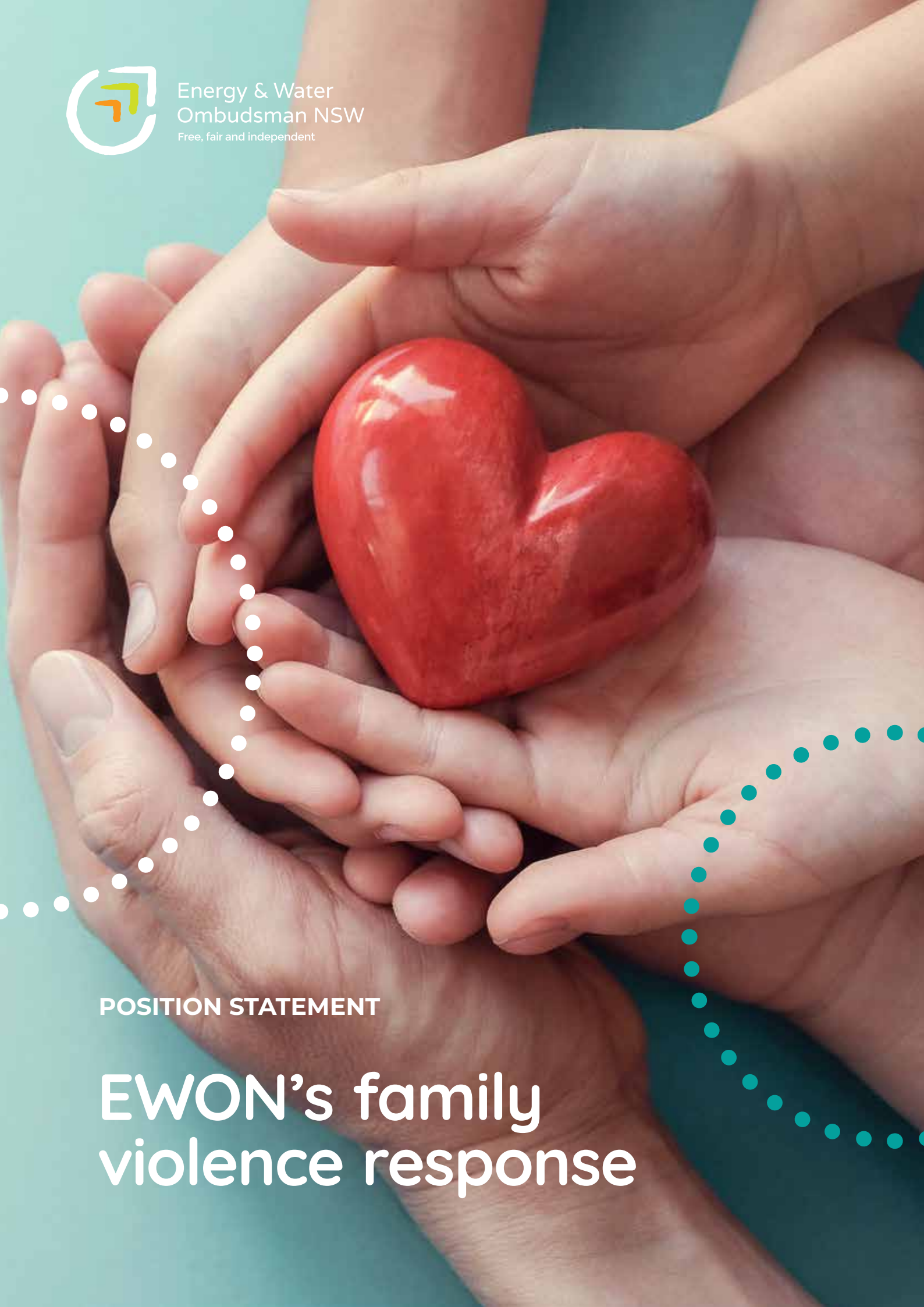




Energy & Water
Ombudsman NSW
Free, fair and independent



POSITION STATEMENT

EWON's family violence response



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EWON's position statement

Foreword

Governments, corporations and social service organisations across Australia are continuing to mobilise with new resolve and a vision for generational change to stop domestic and family violence. The energy and water sector has also considered and implemented ways that it can assist customers impacted by family violence. In developing our position statement, EWON has drawn on the experience of others and sought the assistance of experts.¹

EWON has a critical role in assisting victim-survivors 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 victim-survivors experiencing family violence. 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 and effectiveness of our response to family violence.

