

27 June 2018

Australian Energy Market Commission
PO BOX A2449
SYDNEY SOUTH NSW 1235

Dear Sir/Madam

Re: AEMC 2018, Strengthening protections for customers in hardship, Consultation Paper, 24 May 2018

Thank you for the opportunity to comment on the National Electricity Amendment (Strengthening protections for customers in hardship) Rule 2018 Consultation Paper.

The Energy and Water Ombudsman (Victoria) (EWOV) is an independent industry-based external dispute resolution scheme. We help Victorian energy and water customers by receiving, investigating and resolving complaints about their company. We resolve complaints on a 'fair and reasonable' basis and are guided by the principles in the Commonwealth Government's Benchmarks for Industry-based Customer Dispute Resolution.¹

EWOV welcomes the proposed rule change to require the Australian Energy Regulator (AER) develop binding Customer Hardship Policy Guidelines, which would provide a single point of reference to industry on the application of hardship obligations. In our experience, we often find that the hardship support provided to customers can be inconsistent across retailers. The binding guidelines could promote greater consistency in the level of information, protection, and assistance provided by the retailers to customers in payment difficulty. We believe this consistency will, over time, lead to a more effective complaint resolution process and better customer experiences.

In this submission, we share and analyse relevant EWOV case data, provide our response to selected sections of the Consultation paper that are relevant to our role, and provide a case study to illustrate customer experiences.

Cases about credit-related service disconnection or restriction and payment difficulty

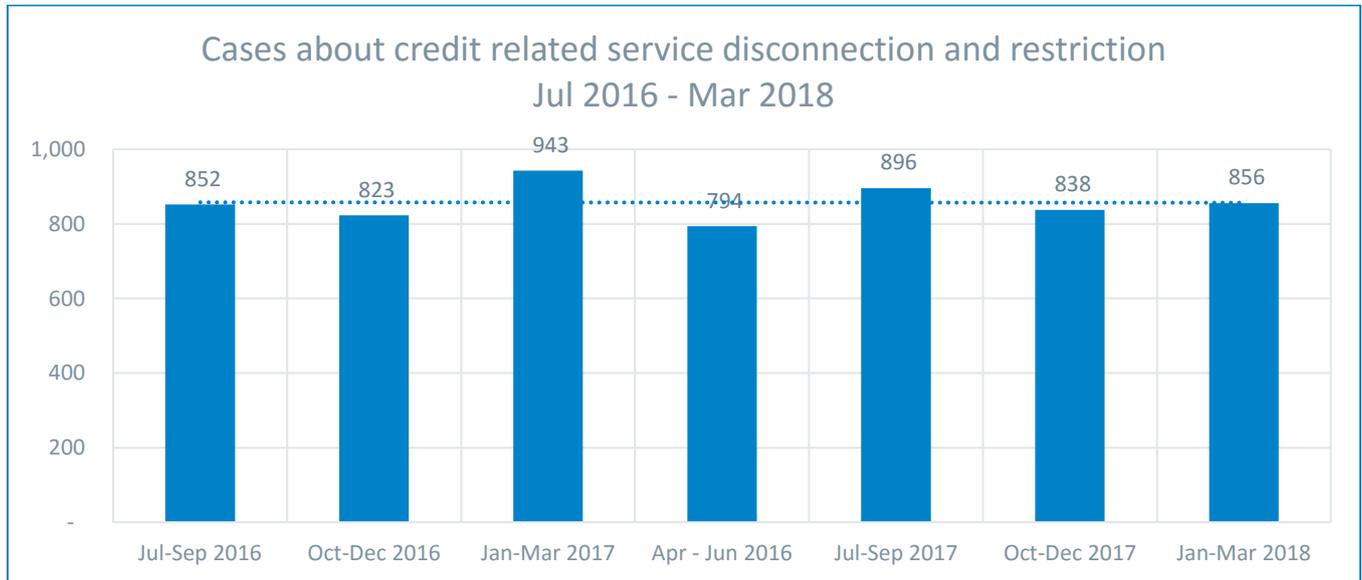
EWOV continues to record a high number of cases from customers with complex financial circumstances, high levels of energy debt and an inability to resolve their payment difficulties with their retailer. Around one in every four cases recorded by our office in the first three quarters of 2017-18 involved affordability issues, which include credit-related service disconnection or restriction, difficulty in establishing or completing a payment plan, or debt collection.

