



28 February 2017

Review Secretariat
Department of Environment, Land, Water and Planning
MELBOURNE VIC 3000

By email: energymarket.review@delwp.vic.gov.au

Dear Review Secretariat

Re: *Department of Environment, Land, Water and Planning Review of electricity and gas retail markets in Victoria – Discussion Paper.*

Thank you for the opportunity to comment on the Department of Environment, Land, Water and Planning (DELWP)'s *Review of electricity and gas retail markets – Discussion Paper* (the Paper).

As an industry-based external dispute resolution scheme, the Energy and Water Ombudsman (Victoria) (EWOV) provides alternative dispute resolution services to Victorian electricity, gas (including LPG) 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 approximately 600,000 cases since we started receiving complaints in 1996. In this submission, we have not responded directly to the questions in the Paper and instead have drawn on our experience handling customer complaints and our previous public submissions^{1,2,3,4}.

We note that the focus of the Paper is on retail competition and contracts, product and service innovation, prices, and consumer outcomes. EWOV's 21 years' experience handling energy cases involving some of these matters positions us well to provide a reflection of our experience and customers' experiences participating in a competitive energy market. We also look ahead to the future at how new products and services intersect with current customer protection frameworks and EWOV's jurisdiction.

¹ Department of Environment, Land, Water and Planning (DELWP)'s *General Exemption Order (GEO) Draft Position Paper* submission available at: <https://www.ewov.com.au/files/ewov-comments-delwp-general-exemption-order-draft-position-paper.pdf>

² COAG Energy Market Reform Working Group's *New Products and Services in the Electricity Market – consultation of regulatory implications* submission available at: <https://www.ewov.com.au/files/ewov-comments-on-coag-emrwg-new-products-and-services-in-the-electricity-market-consultation-of-regulatory-implications.pdf>

³ The Australian Treasury's *Australian Consumer Law (ACL) Review – Issues Paper* submission available at: <https://www.ewov.com.au/files/ewov-comments-on-the-australian-consumer-law-review-issues-paper.pdf>

⁴ Department of Justice and Regulation's *Access to Justice Review* submission available at: <https://www.ewov.com.au/files/ewov-comments-on-the-department-of-justice-and-regulations-access-to-justice-review.pdf>





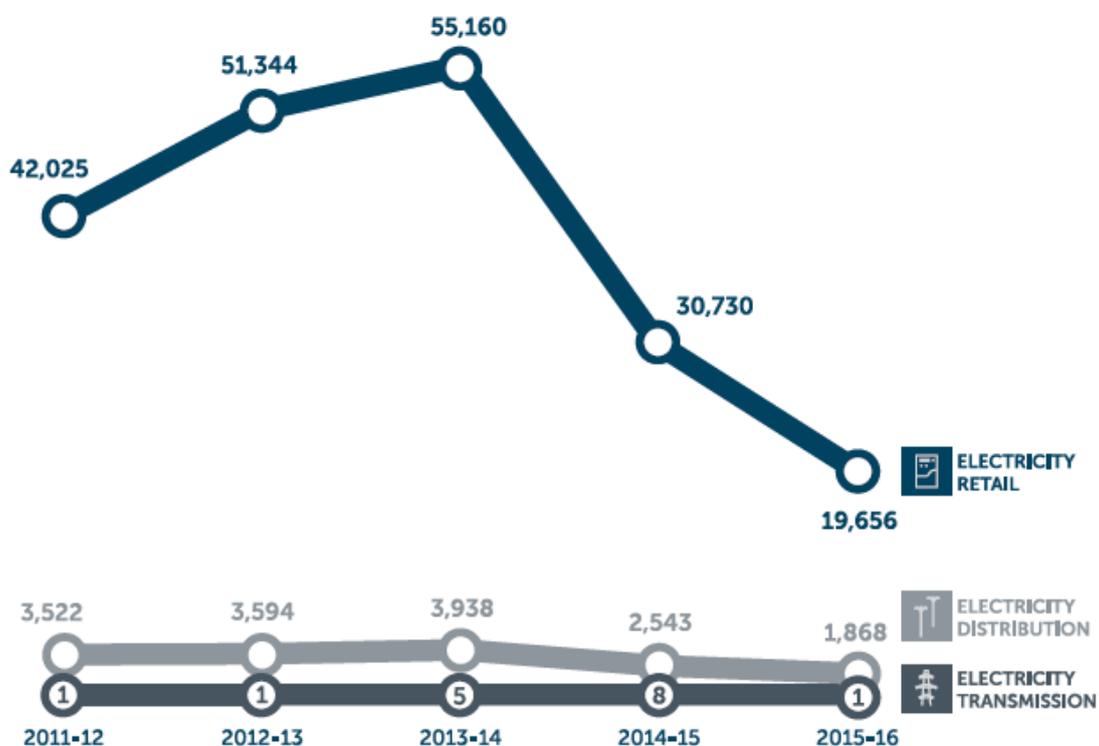
EWOV gas and electricity retail cases reduced in recent years

