

Financial Hardship Policy Guidelines - Electricity & Gas Licences

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Economic Regulation Authority



WESTERN AUSTRALIA

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For further information, contact:

Economic Regulation Authority
Perth, Western Australia
Phone: (08) 6557 7900

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1 Introduction

Energy is required for heating, cooling, lighting, cooking and refrigeration, and as such is generally considered an essential service for residential customers.

The Western Australian Government provides a range of rebates, subsidies and grants to help residential customers meet their energy costs. Most rebates and subsidies are only available to customers who have one or more concession cards, while some are targeted at people with financial difficulties to prevent their supply from being disconnected.

In addition to government assisting residential customers financially, energy providers can play a positive role in avoiding the disconnection of supply to customers who are experiencing financial hardship.

In this regard, the *Code of Conduct for the Supply of Electricity to Small Use Customers* (**Electricity Code**) and the *Compendium of Gas Customer Licensing Obligations* (**Gas Compendium**) require retailers who supply residential customers to develop a financial hardship policy (**hardship policy**) to assist their customers in meeting their financial obligations and responsibilities to the retailer. The Electricity Code and Gas Compendium (collectively referred to as the “**Energy Codes**”) set out the minimum requirements that must be addressed in a hardship policy.

These *Financial Hardship Policy Guidelines – Electricity & Gas Licences* (**Guidelines**) have been developed to provide retailers with additional guidance in meeting the requirements set out in the Energy Codes.

2 Background

2.1 Electricity Code

Under section 79 of the *Electricity Industry Act 2004*, the Economic Regulation Authority (**Authority**) has the ability, in consultation with a committee, to approve a code of conduct with the objective of setting standards in the supply and marketing of electricity and protecting customers from undesirable marketing conduct. The Electricity Code first came into operation on 1 January 2005. The Electricity Code is subsidiary legislation. Compliance with the Electricity Code is a condition of every electricity retail, distribution and integrated regional licence.

2.2 Gas Compendium

On 20 May 2009, the Authority approved the amendment of gas trading and distribution licences, removing a number of existing customer protection provisions, and replacing them with new provisions as contained in the Gas Compendium. The Gas Compendium largely mirrors the Electricity Code, thereby ensuring that conduct requirements across the energy industry are consistent regardless of fuel type. Compliance with the Gas Compendium is a condition of every gas trading and distribution licence.

2.3 Payment difficulties and financial hardship

Part 6 of the Energy Codes addresses payment difficulties and financial hardship. Amongst other things, Part 6 requires retailers to develop a hardship policy. Clause 6.10(2) specifies the minimum contents of a hardship policy.

Upon recommendation by the Electricity Code Consultative Committee (**ECCC**), the Authority published *Financial Hardship Policy Guidelines* in 2008 to provide retailers with additional guidance in the development of their hardship policies. Development of the Guidelines was driven, in part, by a concern about disconnection rates in Western Australia.

Following the ECCC's second review of the Electricity Code in 2009, the Authority agreed to amend the Energy Codes to require that energy retailers review their hardship policies annually, and have regard to these Guidelines when undertaking the review. Retailers are required to submit the reviewed hardship policy to the Authority by 31 December each year to enable the Authority to examine the review and the hardship policy. In August 2010, the Authority amended the Guidelines to reflect the new requirements.

The ECCC completed the third review of the Electricity Code in 2012. Although no substantive changes were made to Part 6 as a result of the review, the Authority decided to amend the Guidelines in August 2012 to clarify the relationship between Part 6 of the Energy Codes, in particular clause 6.10(2), and the Guidelines.

3 Hardship Policies

Clause 6.10(1) of the Energy Codes requires a retailer to develop a hardship policy to assist customers in meeting their financial obligations and responsibilities to the retailer. Hardship policies generally apply to customers in 'financial hardship' as opposed to those experiencing 'payment difficulties'.

3.1 Differentiating between 'payment difficulties' and 'financial hardship'

The Energy Codes define 'payment difficulties' as:

a state of **immediate** financial disadvantage that results in a *residential customer* being unable to pay an outstanding amount as required by a *retailer* by reason of a *change in personal circumstances*.

A customer experiencing payment difficulties has the intention but not the capacity to pay their bills. 'Payment difficulties' can arise from a variety of situations, they can arise both gradually or suddenly, and they can occur over a relatively short period. For example, the theft of a wallet may cause a payment difficulty but would not of itself constitute financial hardship.

Whereas 'payment difficulties' refers to the short-term, financial hardship is of longer duration.

The Energy Codes require that a retailer provide a customer experiencing 'payment difficulties' with specified alternative payment arrangements and advise the customer that additional assistance is available if the customer is experiencing 'financial hardship'.

