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# **Electricity and Water Ombudsman of Victoria Independent Review 2019 Report**

**November 2019**



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## 1. Introduction

1. The Energy and Water Ombudsman (Victoria) (EWOV) is a customer dispute resolution scheme approved by the Essential Services Commission (ESC). It has the power to investigate and resolve disputes between Victorian customers and their electricity and gas companies, and water corporations. Established in 1996, EWOV's jurisdiction has expanded over its years of operation. It has 95 Scheme Participants (Providers) from 'traditional' electricity, gas and water markets, and (since 1 July 2018) 230 new embedded network Providers, with others still yet to join. Throughout this report, we refer to Scheme Participants as Providers, unless quoting directly from external sources or EWOV documents.
2. EWOV's Constitution empowers the Board to conduct reviews of the Scheme in consultation with interested parties including customer and community representative groups.
3. EWOV has engaged *cameron.ralph.khoury* to undertake this independent review. Over the past 18 years we have undertaken independent reviews of many Ombudsman schemes in the USA, Australia, New Zealand and Canada. We have knowledge of energy and water dispute resolution having worked with the energy and water Ombudsman offices in Queensland, New South Wales and Western Australia and with EWOV.

### Review Scope

4. The primary matters for inquiry and report include:
  - EWOV's progress towards meeting the Benchmarks for Industry-based Customer Dispute Resolution:
    - i) Accessibility
    - ii) Independence
    - iii) Fairness
    - iv) Accountability
    - v) Efficiency
    - vi) Effectiveness
  - whether the scope of EWOV is appropriate
  - Scheme Participant and customer satisfaction with EWOV
  - whether the dispute resolution processes used by EWOV are just and reasonable
  - the degree of equitable access to EWOV, and



- the effectiveness of the statute, charter, terms of reference or other documents establishing the EWOV, its jurisdiction, functions, rules and procedures.
5. This review does not extend to EWOV's funding structure, case fees or the structure and performance of the EWOV Board.



## 2. Overview

### Our Assessment

6. This review takes a "fresh eyed" approach to our examination of EWOV against the revised 2015 Benchmarks. While we have drawn on the knowledge and experience of the 2014 review team and its findings and recommendations, a new team has undertaken the bulk of this review to assess the current performance of EWOV. Our approach has been to start with the current performance of EWOV and, only once we had done so, go back to see what has changed since the last review in 2014.
7. Our overall assessment is that EWOV remains a professionally run external dispute resolution scheme that performs well against the key EDR benchmarks, although with opportunities to improve, and some significant risks ahead if it does not do so.
8. EWOV continues to have the strong support of both consumer organisations and Providers, although stakeholders identified a range of things they felt EWOV could do better.
9. We found management and staff to be engaged, with many current initiatives underway to improve EWOV's performance. They displayed real strengths in specific areas. As a small scheme, its internal management reporting systems and recent use of data analytics are impressive.
10. EWOV also impressed us with its forward looking focus, given the rapidly changing and complex regulatory environment in which it operates. The additional strategic priority set by the EWOV Board for 2019-2020 - *Future Scope and Capability* is clearly designed to ensure EWOV adapts and develops capabilities to continue to perform strongly. This, and EWOV's active involvement in the current Australian and New Zealand Energy and Water Ombudsman Network (ANZEWO) project (referenced throughout this report), are testament to its forward looking focus.
11. We also recognise the important role EWOV has played, and the extent of work involved for its management and staff, in implementing key changes in the Victorian energy and water regulatory environment over the last few years. In particular, its efforts in operationalising EWOV's expanded jurisdiction for embedded networks, and the significant changes to the hardship framework under the Payment Difficulty Framework.
12. The range of current improvement initiatives across key operations and the enthusiasm of the EWOV team has impressed us. However, we note most of these initiatives appear to be recent and very much work in progress.



## Status of the 2014 Review Recommendations

13. While we assess that EWOV continues to perform well against the benchmarks, we were a little surprised to find the key themes identified in the current review remain similar to those identified in the 2014 independent review. In going back to check on the progress of the recommendations from the 2014 review, we found that after an initial flurry of activity in 2014-15, most of the recommendations had fallen by the wayside.
14. We wanted to understand why this was the case so that in making recommendations in the current review, EWOV does not end up in a similar situation a few years down the track.
15. We identify several inter-linked reasons that we think might have led this. These include:
  - the significant drop and change in the mix of dispute numbers immediately after 2013-14 appears to have reduced the imperatives to change a dispute process EWOV felt to be working reasonably well,
  - given the fall off in complaint numbers there was a significant reduction in staff numbers, directing management's energy to downsizing and then seeking to re-stabilise the organisation
  - more recently, the expansion of jurisdiction to embedded networks and other changes to the regulatory framework have consumed significant management time and effort.
16. In a small scheme, we understand there are limited resources available for new initiatives and that choices have to be made about directing efforts to what will make the most difference to the service the scheme provides.
17. At the same time, transparency on the Board's response to any recommendations of an independent review, together with regular public reporting on implementation or follow-up action, are important elements of the accountability framework for an Ombudsman Scheme.<sup>1</sup> Where the scheme makes a decision to defer or not progress any action it has agreed to take arising from an independent review, we consider that as part of its accountability to its stakeholders, it should publicly report and explain its reasons why it has done so.

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<sup>1</sup> See Final Report, Review of the financial system external dispute resolution and complaints framework, Australian Treasury, April 2017, p 175-176



## Imperatives for change

18. In response to the findings of this current review, the EWOV Board and management may take the view that, as its complaint process meets the EDR benchmarks or that other issues are more important, it should again defer making major changes to its complaints process. We consider this would be a mistake for several reasons.
19. There are sufficient early indications from stakeholder feedback that unless EWOV takes early steps to address issues in its processes, current levels of stakeholder support may not be sustained. Many Providers have gone through major re-engineering of their own customer complaint processes. Having done so, their expectations of EWOV have also increased.
20. Our findings show that while the existing complaint resolution process can handle the current decreasing volume and mix of dispute numbers, it is doing so less efficiently than in previous years. This means that any increase in volume or change in the type of cases will place pressure on time, quality and other KPIs. One indicator of this is the increase in case allocation wait times that occurred with the relatively modest rise in complaint volumes during 2018. These pressures will only compound should EWOV's jurisdiction expand to the broader range of energy-related customer complaints that is being contemplated.
21. While there are a number of internal continuous improvement projects and other initiatives underway, unless EWOV directs its efforts at the right matters, makes significant changes to its complaint process and has a robust, aligned, internal project management approach, its efforts may not result in sustainable improvements. We also found that a range of what we consider good housekeeping matters warrant greater attention.

## Overview of our recommendations

22. Our key recommendations relate to improvements in EWOV's complaint handling process and changes to its planning, budgeting and quality assurance processes to better support its improvement efforts. We also note the challenges EWOV faces in continuing to meet the effectiveness benchmark given an increasing number of complaints falling outside its jurisdiction in new and emerging energy products and services.
23. Our recommendations set out in the report and at Appendix 1 cover the following key matters:
  - a) **At registration and referral, we recommend EWOV needs to do more to provide reassurance that the Assisted Referral Process is leading to good customer outcomes, and it is more actively managing consumer expectations.**
  - b) **At investigation, we recommend that EWOV should revamp its current process to make it less linear, with better triage of complaints to different investigation pathways. There should be a reduction in the reliance on the shuttle exchange of information, and conciliators should be more confident in making fair offer decisions and jurisdictional decisions earlier and more often.**



- c) EWOV will need to support these change by placing more emphasis in its Quality Assurance activity on checking consistency of outcomes for similar types of complaints and in monitoring the impact of continuous improvement efforts.
- d) EWOV should shift from its current one year planning, budgeting and funding cycle to a combined three-year strategic and financial planning cycle to better identify, scope and implement its strategic initiatives, including those arising from independent reviews. Moving to a longer budget cycle will also assist the Board to assess and monitor its strategic initiatives given that in most cases, the full costs and benefits will be spread over a number years. To the extent that the current EWOV Constitution makes this difficult, we recommend the EWOV Board consider appropriate amendments to provide the Board with greater flexibility in setting budgets and funding over a longer forward planning cycle.
- e) EWOV should review its jurisdiction to ensure that it effectively covers most customer complaints involving new and emerging products and services in the energy sector.
- f) EWOV should devote more attention and resources to identifying, investigating and reporting systemic issues to help reduce complaints.
- g) We make several recommendations about improving EWOV's reporting of complaints data; performance reporting in its Annual Review; its internal complaints policy and handling; and a range of other matters.

## Some further observations

- 24. Our review assesses how well EWOV is meeting the current EDR benchmarks and covers other specific issues EWOV requested be incorporated in our work. Because the Board and management of a scheme are much better placed to understand the internal dynamics and what approach works best in their organisation, we are hesitant about commenting on **how** the recommendations we make should be implemented. However, based on our experiences of what has worked well in some other organisations, we offer two observations.
- 25. First, we appreciate that making wholesale changes to dispute processes can be challenging, especially in a changing environment where there are concerns by staff and diverse stakeholders about impacts on customer outcomes and themselves. This can result in staff or stakeholder resistance and complex, high risk projects taking a long time to achieve improvements.
- 26. One way to address this is by taking a pilot-based approach. This could involve selecting a category of complaints and working with several Providers to run pilots within (say) a six-month timetable. A rapid, controlled pilot approach enables early action compared with a full redesign process. It also allows management to assess outcomes from the pilots before implementing changes more broadly.



27. Our second observation is that we feel EWOV could better align its key improvement initiatives around how they will contribute to improving the experience of customers and Providers, and then assess whether this has been achieved. Some examples of where the linkages between separate projects were not as clear as we felt they could be include: the review of the quality assurance framework: the revamp of customer and stakeholder surveys: and the roll-out of continuous improvement training. We think there are benefits in aligning improvement initiatives around a clearly articulated EWOV-wide view of what customers and Providers want and expect when dealing with EWOV.



### 3. Review approach

#### Methodology

28. While occasionally in this review, we will refer to our work and findings of the 2014 Independent Review of EWOV, we have taken a 'fresh eyes' approach to our examination of EWOV against the updated 2015 Benchmarks.
29. Our work program included:
  - review of EWOV's website materials
  - review of EWOV's procedural guidance for its staff and interviews of EWOV managers to get a detailed understanding of EWOV processes
  - a staff forum and various meetings involving around 15 staff
  - review of over 100 cases
  - review of 9 systemic issues investigated by EWOV
  - telephone interviews of around 30 customers who had brought their customer to EWOV
  - consideration of 4 public submissions and 1 confidential submission
  - interviews of 13 industry stakeholders
  - interviews with 4 consumer bodies
  - review of EWOV stakeholder surveys conducted in 2018 and 2019
  - review of EWOV's data and data from the ESC and the ANZEWON 2019 Draft Report (see below), and
  - meetings with EWOV management to clarify issues and discuss our findings.
30. EWOV provided us with the draft Report by the University of NSW on '*How will the Australian and New Zealand Energy and Water Ombudsman's Schemes have to change to remain 'fit for purpose' in 2020, 2025 and 2030?*' (ANZEWON 2019 Draft Report) commissioned by ANZEWON.

#### Structure of the Report

31. Our Report begins with a discussion of the context in which EWOV operates and an overview of EWOV's dispute resolution process. We then analyse EWOV's performance against the Benchmarks with particular regard to the questions that EWOV has asked us to consider.



## Acknowledgements

32. We would like to thank EWOV staff for their help in providing background briefs, responding to detailed data requests and answering our many questions. We would also like to thank the Providers and consumer representatives who contributed to our understanding of the issues. We are grateful to the 30 Victorian energy and water customers who generously consented to speak with us about their experience at EWOV.



## 4. EWOV's role

33. EWOV is an Ombudsman scheme established to independently and efficiently resolve disputes between customers and energy and water service providers in Victoria. It is not a regulator or part of government. It is not part of industry, nor is it a consumer advocacy body.

### The energy environment

34. The framework for energy and water regulation in Australia is complex.
- The Australian Energy Regulator (AER) regulates electricity networks and covered gas pipelines, in all jurisdictions except Western Australia. It sets the amount of revenue that network businesses can recover from customers for using these networks.
  - The AER protects the interests of household and small business consumers by enforcing the Retail Law in New South Wales, South Australia, Tasmania, the ACT and Queensland.
  - In Victoria, this function is within the remit of the Essential Services Commission (ESC) 'an independent regulator that promotes the long-term interests of Victorian consumers regarding the price, quality and reliability of essential services including energy and water'.
35. The ESC licenses electricity, gas and water companies that operate in Victoria. It requires most of these to be a member of EWOV by a licence or agreement, under legislation or under an applicable industry code, or are exempted from a requirement to hold a licence if they become a member of EWOV.
36. Each State and Territory (in different forms) has an energy and water Ombudsman scheme, and while there is good collaboration and sponsored research between them, complaint data across schemes and the respective performance of each scheme, is hard to compare.
37. Energy and water markets continue to evolve rapidly driven by technology, new entrants, changing consumer needs and regulatory developments leading to regular review by the schemes, consumer organisations and policy makers of the current coverage and capabilities of Ombudsman Schemes operating in the sector.
38. We expect that the pace of change will increase in coming years with the growth of new ways consumers take part in the energy market. This includes<sup>2</sup>:

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<sup>2</sup> University of Sydney, Issues Paper commissioned by the Australian and New Zealand Energy and Water Ombudsman, *How will the Australian and New Zealand Energy and Water Ombudsman's Schemes have to change to remain 'fit for purpose' in 2020, 2025 and 2030?*, July 2019, p. 2



- The growth in the provision of bundled services (e.g. energy and water, energy and new technology systems, and new technologies and management and control systems)
  - Self-generation and consumer energy trading through the installation of integrated residential PV solar and battery storage systems
  - Solar leasing and solar PPAs
  - Smart technologies, which integrate energy services with other household technologies, relying on the internet, and
  - Installers, maintenance contractors and designers of new technologies and management systems, increasingly coming onto private property to conduct installations and repairs.
39. In November 2016, the Victorian Government commissioned a review of Victoria's electricity and gas retail markets to examine their operation and options to improve outcomes for consumers. The final report of the Review panel concluded that the 'market is failing consumers' and that 'the benefits promised when competition was implemented have not been realised and consumers are paying more for the same service. As an essential service, it is imperative that all consumers, including low-income and vulnerable consumers have access to affordable energy'. The Review panel made 29 recommendations designed to 'place Victoria's retail energy market back on a level playing field for the benefit of consumers'.<sup>3</sup>
40. The Government, through the ESC, has in recent years been implementing several regulatory reforms of the Victorian retail energy market. Its new framework for electricity licence exemptions, extended protections for electricity customers who rely on embedded networks - private networks in which electricity is on-sold to multiple customers typically in shopping centres, retirement villages, apartment complexes and residential caravan parks. As a result, since 1 July 2018, most embedded network operators need to be a member of EWOV.
41. The ESC's new Payment Difficulty Framework (PDF) came into effect in the updated Energy Retail Code on 1 January 2019. The Code sets out minimum standards of assistance to which it entitles residential customers anticipating or facing payment difficulties, so that disconnection of a residential customer for not paying a bill is a measure of last resort. EWOV is working with Providers to ensure they understand their new obligations under the PDF and many of the cases they have handled in 2019 to date reflect this focus. Likewise, the ESC introduced from 1 July 2019 enhanced protections including it's a 'best offer' on energy bills, the Victorian Default offer, and a new fact sheet on available energy offers.<sup>4</sup>

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<sup>3</sup> Independent Review into Electricity & Gas Retail Markets in Victoria, August 2017, Executive Summary, p x

<sup>4</sup> Essential Services Commission, Annual Report 2018-19, p 20



42. The report from the University of Sydney commissioned by ANZEWON examines the changes in the energy markets, implications for consumers and what this means for the current and future jurisdiction of the Ombudsman schemes along with what new capabilities they will need. We are advised that the final ANZEWON 2019 Report will be published around March 2020. Where relevant to our review, we refer to the draft of this report and its proposed recommendations. We also examine the implications of these changes for EWOV's jurisdiction later in this report.

## Industry Codes

43. Industry Codes of Practice provide an important reference point for Ombudsman dealing with dispute resolution across the full range of industry sectors, and this is the case for EWOV. In the energy and water sector there are several codes of practice, most mandatory, but some voluntary, to which EWOV refers when resolving complaints. The ESC establishes mandatory codes for Victorian Energy and Water providers including:
- the Energy Retail Code that sets out the rules that electricity and gas retailers must follow when selling energy to customers
  - the Electricity Distribution Code that regulates distribution and connecting electricity to customers
  - the Electricity Customer Transfer Code that regulates the processes that electricity customers can use to change retailers or transfer to another retailer
  - the Customer Service Code for Urban Water Businesses, and
  - the Customer Service Code for Regional Water Businesses.
44. EWOV actively contributes views and insights in the periodic review of these codes based on its complaint handling experience.

## A broader role

45. Like most Ombudsman schemes EWOV is in a unique position to monitor and analyse trends in complaints and utilise this analysis to influence changes in Providers' service delivery to consumers. More than this, it can use its insights to influence public policy developments in the energy and water markets.
46. EWOV is active in doing so. Stakeholders, including the regulator, value its quarterly publications Res Online and its Affordability report, and EWOV makes regular submissions to both government and regulators on policy issues in the energy and water sectors.
47. We consider, however, that there is more the EWOV Ombudsman can do to identify, report and take a higher profile public stance on emerging and systemic issues, and we address this later in the report and in our recommendations.



## 5. Scheme Overview

### EWOV's Constitution

48. EWOV is a company limited by guarantee with its governance structure and case handling powers set out in the EWOV Constitution and the EWOV Charter. EWOV updated both these documents in 2018 to reflect its expanded jurisdiction for embedded networks.
49. EWOV's Board and governance structure derive from its Constitution. It has an equal number of industry and consumer directors, and an independent Chair who must not be associated with any director or any company participating in the scheme. The nine-person board comprises an independent Chairman, four consumer directors nominated by Victoria's Essential Services Commission and four energy/water industry directors elected by EWOV Limited's industry members. The Board appoints the EWOV Ombudsman.
50. The objects of EWOV are set out at Clause 3 of its Constitution:

*... to establish and operate an energy and water Ombudsman scheme and to appoint an energy and water Ombudsman with the power on behalf of EWOV Limited to:*

*(a) independently and efficiently resolve disputes between customers and energy and water service providers in Victoria; and*

*(b) receive, investigate and facilitate the resolution of:*

*(i) complaints as to the provision or supply of (or the failure to provide or supply) electricity, gas or water services by a Participant to a customer as required by a Licence or agreement, under legislation or under an applicable industry code;*

*(ii) billing disputes;*

*(iii) complaints about the administration of credit and payment services in the circumstances of a particular customer;*

*(iv) disconnection, restriction and refundable advance complaints;*

*(v) complaints from owners or occupiers of land or other property about the way in which a Participant has exercised its statutory powers in relation to that particular land or other property or in relation to neighbouring land or other property;*

*(vi) complaints referred by the Essential Services Commission in relation to the conduct of a Participant's electricity, gas or water services business; and*



*(vii) such other complaints as may by agreement with the Ombudsman and the complainant, be referred to the Ombudsman by a Participant, with the further aim of reducing the occurrence of disputes between customers and energy and water service providers in Victoria.*

51. The Constitution sets out membership requirements and obligations including for the payment of levies by Providers to fund the operation of the scheme.
52. Section 17.1 of the Constitution states that EWOV 'shall operate in accordance with and observe the roles, functions, powers and obligations set out in the Energy and Water Ombudsman (Victoria) Charter'. The Charter explains what EWOV does, and does not do, and how it operates. The EWOV Charter covers both the roles and responsibilities of the Ombudsman and Board in managing the scheme and how the scheme will handle complaints. Other schemes often refer to this as the complaint handling rules.
53. The EWOV Board must agree to any recommended amendment to the Charter which must be discussed with the ESC prior to being voted on by EWOV's members (Providers) at a general meeting of members.

## Membership of EWOV

54. EWOV has 95 members from 'traditional' electricity, gas and water markets, and (since 1 July 2018) 230 new embedded network members with others still yet to join.

Scheme Participants	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
Electricity, Gas & water	75	82	83	87	90	95
Embedded Networks	-	-	-	-	-	230
<b>Total</b>	<b>75</b>	<b>82</b>	<b>83</b>	<b>87</b>	<b>90</b>	<b>325</b>

55. The Victorian Government's framework for electricity licence exemptions, has recently extended protections for electricity customers who rely on embedded networks—private networks in which electricity is on-sold to multiple customers typically in shopping centres, retirement villages, apartment complexes and residential caravan parks. Previously, customers in these complexes did not have the same protections as customers buying from licensed electricity retailers, and EWOV could not deal with their complaints. Under the Victorian Government regulatory framework, since 1 July 2018, most embedded networks now need to be a member of EWOV.
56. To accommodate this expanded jurisdiction, in early 2018 EWOV introduced a new funding model, updated its Constitution and Charter, and made organisational changes to handle cases in the new jurisdiction.



## EWOV's complaints over the last six years

57. EWOV's complaint volumes over the past four years have remained relatively steady and significantly below peak complaint volumes experienced in 2013-14.

	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
<b>Electricity</b>	60,517	34,524	22,629	19,012	21,085	18,800
<b>Gas</b>	20,881	13,066	10,715	10,547	11,268	10,384
<b>Water</b>	2,785	2,383	2,398	2,105	1,928	1,721
<b>Dual fuel and other</b>	575	464	410	338	243	275
<b>Total cases received</b>	<b>84,758</b>	<b>50,437</b>	<b>36,152</b>	<b>32,002</b>	<b>34,524</b>	<b>31,180</b>

58. The 2013-14 peak in complaints was because of several factors.
- Victoria was an early adopter of smart meters and mandated compulsory installation of these, a controversial policy and one that generated many complaints in 2012-13 and the following year.
  - Another factor influencing complaint volumes was the significant price rises for electricity and gas in Victoria in 2012-13. Victoria, unlike most States, does not regulate retail electricity prices. According to the Australian Energy Regulator's report, *State of the Energy Market 2013*, standard contract prices rose in Victoria by 5% to 12% in 2013 across the State's five distribution network areas, following increases of 20% to 25% in 2012.
  - Added to the external energy environment changes, energy and water companies made large-scale billing system changes during the same period creating wholesale problems of delayed bills, estimated bills and billing errors by companies.
  - In 2014-15 the impact of market and system changes began to reduce. So too did the number of complaints to EWOV. This trend of reduced complaints has continue with further reductions of complaint numbers in the last financial year.

