

QCOSS

Queensland Council
of Social Service

Standardised statements for use in customer hardship policies

*QCOSS submission to the Australian
Energy Regulator*



December 2018

About QCOSS

The Queensland Council of Social Service (QCOSS) is the state-wide peak body representing the interests of individuals experiencing or at risk of experiencing poverty and disadvantage, and organisations working in the social and community service sector.

For nearly 60 years, QCOSS has been a leading force for social change to build social and economic wellbeing for all. With members across the state, QCOSS supports a strong community service sector.

QCOSS, together with our members continues to play a crucial lobbying and advocacy role in a broad number of areas including:

- place-based approaches
- citizen-led policy development
- cost-of-living advocacy
- sector capacity and capability building.

QCOSS is part of the national network of Councils of Social Service lending support and gaining essential insight to national and other state issues.

QCOSS is supported by the vice-regal patronage of His Excellency the Honourable Paul de Jersey AC, Governor of Queensland.

Lend your voice and your organisation's voice to this vision by joining QCOSS. To join visit [the QCOSS website](http://www.QCOSS.org.au) (www.QCOSS.org.au).

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Introduction

Thank you for the opportunity to make a submission to the Australian Energy Regulator (AER) in response to your *Issues paper: Standardised statements for use in customer hardship policies* (November 2018). Queensland Council of Social Service (QCOSS) is the peak body for social services in Queensland and a voice for people experiencing disadvantage. For almost 60 years, QCOSS has been a leading force for social change to build social and economic wellbeing for all. With around 600 members from throughout Queensland, QCOSS undertakes informed advocacy and supports a strong community service sector. QCOSS is also part of the national network of Councils of Social Service lending support and gaining essential insight to national and other state issues.

This submission builds on our responses to the Australian Energy Market Commission (AEMC) in the process of making the Rule change to *Strengthen protections for customers in hardship*. This rule change provides the AER with the power to specify in the Hardship Guidelines standardised statements which aim to give effect to the minimum requirements set out in the National Energy Retail Law for the purpose of guiding consumers on their rights and obligations. The intent of the standard statements is to address concerns with retailers' hardship policies – in particular, a lack of consistency and clarity about the support customers can expect.

QCOSS position

QCOSS participated in a conversation with other members of the National Consumer Roundtable on Energy and there was broad agreement that:

- **access to hardship support is a priority** and the key effect of the new guidelines and standardised statements should be to 'widen the door and lower the bar' for customers who need hardship support;
- there is often no discernible difference between a customer experiencing payment difficulty due to hardship and a customer having difficulty paying for any other reason, and attempts by retailers to distinguish between them are undermining the intent of hardship policies;
- the broader guidelines (not just the standard statements) are crucial and it will be important to include strong general principles and specific outcomes in both the guidelines and the statements designed to give effect to them;
- the AER should interpret the rule as enabling them to include specific action statements in their guidelines to improve outcomes for customers experiencing payment difficulties due to hardship.

QCOSS has found through our community engagement that energy retailers have established **hardship policies that pay lip service to the law**, but their actions are contrary to the purpose and spirit of the hardship provisions. To strengthen the protections for customers experiencing hardship, we ask the AER to amend the draft standard statements to ensure:

- All customers that meet the hardship definition are offered tailored assistance and advice by their retailer, based on the customer's individual circumstances and within a reasonable time from when the retailer becomes aware that the customer is eligible for assistance.
- Hardship is defined based on the simple criteria used by the Victorian Payment Difficulty Framework (ESC, 2017), that is, a residential customer who has not paid a bill by its pay by date and who has arrears of more than \$55. The definition should also include customers that tell their retailer they are having difficulties paying their bill and those who are referred to a hardship program by a financial counsellor or other community worker.

- At a minimum, the assistance offered takes into account the person's individual circumstances and includes flexible payment arrangements, access to concessions and access to the best deal available.
- Customers that meet the hardship definition are protected from adverse outcomes that are caused by the actions, or inaction, of the retailer – such as the Victorian Payment Difficulty Framework which ensures that a residential customer is only disconnected as a last resort for non-payment, and that retailers must meet all their obligations under the framework before disconnection is considered (ESC, 2017).
- Customers are offered assistance early, to give them the best chance of being able to manage their bills on an ongoing basis. This is likely to strike the best balance between strengthening protections for customers and flexibility and cost implications for retailers.

