



Failure of an energy retailer: An event with a very long tail

**Follow up report of the impact on customers
and EWON of failed retailer Jackgreen**

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20 SEPTEMBER 2013

Introduction

On 18 December 2009 the Australian Energy Market Operator (AEMO) suspended the electricity retailer Jackgreen from the national energy market. This led to a Retailer of Last Resort (ROLR) event, where existing Jackgreen customers in NSW were transferred to the appropriate ROLR – Country Energy, EnergyAustralia or Integral Energy.

In September 2010 EWON published a report entitled *Jackgreen – the failure of an energy retailer: The perspective of the Energy & Water Ombudsman NSW in dealing with Jackgreen customer complaints*¹.

EWON was in a good position to document issues arising from the failure of Jackgreen as a retailer in the national electricity market in Australia. Although Jackgreen operated in NSW, Victoria, and Queensland, most of its customers were in NSW (around 47,000). EWON had extensive experience with Jackgreen through complaints from its customers both before and after the company was suspended from the market by AEMO in December 2009.

We considered it important to document our perspective on the Jackgreen failure as an energy retailer, as this highlighted important issues for the energy retail industry, energy regulation, and the Retailer of Last Resort (ROLR) provisions.

This first report highlighted the significant issues for many Jackgreen customers both before and after the failure of the company.

Aftermath

The ROLR event in NSW went smoothly, and there were few complaints to EWON about this. However, in the years since Jackgreen's demise we have continued to receive complaints from former Jackgreen customers. This second report aims to show the continuing and long term impact of a retailer's failure on their customers. It also shows the impact on EWON as a dispute resolution body that with the support of industry members of the Scheme, has continued to assist former Jackgreen customers as far as possible.

Jackgreen customer complaints following the ROLR event

In the period December 2009 to the end of June 2013, EWON received 2116 complaints from former Jackgreen customers. Of these complaints:

- 772 were closed as Complaint Enquiries (information, advice, appropriate referral provided to the customers)
- 1344 were investigated by EWON.

Of the 1344 complaints that were investigated by EWON:

- 1290 resulted in a negotiated or facilitated resolution
- 54 were closed as No Further Investigation/Insufficient grounds.

Initially the majority of cases involved billing issues and debt collection action. Over time the more dominant issue became credit default listing. When some customers applied for

¹ This report is available at www.ewon.com.au

credit (loan, mortgage etc) years after the demise of Jackgreen, they found that their application for credit was declined because they had been credit default listed in relation to a Jackgreen debt.

Complaint handling in the absence of a retailer member

The EWON Board had approved EWON continuing to assist former Jackgreen customers, particularly as the company's marketing strategy had appeared to target many low income and disadvantaged households.

This assistance raised some challenges for EWON as we did not have a retailer to deal with in the usual way. We found ourselves in new territory, having to deal with third parties with whom an Ombudsman would normally not have any direct contact.

Receiver Managers: From 19 December 2009 to mid-2010 the Receiver Manager Jirsch Sutherland, appointed by the Jackgreen Board-appointed administrator PKF, retained a small team of Jackgreen's Credit Collection Officers.

EWON was contacted by customers about billing matters, in particular disputed billing and affordability issues. Many customers were subject to debt collection action, some for bills that they were disputing.

During this period the NSW Department of Industry and Investment approved assistance for Jackgreen customers in financial hardship by way of EAPA² to the sum of \$75,000.00. The objective was to assist eligible Jackgreen customers to finalise their accounts and to avoid debt collection action and credit default listing.

EWON was given special approval to assess the eligibility and amount of assistance to former Jackgreen customers in accordance with EAPA Guidelines. EWON needed to work quickly and efficiently to identify eligible customers, as we did not know how long the Receiver Managers intended to retain Jackgreen's Credit Collections Officers and IT officers to ensure the maintenance of billing and account systems. It was a very volatile and unstable period.

Over several weeks EWON staff met regularly with the Jackgreen staff in the former Jackgreen corporate office retained by the Receiver Managers to go through customer accounts and try to reach an outcome. EWON's independent review process was assisted by the co-operation of the former Jackgreen Credit Manager and her staff, who ensured there was transparent and prompt access to Jackgreen's billing system records for EWON's investigations staff. The availability of financial assistance through EAPA meant that in many cases EWON could negotiate debt reduction or waiver to finalise customer matters³.

