



30th August 2016

General Exemption Order Review
National Energy Market Development
Department of Environment, Land, Water and Planning
GPO BOX 4509
MELBOURNE VIC 3001

By Email: geo@delwp.vic.gov.au

Dear Sir/Mdm,

The Consumer Utilities Advocacy Centre (CUAC) and Consumer Action Law Centre (Consumer Action) welcome the Department of Land, Water and Planning (the Department)'s General Exemptions Order Draft Position Paper (the Paper) towards improving the efficiency and effectiveness of the Victorian electricity licence exemptions framework.

Our organisations have separately conducted research highlighting gaps in the protections framework for embedded networks and identified future market issues. In 2012, CUAC research found significant disparities for consumers purchasing electricity from embedded networks. CUAC's research report, *Growing Gaps: Consumer Protections and Energy Re-sellers*, identified a number of matters for policy review including a lack of information on re-sellers, lower consumer protections, including for External Dispute Resolution (EDR) and the impact of a lack of retail choice on price. It was pleasing that the Department's June 2015 General Exemptions Order Issues Paper (the Issues Paper) acknowledged the CUAC research in framing matters for consultation.

More recently, Consumer Action's report *Power Transformed: Unlocking effective competition and trust in the transforming energy market* examines the transformation of the market from a consumer perspective and considers the implications for the consumer protection framework's application to new electricity technologies and finance arrangements.

We are pleased to see that there has been growing interest in addressing these inequities and future market issues at the Victorian level by the Department and the Essential Services Commission (ESC) review.¹ We note that these issues have also become a focus for national policy makers, evidenced in the renewed focus of the Council of Australian Governments Energy

¹ Department of Economic Development, Jobs, Transport, and Resources (DEDJTR), *Review of the General Exemption Order Issues Paper*, 2015; ESC, *Modernising Victoria's Energy Licence Framework – Issues Paper*, June 2015.

Council.² We also welcome the recent review by the Australian Energy Regulator (AER) of their retail exemptions guideline March 2016.³ However, we mention that while the revised guidelines are an improvement, they fail to address some key areas which are also considerations in this position paper.

CUAC, Consumer Action and the Victorian Council of Social Service (VCOSS) responded to the Department's Issues Paper in a joint submission. We are pleased to see that the Department has maintained the focus on previously identified gaps but broadened the scope of the review to include the innovative products and services that are emerging as a result of new technologies.

Our organisations support the broad thrust of the Paper. However, in our submission we will bring to your attention specific recommendations regarding the Department's draft positions. In particular, we would encourage the Department to give further consideration to the experiences of long term stay consumers in caravan parks, residential parks and manufactured homes, where low income and disadvantaged consumers are overrepresented and there are particular challenges for those consumers posed by new market arrangements. In producing this submission, we have consulted with our colleagues at ATA, however this submission does not necessarily represent their views in whole or part.

Principles

Our organisations support the adoption of principles to underpin the policy approach including that regulatory arrangements for customers of exempt sellers are not unreasonably disadvantaged compared to customers of licensed retailers or distributors.

Divergence from standard regulatory arrangements

We agree with the Department's position that exempt sellers necessarily differ from licensed retailers, particularly when they provide electricity as an auxiliary service rather than their core business. Compliance with the full suite of Electricity Industry Act (EIA), licence conditions and related codes and guidelines may therefore be inappropriate for some exempt sellers.⁴

However, we believe careful consideration should be given to the regulatory arrangements for innovative business models. Consumers will be faced with increasingly complex decisions about these products, services and financing options, requiring comparative assessment against other fuels. Adequate protections around these transactions are important to good consumer outcomes and ultimately consumer confidence in the emerging market.

Access to consumer protections

We strongly support the principle that customers of exempt entities should be given comparable protections as afforded to customers of licensed providers. We take this to mean that the Department believes this principle should apply to vulnerable customers of exempt entities

² Council of Australian Governments, *Consumer Protections for Behind the Meter electricity supply Consultation on regulatory implications*, (Energy Market Transformation Team, 19 August 2016).

³ AER, *(Retail) Exempt Selling Guideline – Version 4*, March 2016.

⁴ Authorised Version No. 076, *Electricity Industry Act 2000*, No. 68 of 2000, Authorised Version incorporating amendments as at 1 January 2016, Division 1, s. 10; Authorised Version No. 050, *Essential Services Commission Act 2001*, No. 62 of 2001, Authorised Version incorporating amendments as at 7 June 2016, Part 2, s. 8.

including long term stay caravan park and residential park residents. In particular, we endorse that customers of exempt entities should be able to access an independent free, EDR service (as embodied by EWOV).

Choice of Retailer

We strongly support this principle. Whilst there are difficulties for consumers in negotiating the competitive market, it is clear that significant price savings can be made by moving from standard offers to competitive retail offers. The absence of choice for customers of embedded entities therefore creates a significant equity issue. We recommend that the Department apply this principle wherever practicable to customers of embedded entities. Where there are significant logistical barriers preventing choice for some consumers, in particular, exempt selling arrangements, we suggest the Department consider alternative policy mechanisms to address these barriers and agree that consumer protections (including regulatory pricing options) should apply to those consumers for whom choice is not ultimately practical. Our organisations outline some suggestions for the Department's further consideration under the Pricing section.

Classifying Exemptions

The Department's proposed approach

We generally support the Department's approach to classifying exempt selling arrangements. In our view, more closely aligning the different exemption categories under the General Exemptions Order with the AER's exemption classes in the Retail Exemption guideline will help to provide greater clarity with regard to the activities and protections that apply under each exempted activity.

We agree that registration, monitoring and enforcement of consumer protections will provide better outcomes for customers of embedded entities. We support the Department's proposed approach on:

- registration of larger scale entities selling electricity to more than 10 customers and to entities selling electricity to long term residents in caravan parks
- more specific exemption classes for retail and distribution activities
- registrable classes of exemptions being administered by the ESC and registrable on a public database

Additional considerations:

We request that in addition to the approach above, that the Department give consideration to extending registration to smaller scale entities selling electricity to under 10 customers within a site.

We see value in this for two reasons:

- firstly, there are benefits in collecting data to assess market activity for the purposes of assessing changes in the market

- secondly, we recommend that all residential and small business consumers have access to appropriate EDR (EWOV)

We also suggest that the Department consider the value of improving the quality of data collected about registered classes of exempt sellers by the ESC. The AER's registration data does not necessarily include data on the number of consumers (households, small businesses) being supplied with electricity through the embedded entity. Collecting more meaningful data will assist policy and regulatory planning to achieve better market outcomes for consumers.