The Energy Codes define 'financial hardship' as:

a state of **more than immediate** financial disadvantage which results in a *residential customer* being unable to pay an outstanding amount as required by a *retailer* without affecting the ability to meet the *basic living needs* of the *residential customer* or a dependant of the *residential customer*.

Financial hardship may be caused by (but is not limited to) sustained incidence of one or more of the factors listed below:

- loss of the customer's or family member's primary income;
- spousal separation or divorce;

- physical and mental health issues;
- loss of a spouse or a loved one;
- a chronically ill child;
- domestic violence;
- budget management issues associated with a low income; and
- other unforeseen factors resulting in a customer's capacity to pay, such as a reduction in income or an increase in non-discretionary expenditure.

3.2 *Minimum content*

Clause 6.10(2) of the Energy Codes specifies the minimum contents of a hardship policy. Under this clause, a hardship policy must:

- (a) be developed in consultation with relevant consumer representative organisations;
- (b) provide for the training of staff:
 - i. including call centre staff, all subcontractors employed to engage with customers experiencing financial hardship, energy efficiency auditors and field officers;
 - ii. on issues related to financial hardship and its impacts, and how to deal with consumers consistently with the obligation in sub-paragraph (c);
- (c) ensure that customers are treated sensitively and respectfully; and
- (d) include guidelines –
 - i. that –
 - A. ensure ongoing consultation with relevant consumer representative organisations (including the provision of a direct telephone number of the retailer's credit management staff, if applicable, to financial counsellors and relevant consumer representative organisations); and
 - B. provide for annual review of the hardship policy in consultation with relevant consumer representative organisations;
 - ii. that assist the retailer in identifying residential customers who are experiencing financial hardship;
 - iii. for suspension of disconnection and debt recovery procedures;
 - iv. on the reduction and/or waiver of fees, charges and debt; and
 - v. on the recovery of debt.

The financial hardship guidelines set out in Section 4 provide additional guidance as to the matters to be included in a hardship policy.

3.3 *Annual review*

Clause 6.10(5) – (7) of the Energy Codes provides as follows:

- (5) The retailer must, unless otherwise notified in writing by the Authority, review its hardship policy at least annually and submit to the Authority the results of that review within 5 business days after it is completed.
- (6) The retailer may, at any time, review its hardship policy and submit to the Authority the results of that review within 5 business days after it is completed.
- (7) Any review of a retailer's hardship policy must have regard to the Authority's Financial Hardship Policy Guidelines.

The Authority requires all retailers to submit a copy of their hardship policy, and details of the review, to the Authority by 31 December each year. Any review of the hardship policy must have regard to these Guidelines.

A retailer may review its hardship policy more frequently and, if this is the case, must submit the results of that review, within five business days.

The Energy Codes require that the annual review include consultation with relevant consumer representative organisations.

Before submitting a copy of their hardship policy, a retailer should review their hardship policy against the checklist included in Appendix A of these Guidelines. A copy of the completed checklist, including reference to relevant paragraph or page numbers, should be submitted with the retailer's initial or reviewed hardship policy.

The retailer should further ensure that in addition to a copy of the hardship policy, information is provided to the Authority regarding the process of the review and the nature of amendments resulting from the review.

The Authority further strongly encourages retailers to produce a short, easily accessible and 'consumer friendly' summary of their hardship policy. This summary should be written in plain, easy to understand language and include the key elements of the retailer's hardship policy.

The Authority will examine both the retailer's review process and the hardship policy to assess performance in relation to the relevant Code and these Guidelines.

In most cases the Authority will publish an assessment of the retailer's hardship policy every two years, or at its discretion. However, in some cases, the Authority may publish an assessment more frequently than once every two years. For example, where a licensee submits a policy that contains substantial amendments, or where a previous assessment was poor, the Authority may determine that it is necessary for an assessment to be published annually.

The Authority does not have an approval role in relation to hardship policies.

The Authority will endeavour to publish its assessment and a copy of the licensee's hardship policy on its website by 30 March every two years, except where the Authority otherwise determines.

4 Financial Hardship Policy Guidelines

As set out above, clause 6.10(2) of the Energy Codes specifies the minimum content requirements of a hardship policy. The Guidelines below provide additional guidance as to the information retailers should include in their hardship policies (or the supporting information supplied to the Authority) to meet these requirements. The Guidelines outline the general approach the Authority will take in reviewing and assessing hardship policies.

These Guidelines do not replace the obligations contained in the Energy Codes. Retailers should review the obligations contained in the Energy Codes, as well as these Guidelines, when preparing or reviewing their hardship policies to ensure compliance.

4.1 *Development in consultation with relevant consumer representative organisations (clause 6.10(2)(a))*

The Energy Codes require a hardship policy to be developed in consultation with consumer representative organisations.

