



6 December 2023

Energy Social Programs Branch
Office of Energy and Climate Change

By email: strategicprojects.esp@planning.nsw.gov.au

Dear Energy Social Programs Branch

Energy Accounts Payment Assistance (EAPA) Public Consultation Paper on proposed reforms

Thank you for the opportunity to comment on this consultation paper.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have only responded to those questions in the consultation paper that align with issues customers raise with EWON, or with our organisation's operations as they relate to this consultation.

If you would like to discuss this matter further, please contact Rory Campbell, Manager Policy & Systemic Issues, on (02) 8218 5266.

Yours sincerely

A handwritten signature in black ink that reads "Janine Young".

Janine Young
Ombudsman
Energy & Water Ombudsman NSW

Energy Accounts Payment Assistance (EAPA) Public Consultation Paper on proposed reforms

EWON welcomes the proposed developments outlined in the EAPA Public Consultation Paper. We have provided general comments about the proposed reforms below, and provided more specific feedback to questions that align with issues customers raise with EWON, or with our organisation's operations as they relate to this consultation.

Section 1.1 Intent of EAPA

Proposed reform 1

The consultation paper proposes to define and clarify the policy intent of EAPA to reduce ambiguity.

Fixed supply charges

The consultation paper states that EAPA should apply to consumption charges only and not to supplementary non-consumption charges such as late payment fees. However, it is not clear in the consultation paper whether fixed supply charges are intended to be classified as consumption charges or supplementary non-consumption charges. This could cause confusion and potentially disadvantage customers.

Consumption charges generally mean variable usage charges in the energy industry. For example, a conditional discount off consumption charges is understood not to apply to the fixed supply charges unless inclusion is clearly specified.

It should also be recognised that there is no regulatory link between fixed supply charges on a customer's bill and the actual network costs. Energy retailers can, and do, structure their billing in the way they choose to structure billing. For example, higher fixed charges with lower consumption charges, membership fees or a product where customers paid a fixed amount for their bill per month, regardless of usage. Therefore, EAPA needs to be flexible to deal with varying retail market practices.

EWON strongly recommends that EAPA be applicable to the total bill amount, as is defined in the current *NSW Social Programs for Energy Code* (the Social Code) and that the NSW Government stipulate that this includes fixed supply charges. This would ensure that EAPA is applied equitably to all eligible NSW energy consumers. Further, excluding fixed supply charges would disadvantage low users, and those who work to reduce consumption to reduce costs, who despite their efforts, would struggle to pay the fixed portion of their energy bill.

Impact of excluding other fees and charges

Excluding other fees and charges may cause additional financial stress to customers because:

- customers who are in crisis or experience an emergency require assistance for the money owing on their energy account, which represents the whole bill, not part of the bill
- customers who have been disconnected or had supplementary fees applied to their account may not have been aware of any assistance at the time that the fees occurred
- customers in a crisis or emergency may be dealing with other higher priorities, such as rent / mortgage payments with energy bills coming at a later stage, which may mean they have already incurred additional fees.



We encourage the NSW Government to consider some discretion or leniency regarding fees and charges depending on the circumstances of the customer, especially including people impacted by natural disasters or victim-survivors of family violence.

The NSW Government could also encourage energy retailers to waive fees including disconnection / reconnection fees for customers who receive EAPA.

Proposed reform 2

The consultation paper proposes to articulate EAPA's intent separately from the Social Code. We support this proposal as it will provide a clear and easier to understand suite of information / documentation about EAPA.

Proposed reform 3

The consultation paper proposes to define 'short term assistance' as up to two years from the crisis or emergency.