## EWOV complaints in the context of overall complaints in the Victorian Energy Sector

59. In 2017-18, cases to EWOV represent about 23 percent of total cases received by Service Providers - 25 percent of the total complaints received by energy companies and much less, about 10 percent, of the total complaints received by water corporations. 2018-19 ESC data was not available at the time of this report.



60. Based on the data of the Australian Energy Regulator in its 2017-18 report this compares to 16.4 percent for NSW, 14 percent for Queensland, 22.8 percent for SA, 33.4 percent for the ACT and 0.9 percent for Tasmania.<sup>5</sup>

2017-18	Number of complaints to service providers as reported by them to the ESC <sup>6</sup>	Number of cases to EWOV
<b>Electricity and Gas</b>	116,623	32,353
<b>Water</b>	17,029	1,928
<b>Total</b>	<b>133,652</b>	<b>34,524*</b>

\*includes 275 dual fuel and other cases

Note: Essential Services Commission data as to the number of electricity and gas complaints only includes complaints to retailers while the EWOV case numbers include complaints and enquiries to both retailers and distributors.

## The most common issues that give rise to EWOV cases

61. The five most common issues that give rise to EWOV cases are billing, credit issues, provision of supply, transfer issues relating to switching provider, and supply issues. While decreased in absolute numbers, billing cases have remained relatively stable as a percentage of overall complaints over the last 5 years. Credit case have fallen from 27 percent of all cases in 2014-15 to 20 percent in 2018-19, and cases about the provision of supply increased from 7 percent to 13 percent over the same period, as the table below illustrates.

	2014-15		2015-15		2016-17		2017-18		2018-19	
	Number	%	Number	%	Number	%	Number	%	Number	%
Billing	22,855	45%	14,643	41%	12,863	40%	13,067	38%	13,699	44%
Credit issues	13,537	27%	10,995	30%	8,245	26%	8,121	24%	6,109	20%
Provision of supply	3,652	7%	3,009	8%	3,961	12%	5,187	15%	3,976	13%
Transfer	5,610	11%	3,883	11%	3,583	11%	4,077	12%	3,089	10%
Supply issues	1,195	2%	1,023	3%	1,137	4%	1,257	4%	1,278	4%
Other	3,588	7%	2,599	7%	2,213	7%	2,815	8%	3,029	10%
<b>Total</b>	<b>50,437</b>	<b>100%</b>	<b>36,152</b>	<b>100%</b>	<b>32,002</b>	<b>100%</b>	<b>34,524</b>	<b>100%</b>	<b>31,180</b>	<b>100%</b>

<sup>5</sup> Australian Energy Regulator, Annual Report on Compliance and Performance of the Retail Energy Market, 2017-18, pp.44-48

<sup>6</sup> ESC, Victorian Energy Market Report, 2017-18 p.30 and Water Performance Report, 2017-18, p.32



62. 44 percent of all cases received by EWOV in 2018-19 related to billing issues (13,699 cases), and of these 57 percent were lodged by electricity customers, 36 percent by gas customers and 6 percent by water customers.
63. High bills is the most prevalent reason for lodging a complaint with EWOV and has been over the last two years. This trend appears to reflect general cost-of-living pressures.
64. So too does the range of cases EWOV handles regarding credit issues, particularly about credit collection and threatened or actual energy disconnection. In 2018-19 EWOV received 6,109 cases related to credit issues. Credit cases were down 25 percent from 2017-18 and disconnection/restriction cases were down 29 percent in the same period. EWOV attributes these falls (and a 17 percent reduction in payment difficulty cases) to the implementation by energy retailers of the new *Payment Difficulty Framework*<sup>7</sup> (see Hardship section below).

## Hardship<sup>8</sup>

65. The costs of essential energy services are challenging for an increasingly large demographic—this is clear from the increasing numbers of residential electricity and gas customers accessing financial assistance as per the table below. To illustrate the increasing levels of hardship, we have included the 2012-13 figures, reported in our 2014 review of EWOV.

	2012-13	2017-18
Number of electricity and gas customers accessing retailer financial hardship programs	24,356	47,289
Percentage of customers that exited the financial hardship program because they did not comply with the program's requirements	59%	43%

Source: ESC *Energy Retailers Comparative Performance Report-Customer Service*, January 2014, and *Victorian Energy Market Report 2017-18*.

<sup>7</sup> EWOV 2018-19 Annual Report, p.33

<sup>8</sup> Note: The ESC generally uses the term 'payment difficulty' rather than 'hardship'.



66. The ESC states in its 2017-18 report that the high percentage of customers that exit hardship programs could suggest 'that hardship participants have found it difficult to comply with the requirements and the assistance provided may not be effective in helping participants manage their energy debt'. It also suggested that access to assistance is coming too late for most customers<sup>9</sup>. In response, on 1 January 2019 the ESC introduced changes to the Energy Retail Code including the new Payment Difficulty Framework (PDF).<sup>10</sup>
67. In 2018-19 EWOV reported that credit cases were down 25 percent from 2018 to 2019 with conciliated outcomes resulting in 767 customers getting their PDF entitlements<sup>11</sup>. As EWOV data shows, the introduction of the new PDF framework, saw overall credit complaint numbers reduce. These have now stabilised and continued reduction in credit complaint numbers has not been experienced in the first quarter of 2019-20.<sup>12</sup>
68. EWOV has successfully adapted its processes to capture better information about cases related to this new framework and in doing so has been able to highlight Provider shortcomings in applying their PDF obligations. For instance, in its August 2019 Res Online Report, EWOV stated that 72 percent of customers, who should have been made aware of advice and assistance under the framework, told EWOV they were not.<sup>13</sup> EWOV continues to monitor this.
69. It is worth highlighting that there is a higher percentage of credit cases closed for procedural reasons (when EWOV closes a complaint because the customer has not responded to an information requests, or has not made an agreed payment to the provider) than for other types of complaints (2017-18, 87 percent of all procedural closures; and 2018-19, 63.8 percent of all procedural closures). A positive sign is that this proportion is decreasing as are procedural closures as a proportion of all credit complaint closures, with a comparable rise in conciliated outcomes.

Credit Complaint Closures (only)					
Outcomes	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Conciliation	71.96%	65.00%	62.34%	66.89%	69.67%
	2,289	1,824	1,288	1,315	928
Procedural closure	26.82%	33.71%	35.91%	32.04%	29.80%
	853	946	742	630	397

<sup>9</sup> Essential Services Commission, *Victorian Energy Market Report, 2017-18*, p.58

<sup>10</sup> The *Payment Difficulty Framework* (PDF) requires an energy retailer to offer a customer with an unpaid energy bill of \$55 or more tailored assistance. It also specifies that for customers that cannot afford their ongoing energy use providers must offer additional help such as a pause on debt payments or agreement to pay less than the full cost of energy use.

<sup>11</sup> EWOV, *Annual Report 2018-2019*, p.7

<sup>12</sup> <https://www.ewov.com.au/reports/res-online/201911>

<sup>13</sup> <https://www.ewov.com.au/reports/res-online/201908-0>



## Complaint processes

70. EWOV's Charter sets out its complaints handling process which has three stages. When a customer contacts EWOV, service officers will first check that the customer has tried to resolve the complaint with their energy or water provider and if not, EWOV will provide the relevant contact details so that the customer can do this. This stage is called an Unassisted Referral (UAR). Where the customer requests information about a relevant code or guideline or where the matter relates to another agency, EWOV treats this as an enquiry.
71. If the customer has already been to their energy or water provider with their complaint, but it remains unresolved, EWOV will refer the matter to a designated higher level contact with the company. EWOV will also provide the customer with information about their rights and responsibilities, relevant to their complaint. They call this an Assisted Referral (AR) and it enables companies and customers to reconnect to resolve the complaint without requiring EWOV to investigate the matter further. The company has three business days to contact the customer by phone or five days in writing. The provider has 15 business days to resolve the complaint.<sup>14</sup>
72. Because not all Assisted Referrals result in a resolution, a proportion of customers will return to EWOV either dissatisfied with the solution their service provider has proposed or because they were not contacted as required. Where the customer cannot resolve the complaint at the AR stage, EWOV will open an investigation. The EWOV conciliator gathers information from both parties to resolve the dispute under EWOV's fair and reasonable framework.<sup>15</sup>
73. Investigations are categorised as either Stage, 1, 2 or 3 or Final. EWOV categorises matters as:
- Stage 1 when they can be resolved within 10 business days, and do not require detailed information, action or analysis by the customer, Provider and/or EWOV Conciliator.
  - Stage 2 is a case that requires detailed information, action or analysis by the customer, Provider and/or EWOV Conciliator or will take more than 10 business days to resolve.
  - Stage 3 is when timelines or other requirements at Stage 2 are unmet, such as when the case when a Provider's response is incomplete, or does not address the issues in the complaint or meet the timelines for provision of information, or when customers are contacted contrary to requirements that contact should be on hold during the investigation phase. EWOV will attempt to conciliate an outcome at this stage, or may write a detailed Final Investigation Report providing an explanation for its decision to close the

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<sup>14</sup> EWOV Case Registration Procedure – Internal Policy Document

<sup>15</sup> Fair and Reasonable Bubbles, EWOV Annual Report, 2018-19, p.23



complaint on the basis that the scheme participant has made a fair offer to resolve the complaint and the customer has not accepted it.

- Final Stage is when a complaint remains unresolved through earlier stages and EWOV considers that further investigation is required. At this stage EWOV will continue to pursue a conciliated outcome or write a detailed Final Investigation Report providing an explanation for its decision to close the complaint on the basis that the Provider has made a fair offer to resolve the complaint and the customer has not accepted it. EWOV's approach is set out in its Procedural and Fair Offer Closure Policy of August 2019.
74. EWOV will upgrade a case to a next stage and in other circumstances under EWOV Complaint Upgrade Policy of February 2019. A complaint will not be upgraded 'if the Scheme Participant has a response/offer to resolve a complaint within the required timeframe and EWOV, through its investigation and analysis believes a fair offer has been made'.<sup>16</sup>
75. As the table below shows, Providers resolve the vast majority of cases in the early stages, with comparatively few complaints progressing to an Investigation. In 2018-19, 15 percent of Assisted Referrals returned to EWOV for investigation. There were also cases that went straight to an investigation under EWOV's escalation procedures. Of the total 18 percent of cases closed in investigations in 2018-19, 5 percent closed at Stage 1, 11 percent at Stage 2, and 2 percent were closed at Stage 3.
76. There are slight, but immaterial differences in the total number of complaints recorded in the two tables below when compared to the relevant year annual report data. This is due to updated case stage information that occurred post balance date in each year and is now reflected in current report

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<sup>16</sup> EWOV Complaint Upgrade Policy p.4



Complaints Received and Closed at the Different Complaint Process Stage								
	2015-16		2016-17		2017-18		2018-19	
Stage	Received	Closed	Received	Closed	Received	Closed	Received	Closed
Enquiry	1,666	1,664	1,538	1,517	1,689	1,692	1,919	1,904
%	5	5	5	5	5	6	6	7
UR	4,736	4,548	4,656	4,557	4,613	4,514	3,856	3,784
%	13	15	13	16	13	15	12	14
AR	22,408	17,629	20,203	16,350	22,568	18,279	20,610	16,882
%	62	57	63	59	66	61	66	62
RTR	1,644	1,460	579	496				
%	5	5	2	2				
Stage1	1,563	1,592	1,791	1,781	1,910	1,908	1,492	1,494
%	4	5	6	6	6	6	5	5
Stage 2	3,610	3,773	2,797	2,819	3,237	3,145	2,717	2,873
%	10	12	9	10	9	11	9	10
Stage 3	332	350	286	262	329	344	408	381
%	1	1	1	1	1	1	1	1
Final Stage	69	84	75	72	76	66	130	108
%	0	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>36,028</b>	<b>31,100</b>	<b>31,925</b>	<b>27,854</b>	<b>34,422</b>	<b>29,948</b>	<b>31,132</b>	<b>27,426</b>

77. Once a complaint progresses to the investigation stage, it will be closed when agreement is reached on the resolution offer or for procedural reasons such as a customer not making relevant payments, or lack of response or engagement in good faith by a customer in the complaint process.
78. A complaint can also be closed where EWOV considers that the Provider has made a fair offer that has not been accepted by the customer. EWOV sets out how these types of matters will be handled in its fair and reasonable procedure. This is a very comprehensive document designed to ensure procedural fairness requirements apply, and that it decides cases based on relevant industry codes, law and good industry practice.



79. In 2018-19 EWOV closed 907 (19 percent) at Investigation as procedural closures and 7 (less than one percent) based on a fair offer assessment. The table below shows the complaint outcomes over the last five years.

Investigation closures					
	2018/19	2017/18	2016/17	2015/16	2014/15
<b>Total</b>	<b>4,863</b>	<b>5,467</b>	<b>4,937</b>	<b>5,802</b>	<b>7,357</b>
Conciliated	3,881 (80%)	4,152 (76%)	3,589 (73%)	4,187 (72%)	5,793 (73%)
Other	982 (20%)	1,315 (24%)	1,348 (27%)	1,615 (28%)	1,564 (27%)
Broken down by:					
Procedural	907 (19%)	1,240 (23%)	1,239 (25%)	1,513 (26%)	1,455 (20%)
Withdrawn by customer	37	36	49	48	45
OOJ	24	23	35	37	0
Better dealt with by another body	1	5	4	2	38
Fair offer or no further investigation warranted	7	11	19	15	26

80. If a complaint goes through the process of Investigation without a resolution being achieved, the Ombudsman has the power to close the complaint if it's assessed that further investigation isn't warranted, or to make a Binding Decision. Where the Ombudsman makes a Binding Decision, the decision is binding on the company if the customer accepts it. Alternatively, the customer may take action in another forum, such as a court. EWOV has not made a Binding Decision since 2003.



## 6. EWOV's scope and approach

### EWOV's Charter

81. The Charter sets out the complaints the EWOV can handle, and how it handles them, including:
  - who can make a complaint
  - that complaints must be about a Scheme Participant [Provider]
  - when a complaint can be made
  - the types of complaints EWOV handles
  - the types of complaints it does not handle, and
  - how it handles complaints - what EWOV considers in handling complaints or making procedures for handling complaints
82. Importantly the Charter sets out the following factors EWOV takes into account in handling complaints including:
  - relevant laws
  - any relevant licence
  - any relevant industry code
  - good practice
  - any benchmarks the Commonwealth Government publishes about dispute resolution schemes, and
  - what is fair and reasonable.

### EWOV's process guidance

83. EWOV's website informs consumers how they can make a complaint by either calling EWOV on the numbers provided, or via an online complaint form. It also details what assistance is available to help them lodge a complaint.
84. The website contains a wide variety of resources for consumers including fact sheets, video and video transcripts on common complaint issues, hot topics, and case studies. However, the reader needs to refer to several documents to understand key aspects of the current complaint handling approach. EWOV does not have on its webpage a single document that captures in summary form its complaint handling process.



85. Several other schemes have on their webpage a high-level overview showing, in a graphical flowchart format, their complaint process, the different complaint pathways, key timeframes and key process considerations at each stage. Likewise, the ANZEWO 2019 Draft Report includes a high-level overview process chart of a consumer making a complaint to an energy and water Ombudsman scheme.<sup>17</sup>
86. We consider the drawing together key elements of a scheme's complaint handling process is a useful reference for staff, customers and stakeholders. We recommend that EWOV develops a similar high level graphical process to complement available information. We think it would be beneficial for EWOV to work with the other members of ANZEWO to develop a consistent dispute process flowchart format, the dispute handling process for each ANZEWO member scheme. This would build on an earlier harmonisation ANZEWO project and also on the work of the recent ANZEWO 2019 Report.
87. On its intranet, EWOV provides staff with detailed Best Practice Procedures (BPP) and other complaint handling information. The BPPs cover all stages of the complaint handling process with detailed process flows (from incoming calls, through case handling information and investigations processes), issue wizards on key matters of hardship, vulnerability, privacy etc, handy tips, and useful external links. EWOV's case handling materials are of high quality, comprehensive and easily accessible to staff on the intranet and via links in EWOV's case management system.

### Recommendation 1

EWOV should:

- a) provide on its website a graphical flowchart of its complaint handling process including the different complaint pathways, key timeframes and a summary of key considerations at each stage of the complaint process.
- b) work with other members of ANZEWO to encourage each Scheme to develop and publish a consistent dispute process flowchart to enable better comparisons of process steps and timeframes across all energy and water Ombudsman schemes.

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<sup>17</sup> University of Sydney ANZEWO commissioned draft report: *How will the Australian and New Zealand Energy and Water Ombudsman's Schemes have to change to remain 'fit for purpose' in 2020, 2025 and 2030?* 2019, p.39



## Approach to commonly occurring complaints

88. EWOV has set out its approach to commonly occurring complaints available on its website. EWOV has the five position statements available on its website covering the following topics:
- Meter access and estimated billing
  - Credit collection and default listing
  - Compensation for damage and loss following electricity outage
  - Payment difficulties and hardship, and
  - Family violence
89. EWOV also publishes cases studies to help inform both consumers and Providers about current topical complaint issues.
90. In our review of a sample of files, we observed several examples where as part of the investigation process, an EWOV conciliator sought the views of Providers on what good industry practice was in the specific circumstances of a case. This advice can be very valuable in resolving individual complaints, but it is also important more generally in informing EWOV's general approach to resolving similar complaints. EWOV currently captures this information in an internal database available to its conciliators. We would like to see EWOV making more use of the outcomes of these reviews to publicly share its views on its approach to good industry practice in resolving particular types of complaints. This will help inform all Scheme Participants about how they should approach such complaints
91. At the time of preparation of this report, EWOV has one guidance document for Assisted Referrals and is drafting seven other guidance documents for customers when EWOV investigates a complaint. EWOV's aim is to provide customers with clear advice on how it will investigate specific case types, what is EWOV's role and how customers are expected to participate.
92. Based on review of case files and observations on the EWOV complaint handling process, providing customers with this type of clear information and guidance at the start of an investigation process should help manage customer expectations and enable the customer to better understand and feel more involved in the process of resolving their complaint.

### Recommendation 2

**EWOV should more regularly publicly share its approach to good industry practice in resolving particular types of complaints to help inform all Providers about how they should approach complaints of a similar nature.**



## 7. Accessible dispute resolution

### Awareness raising initiatives

#### Stakeholder views

93. Providers generally commented favourably about EWOV's awareness raising, although several also considered that EWOV's level of community engagement jointly with Providers was less than some Ombudsman schemes that they also interact with in other States.
94. The Consumer Action Law Centre (CALC) submission commended EWOV for its efforts to improve community awareness of the scheme and stressed the importance of continuing to devote adequate resources to reaching out to under-serviced communities. It noted EWOV's direct engagement with aboriginal communities and organisations, which both academic and their own data showed were vulnerable to energy related debt issues, unsolicited selling and overcharging. It also highlighted the special difficulties faced in accessing EWOV's services by people in custody with utility debts, and energy and water contracts they may not fully understand.<sup>18</sup>
95. Based on the experience of the referrals from the National Debt Helpline, CALC also considered that the general awareness of EWOV among users of this service was low and that some providers were not informing customers with a complaint about their rights to take their complaint to EWOV.
96. The ANZEWON 2019 Draft Report also observes that there was strong support from consumer and advocacy groups for further awareness raising efforts. The report notes there were different views on how best to approach and fund any broad based general community awareness campaigns.<sup>19</sup>

#### Our assessment

97. EWOV's Accessibility Policy sets out its approach to promoting community awareness, being easy to use, and not having any cost barriers for customers.
98. The 2014 Independent Review found that EWOV rated highly against the Accessibility Benchmark with particular reference to its outreach activities, ease of EWOV process, explanatory materials and help for vulnerable consumers under its Vulnerable and Disadvantaged Customer Policy and Procedures. The 2014 findings continue to apply to EWOV's activities in 2019. In our current review, we highlight some recent developments and make a few additional observations.

