

12 September 2019

By email: EWOV_independent_review@crkhoury.com

EWOV Independent Review Team
Cameron.Ralph.Khoury

Dear Review Team

Energy and Water Ombudsman Victoria Independent Review

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Energy and Water Ombudsman Victoria (**EWOV**) Independent Review. EWOV plays an important role in ensuring Victorian households have ongoing access to fair outcomes in relation to the provision of essential energy and water services. Generally, we commend the performance of EWOV. Financial Counsellors at our National Debt Helpline service regularly refer callers to EWOV and these callers report receiving an effective service.

However, EWOV must focus on continuous improvement and regularly consider whether changes must be made to ensure the service is keeping up with transforming energy and water systems. In this submission we raise a number of areas where EWOV should continue to dedicate resources for improvement as well as some areas where a change of approach may improve EWOV's performance against the Benchmarks for Industry-based Customer Dispute Resolution as well as outcomes for Victorian households. We also point to the need for EWOV's jurisdiction to expand in order to supply sufficient coverage of disputes that are arising as changes in technology and regulation transform energy markets.

Our comments are explained in detail below. A summary of recommendations is available at **Appendix A**.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

TABLE OF CONTENTS

About Consumer Action	1
Awareness	4
Continue to invest in expanding Victorian household’s awareness of EWOV	4
Scheme Participant’s need to improve information and links to EWOV	5
Complaint statistics for 2017-18 financial year	5
Embedded networks	6
Customer Assistance	6
Accessibility of EWOV materials about process and jurisdiction	6
Do EWOV's staff provide clear explanation of EWOV's processes and sufficient assistance, particularly to vulnerable and disadvantaged customer groups?	7
Scheme coverage	8
Does EWOV’s Charter permit adequate coverage of current and emerging energy and water issues	8
Does EWOV appropriately exercise its discretion not to investigate complaints?	9
Is EWOV's monetary limit sufficient for binding decisions and is that monetary limit is constraining conciliated resolutions given increases in the price of energy and water since EWOV was established in 1996?	9
EWOV’s dispute handling processes	10
Do EWOV's case handing and decision-making processes demonstrate its independence and impartiality?.....	10
Are Outcomes (conciliations, closures on the basis that investigation is not warranted, closure due to non-participation by the customer, referrals to other bodies etc) achieved through EWOV at all stages of its process (unassisted referral, assisted referral, investigation) fair?	10
Does fairness require that EWOV more regularly exercises its power to make decisions that are binding on Scheme Participants?	11
Efficiency and timeliness	12
Do EWOV's processes deliver efficient complaint resolutions to customers and Scheme Participants without adversely affecting the quality of the outcome or process?	12
EWOV’s staffing and skill level is adequate to handle dispute volumes in an expanded jurisdiction and changing energy sector	12
EWOV provides Scheme Participants with good value for their funding.....	12
Balance	13
Is EWOV is achieving an appropriate balance in relation to the six Benchmarks for Industry-based Customer Dispute Resolution (accessibility, independence, fairness, accountability, efficiency and effectiveness).....	13
Compliance by Scheme Participants	13
Scheme Participant compliance with EWOV processes, including whether they are meeting agreed timeframes and complying with agreed settlements.....	13

Has EWOV been successful in its efforts to work with Scheme Participants to be compliant with EWOV's processes to promote customer confidence in EWOV and its role?13

Systemic issues14

The effectiveness of EWOV's current systemic issues process and the adequacy of its current reporting about systemic issues.14

Public reporting14

Rapidly changing environment.....15

How effectively EWOV monitors changes in the relevant energy and water markets and emerging consumer issues.....15

APPENDIX A - SUMMARY OF RECCOMENDATION16



Awareness

Continue to invest in expanding Victorian household's awareness of EWOV

We commend EWOV for continuing to strive to improve awareness of the scheme. It is essential that these efforts continue to include devoting resources to identifying underserved communities and targeting work to raise awareness accordingly. We particularly note EWOV's work engaging directly with Victorian Aboriginal¹ communities and with other organisations in the sector working to address the civil law needs within these communities.

Energy and water are essential services. Where Victorian households encounter issues with the provision of their water, electricity and gas supplies, it is important that they are aware of the effective arrangements in place to resolve disputes in a fair and reasonable way. On average, 14 percent of the callers to the National Debt Helpline Consumer Action service report issues with energy.² In many instances our service makes a referral to EWOV to resolve a dispute around payment difficulties and in almost all of these instances the caller is not aware of this being an option available to them to resolve their issue before the referral is made. While it is positive that community workers are aware of EWOV and are making referrals, this demonstrates that the community is generally unaware of the option to utilise EWOV.

