



12 December 2017

Dr Ron Ben-David
Chair
Essential Services Commission
Level 37, 2 Lonsdale Street
MELBOURNE VIC 3000

Dear Dr Ben-David,

Request to vary approval as a customer dispute resolution scheme

I refer to the *General Exemption Order* released by the Department of Environment, Land, Water and Planning (DEWLP) on 15 November 2017. Specifically I refer you to Division 3, Section 11 of the *General Exemption Order* that states that an exempt person must enter into a customer dispute resolution scheme approved by the Essential Services Commission (the Commission).

The Energy and Water Ombudsman (Victoria) (EWOV) is the Commission approved customer dispute resolution scheme for the electricity, gas and water industries. I am applying to the Commission to vary the EWOV scheme's existing approval so that the EWOV scheme is also approved as the customer dispute resolution scheme for the purposes of the *General Exemption Order*. This variation would enable the EWOV scheme to provide a free, fair and independent dispute resolution service to nearly all Victorian electricity customers – an equitable outcome that is in the long term interests of Victorian consumers.

This document details information that we trust will assist you in considering our request to vary our existing approval. I look forward to hearing from you as soon as possible to progress this important issue.

Kind regards,

Cynthia Gebert
Energy and Water Ombudsman (Victoria)

CRITERIA OF APPROVAL OF A CUSTOMER DISPUTE RESOLUTION SCHEME

In approving a scheme for the purposes of the *General Exemption Order*, the Commission must have regard to section 28(2) of the *Electricity Industry Act 2000* (the Act) with any necessary changes (Division 3, Section 11(2) of the *General Exemption Order*). This includes the objectives of the Commission under the Act and the *Essential Services Commission Act 2001*. We make a number of observations below.

1. A free, fair, independent and efficient dispute resolution scheme, which can assist Victorian customers with most energy related complaints, is a key consumer protection mechanism that supports customer confidence and participation in the energy market by reducing information and power asymmetries. This is particularly important for customers experiencing payment difficulties but is also in the long term interests of all Victorian consumers.
2. A cost effective dispute resolution scheme, like the EWOV scheme, drives improved customer service and efficiency in the electricity industry. This is achieved by incentivising effective complaint handling processes, the identification of systemic issues and the sharing of data and information about complaint drivers.
3. An efficient one stop shop for energy related complaints promotes competition between players within the electricity market, while reducing customer confusion about how to access assistance when required. This is in the long term interests of Victorian consumers, especially low income and vulnerable consumers.
4. The EWOV scheme has well established regular independent reviews and governance structures, operational processes and infrastructure that are sufficiently flexible to support the Commission's objectives in approving a customer dispute resolution scheme for the purposes of the *General Exemption Order*.

We note that the Australian Energy Regulator (AER) is considering a condition that would require exempt entities to be a member of energy Ombudsman schemes in states that fall under the AER's jurisdiction¹. As such, the Commission's objective of consistency between states and on a national basis may be furthered by varying EWOV's approval as a customer dispute resolution scheme for the purposes of the *General Exemption Order*.

This application details how the EWOV scheme currently meets the objectives of the Commission and the matters set out in section 28(2) of the Act. It will also demonstrate the amendments that are being made to the EWOV scheme to ensure that these criteria will continue to be met should the EWOV scheme's existing approval be varied.

¹ <https://www.aer.gov.au/communication/review-of-the-retail-exempt-selling-guideline-%E2%80%93-request-for-submissions>

We note, by way of summary, that section 28(2) of the Act requires the Commission to also consider the criteria of:

- accessibility
- independence
- fairness
- accountability
- efficiency and effectiveness of the proposed scheme.

Below is an overview of how EWOV meets this criteria and how this would be relevant for consideration for the purposes of approving a scheme under the *General Exemption Order*. Further information is available if required.

Background to the EWOV Scheme

Energy and Water Ombudsman (Victoria) Limited (EWOV Limited) is a company limited by guarantee. The company is separate from, and independent of, the energy and water companies and government. EWOV Limited established the EWOV scheme.

The EWOV scheme was the first energy Ombudsman scheme in Australia, established in 1995. It formally opened for operation in 1996 as the Electricity Industry Ombudsman (Victoria). The jurisdiction of the EWOV scheme expanded to include gas, water and liquefied petroleum gas (LPG) over subsequent years, and has since handled over 620,224² cases across the electricity, gas, LPG and water industries.

