



Family violence January 2017

Background

EWOV has a critical role in assisting victims of family violence when it is revealed through our casework. This role was strongly articulated in the Victorian Royal Commission into Family Violence in March 2016 and the release of the Consumer Utilities Advocacy Centre (CUAC) research report *Helping Not Hindering: Uncovering Domestic Violence & Utility Debt* in August 2014.

Both the Royal Commission and the CUAC report identified utility debt as a key contributor to the accumulation of household debt and financial insecurity for women experiencing family violence.¹ The Royal Commission noted the need for EWOV and other Ombudsman schemes to publicise the availability of our dispute resolution services, given we play an essential role in resolving disputes between utility service providers and consumers where financial security is at risk.²

Definition and effects of family violence

Family violence has been defined in Victorian legislation as behaviour towards a family member which is physically, sexually, emotionally, psychologically or economically abusive, coercive or threatening.³ The meaning of family member is broad.⁴ The Royal Commission acknowledged that *“although every experience is unique, family violence is not a one-off incident for many victims. It is a pattern of behaviour that involves an escalating spiral of violence. This can include physical and sexual abuse, as well as psychological, emotional or financial abuse – all designed to intimidate, undermine, isolate and control. It can also include violence or threats of violence against children, other family members and pets. Ultimately, it can be lethal.”*⁵ Abuse can continue after a relationship ends, with financial abuse a common strategy used to control victims post separation and a significant contributor to women’s poverty.⁶ Family violence is also associated with short and long term impacts on physical and mental health.⁷ For some victims, the effects of family violence can be amplified due to disadvantages resulting

¹ EWOV acknowledges that not all victims of family violence are women. However, because women are more likely than men to experience family violence, this document refers to women as the victims of family violence for ease of reference. In addition, the terminology abusive partner and victim are used. This is not to suggest that people experiencing family violence are devoid of agency or choice, and is solely used for efficiency of terminology.

² State of Victoria, *Royal Commission into Family Violence: Report and recommendations, Vol IV, Parl Paper No 132 (2014-16)* (Royal Commission Report Vol IV), pages 104 to 106 and 117 to 120

³ *Family Violence Protection Act 2008* (the Act), sections 5 to 7

⁴ The Royal Commission noted that the definition covers biological relationships, relationships arising from marriage, de facto partnerships and other intimate personal relationships (regardless of whether the relationship has involved a sexual relationship and regardless of the sex or gender identity of the people in the relationship). It also covers children (including step or foster children) as well as current and former relationships. People living in the same house or residential facility and people reliant on care can also be covered. Likewise, people the victim reasonably regards as being ‘like a family member’ can also be included, for example the carer of a person with a disability. The Act also acknowledges that Aboriginal and Torres Strait Islander communities’ definition of the ‘nature and forms of family violence are broader than those used in the mainstream’. State of Victoria, *Royal Commission into Family Violence: Report and recommendations, Vol I, Parl Paper No 132 (2014-16)* (Royal Commission Report Vol I) p16

⁵ *Royal Commission Report Vol I* p20

⁶ *Royal Commission Report Vol I* p21

⁷ See *Royal Commission Report Vol I* p15 to 41 for more detail about the nature, dynamics and effects of family violence.



from their cultural and linguistic background, disability, age, race, sexuality, gender identity or socio-economic status.⁸

Family violence - special customer circumstances

When investigating complaints and establishing a fair and reasonable outcome for both parties, EWOV has regard to laws and codes, good industry practice and other reference points, such as past case results or Binding Decisions, provider policies, relevant legal or technical advice, regulatory advice, and special customer circumstances.

Importantly however, EWOV considers each complaint on its individual merits and outcomes will depend on the circumstances of the complaint.

Extenuating circumstances, particularly those which create vulnerabilities for the customer (such as extensive health or medical issues, language and education barriers, disability or family violence), can be critical factors in establishing what would be a fair and reasonable outcome for a particular case.

Family violence clearly creates special vulnerabilities for a victim, including legitimate concerns for personal safety or safety of family members, and sometimes the inability to engage with providers or EWOV in the same manner as other customers. Often when attempting to sort out broader issues within their lives, energy or water debt will not be a high priority for customers who have experienced, or continue to experience, family violence, until the issue reaches a crisis point (such as supply being disconnected).

In situations where EWOV is aware that a customer has been impacted by family violence,⁹ EWOV considers this to be a special customer circumstance relevant to establishing a fair and reasonable outcome.

Common scenarios - key issues and consequences

Family violence includes economic or financial abuse. Examples of utility related economic abuse can include scenarios where the abusive partner:

- insists the account is in a victim's name and refuses to contribute to the cost
- puts a service in the sole name of the victim without their knowledge or consent
- holds an account jointly and refuses to contribute to the cost
- holds an account in their name alone and does not pay the bills, resulting in disconnection
- holds the account in their name and threatens to have the service cut off, or has it cut off, when they leave the family home.

EWOV recognises that there can be a number of key issues which arise for the energy and water industries in handling these common scenarios:

1. There is no readily available legal remedy to sever joint liability where utility accounts are jointly held.

⁸ *Royal Commission Report Vol I* p33, see also pages 32 to 41 for more detail about the effects of family violence.

