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Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Attn: Kate Wild / Michael Bradley

National Energy Retail Amendment (Strengthening Protections for Customers in Hardship) Rule 2018 (RRC0017)

We appreciate the opportunity to make a submission to the Consultation Paper on the National Energy Retail Amendment (Strengthening Protections for Customers in Hardship) Rule (the Proposed Rule).

Energy Consumers Australia is the national voice for residential and small business energy consumers. Established by the Council of Australian Governments Energy Council (the Energy Council) in 2015, our objective is to promote the long-term interests of energy consumers with respect to price, quality, reliability, safety and security of supply.

Affordability is a key concern of Australian households, not just those on low-incomes. Energy prices have doubled in real terms over the past decade. Households are telling us they do not see value for money in this market, and their confidence in their own ability to make choices about the energy market has fallen in every state and territory[1].

Energy Consumers Australia supports the Proposed Rule change, to allow for the development of binding Customer Hardship Policy Guidelines in the National Energy Retail Rules, as means of strengthening protections for vulnerable consumers facing hardship.

We note that on 18 June 2018 the AER released its audit of five large retailers with respect to provisions around disconnections and compliance with the AER Compliance Guideline. It is worth noting that performance on the procedures for disconnection for non-payment — which includes the consideration of hardship — was strong with only AGL failing.[2]

Financial hardship is not exclusively limited to low income households. St Vincent de Paul's *Households in the Dark* report identified six broad categories of postcode types that are likely to have higher disconnection numbers (it should be noted this report was only possible because of the assistance provided by AGL).[3] These are postcodes that have a higher proportion of:

1. low income families experiencing housing stress;
2. median income families experiencing housing stress;
3. low to median income families with lower housing costs but greater transport costs;
4. low income small households (couples, sole persons and sole parents) experiencing housing stress;
5. small households with median income experiencing housing stress; and/or

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[1] *Energy Consumer Sentiment Survey 2017* http://energyconsumersaustralia.com.au/wp-content/uploads/Energy-Consumer-Sentiment-Survey-December-2017.pdf
[2] https://www.aer.gov.au/retail-markets/compliance/audits
[3] https://www.vinnies.org.au/content/Document/VIC/2016-June-Households-in-the-dark2.pdf

6. small households with low to median income with lower housing costs but greater transport costs

Consumers who face disconnection for non-payment can be highly motivated to engage in the energy market and to reduce their energy bill, but have limited opportunities to do so. They may not have access to funds to replace appliances or improve the energy efficiency of their house, or they live in rental housing. The ability of a consumer to take action is also influenced by a range of characteristics, including literacy and numeracy, language barriers, trust in others (including organisations), their ability to influence household behaviour, and their technological access and capability.[4] These factors collectively are often referred to as being 'vulnerable', but not all vulnerable customers experience financial hardship.

Energy Consumers Australia believes the Proposed Rule change would contribute to ensuring that consumers facing financial hardship retain access to energy services, and consequently we support the rule change.

We understand that the Proposed Rule change, to develop new Customer Hardship Policy Guidelines, enforceable by civil penalties, could provide:

- a single point of reference for hardship programs;
- consistency in approach, deriving from the inclusion in all hardship programs of standard requirements;
- an improved customer understanding of rights and entitlements;
- improved opportunities for AER to monitor performance;
- greater industry clarity over minimum requirements; and
- improved processes for approval and variations to hardship policies

We note the recommendation to COAG Energy Council for a broader review by the AEMC to assess how retailers support customers in financial difficulty, and welcome a process that addresses the concerns of vulnerable consumers, who are may not all have access to the assistance they need. We see this rule change and the introduction of a binding hardship guideline as an important interim step.

In this context the findings of the AER 2017 Hardship Review are troubling. We are deeply concerned at the low level of success of those programs – particularly that only around 25% of customers in these programs resolve their debt, as well as the extraordinarily high numbers (57 in 100 customers) who exit after being excluded from a hardship program.

The AER findings are supported by a range of reports and inquiries over the last two years. There is now a substantial evidence base indicating the need to change the way that hardship programs are accessed. This suggests the need to move away from regulating by prescribing the conduct of retailers but by targeting the outcomes.

[4] (Forthcoming) *Supporting Households to Manage Their Energy Bills: A Strategic Framework* (ACIL Allen, 2018) which outlines the range of factors that will influence a household's behaviour.

