



18 October 2018

Ms Anne Pearson
Chief Executive Officer
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Dear Anne

AEMC Reference RRC0017 – Strengthening protections for customers in hardship

Thank you for the opportunity to comment on the *AEMC Draft Rule Determination – National Energy Retail Amendment (Strengthening protections for customers in hardship) Rule 2018*.

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 the complaints made to our office and also from our community outreach and stakeholder engagement activities. We have supported our arguments using explanatory case studies in Attachment 1.

EWON welcomes the draft rule determination of the AEMC as we believe it is an important step in strengthening protections for customers struggling with energy affordability.

In addition to the two key issues identified as needing to be addressed by this Rule change, EWON would also like to see the following addressed:

- Removing barriers to access to hardship programs, such as those imposed by some retailers who require lump sum payments or a number of regular payments, before a hardship team referral is made.
- Eligibility of disconnected customers to the protections given to customers experiencing financial hardship.
- Terminology changes – use of the term ‘affordability’ rather than the stigmatised term, ‘hardship’.

Identification of vulnerable customers

Section 44 (a) of the NERL sets out the minimum requirements that a retailer needs to meet in its hardship policy:

processes to identify residential customers experiencing payment difficulties due to hardship, including identification by the retailer and self-identification by a residential customer

There are inconsistencies in application of this requirement by retailers, individually and collectively. EWON rarely has difficulty having a customer referred to a hardship program through our contacts in various dispute resolution teams. In many instances these same customers should have been

referred to the hardship program well before the particular issues that saw the customer approach EWON. All too often customers have attempted to seek assistance and have been unhappy with the result.

A greater level of consistency in retailer identification of residential customers facing payment difficulties is crucial to addressing affordability.

Capacity to pay

Rule 72 of the NERR requires retailer's payment plans for hardship customers:

- (1) (a) be established having regard to:*
- (i) the customer's capacity to pay; and*
 - (ii) any arrears owing by the customer; and*
 - (iii) the customer's expected energy consumption needs over the following 12 month period;*

The criteria for payment plans is further emphasised in the AER's Sustainable Payment Plans Framework. EWON's experience is that retailers place too much emphasis on the arrears owed and expected energy consumption, and equal consideration is not given to customer's capacity to pay.

A clear expectation of the customer's rights for capacity to pay to be considered as provided for by the Law and the Rules will be a welcome outcome of this rule change. The Sustainable Payment Plans Framework provides clear guidance of how this should be done, and it would be useful for any proposed standard statement to reference the Framework so that customers can expect that their capacity to pay be taken into account when negotiating payment plans.

Barriers to entry

Many retailers centralise their obligations to customers with payment difficulties in formal programs which have specific entry requirements. In these instances, customers rights under the NERL and NERR should not be negated by artificial criteria. An example of such criteria could be a requirement to make four consistent payments prior to a referral to a hardship program. Nowhere in the Law or Rules is there a "Willingness to Pay" qualification for the provision of legally required assistance.

As the AEMC argues in the draft determination, one of the positive benefits of the proposed rule change will be consistency between retailers and the assistance they offer. A customer should be able to have a clear and easily understood right to assistance if they encounter payment difficulties and should not have to meet different requirements from different retailers when seeking such assistance.

Disconnected customers

As identified in EWON's submission to the AEMC's Consultation Paper there is an industry practice of retailers seeing hardship obligations having ended once they have disconnected a customer for non-payment. The establishment of hardship guidelines provides an opportunity for the rights of disconnected customers to be stated clearly. While disconnection should always be a last resort, disconnection provides an opportunity to engage with customers experiencing vulnerability. Such engagement needs to occur under the conditions that are required by the NERL and the NERR.

Other Issues

Costs

Some submissions have raised concerns that this rule change could incur increased costs. EWON notes the AEMC comment that:

A majority of retailer submissions to the consultation paper noted the adequacy of their policies and hardship programs. Given that the Hardship Guidelines will only be giving effect to the minimum requirements under the NERL, complying retailers should not have to make material changes to their internal processes¹.

If there are increased costs associated with this Rule change, they will only be incurred if retailers need to take additional actions or system changes to meet their current obligations. This Rule change will result in a 'level playing field' providing a level of assurance that retailers cannot operate in a manner which avoids the cost of providing adequate affordability support to their customers.

The obligations to provide assistance are a crucial part of the NECF. To operate in the National Energy Market, the Law requires all retailers to provide support and assistance to vulnerable customers. It is, simply, a cost of doing business. Recognition of this obligation is particularly important for all retailers, including second-tier retailers, which choose to market their product to customers experiencing vulnerability, such as those living in remote communities or newly arrived immigrants. EWON is now regularly seeing examples where smaller retailers are not appropriately supporting their customers – and this Rule change should address this.

Transition

It is EWON's view that the proposed transitional arrangements are suitable.

