

5 June 2012

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Independent Reviewer
2012 Review of the Credit Reporting Code of Conduct
By email: codeofconduct@arca.net.au

Thank you for the opportunity to comment on the *Issues Paper: Credit Reporting Code of Conduct - 2012 Review*.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers.

Customer complaints to EWON about credit default listing issues

There has been an increase in the number of customers complaining to EWON about a credit default listing for an energy debt, and we anticipate this upward trend to continue:

	2009/2010	2010/2011	2011/2012 Year to date ¹
EWON credit default listing cases ²	280	438	621
Total EWON cases	15048	17559	22688
Credit default listing cases as a percentage of all EWON cases	1.86%	2.49%	2.74%

See *Attachment One: EWON case examples*.

For ease of reference we have adopted the same numbering as the *Issues Paper*.

¹ Year to date as at 29 May 2012

² These EWON case numbers consist of enquiries, complaints referred back to higher level at the company and investigated complaints.

1.11.2 Government Response: Notification requirements prior to listing of missed payments

The Issues Paper highlights some of the difficulties concerning notification processes and the timing of the notification to a customer about their credit listing. We note that the Government's position is:

*"it is expected that any notice would be sufficiently connected in time to when the default is intended to be listed"*³.

EWON would support clear guidance on the customer notification requirements. This may improve customer awareness that they are to be credit default listed, and prompt customers to make contact with their energy/credit provider about payment of the debt (or dispute of the debt).

Customers contact EWON when they have been denied credit based on an old energy debt and they dispute this listing. Many customers report that this is the first they are aware of the debt and/or listing. Generally customers have been unable to resolve the complaint with their energy provider and then contact EWON for assistance. In many cases the customer pays the debt as soon as they become aware of it, however are not able to have the listing removed.

1.11.5 Implications of the Exposure Draft provisions on the ARCA position Notification Prior to Listing a Default

The Issues Paper states:

*Whilst the requirement is a 'reasonable period to have passed' prior to listing a default, there is no requirement for 'proximity' to that notice. It therefore remains unclear as to whether a single blanket notification is sufficient...it may be worth making provision in the Code for some aspect of proximity as a means of enhancing customer's awareness of the implications of potentially reaching the default threshold."*⁴

Based on EWON's experience, some customers are credit default listed but there is a delay in the listing, sometimes up to several years after the subject debt arose. This means that the negative impact on a customer's credit report will continue well beyond the usual five year period of a credit default listing. It may also run over the standard period of time a provider has to take legal action to recover a debt. It seems unreasonable and unfair for the effects of a debt to be prolonged in this way. *See Attachment Two – EWON case examples of delayed credit listing.*

³ Issues Paper pg 26

⁴ Issues Paper pg 28

The Telecommunications Industry Ombudsman (TIO) has adopted the approach that an overdue account should not be credit listed more than one year after the account due date⁵. EWON would support provisions in the Code for detail on when a debt can be listed to address this issue.

1.21 Complaints Management

EWON supports clear complaint handling procedures for credit providers and Credit Reporting Agencies (CRAs) to ensure customer disputes are handled in a timely, fair and efficient manner⁶. EWON strongly endorses the position that customers are advised upfront of the dispute resolution avenues available to them if the provider or CRA are unable to resolve the complaint. It is important that customers are aware of the assistance industry ombudsmen schemes such as EWON, can provide.

We note that the Issues Paper canvasses two approaches to customer complaint handling. One, recommended by the Australian Law Reform Commission, is that the credit provider is responsible for the resolution of a customer's complaint in the first instance. The Government's alternative proposal is that the onus for complaint resolution is on the organisation which the customer contacts in the first instance – either the CRA or credit provider.

EWON supports the aim to make the complaint handling process as simple as possible for customers, and stop situations where customers have to “go back and forth between the parties”⁷. As noted in the Issues Paper credit providers and CRAs “would need to be required to take the necessary steps to attempt to resolve the complaint, including liaising with and obtaining information from the other relevant body...”⁸

If a customer is disputing the energy debt listed on their credit report it appears practical that the energy provider that listed the debt would be the best party to handle the customer's complaint in the first instance, however they may approach the CRA or the financial institution. Robust procedures and guidelines as well as effective contact and information sharing arrangements would need to be in place for this process to work effectively.