One such approach has been applied by Ofgem in the United Kingdom in relation to consumer protections, for tariff comparability and sales and marketing. In this instance, the majority of prescriptive standards in licensing conditions were replaced by a package of enforceable principles to support informed consumer choice.[5] In making their decision, Ofgem commented that:

> *"In regulating the retail energy market we have committed, over time, to rely more on enforceable principles rather than detailed rules about how suppliers should run their businesses."*

We would encourage the AER, and the AEMC in this rule change, to consider such an approach to identify principles for hardship assistance, that could deliver better consumer outcomes and innovation.

In our view, a principles approach is consistent with the setting of minimum protections, and an enforceable binding guideline.

The challenge for the sector is to build programs that meet the needs of all consumers facing hardship – that ensures consumers are on an affordable energy plan that best suits their circumstances, and are able to effectively manage their energy use.

Our answers to individual questions asked in the Consultation Paper are in the **Appendix**.

If you have any questions regarding the submission, please contact Energy Consumers Australia on 02 9220 5500, or by email at kerry.connors@energyconsumersaustralia.com.au.

Yours sincerely,

Kerry Connors
Associate Director, Research

[5] Information on this decision can be found on the Ofgem website at https://www.ofgem.gov.uk/publications-and-updates/final-decision-enabling-consumers-make-informed-choices

APPENDIX:

Question 1. Rationale for rule change - adequacy of the current approach to hardship

(a) To what extent do you consider that the current approach to the application of hardship policies provides adequate protections to consumers in financial difficulty?

Rank the Retailer 2016

A number of comments described clients agreeing to unaffordable payment plans because they felt they had no other choice and were afraid of having their energy disconnected. Some respondents felt that the 'threat of disconnection' was used to pressure clients into agreeing to unaffordable amounts, as were warnings of falling further behind. Financial counsellors reported that when some clients attempt to suggest affordable instalment amounts, retailers reject these offers.

Rank the Retailer 2016 *p. 17, FCRC 2016*

There is strong evidence that the current approach does not provide adequate protection to consumers in financial difficulty.

In addition to the AER 2017 Hardship Review, the Financial and Consumer Rights Council (FCRC) *Rank the Retailer 2016* report[6] raised similar concerns. That research canvassed financial counsellors' experience on the accessibility and effectiveness of retailer hardship programs. The findings are relevant to this rule change, and worth outlining briefly.

Retailers did not communicate well with their customers – financial counsellors reported a failure to accommodate consumers with special communication needs, including not using interpreters. Customers were faced with long call waiting times, and limited willingness to offer call-backs, constituting a significant barrier to engagement.

Overall retailers did not response well to a customer's individual circumstances, such as language barriers, unemployment, mental and physical health issues, or situations of domestic violence.

Companies rated poorly on retailers' early identification of hardship and proactive assistance – Energy Australia was the only retailer deemed on this measure to have reached an 'acceptable' performance standard. Financial counsellors cited large debts accumulating without intervention, and customers given no help by call-centre staff.

Source: FCRC Rank the Retailer 2016

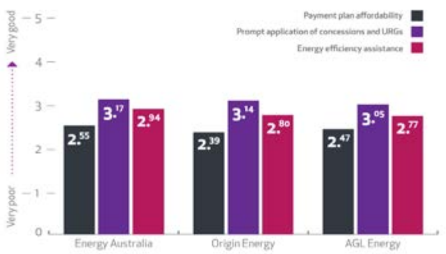

Figure 12. Payment plan affordability and application of concessions and grants by first tier retailers

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[6] Available at http://www.fcrc.org.au/Content/PDF_downloads/4796%20Rank%20the%20Energy%20Retailer%20Report%202016-Web2.pdf

Retailers did not offer affordable payment plans (rated as poor or very poor by half the respondent counsellors), who also noted this was a particular issue for clients on income support payments.

No retailer offered effective assistance to consumers to manage their energy use.

The Victorian Hardship Inquiry, conducted by the Essential Services Commission Victoria (ESCV), similarly identified a range of issues with retailers' hardship programs, including that they were ineffective in preventing accumulation of debt, and that many customers with payment difficulties were not getting assistance.[7]

And the AEMC's 2018 Retail Competition Review noted that there are consumers in financial hardship who have not been able to access assistance, with the number of customers excluded from hardship programs increasing *by 32 per cent* (our emphasis).

(b) Are general obligations that are more difficult to enforce leading to inadequate consumer protections?

There are demonstrably inadequate consumer outcomes within the current Guideline. Hardship programs are developed in response to the regulatory obligation. They do not provide a commercial benefit or competitive advantage.