Furthermore, there is evidence that suggests that energy issues are particularly prevalent in Victorian Aboriginal communities. In 2013, James Cook University's report, *The civil and family law needs of Indigenous people in Victoria*, identified utilities issues as one of the most common arising from their research. They identified utilities both as a major cause of debt amongst research participants³ and as being a potential cause of consumer law breaches relating to unsolicited selling⁴ and unfair overcharging by utilities companies.⁵ These findings are consistent with the issues we are observing through our community engagement and outreach sessions with Victorian Aboriginal communities. Preliminary data analysis of the enquiries data collected since March this year indicate that, of the enquiries made through these engagement sessions, around 17% were gas, electricity or water related enquiries. This represents the third most enquired about issue. Furthermore, issues similar to those reported back in 2013 have been observed. For example, community members have complained of utilities debt and of having been sold energy contracts over the phone without their full understanding that they had switched energy providers.

Our outreach work with Victorian Aboriginal communities indicates that accessing EWOV's services is a particular challenge for people detained in custody. People in custody are not receiving an income and making outbound calls from prison is difficult for a number of logistical reasons. Consumer Action, along with the Victorian Aboriginal Legal Service, recently attended an outreach session at Dame Phyllis Frost prison. A significant proportion of the women we spoke to (40%) reported utilities debts or concerns regarding utility disconnection. For some, the risk of disconnection is particularly concerning because of the flow on effect it would have on their families. For example, one of the women we spoke to expressed concern about the impact that disconnection would have on one of her family members who lacked capacity to manage household concerns.

EWOV has attended community engagement sessions with Consumer Action which we believe, not only assists EWOV in their work around systemic issues, but also facilitates faster issue resolution and increases awareness of EWOV's services amongst Victorian Aboriginal communities.

¹ References to Aboriginal people or communities also refer to Torres Strait Islander peoples and communities living in Victoria.

² Consumer Action, 2019. *Energy Assistance Report; Tracking how Victoria's changing energy policies are impacting households in the state*

³ Schwartz, M., Allison, F. and Cunneen, C. 2013. *The Civil and Family Law Needs of Indigenous People in Victoria*. Cairns: James Cook University, p. 131.

⁴ Ibid, p. 137.

⁵ Ibid, p. 145.

Community organisations will only ever provide assistance to a fraction of people experiencing issues. EWOV should continue to invest in expanding awareness of EWOV amongst workers and volunteers in community organisations as well as amongst the public in general.

RECOMMENDATION 1. EWOV continues to invest in targeted work to raise awareness about the availability of EWOV amongst Victorian communities.

Scheme Participant’s need to improve information and links to EWOV

The review must also consider whether members are sufficiently informing their customers of the availability of EWOV. As stated above, often our services make referrals to EWOV based on financial counsellor’s assessment that EWOV would be helpful in resolving an energy issue but our client is unaware of EWOV up until this referral. Members of EWOV are not effectively communicating the availability of EWOV when households and the business cannot reach a fair outcome through internal dispute resolution processes or even providing internal dispute resolution where issues are raised by consumers in relation to business’ processes.

Members communicating EWOVs availability in scenarios where they and their customer are in dispute reflects the most efficient means of providing information about EWOV when it is most needed by consumers. However, businesses are incentivised to minimise consumer’s awareness of EWOV. This is because a dispute being dealt with by EWOV removes the member’s advantage in a dispute where there is a power imbalance. Complaints to EWOV may result in costs to the business that they seek to avoid.

RECOMMENDATION 2. EWOV undertake work to ensure members are effectively informing their customers of the availability of EWOV when this is appropriate.

Complaint statistics for 2017-18 financial year

	Electricity Finalised Cases, Cases or Complaints	Gas Finalised Cases, Cases or Complaints
EWOV annual report⁶	21,085	11,268
EWOV assisted referral complaints⁷	13,603	7,795
ESC Victorian Energy Market Reporting⁸	81,337	46,055

It is unclear, based on reporting, how often EWOV cases and energy retailer’s reporting of complaints overlap. However, the figures above suggest a significant proportion of issues raised with retailers become EWOV cases. For instance, EWOV’s processes indicate that an assisted referral complaint is raised where a consumer has already contacted the relevant business.

It would be helpful to have more detailed reporting requirements from the Essential Services Commission (ESC) to know how many internal complaints were not resolved and how many overlapped with EWOV. It would also be helpful to know how many households with a dispute with their energy retailer simply gave up pursuing a fair

⁶ EWOV, 2018. *EWOV 2018 Annual Report*. Retrieved from: <https://www.ewov.com.au/2018>

⁷ Ibid, p.23

⁸ ESC, 2019. *Victorian Energy Market Report; Appendix – Performance of energy companies*

outcome after becoming fatigued with the process, facing significant barriers to progressing the complaint or because they were unaware of EWOV. Reporting from EWOV and the ESC should better detail aggregated actual outcomes in relation to complaints.

We are concerned that businesses are not providing sufficiently robust internal dispute resolution or are not meeting regulated minimum standards. For instance Consumer Action's Energy Assistance report showed that callers to the National Debt Helpline Consumer Action continue to report issues with setting up affordable payment plans, despite a new regulatory requirement and significant guidance around these requirements under the Payment Difficulty Framework.⁹ In most scenarios this issue being raised with our services would end up with a referral being made to EWOV where the retailer should have instead prevented the issue arising.

RECOMMENDATION 3. EWOV report outcomes for complaints more regularly, especially those where consumers cease pursuing a fair outcome. EWOV should demonstrate any efforts to address unfair outcomes that are reported.

