



3 March 2014

By email: phil@cameronralph.com.au

Phil Khoury
Cameronralph Navigator Pty Ltd
GPO Box 5225
Melbourne VIC 3001

Dear Mr Khoury

Energy and Water Ombudsman Victoria: Independent Review Issues Paper (January 2014)

The undersigned organisations have jointly prepared our comment on the *Energy and Water Ombudsman Victoria (EWOV): Independent Review Issues Paper (January 2014) (Issues Paper)*.

This submission is the result of a collaboration between the Consumer Utilities Advocacy Centre (**CUAC**), the Victorian Council of Social Services (**VCOSS**), Consumer Action Law Centre (**Consumer Action**) and the Financial and Consumer Rights Council (**FCRC**).

Collectively, our organisations represent the interests of the majority of Victorian residential and small business energy consumers—being particularly cognisant of the special needs of low income and vulnerable households—and we have a keen interest in ensuring that dispute resolution services for energy consumers remain effective to protect the rights of these consumers. The lawyers of Consumer Action and financial counsellors across Victoria regularly refer clients to the Energy and Water Ombudsman of Victoria (EWOV) for assistance in resolving energy and water disputes. These community workers rely on this service to assist clients to represent themselves and resolve their own disputes. Without this avenue, many of our clients would be unable to assert their own rights. Therefore, we consider it immensely important that EWOV maintains its balance and effectiveness. Further, from a policy perspective, all the

Consumer Action Law Centre

Level 7, 459 Little Collins Street Telephone 03 9670 5088
Melbourne Victoria 3000 Facsimile 03 9629 6898

info@consumeraction.org.au
www.consumeraction.org.au

contributing organisations rely on EWOV to provide information as to complaint trends and statistics, and to identify systemic issues that occur in the energy and water sectors.

The broad view of contributors to this submission is that, while there is room for improvement, EWOV is providing an essential service of a high standard and should be congratulated. Contributors to this submission on the whole consider EWOV to be a fair, accessible and effective dispute resolution scheme for our clients, though some concerns are raised below. The results of a survey of financial counsellors and caseworkers support this view. EWOV is one of the most important External Dispute Resolution (EDR) services in Victoria, and we would like to see it continuously improve.

Our response to the specific questions are outlined below.

Process

The organisations as named, agreed to contribute to this joint submission, through participation in a telephone conference to discuss the Issues Paper and a process of allocating different sections for drafting. Contributors have also had the opportunity to provide feedback prior to the final draft being submitted.

In addition, we sought input from financial counsellors throughout Victoria via an online survey. financial counsellors are one of the avenues through which people are referred to EWOV, which means canvassing their views is essential to understanding the views of vulnerable consumers. We accepted responses for the survey for one week from 12 February 2014 to 19 February 2014. During that period the survey was started by 37 financial counsellors (being a little over 15 percent of the financial counsellors who are currently members of the FCRC) and was completed by 34. While we are conscious that this is a relatively small sample, we consider it provides real insight into the experiences of financial counsellors assisting some of the most vulnerable clients in the state in their dealings with EWOV.

A copy of the survey can be found in **Attachment A**.

Response to Relevant Issues:

1. Awareness of EWOV

We have concerns about the conduct of scheme participants, particularly energy and water retailers, in relation to customer disputes. Significantly, 97 percent of financial counsellors surveyed believe that EWOV deals with problems that retailers should be able to resolve internally. This is extremely concerning as this infers that industry members of EWOV do not have a suitably robust Internal Dispute Resolution (**IDR**) process. One could conclude that industry only takes matters more seriously when a consumer or advocate seeks redress via EWOV.

Data provided to the Essential Services Commission (**ESC**)¹ detailed consumer complaints received by energy retailers in the 2012-3 financial year. In total 178,031 electricity complaints and 59,902 gas complaints were recorded by energy retailers. Further work is required to analyse the number of complaints resolved at IDR compared to the number of complaints received by EWOV, and to analyse these complaints—for example, whether these complaints were resolved/not resolved to the satisfaction of the consumer, whether the resolution was fair, whether they were resolved in a timely manner and some assessment regarding the retailers' genuine engagement towards the resolution of the complaint.

EWOV recorded 75,000 complaints for the same period. Due to a lack of data we do not know if this disparity is because consumers failed to raise a matter with the EWOV because they were either unsure of their rights or, suffered from 'complaint fatigue', and thus did not see a benefit in taking their matter further. The majority of financial counsellors surveyed did not believe that retailers on the whole were making client's aware of EWOV.

The need for improved analysis is also underscored by the ESC's analysis of the link between IDR and EDR. In its report,² the regulator states:

'Despite the rise in complaints to retailers, complaints referred for full investigation by EWOV have decreased in recent years'

¹ Essential Services Commission, *Energy Retailers Comparative Performance Report*, January 2014, available at: <http://www.esc.vic.gov.au/getattachment/983c8101-90be-4173-b57e-73ec365f2648/Energy-Retailers-Comparative-Performance-Report-Cu.pdf>.

² ESC, above n 1, p 53.

In fact, complaints to EWOV increased 22 percent for the same period. The regulator was referring to one component of their complaint processes (Investigated Complaints) which fell slightly due to changes to EWOV complaint handling processes. We encourage EWOV to make a comparative analysis of utility companies' IDR process including assessing if customers were satisfied with their outcomes of referral processes, and also to analyse IDR reporting in other dispute resolution schemes and recommend best practice IDR reporting.

The organisations contributing to this submission have a strong awareness and knowledge of EWOV and believe EWOV's profile has continued to grow over the past few years. EWOV appears to be very cognisant of the importance of awareness-building and recognises that relying on scheme participants to direct complainants to them is not enough.

