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Energy Financial Hardship Policies Framework  
Essential Services Commission  
Level 2, 35 Spring Street  
MELBOURNE VIC 3000

Dear Ms Marin

### **Energy Retailers' Financial Hardship Policies – Framework Paper**

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Essential Services Commission's (the **Commission**) Energy Retailers' Financial Hardship Framework Paper (the **Framework Paper**), released on 21 December 2006.

We strongly support the passing of the *Energy Legislation (Hardship, Metering and Other Matters) Act 2006* (the **Act**) which provides the Commission with this new function of approving energy retailers' hardship policies.

### **Commission's approval approach**

In our view, the Commission's general approval approach outlined in the Framework Paper accords with its legislative obligations under section 45 of the *Electricity Industry Act 2000* (Vic) and section 481 of the *Gas Industry Act 2001* (Vic). We would like to make the following comments about the key elements and principles of this approach.

#### *The definition of financial hardship*

We believe that it is not possible to successfully define "financial hardship". An approach which tries to identify the "can't pay" from the "won't pay", an issue which has dominated recent regulatory and policy debates on energy and financial hardship, is not, in our view, something on which the Commission should focus. We know that, for some, financial hardship is short-term and brought on by, for example, sudden loss of employment or a relationship breakdown. For others, financial hardship is chronic and long-term, caused by, for example, a sustained period of illness or a mental or physical disability. There is no single definition that is capable of capturing all those in our community who are suffering from financial hardship at any given time. There will always be people who fall outside of the definition.

For this reason, we believe that the Commission, rather than focus on how best to measure and define financial hardship, should instead focus its efforts on promoting hardship policies that will serve to strengthen the current protections and programs for those who are currently slipping through the gaps.

Despite this, we recognise that the Commission has adopted a definition of a customer in hardship for the purposes of its recent *Review of Water Businesses' Hardship Policies*.<sup>1</sup> This was deemed as appropriate because of the obligations imposed on businesses and the rights that accrue to customers, as a result of the legislation. If the Commission deems it appropriate to take the same approach, we support a broader definition of a customer in hardship. The definition adopted in the *Review of Water Businesses' Hardship Policies* is such a broad definition:

*A customer in hardship is someone who is identified by themselves, the water business, or an independent accredited financial counsellor as having the intention but not the financial capacity to make the required payments within the timeframe set out in the business's payment terms.*

We would support a similar definition to apply to energy customers. We note, however, that the burden of identification must not be placed solely on financial counsellors. The waiting period for financial counsellors is between four and six weeks, and requiring a customer to see a financial counsellor before they are considered a customer hardship would reduce access to financial hardship programs.

### *Essentiality*

We agree that energy is an essential service, and as such, is a prerequisite to social participation and adequate standards of living. We also agree with the Commission that the Energy Retail Code (the **Code**) is the primary instrument in regulating retailers' responses to customers experiencing payment difficulties. Financial hardship policies should be consistent with, and provide additional protections to, the Code for customers in financial hardship. However, the establishment of financial hardship policies should not abrogate from the general duty to abide by the Code for all customers who may experience difficulties to pay on time.

### *Shared obligations*

We support the Commission's expectation that hardship policies submitted for approval must offer customers in financial difficulty sufficient opportunity to identify themselves to the retailer and maintain their participation in instalment plans and other hardship responses.

This approach supports the collaborative response to energy hardship adopted by the Committee of Inquiry into Energy Financial Hardship.<sup>2</sup> In the Government's policy statement in response to the inquiry, it stated that 'the management of cases of energy consumer hardship is primarily the responsibility of the energy retailer'.<sup>3</sup> We agree with this as the retailer is best placed to coordinate the response and support customers. In our view, this means that the policies must, among other things, ensure that

- staff be provided with guidance with communications skills, especially in relation their use of language and tone;

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<sup>1</sup> Essential Services Commission, *Review of Water Businesses Hardship Policies*, December 2006.

<sup>2</sup> Recommendation 3.

<sup>3</sup> Victorian Government, *Government Energy Consumer Hardship Policy Statement*, June 2006.