⁵ See TIO position paper: See position paper on Credit Default Listing:
http://www.tio.com.au/_data/assets/pdf_file/0014/9032/DISPUTED-DEFAULT-LISTINGS.pdf

⁶ Issues Paper pg 42

⁷ Issues Paper pg 43

⁸ Issues Paper pg 43

In this context it is worth noting the processes of the External Dispute Resolution services such as EWON. The industry Ombudsmen schemes require the customer to have raised their complaint with their provider in the first instance. If a customer contacts EWON and has not spoken to their energy provider we refer them back to the energy company to allow the company the opportunity to resolve the complaint.

EWON recommends further consideration with industry, community sector, ombudsman schemes and other stakeholders on the practicalities of both approaches. Regardless of the final approach, EWON supports the clear complaint handling procedures and information for customers and industry stakeholders.

Other issues for consideration

Minimum amount for credit listing

EWON is concerned that some customers are being credit listed for quite small amounts, resulting in adverse outcomes out of all proportion to the debt⁹. Most unpaid utility debts that arise when a final bill issues after the customer has moved out of the premises represent usage over one three-month period, and often less than that if the customer moved out during the billing quarter. Failure on the customer's part to provide a forwarding address, or failure on the part of the retailer to send the bill and notices to the forwarding address provided, can result in the customer being credit listed without receiving the appropriate notice. This is a source of considerable stress for customers who may have paid the debt as soon as they became aware of it. The credit listing is notated to reflect the payment, but the customers are still denied credit.

EWON supports a minimum amount being prescribed but suggests that a more realistic definition of "the amount of overdue payment" would be in the order of at least \$300¹⁰. This would exclude small utility bills from the adverse consequences of credit listing.

It is notable that a credit default listing is for a period of 5 years regardless of whether the listing is for a debt of \$300 or \$30,000. While it might be expected that credit providers might take this into account, it appears from customer reports that this is not the case, and that credit is denied regardless of the level of the debt. It has been suggested that another option could be a 'sliding scale' where the

⁹ We believe a sizeable number of customers are being credit listed for small amounts (\$100-\$300) eg in a recent sample of 218 credit listing cases from 1 January – 31 October 2011 there were 66 cases (ie 30%) where the amount was for less than \$300.

¹⁰ EWON Submission to Senate Finance and Public Administration Committee *Credit Reporting Exposure Draft* available at www.ewon.com.au

credit default listing is for a period relative to the amount of the debt, e.g. \$1000 or less = 1 year listing; \$1001 to \$5000 = 2 years listing; \$5001 to \$10,000 = 3 years listing etc.

EWON would appreciate the opportunity for further discussion of these matters with stakeholders, or consideration of an industry or sector approach to address these matters which may be particular to the energy industry.

Conduct of credit fix and credit repair agencies

EWON is concerned about the rise of enquiries from credit fix and credit repair services who contact EWON for assistance on behalf of their clients¹¹. Like other ombudsman offices, EWON's dispute resolution services are free to consumers. It is a concern that many consumers incur unnecessary expenses by engaging a credit repair agency to undertake a service that EWON provides free of charge. (In one case involving credit listing for a Jackgreen debt of less than \$500, the customer advised that they were charged \$1,000 in advance and would be charged another \$1,000 if the credit default listing was removed.)

This is a shared concern with Ombudsman schemes in energy and other jurisdictions. EWON has developed a response which is on our website and is now part of our training for staff. We have also amended the EWON Authority to Act Form. *See Attachment Three: EWON policy on paid advocates.*

Some customers who we contact choose to deal with EWON directly rather than stay with a paid agent. However, they have generally already signed a contract with the credit repair agent and paid substantial fees upfront. Some customers who we contact advise that the information provided to EWON by the credit repair service about the customer's situation is not accurate. EWON is concerned by these examples of poor practices and standards of some of these services.

We understand that there is interest to establish an industry association, Credit Repair Industry Association of Australasia (CRIAA), to improve the conduct of the industry and possibly establish a dispute resolution service for consumers. EWON supports this approach. In the context of a review of the Code EWON also suggests that there needs to be consideration of rigorous ways to regulate and monitor these services.

¹¹ Agencies contacting EWON include: Clean Credit, MTA Credit Partners, Credit Repair Australia, Princeville Credit Advocates, Fix Credit Australia, Visage Credit Solutions, We Fix Credit.

