

4 March 2019

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

By email: [AERConsumerandPolicy@aer.gov.au](mailto:AERConsumerandPolicy@aer.gov.au)

Dear Ms Proudfoot,

**Re: Draft Hardship Guideline**

Thank you for the opportunity to comment on the Australian Energy Regulator's (AER) *Draft AER Customer Hardship Policy Guideline Version 1 (Draft Guideline)*.

The Energy and Water Ombudsman (Victoria) (EWOV) is an industry-based external dispute resolution scheme that helps Victorian energy or water customers by receiving, investigating and resolving complaints about their company. Under EWOV's Charter, we resolve complaints on a 'fair and reasonable' basis and aim to reduce the occurrence of complaints<sup>1</sup>. We are guided by the principles in the Commonwealth Government's Benchmarks for Industry-based Customer Dispute Resolution<sup>2</sup>. It is in this context that our comments are made.

EWOV is conscious that the finalised AER Hardship Guideline will not apply to the customers we assist, who lie outside the jurisdiction of the National Energy Retail Law (**Retail Law**) and are instead subject to Victoria's Energy Retail Code (**ERC**). That being said, we are in a position to provide some brief informed commentary, having recently been party to the implementation of the Payment Difficulty Framework (**PDF**) in Victoria.

As the AER is aware, the PDF came into effect on 1 January 2019 and constitutes a step change in Victoria's hardship policy framework. While it is unfortunately too early to provide definitive data demonstrating the success or otherwise of the PDF, we are confident that over time it will significantly improve the experience of customers in hardship. On that basis we are supportive of the AER's stated intention to observe the impact of customer hardship measures outside the Retail Law in the 12 months following implementation of the AER Hardship Guideline, and potentially revisit the Guideline to

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<sup>1</sup> See Clause 5.1 of EWOV's Charter: <https://www.ewov.com.au/files/ewov-charter.pdf>

<sup>2</sup> See EWOV's website: <https://www.ewov.com.au/about/who-we-are/our-principles>

incorporate measures drawn from other approaches if they can be shown to be effective. A ‘debt trigger’, which in Victoria is set at \$55, is explicitly cited by the AER as one measure which may be considered through such a review.<sup>3</sup>

EWOV strongly endorses consideration of this measure in due course as an essential element of an effective hardship policy. A debt trigger ensures that retailer intervention occurs at an early stage – drawing customers experiencing payment difficulty into a more proactive program of managing their energy costs before they have accrued an unmanageable level of debt.

As the AER are aware, high energy debt levels are a national problem. The recently released Essential Services Commission (ESC) *Energy Market Report 2017-18* shows that in Victoria in the 2017-18 financial year (i.e. before the introduction of the PDF), one in seven participants entering an energy hardship program did so with an energy debt of over \$2,500.<sup>4</sup> As the Chairperson of the ESC highlights in his introduction to that report, over a third of those entering energy hardship programs already had debts of over \$1,500, meaning they ‘are already about a year behind on their bills before the retailer offers them hardship assistance’<sup>5</sup>. EWOV’s own data corroborates these findings, in 2017-18 the average amount owed on bills by customers contacting EWOV was \$2,698, up from \$2,521 in 2016-17.<sup>6</sup>

Clearly, such high levels of debt increase the risk of unrealistic payment plans, which are unlikely to end in positive outcomes. Through July to December 2018, EWOV dealt with 174 vulnerable customers – whom we define as having consumption greater than their capacity to pay. The average debt level on entry into a payment plan for those customers was \$3,286. The range of these debts was very significant – from \$197 to \$33,015. The average fortnightly payment plan for this group was \$87, which is not sustainable for a person on a very low income. EWOV’s 2018 Annual Report demonstrates this issue through case study on page 34, in which ‘Ms K’ contacted EWOV after her gas had been disconnected for failing to maintain a \$70 fortnightly payment plan. At the time there was \$5,100.88 owing on her account. A phone assessment by our independent financial counsellor confirmed that Ms K’s income was very low, and she did not have capacity to pay more than \$20 a fortnight – which she had been maintaining prior to disconnection. We also found that Ms K had never been sent a Utility Relief Grant form, despite being on the retailer’s hardship program.<sup>7</sup>

Without a clear mechanism requiring retailers to intervene at an earlier point it is difficult to see how this situation will improve, and cases like Ms K’s will continue to occur. On that basis, we do strongly recommend serious consideration of a debt trigger in future as an effective mechanism to ensure customers in hardship are identified at an early stage and assisted to prevent serious energy debt

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<sup>3</sup> AER, *Notice of Draft Instrument: DRAFT AER Customer Hardship Policy Guideline Version 1*, February 2019, p. 12.

