

14 July 2010

Ms Lanie Chopping
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*Ways to make
a difference*

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Dear Ms Chopping,

RE: WACOSS response to ERA amendments to the Financial Hardship Policy Guidelines

WACOSS welcomes the opportunity to respond to the Economic Regulation Authority's (ERA) amendments to the Financial Hardship Policy Guidelines (the Guidelines) released 23 June 2010.

This response is intended to represent the views of the Western Australia Council of Social Service Inc. (WACOSS) in relation to the amended 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 those parts of the Guidelines.

Gas and Electricity as Essential Services

In Western Australia gas and electricity services support various fundamental human needs, including those relating to health, hygiene, food and shelter. Connection to gas and electricity supply is essential in supporting equipment that is crucial to wellbeing and independence and that enables and supports engagement in community and family life. As such, gas and electricity are considered to be essential domestic services.

In this context, WACOSS recognises that the ERA Financial Hardship Policy Guidelines are crucial to the positive evolution of energy retailers' financial hardship policies. Required under the *Code of Conduct for the Supply of Electricity to Small Use Customers* (the Electricity Code) and the *Compendium of Gas Customer Licence Obligations* (the Gas Code), Financial Hardship Policies ensure that financially vulnerable energy customers are more readily identified as being in hardship, protected from disconnection, and assisted in managing their energy debt.

Treatment of Guidelines that Duplicate Code Provisions

WACOSS notes that throughout the document lists of associated guidelines are introduced with the phrase: *'It is considered good practice to: ...'* WACOSS asserts that whilst this is appropriate for points acting only as guidelines to the development of retailer Financial Hardship Policies, the provisions found within many of the guidelines are also requirements under the relevant utility Codes. For example, guideline 4.3.6 in the Guidelines,

4.3.6 Consider reducing and/or waiving fees, charges, debt (including statutory barred debt) and consider payment incentives such as matched payments and full or partial debt waivers.

Essentially recreates Part 6.6(1) of the both the Gas and Electricity Codes:

- (1) A **retailer** must give reasonable consideration to a request by a **customer**, or a **relevant consumer representative organisation**, for a reduction of the customer's fees, charges or debt.¹

Understandably, such duplication occurs throughout the Guidelines. WACOSS believes that the use of stronger language than '*It is considered good practice to:...*' is required where guidelines duplicate provisions contained in both the Gas and Electricity Codes. If a guideline recreates provisions required under both Codes, it should be stated as such.

WACOSS Recommendation

That guidelines duplicating provisions found within both the Gas and Electricity Codes be introduced by words to the effect of: 'It is a requirement of the Codes that:...' as opposed to '*It is considered good practice to:...*'

3.1 Differentiating between 'payment difficulties' and 'financial hardship'

WACOSS supports the inclusion of definitions for 'payment difficulties' and 'financial hardship' within the Guidelines and commends the authority on the inclusion of a non-exhaustive list of factors that may cause hardship. The provision of this information is important in establishing better understandings around financial hardship and its causes; crucial to the successful development and implementation of retailers' Financial Hardship Policies.

In the interest of streamlining processes and documentation in relation to customers experiencing payment problems WACOSS recommends that the scope of the Financial Hardship Policy Guidelines include customers experiencing both 'payment difficulties' and 'financial hardship'. WACOSS notes that both 'payment difficulties' and 'financial hardship' are dealt with simultaneously in Part 6 of the Gas and Electricity Codes, and suggests this should be reflected in the Financial Hardship Policy Guidelines.

It is also important that retailers' hardship policies contain accurate information in relation to the rights afforded to customers experiencing both 'payment difficulties' and 'financial hardship'. WACOSS notes that the Guidelines do not sufficiently outline a retailer's obligation to customers experiencing 'payment difficulties'.

Part 6.3 of both the Gas and Electricity Codes stipulate that if a residential customer is assessed as experiencing:

... (a) **payment difficulties**, the retailer must –

(i) offer the **residential customer** the alternative payment arrangements referred to in clause 6.4(1); and

(ii) advise the **residential customer** that additional assistance may be available if,

¹ Economic Regulation Authority, *Code of Conduct for the Supply of Electricity to Small Use Customers*, 2008, p. 33; Economic Regulation Authority, *Compendium of Gas Customer Licence Obligations*, 2010, p. 23

*due to financial hardship, the residential customer would be unable to meet its obligations under an agreed alternative payment arrangement;*²

WACOSS asserts that consumers experiencing 'payment difficulty' should not be disadvantaged by this categorisation, and that the Financial Hardship Policy Guidelines should ensure retailer Hardship Policies inform those customers experiencing 'payment difficulties' of their right (under Part 6.4(1) of the Gas and Electricity Codes) to:

- (a) additional time to pay and bill ; and
- (b) an interest-free and fee-free instalment plan or other arrangement under which the **residential customer** is given additional time to pay a bill or to pay arrears (including any disconnection and reconnection charges) and is permitted to continue consumption.³

Ensuring that those experiencing 'payment difficulties' are aware of, and afforded, these rights is appropriate and in many instances will serve as a preventative measure, helping the customer to avoid slipping into further, ongoing hardship.