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<sup>18</sup> Consumer Action Law Centre submission to the EWOV Independent Review Issues Paper, September 2019 p.4

<sup>19</sup> University of Sydney ANZEWON commissioned draft report: *How will the Australian and New Zealand Energy and Water Ombudsman's Schemes have to change to remain 'fit for purpose' in 2020, 2025 and 2030?* 2019, p.96



99. EWOV has continued to develop and refine its awareness raising initiatives since 2014. Recently, it has taken a more strategic approach to its outreach by using enhanced data analytics to better combine its own complaints data with ABS socio-economic and other data on vulnerability to identify areas of higher need and lower levels of current engagement. Based on this analysis, it is running two pilot engagement programs: one in a metropolitan area and the other in a non-metropolitan locality. EWOV will evaluate these pilots when they finish in June 2020.
100. EWOV's efforts to make better use of data analytics in targeting its engagement and outreach activities is commendable. While we appreciate that developing sustainable relationships with the many organisations in each of the two engagement pilots takes time, we feel that shorter pilot projects might be more appropriate in a fast changing environment.
101. We appreciate it is difficult for a scheme like EWOV, with the limited financial and staffing resources, to engage in sustained large-scale community awareness raising activity. We support EWOV's efforts to better target its activities to vulnerable communities with lower levels of engagement, including aboriginal communities and those in prison.
102. EWOV has a busy calendar of diverse outreach activities and continues to explore how to make these more accessible and more effective. EWOV uses traditional media such as radio and print, including regional outlets, and is at the early stages in its use of social media.
103. EWOV's general community awareness activity is largely event driven taking advantage of the publication of its Annual Review, Affordability Report, quarterly Res Online publication for its media engagement.
104. One Provider commented that while the Ombudsman had been taking a higher profile public stance on issues recently, they would like to see this happen more often. Increasingly, the community expects an Ombudsman to be the highly visible face of the organisation prepared to speak out more often on emerging trends, systemic issues and what the industry can do to improve customer service. This public visibility is a major driver of stakeholder perceptions of scheme effectiveness and we encourage the EWOV Ombudsman to continue to take a higher profile on these issues.
105. How a scheme such as EWOV measures the impact of its activities on community awareness is challenging. One way is through specific measures it has set for its pilot programs. Another way is through general community surveys.
106. Energy Consumers Australia conducts a bi-annual survey of energy consumer sentiment. This contains a question on the awareness of the Ombudsman Scheme. It published the results of its last survey in June 2019. This showed 36 percent of small businesses and consumers were familiar or very familiar with EWOV, a little higher than most of its counterpart schemes, although dropping slightly since the previous survey.<sup>20</sup>

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<sup>20</sup> <https://energyconsumersaustralia.com.au/wp-content/uploads/Energy-Consumer-Sentiment-Survey-Report-June-2019.pdf>



107. We consider there is value in EWOV using this report as a baseline benchmark to track and publicly report on general community awareness of EWOV.
108. As part of its suite of internal reports, EWOV analyses its complaints data based on a range of demographic and socio-economic indicators (see Chapter 12 for more detail). This data highlights the wide demographic and socio-economic spread of the consumers who access EWOV given the role of energy and water as essential services. The EWOV socio-economic analysis of its complaints also provides useful insights into changes in the user profile of EWOV. It can also analyse this data based on individual Local Government Areas (LGAs). As we comment frequently throughout the report, we consider that EWOV's data analytic capabilities are impressive and better than other schemes we have seen.
109. CALC's submission to our Issues Paper commented that EWOV members were not always adequately informing consumers about access to EWOV. We did not find direct evidence of this in our review of the sample of complaint files, however, this is not a reliable indicator. Initial referrals occur mainly by telephone and there is limited information recorded about whether Providers have met their obligations in this regard.
110. While compliance with these obligations is primarily a matter for the regulator, the EDR Benchmarks state that a scheme should ensure '*information about its services, procedures and scope is made available to customers by participating organisations when the participating organisation responds to a complaint*'. The benchmark also covers when this information is to be made available to a customer by a Provider.<sup>21</sup>
111. EWOV is best placed to check how customers have been informed about EWOV when a complaint is received. When there is a concern that customers are not being informed, EWOV should treat this as a potential systemic issue. If there is evidence from its systemic issues review that a Provider is in fact failing to properly inform its customers about access to EWOV, it should report this to the ESC.
112. EWOV is amending the template standard letters it sends to Providers at the commencement of a Stage 2 Investigation to require information on what steps the Provider took to meet their customer obligations, including what they told the customer about their right to bring their complaint to EWOV. This will assist EWOV to monitor whether the Providers are meeting their obligations in this respect.

### Recommendation 3

EWOV should:

- a) when it receives a complaint, do more to check whether the Provider has informed the customer of their rights to bring their complaint to EWOV.
- b) raise a systemic issue and report to the ESC for investigation and regulatory action when it identifies that a Provider is not informing its customers about their complaint rights to EWOV.

<sup>21</sup> Key Practices for Industry-based Customer Dispute Resolution Scheme, Australian Treasury, February 2015, pp.7-8



## Consumer assistance, vulnerable customers and ease of access

### Stakeholder views

113. Consumer organisations were complimentary about EWOV's efforts to make the service accessible, including for vulnerable and culturally diverse consumers. They considered the assistance provided by EWOV was easy to access, and understand and commented on the good feedback they had from customers on their dealings with EWOV staff.
114. While generally positive about EWOV's efforts, the CALC submission highlighted several areas for continued vigilance by EWOV. It noted some examples of the difficulties financial counsellors experienced in having their authorities to act on behalf of a customer recognised, some customers who were not clear about the EWOV investigation approach causing them to drop out of the process, some lack of clarity around limitations or timeframes on when EWOV can re-open a case and concerns about the rates of cases closing because of no further contact. CALC acknowledges that EWOV has been trialling various ways to address this last issue for vulnerable and disadvantaged customers.
115. Providers were supportive of EWOV's efforts in making its services accessible, especially for vulnerable and disadvantaged consumers. One Provider considered EWOV needed to do more for hard to reach customers, such as those in embedded networks.

### Our assessment

116. EWOV continues to maintain its strong focus on making the scheme easy to access and it does a good job in providing assistance to consumers. EWOV has continued to refresh its various publications and fact sheets to make them more user friendly. It translates key fact sheets into multiple languages and has a translator service available.
117. EWOV's refers in its Accessibility policy to periodically reviewing its website to ensure compliance with the relevant Web Content Guidelines. This has not happened for some time. EWOV should review its compliance with relevant website accessibility best practice standards and report on a what action it is taking to address any identified weaknesses.
118. EWOV should also set out more prominently on its webpage the various tools available for those with special needs in accessing their service.
119. We found EWOV publications to be of a high quality. Given the diversity of potential users of EWOV, keeping publications user friendly needs to remain a high priority. One consumer organisation referred us to the work they were doing with service providers on designing easy-to-understand documents for those with low literacy levels. We think EWOV should be looking for opportunities to partner with community groups working with vulnerable consumers to user test EWOV communications.
120. EWOV complaints can be made by telephone, by email or by completing a website form. The various ways to lodge a complaint are set out clearly on the EWOV website and through observation seem easy to follow for most customers.



Method	2017-18	2018-19
Telephone – 1800 number	71%	67%
Email/website	28%	33%
Letter/Fax	>1%	-

121. EWOV's average response time for telephone calls is excellent - the most common way complaints are lodged. There are electronic boards throughout its office to show the number of active calls and elapsed time before answering. The EWOV service team handles most calls, however if call queues grow, conciliators will step in to answer.
122. EWOV has put in place several effective measures to address consumer advocate concerns about customer withdrawals due to lack of engagement with the process. These include removing caller ID blocks given feedback that customers did not answer calls from a private number or to those with no call ID, sending an SMS to customers difficult to reach on the telephone, simplifying its correspondence and improving its engagement with a range of external agencies. While these are welcome initiatives to reduce consumer withdrawals, EWOV accepts this remains an area of ongoing work.

Investigations	Stage 1		Stage 2		Stage 3		Final Stage		Total
2018-19	Number	%	Number	%	Number	%	Number	%	
No further contact by a customer with EWOV (procedural closure)	77	8.4	733	80.0	75	8.3	22	2.4	907
Customer advises they are not continuing with the complaint (conciliation)	7	18.9	27	73.0	3	8.1	-	-	37
Total investigated complaints	1,494	30.0	2,873	57.8	381	7.7	108	2.1	4,967

123. EWOV's induction, ongoing training and Quality Assurance maintains a strong focus on vulnerable and disadvantaged consumers. Our review of the QA framework and a sample of files showed it continues to review the steps taken by the service team to check identification of vulnerable and disadvantaged consumers at registration and referral. As EWOV revamps its QA process, described later in this report, it will need to make sure it does not lose this current strong focus. Our recommendations on EWOV's approach to Quality Assurance are set out in Chapter 9.



124. As a final comment we note that EWOV's current Accessibility Policy was last updated in April 2015. As a matter of good practice, we consider EVOW should review critical policies on a regular basis.

#### Recommendation 4

EWOV should enhance its awareness raising, accessibility and outreach activities by:

- a) utilising the results of the Energy Consumers Australia bi-annual Energy Consumer Sentiment Survey to track progress on the impact its awareness raising initiatives
- b) reviewing its compliance with relevant website accessibility best practice standards and publicly reporting the action it is taking to address any weaknesses
- c) setting out more clearly on its website how it provides tailored support for customers with additional needs
- d) engaging with consumer organisations and community groups that represent vulnerable consumers to user test its publications and fact sheets to ensure they are accessible to those with special needs
- e) including in its community engagement schedule periodic joint activities with Providers, subject to ensuring arrangements for these events do not cause consumers to be confused about EWOV's role as an independent Ombudsman scheme



## 8. Handling disputes efficiently and effectively

### Complaints Process

125. EWOV's complaint handling process refers customer complaints back to Providers to resolve the complaint directly with their customers. EWOV resolves most complaints at this stage. While there have been two changes in EWOV's dispute process since the 2014 Review, they do not change the fundamentals of EWOV's complaint handling process.
126. In 2017-18 EWOV discontinued its Real Time Resolution Process (RTP). EWOV implemented RTP to deal with the surge in complaint numbers in 2013-14. RTP involved a quick conciliation with little examination of the documents to see if the Provider and customer could find common ground. With the reduction in overall complaint numbers since 2014, EWOV decided that the Stage 1 investigations process could deal with these type of disputes.
127. The other change is that starting in the financial year 2019-20, EWOV no longer charges a fee for enquiries and Unassisted Referrals. EWOV made this change after reviewing feedback from the embedded network operators about their concerns about having to pay these fees, the profile of enquiries (70 percent of which are outside jurisdiction or are about an issue that would not give rise to a complaint) and the existence of other mechanisms available under the charging regime to cover the costs involved.

### Timeframes to close complaints

#### Stakeholder views

128. Consumer advocates expressed the view that it was important that EWOV does not set KPIs that could give staff an incentive to close cases quickly rather than with due consideration. A Provider also raised a concern about an emphasis on prompt closure adversely affecting the effective resolution of complaints. The example cited was of closing a complaint before EWOV had received meter tests when the customer had a significant debt outstanding.
129. Several other Providers commented on the time taken at investigation stage. There were similar comments by some Providers in their response to EWOV's most recent survey. EWOV attributes these views to delays before EWOV cleared its backlogs in April 2019.

#### Our assessment

130. EWOV has KPIs relating to the timeframes for resolving complaints. EWOV management actively manages these and reports regularly to the EWOV Board. EWOV's key KPIs and results reported in its 2018-19 Annual Report are set out below:
  - 90 percent of Stage 1 cases close in 28 Days - 93 percent achieved
  - 90 percent of Stage 1 Investigations remain closed – 93 percent achieved



- All Investigations closed on average within 60 days — result was 67 days
- 98 percent of all cases closed within 180 days — 97% achieved

131. EWOV has met, or nearly met, these KPIs over the last two years of operation, except for average days to close which, for 2018-19 which was 67 days. At the time of our last Independent Review in 2014, and at a time with a record number of complaints, the average days to close more complex investigations was 43 days.<sup>22</sup>
132. The tables below shows current closure times compared to the previous years, and these compared to our reported findings of 2012-13. The impact of the backlog in investigation cases experienced in 2018-19 is clear in the results for that year.

Percentage of all case at investigation stage by time to close:							
	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
< 28 days	43.61%	36.95%	49.6%	43.11%	44.66%	47.59%	38.55%
< 60 days	76.87%	65.4%	79.85%	77.22%	77.03%	78.16%	70.98%
< 90 days	90.71%	82.64%	92.24%	91.24%	90.23%	90.94%	86.26%
>90 days	9.29%	17.36%	7.76%	8.76%	9.77%	9.06%	13.74%

Percentage of all cases by time to close:							
	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
< 28 days	92.53%	90.10%	91.15%	89.39%	90.20%	90.44%	89.12%
< 60 days	96.94%	94.57%	96.46%	95.75%	95.93%	96.02%	94.86%
< 90 days	98.77%	97.28%	98.64%	98.37%	98.27%	98.35%	97.57%
>90 days	1.23%	2.72%	1.36%	1.63%	1.73%	1.65%	2.43%

133. When a case is not closed at Assisted Referral, it is escalated to an Investigation and allocated to a conciliator. Allocation times for investigations in 2018-19 were:

<sup>22</sup> Cameronralph Navigator, *Independent Review of the Electricity and Water Ombudsman of Victoria*, 2014, p.47



Allocation Waiting time:	2018-19	Jul-Sep 2019
1-7 days	31.90%	53.9%
8-14 days	17.60%	45.9%
15-21 days	25.60%	0.1%
22-28 days	16.30%	
29-35 days	5.20%	0.1%
36-42 days	3.30%	

134. Following allocation to investigation, case closure times over the last five years show relatively consistent timeframes until the last financial year when average days to closure at all stages and across all industries are at a five-year high.

		2014-15	2015-16	2016-17	2017-18	2018-19
<b>Average overall days to close a case once allocated to a conciliator for investigation</b>		39	44	44	41	50
<b>Stage 1</b>	Number of cases	2,218	1,585	1,776	1,908	1,494
	Average days to closure	13	15	15	12	12
	Average time in minutes	98	106	128	113	105
<b>Stage 2</b>	Number of cases	4,454	3,763	2,803	3,145	2,873
	Average days to closure	45	50	55	52	61
	Average time in minutes	244	277	280	273	295
<b>Stage 3</b>	Number of cases	495	349	260	344	381
	Average days to closure	76	85	98	84	92
	Average time in minutes	413	508	524	494	484
<b>Final Stage</b>	Number of cases	128	84	72	66	108
	Average days to closure	106	125	145	119	135
	Average time in minutes	565	728	732	562	751
<b>Water</b>	Number of cases	212	228	253	230	179
	Average days to closure	54	54	64	62	74
	Average time in minutes	371	373	402	340	420
<b>Distribution</b>	Number of cases	444	284	380	483	540
	Average days to closure	47	57	55	54	70
	Average time in minutes	278	362	309	312	326
<b>Retail</b>	Number of cases	6,639	5,269	4,278	4,750	4,137
	Average days to closure	38	42	42	38	46
	Average time in minutes	208	239	229	221	247

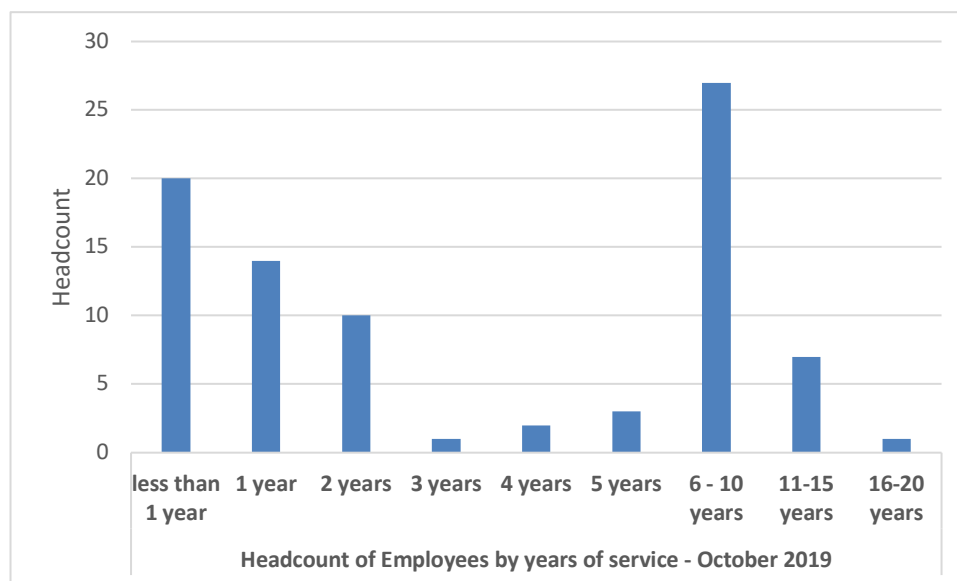


135. Blowouts in timeframes can occur because of a range of factors including: short term increases in complaint volumes, productivity issues in specific teams, proportionately more complex complaints taking longer to resolve, an expanded jurisdictional coverage with a lag in the expertise, staff shortages, and higher staff turnover impacting on the skills and experience mix of teams.
136. Over the last five years EWOV's complaint volumes have decreased significantly, and the overall proportion of Investigations is slightly lower. At the same time, EWOV's jurisdiction has expanded to cover embedded networks and there is the new regulation of the energy sector, that could add more complexity or require new skills.
137. In its 2018-19 Annual Report, EWOV advised that it took on average '38% longer to close embedded network Investigations' than general investigations given the newness of this jurisdiction and the process of up-skilling EWOV staff. In the 2018-19 financial year, there were 20 embedded network cases closed at investigation.
138. While the challenges in dealing with the new embedded networks have no doubt contributed to some of the increase in investigation timeframes, it is not a complete explanation.

Complaint staff compared to complaint volumes:	2017-18	2018-19
Number of enquiries and cases	34,524	31,180
Number of complaints handling staff (FTE)	34.99	27.25
Number of Unassisted and Assisted Referrals	28,970	22,897
Number of Service Team Staff	15.71	10.58
Number of Investigations	5,554	4,857
Number of Investigations staff	19.28	16.67

139. The ratio of complaint staff to complaints received in 2018-19 was 1:1,144. In 2017-18 this was 1:987 and in 2012-13 it was 1:1,095. While there has been an increase in workload volumes per FTE in the Service Team over the last two years, the ratio of Investigation cases per Investigations FTE has remained relatively stable, suggesting this is not a contributing factor.
140. The profile of current EWOV personnel also shows a good spread of new recruits and seasoned operators, again suggesting this is not a factor.





141. Even though EWOV is meeting its average timeframes for its complaint KPIs, the actual time spent by an EWOV conciliator is considerably less than the elapsed time from the start of an investigation to when a matter is closed. It seems that much of this difference is because of the 'waiting' time arising from the sequential shuttle form of information requests and exchanges. We discuss this further in the section on investigation.
142. While tweaking staff numbers and skills sets and renewing capability building through training and experience should have a positive impact on complaint resolution timeframes, we think that EWOV will need to look to reforms in its current complaint handling process to achieve sustainable efficiencies and better customer experience. We discuss this further below.

## Coverage

### Stakeholder views

143. The CALC submission to our Issues Paper, reinforced by discussions we have had with consumer representatives, considers that:

*'EWOV is able to adequately accept complaints in relation to licensed energy and water businesses, is increasingly able to accept complaints in relation to embedded networks but is inappropriately limited in its jurisdiction over issues that arise with businesses providing new energy technology, demand response and intermediary businesses'.<sup>23</sup>*

<sup>23</sup> Consumer Action Law Centre submission to the EWOV Independent Review Issues Paper, September 2019 p.8



144. They pointed to the changes in the energy market and raised concerns that consumers with complaints about ‘behind the meter’ energy services have nowhere to take their complaint.

145. The CALC Submission also argued that the \$20,000 monetary limit should be increased:

*The current monetary limit for binding decisions may limit the scope of conciliated decisions now or in the future and should be raised. Consumer Action has seen instances where energy debts exceed the \$20,000 amount. People should not be excluded or be forced to limit their claims where such issues arise. Where EWOV expands its jurisdiction to include new energy technology providers, this amount should also be expanded as these technologies can involve investment from consumers of amounts greater than \$20,000 to purchase, install and/or access technology.<sup>24</sup>*

146. Providers who responded considered the current monetary limit is adequate and that a Provider could waive it in appropriate circumstances. Providers did not highlight any major issues with the current scope of EWOV’s Charter, although we are aware many of them would have already participated in the ANZEWON review and provided their views on this issue as part of that project. One Provider noted in their submission to our Issues Paper that the current Charter did not cover emerging ‘behind the meter’ technologies.

147. The issue of whether EWOV’s jurisdiction covers emerging technologies in the energy sector is not new. The September 2017 report of the Independent Review into the Electricity, Gas and Retail Markets in Victoria recommended an expansion of the powers of EWOV to cover emerging energy business, products and services.<sup>25</sup>

148. The Review acknowledged that because the jurisdiction of EWOV is directly linked to the licence conditions of the retailers, where exemptions to licence conditions are granted or companies operating in areas where licences are not required, the jurisdiction of the EWOV is limited. The Victorian Government response to this recommendation was:

*The Government will work with the Council of Australian Governments Energy Council and industry stakeholders to ensure the proposed industry code for ‘behind the meter’ products and services, such as the installation of solar panels, provides strong protections for Victorian consumers. If it deems these protections to be inadequate, the Government will extend the Ombudsman’s jurisdictions to cover these products and services.<sup>26</sup>*

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<sup>24</sup> Consumer Action Law Centre submission to the EWOV Independent Review Issues Paper, September 2019 p.9

<sup>25</sup> Independent Review into the Electricity, Gas and Retail Markets in Victoria, Recommendation 10A

<sup>26</sup> [https://www.energy.vic.gov.au/\\_data/assets/pdf\\_file/0034/396583/Independent-and-Bipartisan-Review-of-the-Electricity-and-Gas-Retail-Markets-in-Victoria.pdf](https://www.energy.vic.gov.au/_data/assets/pdf_file/0034/396583/Independent-and-Bipartisan-Review-of-the-Electricity-and-Gas-Retail-Markets-in-Victoria.pdf) p. 16



149. The ANZEWON 2019 Draft Report examines these issues in detail. Based on its consultations with the schemes, a wide range of current and prospective scheme members, consumers, governments and regulators, the reviewer found these stakeholders 'believed that all consumers should have the right to access a specialised Energy and Water Ombudsman Scheme as a matter of fairness and best practice.'<sup>27</sup>
150. The report also examined how best this expanded jurisdiction could be best defined and implemented. The reviewer recommends the jurisdiction of the Ombudsman's Scheme be expanded using the following definition:

*'Any service relating to the sale or supply of energy, or that may interrupt the supply of energy or otherwise impact upon the sale or supply of it.'*<sup>28</sup>

151. To implement this expanded jurisdiction, the report proposes that:
- a. changes to implement this expanded jurisdiction should be made by the relevant regulators and be based on mandatory membership of the applicable scheme
  - b. the schemes have the flexibility to modify the wide scope of this expanded jurisdiction definition by enabling temporary exclusions for technology and products not yet available commercially in Australia or that do not pose a consumer risk.

## Our assessment

### Expanded Jurisdiction

152. There is little value in us seeking to cover the same ground as the ANZEWON 2019 Report.
153. The Benchmark for effectiveness requires a scheme to have 'an appropriate and comprehensive jurisdiction' which is described, among other matters, as the scope of the scheme being sufficient to deal with the 'vast majority of complaints in the relevant industry or service area and the whole of each such complaint.'
154. The increase in the number of customer complaints falling outside EWOV's jurisdiction for new energy products and services, such as solar in recent years, while still relatively low, is indicative that the EWOV's jurisdiction is increasingly not effectively covering all the relevant customer complaints in the industry.

