

Financial Hardship Policy Guidelines

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Economic Regulation Authority

 WESTERN AUSTRALIA

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1 Introduction

Energy is required for food preservation, cooking, illumination, heating and cooling and as such is a prerequisite to social participation and a comfortable, adequate standard of living.

In June 2007, the Minister for Energy with the cooperation of the Premier, Treasurer and Ministers for Housing, Water and Child Protection established the Government Utilities Essential Services Hardship Inter-Agency Working Group (**GUESHIWG**) to identify and report to government on ways in which government owned essential service utilities, welfare agencies and government agencies can further improve the delivery and coordination of essential services to the community's most financially and socially disadvantaged individuals and families. In December 2009, the GUESHIWG provided its Final Report to the Minister for Energy.

In May 2008, the State Government announced new initiatives to assist consumers in financial hardship to avoid disconnection or restriction of service, including:

- the Hardship Utilities Grants Scheme (**HUGS**) to assist with the payment of overdue accounts for consumers declared in financial hardship;
- the Hardship Efficiency Program (**HEP**) to provide free energy efficiency audits and resources; and
- an increase in funding to financial counsellors across the State.

In addition to government assisting customers financially to meet their responsibilities and reduce their energy consumption, energy providers can play a positive role in avoiding disconnection of customers who are experiencing financial hardship.

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

These Financial Hardship Policy Guidelines (**Guidelines**), originally published in August 2008, have been developed to provide retailers additional guidance in meeting the requirements set out in the Energy Codes.

2 Background

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 is subsidiary legislation. The Code of Conduct first came into operation on 1 January 2005.

Compliance with the Code of Conduct is a condition of every electricity retail and distribution licence. The Authority is responsible for monitoring and enforcing the Code.

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 Code. The Gas Code largely mirrors the Code of Conduct, thereby ensuring that conduct requirements across the energy industry are consistent regardless of fuel type.

Compliance with the Gas Code is a condition of every gas trading and distribution licence.

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 financial hardship policy.

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

Following the ECCC second review of the Code of Conduct in 2009, the Authority agreed to amend the Energy Codes to require that energy retailers review their financial hardship policies annually, have regard to these Guidelines when undertaking the review and submit the reviewed policy to the Authority to enable the Authority to conduct and publish an assessment of the policy.

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 long 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;
- 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 financial 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.

A financial hardship policy must be developed in consultation with relevant consumer representative organisations with details of the contents of the hardship policy to be provided to residential customers, financial counsellors or relevant consumer representative organisations.

3.3 *Annual review*

A retailer must, unless otherwise notified in writing by the Authority, review its hardship policy at least annually. The results of the review must be submitted to the Authority within 5 business days after completion of the review. 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.

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

The Authority will require that all retailers submit a copy of the financial hardship policy, and details of the review, to the Authority by 31 December each year.

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. 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 it determines it should be published annually, commencing March 2011.

4 Financial Hardship Guidelines

There are five financial hardship policy guidelines:

- 1) Staff Training
- 2) Identifying and Engaging with Customers in Financial Hardship
- 3) Flexible Payment Arrangements
- 4) Engaging with Consumer Representative Organisations and Financial Counsellors
- 5) Transparency and Accessibility

4.1 Staff training

The Energy Codes require that the retailer provides training to staff on issues related to financial hardship and its impacts, and how to deal with consumers sensitively and respectfully.

The obligations that staff must be made aware of are included in Part 6 of the Energy Codes. Staff should understand the retailer's obligations with respect to the temporary suspension of actions, assistance to be offered, alternative payment arrangements, consideration of a reduction in fees, charges and debt, and provision of information.

Additionally, to effectively implement a financial hardship policy, staff must understand the retailer's wider hardship policy, processes and procedures.

The Energy Codes require that training must at least be provided to call centre staff, all subcontractors employed to engage with customers experiencing financial hardship, energy efficiency auditors and field officers. However, all levels of the retailer's business will benefit from training and retailers should consider whether training should be provided as part of induction for 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". Training should be most detailed and targeted for "front-line staff" such as staff in call centres and credit departments.

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

Retailers should work with relevant community groups to develop training packages. Training packages could address key cultural and social issues for significant customer groups, help staff develop communication skills for engaging with customers in financial hardship, and provide information on energy audits, Centrelink benefits and budgeting.