⁹ EWOV notes that customers often do not explicitly identify their experience of family violence. Past negative experiences when disclosing family violence abuse can mean a victim is reluctant to subsequently disclose the abuse. In addition, victims of abuse, particularly financial or economic abuse, may not be aware that what they have experienced is family violence. Sometimes EWOV becomes aware of family violence through the context of the investigation, or because a Conciliator has built rapport and trust, so a victim is willing to disclose information about their circumstances.



2. When utility accounts are jointly held, the consent of both parties is generally required to remove an account holder's name or to access payment assistance.
3. There are often privacy barriers for the victim when the account is held in the abusive partner's name and the victim wishes to re-establish the account in their own name.
4. Debt can be transferred into a victim's name when establishing or transferring an account, sometimes with disconnection and reconnection fees.
5. Currently, there is no specific access to financial hardship assistance for customers experiencing family violence available under the relevant codes (*Energy Retail Code, Customer Service Code for Urban Water Businesses*).
6. Responsibility for water debt differs from the responsibility for energy debt because it is statute-based rather than contract-based, and is tied to a property, rather than a person. This means that if the title is in the abusive partner's name, the water company is legally required to maintain the account in that name, which allows the abusive partner to have access to account information.

These scenarios can result in the following:

- **Liability issues, including transfer of liability, continuing liability after vacating a property and questions about explicit informed consent** - in order to maintain supply a victim may agree to debt transfer or to the payment of debts for which they are not legally responsible.
- **Joint liability** - there can be challenges associated with finalising accounts after either partner has vacated the premises without contact/consent.
- **Affordability issues and hardship as a result of debt** – a victim can be forced to bear the full cost of utilities to maintain supply, or may have reduced financial capacity because of their circumstances.
- **Debt collection/credit default or loss of supply** - non-payment (by a victim or a partner) may result in debt collection activity, default listing or disconnection/restriction of supply.
- **Concerns for privacy and safety** - a victim's personal information, such as their new residential address, may be obtained by, or disclosed to, the abusive partner, threatening the personal security of the victim or other family members.
- **Customer service** - a victim may experience customer service issues, such as an inability to get appropriate or empathetic assistance.

Complaints commonly incorporate a number of these issues and the potential impact is heightened by the essential nature of energy and water services.

EWOV's approach

EWOV considers each complaint on its individual merits and the outcome will depend on the particular circumstances of the complaint.

As noted above, family violence often creates particular vulnerabilities for the victim, and as a result, will carry significant weight for EWOV's expectations about how a provider will address a customer's circumstances. It may also have a bearing on the type and quality of substantiation EWOV would expect a family violence victim to be able to produce.¹⁰

¹⁰ In particular, if a victim of family violence has fled their home due to personal safety concerns, they may have limited access to relevant documentation. In these circumstances, EWOV may not expect any documentation to be produced.



The following information broadly outlines EWOV's approach to the key issues and consequences of common scenarios.

Liability and consent issues

- EWOV will consider whether a provider can demonstrate documented explicit informed consent from the victim for EWOV to be satisfied that they bear liability for the account. This is consistent with EWOV's standard approach for marketing and transfer complaints where providers are asked to demonstrate that a customer gave informed and explicit consent prior to entering into a contract or establishing an account.
- In circumstances where consent can be demonstrated, EWOV will also consider whether there are other questions regarding liability, or whether there is other assistance which should have been offered, either from a regulatory compliance or customer service perspective (for example hardship assistance).
- EWOV will also consider the date from which it is appropriate for the victim to assume liability for charges. This is consistent with standard EWOV treatment of issues where responsibility for billing is in question (for example, billing not commencing or being finalised correctly at a move in or move out date). Depending on the circumstances, EWOV may expect a provider to commence an account in a victim's name at the date when the abusive partner moved out, or when the victim became responsible for the premises, and to pursue the abusive partner only for any outstanding debt.
- If the victim is no longer at the property, but remains the account holder, EWOV may expect the provider to finalise the account at the date the victim left the property.¹¹
- If there has been debt transferred from one account to another, EWOV will consider both the legality of the transfer, and whether it was fair and reasonable in the circumstances. Even without family violence as a consideration, EWOV generally views attempts to transfer debt to a customer (where the customer was not the previous account holder) as not fair and reasonable because the contract for that account was with the previous account holder, and they are the legally responsible party.
- If payments have been made to the incorrect account by the victim, EWOV will usually require these payments to be transferred to the correct account.¹²
- EWOV will consider the most appropriate outcome in the circumstances. For example, this may include a debt waiver or removal of a victim's name from the account.

Joint accounts

When the abusive partner has left the property

- The issue of consent and whether the victim knew the account was established in joint names may be relevant. If there are questions about consent, EWOV will generally require a provider to demonstrate that explicit informed consent was obtained from the victim when the account was established.
- EWOV may expect a separate account to be set up in the victim's sole name from the date the abusive partner left the property. If the provider believes that there are legal hurdles preventing it from establishing a new account in the victim's name alone, EWOV would expect the provider to demonstrate this by reference to the relevant law or code.

