

25 June 2024

Ms Danielle Chifley  
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Australian Energy Regulator  
GPO Box 3130  
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Via email: [ConsumerPolicy@aer.gov.au](mailto:ConsumerPolicy@aer.gov.au)

Dear Ms Chifley

**Australian Energy Regulator (AER) Review of payment difficulty protections in the National Energy Customer Framework (NECF) Issues Paper**

Thank you for the opportunity to comment on this Issues Paper.

The comments contained in this submission reflect the feedback of the Energy & Water Ombudsman NSW (EWON), Energy & Water Ombudsman South Australia (EWOSA), and Energy and Water Ombudsman Queensland (EWOQ).

We are the industry-based external dispute resolution schemes for the energy and water industries in New South Wales, South Australia, and Queensland. We have collectively reviewed the Issues Paper and we have answered those questions that align with issues customers raise, or with each respective organisation's operations as they relate to the Issues Paper.

Global unrest, climate instability, increased cost of living and other complex pressures have intensified since the release of the AER's Towards Energy Equity strategy (the strategy). We strongly support the AER's review of payment difficulty protections in the NECF (this review) which fulfills an action from the strategy, alongside recent progress with the Game Changer initiatives and the development of a Customer Engagement Toolkit.

Many households are dealing with affordability difficulties across multiple utilities and living expenses simultaneously, and the energy industry is not the only sector reckoning with a need for change. The Australian Securities & Investment Commission (ASIC), for example, released a report in May 2024 which found that home lenders in Australia should be doing more for struggling customers.<sup>1</sup> The Telecommunications Industry Ombudsman (TIO) released a report in June 2023, which similarly found that providers need to do more to reduce barriers for consumers seeking help.<sup>2</sup> With this review, the energy industry has an opportunity to become a best practice standard in affordability protections.

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<sup>1</sup> ASIC, Hardship, hard to get help: Lenders fall short in financial hardship support, 20 May 2024, p7

<sup>2</sup> TIO, A time for change – Three years of systemic investigations in review, June 2023, p11

In this submission, we detail our recommendations as follows:

- **Review scope, objectives and approach (recommendations relate to consultation question 1)**
  1. [Consider language and terminology carefully](#)
  2. [Progress and build on the Game Changer initiatives](#)
  3. [Reconsider excluding small business protections from this review](#)
  4. [Avoid further gaps in protections for customers in embedded networks](#)
  5. [Consider the scope for closed account protections and conduct research into switching and debt management](#)
  
- **Characteristics of an effective payment difficulty framework (recommendations relate to questions 2, 3, 4, 5 and 6)**
  6. [Mandatory and enforceable](#)
  7. [Early, proactive identification that leads to effective, sustained assistance](#)
  8. [Consumer-centric and flexible](#)
  9. [Minimum standards operate as the 'floor' for assistance options, not the 'ceiling'](#)
  10. [No inflexible barriers – no one-size-fits-all 'two strikes' rule](#)
  11. [Standards for how assistance ends](#)
  
- **Rethinking disconnection (recommendations relate to question 7)**
  12. [Review the disconnection threshold](#)
  13. [Improve touchpoints before disconnection](#)
  14. [Minimise barriers to reconnecting customers who show willingness to engage](#)
  
- **Appendix – Case studies**

We are happy to provide further case studies upon request.

Our comments are informed by an understanding that the AER must also consider retailer costs and other impacts, in a complex regulatory environment where retailers have been dealing with significant changes in recent years across billing, concession entitlements and metering, among other things.

We also recognise that some retailers are already going above and beyond the requirements of the current framework and providing a best practice standard – we wish to see this become a consistent standard for all consumers.

We confirm our strong ongoing commitment to reporting compliance issues and providing insights from our complaints to help measure the consumer outcomes of any changes in the framework.

If you require any further information regarding our submission, please contact Dr Rory Campbell, Manager Policy & Systemic Issues (EWON) on 02 8218 5266, Mr Antony Clarke, Policy and Governance Lead (EWOSA) on 08 8216 1861, or Mr Jeremy Inglis, Manager Policy and Research (EWOQ) on 07 3212 0630.

Yours sincerely



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# AER Review of payment difficulty protections in the NECF Issues Paper

Review scope, objectives and approach

Consider language and terminology carefully

## Recommendation 1

The AER should continue to give careful and nuanced consideration to language and terminology.

### Why we are making Recommendation 1

In its Toward Energy Equity strategy, the AER explored the complexities of terminology, recognising that some consumers would not identify with or respond positively to the term 'vulnerability'. The AER came to a nuanced definition that acknowledged these complexities and leaned toward using phrasing like 'experiencing vulnerability' or 'at risk of experiencing vulnerability'.

This review is an opportunity to consider fundamental language changes. We have argued many times in previous work on energy affordability that the word '*hardship*' is viewed, by many people, as a being a discriminatory or dysfunctional label. If retailers offered Energy Affordability Programs rather than *hardship* programs, for example, we may see a greater number of customers who experience financial vulnerability self-identify. It may also open the door to initiating easier conversations between retailer staff and the customers who need these programs.

We recognise that the continued use of *hardship* is largely due to language ingrained in the NECF – we reluctantly use the term when referring to those provisions in this submission. We use the terms affordability program and affordability policy, instead of *hardship* program and *hardship* policy.

Progress and build on the Game Changer initiatives

## Recommendation 2

The Game Changer initiatives should be a starting point for more innovative and ambitious change.

### Why we are making Recommendation 2

We strongly support the AER's work to progress and build on the Game Changer initiatives alongside this review of payment difficulties protections in the NECF. The Game Changer initiatives aim to address the fundamental issue, outside the scope of this review, that the National Energy Market and the NECF were not designed to accommodate households that simply cannot afford to pay their energy costs and whose financial circumstances are unlikely to change. This is compounded by the fact that the households most at risk of experiencing vulnerability often have the least control of the energy efficiency of their homes, as well as barriers to accessing Consumer Energy Resources (CER).

Even with an overhaul of the way payment difficulties are addressed in the NECF, there will still be customers who cannot be shoehorned into the framework and need more radical solutions. There are also limitations to looking at standalone energy policy when the intersection with housing, health and other policy areas is so crucial. The limited scope of the NECF cannot accommodate this complexity, but Game Changer or other radical approaches may be able to foster broader, shared policy objectives. Progress in the energy industry could encourage governments and essential

service-related industries, not only energy, to consider their broader social responsibilities to Australians who, without poverty eradication, will always find essential services unaffordable.<sup>3</sup>

### Reconsider excluding small business protections from this review

#### Recommendation 3

The AER should take this opportunity to consider what protections would be suitable to extend to small businesses with input from stakeholders, including retailers.

#### Why we are making Recommendation 3

The AER notes that small business customers are outside the scope of this review, which is focused on residential customers experiencing payment difficulties. This is a significant gap in this review's scope given the financial landscape for small businesses in the wake of considerable COVID-19 impact and the growing cost of living crisis over the past several years.

Many small businesses are struggling. In November 2023, Energy Consumers Australia (ECA) released its survey research into small business energy consumers, which found that:

- 35% of small business owners find it difficult to keep up with their energy payments
- 62% of small business owners are concerned with increasing energy costs for their business.<sup>4</sup>

In May 2024, the Council of Small Business Organisations Australia (COSBOA) released a research report funded by ECA, which found that:

- 34% percent of small businesses have experienced energy affordability challenges in the last 12 months
- overall, 51% of small businesses report a negative financial impact over the last 12 months.<sup>5</sup>

Critically, both pieces of research identified that about a third of small businesses owners reported payment difficulties.

