

6 December 2018

Sarah Proudfoot
General Manager, Consumer and Markets Branch
Australian Energy Regulator

By email: AERConsumerandPolicy@aer.gov.au



Dear Ms Proudfoot,

Submission to Standardised statements for use in customer hardship policies Issues Paper

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in New South Wales. Established in 1982, PIAC tackles systemic issues that have a significant impact upon people who are marginalised and facing disadvantage. We ensure basic rights are enjoyed across the community through litigation, public policy development, communication and training. The Energy + Water Consumers' Advocacy Program represents the interests of low-income and other residential consumers, developing policy and advocating in energy and water markets.

PIAC welcomes the opportunity to respond to the AER's Issues Paper on the development of standardised statements for use in customer hardship policies. PIAC supports the development and application of standardised statements in retail hardship policies, and the intent to ensure more effective and consistent fulfilment of electricity retailers' minimum requirements under section 44 of the National Energy Retail Law (NERL).

Difficulty in offering detailed input on standardised statements in advance of hardship guidelines

While the issues paper links potential standardised statements directly to the minimum requirements set out in section 44 of the NERL, PIAC understands that the primary purpose of standardised statements is for greater clarity and consistency in the practical application of new, enforceable, retail hardship policy guidelines. It is, therefore, difficult to offer specific input on the detail of the draft standardised statements in advance of the Hardship policy guidelines that they are intended to reflect and give effect to.

Accordingly, this submission will focus on the key principles that should shape the identification and drafting of standardised statements. We will provide detailed comments on the specific wording at a later stage of the process when statements can be more effectively assessed alongside the hardship policy guidelines.

Minimum retail requirements in the NERL and the purpose of Hardship policies

The NERL sets out very clear minimum requirements that retailers must reflect in their hardship policies, and requires that those policies contribute to the 'purpose' set out in section 43(1) of the NERL. The following considerations are crucial in both the development of hardship policy guidelines, and the standard statements intended to give effect to them:

- Customer hardship policies must contain 'Processes to identify residential customers experiencing payment difficulties due to hardship, including identification by the retailer and self-identification by the residential customer'¹; and

¹ NERL Section 44(a)

- Customer hardship policies must contain ‘processes for the early response by the retailer in the case of residential customers identified as experiencing payment difficulties due to hardship’²;
- Customer hardship policies contribute to the purpose to ‘identify residential customers experiencing payment difficulties due to hardship and assist those customers to better manage their energy bills on an ongoing basis’³;
- The principle that ‘the supply of energy is an essential service for residential customers’⁴;
- The principle that ‘retailers should assist hardship customers by means of programs and strategies to avoid de-energisation (or disconnection) solely due to an inability to pay energy bills’⁵; and
- The principle ‘that residential customers should have equitable access to hardship policies, and that those policies should be transparent and applied consistently.’⁶

Key principles for developing standardised statements and hardship policy guidelines

In order to accurately translate the current requirements in the NERL into more effectively and consistently applied retail hardship policies, PIAC considers that a number of key principles must be adhered to. Specifically:

- That any customer-facing policies or material do not utilise the term ‘hardship’ in relation to the consumers intended to be assisted.

PIAC’s recently published research report⁷ indicates that even consumers in severe and prolonged payment difficulty do not identify themselves as being ‘in hardship’, and are likely to regard this or any similar terminology as a source of shame and embarrassment. This is a significant barrier to consumers understanding that assistance is available, and seeking assistance at a time when it is most likely to be effective. In framing hardship policy guidelines and standard statements that rely, even partially, on self-identification and self-advocacy on the part of consumers, the language should be neutral (for instance, utilising terms such as ‘customer payment assistance policy’) to facilitate consumers seeking out the assistance that they need as early as possible.

- That hardship policy guidelines and standardised statements recognise that there is no discernible or practical difference between people experiencing payment difficulty due to hardship and other people experiencing payment difficulty.

PIAC research on disconnections⁸ highlights that payment difficulty leading to debt accumulation and disconnection usually results from a complex interaction of contributing social and economic factors. These are not able to be clearly separated into those that constitute ‘hardship’ and those that may be ‘other payment difficulties’, without inappropriate and intrusive inquiries regarding the detail of a person’s circumstances.

