



25 August 2011

Ms Erin Dempsey
Department of Primary Industries
1 Spring Street
Melbourne
VIC 3000

By email: erin.dempsey@dpi.vic.gov.au

Dear Ms Dempsey

Re: Department of Primary Industries (DPI) Paper – Extending the jurisdiction of the Energy and Water Ombudsman (Victoria)

Thank you for the opportunity to comment on the Department of Primary Industries (DPI) Paper – Extending the jurisdiction of the Energy and Water Ombudsman (Victoria) (EWOV) (the paper).

This paper was discussed at the EWOV Board meeting on 25 August 2010. Given the complexity of the issues involved in extending our jurisdiction to include energy providers which are exempt from holding an ESC licence (exempt bodies) and the subsequent fundamental change required to EWOV's operation, EWOV strongly believes that an independent feasibility study is required to make an informed and sound decision about this matter.

This submission will address the questions raised in the paper, outline EWOV's experience of receiving customer concerns about exempt bodies, and set out the considerations for an independent feasibility study.

The questions raised in the paper

- 1. What is the most appropriate forum to assist in the resolution of energy complaints between exempt bodies and their customers?***

The paper makes a comparison between several characteristics of the Victorian Civil and Administrative Tribunal (VCAT) and EWOV. EWOV has more than 15 years experience in resolving complaints between customers and their energy and water providers and, while VCAT is highly effective at resolving disputes, we believe that EWOV offers some comparative advantages to customers, as outlined below.

2. Are there advantages for customers and exempt bodies in having complaints heard by EWOV rather than VCAT?

There are advantages for both customers and exempt bodies in having EWOV resolve complaints, predominantly by conciliation rather than through VCAT processes and a potential hearing. The advantages for a customer are as follows:

- EWOV's services are free to all customers.
- EWOV generally resolves complaints quicker than VCAT.
- EWOV offers customer tailored processes to resolve their complaint, such as referring it back to a higher level contact at their company for a final opportunity for resolution.
- EWOV is accessible by phone, email, the web, by interpreter and by third party representatives.
- EWOV's processes are informal. A written complaint is not required and the majority of customer complaints are resolved directly over the phone.
- EWOV staff have specialised knowledge of the energy and water sectors.

There may also be advantages for exempt retailers:

- EWOV may be cheaper and quicker than a protracted VCAT process, which may include compulsory conferences and mediations, before an actual hearing.
- Customer access to external dispute resolution is considered good and accountable corporate governance.
- Alternative dispute resolution helps preserve the relationship between customers and their energy provider.
- There is much to learn from EWOV's extensive experience in resolving customer complaints about energy and water matters. This may lead to better customer service practices and policies.

3. If EWOV's jurisdiction was extended, should exempt bodies be obligated to become members of EWOV?

The membership of EWOV for exempt bodies would be considered as part of an independent feasibility study. At present, under EWOV's Charter and Constitution, exempt bodies can voluntarily become part of the scheme and a member of EWOV Limited as a 'Contracting Participant'¹. However, they are not obliged to do so. Exempt bodies are diverse in nature and sometimes complex in organisation, so rather than entering into potentially hundreds of

¹ See clauses 7.2 of EWOV's Constitution - http://www.ewov.com.au/site/documents/EWOV-Constitution_17May2010.pdf and clauses 1 and 2 of EWOV's Charter <http://www.ewov.com.au/site/DefaultSite/filesystem/documents/PDF/Charter%2030%20May%202006.pdf>.

separate 'Contracting Participant' agreements, it may be preferable to create a new and distinct membership class.

Our preliminary view is that in deciding whether exempt bodies should be members of the EWOV scheme, consideration should be given to the following:

- Creating a new membership category to oblige exempt bodies to join the scheme.
- Whether exempt bodies should have the same voting rights as EWOV's licensed scheme participants, or be a 'non-voting' or other type of membership basis.
- Whether to restrict representation by exempt bodies on EWOV's Board.
- Making necessary amendments to EWOV's Constitution and Charter.
- The possible need for any Memorandum of Understanding about how to charge and bill exempt bodies for the services EWOV provides.

4. *What is the most appropriate model for funding the costs of resolving disputes raised by customers of exempt bodies (e.g. fee-for-service)?*

The payment for EWOV's services to exempt bodies is a complex matter which requires careful consideration by EWOV's Board, informed by an independent feasibility study. The most appropriate funding model in all the circumstances would be considered in detail as part of the study.

EWOV's currently bills its members six-monthly in advance with a reconciliation taking place at the end of each financial year. This model operates well and EWOV has never had to worry about recovering bad debts.