¹ EWON 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.



Definition and impact of family violence

Family violence is a crime. It's when there is violent, abusive or bullying behaviour or actions towards a victim-survivor 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. 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.

The energy sector uses a broad definition of 'family' when looking at the types of relationships within which abuse may occur – including where one person is a carer of the other, or where the relationship is established under Aboriginal and Torres Strait Islander kinship rules.²

Although every experience is unique, family violence is not a one-off incident for many victim-survivors. 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 victim-survivors 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 a perpetrator to control utilities in order to manipulate, control or punish a victim-survivor (e.g. cutting off the energy or water).

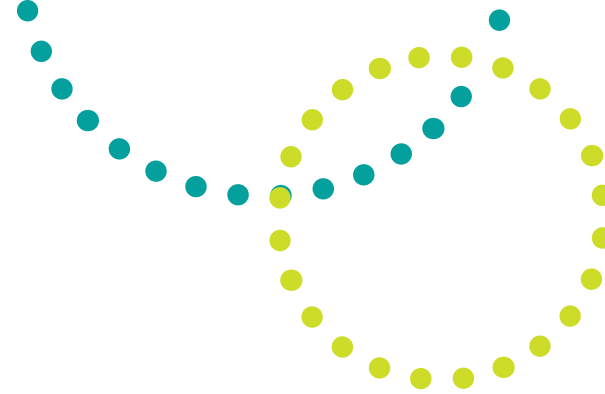
Avoidance of debts is also a common tactic among victim-survivors, who are currently living in a violent situation or who are recovering from a violent situation. This occurs for a variety of reasons, including that they have limited capacity to contact the utility providers and/or are overwhelmed when being confronted with paying household bills for the first time. When a victim-survivor does 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 a victim-survivor 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.

² Family violence has the meaning given to the term "domestic abuse" in section 8(8) of the *Intervention Orders (Prevention of Abuse) Act 2009 SA*

³ Fiona Macdonald, Catalyst Paper 2 (2012) *Credit Debt and Economic Abuse*, p1.

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:

- › 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
- › If it is safe to send an email to their email account

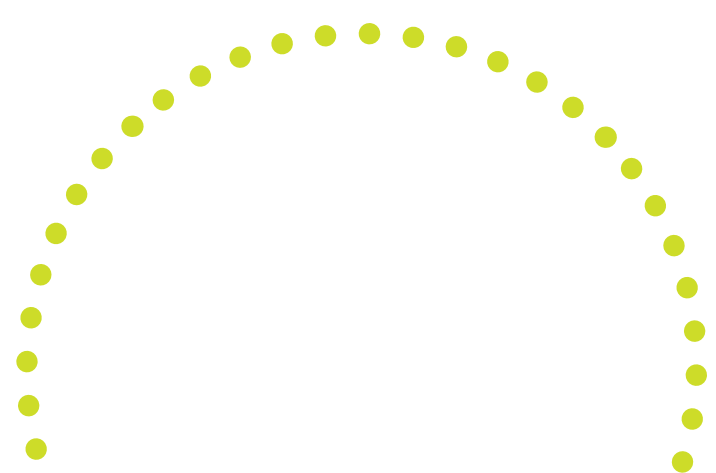
Other considerations include but are not limited to:

- › Ensuring we do not disclose the customers contact details to the perpetrator
- › 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 to manage the complaint so that the customer doesn’t need to repeat information.

Sensitive personal information

EWON follows the principles contained in the *Privacy Act 1988 (Cth)*. Consistent with EWON’s 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 considers 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.