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<sup>27</sup> University of Sydney ANZEWON commissioned draft report: *How will the Australian and New Zealand Energy and Water Ombudsman's Schemes have to change to remain 'fit for purpose' in 2020, 2025 and 2030?* 2019 p.5

<sup>28</sup> Ibid p. 7



*'[75% of the out of jurisdictional complaints received by EWOV in Victoria in 2018/2019 related to non-members, up from 43.5% in 2017/2018. In particular, 28% of EWOV's 706 out of jurisdictional matters in 2017/2018 related to the conduct of solar installers who were not members of EWOV, while out of jurisdiction complaints about third-party providers doubled'.<sup>29</sup>*

155. As the ANZEWON 2019 Draft Report sets out, this trend is only likely to increase. If EWOV is to continue to meet the EDR effectiveness benchmark, its jurisdiction will need to be expanded to cover a wider range of energy disputes.
156. The EWOV Board will need to form a view on how it can best define any such expanded jurisdiction with sufficient certainty, and in a way that facilitates the practical management and operation of the scheme. The ANZEWON 2019 Draft Report sets out one possible approach on how this might be achieved. The report also details what would be required for the effective operation of a scheme in an expanded jurisdiction, including mandatory scheme membership. These aspects will also need careful consideration by the EWOV Board .
157. So too will the timeline for introducing a broader jurisdiction and here, EWOV's experience with the inclusion of embedded networks will be valuable. Both EWOV and new industry participants need time to ready themselves for handling complaints – EWOV to build capacity and capability to manage complaints covering new products and services; and providers in developing their internal complaints processes and understanding their responsibilities as members of an external dispute resolution scheme.

### Monetary Limit

158. Since 2011 EWOV has received around 735 cases exceeding the current \$20,000 binding limit. Of these 452 (61 percent ) were from small business, 262 (36 percent ) from residences and the rest were from not-for-profit or government organisations. The peak of these disputes was in 2013-14 when it received 120 cases. Over the last few years the numbers have been around 50. The range of issues for these complaints covers billing, supply and credit issues.
159. In our 2014 review, we recommended that EWOV periodically monitor the limit and if there were increasing percentage of complaints, then EWOV should increase the monetary cap. Based on the numbers of complaints in 2013-14, we suggested as a threshold for the numbers of complaints above the monetary threshold at less than 0.1 percent total complaints received .

	2017-18	2018-19
Flagged that disputed amount was more than \$20,000	52 0.15 % of cases	54 0.17 % of cases

<sup>29</sup> Ibid. p.8



160. While the current percentages are slightly above this threshold, this is mainly because of the fall in overall case numbers rather than a significant increase in matters above the current claims limits. While we consider there is not sufficient evidence at this stage for us to recommend an increase in the cap, we agree that if EWOV's jurisdiction broadens in the way proposed in the ANZECON 2019 Draft Report, then it will be more of an issue. EWOV should review the monetary cap at the time it considers any changes to EWOV's Charter to expand its jurisdiction for new and emerging technologies in the energy sector.

#### Recommendation 5

EWOV should:

- a. with the regulator, consider an expansion to its jurisdiction to cover a wider range of energy disputes so that it is able to effectively cover most consumer complaints in the energy sector.
- b. review the current \$20,000 monetary cap at the same time as any new expanded jurisdiction is being put in place.

#### Wrongful Disconnection Payment (WDP)

161. EWOV also undertakes compliance checking of whether a Scheme Provider has met the requirements for disconnection under the Energy Retail Code and, as a result, to determine whether a scheme provider is required to make a wrongful disconnection payment. EWOV will commence a separate WDP investigation once it has resolved a customer's complaint about a disconnection of supply. Unlike its jurisdiction for resolving complaints based on achieving a fair and reasonable outcome, a WDP investigation is a strictly legal review of whether the Provider followed all the technical requirements under the Code when disconnecting a customer's electricity supply.
162. We query whether undertaking this form of strict compliance checking sits comfortably with the Ombudsman's role in resolving complaints based on its fair and reasonable jurisdiction. A key challenge for any Ombudsman scheme is being clear in its dealings with the community that it is an independent dispute resolution body not a regulator. EWOV undertaking WDP compliance investigations blurs this and creates further confusion about the respective roles of the Ombudsman and the regulator. We suggest that EWOV discuss with the ESC whether the ESC would take over this role given the ESC's new approach to compliance and enforcement.

#### Recommendation 6

To reduce confusion about the roles of the Ombudsman and regulator, EWOV should discuss with the ESC whether it would take responsibility for wrongful disconnection compliance investigations under its new approach on compliance and enforcement.



## Cases outside jurisdiction

163. Only six percent of all cases received by EWOV are closed as outside its jurisdiction. The largest proportion of out of jurisdiction cases relate to complaints about companies that are not members of EWOV. Increasingly, these relate to solar installation, products, pricing etc., some 300 complaints last financial year. We discuss earlier in the report the implication this has for the expansion of EWOV's current jurisdiction.
164. We observed that EWOV continues to be reluctant to exclude a complaint on its face, without conducting some level of investigation to establish to EWOV's satisfaction that there is no merit to the complaint. Given the potential impact on consumers, we agree EWOV should maintain a cautious approach to excluding complaints.
165. As we set out later in the report, and consistent with our 2014 review, we consider there are opportunities for EWOV to make earlier "fair offer" and jurisdictional assessments in a revamped complaint handling process.

	Number of cases closed in 2018-19	% cases closed in 2018-19
Within jurisdiction	25,742	93.86
Outside jurisdiction	1,684	6.14
Yes - 3.2(d) out of time	21	0.08
Yes - 4.2(a) setting of prices or tariffs	60	0.22
Yes - 4.2(b) commercial activities outside scope	118	0.43
Yes - 4.2(c) content of government policies	32	0.12
Yes - 4.2(d) under consideration court/tribunal	10	0.04
Yes - 4.2(e) required by legislation	1	0.00
Yes - 4.2(f) contribution to capital works	6	0.02
Yes - 4.2(g) beyond reasonable control	2	0.01
Yes - 4.2(h) action taken under direction	1	0.00
Yes - not about Scheme Participant	1,145	4.17
Yes - made by a Scheme Participant or exempt entity	39	0.14
Yes - Property / customer outside Victoria	249	0.91
Total	27,426	100



## Providers' compliance with EWOV's processes

### Stakeholder views

166. EWOV's Complaint Upgrade Policy sets out the criteria for when a conciliator can delay or defer an upgrade, and a process by which the Provider can escalate the matter where they query the basis of a decision to upgrade a complaint. EWOV's upgrade policy is an important tool in ensuring Providers comply with its timeframes, provision of information and other complaint handling processes. Some Providers however took issue with how EWOV's conciliators had applied the upgrade policy in specific complaints and felt that conciliators should be more flexible in their approach.
167. They also questioned whether EWOV sufficiently took into account their views that their offer to a customer was fair and reasonable or of their efforts to resolve the matter. One Provider expressed a view that EWOV's fees model was the key driver of its upgrade decisions.

### Our assessment

168. EWOV's revised October 2019 Complaint Upgrade Policy clearly sets out its approach to upgrading a case to a higher level with an increase in cost where the Provider is not complying with EWOV's timeframes, information requests or otherwise appropriately taking part in the dispute process. Where a conciliator upgrades a complaint, they will email the Provider setting out:
- the criteria under which the complaint has been upgraded
  - the reasons for the upgrade
  - the stage to which the complaint has been upgraded
  - an outline of the information required to progress/resolve the complaint, and
  - a timeframe of five business days to provide an additional response.
169. A Provider's has the opportunity to escalate to EWOV management when they disagree with an upgrade decision.
170. Based on our review of EWOV data and sample file review, EWOV actively applies its policy. We also saw examples in our file reviews of EWOV agreeing to downgrade a complaint based on further information provided by the Provider.
171. EWOV captures any such escalation by a Provider in its case management system and its reporting system provides details of the escalations, including by stage of complaint. Most of these requests are for a stage downgrade.
172. EWOV has identified that the reporting system does not capture how many of these requests result in a decision to downgrade a complaint and that it should undertake further analysis of trends and reasons for these escalation requests. Given the concerns we heard from Providers about EWOV's decisions to upgrade a case, we agree that this is important information for EWOV to capture, analyse and discuss with Providers



173. Clauses 3.7, 3.8 and 3.18 of EWOV's Charter set out a Provider's obligations to provide EWOV information and comply with a binding decision. If a Provider does not comply, EWOV can take action include referring the matter to the participant's Chief Executive Officer, EWOV's Board or the Essential Services Commission
174. Under Clause 10.2 of the EWOV Constitution the EWOV Board may end the membership of a scheme member if it does not comply with the EWOV Charter or any rules of EWOV. Prior to the 2018 amendments to the Constitution, the Board had to put this resolution to scheme members and a majority of members had to approve it. The EWOV Board has not had to use these powers as EWOV has sorted out these issues through the upgrade policy or escalation to senior levels within the Provider.

### Recommendation 7

EWOV should capture how many, and why escalation requests from Providers result in a downgrade to a lower investigation stage. This is an important quality check to ensure EWOV's complaint upgrade policy is being appropriately applied

## Registration and Referral processes

### Stakeholder views

175. While stakeholders supported the current referral back process, consumer advocates and Providers voiced some concerns about the practical operation of EWOV's Assisted Referral process.
176. Consumers advocates seek more assurance that consumers are not dropping out and being discouraged by the referral back process. Providers want EWOV to do more at this initial registration and referral stage to manage the customer's expectations, particularly where they consider there is little merit in the complaint or that a customer's expectation of what they want as a monetary or other outcome is unrealistic.
177. One Provider felt that how EWOV sets out the customer's issues and what they want as an outcome in the standard Assisted Referral email can entrench unrealistic customer expectations, rather than help achieve a fair and reasonable outcome - particularly where they consider they had done everything practical to address the complaint.
178. Given that in 67 percent of cases, EWOV records the case issues and customer-desired outcomes through direct phone interaction with the customer, Providers asked what was being done by EWOV service staff at the initial call stage to set reasonable and fair expectations.

### Our assessment

179. In our experience with other schemes, these views and issues are not unique to the EWOV's assisted referral process, and are similar to the views expressed by stakeholders in 2014.



180. When EWOV receives a complaint the service team is responsible for its registration. 67 percent of all complaints are received by telephone and 33 percent by email via the web dispute form. Unlike some schemes in other sectors, EWOV has not seen a dramatic change in the relative proportions of disputes being received by telephone and online. This may reflect the nature of energy and water as an essential service, demographics of consumers, or a range of other factors specific to energy and water services. This split is broadly consistent with the other energy and water Ombudsman schemes.
181. When a service officer receives a complaint, they will check whether a complaint is within jurisdiction, whether the matter is an enquiry or complaint and whether the customer has attempted to resolve the matter with a Provider and if so, how many times. Where there has been no contact with the Provider it refers the matter back to the provider as an Unassisted Referral. If the customer claims they have made one or more attempts to contact their Provider, EWOV will register the complaint as an Assisted Referral. EWOV registers complaints that raise issues outside its jurisdiction as an Enquiry.
182. EWOV will register a case based on the issues raised by a customer. Separate unrelated issues result in separate cases being registered for each issue.
183. EWOV's case registration procedure sets out a range of exceptions to its standard case registration procedure. These include, among others:
  - If a complaint is about a disconnection or restriction of supply, EWOV will register as an Assisted Referral even if there has been no prior contact with the Provider. If there has been two or more attempts to resolve with the Provider, EWOV will begin an investigation.
  - Dual fuel cases where a single contract for both gas and electricity will be registered as one dual fuel case. However, sometimes two cases will be registered depending on the issues involved.
  - Circumstances in which it will treat complaints involving multiple properties as a single case
  - Exercise of discretion to register a matter is outside jurisdiction, involving special circumstances or unconscionable market conduct.
  - EWOV Charter (clause 2.5) gives it the discretion to investigate a complaint that has not been made to Provider where it is considered necessary to avoid undue handling of a complaint due to customer vulnerability. EWOV actively uses this discretion – it did so 789 times in 2018-19 and 1,223 times in 2017-18.<sup>30</sup>
  - Where EWOV registers a case as an Assisted Referral it summarises the issues and desired outcome advised by the customer when lodging the complaint and sends this to the Provider with a copy to the customer. It informs the customer that the Provider is to get in contact with them within 3 days. EWOV

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<sup>30</sup> This figure includes cases that may have been later downgraded to Unassisted or Assisted Referrals (48 cases in 2017-18, and 30 in 2018-19)



informs the customer that if the complaint is not resolved, they can come back to EWOV. EWOV will also provide customers with information relevant to their complaint by attaching an EWOV fact sheet to their email correspondence with the customer.

184. If EWOV does not hear from a customer after an Assisted Referral, it will send an automatic text message after 6 weeks stating that if the matter has not been resolved with the provider they can get back in contact with EWOV.
185. EWOV tracks the response rate to these SMS messages on both a daily and monthly basis. In the last 12 months (November 2018 to November 2019) 1,203 customers (nine percent) re-contacted EWOV after getting the SMS message. Of these, 599 customer complaints advanced to investigation. The others might be referred back to their provider or told about how their complaint is progressing. All customer responses are recorded in the case management system as a post Assisted Referral contact. EWOV tracks this number on a daily, weekly and monthly basis. Of those customers that respond, most do within five days after receiving an SMS.
186. While both Providers and consumer advocates raised several concerns about the registration and referral process, we consider the current Assisted Referral process works as intended. The Assisted Referral provides the Provider a further opportunity to resolve a customer's concern before it moves to the more detailed investigation stage. This is good for the customer, Provider and for the efficient use of EWOV resources.
187. The customers we spoke to as part of our file review told us their Assisted Referral to a higher level contact within the provider helped them sort out their issues after frustration from their dealings with the first level customer service teams. The 2018-19 Customer Survey did not ask questions about customers' experience with specific stages of its complaint handling, so we were not able to compare customers' experience of Assisted Referral with previous years. EWOV acknowledges that this was a shortcoming and are addressing this in future surveys.
188. Our review of a sample of Assisted Referral files, telephone conversations, and discussions showed EWOV service officers were using neutral language, accurately capturing the key issues from the consumers' point of view and recording this accurately on the case file and in the Assisted Referral letter to the relevant Provider. Our review of the Quality Assurance framework and Quality Assurance files saw that this remains a strong internal focus in EWOV.
189. Given most customer complaints are closed at this stage, we understand that consumer organisations and Providers want assurance that the process works properly. In the 2014 Independent Review we recommended several ways in which EWOV could help provide this reassurance to stakeholders that the actions from unassisted and assisted referrals were leading to fair outcomes. We recommended EWOV implement a follow-up process with customers and firms.



190. For Unassisted Referrals, our recommendations included following up a sample of customers to check fairness of any outcomes. For Assisted Referrals, we recommended a holistic approach based on periodic research to compare the quality of outcomes across different Providers. Where differences were identified, we recommended EWOV should engage with that Provider to remedy, including applying different processes and escalation points.
191. We have discussed the progress of these recommendations with EWOV management. They told us they had discussed these initiatives with Providers and undertook follow up sampling of customers in 2014-15.
192. We understand they did not implement any ongoing changes to their complaint handling processes given the significant fall in numbers of Assisted Referrals in 2014-15 (a 40 percent decrease on the previous year), continued high satisfaction results in EWOV surveys and reluctance of Providers to recontact customers with closed disputes. Providers expressed concerns that re-contacting customers may cause the customer to consider this as an invitation to re-open resolved complaints.
193. Similar reasons were the basis for not pursuing the research and follow up of customers whose disputes at been closed following an Assisted Referral. We were told EWOV had limited success with periodic sampling of customers, and that there had been a decrease in Assisted Referrals in the period immediately following the 2014 Review.
194. EWOV also referred to a report they developed around that time to compare the relative success of its Assisted Referral process and monitor variations between the Providers, with a focus on Providers with a disproportionate number of failed Assisted Referrals.
195. We have reviewed this report and how managers use it. The report provides useful information about the comparative performance of Providers at the Assisted Referral stage. We were given examples of how EWOV actively uses this report to engage with a Provider when they identified a concern about a Provider's relative performance. However, we do not consider this report is a complete substitute for periodically getting in contact with a sample of customers who have been through the Assisted Referral process to obtain first-hand views from them about their experience -nor do we think it will fully satisfy stakeholder concerns.
196. The percentage of customers proceeding to an investigation following an Assisted Referral has remained reasonably steady at around 15 percent in the last couple of years. Likewise, the number of customers contacting EWOV after they receive the 6 week SMS and then proceeding to an investigation has not decreased. Based on these figures it is not possible to determine if Providers are getting better at using the Assisted Referral Process to resolve issues directly with their customers. We think EWOV should undertake further checking of how well the Assisted Referral process is working for customers.



197. Despite the reservations expressed by Providers, we consider periodic telephone follow up with a sample of Assisted Referral Customers is important to gain better insight into their experience with their provider following that referral. Other schemes do so, either as part of their regular customer satisfaction surveys or as a stand-alone exercise.<sup>31</sup>
198. While EWOV will follow up with specific Providers when the comparative performance data highlights a specific issue, we consider there would be benefit in making comparative data available on the success of Assisted Referrals to Providers so they can assess their own performance against their peers. Ideally, EWOV should publish this comparative information quarterly in summary form.
199. While consumer organisations are concerned about the potential for customers to drop out of the EWOV process, or get unfair outcomes, some Providers want EWOV to do more at the registration stage to manage consumer expectations about a realistic outcome or where they consider they have made a fair offer to resolve or the complaint is without merit.
200. Given the limited information available to the EWOV service officers based on an initial telephone call or email exchange, EWOV does not undertake a merits review at this stage of its process. EWOV's current fee arrangements are based on it spending time to identify the issues of customer concern and referring the customer back to the Provider. Any change to undertake further investigation at this early stage would result in additional costs for Providers.
201. Based on our file reviews, we consider the sharing of EWOV's succinct summary of the customer's issues with the provider adds value by clarifying the issues in the customers complaint as early as possible. This is especially important for vulnerable and disadvantaged consumers.
202. An important role played by the registration process, especially for consumers who feel frustrated in their initial dealings with their providers, is that they feel their issues are being listened to by EWOV, as an impartial and independent third party. Those customers we contacted told us they felt EWOV was impartial and independent, and that they valued EWOV's role in escalating their concerns to a higher level contact in the Provider.
203. We consider, however, there is scope for EWOV to explore ways it can better set consumer expectations by providing clearer factual and impartial information about resolution options at the registration and referral stage of its process. For example, by providing clear factual information on how EWOV has resolved similar disputes in the past.

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<sup>31</sup> Telecommunications Industry Ombudsman (TIO), *Submission to Consumer Safeguards Review, Part A -Redress and Complaint Handling*, 2018 p.31



204. While we share the concerns about EWOV staff making merit judgements at the early stage of the complaint process, we do not consider that it would be inconsistent with fair complaint resolution to be as clear as possible with consumers about resolution options and possible outcomes of their complaint early in the complaint process. One example, might be customer complaints about general prices increases as set by the regulator where there is no element of financial hardship or billing irregularities involved. Another example might be where a customer claims compensation in circumstances of a load shedding event by a distributor when this has been required by the regulator.

### Recommendation 8

EWOV should:

- a. better manage customer expectations at the registration and referral stage by providing clear factual information to customers on resolution options and outcomes for similar disputes
- b. implement periodic follow up of customers who have been through unassisted and assisted referral processes as part of its broader customer survey and assurance work, to ensure their complaints resulted in appropriate outcomes.
- c. publish comparative data by Provider on customers with Assisted Referrals that result in an investigation of their complaint. This will allow Providers to assess their performance on complaint resolution against their peers.

## Investigations

### Stakeholder views

205. Consumer organisations consider that EWOV independently and impartially resolves complaints, is efficient and effective, and provides good value for the funding it receives.<sup>32</sup>. CALC identified in its submission several potential areas for review:

- limiting case closures because of the non-response from consumers
- ensuring consistency of findings for similar types of complaints, including reviewing differences in outcomes between consumers with representatives to help them and those without, and
- setting KPIs which do not inappropriately incentivise EWOV staff to close complaints in ways that might prejudice a fair resolution.

206. In their submissions, and discussions with us, Providers raised a range of issues about the current EWOV complaint handling process, including:

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<sup>32</sup> Consumer Action Law Centre, Submission to the Independent Review Issues Paper, 12 September 2019, p.12



- EWOV accepting some disputes outside its Charter/jurisdiction, for example, complaints over 12 months old
  - issues about EWOV expertise or slow responses attributed mainly to a change of case manager/conciliators or because staff have not kept up with new market developments
  - concerns about how cases involving both retailers and distributors are allocated between Providers, and
  - a concern that EWOV conciliators can favour consumers rather than always being impartial and objective in the dispute process.
207. As is to be expected given the diverse nature of EWOV's membership, there was a broad range of views from providers about dealing with EWOV and its complaint handling. Often this was influenced by the approach taken on specific cases. Most characterised the issues they raised as relatively minor in an otherwise good relationship with EWOV. A few were more critical and, in one case, considered that EWOV's business and funding model resulted in incentives to escalate complaints rather than resolve them as early as practicable.
208. The survey of Providers in the last 12 months shows a slight drop in how they rated EWOV's performance on fairness.
209. Stakeholder comments did not fundamentally question the overall approach of referring matters back to Providers and, if unresolved, moving to an EWOV investigation. Rather, with a few exceptions, the issues raised with us by Providers went to how EWOV was applying its process at various stages, perceptions that EWOV was not always even-handed or consistent in its approach, or specific issues that Providers had with EWOV's approach to particular types of complaints.
210. As noted above, some Providers expressed concerns that certain matters progress to investigation when the Provider feels it is not at fault or it has made a fair and reasonable offer.
211. Providers also commented about extensive information requests not directly relevant to resolving the complaint at hand, an investigation process that can continue until agreement is reached, even where the issues were identified earlier, and a concern about the reluctance of EWOV conciliators to close cases where a customer is not satisfied with the offer made.
212. When a matter reaches the investigation stage, Providers incur additional fees leading some to feel pressured to make a financial settlement offer for commercial reasons, even when they do not consider the settlement is justified on the merits of the complaint. Some Providers that operate nationally, said that Ombudsman schemes in other states are less likely to escalate a complaint to an Investigation stage when they form the view that the merits of the complaint do not justify further investigation.