EWON acknowledges that the proposed two-year timeframe for a crisis or emergency is based on feedback from Non-Government Organisation (NGO) EAPA Providers. However, EWON strongly recommends that this should not be a hard line barrier which prevents a customer from receiving assistance. For example, where a customer seeking EAPA assistance experienced a crisis or emergency that occurred over 2 years ago i.e. the 2019 bushfires or 2021 and 2022 Lismore floods, and is now finding they have energy billing debts, it seems unreasonable to deny them access to assistance which would significantly improve their circumstances. In these circumstances, and in many others, our complaints tell us that while people continue to experience long-term consequences following an extreme weather event, targeted energy provider support reduces.¹

The NSW Government should take a principles-based approach rather than fixed a timeframe, and consider the crisis and level of impact a customer is still experiencing. This would also be particularly beneficial for customers that have experienced natural disasters or family violence, and Aboriginal and Torres Strait Islander customers.

Our Aboriginal Community Energy Officer advises that Aboriginal and Torres Strait Islander customers experience ongoing, overlapping and concurrent crises, including:

- accommodating non-general household family and extended family during Sorry business, which may occur for long periods of time
- accommodating children or young people for short periods of time to keep them out of 'the foster care system' until their parents or carers are in positions to care for them again
- preventing recidivism by accommodating family members short term until they are financially secure enough to get their own accommodation.

¹ EWON Spotlight on – Natural disasters – the long-term customer experience, November 2023



Question 1.1b Do you find any aspects of the intended policy of EAPA to be unclear or ambiguous? If yes, please outline which specific elements you find to be lacking clarity or causing confusion?

Meaning of crisis or emergency

There is ambiguity around what constitutes a crisis or emergency. There is a concern that this is subjective to the person experiencing the crisis or emergency and ultimately it is left to the person administering the vouchers to determine whether they also perceive it to be a crisis or emergency. EWON suggests that the NSW Government consider guidance with a non-exhaustive list of examples of what it considers to be a crisis or emergency.

Intent of EAPA

The consultation paper states that EAPA can be used on any amount owing on the current energy bill for consumption charges. However, it is difficult to separate accumulated debt and a current bill, and customers generally do not distinguish between the two.

We recommend that the NSW Government consider some alignment between the length of time a customer has been in an emergency or crisis and how long EAPA can be applied to a customer's bill if a customer has accumulated a debt. We acknowledge that under the reform, customers will be able to access EAPA multiple times throughout the year, but in our experience customers impacted for more than one billing period will have accumulated debt before they seek assistance.

In our experience, customers in a crisis or emergency often have competing priorities that mean they may not be in a position to review energy bills for some time. For example, if a customer experienced an event six months prior to seeking assistance (such as a natural disaster) it would be more beneficial to the customer to have assistance in paying all of their amount owing, rather than part of it and still having to manage a debt.

EWON notes that energy retailers process EAPA like a normal payment, and payments are generally allocated to the oldest debt, not the current bill. EWON recommends that the NSW Government consult with retailers as limiting EAPA to a current bill may cause some administrative issues for the retailer in paying off current debt, rather than aged debt, or taking it off the whole account balance.

Disconnection

The NSW Government states that EAPA is intended to work as a temporary measure to help a customer stay connected at the point EAPA is applied to the energy bill, and that EAPA can help a customer avoid disconnection for non-payment in that payment cycle. The NSW Government states that it does not intend EAPA to prevent a customer from being disconnected for older debt.

This creates ambiguity about whether the intent of EAPA is to stop a disconnection at the point in time of the application, to keep a customer connected over the crisis or emergency time period, or both. This requires clarification. It is also critical that the proposed changes to apply EAPA to the current bill cycle are not at odds with the intent of EAPA to ensure a customer has continued access to energy during a time of crisis.

Disconnection and credit collections occur for the oldest debt or total account balance – not the current cycle. It is unlikely that a disconnection would occur in a current cycle, given



hardship/affordability obligations placed on a retailer under the NERR and current retail practices. Therefore, only applying EAPA to the current bill leaves customers at risk of disconnection during a time of crisis, as the aged debt still exists i.e. that debt that causes disconnection. This approach could also provide a gateway for retailers to circumvent the rule if a customer is not protected under hardship provisions.

