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Industry & Investment NSW
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Customer Hardship Regulatory Amendments

Thank you for the opportunity to comment on the draft amendments to the *Electricity Supply (General) Regulation 2001* and the *Gas Supply (Natural Gas Retail Competition) Regulation 2001*.

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

EWON strongly supports the early introduction in NSW of mandated Customer Hardship Charters and strengthened payment plan requirements for hardship customers ahead of the implementation of the National Energy Customer Framework (NECF). We note that these amendments could be introduced as early as March 2010. We also support the rationale to align with the NECF in the lead up to our transition to the national framework.

Overall EWON welcomes the draft amendments as a positive development for vulnerable customers and their retailers in NSW. We also highlight some potential gaps and have offered some suggestions for ways that the new provisions could be enhanced, as detailed below.

Mandated hardship charters in NSW

Most energy retailers in NSW have been operating hardship programs for some years, and many have developed policies with flexible payment options, referrals to community welfare organisations and financial counsellors, and tailored case management processes. Generally these programs work well to assist vulnerable customers who are struggling to manage their energy accounts.

However, EWON welcomes mandating the charters to encourage best practice consumer protection in NSW and to ensure consistent programs across retailers. The proposed draft Clause 13AA outlines new licence conditions that suppliers¹ must develop, implement

¹ We have adopted the language of the draft amendments, using the term *supplier* for *retailer*.

and publish hardship charters, as well as inform hardship customers of the charter and provide these customers with a copy of the charter. These draft amendments will also allow for the monitoring of these new licence conditions across the industry by the appropriate regulator, which is presently IPART.

In particular EWON notes that the amendments include provisions for customer self identification of hardship as well as identification by the supplier. Cementing this dual identification process in the Regulations is an important development, allowing for customers with complex needs, perhaps not covered by typical policies and procedures, to self identify and be offered assistance.

Early response by the supplier is also a welcome provision. Suppliers are consistent in their position that the earlier they know that a customer is in financial difficulties and in need of assistance the better. Many suppliers try to identify customers in hardship through a variety of ways including frequent requests for extensions of time to pay, frequent late payments, intermittent payments. However, in EWON's experience of customer complaints in NSW, some suppliers do not engage sufficiently with their hardship customers until very large arrears have accumulated, or the customer is facing disconnection. The earlier the supplier and customer begin to address payment difficulties by implementing tailored affordable payment options and accessing appropriate referrals and assistance, the better the outcomes for both the hardship customer and the supplier. Early identification of hardship can avoid disconnection and ensure arrears can be managed.

Payment plan requirements

We note that the draft amendments in Clause 13A (2A) impose on the supplier the requirement to make two written offers of assistance under the supplier's payment plan in the previous 12 months, before disconnection procedures can begin.

We envisage that this new provision, mirrored in the NECF, will allow for hardship customers and suppliers a further opportunity to review customer circumstance and payment options, and tailor a second payment plan if required. This will afford hardship customers and suppliers another opportunity to manage the arrears and avoid disconnection. We believe this is a positive development for NSW.

What is not clear in the draft amendments is what format/form the two written notices will take. Will the offer of a payment plan appear as text on the existing reminder and disconnection notices, or is a separate notice required? We would appreciate clarification on this, as it could be a potential area for confusion or misinterpretation.

We note that the amendments will complement the current Clause 13A licence conditions concerning payment plans, where suppliers must consider the customer's capacity to pay, consumption needs and arrears, when calculating payment plans.

Options for disconnected customers who are identified as in hardship

EWON has argued elsewhere, including in our submission on the Customer Assistance Policy Draft, that a strengthened framework for NSW consumer protection needs to include provisions for those customers who have been disconnected and whose hardship is only identified at this point.

We stated in our CAP submission:

Payment plans to be available to customers after disconnection

Retailers are currently required to provide payment plans to customers in financial difficulties prior to disconnection. However it is EWON's experience that many hardship customers do not actually make contact with their retailer until after disconnection, when they are forced to face the crisis situation and seek assistance. There is currently no obligation on the retailer to provide a payment plan in these circumstances. EWON would like to see the requirement to provide a payment plan to be extended to customers after disconnection.²

In EWON's experience it is often the case that these disconnected customers can be the most vulnerable consumers, often experiencing a range of complex problems such as mental health issues, disability or be in crisis situations that have prevented them from seeking help sooner. We are also concerned by some cases where a supplier requires an up front payment of all or a large portion of the arrears before the hardship customer is reconnected. In some instances there is no offer of a payment plan or referral to the hardship program.

In the context of the draft amendments, these disconnected customers would only be considered hardship customers and offered assistance if they had been identified before disconnection. EWON believes it is crucial that these customers have the same access to assistance as other hardship customers and that supply can be reconnected on the basis of an affordable payment plan.

We note that the current practice of most suppliers in NSW is to offer disconnected hardship customers referral to their hardship program, information about other assistance, tailored payment plans as well as reconnection once they are aware of the customers' circumstances.

EWON would therefore like to suggest that the draft amendments extend the same assistance to hardship customers who are only identified after disconnection. This could

² EWON submission on the Customer Assistance Policy Draft, DWE, July 2009, pg8

possibly be done by expanding the provisions relating to the identification of hardship customers in 13AA (3)(a).

Ensuring customer hardship charters are accessible

Another concern for EWON is ensuring that all assistance measures, including EWON's service, are accessible to all hardship customers, including Culturally and Linguistically Diverse customers. It is now common practice to provide information translated in other languages, as well as interpreting services free of charge. We suggest that the draft amendments require that hardship charters/information are made accessible to all customers including customers whose first language is not English, or who have literacy or other access difficulties.

Waiving fees and charges for hardship customers

In EWON's experience, fees and charges such as late payment fees and disconnection/reconnection fees often comprise a significant part of the arrears for customers in hardship. EWON will generally negotiate with suppliers to have these fees and charges waived for hardship customers. Some suppliers have the practice of waiving these fees and charges from accounts, particularly when customers are placed on the hardship programs and continue to meet the agreed payment arrangements.

IPART have mandated the waiving of late payment fees for hardship customers. This is detailed in the current IPART electricity retail price determination that states that late payment fees must be waived in the following circumstances:

- where a customer has contacted a welfare agency for assistance
- all or part of the payment is by EAPA
- where considered appropriate by EWON³.

As well, the Second Exposure Draft of the NECF requires a retailer to waive late payment fees for hardship customers⁴. EWON would recommend that the draft amendments are consistent with the NECF in this area.

Arrangements between suppliers and service providers

The only difference between the draft gas and electricity amendments seems to be that Clause 13A (2B) does not appear in the draft amendments for the gas regulation. We query why this provision would not also apply for gas arrangements.

³ Promoting Retail Competition and Investment in the NSW Electricity Industry, Regulated electricity retail tariffs and charges for small customers 2007 to 2010, IPART, pg 132

⁴Part 3, Section 303 - Waiver of late payment fee for hardship customer, National Energy Rules – Second Exposure Draft, NECF, pg 48

If you would like to discuss this submission further, please contact me or Emma Keene,
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Yours sincerely



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