While it is as yet unclear how any extension of EWOV jurisdiction may be facilitated to include exempt selling entities, registration of these entities would enable their identification for inclusion in the scheme. Registration of a broader class of embedded entities would also facilitate monitoring and enforcement of consumer obligations by the regulator.

We support the tailoring of registrable and deemed classes to reflect Victoria's needs. Principally, in referring the task of aligning the Victorian GEO categories to the AER classes of exemption, we suggest the ESC examine the appropriate level of consumer protections afforded to each exemption class and suggest that the ESC be required to consult broadly on these as is common in exercising their regulatory powers.

Our organisations also recognise the changing nature of the market through emerging technologies. While we welcome the many products and services and benefits to energy efficiency and reduced climate change, as with any transition to new market models, the pace of that change and its impact on consumers needs to be carefully assessed in conjunction with consumer protections. Especially in times of transition, consumers can be confused, unwary and exposed to exploitative behaviour. We have previously seen evidence of that in the transition to retail contestability, where door-to-door marketing became quite problematic, particularly for vulnerable consumers.⁵

Many of the new products and services including solar and battery storage are now being marketed to a broader range of consumers, who may not otherwise have the financial capacity to purchase these outright (Solar Power Purchase Agreements and lease agreements). Long and short term lease arrangements are available. The difficult and complex matter for a consumer to assess is whether a particular offer and finance component is in their best interests. Decision-making is really quite complex and should be based on an understanding of the consumer's actual usage/pattern, and the details of a tariff offer, combined with the finance arrangement. As evidenced in Consumer Action's *Power Transformed* report these decisions may create real challenges for people as, "it is well established that human decision-making markedly deteriorates as the amount of complexity of information increases...In cases of extreme complexity or choice, they frequently even fail to make any decision at all."⁶

We note that the AER has introduced a new registrable class of exemption for Power Purchase Agreements for residential customers where the duration of the agreement is under 10 years and the customer is able to terminate the agreement early. We are concerned about the extent to

⁵Consumer Utilities Advocacy Centre, *Minimising consumer detriment from energy door-to-door sales*, December 2012.

⁶ Consumer Action Law Centre, *Power Transformed: Unlocking Effective Competition and Trust in the Transforming Energy Market*, July 2016, 4.

which customers may suffer detriment through these agreements and suggest that if the department proceeds with such an exemption, that the ESC be required to review appropriate consumer protections. Our minimum requirement would be that the consumer is able to access the EWOV should a dispute not be able to be resolved between the customer and provider.

We support the Department's intention to introduce a new registrable exemption category for community projects. While we support the development of community energy projects we also believe that it is important to consider the degree to which consumer protections should apply including the provision of access to free and independent EDR (access to the EWOV).

Our views on Recommendations 3.5

- Generally, support alignment of categories of exemption with AER classes of exemptions
- Support the amendment of the GEO to adopt registrable categories of exemptions. We ask the Department to consider whether there is value in collecting more detailed data, particularly to assist a better understanding of changes to the market regulator to facilitate monitoring, assist compliance and expansion of ombudsman jurisdiction
- Support the proposal for exemption classes of deemed exempt sellers with 10 or more consumers to be registered with the regulator
- Strongly recommend that *all* proposed deemed exemption classes be required to register with the regulator to facilitate monitoring, assist compliance and expansion of ombudsman jurisdiction
- We are concerned about the introduction of new exemption classes for both SPPAs and community projects in the absence of free and independent access to EDR (through EWOV).

Consumer Protections

The Department's proposed approach

We generally support the Department's approach to ensure that consumers in exempt selling arrangements are given a "comparable" level of protection to customers of licensed retailers.

Our organisations agree about the importance of the issues raised by stakeholders in relation to the following matters:

- customers of embedded entities currently experience a sub-standard level of consumer protection
- customers of embedded entities lack clarity on their consumer protection rights
- support for clarification of consumer protection obligations

However, we are concerned that the consumer protections themselves should, in addition to being consistent with the national exemptions framework, be reviewed by the ESC to accommodate Victorian conditions to ensure the best balance between protections and inappropriate regulatory burden.

We agree with the Department that residential customers of exempt entities in long term accommodation require a greater level of protection than customers in short term holiday residences and that it is appropriate to provide exemptions for equivalent Energy Retail Code protections for large business customers.

We support the Department's approach to developing a generally applicable core set of consumer protections. Mainly, we would encourage the ESC to consider the principle of equity and the right to external dispute resolution in determining which protections should be specified. Ideally, the ESC could consider market complexity and cognitive biases of consumers that create barriers for consumers effectively engaging with the energy market.⁷ We believe that in determining the appropriate level of consumer protections for small scale exempt sellers the ESC should carefully consider the extent to which *all* customers should have access to some key hardship provisions. We support the Department's present approach (under the current GEO) to specifying consumer protections that apply to exempt sellers.

Our strong view is that access to a free and independent external dispute resolution was central to the design of the competitive market in Victoria (and nationally) and it remains a core consumer protection. We will comment further on this matter under Dispute Resolution.

Our views on Recommendations 4.4

- Support the Department's approach in referring the ESC to specify "core" and "additional" consumer protections, in line with the present approach
- Recommend the ESC take a principle based approach and seek to accommodate Victorian conditions

Choice of Retailer

The Department's proposed approach

Our organisations agree with the Department that there are a range of barriers to effective choice of retailer for customers in embedded networks. We also agree that choice should be extended to consumers in embedded networks wherever practicable. Our view is that the evolution of the market to effectively limit choice to customers of embedded entities was a largely unintended development and consequence. In Victoria, more than any other state in Australia, the planned development of the market was towards the benefits of choice, underpinned by the technical capability of a mandated rollout of smart meters and the realisation of those benefits by consumers. Despite our concerns about the effectiveness of the market for consumers it is clear that if consumers do use appropriate tools such as the Energy Price Comparator or negotiate directly with their or other retailers, they can achieve considerable retail savings. To this extent then, lack of access to choice is an equity issue that can result in significant detriment.

⁷ Karen Stenner, Elisha R. Frederiks, and Elizabeth V. Hobman, 'Household Energy Use: Applying Behavioural Economics to Understand Consumer Decision-Making and Behaviour', *Renewable and Sustainable Energy Reviews* 41 (January 2015): 1385–94.

We agree with the key issues raised by stakeholders that customers are often not aware of the type of supply arrangement that will apply in an embedded network including that they will effectively not have choice of retailer. We support the Department's approach to improving information provision to customers in exempt selling arrangements or in embedded networks. In our view, an enhanced requirement on exempt sellers to obtain the Explicit Informed Consent (EIC) of consumers before they enter an exempt selling arrangement provides a basic and essential layer of consumer protection. While disclosing consumers' rights and responsibilities in plain English will go some way to informing vulnerable consumers, the Department might consider how translated materials or materials for low-literacy consumers might be developed and distributed, and which agency might be responsible for this.