Operating in parallel with the NERR

The consultation paper states that EAPA operates in parallel to energy retailers' obligations, under the *National Energy Retail Law (NERL)* and *National Energy Retail Rules (NERR)*, and exempt sellers' obligations, under the *Exempt Selling Guidelines*, to support customers experiencing difficulty paying their energy bills.

The Social Code is not only utilised by energy retailers but is referenced by community agencies and may be reviewed by customers. The statement above is unclear and would benefit from clear guidance outlining expectations of what is required of energy retailers in NSW. For example, fees such as late payment fees must be waived if a customer has sought government assistance, as required under the NERL.

Section 1.2 Energy debt

EWON supports the differentiation between providing assistance to customers experiencing a crisis or emergency and those that are experiencing long term debt. However, there are some circumstances in which a string of crisis events or life situations that are ongoing and lead a customer to fall into long term debt. As noted above, EWON recommends further consideration into how energy debt and ongoing crises impact customers with long term affordability problems, including the cultural crisis issues experienced by Aboriginal and Torres Strait Islander customers.

The NSW Government has acknowledged that the use of By Now Pay Later (BNPL) and payday loans to manage expenses leads to compounding debt if payments are missed, and that this can prevent retailers from being aware of a customer experiencing financial vulnerability.

The Public Interest Advocacy Centre (PIAC) recommends that payment options from energy retailers should be as 'frictionless' as access to BNPL and other unregulated or lightly regulated credit products – frictionless being defined as "easy to know about, easy to access and easy to alter, all without judgement".²

While EWON supports the assistance of customers facing long term debt, we also encourage the NSW Government to examine how existing supports like EAPA can be more widely promoted and known about, so that the people who need EAPA access it before resorting to BNPL products.

Proposed reform 1

The NSW Government proposes to deliver a trial debt program to support customers in debt and gather data from the trial to inform longer-term reforms.

EWON supports the NSW Government proposal to deliver a trial debt program to assist customers facing long term debt. EWON is however, concerned about the potential gap in assistance from 1

² PIAC Paying to pay: Using credit products to afford energy, June 2023, p25



July 2024 when the new, stricter parameters around EAPA delivery are introduced and time taken before other programs are available to the wider public if they are not part of the trial.

Clarification from the NSW Government about how it will address this gap is needed including about interim measures to provide additional assistance to customers in long term debt, or who may fall into long term debt, if they are unable to be part of the trial.

Proposed reform 2

The NSW Government proposes to work with the Australian Energy Regulator (AER), retailers and consumer groups to further explore how the NSW Government can better help customers with energy debt.

The AER has recently undertaken significant research and work in its proposed *Game changer – A package of reforms to improve outcomes for consumers in energy hardship*. EWON strongly encourages the NSW Government to take a leading role in introducing the AER's initiatives. For example, the AER report highlights that research by the Consumer Policy Research Centre (CPRC) identified that 35% of consumers in NSW that are eligible for concessions in NSW did not receive their concessions.³ Automation of NSW concessions for eligible customers could close this gap, including by providing easier access to eligibility data for retailers. As a result, many NSW customers experiencing vulnerability and payment difficulty would be identified at a much earlier stage and be able to also access the energy retailer support that they are entitled to and need.

Question 1.2 Are there groups currently focused on addressing energy debt issues in NSW? If yes, which of these stakeholders should the NSW Government consider consulting with on this issue?

EWON recommends that the NSW Government look to engage with the Australian Department of Social Services. The Government has recently introduced the Financial Counselling Industry Funding Model which will expand financial counselling services across Australia.⁴

The expansion and industry funding of financial counselling is also included in the AER's Game changer reforms noted above.

