



29 February 2016

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Access to Justice Review
Department of Justice and Regulation
Level 24
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MELBOURNE VIC 3000

Submitted by email: accesstojusticereview@justice.vic.gov.au

Dear Ms Leonard

Re: Department of Justice and Regulation's *Access to Justice Review*

Thank you for the opportunity to comment on the Department of Justice and Regulation's *Access to Justice Review* Terms of Reference and associated background papers.

As an industry-based external dispute resolution scheme, the Energy and Water Ombudsman (Victoria) (EWOV) provides alternative dispute resolution (ADR) 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 handling over 575,000 cases¹ since the establishment of the scheme in 1995. We also provide some background about the scheme, our role and how ADR processes play an important part in the delivery of fair and just outcomes, and access to justice for the wider community. Lastly, we provide some comments about EWOV's experience with providing accessible legal information to the Victorian community.

Terms of Reference

EWOV's comments refer to points one and three of the Terms of Reference and some of the questions in the associated background papers.

- **Point one:** the availability of easily accessible information on legal assistance services and the Victorian justice system, including advice on resolving common legal problems.
- **Point three:** whether and how ADR mechanisms should be expanded so that more Victorians can make use of them.

¹ The term 'cases' includes both Enquiries and Complaints. More detail about EWOV's case levels is available at: <https://www.ewov.com.au/complaints/process-for-complaints/cases,-enquiries,-complaints/ewovs-complaint-types>





EWOV's previous submissions

EWOV would like to highlight our two previous and relevant submissions to the Productivity Commission's *Access to Justice Arrangements Issues Paper*² and *Draft Report*³.

About EWOV

Establishment of EWOV

EWOV was established in 1995 and received its first case in 1996. EWOV was initially set up to handle electricity cases following the privatisation of the electricity sector in Victoria. Since then, EWOV's jurisdiction has been expanded to include natural gas, water and liquefied petroleum gas (LPG). As at 30 June 2015, EWOV had 82 members (scheme participants):

- 41 electricity members
- 18 gas members
- four LPG members
- 19 water members.

Jurisdiction

EWOV can assist with most issues between Victorian customers and electricity, gas and water companies, including the provision and supply of a service, the failure to provide or supply a service, billing, credit, payment arrangements, energy disconnection and water restriction, customer service, marketing, transfer (switching), poles, wires, pipes, meters, vegetation management and land.

Case trends over time

The volume of cases EWOV received each year was historically on an upward trend, however, in 2014-15 we saw a 40% drop in cases compared to 2013-14⁴. The graph on the following page shows the cases received between 1 July 2010 and 30 June 2015.

² Submission available on EWOV's website:

https://www.ewov.com.au/_data/assets/pdf_file/0010/9874/EWOV-comments-on-the-Productivity-Commission-Inquiry-into-Access-to-Justice-Arrangements.pdf

³ Submission available on EWOV's website:

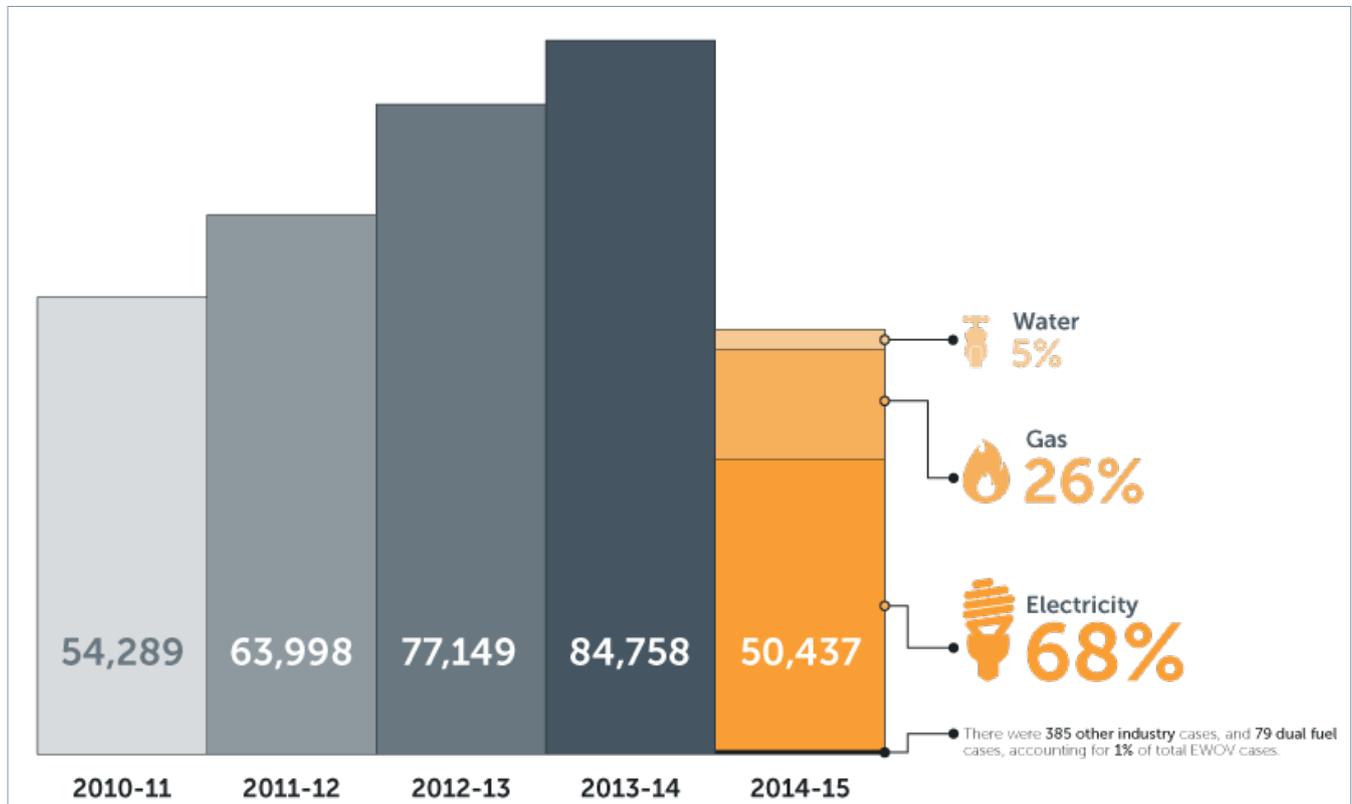
https://www.ewov.com.au/_data/assets/pdf_file/0013/12442/EWOV-comments-on-Productivity-Commission-Access-to-Justice-Arrangements-Draft-Report.pdf

⁴ More information and context about the reduction in cases is on page six of EWOV's 2014-15 Annual Report, available at: <https://www.ewov.com.au/publications-and-media/2015-annual-report>





EWOV cases received between 1 July 2010 and 30 June 2015



The growth in EWOV cases between 2010-11 and 2013-14 cannot be attributed to a single cause but rather significant changes in the energy and water industries and the capacity of EWOV's members to manage customer concerns that arise from this. The volume of cases received by EWOV since our inception clearly demonstrates the essential function EWOV has in providing customers with access to fair, independent and efficient dispute resolution.

External dispute resolution

As an industry-based external dispute resolution body, EWOV must adhere to the Australian Government's *Benchmarks for Industry-Based Customer Dispute Resolution*⁵ (the *National Benchmarks*):

- accessibility
- independence
- fairness
- accountability
- efficiency
- effectiveness.

⁵ Available at: <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/benchmarks-ind-cust-dispute-reso>





Customer access to EWOV

To make sure that EWOV is accessible, our processes have been designed to make it easy for Victorian energy and water customers to lodge complaints in an informal and clear-cut way. We explore customer access in more detail later in this submission.

EWOV does not require complaints be made in writing. Subsequently, most customers (75%) lodge complaints via telephone, 24% use our online complaint form or email, and only 1% put their complaint in writing via letter or fax.

Most customers who access EWOV live in metropolitan areas (75%) and the remaining 25% live in regional or rural areas of Victoria. The majority of customers who contact EWOV (91%) are residential, while 9% are business customers and less than 1% are from government or the not-for-profit sector⁶.

When accessing EWOV, it is uncommon for a customer to require representation by a professional and paid advocate such as a legal representative or 'credit repair' agency. However, complaints are commonly lodged on behalf of customers by friends, family members, financial counsellors and other community workers. In 2014-15, 17% of all cases received had a representative acting on behalf of a customer.

Dispute resolution processes

EWOV uses a number of dispute resolution processes to ensure that cases are handled by the most appropriate process, delivering efficient and effective outcomes for both customers and EWOV members, including Referred Complaints, Real Time Resolution and Investigations⁷.