When developing its initial hardship policy, a retailer should consult consumer representative organisations on:

- the (proposed) content of its hardship policy; and
- the (proposed) ongoing consultation processes with those organisations.

[The Energy Codes require a retailer to provide for ongoing consultation with consumer representative organisations and to consult those organisations in relation to any annual reviews undertaken by the retailer (see guideline 4.4 below). To ensure that the consultation processes proposed by the retailer are appropriate, it is expected that a retailer consults consumer representative organisations on the proposed processes.]

When submitting an initial hardship policy to the Authority, a retailer is expected to provide the following supporting information:

- 4.1.1 The consumer representative organisations that were consulted.**
- 4.1.2 The manner in which those organisations were consulted (e.g. workshop, telephone, e-mail, etc).**
- 4.1.3 The matters on which those organisations were consulted.**

4.2 Training of staff (clause 6.10(2)(b))

The Energy Codes require a hardship policy to provide for the training of staff, including call centre staff, all subcontractors employed to engage with customers experiencing financial hardship, energy efficiency auditors and field officers (paragraph (i) of clause 6.10(2)(b)).

Comprehensive training should be provided to the staff listed in clause 6.10(2)(b)(i). However, all levels of a retailer's business will benefit from training in hardship matters and retailers should consider whether some general awareness training should be provided to all staff.

A financial hardship policy is most likely to succeed if senior management's commitment to the training program is clearly communicated to the organisation, reinforcing a "whole of business approach".

Content of training

The training must focus on issues related to financial hardship and its impacts, and how to deal with customers in a sensitive and respectful manner (clause 6.10(2)(b)(ii) of the Electricity Codes).

As a minimum, training should be provided to "front-line staff" (such as staff in call centres and credit departments) on the retailer's obligations included in Part 6 of the Energy Codes. This includes, for example, temporary suspension of actions, assistance to be offered, alternative payment arrangements, consideration of a reduction in fees, charges and debt, and general provision of information to customers.

To effectively implement a financial hardship policy, "front-line staff" will need to understand the retailer's wider hardship policy, processes and procedures.

Training packages should further address key cultural and social issues for significant customer groups, help staff develop communication skills for engaging with customers in financial hardship, enable staff to educate customers by providing basic energy saving tips, information on energy audits, concessions and rebates, Centrelink benefits and budgeting.

Any training provided to staff that do not directly deal with customers in financial hardship could be of a more general nature.

Timing of training

Training of “front-line” staff should occur as soon as possible after an employee is engaged in a position that requires them to interact with customers in financial hardship.

Retailers should also consider what ‘refresher’ training should be provided.

Development of training

Retailers should consider consulting consumer representative organisations in the development of some of their training packages. Consultation with consumer representative organisations may be particularly valuable when developing training on how financial hardship impacts on customers, how to communicate with customers in financial hardship, and some of the key cultural and social issues to consider when dealing with disadvantaged customers.

When submitting a hardship policy to the Authority for review, a retailer is expected to include in their policy:

4.2.1 A short description of the training provided by the retailer to its staff.

In addition, a retailer is expected to provide the following information to the Authority (either within the hardship policy or by means of supporting information):

4.2.2 The type of training provided to staff (i.e. a short description of the objective of each training program provided to assist staff in dealing with customers in financial hardship).

4.2.3 A general description of the staff that have received training over the past 12 months (e.g. call centre staff, contractors, senior management, etc) and how often that training has been provided.

4.2.4 If any consumer representative organisations were consulted on the development of any of the training packages and, if so, which ones.

4.3 Treating customers sensitively and respectfully (clause 6.10(2)(c))

Customers in financial hardship may find it difficult to discuss their financial problems with their retailer for a variety of reasons. A study commissioned by the Essential Services Commission (Victoria) found that some hardship customers may be:

“reluctant to, or put off, contacting utilities after previous negative experiences. They also tended to be more likely to speak of deferring making initial contact because of the burden (in terms of time and emotion) it involved. They spoke of being weary of waiting on hold for long periods and of having to re-explain their (often depressing) circumstances over again. A further barrier to initially seeking assistance is the sense of embarrassment and even shame people feel about having to ask for assistance – this was expressed uniformly across the sample.”¹

¹ Hall & Partners – Open Mind, (2011) “Customers of water and energy providers in financial hardship: a consumer perspective”, pg. 20.

Customers who put off contacting their retailer are more likely to accumulate significant debts than those who contact their retailer early on. It is neither in the customer or the retailer's best interest for this to occur. A customer is more likely to contact their retailer early on if the customer feels respected and listened to without judgement. It is therefore important that retailers treat their customers sensitively and respectfully.

As discussed in Section 4.2, retailers should consider providing training to staff on how financial hardship impacts on customers, how to communicate with customers in financial hardship, along with some of the key cultural and social issues to consider when dealing with disadvantaged customers.