EWOV's annual report provides an important insight for consumer advocates into the work of EWOV, as does its website and newsletters (particularly the regular e-bulletin, *RES Online*). Importantly, these publications provide regular and timely information on complaint trends and systemic issues. Also, in an effort to expand its reach we understand that EWOV has produced a series of posters and brochures advertising and explaining its services in a clear and informative manner that it distributes to community service organisations and community facilities. The website explains its services in relation to energy and water, how people can access these services, and provides information to help people resolve complaints directly. We understand that EWOV consulted with consumer advocates and community service organisations when developing these materials, which we encourage.

Survey responses support the usefulness of EWOV's materials. A majority of survey respondents had positive feedback regarding EWOV's website. Two thirds of respondents' (financial counsellors) clients used information provided by EWOV on its website to assist with making a complaint, or getting information about a particular subject. Amongst those who used EWOV's website, 90 percent either found the information 'very helpful' or 'somewhat helpful.' We commend EWOV for providing their basic fact sheet, 'Helping you with energy & water' in 29 languages, and videos with subtitles about EWOV and common energy and water problems.

We note that EWOV has been actively promoting its scheme to consumers through community visits and joint projects with community agencies; for example participating in 'Bring your Bills Day' and National Aborigines and Islanders Day Observance Committee (NAIDOC) week events. Survey results indicate that these promotional activities have proven to be beneficial to those who have attended. Just over 40 percent of the respondents found the community road shows either very helpful or helpful. However, 57.6 percent of the respondents reported that they did not

attend any of the community road shows. This may suggest that the respondents did not know about road shows, which may mean that more efforts need to be taken to promote the community road shows among financial counsellors.

While general awareness raising is important, we are of the view that it is even more important for consumers to be aware of EWOV and its function at the time that they have an unresolved complaint or dispute. Recognising this, we appreciate EWOV's efforts to work with community service organisations that work directly with people experiencing financial hardship or consumer complaints, ensuring that community service workers are themselves well aware of EWOV's role. It is often community service and other organisations that engage directly with the public that are in the position to inform consumers about the existence and role of EWOV.

We are concerned, however, that EWOV does not appear to have a specific approach to target vulnerable and disadvantaged consumers. From our perspective, this should be a priority, as this group of people is firstly likely to be the most in need of EWOV's services, and secondly the most difficult for EWOV's services to reach. We believe that many of those consumers are contacting EWOV as a result of pending or actual disconnection, or as a result of a financial counsellor referral. We would welcome evidence of a more comprehensive approach as to how EWOV proactively reaches these consumers and whether it is effective. For example, we are aware that vulnerable consumers from culturally and linguistically diverse backgrounds (**CALD**) particularly have difficulty accessing telephone services. One method could be by EWOV taking on specialist caseworkers who are from communities that EWOV has difficulty reaching. As a service provider, Consumer Action recognises the challenges in reaching this consumer group, and regularly reviews its approach through call-backs to consumers to determine whether information or advice has been acted upon. Some community agencies, such as the Footscray Community Legal Centre, has had real success in targeting vulnerable CALD communities—for example, taking on an Iranian caseworker allowed them to increase the number of advices to the Iranian community tenfold within two years.

As to retailers, 65 percent of survey respondents said retailers were either “not really” or “not at all” making customers aware of EWOV, while a little under half said they were “somewhat” making customers aware. This aligns with anecdotal reports from financial counsellors and emergency relief workers that the quality of assistance from retailer call centres—including whether, if appropriate, an EWOV referral is made—varies widely. We do not have information about whether retailers are complying with their obligations to inform clients who contact them with complaints that they can complain to EWOV, although we are aware that at least one

retailer was failing to comply with this requirement through EWOV systemic issue reports and ESC compliance reports.³

As noted earlier, it is most important for a consumer to be made aware of EWOV when they have an unresolved complaint or dispute. Scheme participants are thus in the best position to inform consumers of the availability of EWOV. Regulatory requirements for energy retailers require that advice is provided on disconnection notices, or where a client has already made a complaint to an energy company.⁴ Water retailers are required to include information about EWOV in their complaints and disputes policy⁵ and on payment warning notices before taking action for non-payment⁶, and through their 'enquiry facilities'⁷ and charter.⁸ We could not find reports of audits of some of these obligations by the ESC.

We would encourage EWOV to advocate for energy and water businesses to develop a policy of proactively informing clients about the existence of EWOV and its processes, for example, by reinstating the agreement that ensures that retailers put information about EWOV on customer bills.

Recommendations:

That EWOV:

- 1. Undertake a comparative analysis of Utility Companies' Internal Dispute Resolution process including assessing if customers were satisfied with their outcomes of referral processes.**
- 2. Analyse IDR reporting in other dispute resolution schemes and recommend best practice IDR reporting.**
- 3. Demonstrate a comprehensive, proactive approach to reaching vulnerable customers.**
- 4. Encourage scheme participants to have a policy of informing clients of EWOV's services.**

³ EWOV, *Systemic issues report 2012*, available at: http://www.ewov.com.au/_data/assets/pdf_file/0004/9319/CEO-Report-Energy-Closed-2012.pdf; and ESC, *Energy Retailer Compliance Report 2012*, available at: <http://www.esc.vic.gov.au/getattachment/6c2ba34c-6c90-4fef-a39f-7bc994b378f3/2011-12-Compliance-Report,-Energy-Retailers.pdf>.

⁴ Section 28.2 - 28.3, *Energy Retail Code*.

⁵ Section 3.1(d)(2), *Customer Service Code, Urban Water Businesses*.

⁶ *Id*, section 6.2(a).