EWOV's independence

EWOV's independence is established by EWOV's Charter and Constitution, and our corporate governance structure including EWOV's Board⁸. Additionally, the National Benchmarks provide a framework in which EWOV operates independently of members, customers and government.

EWOV has extensive case handling policies and procedures, and a well-developed learning and development program, to support fair and independent decision making. An independent review of the fairness and independence of these processes and case handling procedures, undertaken by CameronRalph Navigator in 2013, positively found that these EWOV processes were impartial and that EWOV complies with the *National Benchmarks*⁹.

⁶ Numbers are rounded to the nearest whole number and therefore do not total 100%. Figures are available on page 19 of EWOV's 2014-15 Annual Report at: <https://www.ewov.com.au/publications-and-media/2015-annual-report>

⁷ Details of these case levels are available at: <https://www.ewov.com.au/complaints/process-for-complaints/cases,-enquiries,-complaints/ewovs-complaint-types>

⁸ Details of EWOV's Board are accessible at: <https://www.ewov.com.au/about-us/about-ewov/the-board>

⁹ EWOV Independent Review Report available at: <https://www.ewov.com.au/about-us/ewov-independent-review>





Resolution timeframes

EWOV strives to achieve efficient, fair and just outcomes for Victorian energy and water customers and their companies. In doing so, many complaints are resolved quickly via the Referred Complaint processes outlined earlier. However, where a detailed Investigation is required, EWOV's complaint resolution is also timely. In 2014-15, 53% of Investigations were resolved in less than one month, a further 39% were resolved in less than three months, and the remaining 8% took more than three months to resolve.

Case outcomes

EWOV resolves disputes equitably, confidentially and on a case-by-case basis. The resolutions aim to be fair, just and independent, informal and to take into consideration the wider context of:

- what is fair and reasonable
- what constitutes good industry practice
- what lies within current law.

The majority of Investigations EWOV receives are resolved through a conciliated outcome and on an individual basis. In 2014-15, 79% were resolved with a negotiated or conciliated outcome. These outcomes of the complaints will depend on the circumstances of the complaint and can include:

- an apology
- re-billing and billing adjustments
- payment of a customer service gesture
- reimbursement of costs
- a full or partial debt waiver
- transfer back to original retailer
- removal of a credit default listing
- restoration of damaged property or land
- help in negotiating a payment plan.

To provide context of the remedies achieved for Victorian energy and water customers in 2014-15, over \$4.3 million was paid via various forms of financial redress to resolve Real Time Resolution complaints and Investigations¹⁰.

When a conciliated outcome cannot be reached, the Ombudsman has the power to make a determination of the merits of the complaint that is binding on EWOV's member¹¹. This decision is published¹² with reasons and in a de-identified form. However, it has not been

¹⁰ More detail about case outcomes and redress is on page 24 of EWOV's 2015 Annual Report:

<https://www.ewov.com.au/publications-and-media/2015-annual-report>

¹¹ EWOV Charter, clause 6.1, available at: <https://www.ewov.com.au/about-us/charter-and-constitution>

¹² EWOV's Binding Decisions are available at: <https://www.ewov.com.au/publications-and-media/archive/binding-decision>





necessary to make a Binding Decision since 2003. We make further comments about case outcomes later in the submission.

ADR background paper

Thank you for referencing EWOV as a Victorian-based external dispute resolution service. We note that page five of the background paper states that:

“The Energy and Water Ombudsman (EWOV) is an external dispute resolution scheme which can take complaints about all electricity, gas and water companies in Victoria.

All energy and water companies operating in Victoria are scheme participants. EWOV is independent of, and external to, the companies participating in the scheme. EWOV does not receive government funding. Instead, it charges industry members for the complaints that it handles.”

EWOV would like to clarify – in relation to electricity and gas companies operating in Victoria – that our scheme’s jurisdiction only extends to companies that have been issued with a full electricity or gas license by the Essential Services Commission (ESC)¹³. In recent years, EWOV has seen an increasing number of business models emerging in the energy market. Many of these new and emerging business models – including renewable energy technology companies and embedded electricity networks in various new apartment buildings, retirement villages and shopping centres – are currently exempt under their license conditions from several of the requirements placed on ‘traditional energy companies’, including membership of EWOV. The result is that there are a growing number of Victorian energy customers who are unable to access EWOV’s service to resolve complaints, particularly electricity complaints. This is discussed further in our submission.