213. EWOV also works closely Providers to resolve matters by regular operational case meetings to review open files, particularly those that may have been open for some time. Feedback from Providers on this “batching approach” by regular face-to-face meetings of Provider and EWOV operational staff were very positive. We also saw from our file reviews that use of this batch process for some older or urgent matters resulted in quick, effective and reasonable resolutions being achieved.
214. There were several sensible suggestions from Providers on how EWOV could make these operational meetings even more effective. These included better preparation and exchange of documents ahead of meetings so that the meetings could focus on actively seeking to resolve issues.
215. Consumer organisations were also concerned about whether there was sufficient transparency of consumers receiving consistent outcomes for similar types of complaints handled by different conciliators. They also queried whether there are differences in outcomes between consumers with a representative and those without. They also noted the lack of formal decisions at EWOV and the opportunities missed of not doing so:

*‘EWOV should consider binding decisions more often and the contribution such decisions may have to deterring conduct that is causing widespread harm. Not making binding decisions may be an indication that EWOV’s members factor the consequences of breaches or other consumer harm into the cost of business. It may also be a sign that businesses see resolution decisions as favourable relative to what they expected and that households are not realising that they could ask for different remedies like debt waivers that would make the resolution reached fairer’.<sup>33</sup>*

## Our assessment

216. We reviewed current internal case handling procedure documents, reviewed a sample of 100 cases files and sought explanations on any process changes EWOV made in response to the recommendations of the 2014 Review, or for other reasons.
217. While we consider the current dispute process is meeting the industry benchmarks, there are opportunities for EWOV to improve its processes so they remain fit for purpose into the future. For the reasons explained below, we believe EWOV needs to make the current process less linear, triage complaints more effectively, and have different investigation pathways for different categories of complaints. It should reduce the reliance on the shuttle exchange of information, and facilitate conciliators to be confident in making fair offer and jurisdictional decisions earlier and more often.
218. Based on our file reviews and discussions with stakeholders and staff, we consider that EWOV conciliators generally communicate clearly with both parties, have timely follow up on issues, and have a good understanding of the issues for most types of complaints. The investigations reviewed by us were thorough and professional.

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<sup>33</sup> Consumer Action Law Centre submission to the EWOV Independent Review Issues Paper, September 2019, p.11



219. EWOV has a common investigation process for Stage 2 cases, other than disconnection matters, irrespective of the type, nature or complexity of the complaint. This typically involves extensive 'shuttle' style requests for and exchanges of information. Some disputes we reviewed continued even where the issues seemed clear-cut. Where a consumer does not accept the offer of a resolution by the Provider, for example, conciliators seem to be reluctant to close a dispute on a merits basis, and rarely use the fair and reasonable offer procedure
220. This practice is unlike other schemes we are familiar with, that use a fair offer assessment approach as a more routine stage in an investigation when the parties are unable to reach an agreed outcome within set timeframes.
221. We appreciate our characterisation is a generalisation and understand from our conversations with EWOV conciliators that some will adopt a shorter, less linear and more hands on approach when they are confident in doing so.
222. However, rather than adhering to a standard operating procedure built into the case management system and procedural guidelines for investigations, this seems based on individual conciliator preferences. This means that depending on which conciliator a complaint is allocated to, customers and Providers may get a different quality experience of EWOV's complaint handling process.
223. As we have set out in the introduction to this report, we have sought to take a "fresh eyes" approach to the current review of EWOV against the revised 2015 Benchmarks rather than treat it as a revisiting of the 2014 Independent Review and recommendations. However, the issues raised by stakeholders, and arising from our case file review, continue to raise similar issues to those canvassed in that review. We also sought to understand why many of the recommendations from the earlier review were not fully implemented.
224. Recommendation 3 of the 2014 Review was that EWOV *'should undertake a preliminary merits review of complaints that do not resolve through EWOV's early resolution processes and in appropriate cases refuse to escalate these to an investigation'*<sup>34</sup>
225. EWOV management reviewed the progress of the 2014 Review recommendations in more detail over the course of 2014-15. Based on this analysis, EWOV management decided it would not progress this recommendation. Instead, it proposed to focus on other areas such as better training of staff to deal with difficult customers and improved procedures to enable conciliators to make real time resolutions and better escalation decisions.
226. A key reason given for this decision was that EWOV received fewer Real Time Resolution Cases (down 60 percent from 1 July 2014 to 30 April 2015 compared to the previous period), credit related disputes increased from 16 percent to 30 percent and billing cases decreased. There was a corresponding reduction in Stage 1 Investigations.

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<sup>34</sup> Cameronralph Navigator, *Independent Review of the Electricity and Water Ombudsman of Victoria, 2014*, Recommendation 3



227. Based on the documentation we have reviewed, the view expressed was that 'less complex cases are less likely to warrant investigation and are a smaller proportion of EWOV's caseload, and the driver behind this recommendation has changed'. There also remained concerns about the risk of making an early merit- based assessment, particularly given the shift in the types of complaints being received by EWOV at that time.
228. As set above, while we are not recommending that EWOV undertake a formal merits assessment on registration and referral of a complaint, we consider there is more that it can do to manage customer expectations at the early stage of its complaints process. The recommended redesigned investigation process, set out below, is intended to also assist in the quicker resolution of the types of complaints addressed by recommendation 3 of our 2014 Review.
229. Another key recommendation of the 2014 Review was that EWOV '*Revise its No Further Investigation Policy and Procedure and Fair and Reasonable Procedure to introduce a streamlined merits assessment process for less complex complaints able to be carried out as part of stage 2 investigation*'.<sup>35</sup>
230. In its review of this recommendation, EWOV referred to the further work it was undertaking to ensure these policies balanced efficiency and procedural fairness. This included standardising its requests for good industry practice, creating a database to capture this information for use by conciliators in analogous cases, developing Position Statements for guidance of EWOV staff, scheme participants and community workers and reviewing how to handle 'repeat' customers.
231. Based on our review findings, we consider the actions EWOV has taken on standardising requests for good industry practice, publication of its position statements, training, improved procedures, and escalation, while important, have not eliminated the need for more structural changes to the design of EWOV's current investigation process.
232. Key elements of a redesigned investigation approach we recommend include:
- Mandatory phone (except where a customer states that contact by this means is not appropriate) with consumers at the start of an investigation to explain EWOV's role, clarify the issues in the complaint and determine the resolution approach to adopt, given the issues involved.
  - More active triage of complaints with simpler disputes to be fast tracked and those where conciliation is unlikely to result in an agreed outcome to be subject to an early fair offer assessment.
  - Review and refine the current batch review process so that the EWOV uses the operational meetings with Providers as an opportunity to resolve matters rather than being seen as part of the ongoing information exchange.

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<sup>35</sup> Cameronralph Navigator, *Independent Review of the Electricity and Water Ombudsman of Victoria*, 2014, Recommendation 4



- Greater use of an early two-way conciliation complaint resolution conference with both parties to reduce shuttle exchanges of information and resolution offers.
  - If the complaint cannot be resolved within a set period, an early fair offer assessment be done with clear timeframes for completion of this process. We suggest for simpler disputes this should be within four weeks.
  - Revisit a more streamlined procedure for fair and reasonable assessments. We consider this can be achieved while still meeting procedural fairness obligations. The current process seems overly complex for other than the most intractable of EWOV complaints.
  - As part of revamped quality assurance framework, implement periodic thematic style reviews on the consistency of outcomes for the same types of complaints for different customers and providers. Include in these reviews a comparison of outcomes for customers that use a representative and those that do not.
233. We appreciate that making changes to dispute processes can be challenging, especially in a changing environment and where there are concerns about how changes may impact on customer outcomes. Any changes to EWOV's process will also directly impact on the internal systems, processes and resources of Providers. This means EWOV will need to work closely with Providers in making the changes we recommend.
234. We suggest that to overcome this, EWOV should use a pilot-based approach to trial and implement the recommended changes. This could involve selecting a category of complaints and working with several Providers to run pilots within (say) a six-month timetable. A rapid, controlled pilot approach enables early action compared with a full redesign process. It also allows management to assess outcomes from the pilots before implementing changes more broadly.
235. This would enable EWOV management to assess the outcomes from the pilot to refine the approach and use this as an evidence base to consult with all impacted Providers before implementing the changes more broadly.
236. Such an approach would facilitate early action by EWOV on this review's recommendations, while providing a collaborative platform with stakeholders to test and refine the proposed process changes.



## Recommendation 9

EWOV should redesign its investigation process to better triage complaints, reduce the reliance on shuttle exchange of information and revise the fair and reasonable procedures to facilitate no merits findings earlier in the process and more often.

We recommend the following key elements be included in a redesigned investigation process:

- a) Mandatory phone contact with customers (except where a customer states that contact by this means is not appropriate) at the start of an investigation to explain EWOV's role, clarify the issues in the complaint
- a) More active triage of complaints with simpler disputes to be fast tracked and those where conciliation is unlikely to result in an agreed outcome to be subject to an early fair offer assessment.
- b) Review and refine the current batch review process so that the EWOV uses the operational meetings with Providers as an opportunity to resolve matters rather than being seen as part of the ongoing information exchange.
- c) Greater use of an early two-way conciliation complaint resolution conferences with both parties to reduce shuttle exchanges of information and facilitate resolution offers.
- d) Early fair offer assessment be conducted when it is clear a complaint cannot be resolved within a set timeframe.
- e) Design a more streamlined procedure for fair and reasonable assessments, while still meeting procedural fairness obligations.

## Efficiency of Internal Management

237. We have examined EWOV's dispute handling process and timeliness. Another aspect of efficiency is the extent to which a scheme's management has a clear focus on efficiency, cost control and continuous improvements in systems, process and capabilities. We found these all to be current strengths of EWOV.

### Our assessment

238. Management has a clear focus on workloads, timelines and KPIs at an organisation wide, team and individual level. The Tableau reporting system provides clear real-time performance management reports that enable live tracking of performance indicators across the dispute process at individual, team (service team and conciliators) and organisation levels. The system allows managers to monitor individuals and teams with a clear line of sight to overall organisation performance.



239. We saw evidence managers use these tools The management team meets frequently to review current information and deal with any emerging problem areas. We consider these type of “scrum” meetings are illustrative of an effective management focus on complaint allocation and flows.
240. EWOV tracks the time spent on cases on a per minute basis and it applies this to its charging regime. It captures the information in the case management system and it is also available through the Tableau reporting system. EWOV projects its costs for the year ahead and provisionally bills Providers based on these projections. It will then reconcile and adjust costs charged to Providers each August based on the actual cases received and closed at each stage of its process. Throughout the year EWOV provides an update to Providers on the anticipated impact that their case volumes may have to enable them to accrue as required.
241. EWOV has taken steps to improve its IT infrastructure. Some key improvements have been the implementation of a members’ portal, enhanced data analytics and better management reporting capabilities. It has plans to further expand its data analysis capabilities and improve other aspects of IT infrastructure. While EWOV has continued to improve its IT capabilities, we note that it has not updated its IT strategic plan since 2014, and EWOV’s capital expenditure remains on a one-year budget cycle. As a matter of good governance, there would be value for EWOV in updating the IT plan and for the Board to review it on a more regular basis.
242. We have noted in several places in this report examples of where EWOV should review and update its key policies. As a general observation, as a matter of good housekeeping, EWOV should set a periodic review date, accountabilities and a process for review of all its key policies and procedures documents.
243. Clauses 11.6, 11.7 and 11.8 of the EWOV Constitution set out the role of the Board in approving an annual business plan, annual budget and annual funding. Clause 11.8 specifies that ‘in producing the proposed Annual Funding Figures the Board will seek to ensure that the level of funding is such that the Ombudsman is able to carry out his or her functions under this Constitution.’ It also requires the Board to seek approval of its annual funding figure at a General Meeting of members at least 30 days before the start of the new financial year.
244. While funding for EWOV appears to have been adequate to reflect changing disputes volumes, a one-year budget forecast including capital expenditure is limiting. Significant changes for any organisation, such as major IT upgrades, or process re-design take time and more often, span successive financial years. Year one might have material capital or project development costs, while subsequent year budgets would reflect the impact on the initial investment in capital or IT improvements. Boards would usually want to understand the anticipated return on investment (ROI) in outyear budgets arising from their initial decision to implement and fund change. The ROI should be reflected in financial indicators such as a change in staffing profile or skills mix or reduced ongoing IT costs, and in non-financial indicators like expected improvements in KPI’s in the short to medium terms or in improved risk mitigation. A one year budget view cannot fully provide this information.



245. We consider a three-year strategic plan together with a financial strategy (three-year budget) to achieve the strategic initiatives and/or address organisational risks, should be presented to the Board each year and adjusted on a half-yearly basis. This will allow opportunities to better plan and implement longer-term strategic priorities, invest in skills acquisition as required and manage risks in a volatile energy market. Should the current EWOV Constitution make this difficult, we recommend the EWOV Board consider appropriate amendments to it to provide the Board with greater flexibility in setting and monitoring budgets over a longer cycle.

#### Recommendation 10

EWOV should:

- a) align its three-year strategic plan with a three-year budget forecast to provide the Board and management with greater capacity for capital improvement planning, skills acquisition and retention, and
- b) if necessary, seek relevant changes to its Constitution to allow for Board approval of annual budgets and funding to support a three-year budget cycle.

246. EWOV has continued its efforts to develop capabilities and improve adaptability of its workforce. We saw examples of the flexible use of staff in the conciliation team stepping in to take service calls when required.
247. EWOV has a comprehensive induction training process for all new staff and maintains a current competency framework and staff development plans. EWOV is also rolling out a program of continuous improvement training – a good initiative.
248. In our overview section of this report, we made the observations that is that there is not a cohesive or holistic view of how the many change initiatives underway at EWOV are interlinked to improve customer and Provider experience in dealing with EWOV, commenting that it would be beneficial to define the attributes of what customers would want, need, and expect to experience, when dealing with EWOV at all stages of is complaint resolution.
249. Defining these attributes would inform key aspects of EWOV's staff performance reviews and training, including continuous improvement training.

#### Recommendation 11

EWOV should

- a) define and publish a desired 'customer experience model'- what customers would want, need and expect to experience at each stage of the complaint process, and
- b) align aspects of its quality assurance framework, staff performance reviews and training, customer surveys and continuous improvement projects with the new customer experience model.



250. We heard several comments about the loss or lack of technical or industry knowledge skills in aspects of EWOV's jurisdiction and also the need for specialist skills in some areas of its jurisdiction. This is always a challenge for Ombudsman schemes and stakeholders raised similar issues in the 2014 Review. Several disputes we reviewed involved a range of quite highly technical issues requiring specialist advice. EWOV currently has an electrician on staff and has access to other technical experts as required, for example, hydro engineers, gas fitters, plumbers. It also engages with providers to help EWOV staff build technical capability about the industry.
251. We appreciate it is always a challenge for a small scheme such as EWOV to have available all the specialist skills in all aspects of its broad jurisdiction. This will become even more challenging for EWOV should its jurisdiction expand to a broader range of energy-related complaints.
252. Given concerns expressed by some Providers about the lack of technical capabilities of some staff, EWOV should consider making more visible the arrangements it has with technical specialists, including how it draws expertise from Providers to help build skill levels in its staff. One way to do so would be to formalise the panel list of its technical specialists.

#### Recommendation 12

EWOV should take steps to increase the level and visibility of the technical and industry expertise it can draw upon by establishing a 'panel' of experts able to be accessed as required.



## 9. Fairness of dispute resolution

253. Under EWOV's Charter it is required to handle complaints in a fair, reasonable, independent, economical, informal and timely way and apply the principles of natural justice. When handling cases or making case procedures, the Charter requires EWOV to consider what is fair and reasonable

### Stakeholder views

254. As we noted earlier, some Providers expressed concerns that EWOV conciliators tend to favour consumers rather than always being impartial and objective in the complaint process. We also heard that they, in some disputes, felt pressured to make or increase an offer as the only way to bring a complaint to finality, even when they considered it not warranted on its merits. There were also some comments about EWOV's approach to particular types of complaints, such as credit default listings, and setting appropriate customer expectations on debt recovery and bill payments in disconnection cases.
255. CALC, in its submission, raised concerns on how EWOV was ensuring consistency of outcomes for different customers with similar complaints, particularly those customers with a representative and those without. It also considered the issuing of more binding decisions by EWOV would both increase accountability and help bring clarity to what is fair and reasonable. It noted the Australian Financial Complaint's Authority (AFCA) Fairness Project and proposed that EWOV develop a similar guideline on how it will ensure it performs against the fairness benchmark.
256. While EWOV continues to do well on its annual survey of Providers, the results from the most recent survey in June 2019 show a slight drop in rating against the fairness benchmark.

### Our assessment

257. EWOV's charter sets out the fair and reasonable and procedural fairness requirements that underpin its complaint handling. Our review of EWOV policy, procedures and process documents show it has embedded the principles of procedural fairness at each stage of its complaint handling process. This is supported by staff training and development and its Quality Assurance Framework.
258. EWOV has detailed guidance and procedures when it makes a fair and reasonable assessment and set outs in its fair and reasonable documents the key elements EWOV staff must take into account.
259. Our review of a sample of files did not highlight any issues with the proper sharing of documents, clarifying issues, use of neutral language and ensuring conciliators informs both parties of the outcome of the complaint and the basis on which it was being closed. It achieves this at investigation by a formal closure letter to both the customer and Provider. Based on our file reviews, we found conciliators sent closure letters promptly with a clear setting out of the basis of the resolution agreed.



260. Several Providers referred us to specific cases as examples of where they felt EWOV's approach had not been appropriately balanced, lacked consistency or did not sufficiently take into account their commercial issues. These cases included claims by customers for compensation when load shedding occurred, requests for stage downgrades for a variety of reasons, concerns about EWOV's views on what was required for proof in disconnection cases, or concerns about unnecessary costs for inspections.
261. While we did see in some cases a difference in views between EWOV and Scheme Providers on how obligations apply in specific matters, we did not find any evidence of a general lack of balance or bias by EWOV in the sample of cases we reviewed. However, we accept that Providers perceptions are important concerns for EWOV to address.
262. In our view, the complaint handling design process issues we discussed earlier are a contributing factor to Providers perceptions of fairness and we believe some of our recommended changes would help address this perception, without undermining procedural fairness.
263. While each complaint needs to be resolved based on its own facts and circumstances, a complaints process that is fair and feels fair to both parties requires similar disputes to be treated consistently.
264. EWOV seeks to highlight how it approaches complaints about specific issues through the publication of position statements, case studies and the other information it provides to Providers and customers. Together, they form important guidance to EWOV staff and users of the scheme. They also inform Providers as to the approach they should adopt to resolve disputes directly with their customers to avoid escalation to EWOV.
265. As we have noted earlier, EWOV should include how it uses the outcomes of its best practice reviews in this valuable suite of material.
266. We also consider that there are opportunities to escalate to Ombudsman Decision more cases where there are different views among Provider about what the law, codes or good industry practice requires, in areas of the new jurisdiction or where a "lead decision" would assist to provide clarity on how EWOV approaches certain complaint issues.
267. A further key aspect of ensuring consistency in fair and reasonable outcomes is a robust Quality Assurance Framework. We discuss below EWOV's QA framework and its current review of this framework. To help provide more reassurance, we recommend that EWOV's add to its QA framework a program of thematic reviews across types of dispute and teams to test that approaches and outcomes are consistent.



### Recommendation 13

EWOV should escalate more cases to Ombudsman Decision where there are:

- a) different views among Providers about what the law, codes or good industry practice require, or
- b) where a “lead decision” would assist to provide clarity on how EWOV approaches certain complaint issue

## Quality Assurance Processes

- 268. EWOV has a structured Quality Assurance Framework (QAF) in place. It is under review and we outline later in this section the reasons for this, and focus of likely changes.
- 269. The Quality Assurance Framework Policy of August 2017 sets out the framework and its focus on identifying areas for individual and organisational improvement
- 270. Two quality improvement officers, both with experience in conciliation, check a sample of cases against the QAF checklist relevant to the area of operation. Their checking covers communication, case documentation, integrity and sustainability (expectations management and independence), and compliance. The QA team reviews ten percent of all EWOV cases every month covering those handled by Service Team Officers (Unassisted and Assisted Referrals) and by Conciliators (Investigations). Every Conciliator will have two of their cases reviewed while every Service Team member will have three of their cases reviewed per month within the ten percent sample selected. Individual's performance against the established criteria is scored, and they and their manager receive monthly reports.
- 271. The QA team and quality improvement officers record the results in the EWOV case management system. EWOV restrict access to this module of the Resolve Case Management System to the QA and Continuous Improvement staff.
- 272. Managers can access individual and team reports through the Tableau interactive reporting dashboards. These provide the ability to track individual and team progress over time, identify areas where quality standards are not met and address areas where improvement is required. QA results are linked to individual performance assessment and feedback cycles. The Senior Capability Advisor, who works alongside the quality assurance team, will review trends in an individual's performance and assist with training or other development plans where the need for improvement is identified.
- 273. Identification of thematic issues across the monthly QA sample is the role of the Senior Quality Officer, although at the time of our review this position was vacant. There is no regular analysis of emerging themes that is discussed by the Senior Leadership Team, nor is a report on quality presented to the EWOV Board.