WACOSS Recommendation

That the scope of the Guidelines incorporate all customers experiencing payment problems, whether they are assessed as experiencing 'payment difficulties' or 'financial hardship'. And that a statement to this effect be included in Part 3.1 of the Guidelines.

WACOSS Recommendation

That Part 3.1 of the guidelines be amended to include those rights afforded to customers assessed as experiencing temporary 'payment difficulty' under 6.3 of the Gas and Electricity Codes.

The Guidelines should also state that offering alternative payment arrangements (and/or other assistance) to customers experiencing 'payment difficulties' should be utilised as a preventative measure by retailers to help that customer avoid moving into longer term 'financial hardship'.

3.3 Annual Review

WACOSS strongly agrees with the Guideline requirement for retailers to review their hardship policies at least annually. This will ensure retailers' hardship policies are updated to reflect any evolution in relation to hardship regulation, assistance schemes or retailer innovation in assisting customers in hardship, as well as encouraging the adoption of best practice guidelines through a consistent process of review.

However, WACOSS notes that this review process could be improved by the inclusion of a provision similar to that found in clause 2.4 of the Victorian Essential Services Commission *Financial Hardship Policies Guideline* (April 2007) (Victorian Guideline):

*Any request by the retailer for the Commission to approve a new or amended financial hardship policy... must include a statement as to the nature, impact and reason for the change.*⁴

² *Ibid*, p. 32; p. 22

³ *Ibid*, p. 32; p. 22

⁴ Victorian Essential Services Commission, *Energy Retailers' Financial Hardship Policies: Final Decision*, April 2007, p. 22

As a consumer representative organisation consulted during retailer hardship policy reviews WACOSS is in a unique position to comment on how the efficiency of this process can be improved. On more than one occasion WACOSS has received energy retailer hardship policies for review that do not accurately delineate the amendments that have been made to the document since its last publication.

A guideline recommendation such as that included in the Victorian Guideline would result in much greater transparency within the review process. It also equates to a minimal, and reasonable, requirement on the part of the energy retailer that results in much greater efficiency for all organisations consulted as part of the review process. This would also translate to greater accuracy and efficiency for the ERA in its assessment of whether or not a hardship policy complies with the requirements of the relevant Code and the Financial Hardship Policy Guidelines.

In addition, WACOSS believes that it is appropriate that Part 3.3 of the Guidelines include reference to relevant sections of '4.4 Engaging with consumer representative organisations and financial counsellors'. In particular, guideline 4.4.4 relates directly to the annual review process:

4.4.4 Consult with relevant consumer representative organisations on a process for the periodic review of financial hardship policies

WACOSS Recommendation

That Part 3.3 include a guideline recommending that all amendments (additions and deletions) made during the annual review of a retailer's Financial Hardship Policy must be clearly indicated. And that the retailer include in their draft hardship policy a statement explaining the nature, impact and reason for any amendments made.

WACOSS Recommendation

That Part 3.3 of the Guidelines pertaining to the annual review process include reference to consultation with consumer representative organisations (guideline 4.4.4).

4.1 Staff Training

WACOSS praises the inclusion of the detailed guidelines relating to staff training found in Part 4.1 of the Guidelines. Appropriate and regular staff training is essential to ensure that customers experiencing payment problems are dealt with according to retailer obligations under the relevant Code. Training also provides crucial understandings for staff in relation to the complex issues surrounding hardship.

WACOSS notes that within Part 4.1 of the guidelines the term '*should*' is used twice in referring to responsibilities that are in fact explicitly required of retailers under the Gas and Electricity Codes:

Some of the obligations that staff should be made aware of are included in Part 6 of the Energy Codes...

...Training should at least be provided to those staff who interact with customers, including call centre staff, all subcontractors employed to engage with customers experiencing financial hardship, energy efficiency auditors and field officers.

The first example refers directly to the Energy Codes. As retailers are required to meet the obligations contained within the Code, WACOSS asserts that stronger language than 'should' is necessary.

The second example essentially recreates sub-paragraph (b)i. of Part 6.10(2) of the Gas and Electricity Codes:

(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;*

WACOSS suggests that in both instances the term 'should' be replaced with 'must', as it is in the third paragraph of Part 4.1:

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

Whilst WACOSS agrees that it is of central importance that staff understand their employer's 'hardship policy, processes and procedures', it also notes that this level of obligation should be placed upon all training requirements prescribed in Part 4.1 that are also found within the Gas and Electricity codes.