Issues with ADR

The background paper highlights a number of issues with ADR identified by the Productivity Commission’s *Access to Justice Arrangements Final Report*. Although EWOV is only one of many external dispute resolution bodies that use ADR processes, we would like to highlight how we handle some of the challenges identified in the background paper, while acknowledging that there is no ‘one size fits all’ approach.

There is an imbalance of power between parties because of socioeconomic disadvantage, or a history of violence between the parties.

EWOV helps to balance power between parties and provide customers, particularly those who are vulnerable or disadvantaged, with a level playing field to help resolve energy and water complaints with their companies. Some customers tell us, for example, that they are experiencing financial hardship and have ‘been hassled’ by debt collectors and cannot negotiate a payment plan. Prior to EWOV’s involvement in resolving the dispute, many customers might

¹³ ESC website: <http://www.esc.vic.gov.au/Energy/Licensing>.





feel like they have to accept a particular outcome when dealing with the debt collector or their company, or may not engage at all. However, customers often tell us as part of our regular customer satisfaction surveying, that they couldn't have resolved the complaint without EWOV's independent help and assistance¹⁴.

There is an unwillingness of parties to engage in constructive ADR, or to acknowledge that there is a problem.

EWOV's members need to adhere to our case handling procedures and processes, such as timeframes for providing responses to customer complaints. EWOV has mechanisms to escalate complaints when these procedures and processes are not followed by a member. Conversely, EWOV has processes to close complaints when customers do not engage with us or maintain contact. These processes and procedures for both parties help ensure that procedural fairness and natural justice are accorded in each case, and also encourage both parties willingly and actively participate in the resolution of the dispute in a timely way.

There is little or no prospect of a successful outcome, such as when claimants are unreasonable and inflexible or when disputes are vexatious.

The Ombudsman has powers under EWOV's Charter to close cases on the basis of No Further Investigation if a complaint is deemed to be frivolous or vexatious. Additionally, EWOV has a fair and reasonable framework, and if an agreed outcome cannot be reached after a thorough investigation, the complaint may be closed on the basis that no further investigation is warranted, that a fair offer has been made, or as discussed earlier, it may result in a Binding Decision¹⁵. These processes help ensure that complaints do not get stuck in a 'revolving door' of complaint deadlock.

It is in the public interest to set a precedent that can guide future dispute resolution, particularly if a dispute type is common and recurring.

One of the core principles on which EWOV operates is that each complaint is handled on a case-by-case basis and that the matter is not pre-judged. Even so, our case handling experience tells us that some types of complaints are common and recur for many customers. To help manage this, EWOV has a number of Position Statements for our members, which provide a clear guide on our approach to common issues and sources of complaints. This helps ensure consistency in complaint handling and sustainable resolutions of certain issues. Additionally, in reaching a fair and reasonable outcome, EWOV has regard to previous case outcomes and Binding Decisions. All of EWOV's Binding Decisions are published in our annual reports and are available on our website. Additionally, EWOV regularly publishes case studies on our website and in periodic publications and reports. Lastly, EWOV's fact sheets and online videos provide customers with

¹⁴ EWOV's quarterly publication, *Res Online 14* has two case studies on pages six and seven, and is available at: <https://www.ewov.com.au/publications-and-media/res-online-no.14-february-2016>

¹⁵ Binding Decisions are only binding on scheme participants and are limited to \$20,000 unless both parties agree to increase EWOV's jurisdiction to \$50,000 for a particular case. We note that EWOV has not had to make a Binding Decision since 2003.





guidance about our interpretation of relevant laws and codes and how these relate to common energy and water issues.

Participation would result in personal or financial hardship

As highlighted earlier in this submission, one of the principles of the *National Benchmarks* is accessibility. To ensure that EWOV is accessible for Victorians, EWOV is a free service and provides customers with multiple access points, including:

- a Freecall number
- callbacks to mobile phones
- reverse charge calls
- free Translating and Interpreting Service
- free National Relay Service
- online complaint form
- complaints made in person
- email complaints.

Questions in paper

In the following section, EWOV's comments are based on some the questions in the background paper:

Question One: Are there circumstances where it would be appropriate to expand the use of ADR in Victoria? If so, how should that be done?

EWOV believes that as industries, the legal system and community expectations change about dispute resolution and the role of ombudsmen evolve, there are opportunities to review and reshape the way Victorians can access ADR services and external dispute resolution bodies. In the context of energy and water, EWOV believes that all customers should have access to free, fair and independent dispute resolution regardless of how they are sold or supplied these essential services.