The Receiver Managers were candid in acknowledging the problems with Jackgreen's operational practices and record management. However, their focus was, understandably for their role, to salvage funds for the major Jackgreen creditors. Similarly, while the

² Energy Accounts Payment Assistance

³ See EWON's first report – *Jackgreen: the failure of an energy retailer* Sept 2010, www.ewon.com.au

Receiver Managers advised that Jackgreen records at the time of the suspension would be retained and archived, they acknowledged that they were not prepared to contribute the ongoing financial outlay to ensure straightforward access to all of these records.

EWON also anticipated that we would likely be contacted by former Jackgreen customers for an extended period. This was based on the advice of former Jackgreen credit staff that Jackgreen had terminated its contractual arrangement with one of its mercantile agents around mid-2009 because of concerns about their unreliable record keeping, including default listing customers with active Jackgreen accounts.

Debt collection agencies: After mid 2010 most of the former Jackgreen account holders with arrears on their accounts were referred to one of two debt collection agencies, Stoneink Pty Ltd (Stoneink) and LedgeStone Pty Ltd (LedgeStone).

This was new territory for EWON as we would normally deal with the energy retailer about debt collection action rather than liaise directly with a debt collection agency. We had no jurisdiction in relation to these agencies and there was no authority to compel them to cooperate with EWON, or in fact to deal with us at all.

Similarly, exposure to an Ombudsman Office was new territory for the debt collection agencies. EWON's early case-based discussions with Stoneink's Managing Director and his credit manager and their openness to quickly developing an understanding of the Ombudsman's independence and objectivity, established the framework for EWON to retain access to Jackgreen's records for our investigations.

Stoneink proved to be very cooperative, and a very positive working relationship was developed with them. Stoneink had access to some, though not all Jackgreen records. However they did continue to contact the Receiver Managers to check if further information was available. Although they were under no obligation to assist EWON they acted professionally and efficiently in providing EWON with requested information, and they negotiated many fair and reasonable outcomes for the customers.

Unfortunately the same positive working relationship was not achieved with LedgeStone. LedgeStone's primary focus was to have a procedural mechanism in place to ensure that they were paid out promptly if they accepted EAPA as part of a customer's payment.⁴ LedgeStone was also aware of the significant problems with Jackgreen's accounting and record-keeping. In August 2010 their then CEO advised EWON that LedgeStone had regularly found anomalies with Jackgreen account numbers in their business dealings with Jackgreen, e.g. extra digits, missing digits featured regularly in Jackgreen's account records.

In June 2011 EWON's Investigations Manager met with LedgeStone representatives about complaints from former Jackgreen account holders whose account arrears were sold to LedgeStone Pty Ltd prior to Jackgreen's suspension from the market in December 2009. EWON advised that many former Jackgreen account holders had contacted EWON

⁴ Note: the Department of Energy which administers the EAPA Scheme supported former Jackgreen customers applying to EAPA agencies for assistance in paying their Jackgreen account arrears.

to request that we independently review the appropriateness of Jackgreen's invoicing of their accounts.

On 23 September 2011 EWON provided the new CEO of Ledgestone with a copy of the Ombudsman's report – *Jackgreen: the failure of an Energy Retailer*, September 2010 - on the range of issues we had identified with Jackgreen's billing system and business practices. We advised that the Ombudsman had also provided a copy of her report to the NSW Minister for Energy and the relevant regulatory authorities.

EWON provided Ledgestone with the details of a number of customer complaints, mainly in relation to credit default listings that were being handled by Ledgestone. Ledgestone's CEO agreed on two occasions to review this information, but we did not receive a response beyond this.

EWON investigated these matters as far as possible through the limited records being held by Stoneink. We provided the outcomes to Ledgestone but still did not obtain a response.

We were not able to take the matters with Ledgestone any further. However, we considered that former Jackgreen customers whose accounts were now being pursued by Ledgestone should not be disadvantaged because Ledgestone was (1) unwilling to review the appropriateness of Jackgreen's account records and the default listing of customers or (2) assist EWON to independently review Jackgreen customer complaints. As a result, customers were provided with a report of EWON's findings and referred to the credit default listing agency Veda Advantage and to the Consumer Credit Legal Centre NSW⁵.

