

ENERGY AND WATER OMBUDSMAN (VICTORIA)

CHARTER

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1 THE EWOV SCHEME

- 1.1 Welcome to the Energy and Water Ombudsman (Victoria) (**EWOV**) scheme. This Charter explains what the EWOV scheme does.
- 1.2 The Ombudsman and Ombudsman's staff handle complaints about electricity, gas and water services in Victoria.
- Water services include sewerage and drainage services as well as other water services.*
- 1.3 The Ombudsman and Ombudsman's staff are independent of government, industry and consumer groups.
- 1.4 This Charter explains the types of complaints the Ombudsman and staff can handle, and how we handle them.
- 1.5 When handling complaints or making procedures for handling complaints we will consider:
- (a) relevant laws;
 - (b) any relevant licence;
 - (c) any relevant industry code;
 - (d) good practice;
 - (e) any benchmarks the Commonwealth Government publishes about dispute resolution schemes; and
 - (f) what is fair and reasonable.
- 1.6 We aim to handle complaints in a fair, reasonable, independent, economical, informal and timely way.
- 1.7 We also aim to uphold principles of natural justice, access, effectiveness and community awareness.

2 COMPLAINTS WE HANDLE

2.1 This section explains the types of complaints we will handle.

We handle complaints made by consumers

2.2 A person or business who can complain to us is called a **consumer**, meaning:

- (a) a person or business that consumes an electricity, gas or water service in Victoria; or
- (b) a person or business directly affected by an electricity, gas or water service in Victoria.

This includes a person or business directly affected by failure to provide the service. A consumer can be an individual, a company or another type of entity.

We handle complaints about participants

2.3 We can only handle a complaint about participants in the EWOV scheme.

The EWOV scheme is a customer dispute resolution scheme approved by the Essential Services Commission which is the independent regulator of electricity, gas and water services in Victoria.

Providers of certain services must under their licences, under a law or under an industry code enter this type of scheme. These include:

- *an electricity distributor, supplier or seller under the Electricity Industry Act 2000 (Vic), unless an exemption under that Act applies;*
- *a gas distributor or retailer under the Gas Industry Act 2001 (Vic);*
- *a water corporation established under the Water Act 1989 (Vic); and*
- *a Victorian liquefied petroleum gas (LPG) retailer that volunteers to comply with the Victorian LPG Retail Code.*

Some types of sellers and distributors of electricity to "embedded networks" that may be required to enter the EWOV scheme include:

- *a seller that sells electricity to customers within a site the seller owns, occupies or operates;*
- *a retirement village that sells electricity to residents of the retirement village; and*
- *a seller that sells electricity in a caravan park, holiday park, residential land lease park or manufactured home estate.*

*All of the service providers above can enter the EWOV scheme by becoming a **member** of the EWOV scheme. They do this by applying for membership and being accepted, under the process in [EWOV's Constitution](#).*

*An entity in the electricity, gas or water industry can also become a **contracting participant** by agreeing with us to participate in the EWOV scheme.*

A member may agree with us to be a contracting participant in relation to electricity, gas or water services it provides and that would otherwise be outside the scope of the EWOV scheme.

Members and contracting participants are called **participants** in the EWOV scheme.

- 2.4 A consumer can check on our website whether a business is a participant in the EWOV scheme.

Our website gives lists of:

- [electricity participants](#);
- [gas participants](#); and
- [water participants](#).

The Ombudsman will ensure that these lists are accurate and up-to-date.

When complaints can be made

- 2.5 We usually only handle a complaint after it has been made to the participant.

We won't usually handle a complaint unless the consumer or their representative has already complained to the participant (directly or through a representative of the participant) and given the participant a chance to consider the complaint.

If we won't handle a complaint because the consumer hasn't given the participant a chance to consider it, we may refer the consumer or their complaint to the participant so the participant can consider it.

We may investigate a complaint that hasn't been made to the participant if we think it is necessary to avoid undue delay in handling the complaint. In that case we will tell the participant that we are investigating.

- 2.6 When we get a complaint we will consider when the events leading to the complaint happened and when the consumer discovered the issue they are complaining about.

