



10 November 2011

Mr Declan Leamy
Project Manager
Essential Services Commission
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Melbourne
VIC 3000

By email: Declan.Leamy@esc.vic.gov.au

Dear Mr Leamy

Re: The Essential Services Commission's Guideline 19 – Energy Price and Product Disclosure Issues Paper

Thank you for the opportunity to comment on the Essential Services Commission (ESC)'s Guideline 19 – Energy Price and Product Disclosure Issues Paper (the paper).

The Energy and Water Ombudsman (Victoria) (EWOV) welcomes the ESC's proposal to change Guideline 19 to improve the delivery of pre-contract information to customers and make it relevant to advanced (smart) meters and time of use tariffs. Our case handling experience suggests that the proposals in the paper meet a genuine customer need for greater and better information before entering into a market contract.

This submission provides EWOV case data that supports the ESC's proposals to change Guideline 19 and addresses the questions raised in the paper.

EWOV's case handling statistics support the need for changes to Guideline 19

EWOV case data clearly suggests that customers are increasingly concerned about not getting enough clear and understandable information before entering into an energy market contract.

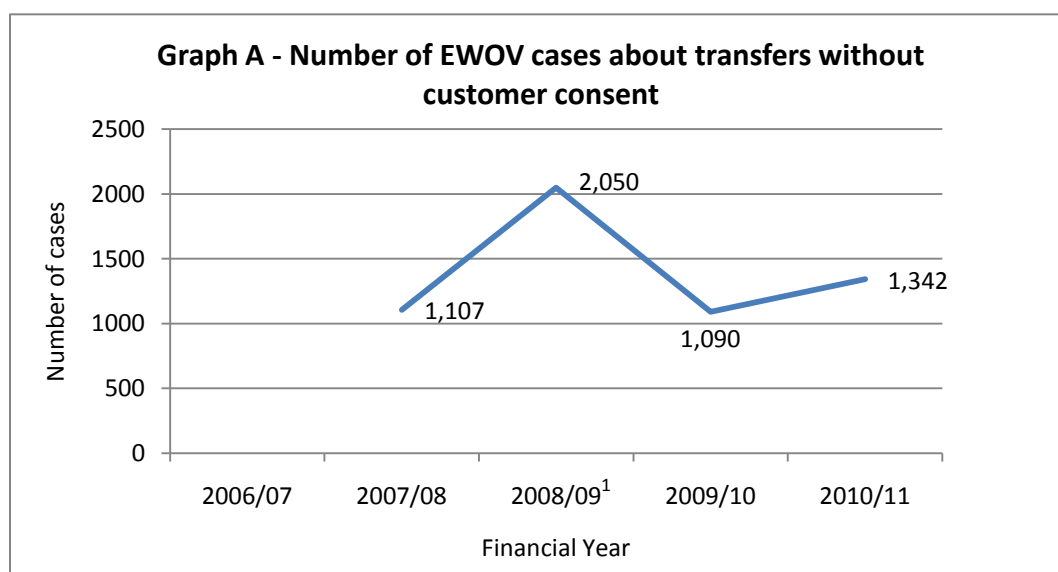
Customer concerns about this matter fit into four distinct EWOV issues categories.

Transfer without consent

These are cases where the customer states that a retailer gained the billing rights for a property, without having obtained their consent. Depending on their existing contract, the

customer may also find themselves liable for an exit fee. If greater information is provided to a customer at the time of marketing, their consent is likely to be more informed and the agreement more satisfactory to them. This situation is different to a transfer error, where the billing right to a customer's meter is transferred by mistake.

Graph A below shows the number of EWOV cases received over the past five financial years, from customers claiming that they were transferred to an energy retailer without their explicit and informed consent. From 1 July 2009, EWOV stopped using the 'transfer without consent - no prior contact' issue category resulting in a decrease in the total number of 'transfer without consent' cases¹. This shows itself in Graph A as an apparent 'spike' in cases for the 2008/2009 financial year. In the last financial year – compared to 2009/10 – EWOV 'transfer without consent' cases increased by 23%, from 1,090 to 1,342 cases.