Case study

- EWON was initially contacted by a credit repair agency on behalf of a customer who was disputing a credit listing. EWON contacted the customer to confirm some information. The customer had not been told that the agent had approached EWON on her behalf and did not advise her that EWON offers a free service. The customer advised that she wanted to deal with EWON directly. The agent had been unsuccessful liaising with the credit reporting agency prior to contacting EWON, and was not able to have the credit default removed. EWON was able to have the default removed on the basis of an incorrect referred amount for the listing. The customer said she had already paid the agent \$1600. She requested a refund on the basis that EWON was doing their work for them and they failed to inform her that EWON is a free service. The agent offered to refund all but \$500. The customer was not happy about this but decided not to pursue it as she was extremely happy with the result through EWON. The customer made an arrangement to pay the arrears on her account.

If you would like to discuss this matter further, please contact me or Emma Keene, Manager Policy on 02 8218 5250.

Yours sincerely



Clare Petre
Energy & Water Ombudsman NSW

Attachment One – EWON credit default listing case studies

Case study 1

The customer applied for a loan and discovered he had been credit listed for \$440 in May 2010. He advised that he had closed his account in December 2009, as he was moving and gave the retailer a forwarding address. He said that he did not receive the final bill or any further correspondence from the retailer. Once the customer became aware of the debt he said he rang the retailer and confirmed the forwarding address was incorrect and he paid the account in full, however the retailer refused to remove the listing. EWON's investigation identified that there was a spelling error with the forwarding address, and in addition, the notice of credit listing was sent to the wrong address. On this basis the retailer agreed to withdraw the credit listing. EWON reviewed the voice recording of the customer's call to the retailer which highlighted that the customer provided the retailer with the correct forwarding address but this was recorded incorrectly in the retailer's system.

Case study 2

The advocate (a credit repair agency) advised that the customer was credit listed for \$114 and the retailer had refused to provide details of the listing but has advised that \$40 of the amount was a disconnection fee. The customer did not believe the listing is fair and would like the retailer to review. EWON's investigation identified that this listing was non compliant due to the lack of notices to the customer that the debt was overdue and would be sent to a collection agent, and on this basis the retailer agreed to withdraw the listing.

Case study 3

The customer returned to EWON after a Referred to Higher Level (RHL) complaint as she was not satisfied with the retailer's response. She moved in October 2010 and acknowledges she forgot to pay the final bill due to an oversight on her part. In January 2011 she was contacted by a debt collector and paid \$161.40. She applied for a home loan and discovered she had been credit listed. She contacted the retailer and was told the listing could not be removed. EWON's investigation identified that the customer had been credit listed twice, the first time for \$2.78 one month prior to the rest of the outstanding amount. This listing fell within the 60 day time frame from when final bill issued. The retailer had appropriately listed her for an amount of \$158. On the basis of EWON's findings the listing was removed.

Case study 4

In February 2011 the customer discovered she had been credit listed for a debt of \$205 from March 2007. She considered that her bills were paid up until she

moved out of the event address in July 2005. EWON's investigation found that the customer had been credit listed for charges incurred about 12 months after she had left the address. The real estate agent provided certification that the customer had left the address by this time. It appeared that the intervening bills had been paid by the next occupant who did not open an account. The retailer agreed to remove the listing in the circumstances.

Case study 5

The customer applied for a loan in October 2011 and discovered she was credit listed for \$914 incurred after she moved in August 2005. She believes that she closed her account and paid all arrears for the period that she resided at the property. The retailer refused to remove the listing, which appears to have been listed in October 2008. As a result of EWON's investigation the customer provided rental records to show that she had left the address as advised. The retailer removed the listing and advised they will write off the debt.

Case study 6

The customer advised she had an account with Jackgreen and she had an amount owing for \$486 from 2009, which she paid off in instalments. She was not advised that she was at risk of being credit listed. She has recently applied for a credit card and it was denied as this amount has been listed. She paid the amount and wanted the listing removed urgently as she was going overseas and needed a credit card. EWON's investigation identified that the customer was credit listed in 2009 as part of the bulk listing process, without prior notice, while Jackgreen was still in business. The customer had been making regular payments, demonstrating a commitment to pay the arrears on her account, and the account was paid in full. On this basis EWON recommended to the debt collection agency that the listing be removed.