Context

Customers experiencing vulnerability

The Australian Competition and Consumer Commission (ACCC, 2018) has identified two forms of vulnerability that often overlap:

- where a customer who, due to personal circumstances, is unable to meet or is at risk of being unable to meet the cost of electricity supply and, as a result, is at risk of experiencing detriment to their wellbeing and standard of living; and
- where a consumer faces additional barriers to engaging with the retail electricity market (such as language barriers, cultural background, health problems and domestic and family violence).

The existing measures to support vulnerable customers are not sufficient to support those in financial hardship, and those that face additional barriers in engaging with the retail electricity market (ACCC, 2018). Utilities industry research tells us that at any point in time around 10 per cent of people are in serious financial hardship and are unable to pay their bills (Thriving Communities Partnership, 2016) yet we know that only around one per cent of customers are accessing hardship programs (AER, 2017).

Hardship is not just an issue for long-term welfare recipients, as is often the perception – it affects people from all walks of life. Right now, millions of Australians are only a lost job, relationship breakdown or medical emergency away from falling into serious financial distress. The reality is, we are all at risk and vulnerable to hardship. – Thriving Communities Partnership

Failure to support customers experiencing vulnerability

QCOSS has identified through our research and conversations with the community sector that energy retailers are not supporting customers experiencing payment difficulty due to hardship in the following ways:

- **arbitrary barriers to access hardship programs** – such as requiring payments be made under a payment plan before accessing hardship support, making an appointment with a financial counsellor or allowing the retailer to undertake a financial assessment; only 1.02 per cent of electricity customers in Queensland were repaying a debt under a retailer's hardship program in 2016-17 (AER, 2017);
- allowing customers to **accumulate high debts before offering, or without offering, assistance** – the average debt of Queensland customers entering a hardship program was \$776, and the average debt for customers in a hardship program was \$1,012 in 2016-17 (AER, 2017; case study 2 below);

- creating **unsustainable payment plans** – the proportion of energy customers successfully exiting hardship programs was only 25 per cent in 2016-17 and in the same year around 58 per cent of customers were excluded from hardship programs (AEMC, 2018);
- failing to identify and discuss **concessions** – in Queensland this particularly applies to the Home Energy Emergency Assistance Scheme (HEEAS), (see case study 3 below).
- **poor customer experience** – in 2017-18 there were 8,838 electricity customer complaints to the Energy and Water Ombudsman Queensland (EWOQ, 2018);
- **not putting customers on the best deal** – low-income households, those with limited or no use of the internet, and public rental households paid the highest rates for electricity before concessions were applied (ACCC, 2018). Retailers have chosen to make many discounts conditional such as discounts for paying on time, which results in an effective late payment penalty for customers that can't meet this obligation, and results in many vulnerable customers paying substantially higher bills (AEMC, 2018);
- misrepresentation of the assistance available to people in hardship or **refusing to offer any additional supports** – only 25 per cent of consumers were confident that the retail energy market was working in their long-term interests (ECA, Energy Consumer Sentiment Survey, 2018);
- **not allowing customers to switch** to another retailer until they have paid off their debt – an implication of this is that customers are locked into higher bills, even if they can leave they will lose access to hardship support;
- constant threat of, or actual, **disconnection as a debt collection strategy** without offering tailored advice and assistance under their hardship program – 25,201 Queensland electricity customers were disconnected for non-payment in 2016-17 (AER, 2017); research indicates that only 9 per cent of people that are disconnected are offered assistance under a hardship program (PIAC, 2018);
- **unfair barriers** to getting reconnected – some retailers require large payments before reconnecting customers (ACCC, 2018).

QCOSS encourages the AER to concentrate efforts on matters that pose the highest risk to customers experiencing hardship. This needs to be balanced where appropriate with allowing retailers scope to make decisions about the efficient and effective allocation of resources.

Uncertainty in the law

We acknowledge that there is uncertainty in the law relating to hardship policies. This uncertainty has created an imbalance of power where many customers experiencing vulnerability do not have the information or support they need to manage their energy bills and where retailers have absolute discretion in choosing:

- who to offer assistance to under their hardship program;
- when to offer that assistance; and
- what type of assistance to offer.

This means that even while customer experiences were varied and unpredictable, retailers are found to be technically compliant with their obligations because those obligations are so poorly defined (ESC, 2017; AER, 2018). The practical significance of this uncertainty should not be downplayed – it means that the application of the law by retailers will at times be contrary to the intent of the law and as such will fail to meet the needs of customers that are experiencing hardship. For example, sometimes retailers use their superior position to keep the customer on more expensive deals or to deny customers access to their hardship programs and additional tailored advice and assistance that should be available to them.

