



PO Box 4136  
East Richmond VIC 3121  
**T** 131 806  
**F** 1300 661 086  
**W** redenergy.com.au

PO Box 632  
Collins St West VIC 8007  
**T** 1300 115 866  
**F** 1300 136 891  
**W** lumoenergy.com.au



14 January 2019

Ms Sarah Proudfoot  
General Manager, Consumers and Markets  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

Submitted electronically: [AERConsumerandPolicy@aer.gov.au](mailto:AERConsumerandPolicy@aer.gov.au)

Dear Ms Proudfoot,

**Re: Issues Paper – Hardship Guideline**

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to respond to the Australian Energy Regulator's (the AER's) Issues Paper on a proposed Hardship Guideline (the Issues Paper).

The obligations to provide assistance to customers experiencing financial difficulty are outlined in the National Energy Retail Law (the Retail Law). This legislative framework provides a set of minimum standards as a consumer protection mechanism for all customers, implemented by all retailers.

The Australian Energy Market Commission recently made a change to the National Energy Retail Rules (the Retail Rules) that requires the AER to develop a binding Hardship Guideline (the Guideline) that includes standard statements. This rule aims to facilitate greater consistency in the provision of assistance by retailers, to assist consumers to better understand their entitlements, and improve the AER's ability to monitor compliance.

The overarching legislative structure and the important role for retailers to actively support their customers effectively remains the same, even with the recent rule change. Retailers have always - and continue to - retain some discretion in offering assistance, subject to minimum levels of legislative protection. The standard statements exist to inform customers how a retailer will comply with the *minimum* requirements as set out in section 44 of the Retail Law.

Retailers will continue to draw on their knowledge of what forms of assistance are successful (and in what circumstances) and revise them when it becomes apparent that some are more effective than others. Flexibility also means retailers can offer assistance in a way that suits their customer base.

Red and Lumo are leaders in the early identification of payment difficulty according to the AER's 2018 Retailer Report Cards, with Red Energy's average electricity debt on entry to a hardship program was \$196 compared with an industry average of \$1,146 (and \$117 for gas debt compared with an industry average of \$734).<sup>1</sup>

As we explained in our submission to the AER's consultation on draft standard statements, this is a function of the flexibility available to us to tailor our support and the way we communicate with our customers.<sup>2</sup> In our view, a hardship policy is a customer-friendly document with two primary purposes. Firstly, it should reassure customers that support is available and they should contact their retailer as soon as they feel they might be experiencing payment difficulties. Secondly, it should advise them that the assistance they receive will reflect their individual circumstances. There is an inherent information asymmetry between a retailer and customer with respect to their circumstances and this must be overcome in order for a retailer to provide effective support. A customer-friendly hardship policy that encourages engagement is part of that process.

In general, we agree with the AER's discussion throughout the Issues Paper of the objectives of hardship policies. However, we have concerns about some of the specific proposals in the Issues Paper under the AER's main areas of interest. The AER should clearly articulate its objectives and desired market outcomes rather than prescribing what retailers must do. For example, the Issues Paper suggests that hardship policies should provide information in an *'easily accessible and understandable way'* and should be *'capable of communicating with diverse audiences'*.<sup>3</sup> Further, it states that retailers should *'give particular consideration to the needs of the market they are serving, and develop innovative ways of serving this market'*. This is useful advice about the AER's expectations.

This approach would complement the proposed standard statements and avoid confusion and misinterpretation. One of the risks in prescribing more detail or requiring retailers to map out processes is that consumers could perceive that support is only available under certain circumstances or will be offered in a very specific way.<sup>4</sup> As noted above, it is important for consumers to understand that retailer support will reflect their circumstances.

The AER must avoid a final Guideline that limits retailers' flexibility to provide effective assistance and / or mandates that retailers include extraneous information (or a level of detail) in their policies that few consumers will find useful. An example of the latter is the AER's suggestion that the Guideline include a requirement that hardship policies should:

- Describe the types of systems a retailer has in place to assist in early identification and assistance for customers experiencing hardship.

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<sup>1</sup> Australian Energy Regulator (2018), *Annual Report on Compliance and Performance of the Retail Energy Market 2017-18, Retailer Report Cards*.

