

5 August 2015

Essential Services Commission
Energy Licence Framework Review
Level 37
2 Lonsdale Street
MELBOURNE VIC 3000

Submitted by email: energy.submissions@esc.vic.gov.au

Dear Essential Services Commission

Re: Essential Services Commission 2015, *Modernising Victoria's Energy Licence Framework – Issues Paper*, June 2015.

Thank you for the opportunity to comment on the Essential Services Commission's 2015, *Modernising Victoria's Energy Licence Framework – Issues Paper*, June 2015 (the 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 do not address specific questions raised in the Paper, but do address the relationship between energy licensing arrangements and the potential impacts the proposed changes may have on EWOV's jurisdiction.

EWOV welcomes the Essential Services Commission's review of the energy licence framework and believes it is timely as the market has evolved since the implementation of the existing licensing framework. Additionally, the energy landscape has changed since EWOV's establishment, as the innovation of new energy technologies and business models changes the way Victorian customers are being sold and supplied energy.

History of EWOV's jurisdiction

Since the Electricity Industry Ombudsman (Victoria) (EIOV) received its first case in 1996, our jurisdiction has grown to incorporate new industries; gas was added in 1999, water in 2001 and LPG in 2005. Additionally, the number of licensed energy companies, which are required to be members of the EWOV scheme¹, has grown from six founding electricity companies to currently over 75 companies across four essential service industries.

¹ All companies issued with an energy license under the *Electricity Industry Act* or *Gas Industry Act* must be a member of an approved external dispute resolution body. In Victoria, the approved body is EWOV.



Energy customer protections

EWOV's understanding is that customers are protected under existing energy codes and guidelines, and have access to EWOV, if a company is granted an electricity or gas licence. However, if a company is exempt from the requirement to hold a full energy licence, customers of that company may not necessarily be covered by the full suite of protections provided by the *Energy Retail Code* and *Electricity Distribution Code*, such as hardship, disconnections, payment plans, life support and access to external dispute resolution. Additionally, companies that are exempt from holding a full energy licence are not required to become an EWOV scheme participant.

Dispute resolution

EWOV supports the principle of all Victorian energy customers having equitable access to free, fair, effective and independent dispute resolution. EWOV believes that as the energy market continues to develop, as highlighted in the Paper, our relevance and reputation as an effective and comprehensive dispute resolution mechanism may be affected if a growing number of Victorian energy customers cannot access our service. However, as previously stated by EWOV in public policy submissions, a comprehensive feasibility study is needed to examine the impact of any changes to EWOV's jurisdiction².

Currently, when EWOV receives a complaint about a company that is not an EWOV scheme participant – such as a private solar PV system installation company that leases solar panels to a customer, or an embedded network operator – a case is registered³ but the customer is referred to the appropriate body or forum⁴ because the complaint is out of EWOV's jurisdiction. As a growing number of customers are sold and supplied energy from exempt companies, there is a risk of a growing inequality for customers who do not have access to EWOV to resolve complaints. While EWOV acknowledges that it is important to allow industry to innovate new products and services, these developments need to be considered together with the availability of crucial customer protections, such as free and independent dispute resolution, to ensure that customers still have fair and equitable access to an essential service, regardless of what type of entity is providing the electricity supply.

Our case handling tells us that customers expect EWOV to be able to assist with most energy complaints. However, customers of exempt companies find – often to their surprise and dissatisfaction – that EWOV cannot assist them.

To add to this complexity, some customers of EWOV's scheme participants are not able to access EWOV either as some companies currently carry out commercial activities that are

² See EWOV comments on Department of Primary Industries Paper – Extending the jurisdiction of the Energy and Water Ombudsman (Victoria): http://ewov.com.au/_data/assets/pdf_file/0018/4446/EWOV-comments_DPI-Paper-Extending-EWOV-jurisdiction_August-2011.pdf.

³ EWOV captures high-level information about the customer's complaint before referring it to another body or forum.

⁴ One or a combination of the following: Consumer Affairs Victoria, Australian Competition and Consumer Commission and/or the Victorian Civil and Administrative Tribunal.



outside the scope of their energy licence, such as the selling and financing of solar PV systems. These activities are generally deemed to be out of EWOV's jurisdiction as the activity does not directly relate to the scheme participant's energy licence⁵.

It is important to note that jurisdictional issues can become complex when EWOV's scheme participants offer products and services normally considered to be outside of EWOV's jurisdiction as sometimes the products or services can fall within EWOV's jurisdiction. For example, EWOV completes a jurisdictional assessment for these complaints and if it is found that the scheme participant has billed the customer for a solar PV system on their standard electricity retail bill then the complaint will generally be within EWOV's jurisdiction. This is an issue with enormous potential to increase in complexity as more new products and services enter the market and are offered by EWOV's scheme participants.

Potential impacts on EWOV

EWOV's understanding is that the proposed implementation options of the modernised energy licence framework may require currently exempt companies to hold the proposed 'small-scale' energy licence⁶. EWOV anticipates that consequently they would be required to join EWOV as a condition of the energy licence. Therefore, customers of these companies will be able to access EWOV's service to resolve complaints.

EWOV's other submission work

EWOV advises that we are also making a submission as part of the concurrent consultation underway by the Victorian Department of Economic Development, Jobs, Transport and Resources on the *Review of the General Exemption Order*⁷, which has raised discussion about the extension of EWOV's jurisdiction.

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.

Yours sincerely



Cynthia Gebert
Energy and Water Ombudsman (Victoria)

⁵ Clause 4.2(b) of EWOV's Charter: http://ewov.com.au/_data/assets/pdf_file/0017/4517/EWOV-Charter.pdf.

⁶ Page 42 of the Paper: <http://www.esc.vic.gov.au/Energy/Modernising-Victoria-s-Energy-Licence-Framework>

⁷ <http://www.energyandresources.vic.gov.au/energy/about/legislation-and-regulation/georeview>.