EWON has clearly had very disparate experiences with the two mercantile agencies - Stoneink and Ledgestone - in relation to the management of complaints referred to us by former Jackgreen customers. Of the nine mercantile agents originally engaged by the Receiver Managers to collect Jackgreen debts, Stoneink eventually became the sole point of contact for EWON for access to records and for negotiated resolutions.

Sale of energy retail debt

Our experience of these mercantile agencies is pertinent to current developments in the credit collection industry involving essential service providers.

The sale of aged debt to mercantile agencies by energy retailers is a recent development in credit management in the essential service industry of energy. This development has generated discussion between energy retailers and Ombudsman offices about jurisdictional issues relating to complaints associated with the debt sale.

Some energy retailers have questioned whether the Ombudsman has a role in disputes related to the sale of debt because the retailer is no longer the owner of that debt. Some retailers also have an expectation that the Ombudsman will refer customers to the new owner/mercantile agency on this basis and in the expectation that the mercantile agent

⁵ Both the Consumer Credit Legal Centre NSW and Veda Advantage were cooperative and supportive in assisting former Jackgreen customers as far as possible.

will offer favourable terms to the customer who is willing to settle the matter on negotiated terms. EWON's dealings with Stoneink and Ledgestone have given us deeper insight into how variable the customer experience can be, and how fair and reasonable the outcomes may be subject to which mercantile agent is collecting or has purchased the debt⁶.

Jackgreen complaints as of mid-2013

Although the number of Jackgreen complaints has dramatically reduced over the years since 2009, a small number of complaints are still being received by EWON. Most of these customers are referred to EWON by Stoneink, as the former Jackgreen customers are disputing their accounts and/or their credit default listing.

Complaints investigated by EWON

The following are the types of issues that EWON has investigated and the assistance provided to former Jackgreen account holders.

Affordability

After the demise of Jackgreen on 18 December 2009, and while the Receiver Managers retained a small number of Jackgreen Credit Collection Officers, EWON negotiated assistance from the NSW Department of Industry and Investment. This resulted in the then Minister for Energy, the Hon John Robertson MLC, approving a special arrangement with respect to those customers identified as in debt for electricity consumption to Jackgreen and who were experiencing serious financial difficulty in paying those debts. He approved EAPA to the value of \$75,000.00 to assist those customers identified by EWON as vulnerable customers in financial hardship for health or other reasons.

EWON identified 148 customers eligible for assistance under the EAPA guidelines, most of whom were on a Centrelink pension or benefit.

The application of EAPA enabled EWON to further negotiate debt waivers to the amount of \$92,656.84, fee cancellations, and bill reductions. The assistance of EAPA was exhausted by mid-2010, when the Receiver Managers no longer engaged any former Jackgreen staff.

Case examples:

Case study 1.A

Mrs H had arrears of \$1934.61. She is a pensioner and has spent many months in hospital. She had suffered a stroke and has liver cancer.

EWON recommended EAPA of \$960 and the Receiver Manager representatives offered to waive the remaining outstanding amount of \$974.61, leaving Mrs H with a nil account balance.

⁶ EWON and other Ombudsman offices have published the guiding principles for our processes for dealing with debt sale matters.

Case study 1.B

Mrs G had arrears of \$2784.75. Mrs G is on a pension and is the sole carer for her 18 year old grandson who has a rare genetic illness where he needs an air-conditioner on all day and night to control abnormal temperatures. He is also on life support (Kangaroo Pump). She has struggled for years and her electricity bills increased to an amount that she could no longer afford.

EWON recommended EAPA of \$1590 and the Receiver Manager representatives offered to waive the remaining outstanding amount of \$1194.75, leaving Mrs G with a nil account balance.

Case study 1.C

Ms P had arrears of \$1735.49. She is a Newstart recipient but was unable to work because of health issues. She has three children and is behind in her rent payments. Jackgreen's records indicated that Ms P was struggling to pay her bills and had Centrepay in place for a long time. When her Centrepay arrangement dropped off, she still continued to make regular payments on her account.

With EWON's recommendation of \$750 in EAPA, her account balance was reduced to \$985.49. The Receiver Manager representatives agreed that if Ms P paid \$50 in May 2010 and \$50 in June 2010 they would write off the balance of \$885.49 in view of her circumstances.

