



ENERGY AND WATER
OMBUDSMAN
Victoria Listen Assist Resolve



Energy and Water Ombudsman Victoria - Systemic Issue Policy

17 April 2024



What is a systemic issue?

1. The Energy and Water Ombudsman Victoria's (**EWOV**) definition of a systemic issue is *a problem with, or change in, a scheme participant's (SP) policy, practice or conduct that adversely affects, or has the potential to adversely affect a number of customers.*
2. EWOV's definition of a systemic issue is derived from and informed by section 109C(1) of the *Electricity Industry Act 2000 (Electricity Industry Act)*, section 225 of the *Gas Industry Act 2001 (Gas Industry Act)* and clause 4.4 of the Energy and Water Ombudsman (Victoria) Charter (**EWOV Charter**).
3. EWOV supplements its understanding of systemic issues by considering definitions adopted by other Ombudsman schemes and other relevant best practice standards such as the *Benchmarks for Industry-based Customer Dispute Resolution 2015* which the Commonwealth Consumer Affairs Advisory Council has endorsed.

Why is EWOV concerned with systemic issues?

4. Addressing systemic issues helps to improve consumer and market outcomes by:
 - a. assisting a greater number of consumers affected by a systemic issue receiving appropriate redress e.g. consumers who have not raised complaints with EWOV but have nonetheless been impacted by a systemic issue;
 - b. SPs addressing underlying policies, approaches or practices that are driving complaints and thereby reducing the likelihood of the issue impacting other consumers;
 - c. EWOV highlighting outcomes from systemic issue investigations to encourage better practice across industry;
 - d. allowing EWOV to make referrals to stakeholders such as the Essential Services Commission (**the Commission**) to assist in the Commission addressing the underlying cause of systemic issues; and
 - e. enhancing consumer confidence in SPs and alternative dispute resolution more broadly.

What is EWOV's systemic issue authority?

5. EWOV's systemic issue authority is derived from the Electricity Industry Act, the Gas Industry Act, EWOV's Charter and the Memorandum of Understanding between the Commission and EWOV 2023 (**the MOU**). A copy of the MOU is available [here](#).
6. In relation to energy, section 109C(1) of the Electricity Industry Act and section 225 of the Gas Industry Act both provide that EWOV may refer a systemic issue relating to a licensee to the Commission. This power is also reflected in clause 4.4 of EWOV's Charter which provides that EWOV can refer a matter in relation to a participant that holds an electricity or gas license to the Commission if EWOV thinks there is a systemic issue.

7. The MOU further informs EWOV's systemic issue authority and what steps EWOV will take prior to making systemic issue referrals to the Commission. It provides that prior to referring a possible systemic issue to the Commission EWOV will:
 - a. carry out initial analysis and investigation regarding the nature and extent of the possible systemic issue, including escalation to higher level management at the relevant energy or water business where necessary to progress the investigation; and
 - b. where possible and appropriate, investigate and resolve the systemic issue, obtaining redress for affected consumers.
8. In addition, the MOU provides for EWOV to report or refer information, complaints and insights to the Commission, including potential compliance and enforcement matters. This includes in relation to any insights regarding the water industry.

How does EWOV identify potential systemic issues?

9. EWOV identifies potential systemic issues through a range of methods including EWOV:
 - a. analysing complaints, data and trends including:
 - i. increases or changes in complaint patterns;
 - ii. total and/or proportional rates of complaints between comparable SPs;
 - iii. total and/or proportional rates of complaints impacting particular types of consumers - for example, consumers experiencing vulnerability; and
 - iv. complaint insights indicating an SP may be adopting a consistent policy or approach in particular circumstances that is likely to affect all or a substantial number of its customers;
 - b. using information provided by other stakeholders, such as consumer representative groups to inform our analysis of and contextualise our case insights; and
 - c. self-reports of systemic issues made at the discretion of SPs.

How does EWOV engage with SPs in relation to systemic issues?

10. When EWOV proactively identifies a potential systemic issue, we decide whether it should be prioritised in our current work program. This decision may be influenced by a range of factors including:
 - a. potential consumer and/or market harm stemming from the conduct;
 - b. redress that may be available to affected consumers;
 - c. whether another body is more appropriate and/or is already handling the potential systemic issue; and

- d. the resources required to progress the investigation.