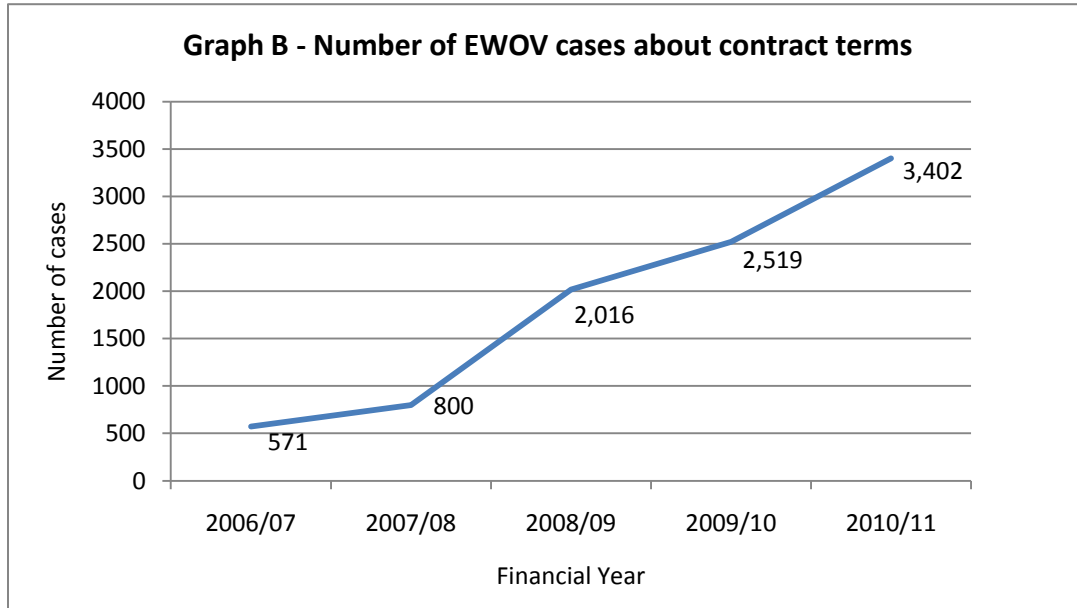
Transfer contract terms

This issue category involves cases where a customer questions the terms of a contract, often involving exit fees. Failure by a retailer to draw attention to some contract terms can lead to claims that the customer did not give their explicit informed consent to the contract.

Graph B below shows the number of EWOV cases received over the past five financial years, from customers questioning the terms of their contract after a recent transfer. In the last

¹ This change was needed to make a distinction between two different circumstances - one where there was a marketing experience, but explicit informed consent to a transfer was not given by the customer, the other where there was no contact yet a transfer occurred regardless. Any transfer without contact with a customer is an error and is registered as a 'transfer in error'.

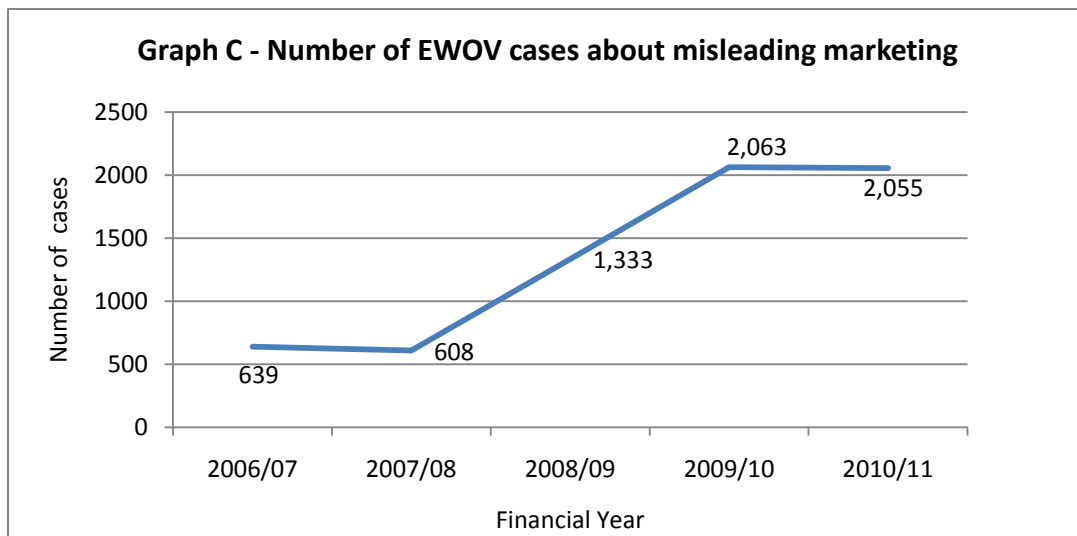
financial year – compared to 2009/10 – EWOV ‘transfer contract term’ cases increased by 35%, from 2,519 to 3,402 cases.



