



16 May 2017

Australian Energy Market Commission
PO Box A2449
SOUTH SYDNEY NSW 1235

By email: aemc@aemc.gov.au

Re: Australian Energy Market Commission, Review of regulatory arrangements for embedded networks

Thank you for the opportunity to comment on the Australian Energy Market Commission (AEMC), *Review of regulatory arrangements for embedded networks, Consultation Paper* (the Paper).

The Energy and Water Ombudsman (Victoria) (EWOV) is an industry-based external dispute resolution scheme that provides alternative dispute resolution services to Victorian energy and water customers by receiving, investigating and facilitating the resolution of complaints. EWOV's comments are based on our 21-years' experience in handling customer complaints, including those we receive about embedded networks (exempt sellers) which we do not currently have jurisdiction to investigate. Although Victoria has its own jurisdictional arrangements for exempt sellers, we believe that our experience handling enquiries and complaints from Victorian embedded network customers helps paint a complete national picture for the AEMC's review. The majority of our commentary is focused on section 3.3 of the Paper, including question 6 about dispute resolution and consumer protections, and we provide case studies to illustrate some of the issues embedded networks customers contact EWOV about.

Additionally, this submission draws on some of our previous comments on related topics and issues raised in other consultations:

- Victorian Department of Environment, Land, Water and Planning (DELWP)'s *General Exemption Order – Draft Position Paper*¹.
- Council of Australian Government Energy Council's *Consumer Protections for Behind the Meter Electricity Supply – consultation on regulatory implications*².

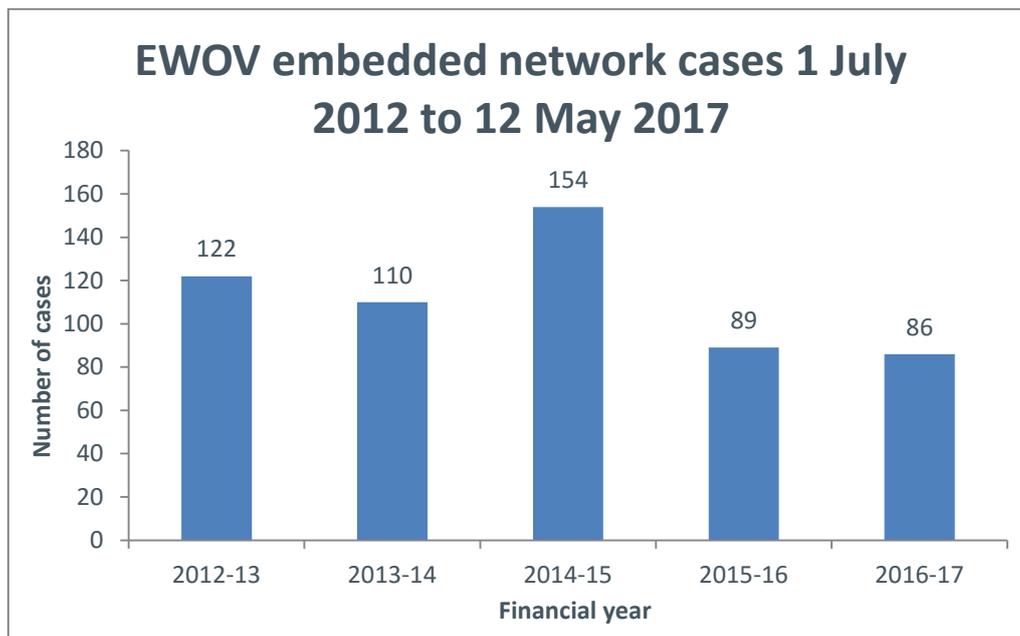
¹ Submission available at: <https://www.ewov.com.au/files/ewov-comments-delwp-general-exemption-order-draft-position-paper.pdf>

² Submission available at: <https://www.ewov.com.au/files/ewov-comments-on-coag-energy-council-consumer-protections-for-behind-the-meter-electricity-supply-consultation-on-regulatory-implications.pdf>



EWOV'S CASE DATA

EWOV does not yet have a cache of case data to paint a complete picture of the volume or type of embedded network complaints received. However, we can provide the following case data following a manual analysis of cases received between 1 July 2012 and 11 May 2017. It is important to note that EWOV's overall case volumes peaked in 2013-14 at 84,758 cases before dropping to 50,437 in 2014-15, followed by a further reduction to 36,152 in 2015-16. This may partly explain the fluctuation in embedded network cases received by EWOV.