During EWOV's operation, we have consistently seen energy retail cases make up the bulk of our total caseload. In 2015-16, electricity retail cases made up 54% of EWOV's total work while gas retail cases made up 28% of EWOV's total caseload. Encouragingly, as shown in graphs 2 and 3, EWOV saw a 36% reduction in electricity retail cases between 2014-15 and 2015-16 and a 19% drop in gas retail cases in the same period. There were a range of reasons behind the sharp drops in cases EWOV received, which included:

- improved internal dispute resolution at energy companies
- the resolution of issues involved with implementing new billing systems at large energy retailers
- the conclusion of the Smart Meter rollout
- in relation to retail competition, the cessation of door-to-door marketing by three large energy retailers.

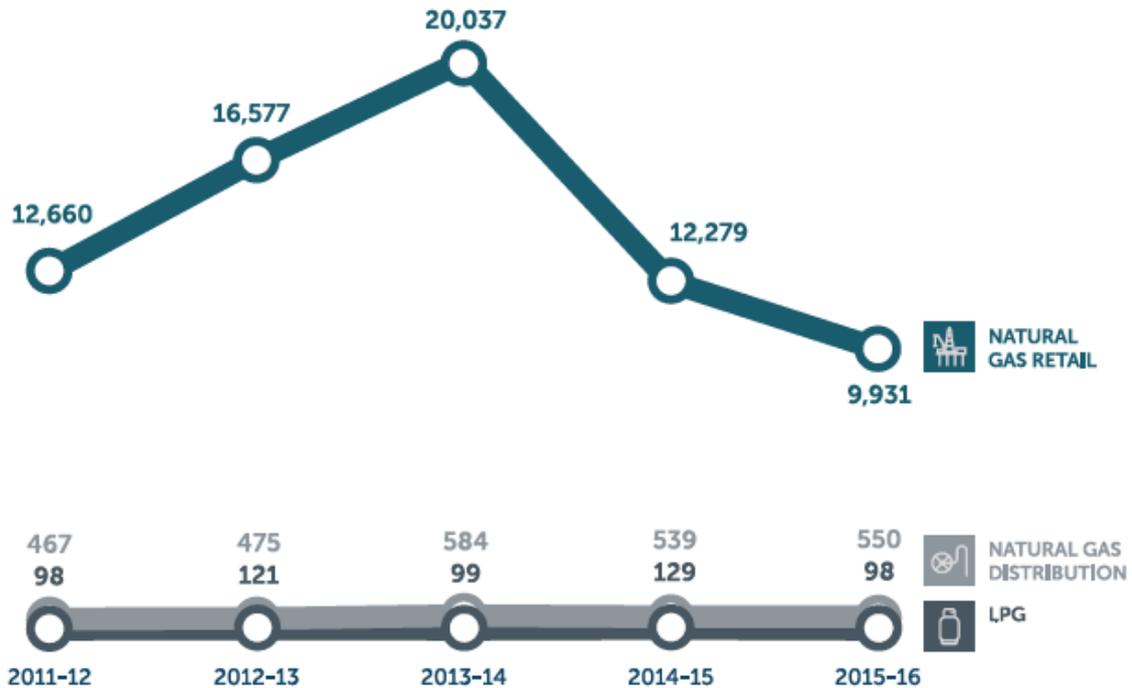
However, it is important to acknowledge that although cases have come down over the last two financial years, case volumes had reached peak levels in 2013-14 when EWOV received 84,758 cases.

