16 August 2018

Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

By email: exemptionregister@esc.vic.gov.au

Dear Dr Ben-David

Re: Draft decision - Energy Retail Code obligations for exempt sellers under the general exemption order 2017

Thank you for the opportunity to comment on the Essential Services Commission's (ESC) *Draft decision – Energy Retail Code obligations for exempt sellers under the General Exemption Order 2017*.

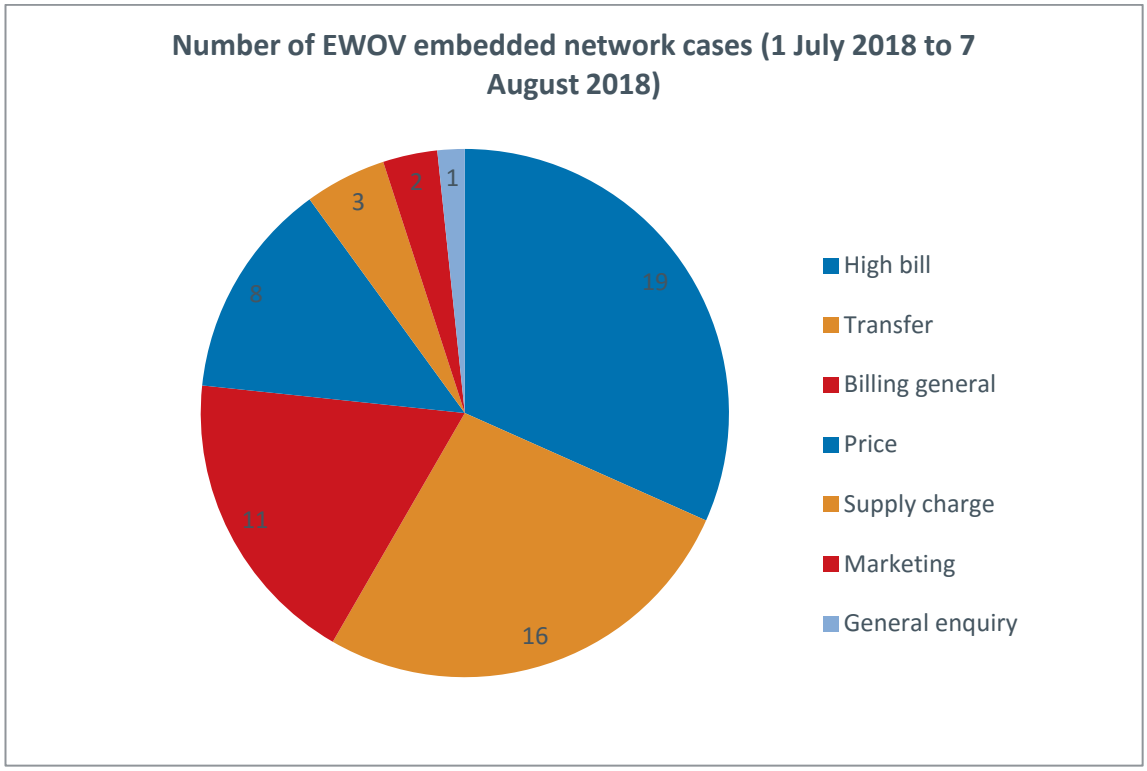
The Energy and Water Ombudsman (Victoria) (EWOV) is an industry-based external dispute resolution scheme that helps Victorian energy or water customers by receiving, investigating and resolving complaints about their company. Under EWOV's Charter, we resolve complaints on a 'fair and reasonable' basis and aim to reduce the occurrence of complaints[1]. We are guided by the principles in the Commonwealth Government's Benchmarks for Industry-based Customer Dispute Resolution[2].

In examining complaints we received from customers of exempt sellers, we broadly find that they present with the same type and similar distribution of issues as customers of licensed energy retailers. Our submission aims to highlight clauses of the proposed new *Energy Retail Code* (the Code) that we think could be changed, strengthened or retained.