The paper comments on two funding options for exempt bodies:

1. The Energy & Water Ombudsman NSW (EWON) has jurisdiction to investigate customer complaints against exempt bodies. The costs of handling these complaints are spread across the other scheme participants.
2. The ESC Small Scale Licensing Framework Review (2006) recommended that EWOV adopt a 'fee-for-service' model where exempt bodies are charged for the complaints EWOV receives, but without contribution to annual membership fees. Annual membership fees give EWOV financial security for its fixed costs.

It is difficult to see how these two funding models could be equitable for EWOV's existing members, as they would in effect be subsidising the new member exempt bodies. They also do not address the 'start up' costs of extending EWOV's jurisdiction. The company engaged to

conduct the independent feasibility study would be briefed to assess a suitable charging model for exempt body entry into EWOV, taking into account the following:

- the interests of existing members
- the principle of 'user-pays' as an equitable way of funding the scheme
- an annual membership fee as a perceived barrier of entry to EWOV's scheme
- EWOV costs potentially being passed onto customers, for example, by increasing their rent
- charging as an incentive for good customer service, so that a customer's complaint is resolved before being brought to EWOV
- changes to EWOV's billing system
- issues of debt collection and bad debts
- administrative changes that may need to be made.

5. *Should only certain classifications of exempt customers have access to EWOV?*

In principle, we would like all Victorians to have equal access to EWOV to help resolve concerns they have with their energy and water providers. Therefore, customers of exempt bodies should have the same access to EWOV as customers of licensed scheme participants. In practice, this will not be easy to achieve, but should always be the goal.

6. *If yes, what classifications of exempt customers should have access to EWOV?*

This question will form part of an independent feasibility study.

Presently, EWOV does not restrict access to our services based on the characteristics of a customer, such as the amount of energy they use. In principle, the right to use EWOV would apply to customers of all types of exempt bodies. In practice, it may be better to take a staged approach to any entry by exempt bodies into EWOV's scheme, and this will be considered in the independent feasibility study.

7. *What avenues of enforcement could the Government empower EWOV to utilise in the event that an exempt body does not adhere to EWOV's case handling policies or resolutions.*

EWOV is a company limited by guarantee under corporations law, wholly independent from government and funded by its members. It is a condition of all Victorian:

- electricity and gas retail licences
- distribution and transmission licences
- metropolitan water licences

and a legal requirement of regional and rural water authorities, to be a member of an approved external dispute resolution scheme.

As a consequent of this licence condition, EWOV's current members are at risk of losing their license should they not comply with EWOV's case handling policies, resolutions or binding decisions². This ensures compliance with EWOV's processes. If however exempt bodies were included in EWOV's jurisdiction, then as non-licence holders this penalty would not exist as a sanction on non-compliance. A clear regulatory framework is required that is capable of penalising exempt bodies if they are found to be not following EWOV's policies and procedures.

The enforcement of EWOV's case handling policies and decisions should be considered as part of an independent feasibility study.

EWOV also notes that the Australian Energy Regulator (AER) is currently in the final round of public consultation on network and retail exemption guidelines³. This may present an opportunity to consider whether any non-compliance by exempt retailers with EWOV's processes should result in sanctions by the AER.

8. If, like EWON, EWOV has the power to refer exempt body complaints to another body for enforcement, which body should the matter be referred to?

In the paper, the DPI states that *'EWON often refers unresolved matters to the NSW Consumer, Trader & Tenancy Tribunal, due to its enforcement powers'*. Theoretically, if EWOV could not resolve an exempt body complaint and needed to refer it to an external body for enforcement, then VCAT would appear to be the logical choice, depending on the monetary amount of the dispute.

9. Does the difficulty in enforcing resolutions or case handling policies against exempt bodies make it less beneficial for customers to take their matter to EWOV over VCAT?

Due to a lack of sufficient regulatory sanctions there is a risk that should exempt bodies become part of EWOV's jurisdiction, they may not always comply with EWOV's decisions and processes. This is discussed above in question 7. This situation may create a disparity between outcomes for customers of exempt bodies and customers of our current members.

² The Ombudsman has not been required to make a binding decision since 2003 – see WD/2002/10 - compensation for loss and damage to land, due to construction of a water main.

³ See - <http://www.aer.gov.au/content/index.phtml/itemId/747453> - Publication of draft exempt selling guideline and network registration exemption guideline for consultation

We believe that in many cases there would be significant benefit in an energy and water user to choose EWOV to assist in resolving their dispute, given that EWOV is free, accessible and expedient. It is possible however, that upon receiving advice, a customer may decide to use the services provided by VCAT.

