



29 November 2017

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

By email: energy.submissions@esc.vic.gov.au

Dear Sir/Madam

Re: Fixed benefit periods - notification obligations for energy retailers - Draft Decision

Thank you for the opportunity to comment on the Essential Services Commission's (ESC) *Fixed benefit periods - notification obligations for energy retailers - Draft Decision* (the Draft Decision).

The Energy and Water Ombudsman (Victoria) (EWOV) is an industry-based external dispute resolution scheme that helps Victorian energy or water customers by receiving, investigating and resolving complaints about their company. Under EWOV's Charter¹, we resolve complaints on a 'fair and reasonable' basis and are guided by the principles in the Commonwealth Government's *Benchmarks for Industry-based Customer Dispute Resolution*².

EWOV has 21 years of experience in resolving customer complaints, many involving concerns about energy contract terms. In this submission, we share and analyse relevant EWOV case data, explain the common complaints customer have about terms of their energy contract, and provide some illustrative case studies where customers complained that their fixed benefit period had ended. We also explain that although we welcome the proposed changes in the Draft Decision, it is doubtful that the notice alone will necessarily result in customers getting the best deal from the market, or even their own retailer. This view is informed not only by our case experience, but by the retail market analysis and context provided by the recent ESC *Victorian Energy Market Report 2016-17*.³

¹ See Clause 5.1 of EWOV's Charter: <https://www.ewov.com.au/files/ewov-charter.pdf>

² See EWOV's website: <https://www.ewov.com.au/about/who-we-are/our-principles>

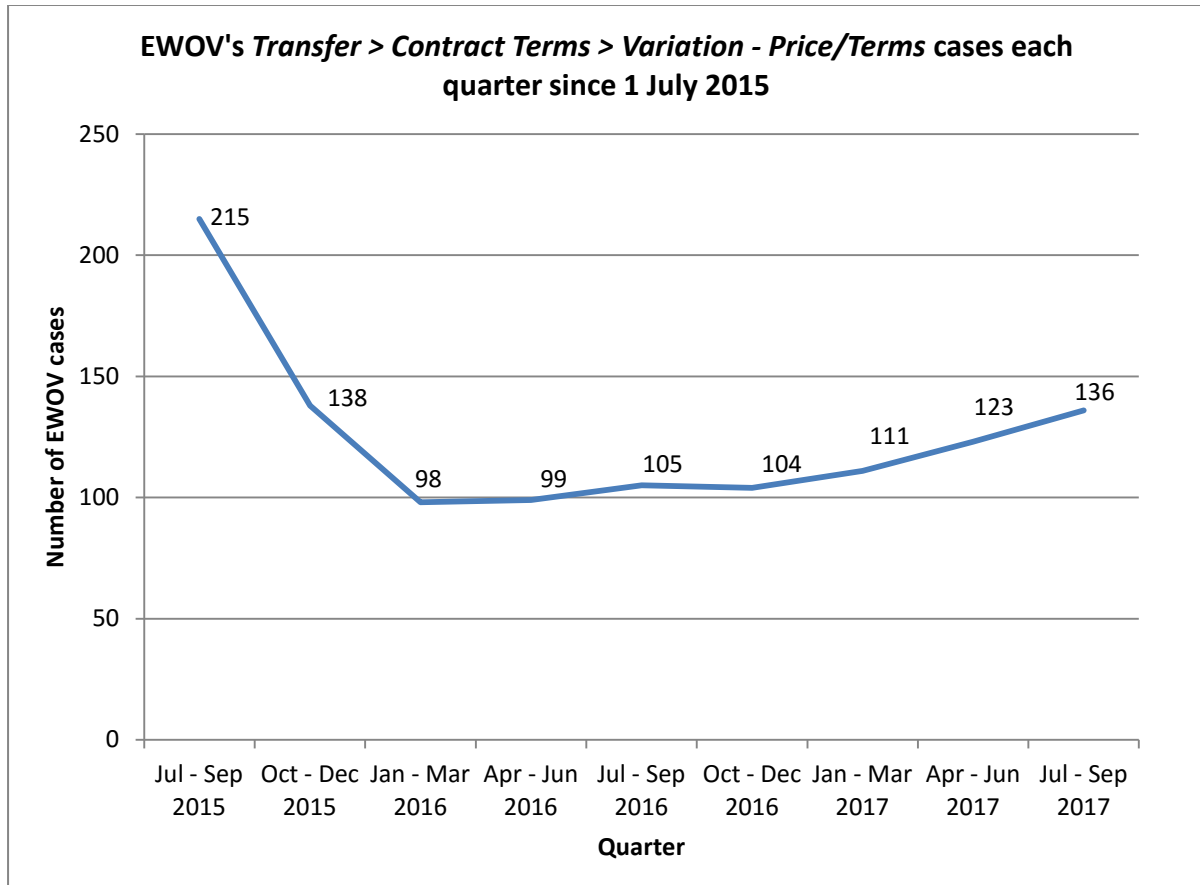
³ See Essential Services Commission's *Victorian Energy Market Report 2016-17*:
<https://www.esc.vic.gov.au/document/energy/55678-victorian-energy-market-report-2016-17/>





EWOV contract term variation case numbers

The graph below shows the number of EWOV cases received each quarter since 1 July 2015, where customers contacted us because they were concerned about a change to their contract, either to the price or terms. We categorise these types of complaints under the issue *Transfer > Contract Terms > Variation - Price/Terms*.