⁷ *Id*, section 12.1(f)

⁸ *Id*, section 16.2(h)

5. Encourage scheme participants to provide information about EWOV on the customer's bill at least once a year.

2. Customer Assistance

EWOV has a variety of materials provided for consumers, which explain EWOV's processes and jurisdiction in an accessible manner. As we state above, EWOV has made strong efforts to ensure that its materials clearly explain its processes and jurisdiction, in language that consumers can understand and follow, and we commend its consultation with consumer advocates and community service organisations when developing these materials.

In the survey to financial counsellors, we asked whether, firstly, they had used material from EWOV's website. 72 per cent of participants said that they had used material from the website. We then asked how helpful they had found the material. Over 90 percent of respondents said they found it "very helpful" or "somewhat helpful". These responses suggest that EWOV is providing information that is useful and comprehensible for its audience.

Client X

X is a Disability pensioner who lives in public housing. Energy Australia failed to bill him for his gas usage for the 6 months preceding January 2013. In January 2013, he received several high bills. One was an estimated bill that was much higher and not reflective of his normal usage, which stated that the gate had been locked. The bills stated that the amounts were all due within a couple of weeks. The total amount due for the bills was \$796. X later received several further bills, with one estimated for \$3,435 for a two month period. X went to his local member of parliament, who complained to EWOV on his behalf.

EWOV initially assisted X by negotiating with Energy Australia to adjust the bill. After this was resolved, X then received six high bills, for amounts of varying between \$4,000 to \$5000. During this time he also received bills, rendered on the same dates, that were much lower. In December 2013, X received a demand from lawyers, asking for payment of over \$4000. A Consumer Action lawyer assisted X by

contacting EWOV again on his behalf to make a further complaint. EWOV told the lawyer that the business would contact him three days later regarding the matter, however, the business did not do so. The lawyer found it very difficult to get in touch with his client's case manager at EWOV, and did not hear any updates from EWOV about the matter. After some time of non-communication, the lawyer settled the matter with Energy Australia directly on behalf of X. The lawyer did not hear anything further from EWOV. The lawyer will now have to make contact with EWOV to determine whether the EWOV case-file is still open, and to advise them to close it if it is still open.

As demonstrated by the case study above, and the experience of Consumer Action solicitors, clients are not always getting clear explanations from EWOV staff about its process, and what to expect from that process. Failure by EWOV to follow up with the solicitor, combined with lack of communication overall, was difficult for the solicitor to navigate, and would be confusing and disappointing for consumers in general. Further, the survey results suggest that poor communication or challenging processes could be a deterrent in continuing to use the service. We asked participants in the survey to indicate where they had clients who were excluded or dropped out of their EWOV complaint for different reasons. 50 percent of respondents said that they had clients' drop out of their complaints because the client didn't understand EWOV's process.

54 percent of respondents said that their clients had dropped out because the client lost faith in EWOV's ability to handle their dispute. These results suggest that these consumers are not getting the assistance they need from EWOV staff to understand the complaints process, nor what EWOV is doing about their complaint. They also suggest that vulnerable clients (being the majority of financial counsellors' client base), in particular may be struggling to understand EWOV's process, and to use that process.

We encourage EWOV to investigate whether vulnerable or disadvantaged customers are underrepresented in their use of the EWOV scheme, and ensure that it is actively promoting itself to those groups. We also encourage EWOV to identify where customers require extra assistance, particularly where this vulnerability prevents the customer from self-representing, and provide appropriate assistance to ensure they remain engaged with the scheme until an effective and fair resolution is obtained.

Recommendations

That EWOV:

- 6. should analyse data on applicant characteristics to identify whether any groups are under-represented.**

- 7. If it finds that vulnerable groups are under-represented, EWOV should consider:**
 - Whether EWOV's promotion activities could be tailored to these groups**
 - Why these groups are under-represented. For example, is it because the EWOV members they use do not promote EDR as well as they should?**
 - Whether people in these groups are more likely to abandon applications when they do make them, and whether there is any tailored assistance that EWOV could offer to assist people in these groups to make applications to EWOV?**

3. Scheme Coverage

We are concerned that EWOV's scheme may not permit adequate coverage of energy and water issues. Our concern stems from the rate of change within the energy market in particular, with new types of businesses contracting directly with customers relating to their energy use.

The most significant gap includes energy consumers who are not customers of licensed energy retailers but who buy their energy from exempt re-sellers. Customers of exempt re-sellers have fewer rights and protections and do not have access to EWOV because the businesses they buy their energy from are not scheme participants. Their only avenue for complaint is Consumer Affairs Victoria, and their only means of redress the Victorian Civil and Administrative Tribunal (VCAT). VCAT in particular is a difficult and often costly process to navigate. For example, unlike EWOV which is free for consumers, a civil claim application at VCAT costs \$43.90 if the dispute is less than \$500 and \$129.10 if the value of the dispute is greater than \$500.

This situation mainly affects people who buy energy from resellers such as residents of caravan parks retirement villages, apartments with exempt networks, and owners' corporations. CUAC's

2012 report *Growing Gaps: Consumer Protections and Energy Re-sellers*⁹ revealed that a third of the respondents who were surveyed as part of the research, had experienced some type of problem—most often relating to price, fees and charges, or billing problems or errors—within the previous 12 months. Of this group, around 60 percent made a complaint to their re-seller. Satisfaction with the outcomes of these complaints was, however, highly variable. Access to EWOV would therefore be helpful, particularly for vulnerable consumers and where disconnection is imminent or actual.

