



29 November 2013

Access to Justice Arrangements
Productivity Commission
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Canberra City ACT 2601

By email: access.justice@pc.gov.au

Dear Commissioners

Submission to the Productivity Commission Inquiry into Access to Justice Arrangements

Thank you for the opportunity to comment on the Productivity Commission's *Access to Justice Arrangements Issues Paper 2013* (the Issues Paper).

As an industry-based external dispute resolution scheme, the Energy and Water Ombudsman (Victoria) (EWOV) provides alternative dispute resolution services to Victorian energy and water consumers by receiving, investigating and facilitating the resolution of complaints. In making this submission, EWOV's comments are based on our experience in dealing with energy and water complaints that come to us after they have not been resolved between a customer and their energy or water company.

EWOV is also a founding member of the Australian and New Zealand Ombudsman Association (ANZOA). EWOV supports ANZOA's response to the Issues Paper. The comments made in this submission are supplementary to ANZOA's response to the Issues paper.

Background

EWOV was established in 1995, initially to handle electricity cases following the privatisation of the electricity sector in Victoria. EWOV's jurisdiction has been expanded to include cases about natural gas, liquefied petroleum gas (LPG) and water. As at 30 June 2013, EWOV had 71 members (scheme participants) covering Victorian energy retailers, energy distribution businesses and water corporations.

EWOV can assist with most issues that arise between customers and electricity, gas and water customers, including the provision and supply of a service, the failure to provide or supply a service, billing, credit, payment arrangements, disconnection and restriction, marketing, transfer, poles, wires, pipes, meters, vegetation management and land.

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EWOV has experienced year on year growth in the volume of cases received (see Figure 1 below). Of note, EWOV has experienced an increase of 106% increase in workload over the past five years.

