

Compensation for damage and loss following electricity outage September 2015

Background

EWOV receives and investigates complaints about claims for damage or loss following supply reliability or interruption issues, known as outages. While complaints may relate to planned outages, power outage complaints are more commonly about damage and loss caused by unplanned supply interruptions. This statement outlines EWOV's view of what is fair and reasonable in situations where there has been a claim following an outage or series of outages.¹

Note: EWOV's view of what is fair and reasonable following unauthorised voltage variation is contained in EWOV's [Position Statement 3 - Compensation for damage and loss following voltage variation](#).

Considerations during an EWOV investigation

Each complaint is reviewed on its individual merits and its outcome will depend on the circumstances of the complaint. However, for complaints about damage or loss following an outage or series of outages, EWOV will usually consider:

1. A timeline of events and the relevant facts
2. Laws and codes
3. Regulatory considerations and advice
4. Electricity distributor policies and their application
5. Current good industry practice, past outcomes for similar investigated complaints and previous Binding Decisions
6. Other relevant considerations

1. A timeline of events and the relevant facts

For this type of complaint it is important for EWOV to establish:

- Whether there has been any damage or loss experienced.
- Substantiation of the damage or loss, and of the value of the damage or loss.² If compensation is payable, it will ordinarily be based on value at the time of the event (ie. "old-for-old" not "new-for-old", or to put the customer in the same position as they would have been had the event not taken place).
- Whether the customer has any insurance, and whether the event is covered by the insurance, as well as the amount of any excess or increase to premiums as a result of a claim.
- Precautions or loss minimisation strategies and steps undertaken by the customer, both planned and implemented.³

¹ Claims are usually made against electricity distributors, but can sometimes be made against electricity retailers (for example in situations where a service order is not cancelled and there has been a disconnection in error). This document refers to electricity distributors for ease of reference. However, in some instances the concepts will apply in a retailer complaint.

² The substantiation required may vary depending on the circumstances or claimed amount. Larger amounts normally require more robust substantiation.

³ For example, insurance, a business risk mitigation plan or use of a generator. EWOV is more concerned with loss minimisation strategies actually implemented rather than whether customers have formal written business risk mitigation plans in place. In relation to unplanned events, use of a generator would not normally be expected for most customers.



- Whether the customer has been disadvantaged financially or has recovered money elsewhere.
- Whether the distributor has complied with any regulatory or legal obligations.⁴
- Whether the distributor accepts any liability or responsibility.
- Precautions or loss minimisation strategies and steps undertaken by the distributor, both planned and implemented.⁵
- Whether there were any aspects of the event or events within the distributor's control and the actions of the distributor in response to the event or events – technical as well as customer service related.⁶
- Whether a distributor has applied for and/or been granted a guaranteed service level exemption from the regulator.
- Any representations made by the distributor about the claim process or compensation, such as those made in a Customer Charter, terms and conditions of a contract or media statements, and whether the distributor has met those representations.
- The communication between the customer and the distributor regarding the event, damage and loss or claim so far,⁷ including whether the communication was customer or distributor driven/initiated. EWOV will consider whether, based on the communications with the distributor, it was reasonable for the customer to assume or expect that their claim would be paid or that submitting paperwork was a mere formality.
- Any relevant customer circumstances, including the impact on the individual customer and whether the damage or loss has caused financial or other hardship.
- Other relevant information depending on the facts of an individual complaint, as the above list is not exhaustive.

2. Laws and codes

EWOV expects customers and distributors to meet their legal and regulatory obligations. Obligations under laws and codes represent minimum standards. Consideration of what is fair and reasonable includes, but is not limited to the legal requirements.

Legislation and codes

Under the *National Electricity (Victoria) Law*⁸ electricity distributors have immunity in relation to a partial or total failure to supply electricity. Unless the supply failure is due to an act or omission done in

⁴ For example, notification requirements for a planned outage.

⁵ For example, appropriate contractual arrangements between distributors and transmission businesses. Some past EWOV Binding Decisions held the distributor responsible for losses arising from the actions of the transmission business' employees on the basis that the distributor had failed to put appropriate measures in place in its contract with the transmission business to mitigate the effects of such events. The Binding Decisions were upheld in the Supreme Court.