Generally, where there is uncertainty in the law, it is interpreted and applied by the courts in the way that is most consistent with the broader legislative context and extrinsic materials. Currently though, retailers are exploiting the uncertainty for their own benefit and it is the customer that is bearing the cost (because customers are not in a position to take their

retailer to court). Retailers are choosing to focus literally and narrowly on the words of the hardship minimum requirements and achieving technical compliance without actually giving effect to the substantive objectives of the law. Not only does this uncertainty lead to poor experiences for customers, it also increases costs for the customer, the community services that they may go to for assistance, and the retailer:

- Customers may face the cost of disconnection, or end up paying more for energy than they should as the customer may not know what their rights are, what the best deal is, what concessions they may be entitled to, how to reduce their energy use, how to negotiate a fair and sustainable payment plan, and what to ask for if they can't afford to pay for their energy use and accumulated debt.
- Many of the community workers that form part of the QCOSS Essential Services Consultative Group have reported spending more than 10 hours over several weeks (or months) to support customers with complex needs. This usually comes after the customer has had a number of failed attempts to get assistance from their energy retailer, has accumulated large debts, and may have been disconnected due to an inability to pay. Community workers also identified a strong relationship between energy hardship and access to emergency assistance for food and other essential household costs. Research into disconnections found that 12 per cent of customers that were disconnected got a loan through a pawn broker or money lender to get reconnected and 11 per cent got a voucher from a community group (PIAC, 2018). This can then prevent these customers from accessing fairer credit such as through the No Interest Loan Scheme (NILS) as they are overcommitted financially.
- The uncertainty also has cost implications for energy retailers – for example, it is inefficient to require customers to persistently contact the retailer to try to access support, or to allow them to accumulate debt that they may never be able to afford to repay. Experience in the water industry shows that lowering the cost of services to customers in severe payment difficulty can produce a more favourable financial outcome for the service provider (TCP, 2018).

Retailers can seek clarification through the courts if they don't agree with the AER's interpretative approach and enforcement action. Retailers are in a better position to do this than customers experiencing vulnerability. The AER may even find that retailers are reluctant to challenge reasonable enforcement action for reputational reasons, or because they generally benefit from the uncertainty in the law and strict application of the law is likely to lead to calls for the law itself to be changed to strengthen protections for customers. The AER could also seek legal opinion to help inform the development of the standardised statements and revised hardship guidelines and to pre-empt any legal challenge by retailers.

What are we asking the AER to do?

The hardship law should be predictable and should treat cases consistently. QCOSS wants the AER to transform vagaries in the law into firm rights and obligations that can be consistently and equitably applied and enforced. This should be balanced with some flexibility for retailers to offer tailored advice and assistance that they believe best meets the needs of their customer while also meeting their obligations under the law.

The standardised statements provide an opportunity to establish more predictable and equitable outcomes for customers experiencing payment difficulty due to hardship. They can establish specific circumstances that will give rise to a customer's right to access a retailer's hardship program, the protections that they will be entitled to, and the obligations on the retailer to provide assistance (albeit, with flexibility around what this assistance involves).

The AER should develop the standardised statements based on a pragmatic and purposive interpretation and application of the law, to shift the balance of power away from retailers and to be more consistent with the:

- **purpose of the hardship law** – “to identify residential customers experiencing payment difficulties due to hardship and to assist those customers to better manage their energy bills on an ongoing basis” (subsection 43(1) of the National Energy Retail Law); and
- **hardship policy principles** (subsection 45(3) of the NERL):
 - that the supply of energy is an essential service for residential customers;
 - retailers should assist hardship customers by means of programs and strategies to avoid disconnection solely due to an inability to pay energy bills;
 - that disconnection of premises of a hardship customer due to an inability to pay energy bills should be a last resort option; and
 - that residential customers should have equitable access to hardship policies, and that those policies should be transparent and applied consistently.

The AER should interpret and apply the law in a way that best promotes the underlying purpose of the hardship provisions.

Draft standard statements

Our primary concern is that the approach taken by the AER in the draft standardised statements will not address the retailers’ current poor practices in relation to the implementation and application of their hardship policies. The application of hardship policies is based on retailer discretion and is broadly unenforceable. Rather the standardised statements should produce predictable and equitable outcomes that are consistent with the purpose of the hardship law. It is in this context that we have provided comment on the draft standardised statements.