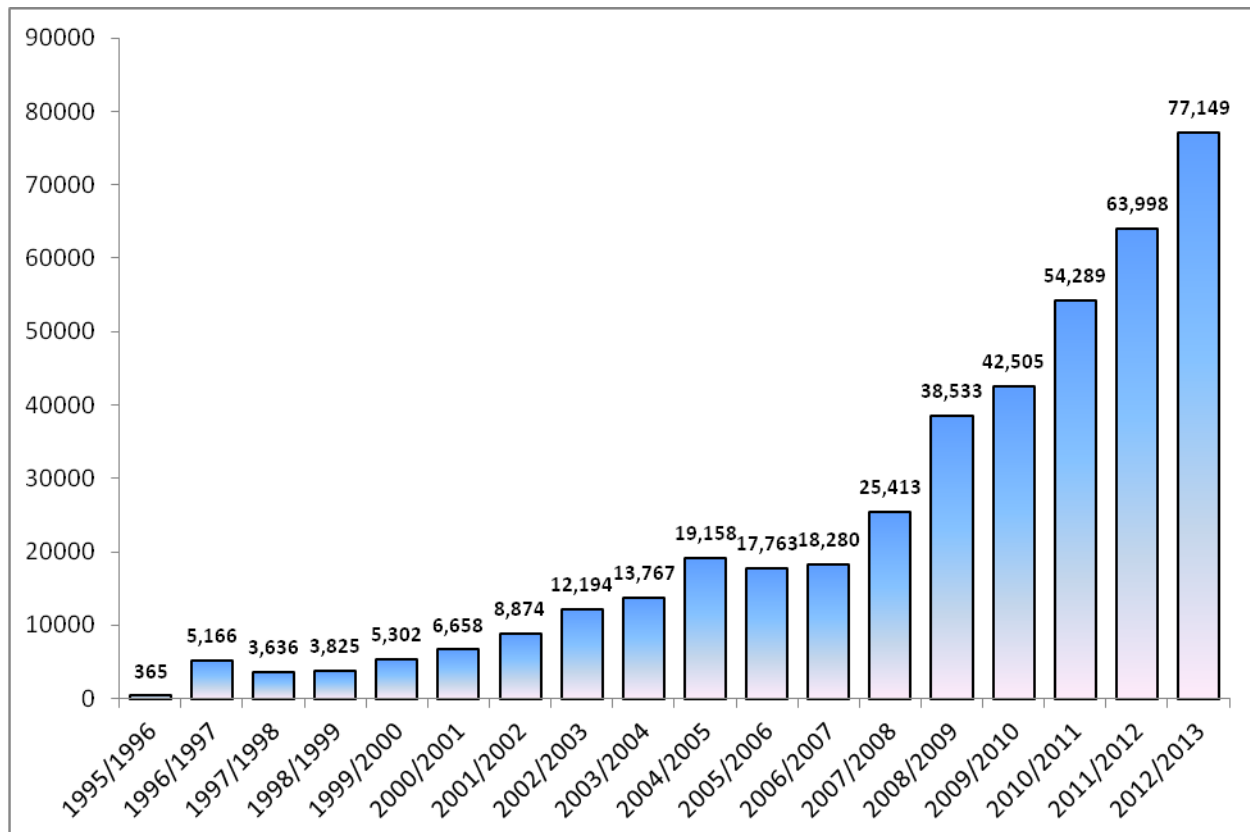


Figure 1 The number of EWOV cases received

This growth cannot be attributed to a single cause but rather significant change in the energy and water industries and the capacity of EWOV's members to manage customer concerns that arise from this. The volume of cases received by EWOV clearly indicates the essential role played by EWOV in providing customers with access to fair, independent and efficient dispute resolution.

External Dispute Resolution

As an industry-based external dispute resolution scheme EWOV must satisfy the Department of Industry, Science and Tourism *Benchmarks for Industry-Based Customer Dispute Resolution Schemes*¹ (the National Benchmarks):

- accessibility
- independence
- fairness
- accountability
- efficiency
- effectiveness

Given EWOV's case handling experience, EWOV's comments will be focused on the questions raised in the Issues Paper about Ombudsmen as an informal dispute resolution mechanism.

The scope and operation of EWOV

Accessing EWOV

To ensure accessibility to Victorian energy and water consumers, EWOV is a free service and the process for lodging a complaint is informal and straightforward:

- EWOV's free call phone number is widely promoted. 80% of our cases are received by telephone².
- Consumers can also lodge complaints by email, via our website as well as in writing, by fax or in person³.
- High consideration is made for alternative arrangements for access by customers with special needs, including:
 - the use of the National Relay Service for customers with a hearing or speech impairment
 - a free Telephone Interpreter Service for customers of a culturally and linguistically diverse background
 - a ring-back service for customers with restricted phone services and for customers calling from mobile phones
 - the ability for consumers to raise complaints by a third-party representative.

¹ <http://www.anzoa.com.au/National%20Benchmarks.pdf>

² EWOV's 2012-13 Annual Report, page 15;

³ 19% of customers contact EWOV via our website and a further 1% used fax or made their complaint in person. This information is available via EWOV's 2012-13 Annual Report, page 15.

Who contacts EWOV?

In 2012-13, we assisted:

- 72,058 residential customers (93%)
- 4,791 business customers (6%)
- 300 not-for-profits or government customers (<1%)

Of these customers, 73% were from metropolitan Melbourne and 27% from regional and rural Victoria.

It is unusual for a party to require representation by a professional advocate such as a legal representative, though complaints are lodged on behalf of customers by friends, family members or financial counsellors. EWOV's processes are designed to provide user friendly and accessible dispute resolution for customers and members.

84% of the customers who contacted EWOV in 2012-13 did so because they were dissatisfied with the information, advice or outcome of their contact with their energy or water company. This indicates a strong need to customers to have an accessible external dispute resolution option available to resolve their energy and water concerns.

Dispute resolution processes

EWOV uses a number of dispute resolution processes to ensure that cases are handled by the most appropriate process, delivering efficient and effective outcomes for both customers and EWOV members.