When submitting a hardship policy to the Authority for review, a retailer is expected to include in their policy:

4.3.1 A statement advising that the retailer will treat all customers sensitively and respectfully.

In addition, a retailer is expected to provide the following information to the Authority (either within the hardship policy or by means of supporting information):

4.3.2 A short description of any measures taken by the retailer to ensure that all customers in financial hardship are treated sensitively and respectfully (e.g. sampling of phone calls etc).

4.4 Ongoing consultation with relevant consumer representative organisations (clause 6.10(2)(d)(i)(A))

Clause 6.10(2)(d)(i)(A) of the Energy Codes requires a hardship policy to include guidelines that ensure ongoing consultation with consumer representative organisations (including the provision of a direct telephone number of the retailer's credit management staff, and if applicable, to financial counsellors and consumer representative organisations).

Hardship customers who are unable to pay their energy bill often also struggle with other financial commitments, such as rent, medical expenses, food etc. To determine which alternative payment arrangement best suits a customer, a retailer usually requires an accurate overview of the customer's current financial situation. Analysis of a customer's financial situation is a specialised, time-consuming task and is often best undertaken by a financial counsellor.

Part 6 of the Energy Codes therefore provides that a retailer must give reasonable consideration to advice given (if any) by an independent financial counsellor or consumer representative organisation when assessing a customer's financial situation (clause 6.1). The Energy Codes also require a retailer to advise customers in financial hardship about the availability of independent financial counselling and other consumer representative organisations (clause 6.8).

Financial counsellors have extensive experience in dealing with customers in financial hardship and may provide retailers with valuable insights on issues of hardship. The Energy Codes therefore require retailers to consult on an ongoing basis with consumer representative organisations both generally and in relation to their hardship policies.

Retailers and consumer representative organisations and/or financial counsellors could, for example, opt to enter into memorandums of understanding or inter-agency protocols to ensure a common understanding of any agreed processes and protocols. Alternatively,

retailers could consult consumer representative organisations on a more ad-hoc basis through the establishment of, for example, quarterly meetings, reference groups, etc.

When submitting a hardship policy to the Authority for review, a retailer is expected to explain in their policy:

4.4.1 How the retailer engages in ongoing consultation with consumer representative organisations.

In addition, a retailer is expected to provide the following supporting information to the Authority:

4.4.2 Whether the retailer's credit management staff have a direct telephone number and, if so: (i) whether this number has been provided to financial counsellors and consumer representative organisations; and (ii) if so, which organisations have been provided with it.

4.5 *Annual review of hardship policy to occur in consultation with relevant consumer representative organisations (clause 6.10(2)(d)(i)(B))*

Clause 6.10(2)(d)(i)(B) of the Energy Codes requires a hardship policy to include guidelines that provide for annual review of the hardship policy in consultation with consumer representative organisations. This requirement recognises the expertise and importance of consumer representative organisations in developing effective hardship policies to assist customers.

Consultation on the retailer's hardship policy may occur in a number of ways. A retailer could, for example, seek feedback by organising one or more reference groups or forums. Alternatively, a retailer may opt to conduct a telephone survey or send a copy of the hardship policy to consumer representative organisations by (e)mail with a request to provide feedback.

It is important that retailers consult consumer representative organisations about the manner in which they propose to seek feedback to ensure those organisations are best able to participate. The Authority suggests a retailer commence engagement with consumer representative organisations approximately two months prior to the retailer's deadline. Retailers should ensure that consumer representative organisations are provided with sufficient time to provide any feedback they may have on the retailer's policy.

When submitting a hardship policy to the Authority for review, a retailer must explain in their policy:

4.5.1 That the hardship policy is reviewed annually and that any review will occur in consultation with consumer representative organisations.

In addition, a retailer is expected to provide the following information to the Authority (either within the hardship policy or by means of supporting information):

- 4.5.2 The consumer representative organisations consulted by the retailer.**
- 4.5.3 A short description of the manner in which those organisations were consulted.**

4.6 Guidelines that assist the retailer in identifying residential customers who are experiencing financial hardship (clause 6.10(2)(d)(ii))

It is important that customers in financial hardship are identified before significant debts to the retailer are accumulated.

A retailer should therefore have an objective set of criteria in place that assists its staff in identifying customers in financial hardship. Criteria could include one or more of the factors listed on pages 4 and 5 of these Guidelines.

Retailers should further consider the assessment of a customer's financial counsellor or consumer representative organisation, where applicable. In this regard, the Government Utilities Essential Services Hardship Inter-Agency Working Group (GUESHIWG) noted that *"to avoid perceptions of bias or conflict of interest, the decision of whether a person is in utility hardship should ultimately rest with an independent financial counsellor"*.² Where an assessment is to be provided by a financial counsellor or consumer representative organisation, a retailer should provide the counsellor or organisation with any relevant information regarding the customer's financial situation (subject to privacy and customer consent requirements).