The EWOV scheme operates independently on an industry-funded Ombudsman model. The framework for EWOV's operations is drawn from the EWOV Charter, the EWOV Limited Constitution, license conditions for the electricity and gas industries, relevant water legislation, the LPG industry code and the Benchmarks for Industry-based Customer Dispute Resolution (*CDR Benchmarks*)³.

The EWOV scheme specialises in customer dispute resolution using alternative dispute resolution processes. We assess complaints on a case-by-case basis, and consider relevant industry codes, good industry practice and the law, to reach fair and reasonable outcomes. We don't advocate for either party.

The nine person EWOV Limited Board consists of an independent Chairman, four consumer directors (nominated by the Commission) and four energy/water industry directors elected by EWOV Limited members.

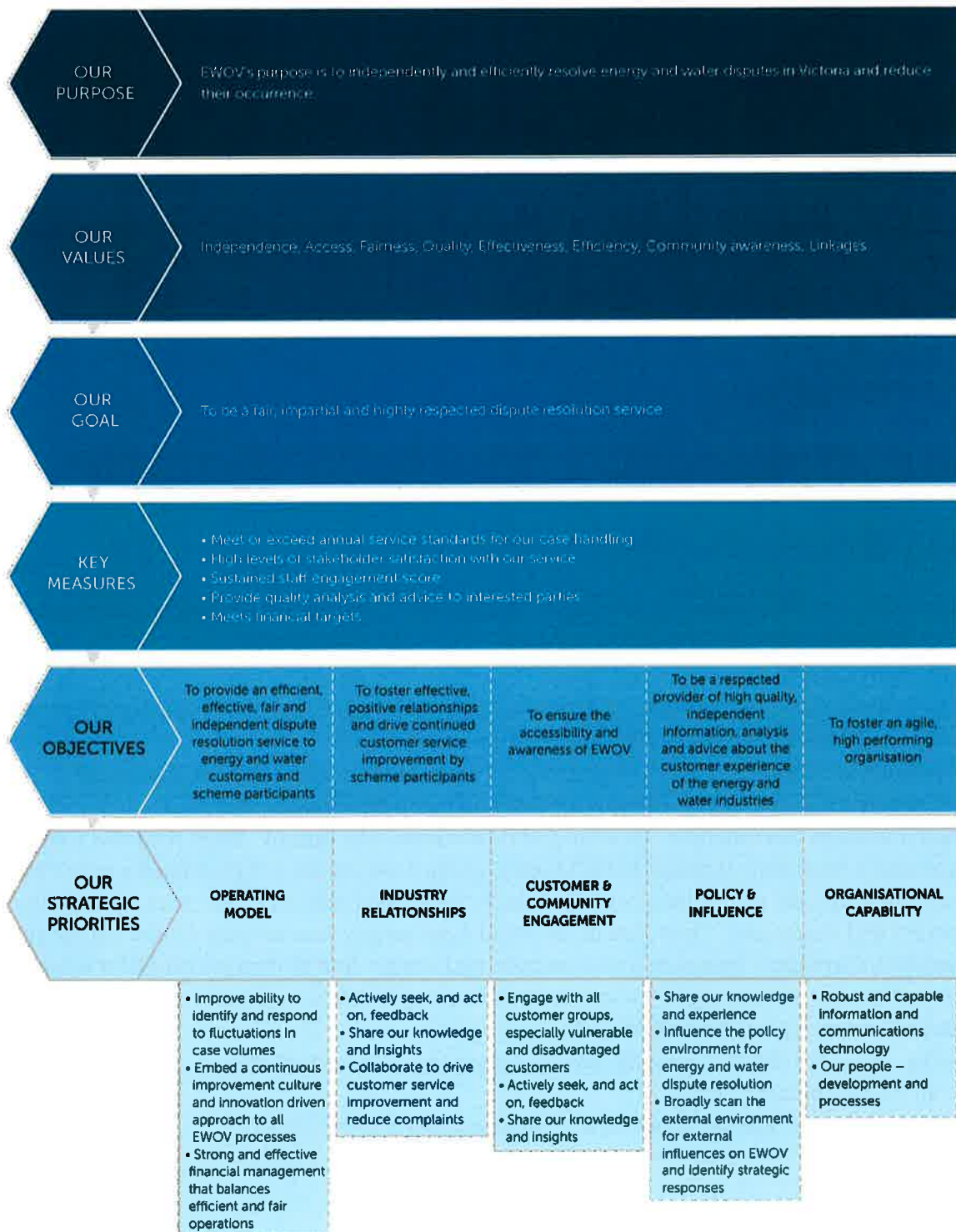
The Board is responsible for the business affairs and property of EWOV Limited, including corporate governance, approval of budgets, risk management, strategic planning and ensuring

² At 30 June 2017

³ The CDR Benchmarks require the scheme are accessible, fair, independent, accountable, effective and efficient.

the Ombudsman’s independence. The Board also appoints the Ombudsman, who is responsible for the day to day operation of the EWOV scheme.