However, we believe that in the majority of cases information provision and a requirement for EIC around exempt selling arrangements is unlikely to shift a consumers' primary concerns to purchase or rent in a constrained market. This is, of course, is exacerbated when information provision and informed consent is provided post-auction, purchasing off the plan or signing a lease agreement. We strongly recommend that the Department consider how this information could be disclosed prior to auction or rental – for example as a required property characteristic when describing a property for rent or at auction in marketing materials - to improve consumers' decision making. (The Department may need to consider this in conjunction with other statutes or instruments.) This information should also be easily accessible to tenants and home owners thereafter. Clear and simple information about the exempt selling arrangement could be linked to fact sheets about external dispute resolution and the relevant core/additional protections. We note that there is meagre, and often confusing information about exempt selling arrangements on the websites of the relevant regulatory and government bodies of Consumer Affairs Victoria, Victorian Civil and Administrative Tribunal. For example, the Consumer Affairs Victoria website provides information about embedded networks while referring consumers with disputes or enquiries on to the ESC.⁸ The Department should consider how the required information could be presented succinctly, made visible and easily accessible to consumers on the most relevant government website(s), especially given the complexity of the energy market. The Department should also consider updating the information on the Department's website including website links.

We strongly support the Department's approach to metering arrangements and network configuration for new developments/redevelopments. In our view, Victorian based legislative building requirements for developers of multi-dwelling complexes - such as apartment buildings and shopping centres – should be amended to require individual electricity metering, compliant with current NEM standards including a NMI number, for each strata title. This requirement will address this significant equity issue for new developments (and redevelopments) and allow these consumers access to a choice of licensed retailer and the customer protections that follow.

We support the Department's principled approach to facilitate choice of retailer for all consumers. For those residing in embedded networks, this effectively requires the removal of the embedded network meter and installation of compliant smart meter with a NMI number. As

⁸See: <https://www.consumer.vic.gov.au/shopping/energy-products-and-services/what-are-energy-products-and-services> updated as of 16/07/2016

identified by the Department, the costs to do so are significant enough to discourage customer choice within embedded networks. However, we would point out that for tenants residing in embedded networks, there are additional barriers, caused by the split incentive between landlord and tenant. A landlord receives none of the benefit of installing a compliant smart meter, while the tenant cannot make significant alterations to their rental accommodation without a landlord's permission – which provides an additional barrier. Further, the length or uncertainty of a renter's tenancy may not justify the cost of installation, and may create a disincentive to install a compliant (smart) meter.

There is a larger question of responsibility for cost in transitioning consumers living in embedded networks with embedded network meters to compliant smart meters. Importantly:

- Tenants and owner-occupiers residing in embedded networks have already contributed to the AMI roll-out through network charges passed on by embedded network operators and exempt sellers.
- Tenants and owner-occupiers are likely to have paid electricity retail rates significantly above market offers for some years already in the absence of competition

In our view, it is not enough to address future apartment buildings and leave consumers with legacy meters stranded outside the market by the current arrangements. The exemption for strata title lots has created a fundamental inequity issue for these consumers.

As acknowledged by the Department, there is limited information currently available about the number of consumers residing in embedded networks for multiple strata title lots, however, there is significant evidence that this is in the tens to hundreds of thousands in Victoria.⁹ We hope that the Department's proposal to introduce registerable exemption classes will clarify the number of consumers in these embedded networks.

It is unsurprising that some embedded network operators and sellers are reluctant to see more consumer choice for consumers in embedded networks. Providing customers with choice of retailer may result in a loss of market share for embedded network operators and sellers, or reduced revenues as competing retailers offer lower prices, leading the incumbent seller/operator to reduce prices accordingly. While this may not be the fault of the embedded network operator, consumers should not be held captive to a monopoly provider simply because it may affect a network operator's revenue stream.

We believe the Department should give further consideration to mechanisms that would encourage low cost/no cost retrofitting of legacy meters for consumers in embedded networks. One option we have given some initial consideration to is whether there might be benefit in bringing forward the introduction of competitive metering for embedded networks only, to address the issue of choice of retailer for consumers in these exempt selling arrangements. We have not considered in any depth the range of impacts on consumers, and suggest the Department would first need to examine the costs and benefits to consumers (meter installation vs

⁹ Jo Benvenuti and Caitlin Whiteman, *Consumer access to external dispute resolution in a changing energy market*, (Energy and Water Ombudsman (Victoria), Energy & Water Ombudsman NSW, Energy and Water Ombudsman (SA), 2016), 13-14.

benefits of choice). The Department might also consider special consultation with industry and consumers to garner stakeholder views.

However, it is our strong preference that the wider introduction of competitive metering be delayed for those Victorian consumers that already possess smart meters, closer to the technical “end of life” of these meters - likely beyond 2020. This delay will ensure that these customers can extract a fuller benefit from the AMI smart meter roll out, which after all, they have already paid for.

Our views on Recommendations 5.4

- We strongly endorse improved information provision to consumers who may be sold electricity by exempt sellers. This information should be easily accessible before the point of sale or rental agreement.
- We suggest the Department consider how information in plain English about embedded networks could be provided to consumers through the websites of relevant government bodies.
- We strongly endorse enhancing the obligations on exempt sellers to obtain explicit informed consent from a consumer before they enter into that arrangement, including the consumers’ right to purchase information from a retailer of their own choosing.
- We strongly recommend that metering arrangements and network configurations for all new developments require compliant smart meters to provide consumers choice of retailer.
- We strongly recommend the Department consider additional mechanisms to ensure that all consumers in embedded networks (legacy) can be transitioned into a metering arrangement and network configuration to provider choice of retailer.

Obligations on embedded network operators

The Department’s proposed approach

We strongly support the approach of the Department in addressing inconsistencies and confusion around what embedded network operators may charge for the use of its network. We agree that network establishment and maintenance should be met through initial purchase/entry fees and ongoing maintenance fees for the relevant facility. This is particularly important where consumers are on-market or intend to become on-market, as this may lead to confusion about consumers potentially paying twice for network infrastructure - once through their owner’s corporation fees and again through network charges passed through as a result of embedded networks infrastructure.