Embedded networks

It is our understanding that registration with the ESC and membership requirements for EWOV are not yet comprehensive. It is therefore unlikely that households in embedded networks are aware that they are entitled access to EWOV to resolve issues with their electricity supply.

EWOV should continue to take proactive steps to ensure that those entitled to effective external dispute resolution in a new jurisdiction area have access and are aware of this access. For instance, where complaints are made against a business who should be a member, EWOV should be approaching the business and informing them of their requirements and notifying relevant regulators or decision makers where businesses refuse to join and participate in resolution of complaints. EWOV should also publish information about complaints made that could not be heard because despite requirements, the business involved was not yet a member. EWOV should also invest in outreach to inform people who have recently gained access to EWOV that this is the case, particularly vulnerable and disadvantaged consumers.

Callers to our services have reported significant consumer harm caused by issues arising with embedded networks. EWOV should work to improve awareness and coverage of services in this new jurisdiction, particularly where providers service vulnerable and disadvantaged communities.

RECOMMENDATION 4. EWOV invest resources in ensuring that there is comprehensive membership in expanded jurisdictions and that consumers in these jurisdictions are aware of their ability to access EWOV.

Customer Assistance

Accessibility of EWOV materials about process and jurisdiction

We support EWOV's work to make services accessible. EWOV's promotional materials and website are well designed to communicate information. EWOV investment in continuous improvement and updates that make its services easily accessible are vital to ensuring that EWOV meets the community's needs.

We also commend EWOV's efforts to remove barriers to access for culturally and linguistically diverse communities and encourage the scheme to continue to translate important materials, feature these materials

⁹ Consumer Action, 2019. *Energy Assistance Report; Tracking how Victoria's changing energy policies are impacting households in the state*, p.21.

prominently on EWOV's main webpage, engage with communities who are in need and provide facilities to contact EWOV in a household's first language.

RECOMMENDATION 5. EWOV continually invest in best practice approaches to ensure access and understanding of EWOV's processes and jurisdiction.

Do EWOV's staff provide clear explanation of EWOV's processes and sufficient assistance, particularly to vulnerable and disadvantaged customer groups?

EWOV's processes relating to varying forms of assistance are generally simple to understand and use. When following up with vulnerable and disadvantaged clients who have been referred to EWOV, feedback after their initial contact with EWOV often commends the care taken by EWOV staff to clearly explain relevant processes, particularly where a disconnection has occurred. This should be commended and continue to be a priority in the training and expectations of EWOV staff.

We have heard of instances where third parties have trouble raising issues with EWOV in complicated circumstances. An example is some instances where financial counsellors have reported not having their authorities from clients recognised by EWOV staff. We have also been told of family members trying to contact EWOV where they believe a very vulnerable and disadvantaged household may be facing imminent disconnection but EWOV would not accept a complaint. Obviously, we recognise the need for safety and privacy concerns to be considered on a case by case basis but EWOV should do everything possible to enable access to resolve potential emergencies. We have found EWOV managers approachable and have appreciated their commitments to reiterate internal policies when we have raised these issues but feel that it should not take our intervention to resolve such access issues.

On occasion we do also hear from consumers who have raised a complaint with EWOV but are not clear as to the process where an ongoing investigation is in motion. As a result, they may not pursue a complaint further given time delays, a lack of trust that doing so will result in a fair resolution or due to confusion around the process to reach resolution. We also have heard of instances where vulnerable and disadvantaged clients are fearful of raising or continuing complaints about energy businesses as they believe the business has the ability and willingness to retaliate by taking action such as disconnection. This shows the care which must be taken to explain processes as well as EWOV's powers to instruct members to cease action while investigations are under way to vulnerable and disadvantaged people who make complaints. Options for proactive check-ins like the practice of sending an SMS to those who have not re-contacted EWOV following an assisted referral, should be explored where complaints are likely to close due to non-participation by a household.

We welcome the Ombudsman's recognition at Community Consultation Group meetings and in publications that the rate of cases closing due to no further contact from the consumer needs attention. The 2016-2017 annual report pointed that 40 percent of affordability investigations were closed because the customer involved dropped out which had risen from 26 percent four years prior.¹⁰ The most recent annual report signals that EWOV has trialled different ways to address this issue. We encourage EWOV to continue to focus on improvements in this area.

This issue of maintaining engagement, particularly where consumers are identified as being vulnerable or disadvantaged is also experienced in the community services and by industry. Priority should be placed on vulnerable or disadvantaged customers who may be in emergency situations. For instance, those who contact about disconnection but do not make further follow up contact could benefit from welfare checks or direct

¹⁰ EWOV, 2017. *EWOV 2017 Annual Report*, p.6

specialist engagement and referrals. A binding decision from 2002 shows that the Ombudsman has conducted home visits in exceptional circumstances in the past.¹¹ The rates of investigations closed due to customers dropping out in complaint areas that are most likely to involve vulnerable and disadvantaged consumers should be regularly reported. Any successful strategies to reduce this occurring should be publicised to promote best practice and demonstrate EWOV's commitment to improving outcomes for households.