Misleading marketing

In these cases, the customer states that a marketer has provided them with potentially misleading information. ‘Misleading’ is a broad term that includes an omission, or an inadvertent misrepresentation of information.

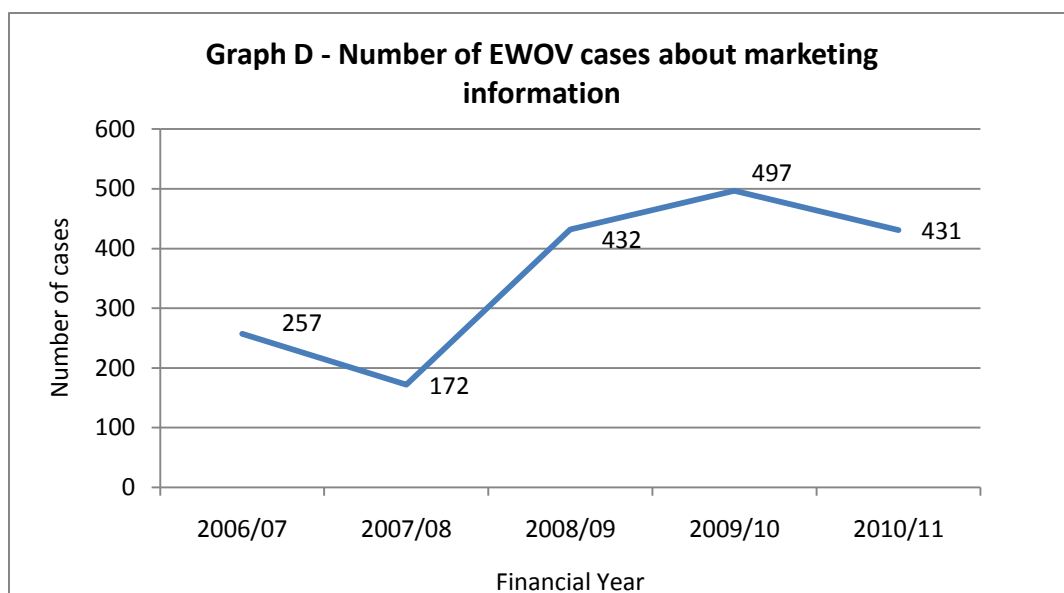
Graph C below shows the number of EWOV cases received over the past five financial years, from customers claiming that they experienced some misleading energy retail marketing. After significant year-on-year increases, EWOV ‘misleading marketing’ cases stabilised this financial year.



Marketing information

These are cases where a customer states they received marketing information that they did not understand or believe is incorrect. Some time later, customers may also find out that they were misinformed or not fully informed of details during the marketing experience – rather than being intentionally misled. An example is where a customer does not receive an Offer Summary when requested.

Graph D below shows the number of EWOV cases received over the past five financial years, from customers claiming they received marketing information that they did not understand. In the last financial year – compared to 2009/10 – EWOV ‘marketing information’ cases decreased by 13%, from 497 to 431 cases.



Questions raised in the paper

2.3

The Commission seeks comments on the following proposed text and its practical implementation:

‘The home page of the retailer’s principal website must have a link that allows a person to access the retailer’s standing offer easily and logically. The link must be called “Standing Offer – Price and Product Information Statement.”’

EWOV supports the ESC’s proposal to have a hyperlink in all retailer website home pages, which with a single mouse click takes a customer directly to the retailer’s Price and Product

Information Statement. To ensure a direct link and to include market offers, EWOV suggests minor amendments to the proposed text as follows:

“The home page of the retailer’s principal website must have a link that allows a person to **directly** access the retailer’s standing **and market** offers easily and logically. The link must be called “Standing **and Market** Offers – Price and Product Information Statement.”

2.4 – part one

The footnote to clause 3.1(a) of the Guideline states that
“This clause is not intended to prevent retailers from asking questions about these characteristics. However, it cannot be mandatory that the customer provide the information in order to proceed through the online process and obtain a price and product information statement.”

The Commission seeks comments on whether retailers could provide TOU Price and Product Information Statements to customers without requiring the information specified in clause 3.1(a) of the Guideline.

Due to the nature of Time of Use (TOU) tariffs, EWOV would expect that before providing a customer with an accurate TOU Price and Product Information Statement, retailers would as a minimum, need to know the customer’s meter type to determine its capacity for a TOU tariff. They do not require any personal information from the customer.