Standard statement 1: Identify customers in hardship

This draft standard statement is meant to give effect to paragraph 44(a) of the NERL – that a hardship policy must contain processes to identify residential customers experiencing payment difficulties due to hardship. We disagree with the AER’s decision to continue to allow retailers to exercise complete discretion about who will be allowed to access their hardship program – “The standardised statements do not remove a retailer’s right to assess customers for entry onto its hardship program.”

To ensure predictable and equitable outcomes for customers:

- the meaning of the phrase “customers experiencing payment difficulties due to hardship” must be defined by the AER;
- energy retailers must be expected to take steps to identify customers that meet this definition; and
- these customers must be offered assistance under their retailer’s hardship program (not just a payment plan).

Retailers could retain flexibility around the nature of the assistance offered, but it should not be ok for them to not offer any assistance at all.

The Essential Services Commission in Victoria have introduced a payment difficulty framework that, if followed by retailers across the national energy market, would achieve outcomes for customers that are consistent with the objectives of the hardship law. This framework could be adapted to form the basis of the standardised statements. For the many Victorian retailers that also operate in other jurisdictions, this would also ensure that they only have one set of rules to comply with, and that their customers are treated fairly and equitably.

We are not only concerned that this draft statement doesn’t give effect to the minimum requirement, it also doesn’t address the current issues around barriers to accessing hardship programs and inaction by retailers (even when they know a customer is experiencing hardship). Essentially the AER is trusting that retailers will do the right thing by customers

experiencing hardship, to have processes to identify them (based on a shared understanding of what this means), and to offer customers access to their hardship program on a consistent and equitable basis.

Case study 1 – Common experience of customers in hardship

A community worker visited an energy customer's home to assist them with severe financial hardship. The customer was living in social housing, had been forced to sell her fridge and washing machine to cover basic living expenses and had no way of replacing them. She was on a payment plan with her energy retailer, but the plan was not affordable. She was not on a hardship program.

The community worker contacted the retailer and asked to speak to someone in the hardship team. She explained the client's situation and asked the customer service officer to put the customer on the hardship program, renegotiate the payment plan and to be put on a more affordable energy deal.

The customer service officer resisted every request, including being unable to confirm that the customer was already on a payment plan, refusing to provide access to the hardship program and disputed being able to put the customer on a better deal. The customer was extremely upset with the attitude and treatment by the customer service officer.

The community worker was eventually able to get everything that she had requested for the client but it was an upsetting experience for the customer who was already going through an extremely stressful time.

Standard statement 2: Respond to customers in hardship

This draft standard statement is intended to give effect to paragraph 44(b) of the NERL – that a hardship policy must contain processes for early response by the retailer in the case of residential customers identified as experiencing payment difficulties due to hardship. The core issue with current hardship practice is that access to assistance is at the discretion of the retailer, and if it is offered, it is way too late for many customers to get on top of their accumulated debt and manage their bills on an ongoing basis. The AER's commentary in part 5.3 of the Issues Paper indicates that a retailer is only obliged to engage with a customer that is identified as experiencing payment difficulty to assess whether entry to the hardship program is appropriate – "Whilst the retailer must take specific actions in this respect, the retailer still retains the ability to determine which customers will be offered entry to a hardship program."

The draft standard statement says "*If you are accepted onto our hardship program, we will tell you.....*". This implies some sort of assessment and/or enables the retailer to impose conditions to get onto the hardship program. If the customer meets the identification criteria set out under draft standard statement 1 then it should be automatic that they are told about what support is available and that they will be offered support (that is access) under the hardship program. A key feature of this support should be that the customer is automatically put on the retailer's best deal that meets their needs and a hardship policy explained and sent to them. They should not have to request this. In relation to the Victorian Payment Difficulty Framework, the Consumer Action Law Centre and Financial and Consumer Rights Council said, "We strongly support the principle that assistance is a clear entitlement that is not subject to retailer discretion."