Callers to our legal services and workers in our legal team have also commented at times that it is hard to determine whether there are limitations or timeframes around whether EWOV cases can be reopened in instances where the caller has previously stopped engaging or is not satisfied that the resolution is fair. EWOV should consider how to make these processes simple to understand and accessible.

We welcome that EWOV has a clearly set out Internal Complaints Handling Policy. To ensure accountability EWOV should report on the number and type of complaints that are received and the outcomes of such complaints. Doing so will improve accountability and better inform the public as to whether there is the need for an independent assessor to review complaints about EWOV's work.

RECOMMENDATION 6. EWOV ensure processes are reflexive to particular complex scenarios that arise where third parties may need to raise complaints.

RECOMMENDATION 7. EWOV explore proactive options to maintain consumer engagement and improve consumer's understanding of how EWOV's powers and processes may protect them.

RECOMMENDATION 8. EWOV should regularly report on complaints closed due to non-participation by a household, what strategies are being implemented to counter these and what outcomes those strategies are having.

RECOMMENDATION 9. EWOV report on the number of complaints received under the Internal Complaints Handling Policy as well as the nature and outcomes of these complaints.

Scheme coverage

Does EWOV's Charter permit adequate coverage of current and emerging energy and water issues

Our experience is that EWOV is able to adequately accept complaints in relation to licensed energy and water businesses, is increasingly able to accept complaints in relation to embedded networks but is inappropriately limited in its jurisdiction over issues that arise with businesses providing new energy technology, demand response and intermediary businesses.

Changes are happening with technology, energy specific regulations and regulations that may impact energy services. As the Consumer Data Right expands to cover energy data this is likely to result in consumers giving access to energy data to businesses currently outside EWOV's jurisdiction for services related to their energy provision. Businesses that enable households to participate in demand response, besides engaging with licensed retailers, may also emerge and result in disputes. Disputes with new energy technology may also involve multiple businesses, many of which are out of jurisdiction. In light of this EWOV must also consider its ability work alongside other ombudsman to reach a holistically fair and effective resolution. EWOV's jurisdiction should reflect

¹¹ EWOV, 2002. *Gas supply disconnection – hardship considerations (GD/2001/13)*. Retrieved 3 September 2019 from: <https://www.ewov.com.au/gas-supply-disconnection-hardship-considerations-gd200113>

consumer's expectations as to what external dispute resolution scheme should resolve their issue. In relation to the new business areas discussed here, we believe this will be EWOV for Victorian households.

Our *Sunny Side Up* report investigated issues with solar markets that arise through our legal services.¹² It found that significant harm was being caused by systemic issues in the provision of Solar PV systems to households and recommended that EWOV's jurisdiction be extended to include the retail sale of new energy products and services. The Independent Review of The Electricity and Gas Retail Markets in Victoria also recommended "expand[ing] the powers of EWOV to cover emerging energy businesses, products and services."¹³ There are a number of reasons why EWOV should expand its jurisdiction to include these disputes. For example, increasingly complex technology and purchase arrangements as well as widespread continuing uptake of new technology will require a broader jurisdiction. There will also be a growth in the involvement of multiple parties in more complex disputes and the prevalence of harm, as well as the difficulty households face in accessing the technical expertise to resolve complaints.

We also welcome changes to EWOV's charter so that the Ombudsman now has the discretion to instruct a member to not proceed with, or to commence court proceedings in relation to credit issues for vulnerable consumers so that an investigation and resolution is more accessible through EWOV. However, this change appears to not have been widely communicated to the community sector or public and this may result in community workers or households not considering this as an option available for assisting a household. We ask that this change be better disseminated.

RECOMMENDATION 10. EWOV's jurisdiction expand to cover new energy technology businesses, intermediaries utilising consumer's data through the Consumer Data Right and Demand Response Service Providers.

RECOMMENDATION 11. EWOV work with other external dispute services to ensure a fair and holistic outcome results from a dispute involving multiple businesses over different jurisdictions.

RECOMMENDATION 12. EWOV better communicate the changes to its charter involving the Ombudsman's discretion to instruct a member to not proceed with or commence court proceedings in some scenarios.

Does EWOV appropriately exercise its discretion not to investigate complaints?

Apart from issues of appropriate access to raise complaints by third parties raised above we have not seen any issues with this discretion.

Is EWOV's monetary limit sufficient for binding decisions and is that monetary limit is constraining conciliated resolutions given increases in the price of energy and water since EWOV was established in 1996?

The current monetary limit for binding decisions may limit the scope of conciliated decisions now or in the future and should be raised. Consumer Action has seen instances where energy debts exceed the \$20,000 amount.¹⁴ People should not be excluded or be forced to limit their claims where such issues arise. Where EWOV expands its jurisdiction to include new energy technology providers, this amount should also be expanded as these technologies can involve investment from consumers of amounts greater than \$20,000 to purchase, install and/or access technology. We also question whether this monetary limit clashes with EWOV's role in determining

¹² Consumer Action, 2019. *Sunny Side Up; Strengthening the Consumer Protection Regime for Solar Panels in Victoria*. Available at: <https://consumeraction.org.au/20190404-sunny-side-up-report/>

¹³ Faulkner, P, Mulder, T & Thwaites, J, 2017. *Independent Review of The Electricity and Gas Retail Markets in Victoria*.