We also strongly agree with the Department’s approach to address confusion in the sale of electricity within strata title lots. Current arrangements – where the owners’ corporation engages an agent to manage the sale of electricity to consumers within their embedded network - creates dispersed responsibility for consumer protections and dispute resolution. Consumers in these networks have limited if any access to hardship or payment assistance schemes, accessible

external dispute resolution processes, protection from disconnection and consumer protections around continuing supply.

The Department's proposal (articulated elsewhere in their draft paper) to extend the jurisdiction of EWOV to include embedded networks goes some way to addressing this problem. The Department raises an important point about the threshold question of whether these activities are appropriately dealt with through the exemptions regime at all, and we agree that where the primary business of the embedded network operator/manager is the sale of energy, this constitutes the provision of a public utility service and these businesses should be required to hold a license administered by the ESC. The interim measures proposed seem sensible and appropriate.

We disagree with the Department's characterisation of all caravan park tenants as "highly mobile [who] generally only stay a short period of time". The current exemption categories (R4 and NR4) for "caravans, residential parks and manufactured home estates for consumers who **principally reside there**" necessarily includes consumers who are long term residents in these forms of accommodation.

We would draw the Department's attention to the recent report titled, *The Retail and Network Exemption Framework: Emerging Issues for Consumers*, produced by the South Australian Council of Social Service (SACOSS), and ask the Department to consider the report's recommendations.¹⁰ As SACOSS point out, these consumers include "some of the most vulnerable electricity consumers in our community".¹¹ These consumers may be more reliant on electricity to heat and cool their homes given the relatively poor thermal efficiency of caravans and particular dwellings in residential parks.¹² This leaves these consumers at a higher risk of financial hardship than the wider population, exacerbated by the absence of effective consumer protections. Consumers who pay their electricity bill as part of their rent are particularly vulnerable, as they may face repercussions for seeking redress to supply, disconnection, billing, pricing and payment or hardship issues. SACOSS suggests there are ongoing compliance issues with many of the AER exempt selling conditions already required of caravan, residential parks and manufactured home estates.¹³

We support the Department's recommendation that relevant caravan park owners supplying electricity to a person who principally resides in the caravan park should be required to register with the ESC.

We agree with the approach to adjacent properties, though we would note that new markets and selling arrangements for energy are rapidly emerging. It may be prudent to require all energy providers to join EWOV to avoid new markets evolving in response on the fringes of different exemptions.

As a possible interim measure, the Department could consider distinguishing the sale of energy between adjacent properties on the basis of whether the supply constitutes a consumers' primary source of electricity and a supplementary source of energy, reflecting the essential nature of electricity and the need for consumer protections. Where a consumer with excess solar output would like to sell power to their neighbours at an agreed rate, provided their neighbour has an

¹⁰ South Australian Council of Social Service, *The Retail and Network Exemption Framework: Emerging Issues for Consumers*, December 2015, 9–10.

¹¹ *Ibid.*, 12.

¹² *Ibid.*

¹³ *Ibid.*, 42.

existing electricity connection, an exemption to provide over-the-fence distribution might be appropriate on a “post-paid” basis.

Our views on Recommendations 6.4

- Support the transition of embedded networks serving multiple strata lots to an appropriately designed licensing framework
- We agree that requirements need not be as onerous for short term holiday makers in caravan parks and strongly support all caravan park owners with long term residents to register with the ESC. We would encourage the Department to review SACOSS recommendations with regard to caravan parks
- Our strong preference is for all energy consumers to have access to external dispute resolution, which may go some way to addressing questions of adjacent properties sharing electricity.

Pricing

The Department’s proposed approach

Our strong preference for energy retail pricing is for all consumers to be provided easy access to energy retail markets, leading to lower prices through competitive pressure. However, we note that where transitioning consumers to full retail contestability is not immediately practical, we support the Department’s approach to address monopoly pricing. The proposal to task the ESC with formulating a new price cap benchmark based on commercial market data is sensible, as retailers’ local standing offers are well in excess of market rates. Recent research indicates that Victorian consumers can save “up to \$610 - \$830 per annum (depending on their network area) if switching from the worst standing offer to best market offer”.¹⁴

We also agree that the new pricing model will need to be flexible in order to allow for new business models, as some consumers may wish to pay a higher price for renewable power while other consumers may prefer to pay the lowest price possible. We would highlight that ensuring all consumers have access to choice of retailer effectively resolves this issue.

We would like to raise a number of concerns about consumers living long-term in caravan, residential parks and manufactured homes, with a deemed exemption. The SACOSS research report raised a number of questions about transparency and accuracy of both pricing and billing for consumers in these exempt selling arrangements that we think warrant further consideration by the Department. Some of the SACOSS findings around pricing and billing issues include¹⁵:

- Consumers’ billing may be limited to a single line item which incorporates rent, facilities *and* electricity usage;
- Other bills only include the total kwh consumed and the total dollar amount due;
- Fixed energy charges were unexplained and exempt sellers refused to provide explanation when questioned by residents;

¹⁴St Vincent de Paul and Alvis Consulting Pty Ltd, *Victorian Energy Prices January 2016: An Update report on the Victorian Tariff-Tracking project*, 2016, 4.

¹⁵ South Australian Council of Social Service, *The Retail and Network Exemption Framework*, 12.

- Bills often do not provide a start and end meter reading;
- Consumers are concerned meter readings are not being taken. In some cases, consumers couldn't verify a meter reading due to the poor condition of the meter or couldn't get access to their own meter;
- No transparency about the rate the exempt seller paid at the parent meter – consumers expressed concern that a higher rate was not being passed onto consumers within the embedded network;
- Distinct lack of information provided to residents about the exempt selling arrangement when they moved in; and,
- The owners of a particular site encouraged residents to install solar panels on their homes, on the premise that residents would save money. However, residents have not seen any evidence of the implications or benefits of solar installation on their electricity bills.

CUAC has been provided evidence of an exempt selling arrangement where an exempt seller provided an annualised bill, charging the consumer for the year ahead based on the previous year's total number of kilowatt hours. This arrangement intentionally smooths the consumer's annual usage/charge on a monthly basis, and reconciles the difference between actual and forecast usage at the end of the year which prevents any verification of usage by the consumer. (Although we are aware that bill smoothing can be a useful option for people in payment difficulty.) This arrangement (see appendix A) breaches a large number of the AER's core exemption obligations, particularly around information provision relating to the obligations of the exempt seller and the consumer protections foregone as part of the agreement.

