

14 January 2019

Ms Sarah Proudfoot
General Manager, Consumers and Markets
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Email: AERConsumerandPolicy@aer.gov.au

Dear Sarah

Submission – Hardship Guideline issues paper

Thank you for the opportunity to comment on the AER issues paper **Hardship Guidelines**.

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.

Introduction

In June¹ and October² 2018 EWON provided submissions, supported by case studies, to the AEMC supporting the AER request for a rule change to strengthen protections for customers in hardship. In December EWON also provided a detailed submission to the AER on the issues paper “*Standardised statements for use in customer hardship policies.*”³ It is important that the AER consider holistically the standardised statements and the hardship guidelines as the problems they address are common.

The need for change

EWON’s quarterly activity report for April to June 2018 contained a dedicated section on complaints about customers experiencing payment difficulties. The specific issues outlined in this report included:

- retailers requiring upfront, unaffordable payments from consumers who were requesting a payment plan or who had been disconnected / facing disconnection
- retailers placing ‘willingness to pay’ conditions on customers requesting a payment plan or access to a hardship program
- retailers refusing requests for an affordable payment plan leading to failed negotiations between the customer and their retailer
- customers trying to negotiate an affordable payment arrangement with a retailer for a closed account

¹ [EWON Submission AEMC Strengthening protections for consumers in hardship June 2018](#)

² [EWON Submission AEMC Strengthening protections for consumers in hardship October 2018](#)

³ [EWON Submission AER Standardised statements for use in customer hardship policies December 2018](#)

- customers taking positive steps to make regular payments towards their account, but their retailer not accepting these payments as being part of a formal payment plan.⁴

From this report and through our submissions to the AEMC, EWON has identified some key areas needing improvements for the protection of customers experiencing energy affordability challenges. These are:

- failure to identify customers experiencing financial hardship
- inconsistency in determining eligibility and or referral to Affordability / Hardship Programs
- frontline staff not implementing existing affordability / hardship policies
- retailers seeing disconnection as an end of their responsibilities.

Standardised statements

EWON provided a submission to the AER on the issues paper “*Standardised statements for use in customer hardship policies.*” The prescribed timing requirements meant consultation on the Standardised Statements preceded the consultation on Hardship Guidelines. This placed ‘the cart before the horse’ as the Statements should flow from the Guideline.

The Guideline should require specific, actionable and measurable commitments. The Statements therefore should be aligned with the Guideline and require action-based commitments that are clear and unambiguous for both customers and frontline customer service officers

AER performance statistics

The AER *Annual Report on Compliance and Performance of the Retail Energy Market 2017-18* identifies that the retailers are not responding adequately to energy affordability. In NSW:

- residential electricity customer average debt has increased by 46%
- the percentage of payment plans cancelled rose from 26% in 2016-17 to 45% in 2017-18
- the number of disconnections rose from 27,382 to a near record high of 32,315⁵.

Even more significant was that nationally, the percentage of customers experiencing hardship that were excluded from Hardship Programs increased from 57% in 2016-17 to 64% in 2017-18.

These facts clearly point to the need for strong, detailed and enforceable Hardship Guidelines, supported by aligned Standardised Statements. This will enable effectiveness of the Rule change to be measured by a decrease in the above statistics, which will, of course, also be influenced by a significant decrease in energy pricing if that occurs.

The disconnect between credit and hardship policy

There is currently a disconnect between policies that retailers have for credit collection practices and the policies and legal obligations that retailers have for customers facing affordability issues. The design of payment plans that place an emphasis on consumption and debt reduction rather than capacity to pay is an example of where the balance between competing policies needs to be addressed.

The other area that demonstrates this disconnect is a requirement of unaffordable upfront payments for reconnection. Disconnection is a critical point of engagement with retailer affordability programs, which does not accord with a demand for unaffordable upfront payments.

⁴ [EWON Insights April - June 2018](#)

⁵ Since the introduction of NECF the only year with higher disconnections in NSW was 2013-14 with 32,940

How should the guideline best ensure that consumers are effectively informed of their rights?

The approach proposed in the Issues Paper identifies that customers need to be aware and informed of their rights, and that specific requirements are needed to ensure that customers can readily access information about Hardship Programs. This information needs to be readily available, consumer friendly and effectively communicated to a wide range of diverse audiences, such as those with low literacy or CALD customers.

To achieve this the Guideline needs to address a range of issues.

