



26 August 2016

Department of Environment, Land, Water and Planning
Victorian State Government

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

Dear Ms D'Souza

Re: General Exemption Order – Draft Position Paper

Thank you for the opportunity to comment on the Department of Environment, Land, Water and Planning (the Department)'s *General Exemption Order – Draft Position Paper* (the Paper).

The Energy and Water Ombudsman (Victoria) (EWOV) is an industry-based external dispute resolution scheme that helps Victorian energy and water customers by receiving, investigating and resolving complaints with their company. EWOV's comments follow the numbering order within the Paper and are based on our long experience in handling customer complaints, including those we receive about exempt sellers which we do not currently have jurisdiction to investigate. Most of our commentary is focused on section 9 of the Paper, about dispute resolution.

3. Classifying exemptions

EWOV supports the Department's move to bring the General Exemption Order in line with the Australian Energy Regulator's exemptions framework by creating registered categories and classes of exemptions.

Establishing a registration requirement will provide a public record of the number and types of exempt sellers operating in Victoria. This will help government, regulators and EWOV to better understand the different energy selling activities, consumer relationships and emerging technologies that are becoming more available to Victorian customers.

5. Choice of retailer

EWOV supports the Department's proposal to increase consumers' awareness of their right to buy electricity from a retailer of their choice, rather than the exempt seller alone. In practice it

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can be difficult for customers to exercise this choice due to the often prohibitive cost of exiting an embedded network arrangement. Nevertheless, we support requiring an exempt seller to make the customer explicitly aware that they have this option.

Our support is based on what we have observed in our case work. In a noticeable number of cases EWOV receives about exempt sellers, the customer expressed a concern about their inability to change energy retailer¹. This suggests there is some merit to the exempt seller having an early and informed discussion with all new customers about the exempt selling circumstances. This will both improve their understanding of the exclusive commercial relationship with the exempt seller and make them aware of their option to choose another retailer.

9. Dispute resolution

We support the Department's proposal to extend EWOV's jurisdiction so that electricity customers within embedded networks have access to our free and independent dispute resolution services. It is our view that all Victorian energy customers, including those within embedded networks, should access the same consumer protections. EWOV's position has been consistent across previous consultations² and is based on two equitable principles - the inherent fairness in Victorian energy customers having equal access to EWOV for disputes about an essential service, and the principles of effectiveness, accessibility and fairness built into the national *Benchmarks for Industry-based Customer Dispute Resolution*.³ EWOV, like other industry-based dispute resolution schemes, must comply with these Benchmarks and aim for comprehensive and appropriate complaint coverage.

A staged approach

While our support is one based on strong equitable principles, we also recognise that there are practical reasons why a sensible, gradual and staged approach to opening our jurisdiction is needed. The nature of the exempt seller is an important consideration. In that regard, we welcome the Department's plan to initially only extend EWOV's jurisdiction to established embedded network operators and, at this stage, not to include small scale operators like caravan parks, alternative energy sellers and community energy projects. Based on the relative

¹ See page 3, EWOV comments on the [Department of Economic Development, Jobs, Transport and Resources Review of General Exemption Order - Issues Paper](#).

² See EWOV comments on the [Department of Economic Development, Jobs, Transport and Resources Review of General Exemption Order - Issues Paper](#) (6 August 2015) and [Department of Primary Industries Paper – Extending the jurisdiction of the Energy and Water Ombudsman \(Victoria\)](#) (25 August 2011).

³ See the [Principles and Purposes](#) and [Key Practices](#) of the *Benchmarks for Industry-based Customer Dispute Resolution*, republished in February 2015 by The Treasury, Australian Government.

size and customer base of some larger embedded networks (which often operate in strata titled apartments and shopping centres) we believe that this is a logical and reasonable starting point.

Nevertheless, we do envisage a time when our jurisdiction will be further extended to include other energy users, such as customers of new technologies, like solar power purchase agreements. The objective of comprehensive ombudsman coverage for all Victorian energy customers should be a gradual and progressive government policy aim.

An ongoing supply relationship

Ombudsman schemes have the necessary expertise to deal with disputes where the customer and seller require an ongoing relationship concerning the supply of energy. Accordingly, EWOV supports the idea that an ongoing supply relationship should be the basis for the comprehensive coverage of energy-related disputes and so providing customers with access to our dispute resolution services. This relationship principle is in contrast to complaints about energy ‘gadgets’ or hardware products, which are covered by the *Australian Consumer Law*⁴ and can be appropriately handled by the consumer protection agency in the relevant jurisdiction, such as Consumer Affairs Victoria.

