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Ms Celine Grant
Project Manager
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne, VIC 3000

By email: energyhardshippreview@esc.vic.gov.au

Dear Ms Grant

Re: Inquiry into the Financial Hardship Arrangements of Energy Retailers: Our Approach

CUAC is a specialist consumer organisation established in 2002 to represent Victorian energy and water consumers in policy and regulatory processes. As Australia's only consumer organisation focused specifically on the energy and water sectors, CUAC has developed an in-depth knowledge of the interests, experiences, and needs of energy and water consumers.

Our work is guided by strong principles. Energy and water services are essential for health, wellbeing, and social participation. Therefore, we believe that consumer interests – particularly those of low-income, disadvantaged, and rural and regional consumers – must be a primary consideration in the development and implementation of energy and water policy and in service provision. CUAC's advocacy maintains a focus on the principles of affordability, accessibility, fairness, and empowerment through information and education. CUAC supports informed consumer participation in energy and water markets.

We thank the Essential Services Commission (ESC) for preparing a useful paper *Inquiry into the Financial Hardship Arrangements of Energy Retailers: Our Approach* (ESC's paper), and for their endeavours to include consumer advocates in this important discussion.

We include as a constituent part of our submission CUAC's interim report – [CUAC Regulatory Review: A Comparative Analysis of Key Consumer Protections](#). In our research, we compared the pre-harmonisation energy consumer protections contained in the Energy Retail Code (version 10a, December 2013) (ERC) with the Harmonised Energy Retail Code (version 11, 1 January 2015) (HC), paying particular attention to the provisions on payment difficulties, hardship and disconnection. *Appendix A* of CUAC's interim report contains a word-for-word analysis/comparison of key provisions in the ERC and HC. CUAC's findings identify where consumer protections have been eroded and our recommendations list the key issues we will be advocating on. While our recommendations are addressed to the Victorian Government and the COAG Energy Council, they are relevant and useful for the ESC's inquiry.

We have in this submission endeavoured to respond directly to the questions posed in the ESC's paper by referring to relevant sections in CUAC's interim report.

The Commission's approach

Q1. Are the principles of effectiveness, flexibility, consistency, efficiency and proportionality, transparency and clarity, and accountability (of all stakeholders) the most relevant principles for this inquiry? Are there other principles that should be included or used? Should some principles be given greater weight?

Effectiveness, transparency and accountability are paramount for the consumer protections framework. Flexibility and proportionality, however, are most relevant for the energy retailers' hardship program, which need to be tailored to the specific circumstances of each customer experiencing hardship.

Regulatory framework (chapter 3)

Q2. Does the regulatory framework need to be improved to support customers who are unable to pay their energy bills in full and on time? If so, what improvements are needed? Are certain aspects of the framework ambiguous, unnecessary or ineffective? Are there other regulatory frameworks offering good examples that the Commission should examine?

We refer the ESC to CUAC's interim report (*see Disconnection, Payment Plans and Hardship sections*) for our findings and recommendations on what improvements to the regulatory framework are needed. One overarching observation we have emphasised in CUAC's interim report is that the HC is poorly drafted and leaves many provisions subject to interpretation. The obvious consequence would be that monitoring and enforcement would be difficult if provisions are vague and unclear.

The high disconnection rate, the large number of EWOV customer complaints (in particular, the growing number of affordability/credit-related complaints), and the fact that 51 per cent of customers fail their hardship programs strongly suggest that the regulatory framework is inadequate and is in need of reform. Disconnections have been trekking upwards for the past 10 years; it is concerning that Victoria has the highest electricity disconnection rate in Australia. CUAC's research indicates that there is a strong correlation between the disconnection rate, wrongful disconnections and the level of hardship support which, energy retailers extend to customers.

The current situation may worsen with the HC. The disconnection, payment plan and hardship provisions offer customers lower protections than what they previously enjoyed under the ERC. There is no universal right to payment plans; the energy retailers' hardship obligations are articulated in less concrete language; and the timeframe between the issue of a bill and actual disconnection has been reduced. This potentially leaves more customers struggling with their bill payments inadequately supported, and vulnerable to disconnection.

In addition, many of the basic/standard consumer protections (which previously applied to market offers under the ERC) need not apply to market retail contracts (MRCs) under the HC, which means that a significant percentage of Victorians (a majority are on MRCs) are left out in the cold.

A major problem with the regulatory framework is that customers of exempt sellers do not have the same protections as customers of energy retailers. Exempt sellers do not, for example, have to provide hardship assistance to their customers.

