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Executive Director  
Licensing, Monitoring and Consumer Protection  
Economic Regulation Authority  
Level 6, Governor Stirling Tower  
197 St Georges Terrace  
PERTH WA 6000

4 July, 2008

Dear Mr Kelly

**RE: DRAFT FINANCIAL HARDSHIP POLICY GUIDELINES**

WACOSS welcomes the opportunity to respond to the recent release of the Economic Regulation Authority (ERA) Draft Financial Hardship Policy Guidelines. Hardship policies are instrumental to improving outcomes for disadvantaged essential service consumers.

This submission is intended to represent the views of the Western Australian Council of Social Service (WACOSS) in relation to the Draft Financial Hardship Policy Guidelines provided by the ERA. Omission of comment in relation to any part of the Guidelines is not intended to imply endorsement of the statements contained within the Guidelines.

**The Essentiality of Energy**

Electricity retailers provide services that are essential to the maintenance of acceptable standards of living in the community. In many cases, the continued, uninterrupted provision of these services is necessary for the maintenance of life itself. That is why electricity is often said to be an essential service, or essential utility.

The essentiality of these services is such that the right of access to them is even contained in United Nations human rights standards, accepted by the Commonwealth Government<sup>1</sup>. Additionally, the importance of essential service provision was recognised in the Senate Poverty Inquiry which stated that,

*"Evidence indicated the importance of ensuring access to low income households to essential utilities such as electricity, gas, water and telephone services. Those services provide the basic means by which any household is able to function in a modern society."*<sup>2</sup>

The Productivity Commission also stated in its review of National Competition Policy in 2005 that,

*"Reliable, affordable and sustainable energy services are critical to Australia's economic and social wellbeing ... they are essential for supporting basic quality of life."*<sup>3</sup>

## **Hardship**

The use of energy services in Western Australia is both essential as well as almost universal. That is, almost everyone living in Western Australia uses energy services, usually provided by a third party such as Synergy Energy or Horizon Power. Because almost everyone uses these services, it is inevitable that, at some time, some essential service consumers will experience financial or other types of hardship.

Financial and other types of hardship may have many complex and interrelating causes, or contributing factors. These may include the loss of employment, physical and mental health issues, increasing household debt or a significant life event, such as the death of a family member. The effects of financial and social hardship are wide-ranging and significant and may include difficulty in accessing accommodation, declining health status, legal problems, poor access to employment and education as well as interpersonal conflict.

Because of the factors – such as those outlined above - it is vital that essential service providers have appropriate policies and procedures in place to meet the needs of consumers experiencing financial hardship. In addition to this need for essential service provider participation, government also possesses an overarching responsibility to design regulation accordingly, to ensure that minimum standards are upheld in the provision of essential services.

## **Hardship Policies and Procedures are Necessary**

The energy market in Western Australia continues to experience significant processes of reform. Processes of reform to date have included the disaggregation of Western Power, the introduction of contestability for larger electricity consumers and the introduction of competition to aspects of service delivery. This process follows the deregulation of many essential service markets both within the Australian National Energy Market and internationally.

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<sup>1</sup> United Nations Economic & Social Council, Committee on Economic, Social & Cultural Rights, 'The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights', November 2000, p. 6.

<sup>2</sup> Australian Senate, 'Report from the Australian Senate Community Affairs References Committee Inquiry into Poverty and Financial Hardship (Senate Poverty Inquiry)' 2004, Ch 9, pg. 191.

<sup>3</sup> Australian Productivity Commission, 'Review of National Competition Policy', April 2005, §8.2, pg. 180.

Within the context of this reform, it is imperative that vulnerable consumers, such as consumers experiencing financial hardship, are protected. This may be done both through the adoption of appropriate business practices at a retailer level and through the development of regulation by government, which may better enable companies to protect the public interest. Given the essentiality of energy services, as discussed previously, and the likelihood that electricity consumers will, at times, experience periods of financial hardship or crisis, it is vital that regulation exist regarding the form and content of electricity retailers' financial hardship policies.

#### **WACOSS RECOMMENDATION**

*That the content and management of electricity retailers' Hardship Policies be subject to regulation. Such regulation should mandate the inclusion of specific content in electricity retailers' Hardship Policies.*

#### **MONITORING AND APPLICATION OF HARDSHIP POLICY CONTENT**

WACOSS asserts that the content of Hardship Policies developed by utility retailers should require evaluation by the relevant regulating authority, in this case the ERA. WACOSS has stated this previously in submissions to the Government Essential Service Hardship Interagency Working Group (GUESHIWG), including its issues paper on *Utilities Essential Service Hardship* (attached) and continues to assert that hardship guidelines should be mandatory applied to retailers' Hardship Policies and assessed by the relevant regulator at regular intervals.