These initiatives are all directed towards delivering equitable and efficient sharing of costs and risks across the energy sector, and aimed at supporting customers who are experiencing, or are at risk of experiencing, vulnerability. They are therefore aligned with the NSW Government's intent to assist customers that are experiencing longer-term financial vulnerabilities.

Section 1.3 EAPA for embedded networks

EAPA should be available to customers who live in embedded networks. A phased approach is practical as it will help ensure that exempt sellers are ready to implement any changes required in the application of EAPA to their eligible customers' accounts.

³ AER Game changer – A package of reforms to improve outcomes for consumers in energy hardship, November 2023, p4

⁴ The Hon Amanda Rishworth MP, Media release – Industry to fund additional financial counselling services, 21 November 2023



To ensure prompt and equitable access to EAPA for customers that reside in embedded networks, including the often more vulnerable customers that reside in small embedded networks, we seek further clarification from the NSW Government regarding when the roll out of EAPA to customers that reside in networks operated by exempt sellers and deemed exempt sellers will occur.

Question 1.3 What processes should the NSW Government consider to provide EAPA to customers living in deemed exempt seller communities?

We strongly support the NSW Government considering the provision of EAPA to customers living in deemed exempt seller communities. The nature of deemed exempt seller communities means that there is a likelihood that the majority of residents, while small in number, will be eligible for EAPA, and at the same time, the formality of the exempt seller's systems will be minimal, meaning automation / offsetting energy bills will be challenging. We therefore suggest that the NSW Government consult with Fair Trading, Councils, Shires, Caravan & Camping Association, and community groups about how to identify these communities in order to engage with deemed exempt seller communities about EAPA promotion and delivery.

Section 2.1 Communications

EWON supports the NSW Governments proposed reform to rename EAPA to provide a better understanding of the support available and to move away from terminology including vouchers. We also strongly recommend that the NSW Government take up a leading approach to using language that does not label customers or carry stigma. For example:

- customers experiencing affordability challenges rather than hardship customers
- customers experiencing, or at risk of experiencing, vulnerability and not hardship customers
- customers with accrued debt not delinquent customers.

This approach will make it easier for eligible customers to self identify / engage with energy retailers and other stakeholders.

Question 2.1a Are there other promotional channels that the NSW Government should consider as part of the EAPA communication strategy? If yes, please outline them.

EWON's community engagement program is designed to promote our services and educate consumers, small business and community workers about energy and water issues. To achieve this, we have established a large network of community and industry contacts that have assisted us in raising awareness about EWON; energy and water retailer internal dispute resolution processes affordability programs; government rebates and concessions and EAPA.

We strongly suggest that the NSW Government take a similar approach by engaging with organisations including Migrant Resource Centres, Settlement Services International (SSI), Multicultural NSW, Aboriginal Medical Services, Community medical centres, Local Aboriginal Land Councils, Local Councils, Health NSW, and Local Health Districts. In addition to this there are resources such as NITV, Koori Mail and Koori Radio which we have utilised as part of our community engagement.

Literacy levels also need to be considered broadly and not just specifically for customers in culturally and linguistically diverse communities. Complex information is conveyed more effectively verbally, face to face or via videos and using diagrams rather than written words. Information about EAPA



therefore needs to be shared through the use of simple messaging and via different languages with targeted advertising.

EWON also recommends that the NSW Government engage with:

- The Energy Charter – Knock to Stay Connected notices could be a useful tool to deliver messages about EAPA.
- Australian Retail Credit Association (ARCA) – ARCA is currently undertaking a review of the *Privacy (Credit Reporting) Code 2014 (Version 2.3)* and a potential variation is allowing retailers to include information about the availability of affordability assistance on s21D notices (intention by a credit provider to disclose default information) sent to customers. The NSW Government could consult with ARCA about the possibility of the inclusion of available government assistance.

Question 2.1b Within these promotional channels, are there any particular media outlets, events, or organisations that you believe should be taken into account when formulating the EAPA communication strategy? If yes, please provide further information about these potential channels.

