



Queen Margaret University
CONSUMER DISPUTE RESOLUTION
CENTRE

Energy and Water Ombudsman NSW

Independent five-year review

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LIST OF ABBREVIATIONS

Abbreviation	Meaning
ADR	Alternative Dispute Resolution
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
AFCA	Australian Financial Complaints Authority
AICD	Australian Institute of Company Directors
ANZEWON	Australia and New Zealand Energy and Water Ombudsman Network.
CDR	Consumer Dispute Resolution
EDR	External Dispute Resolution
EWOSA	Energy and water Ombudsman South Australia
EWOV	Energy and Water Ombudsman Victoria
FOS	UK's Financial Ombudsman Service
IDR	Internal Dispute Resolution
IPART	Independent Pricing and Regulatory Tribunal of New South Wales
IRT	Initial Response Team
Ofgem	UK Government Regulator for Energy Markets
PTO	Public Transport Ombudsman
RRT	Rapid Response Team
TIO	Telecommunications Industry Ombudsman
UDL	Utilities Disputes Limited
WATRS	Water Redress Scheme

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Introduction

This executive summary outlines the main findings of the five-year independent review conducted by the Consumer Dispute Resolution Centre at Queen Margaret University in Edinburgh, Scotland.

The primary matters for enquiry and report set by EWON were:

- Review of EWON's complaint handling service and its related operations, including systemic issue identification, complaints reduction and policy influencing work to ensure they are in accordance with the Australian Government's Benchmarks for Industry Based Customer Dispute Resolution (CDR Benchmarks):
 - accessibility
 - independence
 - fairness
 - accountability
 - efficiency
 - effectiveness
- Member / stakeholder engagement
- Promotion of EWON's services to customers
- Complainant satisfaction
- The effectiveness of the [constitution], charter, terms of reference or other document establishing the office, its jurisdiction, functions, rules and procedures.

The review consisted of three phases:

Phase 1: Desk-top research was undertaken by the review team which included review of documents supplied by EWON, documents supplied by interviewees, and the academic research. A call for evidence by QMU was posted on the website of EWON together with a confidential Queen Margaret University email address for responses and details of the call for evidence were sent by EWON to members and stakeholders.

Phase 2: One member of the review team conducted fieldwork in Sydney. This included 26 interviews with external stakeholders (industry, community and formal

stakeholder representatives), five interviews with board members, and 11 interviews with staff. In addition, the member of the review team observed staff at work and listened in to casework telephone calls with the approval of those involved and undertook a review of 125 cases which covered both the jurisdiction of EWON and its casework process. The reviewers are confident that all relevant information necessary for this review was collected and considered.

The Benchmarks

Benchmark 1: Accessibility

EWON asked two specific questions for consideration by the review team in relation to the accessibility benchmark:

1. Does EWON effectively promote awareness about its role and function particularly to vulnerable and disadvantaged customers?
2. Are EWON's processes easy to access, easy to use and have no cost barriers?

EWON undertakes significant activity to increase public awareness in its existence and role, and also to make its services as accessible as possible. The review team are of the view that there is no set target of awareness to which EWON should specifically aim, but it is important for members to promote EWON and to signpost complainants towards both their internal dispute resolution (IDR) schemes and to EWON should complainants remain dissatisfied after IDR. EWON makes particular effort to reach vulnerable and disadvantaged individuals through its impressive community engagement strategy. The activities of EWON in the areas of raising awareness and promoting accessibility represent best practice.

Benchmark 2: Independence

EWON asked two specific questions for consideration by the review team in relation to the independence benchmark:

1. Are case handling and decision-making processes independent and impartial and are they seen to be independent and impartial?

2. Does the Constitution and Charter of EWON continue to support the independence of EWON?

Casework undertaken by EWON is independent from participating organisations and the ombudsman is the final decision-maker on all casework. Interviewees were consistent in stating that, from their perspective, case handling and decision-making was both independent and impartial.

The Board of EWON is of a traditional structure within the Australian consumer ombudsman sector in that it comprises an equal number of industry and consumer members. Some consumer ombudsman are beginning to introduce directors independent of both industry and community groups and this is seen as a positive development. In addition, the review team is of the view that, as EWON has a board of eleven members, this is, on the large side both compared with comparator organisations and guidance from the AICD.

In its review of the Charter, the review team also identified a number of clauses which would benefit from tidying and clarification.