[1] See Clause 5.1 of EWOV's Charter: https://www.ewov.com.au/files/ewov-charter.pdf
[2] See EWOV's website: https://www.ewov.com.au/about/who-we-are/our-principles

EWOV CASE DATA

From 1 July 2018, customers supplied by embedded networks were given access to EWOV's dispute resolution services. From 1 July 2018 to 7 August 2018, we registered 49 cases from embedded network customers[3], with the following issues[4]:



EWOV'S COMMENTARY ON THE PROPOSED CHANGES TO THE *ENERGY RETAIL CODE*

We'd like to highlight some specific clauses of the proposed version 12 amendments to the *Energy Retail Code* that we think could be changed, strengthened or retained.

Clauses 15A(1)(a) and 15A(2) – publishing prices on exempt seller websites

The ESC proposes to exclude clauses 15A-15F relating to price and product disclosure for exempt sellers. This makes sense considering that customers will now be given price information before they enter a contract, on an annual basis and at any time when requested. However, we see value in keeping clauses

[3] Note that we can't handle complaints until the embedded network becomes a member.
[4] An EWOV case can have more than one complaint issue assigned to it.

15A(1)(a) and 15A(2) regarding publishing standing offers on retailer websites and repurposing the clauses' intent elsewhere in the Code to relate to exempt sellers.

The relevant parts of Clause 15A 1(a) read:

> *15A Internet publication of standing offer tariffs*
>
> *(1) A retailer must:*
>
> *(a) publish on its internet site details of its standing offers in the manner set out in Schedule 4 or Schedule 5…*
>
> *(2) The home page of the retailer's principal internet site must have a link that allows a person to access the retailer's standing offer easily and logically.*

Presuming that an exempt seller has a public website, we think it's reasonable that the prices it charges for electricity are displayed there. Price disclosure is an important part of the effective operation of the licensed retail energy market. We think that if the objectives of the AEMC's Power of Choice reforms to increase customer choice are to be realised, then customers need to be able to see and compare offers. Admittedly its only one of many considerations when a customer chooses to move into an embedded network, but greater market visibility around price should remain a goal in the long term interests of consumers. Where an exempt seller does not have a website, we think its electricity prices should be provided to customers in writing before entering a tenancy agreement or other occupancy contract. This will assist in avoiding confusion and potential complaint.

For example, from 1 October 2017 to 30 June 2018, EWOV received 24 cases from embedded network customers concerned about the price and fees they were paying for their electricity. We referred these cases to Consumer Affairs Victoria as EWOV didn't have the jurisdiction to investigate the issues. We think that greater transparency about price, would help minimise these types of complaints to EWOV

Clause 18 (3) – customer details and meter access

We have two queries about the removal of clause 18(3) from the proposed version 12 of the Code.

Firstly, by excluding clauses 18(3)(a) and18(3)(b), it removes a pre-contractual obligation for an embedded network customer to provide their personal details to the exempt seller. We presume that this requirement was excluded because it is implied by the nature of their relationship that the exempt seller will have the customer's necessary details. However, we envisage there may be circumstances where an account holder and resident/business are different parties or entities. We ask that the ESC clarify its reasoning behind excluding these sub-sections.

Secondly, we enquire whether it's the ESC's intent to remove the requirement for embedded network customers to provide access to their meter, provided under clause 18(3)(c). The clause reads:

18 (3) The small customer must…

(c) ensure that there is safe and unhindered access to the meter at the premises.

We recognise that with remotely read smart meters there is less need for customers to provide unhindered access for the purposes of obtain meter read data. However, EWOV is aware that not all child meters within an embedded network are capable of being remotely read and access is also needed for other purposes - meter exchanges or upgrades will still be necessary.