## Our assessment

274. Our review of QA files and reports shows that quality audits are conducted in accordance with the QAF and that results of the audits are made available to individuals and team managers regularly. Quality issues are being identified and reported. The reporting dashboard is impressive and has a rich source of information that team leaders can use to address quality issues.
275. Our assessment is the QAF helps to embed EWOVs values, desired culture, and compliance with policies and procedures.
276. We do have some concern, however, that despite a rigorous approach to quality checking and reporting at the individual and team level, the opportunity to glean organisational-wide trends about quality shortcomings or inconsistent approaches or application of policies between teams is being missed. There is no clear link, for example, between QA results and analysis of overall organisational performance or achievement of KPIs. Nor is it clear that the investment in QA results in more consistent outcomes for customers and Providers.
277. The QA regime at EWOV is predominantly individual-focused. It checks whether individuals are following procedures set out in BPP's, applying templates correctly, communicating effectively, and so on. The monthly work program is planned around achieving the audit targets of three cases per Service Team officer and two cases per Conciliator. Feedback is at an individual level, and sometimes at a team level. While this is an important element in all quality assurance frameworks, effective quality assurance needs to include a more multi-faceted analysis.
278. Some staff we spoke to find the quality assurance process confronting and view the system as punitive, knowing that not following a set procedures will impact on their monthly score and on their performance assessment.
279. EWOV has already identified the need to upgrade and change the focus of the QAF to move away from a 'tick the box' compliance focus to one that drives quality and capability improvement. Despite a structured and matured process, EWOV admits it cannot measure the impact the quality assurance regime has on actual case progression, closure or timeframes. At the time of our review, workshops had been held with management and staff about the quality assurance process and a formal review is underway.
280. The review project plan involves adapting to staff and management feedback, piloting a new approach to QA, and using experience from the pilots to settle a revised QAF. The QA process will still involve a program of checks and audits for all complaint handling staff, but with the focus on adherence to privacy; policy, procedure and process; reporting tabs; and case documentation and less focus on the communication aspects of the service provided to customers and Providers.
281. The basis for this change is that the more soft-skill aspects of complaint resolution should be fostered through building capability through coaching, soft skill training and targeted training in vulnerability and respectful call handling. Whether reporting of QA will be at the team manager level, rather than provided to individuals as is the case, is yet to be determined. The focus will be less 'punitive' and more reinforcing of good practice.



282. The review has identified the need for 'deep dives' on emerging trends in quality analysis, and establishes links to the capability framework, although its primary objectives are aimed at delivering improved employee experience and performance and increased employee engagement.
283. While these are worthy objectives, our concern is that there is no recognition in the review that the aim of quality assurance is to ensure the approaches to complaint resolution are predictable and consistent, supporting the achievement of fair outcomes for consumers and Providers.
284. Further, the change of focus does not seem to consider the feedback from consumers and Providers in EWOV's own surveys about aspects of communication with EWOV staff.
285. We consider that in its redesign of its QA framework EWOV needs to retain a strong focus on the its role in achieving consistency and fairness of outcomes. That is, if a customer or Service Provider had the same case at EWOV handled by two different Service Team officers and/or conciliators, would they get the same outcome and have the same experience in the handling of their case?
286. Consumer organisations queried whether there are differences in outcomes between consumers with a representative and those without. This aspect should also be included in the QA framework when reviewing consistency of outcomes.
287. The achievement of consistent quality and outcomes across all case officers relies on the application of clear policies and procedures and effective training, not only in the more technical aspects of dispute resolution, but importantly in communication and engagement skills. Compliance checking is an important part of quality assurance audits, but it should not stop there. Quality assurance reviews should also compare cases with similar attributes and issues need to be compared to determine that approaches and outcomes are consistent across similar cases and types of complaints.

#### Recommendation 14

EWOV should make additional enhancements to its revised QA framework to ensure:

- a) it extends beyond the current individual-focussed approach to include thematic reviews
- b) it keeps a strong focus on achieving consistency and fairness of outcomes. comparing cases with similar attributes and issues to determine that approaches across teams and individuals result in consistent outcomes
- c) it retains a strong focus on checking that its registration process identifies and supports vulnerable and disadvantaged consumers
- d) that QA includes consideration of any differences in outcomes between consumers with a representative and those without



## 10. Minimising complaints

288. Ombudsman schemes have an important role to play in taking action to minimise complaints by widely communicating issues of concern, reporting on complaint trends, dealing with systemic issues, seeking to improve the internal complaint handling by providers and influencing regulatory policy.

### Systemic issues

289. The Benchmarks for industry-based Customer Dispute Resolution as rewritten in 2015 emphasise the important role of schemes having mechanisms for dealing with systemic issues. This is a key element of a scheme meeting the benchmarks for accountability, efficiency and effectiveness.
- Benchmark 4: Accountability requires the scheme to publish an annual report with information on complaints together with systemic problems arising from complaints.
  - Benchmark 5: Efficiency requires mechanisms and procedures for dealing with systemic issues arising from complaints and
  - Benchmark 6: Effectiveness requires a scheme to have a mechanism for referring systemic issues to an appropriate regulator for action, if required.
290. EWOV systemic reporting obligations differ slightly between energy and water. Under clause 4.4 of its Charter (and Constitution) EWOV can 'refer to a matter in relation to a participant that holds an electricity or gas license to the Essential Services Commission if we think there is a problem with, or a change in, the participant's policy, practice or conduct that adversely affects, or could adversely affect, a number of customers (a systemic issue)'.
291. EWOV's MOU with the ESC (September 2019) requires EWOV to provide to the Commission reports concerning emerging, systemic or regulatory compliance issues (cl. 5.4(b). With water issues, EWOV reports these to the now Department of Environment, Land, Water and Planning (DELWP).
292. The last Independent Review in 2014 found some views by Providers querying whether EWOV was adding value in its systemic issues activities. The 2014 Review made several recommendations for potential enhancements through better data analysis to help identify practices that lead to complaints, working with participants to address these practices and building on experience of interstate counterparts in undertaking this work<sup>36</sup>.

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<sup>36</sup> Cameronralph Navigator, *Independent Review of the Electricity and Water Ombudsman of Victoria, 2014*, Recommendation 10



293. In the current review we have considered Stakeholder views, examined relevant internal documents, EWOV's external reporting, interviewed EWOV staff and reviewed nine systemic files from the last few years, including two open matters.

### Stakeholder views

294. CALC in its submission argued that while EWOV systemic issues process was generally effective, EWOV should name the business involved where confirms that a systemic issue has been remedied or, where this is not the case, a matter has been reported to a government department or regulator. It argues this is particularly important when a referral has been made to the ESC under Section 54x of the *Essential Service Commission Act 2001* and there has been no action by the regulator. The CALC submission points to the recent decision by AFCA to start publishing the names of firms in its determinations.
295. Several providers made comments on whether EWOV had correctly characterised an issue as systemic, suggesting it should review these matters and queried whether EWOV actively checked whether an issue EWOV raised with one Provider applied more broadly across other Providers
296. In other more general comments there was support for EWOV playing more of a role in identifying emerging consumer issues and working with industry, regulators and policy makers to address these early to avoid future complaints from customers.

### Our assessment

297. EWOV sets out its jurisdiction and approach on systemic issues in its November 2018 EWOV Systemic Issues Policy. The EWOV website has a section on systemic issues and a report listing closed systemic issues by energy and water sectors. We note that the latest report at the time of our review was September 2017. Both Res Online and the EWOV Annual Report contain summary information on the issues involved in closed systemic issues.
298. In 2018-19 EWOV closed 28 confirmed systemic issues. This is similar to the numbers reported in the last few years.
299. EWOV can identify a potential systemic at several stages of its complaint handling process. The internal case management system has a case action to flag a potential systemic issue. Once referred to the systemic issues officer, they will conduct a review and determine whether it meets the threshold for a potential systemic issue. If it does, EWOV writes to the provider with several standard questions on the issues, asking how many consumers are affected and what actions the provider has or will take to redress the issue. If they do not resolve it to EWOV's satisfaction, EWOV can report the matter to either the ESC or the Department of Energy, Land, Water and Planning (DELWP).
300. We are not aware of any recent formal references of systemic issues to the ESC. We understand EWOV is actively considering referring a legal issue about interpreting provider obligations arising from a systemic issue to DELWP along with a possible referral of another matter to the ESC.



The standard induction for new EWOV staff contains an overview of the systemic issues process. More recently EWOV has sought to raise awareness of systemic issues among EWOV staff through a regular update on the EWOV internal newsletter and through regular attendance by the systemic issues officer at case meetings. There is a systemic issues interest group amongst the Australian and New Zealand Ombudsman Association (ANZOA) and regular discussion about systemic issues at the Ombudsman level within the Australian and New Zealand Energy and Water Ombudsman Network (ANZEWO).

301. Based on our review of the materials and systemic issue cases files, we consider the current EWOV systemic issues process has been appropriately identifying and following up potential systemic issues. In a few of the files reviewed, the actions by EWOV enabled early action to reduce further consumer detriment and therefore limit an increase in complaints. The reviews in the cases we saw were thorough with diligent follow up of the issues identified.
302. However, we consider that there is both some internal housekeeping and broader imperatives that suggest greater attention to systemic issues is required.
303. The revised 2015 EDR benchmarks, regulatory developments and general community expectations mean that Ombudsman schemes' role in identifying and actively working with providers, regulators and others to resolve systemic issues is now much greater than it was a few years ago.
304. A further complication in the energy and gas sectors is that while most providers operate nationally, there are separate Ombudsman schemes in each jurisdiction. This makes early identification of trends in complaints and potential systemic issues across sectors or Providers harder to identify and address.
305. Since 2014 there have been a variety of models for how EWOV has configured and resourced its systemic issues function. Currently, the staff member who handles legal and privacy matters also handles systemic issues. Previously, under another iteration, the function was located in the communications team. While EWOV's systemic issues activities have continued to improve over the last few years, the systemic issues function appears to have taken a back seat to other priorities, and has not always been treated as a key operational and strategic priority for EWOV.
306. In terms of systemic issues operations, we identified several process issues that EWOV can improve. While the functionality for recording systemic issues exists in the case management system, our review of both systemic issue and general cases files found that EWOV staff rarely make use of the systemic issues case management system action. In our review of systemic issues case files, a cross check showed the systemic issue action had not always been used by conciliators in the case management system.
307. In a few of our general case reviews, we identified what would appear to be potential systemic issues yet we could not tell from the case system files whether or how these had been followed up. The process for deciding on the escalation from potential to actual systemic issues is also less formalised than in some other schemes with which we are familiar.



308. We noted a few matters where the resolution of an issue, while appropriate in terms of EWOV's role in dealing with the particular case, might have acted as a trigger for a broader review by a regulator with formal investigation powers. For example, one Provider's IT issue that impacted on a broad consumer base, might have triggered a review by the regulator on broader consumer-facing IT governance and risk management approaches adopted by large participants in the energy sector. In another case, an EWOV review found an issue with the conduct of several service agents. This may have also led to a wider regulatory review to assess whether there were broader weaknesses in the Provider's initial screening and compliance checking arrangements.
309. While over the last 12 months EWOV has increased its efforts to raise awareness of systemic issues among staff, our experience is that this requires concerted, consistent and structured effort – which can be difficult to sustain in an environment of pressure to maintain business-as-usual and without clear Board and management support for the importance of the scheme's role in systemic issues
310. EWOV in the past has met with the ESC and provided details of systemic issues matters. For a range of reasons, this did not happen for a period in 2018. EWOV now provides the ESC with a regular quarterly report of both open and closed systemic issues in the relevant period.
311. We would like to see EWOV more actively engaging with the ESC and DEWLP on systemic issues. This should include a more frequent referral of matters by EWOV to both. Even where a matter is closed, EWOV should highlight to the regulators whether it considers that there may be broader governance, risk or compliance issues that the ESC or DEWLP should consider investigating.
312. While each of these matters is not a significant failing, they highlight the challenges for any scheme to deliver meaningfully on systemic issue management. We think that EWOV should review its current processes, its resourcing, enhance its systemic issues training for EWOV staff, increase visibility of its efforts and more actively work with providers, regulators and counterparts in other states and territories.
313. We have not recommended that EWOV publish the names of Providers when a systemic issues investigation has resulted in concerns being remedied or where this is not the case, EWOV has formally reported a systemic issues matter to a government department or regulator. The consumer submission argued this was important when EWOV has made a referral to the ESC under Section 54x of the *Essential Service Commission Act 2001*, and there has been no action by the regulator. It also referred to the recent decision by AFCA to publish the names of financial service providers in its determinations. However, we note that the change in AFCA rules relates to determinations in specific disputes and not its reporting of specific systemic issues investigations.
314. We consider the publication of the names of scheme providers referred the ESC by EWOV is more appropriately a matter for the ESC to consider under its new enforcement approach.



315. The success of EWOV's systemic issues function relies on the co-operation of Providers to give information and take appropriate steps to fix systemic issues when they arise. The threat that EWOV will name any provider with a systemic issue investigation could lead to a more adversarial approach where the focus becomes on contesting categorisation and reporting of investigations rather than on fixing an issue. The current EWOV processes for categorisation, confirming and documenting systemic issues also need to reach a more mature stage before any change in the current approach is considered.
316. Our views on not naming Providers relates only to the circumstances of a specific EWOV systemic issue investigation. We encourage EWOV to continue to use case studies and other means to highlight current and emerging systemic issues adding to the richness of information it makes publicly available on complaint trends and issues.

#### Recommendation 15

EWOV should improve its focus and increase resourcing for its systemic issues activities including:

- a) reviewing and updating its policy, procedures, training and compliance checking for systemic issues, and
- b) more actively engaging with, and referring matters to, the relevant regulators, particularly where a systemic issue highlights potential broader issues within a provider or in the sector



## 11. Accountability

### External Reporting

#### Stakeholder views

317. Providers and consumer organisations did not raise any significant issues around EWOV's reporting of complaints data and commented favourably on the quality of the information in EWOV's various publications. These include its quarterly report, Res Online, Annual Review, its publication for financial counsellors and community workers Connect, monthly Hot Topics and a quarterly Affordability report. Consumer and Providers singled the Affordability report out as particularly useful. The new Providers portal also enables Providers direct access to details of current cases and their progress.
318. Several Providers operating nationally commented that getting consistent national comparative data across schemes was challenging given different ways of reporting complaints data in different jurisdictions. CALC also urged EWOV to publish the names of Providers in its reporting on systemic issues – dealt with earlier in this report.

#### Our assessment

319. EWOV external publications remain of high quality with their use of bright graphics and other user-friendly presentation styles. It has a range of publications directed at different audiences. Res Online provides detailed quarterly information on complaints statistics, systemic issues and commentary on trends and issues in energy and water complaints received by EWOV in that quarter. The Annual Report contains an overview of EWOV activities, performance measures and 5 year trend complaints data. It provides complaint data by location, some high level information about investigation timeframes and total investigation money outcomes.
320. As part of the review, we compared EWOV's Annual Report to that of several other Ombudsman schemes. The EWOV report compares favourably in many aspects. The information on complaints and commentary on complaint issues, trends and case studies helps the reader put the detailed complaint statistics into context.
321. However, EWOV provides less granularity than some other schemes on its key performance metrics.
322. EWOV's Annual Report sets out the results of its customer satisfaction results, a commentary on its email survey of Providers, performance against key timeframes and the monetary outcomes from its investigations. We consider that in each of these areas greater granularity and use of consistent trend figures would provide greater information about EWOV's performance over time and increase transparency and accountability of EWOV performance to its stakeholders. For example, on the customer survey, as well the net promoter score (NPS), further details on how customers view key aspects of EWOV's service would be useful.



323. There are opportunities for EWOV to be more transparent about its performance for the benefit of consumers, Service Providers and EWOV's own staff. This includes comparability of data about EWOV's performance from year to year and through collaboration with other energy and water Ombudsman schemes better comparability of performance across schemes. We also consider that regular public reporting on implementation or follow-up action following an independent review is an important element of the accountability framework for an Ombudsman Scheme.
324. We commented earlier on some issues we found with EWOV's reporting of its data on timeliness. EWOV's 2018-19 Annual report sets out its performance against its KPI at Stage 1 investigations and then a single figure for other investigations. The report also has a chart of investigation timeframes closed by the number of months for each sector. However, it is difficult to understand how these figures interrelate, how performance has changed over time and to what extent changes in these timeframes are because of changes in the mix of complaints, stages at which they closed or other factors.
325. We consider data on investigations should provide more granular information on numbers (in both actual and percentage terms when relevant) even when data is presented graphically. Trend information, by investigation stage (1, 2 and 3) and outcome should also be published.
326. It would be helpful in the detailed provider complaint tables to show details of investigations broken down into stage 1, 2 and 3 for each provider. We note that another Ombudsman scheme also shows the complaints data for providers tiered by customer numbers and also a metric for cases received per 10,000 customers for comparison.
327. EWOV collects and has several informative internal reports on the demographic characteristics of its customers, including for various geographic areas. It would be useful for EWOV to provide more detailed information about the socio-economic and demographic characteristics of customers in its Annual Report.

### **Lack of consistent national data**

328. One of the data challenges faced by Providers, consumers and policy makers is the lack of comprehensive national data on customer complaints and complaint trends. This makes it difficult to identify and address emerging systemic issues, common problems that might occur in different jurisdictions and to evaluate the impact on consumer outcomes of the various reform measures.
329. Along with the data collected and reported by the schemes in each jurisdiction, the regulators also collect and publish various data. The Australian Energy Regulator collects and reports complaint data for those jurisdictions in the national scheme. The ESC collects and reports Victorian complaint data in its energy and water market reports. While the categories of complaints used in these reports is the same, the format of this reporting differs.



330. One national Provider commented to us they had tried to do a comparison across the various Ombudsman schemes but found it very difficult. Another commented that they reported extensive data to various agencies all of whom used different definitions and metrics on how they compiled and reported complaints data.
331. EWOV works closely with its counterparts in other jurisdictions to share information to identify emerging issues for customers to help fill this national data gap. EWOV, through its role in ANZWEON and work with the ESC, should promote greater efforts to get a nationally consistent complaints data reporting framework for the energy and water sectors and Ombudsman schemes.
332. One scheme, for instance, provides simple comparative numbers of the volume of complaints received by the Ombudsman from individual service providers reported at a number per 10,000 customers. This then allows the reader to easily compare the chance of a complaint reaching the Ombudsman irrespective of the size or market share of the provider. If all schemes reported in the same way, users of the reports could compare the relative performance of providers in a particular state or territory and also the performance of a provider across multiple jurisdictions.

## Recommendation 16

EWOV should:

- a) improve its performance and complaint reporting in its Annual Report and other publications. This should encompass greater granularity and use of consistent data sets year on year relating to:
  - customer and stakeholder satisfaction results
  - dispute handling timeframes including at all investigation stages
  - provider complaint numbers against each investigations stage
  - outcomes achieved
- b) work with the ESC and ANZEWOON to agree a consistent approach to develop a simple comparative benchmark based on Provider complaint numbers received by the Ombudsman per fixed number of customers (100, 1,000 or 10,0000)
- c) work more broadly with its ANZEWOON counterparts and the ESC to promote nationally consistent complaints data reports for the energy and water sectors and Ombudsman schemes
- d) provide more detailed information about the socio-economic and demographic characteristics of customers bringing complaints to EWOV
- e) revamp its customer surveys applying consistent questions over time, analysing better real time data and publicly reporting enhanced insights to facilitate improvement action.



## Complaints about EWOV

### Provider Views

333. In our discussions with Providers they were generally positive about their ability to have constructive conversations with staff and managers in EWOV when they had issues of concern about particular cases or on EWOV's approach to types of cases. Providers considered this open and constructive dialogue essential at both a day to day operational level and also at a broader management level. They were also positive about engagement directly with the Ombudsman. We heard a few comments that it was not always clear what action had resulted from their feedback on EWOV's approach to complaint handling, as opposed to case specific feedback.
334. EWOV's approach to internal complaints is set out in its Internal Complaint Handling Policy January 2019. The policy sets out the types of complaints EWOV can receive and the process by which it will review them. The four types of complaints set out in that policy are:
- complaints about case management
  - complaints about cases closed after a fair and reasonable assessment
  - complaints about the operation of the scheme, and
  - and complaints about EWOV's jurisdiction to handle a complaint.
335. In 2017 EWOV implemented an "escalation" action in the Resolve Case management system to make it easier to keep track of escalation requests by providers and customers. EWOV captures this data captured in Tableau with reports on the reasons for escalation for both providers and customers. While the Tableau report is very useful and available to managers, until recently there has been little systematic analysis of this information. In October 2019 a new report to the Ombudsman sought to bring together this data with other feedback information in a more holistic manner.
336. The EWOV webpage under the 'about us' section contains a tab on complaints about our work with a link to the internal complaints policy. Separately, under the 'contact us' tab there is a feedback email contact address.
337. The 2014 Review recommended EWOV enhance its feedback form, provide a link on this webpage, log complaints about its performance, analyse trends and identify improvement opportunities and provide regular reporting the Board. We are not aware that the Board has received regular reports on internal complaints or any analysis of trends.



## Our assessment

338. While EWOV has made several steps to improve the capture of internal complaints and feedback, it can do more. We have reviewed the internal complaints policy of some other Ombudsman schemes both in the energy and water sectors and in other industries to provide some comparisons with the current EWOV approach.<sup>37</sup>
339. EWOV needs to update and substantially revise its internal complaints policy. The current policy combines internal complaints with other categories of escalation issues, such as a disagreement with complaint outcomes, policy matters or decisions on the merits. EWOV should include these aspects in its separate dispute process and procedures policy documents. The current mixing into one policy and into a single “escalation” action does not assist transparency, clear reporting and root cause analysis of complaints about EWOV.
340. The policy needs to be much clearer on the way service complaints about EWOV are handled, including:
- adopting the definitions and approach of the Australian/New Zealand Standard AS/NZ s10002 on complaint handling by organisations and the basis for EWOV policy
  - clarifying what types of complaints, the new policy covers and what other policies apply to other escalation actions
  - setting out how complaints and positive feedback can be made, and
  - providing succinct guidance on the key steps and timeframes for dealing with a complaint and the types of outcomes that it might provide to customers. This should include, among other matters, how and in what time it will acknowledge complaints, how they will handle them, and how it will communicate its progress in dealing with a complaint and its outcome.
341. EWOV should cover some matters in the existing policy elsewhere. For example, it should cover requests for a stage decision review in its general complaint handling policies and procedures, not in its internal complaints policy.
342. The internal complaints handling policy and procedures should remain focussed on complaints by customers and providers with the conduct of an EWOV staff member, service issues in the delivery of EWOV’s dispute handling, such as delays and handling of personal information under privacy requirements.
343. While we support efforts to bring together the various strands of feedback information EWOV receives to guide improvement initiatives, EWOV management can draw this information from separate reports for different activities. Trying to capture everything under the current escalation action is not effective.