Benchmark 3: Fairness

EWON asked two additional questions for consideration by the review team in relation to this benchmark:

1. Does EWON observe the principles of procedural fairness in the handling of complaints??
2. Does EWON have quality assurance processes to ensure fair processes are used and fair and seen to be fair?

All member interviewees spoke positively about EWON's procedural fairness and were of the view that decisions reached were fair and reasonable. EWON's casework is subject to rigorous quality assurance but this could be extended to include the recoding of the time taken on individual casework as this is not currently part of the quality assurance process.

Benchmark 4: Accountability

EWON asked three specific questions for consideration by the review team in relation to this benchmark:

1. Does EWON have a process for accepting complaints about EWON (including complaints about case management, privacy, jurisdiction, and day to day operations of EWON)?
2. Does EWON fulfil the CDR Benchmarks for public reporting?
3. Does EWON have a process(es) in place to promote industry improvement? (this requirement is considered under Benchmark 6)

EWON fulfils the CDR benchmarks for public reporting, however, it could do more in publishing material in different languages and formats. EWON demonstrates appropriate accountability to the public, members and to other members of the integrity network. The information published by EWON is comprehensive, detailed and informative. EWON does publish information about its case handling in its Annual Report but could also publish more information concerning its casework performance.

EWON has a process for accepting complaints about itself and these complaints are considered appropriately.

Benchmark 5: Efficiency

EWON asked one specific question for consideration by the review team in relation to this benchmark:

1. Does EWON's structure and processes deliver timely, independent and fair outcomes for customers?

The review team identified that EWON's Charter does not specify a time limit by which members' internal dispute resolution (IDR) processes should be completed and are concerned that this may lead to delays in people appropriately approaching EWON.

The high number of customer enquiries and referrals to higher levels is a matter of concern to the review team suggesting that the internal complaint systems operated by members are not working as effectively as they could do. The review team is not

generally supportive of the Referral to Higher Level step in EWON's complaints process although it does accept that may be particular complaints where this step would be appropriate. By the time a valid complaint reaches EWON, members will have had two opportunities to resolve the complaint. High levels of refer backs may encourage poor IDR processes and create additional barriers to resolving a complaint, leading to increased complainant fatigue.

The Rapid Response Team is a particularly effective method of resolving complaints. Timeliness of investigations is a matter of concern to members and there is a need for the Ombudsman and her team to continue their focus on reducing the time taken to complete an investigation.

Benchmark 6: Effectiveness

EWON asked two additional questions for consideration by the review team in relation to this benchmark. In addition, the review team fully consider the third question identified by EWON under Benchmark Four: Accountability:

1. Does EWON's Charter provide sufficient jurisdictional coverage to enable EWON to handle complaints about current and emerging issues in the energy and water sectors?
2. Does EWON have sufficient powers and mechanisms in place to ensure member compliance with policies and procedures?
3. Does EWON have a process(es) in place to promote industry improvement?

While EWON is effective in its systemic activities there are further opportunities for it to increase its contribution on improving the energy and water system while also increasing public awareness of its activities. The rapidly changing energy market is creating a potential future risk to consumer protection. EWON needs to be part of the discussion about the future regulation of the energy market.

Notwithstanding the electricity market, the review team suggests that consumer protections could be improved for people where LPG is one of their principal energy sources, and who currently are protected by generic consumer protection law. In addition, the presence of two different ombudsman schemes (EWON and the NSW Ombudsman) with responsibilities for different parts of the water market is potentially

confusing for customers. People may be better served with one ombudsman assuming responsibility for water and sewerage complaints.

The review team considered EWON's powers and mechanisms to ensure compliance with its policies and procedures. While not identifying any significant concern, the review team felt that there was scope for a discussion with stakeholders on this issue.

Overall Conclusion

In conducting the review, the review team has sought not only to assess whether the scheme operates in accordance with the CDR benchmarks, but also to enter into discussion with the scheme and stakeholders about future developments that would be of benefit. As a result, the review team is satisfied that EWON is an effective and well-run consumer dispute resolution scheme, and we make a number of recommendations in this report which seek to encourage and ensure the continued success of EWON into the future.

Summary of recommendations

This is a list of the recommendations made within the main report.

