



Energy & Water
Ombudsman NSW

POSITION STATEMENT

EWON's approach to dealing with Family Violence



Contents

Foreword	2
Definition and impact of Family Violence	3
Economic abuse in the context of utilities	3
Safety and privacy	4
Sensitive personal information	4
Special customer circumstances	5
Common scenarios - key issues and consequences	6
EWON's approach	8
Liability and consent issues	8
Joint accounts	9
Affordability and hardship assistance	10
Debt collection/default listing or loss of supply	10
Privacy and safety issues	11
Customer services issues	11

EWON's position statement

Foreword

Governments, corporations and social service organisations across Australia are mobilising with new resolve and a vision for generational change to stop domestic and family violence. This response to family violence is relatively new and the energy & water sector have expressed a commitment to learn from each other's experience and share understanding of best practice. In developing our position statement, EWON has drawn on the experience of others and sought the assistance of experts¹.

EWON has a critical role in assisting victims of family violence when it is revealed through our casework. Utility debt can be a key contributor

to the accumulation of household debt and financial insecurity for women experiencing family violence². EWON will continue to publicise the availability of our dispute resolution services including this Position Statement on family violence, given we play an essential role in resolving disputes between utility service providers and consumers where financial security is at risk.

EWON understands this will not be a linear process and is committed to a cycle of learning and iteration but that it is important to make a start. EWON commits to monitor the quality & effectiveness of our response to family violence.

¹EWON acknowledges the assistance of the Economic Abuse Reference Group, Essential Services Commission Victoria, Kildonan Uniting Care and particularly the Energy & Water Ombudsman, Victoria in the development of this position statement.

² EWON acknowledges that not all victims of family violence are women. However, because women are more likely than men to experience family violence, this document refers to women as the victims of family violence for ease of reference. In addition, the terminology abusive partner and victim are used. This is not to suggest that people experiencing family violence are devoid of agency or choice and is solely used for efficiency of terminology.

Definition and impact of Family Violence

Domestic and family violence is a crime. It's when there is violent, abusive or bullying behaviour or actions towards a partner or former partner to scare and control them. It can happen at home or outside the home. It causes fear and harm to the body, mind and spirit. Domestic and family violence can happen to anyone. It happens:

- › in every community
- › in all cultures
- › to young and old
- › to wealthy and poor
- › in any profession and level of education.

Although every experience is unique, family violence is not a one-off incident for many victims. It is a pattern of behaviour that involves an escalating spiral of violence. This can include physical and sexual abuse, as well as psychological, emotional or financial abuse – all designed to intimidate, undermine, isolate and control. It can also include violence or threats of violence against children, other family members and pets. Ultimately, it can be lethal. Abuse can continue after a relationship ends, with financial abuse a common strategy used to control victims post separation and a significant contributor to women's poverty.³

Economic abuse in the context of utilities

Substantial debts are often a consequence of economic abuse.⁴ Research indicates that it is common for an abusive partner to control utilities as a means to manipulate, control or punish a woman (e.g. cutting off the energy or water).

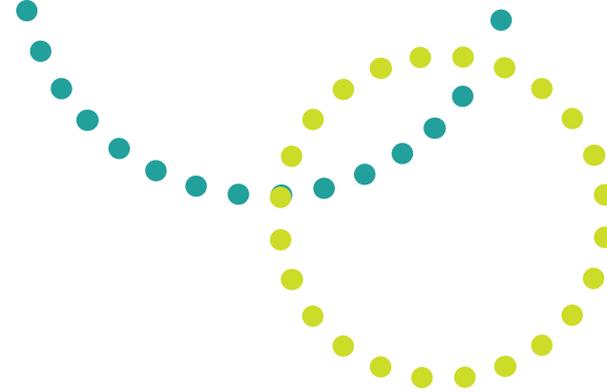
Avoidance of debts is also a common tactic among women who are currently living in a violent situation or who are recovering from a violent situation. This occurs for a variety of reasons, including that they have limited capacity to contact the utility providers and/or are overwhelmed when being confronted with paying household bills for the first time. When women do make contact with utility providers it is usually at the stage of disconnection or when the account is with debt collectors.

