should be directed to the contact details provided at section 4.21.
- 2.11 Where these retailers subsequently acquire residential customers (or intend to acquire residential customers), they should advise the AER as soon as is practicable. Given this change in the retailer's circumstances, the AER may form the view that the retailer's customer hardship policy requires review, under s. 43(3) of the Retail Law. In these instances, the process outlined in section 4.11-4.13 of this Guidance would apply.

¹³ s. 46, National Energy Retail Law

¹⁴ r. 71(1), National Energy Retail Rules

¹⁵ r. 71(2), National Energy Retail Rules

¹⁶ s. 43, National Energy Retail Law

3 Consideration of the customer hardship policy minimum requirements

- 3.1 As set out at section 2.1, the Retail Law specifies the minimum requirements that a retailer's customer hardship policy must contain.¹⁷ 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.
- 3.2 This guidance is provided having regard to the factors that the AER is required to consider under section 45 of the Retail Law.

Processes to identify customers experiencing payment difficulties

- 3.3 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.¹⁸
- 3.4 In assessing whether a proposed customer hardship policy contains this minimum requirement, some factors the AER may consider include:
- (a) How the retailer will identify customers experiencing payment difficulties for inclusion in their hardship program, including the processes in place to enable a customer to self identify
 - (b) The training provided to staff dealing with customers experiencing hardship. This may include, for example, training on how to identify customers in potential hardship; training on issues relating to financial hardship; regular refresher training on identification and referral processes and protocols; training in respectful communication to ensure customers experiencing hardship are dealt with in an empathetic and non-judgmental manner
 - (c) Any eligibility criteria that the retailer applies to customers seeking to enter the hardship program
 - (d) Any application processes or procedures that customers are required to complete in order to join the hardship program
 - (e) Any circumstances where customers may be denied access to the hardship program
 - (f) 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

¹⁷ s. 44, National Energy Retail Law

¹⁸ s. 44(a), National Energy Retail Law

- (g) 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
 - (h) Any commitment from the retailer for dealing empathetically, respectfully and fairly with customers experiencing payment difficulties to encourage customers in hardship to self-identify.
- 3.5 Retailers may also wish to provide the AER with any other relevant supporting information they consider appropriate.
- 3.6 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.¹⁹ 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.
- 3.7 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,²⁰ such as:
- (a) How the retailer will identify PPM customers experiencing payment difficulties for inclusion in their hardship program, including the processes the retailer has in place so that it can identify PPM customers and the processes in place to enable a PPM customer to self identify
 - (b) The offer to make immediate arrangements to replace the prepayment meter with a standard meter at no cost²¹
 - (c) Alternative retail contracts that may be offered to the customer²²
 - (d) Information about, and referral to, any government funded energy charge rebate, concession or relief scheme,²³ and
 - (e) Any available financial counselling services.²⁴

Processes for early response by the retailer

- 3.8 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.²⁵

¹⁹ 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.

²⁰ r. 141(2)(f), National Energy Retail Rules

²¹ r. 141(2)(c), National Energy Retail Rules

²² r. 141(2)(d), National Energy Retail Rules

²³ r. 141(2)(e), National Energy Retail Rules

²⁴ r. 141(2)(g), National Energy Retail Rules

²⁵ s. 44(b), National Energy Retail Law

- 3.9 In assessing whether a proposed customer hardship policy contains this minimum requirement, some factors the AER may consider, include:
- (a) 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
 - (b) 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.
- 3.10 Retailers may also wish to provide the AER with any other relevant supporting information they consider appropriate.