Consumers living in caravan parks, residential parks or manufactured homes with these type of exempt selling arrangements are often reluctant to address pricing and billing concerns because the embedded network operator is also their landlord. Consumers expressed concerns to SACOSS that if they pursued a complaint with the exempt seller/operator, they might be subject to "adverse repercussions".¹⁶ We also note the Victorian Caravan Parks Association supports the expansion of the jurisdiction of the EWOV to provide effective dispute resolution for their sector, on the basis that this would be less onerous than Victorian Civil and Administrative Tribunal.¹⁷ In our view, access to EDR is particularly important to address and resolve disputes around pricing accuracy in embedded networks.

These issues point to a clear need for enhanced obligations on exempt sellers around the transparency of pricing and billing, as well as enforced compliance by the regulator, particularly where there are practical impediments preventing consumers from access to choice of retailer. Further, consumers residing in caravan parks, residential parks and manufactured home estates are often vulnerable consumers of low socioeconomic status. This lack of equity in electricity provider exacerbates existing inequality and standards of living.

¹⁶ Ibid., 33.

¹⁷ Victorian Caravan Parks Association, *Response of the Victorian Caravan Parks Association to the Issues Paper Modernising Victoria's Energy Licence Framework*, 2015.

Our views on Recommendations 7.4

- Our strong preference is that all consumers have access to choice of retailer
- In cases where providing customers with full retail contestability is not immediately practical, we strongly support the Department's approach to task the ESC with formulating a new price cap benchmark based on commercial data.
- We strongly recommend enhanced obligations on exempt sellers/network operators around transparency of pricing and billing, particularly where there are significant barriers to transitioning consumers to the energy retail market.
- Recommend access to EWOV to resolve price disputes in embedded networks

Enforcement

The Department's proposed approach

We strongly disagree with the Department's approach to enforcement. We view current enforcement of licensed retailers as relatively light handed and that enforcement of existing consumer protections for exempt sellers is, by virtue of a lack of registration and regulatory requirement, virtually non-existent. However, we do agree that the magnitude of the problem may be illuminated by the required registration of a number of exemption categories, though as stated elsewhere, we hope the Department will impose stronger registerable information obligations.

Our organisations are concerned that developing a regulatory exemptions regime without compliance and enforcement sends the wrong message to this industry and shifts the risks entirely to consumers. However, we understand that any penalties need to be proportionate with the relative size and viability of the industry.

We suggest the Department considers the merits of adopting a public warning notice for a breach of obligations, with a period to ensure compliance, followed by a fine if obligations are not met. Smaller penalties for proportionally smaller networks should also be reconsidered by the Department, and the Department could consider increasing the penalty for repeat breaches.

We have seen billing evidence of an arrangement carried forward over a number of years that provides evidence of exempt sellers breaching a large range of exempt selling obligations (see appendix A). We would ask the Department to task the regulator with a more proactive approach to prosecuting breaches of the exempt selling regulatory framework for failing to meet their obligations.

Our views on Recommendations 8.4

- Strongly recommend that the Department consider an enforcement regime that reinforces the need for compliance
- The ESC should be required to engage in proactive monitoring and enforcement of energy providers who breach their consumer protection obligations

Dispute Resolution

The Department's proposed approach

We strongly endorse the Department's support for extending the jurisdiction of EWOV to include all consumers of grid sourced electricity. This will require that amendments to the GEO facilitate this change. Importantly, this will provide consumers in embedded networks and with exempt selling arrangements with external dispute resolution which as we have stated, is an important component of an effective competitive market.

We consider the Department's approach to addressing issues around membership fees for small entities and equitable fee structures with the ESC and EWOV is sensible and one we endorse.

We also strongly support the approach to informing consumers about these changes, which obliges exempt sellers to inform their customers in writing about their right to access the services of EWOV's dispute resolution mechanism. We suggest the Department consider obliging exempt sellers to provide clear information about the EDR process and key issues consumers can raise with the ombudsman, and should require exempt sellers to give consideration to culturally and linguistically diverse (CALD) consumers and consumers with low-literacy. The Department might also consider commissioning EWOV to produce factsheets with an explainer about the change in arrangements in simple English to accompany consumers' bills.

We strongly disagree with the Department's intent not to expand EWOV's jurisdiction to include alternative sellers and community energy projects. Our strong preference is that the Department extend the jurisdiction further to include all consumers, including those with SPPAs or in community energy schemes, to ensure that all customers have access to external dispute resolution. We consider that all ongoing energy-supply arrangements should be subject to free and accessible dispute resolution. To this end, we urge the Department to consider the inclusive jurisdiction of two "like" industry schemes, the Telecommunications Industry Ombudsman (TIO) and the Financial Services Ombudsman (FOS). In our view, easy access to external dispute resolution is a basic and essential consumer protection in what is an increasingly complex market. Purchase and lease arrangements are at the most thorny end of the complex array of offers facing consumers and involve significant commitment to the extent of terms of agreement. In an emerging market it is important that there are safeguards against exploitation of that multifarious transaction. We refer you to our comments on alternative sellers.

Our views on Recommendations 9.3

- Strongly support the Department's approach to expand the jurisdiction of EWOV to provide access for consumers in embedded networks.
- Agree with the need for better information requirements to inform consumers in embedded networks about this new service (suggest exempt sellers be required to cater for simple clear messaging, including for CALD consumers).
- We strongly disagree with the Department's stated approach to limit jurisdiction of the ombudsman consumers with SPPAs.

Alternative Energy Selling

The Department's proposed approach

We support the Department's approach in recommending SPPAs and other alternative energy sellers be moved to a registrable class exemption. Alternative Energy Selling is a dynamic and fast growing market which warrants the collection of information about the number of customers who have this kind of exempt selling arrangement in place.

However, as stated above, we strongly disagree with the Department's approach towards alternative energy selling – particularly with regard to membership of the EWOV. In our experience, the current class exemption and existing conditions for the activities undertaken by SPPA providers do not ensure an adequate level of consumer protection.

Our strong preference is that the EWOV should cover disputes arising from any energy service, including SPPAs and community energy projects.¹⁸ In our view, the recommendation that the SPPA providers join the scheme on a voluntary basis will lead to little take-up from those providers whose business practices are most likely to lead to consumer detriment. It also has the potential to create confusion among consumers and consumer advocates when seeking external dispute resolution for issues regarding SPPAs. In practice, voluntary membership of the Energy and Water Ombudsman New South Wales (EWON) by caravan park and residential park owners has resulted in:

- poor information provision for consumers (including consequent take-up)
- concerns about cross subsidy by other members and
- poor outcomes (lack of Binding Decision powers for non-members)

The Department's approach is likely to result in similar outcomes, as EWOV will be able to publicise its expanded jurisdiction to handle complaints relating to SPPAs, though in reality the scheme will only be able to handle complaints on a business by business basis. The current review provides the window of opportunity to prevent these outcomes and set expectations for energy supply service providers as the market develops. Imposing an obligation to be members of EWOV after the market as developed will likely be opposed by businesses that have been established without this requirement.

