



ENERGY AND WATER
OMBUDSMAN
Victoria **Listen Assist Resolve**



Payment of Undisputed Amounts Policy

ENERGY AND WATER OMBUDSMAN (VICTORIA)

February 2019



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BACKGROUND

When investigating complaints, EWOV acts independently and seeks to achieve fair, sustainable outcomes. This includes ensuring that debt does not unnecessarily or unreasonably accrue during an investigation. The accrual of debt during an investigation impacts negatively on both a customer and a scheme participant, and can impact on the sustainability of the outcome achieved.

The requirement for customers to make payments towards undisputed amounts and ongoing charges is a standard part of the alternative dispute resolution process. It ensures that debt does not unnecessarily or unreasonably accrue during investigations. It shows that customers are making complaints in good faith, particularly given that a scheme participant cannot disconnect or restrict supply, or initiate collection action while EWOV is investigating a matter.

The general principle that customers should pay any undisputed amounts while they are disputing a charge is also reflected in some relevant industry codes¹, and business customer contracts.

This policy provides guidance on how EWOV decides what payments should be made by a residential customer while their complaint is being investigated.

Policy

EWOV will assess complaints on a case-by-case basis, and decide what payments should be made by a customer during an investigation having regard to:

- the amount the customer believes would be reasonable
- the amount the scheme participant believes would be reasonable
- the customer's capacity to pay
- the amount outstanding
- the circumstances surrounding the disputed charges, including the customer's reason/s for disputing the charges
- ongoing consumption costs and
- the potential for a debt to accrue.

Business Customers

- EWOV places a greater onus on business customers to make payments towards outstanding amounts than on residential customers, due to higher usage and greater levels of debt. In some instances, there may be the potential for a company to be trading whilst insolvent, and for the directors of the company to be committing an offence under the Corporations Act. In turn, this means that there may be no reasonable prospect of the scheme participant ever receiving payment.

¹ See for instance clause 6.1 of the *Energy Retail Code*.

- EWOV will not knowingly allow business customers to use its processes to avoid the payment of debt. If EWOV did allow this to occur, it could constitute a breach of the insolvent trading provisions of the Corporations Act and may open EWOV and individuals such as EWOV's Directors to legal action.
- Conciliators will advise EWOV management immediately, where it appears a business is or may be unable to pay its debts as and when they fall due, or it appears the business' directors may be acting dishonestly.
- Depending on the size of the business and level of debt outstanding, EWOV may also consider the customer's capacity to pay. However, this is accompanied by an understanding that businesses should be able to cover their standard operating costs.
- In making these assessments, EWOV will balance the customer's complaint and reason for their dissatisfaction with the expectation that business customers are able to cover their operating expenses. In considering what would be reasonable, EWOV will have regard to the factors outlined above, including the customer's reasons for disputing the charges.

PAYMENTS

EWOV will make fair and reasonable decisions regarding payments, ideally making decisions which both parties agree with. EWOV will not knowingly allow customers to use its processes to avoid the payment of debt. However, EWOV is also not a debt collector and will not act as such.

Where appropriate, EWOV will require that a customer make payments towards one or more of the following:

Undisputed Amounts

Where an amount is outstanding that is not the subject of the customer's complaint, EWOV will require that it be paid. This may be in one payment, several smaller payments, or through regular ongoing instalments.

Ongoing Accounts

Where ongoing accounts are issued during an investigation, which do not form part of the dispute, they should be paid. This may be in one payment, several smaller payments, or through regular ongoing instalments. EWOV may negotiate an ongoing instalment plan which incorporates ongoing charges and a portion towards other outstanding amounts.

Good Faith Payments

EWOV will assess the amount disputed by the customer at the beginning of the investigation and continue to assess it throughout the investigation. If EWOV believes that all or some of the amount is being disputed unreasonably, it may require that the customer make a reasonable payment towards the disputed amount, to

show good faith to EWOV's process. This may be in one payment or through ongoing instalments. It may be required upfront, before the investigation commences, or during the investigation.

APPLICATION OF THIS POLICY

EWOV will ensure that customers are informed of the need to make payments towards their account. This includes:

- discussing the policy with customers at the time that they contact EWOV, reaching agreement as to what amounts will be paid, and confirming this in writing
- requiring scheme participants to continue issuing ongoing accounts during investigations
- requesting that scheme participants keep EWOV informed of the progress of any account balances and adherence to payment arrangements
- regularly reviewing whether payments are being made, with the customer and the scheme participant and
- where payments are not made, reminding customers of the need to make payments.