Case study 7

The customer had had a previous incorrect credit listing removed when Jackgreen was still in business. The customer recently tried to refinance his home loan and discovered the credit listing had been reinstated and he could not refinance as a result. In the course of EWON's investigation the mercantile agent agreed that it appeared that they had listed him in error and agreed to remove the listing. Because this would take a few days, in the interim, they would mark the listing as "in dispute" so that if any enquiries were made on his credit history it would be clear there was action being taken.

Case study 8

The customer is a sole parent with a debt of approx \$1100 which was referred to a collection agency, from a final bill in 2009. The customer said she spoke to the

retailer who agreed to withdraw the debt and establish a payment arrangement of \$150 per fortnight. When her husband left 5 months ago she contacted her retailer and they agreed to reduce the payment plan to \$50 per fortnight. Around this time she became unemployed however she said she continued to make payments as the retailer had advised she would not be credit listed so long as she continued making payments. She contacted the retailer when she found she had been credit listed for \$156 and was told by the CSR that she had been “black listed”. She does not recall any advice about the possibility of credit listing. The customer was extremely distressed by this. EWON’s investigation found that it appeared the customer’s account was sent to collections and then credit listed while there was an open billing complaint for the \$156 amount. The retailer agreed to recall the debt from collections and waive the arrears in light of the account charges being disputed prior to being sent to the collection agency and default listed. As well, the retailer advised that in light of the customer’s financial situation, and the default listed in error, they would waive the remaining account balance of \$156.21.

Attachment Two: Case Studies – EWON complaints about delayed credit listing

Case study 9

Customer contacted EWON in May 2011 and advised that he had defaulted on an overdue account in September 2006, however he was not credit listed until April 2008, one year and seven months after the default occurred. The customer said he is being ‘unfairly punished’ and would like the listing removed. The customer was referred back to his retailer as he had not contacted them. The customer subsequently returned to EWON in September 2011 dissatisfied with the retailer’s response. EWON’s investigation confirmed that while the credit listing appeared to be in accordance with the Credit Reporting Code of Conduct, 546 days had passed between the due date of the final bill and the referral for listing and on this basis the retailer agreed to remove the default listing effective from February 2012.

Case study 10

The advocate (credit fix agency) advised that the customer was default listed in April 2008. The customer said he did not receive any reminders or notices about the outstanding amount and would like EWON to review the matter. EWON’s investigation confirmed that the final letter of demand was issued in October 2006, but the customer was not credit listed until April 2008, on this basis the retailer agreed to remove the listing.

Case study 11

The customer advised that he was renting and moved out of a property in May 2005 and he disputed the final bill for \$126, as it had a different supply address. He did not pay the bill and said he did not receive any further contact from the retailer. He recently discovered he was credit listed for two amounts, the \$126 debt and \$228. The \$126 disputed amount has now been removed, as 5 years have elapsed since July 2005, however the second amount was not placed on his credit report until 18 months later in October 2006. The customer is disputing the credit listing and would like it removed. He agreed to have this matter referred back to the retailer at a higher level.

Attachment Three – EWON Policy on paid advocates and Authority to Act form

<http://www.ewon.com.au/index.cfm/making-a-complaint/>

complaint until we receive the Authority to Act form.

Note about representatives or advocates who charge their clients a fee

EWON provides a free service for all energy consumers in NSW and some water consumers. Consumers are not charged for EWON's services when they contact us for assistance with the resolution of complaints.

If EWON is contacted by a representative on behalf of a consumer we require an authority from the consumer, either verbally or in writing. (EWON has an Authority to Act Form for this purpose.)

Where it appears the representative is charging the consumer in relation to any aspect of the matter referred to EWON, we will contact the consumer directly and advise them that our service is free. If the consumer chooses to continue to be represented by their agent for a fee, the consumer's wishes will be respected and EWON will deal with their agent.

If the consumer advises that they wish to deal directly with EWON to avoid incurring any costs, we will confirm this in writing to the consumer and deal directly with them regarding their energy or water complaint. It is the consumer's responsibility to advise the agent of their decision to deal directly with EWON.

This approach to paid representatives is consistent with other members of ANZEWON, the Australia and New Zealand Energy & Water Ombudsman Network.

EWON Authority to Act form:

http://www.ewon.com.au/ewon/assets/File/Authority_to_Act.pdf