Additional considerations

Consumer Action receives approximately 5000 calls to its legal advice line every year. During 2016, it received a high volume of complaints about unsolicited solar sales and poor installation which have created poor outcomes for clients. Consumer Action's recent report, *Power Transformed*, outlines the potential detriment for consumers in the new energy market. Two case studies highlight the issues relating to finance arrangements, and reflect the significant problems for customers created by the exemption of these services from an effective EDR.

When disputes arise with newly installed products and services that require a network of relationships to deliver, such as a SPPA, the potential for **buck-passing and blame shifting** between parties is high (see Case 1).¹⁹ In the absence of an effective EDR scheme, the dispersed

¹⁸ Consumer Action Law Centre, *Power Transformed*, 36.

¹⁹ *Ibid.*, 7.

Case 1

In February 2016, Consumer Action received a call from a client who is on WorkCover and her husband is a recipient of the disability support pension. They were approached by a solar sales company and purchased a 15 kW solar panel system for \$27,485. An electrician later attended the property to install the system, however the first solar contribution didn't appear on our client's bill until eight months after installation, and this contribution was only \$1.53.

Our client tried to resolve the matter with the seller of the system, but they referred her to the subcontracted installer of the system. The installer referred our client back to the solar sales company which by then was entering into administration.

Our client contacted another installer to look into the problem, who identified that the system was wired incorrectly. The second installer fixed the problem and the output significantly increased. Consumer Action assisted the client to seek compensation for the cost of repair plus the lost solar contribution through the Victorian Civil and Administrative Appeals Tribunal.

Prior to the hearing, a lengthy defence was filed by the opposing party raising a broad range of issues that had not previously been raised. The client eventually chose not to proceed and the complaint was withdrawn.

Source: Consumer Action, *Power Transformed*, 21.

responsibility for installation creates complexity and confusion, even an effective barrier, for consumers trying to resolve an issue with the installed product or service.

Case 1 also highlights the difficulties in seeking EDR through VCAT. The consumer in this case required assistance from Consumer Action to pursue compensation through the tribunal. However, the nature of the agreement (the contract between the consumer and the SPPA provider) provides opportunity for SPPA providers to engage in protracted and costly legal proceedings to effectively avoid delivering on their obligations. In many instances, such as this,

Case 2

A client contacted Consumer Action and stated that in April 2016, a salesperson attended their home to provide a quote. They are both disability support pensioners, and were concerned that they could not afford the solar system on offer, but the salesperson made representations that they would no longer receive energy bills if they installed solar panels, and they could pay with third-party finance.

The salesperson subsequently completed the contracts without the clients' knowledge, and falsely indicated that one of them was employed on the finance application. In addition, our clients were not told about the cooling-off period on unsolicited sales, and when the panels were delivered, our clients assumed that they had no option but to proceed with the contract despite misgivings about whether they could afford it. Once the finance company discovered that the applicant was not employed, finance was rejected.

The panels had by then been fully installed, although our clients had no capacity to pay for them. The solar company subsequently engaged debt collectors to recoup the money they claim they are owed, and were ultimately successful in obtaining default judgement against our clients in March 2016. Consumer Action is assisting the client. If we are unsuccessful, the clients are at risk of losing their house to repay debt on solar panels which should never have been incurred.

Source: Consumer Action, *Power Transformed*, 22.

consumers may be effectively deterred from continuing legal action when businesses raise complex technical matters based on particular clauses from the contract.

Another key consumer detriment that has developed in alternative energy selling markets is propensity for SPPAs to be delivered via **complex financing tools**.²⁰ The combination of less than scrupulous salesmen and complex arrangements for financing new solar PV systems creates the potential for misleading sales techniques in the industry and a vested interest not to provide consumers with information about their rights (see case 2). Again, in the absence of free and effective EDR, the consumer's only alternative is contracts more complex, costly and time-consuming legal proceedings. Case 2 highlights the complexity of issues facing consumers when trying to determine which party may be responsible and how they can seek redress.

Case 3

In December last year a customer signed up for a \$13,800 solar system on the roof of his Greenvale home after a sales representative from Ires Asia Pacific promised he would never pay for electricity again. Seven months on it is still not working. "I don't even know how they work, if they work, because I got an electricity bill for \$340 but they promised me I would get a bill for \$32" he said.

Mr Georgopolous said that was not the only broken promise. "He promised me it was all made in Germany and that it would be a German unit but when they came to install them and I saw the boxes the solar panels came out of, I could see it all said 'made in China'... They installed them and then I tried to ring the company [Ires] and after a few calls, five or ten calls, I eventually got through to one of the supervisors... I explained what happened. He apologised and said 'everything is made in China these days, but they're German quality'."

"I looked it up on the internet and I made a few enquiries and the system is not worth more than five, six or \$7,000 maximum. They charged me \$13,800" he said.

Source: ABC News, *Surge of complaints against solar companies*, 30th June 2016 [available online at]: <http://www.abc.net.au/news/2016-07-30/surge-of-complaints-against-solar-companies/7666816>

Case 3 demonstrates the potential for providers promoting finance solutions to engage in deliberate **mis-selling** of solar PV systems to a customer.²¹ Not only was the customer sold a product that was not-as-described (the product was found to be made in China not Germany) at an overinflated price, but the case raises questions about whether the product was fit-for-purpose, including whether the customer may have been misled about the solar feed-in tariff and the likelihood of reimbursement. All these issues demonstrate the complexity of this emerging market, which creates a heightened risk for consumer detriment. Relying on a contract as the sole basis for consumer protections necessarily requires that consumers can understand the terms of that contract and check to ensure the promises made by sales representatives are explicitly outlined in the SPP agreement.

This has a broader impact, as it allows less scrupulous businesses to operate in the market, effectively creating a disadvantage to those businesses that seek to offer a quality product/service and may voluntarily join the EWOV. A consequence may be a decline consumer confidence and trust, leading to a reduced willingness to engage in the market.

²⁰Ibid.

²¹Ibid.

Accenture research from 2015 indicates only 37 percent of consumers trust their utility company (including monopoly providers) to help them optimise their energy consumption, up from 28 percent in 2011.²² Further, only 28 percent of consumers trusted their utility operating in a competitive market to offer this advice.²³ These figures suggest consumer sentiment towards energy providers is slowly growing, but remains fragile. As Origin Energy's General Manager of Sales, Service & Marketing, Rebekah O'Flaherty, stated in 2014: "the energy industry is just above tobacco in [consumer] likability" and consequently, Origin Energy has "committed to this kind of long journey of building trust".²⁴

In the absence of effective consumer protections in these emerging markets, efforts to gain consumers' trust in the broader energy utility industry are likely to be further undermined by the poor practices of SPPA and other finance providers.