- (a) If the participant involved is exempted by the General Exemption Order 2017 from the requirement to obtain a licence to sell or distribute electricity, we won't usually handle the complaint unless the events leading to the complaint happened after 30 June 2018.

These participants can include, for example, sellers and distributors of electricity to "embedded networks" such as:

- *a seller that sells electricity to customers within a site the seller owns, occupies or operates;*
- *a retirement village that sells electricity to residents of the retirement village; or*
- *a seller that sells electricity in a caravan park, holiday park, residential land lease park or manufactured home estate.*

- (b) If the participant involved is a contracting participant, we won't usually handle the complaint if the events leading to the complaint happened more than 1 year before the contracting participant entered the EWOV scheme.
- (c) Otherwise, if it has been less than 1 year since the consumer discovered the issue, we can handle the complaint.
- (d) Even if the complaint doesn't meet the above timeframes, we can still choose to handle the complaint.

We will consider things like the consumer's explanation for any delay and any impact the delay may have on the participant. If we choose not to handle the complaint, we may be able to suggest other ways the consumer could try to resolve the issue.

Complaints we handle

2.7 We handle the following types of complaints by a consumer:

- (a) complaints about provision or supply of (or failure to provide or supply) electricity, gas or water services by a participant under a licence, an agreement, a law (including an exemption from a law) or an industry code;

This includes complaints about:

- *faults with, or failure to supply, an electricity, gas or water service or related goods;*
- *transfer of services from one participant to another;*
- *supply quality;*
- *supply reliability;*
- *lack of notice of matters likely to affect supply;*
- *customer service;*
- *marketing; and*
- *infrastructure such as meters, poles, wires and pipes.*

- (b) complaints about payment services, billing and credit;

This includes complaints about:

- *general billing, billing errors, catch up bills, delayed bills, bill payment and refunds;*
- *payment options offered to consumers; and*
- *debt recovery and credit default listings.*

- (c) complaints about disconnection, restriction and refundable advances; and

This includes complaints about:

- *actual or planned disconnection or restriction of services for non-payment; and*
- *a participant requiring a consumer to pay a refundable advance before supplying a service.*

- (d) complaints from owners or occupiers of land or other property about the way a participant has exercised its statutory rights in relation to that land or property or neighbouring land or property.

Examples include a complaint about:

- *how the participant has used its statutory rights to access or use the land;*
- *how the participant has used its statutory rights to access or use neighbouring land;*

- *failure to tell the consumer about the proposed use of the statutory rights;*
- *failure by the participant to limit harm or inconvenience if required to do so; or*
- *failure to pay fair and reasonable compensation if required to do so.*

2.8 We also handle the following types of complaint by a consumer:

- (a) a complaint referred to us by the Essential Services Commission in relation to a participant's electricity, gas or water services business; and
- (b) any other type of complaint referred to us by a participant, if we and the consumer have agreed to this referral.

2.9 We will also handle a complaint by a consumer about a participant's employee, agent, contractor or officer. We will only hold the participant responsible if we think it is fair and reasonable to do so.

For example, in some cases we might think it is fair and reasonable to hold a participant responsible if another person is trying to collect a debt the consumer owes or owed to the participant.

Complaints we don't handle

2.10 We don't handle complaints about:

- (a) the setting of prices or tariffs;
- (b) a participant's commercial activities that are:
 - (i) outside the scope of any water, electricity or gas licence it holds (unless it is a contracting participant);
 - (ii) for a participant that does not hold any water, electricity or gas licence – not within or closely related to its core water, electricity or gas services; or
 - (iii) for a participant that holds a water, electricity or gas licence and is a contracting participant for other water, electricity or gas services – outside the scope of any licence and not within or closely related to the other water, electricity or gas services;
- (c) specific issues being considered by a court or tribunal, or that have already been considered by them;

We will publish a policy about when we can tell a participant not to start or pursue legal action to recover a debt that is the subject of a complaint we are handling. A participant must not breach the policy.

For example, the policy may state that the Ombudsman can tell a participant not to start or pursue legal action to recover a debt if the Ombudsman thinks the consumer is in a vulnerable position.