The AER notes that the average debt of residential customers is 23% higher than it was five years ago, which is based on performance reporting data up to 30 June 2023. More recent performance reporting data up to 31 December 2023 indicates that:

- average residential debt was 38% higher in Quarter 2 2023-24 (October to December) than it was five years ago in Quarter 2 2019-2020
- average small business debt has increased even more – it is 48% higher in Quarter 2 2023-24 than it was five years ago in Quarter 2 2019-2020.<sup>6</sup>

The impact of these financial pressures on small businesses is evident in ASIC annual corporate insolvency statistics. There were 5,440 insolvencies in the 2022-23 financial year compared to 4,064 insolvencies in 2021-22, an increase of 33%. 87% of insolvencies in the 2022-23 financial year were for businesses with fewer than 20 employees.<sup>7</sup>

Excluding small businesses from the review's scope is not in line with growing energy industry recognition that small businesses could, and should, benefit from increased protection. When the AER introduced the Statement of Expectations to provide extra protections during the COVID-19

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<sup>3</sup> EWON, Spotlight On – The national energy affordability framework – it's time for a change, December 2020

<sup>4</sup> ECA, SME Energy Consumer Information Research, Final Report, November 2023, pp12-16

<sup>5</sup> COSBOA, Small Steps. Bright Future. Supporting small businesses to net zero and beyond, May 2024

<sup>6</sup> AER, Retail performance reporting data, Quarter 2 2023-24 Schedule 3 and Quarter 2 2019-2020 Schedule 3

<sup>7</sup> ASIC, Insolvency statistics – Series 3 External administrator reports, 2022-23 Series 3.1

lockdowns, the extra protections applied to small businesses as well as households.<sup>8</sup> The Australian Energy Market Commission (AEMC) initially proposed that new rules to better support customers impacted by family violence would not apply to small business customers.<sup>9</sup> However, the AEMC's final rule determination extended the protections to small business customers following feedback provided throughout consultation from stakeholders like the AER and our offices.<sup>10</sup> The AER states in its submission to the initial consultation paper that:

Given the serious impact of family violence on consumers, we consider it is important that small business customers are also able to access supports under the proposed rule.<sup>11</sup>

The AER also recognises that small businesses could benefit from additional protections in the Sustainable Payment Plan Framework, which strongly encourages retailers to apply its principles in their engagement with small business customers even though they are not obligated to do so.<sup>12</sup>

We recognise that the protections for residential and small business customers cannot be exactly the same. While the framework should not encourage small businesses to trade while insolvent, the majority of small businesses would be better placed to pay debt if retailers provided affordable payments plans to assist them. Complaints to our offices show that small business customer experiences vary in degree of payment difficulties, whether it be due to natural disasters<sup>13</sup>, personal illness, family violence, ongoing COVID-19 impacts or other long-term or short-term issues. Some retailers offer payment arrangements, but business owners are currently not in a strong negotiating position when requesting an affordable arrangement or time to pay the debt.<sup>14</sup>

Like residential accounts, small businesses that are engaged, with a genuine intention to pay, would benefit significantly from the extension of payment difficulty protections. See [Case study 1](#) and [Case study 2](#).

## Avoid further gaps in protections for customers in embedded networks

### Recommendation 4

The AER should consider how it can extend increased protections for customers of authorised retailers to customers of exempt entities in a timely manner.

The AER should also recognise that customers of authorised retailers in embedded networks do not have the exact same options or protections as on-market customers of authorised retailers.

### Why we are making Recommendation 4

The AER notes that the protections under review will apply to embedded network customers of authorised retailers, but customers of exempt entities are outside the scope of the review.

There is a risk that the growing gap in protections between customers of authorised retailers and customers of exempt entities will widen. We have observed, for example:

- instances where exempt entities are very strict on disconnections

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<sup>8</sup> EWON, Spotlight On – Consumer and small business energy debt solutions, November 2021

<sup>9</sup> AEMC, Protecting customers affected by family violence Consultation Paper, 18 November 2021, p7

<sup>10</sup> AEMC, Protecting customers affected by family violence Final Rule Determination, 15 September 2022, p3

<sup>11</sup> AER submission, Protecting customers affected by family violence Consultation Paper, 3 March 2022, p4

<sup>12</sup> AER, Sustainable Payment plans – A good practice framework for assessing customers' capacity to pay, July 2016, p2

<sup>13</sup> EWON, Spotlight On – Natural disasters – the long-term customer experience, November 2023

<sup>14</sup> EWON, Spotlight On – Consumer and small business energy debt solutions, November 2021

- condition 9, 10 and 11 in the Retail Exempt Selling Guideline are not always being managed appropriately.

See [Case study 3](#) for several examples.

We recognise that there are practical constraints to changing protections for customers of exempt entities, including review cycles and consultation requirements. We also acknowledge that the AER is currently undertaking a review of the exemptions framework for embedded networks. Our joint submission to that review details our concerns with its scope.<sup>15</sup>

We are concerned about important protections for customers of exempt entities lagging behind, rather than keeping pace with, protections for customers of authorised retailers. Two recent examples are affordability policy minimum standards and family violence protections.

The AER's Customer *Hardship* Policy Guideline (including standardised statements) was introduced in the NECF in March 2019, following a rule change in November 2018. It was not until over two years later in July 2022 that similar minimum standards were brought in for exempt entities in version 6 of the Retail Exempt Selling Guideline, and the accompanying Exempt Seller *Hardship* Policy Template.

Protections for customers impacted by family violence were strengthened in the NECF from 1 May 2023. The AER is currently consulting on changes to the exemptions framework that may include family violence protections to the extent that they are reasonable and feasible. If included, any changes will not come into effect until 2025 at the earliest.

The AER made the commitment to consider how family violence protections could apply in embedded networks in its submission to the AEMC's final determination on the NECF rule change.<sup>16</sup> At minimum, the AER should commit to reviewing and improving payment difficulties protections for customers of exempt entities in line with the findings of this review.

It is also important context for this review that customers of authorised retailers in embedded networks do not have the exact same options or protections as on-market customers of authorised retailers. Regardless of whether a customer is billed by an authorised retailer or exempt entity (or billing agent), customers living in embedded networks do not have the option to switch retailers or make choices about their available services. We have observed that customers can, for example:

- be confused by bundled accounts and the disconnection process, such as when the customer has a separate hot water or air conditioning service
- find it much harder to negotiate payment for reconnection because the customer has no immediate alternative and therefore no negotiation power.

Some protections in the NECF do not apply and/or cannot operate normally for customers of authorised retailers in embedded networks, including:

- the right to an account on a standing offer – section 22 of the National Energy Retail Law (NERL)
- the right to reconnect on a standing offer if disconnected for over 10 business days for non-payment – section 22 of the NERL and rule 18 of the National Energy Retail Rules (NERR).

These differences in protection should be taken into account in this review, particularly our recommendations for rethinking disconnection.

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<sup>15</sup> EWON, EWOQ, EWOSA and EWOV submission, AER Review of the exemptions framework for embedded networks, 6 February 2024

<sup>16</sup> AER submission, Protecting customers affected by family violence Final Rule Determination, 4 August 2022, p3

## Consider the scope for closed account protections and conduct research into switching and debt management

### Recommendation 5

The AER should take this opportunity to consider what measures could be extended to closed accounts with input from stakeholders, including retailers. This should include research into energy debt and consumer outcomes for closed accounts, and the role of disconnection and switching.