This graph shows a gradual increase in cases about contract term variations over the last 18 months. In the July 2017 to September 2017 quarter, the most recent, there was an 11% quarterly increase in these types of cases and a 30% annual increase compared to the same quarter in 2016. To add context to this notable case growth, EWOV's overall case volumes over the same 12 month period fell by 1%.





Common complaints about energy contract term variations

We analysed the 136 contract term variations cases EWOV received in July 2017 to September 2017, to uncover any common customer complaint trends⁴. We found, overwhelmingly, that the contract terms most complained about were tariff rates (or prices) and discounts. And often a customer would complain about both. Customers commonly told us that:

- when getting their first bill, a different discount or tariff rate had been applied to it than that offered at the time of marketing or entering the contract
- during their fixed-term contract, they were unhappy with a price increase and were unaware that retailers were permitted to do this as a term of their contract
- at the end of the contract, a discount or tariff rate had changed and they were being billed at a higher rate. They were not aware that a discount or tariff rate would change or cease after the end of a contract period.

These types of complaints suggest that there is customer confusion and misunderstanding about how retailers may vary tariff rates and change discounts. This confusion can be compounded by incorrect or inadequate communication during the marketing interaction, the difficulty for the average customer to understand the ‘fine print’ terms and conditions, and the expectations created by the growing prevalence of highly discounted contracts. The price impact of this lack of understanding and confusion can be significant.

Other contract term variation complaints we received in the July 2017 to September 2017 quarter included, complaints about monthly and quarterly billing periods, time of use tariffs, not receiving contract inducements (such as movie tickets) and the high price of energy in general.

⁴ Most cases were Unassisted Referrals and Assisted Referrals where EWOV is only told the customer’s version of events. 72% of the contract variations cases EWOV received in July 2017 to September 2017 were about electricity and 28% were about gas.





EWOV case studies about the expiry of a fixed benefit period

The following four EWOV case studies illustrate the customer experience in complaints where a contract benefit, such as a discount, has changed after the expiry of a fixed-term contract.

Case study 1: A customer lost his discount after his contract had expired, despite his attempt to recontract after receiving a renewal notice (2017/19952)

The customer was on a gas contract with a 13% pay on time discount. He received a bill that did not have this discount. He contacted the retailer to enquire why. He was told that his contract had expired and therefore his discount no longer applied, and he'd been re-contracted at a different rate. He was confused by this response. About a month before the discounted contract was to expire, the retailer wrote to the customer to inform him about the contract ending and suggested he choose a new plan, online or over-the-phone. The customer responded to this letter with a phone call to the retailer. During this phone call it was agreed that his current 13% discounted plan would continue. He was transferred to the sales team and believed he was recontracted on the same terms. However, when he received the next bill it did not include the 13% discount. Nor did the following bill.

He was unhappy with losing out on his discount despite doing everything he could to remain on his 13% discounted plan. After speaking to the retailer on several occasions, he contacted EWOV.

After the complaint was unable to be resolved as an Assisted Referral, EWOV raised an Investigation. The investigation confirmed the customer's version of events and the retailer apologised that he was not recontracted on the 13% discount when he had asked. It applied \$80 to his account to recognise the inconvenience caused, re-billed his account to include the 13% pay-on-time discount, and confirmed he would receive this discount in future. The retailer also said that it would waive any exit fees should the customer decide to switch retailers, and provided a direct contact for any further queries.





Case study 2: A customer lost a 30% discount after his contract benefit period ended (2017/2098)

The customer received a letter from his retailer that advised he would continue on the same terms after the contract ends. The contract had a 30% discount for paying on time. However, the first bill the customer received after the notification letter did not have the discount applied. He contacted his retailer dissatisfied that the discount was not on his bill. The retailer agreed to backdate the discount. However, the customer received bills which had different amounts owing for the same billing period.

Dissatisfied with the ongoing issue, the customer contacted EWOV and an Assisted Referral was raised. This process did not resolve the billing issue for him so EWOV raised an Investigation. As part of the Investigation we reviewed the customer's account information and discussed the billing and discounts with the retailer. To resolve the issue, the retailer apologised for the conflicting billing and its failure to apply the 30% discount at the end of the customer's contract. It applied a credit of just over \$200 to the account to ensure the account was billed as though it had never lost the discount.

