



ENERGY AND WATER OMBUDSMAN Victoria

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20 March 2015

COAG Energy Council Secretariat
GPO BOX 9839
CANBERRA ACT 2601

Submitted by email: energycouncil@industry.gov.au

Re: Council of Australian Governments Energy Market Reform Working Group's *New Products and Services in the Electricity Market – consultation of regulatory implications*

Dear Secretariat

Thank you for the opportunity to comment on the Council of Australian Governments (COAG) Energy Market Reform Working Group (EMRWG)'s *New Products and Services in the Electricity Market – consultation on regulatory implications* (the 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 customers by receiving, investigating and facilitating the resolution of complaints. In making this submission, EWOV's comments are based on our extensive experience in dealing with complaints between customers and their electricity companies.

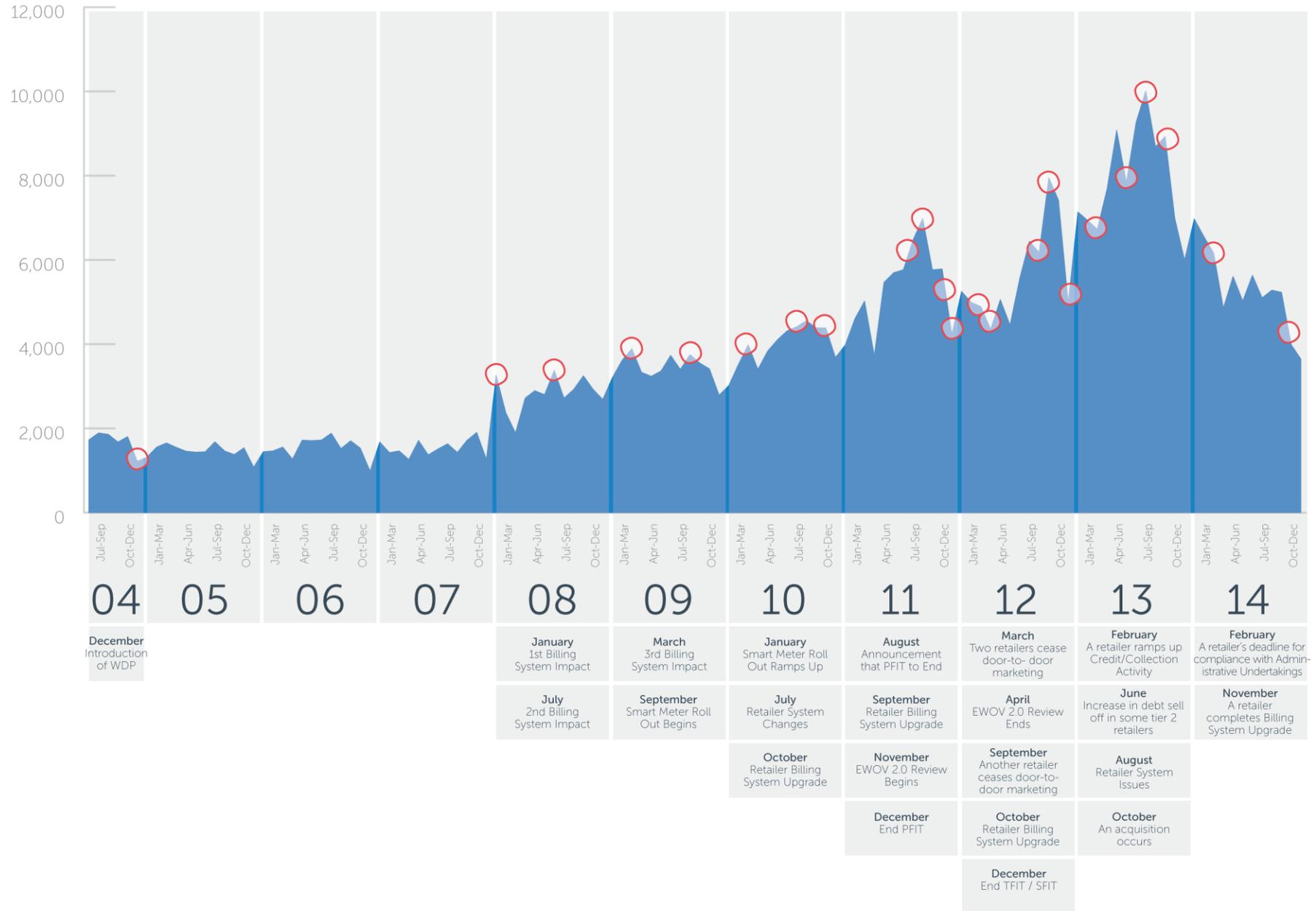
As illustrated in the following graph, EWOV case numbers have historically been significantly impacted by industry, policy, regulatory and billing system changes. Given our knowledge and experience of complaints arising from industry changes, EWOV expects complaints to electricity retailers, distributors and EWOV to increase as new products and services in the areas of electricity supply, demand management and energy information services are implemented in the market.

