12 March 2014

Ms Erin Dempsey
Legal Policy Officer, National Energy Market Development
Department of State Development, Business and Innovation
GPO Box 4509
**Melbourne VIC 3001**

**By email: erin.dempsey@dsdbi.vic.gov.au**

Dear Ms Dempsey,

**Re: Draft Consultation Paper Reforms To Retail Regulation 2014 and Planned Outages**

Thank you for the opportunity to provide comment on the Department of State Development, Business and Innovation (DSDBI)'s Draft Consultation Paper Reforms To Retail Regulation 2014 and Planned Outages (Consultation 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. The following comments are based on our extensive experience in handling customer complaints.

**Increasing the Wrongful Disconnection Payment (WDP)**

When EWOV receives complaints about the disconnection of a customer's electricity or gas account, EWOV undertakes two separate investigations. The first assesses any 'non-compliance' aspects of the complaint and the second reviews whether the disconnection complied with the terms and conditions of the customer's contract. To complete this review of the retailer's compliance with the terms and conditions of the contract, EWOV investigates the circumstances surrounding the disconnection of the electricity or gas supply and assess if a WDP applies. If EWOV finds that the energy retailer failed to comply with its obligations, the customer is entitled to the WDP. If the energy retailer contests EWOV's findings, the matter is then referred to the ESC to determine if a WDP applies.

EWOV expected the 2004 WDP legislation to reduce complaints involving actual disconnection cases. While this did occur initially, there has been a significant increase in actual energy

disconnection complaints since July 2008. Between 2008-09 and 2012-13 financial years, EWOV investigations about WDP have increased by 380%. EWOV notes that during the same period, cases that involve credit related issues also increased by 185%. These credit related issues include customers who are experiencing affordability issues paying their energy bills and who have received credit collection activity or have been default listed. Based on EWOV's case handling experience, it is our view that the number of actual energy disconnection has increased due to tighter collection activity by energy retailers and because of growing affordability issues of Victorian energy consumers.

From 2008-09 to 2012-13, on average 48% of the actual energy disconnection investigations EWOV received were found to have a WDP applicable. These results reveal that the retailer had breached the terms and conditions of the customer's contract, following almost one in every two actual energy disconnections investigated by EWOV[1]. In the 2012-13 financial year alone, 845 actual energy disconnection complaints were found to have a WDP applicable[2]. Of these complaints, the following recurring compliance issues were a concern:

- Retailers not appropriately assisting customers who were experiencing affordability issues (24%), including:
    - failing to offer two payment plans prior to disconnection
    - not advising customers of the availability of a financial counsellor
    - not providing energy efficiency advice
    - failing to advise of potential concessions and grants.
- Retailers failing to send out the required notices prior to disconnecting a customer on a deemed contract (17%).
- Retailers failing to send compliant notices to customers on a normal collection cycle (16%).

EWOV is unsure whether increasing the WDP amount from $250 to $500 per day would have a material impact on the number of actual energy disconnections completed, and completed correctly. EWOV believes that, given there are a growing number of Victorians being disconnected, and that the number of wrongful disconnections are not decreasing, a focus is required on improving retailers' disconnection and credit related processes. This may be a more effective way of reducing the number of customers who are disconnected.

[1] EWOV notes that the number of WDP payments reported by energy retailers to the ESC as a part of the annual Compliance Reports for Victorian Energy Retail Businesses, are significantly different. On page three of the DSDBI Consultation Paper, retailers only reported 233 WDP cases to the ESC in the 2011-12 financial year. While EWOV found WDP payable in 752 case during this period.

[2] This includes 309 cases where the retailer agreed to pay the WDP amount, without admission that a breach had occurred.