Graph 1: EWOV electricity cases received between 2011-12 and 2015-16





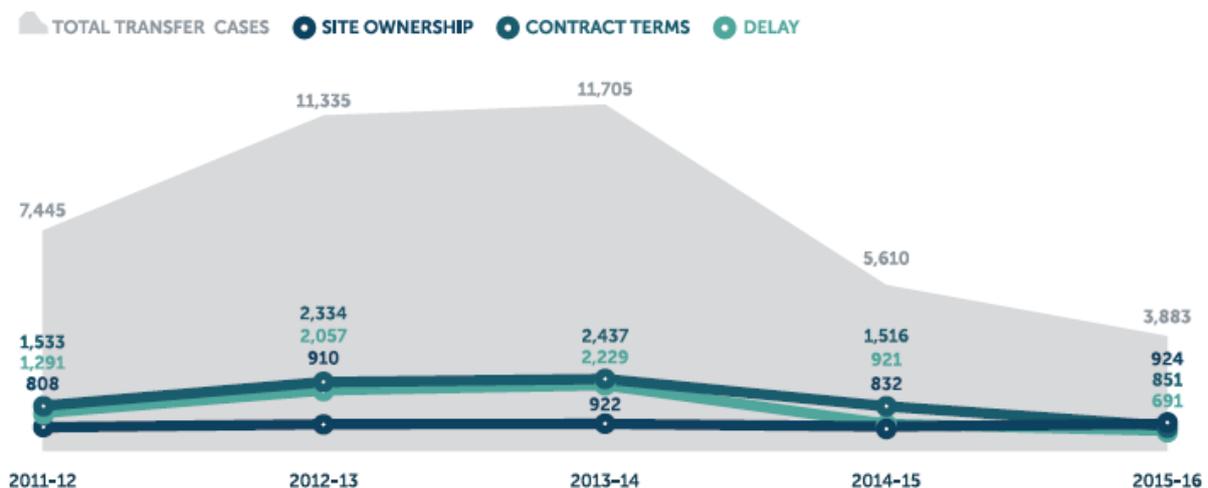
Graph 2: EWOV gas cases received between 2011-12 and 2015-16



EWOV energy transfer cases reduce substantially

As illustrated in graph 3, EWOV has seen a decrease in the number of energy transfer cases with significant drops recorded from 2013-14 onwards.

Graph 3: EWOV energy transfer cases 2011-12 to 2015-16



Transfer cases involve issues such as delays, contract termination fees, variation in contract terms and/or prices, transfer objections, transfer errors and transfer without consent. Due to





the historically high levels of transfer issues customers raised with EWOV, we previously had a quarterly *Marketing and Transfer Report*⁵ which provided insights into customer complaints and EWOV's analysis.

Two of the most complained about issues with energy transfer cases are that prices change during fixed-term contracts and the application of termination fees.

Termination fees historically a big issue

The number of cases about termination fees has decreased substantially over the past three years since our submission to the Australian Energy Market Commission's rule change request consultation about price variation in market contracts⁶. We note that the Victorian Government's *Energy Amendment (Consumer Protection) Act 2015*⁷ prohibited energy retailers from applying termination fees where the price or terms of a contract had changed during the fixed-term contract period from 1 January 2016. In turn, this allowed customers to switch to a new retailer without incurring financial penalty if their price and/or terms had changed.

Variation in prices and terms during fixed-term contracts still an issue

The cases EWOV receives about contract variations usually involve customer complaints about prices increasing during fixed-term periods. These are sometimes coupled with a loss of discounts – such as paying on time – after a fixed period of time, often resulting in unexpectedly high bills. In 2015-16, EWOV received 844 energy contract terms cases. Many customers complained that they were not aware that prices could increase during fixed-term contracts or that discounts or other benefits would cease after a period of time. Sometimes this confusion was caused by incorrect or inadequate communication during the marketing interaction or with the terms and conditions of the contract. The case studies below demonstrate these two issues.