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EWOV Quarterly Case Receipt (1 July 2004 - 31 December 2014)



Evolving electricity market

Electricity prices have increased significantly in recent times¹. EWOV has seen a correlation between price increases and associated affordability issues in Victoria. This is highlighted by the fact that our Credit² cases increased by 228% between 2009/10 and 2013/14. During this period, EWOV has also seen the proportion of Credit-related cases increase from an annual average of 17% (from 2009-10 to 2013-14) to 26% of all cases received for the October to December 2014 quarter³. Additionally, between 2009/10 and 2013/14, customer complaints about high bill increased by 128%. This trend shows that customers are increasingly complaining about high bill issues, which may be partly attributable to increasing prices. It is also EWOV's experience that high bills and credit-related issues are often interrelated, with high bill cases sometimes masking underlying hardship issues.

These trends in EWOV's case data, along with the falling costs of alternative energy supply arrangements, may together act as a catalyst for an increasing number of customers to consider switching from a 'traditional electricity supply' to an 'alternative energy supply'⁴ to decrease costs⁵.

EWOV believes that changes to the ways customers access electricity, manage their usage, and seek energy information could have significant implications in a number of key areas, which include:

- the relationships between customers, energy retailers, energy distributors, alternative energy sellers and other types of energy management services
- customer access to external dispute resolution
- the jurisdiction of energy ombudsmen and other statutory bodies
- privacy of customer data and information
- existing regulatory and legislative consumer protections⁶ and how these do and do not fit with emerging changes in the electricity market.

Given the potential impact that electricity industry innovations are likely to have on customers, industry and EWOV, as noted above, we provide the following comments.

As electricity is an essential service that should be accessible to all consumers, consideration of how new energy products and services operate in the market also needs to occur in the context of vulnerable customers, particularly those who have limited or no capacity to participate in the market or engage with new products and services. If innovations in the sector are considered a key way of addressing affordability in the market, EWOV believes that it is important that further consideration is given to these customer circumstances so they can benefit as the regulatory and market framework is developed.

¹ AER State of the Energy Market 2014, December 2014, Chapters Two and Five: <https://www.aer.gov.au/node/29358>.

² These include cases involving payment difficulties, payment plans and credit-related disconnections.

³ Pages four and five, *EWOV's Quarterly Affordability Report*: http://ewov.com.au/_data/assets/pdf_file/0004/14089/Affordability-Report.pdf

⁴ Page four of the Consultation Paper.

⁵ AER State of the Energy Market 2014, December 2014, Chapter Five: <https://www.aer.gov.au/node/29358>.

⁶ Including energy-specific protections under NECF and state-based equivalents, and non-energy specific protections such as those under the *Australian Consumer Law*.

In order to mitigate customer confusion and complaints, EWOV believes that it is critical that the adequacy of current customer protections is reviewed to ensure that customers are:

- clearly informed about terms and conditions
- aware of the potential impacts and consequences new products and services may have on them
- entering into agreements with explicit and informed consent.

Customer protections

EWOV's current understanding is that a customer will be covered under existing energy protections if the Australian Energy Regulator (AER) grants the company a Retailer Authorisation. However, if the company is deemed, under the AER's current test, to be an exempt retailer⁷ then the customer may not necessarily be covered by the full suite of provisions under the relevant energy laws and rules.

While EWOV acknowledges that it is important to allow industry to innovate new products and services, these developments need to be considered together with crucial customer protections to ensure that customers still have fair and equitable access to an essential service, regardless of what type of entity is providing the electricity supply⁸.

The AER's existing Exempt Selling Guideline does provide a robust framework for determining what customer protections are applied to a retail exemption granted to an alternative energy seller. However, EWOV believes that as energy is an essential service it requires energy-specific consumer protections and as such the current customer protections provided under the National Energy Customer Framework (NECF)⁹ should extend to customers of an alternative energy seller – if it is the main supplier of a customer's electricity.

We also acknowledge that the Australian Consumer Law and state-based trade practices laws do have the capacity to regulate some energy-specific issues, but we believe that they will not adequately cover all alternative energy selling and demand management issues, such as when customers:

- are voluntarily or mandatorily supplied by off-grid electricity
- are primarily supplied with electricity by an alternative energy seller
- accept direct load control (DLC) or supply capacity control (SCC) products.

EWOV believes that current laws and regulations need to be reviewed to cover any regulatory gaps that exist in the context of the new products and services discussed in the Consultation Paper.

Distributor Role and Customer Protections

EWOV's understanding is that some of the proposed products and services may alter the role of electricity distributors, and in some circumstances, make the role akin to that of a retailer. However, it is unclear what this will specifically entail and whether the existing regulatory

⁷ AER (2014) Statement of Approach: Regulation of Alternative Energy Sellers in the National Energy Retail Law, page five: <http://www.aer.gov.au/node/22188>.