Language

The word 'affordability' should replace 'hardship' wherever possible, noting it may be necessary to use the term 'hardship' at specific points in the Hardship Guidelines, and the Standardised Statements, when linking them directly to the NERL or the NERR. The term 'in hardship' carries stigma. If the Standardised Statements and Guidelines guide retailers to use words such as 'affordability', a greater number of customers who experience financial vulnerability may self-identify. It may also open the door to initiating easier conversations between retailer staff and the customers who need these programs.

Online materials

Consumer friendly and easily accessible information needs to be provided through online resources, balanced with other approaches. The Australian Digital Inclusion Index 2018 (ADII⁶) provides some critical information about who is left out when information is primarily focused through digital media. The national ADII is 60.2 and in NSW it is 60.5.

Several socio-demographic groups in NSW have ADII scores substantially below the state average. These groups are, in ascending order:

- people with household income in the lowest quintile (39.6)
- people who did not complete secondary school (45.7)
- older Australians (those aged 65+, 46.4)
- people with a disability (48.7)
- Indigenous Australians (49.5)
- people with household income in the second lowest quintile (51.5)
- people not in the labour force (52.0).

In addition, four regions in NSW have an ADII below 55.0. These are North East NSW, North West NSW, Murray and Murrumbidgee (the lowest at 51.0) and the Hunter.

Accordingly, comprehensive alternative sources of information must supplement digital material. Regional NSW pays more for energy and clearly the socio-economic groups identified in this study are more likely to experience affordability issues with their energy supply.

CALD accessibility

There are a number of retailer requirements for referring CALD customers to language assistance services in the National Energy Retail Rules, including:

⁶ The index measures a range of aspects under three primary headings of access, affordability and digital ability. These are then combined to achieve a total score.

- Rule 55 states that retailers must refer a residential customer to a relevant interpreter service if a referral is necessary or appropriate to meet the reasonable needs of the customer
- Rule 25 requires the contact details of interpreter services in community languages be included on customer bills.

My letter to the AER of 9 August 2018 (attached) details the current experience of customers who are discouraged from making a complaint or asking for payment assistance, as their retailer does not offer the additional assistance required by non-English speaking customers.

In EWON Insights January to March 2018⁷ we provided case studies (reproduced in an attachment) where CALD customers encountered difficulties when experiencing affordability problems.

The use of translation services needs to be a specific requirement of the Hardship Guideline to avoid such problems.

Indigenous customers

The Origin Energy submission to the 2017 AER Customer Price Information Review responded to the question ‘how to engage with customers without internet access’ with the following statement:

“Origin is aware of some agencies, such as the Energy and Water Ombudsman of New South Wales, organising ‘Bring your bill’ days. This is where customers present their bills to members of the Ombudsman, and participating retailers, so that they can get an understanding of their energy costs, obtain hardship assistance and find better offers. Consumer groups and welfare agencies are also involved. This has proven to be a useful community outreach program and is a good way of engaging customers without access to the internet.”⁸

The success of EWON’s engagement with regional Aboriginal customers has been significantly improved through the involvement of Origin Energy and other retailers. This has allowed face to face contact which has resulted in ongoing communication and significant debt reduction, as measured by Origin Energy.

Engagement with Aboriginal customers is most successful through working closely with local communities and this has been facilitated by EWON establishing a dedicated Aboriginal Project Officer position to initiate and maintain these links.

The Guideline needs to encourage retailers to engage directly with remote communities and EWON is open to facilitating this engagement.

Customer representatives

The recent Public Interest Advocacy Centre report “Close to the Edge” clearly expressed the view that advocates or supporters play a valuable role for those customers who require assistance:

“As well as saying that they did not know where to go for help, respondents expressed interest in having someone to advocate on their behalf and / or explain their situation to the retailer. The qualitative case studies indicate that advocates or supporters could also help those at risk of disconnection to get support from government and community groups”.⁹

⁷ [EWON Insights January - March 2018 p7](#)

⁸ [Origin Energy submission to the AER Customer Price Information Review p4](#)

⁹ [Close to the Edge – a Qualitative & Quantitative Study: Summary of Key Findings PIAC 2018 p6](#)

It is also EWON's experience that customers are more prepared to disclose personal details when supported by trained advocates, family members or friends. The Guideline needs to recognise this and require retailers to communicate with a customer's representative where the customer requests it.