¹⁴ Consumer Action, 2019. *Energy Assistance Report; Tracking how Victoria's changing energy policies are impacting households in the state*, p.19

Wrongful Disconnection Payments where households were disconnected for more than 40 days and whether this is impacting on EWOV's ability to resolve these decisions without unnecessary barriers to the households involved?

In comparison, the Australian Financial Complaints Authority (**AFCA**) can consider claims of up to \$1 million and have a compensation amount limit per claim of up to \$500,000 in relation to non-small business consumer disputes. AFCA also has the ability to pay compensation of up to \$5,000 each for indirect financial loss or non-financial loss.¹⁵ Consumer Action has previously argued for these indirect financial loss or non-financial loss limits to be unlimited or at least up to the general compensation cap.

While financial services disputes may relate to much greater sums of money than energy and water disputes, the significantly greater limits in this newly established forum point to a precedent for EWOV to raise monetary limits. Doing so would ensure all relevant complaints can be heard. It would also be helpful for EWOV to specify and publicise a process around the consideration of compensation for indirect financial loss or non-financial loss resulting from and energy or water business's actions.

RECOMMENDATION 13. EWOV's monetary limit for binding decisions be increased and EWOV specify a clear process for considering compensation for indirect financial loss or non-financial loss.

EWOV's dispute handling processes

Do EWOV's case handling and decision-making processes demonstrate its independence and impartiality?

We have not heard of concerns raised in relation to EWOV's independence and impartiality.

Are Outcomes (conciliations, closures on the basis that investigation is not warranted, closure due to non-participation by the customer, referrals to other bodies etc) achieved through EWOV at all stages of its process (unassisted referral, assisted referral, investigation) fair?

Consideration must be given as to whether consumers are getting consistent and fair outcomes. As discussed in more detail above, the amount of affordability investigations closed due to non-participation by the customer that have been sporadically reported are a cause of concern. These should be better reported and the reduction of such instances should be a priority for EWOV.

We are limited in our ability to comment on whether outcomes are fair at all times as we are only fully informed as far as the amount of ongoing EWOV complaints that our legal practice actively assists clients with. We may also hear some feedback volunteered from callers to our National Debt Helpline service or from colleagues in the wider community sector. While each issue is considered on a case by case basis, fair resolution to similar complaints shouldn't vary greatly in actual outcomes for households. EWOV should actively monitor whether people making complaints receive inconsistent outcomes and report findings as well as actions taken if outcomes are inconsistent and therefore unfair.

A priority area should be comparing whether complaints where assistance is provided to a household by a representative such as a financial counsellor result in better or fairer outcomes compared to resolutions for similar complaints raised by households directly. Our concern is that representatives may be more aware of what resolutions may be requested or less likely to accept a resolution that in their experience is not fair whereas households without expert representatives may not be aware of what resolution to request. For instance, in situations where a payment plan has not been made available a representative may request a debt waiver for a person experiencing payment difficulty so that they are able to overcome the compounded issue that has resulted. In contrast a consumer making a complaint direct may never be made aware of the possibility of a debt waiver or

¹⁵ AFCA, 2018. *Complaint Resolution Scheme Rules*, p.35

feel under pressure not to ask for one when already facing stigma in relation to having debt and experiencing payment difficulty or fearing some form of retaliation by their energy or water provider.

Disconnection is a form of debt collection which is inappropriate where someone has an inability to pay. We have seen situations where particularly vulnerable and disadvantaged clients have contacted EWOV to raise a complaint to have their energy reconnected but appear to have never had an assessment as to whether their disconnection was wrongful. It is only fair that EWOV do everything possible to investigate whether any person complaining about a disconnection for non-payment has a Wrongful Disconnection Payment assessment, especially if that person struggles to follow up with EWOV due to vulnerability or disadvantage.

Ongoing assessment of whether effective resolutions are reached following assisted referrals should be a priority. We understand and support EWOV's process of sending an SMS as follow up after people do not recontact EWOV when an assisted referral back to their retailer has been made. However, we have also heard anecdotes of consumers feeling forced to accept unaffordable payment plans after an assisted referral as they believed there is little recourse to negotiate otherwise. There is also a risk that assisted referrals go nowhere and that people juggling complex financial hardship get complaint fatigue and do not have their issue resolved. These unfair outcomes may compound payment difficulty and lower the likelihood that consumers will see EWOV as an option to resolve this ongoing issue in the future. Other assessments should be made in addition to the SMS reminders we are aware of.

Does fairness require that EWOV more regularly exercises its power to make decisions that are binding on Scheme Participants?

EWOV should consider binding decisions more often and the contribution such decisions may have to deterring conduct that is causing widespread harm. Not making binding decisions may be an indication that EWOV's members factor the consequences of breaches or other consumer harm into the cost of business. It may also be a sign that businesses see resolution decisions as favourable relative to what they expected and that households are not realising that they could ask for different remedies like debt waivers that would make the resolution reached fairer.