Further, the continuing evolution and expansion of smart meters and grids, as well as network tariff reforms, opens opportunities for third parties to sell energy (or energy saving) products direct to consumers. Already, we are seeing more of these businesses in the marketplace, including solar leasing arrangements (such as that marketed by the One Big Switch). In October 2013, the Australian Energy Regulator (**AER**) consulted on its approach to alternative energy sellers. In submissions to this consultation, consumer organisations called for access to alternative dispute resolution schemes and the need to update the membership of energy ombudsman.¹⁰ While Victoria has not yet adopted the National Energy Retail Law which empowers the AER, its approach will be instructive to this developing market. We think that the Victorian Government and EWOV need to further consider this growing market, and whether new service providers should be members of ombudsman schemes. Our view is that a much more decentralised energy market (while offering benefits to consumers) will result in a much broader and larger group of consumers who are effectively buying energy from businesses that are not scheme participants and thus have no access to EWOV. In many cases these businesses may be providing (or having impact on) the delivery of essential services, and there is a strong case for them to be within jurisdiction of EWOV.

Third parties fall outside the jurisdiction of EWOV unless they are acting as the agents of retailers, which means, that customers of third parties would not have access to EWOV. Some of the services third parties could include supply capacity control or direct load control products which can potentially result in consumer detriment. Thus, the regulatory framework that needs to be developed for third parties should include customer access to a free and independent service such as EWOV to help customers with their complaints.

⁹ Consumer Utilities Advocacy Centre, *Growing Gaps; Consumer Protections and Energy Re-sellers: A CUAC research report* (December 2012), available at:

http://www.cuac.org.au/index.php?option=com_docman&task=doc_download&gid=275&Itemid=30, p 5.

¹⁰ See Consumer Action's submission: <http://consumeraction.org.au/wp-content/uploads/2013/11/Consumer-Action-submission-to-AER-Regulation-of-alternative-energy-sellers-November-2013-Final.pdf>, p 5.

We recognise that this problem is at least in part a failure of regulation and is one that may require regulatory change. However, it limits EWOV's ability to deliver on its vision to "provide a wholly impartial and highly esteemed dispute resolution service for Victorian energy and water consumers" and we are concerned that it means that EWOV is unable to deliver on the Charter promise to permit adequate coverage of current and emerging energy and water issues.

We submit that a seamless approach to consumer dispute resolution in relation to alternative energy sellers needs to be developed for this emerging area. This would need to include a clear outline of protections available to consumers and guidance about where to seek resolution, both directly for consumers but also for assistance services such as our own. Given that the market is adapting very quickly, there is an opportunity for EWOV to be on the front foot and take steps to consider whether these businesses (or at least some of them) should be within jurisdiction. These developments may also require a cross-scheme Memorandum of Understanding with key regulators and ombudsman.

Recommendation

That EWOV should:

- 8. Consult with government, the ESC, industry and consumer organisations to address the gaps which have been identified in this submission**
- 9. Work towards the inclusion of entities such as resellers, alternative energy sellers, or other third parties enabled by a more decentralised energy market, to become Scheme Participants so as to ensure EWOV has adequate coverage of current and emerging energy and water issues.**
- 10. Develop a cross-scheme understanding between ombudsmen and the regulators to ensure that consumer disputes with alternative energy sellers are captured.**

In our view, the question as to the sufficiency of EWOV's monetary limit for binding decisions has limited relevance, as EWOV has not exercised its power to make a binding decision for more than ten years. We are concerned that this may indicate a reticence on EWOV's part to making binding decisions. We would encourage EWOV to look at its processes to determine why there are so few binding decisions made, and whether binding decisions may in fact contribute to better outcomes with respect to systemic issues.

4. EWOV's Dispute Handling Processes

As an external dispute resolution scheme, EWOV is required to ensure that their decision-making processes give consideration to principles of independence and fairness. Financial counsellors surveyed broadly supported the notion that EWOV's dispute resolution processes were overall fair, and independent of the consumer and industry.

86 percent of survey respondents rated EWOV's performance resolving disputes as either good, excellent or average. In response to the question "Have you ever had problems with decisions made by EWOV in the cases you have worked on?" 52 percent said that they had never had a problem with EWOV decision-making.

Despite the broad view that EWOV's dispute resolution process was fair, independent and timely, over half of the financial counsellors surveyed were unaware that EWOV had recently undertaken changes to its processes, which indicates a need for EWOV to deliver information to financial counsellors and other service agencies on its decision making processes.

Even where matters are resolved at EWOV rather than through IDR, many of the consumer complaints are resolved relatively early in the process, particularly through the relatively new processes of Assisted Referrals and Real-Time Resolutions. While we very much welcome more timely resolutions to complaints, there is always a risk with speedier dispute resolution that the quality of outcomes can suffer. Given the importance of fair resolutions, we would welcome further consideration of fairness in EWOV's case handling processes, particularly as they relate to early resolution. For example, we encourage the independent reviewers to consider:

- the extent that EWOV undertakes any preliminary assessment before sending a complaint to a Scheme Participant through Assisted Referrals and Real-Time Resolution processes;
- if preliminary assessments are undertaken, how detailed is the assessment and what impact does it have on the way the complaint is handled (i.e., if the assessment determines the complaint is one against a Scheme Participant who has engaged in unfair conduct in the past, or it raises practices that are regarded as at high risk of causing detriment, would this mean that the complaint is handled internally rather than handed over to the member?); and
- whether EWOV makes any judgment on the fairness of any resolutions proposed by Scheme Participant early on in the process.

We understand that EWOV has undertaken a 'fair and reasonable review' of its newer case handling processes.¹¹ We congratulate EWOV on undertaking this sort of review as it does consider the issues raised above about case-handling processes which are designed for quicker outcomes but risk more considered and perhaps fairer outcomes. We encourage EWOV to undertake these reviews regularly, and consult with stakeholders (including consumer agencies) about the reviews, the findings, and any proposed changes.