The policy will not prevent a participant from starting or pursuing legal action where necessary to:

- *prevent the limitation period for the legal action expiring;*
- *respond to any step taken by the consumer in the legal action; or*
- *do anything required by the court or tribunal.*

We discourage participants from taking any other legal action about a complaint we are handling.

Consumers can start legal action after complaining to us, but if they do we will stop dealing with their complaint.

If a consumer or participant stops legal proceedings that relate to a complaint issue, or if a participant has started but is not pursuing legal proceedings that relate to a complaint issue, we may consider that issue.

- (d) a matter that we have agreed with the Essential Services Commission or another government authority will be handled by them;
- (e) consumer contributions to the cost of capital works;
- (f) events beyond a participant's reasonable control and their consequences;

We will take the law and reasonable and relevant industry practice into account.

- (g) a participant if the complaint is made by:
 - (i) another participant; or
 - (ii) an electricity seller or distributor that does not hold a licence to sell or distribute electricity and is exempt from the requirement to obtain a licence,

unless we think there is a good reason why we should handle the complaint;

For example, we might think there is a good reason for us to handle the complaint if the complaining participant is much smaller than the other participant.

- (h) government policies, laws, licences and codes;

We can handle complaints relating to commercial policies of government-owned or government-controlled participants.
- (i) actions taken by a participant under a direction, notice or similar document given to the participant by someone with the regulatory or administrative power to give it.

The direction, notice or document must relate to:

- *the reliable supply of water services, gas or electricity;*
- *the security of a water services, gas or electricity system;*
- *a water services, gas or electricity emergency; or*
- *the safety of water services, gas or electricity.*

If we can't handle a consumer's complaint we may refer the consumer to an organisation that we think can.

3 HOW WE HANDLE COMPLAINTS

- 3.1 This section explains how a consumer can complain and how we will handle the complaint.

No charge to consumers

- 3.2 We will not charge consumers for handling a complaint, or make consumers pay a participant's costs.

How to complain

- 3.3 A consumer can complain by speaking to us or writing to us.

For example, a consumer can complain by calling us, e-mailing us or visiting our website.

- 3.4 A consumer can also ask someone else to complain to us for the consumer.

We can ask for proof that the consumer permits us to deal with the other person.

- 3.5 When we get a complaint, we will promptly tell the participant about it.

Often we will tell a more senior person at the participant than the person the consumer has been dealing with.

Resolving complaints

- 3.6 We will work with the consumer and the participant to see if they can agree how to resolve the complaint.

We use various methods to help the consumer and the participant to resolve a complaint. We will tell the consumer and the participant what we expect them to do to help resolve the complaint.

We can get information

- 3.7 We can tell the participant to send us any information or documents they have, or that someone else holds for the participant, that are relevant to the complaint. The participant must give us the information and documents.

We will tell the participant how long they have to give us the information and documents. We will be reasonable in setting this deadline but it will not be more than 28 days.

If a participant has information or documents relevant to the complaint but they contain someone else's confidential information, we still want to see them. The participant doesn't have to give us the confidential information and documents if the participant can't get permission from the other person, but the participant must make reasonable efforts to get permission.

If a dispute arises about giving us information or documents, we can decide if the participant must give us the information or documents (except someone else's confidential information).

- 3.8 We can take action to make sure the participant gives us the information and documents.

This could include referring the matter to the participant's chief executive officer, EWOV's Board or the Essential Services Commission.

If a complaint is not resolved by agreement

- 3.9 If the consumer and the participant don't agree how to resolve the complaint we may investigate the complaint.

We will tell the consumer and the participant if we plan to investigate the complaint.

We may choose not to handle, or to stop handling, a complaint

- 3.10 We may choose not to handle, or to stop handling, a complaint at any time if it is fair and reasonable to do so.