Case study 3: A customer had been moved to a contract with a lower discount rate after his agreed contract term had expired (2017/20197)

Before the customer's 12-month contract expired, he received a contract renewal notice from his retailer that indicated he did not need to do anything to renew his plan, but could call the retailer to find out more. A year later, after receiving a further renewal letter he contacted his retailer and was told that for the preceding 12 months he had been on a 5% lower discount rate than originally contracted. He renegotiated his contract with the retailer, however it would not credit him with the amount he lost as a consequence of the contract renewal at a lower discount rate.

The customer contacted EWOV and an Assisted Referral was raised with the retailer. A senior member of the retailer contacted the customer and his complaint was resolved. The retailer apologised for their customer service and agreed to backdate the 5% higher discount rate for the preceding 12-month contract period, resulting in an \$80 credit to the customer's electricity account and \$102 to his gas account. He was satisfied with this outcome.





Case study 4: A customer's discount amount on his electricity and gas bills had changed without him knowing (2016/19797)

In September 2015, the customer entered a 12-month contract with a 44% pay-on-time discount on his electricity bills and 30% discount on his gas bills. In late 2016 he received a gas bill that applied a 28% discount. He contacted his retailer to find out why. He was told that his 12-month contract had expired and was renewed at the lower 28% discount rate. The customer said he had not been made aware of this change. Dissatisfied with his conversations with the retailer, he contacted EWOV for assistance.

EWOV raised an Assisted Referral so the matter could be handled by a more senior contact at the retailer. During this process, the retailer offered the customer a new 12-month contract with a 44% discount for electricity and a 30% discount for gas. He accepted this offer. However, when he received his next gas bill the agreed discount had not been applied. He recontacted the retailer. He said he was told to pay the bill and that the discount would be added later, and his billing adjusted. Not having confidence in the retailer's assurances, he decided to contact EWOV again. We raised an Investigation.

While investigating the complaint, the customer decided to switch retailer. The retailer apologised for the inconvenience and waived the remaining final gas account balance of \$423. The customer was given a direct contact should he have any further queries.

The proposed changes to the *Energy Retail Code*

EWOV welcomes the proposed new clause 47A to the *Energy Retail Code* outlined in the Draft Decision. While we do not know the procedures of every retailer, our experience shows that in practice, some retailers already send contract renewal notices to customers (usually about a month before the contract expires). These notices appear to already broadly meet most of the requirements outlined in the new clause 47A. Therefore, the objective of providing customer 'notice' is already happening for many customers. The codification in the *Energy Retail Code* will create specific obligations to cement this practice across all retailers.

EWOV believes the most significant requirement of clause 47A will be the inclusion of details about Victorian Energy Compare and its web address into the contract renewal notice. EWOV welcomes this requirement as it would encourage customers to shop around for the best offer and engage in the market.





Our analysis of recent EWOV contract term variations cases and illustrative case studies show that customers can be confused by discounts and prices in a complex retail market. It may be unrealistic to expect customers, especially vulnerable customers, to have the capacity to shop around every 12 months to find the best offer. This is particularly difficult task in a deeply complex retail market with hundreds of electricity offers, significant differences in the prices and terms offered by retailers and where advertised discounts can be confusing. As stated by the ESC in its *Victorian Energy Market Report 2016-17*:

“Energy bills can vary by many hundreds of dollars and there is no consistent basis for how discounts are offered. As a result, the advertised discount rate is a poor measure of the amount a customer can expect to pay for their electricity or gas.”⁵

Clearly, it can be difficult for the average person to compare and easily understand the offers available to them. And when the best offer is conditional on paying on time, switching may not even be the right decision for household with financial difficulty. For example, the most expensive contracts are those where customers on discounts don't pay their bills on time. As stated by the ESC in its *Victorian Energy Market Report 2016-17*:

“... a typical electricity customer who consistently fails to meet the conditions of their discount could find themselves paying \$314 more than they expected (over a year).”⁶

We welcome any new regulatory requirements and measures that provide customers with enhanced clarity about the terms of their energy contract, and the ability to make informed decisions about the cost of the energy they consume so as to reduce what is a growing complaint received by my office.

We trust that these comments are useful. Should you require further information or have any queries, please contact Justin Stokes, Senior Research and Communications Advisor on

Yours sincerely

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

Cynthia Gebert
Energy and Water Ombudsman (Victoria)

⁵ See page 4, Essential Services Commission's *Victorian Energy Market Report 2016-17*:

<https://www.esc.vic.gov.au/document/energy/55678-victorian-energy-market-report-2016-17/>

⁶ See page 5, Essential Services Commission's *Victorian Energy Market Report 2016-17*:

<https://www.esc.vic.gov.au/document/energy/55678-victorian-energy-market-report-2016-17/>