Referred Complaint

Unassisted Referral – where a customer has not yet spoken with their company about their complaint and they are referred back to the company's contact centre.

Assisted Referral – where a customer has spoken with someone at their company's contact centre about their complaint, but it remains unresolved and the matter is referred to a higher level complaint resolution officer at the company. The company has three business days to contact the customer and 15 business days to resolve the complaint.

In 2012-13, 84% of EWOV's complaints were Referred Complaints. Importantly, in 2012-13 82% of surveyed customers who had their complaint handled through EWOV's Unassisted Referral or Assisted Referral process were satisfied with this process for resolution.

Investigation

A complaint for investigation is registered where:

- an Assisted Referral has failed, as the matter remains unresolved, and the customer has recontacted EWOV, or
- the matter is complex and unlikely to be resolved as an Assisted Referral, or
- the company has requested an escalation to an investigation.

If EWOV identifies that the complaint can be resolved through customer education and direct negotiation with the customer and their company to reach a fair and reasonable outcome within 24 hours, EWOV will attempt Real Time Resolution of potential complaints for investigation. This process effectively matches the type of dispute with the most efficient and effective process to resolve it.

In 2012-13, EWOV opened 10,062 investigations and finalised 8,717 investigations.

EWOV has comprehensive case handling policy and procedures and an extensive ongoing learning and development program, which supports fair and independent decision making. The effectiveness of this program was highlighted by the findings of an independent review of the fairness and independence of EWOV's Assisted Referral and Real Time Resolution process undertaken by Cameronralph Navigator early in 2013. Positively, it was found that these EWOV processes were impartial and reflected early resolution External Dispute Resolution outcomes.

Timeliness of resolution

EWOV's processes provide timely resolution to customers. As noted above, EWOV's Assisted Referral and Real Time Resolution processes deliver quick resolutions to customers through the use of higher level referrals and immediate negotiation about the issues in dispute. However, where a detailed investigation is required EWOV's Investigation process also delivers timely resolution of customer complaints about energy and water companies. For example, of the 8,717 Investigations that EWOV finalised in 2012-13, 90% were finalised in less than 90 days (see Figure 2 below).