In EWOV's 2016-17 Annual Report, we highlighted that the credit issue of 'disconnection/restriction' has been the top complaint issue over the last four years. While it has fallen behind 'high bill' to

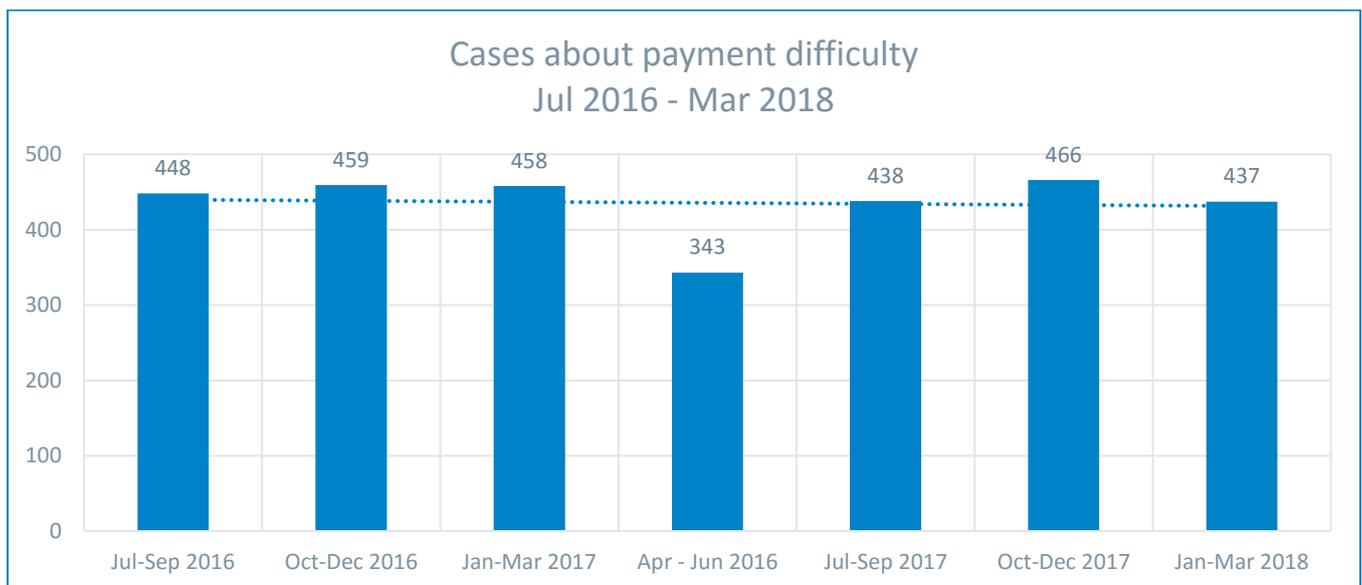
¹ EWOV Charter, https://www.ewov.com.au/files/ewov_charter_140318.pdf



become the second most common complaint issue in the first three quarters of 2017-18, we have not seen a marked improvement in the volume of complaints we received about credit-related service disconnection and restriction. As shown in the graph below, between 1 July 2017 and 31 March 2018 EWOV received 2,618 cases under this category, a slight reduction of 1.1% compared with the same period in 2016-17.²



Similarly, we continued to record a high number of cases from consumers with payment difficulty issues in the first three quarters of 2017-18. As shown in the graph below, between 1 July 2017 and 31 March 2018, EWOV received 1,341 cases under this category, a slight reduction of 1.8% compared with the same period in 2016-17.



² EWOV 2017 Annual Report, <https://www.ewov.com.au/2017>

Rationale for rule change - adequacy of the current approach to hardship

In the rule change proposal, the AER outlines its concern that there are significant issues with the application of the hardship protections in the National Retail Rules by retailers to customers experiencing payment difficulties. As a result, the AER does not believe that hardship programs are providing the support they should to residential customers in financial difficulty.

In its 2016-17 Annual Report on Compliance and Performance, the AER reveals trends of increasing level of energy debts, fewer customers successfully completing hardship programs, and increasing number energy disconnections³. All of the above findings are consistent with our recent case handling experience in Victoria. It is also concerning that, we are still recording incidents where retailers fail to refer a customer to their hardship programs even after the customer discloses clear indications of payment difficulties. The following case study provides an example of this issue.

CASE STUDY – 2018/1760 and 2018/1765

Ms X's electricity distributor visited her property to disconnect her electricity service for non-payment. While the disconnection did not take place, Ms X followed up with her electricity retailer to find out why she was being disconnected, but was dissatisfied with the explanation she received. Ms X decided to call EWOV to seek assistance. She had an outstanding account balance of \$4,700 for electricity and around \$3,400 for gas with the same energy retailer. She was a single mother with four young children and was experiencing financial hardship. Ms X said that six weeks ago she and her energy retailer reached an agreement for a \$50 per fortnight payment arrangement to pay off the outstanding balance. When she called the retailer to clarify this, she told EWOV that she was advised that the payment plan was cancelled and she was unsure why. Considering the circumstances of the case, EWOV decided to investigate Ms X's case rather than seek to resolve it through an Assisted Referral. Ms X sought help from a financial counsellor to represent her in the case.