Due to heightened vulnerability, research indicates it is common for women to agree to take on the liability and debt which they are not responsible for when negotiating a new contract with their utility provider in order to move on from a violent situation or in order to establish a new residence and provide a safe and stable environment for their children. In some instances, they can be pressured to do so by retailers.⁵

² NSW Government "What is domestic and family violence? See www.facs.nsw.gov.au/domestic-violence/about/what-is-dv

³ Fiona Macdonald, Catalyst Paper 2 (2012) *Credit Debt and Economic Abuse*, p7.

⁴ CUAC Research Report (August 2014) *Helping Not Hindering: Uncovering Domestic Violence & Utility Debt*



Safety and privacy

The safety of customers and EWON staff is paramount.

If we think a customer is in immediate danger, we will contact emergency services by calling triple zero (000).

If there is no immediate danger, we may also refer the customer to 1800 RESPECT (1800 737 732) a 24-hour counselling, information and referral service for all Australians. We may also refer the customer to other support services, including financial counselling, housing, emergency relief and legal services.

In our initial contact with the customer, we will confirm:

- › What is the best and safest method for us to communicate with them?
- › Whether it is safe to phone them and or leave a voicemail message on their phone and
- › Is it safe to send an email to their email account?

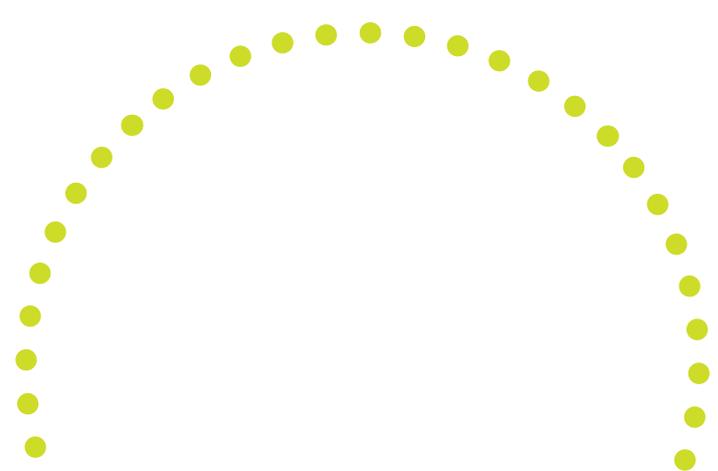
Other considerations include but are not limited to:

- › Processes in place to ensure we do not disclose the customers contact details to the abusive partner

- › Secure handling of contact information
- › When/how information relating to one joint account holder should not be disclosed and “hidden” to the other account holder
- › How/when customers/accounts should be “flagged” for the customers safety and to alert staff to possible risks
- › Dedicated EWON staff in order to minimise the need for customers to repeat information.

Sensitive personal information

EWON follows the principles contained in the *Privacy Act 1988 (Cth)*. Consistent with EWONs standard practice (as documented in our Case Handling Manual) when customers provide sensitive personal information when disclosing their complaint, we consider whether it needs to be detailed on our file. Where this information has a direct bearing on the customers complaint it may be sufficient to record the discussion more generally. If we consider that some of the sensitive information provided by the customer may assist in our discussions with the provider, we will request the customer’s agreement to discuss this information before reviewing it with the provider.



Special customer circumstances

When investigating complaints and establishing a fair and reasonable outcome for both parties, EWON has regard to laws and codes, good industry practice and other reference points, such as past case results or Binding Decisions, provider policies, relevant legal or technical advice, regulatory advice, and special customer circumstances.

Importantly however, EWON considers each complaint on its individual merits and outcomes will depend on the circumstances of the complaint.