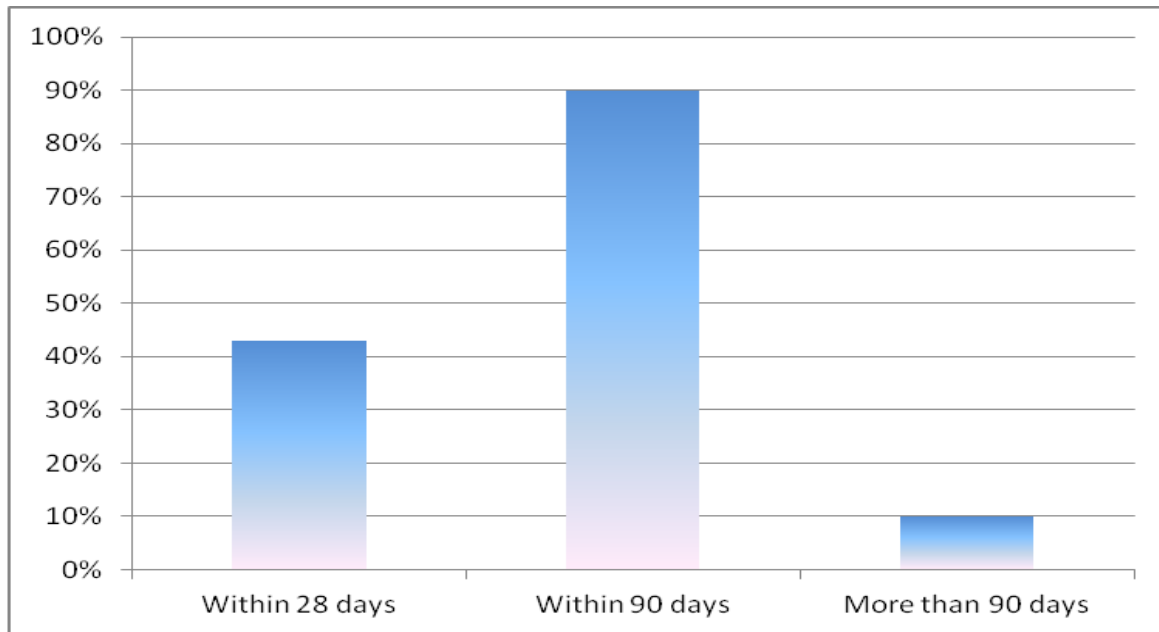


Figure 2: Time taken to finalise the 8,717 Investigations

Changes in the energy and water industries demands that EWOV continues to innovate to improve the efficiency of the service provided to customers and energy and water companies. More detail on EWOV's operations and efficiency improvements can be found in EWOV's 2012-13 Annual Report.

Case outcomes

EWOV resolves disputes equitably, confidentially and on an individual basis. The resolutions aim to be fair, just and independent, informal and to take into consideration the wider context of:

- what is fair and reasonable?
- what constitutes good industry practice?
- what lies within current law?

Most complaints that come to EWOV are resolved through a negotiated or conciliated outcome. In 2012-13, for example, 84% of all cases were resolved with a negotiated or conciliated outcome. These outcomes of the complaints will depend on the circumstances of the complaint and can include:

- an apology
- billing the customer's account again
- payment of a customer service gesture
- debt waiver
- transfer back to original retailer

- help in negotiating a payment plan
- payment of a guaranteed service level.

In the absence of a conciliated outcome EWOV has the power to make a determination of the merits of the complaint that is binding on EWOV's member⁴. This decision is published with reasons and in a de-identified form.

EWOV effectively resolves complaints that are both straightforward and also highly complex. The two case studies below illustrate the diversity of complaint types that EWOV resolve.

2013/9006: Customer credit default listed after door-to-door energy salesperson signs up account without consent

The issue

The customer discovered in late 2011 that he had a debt of about \$850 from an energy company he had never signed up with. Knowing that this was a mistake, he contacted the energy company to raise his concerns and dissatisfaction. The company said it would take up to two months to investigate the matter as it would obtain the call recording and a copy of the signed contract from its third-party sales company. However, this time passed and the customer did not have any further contact from the company. Late in 2012, the customer discovered that the company had since listed a default for the energy account arrears on his credit file. Dissatisfied with the delays, and with the default listing impacting his ability to access credit for a home loan, he contacted EWOV for assistance. On 18 February 2013 an Assisted Referral was raised.

However, the customer was not contacted by the company within the required timeframe and so when the customer recontacted EWOV, a complaint was lodged via the Real Time Resolution process on 8 May 2013. During this process, the company confirmed that it would waive the account balance and remove the default listing. However, it did not fulfil all of the agreed resolutions and the customer recontacted EWOV on 9 May 2013 and an Investigation was raised.

The Investigation

During the Investigation, the company said that it requested the contract from its third-party sales company on 19 March 2013, but that it could take two to three months to obtain it. The customer's employer produced a letter during the Investigation which confirmed that the customer was in fact more than 200 kilometres away from his home on the day the company said he accepted the door knocker's offer and completed the phone recording. Also, EWOV found that the phone number provided by the salesperson in the call recording did not match the customer's mobile phone number. The company could also not produce a copy of a signed contract.

⁴ EWOV Charter, clause 6.1

The outcome

In recognition of not being able to substantiate that the customer had provided explicit and informed consent via a signed contract, the company waived the debt of approximately \$850, removed the default listing from the customer's credit file and ensured that there were no accounts open in the customer's name.

