



Energy & Water
Ombudsman NSW
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7 December 2018

Ms Sarah Proudfoot
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Australian Energy Regulator
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Email: AERConsumerandPolicy@aer.gov.au

Dear Sarah

Submission – Standardised statements for use in customer hardship policies

Thank you for the opportunity to comment on the issues paper Standardised Statements for use in customer hardship policies.

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.

Please note that we have attached detailed recommendations and comments, with suggested amendments to the Standard Statements, at the end of this submission. We have provided below a brief summary of our recommendations as a response to the consultation questions outlined in the issues paper.

Do the draft standardised statements at Appendix B provide a clear description of the minimum requirements set out in section 44 of the Retail Law? If not, why not?

The Standard Statements must contain strong action-based commitments

EWON calls on the AER to take a strong position and retain wording in the Standard Statements that requires specific and actionable commitments. If the AER publishes Standard Statements that contain general principles and subjective wording, this will undermine the purposes set out by the AER when it commenced this reform.

Some of the strong action-based wording of the initial draft of the Standard Statements presented at the AER/AEMC workshop on 25 September 2018 appears to have been replaced with less impactful language. For example, the specific actionable commitment “we will immediately refer you to our hardship program” could now have a reduced impact as “we will tell you about our hardship program and how it might help” unless supported by the delivery of comprehensive training about affordability indicators and program training for all front line staff, especially those located offshore.

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Complaints to EWON are most often a result of poor frontline customer service rather than due to the credit processes adopted by an energy retailer. This is reflected by the positive outcomes we achieve when dealing with retailers' more senior complaint staff. Therefore, it is critical that a retailer's affordability policy provides clear action-based commitments for both consumers and the retailer's frontline customer service teams. Affordability policies based on general principles and subjective wording will lead to poorer complaint outcomes. For this reason, the Standard Statements should be based on words which express specific and actionable commitments.

The hardship indicators set out in section 1&2 of the Standard Statements should be expanded

Further to the above, to assist retailer front line staff to identify and make appropriate affordability program referrals, the list of hardship indicators contained in section 1&2 of the Standard Statements should also include:

- customers with a history of broken payment plans
- customers who cannot afford to pay for their ongoing energy consumption
- customers who have been disconnected for non-payment and cannot afford the requested upfront payment to be reconnected
- personal circumstances such as:
 - customers experiencing a reduction in income
 - customers experiencing relationship breakdowns
 - sole parents
- customers paying by Centrepay who cannot afford significant increases in energy usage.

The AER's Standard Statements should require retailers to appropriately balance consideration of capacity to pay, level of debt and ongoing consumption

Retailers too often place too much emphasis on the arrears owed and expected energy consumption, and equal consideration is not given to the customer's capacity to pay. We recommend that the Standard Statements be amended to reflect best practice from the Sustainable Payment Plans Framework which prompt retailers to give an equal balance between capacity to pay, debt and consumption.

Do the draft standardised statements contain user-friendly language that would be easily understood by a range of customers? If not, please specify.

Use of the term 'hardship'

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 Standard Statements, when linking them directly to the NERL or the NERR. The term 'in hardship' is a stigmatised label. If the Standard Statements guide retailers to use words such as 'affordability' wherever appropriate, 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.

Do the draft standardised statements sufficiently address access gaps by vulnerable customers by clarifying hardship rights and entitlements? If so, how?

The standard Statements include customers who have been disconnected for non-payment as eligible for referral to retailer hardship programs

The opening line of the Standard Statements is *“This policy applies to all residential customers experiencing difficulties paying their energy bills due to hardship”*. The standard retail contract, or market retail contract, for a customer who has been disconnected for non-payment does not end until 10 business days from the date of disconnection¹.

If a customer engages with their retailer within 10 days of being disconnected for non-payment and cannot afford the suggested required payments to be reconnected, the retailer should be required to refer the customer to its hardship program.