<sup>4</sup> ESC, *Energy Market Report 2017-18*, February 2019, p. 56.

<sup>5</sup> ESC, *Energy Market Report 2017-18*, February 2019, p. 5.

<sup>6</sup> EWOV, *2018 Annual Report*, p. 32. Available at: <https://www.ewov.com.au/files/2018-ewov-annual-report.pdf>

<sup>7</sup> EWOV, *2018 Annual Report*, p. 34. Available at: <https://www.ewov.com.au/files/2018-ewov-annual-report.pdf>

accruing. Without this early identification customers will continue to accrue debt which potentially - or even probably - leads to disconnection.

That being said, EWOV is conscious that wholesale alignment by the AER with the PDF is not possible under the current Retail Law and *National Energy Retail Rules (Rules)* arrangements. We are also conscious that many retailers wish to retain flexibility in how they implement their hardship policies, applying practices that they deem effective to meet their responsibilities. For some, the PDF may be seen as overly prescriptive. With that in mind we make the following observations which apply to the effective, practical implementation of any hardship policy and which we would urge the AER to take into account when finalising the AER Hardship Guideline.

First, effective communication of hardship policies is essential. Plain English is not sufficient in and of itself, communication materials must cater for very low levels of literacy. Disability advocacy organisations such as Scope<sup>8</sup> have excellent materials, and can provide advice on this issue. It is also crucial that materials be translated into multiple languages to cater for CALD communities. The use of infographics, animation and video content is also highly recommended. EWOV commissioned some materials to explain the PDF, which [can be viewed here](#).

In short - hardship policies should be communicated simply, frequently, through multiple channels and in multiple formats. Customers in need of hardship programs are often operating under considerable stress – a person's capacity to engage is diminished when they are in a state of vulnerability. Accordingly, it is not sufficient to advise a customer once about hardship assistance, and then assume they remain aware of the option. Customers may need to be reminded several times before they are capable of engaging, especially if they are experiencing stressful circumstances such as threatened or actual disconnection.

As has been raised throughout the consultation period, the reticence of some customers to self-identify as being in hardship presents another communication challenge. Language which moves away from terms like 'in hardship' and towards phrases like 'experiencing payment difficulty' - where the customer is not labelled but instead their current circumstances are described - may be more successful in capturing customers who currently do not access hardship programs, but should.

Second, and related to communication, is the need for effective training of front-line staff. The onus should be on the retailer to identify and acknowledge the customer's financial situation (through a debt trigger, for example) and initiate appropriate programs, not on the customer to self-identify. Well trained staff at multiple contact points, who are able to accurately identify customers in financial difficulty and refer them to appropriate hardship programs are critical to the successful implementation of any hardship policy. This is particularly so when, as described above, some customers who could benefit from payment assistance do not self-identify.

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<sup>8</sup> <https://www.scopeaust.org.au/services-for-organisations/access-and-inclusion-for-businesses/accessible-information/>

Third, practical measures which retailers can take to assist customers in reducing costs and usage are critical to any successful hardship policy. While the Draft Guideline understandably emphasises debt management tools such as payment plans, debt waivers and available concessions, practical measures such as energy audits, more appropriate tariffs and advice on appliances and energy use are also very important - and can assist in addressing the underlying factors which lead to debt accrual.

Finally, we again note the desire of some retailers to maintain flexibility in how they fashion their hardship policies. We encourage the AER to allow retailers to use that flexibility in such a way that it leads towards more meaningful, constructive dialogue with customers. Tailored responses which address the needs of customers are preferable to the process driven 'tick-box' compliance which has historically characterised our sector. While culture change of this sort does represent a major challenge, (and significantly raises the bar in terms of staff performance and training requirements), it is a necessary shift. In the end, it is incumbent on an essential service industry to ensure vulnerable customers are identified early and given every assistance possible. This is the challenge that Victoria has taken on with the PDF - and we urge the AER to do what it can to follow suit.

We trust these comments are useful. Should you like any further information or have any queries, please contact Zac Gillam, Senior Policy and Stakeholder Engagement Officer, on (03) 8672 4285.

Yours sincerely



**Cynthia Gebert**  
**Energy and Water Ombudsman (Victoria)**