Energy Retailers Association
of Australia Limited

4 June 2010

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

By email: AERInquiry@aer.gov.au

Dear Mr Leuner

RE: Developing National Hardship Indicators – Issues Paper

The Energy Retailers Association of Australia (ERAA) welcomes the opportunity to provide comments on the Australian Energy Regulator's (AER) issues paper on Developing National Hardship Indicators. The ERAA recognises that sections of the community can face financial hardship and believes that it is important that retailers have mechanisms in place to support hardship customers.

The Energy Retailers Association of Australia (ERAA) is the peak body representing the core of Australia's energy retail organisations. Membership is comprised of businesses operating predominantly in the electricity and gas markets in every state and territory throughout Australia. These businesses collectively provide electricity to over 98% of customers in the NEM and are the first point of contact for end use customers of both electricity and gas.

The ERAA's policy on customer hardship

There are two types of individuals that fail to pay their energy bills: people who 'cannot' pay their bills, and people who 'do not' pay their bills but have the financial capacity to do so. The latter are not hardship customers. The former could be considered to be hardship customers, of which, they fall into two groups: permanent hardship customers or temporary hardship customers.

It is important to recognise these distinctions. Firstly because not all customers that fail to pay their bills are necessarily facing hardship. Secondly because different approaches are needed to appropriately manage the different issues associated with customers facing either temporary or permanent hardship.

The ERAA contends that retailers have a role to play in assisting customers facing temporary hardship and in identifying people who could be facing hardship. Energy retailers already have systems in place to facilitate hardship customers. This is through offering energy on credit, extended collection periods and payment plans, and providing advice on using energy more efficiently. Where possible this ideally assists customers facing temporary hardship on their road back to recovery so that they do not slip into more permanent hardship.

The role of retailers in addressing hardship needs to be put in perspective. Energy bills only constitute a relatively small fraction of an average household income. Even in the UK where they consider 'Fuel Poverty' to be a large proportion of income, an energy bill only exceeds 10% of household income. While retailers do have a role to play, the AER needs to be mindful that energy bill hardship is only one element of total hardship and the expectations of retailers must be realistic.

The ERAA believes that addressing energy hardship is not just the responsibility of energy retailers; it is a joint responsibility of retailers, governments, consumer welfare organisations and customers.

What is the purpose of these hardship indicators?

The ERAA understands that under Section 1216 of the National Energy Retail Law the AER will be able to develop, consult on and determine National Hardship Indicators. The reason why this is necessary is not clear. If it is only for monitoring retailer performance and for Retail Market Performance Reports, then the indicators should not be used for other purposes beyond this.

As already mentioned, energy hardship is a joint responsibility between retailers, governments, consumer welfare organisations and customers. However, this issues paper only looks at hardship indicators from energy retailers and therefore only gives part of the total story. If the AER is going to monitor the performance of hardship policies, then it must expand its scope to include the performance of governments and consumer welfare organisations.

What are these hardship indicators used for?

The ERAA is concerned that the "purpose and objective of the national hardship indicators" as listed in the Issues Paper, goes beyond what these hardship indicators are intended to be used for, which is unclear in itself. Specifically, these hardship indicators should not be used outside the AER, should not be used to compare retailers, and should not be used as an instrument to create incentives on retailers through comparative reporting.

In the issues paper it is mentioned that these indicators could be used to inform interested stakeholders about the performance and progress of retailers in this area. The ERAA believes that these indicators should not be used for social policy and should not be used outside the AER. This is not to say the ERAA does not support any reviews of social policy, but the scope of this stakeholder consultation should be restricted to hardship indicators.

Hardship indicators are almost meaningless in comparing retailers. Each energy retailer is different and their hardship indicators are subject to circumstantial and exogenous factors, not only because of the performance of their hardship programs. These circumstantial and exogenous factors cannot be ignored as they may tell more of the story behind the hardship indicators than the performance of a hardship program. In order to compare retailers the AER would need to account for all other factors, which is burdensome to both the retailer and the AER, not to mention very difficult to do.

The same applies to the industry as a whole: the hardship indicators cannot be used to cast any great inferences about the overall performance of hardship programs for the energy retail industry. To do so would require the AER to look at all other factors, such as government and economic conditions, and would also require government and consumer welfare organisation hardship indicators, which appears to be out of the current scope.

The AER mentions that these indicators are intended to "provide sufficient and appropriate incentives on retailers, through comparative competition, to maintain and improve performance in this area over time." The ERAA does not support the hardship indicators being used in this way because there is no clear rationale that the hardship indicators are being reported for this purpose, and it could have perverse outcomes depending on the indicators that retailers begin to compete on. For example, if retailers begin to compete on reducing their disconnection numbers, then this could result in customers accruing unsustainable levels of debt. Many would not consider this a good outcome as it would be more responsible to disconnect the customer after all other reasonable efforts are made.

The risk to retailers

If these hardship indicators are made public then there is a significant risk to retailers. The risk is that these indicators could be misinterpreted and used against retailers. Given this risk, the ERAA contends that these indicators should not be published. If they are to be used in any public reports, then there should be a clear rationale why this is necessary and retailers should be protected so that the report cannot be used to discredit them.

The differences across jurisdictions

It is important for the AER to acknowledge that the perception of hardship levels, and hardship regulation, required to mitigate circumstances of temporary and permanent hardship, differ across all Australian jurisdictions. In some jurisdictions there are minimal to no provisions enshrining hardship mitigation regulations and consequently no indicators to inform jurisdictional regulators on the performance of such regulations. This was one of the initial motivating factors behind the development of hardship regulation within the NECF. Moreover, the embryonic nature of hardship regulation in Australia is further highlighted by the fact that original working papers provided by Allens Arthur Robinson to support the Retail Policy Working Group's development of the NECF did not include any recognition or reference to hardship regulation.

In this context, the ERAA believes the AER should apply a suite of indicators that only commence at a base level of regulation that is focussed more on illumination of the extent and nature of hardship, rather than apply a broad and extensive range of indicators without the full knowledge of whether these indicators will clarify the critical issues associated with consumer fuel poverty and retailer's efforts to mitigate these circumstances.

Thank you for considering our submission. If you would like to discuss this then please contact me on (02) 9241 6556.

Yours sincerely

Cameron O'Reilly
Executive Director
Energy Retailers Association of Australia