



13 July 2017

Australian Energy Regulator
GPO Box 520
MELBOURNE VIC 3001

By email AERInquiry@aer.gov.au

Dear Sir/Madam

Re: AER Issues Paper – Access to Dispute Resolution Services for Exempt Customers

Thank you for the opportunity to comment on the Australian Energy Regulator (AER)'s *Issues Paper – Access to Dispute Resolution Services for Exempt Customers* (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. Under EWOV's Charter, EWOV resolves complaints on a 'fair and reasonable' basis and is guided by the principles in the Commonwealth Government's Benchmarks for Industry-based Customer Dispute Resolution.

This submission addresses the five questions the AER posed in the Paper. Our comments are based on our extensive complaint handling experience.

3.1 What should be our approach to considering exempt customer access to ombudsman schemes?

We support the AER's approach to considering whether and how exempt customers should have access to ombudsman schemes' free and independent dispute resolution services. The AER's starting principle that '*exempt customers should, as far as practicable, not be denied*

customer protections afforded to retail customers under this Law and Rules.¹, is a position that EWOV has taken for some time, and across previous consultations².

Fair and equitable access to EWOV

It is our long-established view that all Victorian energy customers, including those supplied by exempt sellers, should have access to the same consumer protections. Accordingly, it fair and equitable that all Victorian energy customers who have an ongoing energy supply relationship have equal access to EWOV, regardless of their seller relationship. Further, under the *Benchmarks for Industry-based Customer Dispute Resolution*.³ EWOV, like other industry-based dispute resolution schemes, must aim for comprehensive and appropriate complaint coverage.

EWOV is well-placed

While there are barriers in providing such comprehensive coverage, these barriers are not insurmountable. The fairness and equity in providing universal customer access to EWOV's service vastly outweighs any difficulties ombudsman schemes may face. Indeed, ombudsman schemes are uniquely able and best-placed to handle exempt seller customer complaints. Energy ombudsman schemes in Australia are not only well-established (EWOV has over 21 years experience), but strive for best practice in complaint handling.

EWOV embraces agile processes that are responsive to industry change and complaint volumes, employs skilled and adaptive staff, and it's flexible enough to work with companies of varying sizes. We have 83 scheme participants from the electricity, gas, water and LPG industries⁴, some of which are have a very large and national customer base and some of which are new market entrant retailers, yet to fully establish themselves. In this context, EWOV is well-placed to manage cases about exempt sellers of various sizes, experience and sophistication and still offer the same high standards of service we provide to our current customers.

Barriers to the AER's approach

Despite EWOV's perceived strengths and position, expanding our jurisdiction to include exempt sellers will have a number of operational implications for us. Some of the key issues and challenges are:

¹ See s114(1)(c) Energy Retail Law - <http://www.aemc.gov.au/Energy-Rules/Retail-energy-rules/Current-rules>

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.

⁴ See page 40, EWOV 2016 Annual Report - <https://www.ewov.com.au/reports/annual-report/201610>

- Membership - The lack of information about the number and type of exempt sellers means that it is difficult to determine a suitable EWOV membership category.
- Governance – EWOV will need to make changes to its Constitution and Charter.
- Funding - EWOV will need to assess whether its current fees provide an equitable and appropriate funding model for new scheme members. As far as possible, cross subsidisation by existing EWOV members should be limited.
- Complaint handling capacity of new exempt seller members - EWOV anticipates that there will be a high level of variability in the understanding of dispute resolution and practical experience with effective internal dispute resolution.
- Administrative and operational implications - there are a number of operational issues, such as complaint volumes, resource planning, budgets, new member integration, new processes and training, external reporting and building new community awareness.
- “Bad debt” risk - the potential risk that exempt bodies do not, or cannot, cover the cost of EWOV complaints would be a new challenge for us to manage.
- Timing on integrating new members - a staged approach to integrating a significant number of new members into EWOV would be the most sensible approach.

Victorian Government’s General Exemption Order

We encourage the AER to read our 2016 submission⁵ to the Victorian Department of Environment, Land, Water and Planning’s *General Exemption Order* consultation. The draft Position Paper⁶, released in July 2016, sets out the Department’s policy position on how to improve the Victorian electricity licence exemptions framework and makes specific recommendations about EWOV’s membership and jurisdiction. Broadly, the Department proposed that EWOV’s jurisdiction be extended to make our service available to most customers of embedded network operators and associated exempt sellers. We support this proposal.

