

28 June 2018

Ms Anne Pearson
Chief Executive Officer
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Dear Anne

AEMC Reference RRC0017 – Strengthening protections for customers in hardship

Thank you for the opportunity to comment on the *AEMC Consultation Paper – National Energy Retail Amendment (Strengthening protections for customers in hardship) Rule 2018*.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. Our comments are informed by the complaints made to our office and also from our community outreach and stakeholder engagement activities. We have supported our arguments using explanatory case studies in Attachment 1.

Before responding directly to the questions posed by the AEMC, I would like to bring the Commission's attention to two critical energy industry language barriers which could also be addressed by this Amendment:

1. Customers experience, or are at risk of experiencing, financial vulnerability – short or medium term / situational following job loss for example; long term due to disability / injury for example; or for the most vulnerable, generational. The term 'in hardship' is not a helpful label.
2. The word 'hardship' is viewed, by many people, as being a discriminatory or dysfunctional label – if retailers offered Energy Affordability Programs rather than hardship programs, we may see a greater number of customers who experience financial vulnerability self-identify. It may also open the door to initiating easier conversations between retailer staff and the customers who need these programs.

Rationale for rule change - adequacy of the current approach to hardship

Question 1 (a) To what extent do you consider that the current approach to the application of hardship policies provides adequate protections to consumers in financial difficulty?

Financial hardship and payment difficulty is the most significant key issue faced by customers who make complaints to EWON. This has been the case since EWON was established in 1998.

Many of the problems faced by energy consumers experiencing financial hardship have remained the same over the years. While some retailers, particularly first tier retailers, have taken large steps to improve the hardship policies they introduced from around 2005, with noticeable results, other retailers' hardship programs, by comparison, fall well short of industry benchmarks. And the accessibility and deliverables of all retailer hardship programs fall short of what is required to address energy affordability in today's market.

In our January to March 2015 quarterly report to members and regulators, we outlined a range of situations drawn from customer complaints to EWON where customer hardship should have been identified earlier and addressed. Instead our complaints identified that retailers were:

- failing to offer payment plans or refusing to agree to payment arrangements
- refusing further opportunities to customers who missed a payment
- setting high upfront payments requirements in order to offer reconnection
- not referring customers to hardship programs because the customer had failed to adhere to prior payment plans.

Two years later, EWON's quarterly activity report for April to June 2017 contained a dedicated section on complaints about consumer hardship received after the introduction of the AER's Sustainable Payment Plan Framework. The specific issues outlined in this report included:

- retailers requiring upfront, unaffordable payments from consumers who were requesting a payment plan or who had been disconnected / facing disconnection
- retailers placing 'willingness to pay' conditions on customers requesting a payment plan or access to a hardship program
- retailers refusing requests for an affordable payment plan leading to failed negotiations between the customer and their retailer
- customers trying to negotiate an affordable payment arrangement with a retailer for a closed account
- customers taking positive steps to make regular payments towards their account, but their retailer not accepting these payments as being part of a formal payment plan.

Complaints made to our office today follow a similar pattern to the case studies in these reports.

This is evidence that protections for energy consumers in financial difficulty must be improved.

Outlined below are four examples of the underlying concerns we have about the experience customers face when making a request which should be offered as part of their retailer's hardship policy.

Retailers failing to identify hardship customers based on the indicators set out in their hardship policy.

A retailer's hardship policy must outline the processes it has established to identify residential customers who are experiencing payment difficulties due to financial hardship, including identification by the retailer and self-identification by a residential customer¹.

¹ s44(a), National Energy Retail Law

It is our experience that some retailers are not consistent in their assessment of each customer's request for payment assistance or in identifying the signals that a customer may give that indicate they are experiencing financial hardship. Retailers may have a policy that clearly set out the key indicators to look to identify a customer experiencing hardship, however, in practice these signals are, too often, missed by frontline staff.

This is illustrated in Case study 1 in Attachment 1.