Recommendation

That EWOV should:

- 11. In collaboration with FCRC, design and deliver training to financial counsellors that explains its dispute resolution process.**
- 12. Establish a mechanism to enable ongoing feedback from financial counsellors and consumer organisations regarding its dispute resolution processes.**
- 13. Continue to undertake regular independent reviews of its processes to ensure that fairness and independence in decision making is maintained, and consult with consumer agencies on these reviews.**
- 14. Develop case handling forums for industry and consumers.**

5. Efficiency and Timeliness

Views of EWOV's efficiency levels are mixed. In our survey, 30 percent of financial counsellors answered that they had clients who had dropped out of an EWOV complaint because the process took too long. In answer to our question "have you ever had problems with how long it took EWOV to handle a complaint?" just under half of respondents answered "Yes". We think these responses raise questions about EWOV's efficiency. We note that a delay in the resolution of a case can cause many problems for vulnerable clients. Given that, we encourage EWOV to continue ensuring that their matters are resolved as promptly as possible, whilst still ensuring a fair outcome.

¹¹ EWOV, *Res Online - No.5* (July 2013) available at: <http://www.ewov.com.au/publications-and-media/res-online-no.6-february-2014/res-online-archive/res-online-no2.4,-2013/a-closer-look-at-water-issues>.

Complaints received by EWOV have steadily increased over the past five years. Over the period 2008-09 to 2012-13, total complaints increased 106 per cent from 36,169 to 74,556. Electricity complaints were up 123 percent, natural gas complaints up 72 percent, LPG complaints up 6 per cent, dual fuel complaints up 13 percent. The significant increase in complaints places enormous stress on EWOV in terms of the need for staffing, training and the need to ensure that cases are resolved in a timely manner. We note that EWOV has reduced the average days to close investigations from 53 to 43. We acknowledge that introducing new case handling processes can bring benefits and identify superfluous and inefficient processes. However, as noted above, there is also a potential risk that parties may be negatively impacted in seeking to resolve matters expeditiously. The information asymmetry and power imbalance between businesses and consumers, especially vulnerable consumers, mean that it is likely consumers will find the case handling process more difficult to navigate than their respective businesses who handle complaints on a daily basis and are much more familiar with the process.

We believe it is important that EWOV assesses the impact and outcome of their case handling process on consumers. In particular two key areas are important to consumer advocates.

(1) our understanding is that consumers, particularly vulnerable consumers, will drop their case matter if they find the complaints process too hard to negotiate.¹² The first key area is to learn what the outcomes of consumers who are referred back to the businesses are.

(2) We note that not all restrictions or disconnections are treated as investigated complaints. The second area of high importance is to explore the experience and outcome of consumers who have been disconnected and who have been referred back to their respective retailers or distribution businesses.

Undertaking independent surveys of case outcomes and consumer satisfaction will dispel and avoid the perception in the community sector that the process is not only expedient but that it is actually working well for consumers. It will provide greater transparency about the fair operation and outcomes of the scheme.

We are concerned that the introduction of 'real-time resolution' may impact negatively on vulnerable consumers, such as people with disabilities or those who lack the language or literacy

¹² For example, Consumer Utilities Advocacy Centre (2011) *Wein, Paen, Ya ang gim: Victorian Aboriginal Consumers of Energy and Water*, (2011) available at: http://www.cuac.org.au/index.php?option=com_docman&task=doc_download&Itemid=23&gid=217, p 115-16

skills to resolve their complaints successfully. Resolving complaints promptly may mean that not all the issues a customer complains about are adequately addressed with the potential that the outcome is not fair and reasonable. We believe that EWOV should examine the outcomes to ascertain whether they were fair and reasonable. We note that 35 percent of respondents to the survey question answered that they had clients who were excluded from EWOV, or dropped out of making a claim to EWOV, because EWOV referred the client back to the business the client was complaining about.

Further, as noted above, we encourage EWOV to continually review the outcomes of their cases, to determine whether these outcomes are fair and equitable for all consumers.

Recommendations

That EWOV:

- 15. review their new processes and determine how many clients resolve their case fairly when referred back to the business, under the Real Time Resolution process.**
- 16. treat restrictions and disconnections as investigated complaints because of the seriousness of the issue.**
- 17. test the views of both consumers and industry from time to time, between formal reviews such as this review.**

6. Balance

We are of the view that the six National Benchmarks of accessibility, independence, fairness, accountability, efficiency and effectiveness are critical to guiding effective dispute resolution. Excellence in dispute resolution is only achieved if the 'right balance' is struck between the six benchmarks.

Accessibility

According to the National Benchmarks, accessibility has to do with whether 'the scheme makes itself readily available to customers by promoting knowledge of its existence, being easy to use and having no cost barriers.'

We commend EWOV for providing multiple channels for customers to contact them, as we describe in the first section of this paper. EWOV accommodates the needs of people from non-English speaking backgrounds (there is an interpreter service) and people with hearing and speech impairment, thereby taking positive actions to ensure that the scheme is accessible to them. As above, in question one, we note that our survey results did however reveal that a few respondents had clients who had difficulties understanding EWOV's process or EWOV correspondence and therefore 'were excluded from EWOV or dropped out of making a claim.' This suggests that improvements could be made in the way information is presented or explained to consumers.