That is not to say that retailers take that obligation lightly – some have committed considerable resources to their hardship program, and have worked hard to find innovative solutions to their customer's problems, e.g. through debt waiver, funding financial counsellors, and supporting low interest loans or grants to replace major appliances. The Thriving Communities Partnership in Victoria has created a network of utility providers, including the Big 3 energy retailers, to collaborate and share learnings, research and projects that help combat consumer hardship. It identified economic inequality as a business problem, the impacts of which include driving up their costs to serve those customers, carrying debt, and assisting their employees manage increasing complex and confronting customer situations.[8]

It is positive that the AER has found that there is not widespread non-compliance with the current Guideline, However, most retailers had a deficiency in at least one aspect which needs to be addressed, as a matter of priority given that these are the most vulnerable consumers. Again a focus on outcomes, rather than prescription, may assist with ensuring greater compliance.

We agree with the AER's conclusion that the generalised nature of most policies can make it difficult for consumers to understand their rights. The FCRC report found that retailers did not give a consumer the same hearing as it did a financial counsellor representing that consumer.

Creating a binding guideline could furnish additional incentives for retailers to improve their performance.

[7] See Energy Hardship Inquiry Final Report (ESCV, 2016) https://www.esc.vic.gov.au/sites/default/files/documents/Energy-Hardship-Inquiry-Final-Report-February-2016-1.pdf

[8] https://www.thriving.org.au/about-tcp

Question 2 Hardship indicators
(a) Do the current indicators appropriately reflect the success or failure of hardship policies in protecting consumers who are facing financial difficulty? Please explain your perspective.

Hardship programs are not a cost-free activity – ultimately it is all customers who will bear that cost. It is therefore important that consumer outcomes are accurately tracked, to ensure the Guidelines are achieving the desired improvements in retailer performance, and enabling further refinement and targeting of hardship programs as the evidence base grows.

The proposed indicators provide a useful picture on the experience of and outcomes for consumers who are engaged in a hardship program, and we endorse their continued inclusion, with comments as per below

- Entry into hardship programs should also include information about how many customers apply for and are refused entry, including where a customer is approved entry on a subsequent request. That provides a useful metric for understanding any barriers to entry, and whether a retailer's internal systems and criteria are effectively identifying customers in hardship.
- As is currently the case, Participation in hardship programs indicators should differentiate between concession cardholders and other customers on the program. Retailers should continue to track debt levels on entry and exit, length of time in a program, payment plans, and methods of payment. Those indicators provide the regulator with a better understanding of the effectiveness of a hardship policy in moving the customer from debt to an affordable energy plan.
  - We would also see value in tracking variations to payment plans – a longstanding source of tension has been that consumers are given unaffordable plans, and it would be useful to include that indicator, which would not only identify the extent of a problem, but enable a dialogue between the AER and a retailer on how to improve performance.
- Assistance available to, and provided to, customers under the hardship program – we see this as an important metric to improve the services offered to vulnerable consumers. Managing energy usage is a critical part of managing an energy bill – but poor information or advice can cause consumers to ration energy to an unhealthy and unsafe level. Most low income consumers are very effective budgeters – their problem is insufficient income or poor housing/appliances. Effective assistance includes energy management services, such as links to appliance replacement schemes, ensuring customers are on the right concessions and rebates, and, where necessary, offering home energy audits or retrofits[9]. Including indicators on this provision would ensure that retailers are tracking the effectiveness of those services on debt and usage.

[9] See *Driving Change* (GEER, 2017) http://energyconsumersaustralia.com.au/wp-content/uploads/Driving-Change-What-caused-low-income-consumers-to-change-behaviour.pdf

(b) Should the hardship program indicators reside in the binding Hardship Guidelines as proposed or remain as separate to the Guidelines as a stand-alone requirement in the NERR? Please explain your perspective.

Energy Consumers Australia has no comment to make on this question.

Question 3 Proposed approach

(a) Are you of the view that Hardship Guidelines that include standard statements adequately protect the long-term interest of consumers in financial difficulty, while providing retailers with flexibility in how they apply hardship provisions?

We agree with the AER proposition that standard statements that set out clearly the minimum requirements would not necessarily reduce retailers' flexibility in how they apply hardship provisions.

Retailers should remain free to offer assistance to hardship customers in line with their customers' preferences and their own resources – not all retailers will enter into partnerships with financial counselling agencies, but all retailers can certainly provide a customer with the contact details for the National Debt Helpline, to seek advice from a financial counsellor.

(b) Is there another approach that would better meet the requirements under the NERL in relation to customers in hardship, and allow retailers to meet their obligations more efficiently?