While the current legal framework of the NERL has separate provisions relating to consumers experiencing payment difficulty due to hardship, and other consumers experiencing payment difficulty, the current hardship provisions require retailers to implement processes to identify and assist hardship customers early. The lack of discernible or practical difference between hardship customers and others experiencing payment

² NERL Section 44(b)

³ NERL Section 43(1)

⁴ NERL section 45(3)(a)

⁵ NERL Section 45(3)(b)

⁶ NERL Section 45(3)d)

⁷ PIAC ‘Close to the Edge’ 2018 <https://www.piac.asn.au/wp-content/uploads/2018/11/PIAC-CTTE-Consolidated-Report-FINAL.pdf>

⁸ Ibid

difficulty is crucial. Accordingly, hardship policy guidelines and standardised statements should be drafted to recognise that early identification and assistance of hardship customers should involve narrowing the gap between payment difficulty and hardship policy measures, making hardship policy measures available to all customers experiencing payment difficulty.

- That effective early identification of, and assistance for customers facing payment difficulty due to hardship requires the setting of simple, broad and objective gateway criteria.

Evidence, including the AERs own statistics on retail debt accumulation (for both hardship and non-hardship customers), debt on entry into hardship, hardship program success, and residential disconnection, illustrates that current established retail practice does not identify or assist customers early enough or effectively enough to demonstrate fulfilment of the purpose of retail hardship policy under section 43 of the NERL, or the equitable and consistent access consideration contained in section 45.

PIAC recommends that the development of enforceable retail hardship policy guidelines and standard statements have regard for the approach taken by the new Victorian Essential Services Commission (ESC) payment difficulty framework, in particular the retailer identification and assistance provisions contained in Clause 80(2). These provisions set a simple and objective debt trigger-point for early identification of customers in payment difficulty who must be offered access to the tailored advice and assistance provided through specialist retailer hardship support. PIAC notes that this need not imply that all customers meeting the simple arrears criteria are entitled to receive all available supports, merely that they are entitled to be offered access to the advice and potential supports that are available through retailer hardship policies (as opposed to generalised, credit or debt-recovery service responses).

- That hardship policy guidelines and standardised statements should reflect and enable equity of entitlement for consumers to assistance with their ongoing access to electricity as an essential service.

PIAC notes that the Victorian ESC found significant issues with inconsistency of access to support and assistance, and significant inconsistency of retailer response to consumers experiencing payment difficulty due to hardship⁹. PIAC agrees with the ESC's conclusion that this inconsistency (and the ineffective hardship support that it leads to) results from a poor objective definition of hardship, and the consequent discretion afforded to retailers in who they may identify as entitled to support, how and when they offer it, and what that support entails.

These comments are consistent with evidence from PIAC's own research on disconnections, and the input provided by a range of consumer stakeholders to the recent rule change process. Accordingly, PIAC recommends that hardship policy guidelines and standardised statements are framed to ensure that the identification of consumers requiring support, the determination of the level of support and the delivery of support by retailers, is subject to objective criteria. These could include the payment history of the consumer, the accumulated debt of the consumer, the type of deal the consumer is on and whether the consumer has utilised a rebate or emergency support assistance.

- That hardship policy guidelines and standardised statements focus on the intended outcomes for consumers and the specific actions that a retailer will undertake in specific circumstances.

Effective retailer hardship policy guidelines and standardised statements must focus on the outcomes that are intended to be achieved for consumers, to provide clear objective criteria

⁹ ESC, 'Energy Hardship Inquiry Final Report', 2016 <https://www.esc.vic.gov.au/sites/default/files/documents/Energy-Hardship-Inquiry-Final-Report-February-2016-1.pdf>

for assessing the adherence of a policy to the guidelines, and their effectiveness in delivering upon the intent of hardship assistance. Further, PIAC considers that specific retailer implementation processes, or action statements determining what specific actions retailers will take in specific circumstances, achieve the purpose, and align with the principles in the NERL which underpin hardship policies.

- That consistency with the Victorian Payment Difficulty Framework be a primary consideration in the development of enforceable hardship policy guidelines and the standardised statements that give effect to them.

While PIAC understands that there is not a direct correlation between the legal frameworks underpinning the National and Victorian hardship and payment difficulty provisions, there is an opportunity to more closely align them through this process. Considering that most retailers operating in Victoria also operate in other major national markets, the systems and procedures already developed to meet the new Victorian framework requirements could be utilised if new national policy guidelines are effectively aligned where possible.

Continued engagement

PIAC would welcome the opportunity to meet with the AER and other stakeholders to discuss these issues in more depth, and looks forward to providing further input into the processes developing guidelines and standardised statements for retailer hardship policies. For further comment, detail or input regarding this process, please contact Douglas McCloskey.

Yours sincerely,

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