Benchmark 1– Accessibility

- 1. It is recommended that EWON continue its social media activities to at least at their present level.**
- 2. It is recommended that EWON continues to liaise with media teams of other ombudsman schemes to identify good practice in the preparation of material for use in media and other promotional activities.**
- 3. It is recommended that EWON, in its role of overseeing members' complaints handling, should strengthen its work with its members on how the energy and water complaints system will be promoted and publicised by all parties.**
- 4. It is recommended that EWON continues the development of its community engagement strategy and works with members to ensure their continued participation in such events.**
- 5. It is recommended that EWON collect socio-demographic data from all service users.**
- 6. It is recommended that EWON further monitors the socio-demographic and geographical location of users of its services and, if necessary, undertake additional awareness raising and engagement activities.**
- 7. It is recommended that EWON reviews the formats and media used to provide information to ensure that all vulnerable groups are able to obtain necessary information.**
- 8. It is recommended that EWON continues its work with community groups that work with vulnerable people to ensure that its staff are able to probe sensitively questions about vulnerability.**

Benchmark 2 - Independence

- 9. It is recommended that the 'Objects' of EWON are amended to reflect its key role in ensuring a publicly supported effective energy and water market.**
- 10. It is recommended that EWON reduces the size of its Board to nine members.**
- 11. It is recommended that EWON amends the structure of its Board to have a mix of Industry Directors, Community Directors and Independent Directors with no one group being in a majority position.**
- 12. It is recommended that EWON appoints Industry Directors via open competition rather than through an election of members. The focus should be on appointing Industry Directors that are reflective of the membership, are of the appropriate seniority within their host organisation and have the necessary skills to be an effective Board member.**
- 13. It is recommended that EWON reviews its Board Committee structure and amend its Constitution to reflect the outcome of this review.**
- 14. It is recommended that EWON amends Paragraph 16.2 of its constitution to require the ombudsman to attend all board meetings unless there is a personal conflict which would undermine good governance.**
- 15. It is recommended that EWON conduct a review of its Charter, to include consideration of the issues made by the review team.**

Benchmark 3 – Fairness

- 16. It is recommended that EWON continue the use of the Rapid Response Team.**
- 17. It is recommended that EWON review its case handling manual to ensure that staff have increased guidance on when it is appropriate to gather supporting evidence and how that evidence may be obtained.**
- 18. It is recommended that EWON review the process by which staff provide updates to parties involved in the complaint.**

- 19. It is recommended that EWON strengthen staff training on EWON's approach to the use of the fair and reasonable test.**
- 20. It is recommended that EWON add to their Quality Assurance processes a method to assess the quality of oral communications.**
- 21. It is recommended that EWON consider publication of some or all of the outcomes of its quality assurance activities.**
- 22. It is recommended that EWON contacts its research company and checks when making the comparison in results between 2017 and 2019, whether the company weighted the scores before making statistical comparisons.**

Benchmark 4 - Accountability

- 23. It is recommended that EWON broaden the performance information provided in its Annual Report.**
- 24. It is recommended that EWON reviews the languages and formats in which all its publications are available.**
- 25. It is recommended that EWON revise its 'Complaints about EWON' Policy to clarify which team would be responsible for investigations concerning the operations of the office.**
- 26. It is recommended that EWON considers extending its casework meetings with members where the volume of complaints from a member indicates that such an approach would be helpful to ensure efficient complaint handling.**
- 27. It is recommended that EWON continues discussion with water members on issues affecting the water industry and water complaints.**
- 28. It is recommended that EWON continues working with members of the integrity network.**

Benchmark 5 - Efficiency

- 29. It is recommended that EWON introduces a time limit for member organisations to resolve complaints using their internal dispute**

resolution systems, after which EWON can accept the complaint for consideration.