### Why we are making Recommendation 5

The AER acknowledges in the Issues Paper that customers experience negative impacts when trying to manage debt with previous retailers given the current limited payment difficulty protections for closed accounts. We recognise that the protections for active and closed accounts cannot necessarily be exactly the same. However, a more flexible approach to management of closed accounts could be beneficial for customers and retailers.<sup>17</sup>

We have already seen some recognition of this in the industry. The Sustainable Payment Plan Framework indicates that a retailer who adopts it is committing to applying its principles to inactive accounts.<sup>18</sup> The AER's COVID-19 Statement of Expectations provided extra protections to closed accounts as well as active accounts.<sup>19</sup> The AER recently engaged with a major retailer to enhance the protections in its affordability policy, including a commitment to continue offering some protections to customers who transfer to another retailer or no longer require energy supply.<sup>20</sup> The AER indicated that it considers this to be best practice and encourages other retailers to consider similar commitments.<sup>21</sup>

To help understand what protections are suitable, more research and data must be collected on energy debts on closed accounts and outcomes for households, including the role of disconnection and switching. It is evident in complaints that some customers might deal with unaffordable energy costs and debt by switching retailers, particularly when facing disconnection or following disconnection. While the power to switch retailers is a crucial customer right, the movement of customers to new retailers while carrying existing debt creates challenges for them to access appropriate protections and assistance. See [Case study 4](#) and [Case study 5](#). Financial vulnerability also limits customer choice when a retailer declines to establish an account due to a poor credit rating. See [Case study 6](#). This is most acute for consumers at risk of vulnerability, such as low income renters, people impacted by natural disasters and people impacted by family violence.

This structural issue with the market is also evidenced by the fact that we have seen some retailers, at different times over the last decade, offering to waive the debt of customers who have been disconnected if they agree to switch to another retailer. It is clear in these situations that the retailer assessed that it is more prudent to waive the debt than continue to manage a customer with complex payment difficulties under the current framework. While this is not necessarily a poor outcome for a customer who is able to start fresh with a new retailer without carrying debt, it does not sustainably address the customer's underlying and ongoing payment difficulties. See [Case study 6](#).

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<sup>17</sup> EWON, Spotlight On – Consumer and small business energy debt solutions, November 2021

<sup>18</sup> AER, Sustainable Payment plans – A good practice framework for assessing customers' capacity to pay, July 2016, p2

<sup>19</sup> EWON, Spotlight On – Consumer and small business energy debt solutions, November 2021

<sup>20</sup> Origin Energy, Our hardship policy – Power On Program for ACT, NSW, QLD, SA, January 2024, p19

<sup>21</sup> AER, Letter to retailers – Outcome of AER hardship compliance review, 17 January 2024, p2



## Characteristics of an effective payment difficulty framework

### Mandatory and enforceable

#### Recommendation 6

A payment difficulty framework should be mandatory and enforceable.

#### Why we are making Recommendation 6

It is evident that voluntary and/or non-binding frameworks are not consistently effective.

The enforceable Customer *Hardship* Policy Guideline (including standardised statements) was introduced in the NECF in March 2019. One of the reasons for this decision was to address inconsistent consumer outcomes driven by:

- previous AER guidance to retailers being very general and not enforceable
- the Sustainable Payment Plan Framework being voluntary, and inconsistently adopted by retailers.

Even with the introduction of the Customer *Hardship* Policy Guideline, there is still room for improvement in customer outcomes, as demonstrated by the multiple AER actions against retailers since 2020 in relation to breaches. Because it is enforceable, the AER is able to work with retailers to improve their policies and how they are put into practice.<sup>22</sup>

The New Zealand Consumer Care Guidelines case study explored by the AER in the Issues Paper further demonstrates that voluntary approaches are not adequate. The Electricity Authority ultimately mandated the Consumer Care Guidelines after finding that they were not being applied consistently and the voluntary approach was not providing effective protection.

### Early, proactive identification that leads to effective, sustained assistance

#### Recommendation 7

A payment difficulty framework should support early, proactive identification that leads to effective, sustained assistance.

Our suggestions to achieve this include:

- only allow judicious use of Artificial Intelligence (AI)/machine learning software – there should always be an element of human oversight rather than relying solely on AI/machine learning software, particularly for decision-making
- look at all customer touchpoints for opportunities to identify customers needing assistance
- continue supporting the Customer Engagement Toolkit as retailer best practice
- incorporate the practical guidance and principles of flexibility, consistency, empathy and respect from the Sustainable Payment Plan Framework
- prohibit or limit the circumstances in which retailers can request documentary evidence of payment difficulties
- incorporate requirements for retailers to re-engage with customers and take steps to understand why payment arrangements have not been successful, similar to requirements in the Victorian framework and the UK framework

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<sup>22</sup> Ibid, p1

- progress complementary Game Changer recommendations, outside the scope of this review, such as improving access to financial counselling support – but not as a first step before retailers meet their affordability assistance regulatory requirements.

#### **Why we are making Recommendation 7**

We support pre-emptive measures to identify customers who may need assistance early rather than further along the customer journey, at the acute end when customers have self-identified as being in difficulty and are likely overwhelmed with significant energy debt. An effective payment difficulties framework should accommodate self-identification without solely relying on it.

We recognise the potential value of AI/machine learning software to assist with identification, notification and engagement, such as identifying data-based flags that customers are experiencing payment difficulties and/or vulnerable circumstances. However, there must be human input and oversight. One of the agreed facts from the AER’s compliance action against a large retailer, for example, was that auto-generated payment plans/adjustments without customer discussion contravene the NERR and the NERL.<sup>23</sup> Automated or generic communication is detrimental to customer engagement, and can lead to customers being offered incorrect payment plans that are not suitable or affordable. See [Case study 7](#).

The AER could look at all customer touchpoints that provide opportunities to identify that customers need assistance, including those early in the relationship with the retailer and/or the debt cycle. For example, some customers face difficulties in obtaining a payment plan from a new retailer when they first transfer, even though they expected to be on one because they had one with their previous retailer. There could be an opportunity to incorporate discussions about payment plans and affordability assistance into explicit, informed consent processes – although we recognise that there would be sensitivities around this, such as customers not wanting to feel stigmatised early in their relationship with their new retailer. Other examples are:

- when customers are sent delayed bills and/or bills that cover a period longer than a standard month or quarter
- early in the debt cycle when customers receive reminders to pay.

Identification must translate into effective action, which is sometimes a challenge under both the NECF and the Victorian framework. EWOV’s observations of the Victorian framework indicate that retailers will sometimes respond to self-identified payment difficulties, or signals of payment difficulties like a payment plan request, with standard assistance. However, they will miss an opportunity to provide proactive, targeted, practical assistance that would materially help a customer manage their energy costs and prevent or manage arrears, due to the threshold triggers for tailored assistance. EWOV sees this result in consumers presenting to EWOV already in arrears, who may not have been offered appropriate assistance to prevent arrears accruing.

Similarly in the NECF, the AER identified a trend of retailers using non-affordability program payment arrangements as a first response for customers despite payment difficulty indicators being present.<sup>24</sup> Our offices also see this in complaints. For example, we receive complaints from customers who were not referred to be assessed for affordability programs despite clear indicators of payment difficulties. Frequently, the outcome of the complaint is that the customer is referred to the energy retailer’s affordability program – the Ombudsman complaint could have been avoided had this occurred in the first instance. See [Case study 8](#).

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<sup>23</sup> AER v Origin Energy Electricity Ltd [2022] FCA 802, 28-29, Statement of Agreed Facts, [26-28]

<sup>24</sup> AER, Letter to retailers – Outcome of AER hardship compliance review, 17 January 2024, p1

The AER is developing a Customer Engagement Toolkit (in advanced draft form at the time of this submission), which fulfils an agreed action from the Toward Energy Equity strategy. Effective adoption of the Customer Engagement Toolkit as retailer best practice will help to support identification turning into sustained assistance. For example, it has a section focused on building organisational capability to identify and support customers experiencing vulnerability.

We view the Sustainable Payment Plan Framework as a benchmark for good industry practice, whether or not the retailer formally signed on and adopted the framework. The practical guidance and principles of flexibility, consistency, empathy and respect from the Sustainable Payment Plan Framework provide a best practice standard for retailers in having customer discussions that lead to effective outcomes. It is a crucial reference point and resource for developing any new payment difficulties framework.