**Fixed Term Contracts**

EWOV notes that a national consultation process is underway - and our full views on this issue will be provided to the Australian Energy Market Commission (AEMC) for its consideration as part of its proposed National Energy Retail Amendment (Retailer Price Variations in Market Retail Contracts) Rule 2014 Consultation Paper. In summary, EWOV does receive complaints from consumers who entered a market contract under the belief that the tariffs and charges quoted during the marketing contact would be fixed for the period of the contract. These customers are dissatisfied after receiving notification from their energy retailer about an upcoming price increase, or when they discover that their bill reflects higher tariffs and/or charges than what they agreed to. The customer's confusion often arises from misleading information, miscommunication or a misunderstanding at the time of marketing. EWOV suggests that it may be appropriate to wait for the AEMC's final decision prior to implementing any state specific changes.

**Backbilling**

EWOV cases involving delayed billing and the backbilling of undercharged or unbilled amounts have increased by 135% and 268% respectively between the 2008-09 and 2012-13 financial years. EWOV notes that DSDBI is currently considering stakeholder views on when the restriction on backbilling would apply (limited to delayed billing issued as a result of a retailer's billing system upgrade or apply to all delayed bills and undercharging). EWOV does not have a recommendation as to when or if this restriction should apply. However, we believe it is important for DSDBI to be aware of potential conflict between regulatory obligations for retailers.

Currently under the Victorian Energy Retail Code, a retailer must use its best endeavours to base a customer's bill on an actual meter read at least once every 12 months[3]. If the backbilling is limited to three months, it is unclear which obligation retailers would need to comply with. For example, if a retailer only bases one bill a year on an actual meter read, with other bills based on estimated reads (as is allowable), will it then be prohibited from recovering undercharged amounts.

EWOV's view is that any limitation of bills should therefore commence from the date that the customer was notified by their energy retailer. Currently a customer can be backbilled nine or 12 months from the date on which the retailer notifies the customer that undercharging has occurred[4]. Based on EWOV's case handling experience, most retailers do not send separate letters notifying customers of an undercharged amount, but simply send the backbill to a

[3] Clause 5.1 (b) of the Energy Retail Code Version 10a.
[4] Clause 6.2 (a) of the Energy Retail Code Version 10a.

customer. This means that the notification date of the undercharge is usually not in dispute (as it is the date the backbill was received by a customer). However, EWOV has investigated some complaints where retailers have sent a letter advising of billing delay or undercharging issues. If this is not quickly followed by the correct bill, EWOV has found retailers can attempt to recover undercharges from the date of the letter rather than the bill issue date (which could increase the recovered timeframe/amounts the retailer is seeking payment for). Depending on the individual facts of the case, EWOV would consider what is a fair and reasonable start date for a retailer to commence the backbilling.

As noted above, EWOV does not have a recommendation as to when or if this restriction should apply. However, under both the current National Energy Customer Framework (NECF)[5] and the proposed harmonised Energy Retail Code, the backbilling provisions limit a retailer's ability to recover undercharged or unbilled amount to a maximum of nine months. It therefore seems reasonable that current Victorian regulation reinforce similar protections to ensure that where possible Victoria is consistent with the national approach.

**Energy Efficiency Audits**

EWOV believes that strategies to improve energy efficiency are an integral part of an energy retailer's hardship policy. Strategies, such as free energy audits, can identify if a customer's usage behaviour or appliances are contributing to high usage. When EWOV investigates hardship complaints, we can undertake our own independent energy audit[6]. From this, valuable information can be provided to the customer about their usage patterns and how to reduce their consumption. This can result in lower bills and subsequent increased capacity to afford ongoing consumption and repayment of arrears[7].

We trust the above comments are helpful. Should you require further information or have any queries, please contact Belinda Sandilands, Senior Research and Communications Advisor, on (03) 9672 4460 or at Belinda.Sandilands@ewov.com.au.

Yours sincerely

**Cynthia Gebert**
**Energy and Water Ombudsman (Victoria)**

[5] The NECF regulations do not currently apply to Victoria.
[6] 53 energy audits were conducted in 2012-2013 financial year for customers experiencing payment difficulties.
[7] However, EWOV notes that changes in usage behaviour may not be possible for all customers, such as tenants who are limited by the appliances at the property (owned by the landlord).