⁶ EWOV expects distributors to accept responsibility for their responses (which they can control) to external events (which they cannot control). This could include network design, installation of protective devices in line with best practice, information around restoration times available to customers and information provided regarding the claims process. EWOV may also consider whether the distributor could have offered additional assistance to the customer.

⁷ Communications with all distributor staff, including field officers, inspectors as well as customer service representatives.

⁸ The Schedule to the *National Electricity (South Australia) Act 1996* of South Australia applies as law in Victoria by virtue of s 6 of the *National Electricity (Victoria) Act 2005*, and is known as the *National Electricity (Victoria) Law*.



bad faith or through negligence, a distributor will not incur any civil monetary liability for the partial or total failure to supply electricity.⁹

The *Electricity Distribution Code (EDC)* also contains obligations relating to reliability of supply. Although there is no guarantee of supply in Victoria, distributors are required to use best endeavours to meet reliability targets and otherwise meet reasonable customer expectations of supply reliability.¹⁰ Distributors are allowed to interrupt supply for a variety of reasons, such as planned or unplanned maintenance or repair to the network, to install or restore supply to customers, for load shedding or as otherwise required by AEMO, or in an emergency.¹¹

Within 30 minutes¹² of an unplanned outage, a distributor must make information available about the nature of the supply interruption and an estimate of the time when supply will be restored or when reliable information about supply restoration will be available. The information needs to be available via a 24 hour phone line and also via frequently updated entries on a prominent part of the distributor's website.¹³ Distributors are required to use best endeavours to restore supply as quickly as possible following an unplanned outage, but are able to make allowances for reasonable priorities.¹⁴

For planned outages, distributors are required to give at least four business days notice of the planned interruption. The notice must include a 24 hour phone number for enquiries and must specify the expected date, time and duration of the interruption.¹⁵ Distributors are also required to use best endeavours to restore supply as quickly as possible following a planned outage.¹⁶ There are special obligations relating to life support customers, including keeping an up-to-date register of affected customers.¹⁷

“Reasonable precautions”

The *EDC* requires business customers to take reasonable precautions to minimise the risk of damage or loss.¹⁸ EWOV considers that the “reasonable precautions” required are scenario specific, and will depend on the circumstances of an individual complaint, including the nature and size of a particular business. However, generally a business may be able to demonstrate that it has taken reasonable precautions by:

- Having insurance, or having investigated whether insurance is available. EWOV's experience is that insurance covering business loss due to supply quality or reliability issues can be very expensive, or unavailable for certain businesses. Depending on the circumstances of the complaint, including availability or the amount of the insurance premium it may not be fair and reasonable to expect insurance coverage for supply interruption events, especially for smaller businesses.
- Implementing mitigation strategies to limit the amount of damage or loss. While a formal written business mitigation risk plan is preferable, it is not essential to demonstrate a business

⁹ *National Electricity (Victoria) Law* s 120

¹⁰ *EDC* cl 5.2

¹¹ *EDC* cl 5.3

¹² Or as soon as practicable, *EDC* cl 5.4.1

¹³ *EDC* cl 5.4.1

¹⁴ *EDC* cl 5.4.1

¹⁵ *EDC* cl 5.5

¹⁶ *EDC* cl 5.5

¹⁷ *EDC* cl 5.6

¹⁸ *EDC* cl 16(c). There may also be similar or additional provisions in the distributor's deemed contract with the customer.

has taken reasonable precautions. This is because it is better to implement mitigation strategies in practice rather than having a formal plan which is not implemented during or after an event.

Depending on the circumstances, it may be fair and reasonable for a business customer to have arranged for installation of a generator to minimise loss during a planned interruption. In relation to unplanned events, EWOV does not normally expect business customers to install a back-up power source or generator to minimise risk, but installation of a generator may be appropriate in particular circumstances.

Where a customer has incurred reasonable costs in substantiating a claim, EWOV may expect these costs will be reimbursed to the customer, if it is fair and reasonable in the circumstances.

Common law

In addition to electricity specific laws and codes, there are other applicable laws which can create liability for an electricity distributor following damage or loss caused by supply interruption.

In addition to legislative protections, the common law may also be applicable, and there may be the potential for a claim to succeed under the principles of contract or negligence law. In order to establish liability a court may consider things such as:

- Whether damage or loss actually occurred
- The link between any damage or loss caused and the person or entity defending the case
- Whether it would have been reasonably foreseeable to the defendant that damage or loss may occur
- Whether supply had been consistent with terms and conditions of the customer's contract
- Loss or damage mitigation strategies employed

Similar considerations will be relevant when EWOV is assessing a fair and reasonable outcome.