Unclear processes for determining a customer's eligibility for a hardship program or referring that customer to the hardship program.

Retailer's hardship policies must also outline processes for the early response by the retailer in the case of residential customers identified as experiencing payment difficulties due to hardship².

Many retailers' hardship policies establish a process for referring customers to their hardship programs that appears to have adequate flexibility to meet the individual circumstances of each hardship customer. However, in some cases as illustrated in Case study 2, the requirements placed on customers before they can be referred to the retailer's hardship program by frontline staff are based on more narrow criteria.

Frontline staff not implementing the overarching principles or policy goals of the hardship policy

Retailer hardship policies are often built around a principle that recognises customers in financial hardship need additional assistance and a flexible approach to payment to stay connected. However, it is also our experience that the frontline staff of some retailers are required to follow procedures for dealing with customers with overdue accounts, or those customers who are at risk of disconnection, which contradict the central principles outlined in the retailer's hardship policy. See Case study 3 for an example.

Some retailers view disconnection as the end of their obligation to provide support to customers in hardship

We believe there is a systemic issue in the way the existing framework for payment plans and hardship policies operates, in practice, for some hardship customers who are disconnected for non-payment.

We note that many customers who contact EWON after being disconnected have not engaged with their retailer about the amount owing on their energy account about before the disconnection is completed. Customers in this situation will often have a history of multiple broken payment plans. However, in other cases the customer will not have had a previous opportunity to request a payment plan.

Our experience of industry practice is that some retailers will segment their responsibility for offering payment plans, or identifying and responding to a customer in hardship, from their process for dealing with a customer after they have been disconnected for non-payment. These retailers view disconnection as an end to their responsibilities to discuss affordable payment plans. This means that a customer who has been disconnected will often not have practical access to the

² s44(b), National Energy Retail Law

retailer's hardship policy, or a payment plan, irrespective of their payment history or personal circumstances.

We believe that complaints about disconnections, or complaints from customer's facing disconnection, are a critical indicator of hardship and our investigation of these complaints frequently highlights how a retailer's process for responding to hardship has broken down. Customers who have been disconnected are often at their most vulnerable and yet face the greatest barriers to obtaining assistance.

This is illustrated by Case study 4.

Question 1 (b) Are general obligations that are more difficult to enforce leading to inadequate consumer protections?

In our experience, and as outlined above, hardship policies that are based on general obligations, without a clear process outlining how the customer will be able to easily access assistance, provide inadequate consumer protections.

The proposed approach

Question 3 (a) Are you of the view that Hardship Guidelines that include standard statements adequately protect the long-term interest of consumers in financial difficulty, while providing retailers with flexibility in how they apply hardship provisions?

EWON supports the AER's statement from the rule change proposal:

"The Hardship Guideline will provide additional guidance to industry on hardship approval processes and the application of the minimum requirement under the Retail Law. These may take the form of standard statements and would commit retailers to specific actions that mirror the minimum requirements for hardship policies. Consistent, action-based hardship policies would have a number of benefits including: removing ambiguity over how the minimum requirements are to be applied, provide customers with a clear understanding of their entitlements and assist our role in monitoring and enforcing compliance with these obligations."

A guideline which commits retailers to consistent action-based hardship policies should help to address some of the issues outlined in the above case studies.

Enforceability of the proposed Hardship Guidelines

Question 4 (a) Do you agree that all aspects of the guidelines should be enforceable? If not, what aspects of the guidelines should or should not be enforceable and why?

The AER introduced the voluntary Sustainable Payment Plans Framework in July 2016. The Framework is intended to provide a guideline for retailers to request information about capacity to pay when talking to customers who make a request for a payment plan. The Framework directly relates to retailers' National Energy Retail Law and Rules responsibilities in relation to establishing payment plans. These responsibilities include to having regard to a customer's capacity to pay, with respect to any amount the customer owes, and with respect to how much energy the customer expects / is expected to use over the next year.

The Framework is a crucial part of financial hardship customer protections.