Further to the mandatory inclusion of specific content within Hardship Policies, the effectiveness of such content should also be monitored on an ongoing basis further to mandatory guidelines for Hardship Policies. The results of this monitoring should be reported in a transparent manner. This transparency potentially serves to both promote the efficient (and effective) functioning of the retailers' Hardship Policy as well as being an important source of information both for government policy makers and consumer advocates.

The monitoring of Hardship Policy content may focus on factors such as:

- The nature of training provided to staff regarding financial hardship and the relevant retailer's Hardship Policy.
- The processes by which retailers' Hardship Policies are developed; and
- The type of consultative processes that are entered into during the development and review of hardship policies.

While WACOSS recognises that the terms 'payment difficulty' and 'financial hardship' may be useful in differentiating between customers with ongoing payment problems and those who experience these problems only occasionally. However, WACOSS asserts that consumers experiencing 'payment difficulty' should not be disadvantaged by this categorisation within the administration of the retailers' hardship policies. In many instances, the application of financial hardship policies and procedures are appropriate for consumers experiencing temporary payment difficulty and may serve to avoid further, ongoing financial hardship.

**WACOSS RECOMMENDATION**

*That the hardship policies of electricity retailers be subject to ongoing and periodic assessment by the Economic Regulation Authority and that the results of such monitoring be publicly available.*

**WACOSS RECOMMENDATION**

*That electricity consumers assessed as experiencing only temporary 'payment difficulty' – as opposed to ongoing financial hardship - be duly considered for the application of 'financial hardship' procedures by the retailer.*

**HARDSHIP POLICY GUIDELINE 1 – STAFF TRAINING**

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While the ERA Draft Guidelines recommend that staff should have appropriate levels of training enabling them to effectively respond to customer needs, WACOSS asserts that it is also necessary to mandate the frequency with which such training should occur, and under what instances. Periodic 'refresher' training and training regarding financial hardship, social disadvantage and relevant retailer policies as a part of the retailer's induction processes would serve both to promote awareness regarding the retailer's social responsibilities within the organisation as well as ensuring that staff retain access to the most up-to-date, relevant information.

WACOSS supports the Economic Regulation Authority's recommendation within the *Draft Guidelines* that specialist staff receive levels of training additional to other customer service staff or management. The provision of appropriate training to electricity retailer staff regarding financial hardship and social disadvantage presents an opportunity for electricity retailers to engage with relevant Non-Government Organisations (NGOs) that possess expertise in this area.

**WACOSS RECOMMENDATION**

*That electricity retailers be required by regulation to submit their Hardship Policy training programs to the Economic Regulation Authority for approval.*

**WACOSS RECOMMENDATION**

*That electricity retailers be required by regulation to engage with relevant stakeholders and Non-Government Organisations in the development and review of their Hardship Policy training programs.*

**HARDSHIP POLICY GUIDELINE 2 – IDENTIFYING AND ENGAGING WITH CUSTOMERS IN FINANCIAL HARDSHIP**

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WACOSS supports the current role that Financial Counsellors and other professionals play in identifying essential service consumers experiencing financial hardship and providing

appropriate advice to essential service retailers. While electricity retailers should be encouraged to seek the advice of Financial Counsellors regarding assessment and identification of financial hardship, it is imperative that retailers also have their own processes of identifying consumers in financial hardship. The need for such processes is clear, given the incapacity of some consumers – because of reasons such as health status, location and personal history - to access financial counselling services. Additionally, while the intervention of a Financial Counsellor, if appropriate, may be invaluable in assisting a consumer, many consumers experiencing financial hardship may not require financial counselling at all and can be adequately assisted via the intervention of the retailer.

In addition to Financial Counsellors, many other skilled helping professionals or consumer advocates may be able to provide the retailer with an appropriate assessment of the consumer's situation, with the permission of the consumer. Retailers should also have processes in place that facilitate the self-identification, and adequate weighting of consumers experiencing financial hardship.

The electricity retailers' processes and policies involved in identifying financial hardship should be transparent and easily accessible to both consumers and their advocates. This transparency potentially serves to both provide retailers with clarity in their business practices as well as assisting consumers and their advocates in effectively communicating a consumer's situation to the relevant retailer.

