

25 March 2020

Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

By portal: <https://engage.vic.gov.au/>

Dear Ms Symons,

Re: Changing the back-billing rules for retail energy customers – Draft Decision

Thank you for the opportunity to comment on the Essential Services Commission's (ESC) *Changing the back-billing rules for retail energy customers – Draft Decision (Draft Decision)*.

The Energy and Water Ombudsman (Victoria) (EWOV) is an industry-based external dispute resolution scheme that helps Victorian energy or water customers by receiving, investigating and resolving complaints about their company. Under EWOV's Charter, we resolve complaints on a 'fair and reasonable' basis and aim to reduce the occurrence of complaints¹. We are guided by the principles in the Commonwealth Government's Benchmarks for Industry-based Customer Dispute Resolution². It is in this context that our comments are made.

The Draft Decision succinctly outlines the background and rationale for the proposed changes to back-billing rules, including linking the allowable period of back-billing available to distributors to that available to retailers. As the Draft Decision states, this was an issue that was raised throughout consultation regarding the *Ensuring energy contracts are clear and fair: Draft Decision*, and indeed is one which we raised ourselves in our submission responding to those reforms. Accordingly, we are very familiar with the issue and are comfortable supporting "Draft decision 2 – New back-billing rules for distributors", which would ensure that retailers are not exposed to back-billing claims from distributors for periods where retailers themselves are not permitted to recover from the customer. We are also comfortable with the fact that this additional reform necessarily extends the intended implementation of the back-billing reforms by six months, to take effect on 1 January 2021.

As we stated in our response to the *Ensuring energy contracts are clear and fair: Draft Decision*, we expect that the proposed back-billing reforms will incentivise energy companies to tighten their billing

¹ See Clause 5.1 of EWOV's Charter: <https://www.ewov.com.au/files/ewov-charter.pdf>

² See EWOV's website: <https://www.ewov.com.au/about/who-we-are/our-principles>

systems now to reduce their exposure to back-billing errors that will soon be unrecoverable if they date back further than four months. This will alleviate potential financial pressure on customers and assist to reduce the occurrence of complaints - which would be a very positive outcome.

We are also highly conscious that as we make this submission economic conditions in the community have changed radically, even since the release of the Draft Decision on 28 February 2020. Although the full impact of COVID-19 remains unknown, it is very clear that it will cause considerable – perhaps extreme – economic hardship and in that context it is wholly reasonable that customers should not be liable for back-billing errors extending back nine months, if those errors are no fault of their own. Indeed, in the current circumstances, the proposed four-month period provides a generous margin for error, at the upper end of what can be considered a reasonable back-billing recovery period.

Our further comments are set out below.

1. Draft decision 1 - New back-billing rule for retailers: *Retailers can only recover any amount undercharged in the four months before they notify the customer, unless the undercharging was a result of the customer's fault or unlawful act or omission.*

As the Draft Decision highlights, in the October to December 2019 quarter we received 294 back-billing cases, representing a 40% increase on the previous quarter - largely driven by a systemic billing error by one gas retailer³. While this may have been somewhat of an anomaly, our publicly available [Data Hub](#) shows that in the period February 2019 to February 2020, *Billing > Backbill* was still our ninth highest complaint sub-issue, constituting 729 complaints over that period. This is consistent with the sub-issue's ninth ranking for the 2018/19 Financial Year, when we received 1,067 back-billing cases constituting 3% of our overall caseload. As it is, in the 2019/2020 Financial Year to date, back-billing complaints are currently our third highest complaint sub-issue overall⁴ – indicating a relative increase compared to other issues.

Collectively, these figures demonstrate that despite back-billing complaints having generally dropped over the past five years in terms of raw numbers and relative ranking⁵, they remain a persistent issue. It is further worth noting that, as highlighted by our 2019 Annual Report,⁶ back-billing complaints constituted 9% of our gas complaints for last financial year - making back-billing the third most common complaint sub-issue for gas customers over that period. While smart meters may have done much to

³ EWOV, *ResOnline 30 – 1 October 2019 to 31 December 2019*, February 2020, p. 5. Available at: <https://www.ewov.com.au/reports/res-online/202002>

⁴ At the time of writing (24/3/20) we had received 697 back-billing complaints in the 2019/2020 FY, comprising 4% of overall cases.

⁵ For example, in 2014/15 we received 3,717 back-billing complaints constituting 7% of overall complaints for that financial year – it was our fifth most common complaint sub-issue for that period.

⁶ EWOV, *Annual Report 2019*, October 2019, p. 29. Available at: <https://www.ewov.com.au/reports/annual-report/201910>

reduce the prevalence of back-billing cases in the electricity sector, gas customers remain exposed (as highlighted by the systemic error identified in *ResOnline 30*, cited above).

Given the persistent occurrence of back-billing complaints and the financial strain that a nine-month back-billing period can impose on a customer through no fault of their own, the proposed reform is appropriate.

We support Draft decision 1.

2. Draft decision 2 - New back-billing rules for distributors: An electricity or gas distributor is not permitted to recover charges from a retailer if the retailer is unable to recover those charges from a customer.

The issue of whether distributors should be able to recover for a longer allowable back-billing period than retailers (thus leaving retailers exposed to the shortfall) was the most contentious of the consultation period. Unfortunately, we were not able to extract from our data what proportion of back-billing complaints are ultimately the fault of retailers as opposed to distributors. Anecdotally, long-serving EWOV staff do report that in their view complaints were once split quite evenly, but have tended to be more the fault of retailers in recent years – yet that is not definitive data.

In our view, the issue is probably beside the point. The proposed four-month period should adequately incentivise much improved billing practices across the board, as no party wishes to find themselves unable to recover under-billed services. In principle, it is difficult to justify why a distributor should be able to recover from the retailer what the retailer is unable to recover from the customer. This is reflected by clause 6B.A3.1 of the National Energy Rules (NER) and clause 508 of the National Gas Rules (NGR), both of which are identified by the Draft Decision. The operation of those clauses in other National Energy Market (NEM) jurisdictions demonstrates how other states have decided the issue, and it is appropriate for Victoria to amend its own energy legislation along similar lines. This will be particularly practical for energy retailers operating in multiple NEM jurisdictions.

We support Draft decision 2.

3. Draft decision 3 - Commencement date of code amendments: The code amendments giving effect to the back-billing rule change will take effect on 1 January 2021.

We accept that the original 1 July 2020 implementation date for back-billing reforms was no longer practical given the need for further consultation – particularly in connection to Draft decision 2.

The newly proposed implementation date of 1 January 2021 is appropriate in the circumstances. While it would be preferable to implement the reform sooner, retailers will already be adjusting to a number of new reforms that do come into effect on 1 July 2020.

Needless to say, the impact of COVID-19 will also place huge strain on the industry's capacity to on-board new reforms in the short term as we all strive to adjust to challenging and changing circumstances.

Finally, and as we have already stated, we expect that the imminent implementation of a four-month back-billing period should in itself prompt providers to tighten their billing practices in anticipation of implementation. This in itself may reduce the occurrence of complaints.

We support Draft decision 3.

We trust these comments are useful. Should you like any further information or have any queries, please contact [REDACTED], Senior Policy and Stakeholder Engagement Officer, on [REDACTED].

Yours sincerely

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Energy and Water Ombudsman (Victoria)