The Standard Statements must require retailers to be transparent about the criteria they apply for eligibility to the hardship program and removal from the program

In our quarterly reporting, and in our recent submissions to the AEMC rule change – Strengthening protections for customers in hardship – we stated our concerns about additional barriers to entry that some retailers place on their hardship programs.

The AER rule change proposal to the AEMC recommending the introduction of a hardship guideline highlighted similar concerns about barriers to entry and further identified concerns about the number of customers removed from programs:

- *“some retailers are placing conditions on customers prior to re-entering a hardship program. This can involve requiring a certain number of instalments to be paid or an upfront payment from the customer before they can be accepted back into the hardship program².”*
- *“that the number of customers exiting a hardship program due to exclusion [excluded or removed from the program for failing to meet the requirements] significantly increased from the previous year, from 46 to 57 customers per 100 for both gas and electricity³.”*

To ensure that all customers have equal access to retailer hardship programs, it is crucial that customers have access to clear information about how eligibility for hardship programs is assessed by the retailer, and access to clear reasons that might result in being removed from the program.

The Standard Statements should require retailers to list their criteria for determining a customer’s eligibility to the hardship program and the criteria for removing a customer from the program.

The Standard Statements must reference the customer’s right to access energy ombudsman schemes

When customers complain to EWON about energy affordability or disconnection for non-payment too often the customer has failed to be referred to the retailer’s hardship program, have been removed from a hardship program, or they simply cannot negotiate an affordable payment plan with their retailer. At the AER/AEMC workshop on 25 September 2018, QCOSS suggested that the Standard Statements should include a reference to access to an Energy Ombudsman Scheme if a

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

² AER, Rule Change Proposal, Strengthening protections in the National Energy Retail Rules for customers in financial hardship, p8

³ AER, Rule Change Proposal, Strengthening protections in the National Energy Retail Rules for customers in financial hardship, p6

customer is not satisfied with the retailer's response to their request for assistance. EWON strongly supports this suggestion.

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

A handwritten signature in blue ink that reads "Janine Young". The signature is written in a cursive, flowing style.

Janine Young
Ombudsman
Energy & Water Ombudsman NSW

EWON's detailed recommendations

#	AER draft Standard Statements	EWON's recommendation
1 & 2	<p>We will tell you about our hardship program and how it might help you if:</p> <ul style="list-style-type: none"> • you tell us you are having difficulties paying your bill • you are referred to our hardship program by a financial counsellor or other community worker • we think you may be experiencing financial hardship 	<p>We will refer you to our Hardship Program if:</p> <ul style="list-style-type: none"> • you tell us you are having difficulties paying your bill • you are referred to us by a financial counsellor or other community worker • we identify you are experiencing affordability issues as outlined in the list of circumstances below
<p>Comment on above changes:</p>	<p>The Standard Statements must contain action-based statements and specific actionable commitments</p> <p>It is disappointing that the strong action-based wording of the initial draft of the Standard Statements presented at an AER/AEMC workshop on 25 September 2018 was amended following the workshop to remove the specific actionable commitment “we will immediately refer you” to be replaced with general principles such as “we will tell you about” and “how it might help”. Similarly, wording such as “we think you may be experiencing financial hardship” does not take into account that many retailers are increasingly using sophisticated techniques that do not rely on human decision making to identify customer issues. For that reason, we suggest “we identify you are experiencing affordability issues” would be more appropriate wording.</p> <p>It is also concerning the AER has replaced the words contained in the original draft “we identify you as potentially being in hardship” with more subjective wording such as “we think you may be experiencing financial hardship”. The AER rule change proposal recommending the introduction of a hardship guideline clearly states that “<i>we are of the view that best practice in hardship requires specific and actionable commitments</i>”⁴. The AER also stated that “<i>Subjective wording may also result in a customer’s protections under the Retail Law being minimised. For example, depending on the wording of a policy a customer may only be offered assistance from a retailer if the call centre agent ‘believes’ or ‘thinks’ that the customer is experiencing difficulties paying their bills due to hardship... Therefore, hardship policies with subjective wording may not assist a vulnerable customer having difficulty paying their bills if the agent they speak to does not believe that they might be suitable for the hardship program</i>”⁵.</p> <p>EWON calls on the AER to take a strong position and retain wording in this section of the Standard Statements that requires specific and actionable commitments. If the AER publishes Standard Statements that contain general principles and subjective wording, this could undermine the purposes set out by the AER when it commenced this reform.</p> <p>Use of the term ‘hardship’</p> <p>The word ‘affordability’ should replace the word ‘hardship’ wherever possible in this document, noting it may be necessary to use the term ‘hardship’ at specific points in the Hardship Guidelines, and the Standard Statements, when linking them directly to the NERL or the NERR. The term ‘in hardship’ is a stigmatised label. If the Standard Statements guide retailers to use words such as ‘affordability’ wherever appropriate, 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.</p>	