The EWOV scheme’s purpose is to independently and efficiently resolve energy and water disputes in Victoria and reduce their occurrence. Outlined below are the strategic priorities, goals and values, agreed by EWOV Limited’s Board in pursuit of EWOV’s purpose.



These priorities reflect the EWOV scheme's status as an established, mature scheme that understands its role as a key consumer protection mechanism. The EWOV scheme operates in a fair, efficient and independent manner and assists in building consumer confidence in the energy and water industries.

While EWOV's primary purpose is the resolution of complaints, EWOV's purpose also requires EWOV to work to reduce the occurrence of complaints. The remaining priorities highlight the strategic importance of EWOV's management of the quality of its relationships with its diverse stakeholders, changes in the external environment and EWOV's internal systems and processes to EWOV's performance.

1. Accessibility

Accessibility is one of the *CDR Benchmarks* with which the EWOV scheme complies. It is also a requirement under EWOV's Charter⁴. EWOV is not only at all times compliant with these standards, but in many instances it exceeds them. Specifically, EWOV's accessibility mechanisms are outlined below.

Awareness and Promotion

The awareness and accessibility of EWOV remains a strategic focus despite the already high levels of consumer awareness of EWOV among customers.

The EWOV scheme meets this criteria in the following ways:

- The distribution of a range of publications, all designed to maximise readability and convey accurate information in a straightforward way. Examples are available at www.ewov.com.au.
- Participation with other agencies in programs and working groups to increase awareness of EWOV's role and processes, and current and emerging trends.
- Maintenance of strong networks with financial counsellors and the community sector, particularly those that work with low income and vulnerable consumers.
- Regular visits to metropolitan, regional and rural community groups. Most recently, EWOV organised a Roadshow through 2016/17, during which we visited 118 community agencies and spoke with 548 community representatives, including financial counsellors, community workers and volunteers. The focus of this Roadshow was to demonstrate EWOV's suite of practical information, including a new website and videos, and to discuss complaint issues, how consumers can manage their own complaints and EWOV's accessibility, especially to those experiencing payment difficulties.
- Via the web, with EWOV's website, www.ewov.com.au, which includes:
 - an online complaint form
 - important information about how to lodge complaints with EWOV

⁴ Clause 5.1 of the EWOV's Charter

- 10 online consumer videos - which cover common energy and water issues - viewable from the homepage
- information from community agencies to assist with their work with clients
- links to EWOV publications
- Social media presence, with regular Tweets about industry updates, EWOV's involvement at community events, and helpful tips about energy and water efficiency.

Access, Use and Cost

The EWOV scheme is free to consumers.

To ensure accessibility to Victorian energy and water consumers, the process for lodging a complaint is informal and straightforward:

- EWOV's free call phone number is widely promoted. 74% of our cases are received by telephone⁵.
- Consumers can also lodge complaints by email, via our website as well as in writing, by fax or in person⁶.
- Alternative arrangements for access by customers with special needs, includes:
 - the use of the National Relay Service for customers with a hearing or speech impairment
 - a free Telephone Interpreter Service for customers of a culturally and linguistically diverse background
 - a call-back service for customers with restricted phone services and for customers calling from mobile phones
 - the ability for consumers to raise complaints by a third-party representative.

Staff Assistance

EWOV employs and develops staff with specialist knowledge of the industry and the codes and regulations under which it operates, through the delivery of comprehensive learning and development programs. This ensures that complaints are investigated in a consistent, efficient and effective manner. Further training in embedded network related issues will be given to ensure EWOV continues to deliver high quality, accessible dispute resolution to the Victorian community should EWOV be approved for the purposes of the *General Exemption Order*.

Non-adversarial Approach and Legal Representation

EWOV's processes are non-adversarial, in contrast with those of courts and tribunals which are also costly. EWOV resolves complaints in an informal and expeditious manner while having regard for the law and licences, industry codes, deemed contracts and good industry practice. When handling complaints, EWOV pursues resolutions in a fair and reasonable manner⁷.

⁵ EWOV's 2016-17 Annual Report, page 16.