An appropriate and equitable funding model

EWOV is currently considering what practical and constitutional changes we need to make, along with the funding implications of giving effect to the Department’s proposals. This is, of course, a complex and detailed exercise.

EWOV’s funding model must provide an appropriate and equitable charging model for our services for all membership types. We will work closely with the Department and the Essential Services Commission on the proportionality of our membership fees to ensure they are not prohibitive for some smaller exempt entities. We recognise that given the limited intelligence on the number of exempt sellers and their customer numbers, there will be some challenges in reviewing our funding model. However, our clear objective is to provide the most equitable and appropriate model for both new entrants and our existing scheme members.

In the long term, the nature of exempt seller complaints that EWOV will receive remains unclear. However, we anticipate there will be additional complexity involved in resolving these complaints due to different customer protections, the limited experience of these entities in dealing with an external dispute resolution scheme and the multifaceted relationship between the parties. The time and resource impact of this for EWOV is not clear. While these are longer-

⁴ See www.consumerlaw.gov.au.

term issues, it would seem inequitable if the cost and resource impact of this is borne by existing EWOV members.

The potential challenge of recovering fees from smaller exempt seller entities may also have a cost implication and so is a relevant operational consideration for EWOV to manage.

No cross subsidy of costs

In progressively opening up EWOV's jurisdiction to include exempt sellers, there will be initial preparatory and set-up costs associated with expanding EWOV's role. These initial costs are unknown and difficult to accurately predict as we do not have enough information about exempt sellers and the number and characteristics of their customers. However, it is EWOV's view that our existing members should not bear the cost of introducing new scheme members. We believe it is more equitable and appropriate for the Department to contribute to meeting these initial costs to the scheme, rather than those costs being subsidised by existing EWOV members.

While EWOV will work closely with the Department on identifying and locating exempt sellers, we will need to ensure that the quality of this work is sufficiently high, and conducted in a timely manner, to deliver a smooth transition. This is likely to result in significant cost for EWOV.

EWOV will also incur costs in making the necessary changes to our governance and internal processes and systems. For example, we will need to review and update our Charter and Constitution. We will need to review our existing funding model to ensure that it is appropriate and equitable for a more diverse membership. We will also need to introduce new case handling policies and procedures, update our operating systems and provide staff training so they can handle complaints from customers of exempt sellers. It is important that EWOV delivers the same high quality dispute resolution services to exempt sellers and their customers as that provided to our current members.

Further, a Department-led communications strategy will need to be undertaken to raise awareness of the extension of EWOV's jurisdiction for both exempt sellers and their customers. It is critical that exempt sellers are well-informed of this change - particularly embedded networks and their requirement to become a member of the EWOV scheme. It is also important that clear and plain communications are delivered to embedded network customers so that they understand their new rights and responsibilities. This engagement work will take time, be resource intensive and incur further costs.

Voluntary EWOV membership

The Paper identified mixed stakeholder views on extending EWOV's dispute resolution jurisdiction to Solar Power Purchase Arrangements and other alternative selling arrangements. It is proposed that EWOV would consider developing a voluntary membership category and actively encouraging participation in the EWOV scheme. We are interested in exploring this option further with the Department.

Opening up a voluntary membership category will also support the principle of an ongoing supply relationship as the basis for EWOV jurisdiction, without waiting for regulatory and policy settings to be changed.

Offering voluntary membership of EWOV would not be a new initiative. Changes to EWOV's membership categories last occurred in 2005 when the liquefied petroleum gas (LPG) industry voluntarily and successfully joined EWOV. LPG has small customer numbers and is a useful comparison to some of the proposed new exempt seller members.

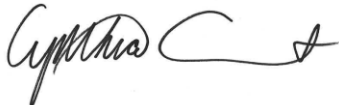
Continued engagement with the Department during the transition

In transitioning the changes to our jurisdiction, EWOV will regularly consult with its Board and members and listen to the views of embedded networks and other exempt sellers.

EWOV will continue our close engagement with the Department to ensure an effective strategy for the transition and clear and timely communications with all affected stakeholders. We will also continue our stakeholder dialogue about the most appropriate and equitable charging model for our services and the potential for government funding to prevent the cross subsidy of set-up costs by our existing members.

We trust that these comments are useful. Should you require further information or have any queries, please contact Justin Stokes, Senior Research and Communications Advisor on (03) 8672 4272.

Yours sincerely



Cynthia Gebert
Energy and Water Ombudsman (Victoria)