Binding decisions would also increase EWOV's accountability while bringing clarity to what fair and reasonable outcomes should be expected when energy and water issues arise. Where published, binding decisions will demonstrate to the community that the Ombudsman is independent and competent and therefore that they can have confidence in EWOV. Published binding decisions will also provide guidance to businesses as to conduct that is unacceptable.

AFCA has taken a different approach to EWOV, where they often make binding decisions and publish decisions. This approach is likely to have a stronger impact in systemically encouraging better conduct from members of their scheme. This is because publicised binding decisions act as guidance which explains conduct that is unfair and the consequences for businesses that practice this conduct. This encourages the businesses involved and their peers to avoid repeating this conduct in order to avoid complaints that will not result in desirable outcomes for the businesses.

Consideration should be given as to whether EWOV has actively avoided making binding decisions and inappropriately set KPIs to avoid situations arising where a binding decision is needed to get a fair outcome for the complainant.

RECOMMENDATION 14. EWOV review whether outcomes to similar complaints are consistent and publicly report findings.

RECOMMENDATION 15. EWOV assess whether outcomes from assisted referrals are adequate and report these findings.

RECOMMENDATION 16. EWOV ensures that all people complaining in relation to actual disconnections receive an assessment as to whether they are eligible for a Wrongful Disconnection Payment.

RECOMMENDATION 17. EWOV ensure that binding decisions are not being inappropriately avoided and make more binding decisions where this is in the interests of the community.

Efficiency and timeliness

Do EWOV's processes deliver efficient complaint resolutions to customers and Scheme Participants without adversely affecting the quality of the outcome or process?

Energy and water disputes can be complex to explain or understand. Generally, we perceive EWOV to be efficient in reaching complaint resolutions. However, priority must always be placed on taking the necessary time to ensure that vulnerable and disadvantaged consumers receive an appropriate quality of tailored service so that they receive a fair resolution. Key performance indicators must be set in a way that ensures EWOV staff are not incentivised to inappropriately speed up processes to the point where complaints are not comprehensive or understood by households.

We would also comment that in our limited exposure to dealing with embedded network complaints we have found that processes have been slower than other complaint processes at EWOV. This new part of EWOV's services needs to aim to provide equivalent service for households in embedded networks as to where households complain about a licensed provider. It is our understanding that EWOV has a dedicated team working in the expanded jurisdiction and such approaches should continue with the aim of achieving better service for households who have complaints in this area.

EWOV's staffing and skill level is adequate to handle dispute volumes in an expanded jurisdiction and changing energy sector

As discussed above, EWOV's jurisdiction should be expanded to cover new energy technology, intermediaries given access to consumer's energy data and demand response businesses as well as the recent expansion to cover embedded networks. This is because EWOV are experts in working towards expert, fair and free dispute resolution. EWOV's skills are well established but staffing levels may need to adjust to increasingly technologically complex disputes and complex disputes involving multiple parties in these expanded jurisdictions. Also, as above, we have found responses slow in embedded network disputes and would welcome resources being dedicated to improving service in new areas.

EWOV provides Scheme Participants with good value for their funding.

Generally, EWOV is an efficient and effective mechanism for resolving complaints and should be seen as good value for the funding it receives.

RECOMMENDATION 18. Key performance indicators be set in a way that ensures EWOV staff are not incentivised to inappropriately speed up processes.

RECOMMENDATION 19. EWOV continue to devote resources to ensure that consumers in embedded networks (or other new jurisdictions in the future) receive equivalent service to their peers with mainstream arrangements.

Balance

Is EWOV is achieving an appropriate balance in relation to the six Benchmarks for Industry-based Customer Dispute Resolution (accessibility, independence, fairness, accountability, efficiency and effectiveness)

As described throughout this submission we are generally happy with the balance taken by EWOV. We encourage EWOV to focus on continual improvement and consider or resolve issues raised in this submission.

The fairness benchmark for Industry-based Customer Dispute Resolution is critical to the effectiveness of EWOV and our confidence in referring consumers to EWOV. EWOV must demonstrate that it effectively makes use of its 'fairness jurisdiction' in resolving disputes. In EWOV's context, fairness includes having unbiased and clear procedures that are followed. Substantive fairness is also important in EWOV deciding how a dispute should be resolved. There should be consideration of factors and circumstances relevant to a complaint that at times may not be able to be resolved by referring to regulation that deals only with one aspect of the complaint.

We are aware that AFCA is undertaking a 'Fairness Project,' which will:

*'map community expectations and produce a set of criteria for fairness which can be plainly understood and will explain how we assess fairness in any given complaint. This approach will ensure we deliver clear, consistent and quality decision making and will set the bar for financial firms when applying fairness to their own internal dispute resolution processes.'*¹⁶

EWOV should also develop a similar guideline on how it will ensure it performs against the fairness benchmark in making decisions.

RECOMMENDATION 20. EWOV undertake work to develop a fairness guideline.