Standardised Statements

The use of Standardised Statements in customer hardship policies has been proposed to address a lack of consistency in the application of the regulatory requirements on retailers to assist customers with affordability issues. These Statements will also provide an excellent opportunity for information available to customers to be accessible, jargon free, visual and easily understandable.

The emphasis in the Standardised Statements (and all communications about affordability policies), as stated in our submission to the Issues Paper, needs to be action based and customer rights focused. Responsibility for providing consumer protections with clear measurable retailer obligations, which offset the pressure that is currently placed by some retailers on customers **TO** receive assistance, is needed.

How should the Guideline support consistent application of the Retail Law minimum standards?

The AER identified inconsistency between retailers in the application of hardship obligations **AND** inconsistency in the application of existing policies by different staff and units within a single retailer. This means that inequitable access to affordability support is experienced by many customers. The Issues Paper proposed Guideline requirements to address this:

- describe the systems that the retailer has to assist early identification and assistance for customers experiencing hardship
- identify that hardship personnel have undergone training
- identify the systems in place to support the delivery of the hardship policy
- commit to regularly reviewing the hardship personnel training.

These requirements need to be strengthened. The AER's *Annual Report on Compliance and Performance of the Retail Energy Market 2017-18* showed that the number of customers in debt and on payment plans both decreased. Conversely, the average debt has increased by 46%, disconnection numbers are close to a record high, and the numbers of payment plan cancellations has increased. No corresponding increase in customers in hardship programs has emerged.

The most critical staff involved in customer engagement who should receive training are those frontline staff in contact centres and credit management teams.

Training in both a retailer's hardship policies and in the obligations and best practice embodied in the Sustainable Payment Plans Framework needs to be central for those staff dealing with customer enquiries and those engaged in debt collection.

This is not to deny the need to adequately train hardship personnel, as the increasing failure rate of customers participating in hardship programs demonstrates. Affordability issues remain the sole purview of a specialist hardship team but without further training of frontline staff, customers will continue to have difficulty in establishing affordable payment plans, avoiding disconnection **AND** accessing affordability / hardship teams.

The Guideline should therefore include ongoing monitoring of training for all staff, not just hardship personnel. Retailers should not just describe but should monitor and report on the effectiveness of the systems for early identification and provide this performance data to the AER.

Further, benchmarks relating to best practice affordability / hardship policies could be established that retailers would report against and be held accountable to. The AER would then be in a position to quantitatively rate retailer programs against each other and this could be incorporated into Energy Made Easy so that customers can choose a retailer taking into account its affordability assistance program.

How should the Guideline support consumers most in need of hardship assistance to receive it?

The Issues Paper correctly identifies two key considerations in addressing this question. First is the early identification of customers facing difficulties, and second is unreasonable barriers to entry to assistance programs.

Early Identification

Early identification of customers with affordability issues is critical. In our submission to the Standardised Statements Issue Paper we provided a list of circumstances which should trigger referral to the hardship program.

The two key points for identification of customers who may benefit from referral to the retailer's support program are cancelled payment plans and disconnection for non-payment.

Customers whose payment plan has been cancelled for non adherence

Customers approaching EWON seeking assistance / advice about energy affordability are frequently in a situation where they have broken one or more standard payment plans offered to them by their retailer, often because they agreed to a payment plan they could not afford. Broken payment plans are a strong indicator for referral to an affordability specialist, and retailer engagement at that point should be recognised as a critical opportunity to refer that customer to the retailer's affordability / hardship program.

The Guideline and the Standardised Statements should require retailers to actively contact these customers with an offer of referral to its affordability program.

Customers who have been disconnected for non-payment

The second group of customers are those who have been disconnected. As discussed earlier, there were 32,315 such customers in NSW during 2017-18. The opening line of the proposed Standard Statements is

*"This policy applies to all residential customers experiencing difficulties paying their energy bills due to hardship."*¹⁰

A retail contract, standard or market, does not end until 10 business days from the date of disconnection.¹¹ Retailers segment their responsibility for offering payment plans, or identifying and responding to customers experiencing affordability challenges, from their process for dealing with a customer disconnected for non-payment. This means that customers who have been disconnected will often not be offered access to the retailer's affordability program, or payment plans, irrespective

¹⁰ AER Issues Paper Standardised statements for use in customer hardship policies November 2018 p16

¹¹ National Energy Retail Rules, r49(1)(e); National Energy Retail Rules, Schedule 1, 4.2(vi)

of their payment history or personal circumstances. If a customer engages with their retailer within 10 days of being disconnected for non-payment, and cannot afford the required payments to be reconnected, the retailer should be referring that customer to its affordability program.