EWOV believes however, that retailers should take further steps to inform customers about changing to a TOU tariff by seeking the following information:

- Whether the customer has any dedicated off-peak appliances, such as an electric hot water system or electric slab heating on a time switch. A TOU tariff will affect the off-peak billing of these appliances.
- Whether the customer has electric air conditioning. The use of air conditioning during the middle of a summer day when the TOU tariff rate is at its highest will have a big impact on a customer’s bills.
- The type of household occupancy to help a customer understand the financial impact of TOU tariffs based on the typical usage patterns for particular groups. Household occupancy could fit into the following categories:
 - a single professional living in a unit/townhouse
 - a working couple with no children
 - a single income family with two school-age children
 - ‘empty nesters’ and retirees.

It is important that before entering into a contract, marketers and retailers explain to customers the cost implication of them *not* shifting their electricity usage to off-peak times – potentially that their bills will increase. This information could be provided as a highlighted text box on the front page of any TOU Price and Product Information Statement.

2.4 – part 2

Clause 3.1 of the Guideline states:

‘If the specified retailer requires the customer’s meter type, the customer must be provided with plain English explanations so that they can identify their meter type easily.’

Is it reasonable to expect that customers would know what their meter type is?

Are current meter type explanations currently meeting small retail customers’ information requirements?

Should meter type definitions be standardised in simple English across the electricity industry? If so, what meter types require definition and how should they be defined?

It is not reasonable to expect customers to know the type of meter at their property. When customers first contact EWOV, we ask whether an interval or advanced (smart) meter is installed at their property. Often, EWOV finds that customers do not know what meter they have, and are sometimes confused about the differences between analogue accumulation meters, interval meters and advanced (smart) meters.

EWOV finds that current explanations of the different meter types vary across the industry. Many customers find out about the technical differences between meters when talking to a retailer customer service representative over the phone. This description would likely vary between representatives and energy companies.

EWOV would like to see the ESC introduce a standard plain English definition for each meter type to be used universally within the industry. The definitions should be set out in the Guideline, published on the ESC’s website, used in Price and Product Information Statements and Offer Summaries, and contained on all energy company websites. EWOV’s customer fact sheets, ‘Electricity, Gas and Water Meters’² and ‘Smart Electricity Meters’³ contain clear descriptions of the different meter types.

² See <http://www.ewov.com.au/site/documents/fact-sheets/Meters.pdf>

³ See <http://www.ewov.com.au/site/documents/fact-sheets/Smart-meters.pdf>

2.5

A retailer's offer contained in a Price and Product Information Statement or on the Your Choice website should contain a hyperlink that brings the consumer directly to the specific offer on the retailer's website.

EWOV strongly supports a direct 'one click' hyperlink between a retailer's offer on the 'Your Choice' website and the corresponding offer on the retailer's own website. This will ensure that customers are signing up to the exact offer they found using 'Your Choice'. EWOV also suggests that the website links are accessible with slower internet connection speeds and compatible with the different devices that connect to the internet, such as smart phones and computer tablets (iPads).

2.6

The Price and Product Information Statement and the Offer Summary could be merged into a single document.

That the Guideline be amended to confirm that the Offer Summary must always be provided to customers during any sales or marketing activity.

EWOV sees no material difference between the Price and Product Information Statement and the Offer Summary. EWOV welcomes the merging of the two documents to avoid duplication of materials, save retailer resources, lessen customer and industry confusion and increase the likelihood of retailers using the document. The ESC should use this opportunity to redesign the information document so that it is: in plain English; clearly structured with the key consumer messages on the front page; and highlighted in some way to make the information more visible.

EWOV welcomes the amendment of Guideline 19 so that the Offer Summary **must always** be provided to customers during any sales or marketing activity. EWOV finds that many customers have not heard of an Offer Summary and often were not provided with one by marketers.

2.7

The term 'Early Termination Fee' to be amended to 'Exit Fee' on all Price and Product Information Statements.

The Price and Product Information Statement should include specific exit fee information.

Retailers should include in the Price and Product Information Statement a list of the items comprising the supply charge.

The Price and Product Information Statement should include information about how a complaint or dispute can be lodged.

If a retailer has subscribed to the EAL Code of Practice, that retailer must ensure that sufficient information is provided in the Price and Product Information Statement / Offer Summary to enable a complaint to be made to the EAL Code Compliance Office.