Where a customer does not make the required payments, or refuses from the outset to make any payments towards the account as required under this policy, EWOV may apply its Procedural and Fair Offer Closure Policy. That policy outlines the steps EWOV will take in reminding customers of the need to make ongoing payments. It also details the circumstances under which EWOV will close a complaint due to a failure to make required payments. Prior to closing a complaint on a procedural basis, EWOV will consider the particular circumstances of the customer, including any difficulties making payments.

ADDITIONAL GUIDELINES FOR MANAGING BUSINESS CUSTOMERS

When handling complaints from business customers, the following guidelines will assist in managing ongoing payments:

1. Conciliators should work with either their Team Manager (TM) on these complaints. The relevant TM will advise the General Manager Operations of the case.
2. The complaint should be escalated within the scheme participant, to ensure that any offers made are not delayed by the need to seek approval from someone with higher authority.
3. EWOV should determine the amount in dispute as soon as possible. This determination should not be based solely on the business customer's assertions, but on EWOV's analysis of the relevant information. This process could include consultation with the scheme participant or an independent adviser.
4. A clarification meeting could be held as soon as possible with both parties to determine the amount in dispute. It is important that such a meeting be held on the understanding that it is focused primarily on

determining the quantum of the amount in dispute, and only where holding such a meeting would not inflame the situation.

5. In some instances, the business customer could be asked to pay some, or all, of the outstanding amount immediately.
6. Business customers should be given the opportunity to state whether they have any affordability problems, and what effect this may have on their ability to pay.
7. If the amount in dispute is in excess of \$20,000, the relevant letter should be sent as soon as possible (refer to the 'Over \$20,000 Policy and Procedure').
8. It is important that your TM is advised of any information which may come to light indicating that a company is/may be unable to pay its debts as and when they fall due, or that the directors of the business customer are/may be acting dishonestly. If there is any doubt as to whether this could be occurring, review the circumstances with your TM and ask the scheme participant what the account payment status is. Sometimes scheme participants fail to bring this to our attention.
9. Scheme participants must be responsible for informing EWOV if payment of undisputed amounts is not being made. However, EWOV should be proactive and regularly check with scheme participants about payment of accounts.
10. The business customer must be informed regularly by EWOV of the need to pay undisputed amounts. This should be done with every piece of correspondence, or during every phone call.
11. Once the issues and amount in dispute are clear, it can be beneficial to arrange a Conciliation Conference. Experience shows that this is a very successful way of achieving resolution.

APPENDIX

The failure by customers to make reasonable payments during an investigation can expose EWOV to significant risks, including:

- the potential to affect our relationship (and credibility) with the scheme participant concerned
- the potential to bring EWOV's independence into question
- the potential for the customer and/or scheme participant to take the view that EWOV has allowed a debt to accrue
- in the case of business customers, the potential for EWOV to be exposed to legal liability, where the customer may be trading while insolvent.

This is particularly relevant where there is a large amount not in dispute outstanding.

If customers are refusing or failing to make payments towards undisputed amounts, it is possible that they may be using EWOV in order to avoid debt. Risk management is vital in these circumstances. The risk is that EWOV could be seen to be assisting customers in avoiding the payment of debt if undisputed amounts are not being paid during the course of an investigation and EWOV is not acting to prevent it.

In relation to business customers, there may sometimes be the potential for the business to be trading insolvent, and for the directors of the business to be committing an offence under the Corporations Act. If EWOV allowed this to occur, it may also open EWOV and individuals such as its directors to legal action. There may also be no reasonable prospect of the scheme participant ever receiving payment. Risk management is vital in these circumstances.

What to remember when managing ongoing payment requirements

- Talk to your TM, and always make your TM aware when you receive a complaint for investigation where there is a large amount outstanding. A "large amount" doesn't necessarily have to be \$20,000 or \$100,000. For a small business, a debt of \$3,000 may be extremely large and the scheme participant may be limited in its ability to recover that amount.
- Work with your TM to decide what would be reasonable payment terms on a case-by-case basis. Refer to the criteria in the policies for making this decision. The criteria can also help you explain the basis of your decision to the parties.
- Make sure that both parties clearly understand the required payment terms from the outset. This will assist you in managing the expectations of both the customer and scheme participant. Confirm the agreement in writing with both parties.
- Make sure that the scheme participant keeps you informed about whether payments are being made. Scheme participants won't always tell you when payments aren't being made, so ask the question regularly during the investigation.

- Where payments aren't being made, follow the Procedural and Fair Offer Closure Policy. It is always best to apply this policy promptly, when payments aren't made.

Document history

Action	Updated By	Date
Updated		May 2013
Updated format and changed name of new NFI Policy	HMN	February 2019