⁶ 25% of customers contacted EWOV via our website and a further 1% used fax or made their complaint in person. This information is available via EWOV's 2016-17 Annual Report, page 16.

⁷ Section 5.1 of EWOV's Charter

It is also unusual for a party to be represented by a professional advocate during an EWOV Investigation, although it is not unusual for complaints to be raised on behalf of customers by friends, family members or financial counsellors. Because the parties do not generally have legal representation, we are able to shift the focus away from legal rules and focus on practical options for resolution of the complaint. This is particularly important for customers experiencing vulnerability including payment difficulties.

Matters of note for variation of existing approval

The EWOV scheme is free to consumers and EWOV is very aware of the potential impact of a customer dispute resolution scheme on the financial viability of some exempt entities. EWOV is also aware of the potential for the cost of EWOV membership to be passed onto consumers. To mitigate this, EWOV has undertaken a detailed Funding Model Review. A key principle underpinning EWOV's funding will be fair and equitable cost recovery. This aims to ensure that the financial impact on exempt entities is proportionate and reasonable, given the benefit to consumers of the additional consumer protection offered by access to free and independent dispute resolution, particularly for vulnerable consumers. This is explained in more detail later in the document.

In addition, the EWOV scheme has developed a comprehensive communications strategy to ensure that an expanded EWOV scheme delivers high levels of awareness among customers of exempt entities and is accessible to these customers. This is available on request.

2. Independence

Although EWOV is industry-funded, EWOV's independence is assured through its governance model. As noted earlier, our governing board, EWOV Limited's Board of Directors, has an independent Chair, and equal numbers of industry and consumer directors. The EWOV Board appoints the Ombudsman and ensures the independence of the scheme.

EWOV is neither a consumer advocate nor a spokesperson for energy and water providers. In order to maintain this independence, procedural fairness and consistency in case handling is of the utmost importance. EWOV's commitment to independence is outlined in EWOV's Charter⁸ and is reflected in EWOV's policies and procedures. These policies and procedures outline how resolutions are achieved through:

- allowing both parties a fair opportunity to explain their perspectives
- ensuring EWOV staff are free from bias
- collecting only relevant information and substantiation.

Staff are educated about these policies and procedures through EWOV's learning and development program and via our extensive quality assurance program. EWOV's Quality, Capability and Improvement Team helps to maintain quality and integrity by:

⁸ Section 5.1 of EWOV's Charter

- checking data weekly for quality/accuracy of customer contact and complaint handling
- checking to validate case data monthly
- identifying trends and training needs.

This program is overseen by management to ensure the accuracy and validity of the information and compliance with case handling policy and procedures. If the Commission is interested in viewing these policies and procedures they are available on EWOV's secure extranet, which can be made available upon request.

Matters of note for variation of existing approval

As explained in more detail below, the EWOV scheme Charter and EWOV Limited Constitution are being reviewed to ensure that independence of the EWOV scheme continues to be robust in a changing energy and water market, particularly as EWOV expands its role and different entities are required to become members.

3. Fairness

The EWOV scheme's Charter and EWOV Limited Constitution establishes EWOV's jurisdiction, function and procedures. Together they ensure that EWOV resolves complaints in a fair and reasonable way, reflecting the essential principles of procedural fairness while having regard for laws, codes and industry practice⁹. EWOV has developed policies and procedures that reflect the requirements of our Charter and Constitution. These policies and procedures ensure there is consistency in EWOV's complaint handling and decision making.

The EWOV scheme focuses on conciliation between the disputing parties although, where agreement cannot be reached, EWOV does have the power to make a Binding Decision. This determinative power is binding on the energy or water company but not on the customer. However, a Binding Decision has not been required since June 2003, and only 35 have been required out of the 620,224 cases received since the scheme started.

A key measure of fairness is whether the parties feel the process is fair. 81% of customers surveyed through the EWOV scheme's quarterly customer satisfaction survey in 2016/17 felt their complaint was handled fairly. The EWOV scheme received similarly strong responses from its scheme participants: an overall rating of 7 out of 10 for the perceived fairness of EWOV in EWOV's annual scheme participant survey.

Matters of note for variation of existing approval

As explained in more detail below, the EWOV Charter has been reviewed to ensure that the EWOV scheme is fair and is seen to be fair. It has been updated to reflect contemporary case handling.

⁹ Section 5.1 of the EWOV Charter.