This could include where:

- *we think it is reasonable for the consumer to pay some or all of the participant's charges and the consumer refuses to pay this amount;*
- *we have asked the consumer to give us documents or information that we think may be relevant to their complaint and the consumer has not done so;*
- *we are unable to contact the consumer because they change their contact details and don't tell us the new details;*
- *the consumer doesn't stay in contact with us or respond to our attempts to contact them;*
- *another person or body can handle the complaint more effectively or conveniently than us. If this happens we can (if the consumer agrees) ask the other person or body to handle the complaint and give them the documents and information we have about it. We will then tell the consumer and the participant who will handle the complaint;*
- *the consumer makes the complaint for an unacceptable reason, for example only to annoy the participant;*
- *we think the participant has made a fair offer to resolve the complaint and the consumer hasn't accepted it; or*
- *the consumer's behaviour has been unreasonable.*

We can decide a complaint

- 3.11 If we finish investigating and the consumer and the participant have not agreed how to resolve the complaint, we will either:

- (a) dismiss the complaint; or
- (b) decide the resolution of the complaint, and tell the participant the actions they must take or not take.

- 3.12 When we dismiss or decide the resolution of a complaint at the end of an investigation, we will give the consumer and the participant written reasons.

The reasons will include the facts of the complaint and why we reached the decision or dismissed the complaint.

- 3.13 We will publish the reasons, without identifying the consumer or the participant.

What we can decide

3.14 When we decide the resolution of a complaint, examples of the actions we can tell the participant to take are to:

- (a) pay compensation to the consumer;
- (b) provide an electricity, gas or water service to the consumer;
- (c) supply the goods or services that were complained about;
- (d) fix the issue complained about;
- (e) cancel or change a charge for a service; or
- (f) put in, leave out or fix an entry in a record.

We can't tell the participant to do anything that would breach a code, licence, regulation or law. If we disagree with a participant about the effect of a code, licence, regulation or law we can at the participant's cost ask the Essential Services Commission, senior counsel or the courts to:

- *determine the effect; or*
- *advise.*

3.15 When we decide the resolution of a complaint, the total value of any action we tell the participant to take in relation to:

- (a) that complaint; and
- (b) any related complaints by the same consumer, arising from the same event or a series of related events that happened within a short time period,

must not be more than \$20,000, unless all parties agree to a higher value that is not more than \$50,000.

If we get multiple complaints about a participant from different consumers about one event or a series of related events, for example an issue with the participant's billing system that affects multiple consumers, the \$20,000 limit applies separately to each complaint and not to all of the complaints in aggregate.

The \$20,000 limit does not stop us from handling a higher value complaint and working with the consumer and the participant to see if they can agree how to resolve the complaint.

The next steps after we decide the resolution of a complaint

3.16 When we decide the resolution of a complaint, the consumer must tell us if they accept our decision.

The consumer must tell us within 21 days.

3.17 If the consumer accepts our decision, they must agree not to take any further action against the participant about the complaint.

3.18 If the consumer accepts our decision, the participant must comply with the decision. We can take action to ensure the participant complies.

This action could include referring the matter to the participant's Chief Executive Officer, EWOV's Board or the Essential Services Commission.

- 3.19 If the consumer doesn't accept our decision, the participant doesn't have to comply with our decision and the consumer can take any further action they want about the complaint.

4 INFORMATION HANDLING, REPORTING AND DEALING WITH A PARTICIPANT'S AGENT

How we deal with information we collect

- 4.1 We will comply with privacy laws and our [privacy policy](#) for information we collect.
- 4.2 If we are required by law to disclose information we get, if possible we will tell the person who gave us the information so that they can seek to challenge the disclosure.

Reporting to participants and the Essential Services Commission

- 4.3 We can give a participant and the Essential Services Commission a report if we consider that the participant's general electricity policy, water services policy, gas policy or commercial practices have:
- (a) contributed to a complaint;
 - (b) caused or may cause a number of similar complaints; or
 - (c) made it harder to investigate or handle a complaint.
- 4.4 We can also refer a matter in relation to a participant that holds an electricity or gas licence to the Essential Services Commission if we think there is a problem with, or change in, the participant's policy, practice or conduct that adversely affects, or could adversely affect, a number of customers (a **systemic issue**).

The Essential Services Commission Act 2001 (Vic) gives us this power.

