



6 August 2015

Department of Economic Development, Jobs, Transport and Resources

By email: geo@ecodev.vic.gov.au

Dear Ms D'Souza

Re: *Review of the General Exemption Order – Issues Paper*

Thank you for the opportunity to comment on the Department's *Review of the General Exemption Order – 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 customers by receiving, investigating and facilitating the resolution of complaints.

Cases

As the Department is aware, EWOV receives some cases about exempt sellers, although we do not have jurisdiction to investigate these complaints. Such cases are typically registered as either Enquiries (where the customer has simply sought information – for example, about their rights as the customer of an exempt seller) or as Unassisted Referrals, usually to Consumer Affairs Victoria. We also handle complaints that are registered against Scheme Participants (SPs), but which also involve exempt sellers, such as site ownership complaints involving both a licensed retailer and an exempt seller.

Figure 1 shows EWOV cases specifically about exempt sellers over the five years to 2014/15.

Figure 1. EWOV exempt seller cases, 2010/11–2014/15

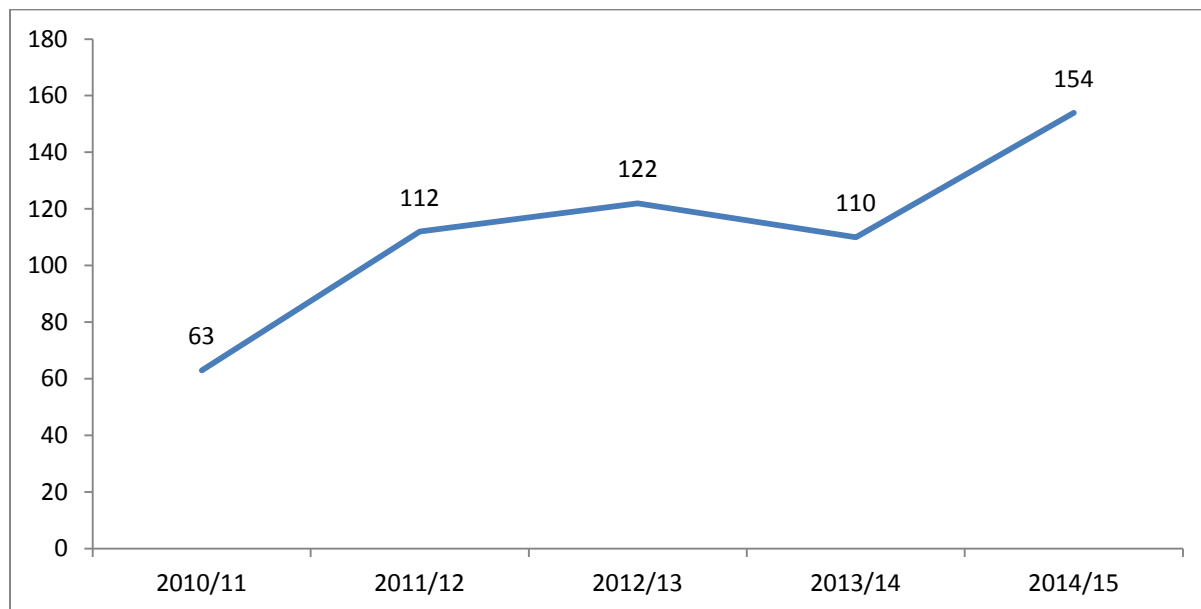


Figure 1 shows that such cases have been increasing. In the 2014/15 financial year, we received 154 cases about exempt sellers – almost three times as many cases as received in 2010/11, and a 40% increase over 2013/14 cases. The growth in cases between 2013/14 and 2014/15 is particularly interesting when considered in light of the substantial decrease in EWOV’s overall case load over the same period. Although the increase might reflect an increase in exempt selling, complaint numbers can be affected by a range of factors and so do not allow for definitive conclusions the extent of exempt selling activity.

Consumer protections

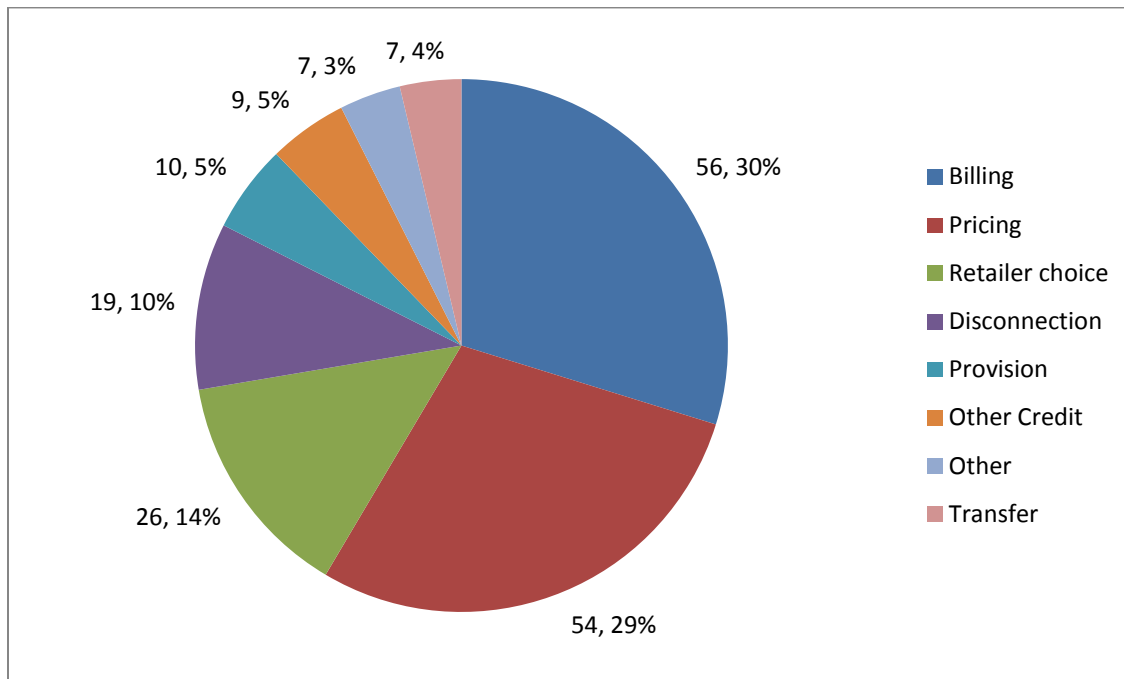
In principle, EWOV believes that all Victorian energy customers should enjoy the same consumer protections. At the least, customers of exempt sellers should be able to access clear, definitive information about what consumer protections apply. Certainty about exempt sellers’ consumer protection obligations should benefit both exempt sellers and their customers. EWOV therefore supports amendments to the General Exemption Order (GEO) clarifying which consumer protections apply.