4. Accountability

To ensure EWOV's accountability to its stakeholders, EWOV has developed a suite of reports and other materials, including seven position statements, which are available to scheme participants and customers. EWOV has done this for three primary purposes:

- to demonstrate consistency and fairness in decision-making (for example via position statements and case studies)
- to share information about EWOV's performance to its stakeholders
- to provide an independent source of data about the customer experience of the energy and water market.

In addition to publishing and publicising the release of an Annual Report, EWOV releases a number of quarterly reports publicly, which detail complaint trends including the number of cases received by scheme participants:

- ResOnline, a data-intensive newsletter, which includes systemic issues
- ResOnline for Scheme Participants, a newsletter focussed on key industry issues for scheme participants
- Affordability Report, an overview of the key affordability related case trends.

EWOV makes available all of the above reports on its website, together with all Binding Decisions previously made and EWOV's Charter and Constitution and EWOV's submissions to regulatory and policy processes.

Scheme participants also receive monthly reports about their cases received. This information is accessible on EWOV's secure scheme participant extranet.

EWOV also meets with the Commission and the AER on a monthly and quarterly basis respectively. These meetings provide EWOV and the regulators with the opportunity to discuss systemic issues, complaint volumes and specific trends. This provides a further important accountability mechanism.

Matters of note for variation of existing approval

All new members of the EWOV scheme receive the same information about the performance of EWOV and their case handling performance. EWOV is implementing a new member engagement and management database to provide this to an expanded membership base, due to the *General Exemption Order* changes, in the most cost effective manner.

5. Efficiency

As noted above, EWOV has an efficient and effective method of tracking complaints. Not only does regular external reporting occur, EWOV also tracks complaints for operational purposes. EWOV's extensive quality assurance program ensures that complaint data is reviewed on a regular basis to ensure its quality, integrity and accuracy. This assurance also checks how EWOV is performing against its Key Performance Indicators (KPIs) set by the Board, case trends and outcomes.

Matters of note for variation of existing approval

As explained in more detail below, a Funding Model Review is being conducted to ensure that EWOV is funded in an efficient, equitable and transparent way.

6. Effectiveness

EWOV conducts regular rigorous external reviews into all aspects of its operation. The outcomes and recommendations of those reviews are put into effect to produce continuous improvement. Since 1996, 21 external independent reviews have been completed of different elements of EWOV's operations, including EWOV's charging model, governance and case handling policies and procedures. EWOV's processes are regularly checked by regarded external agencies for independence and operational efficiency, most recently in 2013.

EWOV has also had numerous surveys conducted about stakeholder relations, including reviews of customer satisfaction and awareness. These independent reviews have been undertaken by various respected consulting firms and have been supplemented by internal reviews of EWOV's Quality Assurance Framework in 2003, 2004, 2005 and 2012.

ADDITIONAL ACTIVITIES

As detailed above, the existing EWOV scheme readily meets the requirements of section 28(2) of the Act. However, to ensure there is a smooth transition to an expanded scheme, EWOV is undertaking a number of key projects to ensure that it will continue to so if it is approved as the customer dispute resolution scheme for the purposes of the *General Exemption Order*. This includes:

- Funding model review
- Charter and Constitution review
- revising EWOV's member application and approval process
- developing a comprehensive new member engagement program
- enhancing operational capability (systems, people and processes).

Of particular note in the context of this application for variation of our approval, is the work being undertaken in the Funding Model Review and the Charter and Constitution review. A high level overview of these projects is outlined below.

Funding Model Review

EWOV operates on an equitable, cost recovery funding model for its current membership. Each year most of EWOV's fees are recovered through complaint costs based on a user-pays principle, with a smaller component based on customer numbers. There is also a start-up/entry fee payable for new entrants. EWOV is committed to a fair and equitable funding model, with cross subsidisation avoided as much as possible.

However, given the scope of the proposed changes to the *General Exemption Order*, EWOV will expand its membership to include a large number of new members of various sizes and business models. EWOV recognises that its current funding model may not be fit for purpose given these changes.

The objectives of the Funding Model Review are:

1. To conduct a review of the EWOV funding model and identify key measures that can be reasonably taken to ensure that the cost of the scheme is fairly and equitably allocated to current and new members of the EWOV scheme.
2. To consider whether alternative member categories are required to support fair and equitable funding of the EWOV scheme.

EWOV has engaged the services of KPMG to undertake this review. KPMG has undertaken five workshops with existing scheme participants, possible new members and interested consumers and consumer groups and received written submissions as part of the review. Further consultation will then proceed on the proposed options.