⁴ AER, Rule Change Proposal, Strengthening protections in the National Energy Retail Rules for customers in financial hardship, p9

⁵ AER, Rule Change Proposal, Strengthening protections in the National Energy Retail Rules for customers in financial hardship, p11

#	AER draft Standard Statements	EWON's recommendation
1 & 2	<p>We will recommend that you speak to a staff member about entry into our hardship program if:</p> <ul style="list-style-type: none"> • your payment patterns show late payments and requests for payment extensions • we have issued disconnection warning notices on your account • you have applied for or used relief grant or other emergency assistance to pay your bills, • you mention personal circumstances (e.g. death, illness, family violence, unemployment) that suggest hardship support may be needed 	<p>Our affordability team will offer you access to our affordability program if one or more of these circumstances apply to you:</p> <ul style="list-style-type: none"> • your payment patterns show late payments, broken payment plans and requests for payment extensions • you can only afford a payment plan that is less than the amount needed to cover your ongoing energy usage and reduce any debt • we have issued disconnection warning notices on your account • you have been disconnected for non-payment and cannot afford the requested upfront payment we are suggesting in order for you to be reconnected • you have applied for or used relief grant or other emergency assistance to pay your bills • you mention personal circumstances (e.g. death, illness, family violence, reduced income, relationship breakdown, sole parenthood, unemployment) that suggest affordability support may be needed • you cannot afford an increase to your Centrepay payment plan to cover a significant increase in your energy consumption
<p>Comment on above changes:</p>	<p>The Standard Statements must contain action-based statements and specific actionable commitments</p> <p>The AER's proposed wording in this paragraph has been amended following the AER/AEMC workshop on 25 September 2018 from "For instance, if we see or become aware of any of the following, we will immediately refer you to our hardship team who will discuss our hardship program with you" to "We will recommend that you speak to a staff member about entry into our hardship program if". The words "we will recommend that you speak to a staff member" do not set a specific action-based commitment. As noted above, EWON calls on the AER to adopt strong and clear wording in this section of the Standard Statements requiring retailers to make specific and actionable commitments in their hardship policies.</p> <p>The key hardship indicators set out in this section of the Standard Statements must be strengthened:</p> <p>Broken payment plans</p> <p>Customers talking to 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 be recognised as being a critical opportunity to refer that customer to the retailer's hardship program.</p> <p>Customers who cannot afford to pay for their ongoing energy consumption</p> <p>The Good Practice Guide Chart from the AER's Sustainable Payment Plans Framework notes that "<i>The customer nominates an amount that is less than the</i></p>	

amount needed to cover their ongoing energy usage and reduce any debt. This signals that the customer would benefit from more tailored support and should be assisted under the retailer's hardship program"⁸. This circumstance should be reflected in the list of indicators set out in the Standard Statements.