11. If EWOV identifies a potential systemic issue and chooses to investigate it, EWOV will:

- a. write to the relevant SP to inform them that EWOV has identified a potential systemic issue, referencing the relevant data and/or complaints where applicable;
- b. explain EWOV observations of the practices, including how consumers could potentially be adversely impacted; and
- c. request information and/or documents from the SP to better inform EWOV's understanding of the potential systemic issues which are likely to include:
 - i. the cause(s) of the potential systemic issue;
 - ii. the extent of the potential systemic issue including the number of consumers impacted;
 - iii. further details of specific cases that have informed the potential systemic issue investigation;
 - iv. steps the SP has taken to resolve the potential systemic issue including any redress provided to consumers;
 - v. the SPs broader policy and/or approach related to the potential systemic issue and other related practices;
 - vi. the number and details of complaints consumers have made related to the potential systemic issue;
 - vii. whether the SP had identified the issue and if so, copies of any reports or findings that followed its identification and, if applicable, subsequent investigation; and
 - viii. other relevant details to help EWOV assess whether it considers the issue is a potential systemic issue and the nature and extent of its impact.

12. Consistent with our Charter, if EWOV proactively identifies a potential systemic issue but determines not to investigate it at that time, EWOV may still take other appropriate actions. This includes:

- a. providing relevant insights and/or making recommendations to providers regarding their policy, practice or conduct; and
- b. reporting our observations and insights to another body such as the Commission.

13. EWOV may still choose to investigate the issue at a later stage if there is a change in circumstances, such as if EWOV identifies further complaints relating to the issue. If EWOV has provided relevant insights to another body, we will engage with that body prior to commencing a potential systemic issue investigation to limit the likelihood of the SP having to respond to multiple investigations.

14. If an SP self-reports a systemic issue to EWOV, EWOV will work with the SP to ascertain all relevant circumstances to inform appropriate next steps, including whether the SP has reported the systemic issue to any other bodies e.g. the Commission.
15. If after receiving the relevant information and documents, EWOV decides:
 - a. the issue is not systemic in nature;
 - b. the systemic issue has been resolved; and/or
 - c. EWOV does not consider it appropriate to continue the potential systemic issue investigation for another reason(s)

EWOV will inform the SP in writing.

16. If after receiving relevant information and documents, EWOV consider more information is necessary, EWOV may request further information and/or documents from the SP.
17. If after assessing all relevant information EWOV considers there is a systemic issue, EWOV will engage with the SP to try and reach an agreed solution. This may involve EWOV:
 - a. meeting with the SP to discuss the systemic issue and potential resolutions;
 - b. making suggestions and/or discussing improvements and/or remedial actions the SP may take including redress that may be provided to affected consumers; and/or
 - c. when an agreed resolution cannot be reached, escalating the issue internally within both EWOV and the SP.
18. If a systemic issue cannot be resolved to EWOV's satisfaction, EWOV may make formal and finalised recommendations to the SP to address the systemic issue (**recommendations**). The recommendations will be based on a range of factors including:
 - a. relevant laws;
 - b. good industry practice; and
 - c. other factors informing what EWOV considers is fair and reasonable in the circumstances.
19. The recommendations are not binding. If the SP does not accept a recommendation, EWOV will request the SP to provide written reason(s) for its approach. The purpose of this approach is to maintain a record of what steps the SP has taken to resolve the potential systemic issue and the reason(s) for not implementing recommendations. This helps inform EWOV in relation to any further steps EWOV considers appropriate.

What other actions does EWOV take in relation systemic issues?

20. If after assessing all relevant information, EWOV considers there is a systemic issue:

- a. in accordance with section 109C(1) of the Electricity Industry Act, section 225 of the Gas Industry Act, clause 4.4 of the Charter and the MOU, EWOV may refer the systemic issue to the Commission. When and how EWOV makes referrals of this nature are informed by the MOU;
 - b. EWOV will report these issues to the EWOV Board at bimonthly meetings. EWOV will de-identify any affected consumers and SPs in these board reports; and
 - c. EWOV may, at the discretion of the Ombudsman, use the findings of the systemic issue as a de-identified case study to help inform other SPs of EWOV's view of good industry practice.
21. If EWOV decides to refer a systemic issue to the Commission, EWOV will usually provide notice to the relevant SPs prior to doing so.
22. EWOV may use the insights gleaned from systemic issues investigations to inform a range of other actions including:
- a. driving market improvements through showcasing better practice;
 - b. providing insights to other stakeholders including:
 - i. the Australian Energy Regulator;
 - ii. the Department of Energy, Environment and Climate Action;
 - iii. Consumers Affairs Victoria; and
 - iv. the Australian Competition and Consumer Commission;
 - c. informing the content of other EWOV external publications including EWOV's annual report; and
 - d. making policy, regulatory and/or law change recommendations to relevant stakeholders.