However, not all retailers have adopted this voluntary framework and it is our experience that customers of some retailers which have adopted the framework are better protected when they experience payment difficulties than customers of those retailers who have chosen not to adopt the framework.

However, our complaints experience also identifies that customer of some retailers who have adopted the framework, do not get the benefits which the framework should deliver.

Two critical factors can be drawn from this.

1. All energy consumers should receive the same level of support if they experience financial hardship.
2. Equal financial support protections for all customers who experience financial hardship cannot be achieved unless the hardship guidelines are enforceable.

Other issues: Access to hardship assistance for customers following disconnection for non-payment

Complaints to EWON indicate that many retailers view disconnection as the end of their obligation to provide support to customers experiencing hardship. This is a critical issue for many energy consumers.

We recognise that the AEMC cannot initiate changes to the NERL. However, EWON strongly believes that the minimum requirements of a hardship policy (s 44, NERL) should also be amended to include:

‘processes and options for responding to customers who have been disconnected and in most cases, have therefore been identified experiencing financial hardship’

Alternatively, EWON considers that another potential solution to this issue would be an amendment to rule 121 of the NERR to include a requirement that a retailer must respond to a customer’s request for a payment plan under rule 33 of the NERR and section 50 of the NERL, or a customer’s request for access to a hardship program, as part of a customer’s request for reconnection.

If you would like to discuss this matter further, please contact me or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

Yours sincerely



Janine Young
Ombudsman
Energy & Water Ombudsman NSW

Attachment 1 – Case studies

Case study 1: A customer who recently lost his job, and could not afford to pay the arrears on his electricity account, was not referred to his retailer's hardship program.

The retailer's hardship policy stated that frontline staff are trained to identify a customer in hardship through a number of signals, including:

- customer advice of financial difficulties and being unable to pay their bill by the due date;
- recent events within the customer's household that place them in a vulnerable financial position (like as job loss, illness or family crisis);
- advice the customer is receiving assistance from a Financial Counsellor or a Welfare agency;
- a history of late payments or failed payment arrangements.

A customer complained to EWON on 28 February 2018 that he was experiencing financial hardship after receiving a significant reduction in income. The customer, a single parent with two teenage children, was going to lose his current job on 2 March 2018. The customer had a job interview that week with an expectation that he could start immediately if he was given the position.

The customer contacted his retailer about the \$1,800 debt on his electricity account and he was told that he would be disconnected by 1 March 2018. The customer had a history of broken payment arrangements and a previous disconnection for non-payment with his current retailer. The customer tried to negotiate a payment arrangement but the retailer told him that he had to make an upfront payment of \$748 to stop the disconnection and that if he could not pay the lump sum he should look for another retailer. The customer advised EWON that he could make an upfront payment of \$200 but was unsure at that time what he could afford as an ongoing payment arrangement.

EWON contacted the retailer to seek a resolution to the complaint. The retailer agreed to place the customer on a temporary payment arrangement of \$110 per week to cover ongoing usage. The retailer agreed to have their Hardship Team contact the customer within 5 working days. EWON referred the customer to obtain EAPA and financial counselling.

This retailer has not adopted the AER's Sustainable Payment Plans Framework.

Case study 2: The retailer required the customer to meet strict 'willingness to pay' conditions before she was eligible to be referred to the hardship program.

The retailer's hardship policy outlined that eligibility to the hardship program required the customer to have an active residential energy account, be experiencing financial hardship, demonstrate a 'willingness to pay'; and have a debt owing on their account. The policy also defined a 'willingness to pay' as the customer taking actions such as:

- making part-payments;
- contacting the retailer advising of experiencing payment difficulties at an early stage;
- engaging with a financial counsellor; or
- attempting to make payments or maintain plans.