¹¹ This may be dependent on substantiation available. However, if substantiation is unavailable, EWOV may still expect an account to be finalised at the date the victim advises they vacated the property (for example, if the victim fled the premises for personal safety reasons and has no access to documentation).

¹² This may also be dependent on substantiation available.



- Depending on the circumstances, EWOV may require a provider to pursue part of the debt with the other account holder, even though the provider may have the legal right to pursue the whole debt from the victim.¹³ EWOV will also consider whether the provider has a policy or standard practice about the pursuit of joint debt, and would expect the provider to demonstrate how it has met the requirements of its own policy or standard practice.¹⁴

When the victim has left the property

- Consent issues will remain relevant, and EWOV will expect a provider to demonstrate documented explicit informed consent by the victim when the account was established.
- If the victim can demonstrate when they moved out of the property, EWOV may expect joint responsibility for the account to end on that date. This is consistent with EWOV's approach as described above for standard move in/move out billing complaints and EWOV's approach for deemed contract cases where family violence is not an issue.
- Depending on the circumstances, EWOV may require a provider to pursue part of the debt with the other account holder. This is especially so in circumstances where the provider has contact details for the abusive partner, or they are still residing at the premises.
- If there is outstanding debt, EWOV will consider whether the customer also requires hardship assistance, and what type of assistance would be fair and reasonable in the circumstances.
- EWOV may also consider whether it is appropriate in the circumstances for the provider to agree to offer an account to the customer for their new premises.

Affordability and hardship assistance

- Family violence, including financial or economic abuse, can often result in significant hardship or affordability issues for a victim. Knowledge about the customer's individual circumstances and experience of family violence can also reveal why the customer may have struggled to engage effectively in the past (for example, limited contact, sporadic payments or a complete failure to remain in contact or make payments).
- Consistent with EWOV's approach to standard affordability or hardship complaints (explained in EWOV's hardship position statements), EWOV expects that appropriate, relevant and tailored hardship assistance and payment support is offered to customers who have experienced family violence.
- A provider's responsibilities to offer appropriate, relevant and tailored hardship and affordability assistance do not cease when an account has been finalised or closed, although these accounts may not require the same level of support as open accounts. The support required for open or closed accounts will depend on individual circumstances, and generally EWOV will expect a higher level of support for customers who have experienced family violence than for customers who have not been family violence victims.
- EWOV would expect a provider to take a customer's experience of family violence and the consequences of that experience into consideration when assessing what support is available

¹³ This is different to EWOV's general approach about issues of joint and several liability, where EWOV acknowledges that a provider has the legal right to pursue either party for the whole debt. In situations where extenuating circumstances do not exist, EWOV may consider it to be fair and reasonable for a provider to pursue either party for the entire debt. However, although the provider may have the legal right to pursue either party for the entire debt, depending on the circumstances it may still be fair and reasonable for the provider to split the debt and pursue both parties for a portion, even in situations where family violence does not exist.

¹⁴ Where a provider has a policy about pursuing joint debt, EWOV expects the provider to comply with its own policy or standard practice, even in situations where family violence does not exist. When a provider has not followed its own policy or standard practice, EWOV would expect the provider to explain why it made this decision.



and appropriate. For example, when assessing their capacity to pay, eligibility for appliance replacement or access to a formal hardship program.

Debt collection/default listing or loss of supply

- Consistent with EWOV's approach to standard debt collection or default listing complaints (as outlined in EWOV's credit collection/default listing position statement), EWOV will seek to establish whether debt collection is appropriate, and whether any listings have been made in accordance with legal requirements. Any consent or liability issues will be considered as part of this process.
- As noted above, EWOV will consider whether appropriate, relevant and tailored hardship assistance has been provided. In situations where there has been inadequate or inappropriate support or assistance, EWOV will often require removal of a default listing.
- EWOV expects that providers will not unnecessarily or unreasonably place barriers to supply for family violence victims, which is consistent with EWOV's approach to access of supply for all customers.

Privacy and safety issues

- EWOV expects that any issues giving rise to privacy breaches or other errors are addressed as quickly as possible, and information provided to confirm what action has been taken to address those breaches.
- EWOV may also expect recognition of customer service issues as a result of privacy or safety issues. For example, a provider may need to contribute towards, or pay in full, for emergency accommodation, or provide other financial compensation to recognise the impact on the customer. EWOV may also expect the provider to treat the matter more urgently than for customers who have not experienced family violence.

Customer service issues

Poor customer service can adversely affect family violence victims in a disproportionate way - for example, having poor contact notes can require a customer to repeat intimate and difficult details to numerous staff members.

EWOV takes customer service issues into account in any assessment of a fair and reasonable outcome. In the circumstances of family violence, the customer service experience may be particularly relevant to establish a fair and reasonable outcome for the complaint. Best practice may include:

- the ability to get appropriate assistance from empathetic staff
- calls back to mobiles, rather than placing customers on hold or making them wait a long time
- good contact notes readily accessible by staff, so victims do not have to repeat their story