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<sup>37</sup> TIO, *Compliments and Complaints Policy* March 2018, and EWON *Internal Complaint Handling Policy*, September 2015



344. EWOV should develop a specific stand-alone management report on complaints arising under the proposed revised internal complaints handling policy. This should include the total numbers of complaints by category, whether EWOV is meeting its timeframes to address the complaints, outcomes, analysis of root causes and the steps taken to address these.
345. Management should provide the EWOV Board with a periodic report on its internal complaint handling. The Annual Report should contain information on the number, types of internal complaints under the revised policy and what EWOV management have done to address any underlying areas of concern.
346. As recommended in 2014, EWOV should also include a link to the policy in the feedback sub-tab in the 'contact us' tab on the website.

### Recommendation 17

EWOV should:

- a) update and substantially revise its internal complaints policy. The policy needs to be much clearer on the framework for how EWOV handles service complaints about EWOV.
- b) should develop a stand-alone management report on internal service complaints. This should include:
  - the total number of complaints by category
  - whether EWOV is meeting its internal complaint timeframes
  - the outcomes of complaint investigation, and
  - analysis of root causes and steps taken to rectify issues resulting in complaints
- c) report periodically to the EWOV Board on internal complaints
- d) report internal complaints in its Annual Report
- e) provide a link to the internal complaints handling policy in the 'contact us' link on its website.



## 12. Stakeholder engagement

### Stakeholder views

347. Generally, stakeholders are complementary about EWOV's engagement with them and more broadly across the community.
348. The Providers that we spoke to commented that the EWOV senior staff are readily accessible to discuss issues on particular cases when the need arises and find case conferencing with conciliators beneficial in progressing and resolving complaints. Those we spoke to referred to the ready availability and access to the Ombudsman and her willingness to engage with them on significant issues.
349. In 2018-19, EWOV conducted an email survey of Providers' perceptions of EWOV of various aspects of EWOV's performance. The results showed a decrease in Provider perceptions of the overall effectiveness of the relationship with EWOV, which EWOV management considers results from some Providers' concerns about timeliness and fairness of complaint handling processes. We have provided comments about these two issues earlier in this report and discuss EWOV's survey activity later in this chapter.
350. Embedded Network Providers told us how EWOV supported these new members through holding excellent information and training sessions and producing useful fact sheets and newsletters. They commented that while it took a little time for EWOV staff to come to grips with aspects of the embedded network operations; they were generally pleased with the commitment EWOV made to learning about their business operations and how operators fit in across the energy regulatory landscape.
351. Consumer representatives advised that they find EWOV very accessible and engaged. Most of their comments to us were about how EWOV might enhance its engagement with vulnerable community members. They strongly advocated, for instance, that when EWOV is developing communication (websites, telephone scripts, printed material) they consult with consumer organisations to make them more helpful for a range of consumers with low literacy or other special assistance needs.
352. In its submission to our Issues Paper, CALC advised that EWOV has attended community engagement sessions with them to increase awareness of EWOV's services amongst Victorian Aboriginal communities, It also raised the need for better information about EWOV to be made available to people in custody.<sup>38</sup> It observed that as community organisations will only ever help a fraction of people experiencing issues, EWOV should continue to invest in expanding awareness of its services amongst workers and volunteers in community organisations and amongst the public.

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<sup>38</sup> Consumer Action Law Centre, submission to the EWOV Independent Review Issues Paper, September 2019 p.4



353. The ESC is also an important stakeholder for EWOV and there is an MOU between two organisations. The Ombudsman and ESC Chair meet quarterly, and there is regular interaction between staff on a range of issues, whether it be about systemic issues or clarification about the terms of one of the industry codes that the ESC administers. The ESC described their relationship with EWOV as constructive and commented that EWOV has been an important player in code reviews and in implementing new policies in the energy and water sector such as the new Payment Difficulty Framework. The ESC told us they value the data analysis and insights that EWOV produces in its regular quarterly publications and its Annual Report.

### **Our assessment**

354. We consider EWOV continues a strong focus on engaging with the community and its stakeholders. Given its new jurisdiction for embedded networks, this has been a particular area of activity for EWOV management over the last few years.

355. The EWOV Board continues to set stakeholder engagement as a high priority area for management. Two of the six specific areas of focus set by the EWOV Board for the management team are:

- Industry Relationships, and
- Customer and Community Engagement

356. EWOV management reports to the Board on progress against these focus areas and on the range of engagement activities, communication and industry training initiatives undertaken in this respect. EWOV has a Communications and Policy Team responsible for member liaison, community outreach, stakeholder engagement and communications.

357. EWOV has a planned program of community outreach each year and involves many of its staff in community engagement activities that range from community stakeholder roundtables, to attendance and presentations at community run events. It publishes and produces fact sheets in several languages. It also produces a biannual community outreach newsletter called Connect.<sup>39</sup>

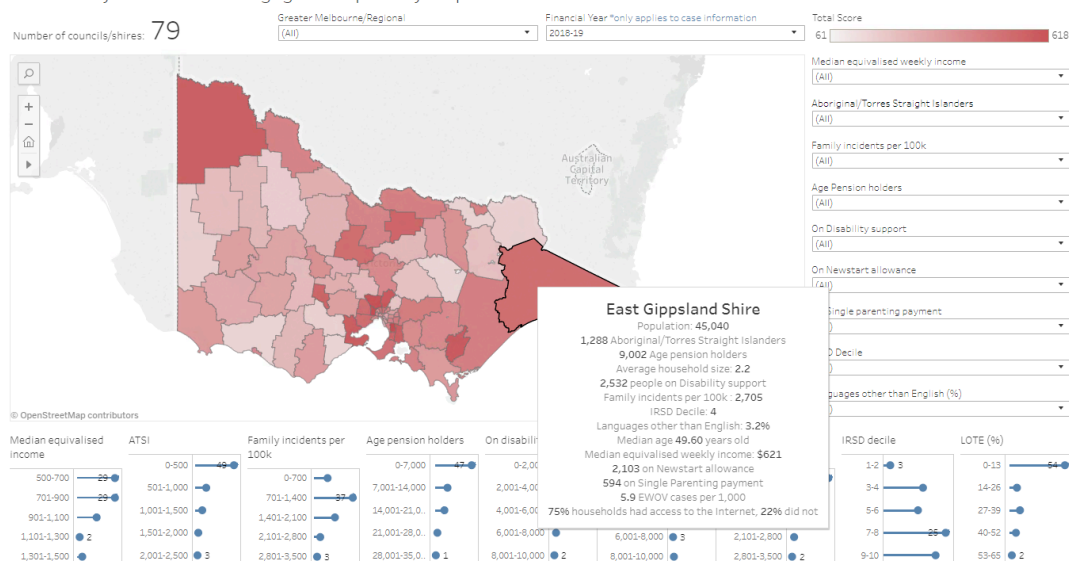
358. The focus of its outreach work is on raising awareness about EWOV with consumer sectors who may not be accessing its services. In the past 12 months, EWOV has been more focussed on identifying priority areas to target its community outreach and engagement. It has done this through an impressive analysis of its own complaint data and external socio-economic data. As the picture below, taken from the EWOV internal dashboard reporting, shows, EWOV has established a priority map of Victorian LGA's, identifying areas of higher vulnerability and using this data to direct its outreach work.

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<sup>39</sup> <https://www.ewov.com.au/reports/connect/201909>



### Community outreach and engagement priority map



359. As reported in the 2018-19 EWOV Annual Report, and as discussed earlier in this report, EWOV has prioritised Latrobe, Greater Geelong and Mildura in regional and rural Victoria and Greater Dandenong, Brimbank and Hume in Metropolitan Melbourne as its focus areas and pilots are either underway or will be conducted this financial year to assess the best and most effective engagement approaches in each location, recognising that community needs, access to services, opportunities to work with local community groups etc are different in each of the LGA's targeted. We commend EWOV for its new focus and the work it is doing to improve the understanding of its role and processes across Victoria, and particularly among more vulnerable communities.
360. We heard from Providers that compared to other its counterpart schemes EWOV conducts less joint activities with Providers. They encouraged EWOV to do so more often. We consider there are benefits in EWOV undertaking more regular joint activities with Providers. These include EWOV and Providers:
- hearing together the concerns customers have about issues with the opportunity to have a joint and direct discussion about them
  - gaining a mutual understanding of customer issues in a particular location and presenting an opportunity to identify steps to address customer concerns and minimise complaints, and
  - providing the opportunity for individual customers to have their concerns sorted out on the spot.
361. However, it is important in organising any such joint events with Providers, EWOV's role as an independent Ombudsman scheme is not confused with the internal complaints handling functions of Providers or with the role of the regulator. Recommendation 4 in Chapter 7 addresses this point.



362. In Chapter 7 on Accessible Dispute Resolution, we also discuss aspects of EWOV's community outreach work to improve the awareness of its services and make some recommendations about how EWOV might assess the impact of its work, acknowledging that this is often hard to achieve.

## Customer and Provider Surveys

363. EWOV undertakes regular customer and Provider surveys. We consider these surveys are important elements of responding to stakeholder concerns, supporting continuous improvement to EWOV's complaint handling and for a scheme's performance reporting and accountability.
364. The customer surveys conducted by EWOV track a net promoter score (NPS) and seek customer views on the quality of EWOV's complaint handling processes. EWOV conducts these surveys quarterly. We reviewed the approach, questions and the last two management reports on the outcomes of these surveys. The recent surveys show a decline in the Net Promoter Score by customers and a slight fall in assessment by Service providers on EWOV's performance against the benchmarks.
365. The most recent customer survey for June to August 2019 shows, that while the NPS remains positive, compared to many other sectors and institutions, there has been a further drop in results arising from both an increase in detractors and a decrease in advocates. In May 2019 the NPS was recorded as 59, while by August 2019 this had declined from 55.2. In 2017-18, the NPS was consistently in the high 60s with one aberrant score of 81, but for only one quarter. These scores were in response to the following question:

*Based on the experiences you have had recently in dealing with EWOV, how likely would you be to recommend that a friend or family member contact EWOV to assist with a complaint about a gas, electricity or water company?*

366. The survey also has a series of questions on how EWOV handled the customer's complaint. The responses show concern about how it explains outcomes to customers, and the timeliness of its contact with customers.
367. The number of respondents has decreased in recent surveys. In the management reports we reviewed there was little detailed analysis of whether or how changes in sample size and composition, complaint issue mix and responses to the more detailed questions might influence the declines in the net promoter scores for EWOV. As we noted earlier in the report, the latest 2018-19 Survey did not allow for analysis of consumer responses by stage of the complaint handling process or comparisons with previous years. We consider this information is important for EWOV to continue to capture.
368. In the absence of being able to undertake more in-depth analysis of these results, the current customer survey provides limited insight into the key drivers of the net promoter scores or clear actionable insights about what EWOV might do to address customer issues as part of its continuous improvement efforts. EWOV management knows of this limitation and is exploring ways to address this.



369. EWOV also undertakes regular surveys of Providers about how they consider it is meeting the key dispute resolution benchmarks. They undertake these surveys annually. EWOV noted in its latest Annual Review that its survey of participant perceptions of various aspects of its performance showed a reduction in how effective Providers perceive their relationship with EWOV. This appeared to relate to concerns about the timeliness of our work and the fairness of our processes and decision-making.’
370. This assessment is reflected in the verbatim comments captured as part of the survey. A review of the latest survey comments, unsurprisingly, show they address many of the same themes raised in submissions and comments from Providers as part of this review.
371. They include concerns about time taken by EWOV to assign a matter, respond or reach a decision when the Provider is held to strict timeframes, a view that the fair and reasonable balance scales seemed to be tipped more in the customer’s favour, lack of technical knowledge and expertise by EWOV staff in some areas of its jurisdiction, and views about a lack of EWOV’s flexibility in how cases were categorised at investigation. We discuss these issues further in the complaints handling section of this report.
372. EWOV management told us it is reviewing its approach to customer surveys with the purpose of having consistent questions over time, better real time data and enhanced insights to support its improvement initiatives.
373. We consider it is timely that EWOV implements changes to its surveying of customers and Providers and recommend that in doing so, it aligns any changes with its Quality Assurance Framework, its performance management framework and its continuous improvement efforts. Recommendation 15 in Chapter 11 on Accountability includes this point.
374. We also note that the ESC undertakes detailed surveying of customer perceptions of energy and water providers and publishes details in its periodic energy and water market updates.<sup>40</sup> In reviewing its customer survey approach, we think it would be useful for EWOV to consider whether it can use the ESC data to complement its own survey work to develop richer insights on customer perceptions of EWOV, and complaint handling more generally.

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<sup>40</sup> <https://www.esc.vic.gov.au/water/sector-performance-and-reporting/how-customers-rate-their-water-business> and <https://www.esc.vic.gov.au/electricity-and-gas/market-performance-and-reporting/victorian-energy-market-report>



## Appendix 1: List of Recommendations

### Recommendations by theme

#### 1. Redesign the investigation process to improve timeliness and quality of complaint resolution

##### Recommendation 9

EWOV should redesign its investigation process to better triage complaints, reduce the reliance on shuttle exchange of information and revise the fair and reasonable procedures to facilitate no merits findings earlier in the process and more often.

We recommend the following key elements be included in a redesigned investigation process:

- a) Mandatory phone contact with customers (except where a customer states that contact by this means is not appropriate) at the start of an investigation to explain EWOV's role, clarify the issues in the complaint and determine the best resolution approach to adopt, given the issues involved.
- b) More active triage of complaints with simpler disputes to be fast tracked and those where conciliation is unlikely to result in an agreed outcome to be subject to an early fair offer assessment.
- c) Review and refine the current batch review process so that the EWOV uses the operational meetings with Providers as an opportunity to resolve matters rather than being seen as part of the ongoing information exchange.
- d) Greater use of an early two-way conciliation complaint resolution conferences with both parties to reduce shuttle exchanges of information and facilitate resolution offers.
- e) Early fair offer assessment be conducted when it is clear a complaint cannot be resolved within a set timeframe.
- f) Design a more streamlined procedure for fair and reasonable assessments, while still meeting procedural fairness obligations.

##### Recommendation 13

EWOV should escalate more cases to Ombudsman Decision where there are:

- different views among Providers about what the law, codes or good industry practice require, or
- where a "lead decision" would assist to provide clarity on how EWOV approaches certain complaint issue



### Recommendation 2

EWOV should more regularly publicly share its approach to good industry practice in resolving particular types of complaints to help inform all Providers about how they should approach complaints of a similar nature

### Recommendation 12

EWOV should take steps to increase the level and visibility of the technical and industry expertise it can draw upon by establishing a 'panel' of experts able to be accessed as required.

## 2. Work with Providers to achieve broad confidence in outcomes achieved where complainants are referred back to Providers

### Recommendation 8

EWOV should:

- a) better manage customer expectations at the registration and referral stage by providing clear factual information to customers on resolution options and outcomes for similar disputes
- b) implement periodic follow up of customers who have been through unassisted and assisted referral processes as part of its broader customer survey and assurance work, to ensure their complaints resulted in appropriate outcomes.
- c) publish comparative data by Provider on customers with Assisted Referrals that result in an investigation of their complaint. This will allow Providers to assess their performance on complaint resolution against their peers.

### Recommendation 3

EWOV should:

- a) when it receives a complaint, do more to check whether the Provider has informed the customer of their rights to bring their complaint to EWOV
- b) raise a systemic issue and report to the ESC for investigation and regulatory action when it identifies that a Provider is not informing its customers about their complaint rights to EWOV.



### 3. Make changes to the Quality Assurance framework to improve consistency of outcomes

#### Recommendation 14

EWOV should make additional enhancements to its revised QA framework to ensure:

- a) it extends beyond the current individual-focussed approach to include thematic reviews
- b) it keeps a strong focus on achieving consistency and fairness of outcomes. comparing cases with similar attributes and issues to determine that approaches across teams and individuals result in consistent outcomes
- c) it retains a strong focus on checking that its registration process identifies and supports vulnerable and disadvantaged consumers
- d) that QA includes consideration of any differences in outcomes between consumers with a representative and those without

#### Recommendation 7

EWOV should capture how many, and why escalation requests from Providers result in a downgrade to a lower investigation stage. This is an important quality check to ensure EWOV's complaint upgrade policy is being appropriately applied

### 4. Address scope of EWOV's current jurisdiction

#### Recommendation 5

EWOV should:

- a) with the regulator, consider an expansion to its jurisdiction to cover a wider range of energy disputes so that it is able to effectively cover most consumer complaints in the energy sector.
- b) review the current \$20,000 monetary cap at the same time as any new expanded jurisdiction is being put in place.

#### Recommendation 6

To reduce confusion about the roles of the Ombudsman and regulator, EWOV should discuss with the ESC whether it would take responsibility for wrongful disconnection compliance investigations under its new approach on compliance and enforcement.



## 5. Work more effectively with Providers and Regulators to prevent complaints arising

### Recommendation 15

EWOV should improve its focus and increase resourcing for its systemic issues activities including:

- a) reviewing and updating its policy, procedures, training and compliance checking for systemic issues, and
- b) more actively engaging with, and referring matters to, the relevant regulators, particularly where a systemic issue highlights potential broader issues within a provider or in the sector

## 6. Shift to a to a three year strategic planning and budgetary cycle for enhanced capital expenditure planning and capability building.

### Recommendation 10

EWOV should:

- a) align its three-year strategic plan with a three-year budget forecast to provide the Board and management with greater capacity for capital improvement planning, skills acquisition and retention, and
- b) if necessary, seek relevant changes to its Constitution to allow for Board approval of annual budgets and funding to support a three-year budget cycle.

## 7. Update key internal complaint handling policy and procedures

### Recommendation 17

EWOV should:

- a) update and substantially revise its internal complaints policy. The policy needs to be much clearer on the framework for how EWOV handles service complaints about EWOV.
- b) should develop a stand-alone management report on internal service complaints. This should include:
  - the total number of complaints by category
  - whether EWOV is meeting its internal complaint timeframes
  - the outcomes of complaint investigation, and
  - analysis of root causes and steps taken to rectify issues resulting in complaints



- c) report periodically to the EWOV Board on internal complaints
- d) report internal complaints in its Annual Report
- e) provide a link to the internal complaints handling policy in the 'contact us' link on its website.

## 8. Provide more granular complaints data and improve reporting of its performance

### Recommendation 16

EWOV should:

- a) improve its performance and complaint reporting in its Annual Report and other publications. This should encompass greater granularity and use of consistent data sets year on year relating to:
  - customer and stakeholder satisfaction results
  - dispute handling timeframes including at all investigation stages
  - provider complaint numbers against each investigations stage
  - outcomes achieved
- b) work with the ESC and ANZEWOV to agree a consistent approach to develop a simple comparative benchmark based on Provider complaint numbers received by the Ombudsman per fixed number of customers (100, 1,000 or 10,000)
- c) work more broadly with its ANZEWOV counterparts and the ESC to promote nationally consistent complaints data reports for the energy and water sectors and Ombudsman schemes
- d) provide more detailed information about the socio-economic and demographic characteristics of customers bringing complaints to EWOV
- e) revamp its customer surveys applying consistent questions over time, analysing better real time data and publicly reporting enhanced insights to facilitate improvement action.



## 9. Strengthen efforts to increase awareness of its service, improve its accessibility and impact of its outreach activities

### Recommendation 4

EWOV should enhance its awareness raising, accessibility and outreach activities by:

- a) utilising the results of the Energy Consumers Australia bi-annual Energy Consumer Sentiment Survey to track progress on the impact its awareness raising initiatives
- b) reviewing its compliance with relevant website accessibility best practice standards and publicly reporting the action it is taking to address any weaknesses
- c) setting out more clearly on its website how it provides tailored support for customers with additional needs
- d) engaging with consumer organisations and community groups that represent vulnerable consumers to user test its publications and fact sheets to ensure they are accessible to those with special needs
- e) including in its community engagement schedule periodic joint activities with Providers, subject to ensuring arrangements for these events do not cause consumers to be confused about EWOV's role as an independent Ombudsman scheme

### Recommendation 1

EWOV should:

- a) provide on its website a graphical flowchart of its complaint handling process including the different complaint pathways, key timeframes and a summary of key considerations at each stage of the complaint process.
- b) work with other members of ANZEWO to encourage each Scheme to develop and publish a consistent dispute process flowchart to enable better comparisons of process steps and timeframes across all energy and water Ombudsman schemes.

### Recommendation 11

EWOV should

- a) define and publish a desired 'customer experience model'- what customers would want, need and expect to experience at each stage of the complaint process, and
- b) align aspects of its quality assurance framework, staff performance reviews and training, customer surveys and continuous improvement projects with the new customer experience model.



## Appendix 2: Dispute Resolution Benchmarks

The terms of reference for our review required us to consider EWOV's progress against meeting the Benchmarks for Industry-based Customer Dispute Resolution issued by the Australian Government in 2015.

This Appendix provides a summary of those measures, with cross references to chapters of our report where we have made recommendations or undertaken more detailed discussion.