**WACOSS RECOMMENDATION**

*That electricity retailers be required by regulation to have processes for identifying consumers experiencing financial hardship. Additionally, these processes should also facilitate the self-identification of consumers experiencing financial hardship who have not come into contact with a consumer advocate or other helping professional.*

**WACOSS RECOMMENDATION**

*That regulation require that the processes used by electricity retailers in identifying consumers experiencing financial hardship – for the purpose of administering their Hardship Policy – be transparent and easily accessible to both consumers and potential consumer advocates.*

**HARDSHIP POLICY GUIDELINE 3 – FLEXIBLE PAYMENT ARRANGEMENTS**

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WACOSS strongly agrees that flexible payment arrangements should be available to customers experiencing financial hardship. It is of particular importance for retailers to recognise that customers will often agree to a repayment plan as suggested by the retailer – even if that plan is not appropriate to their circumstances - in fear that they will otherwise be disconnected<sup>4</sup>. If this payment is inappropriate, the likelihood of further payment difficulty is greatly increased. Previously, a history of defaulting on negotiated repayment plans has made it difficult for consumers to negotiate repayment plan in the future. This, in turn has the

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<sup>4</sup> Committee for Melbourne, 2006, *Supporting Utility Customers Experiencing Financial Hardship: Guiding Principles*, Committee for Melbourne Debt Spiral Prevention Project.

potential to increase consumer's utility debt, subsequently resulting in repeat disconnections. Practical and achievable repayment plans ought to be negotiated with the customer.

**WACOSS RECOMMENDATION**

*That the Economic Regulation Authority's Hardship Policy Guidelines be enforced by regulation and that they require electricity retailers to negotiate flexible repayment plans that are appropriate for consumers experiencing financial hardship or temporary payment difficulty.*

**HARDSHIP POLICY GUIDELINE 4 – ENGAGING WITH CONSUMER REPRESENTATIVE ORGANISATIONS, FINANCIAL COUNSELLORS & OTHER STAKEHOLDERS**

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WACOSS supports the Authority's guidelines regarding engagement with consumer representative organisations and other relevant stakeholders such as financial counsellors. Consumer representatives play an essential role in ensuring that the needs and concerns of consumers are acknowledged and acted on by both essential service providers and government. Through processes of consumer consultation and interaction industry bodies are able to access a wide range of views in their deliberations. Subsequent decisions or advice will therefore be more robust and/or more likely to be accepted by stakeholders. Consumer consultative committees are one such way to ensure consumer representation<sup>5</sup>.

Ideally, a consumer consultative committee should act as a conduit for information - both informing consumers and other consumer representative of developments within a retailer and also ensuring that the retailer's decision-making processes are informed by the experiences of consumers. To be effective, consumer consultative committees require real involvement in decision-making processes, as they occur within the retailer. According to Consumers International, consumer representatives on consumer consultative committees "need access to information and resources. Ideally, dedicated consumer committees and councils need to be supported by staff and have a budget to conduct their own research and consultation among ordinary consumers"<sup>6</sup>.

**WACOSS RECOMMENDATION**

*That retailers are required by regulation to consult with appropriately resourced Consumer Consultative Committees and that best practice models are utilised for how these committees participate in the decision making of the retailer.*

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<sup>5</sup> Garwood, R. (2006) *Consumer Consultative Committees: facilitating consumer protection in essential service markets*, Western Australian Council of Social Service.

<sup>6</sup> Consumer International (2002), *Voices for Change: The Consumer Right to Representation – World Consumer Rights Day 2002*, p. 8.

## TRANSPARENCY AND ACCESSIBILITY

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WACOSS supports the Authority's proposed guidelines regarding transparency and accessibility of a retailer's hardship policy to customers. It is important that both consumers and their advocates are aware of their rights, which may be conveyed within a retailer's Hardship Policy. Reference to these rights should be also be present on billing material.

### **WACOSS RECOMMENDATION**

*That retailers are required to display their hardship policies to customers in the most accessible fashion appropriate, including on bills, websites and other correspondence.*

### **Conclusion**

Electricity is an essential service. Going without electricity, even for a short period of time, can have severe social and economic ramifications for individuals, groups and families. While problems of economic and social disadvantage are complex, utility providers have a clear social responsibility to assist vulnerable consumers through the provision of appropriate, regulated financial hardship policies.

I look forward to hearing from you in response to our recommendations for this important amendment to the Code, to improve regulatory protections for consumers in financial hardship.

Yours Sincerely

Lisa Baker  
Executive Director