

## EWOV Position Statement

### Family violence

November 2019

#### Background

The Victorian Royal Commission into Family Violence in March 2016 identified utility debt as a key contributor to the accumulation of household debt and financial insecurity for those experiencing family violence. It noted that EWOV plays an essential role in helping victim-survivors of family violence resolve disputes with utility service providers.

#### 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 or which controls or dominates causing fear for family members' safety and wellbeing. It also includes any behaviour that causes a child to hear, witness or otherwise be exposed to the effects of that behaviour.<sup>1</sup>

The meaning of family member is broad.<sup>2</sup> 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.”*<sup>3</sup>

Abuse can continue after a relationship ends. Financial abuse may be used to control victim-survivors after separation and is a significant contributor to women's poverty.<sup>4</sup> Family violence is also associated with short and long term impacts on physical and mental health.<sup>5</sup> For some victim-survivors, the effects of family violence can be made worse due to disadvantages resulting from their cultural and linguistic background, disability, age, race, sexuality, gender identity or socio-economic status.<sup>6</sup>

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<sup>1</sup> *Family Violence Protection Act 2008* (the Act), sections 5 to 7.

<sup>2</sup> 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-survivor 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

<sup>3</sup> *Royal Commission Report Vol I* p17

<sup>4</sup> *Royal Commission Report Vol I* p30

<sup>5</sup> See *Royal Commission Report Vol I* p15 to 41 for more detail about the nature, dynamics and effects of family violence.

<sup>6</sup> *Royal Commission Report Vol I* p33, see also pages 32 to 41 for more detail about the effects of family violence.



### **Family violence - special customer circumstances**

EWOV has regard to laws and codes, good industry practice and other reference points when resolving complaints. This includes past case results or Binding Decisions, provider policies, relevant legal or technical advice, regulatory advice, and special customer circumstances.

EWOV considers the circumstances of each complaint. A fair and reasonable outcome will depend on these circumstances. Special circumstances, 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 achieving a fair and reasonable outcome for a particular case.

Family violence creates special vulnerabilities for a victim-survivor, including concerns for personal safety or safety of family members. Where EWOV is aware that a customer has been impacted by family violence, EWOV considers this to be a special customer circumstance relevant to establishing a fair and reasonable outcome.

When trying to sort out other issues, energy or water debt may not be a high priority for customers who have experienced, or continue to experience, family violence. It may only become important when the issue reaches a crisis point (such as supply being disconnected). Family violence may also lead to an inability to engage with providers or EWOV in the same way as other customers.

### **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-survivor's name and refuses to contribute to the cost
- puts a service in the sole name of the victim-survivor 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.
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-survivor when the account is held in the abusive partner's name and the victim-survivor wishes to re-establish the account in their own name.
4. Debt can be transferred into a victim-survivor's name when establishing or transferring an account, sometimes with disconnection and reconnection fees.



5. Responsibility for water debt differs from the responsibility for energy debt because it is statute-based rather than contract-based. The debt 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-survivor 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-survivor 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-survivor or a partner) may result in debt collection activity, default listing or disconnection/restriction of supply.
- **Concerns for privacy and safety** - a victim-survivor'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-survivor or other family members.
- **Customer service** - a victim-survivor 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, family violence often creates particular vulnerabilities for the victim-survivor, therefore it will affect EWOV's expectations about how a provider will address a customer's circumstances. It may also affect the type and quality of substantiation EWOV would expect a family violence victim-survivor to be able to produce.<sup>7</sup>

EWOV expects customers and providers to comply with legal or regulatory requirements. This includes any requirements in the *Family Violence Protection Act 2008* and relevant industry laws and codes. Water companies must meet the requirements of the *Customer Service Code Urban Water Businesses* (clause 14) relating to the help and support offered to family violence victim-survivors.

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<sup>7</sup> 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.



As of 1 January 2020, the *Energy Retail Code* will also set out the help and support energy companies must offer their customers who are experiencing family violence.

