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Dear Sarah

Draft Customer Hardship Policy Guideline

Thank you for the opportunity to comment on the AER *Draft Customer Hardship Policy Guideline*.

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

The Customer Hardship Policy Guideline should serve two purposes. The first is to ensure that a retailer's Hardship Policy meets the minimum requirements of the Law, Rules and the Guideline. The need for this to be enforced in a Guideline was clearly established in the AER's rule change request to the AEMC and confirmed by the AEMC through its resulting rule change. Once these minimum requirements are met, retailers will have flexibility to build on this to develop new and innovative approaches to assist customers.

The second purpose of the Guideline is to ensure that customers are aware of retailers' obligations and responsibilities so that, if they experience affordability difficulty, they can confidentially request assistance.

The Draft Guideline, and specifically the standardised statements, is a significant and positive step to addressing the failings of some retailer's current practice. Key failings identified through the initial AER audit and strongly supported by stakeholder feedback throughout the extensive consultation process are:

- failure to identify customers experiencing financial difficulties
- 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.

Implementation of this Guideline should result in more customers being provided with assistance with better outcomes for such customers.

Section 45 (3) of the National Energy Retail Law (NERL) states:

The AER must, in considering whether to approve a customer hardship policy under subsection (1), have regard to the following principles:

- (a) that the supply of energy is an essential service for residential customers;*
- (b) that retailers should assist hardship customers by means of programs and strategies to avoid de-energisation (or disconnection) solely due to an inability to pay energy bills;*
- (c) that de-energisation (or disconnection) of premises of a hardship customer due to inability to pay energy bills should be a last resort option;*

In 2017-18 in NSW the number of electricity disconnections rose from 27,382 in 2016-17 to a near record high of 32,315¹. In the first quarter of 2018-19 disconnections were 9,425 a 26% increase on the same quarter in 2017-18². A real test of the effectiveness of this Guideline will be a decline in the number of disconnections.

In NSW for the first quarter of 2018-19 there were 84,447 electricity customers on payment plans and 33,558 in affordability/hardship programs³. Another key measure of the success of the Guideline will see the gap between these two numbers reduce.

Specific Responses to Draft Guideline

The numbers in this section reflect the relevant sections of the draft guideline that EWON wishes to comment on.

2 Retailer hardship policy responsibilities: identification, training and information

2.2 Steps used to identify customers experiencing payment difficulty due to hardship

This section establishes a retailer's responsibility to ensure that its Hardship Policy:

- Set out steps for early identification of customers needing assistance and the steps the retailer will assist the customer
- State that the retailer has the systems to meet its obligations and
- Sets out the retailers' procedures for handling hardship customer complaints and disputes.

Of particular importance is the explicit requirement of retailers to have mechanisms for early identification. This is because the most common aspect of identified failures of affordability policies was the misplaced emphasis on self-identification by customers. The Draft Guideline correctly rebalances the requirements by emphasising retailers' obligations to proactively identify customers at risk.

The requirement that the policy sets out the process for handling customer complaints is also important. If, for example, a customer is found not to be eligible for participation in a program, it is only fair that the reasons for this decision are provided to that customer and that there is an avenue to dispute the decision.

Complaints data from both internal and external dispute services is an essential tool for improving retailer processes. While setting the relevant framework for improving assistance to customers is important, complaint data provides the opportunity to assess the effectiveness of aspects of affordability/hardship programs, such as training, and identify areas of implementation that need improvement. The use of complaint data in this way reduces the need for regulatory intervention.

¹ AER, *Annual report on compliance and performance of the retail energy market 2017-18*, p65

² AER, *Retail energy market performance update for Quarter 1 2018-19*, Data Workbook

³ Ibid

2.3 Training

The draft guideline requires retailer staff to receive training and confirm with the AER that this is regularly reviewed. It specifies that staff undergo training to understand the issues that customers experiencing affordability difficulty face, so they can:

- answer customer enquiries
- identify customers experiencing payment difficulties
- assist customers experiencing payment difficulties.

The wording in this section is a considerable improvement on the suggestions in the AER Issues Paper, which spoke about training for 'hardship personnel'. By identifying the need for training for all relevant staff, the draft guideline provides an approach which should result in a more successful outcome.

2.4 Information about a retailer's hardship program

This section requires retailers to provide a clear and reasonable explanation of eligibility to a affordability/affordability program and forbids unreasonable conditions to entry or re-entry to a program. It also provides a non-exhaustive list of such unreasonable conditions. We support this and further propose that if a customer is deemed ineligible, they should be provided with the reasons why.

2.5 Accessibility of customer information

EWON has previously expressed a concern that information about retailer responsibility to provide assistance is not adequately communicated. The requirement that the policy describe how the retailer will communicate with customers with low English literacy, those without internet access, customers with disability, and customers living in remote areas is extremely welcome. Further, the requirement that retailers, with customer consent, fully engage with a customer representative as though they were the customer, will greatly assist many vulnerable customers.

3 Communication of customer rights

EWON supports the requirement that the affordability/hardship policies must be accessible from a retailer's homepage and that it be provided to customers without internet access in written form. EWON also supports the requirement that the affordability/hardship policy must use clear and simple language and be easily readable.

5 Standardised statements

This section of the Guideline sets out what statements must be in an affordability/hardship policy and what words must be used to meet the minimum regulatory requirements. The new draft has much more positive language focused upon retailer obligations with the use of words such as "we will". EWON welcomes the strengthening of this section in that it places a greater level of responsibility on retailers, away from the previous emphasis on vulnerable customers having to initiate engagement. The new wording more accurately reflects the legal obligations in the Law and Rules and addresses key areas where those obligations have not been met in the past.

5.2 Wording of statements

Early identification

The inclusion of disconnection for non-payment as a trigger for referral to a staff member for assessment of eligibility is a significant improvement and reflects an obvious and serious indicator of financial hardship. It links directly of the legal requirements on retailers relating to disconnection as specified in Section 45(3) of the NERL.

An exception to welcome emphasis on retailer obligations for early identification is the point relating to emergency assistance. The current wording places the onus on the customer to let the retailer know that they may be eligible for emergency assistance. EWON would prefer additional wording that requires a retailer to contact a customer if it identifies the use of emergency assistance to pay a bill. This is more in line with the other points in this section.

Payment plans

This section of the standised statement identifies the three key aspects of establishing a sustainable payment plan, one of which is the customer's ability to pay, but then concludes with:

"We will offer you a payment plan best suited to your situation. This will include instalments which cover what you owe, and an amount that aims to cover your future energy use."

This leaves out the customer's ability to pay as a key criterion. EWON suggests the inclusion of the words *"and your ability to pay"* at the end of the first sentence.

Missed payments

The obligation to contact a customer if a payment is missed now requires the retailer to "see if your current plan is still suitable." In EWON's experience a bland written communication that a payment has been missed, and that this could result in a suspension of participation, is seen as a threat rather than an offer of further engagement. This addition is an important improvement that facilitates an ongoing conversation.

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



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Ombudsman
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