Billing of accounts

The report *Jackgreen – the failure of an energy retailer* highlighted major deficiencies in Jackgreen's billing systems. EWON's investigations identified the following issues.

Pension Rebate

There were instances where Jackgreen had not applied the pension rebate to a customer's account. Without the availability of Jackgreen Customer Contracts or voice recordings, it is not known whether customers provided pension details when entering a contract with Jackgreen. In some cases this led to customers being credit default listed with Veda Advantage for an incorrect amount.

In some instances customers were credit default listed for an amount that included the Receiver Managers' administration fees.

EWON considers that if a customer is credit default listed for an incorrect amount, it is reasonable for the provider or their authorised agent to arrange with Veda Advantage for the removal of the listing for the incorrect amount.

In these cases, Stoneink updated the amount owing on relevant customer accounts to include the pension rebate and arranged for the removal of the credit default listing with Veda Advantage.

Billing and closure of accounts

There were cases where customers were billed for electricity consumption for a period after they advised Jackgreen that they had moved from the supply address. Jackgreen also closed some customer accounts based on highly over-estimated meter reads. This had occurred both before the ROLR event and as a result of the ROLR event.

Case examples

Case study 2.A

Mr S's account was closed on 18 December 2009. He was billed on an over estimated meter read, resulting in an overcharge of \$3379.09. Stoneink updated the amount owing on Mr S's account from \$3598.56 to \$219.47.

Case study 2.B

Ms D's account was closed on 17 September 2009. She was billed on an over estimated final meter read, resulting in an overcharge of \$473.37. Stoneink updated the amount owing on Ms D's account from \$916.08 to \$442.71.

Case study 2.C

Ms L's account was closed on 18 December 2009. She was billed on an over estimated final meter read, resulting in an overcharge of \$191.27. Stoneink updated the amount owing on Ms L's account from \$303.18 to \$111.91.

Bill Smoothing

Many customers were advised by Jackgreen marketers that they would pay an agreed amount per week or per month, however, this was not enough to cover consumption, and resulted in large catch up bills. Customers were led to believe that the agreed amount would be all that they needed to pay during a billing period. Jackgreen advised customers that they would reconcile their account every six months. However, by the time a customer's account was reconciled – (up to 12 to 15 months later in some cases) - the customer was not in a position to pay, and this led to significant affordability issues.

Incorrect information displayed on bills

There were instances where clear inaccuracies were displayed on customers' invoices, leading to significant confusion and considerable doubt that the customers had been billed appropriately.

Case examples

Case study 3

When Jackgreen finalised Ms C's account at her previous address on 30 June 2009, there was an amount outstanding of \$285.65 (debit). The first bill at her current premises should have shown an amount carried forward of \$285.65 (debit) and not \$285.65 (credit), therefore making the amount due on this bill \$497.47 (debit). Her next bill showed the amount carried forward as \$277.47(debit), when it should have been \$497.47(debit). This led to Ms C's confusion as to the actual amount owing on her account.

Credit default listing

As at 19 April 2013 EWON had investigated 96 complaints relating to credit default listings.

Of the 96 cases investigated, 67 credit default listings were deemed to be inappropriate or not in accordance with the *Credit Reporting Code of Conduct (March 1996)*⁷ for the following reasons:

- insufficient notification that a customer was at risk of being credit default listed
- credit default listing for an incorrect amount
- inappropriate marketing tactics
- notices not issued to the last known address.

There were also a number of customers who were bulk credit default listed on 10 February 2009 by Impact Collection Agency without prior notification.

Of the 67 credit default listings that were deemed inappropriate or non-compliant, 55 credit default listings were removed.

The remaining were credit default listed by either Ledgestone or Stoneink, and were provided with an EWON Investigation Report and referral letter to Veda Advantage and the Consumer Credit Legal Centre.

10 Ledgestone cases were considered to be inappropriate credit default listings. Even though Ledgestone did not assist EWON, we still investigated these complaints and provided a detailed Investigation Report to the customer, accompanied by a referral letter to Veda Advantage and the Credit Consumer Legal Centre. EWON considered that former Jackgreen account holders whose accounts were now being pursued by Ledgestone, should not be disadvantaged because Ledgestone was unwilling to assist with EWON complaints.