The Issues Paper explores the idea of retailers asking for documentary evidence of financial difficulties, which could impede identification from turning into assistance. As noted by the AER in the Issues Paper, this is not considered best practice but is not prohibited in the NECF. Under the Victorian framework, a retailer cannot require a customer to waive any entitlement or provide personal or financial information in order to receive assistance. The AER should consider similar restrictions in the NECF prohibiting this practice or limiting the circumstances in which a retailer may ask for documentary evidence. Family violence protections in place since May 2023 provide a precedent in the NECF. Rule 76I of the NERR prevents retailers from requesting documentary evidence as a precondition for receiving family violence protections, recognising that this could prevent people from engaging with retailers and getting the help they may need. The protections do not prevent retailers asking for information to help better understand the individual's circumstances and how to help them.<sup>25</sup>

Identification is also ineffective if a customer is not able to then stay on assistance. There are some obligations in the NECF to contact customers who are not meeting the requirements to stay on assistance, but they are fairly general. The Customer *Hardship* Policy Guideline and standardised statements, for example, require the retailer to advise the customer that if they miss a payment, the retailer will contact them to see if they need help. Details of this process are then up to retailer discretion.

The Issues Paper outlines that the Victorian framework places more responsibility on the retailer to contact customers when they do not engage as expected with the assistance required, including when they do not make payments as agreed or take actions to implement practical assistance. Similarly, the UK framework includes greater obligations for retailers to find out why a payment arrangement was not successful, with a condition to re-engage with customers after a failed repayment arrangement, including engaging with the customer in a timely manner to discuss the plan and whether a different plan or method would be more suitable.

Incorporating additional requirements into a payment difficulties framework in the NECF would help to avoid an unnecessary gap between successfully identifying customers needing assistance and then keeping them on that assistance. Cancellation of assistance undoes much of the important work done by the retailer to identify the customer's circumstances and offer assistance.<sup>26</sup> The framework could establish a standard process where customers are notified of a failed payment plan and given a longer fixed time period to engage with their retailer to rectify the missed payments. This would enable customers to advise their retailer about changed circumstances before the plan is

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<sup>25</sup> AEMC, Protecting customers affected by family violence Final Rule Determination, 15 September 2022, p6

<sup>26</sup> EWON, Spotlight On – The national energy affordability framework – it's time for a change, December 2020

cancelled. It would also complement our other recommendations to remove a blanket ‘two strikes’ rule and improve standards for how assistance ends.

The Game Changer report contains initiatives, outside the scope of this review, which will support retailers in identifying customers, getting them on assistance and keeping them on assistance. An example is improving access to financial counselling support – but not as a first step before retailers meet their affordability assistance regulatory requirements. We strongly support these measures.

## Consumer-centric and flexible

### Recommendation 8

A payment difficulty framework should be consumer-centric and flexible, and support retailers to genuinely consider a customer’s individual circumstances and capacity to pay.

Our suggestions to achieve this include the following:

- continue supporting the Customer Engagement Toolkit as retailer best practice
- incorporate the practical guidance and principles of flexibility, consistency, empathy and respect from the Sustainable Payment Plan Framework
- like the Victorian framework, accommodate a spectrum of assistance based on the customer’s needs, ranging from basic help that everyone may need from time to time through to tailored assistance for complex and/or entrenched vulnerable circumstances
- continue to accommodate traditional payment plan structures such as a set amount at regular intervals through methods like Centrepay and direct debit, but also better accommodate options beyond this traditional payment plan structure
- review Buy Now Pay Later reform and Centrepay reform for insights into what works for customers and what does not.

### Why we are making Recommendation 8

Through our close work with consumers we see people experiencing a variety of payment difficulty problems including circumstantial, cyclic and entrenched financial vulnerability. The current framework, on the other hand, is not designed to respond to these complexities. It centres around customers’ ability to adhere to a set payment arrangement of a specified amount at regular intervals. Payment plans can penalise customers whose personal circumstances are uncertain from week to week or even day to day. Rigid payment plans can set people up for failure. A retailer can cancel a payment plan after a single missed payment or underpayment – even if the customer continued to make regular payments and took steps to reduce their energy consumption.<sup>27</sup>

The ASIC review had similar findings that lenders often adopted standardised approaches to dealing with financial difficulties and did not take into account that each customer’s situation is unique and that solutions need to be tailored accordingly – in some cases, this resulted in customers who had a plan to recover their financial situation not getting assistance.<sup>28</sup> This highlights the importance of supporting consumer-centric behaviour and aligning to community expectations.

The Customer Engagement Toolkit is a positive step in supporting retailers to embed a consumer-centric, flexible approach. The Sustainable Payment Plan Framework principles and guidance also support genuine understanding of capacity to pay, and recognise that some customers require

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<sup>27</sup> Ibid

<sup>28</sup> ASIC, Hardship, hard to get help: Lenders fall short in financial hardship support, 20 May 2024, p93

greater assistance and care to ensure payment arrangements are properly budgeted and sustainable.

Many retailers do provide appropriate and reasonable assistance with payment difficulties. However, customers experience negative consumer outcomes, leading to complaints, when a retailer does not apply consumer-centric principles like those in the Customer Engagement Toolkit and Sustainable Payment Plan Framework. We see customers contacting our office where the customer cannot afford what the retailer is seeking and the discussion cannot progress past this stalemate. See [Case study 8](#). We also see customers who ‘fail’ payment plans almost immediately because they have agreed to a payment plan beyond their means, feeling like they had no choice. See [Case study 4](#).

The Victorian framework recognises the importance of flexibility and being responsive to individual circumstances and experiences of payment difficulty, with its spectrum of assistance from standard to tailored, and options to manage payments as well as reduce ongoing costs. The availability of standard assistance recognises, for example, that many people are experiencing payment difficulties because of the price of energy/increased cost of living alone and should have access to suitable assistance. The availability of tailored assistance recognises that customers in more complex and/or vulnerable circumstances require greater support – such as customers impacted by natural disasters<sup>29</sup> or Aboriginal and Torres Strait Islander customers dealing with overlapping and concurrent crises like Sorry Business.<sup>30</sup> We recognise that this needs careful consideration to ensure that standard assistance available to everyone is not diverting retailer resources away from those who need support the most, and that important protections afforded by the current affordability program requirements in the NECF are not diluted.

The approach in the Victorian framework is also not foolproof – for example, EWOV observes that if the Victorian framework is not effectively applied, it can result in negative consumer outcomes such as providers pressuring consumers to accept payment plans where amounts are higher than their capacity to pay.

This review also provides an opportunity to improve upon both the Sustainable Payment Plan Framework and the Victorian framework by supporting a more comprehensive range of options beyond the traditional payment plan structure of set amounts at regular intervals. The Sustainable Payment Plan Framework includes advice to offer customers a choice of payment method and payment frequency whenever possible, but overall the NECF framework is generally built around the retailer and customer coming to a set amount to be paid at strictly regular intervals with little room for error. See [Case study 9](#) and [Case study 10](#).

The Victorian framework includes a few options at various levels of assistance that are somewhat different to the NECF, including:

- options for making payments at different intervals
- an initial period of at least 6 months (with the possibility of extension) during which repayment of arrears is put on hold and the customer pays less than the full cost of their ongoing energy use.

As per the case study explored in the Issues Paper, the United Kingdom Ofgem Consumer Standards and Ability to Pay Principles include a flexible option to pause scheduled payments for an

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<sup>29</sup> EWON, Spotlight On – Natural disasters – the long-term customer experience, November 2023

<sup>30</sup> EWON submission, Energy Accounts Payment Assistance (EAPA) Public Consultation Paper on proposed reforms, 6 December 2023, p3

appropriate period of time as part of a customer’s repayment plan and review ability to pay before reinstating repayments.