Customers who have been disconnected for non-payment

The opening line of the Standard Statements is "This policy applies to all residential customers experiencing difficulties paying their energy bills due to hardship". We also note that a standard retail contract, or market retail contract, for a customer who has been disconnected for non-payment does not end until 10 business days from the date of disconnection⁹. 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 hardship policy, or payment plans, irrespective of their payment history or personal circumstances. Many customers who are disconnected for non-payment have already engaged with their retailer and may have been previously referred to the retailer's hardship program and broken several payment plans. However, there are also customers who have been disconnected for non-payment that have not engaged with their retailer or had the opportunity to discuss payment assistance. 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 their affordability program.

Personal circumstances

EWON recommends expanding the listed examples of personal circumstances that a customer may mention that help indicate financial stress:

- **reduced income:** customers complaining to EWON about affordability issues may not have become fully unemployed. In many cases, the nature of the customer's employment may have changed, or they have been required to reduce the amount of work they can do.
- **relationship breakdown:** customers often mention to us that they are dealing with a relationship breakdown. This situation is often traumatic and may leave the customer with large unexpected debts. Customers who mention a relationship breakdown may also be indicating that they have experienced family violence.
- **sole parenthood:** Many single parents manage their work, family and living expenses without seeking assistance. However, if a customer is seeking payment assistance, being a sole parent is a strong indicator of financial stress. The ACOSS and UNSW report Poverty in Australia 2018 indicates that sole parent families are 2.5 times more likely to be in poverty when compared to the national rate, and households where the main source of income is a parenting payment are 4 times more likely to be living below the poverty line¹⁰.

Use of government funded concessions and significant increases in energy usage

EWON notes that the following hardship indicators have been removed from the Standard Statements following the AER/AEMC workshop on 25 September 2018:

- use of government funded concessions to pay your energy bills (e.g. Health Care Card, Centrelink benefit)
- a significant increase in energy usage for your household size.

The statement '**you cannot afford an increase to your Centrepay payment plan to cover a significant increase in your energy consumption**' is a practical alternative to the two above statements and targets customers who receive government funded concessions and might be experiencing increases in consumption as a result of faulty appliances, poor quality rental property, weather conditions (heat or cold) or illness.

⁸ AER, Sustainable Payment Plans, Version 1, July 2016, p3

⁹ National Energy Retail Rules, r49(1)(e); National Energy Retail Rules, Schedule 1, 4.2(vi)

¹⁰ ACOSS & UNSW, Poverty in Australia 2018, p15

#	AER draft Standard Statements	EWON's recommendation
1 & 2	<p>Our staff member will talk to you about your individual circumstances and eligibility for the hardship program.</p> <p>[Retailer can insert its timeframes for assessing a customer's application for hardship assistance]</p>	<p>Our staff member will talk to you about your individual circumstances and eligibility for the hardship program.</p> <p>[Retailers must list each individual criterion for affordability program assessment]</p> <p>[Retailer can insert its timeframes for assessing a customer's application for hardship assistance]</p>
<p>Comment on above changes:</p>	<p>The Standard Statements must require transparency on the retailer's criteria for eligibility to the program</p> <p>In our submission to the AEMC's strengthening protections for customers in hardship rule change 2018, one of our central underlying concerns was that retailers often had unclear processes for determining a customer's eligibility for a hardship program or referring that customer to the hardship program¹¹. In our second submission, we noted that there are often barriers preventing customers from entering a retailer's hardship program. An example would be a retailer setting specific entry requirements, such as, requiring the customer to make four consistent payments prior to a referral to a hardship program¹².</p> <p>The AER rule change proposal noted that general hardship policies can result in customers who are unclear about their rights and entitlements when experiencing payment difficulties¹³. The AER also stated that <i>"In addition, some retailers are placing conditions on customers prior to re-entering a hardship program. This can involve requiring a certain number of instalments to be paid or an upfront payment from the customer before they can be accepted back into the hardship program"</i>¹⁴. The AER noted that development of standard statements will also clearly set out customer rights in respect of hardship – allowing customers to easily understand their entitlements under a retailer's policy¹⁵. It is critical that the Standard Statements require retailers to list the individual criteria for affordability program assessment so customers have access to clear information about their rights and entitlements for further assistance.</p>	
1 & 2	<p>We will send you information confirming the details of your agreed payment arrangement and the contact details for our hardship team. We will send you a copy of our hardship policy at no cost if you ask for it.</p>	<p>We will send you information confirming the details of your agreed payment arrangement and the contact details for our affordability team. We will offer to send you a copy of our affordability policy at no cost.</p>
<p>Comment on above changes:</p>	<p>The Standard Statements must contain action-based statements and specific actionable commitments</p> <p>The line "We will send you a copy of our hardship policy at no cost if you ask for it" places the onus on the customer to request a copy of the policy. A customer needing assistance because of affordability problems may be reluctant to ask for help or be assertive about their rights and entitlements. We believe that it should be a retailer's obligation to make the customer aware of their hardship policy and offer to send them a copy.</p>	

