



25 February 2011

Australian Energy Regulator
Attn: Mr Tom Leuner
General Manager Markets Branch
GPO Box 520
Melbourne VIC 3001

By email: AERInquiry@aer.gov.au

Dear Mr Leuner

Re: Guidance on The Australian Energy Regulator's approval of customer hardship policies (December 2010)

Thank you for the opportunity to provide comment on the Australian Energy Regulator (AER)'s approval of customer hardship policies (Guidance).

Transfer of responsibilities from the Essential Services Commission (ESC) to the AER

Unlike other jurisdictions, Victoria operates within a regulatory framework that requires retailer hardship policies to be approved by the regulator (currently the ESC). The Energy and Water Ombudsman (Victoria) (EWOV) strongly supports the AER's suggested approach towards the new national legislation. EWOV believes that the AER's guideline will continue the development of comprehensive, effective and accessible best practice hardship policies and programs.

During the 2009-2010 financial year EWOV received 42,505 energy cases from Victorian consumers. Of those cases, 1,823 related to customers experiencing payment difficulties. This represented an increase of 27 percent from 2008-2009¹. This indicates that hardship continues to be a growing issue for Victorian consumers.

In making this submission, EWOV's comments are based on our experience in dealing with payment difficulty issues that come to us after they have not been resolved between the customer and the retailer.

¹ EWOV received 1,432 cases involving payment difficulties in 2008-2009.

Definition of Financial Hardship

EWOV notes that the draft Guideline does not provide a definition of financial hardship. In the previous Guideline established by the ESC the following definition was included:

A customer in hardship is someone who has the intention but not the financial capacity to make the required payments within the timeframe set out in the business's payment terms².

Whilst EWOV believes that the AER has incorporated elements of the definition into the Guideline, we believe that a definition will increase stakeholder clarity about when a customer is considered to be experiencing hardship.

Hardship Policy Requirements

3.1 Identifying customers experiencing payment difficulties

EWOV supports the AER's view that a customer in hardship can be identified either by themselves, the retailer or by an independent financial counsellor. EWOV recognises this as best practice for consumer accessibility. EWOV believes that the use of third party identification through an independent financial counsellor should not be used to replace the ability for self-identification. The customer's own identification should be enough in most circumstances. EWOV does recognise, however, that before accepting a customer back onto a retailer's hardship program, it may require advice from an independent financial counsellor. This can occur when a customer has previously received hardship assistance and has been removed because they were in breach of the agreement.

3.2 Early responses by retailers

EWOV supports the AER's inclusion in retailers' hardship policies of an early response process. EWOV's experience has been that providing an early response to a customer in hardship can prevent a large debt accruing that then becomes unmanageable for the customer to repay. In order to assist with early identification of customers in hardship, EWOV suggests that retailer hardship policies should include the following:

- if the customer has received a number of disconnection warning notices
- if the customer has failed a number of payment plans
- if a series of Utility Relief Grants (URGs) have been requested/approved and or
- if a number of cheques for payment of the arrears have been dishonoured³

² ESC Guideline 21 Energy Retailers' Financial Hardship Policies 2007 page 2

<http://www.esc.vic.gov.au/NR/rdonlyres/6B9B49B3-E13B-4B36-ADD2-64D7695E8F1D/0/GuidelineNo21.pdf>

³ ESC's Compliance Policy Statement 4.2.2 (a)

3.3 Flexible payment options

EWOV supports the AER's suggestion that retailers' hardship policies should include flexible payment options. However, EWOV notes that a payment plan's success is impacted by whether it is affordable for consumers. Given payment plans alone might not resolve every customer's hardship they must also be used in conjunction with a range of other initiatives, including referral to available government and other agency assistance.

3.4 Identifying appropriate government concession programs and financial counselling services

EWOV agrees with the AER's suggestion that retailers should be obligated to provide customers with information about government and other assistance programs. EWOV believes that by providing information and linking a customer in hardship with other programs and benefits, it will assist in the creation of a collaborative approach between retailers, government and community programs (e.g. financial counsellors). This will also help customers with the repayment of any arrears.

3.5 Programs that the retailer may use to assist hardship customers

EWOV supports the AER's expectation that retailer hardship policies will include information about customers' responsibilities, details about how customers maintain their participation in programs, and when they may be considered for removal or exclusion from the program. The AER advises that the draft guidance is not intended to be prescriptive and provides general instruction only. However, EWOV believes in the importance of this information being made available to help prevent retailers removing customers prematurely or unnecessarily from their program.

EWOV also believes that there should be reference to the availability of complaint handling, being formally provided to customers, in all hardship policies. When communicating with a customer about their participation in a hardship program the retailer should provide this information so that customers understand that they have the right to contact ombudsman schemes if they are dissatisfied with or unable to resolve their concerns with their retailer.

3.6 Process to review the appropriateness of hardship customers' market retail contracts

EWOV supports the AER's inclusion of the need to review and assess hardship customers' market retail contracts. EWOV notes that the current requirements of the ESC's Guideline 21 provide further direction about this assessment. EWOV believes that such detail helps clarify what information a retailer should consider when assessing a customer's contract. Guideline 21 refers to making an assessment based on:

- cost effectiveness

- the customer's appliances (if they have a dedicated off-peak appliance)
- the previous tariff (including network charges)
- the overall usage
- the previous bills (if available)
- any other relevant information provided by the customer⁴.

EWOV believes that by providing this additional level of detail based on a customer's individual circumstances, retailers would be able to better assess hardship customer contracts.

3.7 Strategies to improve energy efficiency

EWOV believes that strategies to improve energy efficiency are an integral part of an energy retailer's hardship policy. Strategies, such as free energy audits, can identify if a customer's usage behaviour or appliances are contributing to high usage.

When EWOV investigates hardship complaints, it can undertake its own independent energy audit⁵. From this, valuable information is provided to the customer about their usage and the impact of this on their bills. This often results in the customer making changes, resulting in a reduction of their ongoing consumption. This therefore increases their capacity to repay the arrears to the retailer⁶.

We trust the above comments are helpful. If you require further information or have any queries, please contact Belinda Crivelli, Senior Research and Communications Officer on 03 8672 4460.

Yours sincerely



Fiona McLeod
Energy and Water Ombudsman (Victoria)

⁴ ESC Guideline 21 Energy Retailers' Financial Hardship Policies 2011 page 3 and 4

<http://www.esc.vic.gov.au/NR/rdonlyres/7D88FE7C-D935-43EF-BFC5-A8F46DD351C0/0/GLGuideline21EnergyRetailersFinancialHardshipPoliciesJanuary201120101101.pdf>

⁵ 39 energy audits were conducted in 2009-2010 financial year

⁶ However, EWOV notes that changes in usage behaviour may not be possible for all customers, such as tenants who are limited by the appliances at the property (owned by the landlord).