



5 October 2016

COAG Energy Council Secretariat
GPO Box 9839
CANBERRA ACT 2601

By email: energycouncil@industry.gov.au

Dear COAG Energy Council Secretariat

Re: Council of Australia Governments (COAG) Energy Council Consumer Protections for Behind the Meter electricity supply – consultation on regulatory implications

Thank you for the opportunity to comment on the *COAG Energy Council Consumer Protections for Behind the Meter electricity supply – consultation on regulatory implications* paper (the Paper). Additionally, our response to this Paper can be applied to COAG Energy Council's concurrent consultation, *Stand-alone energy systems in the Electricity Market – consultation on regulatory implications*.

As an industry-based external dispute resolution scheme, the Energy and Water Ombudsman (Victoria) (EWOV) provides alternative dispute resolution services to Victorian energy and water customers by receiving, investigating and facilitating the resolution of complaints. In making this submission, EWOV's comments are based on our extensive experience handling over 585,000 cases since we started receiving complaints in 1996. Our comments are based on scenarios where a customer is primarily supplied with electricity by an entity that offers a product and/or service that does not fit within the traditional electricity retail model. We have responded to the Paper under the following umbrellas: equitable dispute resolution, vulnerable customers, new products and services and the provision of information.

This submission draws on some of our previous comments on related topics and issues raised in other consultations where we have called for energy customers to have access to independent and free external dispute resolution irrespective of how they are supplied energy:

- COAG Energy Market Reform Working Group's *New Products and Services in the Electricity Market – consultation of regulatory implications*¹
- The Australian Treasury's *Australian Consumer Law (ACL) Review – Issues Paper*²
- Victorian Department of Environment, Land, Water and Planning (DELWP)'s *General Exemption Order (GEO) Draft Position Paper*³.

¹ Submission available at: <https://www.ewov.com.au/files/ewov-comments-on-coag-emrwg-new-products-and-services-in-the-electricity-market-consultation-of-regulatory-implications.pdf>

² Submission available at: <https://www.ewov.com.au/files/ewov-comments-on-the-australian-consumer-law-review-issues-paper.pdf>





EQUITABLE DISPUTE RESOLUTION

Should consumers with behind the meter electricity systems have access to an independent dispute resolution scheme?

EWOV believes that all energy customers – regardless of how they are supplied or sold energy – should have easy access to free, independent and fair dispute resolution. EWOV's position is based on two equitable principles: the inherent fairness of all Victorian energy customers having equal access to EWOV for unresolved disputes, and the principles of effectiveness, accessibility and fairness built into the national *Benchmarks for Industry-based Customer Dispute Resolution*⁴, with which EWOV complies.

In July 2016, an independent report – *Consumer access to external dispute resolution in a changing energy market*⁵ – was commissioned by the energy ombudsman schemes of Victoria, New South Wales and South Australia to improve their own understanding of the state of the energy landscape and the impact that this is having on the access to free and independent dispute resolution for all Australian energy customers. The report details the importance of existing consumer protections intersecting with new energy products and services and the jurisdiction of energy ombudsmen.

Are there benefits in a consistent dispute resolution scheme (i.e. an Ombudsman scheme) applying across grid connected and behind the meter arrangements?

EWOV believes that existing state-based energy ombudsman schemes have the necessary expertise to deal with disputes where the customer and seller have an ongoing relationship concerning the supply of energy.

This principle is tested when it comes to complaints about energy 'gadgets' or hardware products, which are generally covered by the *ACL*⁶ and can be appropriately handled by the consumer protection agencies in the relevant jurisdiction, such as Consumer Affairs Victoria. However, these dispute resolution and consumer protections scenarios may become more complex in situations where the hardware products are intrinsically linked to a customer's supply of electricity, billing, contract, or in situations where the product/service is offered by a scheme participant of an energy ombudsman. These scenarios may be comparable to the telecommunications industry where a phone handset is provided as part of a mobile phone retail contract that also provides customers with access to a mobile network.