Compliance by Scheme Participants

Scheme Participant compliance with EWOV processes, including whether they are meeting agreed timeframes and complying with agreed settlements.

Generally, we see few issues with scheme participants complying with processes, timeframes and settlements. On occasion we have assisted consumers where energy retailers have tried to renegotiate a payment plan agreed to in an EWOV resolution despite a household's circumstances not having changed. There has not been issue with raising such problems with EWOV besides the unwillingness of clients to raise the complaint again given their experience following their previous efforts to reach a resolution.

Appropriate regulatory settings provide strong incentives for EWOV members to comply with EWOV. Situations may arise where EWOV's jurisdiction is expanded but regulatory settings are not appropriate to incentivise businesses in the new jurisdiction to comply with requirements to be members of EWOV or comply with EWOV. EWOV and this independent review has our support in publicly requesting from decision makers the adjustments necessary to overcome such systemic issues that may have arisen or are likely to arise with an expansion of jurisdiction in the future.

Has EWOV been successful in its efforts to work with Scheme Participants to be compliant with EWOV's processes to promote customer confidence in EWOV and its role?

Most consumers contacting the National Debt Helpline service at Consumer Action with energy or water issues are not aware of the availability of EWOV. This is a general indication that EWOV members are not effectively communicating with customers in relation to the role of EWOV and confidence they should have when using

¹⁶ AFCA, Six Month Report, July 2019, p 15, available at: <https://www.afca.org.au/news/statistics/six-month-report/>.

EWOV's services. Members have an incentive not to inform customers of their ability to raise complaints with EWOV as they may benefit from the conduct that their customer seeks to complain about. EWOV must take action to ensure members are effectively communicating EWOV's availability when it is timely and report publicly on any issues identified and actions taken to resolve these issues.

RECOMMENDATION 21. EWOV clearly inform decision makers and regulators of systemic issues with scheme participants not complying with EWOV and call for changes

Systemic issues

The effectiveness of EWOV's current systemic issues process and the adequacy of its current reporting about systemic issues.

EWOV's role in resolving systemic issues is a valuable aspect of the organisation's place in the effective provision of essential energy and water services in Victoria. While we see EWOV's processes as generally effective, reporting of systemic issues should name the business involved. AFCA has recently announced that it will begin naming businesses in determinations in order to improve transparency.¹⁷ This should also be the case both where EWOV confirms the business has remedied a systemic issue and where the issues are not addressed and result in EWOV reporting to government departments or regulators.

Naming the businesses involved in systemic issues will improve the accountability of businesses and the accountability of regulators in resolving systemic issues raised. It will also ensure that the public is able to check whether all of the harm caused by the issues has been resolved and point to where there are gaps in laws or regulations that need adjustment to prevent systemic issues arising across multiple businesses.

In particular it is important for the public to know if an unresolved systemic issue that EWOV is aware of has been referred to the Essential Services Commission (ESC) but has not resulted in action from the regulator. Section 54X of the Essential Services Commission Act 2001 sets out a process for these referrals to be made which does not include the ESC publicly reporting that the referral has been made and what action has been taken.¹⁸ EWOV naming businesses involved in systemic issues that have been referred to the ESC will increase accountability for the regulator to act in the interests of consumers.

RECOMMENDATION 22. EWOV name businesses where systemic issues have been identified as well as the action taken by EWOV in relation to the issues.

Public reporting

EWOV's public reporting is of high quality and is effective in improving conduct in the provision of essential energy and water services in Victoria. Generally, the reporting demonstrates EWOV fulfilling its role and gives Consumer Action confidence in referring people who have complaints about members of EWOV. Reporting often details trends in issues that can inform industry on areas for improvement or community organisations and decision makers of regulations and laws that need reform or enforcement to improve consumer outcomes and prevent issues arising in the first place.

EWOV identifying member's complaint numbers in annual reports and in Res Online publications is informative for community in relation to their choice of business and regulators in their understanding of companies that may need compliance and enforcement attention. As above we call for EWOV to name businesses in relation to

¹⁷ AFCA, 2019 26 August. *AFCA to name financial firms in determinations*. Retrieved 11 September 2019 from: <https://www.afca.org.au/news/media-releases/afca-to-name-financial-firms-in-determinations/>

¹⁸ Section 54x, Essential Services Commission Act 2001 - http://www5.austlii.edu.au/au/legis/vic/consol_act/esca2001327/s54x.html

systemic issues. EWOV should also name businesses in Res Online and other intermittent reporting in relation to one business being the cause of a trend in the data presented, in otherwise de-identified case studies and in paid Wrongful Disconnection Payment outcomes. Doing so would better inform the public of EWOV work to resolve issues and where there may need to be reform or compliance work.

Also as discussed above, EWOV should expand reporting to more consistently investigate and demonstrate actual outcomes that result from EWOV's work following a consumer's complaint. Understanding and regularly reporting the outcome of assisted referrals that do not return to EWOV in particular would be helpful for demonstrating the effectiveness or need for improvement in EWOV's processes. Undertaking this additional reporting will bring transparency about EWOV's impact on the community.