Although identification by a retailer is important, it is generally recognised that the *"most effective approach to timely response under a financial hardship policy is to maximise the opportunity for customers to "self-identify" their difficulties in paying bills"*.³ To enable customers to self-identify difficulties, retailers should encourage customers in financial hardship to make contact by advising customers on bills, reminders notices and other correspondence that assistance is available by contacting their retailer.

Self-identification may further be facilitated by ensuring customer service staff are trained to communicate sensitively with customers in financial hardship.

Retailers could further establish processes to proactively identify customers in financial hardship. For example, clause 7.1(1)(b) of the Code requires a retailer to use its best endeavours to contact a customer before arranging disconnection of the customer's energy supply. For customers who have a history of late payments, a retailer may establish processes to contact these customers personally to determine whether they are in financial hardship and may be eligible for any of the assistance available under Part 6 of the Code.

Identification could also be assisted by having a specialist team that call centres can refer customers in financial hardship to.

When submitting a hardship policy to the Authority for review, a retailer is expected to include in their policy:

² Government Utilities Essential Services Hardship Inter-Agency Working Group, (2007) "Utilities Essential Services Hardship – Public Issues Discussion Paper", pg. 23.

³ Essential Services Commission Victoria, (2006) "Framework Paper – Energy Retailers Hardship Policies", pg. 14.

- 4.6.1 An objective set of hardship indicators.**
- 4.6.2 A statement encouraging customers to contact their retailer if a customer is having trouble paying the retailer's bill.**
- 4.6.3 As a minimum, an overview of the assistance available to customers in financial hardship in accordance with Part 6 of the Energy Codes (However the Authority encourages retailers to also detail any further assistance provided).**

In addition, a retailer is expected to provide the following information to the Authority (either within the hardship policy or by means of supporting information):

- 4.6.4 A short description of any processes developed by the retailer to identify customers in financial hardship as early as possible.**
- 4.6.5 A short description of any processes developed by the retailer to assist customer to self identify payment difficulties and request hardship assistance.**

4.7 Suspension of disconnection and debt recovery procedures (clause 6.10(2)(d)(iii))

A hardship policy must include guidelines that provide for the suspension of disconnection and debt recovery procedures (clause 6.10(2)(d)(iii) Energy Codes).

As a minimum, the hardship policy should specify that the customer may request a temporary suspension of disconnection and debt recovery procedures. Further, a retailer must not unreasonably deny such a request if the customer demonstrates to the retailer that the customer has made an appointment with a financial counsellor or relevant consumer representative organisation to assess the customer's capacity to pay (clause 6.2 of the Energy Codes).

In the interests of transparency, a retailer should consider providing further guidance within its hardship policy as to how a customer may demonstrate that it has an appointment with a financial counsellor and under what circumstances the retailer could deny a request for a temporary suspension of actions. For example, is verbal confirmation of an appointment by the customer sufficient?

The hardship policy should further specify that a retailer will suspend any disconnection procedures if a hardship customer has accepted the retailer's offer for an alternative payment arrangement and has used reasonable endeavours to settle the debt before the expiry of the time frame specified by the retailer in the disconnection warning (as required under clause 7.2(1)(b) of the Energy Codes).

If a retailer requires a customer to "use reasonable endeavours to settle the debt" before disconnection procedures will be suspended, the retailer should provide further guidance within the hardship policy as to what is meant by and when a customer is taken to have used "reasonable endeavours".

It is important to note that a retailer may not commence proceedings for the recovery of debt from a financial hardship customer who continues to make payments under an alternative payment arrangement (clause 5.8(2) of the Energy Codes).

When submitting a hardship policy to the Authority for review, a retailer is expected to explain in their policy:

- 4.7.1 The circumstances under which the retailer will suspend all disconnection and debt recovery procedures. As a minimum, the hardship policy should reflect the requirements of clauses 5.8(2), 6.2 and 7.2(1)(b) of the Energy Codes.**

4.8 *Reduction and/or waiver of fees, charges and debt (clause 6.10(2)(d)(iv))*

Clause 6.6(1) of the Energy Codes requires a retailer to give reasonable consideration to a request by a customer, or a relevant consumer representative organisation, for a reduction of the customer's fees, charges and debt. Further, subclause (2) requires the retailer to refer to "the guidelines in its hardship policy referred to in clause 6.10(2)(d)" when giving "reasonable consideration" under subclause (1).

It is important that any guidelines address the reduction or waiver of fees, charges *and* debt; not just one or two of these three components.