- effective and respectful referral processes exist both within and external to retailers;
- retailers respect financial counsellors' advice through capacity to pay assessments and customers' own advice to the retailer of their financial circumstances; and
- retailers engage with social advocacy organisations to aid the facilitation and development of hardship programs.

In our view, respecting a customer's or financial counsellor's capacity to pay assessments means listening to what the customer or financial counsellor tells the retailer about the consumer's circumstances, not merely asking them to arrange payment for what the retailer requires.

### *Equitable access to policies*

We agree that hardship policies must be applied consistently and have a wide coverage. To enable this, retailers must ensure that their billing and computer systems enable early identification of all consumers who suffer from financial hardship. Relying on manual checking of account histories might act as a barrier for some consumers who require assistance.

### *Innovation*

We strongly agree that hardship policies must include procedures for review, so that they can be updated in accordance with market and other developments. Flexibility in dealing with hardship is key, and processes to enable hardship policies to be monitored and improved over time is essential.

## **Elements of hardship policies**

We note that the legislation provides that hardship policies must include:

- flexible payment options for payment of bills;
- provision for the auditing of a domestic customer's gas and electricity usage (whether wholly or partly at the expense of the retailer);
- flexible options for the purchase or supply of replacement appliances designed for domestic use from the retailer or a third party nominated by the retailer; and
- processes for the early response by both retailers and domestic customers to bill payment difficulties.

### *Flexible payment options*

Instalment payment arrangements are the most common form of flexible payment option. The success or otherwise of instalment arrangements is directly related to whether those arrangements are affordable for consumers. Financial hardship policies must ensure that consumers suffering hardship do not over commit themselves in the negotiation of instalment plans. A good hardship policy might include targets in relation to the successful completion of instalment arrangements. A high percentage of successful completions might show that the arrangements are appropriate.

In respect of consumers with significant amounts of arrears, this can be more difficult and we therefore agree that this provision requires retailers to allow such consumers to utilise a range of other options besides instalment plans. These might include incentive arrangements or debt waivers. Instalment plans alone might not be sufficient to assist all consumers, and a range of options should be available.

### *Addressing usage*

We agree that the auditing of energy usage can be a useful process for customers in hardship. Such auditing can identify whether high usage is contributing to that customer's hardship. The Energy Retail Code currently requires retailers to offer energy efficiency advice – however, the notion of auditing would require a more systematic analysis of total energy consumption, analysis of where energy is being consumed in the household and recommendations about measures to reduce usage.

Auditing will generally require an auditor to enter into a consumer's house, and speak with them about their energy usage. In our view, such an auditor must be specially trained to deal with vulnerable consumers, who might not be used to representatives from energy retailers entering their house. Such training must include specialised communication skills. We are aware of one model for the provision of auditing services which involves a partnership between Origin Energy and a community services agency, Kildonan Child and Family Services. This model has been particularly successful, as the audits are delivered by financial counsellors who look to provide additional social support to consumers. Consumers are assisted with addressing other issues besides their energy usage, including other debt problems, poor housing stock and accessing other social support programs. We note that AGL proposes to engage Kildonan in a similar way. In our view, the Commission's approval of hardship policies should encourage energy audits to be delivered in such a way, so that consumers can capitalise on the additional assistance provided.

We note that the legislation states that energy audits must be conducted at less than full cost. In our view, energy audits will only be beneficial to consumers if they are accessible and are going to bring about clear benefits in relation to the reduction of energy usage and thus bills. The benefits of energy audits will be significantly compromised if consumers are required to pay for them. We would encourage the Commission not to approve hardship policies that require payment at a cost that would outweigh the benefits derived by consumers.