Retail competition and pricing

The Department’s Issues Paper looks at the linked issues of retail competition and pricing, outlining concerns about barriers to retailer choice and asking whether the existing GEO Pricing Rule, which ties exempt seller pricing to the local standing offer, is an appropriate form of price regulation.

While EWOV does not have a view on whether and how exempt seller prices should be regulated, our case data suggests that these related issues of limited competition and pricing are sources of dissatisfaction that drive some customers to complain. **Figure 2** shows the primary issue in exempt seller complaints over the last two financial years.

Figure 2. Primary issue, exempt seller cases, 2013/14–2014/15¹



Exempt seller customers complain about many of the same issues as other energy customers. Billing issues (including high bills, back billing, billing errors and bill format concerns) made up almost a third (30%) of exempt seller-related complaints, while disconnection (10%) and other credit-related (5%) complaints were also reasonably common. At the same time, however, a substantial 29% of complaints were about pricing, with customers expressing dissatisfaction with the overall price paid or with specific fees (such as connection fees) or tariff components (such as the supply charge). Some of these customers also expressed a secondary, related concern about their inability to change retailer. For an additional 14% of customers, the inability to change retailer was the primary complaint issue.

Dispute resolution and EWOV's jurisdiction

The Department's Issues Paper raises the issue of external dispute resolution for customers of exempt sellers. It notes that exempt seller cases are currently out of EWOV's jurisdiction, highlights EWOV's advantages over the Victorian Civil and Administrative Tribunal (VCAT) as a mechanism for resolving energy disputes, and suggests that we undertake a feasibility study to determine the impact on our operations of extending the scheme to include embedded networks and their customers.

In principle, EWOV would like all Victorians, including customers within embedded networks, to have equal access to EWOV to help resolve concerns they have with their energy and water providers; this is a position we have also expressed previously in both national and Victorian consultation processes on this issue. We are supportive of the proposed feasibility study and seek Department funding for a detailed, independent assessment.

¹ Because exempt seller cases fall out of jurisdiction, we do not always gather or record information about the customer's specific concerns. Figure 2 shows the primary issue for the 188 cases for which this information is available.

In a 2011 submission to the former Department of Primary Industries, we described the findings of a 2007 feasibility study² and identified the following as issues to be covered by a further, more comprehensive study:

- the full number and type of exempt bodies expected to become new members of EWOV
- the type and characteristics of the customers serviced by exempt bodies
- an appropriate and equitable charging model for EWOV's services
- a suitable start-up cost for entry into the scheme
- a suitable membership category basis for such entry
- voting rights and company representation
- the staging of entry to EWOV based on the nature of the exempt body
- estimated complaint and enquiry numbers
- the number and type of customer complaints about exempt bodies handled by CAV and VCAT
- the potential impact on the financial and operational stability of EWOV
- the changes in EWOV's policies, processes and systems needed for complaint handling
- the enforcement of EWOV's case handling policies and decisions
- the human, administrative, training, and other resource impacts on EWOV
- EWOV Charter and Constitution changes
- a communications strategy to inform exempt body customers of EWOV.³

A further feasibility study in 2012 examined these issues; however, in light of subsequent developments and potential changes to Victoria's energy retail licensing framework, the issues above should be revisited and the findings of the 2012 study closely reviewed.

The Department's Issues Paper seeks stakeholder feedback on the adequacy of existing ESC enforcement powers in relation to exempt sellers. While EWOV does not currently have a view on what enforcement powers might be appropriate, we do note that regulatory enforcement powers do have a bearing on EWOV's complaint handling work with scheme participants; enforcement arrangements therefore form part of the context that should be considered in any further feasibility study.

As the Department's Issues Paper acknowledges, any feasibility study is complicated by the lack of information about the number of exempt sellers and their activities. A registration requirement for exempt sellers, as suggested in the issues paper, would be a sensible step towards addressing this information gap.

² Commissioned by EWOV in relation to the Essential Services Commission's 2006 Small Scale Licensing Review.

³ See EWOV's 26 August 2011 submission on the [Department of Primary Industries \(DPI\) Paper – Extending the jurisdiction of the Energy and Water Ombudsman \(Victoria\)](#).

We hope the above comments are helpful. Should you require further information or have any queries, please contact Caitlin Whiteman, Senior Research and Communications Advisor, on 03 8672 4273 or at caitlin.whiteman@ewov.com.au.

Yours sincerely

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

Cynthia Gebert
Energy and Water Ombudsman (Victoria)