While conciliation works and enforcement is rarely needed, if exempt bodies are drawn into EWOV's jurisdiction this may change, particularly if EWOV does not have appropriate enforcement powers. This issue would be explored further in an independent feasibility study.

EWOV's case handling experience

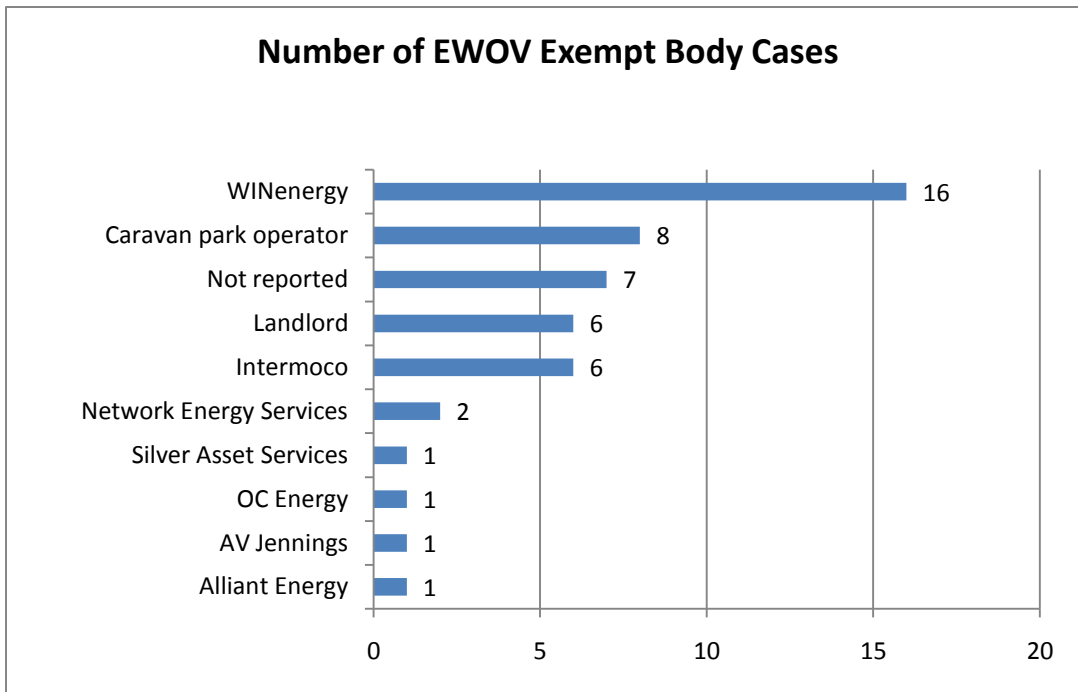
While EWOV does not have jurisdiction over exempt bodies, customers of exempt bodies contact us to seek help with their concerns. We explain EWOV's jurisdiction to these customers, provide them with relevant advice, and in the majority of cases, refer them to Consumer Affairs Victoria (CAV).

The below table shows the number of cases EWOV received in the last three years about exempt bodies:

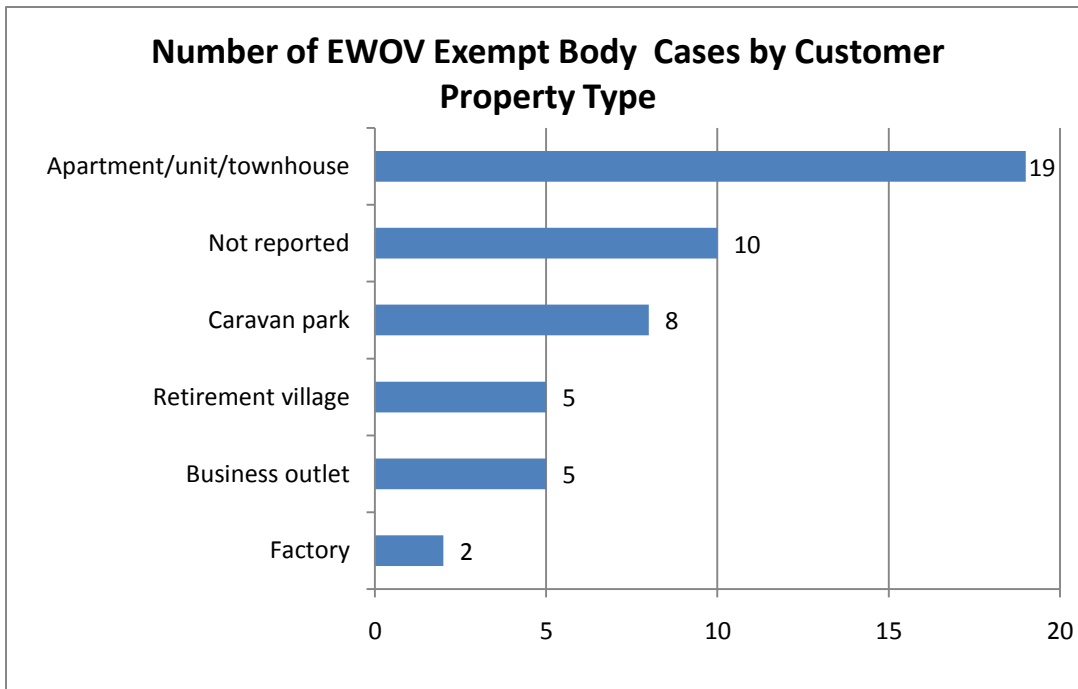
| Period | Number of exempt body cases |
|-----------------------------|-----------------------------|
| 1 July 2008 to 30 June 2009 | 47 |
| 1 July 2009 to 30 June 2010 | 42 |
| 1 July 2010 to 30 June 2011 | 49 |