The following 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-survivor to sign up for the account for EWOV to be satisfied that they are liable for the account. This is consistent with EWOV's standard approach for marketing and transfer complaints.
- In circumstances where consent can be demonstrated, EWOV will also consider whether there are other questions about liability, or whether there is other assistance which should have been offered. We will consider both the regulatory obligations and the customer service performance of the companies (for example hardship or payment difficulties help and support).
- EWOV will also consider the date from which it is appropriate for the victim-survivor to assume liability for charges. This is consistent with EWOV's standard approach where responsibility for billing is in question (for example, billing not commencing or being finalised correctly at a move in or move out date). EWOV may expect a provider to commence an account in a victim-survivor's name at the date when the abusive partner moved out, or when the victim-survivor became responsible for the premises. EWOV will expect a provider to pursue the abusive partner only for any outstanding debt.
- If the victim-survivor 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-survivor left the property.<sup>8</sup>
- 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. Transferring a debt to a customer who was not the previous account holder, is unlikely to be 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-survivor, EWOV will usually require these payments to be transferred to the correct account.<sup>9</sup>
- EWOV will consider the most appropriate outcome in the circumstances. For example, this may include a debt waiver or removal of a victim-survivor's name from the account.

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<sup>8</sup> 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-survivor advises they vacated the property (for example, if the victim-survivor fled the premises for personal safety reasons and has no access to documentation).

<sup>9</sup> This may also be dependent on substantiation available.



### **Joint accounts**

#### *When the abusive partner has left the property*

- Whether the victim-survivor knew the account was established in joint names may be relevant. If there are questions about consent to be an account holder, EWOV will generally require a provider to demonstrate that explicit informed consent was obtained from the victim-survivor when the account was established.
- EWOV may expect a separate account to be set up in the victim-survivor's sole name from the date the abusive partner left the property. If the provider believes there are legal hurdles preventing it from establishing a new account in the victim-survivor's name alone, EWOV would expect the provider to demonstrate this by reference to the relevant law or code.
- EWOV may require a provider to pursue part of the debt with the other account holder. This could be the case, even though the provider may have the legal right to pursue the whole debt from the victim-survivor.<sup>10</sup> 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.<sup>11</sup>

#### *When the victim-survivor has left the property*

- EWOV will expect a provider to show documented explicit informed consent by the victim-survivor when the account was established.
- If the victim-survivor 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 for standard move in/move out billing complaints and 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 - particularly 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 payment difficulties or hardship help and support, 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.

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<sup>10</sup> 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.

<sup>11</sup> 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. As part of a fair and reasonable outcome, EWOV may require a provider to comply with its own policy.



### ***Payment difficulties and hardship assistance***

- Family violence, including financial or economic abuse, can often result in significant hardship or affordability issues for a victim-survivor. 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 payment difficulties or hardship complaints,<sup>12</sup> EWOV expects providers will meet any legal or regulatory requirements. This includes the offer of appropriate, relevant and individualised affordability assistance.
- A provider's responsibilities to offer appropriate, relevant and individualised hardship and payment difficulties assistance does not stop when an account has been finalised or closed. The support required for open or closed accounts will depend on individual circumstances. 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 victim-survivors.
- 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 legally required, available and appropriate. For example, when working out what a customer can afford, their eligibility for appliance replacement or how best to help and support them under a hardship program or payment difficulties entitlements. A fair and reasonable outcome may require a provider to offer support beyond the minimum legal requirements.

### ***Debt collection/default listing or loss of supply***

- Consistent with EWOV's approach to standard debt collection or default listing, 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.
- EWOV will consider whether appropriate, relevant and individualised payment difficulties or hardship help and support 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 victim-survivors.

### ***Privacy and safety issues***

- EWOV expects that any issues giving rise to privacy breaches or other errors are addressed as quickly as possible. Providers must 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

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<sup>12</sup> Explained in EWOV's payment difficulties (energy) and hardship (water) position statements.



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 victim-survivors in a disproportionate way. 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 appropriate staff, so victim-survivors do not have to repeat their story
- the ability to limit staff access to sensitive customer records to appropriately authorised, trained and empathetic staff members to ensure customer privacy.