Circumstances that may warrant a reduction of waiver

A retailer should consider clarifying within its hardship policy when a customer may be eligible for a reduction and/or waiver of fees, charges and debt. For example, one retailer has indicated in its hardship policy that it will generally waive a debt in cases of death, spousal separation, and domestic violence.

Types of fees, charges and debt that may be reduced or waived

As a minimum, it is expected that a hardship policy specifies that a customer will not be charged a late payment fee if the customer has been assessed by the retailer as being in financial hardship (as required under clause 5.6(1)(d) of the Energy Codes).

A retailer should consider specifying within its hardship policy which other fees, charges and debt it may consider reducing or waiving. For example, a hardship policy could provide for the waiver of reconnection and/or disconnection fees for financial hardship customers.

Manner in which fees, charges and debt may be reduced or waived

Fees, charges and debt may be waived in full or partially. A retailer may also make the waiver of fees, charges and debt conditional upon the customer meeting certain conditions. A hardship policy should set out the manner and conditions under which a retailer may reduce and/or waive fees, charges and debt.

For example, a retailer could offer to match any payments a customer makes towards an outstanding debt or agree to waive the debt once the customer has repaid a certain percentage of the debt.

When submitting a hardship policy to the Authority for review, a retailer is expected to explain in their policy:

- 4.8.1 The circumstances under which the retailer will consider reducing or waiving fees, charges and debt;**
- 4.8.2 The types of fees, charges and debt that the retailer will consider reducing or waiving; and**
- 4.8.3 The manner in which fees, charges and debt may be reduced or waived.**

4.9 Recovery of debt (clause 6.10(2)(d)(v))

Clauses 7.1 to 7.3 of the Energy Codes set out the requirements a retailer must meet prior to disconnecting a customer for failure to pay a bill. These requirements will generally also apply to the recovery of debt. For example, when recovering an outstanding bill the retailer must give the customer at least a reminder notice and disconnection warning.

Further, when recovering a debt, a retailer must comply with Part 2 of the *Debt collection guidelines for collectors and creditors* issued by the Australian Competition and Consumer Commission (clause 5.8(1) of the Energy Codes).

As noted previously, a retailer may not commence proceedings for the recovery of debt from a financial hardship customer who continues to make payments under an alternative payment arrangement (clause 5.8(2) of the Energy Codes).

The requirements of clause 5.8 also apply if a retailer outsources the recovery of its debt to a debt collection agency.

Where a retailer outsources the recovery of debt, the hardship policy should advise customers that their debt may be collected by a debt collection agency and whether this may result in any additional fees for the customer.

When submitting a hardship policy to the Authority for review, a retailer is expected to explain in their policy:

- 4.9.1 The applicable process for collecting outstanding debt.**

4.10 Other financial hardship obligations

The Energy Codes specify a number of obligations with regard to customers experiencing financial hardship. When considering whether a hardship policy meets the requirements of the Energy Codes, the Authority will not only review the hardship policy against the requirements of clause 6.10 but also generally for consistency with Part 6.

In particular, the Authority will consider whether the hardship policy reflects the requirements of clause 6.4 of the Energy Codes (alternative payment arrangements), clause 6.8(c) and (g) of the Electricity Code and clause 6.8(c) and (e) Gas Compendium (concessions and grants). The Authority will also assess if the policy contains information on complaints handling, and is easily accessible to customers.

Alternative payment arrangements

Where a customer has been assessed by a retailer as being in financial hardship, the retailer must offer the customer flexible payment arrangements (clause 6.4 of the Energy Codes). Any flexible payment arrangement must have regard to the customer's usage needs and capacity to pay, as set out in clause 6.4(2) of the Energy Codes.

It is recognised that retailers have legitimate commercial objectives and that a hardship policy should not facilitate customers to avoid their financial obligation to the retailer. However, where a customer in financial hardship has significant arrears, the customer is

unlikely to have the capacity to meet their commitments to a payment plan if a significant payment is required upfront followed by substantial instalments in quick succession. Repaying a large debt within a short timeframe is usually impossible for people in financial hardship. Any payment plan that over-commits a customer is unlikely to succeed and may result in the customer being disconnected. For this reason, it is recommended that retailers involve the customer and, if applicable, their financial counsellor in setting a payment plan.

A retailer should ask a customer how much they can afford to pay and determine a realistic payment plan based on the individual circumstances of the customer. A retailer should also be aware that some customers may over-commit to more than they can afford because they are anxious to avoid disconnection or to be reconnected.

If the customer has a financial counsellor, the retailer should consider the financial counsellor's assessment of the customer's usage needs and capacity to pay. Financial counsellors allocate a significant amount of time to helping each client in financial hardship develop a budget and assessing a customer's capacity to pay.