As DELWP's *General Exemption Order Review*³ is underway, EWOV is looking to expand our data capture for these currently out-of-jurisdiction complaints. Additionally, it is important to note that not all embedded network customers would necessarily contact EWOV seeking assistance because they know EWOV is unable to assist with embedded network complaints or are otherwise unaware of EWOV's existence. Despite this, EWOV believes that issues with embedded networks will increase as they supply a greater number of customers, particularly those in residential apartment buildings.

CASE STUDIES

The following out-of-jurisdiction case studies demonstrate how EWOV currently handles complaints from embedded network customers and the broad range of issues they complain about. As these complaints were out of EWOV's jurisdiction, we referred customers to Consumer Affairs Victoria (CAV) and provided customers with general information about embedded networks and our jurisdiction.

³ Department of Environment, Water, Land and Planning's *General Exemption Order Review*:
<http://delwp.vic.gov.au/energy/legislation/general-exemption-order-review>



2017/3300 – hardship customer disconnected

The customer advised that she was experiencing severe financial hardship and had a dependent child. She could not afford her embedded network electricity bill and was consequently disconnected. The embedded network was demanding payment of \$250 to reconnect the supply, which was unaffordable for the customer.

2017/2295 – limited payment options and concessions not applied

The customer was dissatisfied with his embedded network as he had limited methods to pay his bill. He had his bank account direct debited by the embedded network company which left him with no money and no food. At the time of contacting EWOV, he had been without food for two days. He had contacted his embedded network company to request to change to a new retailer; however, he was informed that this was not possible. He also asked about having his concession card details applied to his bills, however, the embedded network company advised him that it would only apply the concession amounts at the end of the year.

2017/1196 – residential customer disconnected

The customer advised that he had always been with a licensed electricity retailer. Unbeknownst to him, the owners' corporation converted the apartment building to an embedded network. He was disconnected twice as he thought the attempts by the embedded network company 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 embedded network was an 'approved electricity retailer'.

2017/7273 – access to meter data

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

2017/4559 – high electricity bill

The customer was dissatisfied with his embedded network company after he received a high bill for a period when the property was vacant. The customer made several attempts to resolve the issue prior to contacting both EWOV and CAV.

2017/6732 – high billing for caravan park customer

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





2017/3833 – site ownership issue results in disconnection

An embedded network company disconnected a residential customer's electricity supply following confusion and errors about whether the embedded network 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 dissatisfied that she had been billed past the date she vacated her apartment, despite notifying the embedded network of this in writing. She had several contacts with the embedded network company which did not resolve the issue.

VICTORIAN JURISDICTIONAL ARRANGEMENTS

As noted on page 12 of the Paper, DELWP is currently undertaking a review of the Victorian-specific jurisdictional arrangements with respect to embedded networks and exempt sellers.⁴ One of the options being considered is the extension of EWOV's jurisdiction to cover customers in embedded networks.

ACCESS TO DISPUTE RESOLUTION

It is EWOV's view that all energy customers, including those within embedded networks, should have access to free and independent dispute resolution. EWOV's position has been consistent across previous consultations⁵ 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*.⁶ EWOV, like other industry-based dispute resolution schemes, must comply with the Benchmarks and aim for comprehensive and appropriate complaint coverage.