Flexible payment options

- 3.11 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.²⁶
- 3.12 In assessing whether a proposed customer hardship policy contains this minimum requirement, some factors the AER may consider, include:
- (a) 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 and payment arrangements available)
 - (b) 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
 - (c) Whether the policy includes information on how the retailer will discuss with the customer the full range of payment options available, their relative advantages and disadvantages and how the retailer will work with the customer to agree which is most appropriate for their circumstances
 - (d) 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 period²⁷
 - set out for the customer all the relevant details of the plan,²⁸ and

²⁶ s. 44(c), National Energy Retail Law

²⁷ r. 72(1), National Energy Retail Rules

²⁸ r. 72(2), National Energy Retail Rules

- inform customers how it will monitor and review their payment plans to ensure they remain appropriate and the circumstances under which a customer's payment plan may be revised or cancelled
 - (e) Whether the policy includes information on how the retailer will assess and establish customers' capacity to pay, including how they will have regard to advice received from financial counsellors (or others), and take that into consideration when agreeing a payment plan, and
 - (f) Whether the policy includes information on how customers can renegotiate or revise their payment plans in response to a change in their circumstances.
- 3.13 Retailers may also wish to provide the AER with any other relevant supporting information they consider appropriate.

Identifying appropriate government concession programs and financial counselling services

- 3.14 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.²⁹
- 3.15 In assessing whether a proposed customer hardship policy contains this minimum requirement, some factors the AER may consider, include:
- (a) 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
 - (b) 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
 - (c) Whether the policy includes information on how retailers will identify and notify customers of financial counselling services that may further assist the customer.
- 3.16 Retailers may also wish to provide the AER with any other relevant supporting information they consider appropriate.

²⁹ s. 44(d), National Energy Retail Law

Programs that the retailer may use to assist hardship customers

- 3.17 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.'
- 3.18 In assessing whether a proposed customer hardship policy contains this minimum requirement, some factors the AER may consider, include:
- (a) 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
 - (b) 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, and
 - (c) Any responsibilities and/or requirements expected of customers when participating in the hardship program.
- 3.19 Retailers may also wish to provide the AER with any other relevant supporting information they consider appropriate.

Processes to review the appropriateness of hardship customers' market retail contracts

- 3.20 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.³⁰
- 3.21 In assessing whether a proposed customer hardship policy contains this minimum requirement, some factors the AER may consider include:
- (a) 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 option³¹
 - (b) 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, including examples of the circumstances or information that may be considered as part of this assessment
 - (c) Whether the policy specifies that any alternative retail contract offered must make Centrepay available as a payment option;³² and if there is no

³⁰ s. 44(f), National Energy Retail Law

³¹ r. 74(4), National Energy Retail Rules

³² r. 74(6), National Energy Retail Rules

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,³³ and

- (d) 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.³⁴

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

Strategies to improve energy efficiency

3.23 The Retail Law requires retailers to have processes or programs in place to assist customers with strategies to improve their energy efficiency, where such processes or programs are required by a local instrument.³⁵

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

- (a) 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
- (b) Whether the policy outlines how the retailer will assess the customer's eligibility for any energy efficiency program before referring the customer to that program
- (c) 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
- (d) 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.

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

Any variations specified by the AER

3.26 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.

³³ r. 74(7), National Energy Retail Rules

³⁴ r. 74(8), National Energy Retail Rules

³⁵ s. 44(g), National Energy Retail Law

- 3.27 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.
- 3.28 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.
- 3.29 Further information on the process for reviewing and varying customer hardship policies is provided in section 4.

Other hardship obligations

- 3.30 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.
- 3.31 In assessing a customer hardship policy for approval, the AER may also consider whether information on the following obligations is included in the policy:
- (a) That any late payment fees applied under a retail contract with a hardship customer will be waived,³⁶ and
 - (b) 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.³⁷
- 3.32 Retailers may also wish to provide the AER with any other relevant supporting information they consider appropriate.