Currently in Victoria, there are two reviews¹⁶ underway which could have impacts on EWOV's jurisdiction by requiring other companies to be members of EWOV's scheme. Although still in draft stages, these reviews could potentially result in currently exempt retailers, such as embedded electricity networks that are in many new residential and commercial buildings, becoming EWOV members. If this occurs, more Victorians will have access to EWOV even if they are sold and/or supplied energy by a company operating a new business model in the energy market.

EWOV believes that all energy and water customers should be able to access the benefits of ADR. In our view, the benefits include that it is fast, impartial, independent, confidential,

¹⁶ Department of Economic Development, Jobs, Transport and Resources' *Review of the General Exemption Order*, and the Essential Services Commission's *Modernising Victoria's Energy License Framework Draft Paper*.





provides tailored resolutions for both parties, and has the capacity to rebuild relationships between parties as both have input to reach an outcome.

Additionally, ADR administered by an external dispute resolution body can be an effective mechanism in the identification of systemic issues, complaint prevention and reduction in the wider community, and can assist in driving improved customer service outcomes.

Question Three: What can be done to improve knowledge and awareness of the availability and benefits of ADR?

On page eight of the background paper, the Productivity Commission stated that ‘improving general awareness and education about different avenues to resolve disputes is an essential prerequisite for getting parties to think about how ADR might be usefully applied to their dispute. Greater uptake of ADR requires improved knowledge and education about ADR in the wider community, and triage and advice services that suggest ADR options.’ EWOV agrees that promoting greater community awareness of ADR, where it can be accessed (for example, through EWOV for energy and water complaints), and what matters can be dealt with, is critical to underpinning the wider use of ADR. Additionally, a multi-faceted communications and referral framework between ADR bodies would assist in boosting the profile of, and subsequently access to, ADR to resolve disputes.

EWOV’s work to improve awareness

We promote our service widely in the Victorian community. We have strong linkages to community organisations, including the financial counselling and emergency relief sectors, and we liaise with government and industry to build on the identification of issues and identify customers in need of EWOV’s assistance, particularly disadvantaged and vulnerable customers. The key elements of EWOV’s community awareness and engagement program include:

- Distribution of a range of publications, all designed to maximise readability and convey accurate information in a straightforward way. The following publications are specific to awareness raising:
 - *Connect* - a quarterly newsletter sent to community, welfare and financial counselling providers. This publication feeds information to assist these stakeholders in their work with clients who have electricity, gas and water issues.
 - Brochures about EWOV’s process, common energy and water issues and a multilingual brochure outlining our availability.
 - Over 30 fact sheets covering the most common issues customers contact EWOV about.
- Participation with other agencies in programs and working groups to increase awareness of EWOV’s role and processes, and current and emerging trends.
- Listing EWOV’s details in community directories, on other ombudsmen’s websites, on our members’ websites and in various state and federal government resources.
- A Community Consultation Group – a formal mechanism for consulting and sharing information with the community sector.





- Maintenance of strong networks with financial counsellors and the community sector. For example, participation in Financial Counselling Australia's External Dispute Resolution Forum.
- Regular visits to metropolitan, regional and rural community groups and customers, including:
 - Bring Your Bills days where we take complaints face-to-face, and other community information days
 - presentations on common energy and water issues for consumers, particularly vulnerable customers, and the agencies that work with them.
- EWOV Open Days where financial counsellors, emergency relief workers and others find out about EWOV and get a practical, hands-on educational experience.
- Via EWOV's website, www.ewov.com.au, which includes:
 - an easy-to-use website with Google optimisation so it's easy for consumers to find
 - information about how to lodge complaints with EWOV
 - 10 online videos which cover common energy and water issues
 - information for community agencies to assist with their work with clients
 - links to EWOV publications, fact sheets and posters.
- Social media presence, with regular Tweets about industry updates, EWOV's involvement at community events, and helpful tips about energy and water efficiency.

Community awareness survey

EWOV has undertaken two community awareness survey since 2009. Findings from the survey in 2009 were that more than half (60%) of respondents stated they would contact an ombudsman to resolve an energy or water dispute. In 2009, total prompted awareness of EWOV specifically was well over half (64%). In 2014, only 50% of respondents said they would contact an ombudsman about an energy or water issue. However, specific awareness of EWOV remained virtually unchanged from the 2009 result at 65% for prompted awareness.