As we also highlight in question one, it is important to ensure that community agencies, which provide client services, are kept informed about EWOV's complaint handling processes. We asked respondents if they were aware of the changes to EWOV's complaint handling process implemented in 2012. This was the introduction of 'real-time resolution.' Significantly, over 53 per cent of the respondents indicated that they were not aware of these changes, while nearly 47 per cent reported that they were aware. This suggests that there could be improvements to the way case handling processes are communicated to community agencies providing client services. Some ways of communicating this information would be through the EWOV Connect and forums with the community sector. Almost two thirds of our respondents also reported that retailers were not really making consumers aware of EWOV. This is a concern as it impacts the accessibility of the scheme.

Independence

Independence is defined in the National Benchmarks to mean, 'the decision-making process and administration of the scheme are independent from scheme members.'

We believe independence is demonstrated through a scheme's structures and case handling processes. We note that EWOV has a board consisting of an equal number of consumer and industry directors, and that the ombudsman and staff are not selected directly from industry. As an independent and impartial scheme, it is important for EWOV to consider whether its case handling processes are fair in terms of outcome and process. We refer to the need for a stakeholder consultation group to guide an impartial analysis of these matters in section 11 of this paper.

The National Benchmarks also refer to the need for processes and decisions of the scheme to be 'seen to be objective and unbiased.' Thus, the perception of independence is also important to a scheme's reputation and consumer confidence. We did not receive significant feedback

specifically on EWOV's independence in our survey. There were a few respondents who expressed concern about their perception of EWOV's independence. We suggest that EWOV does more to test the views of both consumers and industry from time to time, between formal reviews such as this.

Fairness

The National Benchmarks define fairness as; 'the scheme produces decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.'

In our survey, we asked respondents whether the outcomes their clients received were fair and appropriate, and significantly all reported that they were 'always fair,' 'often fair' or 'sometimes fair.'

As previously mentioned, the large number of cases EWOV receives can put pressure on EWOV to resolve cases in short timeframes. We are concerned that this could negatively impact the parties, in particular consumers who because of power imbalance and information asymmetry often find it harder to negotiate a satisfactory outcome. It is essential that the key performance indicators around complaints handling ensure that quality (in terms of process and outcome) is not compromised for the sake of expediency and efficiency.

60 percent of EWOV's complaints are resolved by the referral process. We mentioned earlier the need for EWOV to survey what the consumer experience and outcome of the referred complaints are so as to ascertain if the process is producing fair and appropriate outcomes.

Lack of supply to an essential service is one of the most important issues for consumer advocates. We are concerned that EWOV does not treat all disconnections as investigated complaints given that disconnections have severe implications on consumers and often involve vulnerable consumers and financial hardship issues. Disconnections may also be wrongful. We are of the view that in the interests of fairness disconnections should be treated as investigated complaints.

Accountability:

This section needs to be read with our response to Q8 – Systemic issues and Q9 – Public reporting.

According to the National Benchmarks, accountability means that, ‘the scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic industry problems.’

We support the positive initiatives taken by EWOV in providing quarterly updates on marketing and transfer issues, smart meters and solar issues and systemic issues.

We note that systemic issues are de-identified in EWOV’s reports. Given the detrimental impact systemic issues have on a large number of customers (e.g. billing problems), we would like to see the responsible business identified in EWOV’s systemic reports (this includes the quarterly report, annual report and the *Res Online*). Naming businesses can provide a strong deterrent to poor industry practice thereby raising the performance bar and reducing complaints. In addition, improvements in accountability could be made by reporting on the actions taken by EWOV in bringing systemic issues to the attention of the appropriate regulator. Guidelines on industry best practice and binding decisions are additional tools for addressing systemic issues. Schemes such as the Telecommunications Industry Ombudsman, for example, publish guidelines. Providing guidance to industry through guidelines and binding decisions could potentially drive down complaint levels. It would also be helpful to have an ongoing forum where consumers, industry and EWOV can discuss case trends and complaints handling issues. This is discussed further at section 11 below.

Quarterly reporting of disconnection rates and wrongful disconnections, and flexible pricing issues would be helpful. While overall we think that EWOV’s reporting is of a high quality, we would encourage EWOV to consider publishing more granular data in its reports. In addition to naming businesses responsible for systemic issues, we suggest naming businesses which contribute to complaint spikes in key areas such as billing, credit, disconnections (wrongful or otherwise), marketing etc, rather than merely listing the number of complaints that each business has received.

Efficiency

According to the National Benchmarks, accountability means that, ‘the scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.’

Efficiency is important for consumers as consumers want to have their complaints resolved as quickly as possible and one of the risks of having to wait a long time for a complaint to be resolved is that customers may drop out of the EWOV process. As previously mentioned,

efficiency needs to be balanced with the other National Benchmarks, and it should not, for instance, be given more weight than fairness in process and outcome.

We asked respondents in our survey about the timeliness of complaints resolution. A large majority reported that they did not experience any problems with timeliness. A few respondents, however, indicated that they encountered delays in the length of time it took for wrongful disconnections to be resolved. Nearly 30 per cent of the respondents, however, indicated that they had clients who dropped out of the EWOV process because they felt that the process took too long.

The results suggest that there is room to improve timeliness in resolving certain cases, in particular wrongful disconnections.

Effectiveness

The National Benchmarks define effectiveness to mean that, ‘the scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.’

The energy and water sectors are dynamic and evolving environments. Hence, it is critical to consider how the environment is changing and whether EWOV’s jurisdiction is responsive to those changes. Two examples of this are in the area of exempt selling and smart meters. We discuss this further in section 2 of this paper under Scheme Coverage.

Coverage

As we discussed in section 2 of this paper, with the growth in electricity re-selling in high density residential developments in Victoria, there is a pressing need to expand the scope of the scheme to cover exempt sellers and their customers.