³⁶ r. 73, National Energy Retail Rules

³⁷ r. 40(3), National Energy Retail Rules

4 Process for approving customer hardship policies

Customer hardship policy approval

- 4.1 New entrant retailers who wish to be authorised to sell energy under the Retail Law must, within three months of being granted an authorisation, submit their customer hardship policies to the AER for approval.³⁸
- 4.2 Existing energy retailers, who will be transitioned to authorised retailers under the Retail Law, will be required to have an AER approved customer hardship policy in place for commencement of the Retail Law on 1 July 2012.³⁹ To ensure this requirement is met, transitioning retailers will be required to submit their customer hardship policy to the AER for approval by **1 December 2011**. This requirement will apply to those retailers who already have customer hardship policies in place and where those policies have previously been approved by a jurisdictional regulator.⁴⁰ The AER intends to commence detailed discussions with retailers on the submission and approval of their customer hardship policies from September 2011.
- 4.3 For retailers operating in more than one jurisdiction, the approval of a policy will be considered on a national basis, unless:
 - (a) 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
 - (b) Retailers advise that certain elements of their policy differ across various jurisdictions.
- 4.4 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.
- 4.5 When submitting their customer hardship policy for approval, retailers may also choose to submit additional supporting information and documentation that is not included in the customer hardship policy document, where the retailer is of the view this supporting information will assist in satisfying the AER that the relevant requirements in the Retail Law and Rules are met. This may include commercially confidential information that retailers do not wish to include in the customer hardship policy document or to publish on their websites. Retailers who wish to submit confidential information should clearly identify the information that is the subject of the confidentiality claim. It should be noted that the AER does not generally accept blanket claims for confidentiality over the entirety of the information provided and the identified

³⁸ s. 43(2), National Energy Retail Law

³⁹ http://www.ret.gov.au/Documents/mce/_documents/2011bulletins/Bulletin-No-190-ImplementationoftheNationalEnergyCustomerFramework.pdf

⁴⁰ For example, retailers operating in Victoria are already required to have in place customer hardship policies that have been approved by the Essential Services Commission of Victoria (ESCV).

information should genuinely be of a confidential nature and not otherwise publicly available.⁴¹

- 4.6 When submitting a customer hardship policy to the AER for approval, retailers should not submit detailed operational and procedural documents. Rather the retailer's customer hardship policy document should detail the relevant requirements and processes the Retail Law obliges retailers to have in place as part of their hardship policy.
- 4.7 Retailers should develop a shorter, more accessible and 'consumer-friendly' document outlining key information regarding their hardship policy for their customers (see section 2.4).
- 4.8 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.
- 4.9 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.
- 4.10 The AER will notify retailers in writing when their customer hardship policy has been approved.

Customer hardship policies requiring review or variations

- 4.11 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.
- 4.12 In these instances, the Retail Law specifies that the AER may:⁴²
 - (a) 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
 - (b) 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.
- 4.13 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

⁴¹ 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*, which is available on the AER website under 'Publications'.

⁴² s. 45(2), National Energy Retail Law

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.⁴³

- 4.14 In these instances, the AER will contact the retailer to:
- (a) Advise that a review or amendment of their customer hardship policy is required
 - (b) Explain the reasons for the review and in what respects the AER considers the customer hardship policy to be deficient
 - (c) Advise of the timeframes within which the retailer must complete the review and resubmit an amended customer hardship policy to the AER for approval
 - (d) 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)
 - (e) 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
 - (f) Explain whether the retailer is required to resubmit their entire customer hardship policy or just the amendment(s) or sections that have been varied.

Approving customer hardship policy variations

- 4.15 Retailers may vary their customer hardship policies independently of a direction or requirement specified by the AER (see section 4.12 and 4.13). 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.⁴⁴ The Retail Law specifies that varying a customer hardship policy extends to replacing a policy with another customer hardship policy.⁴⁵
- 4.16 When submitting a varied customer hardship policy (or variations) to the AER for approval,⁴⁶ retailers should follow the process outlined in sections 4.3-4.7. 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).
- 4.17 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.

⁴³ s. 43(3)(b), National Energy Retail Law

⁴⁴ s. 43(4), National Energy Retail Law

⁴⁵ s. 43(5), National Energy Retail Law

⁴⁶ Customer hardship policies should be submitted to the contact details set out in section 4.5.

- 4.18 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.⁴⁷
- 4.19 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,⁴⁸ the AER will not approve the policy and will follow the same process outlined in section 4.12-4.14.
- 4.20 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 regarding whether a change to a customer hardship policy requires approval from the AER should be directed to the contact details provided at section 4.21.

Contact details

- 4.21 Customer hardship policies and any variations should be sent to the AER for approval either electronically to AERInquiry@ aer.gov.au, or by mail, addressed to:
- General Manager
Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001
- 4.22 If sent electronically, the subject of the email should state "Customer Hardship Policy Approval – attention Markets Branch". Customer hardship policies sent by email do not need to be provided separately by mail.
- 4.23 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.