<sup>2</sup> Red Energy and Lumo Energy (2018), *Submission to Issues paper - standardised statements for use in customer hardship policies*

<sup>3</sup> Australian Energy Regulator (2018), *Hardship Guideline - Issues Paper*, page 12

<sup>4</sup> An example is the AER's suggestion on page 16 of the Issues Paper that retailers prepare a graphic or flow chart.

- Identify that a retailer's hardship personnel have undergone dedicated hardship training before handling hardship enquiries, and are able to answer questions.
- Identify that a retailer has systems in place to support the delivery of the retailers' obligations under the law, rules, the Guideline and their own hardship policy.
- State that a retailer regularly reviews its hardship personnel training.<sup>5</sup>

This information - along with some of the other suggestions the AER makes in the Issues Paper - is of more interest to the AER and it could obtain it through direct engagement with a retailer, particularly when it has cause to believe the retailer is not meeting its obligations. We believe the inclusion of detailed descriptions of systems and processes could undermine the effectiveness of a hardship policy by distracting from its key focus: delivering information to customers on assistance measures.

A further issue is that the Guideline should not mandate that retailers provide assistance in a form that exceeds the relevant provisions of the Retail Law and Retail Rules.

## **Specific comments**

### ***Customers are effectively informed***

As mentioned, we recommend that the AER articulate its objectives for how retailers provide information to consumers about their hardship policies, rather than prescribing that it should be jargon-free, reflect best-practice (which is a subjective and evolving concept), is accessible to culturally and linguistically diverse communities, those without internet access, or that retailers present an A4 summary document. Retailers are best placed to determine how to communicate with their customers, ensuring that information is comprehensible, readily available and consistent with other information that customers receive such as bills, terms and conditions, and marketing material. Obligations exist to make this information readily available and accessible to consumers.

Retailers frequently interact with financial counsellors and other advocates when consumers ask for them to act on their behalf. However, we are very mindful of our privacy obligations and of the specific requirements of vulnerable customers, such as those experiencing family violence. Therefore, the AER should be aware that any requirement for retailers to '*communicate with the customer's representative as they would the customer*' is subject to some limitations.

### ***Consistent application***

In our view, section 44 of the Retail Law is sufficiently clear and detailed about the information that hardship policies must contain about retailers' processes. As mentioned above, the inclusion of a further requirement in the Guideline - for retailers to describe their systems for early identification and to support the delivery of their legislative obligations, and to explain that retailers train their hardship staff in their policies - is unnecessary and will undermine the effectiveness of those policies.

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<sup>5</sup> Australian Energy Regulator (2018), op. cit., page 15

### ***Successful completion***

Neither the Retail Law nor Retail Rules require retailers to offer debt waivers or payment matching as part of their hardship assistance, even though this is a common practice for some. The AER's suggestion that the Guideline require policies to include a note that they will do so is unnecessary and appears to exceed the scope of the current legislative framework.

### ***Supporting customers most in need***

The AER's suggestion that policies clearly explain that retailers will not deny access to hardship programs in certain circumstances is reasonable. It will ensure consumers better understand the nature of their entitlements.

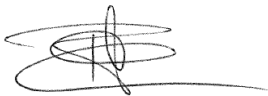
However, we require further detail on how the AER would expect retailers to comply with the requirement that they have internal complaints handling and dispute resolution processes specifically for hardship customers. Retailers have well established processes to receive, investigate and resolve these (and indeed, any other) complaints so additional obligations are unnecessary.

### **About Red and Lumo**

We are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in Victoria, New South Wales, South Australia and Queensland to over 1 million customers.

Red and Lumo thank the AER for the opportunity to respond to the issues paper. Should you wish to discuss aspects or have any further enquiries regarding this submission, please call Geoff Hargreaves, Regulatory Manager on 0438 671 750.

Yours sincerely

A handwritten signature in black ink, appearing to be "Ramy Soussou". The signature is fluid and cursive, with a long horizontal stroke at the end.

**Ramy Soussou**  
General Manager Regulatory Affairs & Stakeholder Relations  
**Red Energy Pty Ltd**  
**Lumo Energy Australia Pty Ltd**