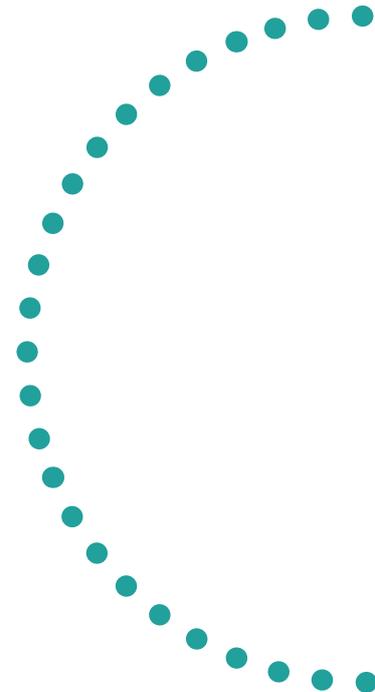
Extenuating circumstances, particularly those which create vulnerabilities for the customer (such as extensive health or medical issues, language and education barriers, disability or family violence), can be critical factors in establishing what would be a fair and

reasonable outcome for a particular case.

Family violence clearly creates special vulnerabilities for a victim, including legitimate concerns for personal safety or safety of family members, and sometimes the inability to engage with providers or EWON in the same manner as other customers. Often when attempting to sort out broader issues within their lives, energy or water debt will not be a high priority for customers who have experienced, or continue to experience, family violence, until the issue reaches a crisis point (such as supply being disconnected).

In situations where EWON is aware that a customer has been impacted by family violence⁶, EWON considers this to be a special customer circumstance relevant to establishing a fair and reasonable outcome.

⁶ EWON notes that customers often do not explicitly identify their experience of family violence. Past negative experiences when disclosing family violence abuse can mean a victim is reluctant to subsequently disclose the abuse. In addition, victims of abuse, particularly financial or economic abuse, may not be aware that what they have experienced is family violence. Sometimes EWON becomes aware of family violence through the context of the investigation, or because an investigations officer has built rapport and trust, so a victim is willing to disclose information about their circumstances.



Common scenarios - key issues and consequences

Family violence includes economic or financial abuse. Examples of utility related economic abuse can include scenarios where the abusive partner:

- › insists the account is in a victim's name and refuses to contribute to the cost
- › puts a service in the sole name of the victim without their knowledge or consent
- › holds an account jointly and refuses to contribute to the cost
- › holds an account in their name alone and does not pay the bills, resulting in disconnection
- › holds the account in their name and threatens to have the service cut off, or has it cut off, when they leave the family home.

EWON recognises that there can be a number of key issues which arise for the energy and water sector in handling these common scenarios:

1. There is no readily available legal remedy to sever joint liability where utility accounts are jointly held
2. When utility accounts are jointly held, the consent of both parties is generally required to remove an account holder's name or to access payment assistance.
3. There are often privacy barriers for the victim when the account is held in the abusive partner's name and the victim wishes to re-establish the account in their own name.
4. Debt can be transferred into a victim's name when establishing or transferring an account, sometimes with disconnection and reconnection fees.
5. In October 2019 the introduction of the AER Customer Hardship Policy Guideline will have a specific reference to family violence as a trigger for retailers to offer customers access to their hardship program.
6. Responsibility for water debt is linked to ownership of a property and a water account is always opened in the name of the property owner. The same issues that apply to joint energy accounts will apply where the ownership of the property is in joint names. If the residents are tenants then under the *Residential Tenancies Act 2010*, tenants are liable to pay a landlord for water usage. Sydney Water is being required by IPART to develop a family violence policy. It is likely that a similar requirement will be placed upon Hunter Water.

Common scenarios - key issues and consequences

These scenarios can result in the following:

Liability issues

including transfer of liability, continuing liability after vacating a property and questions about explicit informed consent - in order to maintain supply a victim may agree to debt transfer or to the payment of debts for which they are not legally responsible.