A revised payment difficulty framework could build on options like these and provide customers experiencing financial vulnerability with increased flexibility by allowing them to pay smaller amounts, and to catch up, without failing or cancelling a payment plan. The framework could provide options to focus on how much a customer contributes over a period of time (the financial objective) rather than simply making a set payment at a particular date. Customers who have experienced a sudden change in income could be allowed to make no payments for a short period of time, provided they engage with their retailer.<sup>31</sup>

There are other reviews in progress that could offer useful insights about payment flexibility. The Public Interest Advocacy Centre (PIAC) recommends that payment options from energy retailers should be as ‘frictionless’ as access to Buy Now Pay Later and other unregulated or lightly regulated credit products – frictionless being defined as “easy to know about, easy to access and easy to alter, all without judgement”.<sup>32</sup> The AER could look at insights from the Treasury’s recent consultation on Buy Now Pay Later regulatory reforms for insights into what makes these products attractive to customers and what lessons we could learn about flexible payment options within the energy framework.<sup>33</sup> Services Australia is currently undertaking a review of Centrepay, which could also provide insights about what works for customers and what causes difficulties.<sup>34</sup>

## Minimum standards which operate as the ‘floor’ for assistance options, not the ‘ceiling’

### Recommendation 9

A payment difficulty framework should include best practice standards of customer assistance. Standards should operate as minimum requirements, not the gold standard – they should be the ‘floor’ not the ‘ceiling’.

Our suggestions to achieve this include:

- continue supporting the Customer Engagement Toolkit as retailer best practice
- incorporate an explicit principle, similar to that in the Sustainable Payment Plan Framework, that assistance options are not exhaustive and retailers are free to offer additional support to any customer, and should give additional support to customers identified as being at higher risk of further payment difficulties
- progress complementary Game Changer recommendations, outside the scope of this review, such as the idea to automatically place customers on affordability programs on the best priced contract to suit their energy consumption and pattern of usage.

### Why we are making Recommendation 9

A payment difficulty framework should provide standards for customer assistance. The NECF, the Victorian framework and other framework case studies in the Issues Paper indicate that at the affordability program or tailored assistance end of the spectrum, assistance should include options like:

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<sup>31</sup> EWON, Spotlight On – The national energy affordability framework – it’s time for a change, December 2020

<sup>32</sup> PIAC, Paying to pay: Using credit products to afford energy, June 2023, p25

<sup>33</sup> Australian Government, The Treasury, Buy Now Pay Later regulatory reform, <https://treasury.gov.au/consultation/c2024-504798>

<sup>34</sup> Australian Government, Services Australia, Centrepay reform, <https://www.servicesaustralia.gov.au/centrepay-reform-for-businesses?context=23256>

- review the customer’s network tariff
- advice about better market offers
- honour pay-on-time discounts and check whether a pay-on-time benefit is suitable
- provide tailored energy efficiency advice
- energy audits
- payment matching or other similar incentives
- advice about available concessions and rebates and support for customers to receive these entitlements
- availability of assistance including free financial counselling
- debt waivers.

These should be the minimum standard, not the gold standard – with recognition that community expectations may be higher. Again, effective adoption of the Customer Engagement Toolkit will help support the standards to operate in this way, as will incorporating principles in the Sustainable Payment Plan Framework. The Sustainable Payment Plan Framework is explicit that:

- its list of potential additional assistance is not meant to be exhaustive
- retailers remain free to offer additional support to any customer regardless of which of the above categories the customer falls into, and customers identified as being at higher risk of further payment difficulties should be given additional support.<sup>35</sup>

It is important for any payment difficulty framework to reckon with this issue. EWOV observes that under the Victorian framework, consumers are not always being offered the full suite of entitlements or assistance suitable to their circumstances. EWOV sees instances of retailers relying on payment arrangement options (such as arrears on hold or payment plans). Consumers face difficulties in accessing other practical supports that would reduce their costs, such as concessions/rebates, best offer/tariff reviews or tailored energy assistance advice.

The Game Changer report recommends ideas, outside the scope of this review, which would complement a payment difficulties framework that aims to lift standards of customer assistance. An example is the idea to automatically place customers on affordability programs on the best priced contract to suit their energy consumption and pattern of usage. We strongly support these measures.

## No inflexible barriers – remove the one-size-fits-all ‘two strikes’ rule

### Recommendation 10

A payment difficulties framework should not include inflexible barriers – such as a retailer being able to decline assistance based on a set number of past unsuccessful arrangements without regard for the customer’s individual circumstances and why the arrangements were not successful.

### Why we are making Recommendation 10

There is little point introducing a consumer-centric, flexible payment difficulties framework with effective standards of assistance if there are inflexible barriers to benefiting from it.

The one-size-fits-all ‘two strikes’ rule will not support effective implementation of a reimagined approach to payment difficulties. The ‘two strikes’ rule refers to rule 33(2) of the NERR which states that a retailer is not required to offer a payment plan to a customer if the customer has had two payment plans cancelled due to non-payment in the previous 12 months. Rule 111(2) of the NERR

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<sup>35</sup> AER, Sustainable Payment plans – A good practice framework for assessing customers’ capacity to pay, July 2016, p3

similarly indicates that a retailer must not arrange for disconnection of supply to a customer on an affordability program or customer experiencing payment difficulties, unless the retailer has offered the customer two payment plans in the previous 12 months and the customer has not agreed to them and/or met their requirements.

Retailer affordability policies, adhering to the Customer *Hardship* Policy Guideline and standardised statements, also state that if the customer has had two payment plans cancelled in the last 12 months because they did not follow their plan, the retailer does not have to offer another plan and may disconnect the customer's energy.

While the intent of these rules is to help ensure customers have received the right assistance from their retailer before disconnection occurs as a last resort, we see in our complaints that it can operate as a barrier to assistance right at the point when a customer is trying to engage. Retailers decline to offer a payment arrangement on the basis of two 'failed' arrangements without necessarily considering individual circumstances, which is a driver of Ombudsman scheme payment difficulty complaints. See [Case study 9](#) and [Case study 10](#). This rule can be the turning point where some customers move from situational financial challenges to long term financial distress, especially when retailers no longer negotiate with them.<sup>36</sup>

Incomplete or 'failed' past payment plans should be just one factor in a range of factors that retailers take into account when assessing how they can assist a customer. Failed past arrangements should not be a blanket, one-size-fits-all barrier.

Removing the 'two strikes' barrier would also be in line with a key learning from ASIC's recent report – that unnecessary barriers to customer engagement and access to assistance must be removed. The ASIC report identified that 35% of customers dropped out of the process of trying to obtain affordability assistance from home lenders, often because of inflexible barriers.<sup>37</sup>

## Standards for how assistance ends

### Recommendation 11

A payment difficulty framework should include transparent standards for the different ways assistance may end.

Our suggestion to achieve this is to include standards for different scenarios like:

- removal/cancellation for non-payment
- removal/cancellation for non-engagement
- fixed period arrangements
- moving from one 'level' of assistance to another – particularly when retailer support will be reduced and/or a payment arrangement amount will increase
- 'completing' an arrangement – particularly when the customer continues to self-identify as having payment difficulties and/or experiencing vulnerable circumstances.

### Why we are making Recommendation 11

Standards for how assistance end are just as important as standards for how assistance commences and is maintained.

Current NECF payment plan and affordability program protections overall focus on how a customer can be removed from assistance for not meeting their responsibilities to make payments as agreed,

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<sup>36</sup> EWON, Spotlight On – The national energy affordability framework – it's time for a change, December 2020

<sup>37</sup> ASIC, Hardship, hard to get help: Lenders fall short in financial hardship support, 20 May 2024, p61



make proactive contact with the retailer and/or respond to retailer contact attempts. The current requirements around these two scenarios are quite light. There is no specific standard, for example, of what non-payment means. There is no distinction between a payment that is a day late, a payment that a customer has not made at all, a payment that is 'caught up' sometime between when it was due and the next payment, and so forth. See [Case study 9](#).