30. It is recommended that EWON consider delivering further training to casework staff on how to determine whether the issue is in or out of jurisdiction. Members should be encouraged to report potential disputes over jurisdiction when an investigation is begun.
31. It is recommended that should EWON refer a complaint back to a member, the caseworker accurately describes to whom they plan to refer a complaint.
32. It is recommended that EWON conduct a formal cost-benefit analysis of the potential to remove the Refer to Higher Level stage in its casework process.
33. It is recommended that EWON review the appropriateness of the Refer to Higher Level step in its complaint process. Should it be decided to retain the Refer to Higher Level step then EWON should review the criteria by which it decides whether or not to treat a complaint as a Refer to Higher Level or as an investigation. Should a complaint be treated as a Refer to Higher Level, there should be more active follow up by EWON with the complainant of action taken by the operator.
34. It is recommended that EWON consider using investigation plans, as a minimum in complex cases.
35. It is recommended that EWON should consider introducing formal and early case assessment, as a minimum in complex cases.
36. It is recommended that EWON review its case handling manual to ensure that there is greater clarity on the closure procedures for investigated cases.
37. It is recommended that EWON continue its focus on the timeliness of allocation and on reducing the length of time taken to close cases.
38. To help understand whether there is an issue or not and, if so, the scale of the issue, it is recommended that as part of its quality assurance programme, the Quality Assurance team audit the timeliness and accuracy of times involved in casework.
39. It is recommended that EWON review its funding model to better reflect the activities that it undertakes.

Benchmark 6 - Effectiveness

- 40. It is recommended that EWON amends its Charter to provide it with sufficient powers to enable it to enforce members to co-operate with systemic investigations.**
- 41. It is recommended that EWON revises its approaches to systemic activities to adopt a broader range of approaches, ideally all four detailed in the body of the report, and include the publication of complaints data, the publication of themed reports, the conducting of systemic investigations by members as at present, and the conducting of systemic investigations by EWON, and EWON should work with operators on the development of these approaches.**
- 42. It is recommended that EWON publishes more of the outputs of its systemic activities, including themed reports and promotes them in the media.**
- 43. It is recommended that EWON discuss with appropriate regulators and Government departments about extending its jurisdiction to LPG retailers.**
- 44. It is recommended that EWON should work with regulators, colleague ombudsman bodies and industry to understand the future changes in energy technologies with an understanding that EWON is currently best placed to assume jurisdiction for all energy related complaints.**
- 45. It is recommended that EWON consider the impact that any such change would have on its service and funding model and contribute this assessment to the above work.**
- 46. It is recommended that EWON discuss with regulators, the NSW Ombudsman, Local Government NSW and the responsible government department the potential for EWON to assume jurisdiction for all water complaints.**
- 47. It is recommended that EWON, discuss with members, community organisations and other stakeholders, including relevant regulators, its ability to ensure compliance with its policies and procedures.**

1. FOREWORD

1.1 The scope of the review

Paragraph 20 of the Constitution of the Energy and Water Ombudsman NSW (EWON) requires that EWON should commission an independent review of the operation of the office and, in particular, its complaint handling service, along with a review of the effectiveness of its governance at least every five years. This report outlines the findings of the five-year independent review of EWON, conducted by the Consumer Dispute Resolution Centre at Queen Margaret University in Edinburgh, Scotland.

The primary matters for enquiry and report set by EWON are:

- Review of EWON's complaint handling service and its related operations, including systemic issue identification, complaints reduction and policy influencing work to ensure they are in accordance with the Australian Government's Benchmarks for Industry Based Customer Dispute Resolution (CDR Benchmarks):
 - accessibility
 - independence
 - fairness
 - accountability
 - efficiency
 - effectiveness
 - Member / stakeholder engagement
- Promotion of EWON's services to customers
- Complainant satisfaction
- The effectiveness of the [constitution], charter, terms of reference or other document establishing the office, its jurisdiction, functions, rules and procedures.

For each of the six CDR Benchmarks detailed in the first bullet point above, EWON asked additional questions for specific consideration by the review team.

The Report, including any recommendations for improvements to services or governance, produced by the Review Team will be presented to the Board of EWON which shall consider the Report and associated recommendations.

1.2 The Review Team

This review was undertaken by Dr Gavin McBurnie and Jane Williams from the Consumer Dispute Resolution Centre at Queen Margaret University. Short biographies of the members of the review team are attached as Appendix One.

1.3 Methodology

The following approach to the review was adopted.

Phase 1: Desk-top research was undertaken by the review team. Included in the Terms of Reference were a list of over forty documents to be supplied by EWON to the Review Team and these were duly supplied at the beginning of the review. Additional documents were supplied by EWON to the review team upon the latter's request. In addition, other documents were sourced from relevant websites prior to the field visit. A call for evidence by QMU was posted on the website of EWON together with a confidential Queen Margaret University email address for responses and details of the call for evidence were sent by EWON to members and stakeholders.