2013/39657: A gas distributor's works cause damage to a customer's driveway and the surrounding road**The Issue**

In May 2013, a gas company carried out gas pipe upgrades in the vicinity of the customer's property. After the upgrade and works had been completed, the gas company undertook remediation works to restore affected land, roads and private property back to their original condition. As part of this process, the gas company covered up part of the customer's driveway with what it believed would be adequate materials. However, when the customer drove over the driveway crossover cracks appeared. He contacted the gas company to convey his concerns and was advised that there was a hollow section under his driveway which it would repair. By this point, he was unable to use his driveway due to safety concerns that it would completely concave. This was especially inconvenient for the customer as he had a newborn baby and was forced to park on the street. After waiting for the repair work to be completed, the customer was dissatisfied with the delays so he contacted EWOV on 11 July 2013 for assistance and an Assisted Referral was raised.

When the customer was not contacted by the company in the required timeframe, the complaint was handled via EWOV's Real Time Resolution process.

The Investigation

Upon contacting the gas company, EWOV was advised that it would carry out the repair works as a matter of priority on 29 July 2013.

The Outcome

On 8 August 2013, the customer recontacted EWOV to advise that the concrete over his driveway had been replaced and that the issue had been rectified. However, during the driveway repairs, the gas company damaged the road around the driveway and caused potholes. EWOV contacted the company on the same day and it arranged for temporary repairs to be completed on 12 August 2013, with permanent repairs to take place on 13 August 2013. The customer let EWOV know that the gas company attended on 12 August 2013 to fix the road and that the remaining issue had been resolved.

Breadth of EWOV's role

EWOV also plays a key role in complaint prevention. EWOV has the power to investigate and seek redress to energy and water systemic issues. Performance of this role ensures that where an issue is identified remedial action can be taken by the relevant member to limit the impact of the systemic issue on its customers. Systemic issue identification and investigation also provides for appropriate redress to be offered without individual customers needing to lodge complaints.

In addition, EWOV uses its data to highlight complaint trends and the prevalence to of conduct that drives complaints and/or does not meet legal standards. For example, EWOV's complaint data was key to the Australian Competition and Consumer Commission's examination of the conduct of door-to-door marketers in Victoria and subsequent enforcement action.

EWOV also produces a variety of resources to ensure that customers are aware of EWOV's existence and to build customer capacity to more effectively manage their energy and water complaints themselves. These include:

- A range of publications, all designed to maximise readability and convey accurate information about customer rights and responsibilities in a straightforward way. These include:
 - the EWOV website, www.ewov.com.au, which includes:
 - an online complaint form
 - important information about how to lodge complaints with EWOV
 - online videos, which cover common energy and water issues
 - information from community agencies, to assist with their work with clients
 - links to EWOV publications
 - Brochures about EWOV's process, common energy and water issues and a multi-lingual brochure outlining our availability and ability to help customers resolve their complaint
 - Posters and 25 fact sheets, which cover the most common issues customers call us about, including, high bills, estimated billing, affordability assistance, disconnection/restriction, marketing and changing retailers.
 - A quarterly newsletter sent to 757 community, welfare and health service providers in Victoria - *Connect*. This publication feeds information to assist them in their work with clients who have electricity, gas and water issues.

Where do Ombudsman services work best?

Based on EWOV's experience resolving energy and water complaints in Victoria, it would appear that industry based Ombudsman work best when:

- easy to use, informal and low cost dispute resolution is required
- there are geographical and cost barriers to traditional dispute resolution

- customers (and their representatives) need information and advice on their rights and responsibilities to better understand the dispute
- negotiated outcomes that are fair and reasonable in the specific circumstances of a customer meet the interests of both the customer and member in dispute
- complaints can be prevented and/or redressed earlier through systemic issue identification.

We trust the above comments are helpful. Should you require further information or have any queries, please contact me, on (03) 8672 4460.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cynthia Gebert', followed by a long horizontal flourish.

Cynthia Gebert
Energy and Water Ombudsman (Victoria)