There is also no specific standard for what a lack of customer engagement means, or what is considered a retailer's best efforts to try and contact a customer. The Customer *Hardship* Policy Guideline standardised statements only indicate that the retailer may stop assisting the customer if they do not tell the retailer that their contact details have changed. Many retailer affordability policies adopt this simple wording. However, we are seeing some improvements to retailer affordability policies after the AER's recent review.<sup>38</sup> For example, a major retailer has gone above and beyond the basic requirements by including detailed information about what it expects from customers to remain engaged, and what its best practice contact attempts will look like.<sup>39</sup> This is more transparent in establishing what is required of the customer and their retailer to mutually achieve sustained engagement and avoid removal/cancellation. Complaints to our offices indicate that setting clearer minimum standards like this would be beneficial to customers and retailers. For example, we receive complaints from customers who continued to make payments under an agreed arrangement with no missed or late payments, but had their arrangement cancelled for non-engagement after sometimes minimal retailer contact attempts. See [Case study 11](#).

Currently, there are also no formal requirements around scenarios to exit/complete assistance where the customer has adhered to all payment and engagement requirements, such as:

- customers 'completing' and 'graduating from' an arrangement after a fixed period or based on specific retailer criteria
- customers being moved from an affordability program to a non-affordability program payment plan after a fixed period or based on specific retailer criteria.

The Customer *Hardship* Policy Guideline indicates that the retailer must state the steps a retailer will take to support customers to successfully complete the retailer's affordability program. However, it does not include standards for what 'completing' an affordability program means. Complaints to our offices indicate that customers can be confused when:

- a retailer assesses that a customer no longer requires the affordability program based on limited criteria like account balance, but the customer still self-identifies as being in payment difficulties – see [Case study 7](#)
- a customer is moved to a standard payment plan upon 'completion' of an affordability program – see [Case study 7](#)
- a customer keeps paying an agreed amount after the end of a fixed period affordability program arrangement, under the impression that the plan is continuing – see [Case study 12](#).

EWOV makes similar observations of the Victorian framework, such as consumers being unaware that their payment plan is about to/has expired. Including standards for scenarios beyond removal/cancellation will help reduce complaints driven by this avoidable customer confusion.

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<sup>38</sup> AER, Letter to retailers – Outcome of AER hardship compliance review, 17 January 2024

<sup>39</sup> Origin Energy, Our hardship policy – Power On Program for ACT, NSW, QLD, SA, January 2024, pp16-17

## Rethinking disconnection

### Review the disconnection threshold

#### **Recommendation 12**

The AER should review the disconnection threshold to ensure it remains reasonable and fit for purpose in the current energy market and financial landscape.

#### **Why we are making Recommendation 12**

The current minimum disconnection amount of \$300 has been in place since 2012, and was last reviewed in 2017. There have been massive changes in the social and financial landscape in the seven years since then.

We support the principle that customers should not be disconnected from an essential service for relatively small amounts or being one bill behind, nor should they be disconnected solely due to an inability to pay.

We recognise the need to balance this with not contributing to climbing debt levels. The review should include research into factors like average utility bill trends (energy and other industries), a possible trend toward monthly billing with accelerating smart meter deployment, increases in disconnection/reconnection fees over time, how energy debt levels have changed (especially since COVID-19) and other data from the performance reporting data the AER collects.

To avoid the escalation of debt, any change in the disconnection threshold must be accompanied by improved touchpoints before disconnection and the removal of unnecessary barriers to reconnection.

### Improve touchpoints before disconnection

#### **Recommendation 13**

A payment difficulty framework should have multiple, strong touchpoints before disconnection.

Our suggestions to achieve this include:

- gain insights into the impacts of disconnection on whole households
- transparent ‘best endeavours’ standards
- an additional touchpoint for contact similar to the Victorian framework, incorporating successful elements of the Knock to Stay Connected initiative
- a human review of engagement to date in the decision-making before disconnection
- consideration of the potential impact of increased remote disconnection/reconnection on touchpoint opportunities.

#### **Why we are making Recommendation 13**

First and foremost, disconnection of the account holder for non-payment means that all residents of that home no longer have access to electricity; young children, students, and elderly family members. See [Case study 10](#). The decision to disconnect should be viewed in this light, and the AER should consider gaining insights into the impacts of disconnection on all residents.

Requirements for retailers to engage with and assist a customer before pursuing debt recovery or disconnection are crucial. This review provides an opportunity to make these requirements stronger and more transparent, providing more consistent consumer outcomes.

Rule 111 of the NERR requires a retailer to use its ‘best endeavours’ to contact the customer in person, by telephone, or by facsimile or other electronic means. With best endeavours not

otherwise defined, our complaints indicate that best endeavours attempts can range from a single phone call attempt at one end of the spectrum (see [Case study 12](#)) through to a physical visit to the property from a member of a specialist team at the other end. From extensive experience with complaints involving disconnection of supply, our offices consider best practice to be, at minimum:

- more than one attempt made if the first was unsuccessful
- to use multiple contact methods where the customer has more than one contact method available, such as trying both a phone call and an email – this is especially critical in regional, rural and remote communities where connectivity is limited, or even non-existent unless the consumer travels into their closest town
- where the contact number provided by the customer has been disconnected, attempt another avenue of contact – for example, some retailers send a letter by registered post or arrange a site visit
- where voicemail is available and the retailer leaves a message, whether or not this is acceptable depends on the nature of the message and whether the customer could have reasonably understood from the message that they were at risk of disconnection
- where the number is still connected but there is no voicemail, further attempts at contact should be made on different days and ideally at different times of day.

The AER has an opportunity to provide stronger, more transparent best endeavours requirements in line with what is fair and reasonable, and community expectations – resulting in more consistent outcomes for customers. This change would not overly impact retailers that already have a fair and reasonable approach to best endeavours.

Along with potentially improving the existing requirements, an additional required touchpoint could be beneficial. As explored by the AER in the Issues Paper, the disconnection process under the Victorian framework includes an additional touchpoint – the intention to disconnect notice. EWOV observes that although the inclusion of this additional touchpoint is an important protection to make disconnections a measure of last resort, the intention to disconnect notice may not be the most effective method for prompting consumers to engage with their provider about payment difficulty assistance. For example, EWOV observes a negative impact of notices on customer trust, customer understanding of available options, and future prospects of engagement, as the customer focuses on the stress of the impending disconnection and not the options for help.

To help get the messaging of any additional touchpoint right, the AER can draw on learnings from the Energy Charter's Knock to Stay Connected initiative. The initiative has demonstrated the great value of an additional touchpoint that involves strong messaging focused on engagement and available assistance, building on the actual intent of current notice requirements to engage consumers at risk of disconnection and get them the help they need to avoid disconnection. This initiative underscores that contact requirements before disconnection should be about helping customers, not about debt collection. This initiative also provides insights about who a disconnection will impact – like essential workers, babies, small children, students, seniors and cohorts at risk of vulnerability. The AER has the opportunity in this review to consider incorporating best practice standards into the regulatory framework so that it is not dependent on whether a customer is in a particular network area and/or with a particular retailer.

Along with considering improved and/or additional touchpoints, EWOV observes that the Victorian framework could benefit from a human audit of engagement with the customer to date before a disconnection goes ahead, in line with recommended best practice by the Australian Energy

Council.<sup>40</sup> This allows the retailer to identify opportunities to reset the relationship and consider the most suitable method for engagement. This would complement stronger, more transparent best endeavours standards.

The AER should also consider how an eventual increase in remote disconnection/reconnection in the National Energy Market as a result of an accelerated smart meter rollout will potentially impact the operation of best endeavours and other touchpoints before disconnection. In particular, the fact that it will be less common for a person to physically visit a property, providing an opportunity for in-person contact.