Our organisations believe that there are significant barriers for energy utility consumers in seeking fair outcomes by pursuing their rights through the VCAT under the Australian Consumer Law.

In the 2014 review of access to justice arrangements, the Productivity Commission found that tribunals did not always meet expectations in delivering an informal, timely and low-cost dispute resolution process and provided recommendations to address the 'creeping legalism' in some tribunals.²⁵ By comparison, the Productivity Commission cited from the Energy and Water Ombudsman NSW [EWON]:

"...94 per cent of the people who did not receive a satisfactory outcome from [EWON] said that it was easy to make a complaint to [EWON]"

drawing attention to the accessibility of a complaints process and considering the measurements of a 'just' outcome.²⁶ The Productivity Commission found both a consensus among general stakeholders and quantitative data to support the assertion that ombudsmen provide an effective, timely service with good outcomes for consumers.²⁷ The ombudsman concept has also received praise internationally and "significant agreement amongst observers that this development has been a broad success, improving access to justice and providing redress for consumers that would not otherwise have been available".²⁸

We also note that the AER has signalled its own preference for the ombudsman scheme to be extended to cover exempt sellers:

"...it is important that small energy customers have access to cheap, robust and effective dispute resolution mechanisms. We encourage the ombudsman schemes to extend participation to exempt sellers and we will work collaboratively with these schemes to determine the best way of ensuring exempt customers and sellers can access effective dispute resolution services."²⁹

²² Accenture Strategy, *Unleashing Business Value in a Digital World*, 2015, 17.

²³ Ibid.

²⁴ Accenture Strategy and the Australian Financial Review, *The Balance of Power: Why Australian Utilities Need to Defend, Delight and Disrupt*, 2014, 3.

²⁵ Productivity Commission, *Access to Justice Arrangements Inquiry Report*, Vol. 1, (5 September 2014), 345.

²⁶ Ibid., 318.

²⁷ Ibid., 318.

²⁸ Chris Gill et al, 15 July 2013, *The future of ombudsman schemes: drivers for change and strategic responses*, Queen Margaret University, Edinburgh, p. 9.

²⁹ AER, March 2016, *Notice of Final Instrument – Retail Exempt Selling Guideline Version 4.0*, p. 32.

A recent research report also directly examined consumer experiences through VCAT. The report, entitled *Review of Tenants and Consumers Experience of VCAT* was commissioned by Consumer Action, the Tenants Union of Victoria and WEstjustice Western Community Legal Centre. As part of the report, a number of consumer representatives were interviewed who expressed the following concerns about the VCAT process:

- “Clients are sometimes subjected to considerable pressure by VCAT mediators and Members to settle their disputes and that this pressure can be without regard to the merits of the case”,³⁰
- “Fairness [may be] adversely impacted by the Member failing to provide adequate compensation where a finding is made in favour of the tenant or consumer”³¹
- The process itself is intimidating and the applicant form can be difficult to fill out³²
- Members sometimes bypass the VCAT appointed interpreter because the interpreter slows down the process, and instead seek a direct answer from a consumer with limited English, resulting in consumers providing answers that may not be appropriate. This was observed in a hearing attended by Cameronralph Navigator, the consultant commissioned to produce the report.³³
- VCAT does not enforce monetary orders, rather a VCAT payment order must be pursued through the Magistrate’s court.³⁴ This also requires legal assistance, an up-front court fee and creates another barrier to resolving a dispute where a consumer is significantly out of pocket for a solar PV system, particularly where a SPPA provider has gone into administration.

Additional matters for consideration

Expanding the EWOV scheme to include alternative sellers has other advantages for policymakers. Ombudsmen not only have expertise in external dispute resolution but they are also uniquely placed to provide insight into emerging issues in the sector. Identifying systemic issues quickly can assist the industry, the regulator and policy makers to respond effectively depending on the level of intervention needed. We refer the Department to EWOV’s 2015 research paper, *Can I speak with a manager?*, which demonstrates how EWOV’s particular insights can inform and encourage complaint handling improvements within industry.³⁵

We request that the Department consider how the rapid, unanticipated growth of consumers living in embedded networks without access to retailer choice or external dispute resolution might be repeated in alternative energy selling markets. The exemptions framework was originally designed to avoid unnecessary costs and onerous obligations for managers of small private networks, where energy provision was not the primary activity. In this review, the Department has recommended that consumers in embedded networks now should have access to EDR, retailer choice where possible and other consumer protections, a recommendation we support. However,

³⁰ Cameronralph Navigator, *Review of Tenants’ and Consumers’ Experience of Victorian Civil and Administrative Tribunal*, (Consumer Action Law Centre, Tenants Union of Victoria and WEstjustice Western Community Legal Centre, July 2016), 25.

³¹ *Ibid.*, 27.

³² *Ibid.*, 11.

³³ *Ibid.*, 18.

³⁴ *Ibid.*, 32.

³⁵ EWOV, *Can I speak with a manager? An analysis of energy and water company performance in handling your complaint*, March 2015.

it illustrates the problem of an approach that is reactive rather than proactive in anticipating transition problems.

It is expected that rooftop solar capacity combined with solar storage will continue to grow rapidly. The Australian Energy Market Operator (AEMO) has forecast that by 2035–36 rooftop solar capacity will have more than tripled from today's levels.³⁶ We note that Origin Energy and AGL have subsidiaries with exemptions to sell PPAs, while many of other established energy retailers provide third-party financing for solar systems and sell systems with installation. Other alternative energy sellers and selling arrangements for selling energy are quickly emerging and suggest potential future models, such as Mojo Power – who offer consumers the opportunity to buy electricity at wholesale prices with a subscription fee, or Power Ledger who have developed a peer-to-peer energy trading platform using blockchain technology.³⁷ Clearly there is enormous potential for growth for alternative energy sellers.

Moreover, the volatile nature of this market creates real potential for consumer detriment. Certegy Ezi Pay, the third-party financing company involved in case 3 (see above), has 435 solar retailers on their books. As reported by the Australian Broadcasting Corporation (ABC), 15 of these companies had gone into administration in the preceding 12 months while Certegy had been obliged to terminate seven more companies for failing to meet compliance requirements.³⁸ This is clearly a dynamic and rapidly developing new market for a service with a **long lock-in period** that lasts up to 25 years.³⁹ For those consumers who face issues with their product/service, the nature of the contractual agreement creates the potential for significant consumer detriment. There are few comparable industries – where a capital intensive product or service is funded through long term financing contracts – in which there is currently such a rapid growth of market and potential for turnover of companies.