⁷ **Clause 2.7** A credit provider may report an overdue payment to a credit reporting agency:

- (a) once 60 days has elapsed since the day on which the payment was due and payable; and
- (b) if the credit provider has sent a written notice to the last known address.....

On 4 August 2010 EWON wrote to the Managing Director of Veda Advantage expressing grave concerns about the integrity of Jackgreen's billing information and requesting that they review all customers credit default listed by either Jackgreen directly or subsequently by the Receivers for the company. We suggested that in view of the serious doubts about Jackgreen account information, Veda Advantage should consider removing the credit default listing for all Jackgreen customers. Veda Advantage advised that while they were not able to do a bulk removal of Jackgreen listings, they would consider each credit default listing on a case by case basis.

Insufficient Notification

There were instances where customers did not receive notification of money owing to Jackgreen and were therefore not given the opportunity to query or dispute the arrears on their accounts. In some instances they advised that they were moving from the supply address and Jackgreen updated the supply address but not the postal address. As a result, those customers did not receive their final bill or any subsequent correspondence, resulting in a credit default listing placed against their name without any prior knowledge.

Case examples

Case study 4.A

Ms C was credit default listed by Jackgreen for arrears of \$155.00. She was only made aware of the arrears on her account after she applied for a loan for her father's funeral. Ms C's account was referred to Impact Collection Agency without notification. Jackgreen was still operating at the time that Ms C's account was transferred to Impact Collection Agency, and were therefore in a position to inform her by letter that she was at risk of being credit default listed for the arrears on her account. After she was credit default listed Ms C continued with the payment of the arrears on her account. Ms C experienced extreme distress when the first notification that she had been credit default listed was when the loan to pay for her father's funeral expenses was denied.

Case study 4.B

Ms O applied for a loan for her son's wedding, which was declined because she had been credit default listed for an amount of \$258.91. She received her final bill for \$88.62, which she paid in full. The amount owing was due to an accounting error by Jackgreen. Ms O was not issued with an amended bill notifying her that an error had been made. Nor was she issued with any advice that she was at risk of being credit default listed. There was insufficient information to determine who had actually credit default listed Ms O.

Case study 4.C

Mr L moved from the supply address and contacted Jackgreen to close his account. He provided a forwarding address but Jackgreen updated the supply address details but not the postal address. Mr L was not aware that there were arrears on his account until he was contacted by Stoneink. Stoneink applied a credit to Mr L's account as a goodwill gesture in recognition of the good payment history of his previous Jackgreen bills and arranged for the removal of the credit default listing.

Inappropriate marketing to vulnerable customers

EWON investigated a number of complaints that highlighted inappropriate marketing by Jackgreen, especially to vulnerable customers⁸.

Case example

Case study 5

Mrs S had been receiving a Disability Pension for the past 25 years following a major car accident. She was contacted by a marketer and advised that she would only ever have to pay \$100 per quarter for her electricity account. As her bills were never more than \$150 with her current provider she accepted a contract. When she received bills that were four times the average bill from her previous provider, she disputed them with Jackgreen. Mrs S's advice to EWON was consistent with the information contained in Jackgreen's Customer Contact Log, where she continually informed them that the marketer had advised that she would only have to pay \$100 per quarter, and that her bills with her previous provider were never more than \$150 per quarter.

EWON confirmed with Mrs S's previous provider that when she held her account with them her bills never exceeded \$150 per quarter. Jackgreen had also not applied the pension rebate to Mrs S's account. This information should have been obtained at the time of marketing. The amount owing on Ms S's account was \$906.20. Stoneink agreed to reduce the amount owing to \$350.00. This amount was calculated by reducing each of Mrs S's three invoices to \$150 each, totalling \$450.00, less her payment of \$100.00.

Conclusion

The support of the EWON Board for EWON to continue to assist Jackgreen customers has been strongly vindicated.

Many customers who contacted EWON were in great distress after finding that their applications for home loans, car and other loans, mobile phone and internet plans were declined due to a default placed against their name with Veda Advantage without their knowledge.

The affected customers, most of whom were vulnerable and with limited income, would have had few other avenues in which to pursue their complaint.

⁸ This was referred to in some detail in the first EWON report.