## Minimise barriers to reconnecting customers who show willingness to engage

### Recommendation 14

A payment difficulty framework should minimise barriers to reconnecting customers who show willingness to engage following disconnection.

Our suggestions to achieve this include:

- remove the one-size-fits-all ‘two strikes’ rule
- explicitly require that 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 refer the customer to its affordability program.

### Why we are making Recommendation 14

The Issues Paper frames the issue of disconnection as though there is agreement across the industry that its purpose is to be a final, drastic, last resort attempt at engagement for customers that retailers have not engaged with at all, or via its best endeavour approaches.

In practice, this does not always appear to be the case. Our complaints suggest that its purpose for some retailers is as a tool to recover debt and/or encourage customer churn. We see retailers:

- declining to reconnect even where the customer is engaged and offering a reasonable payment arrangement, on the basis of the ‘two strikes’ rule – see [Case study 10](#)
- telling customers outright that they should choose another retailer – see [Case study 6](#) and [Case study 10](#)
- asking customers for large upfront payments to reconnect – see [Case study 8](#) and [Case study 10](#)
- missing the opportunity to refer customers to affordability programs despite disconnection being a clear potential indicator of financial difficulty – see [Case study 8](#) and [Case study 12](#).

If disconnection is truly meant to be a last resort attempt to engage the customer, the rules should not be designed to allow retailers to block engagement at this critical point by refusing to reconnect the customer.

As discussed under Recommendation 10, a crucial block in the current framework is the one-size-fits-all ‘two strikes’ rule, which hinders making disconnection truly operate as a last resort.

The opening line of the Customer *Hardship* Policy Guideline standard statements indicates that the policy applies to all residential customers experiencing difficulties paying their energy bills. 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 disconnection. If a customer

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<sup>40</sup> AEC, Principles in Practice Resource – Guidance for retailers seeking to implement best practice customer support, June 2021, p15

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 affordability program.<sup>41</sup> A disconnected customer is still a customer and there should not be a barrier here for engagement to reach a sustainable assistance solution.

Any framework (the current one or a future one) that allows a retailer to disconnect a customer who is experiencing financial vulnerability and then refuse to offer further assistance, if the customer is willing to engage, is unfair. The Knock to Stay Connected initiative demonstrates improved customer outcomes when the possibility of disconnection is truly used for last resort engagement with a view to achieving a sustainable outcome between the customer and the retailer.

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<sup>41</sup> EWON submission, Standardised statements for use in customer hardship policies, 7 December 2018, p3

## Appendix – Case studies

### Case study 1

#### Small family business at risk of disconnection

A technician attended a customer's business to disconnect the electricity supply for non-payment, but left without disconnecting to give the customer time to contact her retailer. She contacted the retailer, but it would not cancel the disconnection unless it received full payment of the outstanding balance, which she could not afford.

She contacted an Ombudsman scheme for assistance. She advised us that she owned the small family food service business with three employees. She was having a difficult time due to a close family member's illness. She said that she could afford to pay the amount owing if she could have a short extension and then pay in two instalments, but the retailer had declined to accept this arrangement or a similar compromise.

We spoke to the retailer and it said the customer's last payment was \$1,600 a few month prior and the balance owing was \$3,100. The retailer said it does generally try to take people's circumstances into account and consider payment arrangements, however, it takes a harder line for small businesses once there is an imminent disconnection. After discussions with us, the retailer agreed to cancel the disconnection based on the customer's offer to pay \$1,500 by the end of that week, and the remaining \$1,600 a week later. The customer was happy with the outcome and confirmed she understood she may be at risk of disconnection again if she did not stick to the arrangement. The customer advised she was going to shop around for a new retailer.

### Case study 2

#### Small business given less flexibility once disconnection occurred\*

A customer was in the process of returning to work and getting her small business back up and running. Without the business she had no income. She believed she had negotiated a payment arrangement with her retailer and was assured that she was not at risk of disconnection. However, when she went to the shop the next week, the power was disconnected. The debt was over \$10,000, and the retailer requested full payment before it would reconnect. The retailer then suggested that it would accept a payment arrangement of \$1,500 per week, which was not affordable. The customer was upset that the retailer became less flexible following disconnection.

She contacted an Ombudsman scheme and we spoke to the retailer. The retailer was willing to accommodate the customer with a suitable payment plan to reconnect the site. The Ombudsman scheme has been reaching out to the customer but to date has been unable to reach her to discuss her options.

\*This complaint is still underway.

### Case study 3

#### Various examples of difficulties experienced by customers of exempt entities

An Ombudsman scheme assisted a customer where the exempt entity did not identify payment difficulties despite its affordability policy making allowance for this. Despite up to five failed standard arrangements in the past 12 months, the exempt entity did not identify that this could be a sign of payment difficulties and continued to manage the customer under the credit team rather than referring him for an affordability program assessment.

A customer was disconnected for non-payment and contacted an Ombudsman scheme for assistance. The exempt entity requested a \$700 payment upfront, and advised that normally it asks for the full balance. The customer had missed the last two payments of their payment plan, putting them \$500 behind. With the Ombudsman scheme's assistance, the exempt seller accepted a payment of \$500 instead of \$700 to bring the plan back up to date.

A customer was disconnected for non-payment after being on an arrangement to pay \$50 weekly. The exempt entity declined to reconnect unless the customer paid the full balance of \$473. With an Ombudsman scheme's assistance, the exempt entity accepted a payment of \$150 for reconnection.

#### Case study 4

##### Customer feels pressured to agree to an unaffordable payment plan

A customer with a fixed government assistance income accrued an electricity balance of just over \$500 due to payment difficulties. Her retailer contacted her to request payment of the balance, and would only offer a payment arrangement of \$84 per fortnight. She could afford a maximum of \$10 per week, but agreed to \$84 as she felt distressed and was concerned about her supply being disconnected if she did not agree. The payment plan failed immediately as she did not make the first agreed payment.

She then moved out of the property and found that this limited the assistance available to her to manage the balance without an affordable payment plan. For example, she was unable to obtain Energy Accounts Payment Assistance (EAPA)\* as it cannot be applied to closed accounts. She was upset that the retailer had not told her about EAPA while the account was active.

An advocate contacted an Ombudsman scheme on her behalf for assistance. The advocate agreed for the complaint to be referred back to the retailer at a senior level in the first instance, knowing that he could return if the complaint remained unresolved.

\*NSW-specific government assistance.

#### Case study 5

##### Customer faces debt collection after retailer does not adequately assist

A customer was experiencing financial and personal difficulties, resulting from leaving a family violence situation, being impacted by flooding, and losing their job. The customer made the energy retailer aware of their difficulties and requested a payment plan. The retailer did not respond to the customer's request in a timely manner. The customer made the decision to disconnect the power, which resulted in the account being closed. Then the retailer sent the debt to a collection agency. A payment plan was finally set up and debt recalled from collection. By that time, the account had been closed for over 60 days, so the customer was no longer eligible to apply for Home Energy Emergency Assistance Scheme (HEEAS)\*.

When an Ombudsman scheme investigated the matter, we established there was a delay in the energy retailer responding to the customer's payment plan and financial difficulty assistance request. This delay led to the customer missing out on applying for HEEAS. To resolve the matter, the energy retailer applied a \$1,000 credit to the account to cover the missed HEEAS grant of \$720 plus a \$280 customer service gesture. The energy retailer also agreed to review the customer's current payment plan to ensure it was manageable.

\*Queensland-specific government assistance.

## Case study 6

### Retailer offers to waive debt if customer transfers away

A customer was receiving quarterly electricity bills of up to \$2,000, which he considered to be high for a one person household. He contacted his retailer and it advised him to have the wiring in his property inspected. He was a renter and his real estate declined to assist with this. His electricity was disconnected for non-payment and he contacted his retailer with a community worker on the call to assist. The retailer agreed to reconnect the electricity and waive his debt if he moved retailers. He agreed and the retailer arranged reconnection. He attempted to change retailers but multiple retailers declined to open an account due to his poor credit rating.