Apart from the regulatory framework, CUAC is of the view that compliance is a real problem. A large number of wrongful disconnection complaints (reported by the ESC and EWOV) appear to involve

non-compliance with provisions specifically designed to help customers with payment difficulty or in financial hardship, maintain access to supply (*see Disconnection section of CUAC's interim report*). The fact that unaffordable or unsustainable payment plans is a common feature in EWOV complaints about payment plans suggests that energy retailers are not appropriately accessing their customers' capacity to pay (*see Payment Plans section of CUAC's interim report*).

Q3. What incentives could be introduced to the regulatory framework to promote innovation in assisting customers who are unable to pay their bills in full and on time?

CUAC supports guaranteed incentive schemes which help customers experiencing hardship pay usage and reduce their arrears. It provides customers with a solution to what seems an intractable problem. In CUAC's experience, in-home energy audits also work well.

Currently, CUAC has not seen much innovation amongst energy retailers in assisting customers who are unable to pay their bills in full and on time. The examples of 'innovative practices' by some national energy retailers (e.g. linkages with community organisations, training in affordability etc), which is mentioned in the AER's *Review of Energy Retailers' Customer Hardship Policies and Practices*¹ are not really cutting edge innovations but rather sensible/reasonable approaches to take in addressing hardship.

We refer the ESC to *Chapter 5* of CUAC's 2014 research [Helping Not Hindering: Uncovering Domestic Violence & Utility Debt](#), which describes industry best practice. Examples of innovative practices are mentioned in this chapter.

Q4. Does the regulatory framework provide sufficient flexibility and discretion for energy retailers to assist customers in financial hardship effectively? Should the Commission's Code and guidelines be more or less prescriptive in order to facilitate best practice and promote innovation by retailers? If so, what should be changed and how?

We refer the ESC to CUAC's interim report (*see Hardship section*). Our impression is that the divergence in hardship programs amongst energy retailers suggests that the minimum standards for a hardship program are too low. It appears to have resulted in a lowest common denominator approach where a hardship program may consist only of a payment plan. Very few onsite energy audits or appliance exchange are offered. The 51 per cent failure rate of customers exiting hardship program suggests that some energy retailers are not providing adequate support to customers in financial hardship. In light of this, we are of the view that there should be more prescription in the code and guidelines to encourage best practice.

Performance and compliance (chapter 4)

Q5. How could the Commission better monitor the overall effectiveness of the hardship assistance provided by energy retailers?

CUAC supports more frequent public reporting (including naming energy retailers) by the ESC, a review of the compliance framework and the publication of the findings of the retail regulatory audits (including the audit of the energy retailers' compliance system and the reliability of their reports) currently underway, as outlined in the ESC's latest compliance report.²

¹ Australian Energy Regulator (January 2015), *Review of Energy Retailers' Customer Hardship Policies and Practices*, p.13.

² Essential Services Commission (April 2015), *Energy Retailer Compliance Report 2013-14*, p, 2, 6-7, 45-46.

The ESC should investigate why there are such a large proportion of customers who fail their hardship programs and ensure that energy retailers reflect a best practice approach to accessing capacity to pay when setting up payment plans.

As previously mentioned, poor drafting of the HC impedes effective monitoring and enforcement of energy retailers' obligations. This needs to be addressed as a priority.

Q6. Are there better indicators the Commission could use to assess the overall outcomes for customers in financial hardship?

For some of the hardship indicators, it would be helpful for the ESC to find out what the reason behind the data that is reported is and publicly report on the findings. For instance, why 51 per cent of customers failed their hardship programs; why more customers entered hardship programs with higher debt levels but remained in the program for a shorter length of time; why so few onsite energy audits and appliance exchanges are offered to customers experiencing hardship. While the number of customers on payment plans is reported, we welcome greater transparency around whether capacity to pay is appropriately determined by energy retailers.

Affordability of essential services is a significant and growing concern in Australia. Thus, we agree with the ESC that the higher participant rates *'indicate an increase in customers experiencing financial difficulties.'* We disagree, however, that it *'indicate[s] retailers' increasing commitments to assist customers via hardship programs'*³ because of the significant percentage who fail the hardship programs, and the difficulties customers encounter in seeking payment assistance as outlined in EWOV's report on affordability⁴ (***See Payment Plans and Hardship sections of CUAC's interim report***).

Q7. Can the Commission improve how it monitors and enforces energy retailers' compliance with the regulatory obligations? If so, how?