RECOMMENDATION 23. In its regular reporting, EWOV name businesses in case studies, paid Wrongful Disconnection Payments and where a business is responsible for trends.

RECOMMENDATION 24. EWOV more consistently report on the outcomes for consumers following EWOV's work.

Rapidly changing environment

How effectively EWOV monitors changes in the relevant energy and water markets and emerging consumer issues.

Consumer Action values EWOV's work on monitoring changes in energy and water issues. Emerging issues within frameworks and jurisdiction are often helpfully identified and publicised. An example would be recent reporting on the lack of provision of tailored assistance to minimum standards under the new payment difficulty framework.

EWOV should gather as much information as possible about complaints that are out of jurisdiction and report these where trends emerge. That households are seeking to complain to EWOV about issues that are out of jurisdiction indicates a clear need for an expansion of jurisdiction or regulatory changes so that households receive fair outcomes.

Consumer Action is also a member of EWOV's Community Consultation Group and appreciates the approach taken by the Ombudsman to understand issues in the community and the making of commitments to explore what can be done to address these issues. This group should continue, it sets an example for effective consultation with community organisations for other organisations.

RECOMMENDATION 25. EWOV gather as much information as possible about out of jurisdiction complaints that consumers seek to raise.

APPENDIX A - SUMMARY OF RECCOMENDATION

RECOMMENDATION 1. EWOV continues to invest in targeted work to raise awareness about the availability of EWOV amongst Victorian communities.

RECOMMENDATION 2. EWOV undertake work to ensure members are effectively informing their customers of the availability of EWOV when this is appropriate.

RECOMMENDATION 3. EWOV report outcomes for complaints more regularly, especially those where consumers cease pursuing a fair outcome. EWOV should demonstrate any efforts to address unfair outcomes that are reported.

RECOMMENDATION 4. EWOV invest resources in ensuring that there is comprehensive membership in expanded jurisdictions and that consumers in these jurisdictions are aware of their ability to access EWOV.

RECOMMENDATION 5. EWOV continually invest in best practice approaches to ensure access and understanding of EWOV's processes and jurisdiction.

RECOMMENDATION 6. EWOV ensure processes are reflexive to particular complex scenarios that arise where third parties may need to raise complaints.

RECOMMENDATION 7. EWOV explore proactive options to maintain consumer engagement and improve consumer's understanding of how EWOV's powers and processes may protect them.

RECOMMENDATION 8. EWOV should regularly report on complaints closed due to non-participation by a household, what strategies are being implemented to counter these and what outcomes those strategies are having.

RECOMMENDATION 9. EWOV report on the number of complaints received under the Internal Complaints Handling Policy as well as the nature and outcomes of these complaints.

RECOMMENDATION 10. EWOV's jurisdiction expand to cover new energy technology businesses, intermediaries utilising consumer's data through the Consumer Data Right and Demand Response Service Providers.

RECOMMENDATION 11. EWOV work with other external dispute services to ensure a fair and holistic outcome results from a dispute involving multiple businesses over different jurisdictions.

RECOMMENDATION 12. EWOV better communicate the changes to its charter involving the Ombudsman's discretion to instruct a member to not proceed with or commence court proceedings in some scenarios.

RECOMMENDATION 13. EWOV's monetary limit for binding decisions be increased and EWOV specify a clear process for considering compensation for indirect financial loss or non-financial loss.

RECOMMENDATION 14. EWOV review whether outcomes to similar complaints are consistent and publicly report findings.

RECOMMENDATION 15. EWOV assess whether outcomes from assisted referrals are adequate and report these findings.

RECOMMENDATION 16. EWOV ensures that all people complaining in relation to actual disconnections receive an assessment as to whether they are eligible for a Wrongful Disconnection Payment.

RECOMMENDATION 17. EWOV ensure that binding decisions are not being inappropriately avoided and make more binding decisions where this is in the interests of the community.

RECOMMENDATION 18. Key performance indicators be set in a way that ensures EWOV staff are not incentivised to inappropriately speed up processes.

RECOMMENDATION 19. EWOV continue to devote resources to ensure that consumers in embedded networks (or other new jurisdictions in the future) receive equivalent service to their peers with mainstream arrangements.

RECOMMENDATION 20. EWOV undertake work to develop a fairness guideline.

RECOMMENDATION 21. EWOV clearly inform decision makers and regulators of systemic issues with scheme participants not complying with EWOV and call for changes

RECOMMENDATION 22. EWOV name businesses where systemic issues have been identified as well as the action taken by EWOV in relation to the issues.

RECOMMENDATION 23. In its regular reporting, EWOV name businesses in case studies, paid Wrongful Disconnection Payments and where a business is responsible for trends.

RECOMMENDATION 24. EWOV more consistently report on the outcomes for consumers following EWOV's work.

RECOMMENDATION 25. EWOV gather as much information as possible about out of jurisdiction complaints that consumers seek to raise.

Please contact Jake Lilley at **Consumer Action Law Centre** on 03 9670 5088 or at jake@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE



Jake Lilley | Senior Policy Officer