Case study 1: Customer in a two-year contract dissatisfied with tariff increases (2017/1498)

The customer contacted EWOV as he was dissatisfied that his electricity retailer had increased tariffs during a two-year fixed-term contract that he had entered in early 2016. In late 2016, the customer was notified by his retailer that the peak tariff would increase by approximately 20% and the off-peak tariff by approximately 50% from 1 January 2017. Dissatisfied with the increases, particularly during a fixed-term contract, he contacted his retailer. Unable to resolve the issue, the customer contacted EWOV for assistance and an Assisted Referral was raised. The customer remained dissatisfied with the information provided by his retailer and re-contacted EWOV, at which point the matter was escalated to an Investigation.

As part of the Investigation, EWOV reviewed the customer's contract and specifically the terms and conditions which specify how and when rates can change. This review found that the

⁵ Report archive available at: <https://www.ewov.com.au/reports/marketing-and-transfer-report>

⁶ Submission available at: <https://www.ewov.com.au/files/ewov-comments-on-aemc-retailer-price-variations-in-market-retail-contracts-consultation-paper.pdf>

⁷ Legislation available at: http://www.austlii.edu.au/au/legis/vic/num_act/elapa201549o2015552/





electricity retailer had acted in accordance with the contract and that it had notified the customer of the price increase.

To resolve the complaint, the electricity retailer confirmed the new rates that would apply from 1 January 2017 and offered a two-year discount on the service to property charge to help facilitate the resolution of the complaint. The customer was satisfied and the case was closed.

Case study 2: Customer loses 30% discount after his contract benefit period ends (2017/2098)

The customer received written notification from his retailer in July 2016 that advised he would continue on the same contract. The contract had a 30% discount for paying on time. However, the first bill the customer received after the notification did not have the discount applied. The customer contacted his retailer dissatisfied that the discount was not on his bill. The retailer agreed to backdate the discount, however, the customer received conflicting billing which had different amounts owing for the same billing period.

Dissatisfied with the ongoing issue, the customer contacted EWOV and an Assisted Referral was raised. This did not resolve the billing conflict issue so EWOV escalated the matter as an Investigation when the customer recontacted us. As part of the Investigation we reviewed the customer's account information and discussed the billing and discounts with the retailer.

To resolve the issue, the retailer apologised for the conflicting billing and issues with applying the 30% discount at the end of the customer's contract. It applied a credit of just over \$200 to the account to ensure the account was billed as though it had never lost the discount. The customer was satisfied and the case was closed.

Based on our experience resolving contractual complaints, we believe that provision of comprehensive and easy-to-understand information by energy retailers to customers is critical as energy products and services increase in complexity, therefore enabling customers to make fully informed decisions. We also believe it is essential that there are strong protections regarding customers' explicit informed consent prior to entering what we envisage will be more complex contractual arrangements for the sale and supply of energy.

The changing face of energy products, services and business models

As illustrated in the graph 4, over the last 10 years of EWOV's operation, we have observed many changes and the associated challenges for customers, industry and government that have impacted on case volumes and customer complaints. With a number of consultations and reviews underway both nationally and in Victoria, EWOV sees an opportunity to address some of the anticipated issues for customers and industry in a proactive and staged approach. We believe that this will help mitigate customer confusion and dissatisfaction in a changing and increasingly complex market.

Our following comments relate to the references on page 7, 9 and 12 of the Paper about new energy products and services. In particular: "In the future, retailers are likely to provide further products and services as the way customers buy and use energy continues to transform."





Based on EWOV's experience, and as shown in the graph 4, as Victoria's electricity market started to change in 2009 with the introduction of Smart Meters and the mass uptake of solar PV panels and premium feed-in tariffs⁸, we saw impacts on customer complaints. As new technologies and ways of buying and supplying electricity become more common place in the future, we expect that there will be an increasing number of complaints and challenges as customers navigate a more sophisticated market. Therefore, EWOV believes that thorough consideration of customer protections for new products and services – including equitable access to external dispute resolution – is crucial for state and federal governments and regulators as the electricity market enters the next phase of technological and product evolution.