The term 'should' implies that the retailer ought to carry out the prescribed actions in relation to staff training, but is under no real compulsion to do so. Conversely, the use of 'must' implies without reservation that the retailer is required to carry out the prescribed training obligations in line with the Gas and Electricity Codes.

WACOSS also asserts that it is necessary to mandate the frequency with which staff training should occur, and under what instances. 'Refresher' training should be carried out annually following the release of a retailer's reviewed Financial Hardship Policy to ensure that all staff undergo hardship training revision, as well as being aware of the contents of their newly revised hardship policy.

In addition, the Guidelines should differentiate between 'in-house' staff training relating to internal processes and procedures (around customer support and hardship) and more specific Financial Hardship and Social Exclusion training, carried out by, or in consultation with, relevant community organisations.

All retailer staff should be required to undergo internal hardship training at their time of induction, in addition to those 'staff who interact with customers, including call centre staff, all subcontractors employed to engage with customers experiencing financial hardship, energy efficiency auditors and field officers' being required to undertake specific Financial Hardship and Social Exclusion training.

WACOSS Recommendation

That the following amendments be made to Part 4.1 of the Guidelines:

Some of the obligations that staff should must be made aware of are included in Part 6 of the Energy Codes...

... Training should must at least be provided to those staff who interact with customers, including call centre staff, all subcontractors employed to engage with customers experiencing financial hardship, energy efficiency auditors and field officers.

WACOSS Recommendation

That Part 4.1 differentiates between 'in-house' staff training and more specific Financial Hardship and Social Exclusion training carried out by, or developed in consultation with, relevant consumer representative organisations. Information regarding when this training should occur, and at what frequency, should also be included.

4.2 Identifying and engaging with customers in financial hardship

WACOSS applauds the inclusion of quotations from the GUESHIWG *Utilities Essential Services Hardship – Public Issues Discussion Paper* and Victorian Essential Services Commission *Framework Paper – Energy Retailers Hardship Policies* in Part 4.2 of the guidelines. These quotes clearly delineate sub-paragraph (a)(i) and (b) of Part 6.1(2) of the Gas and Electricity Codes:

(2) When undertaking the assessment required by subclause (1), a retailer must give reasonable consideration to –

(a) information –

(i) given by the residential customer; and

(ii) requested or held by the retailer; or

(b) advice given by an independent financial counsellor or relevant consumer representative organisation.

WACOSS also commends the passage relating to the retailer's role in hardship assessment found in Part 4.2:

...a retailer should also have an objective, publically available set of criteria by which to assess a customer and should also consider the assessment of that customer's financial counsellor, if applicable.

WACOSS is of the opinion that these three considerations are equally important in assessing a customer's hardship and that they should be utilised in combination when appropriate. WACOSS believes that reference to each consideration being included in the introductory text of Part 4.2, as well as in guidelines 4.2.5 through 4.2.7, is constructive in guiding the accurate assessment of customers who may be experiencing payment difficulties or financial hardship.

WACOSS does however acknowledge that the strong language used in the GUESHIWG quotation in reference to a financial counsellor's assessment of hardship (namely the use of the term 'ultimately') should not in any way discourage retailers from giving reasonable consideration to information provided directly by the customer, or from taking pro-active action to identify customers in hardship through internal mechanisms.

WACOSS also notes that sub-paragraph (b) in Part 6.1(2) of the Gas and Electricity Codes refers to 'an independent financial counsellor or relevant consumer representative organisation' whilst Part 4.2 of the guidelines refers only to a 'financial counsellor'. It is therefore appropriate that references to financial counsellors contained within the

introductory text of Part 4.2 and guideline 4.2.7 be amended to also include reference to 'relevant consumer representative organisations' in order to ensure continuity with the Codes.

WACOSS Recommendation

That Part 4.2 include a statement indicating that all three sources of advice and information to be used in considerations of a customer's financial hardship be regarded with equal legitimacy and that retailers be encouraged to take pro-active action by assisting customers to undertake self identification of financial hardship.

WACOSS Recommendation

That the following amendment be made to the introductory text in Part 4.2 of the Guidelines:

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 or a relevant consumer organisation, if applicable.

WACOSS Recommendation

That the following amendment be made to guideline 4.2.7:

4.2.7 Accept a financial counsellor's or relevant consumer organisation representative's assessment of a customer's eligibility for a hardship program.

4.3 Flexible payment arrangements

Guidelines 4.3.1 through 4.3.4 relate to the retailer's responsibilities to ensure that a customer has the capacity to make the payments negotiated under their payment plan. Whilst WACOSS strongly agrees with these guidelines, it believes that further guidance is necessary to ensure that a customer experiencing hardship is treated fairly in accordance with a retailer's hardship policy.