A systemic issue includes, for example:

- *a change to the participant's billing, metering, supply or other systems;*
- *an absence of a policy, procedure or guideline in relation to a matter;*
- *inadequate policies, procedures or guidelines;*
- *a failure to comply with the Essential Services Commission Act 2001 (Vic), the Electricity Industry Act 2000 (Vic) or the Gas Industry Act 2001; or*
- *the conduct of the participant's employee, agent, officer or contractor.*

If we refer a systemic issue to the Essential Services Commission we must also provide any information about the systemic issue that is available to us.

The Essential Services Commission must act on the matter as stated in the Essential Services Commission Act 2001 (Vic).

- 4.5 We will report to the Essential Services Commission when required under a licence or agreement.
- 4.6 We can also give confidential reports on any subject to participants, the Board and the Essential Services Commission.

- 4.7 When we report or refer a matter to the Essential Services Commission that relates to a complaint we can still handle that complaint unless another clause of this Charter prevents us.

Publishing reports

- 4.8 We can publish reports about our activities and about issues that relate to the EWOV scheme and electricity, gas and water services.

Examples of information that we can publish in our reports are:

- *complaint statistics and trend analyses;*
- *information about our work on issues that affect a number of consumers; and*
- *case studies based on complaints we have handled.*

Dealing with a participant's agent

- 4.9 If a participant asks us to, we can deal with their agent instead of them. But we can always deal directly with the participant if we wish.

The agent could for example be an entity related to the participant, such as its parent company, or a third party with which the participant has a commercial relationship.

A communication to or from the agent will count as a communication with the participant. Any other action by the agent in relation to a complaint or the EWOV scheme will count as the participant's action.

For example we can:

- *communicate with the agent about a complaint against the participant;*
- *send the agent our invoices for the participant;*
- *send the agent a notice about a meeting the participant is invited to;*
- *require the participant to uphold any agreement the agent enters with us or a consumer about the consumer's complaint or resolution of the complaint;*
- *tell the agent that the participant must give us any information or documents the participant or the agent has that are relevant to a complaint; and*
- *tell the agent what actions the participant must take or not take, when we decide the resolution of a complaint against the participant.*

5 MANAGING THE EWOV SCHEME

- 5.1 The EWOV scheme is operated by a company called Energy and Water Ombudsman (Victoria) Limited (**EWOV Limited**).
- 5.2 The EWOV scheme is managed by an Ombudsman and a Board of Directors. This section explains their responsibilities.

The Ombudsman's responsibilities

- 5.3 The Ombudsman is responsible for:
- (a) handling complaints;
 - (b) making procedures for fair, reasonable, informal and timely handling of complaints;
 - (c) making position statements that state our general approach to handling common complaint issues;
 - (d) preparing draft policies for the management of the EWOV scheme if requested by the Board;

For example, these may include policies about:

- *privacy;*
 - *occupational health and safety;*
 - *anti-discrimination and harassment;*
 - *risk management;*
 - *re-imbusement of expenses to our staff; and*
 - *use of computer systems.*
- (e) managing the EWOV scheme's day-to-day operations;
- This includes:*
- *appointing and terminating the appointment of staff (but not an Acting Ombudsman);*
 - *making sure we have up-to-date [lists of participants](#) available to the public; and*
 - *keeping data about the complaints we handle and requests for information we get, for reporting purposes and to identify issues leading to similar complaints.*
- (f) managing the EWOV scheme's finances;

The Board has final responsibility for the EWOV scheme's finances. The Ombudsman manages the EWOV scheme's finances under the Board's oversight.

The Ombudsman must:

- *prepare proposed annual funding figures and budgets and submit them to the Board;*
- *submit to the Board any proposed amendment to a budget;*

- *control (under the Board's oversight) and monitor the EWOV scheme's finances;*
- *give the Board regular reports about the EWOV scheme's finances; and*
- *make sure our spending is efficient and kept within the approved budget.*

(g) working with the Essential Services Commission and other government authorities;

The Ombudsman may make working procedures with these bodies. The working procedures will include the areas of responsibility of the Ombudsman and the other authorities for the handling of complaints. Before making any working procedure the Ombudsman must discuss it with the Board and consider any comments the Board makes.