Another emerging area that needs consideration in the context of consumer protections and access to dispute resolution is the contestability of electricity metering services. On 26 November 2015, the Australian Energy Market Commission (AEMC) made a rule⁹ that will expand metering competition and related services. The rule is due to commence on 1 December 2017. Up until 31 December 2016, Victoria had a derogation¹⁰ that exempted the state from participating in the expansion of metering competition, due to Smart Meters. As electricity distributors and retailers are required by their licence conditions to be EWOV scheme participants, customers are currently able to access our dispute resolution service should an issue arise. We note that DELWP has a consultation underway: *Transition to metering competition in Victoria – Options Paper*¹¹. If metering competition is adopted, it is unclear how customer access to EWOV will be impacted if meters, products and services are provided by companies that are not EWOV scheme participants.

⁸ EWOV's archive of our quarterly Solar and Smart Meter Report is available at:
<https://www.ewov.com.au/reports/solar-and-smart-meter-report>

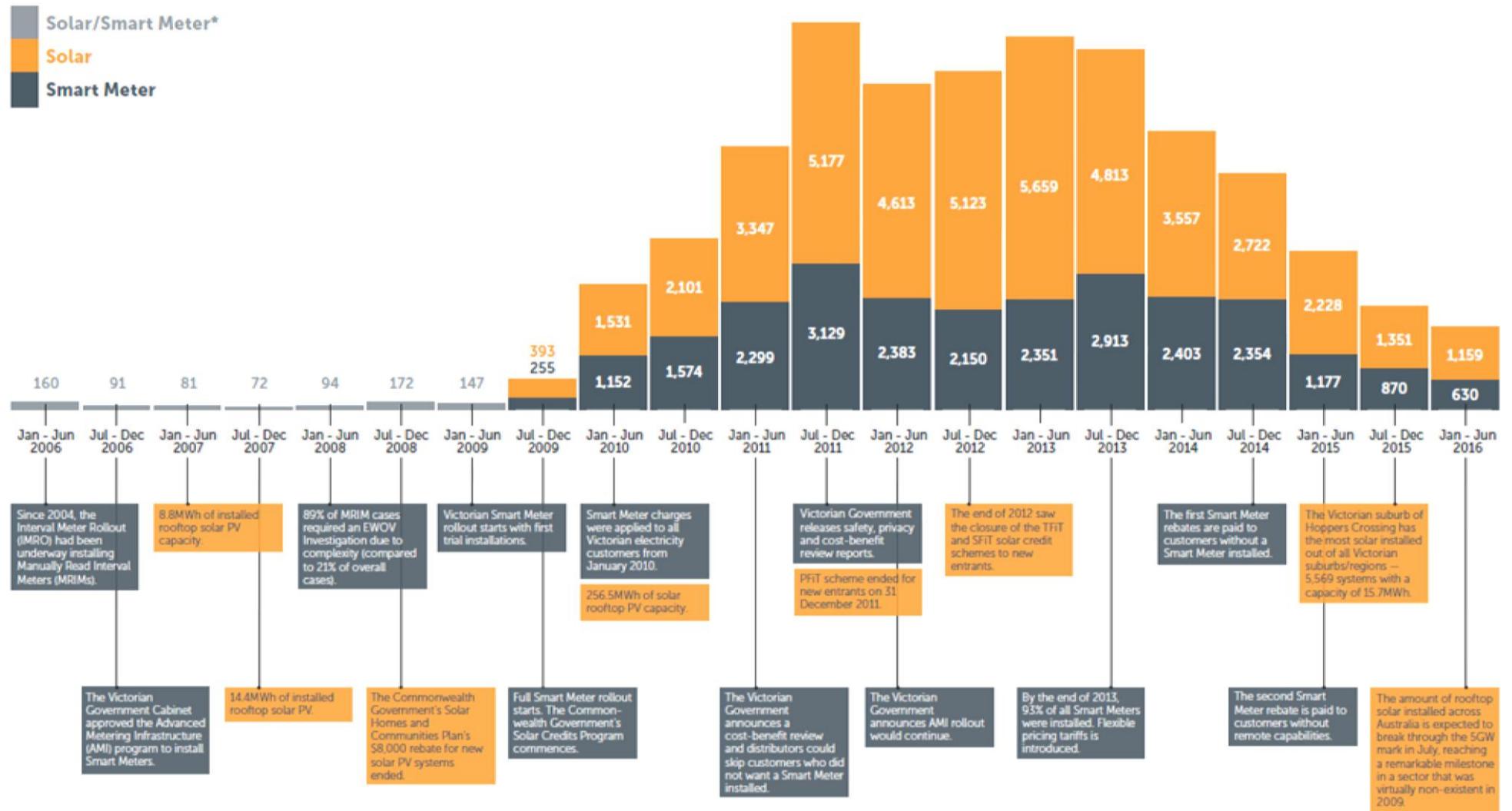
⁹ AEMC Rule on Expanding Competition in Metering and Related Services is available at:
<http://www.aemc.gov.au/Rule-Changes/Expanding-competition-in-metering-and-related-serv>