³ Submission available at: <https://www.ewov.com.au/files/ewov-comments-delwp-general-exemption-order-draft-position-paper.pdf>

⁴ See the *Principles and Purposes* and *Key Practices* of the *Benchmarks for Industry-based Customer Dispute Resolution*, republished in February 2015 by The Treasury, Australian Government.

⁵ Report available at: <https://www.ewov.com.au/files/160624-consumer-access-to-external-dispute-resolution-in-a-changing-energy-market.pdf>

⁶ See www.consumerlaw.gov.au.





Are there particular consumer protections that need to be consistent for competition or to protect consumer harm that has the potential to arise in all circumstances, such as dispute resolution?

EWOV echoes our long-held policy position that all customers with an ongoing relationship with a business regarding the supply of energy should have access to a free and independent external dispute resolution service.

How should the costs associated with the scheme be allocated?

EWOV's funding model is a user-pays system whereby scheme participants are charged a cost per enquiry or complaint, along with a small annual membership fee based on customer numbers. Our service is free for customers. As industry developments occur, more consideration and consultation about EWOV's funding model will be required to assist new and smaller entrants participate in the scheme but to minimise cross subsidisation by current members.

VULNERABLE CONSUMERS

EWOV's affordability-related complaints have decreased over the last two years but now make up about 30% of our total case work⁷. Electricity is an essential service that should be accessible to all consumers. Therefore, consideration of how new energy products and services operate in the market also needs to occur in the context of vulnerable customers and the protections needed to ensure access to supply and appropriate hardship assistance.

NEW PRODUCTS AND SERVICES OFFERED BY EWOV'S SCHEME PARTICIPANTS

The extent of EWOV's jurisdiction is limited by the licence conditions imposed on energy companies by the Essential Services Commission (ESC)⁸. Many new business models that have recently entered the Victorian energy market – including distributed energy generation and storage – are currently exempt under their derogated licence conditions from many of the requirements placed on 'traditional energy companies', including membership of EWOV.

Currently there is growing complexity for energy consumers when EWOV's scheme participants offer products and services – such as solar PV systems and/or batteries – which are considered to be outside EWOV's jurisdiction as they are deemed to be commercial activities outside the scope of the electricity or gas licence issued by the ESC⁹. Often these customers are complaining about issues such as faulty solar systems, billing implications and installation delays, and are generally dissatisfied to discover that EWOV cannot assist them with their complaint. These complaints are referred to another body such as Consumer Affairs Victoria, the Australian Competition and Consumer Commission or the Victorian Civil and Administrative Tribunal.

To add to this complexity, sometimes scheme participant products or services that would usually fall outside EWOV's jurisdiction are actually within jurisdiction by virtue of the billing

⁷ EWOV's affordability case data can be found in our quarterly *Affordability Report* and 2015 research paper, *A closer look at affordability*, available at: <https://www.ewov.com.au/reports>

⁸ ESC website: <http://www.esc.vic.gov.au/Energy/Licensing>

⁹ Clause 4.2(b) of EWOV's Charter: <https://www.ewov.com.au/files/ewov-charter.pdf>





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

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

EWOV out-of-jurisdiction case studies¹⁰

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

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

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

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

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

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

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

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

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

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

¹⁰ As these cases were out of EWOV's jurisdiction, we only heard the customer's 'side of the story'.





PROVISION OF INFORMATION

Based on our experience, we support the provision of comprehensive information by energy companies to customers to enable them to make fully informed decisions and to be required to provide their explicit consent before entering contract arrangements. This also applies to customers who may not have access to the full suite of energy-specific protections and an external dispute resolution service. Information provided about these limited customer protections may help shape some customers' decisions about what products and services will and will not suit their needs.

In conclusion, EWOV believes that it is critical for there to be thorough consideration of how customer protections continue to fit within the proliferation of new energy business models and associated products and services. Specific to this, we maintain that access to free and independent external dispute resolution must continue to play a central role in the suite of customer protections.

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

Yours sincerely

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

Cynthia Gebert
Energy and Water Ombudsman (Victoria)