In 2022 EWON and the AER launched its [Embedded Network campaign](#) – a co-branded, multilingual campaign aimed at residents living in retirement villages and apartment complexes to raise awareness of embedded networks customers rights to access dispute resolution services through Ombudsman Schemes. The campaign included social media posts, posters and factsheets available in different languages.

The campaign has proved to be successful and EWON would be willing to work with the NSW Government on a similar campaign targeting the awareness of EAPA and rebates. A major factor of the successful campaign was the use of culturally appropriate factsheets. EWON recommends that the NSW Government consider a similar approach in the delivery of its factsheets.

Our community engagement team also suggests that the NSW Government look at engaging in regular interagency meetings held by, and for, community workers. Community workers are the ones that share information with their clients, which includes customers experiencing vulnerability and disadvantage in a way that their community best understands. There is an opportunity for the NSW Government to have representation in these networks so that there is a two-way flow of information, including delivery of information about EAPA but also to receive feedback from community workers.

Question 2.1c Are there specific times during the year when communication about EAPA would help generate more awareness? If yes, when and for how long?

Historically high winter energy bills drove an increased need for assistance in July, August, and September annually. The increased need for cooling in summer and higher energy costs means that assistance is now required throughout the year. Two annual events need special consideration – the lead up to Christmas and the late January/early February return to school period.

A regular annual awareness program is now called for.



Question 2.1d How else can the NSW Government improve EAPA accessibility for customers impacted by natural disasters?

Documentation completion that is required to access EAPA can be a barrier for many customers especially those impacted by natural disasters. Like customers that have fled their home due to family violence (see our comments below), required supporting documentation may have been lost or destroyed. A less prescriptive approach to delivering EAPA to these customers would more effectively alleviate the trauma and stress customers experience when trying to manage their energy accounts. It should be noted that customers would not be seeking EAPA immediately following a natural disaster event.

EWON recently released [Spotlight On report – Natural disasters – the long-term customer experience](#). The NSW Government has an opportunity to be a leader in this space and we will look to establish discussions with the NSW Government about how this can be achieved, through EAPA and on a wider scale.

Section 2.2 Application process

EWON supports the work underway or planned and the three proposed reforms. In particular we note strong support for:

- improved accessibility and consideration of the needs of specific community / group which experiences vulnerability
- improved contact processes such as inbound call processes and registered caller ID for outbound calls
- dedicated Aboriginal and Torres Strait Islander d roles within the EAPA team.

In July 2023, EWON introduced, via its 1800 free all number, a dedicated phone access line for Aboriginal and Torres Strait Islander customers who choose to self identify so that a highly culturally awareness trained EWON staff member can take their call. This has been accessed by over 250 customers since then. EWON recommends that the NSW Government consider a similar initiative.

Question 2.2a Are there other improvements the NSW Government should consider in the proposed updated process to assist customers impacted by domestic and family violence? If yes, please outline them.

EWON strongly supports the inclusion of processes around family violence to further strengthen consumer protections and barriers to accessing assistance for victim-survivors.

In May 2023, the *National Energy Retail Rules* were amended to provide additional protections for victim-survivors of family violence.⁵ We encourage the NSW Government to note these recent changes to the energy rules. For example, some features of the new rule that may benefit victim-survivors in the delivery of EAPA:

- 1) The Australian Energy Market Commission took a progressive approach by including a broad definition of family violence, which was given the meaning of the term “domestic abuse” in section 8(8) of the *Intervention Orders (Prevention of Abuse) Act 2009 SA*.⁶ This included

⁵ National Energy Retail Amendment (Protecting customers affected by family violence) Rule 2022

⁶ Intervention Orders (Prevention of Abuse) Act 2009 (SA), s. 8(8)



relationships where one person is a carer of the other, or where the relationship is established under Aboriginal and Torres Strait Islander kinship rules.