It should be noted that as a general rule, low-income consumers are unlikely to make an upfront payment for auditing (even if it is below cost) on the basis that it will provide them with future benefits. This is partly because they find it difficult to afford larger upfront outlays, and partly because upfront costs are generally preventative. Requiring upfront costs may therefore prevent the uptake of audits and the object of the legislation. This conclusion accords with behavioural economic studies that have found that consumers are bad at computation and prefer not to outlay upfront costs where the future benefits cannot easily be calculated.<sup>4</sup>

### *Appliance assistance*

The requirement for retailers to provide energy-efficient appliances to consumers who suffer from unaffordable high bills can assist consumers reduce their energy consumption. However, appliance assistance should not be provided in isolation. In our view, appliance assistance should be provided on the advice of an accredited auditor who provides a comprehensive service to the consumer about their energy consumption and financial capabilities. Further, consumers should be given responsibility to choose appliances that are energy-efficient in collaboration with advisers or auditors. In this way, consumers can improve their understanding about energy efficiency and their

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<sup>4</sup> See, eg, E Dawney & H Shah, *Behavioural economics: seven principles for policy makers*, New Economics Foundation, 2005.

energy usage. We also believe that consumers and retailers should make full use of the Victorian Government's Capital Grants Assistance Program for assistance with replacing inefficient or faulty appliances.

Some retailers may offer a No Interest Loan Scheme (**NILS**) or fund a current community NILS scheme to provide appliance assistance. While we believe that NILS can assist some consumers, it must be remembered that many consumers in hardship would not be eligible for participation, and that further indebtedness (even if interest free) might be disadvantageous to some consumers in financial hardship.

#### *Processes for early response*

We support the Commission's comments in relation to financial hardship policies including processes for early response to bill payment. As stated above, billing and IT systems can be useful in assisting retailers identify customers who might be experiencing difficulty in paying their bills. In our view, hardship policies should make the most of such systems.

#### **Best practice additional requirements**

Below we discuss a number of areas that the Commission states form part of best practice hardship policies. While these elements may constitute best practice and we strongly support the Commission using them in their approval process, we do not believe that they are additional to or complement the legislative requirements. Rather, they are arguably *required* under the legislative requirements, as they support policies which ensure equitable and consistent access to energy, recognise energy as an essential service, and disconnection as a last resort, all of which are required by the legislation to be taken into account.

#### *Training and specialist teams*

Staff training is integral to ensuring that hardship policies are appropriately implemented and are applied consistently to consumers experiencing hardship. The Committee for Melbourne's Guiding Principles on Hardship Policies place special emphasis on extensive and ongoing staff training. It states that training should be undertaken on a "whole of business" basis with regular and scheduled refresher courses. It also should include broader social aspects, including discussion of key cultural and social issues for significant customer groups. We believe that the Commission's approval should only be given where the policy evinces clear details of its comprehensive training program.

#### *Collaboration with community sector*

In the Commission's review of water hardship policies, it recommended that businesses integrate their hardship practices with community agencies in their areas. While we support collaboration with the community sector, it is our view that the community sector must be appropriately resourced for its assistance. Without the provision of such resourcing, the community sector, which is generally under-resourced, will be unlikely to be able to provide the assistance contemplated.

#### *Links to other government assistance*

As stated above, we believe that a best practice hardship program should ensure that it links with government assistance that is available to consumers experiencing financial hardship. The Victorian Government provides a range of concessions to consumers,

and retailers should advise consumers of their entitlements as part of hardship assistance.

*Access and information*

Hardship policies should be transparent and accessible to consumers so as to have the widest impact possible. Policies should be readily available to consumers, and should be placed on retailer's websites in a range of languages. They should also be proactively communicated to appropriate social advocacy organisations and financial counsellors. Consideration should also be given to communication on bills and in follow-up notices.

*Ongoing monitoring and reporting*

Regular reviews of the operation of hardship policies are extremely important. Knowledge of best practices change over time, and a hardship policy must ensure it is able to keep abreast of developments in the market place. Reporting of the assistance provided through hardship policies, for example, the number of consumers successfully completing an instalment arrangement, can assist track policies' effectiveness in assisting customers in hardship.

Should you have any questions in relation to this submission, please contact me on 03 9670 5088.

Yours sincerely

**CONSUMER ACTION LAW CENTRE**

A handwritten signature in black ink that reads "Gerard Brody". The signature is written in a cursive, flowing style.

Gerard Brody  
Senior Policy Officer