CUAC, in principle, supports the suggestions made by the Victorian Government to enhance the ESC's enforcement powers articulated in their document 'ESC's Powers.' We also support increasing the wrongful disconnection payments and the imposition of a penalty as one of the range of measures that may reduce the disconnection rate and the number of wrongful disconnections (***see Disconnection section in CUAC's interim report***). We note that many of the wrongful disconnections arise from a breach of the provisions relating to assisting customers with payment difficulties or hardship.

As mentioned in our response to Q5, effective monitoring and enforcement require clearly worded regulations including the HC.

Best practice (chapter 5)

Q8. Are energy retailers currently providing best practice assistance to customers who are unable to pay their energy bills in full and on time? What evidence is available to support this view?

Generally no; please refer to our response to Q3.

The fact that energy retailers engender low levels of trust suggests that the overall consumer experience of energy retailers is a negative one. In 2013, only 18 per cent of polled respondents

³ Essential Services Commission (March 2015), *Inquiry into the Financial Hardship Arrangements of Energy Retailers: Our Approach*, p.34.

⁴ Energy and Water Ombudsman (Victoria), *A Closer Look at Affordability: An Ombudsman's Perspective on Energy and Water Hardship in Victoria*.

trusted power companies to act in the public interest – the lowest of all surveyed industries.⁵ Complaints about energy retailers to the EWOV have also increased to worrying levels. In addition to improving financial hardship policies (so that it reflects best practice), energy retailers need to commit to targets to reduce complaints and disconnections.

CUAC is of the view that a best practice hardship program includes a well trained team providing one-on-one customised advice/support, in-home energy audits (plus small home retrofits and appliance replacement), a matched incentive scheme for payment plans and debt waivers.

Q9. Should retailers' hardship practices be more transparent? If so, how can transparency be improved?

We mention one method. In CUAC's experience, it is quite difficult to find information on what to do when one is in payment difficulty or hardship on most energy retailers' websites as there is no obvious link from the home page. This is unlike the banking industry where the link is on the home page. Commonwealth Bank for e.g. illustrates best practice in this regard as they have a large banner 'Are you experiencing financial difficulty' on their home page. There is, of course, still the need to ensure that customers who do not have Internet access receive timely information on payment assistance and financial hardship, such as through bill inserts.

Q10. What else could we learn from practices by firms operating in other jurisdictions and industries, nationally and internationally about best practice in hardship assistance?

Q11. Are there any other themes of best practice that we have not covered in chapter 5? Do some themes require higher priority in the regulatory framework administered by the Commission?

Please refer to *Chapter 5* of CUAC's 2014 research [Helping Not Hindering: Uncovering Domestic Violence & Utility Debt](#), which describes industry best practice.

Benchmarking (chapter 6)

Q12. What other matters should the Commission take into account when designing a benchmarking framework for assessing the effectiveness of retailers' hardship programs?

Q13. Which aspects of an energy retailer's hardship policies, practices and procedures should be given priority in the benchmarking framework?

The current indicators do not really show us how well energy retailers manage hardship. Benchmarking for example, could help us to have a better understanding on how well retailers are doing in their hardship programs. For example, if hardship training is provided to staff; the customer/community engagement activities energy retailers undertake; referrals to support services and financial counsellors etc.

We are of the view that the water industry provides a best practice benchmark.⁶

In CUAC's experience, while current energy hardship policies may look good on paper, they often do not translate into best or even good practice. The emphasis needs to be on what energy retailers actually do when benchmarking and assessing hardship

⁵ Essential Report, *Trust in Industries*; found at <http://essentialvision.com.au/trust-in-industries> <accessed on 15 April 2015>. See also Choice (2014) *Pulse Check, National Findings 2014*. Choice's 2014 survey of consumers found that energy retailers scored very low on consumer trust, at just 9 per cent.

⁶ Consumer Utilities Advocacy Centre (August 2014), *Helping Not Hindering: Uncovering Domestic Violence & Utility Debt*, p.37-41.

Additional question (chapter 7)

Q14. Are there any other matters the Commission should consider to help customers who are unable to pay their bills in full and on time to avoid disconnection?

Early intervention is the key. If customers are engaged early in the process and assisted/supported adequately, it is more likely that issues will be resolved prior to them being escalated, thus reducing the likelihood of disconnection or complaints to EWOV.

We thank you for the opportunity to participate in the ESC's consultation. If you have further queries on this submission, please do not hesitate to contact Deanna Foong at deanna.foong@cuac.org.au or 03 9639 7600.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mercedes Lentz', with a stylized flourish at the end.

Mercedes Lentz
Executive Officer