

17 October 2018

Australian Energy Market Commission
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Draft Rule Determination, National Energy Retail Amendment (Strengthening protections for customers in hardship) Rule 2018, Ref: RRC0017

COTA Australia welcomes the opportunity to provide comment on the Draft Rule Determination, National Energy Retail Amendment (Strengthening protections for customers in hardship) Rule 2018, Australian Energy Market Commission, 6 September 2018.

COTA Australia is the national consumer peak body for older Australians. Its members are the State and Territory COTAs (Councils on the Ageing) in each of the eight States and Territories of Australia. The State and Territory COTAs have more than 1,000 seniors' organisation members, which jointly represent over 500,000 older Australians, as well as about 20,000 individual members. Our focus is on national policy issues from the perspective of older people as citizens and consumers and we seek to promote, improve and protect the circumstances and wellbeing of older people in Australia. Information about, and the views of, our constituents and members are gathered through a wide variety of consultative and engagement mechanisms and processes.

COTA supports the significant majority of the Draft National Energy Retail Amendment (Strengthening protections for customers in hardship) Rule 2018. The Draft National Energy Retail Amendment (the Amendment) has the potential to contribute to measures to assist older Australians experiencing difficulty in managing and paying for energy, by increasing the level of guidance to energy retailers on assisting those customers and informing customers of their options.

We understand that currently under the National Energy Retail Law (NERL), energy retailers are required to develop and implement processes and measures to identify and support customers who are facing difficulties managing and paying for energy, and retailers are obligated to communicate support measures to customers experiencing these difficulties. Moreover, the disconnection from energy supply due to inability to pay energy bills should be at a last resort¹.

However, there is evidence that suggests deficiencies in the way consumers facing payment difficulties due to hardship are able to access relevant programs and be provided adequate support under the programs². This includes:

- increasing levels of energy debt for customers on entry into support (hardship) programs;

- higher levels of debt for customers not receiving support assistance;
- lower levels of customers receiving support assistance;
- fewer customers completing support programs by paying off arrears, and
- an overall increase in electricity disconnections³.

Moreover, a review by the Australian Energy Regulator (AER) identified no corresponding increase in customers on support (hardship) programs correlating with higher energy prices, and some energy retailers unable to explain how they implement their hardship policies⁴.

COTA A's view is that the Amendment has potential to help address the very concerning issues above, by ensuring that Hardship Guidelines are developed by the AER with greater information and detail (than in the NERL), and that these would inform energy retailers on how to comply with the law regarding supporting customers who are facing difficulty in managing and meeting energy bills. The Guidelines would be mandated as minimum requirements for energy retailers to meet. Furthermore, the Guidelines would assist consumers to understand the minimum requirements energy retailers need to deliver under law in identifying and supporting them should they experience difficulty managing energy and paying bills.

COTA A supports the Amendment's requirement that retailers with an existing customer hardship policy would need to implement a hardship policy that is compliant with the Guidelines, within a two months period following approval of the policy by the AER. COTA considers that new retailers should also be required to implement their compliant hardship policy within a specified period, potentially within two months, after their policy has been approved by the AER. Currently the Amendment infers that new retailers would need to implement their compliant hardship policy in a timeframe of "as soon as practical" after approved of the policy by the AER. We suggest that the absence of a specific timeframe for new retailers may, in some cases, lead to long periods before policy implementation, thereby placing customers who are facing difficulty managing energy usage and bills at risk of not receiving adequate support.

COTA A is aware that a number of processes would be required for the AER to develop the Hardship Guidelines and for retailers to implement measures that, at a minimum, meet those guidelines. However, the currently proposed timeframe for full implementation of the Guidelines by retailers is no later than October 2019. This would be a long period for those customers experiencing difficulties managing energy consumption and paying energy bills to receive potentially a lower standard of support or no support in some case. Most older people are on fixed incomes, with often less ability than the broader Australian adult population to meet increased energy costs. Older people often try to manage such cost through inadequate levels of heating, cooling, hot water and cooking, which can lead to significant health issues. Severe difficulties in meeting energy costs may in some cases result in homelessness. COTA therefore urges retailers to implement improved measures where possible to assist customers now, and during the lead-up to the full implementation of the Guidelines.

COTA A supports the intention that the new rule in the Amendment, which would require retailers to provide hardship policies initially or following amendment of the Hardship Guidelines by the AER, should be made a civil penalty provision. This would be consistent with a number of existing provisions under the Customer hardship section (Division 6) in the NERL which have civil penalty

provisions. Furthermore, a civil penalty provision has potential to highlight the importance of the new rule to retailers and consumers, and to assist with enforcement should it be required. While COTA A views the Amendment as a worthwhile and important step forward, we suggest that the additional steps of:

- developing the written content of the Hardship Guidelines;
- reporting provided by retailers regarding implementation;
- monitoring scope and frequency undertaken by the AER; and
- enforcement where retailers have not met the minimum requirements,

would be very important to ensure adequate and consistent support for customers experiencing energy management and payment difficulty. We therefore suggest that stakeholders, retailers and customers continue to be engaged and consulted regarding these additional steps to contribute to the robustness of the process. It is encouraging to see an indication from the AER that there would be consultation with stakeholder, and consumer research, in the development of the Hardship Guidelines⁵.

COTA A is aware that changing terms such as Customer Hardship and Hardship Programs in the NERL and the Amendment would likely be problematic. However, we suggest that words such as “hardship” in the description of support and assistance measures may lead to a social stigma and be a contributing factor to the reported low participation rate of people in the measures and programs. Customers may hold off utilising support programs which are described this way, instead of seeking out and engaging early with the programs to the overall benefit of the customer and the energy retailer. We therefore urge retailers and government to consider describing support measures and programs in a way that would help reduce barriers to entry when communicating with customers, avoiding the word “hardship”.

We appreciate your consideration of our input to the Draft National Energy Amendment. Should you have further enquiries regarding this matter please do contact to COTA Australia on (02) 6154 9740 or cota@cota.org.au.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'I. Yates', written over a large, light-colored scribble or background mark.

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¹ National Energy Retail Law (NERL); Division 6 – Customer hardship; 43, 44, 45, 46, 47, 48, 49; Division 7; 50;

² Evidence provided by the Australian Energy Regulator (AER), referenced in the Draft Rule Determination, National Energy Retail Amendment (Strengthening protections for customers in hardship) Rule 2018, 6 September 2018; Page 13;

³ Extracts from AER 2016-17 Annual Report on Compliance and Performance of the Retail Energy Market; summarised in the Australian Energy Market Commission; Consultation Paper; National Energy Retail Amendment (Strengthening protections for customers in hardship) Rule 2018; 24 May 2018; Page 5;

⁴AER 2017 review of hardship programs of nine selected retailers; summarised in the Australian Energy Market Commission; Consultation Paper; National Energy Retail Amendment (Strengthening protections for customers in hardship) Rule 2018; 24 May 2018; Page 5;

⁵ The AER indicated in its rule change request that submissions from stakeholders and consumer research would inform the Hardship Guidelines – as advised in the Draft Rule Determination, National Energy Retail Amendment (Strengthening protections for customers in hardship) Rule 2018, 6 September 2018; Page 37.