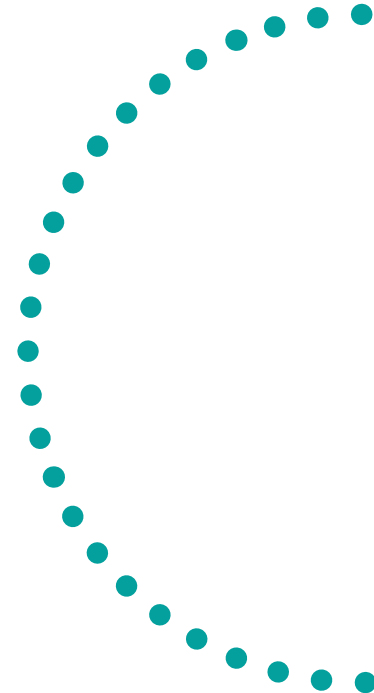
Importantly however, EWON considers each complaint on its individual merits and outcomes will depend on the circumstances of the complaint.

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-survivor, 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 violence,⁵ EWON considers this to be a special customer circumstance relevant to establishing a fair and reasonable outcome.

⁵ 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-survivor is reluctant to subsequently disclose the abuse. In addition, victim-survivors 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-survivor 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 perpetrator:

- › insists the account is in a victim-survivor's name and refuses to contribute to the cost
- › puts a service in the sole name of the victim-survivor 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-survivor when the account is held in the perpetrator's name and the victim-survivor wishes to re-establish the account in their own name.
4. Debt can be transferred into a victim-survivor's name when establishing or transferring an account, sometimes with disconnection and reconnection fees.

5. The AER Customer Hardship Policy Guidelines has a specific reference to family violence as a trigger for retailers to offer customers access to their hardship program. The National Energy Retail Rules (NERR) place obligations on energy retailers to better support customers impacted by family violence. It includes the requirement for energy retailers to publish a family violence policy that applies to residential and small business customers for both open and closed accounts
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 there are specific regulations that require them to pay a landlord for water usage, if the property is separately metered.

Sydney Water and Hunter Water have both developed family violence policies, as required by IPART.

Common scenarios – key issues and consequences

These scenarios can result in the following:

<p>Liability issues</p>	<p>Transfer of liability, continuing liability after vacating a property and questions about explicit informed consent. To maintain supply a victim-survivor may agree to debt transfer or to the payment of debts for which they are not legally responsible.</p>
<p>Joint liability</p>	<p>There can be challenges associated with finalising accounts after either partner has vacated the premises without contact/consent.</p>
<p>Affordability issues as a result of debt</p>	<p>A victim-survivor can be forced to bear the full cost of utilities to maintain supply or may have reduced financial capacity because of their circumstances.</p>
<p>Debt collection/credit default or loss of supply</p>	<p>Non-payment (by a victim-survivor or a perpetrator) may result in debt collection activity, default listing or disconnection/restriction of supply.</p>
<p>Concerns for privacy and safety</p>	<p>A victim-survivor's personal information, such as their new residential address, may be obtained by, or disclosed to, the perpetrator, threatening the personal security of the victim-survivor or other family members.</p>
<p>Customer service</p>	<p>A victim-survivor may experience customer service issues, such as an inability to get appropriate or empathetic assistance.</p>

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-survivor, 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 that a family violence victim-survivor may be able to produce.⁶

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-survivor 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 affordability assistance).
 - › EWON will also consider the date from which it is appropriate for the victim-survivor 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-survivor's name at the date when the perpetrator moved out, or when the victim-survivor became responsible for the premises, and to pursue the perpetrator only for any outstanding debt.
- › If the victim-survivor 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-survivor left the property.
 - › 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-survivor, EWON will usually require these payments to be transferred to the correct account.
 - › EWON will consider the most appropriate outcome in the circumstances. For example, this may include a debt waiver or removal of a victim-survivor's name from the account.

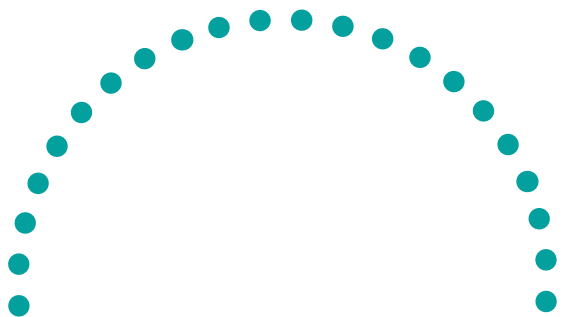
⁶ EWON's position is not to request evidence of family violence. If a victim-survivor of family violence has fled their home due to personal safety concerns, they may have limited access to relevant documentation.