We recommend that EWOV keep a watching brief of the problems that consumers may experience with exempt selling and third party issues, by ongoing discussions with Consumer Affairs Victoria, AER and the Commission.

Systemic problems

Please refer to our earlier comments on systemic issues under the section on ‘accountability’ and our response to Q8 – Systemic issues.

Internal complaints mechanism & compliance

We are not privy to how EWOV advises scheme members about their internal complaints mechanisms or the extent to which the scheme participants abide by the rules of EWOV. We are, however, concerned that EWOV receives a large number of complaints. As mentioned earlier, we believe it is useful for EWOV to issue guidelines to industry as this can increase customer service performance and reduce complaints.

Recommendations:

That EWOV should:

- 18. identify the responsible business in EWOV's systemic reports (this includes the quarterly report, annual report and the *Res Online*) and name businesses which contribute to complaint spikes in key areas such as billing, credit, disconnections (wrongful or otherwise), marketing etc**
- 19. examine using the powers of binding decisions and guidelines to provide guidance to industry, reduce complaints and improve customer service.**

7. Compliance by Scheme Participants

Given that the number of complaints to EWOV has increased, it appears that efforts by EWOV to work with Scheme Participants to improve their customer service are having varying levels of success. As stated above, 97.3 percent of participants in our survey said that they considered EWOV was dealing with problems that retailers should be able to resolve internally.

The high volume of complaints is a worrying trend. We suggest that EWOV examines the reasons that are driving these complaints numbers—whether it is due to poor industry behaviour, poor regulation, or a lack of enforcement—and consider ways in which EWOV can positively identify where this is occurring. The increase in complaints shows us that customer service is declining and that we need to examine the causes and strategies that could improve customer service and reduce the numbers of customers inconvenienced by having to bring their complaints into EWOV.

Recommendations

20. **EWOV should review the internal dispute resolution processes of businesses and advise where improvements need to be made.**

8. Systemic Issues

In our view, EWOV is proactive at identifying systemic issues and making the regulator aware of these. We also commend EWOV's reporting on systemic issues in their annual report and quarterly *Res Online*. We consider that EWOV is a leader in public reporting of systemic issues, and we hope in future that other ombudsman schemes follow EWOV's example.

However, our concern is, in relation to energy matters, that there can be a lack of proactive response on behalf of the regulator regarding the systemic issues that EWOV elevates to them.

We note that under its constitution and charter, there is no difference in EWOV's powers for energy and water. Further, clause 7.2 of EWOV's charter gives it the power to report to a scheme participant and the regulator where it identifies a systemic issue. However, we are also aware that EWOV's role in relation to energy related systemic issues is different in practice to that of water.¹³ In energy related systemic issues, EWOV identifies and reports systemic issues to the ESC. This contrasts with its role in water, where EWOV takes a more proactive role in investigating and seeking redress for affected customers, followed by a report to the Department of Environment and Primary Industries (**the Department**). We understand this difference in approach may be because in the case of water issues, the Department (effectively as owner of the water corporations) receives reports about outcomes of investigations from EWOV, rather than the ESC.

As such, it appears that EWOV sees itself as having a greater role in resolving systemic issues relating to water, compared to energy. We note, however, that in EWOV's regular systemic reports, there is evidence of resolutions of energy systemic issues in terms of changes of processes, refunds to consumers, and the like. There is also evidence in these reports, however, of energy retailers not resolving systemic issues to EWOV's satisfaction. These issues are referred to the regulator and there is often no public response about any outcome.

¹³ Energy and Water Ombudsman of Victoria, Annual Report 2013, p26.

We note that proactive work was done by the ESC in relation to Energy Australia¹⁴ and we commend this, and would encourage that more of these types of actions are taken by the regulator.

Half of the financial counsellors surveyed stated that they had raised an issue to EWOV where they believed it was affecting more consumers than just their client. From the responses received it is fair to conclude that financial counsellors are keen to see more action taken in regard to systemic issues. One aspect of this may be that EWOV's approach to systemic issues in energy is more limited compared to water. The ability to resolve systemic issues goes to one of the core components of a financial counsellor's role which is to address those casework issues that go further than the individual matter.

Some signatories to this submission suggest that EWOV should take a stronger, more consistent approach to systemic issues across both energy and water. Other signatories believe that the regulator has the primary role for systemic issues, and that this should not be confused with EWOV's role.

In the financial services sector, the Australian Securities and Investments Commission provides guidance on the role of external-dispute schemes, including their role as to systemic issues. For example, ASIC's relevant regulatory guide states that it is the responsibility of a scheme to:

- (a) identify systemic issues and cases of serious misconduct that arise from the consideration of consumer complaints and disputes;
- (b) refer these matters to the relevant scheme member or members for response and action; and
- (c) report information about the systemic issue or serious misconduct to the regulator.¹⁵

We recommend that EWOV's approach to systemic issues be enhanced, in accordance with the approach in financial services, so that it proactively raises systemic issues with scheme participants and seeks action and outcome (including redress for customers) across both energy and water issues. EWOV would then report all issues to the ESC or the Department (as it does now), but we believe that EWOV should have the capacity to name a scheme participant should they fail to resolve the issue to the satisfaction of EWOV. We are not suggesting EWOV

¹⁴ See: <http://www.esc.vic.gov.au/Energy/EnergyAustralia-Compliance>.

¹⁵ ASIC, Regulatory Guide 139—Approval and oversight of external dispute resolution schemes, available at: [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg139-published-13-June-2013.pdf/\\$file/rg139-published-13-June-2013.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg139-published-13-June-2013.pdf/$file/rg139-published-13-June-2013.pdf), para 139.127.

has any determinative power with respect to systemic issues, as this appropriately sits with the regulator.