Joint liability

there can be challenges associated with finalising accounts after either partner has vacated the premises without contact/consent.

Affordability issues and hardship as a result of debt

a victim can be forced to bear the full cost of utilities to maintain supply or may have reduced financial capacity because of their circumstances.

Debt collection/credit default or loss of supply

non-payment (by a victim or a partner) may result in debt collection activity, default listing or disconnection/restriction of supply.

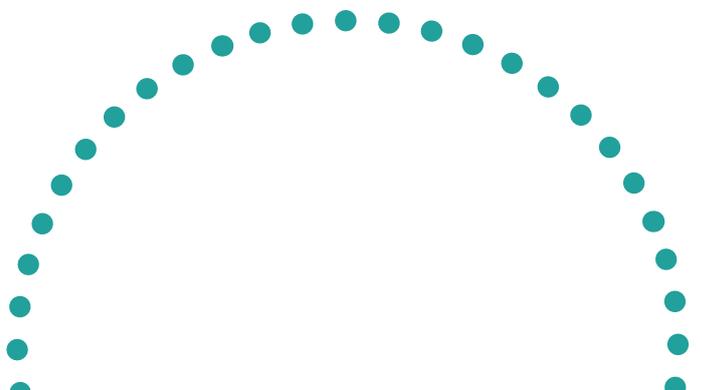
Concerns for privacy and safety

a victim's personal information, such as their new residential address, may be obtained by, or disclosed to, the abusive partner, threatening the personal security of the victim or other family members.

Customer service

a victim may experience customer service issues, such as an inability to get appropriate or empathetic assistance.

Complaints commonly incorporate a number of these issues and the potential impact is heightened by the essential nature of energy and water services.





EWON's approach

EWON considers each complaint on its individual merits and the outcome will depend on the particular circumstances of the complaint.

Family violence often creates particular vulnerabilities for the victim, and as a result, will carry significant weight for EWON's expectations about how a provider will address a customer's circumstances. It may also have a bearing on the type and quality of substantiation EWON would expect a family violence victim to be able to produce⁷.

The following information broadly outlines EWON's approach to the key issues and consequences of common scenarios.

Liability and consent issues

- › EWON will consider whether a provider can demonstrate documented explicit informed consent from the victim for EWON to be satisfied that they bear liability for the account. This is consistent with EWON's standard approach for marketing and transfer complaints where providers are asked to demonstrate that a customer gave informed and explicit consent prior to entering into a contract or establishing an account.
- › In circumstances where consent can be demonstrated, EWON will also consider whether there are other questions regarding liability, or whether there is other assistance which should have been offered, either from a regulatory compliance or customer service perspective (for example hardship assistance).
- › EWON will also consider the date from which it is appropriate for the victim to assume liability for charges. This is consistent with standard EWON treatment of issues where responsibility for billing is in question (for example, billing not commencing or being finalised correctly at a move in or move out date). Depending on the circumstances, EWON may expect a provider to commence an account in a victim's name at the date when the abusive partner moved out, or when the victim became responsible for the premises, and to pursue the abusive partner only for any outstanding debt.
- › If the victim is no longer at the property, but remains the account holder, EWON may expect the provider to finalise the account at the date the victim left the property.⁸
- › If there has been debt transferred from one account to another, EWON will consider both the legality of the transfer, and whether it was fair and reasonable in the circumstances. Even without family violence as a consideration, EWON generally views attempts to transfer debt to a customer (where the customer was not the previous account holder) as not fair and reasonable because the contract for that account was with the previous account holder, and they are the legally responsible party.
- › If payments have been made to the incorrect account by the victim, EWON will usually require these payments to be transferred to the correct account.⁹
- › EWON will consider the most appropriate outcome in the circumstances. For example, this may include a debt waiver or removal of a victim's name from the account.