In addition to the mandatory requirements specified in the Energy Codes, it is considered good practice to:

- 4.1.1 Have commitment from senior management to the training program and clearly communicate the importance of the organisation’s hardship policy.**
- 4.1.2 Work with key community representative organisations and agencies to develop training packages.**
- 4.1.3 Address key cultural and social issues for significant customer groups and provide training in communications skills for engaging with customers in financial hardship.**
- 4.1.4 Provide information to frontline staff to enable them to educate customers by providing basic energy saving tips and other relevant information and ensure that customers are referred elsewhere for further energy efficiency advice if necessary.**
- 4.1.5 Provide training to all new staff who deal with customers or customer issues and schedule refresher courses.**
- 4.1.6 Provide more comprehensive training to customer service areas of the business with more general awareness training and/or other information dissemination to other areas as appropriate.**

4.2 Identifying and engaging with customers in financial hardship

The Energy Codes require a retailer to produce a hardship policy that includes guidelines on identifying residential customers who are experiencing financial hardship. It is important that customers in financial hardship are identified before significant debts to the retailer are accumulated.

The Victorian Essential Services Commission points out 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”¹. Therefore, it is important that customer service staff are appropriately trained to sensitively engage with customers when placing them into a financial hardship program.

In judging a customer’s eligibility for a financial hardship program, a retailer should also have an objective, publicly available set of criteria by which to assess a customer and should also consider the assessment of that customer’s financial counsellor, if applicable.

In its *Utilities Essential Services Hardship - Public Issues Discussion Paper*, GUESHIWG proposed that “to avoid perceptions of bias or conflict of interest, the decision of whether a

¹ Essential Services Commission Victoria, (2006) “Framework Paper – Energy Retailers Hardship Policies”, pg. 14.

person is in utility hardship should ultimately rest with an independent financial counsellor”².

In addition to the mandatory requirements specified in the Energy Codes, it is considered good practice to:

- 4.2.1 Design processes to identify a customer in hardship as early as possible including processes to assist customers to self identify and request hardship assistance.**
- 4.2.2 Have a specialist team that call centres can refer customers in financial hardship to.**
- 4.2.3 Empower the specialist team to negotiate and agree on solutions for customers.**
- 4.2.4 Encourage customers in financial hardship to make contact about bills, reminder notices and other correspondence.**
- 4.2.5 Facilitate self-identification by customers by ensuring customer service staff are trained to communicate sensitively with customers in hardship.**
- 4.2.6 Determine a customer’s eligibility using objective and publicly available criteria as indicators of hardship.**
- 4.2.7 Know where customers in financial hardship can be referred to for further advice.**

4.3 Flexible payment arrangements

Under the Energy Codes, customers in financial hardship must be offered alternative payment options. Where a customer has identified themselves to a retailer as being in financial hardship, retailers are obliged to offer flexible payment arrangements which take into account information about the usage needs and capacity to pay when determining the period of the plan and calculating the amount of the instalments.

It is recognised that energy retailers have legitimate commercial objectives and that a hardship policy should not facilitate customers in avoiding 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 significant instalments in quick succession. Repaying a large debt in a short timeframe is often impossible for people in financial hardship. Any payment plan that over-commits a customer is less likely to succeed and may result in the customer being disconnected. For this reason, it is recommended that retailers involve customers in financial hardship and their financial counsellors in the process to address accumulated debt.

Customers in hardship may be eligible for a grant under the Government's Hardship Utility Grant Scheme (**HUGS**) to assist them to pay their outstanding energy debts. When a customer is referred to a financial counsellor by an energy retailer the counsellor will assess whether they are eligible for a HUGS grant. If the customer is eligible then the financial counsellor will make a HUGS grant application on the customer’s behalf. HUGS grant applications can only be made via financial counsellors - energy retailers are not able to apply for grants on behalf of customers.