Enforceability

EWON stated in our submission to the Consultation Paper that:

Equal financial support protections for all customers who experience financial hardship cannot be achieved unless the hardship guidelines are enforceable.²

Other submissions to the Consultation Paper have not convinced us to change our position. Our ongoing complaints experience further supports this position. The AEMC's position that a new civil penalty will only apply to the submitting of a hardship policy to the AER, and that current penalties are sufficient, seems to fly in the face of the accumulated evidence that the current regime is not effective. EWON recommends that the AEMC reconsider this aspect of its draft determination.

Conclusion

The AER has published, as support for the legal requirements of NECF, the voluntary Sustainable Payment Plans Framework. The Framework established four key principles (Empathy, Respect, Flexibility and Consistency) which should form the basis for effective engagement with customers experiencing financial difficulty. Key to implementing these principles is listening to the customer and being pro-active with offers of support and assistance.

¹ p28 the AEMC Draft Rule Determination – National Energy Retail Amendment (Strengthening protections for customers in hardship) Rule 2018

² p29 ibid

EWON was pleased at the widespread recognition shown by retailers, at the joint AEMC / AER workshop on 25 September, that when talking to customers the issue is affordability not customer hardship. This approach encompasses the principles of empathy and respect and does not set up a situation where a customer could be forced to acknowledge that they are experiencing financial hardship in order to be offered assistance. If this recognition by retailers becomes evident in practice as a result of this Rule change, again, addressing affordability will begin to be achieved

If you would like to discuss this matter further, please contact me or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

Yours sincerely



Janine Young
Ombudsman
Energy & Water Ombudsman NSW

Attachment 1 – Case studies

Case study 1: Failure to identify a vulnerable customer

The customer who was clearly experiencing short/medium term affordability challenges was refused not just a sustainable payment arrangement but a request for an extension of time to pay. This was despite having made regular payments in the past.

A customer, a refugee, changed address and his payment arrangement ceased. He received a disconnection notice requiring payment of \$510. He attempted to negotiate an extension where he would pay half the amount immediately and the balance in a fortnight, but this was rejected.

EWON negotiated with the retailer and an agreement was arrived at where the customer paid \$255 and then would contact the retailer to establish a plan going forward. EWON also identified that the Low Income Household Rebate ceased when the customer moved and we provided advice to the customer to update his details with Centrelink. EWON also provided referrals to agencies providing financial assistance.

This retailer was not a signatory to the Sustainable Payment Plans Framework.

Case study 2: Capacity to pay

The good practice guide associated with the Framework states that the retailer should start by asking the customer what they can afford. It also points out that by suggesting an amount, the retailer may pressure the customer into agreeing to an amount they cannot afford. This case study is an example of this in practice.

A customer received a disconnection notice for arrears of \$570. He contacted the retailer and was offered a payment arrangement of \$190 per fortnight. He could not afford this but felt he had no choice but to agree. He was unable to pay the first instalment and came to EWON seeking assistance.

EWON contacted the retailer and arranged a payment plan of \$90 per fortnight for six months which would cover the arrears and ongoing consumption. The retailer also indicated that if this remained unaffordable then a referral to the hardship program could be arranged. The customer was pleased with this outcome.

Case study 3: Barriers to entry to hardship program.

It is understandable that a customer with a history of failed payment plans and high arrears might be required to demonstrate a willingness to pay before re-admittance to a hardship program. Requiring four payments before considering a customer with low arrears and usage for its hardship program lacks the flexibility which the Framework expects.

A customer's gas was disconnected for arrears of \$786. He called EWON seeking assistance to be reconnected and to establish a payment plan. He said that his partner had passed away and that he had suffered a heart attack and not been coping very well. He said that he was in private rental and that he had very little of his pension left over after he paid rent.

EWON contacted the retailer and established that the customer had a poor payment history. His circumstances were explained, and a reconnection was arranged. The retailer said that if the customer made four payments he could then become eligible for the hardship program. The retailer also indicated that the disconnection fee would be added to the arrears. Given that the usage was only \$15 a fortnight, the retailer accepted a \$50 a month payment for four months to establish

willingness to pay. EWON also assisted the customer in providing his pension details so that he could receive the gas rebate.

As a result of reviewing this case study and others like it, the Ombudsman is now writing to this (these) retailers requesting that its 'four payment' affordability program eligibility criteria be removed and staff retrained.

Case study 4: Disconnected customer

The retailer responded positively once contacted by EWON but had failed to use the opportunity when the customer first made contact to implement the same arrangements

A customer was disconnected and rang his retailer. It required a lump sum payment of \$800 on arrears of \$1,244 to arrange reconnection. He could only pay \$300 so he contacted EWON seeking assistance to be reconnected.

The retailer advised EWON that they had only been retailing energy to the customer for three months, they were on monthly billing and no payments had been received. The retailer agreed to reconnect upon the customer paying \$300 and entering into a payment arrangement. The customer then made this payment and was reconnected. EWON provided an EAPA referral and the customer received \$500 assistance, which further reduced the arrears. The retailer also placed the customer on its hardship program on a payment plan of \$160 per fortnight for three months.