

16 January 2025

Australian Energy Market Commission

Via: [aemc@aemc.gov.au](mailto:aemc@aemc.gov.au)

## **EWOV FEEDBACK ON THE AEMC'S PROPOSED ASSISTING HARDSHIP CUSTOMERS RULE CHANGE**

The Energy and Water Ombudsman (Victoria) (EWOV) welcomes the opportunity to provide input to the Australian Energy Market Commission (the AEMC) consultation on the Assisting Hardship Customers Rule Change (the rule change).

EWOV is a free and independent service that resolves disputes between Victorian consumers and energy and water companies. We work to ensure fair and reasonable outcomes when energy and water problems arise. We use our unique data insights about consumers' experiences of the Victorian energy and water markets to improve consumer and market outcomes, through our engagement with businesses, government, regulators and the wider community.

EWOV broadly supports reforms proposed by the Energy and Climate Change Ministerial Council (the ECMC), focused on how energy consumer protections can further safeguard households and businesses.

While some of the reforms proposed by the ECMC have already been implemented in Victoria, the Victorian Minister for Energy requested the Essential Services Commission Victoria (the ESCV) consider changes to the Energy Retail Code of Practice (the Code) as part of a broader review of the Code currently underway. This has led to the ESCV consulting on options to improve access to the best offer for consumers experiencing payment difficulty, as proposed by this rule change.

EWOV has been engaging directly with the ESCV, including providing two written submissions outlining insights, data and case studies from our caseload. This feedback provided to the AEMC highlights relevant analysis from our submissions to the ESCV, which are provided in full at attachments [1](#) and [2](#).

Although the proposed rule change will not directly apply in Victoria, EWOV nevertheless has an interest in this consultation, as we see benefit in the AEMC and the ESCV progressing consistent reforms that drive better outcomes for energy consumers as well as providing a smooth pathway to implementation and reducing regulatory burden for industry.

EWOV welcomes the opportunity to discuss this feedback further with the AEMC as needed.

## The need to act – hardship customers may not be on the deemed best offer

*This responds to question 1 in the AEMC's consultation paper.*

EWOV agrees with the AEMC's analysis that consumers in payment difficulty may find it challenging to engage with their retailer. As we noted in an initial submission to the ESCV's review, EWOV regularly engages with consumers experiencing payment difficulty and other intersecting challenges who had an energy issue but had not engaged with their energy provider about assistance available.<sup>1</sup> This may be because consumers do not know they are entitled to assistance, may face specific barriers to access due to language, literacy or digital barriers, or they may not seek assistance due to shame or stigma.<sup>2</sup>

The ESCV's latest Energy Market Report notes that 121,000 electricity consumers each month in 2023-24 had arrears greater than \$300, but were not accessing payment assistance from their retailer, placing them at higher risk of being disconnected.<sup>3</sup>

In cases where consumers in payment difficulty have not engaged with their retailer, EWOV observes they can be less responsive to billing notifications or retailer attempts to contact.<sup>4</sup>

In response to the AEMC's question regarding whether existing retailer requirements and/or processes for hardship customers to be on the deemed better offer need to be improved, EWOV considers there are broader changes needed to improve access to the best offer. These are canvassed in detail in our submission to the ESCV, related to:

- Improving the ability to switch to the best offer by introducing changes to address practical barriers to switching and to improve consumer awareness of the best offer.<sup>5</sup>
- Changes to encourage retailers to identify and proactively engage with consumers in payment difficulty who could benefit from switching to the best offer, as well as from other payment difficulty assistance.<sup>6</sup>

## Mechanism for automatically switching customers to the deemed best offer

*This responds to question 2 in the AEMC's consultation paper.*

The AEMC is proposing to make a rule that requires retailers to provide hardship customers with a credit on their bill if they are not on the deemed better offer. The ESCV also proposed this as one of three options to facilitate automatic switching of consumers in payment difficulty in its concurrent review of the Code.

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<sup>1</sup> [EWOV Submission to the Essential Services Commission – Review of the Energy Retail Code of Practice](#), July 2024, p 23.

<sup>2</sup> Ibid, p 24.

<sup>3</sup> ESC, [Victorian Energy Market Report](#), September 2024, p 17

<sup>4</sup> [EWOV Submission to the Essential Services Commission – Proposed Energy Consumer Reforms to the Energy Retail Code of Practice](#), November 2024, p 11.

<sup>5</sup> Ibid, p 6.

<sup>6</sup> Ibid, p 14.