⁷ If a victim of family violence has fled their home due to personal safety concerns, they may have limited access to relevant documentation. Family violence experts suggest that business should carefully consider the purpose of seeking evidence from victim-survivors of family violence. EWON's position is not to request evidence of family violence unless it is absolutely necessary.

⁸ This may be dependent on substantiation available. However, if substantiation is unavailable, EWON may still expect an account to be finalised at the date the victim advises they vacated the property (for example, if the victim fled the premises for personal safety reasons and has no access to documentation).

⁹ This may also be dependent on substantiation available.

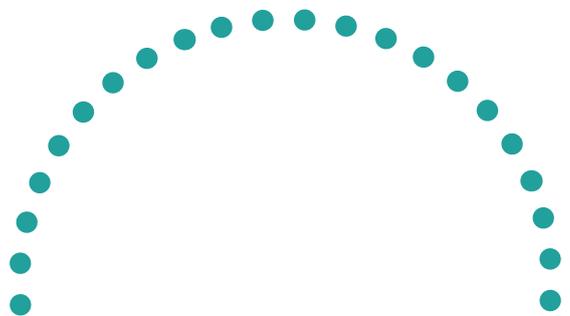
EWON's approach

Joint accounts - when the abusive partner has left the property

- › The issue of consent and whether the victim knew the account was established in joint names may be relevant. If there are questions about consent, EWON will generally require a provider to demonstrate that explicit informed consent was obtained from the victim when the account was established.
- › EWON may expect a separate account to be set up in the victim's sole name from the date the abusive partner left the property. If the provider believes that there are legal hurdles preventing it from establishing a new account in the victim's name alone, EWON would expect the provider to demonstrate this by reference to the relevant law or code.
- › Depending on the circumstances, EWON may require a provider to pursue part of the debt with the other account holder, even though the provider may have the legal right to pursue the whole debt from the victim. EWON will also consider whether the provider has a policy or standard practice about the pursuit of joint debt and would expect the provider to demonstrate how it has met the requirements of its own policy or standard practice.

Joint accounts - when the victim has left the property

- › Consent issues will remain relevant, and EWON will expect a provider to demonstrate documented explicit informed consent by the victim when the account was established.
- › If the victim can demonstrate when they moved out of the property, EWON may expect joint responsibility for the account to end on that date. This is consistent with EWON's approach as described above for standard move in/move out billing complaints and EWON's approach for deemed contract cases where family violence is not an issue.
- › Depending on the circumstances, EWON may require a provider to pursue part of the debt with the other account holder. This is especially so in circumstances where the provider has contact details for the abusive partner, or they are still residing at the premises.
- › If there is outstanding debt, EWON will consider whether the customer also requires hardship assistance, and what type of assistance would be fair and reasonable in the circumstances.
- › EWON may also consider whether it is appropriate in the circumstances for the provider to agree to offer an account to the customer for their new premises.



EWON's approach

Affordability and hardship assistance

- › Family violence, including financial or economic abuse, can often result in significant hardship or affordability issues for a victim. Knowledge about the customer's individual circumstances and experience of family violence can also reveal why the customer may have struggled to engage effectively in the past (for example, limited contact, sporadic payments or a complete failure to remain in contact or make payments).
- › Consistent with EWON's approach to standard affordability or hardship complaints, EWON expects that appropriate, relevant and tailored hardship assistance and payment support is offered to customers who have experienced family violence.
- › A provider's responsibilities to offer appropriate, relevant and tailored hardship and affordability assistance do not cease when an account has been finalised or closed, although these accounts may not require the same level of support as open accounts. The support required for open or closed accounts will depend on individual circumstances, and generally EWON will expect a higher level of support for customers who have experienced family violence than for customers who have not been family violence victims.
- › EWON would expect a provider to take a customer's experience of family violence and the consequences of that experience into consideration when assessing what support is available and appropriate. For example, when assessing their capacity to pay, eligibility for appliance replacement or access to a formal hardship program.