Energy retailers are not allowed to ask an affected customer to provide any documentary evidence as a precondition to applying rules under the NERR or the retailer's family violence policy. Family violence experts suggest that business should carefully consider the purpose of seeking evidence from victim-survivors of family violence, however we recognise that some information may be requested depending on the outcome sought and the resolution being offered by the provider.

EWON's approach

Joint accounts

- › The issue of consent and whether the victim-survivor 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-survivor when the account was established.
- › EWON may expect a separate account to be set up in the victim-survivor's sole name from the date the perpetrator left the property. If the provider believes that there are legal hurdles preventing it from establishing a new account in the victim-survivor'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-survivor. Before a provider can take action to recover a debt, rules in the NERR require it to consider the impact on the victim-survivor and whether other people may have been responsible for the debt. 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.
- › Consent issues will remain relevant, and EWON will expect a provider to demonstrate documented explicit informed consent by the victim-survivor when the account was established.
- › If the victim-survivor 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 perpetrator, or they are still residing at the premises.
- › If there is outstanding debt, EWON will consider whether the victim-survivor also requires affordability 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 victim-survivor for their new premises.



EWON's approach

Affordability assistance

- › Family violence, including financial or economic abuse, can often result in significant affordability issues for a victim-survivor. 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, irregular payments or a complete failure to remain in contact or make payments).
- › Consistent with EWON's approach to standard affordability complaints, EWON expects that appropriate, relevant and tailored assistance and payment support is offered to customers who have experienced family violence. Energy retailers are required to recognise family violence as a likely cause of a residential customer needing affordability assistance.
- › A provider's responsibilities to offer appropriate, relevant and tailored affordability assistance do not cease when an account has been finalised or closed. 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. The same support should also be offered to small business customers impacted by family violence.
- › 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, eligibility for appliance replacement.

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.
- › Before a provider can take action to recover a debt, rules in the NERR require it to take into account consider the impact on the victim-survivor and whether other people may have been responsible for the debt.
- › As noted above, EWON will consider whether appropriate, relevant and tailored hardship affordability 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 victim-survivors, 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

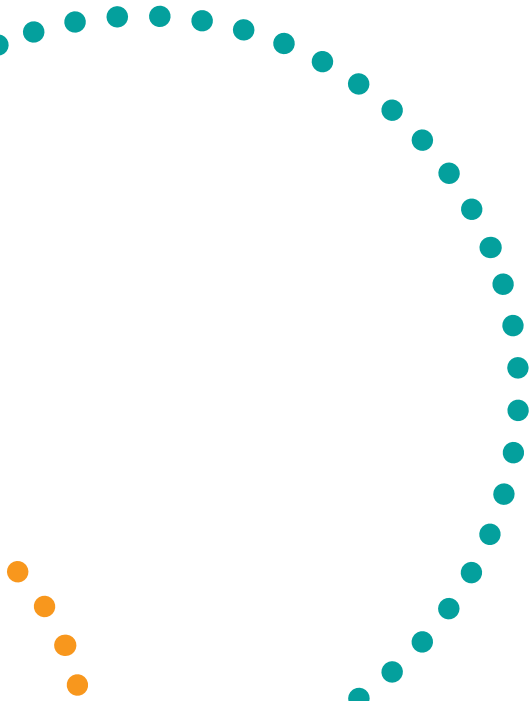
- › Energy providers must have regard firstly to the safety and the circumstances of the victim-survivor as an energy customer.
- › Energy providers must not disclose confidential information about a victim-survivor to any other person, including joint account holders, without their consent. EWON expects 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 will also report those breaches to the relevant regulator.
- › 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 victim-survivors in a disproportionate way - for example, having poor contact notes can require a customer to repeat intimate and difficult details to numerous staff members. Energy providers must make a victim-survivors account easy to identify to avoid repeated disclosure and use their preferred communication method.

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
- › a secure process that provides a method to easily identify the account of a victim-survivor. This includes account passwords and good contact notes readily accessible by staff, so victim-survivors do not have to repeat their story
- › providers' adherence to their own family violence policies.



A final thought

The energy and water sector's response to family violence is progressing from being relatively new, to all providers expressing a commitment to improving protections for victim-survivors of family violence.

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 victim-survivors 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