In 2017/18, EWOV received 57 cases where customers received an estimated electricity bill, ostensibly connected to issues with meter access. This suggests a need to retain this clause 18(3)(c), especially considering child meters were not subject to the Victorian smart meter roll-out and Advanced Metering Infrastructure (AMI) standards. Accordingly, there could currently be a wide variation in child meter functionality and technical compliance. All new child meters must be AMI compliant[5].

Clauses 20 and 25(1) – the need for a billing template

We think that the intent of clauses 20 and 25(1), which establish the required contents for a bill, could be further realised if the ESC provided a billing template for exempt sellers to use. This could be contained in an appendix to the Code, and for illustrative purposes only, rather than a prescriptive requirement. We think this would benefit and reassure exempt sellers by providing guidance about what bill format is expected, especially when a seller has limited previous experience in producing bills with the greater level of detail required by the Code. As a consequence, there will be a greater chance that each embedded network customer is treated consistently.

Clause 30 – undercharging where consumption on a parent meter is over 40MWh a year

We agree that retaining the restrictions on recovering undercharged amounts are important consumer protections and so welcome the retention of clause 30. However, we query how this clause would operate in circumstances where the exempt seller's parent meter consumes more than 40MWh of electricity a year (and so is outside the scope of the Code), yet the numerous customers it bills within the embedded network consume considerably less than this. We think the Code's intent is that the exempt seller would not be able pass on the unrestrained large backbill to its smaller customers within the embedded network, who would otherwise be protected under clause 30. An example could be small retail outlets operating within a large shopping centre. We request that the ESC provides some guidance to clarify this issue to avoid confusion and possible complaints about backbills in these circumstances.

[5] See Australian Energy Regulators network guideline, section 2.1.1. https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/network-service-provider-registration-exemption-guideline-march-2018

Clause 32A – Centrepay as a payment option

We see that in the new clause 32A the ESC proposes to exclude the option for a customer to ask the exempt seller to permit payment through Centrepay. At EWOV, we find that many customers in payment difficulty like to use Centrepay as a way to budget their income to meet their energy and water payment obligations. Energy retailers also like this payment option as it gives greater certainty that payments will be made. As such, we support the inclusion of Centrepay as a means of minimising payment difficulties and complaints.

New Part 3 – Payment difficulties framework

We understand the ESC's challenge in developing a set of obligations that balance appropriate consumer protection without being an excessive burden for the diverse range of exempt sellers. In relation to the support under the payment difficulty framework outlined in the new Part 3, for the most part we think the ESC strikes a reasonable balance.

The more intensive levels of tailored assistance, such as the practical assistance elements, could be onerous for many exempt sellers. However, we think there is an opportunity for the ESC to consider a flexible approach to clause 79(1)(f) – one that reflects the diversity in exempt seller size and sophistication.

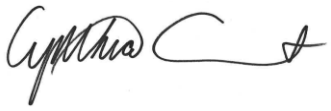
Clause 79(1)(f) reads:

> *79(1) Tailored assistance consists of the following measures:*
>
> *(f) an initial period of at least 6 months during which:*
>
> *(i) repayment of the customer's arrears is put on hold; and*
>
> *(ii) the customer pays less than the full cost of their on-going energy use while working to lower that cost.*

This clause could be refined so that the period during which arrears is put on hold is proportionate to the size and complexity of the exempt seller, referenced by the various exemption codes, as done earlier in the proposed new Code. For example, a large exempt seller with hundreds of customers could place a hold on collection of arrears for 6 months, whereas a small caravan park for only 3 months. During this time the exempt seller could send a written notice to the customer advising them of flexible payment arrangements and information about government and non-government assistance. This would go some distance to striking an appropriate balance between the objectives of the payment difficulty framework and the variation across embedded networks. However, within this clause, the question remains about whether the exempt seller has the expertise to work with the customer to reduce their usage.

We trust these comments are useful. Should you like any further information or have any queries, please contact Justin Stokes, Senior Research and Communications Advisor on (03) 8672 4272.

Yours sincerely



Cynthia Gebert
Energy and Water Ombudsman (Victoria)