Debt collection/default listing or loss of supply

- › Consistent with EWON's approach to standard debt collection or default listing complaints, EWON will seek to establish whether debt collection is appropriate, and whether any listings have been made in accordance with legal requirements. Any consent or liability issues will be considered as part of this process.
- › As noted above, EWON will consider whether appropriate, relevant and tailored hardship assistance has been provided. In situations where there has been inadequate or inappropriate support or assistance, EWON will often require removal of a default listing.
- › EWON expects that providers will not unnecessarily or unreasonably place barriers to supply for family violence victims, which is consistent with EWON's approach to access of supply for all customers.
- › Where default listing has occurred when a provider is not aware of the customers experience at the time of the listing EWON expects the provider removes the listing

EWON's approach

Privacy and safety issues

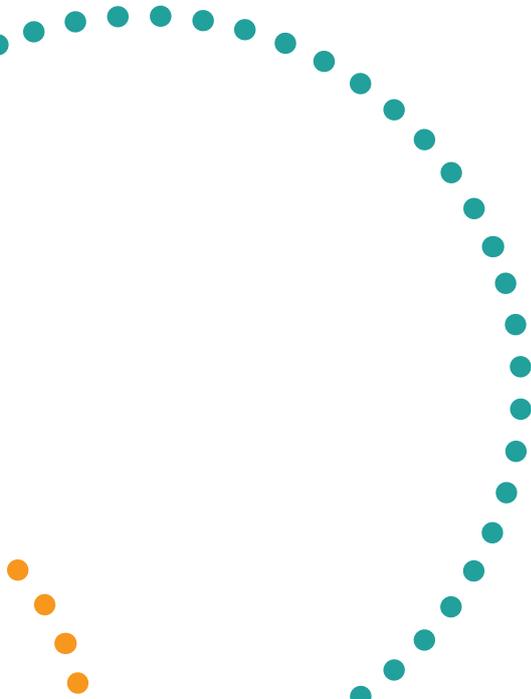
- › EWON expects that any issues giving rise to privacy breaches or other errors are addressed as quickly as possible, and information provided to confirm what action has been taken to address those breaches.
- › EWON may also expect recognition of customer service issues as a result of privacy or safety issues. For example, a provider may need to contribute towards, or pay in full, for emergency accommodation, or provide other financial compensation to recognise the impact on the customer. EWON may also expect the provider to treat the matter more urgently than for customers who have not experienced family violence.

Customer service issues

Poor customer service can adversely affect family violence victims in a disproportionate way - for example, having poor contact notes can require a customer to repeat intimate and difficult details to numerous staff members.

EWON takes customer service issues into account in any assessment of a fair and reasonable outcome. In the circumstances of family violence, the customer service experience may be particularly relevant to establish a fair and reasonable outcome for the complaint. Best practice may include:

- › the ability to get appropriate assistance from empathetic staff
- › calls back to mobiles, rather than placing customers on hold or making them wait a long time
- › good contact notes readily accessible by staff, so victims do not have to repeat their story
- › Providers adherence to their own Family Violence policies



A final thought

Industry and business response to family violence is relatively new, the energy & water sector have expressed a commitment to learn from each other's experience and share understanding of best practice.

We acknowledge we are not experts in family violence, nor do we have all the answers. However, EWON does have a critical role in assisting victims of family violence when it is revealed through our casework. In seeking to assist our customers we should seek to work with providers and to help not hinder.

Advice is that this will not be a linear process but a cycle of learning and iteration, but it is important to make a start.

In the words of family violence survivor, advocate and educator, Lisa McAdams:

“

If you are asking yourself, “how could I help?”, change the tone in that and ask yourself ‘how can I help?’ Because the smallest thing can make a difference.

”

Ms Lisa McAdams,

Domestic Violence survivor, advocate and educator.

Essential Services Commission Workshop August 2018