He received a disconnection warning a month later and contacted an Ombudsman scheme for assistance. The retailer advised us that the customer was reconnected because he agreed to an affordability program arrangement of \$50 per fortnight. He was at risk of disconnection again because he had made two \$50 payments but then stopped. It was his second broken arrangement in 12 months.

The customer was able to open an account with another retailer. Once the transfer occurred, the retailer waived the final debt of over \$3,000 on the closed account as agreed. We provided the customer with information about affordability protections with the new retailer, and referrals for tenancy help, state government energy account assistance and free financial counselling.

## Case study 7

### Customer automatically removed from affordability program based on retailer criteria

A customer was referred to her retailer's affordability program when she self-identified with payment difficulties. She entered into an arrangement of \$40 per fortnight, which was affordable. A few months later she received an email indicating that her payment arrangement had changed to \$67 per fortnight, which was not affordable. She contacted her retailer by online chat and was advised that her previous arrangement had ended and she was automatically moved to a new bill smoothing arrangement. She considers she received confusing information about the payment arrangement and then the retailer began contacting her about an outstanding balance of \$170.

She contacted an Ombudsman scheme for assistance. The retailer advised that the customer was automatically moved to a bill smoothing arrangement when the electricity account balance fell below a certain threshold. The retailer initially advised that the customer had opted in to this automatic change, however then advised that it was unclear how this information was communicated to the customer. The customer maintained that she was not advised she would exit the program when her balance fell below a certain threshold or that she would automatically be moved to a bill smoothing arrangement. The retailer's affordability policy did not include any information about these processes. The retailer resolved the complaint by applying a credit of \$170 and reinstating the affordability program payment arrangement of \$40 per fortnight.

## Case study 8

### Retailer misses payment difficulty cues for disconnected customer

A customer was incarcerated for three months, and the electricity supply to her home was disconnected during that time. She was attending a program assisting her to get back into the community, but wanted her electricity reconnected so it would be ready for her to move back in. She contacted her retailer and it advised she would need to pay the full balance of \$1,200. They could not reach an agreement for reconnection and the power remained disconnected.



The customer contacted an Ombudsman scheme for assistance. The retailer advised us that the customer had only spoken to its credit department and was not referred for affordability program assistance. The customer had made small, sporadic payments to the account, but had never been on a formal payment plan, either standard or affordability program. The retailer arranged reconnection of the customer's electricity supply on the basis that its affordability team would contact the customer to discuss a payment arrangement. We provided the customer with referrals for state government energy account assistance and free financial counselling.

### Case study 9

#### Customer 'fails' two payment arrangements due to unpredictable pay schedule

A customer had an electricity debt of over \$10,000 and a gas debt of over \$2,000. She had been on different payment plans for both accounts in the past. However, they would always end up broken as she was occasionally late on instalment due dates because of her unstable pay schedule. She always caught up the missed payment within a week or so and from her perspective she had never truly missed a payment, only been late. Her retailer advised her that it would not offer her a further payment arrangement or refer her to the affordability program due to her 'failing' at least two payment plans in the last 12 months. For the electricity account, her retailer advised it would only either accept a payment plan of \$1,000 a fortnight, or a payment of \$5,000 to cover half the balance. For the gas account, it would only accept a payment plan of \$300 a fortnight, or a payment of \$1,000 to cover half the balance. The customer could not afford these options and wanted a solution that would work with her unstable pay schedule.

She contacted an Ombudsman scheme for assistance. We established that she was not currently at risk of disconnection. She agreed for the complaint to be referred back to the retailer at a senior level in the first instance, knowing that she could return if the complaint remained unresolved and/or she became at risk of disconnection.

### Case study 10

#### Retailer declines to reconnect unless customer pays full balance due to 'two strikes' rule

A customer accrued a balance of \$1,200 on her electricity account due to payment difficulties. She made payments whenever she could. Her electricity was disconnected for non-payment about a week after she had made an ad hoc payments of \$100, reducing her balance from \$1,200 to \$1,100. She contacted her retailer and it asked for an upfront payment of \$1,000 before it would reconnect. She advised that this was not affordable and offered to make an upfront payment of \$150-200 and then establish an ongoing payment plan of \$100 a fortnight. The retailer declined this offer. The customer's household, which included kids, was left disconnected overnight.

The next day, an advocate contacted an Ombudsman scheme on her behalf for assistance. We spoke to the retailer and it initially still declined to reconnect unless the customer paid \$1,000, on the basis that the customer had broken at least two payment arrangements in the past 12 months for non-payment. The retailer advised that in its discussion with the customer the day before, it had suggested she find another retailer to arrange reconnection. We obtained more information about the customer's payment history and found that her advice about ad hoc payments was correct. Along with a recent payment of \$100, she had paid \$400 about one month prior to that. We discussed with the retailer that the customer's ad hoc payments showed a willingness to pay despite the broken arrangements. The retailer agreed to arrange reconnection. The customer made an immediate payment of \$200, and the retailer set up an affordability program arrangement of \$100 per fortnight.

## Case study 11

### Customer's payment arrangement cancelled for non-engagement after one retailer call attempt

A customer agreed to a payment plan of \$45 per week for her electricity account, which was affordable. The email she received when she agreed to the payment plan said it would be in place from June 2022 to June 2023. When she received bills, there would sometimes still be \$70-100 owing but this was manageable to cover. The bills included a message saying that the payment plan was 'currently on track'.

She found out that the payment plan was cancelled when her retailer requested full payment of the account balance of about \$600 in January 2023. The retailer advised that they tried to call her once in October 2022 to discuss adjusting the weekly amount, and cancelled the plan for non-engagement because they could not reach her. She considered it unreasonable that they cancelled it after only one call attempt given that she had not missed any payments, the payment plan was meant to go until June 2023 and the recent bill had confirmed the plan was on track. She asked to be put back on an arrangement of \$45 per week and the retailer declined, advising she would need to pay at least \$80 a week.

She contacted an Ombudsman office for assistance, and we spoke with the retailer. The retailer confirmed that the payment arrangement of \$45 week was a standard bill smoothing arrangement, not an affordability program arrangement. It confirmed that it cancelled the bill smoothing arrangement after one unsuccessful call attempt to discuss increasing the amount. To resolve the complaint, the retailer offered a goodwill credit of \$300 to reduce the balance of \$600 by 50%. As the customer could not afford an \$80 per week bill smoothing arrangement, the retailer referred the customer to its affordability program.

## Case study 12

### Affordability arrangement ends after 12 months, disconnection after one best endeavours call attempt

A customer was on an affordability program arrangement of \$40 a fortnight, which was affordable. He paid \$25 via Centrepay and the additional \$15 in cash at the post office. His electricity supply was then disconnected. He contacted his retailer and it advised that he was disconnected because he was no longer on an affordability arrangement, but he could not understand why.

He contacted an Ombudsman scheme as he was unable to negotiate reconnection. The retailer advised us that the affordability arrangement was for a 12 month period only and had finished two months prior. The customer had continued to pay \$40, although at times the \$15 cash portion had been slightly late. The retailer sent him a letter advising him to call back to be reassessed for further assistance. The account then went through the disconnection cycle. The best endeavours contact attempt was one phone call, leaving a voicemail.

After speaking with us, the retailer agreed to reconnect the customer on the basis that he commence another affordability program arrangement of \$40 per fortnight. The customer increased his Centrepay payments from \$25 to \$40 so that he would no longer have to pay a cash portion, to reduce the risk of being late with a full instalment amount. We provided the customer with referrals for state government energy account assistance and free financial counselling.