Whilst guidelines 4.3.1 through 4.3.4 ensure a customer's capacity to pay is considered in establishing alternative payment arrangements, there are no guidelines requiring the retailer to ensure that a customer's failure to meet their payment obligations is not caused by their incapacity to pay the agreed amount.

Without such a guideline, the strength of the protections provided to vulnerable customers in 4.3.1 through 4.3.4 is greatly diminished as there is no compulsion for the retailer to undertake either of the following actions before terminating a payment arrangement due to failure to pay:

- re-evaluate their assessment of a customer's capacity to pay at the time of entering into the arrangement; or
- conduct a re-assessment of the customer's capacity to continue to make payments under the agreed arrangement.

WACOSS Recommendation

That additional guidelines be included in Part 4.3 of the Guidelines in order to compel retailers to undertake the following actions before terminating a payment arrangement due to failure to pay:

- a re-evaluation of their assessment of a customer's capacity to pay at the time of entering into the arrangement; or

a re-assessment of the customer's capacity to continue to make payments at the amount originally agreed under the arrangement.

4.4 Engaging with consumer representative organisations and financial counsellors

WACOSS notes that the wording of guideline 4.4.1 creates confusion as to what the guideline is in fact referring to. While all other guidelines in Part 4.4 relate to energy retailers, guideline 4.4.1 makes reference to financial hardship 'guidelines', which is in fact the responsibility of the ERA:

4.4.1 Encourage greater involvement of consumer representative organisations in the development of financial hardship guidelines through reference groups and holding appropriately designed forums.

It is not clear whether this is intended to refer to the development of retailer 'policies' or the ERA's own processes in developing 'guidelines'.

WACOSS Recommendation

That guideline 4.4.1 be amended in the interest of clarity.

4.5 Transparency and Accessibility

WACOSS is aware that (at the time of writing) not all WA energy retailers' hardship policies are available online. The internet is undoubtedly the most likely (and most easily accessible) location for consumers to seek a document such as a hardship policy. WACOSS strongly supports the reference to retailers publishing hardship policy information online in guideline 4.5.3:

4.5.3 Ensure information about the policy is readily available to customers 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.

WACOSS suggests this guideline could be improved by ensuring it relates not only to information about policies, but also the policies themselves. Retailers could also be further encouraged to include hardship policies on the websites by replacing 'such as' with slightly stronger language.

WACOSS further commends the contents of guideline 4.5.2, and wishes to re-iterate the importance of pro-active promotion of hardship policies by retailers.

WACOSS notes that there is no compulsion within the guidelines for retailers to include complaints handling and complaints contact information in their hardship policies.

WACOSS believes that in order for consumer protection and complaint mechanisms to be most effective, and to ensure that as many consumers as possible are aware of the protections afforded them as residential energy customers, such information should be widely available and appear within all relevant public documents.

This is particularly pertinent in relation to vulnerable consumers who may wish to lodge a complaint in relation to a retailer's assessment of their financial hardship, the payment arrangement they have negotiated with the retailer, or any other issues relating to consumer

payment problems. Such vulnerable consumers may otherwise not have access to compliant handling or contact information and thus remain unaware of their right to lodge a complaint.

WACOSS notes that complaints handling and contact information is already clearly provided within the Alinta Gas Hardship Policy. Recommending that such information be included within all hardship policies would encourage best practice consistency across the WA energy market. WACOSS asserts that Part 4.5 of the Guidelines should contain a recommendation that information relating to both internal complaints handling and the Energy Ombudsman should be included in retailer hardship policies.

WACOSS Recommendation

That the following amendment be made to guideline 4.5.3:

4.5.3 Ensure information about the policy, as well as the policy itself, is readily available to customers at no cost in a range of forms such as including, but not limited to, 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.

WACOSS Recommendation

Amend Part 4.5 of the Guidelines to include the following guideline (or equivalent to):

4.5.4 Include detailed information relating to the retailer's complaints handling processes. This should include the retailer's relevant telephone, mail, fax and email contact information, as well as contact (and other) information relating to the Energy Ombudsman.

Conclusion

Gas and electricity are essential services. Disconnection from supply, even for a short period of time, can have severe social and economic ramifications for individuals, families and communities. While problems of social and economic disadvantage are inherently complex, utility providers have a clear social responsibility to assist vulnerable consumers through the provision of appropriate and consistent hardship policies. In turn, constructive amendment to the ERA Financial Hardship Policy Guidelines is crucial to the development of these policies.

WACOSS thanks the ERA for the opportunity to respond to its Invitation for Public Submissions in relation to its amended Financial Hardship Policy Guidelines and looks forward to the final decision of the authority.

For further information regarding this submission please contact Misty Hayden, Senior Policy Officer, Consumer Essentials Project, on (08) 9420 7222.

Yours sincerely,

Sue Ash
Chief Executive Officer