

2 December 2011

Debt Collection Consultation
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Thank you for the opportunity to comment on the *Debt Collection Harmonisation Regulation Options Paper*.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. This includes complaints about debt collection.

Debt collection and utility debts

When a utility company seeks to recover unpaid amounts from current account holders, there are regulated procedures for issuing a series of notices up to and including disconnecting supply¹. The notices must provide advice as to assistance measures available, including the contact number for EWON, and will often prompt the account holder to engage with their provider to agree an affordable payment plan to settle their arrears.

If the account is closed however, the utility has the option of referring the debt to a debt collector. As energy prices have continued to rise, many customers are finding it increasingly difficult to manage their electricity and gas accounts. Debt collection cases only comprise approximately 3.6% of the total customer complaints to EWON. However in the year to date, EWON has seen a 35% increase in the number of complaints about debt collection compared to the same period in 2010 – 630 cases year to date. This increase could be interpreted as the result of retailers taking debt recovery action in relation to an increasing number

¹ *Electricity Supply (General) Regulation 2001*
Gas Supply (Natural Gas Retail Competition) Regulation 2001
For Sydney Water and Hunter Water, the requirements are in their (IPART approved) Customer Contracts.

of defaulting customers, rather than complaints about the actions of the debt collectors themselves.

The complaints that customers bring to EWON are largely because they are disputing the amount of the debt. This may be because there has been a dispute about the accuracy of the billing, misapplied payments, or disputed responsibility for the account in cases where one retailer may have transferred this customer's account from his existing retailer in error.

Utility debts can also arise because the customer has not realised that after they close their account when moving from the property, there will be one more final bill. This can take several days to issue, as it requires a final meter read. If the customer fails to provide a forwarding address, the company will refer the debt for debt collection. Similarly, if a customer simply moves out without closing their account, the provider is entitled to continue billing that customer until a new occupant opens an account, and the unpaid arrears of that previous occupant may be referred to a mercantile agent for debt collection.

EWON's process when investigating these complaints is to immediately request the provider to withdraw the debt from the debt collector so we can investigate the dispute. If our investigation reveals an error with the billing, we ensure that this is rectified. If there is no error, we can assist the customer to negotiate a realistic and affordable payment plan. If the customer declines, we will close our file and the provider may resume their debt collection activity.

We suggest this is an appropriate model for any general process being contemplated across the industry.

Conduct complaints

Customers occasionally complain of harassment by the debt collector, but where the complaint is in relation to a disputed debt and this dispute is resolved, the issue of harassment is generally not taken further. This is particularly the case as the debt is withdrawn from the debt collector during our investigation.

However harassment was a particular issue in the case of the failed retailer Jackgreen. Following Jackgreen's suspension from the national electricity market in December 2009, EWON received a high number of complaints from customers disputing the accuracy of their billing. EWON had serious reservations about the integrity of Jackgreen's account records, but their staff were no longer available to assist with the investigation of billing complaints.

The Receivers then on-sold Jackgreen's debts to a number of collection agents, and customers continued to contact EWON to complain about aggressive and intimidating calls from some debt collection agents. Customers were particularly aggrieved where the basis for the debt was still in dispute, but there was no way for them to contact the company to resolve this. Jackgreen was no longer a member of the EWON scheme, so our normal processes for dispute resolution were no longer available. (Customers were regularly referred to the Consumer Credit Legal Centre NSW, and EWON subsequently developed a good working relationship with the primary debt collection agency and credit listing company to try to resolve matters for former Jackgreen customers with them directly).

This highlighted for us the importance for customers to have access to effective independent external dispute resolution, particularly where there is a dispute as to the debt itself.

Harmonisation

EWON supports the aim of achieving harmonisation of the regulatory framework in this area. The energy industry is currently in the process of moving to a national framework, with the aim of facilitating efficiencies for the providers operating across jurisdictional boundaries, as well as achieving best practice consumer protection nationwide.

EWON understands that there is wide industry acceptance for the ASIC/ACCC *Debt Collection Guidelines*. According to the Australian Collectors & Debt Buyers Association NSW, compliance with these Guidelines is usually part of the contractual agreement between industry members and their clients.²

EWON supports moves to make these provisions part of a national regulatory framework for issues relating to the conduct of debt collectors.

Complaint handling options

The jurisdictional energy and water ombudsmen and the Telecommunications Industry Ombudsman provide independent external dispute resolution with respect to utility and telecommunication debt complaints, and EWON believes both customers and providers benefit from this.

² *Australian Collection Industry – April 2011. A snapshot of the industry, its composition, operations and scope:* www.acdba.com

It should be noted however, that it is the energy retailer, not the debt collection agency collecting debts on their behalf, that is required to be a member of a jurisdictional energy ombudsman scheme. EWON is able to investigate complaints relating to debt collection as our jurisdiction extends to the conduct of our members' contractors or agents.³

Option 2 at page 45 proposes mandatory membership of an external dispute resolution scheme for "*all debt collectors which are not already members of an EDR scheme*". Debt collection agencies used by energy and telecommunications retailers would typically collect debts on behalf of a range of other clients as well, so under this proposal would be required to join an EDR scheme. This could mean that a customer with a complaint about a debt collector in relation to a utility debt could potentially have a choice of more than one EDR scheme.

In this situation, customers would need to be provided with clear information on their options, particularly if there are any significant differences between the schemes available to them. This has the potential to cause confusion for customers who are already in a vulnerable situation.

While EWON supports moves to make some form of independent external dispute resolution process available to all other consumers not covered by a mandatory scheme, we have concerns about the possible duplication of services.

If you would like to discuss this matter further, please contact me or Prue McLennan, Investigations Policy Officer on 02 8218 5250.

Yours sincerely



Clare Petre
Energy & Water Ombudsman NSW

³ EWON's Constitution, clause 3.4, available at www.ewon.com.au