3. Regulatory considerations and advice

When assessing what is fair and reasonable, EWOV considers all available information. The two most recent pricing determinations from the Essential Services Commission (ESC) and AER incorporated increased funding to electricity distributors to cover anticipated additional compensation payouts to customers resulting from climate change and increases in the number, frequency and intensity of adverse weather events. EWOV may take these factors into consideration when assessing a fair and reasonable outcome for a compensation complaint.

4. Electricity distributor policies and application

Where distributor policies or Customer Charters make statements or representations as to how an electricity distributor will deal with compensation claims, EWOV will consider the application of those policies. EWOV expects that electricity distributors will adhere to any statements or representations made in their policies and charters. In addition, EWOV will consider any representations which may have been made to customers about whether their claim may be paid, either during the event, or afterwards. This may be through direct contact with individual customers, or through other channels, such as media statements. Where distribution staff members have indicated to a customer that their claim is likely to be paid, or that submitting paperwork is merely a formality, this will generally add weight to the customer's position.



5. Current good industry practice, past outcomes for similar investigated complaints and previous Binding Decisions

When assessing what is fair and reasonable in an individual complaint, EWOV expects the actions of an electricity distributor will be consistent with or exceed current good industry practice, as well as being consistent with appropriate past complaint outcomes and previous Binding Decisions. Other industry practice, particularly that of the water and/or telecommunications industries, may also be relevant.

EWOV's experience in dealing with these types of complaints indicates:

- Complaints can be resolved on the basis of joint responsibility/contribution¹⁹ and a lower payment than the full claimed amount. Often cases are resolved without admission of liability by the distributor, and with the completion and signing of a release document.
- Where customers have insurance covering supply interruptions, complaints are sometimes resolved by distributors paying the customer's excess and sometimes contributing to increased premiums resulting from the claim.
- Rather than solely considering liability, some water corporations consider the nature of the event and whether the customer had any control. The water corporations aim to maintain a positive ongoing relationship and often feel an obligation to assist their customers. This can mean significant offers are made to resolve complaints even where the water corporation does not admit liability or where some claimed amounts may not have been fully substantiated.
- There is quite often a customer service element, which may require financial recognition separate to the customer's claim.

A number of EWOV's past Binding Decisions relate to claims for compensation following supply quality or reliability issues. In those cases it was rare for customers to be awarded the full amount claimed, however it was not uncommon for customers to be awarded some or most of their claimed amount. Some Binding Decisions awarded a portion of the customer's claim, even where loss minimisation was limited or where customers had contributed to the circumstances. Most Binding Decisions also awarded financial recognition for customer service issues, sometimes reasonably significant amounts. EWOV considers past Binding Decisions in any assessment of what is fair and reasonable in the circumstances.

6. Other relevant considerations

EWOV considers any relevant customer circumstances, including whether the issue relates to domestic or business premises, if the customer is covered by insurance, the impact on the individual customer of the event and whether the customer can afford to cover the damage or loss without compensation or financial assistance.

When determining a fair and reasonable outcome, EWOV will also consider the actions of the customer, for example, the steps taken by a customer to minimise their loss or damage before, during and after a supply interruption.

Complaint resolution and outcomes

Where EWOV's investigation indicates that a distributor is not responsible for the damage or loss and has appropriately assessed the claim, EWOV will advise a customer that the claim should not be paid. However, EWOV's investigation may also indicate that it is fair and reasonable for the distributor to pay part of the customer's claim and/or financial recognition for customer service issues that impacted the

¹⁹ For example, a business customer may have been able to take additional precautions, but failed to do so.

customer. Where a payment is made, it is often appropriate for the customer to agree to completion and signing of a release document.

In situations where an electricity distributor is not able to demonstrate that it acted fairly and reasonably, EWOV may:

- Ask the distributor to pay all or part of the claimed amount.
- Ask the distributor to pay all or part of appropriate and reasonable expenses incurred by the customer to substantiate their claim.
- Ask the distributor to make any additional appropriate offers to resolve the complaint, which could include further recognition for customer service issues.