From 1 July 2010 to 30 June 2011, EWOV received 49 cases from customers of exempt bodies. Although this is a marginal increase on previous years, it does not give a clear indication of whether energy onselling is growing.

The table below shows the number of exempt body cases by energy provider between 1 July 2010 and 30 June 2011:



The table below shows the number of exempt body cases by customer property type between 1 July 2010 and 30 June 2011:



In analysing 2010/11 cases, enquiries were lodged by a range of customers, such as those living in multi-occupancy developments (e.g. apartments, units and townhouses), retirement village residents, caravan park residents and owners of business outlets in shopping centres. WINenergy had the most complaints - 19 of the 49 cases. These were from customers living in multi-occupancy developments or operating a business in a shopping centre.

Independent feasibility study - April 2007

As part of the ESC Small Scale Licensing Framework Review (2006), EWOV engaged consultants to consider the feasibility of a possible extension of the scheme to include exempt bodies. A report was provided to the EWOV Board on 19 April 2007. The consultants made the following recommendations in its report:

- All exempt bodies to register with the ESC in a staged process.
- All exempt bodies to become EWOV members within a year of their registration with the ESC.
- In the first year, EWOV's Board to review the exempt body registrations with the ESC and assess the three different funding scenarios most likely to reflect the actual number and nature of new members.
- The Victorian Government to fund EWOV's costs in establishing a new membership for exempt bodies and the initial costs of preparing the scheme.
- Within two years, EWOV's Board is to review the fees from exempt bodies and consider the scope for restructuring any funding model, including whether to introduce a limited number of 'free-of-charge' enquiries.
- EWOV's Board to seek agreement from EWOV members to amend its Charter and Constitution to establish a new non-voting membership category for exempt bodies, initially without representation. This is to be reviewed within five years.

In late 2007, due to the imminent transition to the National Energy Customer Framework, the ESC referred the recommendations of its review to the Ministerial Council for Energy.

A further Independent feasibility study

It has been over four years since the ESC funded the first independent feasibility study. A further and more detailed study is needed to assess the feasibility of exempt bodies having access to EWOV and the basis on which that could take place. The study would assess all the pros and cons of extending EWOV's jurisdiction. In particular the study needs to cover the following points:

- the full number and type of exempt bodies expected to become new members of EWOV
- the type and characteristics of the customers serviced by exempt bodies

- an appropriate and equitable charging model for EWOV's services
- a suitable start-up cost for entry into the scheme
- a suitable membership category basis for such entry
- voting rights and company representation
- the staging of entry to EWOV based on the nature of the exempt body
- estimated complaint and enquiry numbers
- the number and type of customer complaints about exempt bodies handled by CAV and VCAT
- the potential impact on the financial and operational stability of EWOV
- the changes in EWOV's policies, processes and systems needed for complaint handling
- the enforcement of EWOV's case handling policies and decisions
- the human, administrative, training, and other resource impacts on EWOV
- EWOV Charter and Constitution changes
- A communications strategy to inform exempt body customers of EWOV.

EWOV seeks suitable funding from the Department of Primary Industries to undertake such an independent feasibility study so that EWOV's Board can make a sound and fully informed decision about extending EWOV's jurisdiction to exempt bodies.

We trust that the above comments are helpful. Should you require further information or have any queries, please contact Justin Stokes, Senior Research and Communications Officer on (03) 8672 4272.

Yours sincerely

A handwritten signature in cursive script that reads "Fiona McLeod".

Fiona McLeod
Energy and Water Ombudsman (Victoria)