In July 2016, an independent report – *Consumer access to external dispute resolution in a changing energy market*⁷ – was commissioned by the energy ombudsman schemes of Victoria, New South Wales and South Australia to improve their own understanding of the state of the energy landscape and the impact that this is having on the access to free and independent dispute resolution for all

⁴ See DELWP's *General Exemption Order Review*: <http://delwp.vic.gov.au/energy/legislation/general-exemption-order-review>

⁵ 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).

⁶ 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.

⁷ Report available at: <https://www.ewov.com.au/files/160624-consumer-access-to-external-dispute-resolution-in-a-changing-energy-market.pdf>





Australian energy customers. The report details the importance of existing consumer protections intersecting with new energy products and services and the jurisdiction of energy ombudsmen.

EWOV believes that existing state-based energy ombudsman schemes have the necessary expertise to deal with disputes where the customer and seller have an ongoing relationship concerning the supply of energy. This principle is tested when it comes to complaints about energy ‘gadgets’ or hardware products, which are generally covered by the *Australian Consumer Law*⁸ and can be appropriately handled by the consumer protection agencies in the relevant jurisdiction, such as Consumer Affairs Victoria. However, dispute resolution and consumer protections scenarios may become more complex in situations where the hardware products are intrinsically linked to a customer’s supply of electricity, billing or contract, as noted in the Paper with respect to distributed generation forming part of the embedded network setup.

Lastly, we commented in our submissions to DELWP’s *General Exemption Order Review* about the importance of a staged approach to extending our jurisdiction, commented on the complexity of scheme participant funding models, case cost cross subsidies between scheme participants, and changes that would need to occur to EWOV’s governance, specifically our Constitution and Charter. It is important to consider these comments in relation to our view on equitable access to consumer protections and dispute resolution for embedded network customers.

VULNERABLE CONSUMERS

EWOV’s affordability-related complaints have decreased over the last two years but now make up about 30% of our total case work⁹. Electricity is an essential service that should be accessible to all consumers. Therefore, consideration of hardship programs and payment assistance provided by embedded networks for vulnerable customers is needed to ensure that customers can maintain supply of an essential service. Important consumer protections include the minimum disconnection amount, the mandatory content of hardship programs, provision of energy efficiency information, and ensuring customers receive the government concessions and grants they may be entitled to.

CHOICE OF RETAILER

In a noticeable number of cases EWOV received about embedded networks, customers expressed concerns about their inability to change to a licensed energy retailer¹⁰. This suggests there is some merit to embedded networks 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 embedded network and make them aware of their option to

⁸ See www.consumerlaw.gov.au.

⁹ EWOV’s affordability case data can be found in our quarterly *Affordability Report* and 2015 research paper, *A closer look at affordability*, available at: <https://www.ewov.com.au/reports>

¹⁰ See page 3, EWOV comments on the [Department of Economic Development, Jobs, Transport and Resources Review of General Exemption Order - Issues Paper](#).





choose another retailer. Sometimes these complaints are coupled with a lack of consent to being with an embedded network (usually brownfield site conversions) or the prohibitive costs associated with connecting to the local distributor's network in order to access the competitive electricity retail market.

PROVISION OF INFORMATION

Based on our experience handling embedded network cases, we support the provision of comprehensive plain-English information by embedded networks to customers to enable them to make fully informed decisions. Information provided about the limited customer protections available and limited access to dispute resolution may help shape some customers' decisions about what type of electricity supply and sale arrangement will and will not suit their needs.

In conclusion, EWOV believes that it is critical for there to be thorough consideration of how customer protections fit within the existing or new regulatory regime for embedded networks and their customers. Specific to this, we maintain that access to free and independent external dispute resolution must continue to play a central role in the suite of customer protections.

We trust the above comments are helpful. Should you require further information or have any queries, please contact Christopher Stuart-Walker, Senior Research and Communications Officer, on (03) 8672 4252 or chris.stuart-walker@ewov.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cynthia Gebert'.

Cynthia Gebert
Energy and Water Ombudsman (Victoria)