This draft standard statement does not provide customers with a right to access a hardship program, nor does it clarify when retailers have an obligation to offer assistance to a customer that has been identified as experiencing payment difficulty due to hardship. This means that the following issues are likely to remain:

- Lack of clarity for customers about when they will have a right to access a hardship program – access is still at the discretion of the retailer which is one of the main concerns about current hardship policies.
- Inconsistency in application of hardship policies – all customers experiencing payment difficulties should be able to expect a similar service offering from their retailer. It is not fair that some people that need help will miss out because of the barriers established by the retailer, intentional or otherwise, that keep people out of hardship programs. This is contrary to the purpose of hardship policies.
- Inaction by retailers – concerns have been raised throughout this rule change process that retailers are allowing customers to accumulate large debts before offering assistance (if they offer assistance at all) and this is not supporting some customers to avoid disconnection.
- Compliance challenges – it is difficult to enforce something that is at the discretion of the retailer.

Case study 2: Example of bad practice

John* was 32 years old and lived alone in a rental property in the Logan area since his mother, who John was caring for, passed away about 18 months earlier. John had been struggling to pay his electricity bills during this time and had accumulated a debt of \$6,000. He was on a pay on time discount (which he never received) and was receiving the Queensland government's electricity rebate. His only income was Newstart Allowance – about \$450 per fortnight.

When John engaged with his retailer they asked John to pay \$300 per fortnight to cover the expected usage and accumulated debt. He was obviously unable to sustain this amount on Newstart Allowance and kept missing payments. When he tried to talk to his retailer he was not offered any assistance beyond the payment plan and he was not able to negotiate a more sustainable amount. He would often get frustrated that the retailer was not listening to him. After 18 months of this, and numerous periods of being without power, John sought help from a community organisation called MultiLink.

John had been without power for five days when he came to MultiLink. The retailer was asking John for an upfront payment of \$1,500 to be reconnected. MultiLink spent almost an hour on the phone to the retailer to get John reconnected before the weekend. It was around 4pm on a Friday afternoon and the retailer was insisting that they could not do it as it was past 5pm – they were in a state that had daylight savings. MultiLink renegotiated the payment plan and the retailer eventually offered \$50 per fortnight, an amount that would leave John in debt indefinitely. John was never offered a cheaper deal (he was left on the pay on time discount which he never received), no one ever spoke to him about the Home Energy Emergency Assistance Scheme, and he was never offered any other assistance to try to get his bills down or address the large accumulated debt. The retailer would not let John switch retailers until the debt was repaid.

After three months of persistent contact by MultiLink, the retailer offered John a payout figure of \$1,500. He was able to borrow this money from his dad, paid out the amount and immediately switched to another retailer.

John was never offered hardship assistance from his retailer. A payment plan is not enough.

Standard statement 3: Flexible payment options

This standard statement is intended to give effect to paragraph 44(c) of the NERL – that a hardship policy must contain flexible payment options (including a payment plan and Centrepay) for the payment of energy bills by hardship customers. This draft standard statement does not adequately protect customers from being offered unaffordable or

unsustainable payment plans. It allows retailers to continue to exclude customers from hardship assistance if they do not (or cannot) make payments as agreed, which can then put the customer at risk of disconnection.

Energy is an essential service and good hardship policies have this at their core. A good hardship policy that focuses on finding a sustainable energy outcome for their customer will also get good debt collection outcomes, but a debt collection policy will not get good outcomes for customers experiencing hardship. This draft standard statement does not adequately address retailers' current poor practice with respect to payment options.

Even in the context of debt collection, the ACCC and ASIC guidelines (ACCC, 2017), which aim to ensure that debt collection activity is undertaken in a way that is consistent with consumer protection laws, promote a flexible, fair and realistic approach to debt collection. An example of a fair and realistic approach may be for a retailer to not seek full recovery of an accumulated debt where, had the retailer done all that they should have under their hardship policy, the debt would never have got that large.

The ACCC and ASIC believe that the need for collection activity will be greatly reduced when debtors act promptly and responsibly, and collectors are flexible, fair and realistic. They recognise that debtors may default on their debts because of circumstances beyond their control, such as unemployment, illness or family breakdown and that most people are honest and want to meet their commitments if given a reasonable opportunity to do so.

The ACCC and ASIC encourage flexibility on the part of creditors and collectors. This includes recognising debtors who are experiencing vulnerability or financial hardship and recognising that debtors may have a number of debts owing to different creditors. A flexible approach involves making meaningful and sustainable payment arrangements that reasonably take into account a debtor's ongoing living expenses to enable them to live in basic comfort and prevent impoverishment or humiliation. This should encompass a clear mechanism for customers to vary or renegotiate a payment plan at any time.