During our Investigation, the energy retailer advised EWOV that Ms X did not have a payment arrangement with them. After getting further information from the financial counsellor representing Ms X, we confirmed that she believed that her Centrepay arrangement with Centrelink was an agreement with the energy retailer. During our examination of Ms X's call records with the retailer, EWOV found that she contacted the energy retailer a few months before the incident to discuss her financial situation and the arrangement she had with Centrelink. However, EWOV found that the energy retailer did not sufficiently assist Ms X when it was notified of her financial hardship. We found that the energy retailer had not advised Ms X of the Utility Relief Grant Scheme (URGS), a scheme by the Department of Health and Human Services, which provides help to pay overdue electricity, gas or water bills for low income Victorians experiencing temporary financial hardship. We also found that the energy retailer had not been applying applicable concessions to Ms X's account. With the help of the financial counsellor, EWOV also conducted an assessment into Ms X's financial circumstances and her energy usage as part of our Investigation process.

³ AER Annual Report on Compliance & Performance of the Retail Energy Market 2016-17, <https://www.aer.gov.au/retail-markets/performance-reporting/annual-report-on-compliance-performance-of-the-retail-energy-market-2016-17>

At the end of our Investigation, it was established that Ms X had an outstanding account balance of \$4,400. The retailer and Ms X reached an agreement to pay the first \$900 of the outstanding balance through a stepped payment plan: five \$80 fortnightly payments, followed by five \$100 fortnightly payments. Both parties also agreed to review Ms X's circumstances in six months to work out further arrangements to help Ms X pay off the remaining outstanding balance. The energy retailer confirmed that it had backdated concessions on Ms X's account and sent some information to assist Ms X with her application for the URGS. The energy retailer also assigned Ms X's account to be monitored and regularly reviewed by its financial hardship team. Ms X accepted the outcome and EWOV closed the case.

Proposed approach

EWOV supports the implementation of a minimum standard of assistance approach that provides clear guidance to both retailers and customers while maintaining flexibility for the retailers to extend additional and practical assistance where necessary. Recently, the Victorian energy regulator, the Essential Services Commission (ESC), issued a decision to roll out such an initiative.

In October 2017, the ESC published its final decision on the new payment difficulty framework, which resulted in amendments to the Energy Retail Code (the Code) to include a set of clear customer entitlements to the minimum standards of assistance afforded by the payment difficulty framework⁴. In December 2017, the ESC also issued a Guidance Note for the framework, which details how the ESC expects the principles and objectives of the payment difficulty framework to be applied by the retailers in Victoria, to deliver better customer outcomes.⁵

In a submission to the ESC in November 2017, we recognised that the detailed Guidance Note will be useful in our handling of payment difficulty cases. The Guidance Note is particularly helpful to us in assessing retailer compliance with the Code prior to disconnecting a customer. However, we also mentioned in our submission that the Guidance Note should not be definitive and prescriptive in all customer circumstances, or limit the scope for retailer's flexibility and innovation in this area.⁶

The Victorian Payment Difficulty Framework will only come into effect on 1 January 2019. However, it has already provided a good platform of our engagement with retailers, consumers, and other industry stakeholders.

⁴ ESC Payment difficulty framework – final decision, <https://www.esc.vic.gov.au/sites/default/files/documents/payment-difficulty-framework-final-decision-20171009.pdf>

⁵ ESC Energy Compliance and Enforcement Policy: Guidance note - Payment difficulty and disconnection, <https://www.esc.vic.gov.au/sites/default/files/documents/payment-difficulty-framework-energy-compliance-and-enforcement-guidance-note-final-decision-20171222.pdf>

⁶ EWOV submission on the ESC Draft Guidance Note – Payment Difficulty and Disconnection, https://www.ewov.com.au/files/esc_draft_guidance_note_-_payment_difficulty_and_disconnection_02.11.2017.pdf

Enforceability of hardship guidelines

The ESC states in the Guidance Note to its payment difficulty framework that while the document is not enforceable, it sets out expectations of compliant and non-compliant conduct from the retailers when it comes to the enforcement of the provisions the Code. The protection of the Code applies to all domestic or small business customers in Victoria.

In the rule change proposal, the AER outlines its concern that there are inconsistencies between retailer commitments in their hardship policies and the assistance offered to customers in practice. The AER believes that this disconnect is mainly the result of the general nature of many retailers' hardship policies. We also understand that the AER's Sustainable Payment Plan Framework is voluntary and non-enforceable and therefore does not apply to all customers, with only 17 retailers currently adopting the framework. On that basis, EWOV believes that implementation of an enforceable guideline would be a necessary step at this stage to provide clearer guidance for retailers to develop and apply more effective hardship policies and protect the long-term interest of all customers, especially the vulnerable.

We trust the above comments are helpful. Should you require further information or have any queries, please contact Roni Parlindungan, Senior Research and Communications Officer, on (03) 8672 4245 or ronibasa.parlindungan@ewov.com.au.

Yours sincerely



Cynthia Gebert
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