¹¹ Energy & Water Ombudsman NSW, AEMC Reference RRC0017 – Strengthening protections for customers in hardship, 28 June 2018, p3

¹² Energy & Water Ombudsman NSW, AEMC Reference RRC0017 – Strengthening protections for customers in hardship, 28 October 2018, p2

¹³ AER, Rule Change Proposal, Strengthening protections in the National Energy Retail Rules for customers in financial hardship, p10

¹⁴ AER, Rule Change Proposal, Strengthening protections in the National Energy Retail Rules for customers in financial hardship, p8

¹⁵ AER, Rule Change Proposal, Strengthening protections in the National Energy Retail Rules for customers in financial hardship, p16

#	AER draft Standard Statements	EWON's recommendation
3	<p>When agreeing a payment plan with you, we must take into account:</p> <ul style="list-style-type: none"> • your capacity to pay (how much you are able to pay) • your debt with us (how much you owe), and • how much energy we expect you will use in the next 12 months. 	<p>We will start our payment plan discussion by talking to you about what you can afford to pay. When agreeing a payment plan with you, we must take into account:</p> <ul style="list-style-type: none"> • your capacity to pay (how much you are able to pay) • your debt with us (how much you owe), and • how much energy we expect you will use in the next 12 months.
<p>Comment on above changes:</p>	<p>The Standard Statements must improve the balance between the considerations of capacity to pay, level of debt and ongoing consumption</p> <p>In our further submission to the AEMC's strengthening protections for customers in hardship rule change 2018 we noted that retailers most often place too much emphasis on the arrears owed and expected energy consumption, and equal consideration is not given to customer's capacity to pay¹⁶.</p> <p>In the AER's rule change proposal, it is stated that <i>"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"</i>¹⁷.</p> <p>This section of the Standard Statements should start with the line "We will start our payment plan discussion by talking to you about what you can afford to pay". This statement reflects best practice from the Sustainable Payment Plans Framework and prompt retailers to give an appropriate balance between capacity to pay, debt and consumption.</p>	
3	<p>It is important you let us know if anything comes up that means you might not be able to make the payments agreed for your payment plan or hardship program. You also need to let us know if you have new contact details. If you do not do that, we may consider removing you from the hardship program.</p>	<p>It is important you let us know if anything comes up that means you might not be able to make the payments agreed for your payment plan or hardship program. You also need to let us know if you have new contact details. If you do not do that, we may consider removing you from the hardship program.</p> <p>We may remove you from the hardship program if: [retailer must set out a complete list of criteria for removal from the hardship program, i.e.</p> <ul style="list-style-type: none"> • if you do not update us with your new contact details •]

¹⁶ Energy & Water Ombudsman NSW, AEMC Reference RRC0017 – Strengthening protections for customers in hardship, 28 October 2018, p2