A study of people who had been disconnected found that 41 per cent of those who were disconnected were receiving help through their retailer, including 36 per cent who were on a payment plan with only 9 per cent who were in the hardship program (PIAC, 2018). This indicates the support provided by retailers was not helpful in preventing people in long-term financial difficulty from being disconnected. This same study found that 50 per cent of people who were disconnected said that a more realistic payment plan would have helped them avoid disconnection.

We suggest that the AER more closely follow the approach set out in the Victorian Payment Difficulty Framework (see Division 2 and 3 of the PDF about standard and tailored assistance).

Standard statement 4: Concessions and support

This draft standard statement is intended to give effect to paragraph 44(d) of the NERL – that a hardship policy must contain processes to identify and notify hardship customers of appropriate government concession programs and appropriate financial counselling services. This standard statement must address the following issues:

- Some retailers have a poor understanding of state-based concessions and assistance and the role the retailer should play to assist customers (see case study 3 below).
- There is a shortage of place-based financial counsellors and other community-based organisations to provide advocacy support for customers with high needs – and retailers do not do enough to link in to these services where they are available.

Based on QCOSS' experience during the Switched On Communities Program¹ in 2016, we found that one of the most effective mechanisms to reach low-income and vulnerable customers is via the community organisations these customers come into contact with on a day-to-day basis. These organisations have a strong reputation and trust within their local communities, and their staff have specific expertise in engaging and assisting people on a range of issues, including the cost of living and on financial literacy and good products and services.

An important aspect of the Switched On Communities Program was the ability for funded organisations to develop tailored approaches that met the needs of their clients using their existing relationships with clients and other community organisations. They know best how to reach their own clients and communities. This model of community engagement aimed at improving energy literacy and efficiency and building the capacity of local organisations has been recommended by the ACCC in its recent report to the Electricity Supply and Prices Inquiry (ACCC, 2018).

QCOSS also acknowledges the important role financial counsellors and resilience workers can play in building foundation skills in financial literacy by providing education, empowerment and debt management support. They also educate their clients about their rights and how to access hardship assistance with credit providers and utility companies. Despite some additional funding from the Queensland Government under the Better Budgeting Program, there continues to be a shortage of financial counselling services in Queensland. This is evident by the long wait times. MultiLink in Logan observed about a three to four week waiting period for financial counselling services. They found that this did not assist people with more urgent financial issues, and these clients would often not go to appointments if they had to wait too long.

Some other suggestions arising from our structured interviews (QCOSS, 2018) about how to improve financial counselling and other support services included:

- the need to better triage social service support systems such as referring people experiencing domestic and family violence to financial counsellors or legal services;
- better resourcing of community workers across financial inclusion; and
- the need for home visits by financial counsellors, particularly for energy efficiency advice.

This standard statement should require more from energy retailers. How are customers going to be protected from incorrect or misleading advice from retailers about the concessions available, or referrals to services that have long wait times or don't meet the needs of the customer?

Case study 3 – Home Energy Emergency Assistance Scheme (HEEAS)

Mary* speaks a language other than English and meets eligibility for a payment under the HEEAS to help pay her energy bill and accumulated debt.

A community worker contacted Mary's retailer on 4 October to request a HEEAS application form. The community worker requested an interpreter provided by the retailer to assist Mary. She spoke to a customer service officer and explained that Mary wanted to apply for HEEAS. The customer service officer directed her to the QCOSS website to obtain the application form, saying that it is not available from the retailer.

¹ "Switched on Communities" program where in 2016, AGL provided \$500,000 to the then Queensland Department of Energy and Water Supply to support the education and engagement of vulnerable consumers following electricity price deregulation in South East Queensland from 1 July 2016.

The community worker asked if they could get the application number and due date to enter on the form. The customer service officer said these were only available from the Queensland Government Concession Services.

Mary also asked to set up a payment plan for \$40 per fortnight as the total of the debt is higher than the maximum payment under HEEAS. The customer service officer attempted to transfer the call to the credit management team but instead the call was disconnected. No payment plan was set up, but the customer service officer encouraged Mary to make small fortnightly payments at the post office.

Following the call, the community worker called Queensland Government Concession Services and a staff member there confirmed that the application number and due date must be generated by the energy retailer and that the application will not be accepted by Concession Services without this. They suggested that we contact the retailer again and ask to speak to a manager.