A retailer's staff should be empowered to negotiate and agree on appropriate solutions for customers. It is further important that staff are aware of the agencies where customers in financial hardship can be referred for further advice, along with other services that may assist the customer in managing his/her future energy consumption and financial obligations. This may include offering payment options such as Centrepay and providing energy efficiency information.

When submitting a hardship policy to the Authority for review, a retailer should include within the policy:

4.10.1 The alternative payment arrangements available to customers in financial hardship.

4.10.2 How a retailer will determine a customer's usage needs and capacity to pay when specifying the conditions of an instalment plan.

Concessions and grants

A number of energy concessions are available to holders of certain concession cards. For administrative reasons, these concessions are only applied by electricity retailers to a customer's electricity account.

In addition, the Government has established the Hardship Utility Grant Scheme (**HUGS**) which provides grants to customers in hardship to assist them to pay their outstanding energy debts. When a customer is referred to a financial counsellor by a retailer, the counsellor will assess whether the customer is eligible for a HUGS grant. If the customer is eligible, the financial counsellor will make a HUGS grant application on the customer's behalf. HUGS grant applications can only be made via financial counsellors – retailers are not able to apply for grants on behalf of customers.

Although many holders of a concession card will not be in financial hardship, it is likely that a large percentage of customers in financial hardship hold or are eligible for a concession card. Concessions and grants can reduce a customer's bill and assist in the customer's supply staying connected.

It is therefore important that customers in financial hardship are advised of the availability of concessions and grants. To this end, the Energy Codes require retailers to advise customers in hardship of any concessions and grants available to the customer.

When submitting a hardship policy to the Authority for review, a retailer should include within the policy:

4.10.3 An overview of any concessions and grants that may be available to its customers.

Complaints handling

Part 12 of the Energy Codes requires retailers to have in place a complaints handling process. It would be useful if information regarding the retailer's complaints handling process and relevant contact information were included in the hardship policy. Such information would assist customers who wish to lodge a complaint in relation to any of the retailer's obligations under Part 6 of the Energy Codes, such as a retailer's assessment of the customer's capacity to pay, the payment arrangement offered, etc.

When submitting a hardship policy to the Authority for review, a retailer should include within the policy:

4.10.4 Information regarding the retailer's complaints handling process, including the retailer's contact details and the Energy Ombudsman's contact details.

Accessibility

It is important that customers in financial hardship are aware of their rights and responsibilities. Retailers should therefore actively promote awareness of their hardship policy to customers, financial counsellors and other appropriate agencies.

In addition, retailers should ensure that information about their hardship policy is available at no cost in a range of forms, such as brochures and on the retailer's website. In any event, a retailer must provide details of the hardship policy, upon request, to any customer who has been identified as being in financial hardship (clause 6.10(3) of the Energy Codes).

Interpreter services for non-English speaking persons and communications technology for the hearing and sight impaired should be made available so that all customers may familiarise themselves with the policy.

A hardship policy should be written in clear, simple and concise language and be in a format that makes it easy to understand (clause 10.9 of the Energy Codes).

A retailer should provide the following information to the Authority (either within the hardship policy or by means of supporting information):

4.10.5 How the retailer promotes awareness of the hardship policy to its customers and other appropriate agencies (e.g. by including a statement on the bill or reminder notices, targeted mail distribution, provision of information to seminars and training events, and liaison with consumer representative organisations).

4.10.6 The format in which the hardship policy is available to customers (e.g. hard copy, electronic format, large print etc).

4.10.7 Whether the hardship policy is easily accessible to customers with special needs (e.g. telephone number for TTY and/or independent multi-lingual services included on hardship policy)

References

In preparing these Guidelines, the Authority has referred to the following documents in particular:

- Australian Communications Industry Forum, (2006) “Guide for a Financial Hardship Policy”
http://www.commsalliance.com.au/_data/assets/pdf_file/0010/1018/GUIDE-FOR-A-FINANCIAL-HARDSHIP-POLICY1.pdf
- Australian Energy Regulator, (2011) “Guidance on AER approval of customer hardship policies – FINAL”
<http://www.aer.gov.au/sites/www.aer.gov.au/files/Final%20Guidance%20on%20AER%20approval%20of%20customer%20hardship%20policies%20-%20May%202011.pdf>
- Committee for Melbourne Debt Spiral Prevention Project, (2006) “Guiding Principles - Supporting Utility Customers Experiencing Financial Hardship”
- Energywatch & Ofgem, (2003) “Preventing Debt and Disconnection”
<http://www.ofgem.gov.uk/Media/FactSheets/Documents1/1389-jan2403debtprev.pdf>
- Essential Services Commission Victoria, (2006) “Framework Paper – Energy Retailers’ Financial Hardship Policies”
<http://www.esc.vic.gov.au/getattachment/30b2a467-9a95-4477-b188-bb2163c39b13/Energy-Retailers-financial-hardship-policies-frame.pdf>
- Government Utilities Essential Services Hardship Inter-agency Working Group, (2007) “Utilities Essential Services Hardship Public Issues Discussion Paper”
http://s3.amazonaws.com/zanran_storage/www.energy.wa.gov.au/ContentPages/53325614.pdf
- Hall & Partners – Open Mind, (2011) “Customers of water and energy providers in financial hardship: a consumer perspective”
<http://www.esc.vic.gov.au/getattachment/26284a98-ebfe-4d68-93d1-8ee6d556c64b/Customers-of-water-and-energy-providers-in-financi.pdf>

All hyperlinks were accurate as at September 2012.