A customer contacted EWON after a technician from the network came to her house to disconnect the property. The customer advised EWON that she owed \$2,135 on her electricity account and that the technician told her she would be disconnected by 3pm the next day if the account remained unpaid. The customer was experiencing difficulty paying her electricity bills due to a loss of income. The customer was self-employed and had been unable to work for a few weeks due to illness. The customer had started work again at the time of contacting EWON. The customer had contacted her retailer and agreed to a payment plan of \$700 a fortnight but she had broken the payment plan due to her illness.

EWON contacted the retailer to discuss an affordable payment plan for the customer. The retailer confirmed that the customer had broken the previously agreed payment plan. The retailer offered a number of payment plan options to the customer. The retailer advised EWON that the customer was required to make a minimum of four fortnightly payments of \$400 a fortnight, demonstrating willingness to pay, before she could be referred to the hardship program. The customer advised EWON that she wanted to accept the payment plan offered by the retailer because it was affordable at this stage.

EWON informed the customer of her rights and responsibilities, gave her details of financial counselling services in her area and the NSW government's EAPA program and rebates, and told her that she could re-contact EWON at any time.

This retailer has adopted the AER's Sustainable Payment Plans Framework.

Case study 3: The retailer required the customer to pay a large prescribed amount to be reconnected and referred to its hardship program.

This retailer's hardship policy stated the purpose of its hardship program is to provide customers with additional assistance and flexibility. The objective of the policy recognises that financial hardship should not preclude customers from staying connected if they are willing to pay but require some payment flexibility. The retailer required this customer to make a large upfront payment (50% of the arrears) before she could access further assistance.

A customer contacted EWON on the day she was disconnected by the retailer. The customer advised that she could afford to pay \$30 that day toward her account and \$25 per fortnight going forward. The customer received a pension payment and received the energy rebate. The customer also advised EWON that she was seeking an appointment for an EAPA assessment. The customer lived in a rural town which experienced seasonal temperature extremes.

The retailer advised EWON that the balance owing was \$2,285. The customer had moved into the property eight months ago and there had been little prior contact with the customer. The retailer noted that there appeared to be high usage at the property but had not discussed this with the customer. The retailer advised EWON that a payment of \$30 upfront would not be acceptable and that generally a payment of 50% of the outstanding balance was required before reconnection would be considered. The retailer had not previously offered a payment plan to the customer. The retailer was not prepared to reconnect based on the customer's known circumstances.

EWON contacted the retailer again after clarifying with the customer that she also managed a medical condition that made her more sensitive to temperature extremes. The retailer only then accepted the customer's proposal for a payment plan, raised a reconnection order and referred the customer to its hardship program.

This retailer has not adopted the AER's Sustainable Payment Plans Framework.

Case study 4: This retailer refused to discuss hardship with the customer or EWON as the property was already disconnected.

This retailer viewed disconnection as the end to their responsibility to discuss affordable payment plans or its hardship program with the customer.

A customer advised that her electricity had been disconnected due to non-payment. The retailer advised the customer that she had arrears of over \$3,000 and required a \$2,400 payment for reconnection. The customer informed EWON that she had offered to pay \$800 and then \$100 weekly, but that the retailer had refused her requested payment plan.

EWON contacted the retailer which initially refused to reconnect unless the customer paid \$2,400.

EWON requested further information and established that the customer had no history of disconnection and had not been on a payment plan, nor had there been a referral to the hardship program. The retailer argued that, as the customer had not contacted it prior to the disconnection, it was not obliged to offer access to the hardship program or provide a payment plan.

EWON noted that only one SMS message had been sent to the customer by the retailer after the final disconnection notice, and EWON pointed out that this did not constitute a satisfactory attempt at personal contact prior to disconnection. EWON also pointed out that the customer had tried to arrange a payment plan after disconnection. EWON indicated that the fact the customer was in receipt of Centrelink payments and was seeking EAPA, were indicators of hardship. On the basis that the attempt at personal contact was non-compliant, the retailer agreed to reconnect without an upfront payment. A referral to the hardship program was arranged and the customer was referred to a local agency for financial advice and support.

This retailer has not adopted the AER's Sustainable Payment Plans Framework.