There is an increase in customers contacting EWOV about exit fees. In the 2010/11 financial year, compared to 2009/10, there was a 35% increase in case numbers, from 1,870 to 2,533 cases. This case data suggests a customer need for clearer and better information about exit fees at the time of marketing and before entering a contract. The majority of customers contacting EWOV about this issue either did not know that an exit fee would be applied, or believed it to be higher than they expected or agreed to.

EWOV agrees that 'exit fee' is a better understood and more common term than 'early termination fee'. EWOV welcomes a move to use the term 'exit fee' in customer focused communications across the industry.

EWOV welcomes the disclosure to customers of cost items that contribute to the supply charge. This greater transparency will help inform customers in choosing a retailer.

The Price and Product Information Statement should include EWOV contact information to help a customer lodge a complaint after they have tried to resolve a dispute with their energy company directly. We suggest that EWOV's 1800 500 509 phone number and www.ewov.com.au website address be included. It is also important to include the contact details of the EAL Code Compliance Office and the EAL website address.

2.8

Energy retailers should present their tariff information in a standard format and use standardised terminology. How should such a standard format be developed?

Retailer tariff information should be presented to customers in simple and plain English, with all technical terms clearly defined. For easy customer reference and comparison between retailer offers, it is important that the standard format is straightforward, consistent and contained within a table or other user-friendly design.

2.9

Are there currently any constraints that are preventing retailers from meeting the current Guideline requirements to provide updated pricing information within five business days?

As most tariff changes are known to retailers in advance, the timeframe does not appear to be too onerous.

2.10

A specific reference to the Order in Council S315 (Nov 2008) that obliges retailers to provide the Commission with at least one market offer will be included in the Guideline.

EWOV supports a specific reference in the Guideline to the Order in Council S315 (Nov 2008), as a citation for the obligation on retailers to provide the ESC with at least one market offer for publication on the 'Your Choice' website.

2.11

All energy retailers should be required to use the DPI's distribution zone identification when compiling Price and Product Information Statements.

It is important that distribution zones are correct and up-to-date for several reasons, one of which is that they are a factor in calculating retail tariffs for customers. EWOV agrees that the Department of Primary Industries website is a suitable reference for determining distribution zones⁴.

2.12

What information must a retailer provide to customers to ensure they understand the implications of switching to, or between, TOU tariffs?

Should customers also be given information, at the point of sale, about how to maximise their energy efficiency and potential saving from their time of use plans?

To improve customer understanding of the time of use plans should retailers provide consumers with some examples of low, medium and high energy usage and which plans may best suit their need?

⁴ See <http://new.dpi.vic.gov.au/energy/electricity/electricity-distributors> and <http://new.dpi.vic.gov.au/energy/gas/gas-distributors>

In the 2009/2010 and 2010/2011 financial years, EWOV received 251 and 123 cases respectively where customers complained about TOU tariffs. In analysing these cases, the main customer complaint about TOU tariffs is when customers install a bi-directional meter to record solar and find that their retailer has moved their electricity account to a TOU tariff without their knowledge. This creates significant problems when a customer has a dedicated off-peak appliance, such as an electric hot-water system. Also, some customers called EWOV to complain that while they were informed that they would be put on a TOU tariff, they did not fully understand the cost implications of this change on their bills.

Due to the complexity of TOU offers, customers may not fully understand the impact that changing to a TOU will have on their bills. It is difficult for a customer on a single tariff rate to project their future energy patterns over several different time periods to decide whether a TOU tariff will result in cheaper electricity bills. EWOV believes that retailers and marketers have a responsibility to provide customers with clear and useful information about changing to a TOU tariff. The type of pre-contract information that EWOV believes should be provided is set out above in the response to question 2.4.

In relation to energy efficiency and potential savings from a TOU tariff, customers should be provided, at the time of sale, with a comparative table to show the average cost of using each large appliance (washing machine, clothes dryer, air conditioning split system) during each TOU period (peak, off-peak and shoulder). This should be in a kilowatt/hour and a dollar amount. Also, if retailers provide customers with examples of low, medium, and high energy usage patterns under a TOU tariff, it will improve customer decision making.

EWOV suggests that the ESC consider other solutions outside pre-contract information to address concerns about whether a customer understands the implications of agreeing to a TOU tariff. One option is a mandatory requirement that during the first 12 months of a TOU market contract period, a customer has the option to change back to their original tariff rate (such as a single rate), without a financial penalty being applied. This gives a customer time to compare their new TOU bills with their old single-rate bills.

We trust that the above comments are helpful. Should you require further information or have any queries, please contact Justin Stokes, Senior Research and Communications Officer on (03) 8672 4272.

Yours sincerely



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