Phase 2: One member of the review team conducted fieldwork in Sydney. This consisted of interviews held between a member of the review team and representatives from consumer organisations, member organisations, energy regulators and other associated formal stakeholders, and staff and Board Members from EWOM itself. The organisations with whom those interviews were held are listed in Appendix Two. A total of 26 interviews with external stakeholders (industry, community and formal stakeholder representatives) were held either by telephone or face-to-face, along with five interviews with board members, and 11 interviews with staff.

In addition, the member of the review team observed staff at work and listened in to casework telephone calls with the approval of those involved.

This member of the review team undertook a review of 125 cases. These cases included ten Complaint Enquiries, 15 Referrals to Higher Level, 40 Level 1

Investigations, 25 Level 2 Investigations, 25 Level 3 Investigations and five internal reviews. A final mixed sample of five cases relating to water complaints were also specifically considered.

The reviewers are confident that all relevant information necessary for this review was collected and considered.

1.4 Acknowledgements

The review team wishes to thank:

- EWON for making the necessary local arrangements for the field visit;
- The staff of EWON for their time in answering questions and providing information; and,
- The many individuals from consumer groups, provider organisations and other stakeholders who generously gave up their time to speak to the review team.

Their input is greatly appreciated and ensured the review team was able to come to a holistic view on the performance of EWON.

1.5 Structure of the report

The report comprises three sections. The first section provides the executive summary and recommendations. The second section provides background and context for the report. It covers the changing energy market and some key background information on EWON. The third section of the report reviews the performance of EWON against the six Key Benchmarks for Industry-based Consumer Dispute Resolutions Schemes.

In this report, the term ombudsman is used as both the singular and plural form of the term ombudsman.

3. BACKGROUND AND CONTEXT

3.1 The Energy Market in New South Wales

Energy in New South Wales (NSW) is provided by a network of private organisations. For electricity, the system comprises an electricity transmission company, electricity distributors and electricity retailers. For the gas market, there is a network of gas distributors and gas retailers. It is not uncommon for an energy retailer to provide both electricity and gas. Overseeing the energy market are a number of regulatory bodies, the key such bodies being the Australian Energy Market Commission (AEMC) and the Australian Energy Regulator (AER).

As would be expected there are a number of issues and trends affecting the energy market in NSW. These include:

- Rising energy prices and associated public concern;
- Increased development and use of energy renewables at both state and micro level;
- Increased market competition; and,
- Increased disruption in the energy market including increased development and use in solar power, batteries, micro-grids and smart meters.

The AEMC's 2018 Retail Energy Competition Review found that consumer confidence and satisfaction with the retail energy market had decreased significantly compared with the previous year due principally to rising energy costs and confusing energy pricing schemes (AEMC 2018, p.i). In the same report (p.83) it is reported that only 25% of consumers felt that the market was working in their long-term interest, with only 50% of consumers believing that they could access easily understandable information and thus, only a small majority of consumers were confident in their ability to make the right choice. The Report (p.91) refers to a survey which asked energy customers to compare value for money against water, internet, insurance, mobile phones and banking. The energy sector came bottom in that survey. Perhaps not unsurprisingly, therefore, the report (p.93) notes comparatively low levels of trust (39%) in the Australian energy market.

As mentioned, there is increased interest in what is termed 'disruptive technologies' such as smart meters, solar, batteries and micro-grids. For example, the AEMC

states that developments in ‘behind the meter batteries’ by energy retailers will result in such batteries becoming a more ‘prominent’ element of the market in the future (AEMC 2018, p.vi). A range of new energy service providers have entered the market, sometimes in partnership with existing energy retailers, and which ‘use technology, digital platforms and software solutions to create simple service offers for consumers’ (AEMC 2017, p.iii). ‘Consumers are investing in solar PV systems, batteries, and energy management products and services’ (AEMC 2018, p.ix).

ANZEWON has commissioned the University of Sydney to consider how energy and water ombudsman will have to change to remain fit for purpose in a very different future energy environment. The researchers identified, among others, the following changes in the energy environment:

- The growth of bundled services
- Self-generation and consumer energy trading
- Increased collective action such as micro-grids
- The increased use of intermediaries
- The advent of smart technologies (University of Sydney 2019)

These new developments in the market, are often not subject to the same requirements as traditional energy retailers and consumer protections are likely to be less developed, often dependent upon generic consumer protection law and NSW Fair Trading. Commenting on this situation, the Chair of the AEMC, John Pierce, stated,

“We have recommended jurisdictional action to improve consumer protection for some years and this job is fast becoming absolutely essential,” ...