⁸ For example, a traditional retailer or an alternative energy seller.

⁹ Such as hardship, disconnections, payment plans, life support and access to dispute resolution.

framework will continue to offer customer protections as distributors' relationships with customers change. For example, EWOV notes that there are currently no established regulations that outline the billing requirements for distributors to bill domestic and small business customers under the NECF. Given distributors are not currently covered by the retail laws and codes, it will be critical that these are reviewed should distributor roles extend to include more retailer-type functions.

Customer dispute resolution

EWOV believes that all energy customers, including those of alternative energy sellers, should have access to a free and independent dispute resolution mechanism. EWOV suggests that alternative energy sellers be required to advise customers of the appropriate dispute resolution body to contact if they have an unresolved complaint with the seller, as is required of exempt retailers under the Exempt Retailer Guideline¹⁰. This will ensure that customers are appropriately aware of the recourse available. Currently, in Victoria, when EWOV receives a complaint about a company that is not an EWOV scheme participant¹¹, a complaint is registered¹² but the customer is referred to the appropriate body or forum for what is an out-of-jurisdiction matter¹³.

Additionally, EWOV believes that alternative energy sellers should require internal dispute resolution (IDR) procedures and suggests that these IDR mechanisms comply with the *Australian Standard AS/NZS ISO10002:2014*¹⁴.

EWOV's jurisdiction

As noted above, EWOV believes that all energy consumers should have access to protections consistent with those provided to customers under the NECF. We therefore welcome the Consultation Paper's consideration of consumer protection matters and access to dispute resolution mechanisms. EWOV's energy scheme participants supply electricity and gas to Victorian customers as an essential service. This is distinct from the current alternative energy selling arrangements detailed in the Consultation Paper. At this stage, EWOV does not intend to extend the scheme's jurisdiction to include alternative energy sellers.

It is important to note that jurisdictional issues can become complex when EWOV's scheme participants offer products and services¹⁵ considered to be outside of EWOV's jurisdiction¹⁶ as sometimes the products or services can fall within EWOV's jurisdiction¹⁷. This is an issue with

¹⁰ Required in several Conditions of the the Exempt Retailer Guideline - Condition Two Information Provision page 42 and Condition 15 Dispute Resolution page 49: <http://www.aer.gov.au/node/18677>.

¹¹ Such as a private solar PV system installation company.

¹² EWOV captures high-level information about the customer's complaint before referring it to one of the aforementioned bodies.

¹³ One or a combination of the following: Consumer Affairs Victoria, Australian Competition and Consumer Commission and/or the Victorian Civil and Administrative Tribunal.

¹⁴ *Guidelines for complaint management in organisations*: <http://infostore.saiglobal.com/store/Details.aspx?ProductID=1764518>.

¹⁵ Such as solar PV systems marketed at residential and small business customers.

¹⁶ Clause 4.2(b) of EWOV's Charter: http://ewov.com.au/_data/assets/pdf_file/0017/4517/EWOV-Charter.pdf.

¹⁷ For example: EWOV completes a jurisdictional assessment and it is found that the scheme participant has billed the customer for a solar PV system on their standard electricity retail bill.

enormous potential to increase in complexity as more new products and services enter the market and are offered by EWOV's scheme participants.

Privacy

As discussed in the Consultation Paper, the privacy of customers' information and data is an important area for consideration as the electricity market develops. Whilst EWOV does not have a position on whether companies with an annual turnover of \$3 million or less should be exempt or not from privacy requirements¹⁸, we do believe that customer data and personal information should always be handled and managed in accordance with the Australian Privacy Principles¹⁹.

Customer communications

As noted earlier, large industry changes have the potential to both deliver customer benefits and also customer confusion and concern, and consequently increase enquiries and complaints to distributors, retailers and EWOV. As such, EWOV supports the implementation of a comprehensive communication strategy to a broad range of customer groups in the community to support a smooth implementation of new products and services. It will be critical that all parties – including government, regulators, energy retailers and distributors – communicate clear and consistent information to customers.

EWOV's other submission work

EWOV advises that we are also making a submission as part of the consultation currently underway by the Australian Energy Market Commission (AEMC) on the *Demand Management Incentive Scheme*²⁰.

We trust the above comments are helpful. Should you require further information or have any queries, please contact Chris Stuart-Walker, Research and Communications Officer, on (03) 8672 4252 or at Chris.Stuart-Walker@ewov.com.au.

Yours sincerely



Cynthia Gebert
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¹⁸ Section 6C of the Privacy Act 1988 (Cth)

¹⁹ <http://www.oaic.gov.au/privacy/privacy-resources/privacy-guides/australian-privacy-principles-and-national-privacy-principles-comparison-guide>.

²⁰ <http://www.aemc.gov.au/Rule-Changes/Demand-Management-Embedded-Generation-Connection-I>.