We anticipate that all Jackgreen complaints should cease at the end of the five year credit default listing period (give or take a couple of years depending on when the listing was made). However, on any view, the Jackgreen failure has had a very long tail for its customers and for EWON as a complaints handling body.

Attachment 1

Jackgreen Energy Customer Complaint Statistics (December 2009 – June 2013)

Table 1 – Complaint issue summary:

Issue	Count
Billing	928
Credit	803
Customer service	233
Transfer	103
Marketing	41
General	8
Total	2116

Chart 1 – Primary issues:

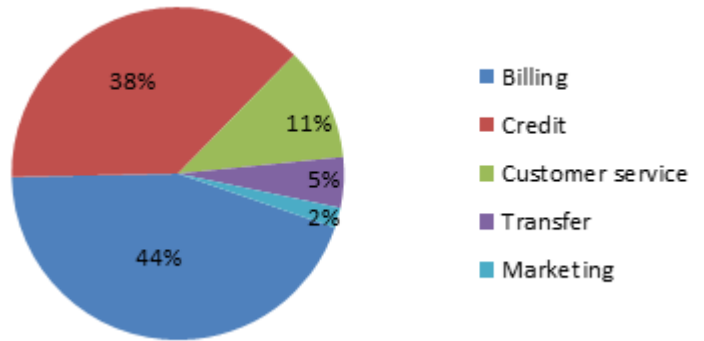


Table 2 – Top 10 Issues

Rank	Issue	Count
1	Credit > Collection > Debt Collector	334
2	Billing > High > Disputed	269
3	Credit > Payment difficulties > Current/arrears	213
4	Credit > Collection > Credit rating	196
5	Billing > Refund > Delay/error/form of refund	153
6	Customer service > Poor service	141
7	Billing > Error > Payment/deduction	108
8	Billing > Estimation > Meter access/not read	54
9	Customer service > Failure to respond	52
10	Billing > Other	51

Closed and opened cases

Table 3.0 – Open and closed cases:

Opened / Closed	Dec 2009	2010	2011	2012	Jan- Mar 2013	Apr- Jun 2013	Total
Opened	90	799	196	123	21	15	1280
Closed	72	794	198	148	23	17	1292

Table 3.1:

Cases open at July 2013: 13

Customer demographics (this information is not routinely collected)

Table 4.0 – Pension/Benefit:

Pension/Benefit	Dec 2009	2010	2011	2012	Jan- Mar 2013	Apr- Jun 2013	Total
No	6	60	30	15	2	4	117
Unknown	48	454	124	103	12	7	748
Yes	18	280	44	30	9	6	387
Total	72	794	198	148	23	17	1252

Table 4.1 – Public housing:

Pension/Benefit	Dec 2009	2010	2011	2012	Jan- Mar 2013	Apr- Jun 2013	Total
No	12	116	34	24	1	4	191
Unknown	58	651	151	119	20	11	1010
Yes	2	27	13	5	2	2	51
Total	72	794	198	148	23	17	1252

Table 4.2 – Location:

Location	Dec 2009	2010	2011	2012	Jan- Mar 2013	Apr-Jun 2013	Total
Inner regional	20	250	57	39	6	5	377
Major cities	50	476	119	90	10	11	756
Non-NSW	0	11	9	12	4	1	37
Outer regional	2	53	12	6	3	0	76
Remote	0	4	1	1	0	0	6
Total	72	794	198	148	23	17	1252

Table 4.3 – DLG Region:

DLG Region	Dec 2009	2010	2011	2012	Jan- Mar 2013	Apr- Jun 2013	Total
Central West	4	46	14	8	3	1	76
Hunter	8	108	28	14	0	4	162
Illawarra	17	113	30	15	1	1	177
Mid North Coast	6	63	6	6	2	0	83
Murray	0	3	0	1	0	0	4
Murrumbidgee	0	8	3	1	1	1	14
Non-NSW	0	11	9	12	4	1	37
North Western	0	26	4	3	2	0	35
Northern	1	33	11	6	1	0	52
Richmond-Tweed	1	64	8	7	0	1	81
South Eastern	3	13	2	3	0	0	21
Sydney Inner	4	67	11	19	3	3	107
Sydney Outer	22	166	50	40	4	4	286
Sydney Surrounds	6	73	22	13	2	1	117
	72	794	198	148	23	17	1252