Customer satisfaction survey

One of the questions asked of customers who complete our quarterly satisfaction surveys is: "Were you aware of EWOV prior to your complaint arising?" In 2014-15, 71% of customers said they were aware of EWOV. Interestingly, 71% of Office of Housing tenants were also aware of EWOV before their complaint arose.

Community roadshow

Between September 2012 and May 2013, EWOV embarked on a community roadshow across Victoria to showcase what EWOV does and how we can help Victorian energy and water consumers. During these visits across metropolitan, regional and rural Victoria, EWOV spoke with about 820 community and volunteer workers from 163 different organisations to help them with their work with clients experiencing issues about energy or water. EWOV is undertaking another community roadshow in the coming months.





Energy and water companies

To help improve customer awareness about EWOV, energy and water companies have EWOV's details in their complaint handling policies which are published on their websites. Additionally, Victorian energy and water companies are required to provide EWOV's details to customers who have:

- a complaint with the company which failed to be resolved via the company's internal dispute resolution (IDR) process
- received an imminent disconnection of energy, or restriction of water, supply notice.

Question Five: Are there opportunities to expand the use of ADR mechanisms by employing online technologies?

As discussed earlier, EWOV has an online complaint form and can accept complaints via email. We receive 25% of cases via our online complaint form or email, up 19 percentage points since 2009-10 when only 6% were lodged online or via email. Therefore, an online complaint form should be an essential customer access point for all external dispute resolution schemes. The increase in complaints being lodged electronically over this time shows a growing preference for some customers and their representatives to make complaints at a time that suits them, for example when EWOV's phone lines are closed.

Accessible legal information background paper

EWOV notes that the background paper highlights the different types of legal information that exist within the justice system for both formal mechanisms (such as courts and tribunals) and informal mechanisms (such as ombudsmen and other complaint schemes). EWOV's comments respond to some of the background and some of the questions, and are based on our experience creating, publishing and disseminating legal information about energy and water issues to the Victorian community.

On page two the paper highlights that "in many cases, people would be capable of resolving commonly experienced legal problems on their own (or with minimal assistance) by accessing general information and advice".

EWOV generally agrees with this statement in some instances where less complex disputes arise. Additionally, we see that there is benefit for both parties if customers are able to research common issues using EWOV resources (fact sheets, educational videos, FAQs and case studies) to remedy complaints directly with their company.

EWOV also notes that on page three of the paper it states "the Commission similarly found that there is a lack of awareness in the community about informal mechanisms for resolving legal disputes, including ombudsmen and other complaint mechanisms." As highlighted on page 10 of this submission, EWOV's community awareness surveys have found that over half of Victorians are aware of the ability to take their energy or water dispute to EWOV. Although these results are encouraging, there is always work to do to promote the existence of our scheme and the matters about which we can help Victorians. Accordingly, we undertake periodic reviews of our





community engagement and awareness strategy, and our linkages with community and grass-roots organisations, to ensure that we are reaching as many Victorians as possible with our available resources, particularly disadvantaged and vulnerable members of the community.

Questions in paper

Question One: How would you normally try to solve a legal problem? Who would you go to for help, information or advice? If you are from an organisation, where do you refer people for legal help?

Sometimes EWOV is contacted by Victorians who have a complaint that is out of our jurisdiction. In these instances we refer the matter on to the most appropriate body. For example, customers with complaints about:

- private solar installers are referred to Consumer Affairs Victoria and the Clean Energy Council
- their local council are referred to Ombudsman Victoria
- their landlord are referred to the Victorian Civil and Administrative Tribunal, the Tenants Union of Victoria and/or Consumer Action Law Centre.

Question Two: What format is most helpful when you are looking for information (e.g. online, printed material, telephone information or face-to-face information)? If you are from an organisation, what forms of material do you find get used by the community you work with? Does this vary between different parts of the community?

As discussed earlier, EWOV has a range of resources and materials available in electronic and printed formats. Some of these resources are exclusively online, i.e. the educational videos on EWOV's website. Additionally, we provide advice and general information to customers over the phone and face-to-face at community events such as Bring Your Bills Days which often include other ombudsman services, community legal centres and other service providers. A broad range of access points for energy and water information is essential for ensuring that most Victorians can research their issue and understand their rights and responsibilities.

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

Yours sincerely

Cynthia Gebert
Energy and Water Ombudsman (Victoria)

