

15 October 2018

**Submitted electronically at aemc.gov.au**

Kate Wild  
Senior Advisor  
Australian Energy Market Commission

Dear Ms Wild

**National Energy Retail Amendment (Strengthening Protections for Customers in Hardship) Rule 2018 Draft Rule Determination**

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the National Energy Retail Amendment (Strengthening Protections for Customers in Hardship) Rule 2018 Draft Rule Determination (**Draft Rule**). We generally support the Draft Rule as it will improve the ability of the Australian Energy Regulator (**AER**) to address energy hardship and ensure compliance, albeit within the constraints of the current National Energy Retail Law (**NERL**). We also support the proposed timeframes for implementation and the proposal that AEMC recommend the COAG Energy Council make changes to the NERL so that retailers must always have approved hardship policies to operate.

We strongly recommend that the AEMC acknowledge the limitations of the NERL and this rule change to address the needs of the community. The AEMC can address this constraint by making a strong recommendation to the COAG Energy Council, urging the Energy Council to comprehensively reform the parts of the NERL addressing hardship and payment difficulty. Much work has already been undertaken on the issues with hardship frameworks not responding to community need by the Essential Services Commission (**ESC**) in Victoria. We advise the AEMC consider making specific reference to the benefits of a framework similar to the Payment Difficulty Framework developed by the ESC. A key reform has been to provide clear consumer entitlements: the new Framework recognises all residential electricity and gas customers are at risk of payment difficulty and should have an entitlement to timely assistance to overcome payment difficulty that is tailored to their circumstances.

At the joint AER-AEMC workshop on 25 September 2018 there was evidence of widespread agreement from industry, regulators, consumer advocates and ombudsman bodies that the current framework for hardship and associated stigma with the language prescribed under the NERL is outdated. It is not functioning in the interests of consumers.

The inadequacy of the current framework prescribed by the NERL is contributing to a range of problems, including people not responding to offers of assistance from their retailers, often finding themselves unable to access assistance, or simply being uninformed of the assistance that retailers are obliged to make available. The NERL can and should harmonise with upcoming changes in Victoria to require retailers to offer timely and tailored assistance for all residential customers that will overcome or avoid payment difficulty.

Our comments are detailed more fully below.

**About Consumer Action**

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy

work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.

### **Draft Rule timelines**

Consumer Action considers it important that the changes proposed in the Draft Rule that will oblige energy retailers to effectively action the current law are implemented quickly. Inappropriate responses to payment difficulty can result in significant and unnecessary hardship for Australian households.<sup>1</sup> Quick and responsive reform will help households in payment difficulty avoid unnecessary hardship caused by breaches of the NERL that the AER cannot practically address.

As discussed below, we also support the AEMC recommending COAG Energy Council address a technical issue that could mean that new retailers operate without compliant hardship policies in place.

- We support the AEMC determining that the AER must publish the new guidelines by 1 April 2019.
- We support retailers with an existing approved policy being required to submit an updated hardship policy that is compliant with new AER guidelines no later than 1 June 2019.
- We support AEMC determining that new retailers must submit a hardship policy that complies with the AER's Hardship Guidelines within three months of being granted authorisation.

### **Recommendations to the COAG Energy Council**

We commend the AEMC for identifying a gap in the NERL (that is, that retailers are able to be authorised and operate without a hardship policy in place) and support the AEMC proposal to recommend a law change to address the issue. It is unacceptable that a household experiencing payment difficulty could find themselves in circumstances where their newly authorised retailer does not have measures in place to provide the assistance prescribed in law and rules. A law change to ensure a customer in payment difficulty with a new retailer can access the prescribed assistance will proactively prevent a household ending up in such circumstances.

We consider that the AEMC should also recommend the COAG Energy Council reform the law to address its limitations in protecting access for all Australians to essential energy services. Part of the discussion at the joint AER-AEMC workshop centred on the current issues of consumers rejecting the suggestion of assistance given stigma about the label associated with "hardship", or not knowing the need to use the specific terminology (advising they are in "hardship"), when calling their retailer. Such issues demonstrate that the NERL is not fit for purpose. We have seen these and many other payment difficulty issues raised by callers to the National Debt Helpline in Victoria. Issues with energy debt are the second most common issue raised behind credit cards, making up 12 percent of 11,146 financial counselling calls in the 2016-17 financial year.

We anticipate that the significant work undertaken by the ESC on the Payment Difficulty Framework which comprehensively consulted with consumer groups and retailers will overcome many of the issues with retailer assistance programs. The AEMC has heard from multiple consumer advocates throughout consultation towards the draft rule that there needs to be a change so that all community members are entitled to assistance. While the AEMC has decided that changing the definition of hardship is beyond the remit of both AEMC and AER, there is scope to make use of this feedback by recommending the COAG Energy Council implement a law change.

Given the feedback and evidence of consumer detriment we and other consumer advocates have provided throughout this process, we urge the AEMC to recommend to COAG Energy Council law reform. This will go a long way towards ensuring all residential customers have an entitlement to timely assistance to overcome payment difficulty that is tailored to their individual circumstances.

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<sup>1</sup> Consumer Action Law Centre, 2015. *Heat or Eat; Households should not be forced to decide whether they heat or eat*, available at: <https://consumeraction.org.au/wp-content/uploads/2015/08/Heat-or-Eat-Consumer-Action-Law-Centre.pdf>



Please contact Jake Lilley on 03 9670 5088 or at [jake@consumeraction.org.au](mailto:jake@consumeraction.org.au) if you have any questions about this submission.

Yours Sincerely,

**CONSUMER ACTION LAW CENTRE**



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