In response to this, EWOV proposed an alternative mechanism for implementing best offer switching.<sup>7</sup> This mechanism aims to recognise and balance:

- The challenges facing consumers in payment difficulty, and their willingness or ability to engage with retailers or participate in the market.
- The limits of relying on engagement for consumers in payment difficulty to switch to the best offer.
- The need to maintain the important consumer safeguard of explicit informed consent.
- How consumers value different aspects of an energy plan and the need to maintain consumer choice and autonomy in this context.

In our submission,<sup>8</sup> EWOV recommended the ESCV consider establishing a prospective compliance requirement for retailers to place a consumer on rates which are no worse off than the consumer's deemed best offer. This proposed requirement would apply at the point when a market or standard retail contract comes to an end and the consumer rolls onto a deemed contract (if the consumer does not enter into a new contract). At this point, the existing explicit informed consent requirements currently in the Code would not be applicable. This may be relevant to the AEMC given a similar rule change would not impact the equivalent explicit informed consent requirements under the National Energy Retail Law.

While this measure would not apply to all customers, EWOV considers that this proposal could be easily implemented as retailers can more easily identify consumers rolling off market contracts. Further, it could limit the potential harms experienced by consumers who are disengaged over protracted periods and who may not scrutinise their energy plans when rolling off market retail contracts and onto potentially less favourable rates.

EWOV notes that this proposed requirement would not capture consumers on legacy contracts as the requirement would operate prospectively. In our submission to the ESCV, EWOV also recommended changes to promote more proactive engagement with consumers to switch to the best offer. Retailers could be required to develop mechanisms to capture indicators of payment difficulty, and identify and proactively engage consumers who are not receiving but would benefit from assistance.<sup>9</sup> The ESCV could also introduce a new requirement in Part 6 of the Code<sup>10</sup> to mandate retailers to, upon customer contact under clause 129 of the Code:

- complete a deemed best offer check and,
- if the customer is found not to be on the best offer, notify the customer at the time at which the deemed best offer check is completed, and
- offer to change the customer onto the best offer plan.

Further, we consider other changes the ESCV has canvassed in relation to retail energy contracts may contribute to improving outcomes for consumers in payment difficulty who face challenges with

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<sup>7</sup> [\*EWOV Submission to the Essential Services Commission – Proposed Energy Consumer Reforms to the Energy Retail Code of Practice\*](#), November 2024, p 10.

<sup>8</sup> Ibid, p 13.

<sup>9</sup> Ibid, p 14.

<sup>10</sup> Ibid, p 13.

engagement.<sup>11</sup> EWOV's analysis in relation to these issues may be relevant to the AEMC's concurrent rule change consultation on retail energy contracts.

EWOV sees some benefits in the proposed credit mechanism. In theory, a credit may be an effective way of achieving the proposed benefit of this reform – that is, refunding excess charges incurred because the consumer was paying more for their energy than they would have had they been on their retailers' best offer, without the need to change plans if that is the consumer's preference. Ordinarily, when excess charges are incurred, the remedy is to refund the excess. For consumers in debt with their retailer, a credit may be a suitable application of the refund to reduce the debt, which would not have been incurred but for the excess charges.

## Costs, benefits and implementation considerations

*This responds to questions 3 and 4 of the AEMC's consultation paper*

EWOV also anticipates some challenges that may arise implementing the proposed credit mechanism, such as increasing the likelihood of billing errors made by providers and potential consumer confusion. In our view, retailers are responsible for informing relevant consumers of the credit and any impacts on their bill, which may also provide a prompt for consumer engagement with the retailer about other assistance available and suitable to their circumstances.

The AEMC may also need to consider any billing information changes that might arise from this reform and work with relevant bodies (such as the ESCV and the Australian Energy Regulator) to progress consistent reforms. Consistency across jurisdictions may contribute to driving better outcomes for energy consumers, provide a smooth pathway to implementation, minimise issues that may arise from inconsistency and reduce regulatory burden for industry.

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<sup>11</sup> [\*EWOV Submission to the Essential Services Commission – Proposed Energy Consumer Reforms to the Energy Retail Code of Practice\*](#), November 2024, p 20.

We hope this submission will assist the AEMC with the important task of assisting customers in payment difficulty to access a better offer. If you would like to discuss any aspect of our submission, please do not hesitate to contact me or Nicole McCutcheon, General Counsel and Chief Risk Officer at [Nicole.McCutcheon@ewov.com.au](mailto:Nicole.McCutcheon@ewov.com.au).

We welcome the opportunity to further discuss this submission, the consultation and the AEMC's next steps.

Yours sincerely



**Catherine Wolthuizen**

Ombudsman and CEO

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