In our view, it is likely that the market will continue to develop and evolve, and we are concerned about the very real possibility that alternative energy selling will follow a similar trajectory as embedded networks in apartment buildings. Failing to put consumer protections in place now may lead to difficulties putting the genie back in the bottle in the future. The continuing absence of effective consumer protections for SPPAs creates an opportunity trade-off favouring short term innovation opportunities for alternative energy selling businesses at the expense of consumer detriment, both in the short term and longer term.⁴⁰

³⁶ Australian Energy Market Operator (AEMO), *Flat forecasts for consumption from the grid*, 16 June 2016.

³⁷ Mojo Power, 'The Mojo model', (Mojo Power website, 2 December 2015); Ben Potter, 'Blockchain Power Trading Platform to Rival Batteries', *Australian Financial Review*, 14 August 2016.

³⁸ Sarah Jaensch and Amy Bainbridge, 'Consumers Warned after Complaints Surge against Solar Companies', *ABC News*, 30 July 2016.

³⁹ Consumer Action, *Power Transformed*, 7.

⁴⁰ *Ibid.*, 6.

Our views Recommendation 10.4

- Support the requirement for alternative energy sellers to be moved to registerable classes of exemption
- Strongly disagree that retaining the class exemption and exiting conditions for the activities undertaken by SPPA providers provides an adequate level of consumer protection.
- We consider the intent to avoid constraining market innovation creates a continuing risk of heightened consumer detriment both in the short and longer term
- Our strong preference is that the regulation of emerging technologies include consumer protections to ensure consumer confidence in new markets, which fosters efficient markets through strong consumer engagement

Community Energy Projects

The Department's proposed approach

Our organisations support community energy programs and support the Department's approach to establishing a registrable category as this will allow some monitoring of this trend. We also suggest that the data collected include information on the numbers of households, public facility, small business, participants to assist monitoring and planning.

We are mindful, however, that community energy programs can also introduce complexity regarding benefits for individual households/small business participation based on:

- Individual costs/benefits (including purchase, contribution, lease and tariff)
- Agreements
- Financing


There is a high potential for misunderstanding in these transactions and little evidence that community energy projects have adequate experience handling dispute resolution. Community programs may also be subject to change in corporate structure, and responsible administrators including volunteers. We believe that as a minimum that these entities be required to be part members of EWOV.

Our views on Recommendations 11.4

- Support Department's position to establish a registrable exemption
- Strong preference is for consumers in community energy projects to have access to external dispute resolution at a minimum

Thank you for the opportunity to provide feedback on the Paper. If you have any queries about this submission, please contact the undersigned.

Yours sincerely,



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Gerard Brody
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Consumer Action Law Centre

Appendix A

The following case study demonstrates the need for clarity around exempt sellers'/network operators' obligations to their customers, along with the monitoring and enforcement of those conditions by the regulator, in addition to access to EWOV.

CUAC was recently approached by a consumer advocate with a client who raised concerns about the cost of their electricity bill. The consumer is a pensioner on a fixed income who resides in a retirement village - which has obtained an exemption to sell electricity to its residents. The consumer advocate made contact with CUAC to check the accuracy of the process.

The letter of agreement between the consumer and exempt seller states that the consumer is under no obligation to choose the exempt seller as her electricity retailer and even provides some detail around how the consumer could switch to another retailer. The exempt seller explains the tariff on offer and the price of each component of the tariff in cents per kWh, with a discount comparable to 20 percent off the local retailer's standing offer. We note that while this discount may not be as large as other market offers, it is a more reasonable discount than we have seen elsewhere.

The agreement also explains that the exempt seller uses bill smoothing "to a fixed amount" for eleven months of the year, with the twelfth month used to reconcile any difference between actual and forecast usage. The exempt seller appears to rely on a single meter reading to calculate the total use of the year (retrospective) – this meter reading is also used to forecast the next year's usage, with the customer charged in eleven even instalments. This is not clearly articulated in the agreement, nor does the agreement mention that consumers will forgo quarterly billing and meter reads as part of the arrangement.

Confusingly, the consumer was also provided with an "Electricity Supply Charter" as part of the agreement, which states that the exempt seller will meet its' obligations according to the Electricity Retail Code (ERC). While seeking to meet obligations of a higher standard than required by the exempt selling guidelines is admirable, this does depend on the exempt seller delivering on those obligations. In this case, exactly which obligations the exempt seller intends to meet remains somewhat ambiguous.

The charter explains it will provide "information on the account" as required by the ERC, and also in the instances of disconnection or reconnection. The charter states that in the case of a dispute, a customer can either resolve the issue with the exempt seller or contact EWOV, despite the fact that EWOV currently does not have EDR jurisdiction for exempt sellers and embedded networks. Yet, the (separate) consent form also distinctly requires consumers to forego a monthly graph of usage, and the annual bill only contains single line items for the different cumulative totals for each component of the consumer's bill.

The annual meter read and bill provided to consumers offers no transparency or feedback about the consumers' usage. This is problematic for consumers because they receive a delayed signal about any change to their usage, and consequently electricity costs. If a consumer's usage consistently exceeds their forecast usage, this creates the potential for significant bill shock in the twelfth month when their account is reconciled. This muted feedback loop can also lead to an elevated usage forecast for the forthcoming year. The consumer, if seeking to respond to the price signal with behaviour change, may then overpay for the first eleven months of the year, with no ability to affect their energy costs until their account is reconciled in the final month. The consumer in this case was a pensioner on a fixed income, who had high off-peak consumption caused by continuous slab heating through winter. Without quarterly meter reads and regular billing, it took

time and external assistance to pinpoint the cause of the consumer's high electricity usage and adjust the slab heating accordingly.

The information provided at the start of the agreement about dispute resolution is misleading to consumers, who may not fully understand the roll and obligations of their exempt seller or their rights. This may in fact be caused by confusion on behalf of the exempt seller themselves, which has consequences where a consumer requires external dispute resolution. Consumers need clear and accurate information about whether they can take their complaint to CAV, VCAT or EWOV.

While the consumer consented to the agreement, the agreement itself is vague, even misleading, about the consumer protections provided by the exempt seller. We do not consider this to be "informed" consent, or "explicit informed" consent.

Above all, the consumer's continuing bills indicate the agreement between the consumer and exempt seller remains unchanged. In our view, these agreements and practices are unlikely to change without regulatory monitoring and enforcement framework.