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

In addition to the mandatory requirements specified in the Energy Codes, it is considered good practice for retailers to:

- 4.3.1** **Involve customers and their financial counsellors in setting a payment plan based on the individual circumstances of the customer.**
- 4.3.2** **Ask the customer how much they can afford to pay and set realistic payment plans that assist a customer to meet their financial obligations and remain connected.**
- 4.3.3** **Be aware that customers may commit to more than they can afford because they are anxious to be reconnected or to avoid disconnection.**
- 4.3.4** **Consider a financial counsellor's assessment of a customer's capacity to pay. Financial counsellors allocate a significant amount of time to helping each client in hardship to develop a budget and assessing a customer's capacity to pay.**
- 4.3.5** **Identify appropriate 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 bill smoothing and providing energy efficiency information.**
- 4.3.6** **Consider payment incentives such as matched payments.**

4.4 ***Engaging with consumer representative organisations and financial counsellors***

The Energy Codes require that a retailer's financial hardship policy ensures ongoing consultation with relevant consumer representative organisations and that such organisations partake in an annual review of the hardship policy. This requirement recognises the expertise and importance of consumer representative organisations in developing effective financial hardship policies.

With the interface between retailers, consumer representative organisations and non-government organisations growing in importance, a range of measures are required to ensure that financial hardship policies and processes, such as those for the identification, engagement and referral of customers in financial hardship, are informed by the non-government sector.

The following proposed guidelines on engaging with consumer representative and financial counselling organisations aim to promote informed policy development and improved referral and service delivery to customers in financial hardship.

In addition to the mandatory requirements specified in the Energy Codes, it is considered good practice to:

- 4.4.1 Encourage greater involvement of consumer representative organisations in the development and review of financial hardship policies through reference groups and holding appropriately designed forums.**
- 4.4.2 Define processes for the early identification and appropriate referral of customers in financial hardship in consultation with relevant financial counselling and emergency relief organisations.**
- 4.4.3 Understand and be responsive to the information needs of financial counsellors subject to privacy and customer consent requirements.**
- 4.4.4 Consult with relevant consumer representative organisations on a process for the periodic review of financial hardship policies.**
- 4.4.5 Use memorandums of understanding or inter-agency protocols between retailers and relevant consumer representative organisations and financial counselling providers to ensure a common understanding of agreed processes and protocols.**

4.5 *Transparency and accessibility*

Greater transparency and the integration of financial hardship and debt processes across the retail business, involvement of senior leadership with regular reporting to executive or senior management and a greater understanding of debt prevention represent good practice. Transparency will build customers' confidence in and understanding of a retailer's financial hardship policy.

In addition to the mandatory requirements specified in the Energy Codes, it is considered good practice to:

- 4.5.1 Include detailed information about how a customer's eligibility and payment options will be assessed in the financial hardship policy.**
- 4.5.2 Pro-actively promote awareness of the hardship policy to customers, financial counsellors and other appropriate agencies. For example, the provision of targeted mail distribution, provision of information to seminars and training events and liaison with consumer representation organisations.**
- 4.5.3 Ensure information about the policy is readily available at no cost in a range of forms such as brochures, the retailer's website, and on customers' bills. Interpreter services for non-English speakers and communications technology for the hearing and sight impaired should be made available in this regard so that all customers may familiarise themselves with the policy.**

References

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

- Essential Services Commission Victoria, (2006) “Framework Paper – Energy Retailers Hardship Policies <http://www.esc.vic.gov.au/NR/rdonlyres/EBB5355C-6818-4352-BCFE-083937043222/0/FrameworkPaperEnergyRetailersFinancialHardshipPoliciesc0618498200612.pdf>
- Essential Services Commission Victoria, (2006) “Framework Paper – Energy Retailers Hardship Policies (no link available as it is the predecessor to the above source)
- Committee for Melbourne Debt Spiral Prevention Project, (2006) “Guiding Principles - Supporting Utility Customers Experiencing Financial Hardship” <http://www.cuac.org.au/database-files/view-file/2336/>
- Energywatch & Ofgem, (2003) “Preventing Debt and Disconnection” <http://www.ofgem.gov.uk/Media/FactSheets/Documents1/1389-jan2403debtprev.pdf>
- Government Utilities Essential Services Hardship Inter-agency Working Group, (2007) “Utilities Essential Services Hardship Public Issues Discussion Paper” <http://www.energy.wa.gov.au/cproot/1069/8949/Utility%20Hardship%20Issues%20Paper%20-Final.pdf>
- 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