The Guideline and the Standard Statements should require retailers to actively contact these customers with an offer of referral to the affordability program.

Unreasonable barriers

EWON strongly supports the AER's consideration of the Guideline specifically ruling out exclusionary or blanket statements that prevent entry or re-entry to a Hardship Program. We also support ruling out the imposition of conditions to entry or re-entry in most circumstances. However, where a customer has a history of multiple instances of unsuccessful participation in the program, a retailer requiring some instalments before an offer of a final opportunity may be an effective mechanism of engagement. A process for identifying these customers could involve engagement with the relevant external dispute resolution service.

External dispute resolution

If a customer is found to not be eligible for participation in the Hardship Program, then the Guideline should require the retailer to inform the customer in writing of the reasons they have been denied participation including the contact details of the relevant external dispute resolution service.

How should the Guideline facilitate more customers completing hardship programs successfully?

Sustainable payment plans

In the AER's rule change proposal, it stated that:

"Many retailers surveyed reported a high number of customers unsuccessfully participating in the hardship program" ... "This finding raised concerns regarding whether the types of payment plans offered are realistic and based on a customer's capacity to pay." ... "Our view is that payment plans that do not fully take into account a customer's circumstances lead to poor customer outcomes, and could be contributing to the high number of customers unsuccessfully participating in hardship programs"¹².

The voluntary Sustainable Payment Plans Framework encourages retailers to start a payment plan discussion by talking to the customer about what they can afford to pay. Given the power imbalance between a retailer and a customer who cannot afford to pay their bill, approaching the discussion from this starting point will provide a better balance between capacity to pay, debt and consumption. This should result in more successful completions and begin to halt the rapid increase in customers excluded from programs that has occurred in 2017/2018.

Other aspects

Two other factors should also be Guideline requirements:

- a process for ensuring that customers are made aware of relevant government concessions, rebates and assistance that is available
- that retailers discuss energy usage and ensure that customers are on the most suitable contract for their circumstances.

¹² AER, Rule Change Proposal, Strengthening protections in the National Energy Retail Rules for customers in financial hardship, p8

Conclusion

The Hardship Guideline and Standard Statements need to ensure that retailers' treatment of vulnerable customers is measurable, accountable and consistent. To achieve this, both documents need to be specific as to what is expected of retailers. Anything less will reduce the chances of increasing energy affordability and addressing the affordability issues reported in the AER's *Annual Report on Compliance and Performance of the Retail Energy Market 2017-18*.

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 – Case Studies

A customer with some basic English skills may still lack the confidence to negotiate complex or difficult conversations with their energy retailer

A customer contacted EWON through an interpreter service for advice about a quarterly electricity bill she had received for \$472. The customer's husband had recently been in hospital after a health emergency which had left her needing some assistance paying her electricity account. The customer's husband was also receiving dialysis and had a CPAP machine and was in the process of having a doctor fill in the forms to apply for rebates relating to these devices.

EWON suggested that the customer contact her retailer in the first instance to discuss payment options.

The customer returned to EWON as the retailer had refused to accept her telephone call via an interpreting service. The customer could speak some basic English but did not have the confidence to negotiate with her retailer without assistance. EWON contacted the retailer who advised that the customer's applications for rebates had been received and all appropriate rebates would be applied to her next bill. The retailer also advised that it would offer an affordable payment plan. The customer paid the outstanding amount and EWON provided the customer with information about the retailer's hardship program and the NSW Energy Accounts Payment Assistance (EAPA) Scheme.

A customer may appear to be able to speak English, but not have the adequate language skills to be assertive enough to ask for payment assistance or negotiate an affordable payment plan

A customer and her advocate approached EWON at a community outreach event. The customer spoke some basic English but required her advocate to provide language assistance. The customer advised EWON that she was having trouble with her electricity account and that she needed assistance paying it. The customer had previously received \$250 as a payment towards her account through the EAPA Scheme. The customer had contacted her retailer to discuss the arrears but found it too difficult to negotiate an affordable payment plan.

EWON contacted the retailer to find out what options the customer had for payment of the account. The retailer advised that the current debt was \$260 and that the customer had an irregular payment history. The retailer agreed to refer the customer to be assessed for its hardship program. The retailer offered to contact the customer again through an interpreting service to discuss the different payment options available under the hardship program. EWON believes this is a much more effective approach for providing affordability assistance.