Appendix A – Hardship Policy Review Checklist

Before submitting a copy of their initial or reviewed hardship policy, a retailer should review their policy against the following requirements.

Clause within Energy Codes	Requirements	Included in hardship policy (paragraph or page numbers) or supporting documentation
n/a	Summary version	Has the retailer produced a short, easily accessible and 'consumer friendly' summary of their hardship policy?
6.10(2)(a)	Development in consultation with relevant consumer representative organisations	The consumer representative organisations that were consulted on the initial hardship policy.
		The manner in which those organisations were consulted (e.g. workshop, telephone, e-mail, etc).
		The matters on which those organisations were consulted.
6.10(2)(b)	Training of staff	A short description of the training provided by the retailer to its staff.
		The type of training provided to staff (i.e. a short description of the objective of each training program provided to assist staff in dealing with customers in financial hardship).
		A general description of the staff that have received training over the past 12 months (e.g. call centre staff, contractors, senior management, etc).
		How often training has been provided over the past 12 months.
		If any consumer representative organisations were consulted on the development of any of the training packages and, if so, which ones.
6.10(2)(c)	Treating customers sensitively and respectfully	A statement advising that the retailer will treat all customers sensitively and respectfully.
		A short description of any measures taken by the retailer to ensure that all customers in financial hardship are treated sensitively and respectfully (e.g. training, sampling of phone calls, etc).
6.10(2)(d) (i)(A)	Ongoing consultation with relevant consumer representative organisations	How the retailer engages in ongoing consultation with consumer representative organisations.
		Whether the retailer's credit management staff has a direct telephone number and, if so, whether this number has been provided to financial counsellors and consumer representative organisations and, if so, to which organisations.
6.10(2)(d) (i)(B)	Annual review of hardship policy to occur in consultation with relevant consumer representative organisations	A statement that the hardship policy is reviewed annually and that any review will occur in consultation with consumer representative organisations.
		The consumer representative organisations consulted by the retailer.
		A short description of the manner in which those organisations were consulted.
6.10(2)(d) (ii)	Guidelines that assist the retailer in identifying residential customers who are experiencing financial hardship	An objective set of hardship indicators.
		A statement encouraging customers to contact their retailer if a customer is having trouble paying the retailer's bill.
		An overview of the assistance available to customers in financial hardship. As a minimum, this should cover the assistance outlined in Part 6

		of the Energy Codes.	
		A short description of any processes developed by the retailer to identify customers as early as possible.	
		A short description of any processes developed by the retailer to assist customer to self identify and request hardship assistance.	
6.10(2)(d) (iii)	Suspension of disconnection and debt recovery procedures	The circumstances under which the retailer will suspend all disconnection and debt recovery procedures. As a minimum, the hardship policy should reflect the requirements of clauses 5.8(2), 6.2 and 7.2(1)(b) of the Energy Codes.	
6.10(2)(d) (iv)	Reduction and/or waiver of fees, charges and debt	The circumstances under which the retailer will consider reducing or waiving fees, charges and debt	
		The types of fees, charges and debt that the retailer will consider reducing or waiving.	
		The manner in which fees, charges and debt may be reduced or waived.	
6.10(2)(d) (v)	Recovery of debt	The applicable process for collecting outstanding debt.	
Other obligations	Alternative payment arrangements	The alternative payment arrangements available to customers in financial hardship.	
		How a retailer will determine a customer's usage needs and capacity to pay when specifying the conditions of an instalment plan.	
	Concessions and grants	An overview of any concessions and grants that may be available to its customers.	
	Complaints handling	Information regarding the retailer's complaints handling process, including the retailer's contact details and the Energy Ombudsman's contact details.	
	Accessibility	How the retailer promotes awareness of the hardship policy to its customers and other appropriate agencies (e.g. by including a statement on the bill or reminder notices, targeted mail distribution, provision of information to seminars and training events, and liaison with consumer representative organisations).	
		The format in which the hardship policy is available to customers (e.g. hard copy, electronic format, large print etc).	
Whether the hardship policy is easily accesibile for customers with special needs (e.g. telephone number for TTY and/or independent multi-lingual services included on hardship policy).			