⁴⁷ s. 43(4), National Energy Retail Law
⁴⁸ s. 45(1), National Energy Retail Law

Publication of approved customer hardship policies

- 4.24 Retailers must publish their approved policy on their website as soon as practicable.⁴⁹
- 4.25 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.

⁴⁹ s. 43(2)(b), National Energy Retail Law

5 Customer hardship policy governance and compliance

Policy governance

- 5.1 Once a retailer's customer hardship policy has been approved by the AER, the retailer must ensure that it is implemented and maintained.⁵⁰
- 5.2 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.
- 5.3 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. Retailers may wish to include this information in their documentation, when submitting their customer hardship policy to the AER for approval.
- 5.4 The AER recognises the benefits, to both customers and retailers, where retailers continue to work towards developing and improving their customer hardship policies and programs so that they are as comprehensive, flexible and innovative as possible and so that it best meets the needs of their customers as well as current 'best practice' standards. The AER's performance reporting regime includes a number of Hardship Program Indicators⁵¹ that will help to highlight examples of good practice that can be shared across industry.

Hardship compliance and performance audits

- 5.5 Under the Retail Law, the AER may conduct hardship compliance and performance audits.⁵²
- 5.6 The AER may audit a retailer's compliance with their hardship obligations⁵³ or the implementation of a retailer's approved customer hardship policy.⁵⁴ 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.⁵⁵

⁵⁰ s. 43(2)(c), National Energy Retail Law

⁵¹ <http://www.aer.gov.au/content/index.phtml/itemId/737816>

⁵² 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>

⁵³ ss. 275 and 283, National Energy Retail Law

⁵⁴ s. 275, National Energy Retail Law

⁵⁵ s. 283, National Energy Retail Law

- 5.7 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*.⁵⁶

AER's approach to compliance under the Retail Law and Rules

- 5.8 Under the Retail Law and Rules the AER will monitor, investigate and enforce compliance by regulated entities—primarily energy retailers and distributors⁵⁷—with the Retail Law and Rules, and report to stakeholders on compliance.⁵⁸
- 5.9 These functions will be underpinned by a framework for auditing and compliance reporting as set out in *AER Retail Market Compliance Procedures and Guidelines*.⁵⁹
- 5.10 The AER has also prepared a Statement of Approach that explains our approach to monitoring compliance and investigating possible breaches of the Retail Law, Rules and Regulations, and how we will determine the appropriate response to any breaches identified through our enquiries and investigations.
- 5.11 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.

⁵⁶ ss. 282(a) and 286(2), National Energy Retail Law

⁵⁷ 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.

⁵⁸ s. 204, National Energy Retail Law

⁵⁹ <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. Retailers should note that this is not an exhaustive list. Retailers can submit any other relevant supporting information they consider appropriate.

Section	Requirements	Included in customer hardship policy
3.3-3.7	Identifying customers experiencing payment difficulties	Processes to identify customers eligible for inclusion in the hardship program including: <ul style="list-style-type: none"> ▪ Self identification ▪ Retailer identification ▪ PPM customers
3.8-3.10	Early response	Processes in place for early response
3.11-3.13	Flexible payment options	Flexible payment options that may be offered, including: <ul style="list-style-type: none"> ▪ Payment plans ▪ Centrepay
3.14-3.16	Government concession programs and financial counselling services	Processes in place to identify and notify the customer of: <ul style="list-style-type: none"> ▪ government concessions programs, and ▪ financial counselling services
3.17-3.19	Programs used to assist hardship customers	Programs and initiatives that are on offer to hardship customers
3.20-3.22	Processes to review market retail contracts	Processes for reviewing the appropriateness of hardship customers' market retail contracts to ensure Centrepay available
3.23-3.25	Strategies to improve energy efficiency	Processes or programs to assist customers with strategies to improve their energy efficiency, including <ul style="list-style-type: none"> ▪ those required by a local instrument ▪ others offered by the retailer
3.30-3.32	Other hardship obligations	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