¹⁷ AER, Rule Change Proposal, Strengthening protections in the National Energy Retail Rules for customers in financial hardship, p8

#	AER draft Standard Statements	EWON's recommendation
<p>Comment on above changes:</p>	<p>The Standard Statements to require transparency on the reasons that a customer can be removed from a hardship program</p> <p>The AER rule change proposal noted that in its 2016-17 Annual Report on Compliance & Performance of the Retail Energy Market it was found that <i>“the number of customers exiting a hardship program due to exclusion [excluded or removed from the program for failing to meet the requirements] significantly increased from the previous year, from 46 to 57 customers per 100 for both gas and electricity”</i>¹⁸. The AER also reported that <i>“for those customers on hardship programs:</i></p> <ul style="list-style-type: none"> <i>only 27 per cent of electricity customers exiting hardship programs did so successfully; and</i> <i>only 20 per cent of gas customers exiting hardship programs did so successfully”</i>¹⁹. <p>The Standard Statements should require retailers to clearly list the reasons that a customer might be removed from the hardship program. Customers will then have clear information about their obligations at the start of their participation in the program.</p>	
<p>4</p>	<p>We will tell you about government concession programs and financial counselling services. We will explain these programs to you so you understand how they can help you.</p> <p>If you find out you are eligible for these programs, please let us know immediately so that we can help you.</p>	<p>We will tell you about government concession programs and financial counselling services. We will explain these programs to you so you understand how they can help you.</p> <p>We will help you establish if you are eligible for the available government concessions and apply these to your account. If you find out you are eligible for these programs, please let us know immediately so that we can help you.</p>
<p>Comment on above changes:</p>	<p>The Standard Statements must contain action-based statements and specific actionable commitments</p> <p>EWON considers that the statement “We will help you establish if you are eligible for the available government concessions and apply these to your account” provides a specific actionable commitment for retailers to help customers access the available rebates they are eligible for.</p>	

¹⁸ AER, Rule Change Proposal, Strengthening protections in the National Energy Retail Rules for customers in financial hardship, p6

¹⁹ AER, Rule Change Proposal, Strengthening protections in the National Energy Retail Rules for customers in financial hardship, p6

#	AER draft Standard Statements	EWON's recommendation
9	<p>We will not:</p> <ul style="list-style-type: none"> charge our hardship customers late payment fees, or require our hardship customers to provide a security deposit. 	<p>We will provide you with the contact details of the relevant energy ombudsman scheme if:</p> <ul style="list-style-type: none"> we consider that you are not eligible for our hardship program we decide to remove you from the program because we consider you have not met your obligations under this policy you are eligible for our hardship program, but we cannot agree on an affordable payment plan. <p>We will not:</p> <ul style="list-style-type: none"> charge our hardship customers late payment fees, or require our hardship customers to provide a security deposit.
<p>Comment on above changes:</p>	<p>The Standard Statements must reference the customer's right to access energy ombudsman schemes</p> <p>When customers complain to EWON about energy affordability or disconnection for non-payment, too often the retailer has failed to refer the customer to their hardship program, has removed them from their hardship program, or has not successfully negotiated an affordable payment plan with their customer.</p> <p>At the AER/AEMC workshop on 25 September 2018, QCOSS suggested that the Standard Statements should require retailers to refer the customer to an Energy Ombudsman Scheme if a customer is not satisfied with the retailer's response to their request for assistance. EWON supports this suggestion.</p> <p>The AER's 2015 review of hardship policies identified that all retailers have established internal dispute resolution processes and provide contact details for local energy ombudsman schemes for when negotiation is not successful²⁰. This means that including a reference to ombudsman schemes in the Standard Statements would reflect current industry practice.</p> <p>The wording we have recommended makes it clear to the customer about the issues they could complain about the relevant energy ombudsman scheme.</p>	

²⁰ AER, Review of Energy Retailers' Customer Hardship Policies and Practices, January 2015, p18