3.2 What is the scale of the problem?

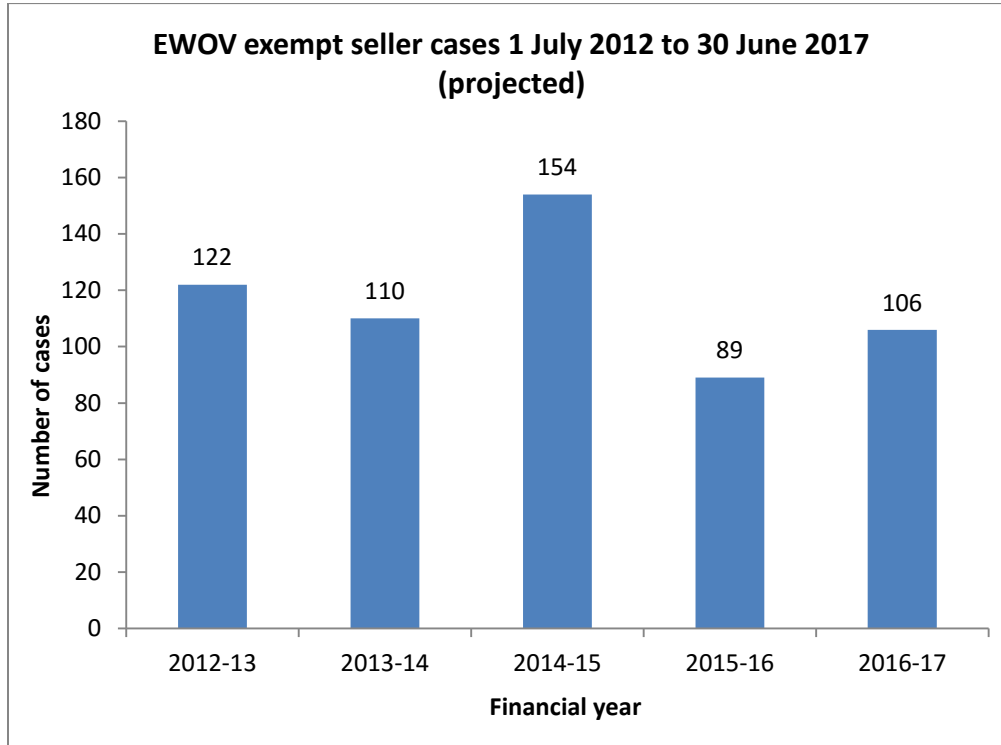
EWOV does not know the number and extent of complaints that Victorian customers have with their exempt seller. We only know the number of customers of exempt sellers that chose to contact us with a complaint or query. We think these numbers do not come close to representing the extent of the issues Victorians may have with their exempt seller.

⁵ See <https://www.ewov.com.au/files/ewov-comments-delwp-general-exemption-order-draft-position-paper.pdf>

⁶ See <https://www.energy.vic.gov.au/legislation/general-exemption-order-review>

EWOV case numbers

These are the number of exempt seller cases EWOV received by financial year from 1 July 2012 to 30 June 2017 (projected):



This case receipt trend roughly follows EWOV's overall case trends. Our overall cases peaked in 2013-14 with 84,758 cases, before falling to 50,437 in 2014-15 and 36,152 in 2015-16⁷. However, our case projection for 2016-17 suggests that, recently, more exempt seller customers are contacting us for assistance (despite a continued fall in our overall cases). Although it's too early and imprecise to make a prediction, this trend could signal a growing customer need or increasing awareness of our service. We certainly believe that we'll see more issues as exempt sellers supply a greater number of customers, particularly with the growth in residential apartment buildings.

However, in Victoria, there is currently no record of exempt sellers, their characteristics or the number and type of the customers they service⁸. We simply do not have a clear understanding of exempt seller customers and the likelihood of them making complaints to EWOV. Accordingly, at this stage we cannot with any degree of confidence, predict or quantify the

⁷ See EWOV 2016 Annual Report - <https://www.ewov.com.au/reports/annual-report/201610>

⁸ As at 2 May 2017 there are 730 network exemptions listed on the AER's Public Register of Network Exemptions, which provides some insight into the number of network exemptions. Retail exemptions remain unclear.

scale of potential energy disputes. Nevertheless, for the reasons outlined earlier, we believe that ombudsman schemes are well-placed to assist these customers and can confidently and collaboratively work with exempt sellers to achieve fair and reasonable outcomes for both parties.

3.3 What is the nature of energy disputes experienced by exempt customers?

In examining complaints we received from customers of exempt sellers, we broadly find that they present with the same type and similar distribution of issues as customers of licenced retailers. Namely, their most common concern is about their bills, such as whether it is too high, incorrectly calculated or based on a miscalculation of electricity usage. However, a prominent secondly issue, that we don't find with licenced retailers, is the related concern with the inability to change electricity retailer within their embedded network. This limited competition is a noticeable concern for some customers who contact us. While in practice it can be difficult for customers to change retailers with an embedded network, due to the often prohibitive cost of exiting such an arrangement, we think exempt sellers could make customers more aware that they have this option.

EWOV case studies

The following EWOV case studies illustrate the range of complaint issues that EWOV receives from customers of exempt sellers. In each complaint we gave the customer some general advice and referred them to another body for assistance, often Consumer Affairs Victoria.

2017/3300 – hardship customer disconnected

The customer was in financial hardship and had a dependent child. She could not afford her electricity bill and was consequently disconnected. The exempt seller was seeking payment of \$250 to reconnect the supply, which was unaffordable for the customer.