Recommendation:

- 21. That EWOV's approach to systemic issues be enhanced so that it investigates all systemic issues and seeks redress for customers across both energy and water issues, and that it reports all issues to the regulator or Department**
- 22. That EWOV has capacity to name a scheme participant should they fail to resolve the issue to the satisfaction of EWOV.**

9. Public Reporting

Please refer to our response in relation to accountability in Section 6 where we suggested various ways in which public reporting could be improved through more granular reporting of data, and the identification of businesses which have contributed to systemic issues and key complaints categories such as billing, credit, disconnections (wrongful or otherwise), marketing etc. We also mentioned that guidance could be provided to industry on systemic issues through guidelines and binding decisions. These measures together with more frequent reporting (e.g. quarterly reporting) could encourage industry to improve as well as boost public confidence in EWOV and its performance. In addition, having a forum for ongoing dialogue between consumers, industry and EWOV about case trends and case handling issues (see section 11 below) would be helpful.

10. Complaints about EWOV

The signatories to this paper are largely unaware of EWOV's processes for handling complaints about its performance.

When our organisations have concerns in relation to clients or cases handled by EWOV, we have attempted to raise them directly with EWOV. In this process a transparent report back mechanism would be useful to ensure that feedback has been considered by EWOV. In relation to complaints from consumers directly however, we are unclear as to how they are handled.

We note that the Issues Paper states that a feedback form was available on EWOV's website as a means of providing feedback about EWOV's performance. Though this form is easily discoverable on the website, an actual explanation of the complaints procedure is not readily

available, and it is not made clear on the website that the feedback form is a method for particular complaints about EWOV's procedures, nor how they will be followed up.

EWOV's complaint handling policy is not readily apparent on the EWOV website. Indeed, in an effort to find it to be able to comment on it for the purposes of this Issues Paper, we ended up having to contact EWOV directly to find where it was. Following some delay, we were told to search for "internal complaint handling policy" in their search bar and the relevant PDF document appeared in the search results.

The document outlines clearly the process for internal complaint handling, and would be a very useful guide if it were more accessible. Further, we note that the complaints handling policy states that the timeframe within which complaints must be made is 60 days after closing the matter.¹⁶ This information is important for consumers who wish to make a complaint about an EWOV process, and needs to be more prominent.

Without calling EWOV customer service we would not have found the document explaining this process. To ensure EWOV can fully capture feedback in relation to its performance, EWOV should ensure that this document is clearly displayed on its website so those interested in making a complaint are able to find the information required to do so.

Only 13.9 percent of survey respondents answered that they had made a complaint about EWOV. Whether that was because they were not sure about how to do so, or they had no complaints to make, is unclear.

11. Stakeholder Engagement

Consumer Action and CUAC were previously members of EWOV's Case Handling Advisory Committee, which comprised both consumer representatives and industry representatives. It provided a comprehensive insight into the trends that EWOV was finding from complaints as well as the operation and case handling policies and procedures of EWOV. This forum was essential for consumer representatives to have access to EWOV, and further to provide input about the experiences of their clients.

We note this forum was discontinued without notice or explanation in 2011. Unfortunately, the removal of this committee occurred at a similar time as the ESC discontinuing its Customer

¹⁶ *EWOV Internal Complaint Handling Policy* (September 2009).

Consultative Committee, providing little to no visibility into complaints, particularly systemic issues and their resolution.

Since then, engagement with consumer representatives is ad-hoc and informal and often based on one way communication through the *Res Online*.

It would be useful for both EWOV and consumer organisations who are actively referring clients to EWOV to have a more formal, structured feedback mechanism to contribute to the ongoing improvement of EWOV services.

Importantly, we encourage EWOV to introduce a stakeholder consultation forum with improved capacity for discussions with industry, consumers and EWOV.

The Financial Ombudsman Service has a comprehensive consumer engagement strategy, which includes consultation with its consumer liaison group. This group is made up of consumer advocate representatives. It meets quarterly, and has a dedicated resource from FOS to support its work. Depending on the agenda the appropriate Lead Ombudsman, Executive General Manager and FOS staff attends.¹⁷ FOS also uses an online hub that allows the group to discuss issues in an online forum, manage and track ideas/issues and share information and documents on an ongoing basis.

Recommendation:

23. We encourage EWOV to introduce a stakeholder consultation forum with improved capacity for discussions with industry, consumers and EWOV.

Conclusion

As we stated in our introduction, the broad view of contributors to this submission is that EWOV should be commended as it is providing an essential service of a high standard. We consider EWOV to generally be a fair, accessible and effective dispute resolution scheme for our clients, although we encourage the consideration of our recommendations, to enhance EWOV's services.

¹⁷ Financial Ombudsman Service, Consumer engagement strategy, page 1, at URL <<http://www.fos.org.au/public/download/?id=33247&sstat=228809>>

We thank you again for the opportunity to provide our views on these issues.

We look forward to receiving your response. Please contact Catherine Thwaite on 03 9670 5088 or at cathy@consumeraction.org.au if you have any questions.

Yours sincerely



Gerard Brody, Chief Executive Officer
Consumer Action Law Centre
ph: 03 9670 5088
email: gerard@consumeraction.org.au



Emma King, Chief Executive Officer
Victorian Council of Social Services
ph: 03 9235 1021
email: vcoss@vcoss.org.au



Jo Benvenuti, Executive Officer
Consumer Utility Advocacy Centre
ph: 03 9639 7600,
email: jo.benvenuti@cuac.org.au



Peter Garland, Chief Executive Officer
Financial and Consumer Rights Council
Ph: 03 9663 2000
email: pgartlan@fcrc.org.au