“Solar, being led by widespread roll-out of household PVs, is experiencing strong market penetration and the steadily falling costs of batteries will reinforce this trend.

“Consumers are also more actively engaging with the market, and selling the surplus energy they are generating themselves to the grid.

“These market shifts are happening so rapidly that consumer protections that fully take into account all the issues associated with this new technology are yet to be devised or available”. (Pierce 2019)

3.2 The Water Market in New South Wales

The water market in NSW is significantly different from the energy market. The two largest water suppliers, Sydney Water and Hunter Water, are both owned by the NSW government and most water suppliers are owned by local government. Sydney Water and Hunter Water are required to be members of EWON while local government water suppliers are under the jurisdiction of the NSW Ombudsman. Shoalhaven Water is unique in that, although a local government water supplier it has volunteered to join EWON.

The Water Industry Competition Act 2006 is intended to encourage competition in the water supply and sewerage market. Providers licensed under WICA are required to be members of EWON, but, as yet, there are only a small number of entrants in the market. However, the number is likely to increase as water supply becomes part of embedded networks.

3.3 Social License to Operate

A key issue for participants in the energy and water markets, and particularly the energy market, is their social license to operate, which refers to 'the level of acceptance or approval by local communities and stakeholders of organisations and their operations' (Learning for Sustainability 2019). Industry-based consumer dispute resolutions schemes, EWON in this case, are part of the integrity system environment which helps to ensure that such companies maintain their social license to operate.

The loss of a social license to operate is possible. In the United Kingdom, which has a broadly similar energy system as Australia, the Labour Party proposed to establish a price cap on energy companies due to public concern about rising energy prices. Initially labelled as a Marxist idea by the Conservative Party (Bienkov 2017), a Conservative Government was forced to introduce it due to overwhelming public support for the proposal. The Labour Party now proposes renationalisation of public utilities, including energy and water companies at below market price (Pickard and Thomas 2019), proposals which also have significant public support. One of the

reasons for this public support in these policy proposals is that persistent negative stories about water and energy companies in the media have contributed to a reduced social license to operate for energy and water companies.

It is important for energy and water companies to remember that effective energy and water ombudsman schemes are essential to their continued operation and profitability. The low levels of customer satisfaction reported in the AEMC's 2018 Retail Energy Competition Review are a worrying indicator of a potential future loss of their social license. It is suggested that supporting the operation of an effective ombudsman scheme is in the interest of both consumer and energy and water organisations.

4. ENERGY AND WATER OMBUDSMAN NEW SOUTH WALES

With the privatisation of former public services, and the delivery of some public services as if they were private businesses, it is essential for consumers to have trust both in their provision and that the markets are working fairly (Hodges 2018). It is important, therefore, should disputes arise between consumers and businesses, that there are mechanisms by which these disputes can be resolved, particularly where those complaints relate to hybrid goods. Courts are not a realistic option for such complaints, due to the normally low monetary values of the claims involved and the power asymmetry between the parties, and this means that the alternative approach of consumer dispute resolution (CDR) schemes are now seen as the best available technique (Gill et al., 2016; Hodges 2018). Underpinning this shift is the development of the idea of consumerism which includes the principle that people with a complaint should have it resolved simply, quickly and cheaply (Hodges 2018, p.55, O'Brien 2015).

Industry-based ombudsman are seen as one type of consumer dispute resolution schemes. The primary role of any consumer ombudsman scheme is to encourage public trust in the industry over which they have jurisdiction and not, as many people suggest, simply to resolve complaints. They are part of the integrity network which helps ensure effectively functioning markets. Compliance with the Treasury Benchmarks should ensure that a consumer ombudsman is able to fulfil this primary role.

EWON was established in 1998 as an industry complaints scheme (the first industry-based consumer ombudsman in NSW), initially for complaints about electricity and gas companies, before including Sydney Water in 1999 and now provides a second-tier dispute resolution service for most gas and all electricity customers in New South Wales and for complaints about some water providers. From 1 July 2018 the jurisdiction of EWON was expanded to include embedded electricity and water networks¹.