In general Energy Consumers Australia thinks that a broader principles based approach with very specific measures based around the number of a retailers customers not actually paying their bills would be more effective. In reality the cost of working capital to support a small number of debtors is not a large financial incentive, nor is an ultimate write-off of an unrecoverable amount.

Question 4 Enforceability of Hardship Guidelines

The AER proposed that all the Hardship Guidelines be enforceable. Do you agree that all aspects of the guidelines should be enforceable? If not, what aspects of the guidelines should or should not be enforceable and why?

Energy Consumers Australia is of the view that the Hardship Guidelines should be enforceable. As the detriment experienced by these consumers through ineffective hardship programs is significant, Energy Consumers Australia thinks the Rules and the AER should be open to the prospect that an approach that falls outside the Guideline could be more effective in achieving the outcome – that is the customer not facing disconnection and having their energy affordability challenge relieved.

Question 5 Implementation

(a) What transitional arrangements should be put in place to require that retailers amend their current policies to comply with the Hardship Guidelines, if this rule were made?

Energy Consumers Australia has no comment to make on this question.

(b) What aspects of the rule, if made, should be a civil penalty provision?

In principle all provisions that are breached should be subject to civil penalty provisions.

Question 6 Costs and benefits
(a) Please comment on the benefits and costs that have been identified, in terms of their adequacy in assessing the rule change proposal and any quantification of those factors.

The proposed rule change should result in:

- improved outcomes for consumers;
- increased consumer confidence, by raising the consistency across all retailers;
- facilitation of retailers' management of policies through greater clarity;
- improved access for consumers, by making consumers' rights clearer – a situation that would facilitate both consumers and their advocates; and
- improved monitoring and enforcement – building a better evidence base of what measures are effective in helping customers in hardship, and where there is room for improvement.

(b) Will improving hardship policies through the Hardship Guidelines result in a cost saving to consumers as a result in a reduction in bad debt? Please explain your perspective.

Effective assistance to consumers in hardship should definitely reduce 'bad' debt, by ensuring those consumers are on an affordable energy plan that best suits their circumstances, are able to manage their energy efficiently, and are linked to all relevant external sources of assistances such as rebates, concessions and grants.

Question 7 Form of rule
Are there amendments that could be made to the proposed rule to better achieve the intent of the rule change request?

Energy Consumers Australia has no comment to make on this question.

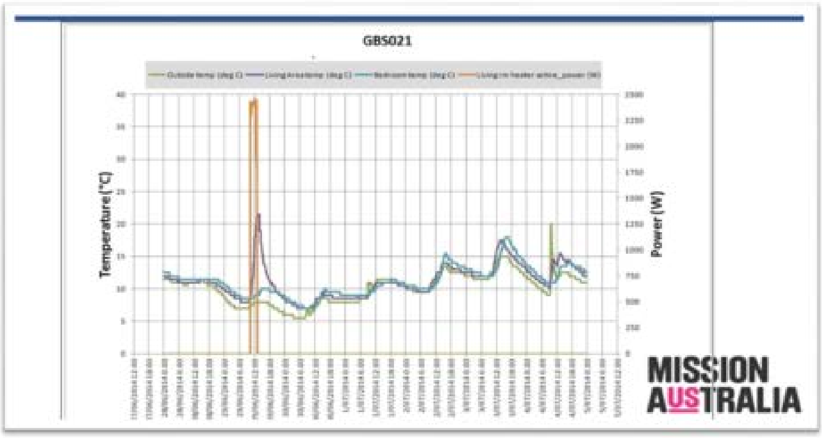
Question 8 Other issues
Please identify broader issues with regards to hardship and affordability that may not be addressed by this rule change, if made.

Energy Consumers Australia is concerned that there are consumers facing an affordability challenge that are not receiving the assistance they require. Specifically, we are concerned that consumers are responding to high energy prices by unhealthy rationing of their energy use.

The following maps the temperature and energy usage of a Hobart household in midwinter, that was engaged in the Low-Income Energy Efficiency Program. The purple line is the temperature of their lounge room, and the green line the temperature outside. The peak is, as far as we can tell, the day that they were having visitors and so turned the heating on.

Case Study: Mission Australia *Get Bill Smart* Hobart, TAS

Source: AusIndustry presentation to IREE, 2017



That sort of unhealthy rationing is we believe widespread, and invisible to us as a sector. As they do not get into actual financial difficulty, there is no contact made with households that are using too little energy to see whether they are safe, or need assistance.

The AER proposed rule change does not address their needs – we hope that the AEMC's review to assess how retailers support customers in financial difficulty will provide those customers with the help they require.