The community worker called the retailer again, this time without an interpreter as they were running out of time. They spoke to a different customer service officer who again told them that the account number and payment due date were the same as the application number and application due date. They asked to speak to a manager, were put on hold, and then the same officer returned to tell them he would get somebody from their hardship team to call the community worker with the requested information.

The retailer did not get in contact over the next couple of days, so the community worker called the retailer again on 8 October. She explained that they needed an application number and due date for a HEEAS application. The client service officer accessed Mary's file and read notes from previous phone calls. The customer service officer acknowledged that they required the application number and due date but advised that she could see that a message had been sent to their hardship team but that the application can take 8-10 weeks and the retailer has no control over the outcome. The community worker said she understands that, but they still need the application number to lodge the form before the 8-10 weeks can start. The customer service officer again told them that Concession Services supply this number. The community worker informed them that she had contacted them and that they had advised that the retailer must generate the number. The customer service officer just said there is nothing that the retailer can do at this time and Mary needs to wait the 8-10 weeks before she can expect to hear from the hardship team.

The customer service officer contacted Concession Services again the following day to inform them of the barrier she was experiencing in accessing HEEAS. Concession Services followed up with the retailer and arranged for an application form to be sent to Mary.

The community worker called the retailer the following week and each of the three officers she spoke to put her on hold at least once to check details. Mary was offered a \$208 discount if she paid by a particular date but she did not have the funds available.

The customer was not offered assistance under the retailer's hardship policy.

Standard statement 5: Hardship programs

This draft standard statement is intended to give effect to paragraph 44(e) of the NERL – that a hardship policy must contain an outline of a range of programs that the retailer may use to assist hardship customers. This standard statement must ensure that retailers offer tailored assistance and advice to all hardship customers and that this, at a minimum, must include flexible payment arrangements based on the customer's capacity to pay, access to concessions that the customer is eligible for and access to the best available deal. Retailers would retain greater flexibility in what additional support may be offered to people that are in more severe financial hardship such as access to energy efficiency advice, additional time to pay to enable the customer to address broader issues that may be affecting their ability to

pay, and payment incentives to reward the customer for doing all that they can to manage their payments.

Vulnerable customers experiencing hardship often rely on community workers to advocate for fair outcomes. Very few of the most vulnerable customers are able to access hardship programs, negotiate a fair payment plan, get the best (unconditional) discount, access assistance to reduce their usage, negotiate a reduction in fees or argue against requests for up-front payments. Many of these things should just be automatically offered to customers that are experiencing payment difficulties. This could free up community services to assist people with more complex issues.

Standard statement 6: Best deal available

This standard statement is intended to give effect to paragraph 44(f) of the NERL – that a hardship policy must contain processes to review the appropriateness of a hardship customer's market retail contract in accordance with the purpose of a customer hardship policy. The way this draft standard statement is worded is effective as it requires the retailer to discuss whether or not the customer is on the most suitable plan for their circumstances. It could be strengthened further by saying "We must advise you of the best deals that we have available and, if you agree that you will benefit from changing to a new plan, we must explain it to you and get your consent to transfer you to the new plan at no cost."

However, access to the best deal relies on customers getting access to support under the hardship program. This is why it is so important to 'widen the door and lower the bar' for customers who need access to hardship support under draft standard statements 1 and 2. It is not acceptable in our view that customers experiencing payment difficulty do not have a right to be put on the best deal available.

Case study 4 – Failure to offer best possible discount

A community energy worker visited an energy customer's home to assist them with managing their energy bills. They were on a hardship program with their retailer. The community worker found that the customer was on a plan that had no discount applied so called the energy retailer to try to get the customer on a better deal. The hardship team said the best discount was 16 per cent. The community energy worker knew that the retailer was offering some customers an unconditional discount of 21 per cent. He asked to speak to someone in the sales team who also said that the best they do was a discount of 16 per cent. The community energy worker persisted and eventually spoke to someone who gave the customer a 21 per cent discount.

The community energy worker found that this practice was common across all energy retailers.

Standard statement 7: Energy efficiency

This standard statement is intended to give effect to paragraph 44(g) of the NERL – that a hardship policy must contain processes or programs to assist customers with strategies to improve their energy efficiency. For customers experiencing persistent payment difficulty, reducing their use through improved energy efficiency may be a key way to assist those customers to better manage their energy bills on an ongoing basis and to avoid disconnection.