¹⁰ AEMC Victorian Jurisdictional Derogation, Advanced Metering Infrastructure is available at:
<http://www.aemc.gov.au/Rule-Changes/Victorian-jurisdictional-derogation,-advanced-mete#>

¹¹ Available at: <http://delwp.vic.gov.au/energy/electricity/smart-meters>



Graph 4: EWOV solar and Smart Meter cases received between 1 January 2006 and 30 June 2016



* Solar and Smart Meter cases were combined issues up until June 2009. From July 2009 they were counted as separate cases.



Equitable dispute resolution and customer protections need consideration

EWOV believes that all energy customers – regardless of how they are supplied energy – should have easy access to free, independent and fair dispute resolution. EWOV’s position is based on two equitable principles: the inherent fairness of all Victorian energy customers having equal access to EWOV for unresolved disputes, and the principles of effectiveness, accessibility and fairness built into the national *Benchmarks for Industry-based Customer Dispute Resolution*¹², with which EWOV complies.

In July 2016, an independent report – *Consumer access to external dispute resolution in a changing energy market*¹³ – 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 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.

While we acknowledge that industry should be able to innovate with new products and services, we believe that there should continue to be a strong focus on customer protections for essential services.

EWOV believes that there are two primary issues involved with customer protections and access to external dispute resolution as the market develops:

- the current exempt seller framework – which we note is under review through DELWP’s General Exemption Order consultation¹⁴
- the potential proliferation of energy retailers and new energy companies offering new products, services and contracts for emerging energy sale and supply arrangements such as solar power purchase agreements, which largely fall outside of EWOV’s jurisdiction.

The above two scenarios already impact a number of customers, for example:

- Customers of exempt retailers cannot lodge complaints with EWOV and therefore effectively have only more legalistic avenues for redress available such as the Victorian Civil Administrative Tribunal.
- Customers of incumbent energy retailers may find that most or all of their complaint about a solar PV system purchased through their retailer is out of EWOV’s jurisdiction¹⁵. Customers of incumbent energy retailers may find that a complaint about a solar power purchase agreement entered into with an energy retailer may fall outside EWOV’s jurisdiction.

¹² 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.

¹³ Report available at: <https://www.ewov.com.au/files/160624-consumer-access-to-external-dispute-resolution-in-a-changing-energy-market.pdf>

¹⁴ DELWP General Exemption Order Review available at: <http://www.delwp.vic.gov.au/energy/legislation/general-exemption-order-review>

¹⁵ These cases are generally referred to Consumer Affairs Victoria.





These scenarios do sometimes create customer confusion and dissatisfaction with exempt and licensed retailers, and with EWOV. EWOV's jurisdiction is detailed further on.

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*¹⁶ and can be appropriately handled by the consumer protection agencies in the relevant jurisdiction, such as Consumer Affairs Victoria. However, these 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, contract and/or in situations where the product/service is offered by a scheme participant of an energy ombudsman.