To ensure that there is clear and transparent information available to retailers, EAPA Providers and customers, there is merit in the NSW Government providing a definition of family violence within the Social Code or providing guidance on the types of relationships within which abuse may occur.

- 2) Requiring EAPA Providers to not ask victim-survivors for evidence of their experience as a precondition to receiving any available assistance. Requiring documentary evidence is problematic because:
- victim-survivors of family violence who have fled their home due to personal safety concerns may have limited access to relevant documentation
 - it places the onus on the victim-survivor to prove that they are a survivor of family violence; causing a victim-survivor to further disclose and re-live personal and traumatic experiences
 - it can eliminate the opportunity for EAPA providers to gain victim-survivor's trust by asking for proof before they are believed (at a time when a victim is facing financial affordability challenges, as well as other burdens that come with rebuilding their lives).

As noted above, EWON also encourages the NSW Government to consider not defining or applying a timeframe for access to assistance for victim-survivors. Victim-survivors will be continuously recovering from their circumstances, and they often face significant barriers that take a long recovery time. By removing this barrier, it will assist victim-survivors at the time that is appropriate to their circumstances.

EWON also recommends that the OECC consider a dedicated phone line for victim-survivors/NGOs to call as part of its commitment to removing the need for victim-survivors to repeat traumatic information. This would align with the rules in the energy sector.

Additionally, the Thriving Communities Partnership has developed a cross-sector digital platform, the One Stop One Story Hub, that enables frontline workers in corporate, government and community organisations to connect and refer their clients to a range of supports through a single, secure access point. It was initially developed for customers impacted by family violence, however now also supports anyone experiencing vulnerability. We strongly recommend that the NSW Government engage with this service to provide easier access to EAPA for victim-survivors.

Question 2.2b What changes can be made to the application process to alleviate the concerns from customers who are reluctant to share personal information?

The proposed reforms for case-by-case consideration of the need for things such as conference calls and additional assistance from NGO EAPA Providers may assist in breaking down the emotional and physical barriers faced by many consumers who need EAPA support.

EWON also recommends providing a secure process for information provision. Our experience is that customers can be reluctant to provide information that is shared via email and therefore, provision of multiple acceptable forms of communication may also reduce customer reluctance to provide information.



Section 3.1 Voucher value, application, and fuel limits

EWON strongly supports the proposed reforms, in particular the removal of \$50 increments and a fuel neutral approach.

Removing the increments of \$50 will be beneficial to many customers that have been left with parts of bills to pay and having the ability to access support at any time, will assist customers in the ongoing management of bills throughout their crisis or emergency.

Another approach

EWON has previously recommended that a proportional system of rebates be considered, rather than the current arrangement where all eligible customers receive the same amount.

Each customer experiencing energy affordability challenges presents with different circumstances and a more flexible approach to rebates would enable increased targeting of assistance and therefore, more sustainable outcomes. This is particularly true for customers in regional and remote NSW who not only already pay more for their energy bills, via higher network costs and higher consumption due to more extreme weather (both hot and cold); they also pay more for many other essentials including food and petrol, which impacts the amount of money they can direct towards energy costs.

A proportional or percentage-based approach to rebates and concessions could provide meaningful and equitable assistance to customers in these areas and also to customers in larger families. This was noted in the NSW Auditor General's Report to Parliament in 2017 which stated that energy rebate schemes where every household receives the same value rebate are simple to administer, but do not target varied circumstances and need.⁷

Question 3.2 What organisations, other than traditional NGOs, could support EAPA delivery as assisted application providers?

EWON recommends that the NSW Government also consult with organisations such as Migrant Resource Centres, Settlement Services International (SSI), Multicultural NSW, Aboriginal Medical Services, Community medical centres, Local Aboriginal Land Councils, Local Councils, Health NSW, and Local Health Districts.

⁷ NSW Auditor-General's Report – Energy rebates for low income households, September 2017, p8