A research project about customers that have been disconnected, or were notified or worried about disconnection, found that very few retailers provided these customers with assistance to reduce future bills. This is despite the evidence that people who are disconnected for non-payment are likely to live in homes that are hard to cool or have other energy efficiency

problems that impact on their bill, with about 80 per cent of people who were disconnected reporting at least one of these issues (PIAC, 2018).

Customers that have higher than average energy bills should always be offered assistance to help bring down their bills. This reflects the intent of the hardship provisions, especially the principle that retailers should assist hardship customers by means of programs and strategies to avoid disconnection solely due to an inability to pay energy bills; that disconnection of premises of a hardship customer due to an inability to pay energy bills should be a last resort option; and that residential customers should have equitable access to hardship policies, and that those policies should be transparent and applied consistently.

Standard statement 8: Variations

This draft standard statement allows the AER to specify any variations to the minimum requirements that a hardship policy must contain. The AER should use its power under this minimum requirement to give effect to Part 3 of the National Energy Retail Rules which details the obligations of retailers in relation to hardship.

Hardship policies should also contain a standard statement about a customer's right to make a complaint to the relevant ombudsman scheme if they don't agree with the retailer's actions under their hardship policy and were unable to resolve the issue with their retailer.

The ACCC and ASIC guidelines (ACCC, 2017) provide the following information about resolving debtor complaints and disputes:

Complaints and disputes must not be ignored. You must have effective internal processes in place for logging, assessing, and where appropriate, taking timely action in response to them.

A robust compliance program is a prudent risk management tool which assists managers and staff to understand their legal obligations and reduces the risk of breaching competition, consumer and other relevant laws.

You should establish and implement clear, appropriate, effective and fair policies and procedures for identifying and dealing with vulnerable debtors. A debtor may be vulnerable for a variety of reasons including experiencing mental health problems or mental capacity limitations.

Standard statement 9: Customer protections

The onus should be on the retailer to demonstrate that their processes that lead to debt collection action or being disconnected for non-payment have legitimacy. This includes the retailer taking positive steps to ensure that customers that are experiencing payment difficulty due to hardship are offered tailored advice and assistance under the retailer's hardship program. QCOSS also recommends that this standard statement prevents retailers from requiring payments to access a hardship program and from excluding customers from hardship programs where a customer has been unable to sustain a payment plan and no other assistance was offered by the retailer. The Victorian Payment Difficulty Framework includes a clause that ensures that a residential customer can only be disconnected if the retailer has complied with all their obligations.

Case Study 5 – Disconnected without hardship support being offered

“George” is a 68 year old aged pensioner with serious medical conditions including Parkinsons Disease and throat cancer. He has had three cancer operations in the past 14 months and has been in and out of hospital. He lives in a rented unit and uses medical equipment when he is at home. He missed some bills while in hospital and received a Disconnection Notice after accumulating an \$800 energy debt. He contacted the retailer to explain that he has been having cancer treatment and needed electricity for his medical equipment. They set up a payment plan starting on 5 September but then the energy retailer demanded that \$400 be paid by 12 October or the electricity supply would be disconnected. Due to his extra medical expenses, George could not afford to pay the outstanding amount.

George had previously obtained a one-off payment of \$480 under the Queensland government’s Home Energy Emergency Assistance Scheme so was not eligible for another payment for two years. He tried to make payments but then had to return to hospital for cancer treatment. He had tried to organise a financial hardship arrangement with the retailer but this was refused.

At no time did they offer George any hardship assistance. Also, they did not register his premises with Energex on the Life Support register.

They disconnected his electricity supply while he was in hospital and then charged him \$400 to reconnect. He believed incorrectly that the retailer was not part of the Energy and Water Ombudsman Queensland Scheme. George contacted Legal Aid and QCOSS, and his matter has been referred to the AER.

Conclusion

There is compelling evidence demonstrating that retailers’ hardship policies are not working. For example, research has shown that a large number of customers were disconnected without being offered a payment plan or hardship supports (PIAC, 2018). The Energy and Water Ombudsman Queensland (EWOQ, 2018) also confirms rising numbers of complaints about poor practices by retailers.

We urge the AER not to back away from using their powers to ensure that retailers are not just paying lip service to the law. A retailer’s hardship policy needs to be more than just words on a page. It must lead to greater consistency in the application of hardship policies; improved (and earlier) access to hardship programs; stronger obligation for retailers to comply with the rules; and must be effectively implemented, with supporting policies, procedures, systems and training for staff.

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