(h) working with industry bodies and community and consumer groups; and

(i) managing the overall performance of the EWOV scheme.

This includes:

- *meeting any goals set by the Board;*
- *preparing proposed annual business plans and submitting them to the Board;*
- *submitting to the Board any proposed amendment to a business plan;*
- *in consultation with the Board, preparing the EWOV scheme annual report;*
- *attending Board meetings (but the Ombudsman cannot vote in these meetings), unless the Board chooses not to invite the Ombudsman to particular meetings or parts of meetings;*
- *attending meetings of any Board committee when invited by the committee;*
- *promoting the EWOV scheme;*
- *making general statements in public about the EWOV scheme;*
- *making submissions to government and other bodies on policy matters; and*
- *making recommendations to the Board about whether any changes should be made to the EWOV scheme.*

The Ombudsman can delegate responsibilities

5.4 Only the Ombudsman (or an Acting Ombudsman) can do the following things:

- (a) decide the resolution of a complaint; or
- (b) give written reasons for the decision.

5.5 The Ombudsman can delegate any other responsibility to any of our staff unless delegation is restricted by a law, an industry code or an industry standard.

The Board's responsibilities

5.6 The Board is responsible for:

- (a) managing EWOV Limited's business, affairs and property;

The Board has final responsibility for these things but may delegate responsibilities to the Ombudsman and staff.

- (b) monitoring the overall performance and results of EWOV Limited and the EWOV scheme;

This includes regularly reviewing the scope, performance, efficiency and effectiveness of the EWOV scheme and whether any changes should be made to [EWOV's Constitution](#) or this Charter.

- (c) setting goals and the overall strategy for EWOV Limited and the EWOV scheme;
- (d) receiving annual business plans (and any proposed amendment to a business plan) from the Ombudsman and deciding whether to approve them;

The Board must approve a business plan or any amendment to a business plan before the Ombudsman implements it.

- (e) managing the EWOV scheme's finances;

The Board has final responsibility for the EWOV scheme's finances. This includes:

- *overseeing the Ombudsman's management of our spending;*
- *overseeing our capital management, funding and cashflows;*
- *ensuring we have sufficient funding;*
- *setting financial delegations;*
- *receiving proposed annual funding figures and budgets from the Ombudsman and using the process stated in [EWOV's Constitution](#) to set the annual funding figure and budget for each year; and*
- *receiving any proposed amendment to a budget from the Ombudsman and deciding under [EWOV's Constitution](#) whether to approve it.*

- (f) overseeing EWOV Limited's systems for risk management, auditing and legal compliance;

- (g) appointing and terminating the appointment of the Ombudsman;

The Board can also appoint and terminate the appointment of an Acting Ombudsman.

- (h) determining policies for the management of the EWOV scheme;

For example, these may include policies about:

- *privacy;*
- *occupational health and safety;*
- *anti-discrimination and harassment;*
- *risk management;*
- *re-imbusement of expenses to our staff; and*
- *use of computer systems.*

The Board may ask the Ombudsman to prepare drafts of these policies.

- (i) advising the Ombudsman on allocating resources within the budgets approved by the Board;
- (j) advising the Ombudsman on promoting the EWOV scheme and preparing our annual report;
- (k) maintaining the Ombudsman's independence.

Changing this Charter

- 5.7 The Ombudsman or the Board can at any time suggest a change to this Charter.

The Ombudsman and the Board will discuss any suggested change.

- 5.8 If the Board recommends a change to this Charter, it will prepare a resolution to make the change to be voted upon by the EWOV scheme's members at a general meeting of members.

Before putting the resolution to the EWOV scheme's members the Board must discuss its recommendation with the Ombudsman and the Essential Services Commission and consider any comments they make.

The Board must give the Essential Services Commission a copy of any proposed resolution to be considered by the members in the general meeting to vary this Charter.

- 5.9 If the EWOV scheme's members pass the resolution for the change at a general meeting of members in accordance with [EWOV's Constitution](#) and any relevant law, the change will be made to this Charter.