2017/2295 – limited payment options and concessions not applied

The exempt seller provided limited methods for the customer to pay his bill, so he was compelled to use direct debit. He had his bank account direct debited by the exempt seller, leaving him with no money and no food. At the time of contacting EWOV, he said he had been without food for two days. He had contacted his exempt seller ask to change to a new retailer, but was told this was not possible. He also asked about having his concession card details applied to his bills, however, the exempt seller advised it would only apply the concession amounts at the end of the year.

2017/1196 – residential customer disconnected

The customer said he had always been with a licensed electricity retailer. Unknown to him, the owners' corporation converted the apartment building to an embedded network. He was disconnected twice as he thought the attempts by the exempt seller to sign him up were not legitimate as he did not consent to any change to the way he was supplied electricity.

2017/5434 – no choice of retailer

The customer moved into an apartment in Melbourne's CBD and was surprised to find that she did not have the option to choose an electricity retailer. She wanted to know if this was genuine information and if the exempt seller was an 'approved electricity retailer'.

2017/7273 – access to meter data

The customer contacted EWOV dissatisfied with his exempt seller as it would not provide him with his electricity meter's interval data.

2017/4559 – high electricity bill

The customer was dissatisfied with his exempt seller after he received a high bill for a period when the property was vacant. The customer made several attempts to resolve the issue before contacting both EWOV and Consumer Affairs Victoria.

2017/6732 – high billing for caravan park customer

The customer lived in a permanent cabin at a caravan park and did not have a choice of electricity retailer. He was dissatisfied about high bills from his exempt seller, including the daily supply charge and the high price per kWh.

2017/3833 – site ownership issue results in disconnection

An exempt seller disconnected a residential customer's electricity supply following confusion and errors about whether the exempt seller or a licensed retailer held the billing rights to the customer's meter. There was also confusion about which company billed the network and usage charges.

2017/591 – customer billed past her move-out date

The customer contacted EWOV because she had been billed past the date she vacated her apartment, despite notifying the exempt seller of this in writing. She had several contacts with the exempt seller, which did not resolve the issue.

Bundling of Complaints

We are confident that should any energy aspect of an exempt seller complaint be bundled with other issues, such as rent payments, we will be able to isolate and effectively resolve that aspect. We have the skill to identify and refer the other issues within the complaint to another appropriate body. We currently have experience in doing exactly this. For example, sometimes an energy retailer will provide a customer with a service that does not relate to its licensed function of supplying energy, such as appliance maintenance. This secondary service lies outside our jurisdiction to investigate. However, we are able to decouple the different issues to only investigate the energy supply and billing aspects of the complaint.

3.4 Can existing external dispute resolution mechanisms effectively deal with energy disputes?

The benefits of external dispute resolution

While other bodies, such as the Victorian Civil and Administrative Tribunal (VCAT), can handle energy complaints from customers of exempt sellers, EWOV believes that the free, quick, specialised and informal nature of ombudsman schemes makes them a better dispute resolution option for customers.

We summarised the benefits of external dispute resolution in EWOV's 2016 submission to the Department of Justice and Regulation's *Access to Justice Review*⁹, where we stated:

“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, 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.¹⁰”

The final report to the *Access to Justice Review* recognised the strengths and customer benefits of external dispute resolution and also reflected on the drawbacks of more formal justice options, such as tribunals and courts.

⁹ See <https://engage.vic.gov.au/accesstojustice>

¹⁰ See pages 8 and 9 - <https://www.ewov.com.au/files/ewov-comments-on-the-department-of-justice-and-regulations-access-to-justice-review.pdf>

Customer awareness of dispute resolution

We believe that customers of exempt sellers would not have a greater level of awareness of external avenues to dispute resolution than customers of licensed retailers. EWOV conducts community awareness surveys every few years. In our last survey (undertaken in 2014) 64% of respondents had a prompted awareness of EWOV, which remained virtually unchanged from the 65% awareness in the 2009 survey.

We undertake significant amount of work to help raise awareness of EWOV's service and free and independent role. The core focus of our awareness building is with community organisations, particular those who serve more vulnerable customers. Accordingly, we have particularly strong links with the financial counselling and emergency relief sectors.

Should there be any changes to our jurisdiction, EWOV will make substantial time and effort to broaden our community and customer engagement work to encompass customers of exempt sellers. We will directly inform customers about their energy rights and responsibilities, including their new entitlement to contact EWOV for assistance. We will use our communication channels including web, social, publications, factsheets and media. This will require updating of existing materials and developing dedicated information for these customers. More detail about our community work is set out in submission to the Department of Justice and Regulation's *Access to Justice Review*¹¹.

3.5 Additional considerations

As for additional considerations, we think it's important to note our view that the AER's exemption framework should also capture the authorised agents that act on behalf of the exempt seller – such as a body corporation who outsource to other entities (and their managers and agents). The chain of agency and corporate responsibility may be long, yet this should not mean that customers as end users are excluded from their right to access dispute resolution about their energy supply.

¹¹ See pages 8 and 9 - <https://www.ewov.com.au/files/ewov-comments-on-the-department-of-justice-and-regulations-access-to-justice-review.pdf>

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cynthia Gebert', with a stylized flourish at the end.

Cynthia Gebert
Energy and Water Ombudsman (Victoria)