EWOV's jurisdiction and existing energy retailers

As noted in the Paper, it is anticipated that energy retailers will expand their suite of products, contracts and services to customers in the future.

The extent of EWOV's jurisdiction is limited by the licence conditions imposed on energy companies by the Essential Services Commission (ESC)¹⁷. Many new business models that have recently entered the Victorian energy market – including distributed energy generation and storage – are currently exempt under their derogated licence conditions from many of the requirements placed on 'traditional energy companies', including membership of EWOV.

At the same time, there is growing complexity for energy consumers when EWOV's scheme participants offer products and services – such as solar PV systems and/or batteries – which are considered to be outside EWOV's jurisdiction as they are deemed to be commercial activities outside the scope of the electricity or gas licence issued by the ESC¹⁸. Often these customers are complaining about issues such as faulty solar systems, billing implications and installation delays, and are generally dissatisfied to discover that EWOV cannot assist them with their complaint. These complaints are referred to another body such as Consumer Affairs Victoria, the Australian Competition and Consumer Commission or the Victorian Civil and Administrative Tribunal.

To add to this complexity, sometimes scheme participant products or services that would usually fall outside EWOV's jurisdiction are actually within jurisdiction by virtue of the billing arrangements for the product or service. For example, EWOV may complete a jurisdictional assessment and find that the scheme participant has billed the customer for a solar PV system on their standard electricity retail bill, thereby arguably bringing elements of the matter within EWOV's jurisdiction. As more new products and services enter the market and are offered by EWOV's scheme participants, this issue is likely to grow.

¹⁶ See www.consumerlaw.gov.au.

¹⁷ ESC website: <http://www.esc.vic.gov.au/Energy/Licensing>

¹⁸ Clause 4.2(b) of EWOV's Charter: <https://www.ewov.com.au/files/ewov-charter.pdf>





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

The following out-of-jurisdiction case studies demonstrate how EWOV currently handles complaints from customers of EWOV scheme participants that offer products and services that are deemed to be outside the scope of the energy licence issued by the ESC. These are illustrative only and do not necessarily represent the issues that EWOV envisages should be within jurisdiction. Additionally, at this stage, EWOV does not yet have a cache of case data to show how new technologies, such as solar power purchase agreements, may impact customers' ability to access energy ombudsmen. However, EWOV believes that this issue has the potential to increase substantially as more products and services where there is an ongoing relationship between customers and companies – but are deemed to be outside energy retail licences and therefore exempt from EWOV membership – are introduced to the market by new and incumbent energy companies.

EWOV out-of-jurisdiction case studies¹⁹

Case study one (2016/600: Referred to CAV)

The customer ordered and paid for a solar system through an EWOV scheme participant but experienced delays and issues with having the system installed and connected. They also had several customer service issues while trying to resolve the complaint.

Case study two (2016/3474: Referred to CAV)

The customer had a solar system installed by an EWOV scheme participant. The solar system stopped working and the customer had issues trying to get it fixed under warranty.

Case study three (2016/5781: Referred to CAV)

The customer received a quote from an EWOV scheme participant for a solar system to be installed. They paid 'thousands of dollars as an upfront payment' but then 'new and unexpected travel charges' were added to the cost.

Case study four (2015/26091: Referred to CAV)

Elderly residents in a retirement village received unsolicited phone marketing from an EWOV scheme participant offering to complete solar system inspections for \$100.

Case study five (2015/6843: Assisted Referral and Referred to CAV)

The customer received unsolicited door-to-door marketing from an EWOV scheme participant offering to install solar panels and advising that the customer will 'never have to pay for electricity again'. Based on this information, the customer proceeded to install the solar system, however, after a billing delay he continued to receive bills with amounts owing.

¹⁹ As these cases were out of EWOV's jurisdiction, we only heard the customer's 'side of the story'.





In conclusion, EWOV believes that it is critical for there to be thorough consideration of how customer protections fit with new and existing energy business models and their associated products and services. Specific to this, we maintain that equitable access to free and independent external dispute resolution, such as EWOV, 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', followed by a stylized flourish.

Cynthia Gebert
Energy and Water Ombudsman (Victoria)