In general, EWOV aims to ensure that our funding model should continue to encourage and reward effective complaint handling and service provision, and maintain equity for members. The following chart outlines the criteria of EWOV's funding .

Criteria	Description
1 Efficiency	• provides financial incentives to members and EWOV that drive better complaint handling
2 Equity	• users pay for the work to handle complaints, and contribute to the costs of work to reduce the incidence of complaints
3 Simplicity	• funding process and charge out are easily explained, understood and low cost to operate
4 Certainty	• minimises volatility in the payments made by members, and allows members to predict their funding contribution
5 Transparency	• easy to identify and understand the fee associated with any individual complaint
6 Sustainability	• ensures EWOV's minimum level of resourcing and sufficiently flexible to accommodate for future changes to EWOV's scope.

While the detail of the Funding Model Review has not been finalised, I can confirm that there is in principle support from the consultation for the following:

- The creation of multiple new smaller fixed Annual Fee tiers for exempt entities based on a fee per customer within a network. The tiers would reflect the variability in size of exempt entities and also the difference between many of the exempt entities and EWOV's current licensed scheme participants. This reflects EWOV's commitment to ensuring an equitable approach to funding the scheme and recognises the importance of minimising the costs of the additional consumer protections on the exempt entities.
- A revised Start Up Levy that also distributes the costs of incorporating exempt entities into the EWOV scheme according to customers within a network. This equally reflects the focus of funding access to the EWOV scheme in an equitable and transparent manner.
- The same "user pays" approach to the recovery of complaints based fees. This will be monitored closely to ensure the equity principle continues to be satisfied.

This approach supports the Commission's interest in a cost effective customer dispute resolution scheme that recovers its costs on an equitable and efficient basis.

The Final Report on EWOV's Funding Model Review will be available in January 2018. A copy will be made available to the Commission for consideration as part of this application to vary the EWOV scheme's existing approval.

Constitution Review

A number of provisions of EWOV's Charter and Constitution require amendment as a result of the proposed changes to the *General Exemption Order*. There are also a number of "tidy up" or housekeeping related amendments required.

The required changes to EWOV Limited's Constitution primarily relate to definitions of new member categories, eligibility for membership, cessation of membership and meeting quorums.

EWOV anticipates that questions will be raised about the appropriate composition of the EWOV Limited Board. EWOV Limited's Constitution provides that EWOV Limited's Board will consist of up to eleven directors who will manage the business, affairs and property of EWOV Limited¹⁰. EWOV Limited doesn't intend to alter the composition of EWOV Limited's Board as this point.

The Board's role is distinct from the role of the Ombudsman, which is to manage the day to day operation of the EWOV scheme. The Ombudsman consults with the Board on developing case handling procedures but the Board, as a governance body, doesn't become involved in the operation of the EWOV scheme. To assist with the transition of embedded network members, EWOV intends to establish an Embedded Network Working Group well before the obligation to be a member of a customer dispute resolution scheme arises on 1 July 2018. This group would provide the forum to inject broader contextual thinking into future decisions by EWOV about how to develop best practice for the efficient and effective investigation and resolution of

¹⁰ Clause 14.1, EWOV Limited Constitution

embedded network cases. This is the most effective mechanism for the embedded networks to engage with EWOV and its operational decision makers.

EWOV Limited's Constitution provides that each class of members (currently Electricity Members, Gas Members, and Water Members) shall appoint one director to the EWOV Limited Board. Voting by members is on a preferential basis¹¹. New EWOV members wouldn't be precluded from a position on EWOV's Board because voting is based on customer numbers¹². The Commission appoints an equal number of directors from groups representing consumers or raising relevant public interest issues.

A copy of the proposed Constitution and a table that provides an overview of the proposed substantive changes to be made to EWOV Limited's Constitution is included with this application for variation. EWOV Limited's current Constitution is available [here](#).

Charter Review

The *General Exemption Order* precipitated a review of EWOV's Charter, including updating the Charter to use plain English to increase the accessibility of the document. EWOV will be consulting with key stakeholders about the proposed changes over the coming months.

A copy of the updated Charter is included with this application for variation. For ease of reference, I have also included a table that provides an overview of the proposed substantive changes to be made to EWOV's Charter. EWOV's current Charter is available [here](#).

Next Steps

We trust the above comments are helpful. I would appreciate the opportunity to discuss this application to vary the EWOV scheme's approval. Should you require further information or have any queries, please contact me

¹¹ Clause 14.2, EWOV Limited Constitution

¹² Clause 13.7, EWOV Limited's Constitution