### Accessibility

The office makes itself readily available to customers by promoting knowledge of its services, being easy to use and having no cost barriers.	
Summary of Benchmark Key Practices	Measures to comply with Key Practices
<p><b>Awareness/ promotion</b></p> <p>The scheme seeks to ensure the community is aware of its existence and promotes itself in the media, through consumer agencies and advocacy services or by other means in an inclusive way including information in appropriate languages, large text and audio.</p> <p>The scheme produces readily available explanatory material about the scheme and its timelines.</p> <p>The scheme requires scheme members to inform their customers about the scheme and that information about the scheme is available through scheme members.</p>	<p>EWOV's approach to accessibility is set out in its Accessibility Policy. EWOV continues to have a strong emphasis on community engagement and awareness raising. See Chapter 7 and Recommendation 4.</p> <p>See Chapter 7 for the explanatory materials available for customers. See also Chapter 11 on Accountability and Recommendation 16 where we recommend some improvement in reporting of timelines and complaint processes.</p> <p>See Chapter 7 and Recommendation 3. The various Energy and Water Codes (described in Chapter 4) place a requirement on providers to inform customers that they may lodge a dispute with the energy Ombudsman where the customer is not satisfied with the retailer's decision in the review and the retailer's action or proposed action.</p>
<p><b>Access</b></p> <p>The scheme seeks to ensure state-wide access and appropriate facilities and assistance for disadvantaged complainants.</p> <p>Initial contact with the scheme can be oral or in writing but the complaint must ultimately be reduced to writing.</p> <p>Terms of Reference must be clear.</p>	<p>Complaints can be lodged via its 1800 number, web complaint forms, fax or in writing. It has various forms of information and assistance available for vulnerable and disadvantaged consumers. It has a range of materials including fact sheets and videos on common types of disputes. These are available in multiple languages.</p>



<p>'Virtual barriers are minimised for example by providing an online complaints form.</p>	<p>See recommendation 4 about reviewing its website against the accessibility standards and providing clearer information as to what forms of assistance are available.</p> <p>Complaints can be made over the telephone with the service officer making a summary or via an online complaints form.</p> <p>An interpreter service is available</p>
<p><b>Cost</b></p> <p>No charge to customers.</p>	<p>EWOV provides a free service to consumers.</p>
<p><b>Staff Assistance</b></p> <p>Scheme's staff are able and adequately trained.</p> <p>Scheme's staff provide complainants with simple explanation of how the scheme operate.</p> <p>Scheme's staff assist complainants to make a complaint where assistance is needed.</p>	<p>EWOV provides induction and ongoing training for its staff. Customers are sent relevant materials about the scheme and facts sheets relevant to their complaint when their dispute is registered and referred to the provider.</p> <p>Service officers provide assistance to customers to help clarify issues in a complaint and the customers concerns are set out succinctly in the assisted referral email.</p>
<p><b>Use</b></p> <p>The scheme's processes are easy for complainants to understand and use with the consumer's case being presented verbally or in writing at the discretion of the scheme.</p> <p>Complainants may be supported by another person.</p>	<p>EWOV's processes are set out in its Charter in Section 1.3. EWOV'S processes are easy to use and complaints can be made verbally or in writing.</p> <p>A consumer can be assisted or represented by a third party. A third-party authorisation is required in these circumstances.</p>
<p><b>Acceptance by scheme</b></p> <p>Complaints are accepted or an appropriate and timely referral made where another dispute resolution office is more appropriate.</p> <p>A transparent process is followed for excluding potentially vexatious or frivolous complaints to ensure appropriate use of the scheme's resources and minimise unreasonable cost increases.</p>	<p>If the matter is outside EWOV's jurisdiction it is registered as an Enquiry and where relevant referred to another agency. Otherwise it is registered as an Unassisted or Assisted referral, except where the discretion is used to move it directly to an investigation.</p> <p>Under Section 6.3 of its Charter EWOV can exclude a complaint if the Ombudsman considers it is frivolous or vexatious, does not warrant further investigation or is more appropriately dealt with by another body.</p>
<p><b>Non-adversarial approach</b></p> <p>The scheme uses appropriate techniques including conciliation, mediation and negotiation to settle complaints.</p> <p>Proceedings are informal, discouraging legalism.</p>	<p>EWOV makes extensive use of conciliation in resolving complaints and its process is informal and non-legalistic.</p>



### Legal Representation

The scheme permits the use of a support person but generally only allows legal representation with permission. If one party is granted permission, so will the other party. If the industry participant is legally represented, it will be required to pay the legal costs of the consumer.

EWOV has a Legal and Paid Advocate Representation Policy (August 2018). The policy outlines EWOV's approach to cases where customers or providers wish to be represented by a paid advocate, such as a legal representative or a credit repair agent. It is aimed at ensuring that EWOV's services remain accessible to all customers. Use of paid representatives requires EWOV's permission and the costs of doing so are not met by EWOV.

EWOV's Fact Sheet 31 *Acting on Behalf of Someone with an EWOV Complaint* explains how customers can have someone act on their behalf, including lawyers or financial counsellors. The customer needs to complete EWOV's Authority to Act form to formalise the arrangement.

## Independence

The decision-making process and administration of the scheme are independent from participating organisations.	
Summary of Benchmark Key Practices	Measures to comply with Key Practices
<b>Decision-maker</b> <p>The scheme has a complaints decision-maker who is appointed for a fixed term. Neither the decision maker nor scheme staff are directly selected by scheme members or answerable to or having a relationship with them.</p>	<p>Clause 18.1 of the Constitution sets out the powers of the Board to appoint the Ombudsman and clause 18.2 provides that the Ombudsman must not be associated with any Participant. Clause 18.3 provides that the Board may terminate the appointment of any person as the Ombudsman (no just cause or period). Section 5 of the Charter sets out the role of the respective roles of the Board and Ombudsman for managing the scheme</p>
<b>Staff</b> <p>The scheme selects its own staff who are not answerable to scheme members.</p>	<p>Other than the appointment of the Ombudsman, Acting Ombudsman and Company Secretary staff are appointed by the Ombudsman and are not answerable to scheme members.</p>



### Overseeing entity

There is a separate entity overseeing the scheme's independent operation with responsibility for appointing or dismissing the Ombudsman, recommending or approving the budget, receiving complaints about the scheme, recommending and being consulted about jurisdictional changes, receiving regular updates about operations and receiving information about systemic problems.

The overseeing entity must have a balance of consumer, industry and where relevant other key stakeholders. Consumer representatives must be capable of reflecting consumer viewpoints and concerns and have consumers' and consumer organisations' confidence.

EWOV's Board and governance structure derive from its Constitution. It has an equal number of industry and consumer directors, and an independent Chair who must not be associated with any director or any company participating in the scheme.

The nine-person board comprises an independent Chairman, four consumer directors nominated by Victoria's Essential Services Commission and four energy/water industry directors elected by EWOV Limited's industry members. The Board appoints the EWOV Ombudsman.

The objects of EWOV Limited set out at Clause 3 of its Constitution, are to establish and operate an energy and water Ombudsman scheme and to appoint an energy and water Ombudsman.

The roles and responsibilities of the Board and Ombudsman are set out in section 5 of the Charter.

### Transparency

The scheme manages any actual or perceived conflict of interest and bias in a transparent manner.

The duties of Directors to act in the interests of the company are set out in Clause 15.2 of the Constitution.

EWOV has a Code of Conduct for its staff (last updated July 2019) with a detailed section on handling conflict of interest.

The handling of conflicts of interest for Board Members is dealt with in Section 10 of the EWOV Directors' Manual.

### Funding

The scheme has sufficient funding to enable its caseload and other relevant functions to be handled in accordance with the Benchmarks.

Under Clauses 11.7 and 11.8 of the Constitution (and section 8 of its Charter) the Board will, for each Financial Year, produce a proposed Annual Funding Figure for EWOV Limited and a proposed Budget, taking into consideration the proposed Annual Funding Figure and proposed Budget formulated by the Budget Committee, and will ensure that the Board's proposed Annual Funding Figure is put before a General Meeting of EWOV Limited to be voted upon at least 30 days before the commencement of that Financial Year.

In producing proposed Annual Funding Figures, the Board will seek to ensure that the level of funding is such that the Ombudsman is able to carry out his or her functions under this Constitution.



	See Chapter 9 and Recommendation 10 where we suggest moving from an annual budget approval cycle to a three-year cycle aligning budget to the strategic plan.
<b>Terms of Reference</b> Terms of Reference changes are made in consultation with relevant stakeholders including scheme members, industry and consumer organisations and government. Scheme members do not have a right to veto a change in jurisdiction, or to significant rules and procedures.	Section 17.1 of the Constitution states that EWOV "shall operate in accordance with and observe the roles, functions, powers and obligations set out in the Energy and Water Ombudsman (Victoria) Charter". The Charter explains what EWOV does, and does not do, and how it operates.  The EWOV Board must agree to any recommended amendment which must be discussed with the ESC prior to being voted on by EWOV's members (Providers) at a general meeting of members

## Fairness

The procedures and decision-making of the office are fair and seen to be fair.	
Summary of Benchmark Key Practices	Measures to comply with Key Practices
<b>Final Determinations</b> The decision-maker bases determinations on what is fair and reasonable having regard to good industry practice, relevant industry codes of practice and the law.	EWOV's Charter sets out the following factors it takes into account in handling complaints or making procedures including: <ul style="list-style-type: none"> <li>• relevant laws</li> <li>• any relevant licence</li> <li>• any relevant industry code</li> <li>• good practice;</li> </ul> any benchmarks the Commonwealth Government publishes about dispute resolution schemes; and what is fair and reasonable. See Chapter 9 and Recommendation 13.
<b>Procedural fairness</b> Complainants are told of their right to access the law if they are dissatisfied with the scheme's decisions.  Both parties are provided with information at the same time and can put their case, are told the arguments of the other party and can rebut these and are told the reasons for any decision in writing.	EWOV informs customers that if they are dissatisfied with a decision they can take the matter to a tribunal or court.  EWOV's complaint process follows the requirements of procedural fairness. Both parties are provided with relevant information and positions put by each other. There is detailed



Both parties are told why a complaint is outside jurisdiction or is otherwise excluded.

guidance on the steps involved in making a fair and reasonable assessment. See Chapter 9.

When a complaint excluded as being outside jurisdiction the reasons for this are explained to the complainant.

#### **Provision of information**

Complainants are encouraged but not compelled to provide information relevant to the complaint.

Scheme members can be required to provide relevant information unless confidentiality or legal reasons prevent this.

EWOV's Accessibility Policy (last update 2015) states that 'Where EWOV's ordinary processes are not accessible to an individual, EWOV will, on a case-by-case basis and in negotiation with the customer, consider the most appropriate way communicate with them and handle their complaint.'

Clause 3.10 of the Charter enables EWOV to choose not to handle, or to stop handling, a complaint at any time if it is fair and reasonable to do so where it has asked the consumer to give documents or information relevant to their complaint and the consumer has not done so; or is unable to contact the consumer because they change their contact details and don't tell EWOV the new details; or the consumer doesn't stay in contact with us or respond to our attempts to contact them.

Clause 3.7 of the Charter enables EWOV to tell a Provider to send it any information or documents they have, or that someone else holds for the Provider, that are relevant to the complaint. The participant must give it the information and documents.

#### **Confidentiality**

Scheme member information that identifies a third party may be provided to the other party with deletions.

The scheme preserves confidentiality unless disclosure is required by law or for a purpose specified in the Benchmarks.

Section 4 of the Charter sets out how EWOV handles information and reporting.

Clause 4.1 of the Charter sets out that EWOV will comply with privacy laws and its privacy policy for information it collects.



## Accountability

The office publicly accounts for its operations by publishing its final determinations and information about complaints and reporting any systemic problems to its participating organisations, policy agencies and regulators.	
Summary of Benchmark Key Practices	Measures to comply with Key Practices
<p><b>Procedures</b></p> <p>Guidelines and policies for dealing with complaints are available to scheme members, complainants and other interested bodies.</p>	<p>Chapter 7 covers EWOV's position statements, fact sheets and other guidance documents available on its webpage</p>
<p><b>Determinations</b></p> <p>Scheme members and other interested bodies have given availability to anonymized, written reports or summaries of determinations to educate them and to demonstrate consistency and fairness in decision-making.</p>	<p>EWOV has not had a formal Ombudsman determination since 2003.</p> <p>See Recommendation 13 on Ombudsman decisions and Chapter 10 on assurance on consistency and fairness in resolution outcomes.</p>
<p><b>Responding to complainants and scheme members</b></p> <p>The scheme uses comments from complainants and scheme members to inform continuous improvement of their internal processes and procedures and their public reporting.</p>	<p>EWOV has a feedback and complaints policy.</p> <p>Chapter 9 on internal complaints and Recommendation 17 sets out the improvements required to EWOV's current internal complaints policies and processes.</p>
<p><b>Annual Report</b></p> <p>The scheme publishes a detailed and informative annual report with statistical and other data about its performance including information about its jurisdiction, how the scheme works, how equitable access is ensured, new developments or key policy or education initiatives, scheme members and which has not met their obligations as scheme members.</p> <p>The report also includes the number and type of complaints and their outcomes, time taken to resolve complaints, systemic problems, representative case studies, information about how equitable access is ensured.</p> <p>The annual report is made public and distributed to scheme members and relevant stakeholders.</p>	<p>EWOV has an Annual Report that is made publicly available.</p> <p>Chapter 11 and recommendation 16 addresses issues relating to EWOV's Annual Report</p>



## Efficiency

The office operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.	
Summary of Benchmark Key Practices	Measures to comply with Key Practices
<p><b>Appropriate process or forum</b></p> <p>The scheme deals only with complaints that are within its jurisdiction. It will generally not deal with complaints that have been dealt with by another dispute resolution forum and where the scheme member's IDR procedures have not had reasonable opportunity to resolve the complaint. The scheme has mechanisms and procedures for referring complaints to other more appropriate fora.</p> <p>The scheme has mechanisms and procedures for dealing with systemic problems including investigating and referring these to relevant scheme members or regulators or policy makers.</p> <p>The scheme has a discretion to exclude vexatious and frivolous matters.</p>	<p>EWOV's jurisdiction is set out in its Charter. Clause 2.5 of its charter sets out that it 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. EWOV systemic reporting obligations differ slightly between energy and water sectors.</p> <p>Under clause 4.4 of its Charter (and Constitution) EWOV can 'refer to a matter in relation to a participant that holds an electricity or gas license to the Essential Services Commission if we think there is a problem with, or a change in, the participant's policy, practice or conduct that adversely affects, or could adversely affect, a number of customers ( a systemic issue)'. </p> <p>We set out in Chapter 10 , recommendation 15 that we consider EWOV should devote greater attention to systemic issues.</p>
<p><b>Timeliness</b></p> <p>The scheme considers timeliness in all its processes including acknowledging, responding to, investigating and deciding complaints.</p>	<p>EWOV currently has and is generally meeting timeliness KPIs. In Chapter 8 we set out our recommendation (Recommendation 9) for improving its complaint handling and decision process, including to improve the time taken to resolve disputes.</p>
<p><b>Tracking complaints</b></p> <p>The scheme has reasonable time limits for each of its processes which facilitate speedy resolution without compromising quality decision-making. The scheme has mechanisms to ensure compliance with time limits and track complaints. The parties are kept apprised of progress of complaints.</p>	<p>EWOV timeframes and monitoring of these are discussed in Chapter 8, including strengths in EWOV 's management information system.</p> <p>EWOV procedures and case management system has requirements for contact with the parties which, on our review of files ,is generally followed. There were some comments about delays from Providers about EWOV getting back to them when staff were away or there has been a change in conciliator.</p>



### Professionalism

The scheme recruits' staff with the requisite skills, qualifications and experience to perform the work efficiently.

We found EWOV staff operate professionally with the requisite skills and experience. Chapter 8 discusses the current EWOV staff experience profile, training and specialist expertise. Recommendation 12 addresses greater access to specialist expertise.

## Effectiveness

The office is effective by having an appropriate and comprehensive jurisdiction and periodic independent reviews of its performance.	
Summary of Benchmark Key Practices	Measures to comply with Key Practices
<p><b>Coverage</b></p> <p>The scheme's scope and powers of decision-maker are clear. These are sufficient to deal with the vast majority of complaints.</p> <p>The decision-maker has power to make monetary awards of sufficient size (consistent with the nature, extent and value of customer transactions) and other awards as appropriate.</p>	<p>The section on Coverage in Chapter 8 reviews the current scope of EWOV's jurisdiction, increase in numbers of complaints in new energy products and services being excluded, and the detailed review undertaken of the impact on energy Ombudsman's jurisdiction of new and emerging technologies by NSW University for ANZEWON.</p> <p>The ANZEWON 2019 Draft Report recommends that the energy Ombudsman jurisdiction be extended. In recommendation 5 EWOV'S jurisdiction will need to increase we agree that to remain effective in covering the vast majority of complaints in the energy sector.</p> <p>In Chapter 8 -Monetary Cap we review the current \$20,000 cap. Although we do not find clear evidence this is currently a major limitation, we recommend it be reviewed in the context of any increase in EWOV's jurisdiction (recommendation 5)</p>
<p><b>Systemic problems</b></p> <p>The scheme has mechanisms for referring systemic industry problems to an appropriate regulator for action if required. Also, to bring systemic problems to the attention of policy agencies or other relevant bodies such as industry associations.</p>	<p>EWOV's MOU with the ESC (September 2019) requires EWOV to provide to the Commission reports concerning emerging, systemic or regulatory compliance issues (cl. 5.4(b). With water issues, EWOV reports these to the now Department of Environment, Land, Water and Planning (DELWP).</p> <p>Chapter 10 deals with EWOV reporting to and engagement with the regulators on systemic issues.</p> <p>Recommendation 15 address these issues.</p>



### **Scheme performance**

The scheme has appropriately qualified staff and provides ongoing professional development and appropriate resources to allow staff to undertake their functions.

The scheme has procedures for receiving complaints about the scheme and referring these to the overseeing body.

The scheme responds to complaints and recommendations of the overseeing body in a timely and appropriate manner.

Chapter 9 and the section on Efficiency of Internal management comments on EWOV's staffing profile and quality of its training and professional development. In Recommendation 12 we address the issue of increasing availability of specialist expertise.

Section 11 and Recommendation 17 set out a number of improvements in EWOV's internal complaints handling policies, including for periodic reporting to the EWOV Board

### **Internal dispute resolution mechanisms**

Scheme members are required to set up internal dispute resolution mechanisms and to inform consumers about these. The scheme has the capacity to advise members about their internal dispute resolution mechanisms.

The various energy and water codes administered by the ESC set out the obligations for Scheme members to have internal dispute resolution mechanisms. See Chapter 4 for an outline of these Codes.. The various Energy and Water Codes also place a requirement on providers to inform customers that they may lodge a dispute with the energy Ombudsman where the customer is not satisfied with the retailer's decision in the review and the retailer's action or proposed action. See also Recommendation 3.

### **Compliance**

The scheme has mechanisms to encourage scheme members to cooperate with the scheme and to abide by scheme rules. Final determinations are binding on scheme members if accepted by the complainant.

The scheme has methods to mandate or improve compliance with decisions and ensure redress for complainants when a scheme member is non-compliant with a final determination.

Clauses 3.7, 3.8 and 3.18 of EWOV's Charter set out a Providers obligation to provide EWOV information and comply with a binding decision. If a Provider does not comply, EWOV can take action include referring the matter to the participant's Chief Executive Officer, EWOV's Board or the Essential Services Commission

Under Clause 10.2 of the EWOV Constitution the EWOV Board may end the membership of a scheme member if it does not comply with the EWOV Charter or any rules of EWOV. Prior to the 2018 amendments to the Constitution the Board had to put this resolution to scheme members and a majority of members had to approve. The EWOV Board has not had to use these powers with matters being sorted out through the upgrade policy or escalation to senior levels within the Provider.



### **Periodic Independent review**

The scheme is independently reviewed at set intervals. The review must be undertaken in consultation with stakeholders and include the scheme's progress towards meeting the Benchmarks, the appropriateness of the scope of the scheme, scheme members' and complainants' satisfaction with the scheme, whether the dispute resolution process is just and reasonable, the degree of equitable access to the scheme and the effectiveness of the scheme's constituent documents.

The results of the review must be available to stakeholders.

Clause 25.1 of EWOV's Constitution empowers the Board to conduct reviews of the Scheme in consultation with interested parties including customer and community representative groups.



## Appendix 3 – Review Scope of Work

EWOV issues Terms of Reference for the Independent Review in May 2019. These are summarised below.

As noted in clause 6.15 of the CDR Benchmarks Key Practices, the primary matters for consideration in a review include: The primary matters for inquiry and report include:

- EWOV's progress towards meeting the Benchmarks for Industry-based Customer Dispute Resolution:
  - i. Accessibility
  - ii. Independence
  - iii. Fairness
  - iv. Accountability
  - v. Efficiency
  - vi. Effectiveness
- Whether the scope of EWOV is appropriate;
- Scheme Participant and customer satisfaction with EWOV;
- Whether the dispute resolution processes used by EWOV are just and reasonable;
- The degree of equitable access to EWOV; and
- The effectiveness of the statute, charter, terms of reference or other documents establishing the EWOV, its jurisdiction, functions, rules and procedures.

The CDR Benchmarks require that an independent review be undertaken in consultation with relevant stakeholders.

The review will have full regard to surveys and reviews already conducted (as relevant). In addition to this, the reviewer will:

- review EWOV's case handling policies and processes, including our approach to systemic issues
- review a representative sample of case files to assess whether EWOV has acted efficiently, fairly and independently in handling the complaint
- review EWOV's customer and Scheme Participant survey results
- interview appropriate groups representing users of energy and water services and community groups representing public interest issues relevant to energy and water services
- survey or interview a sample of customers who have made complaints to EWOV
- survey a sample of Provider CEOs and other Scheme Participant staff as relevant



- interview Chairman and Chief Executive Officer of the Essential Services Commission
- speak with EWOV Board members
- meet with the Ombudsman and EWOV staff
- review EWOV's Quality Assurance Framework
- review EWOV's Charter and Constitution
- undertake other review and research activities as necessary, including consideration of the Australian and New Zealand Energy and Water Ombudsman Network report on challenges facing energy and water Ombudsman schemes (expected by 31 August 2019).

This review does not need to consider EWOV's funding structure, case fees or Board structure or performance.



## Appendix 4 – External Consultations

During the course of our review we consulted with a number of EWOV stakeholders, including the following:

### Consumer organisations:

- Consumer forum with representatives from consumer Action Law Centre, St Vincent de Paul, Renew, and Scope

### Providers

- Active Utilities
- AGL
- Alinta Energy
- CitiPower, Powercor and United Energy
- Energy Australia
- Energy Intelligence
- Globird Energy
- Lower Murray Water
- Origin Energy
- South East Water
- Sumo Energy
- WINconnect

### Other Individuals and Organisations

- Victorian Caravan Parks Association
- Chair and CEO of the Essential Services Commission
- Dr. Penny Crossley, University of Sydney (commissioned by ANZEWON to report on *How will the Australian and New Zealand Energy and Water Ombudsman's Schemes have to change to remain 'fit for purpose' in 2020, 2025 and 2030?*)