¹ 'Embedded networks represent a new way of providing retail energy products and services to consumers. They are increasingly being provided by non-traditional energy suppliers, such as property developers or intermediaries that are associated with property developers.' (AEMC, 2017, p.iv)

EWON utilises a range of alternative dispute resolution techniques, including negotiation, investigation and has the power to make binding arbitrations although this power is rarely used. Having seen a steady fall in the number of complaints between 2013/14 to 2016/17, EWON saw an increase in the number of complaints received in 2017/18. In 2017-2018 EWON received the following numbers of complaints:

Case type	Number
General Enquiry	155
Complaint Enquiry	8,684
Refer to Higher Level	11,136
Investigation – Level 1	5,126
Investigation – Level 2	882
Investigation – Level 3	433
Total	26,416

Table 1: Number of complaints received 2017/18 by category

Excluding embedded networks, as of 18 October 2019, EWON has fifty-eight members, the majority of which are in the energy market with twelve water members, although only three of the twelve are major providers of water. It also has thirty-eight embedded network members. It has proven challenging to EWON to bring all embedded network providers into membership and the current members are only a minority of the total number of embedded network providers in NSW.

In broad terms the complaint handling process used by EWON's is as follows:

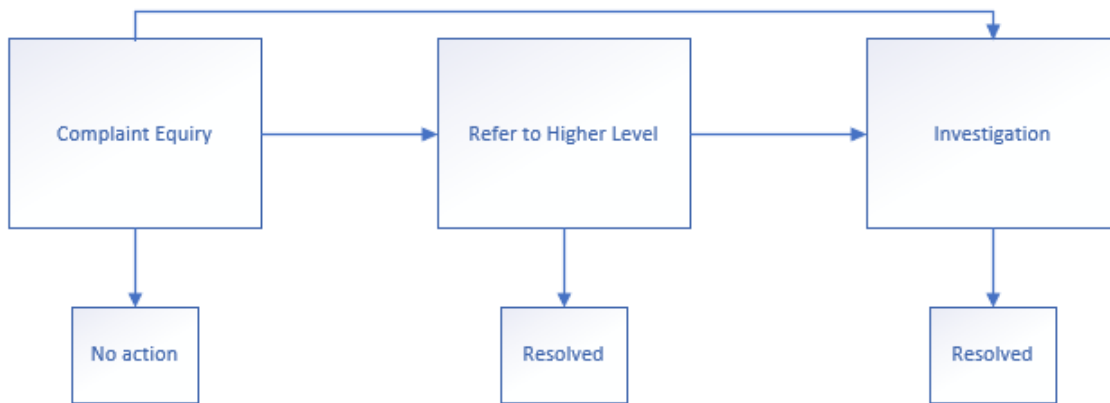


Figure 1: EWON's complaint handling process

For most complaints EWON uses a three-stage process:

1. A complainant approaches EWON and if they have not approached the member organisation are referred to the member (8684 cases in 17/18);
2. If the complainant has previously approached the member but the complaint has not been resolved, in most cases it is likely that the complaint will be referred back to the member for a further attempt by it to resolve the complaint (11,136 cases in 17/18);
3. With some complaints, a majority will be accepted directly for investigation. In 17/18, of 6441 complaints accepted for investigation approximately 3,900 complaints were accepted directly for investigation while approximately 2,600 investigations followed failed referrals to higher level.

EWON is managed by a Board comprising an independent chair, five industry members and five consumer members. In this regard it is typical of industry-based consumer dispute resolution schemes. However, as shall be considered later in this report this historical model of board membership is changing.

BENCHMARKING THE SCHEME

This section of the report assesses EWON against the six Benchmarks for Industry-based Customer Dispute Resolution.

BENCHMARK ONE: ACCESSIBILITY

Principle: The office makes itself readily available to customers by promoting knowledge of its services, being easy to use and having no cost barriers.

Purpose: To promote access to the office on an equitable basis.

EWON asked two additional questions for consideration by the review team in relation to this benchmark:

1. Does EWON effectively promote awareness about its role and function particularly to vulnerable and disadvantaged customers?
2. Are EWON's processes easy to access, easy to use and have no cost barriers?

Consumer protection is seen to be a core responsibility of an ombudsman (Mediterranean Energy Regulators 2018, p.5). Customers in the energy market are likely to be disadvantaged towards service providers due to an inequality in their knowledge and resources. 'The availability to household customers of effective means to address their complaints and to have access to efficient, effective and inexpensive means of dispute resolution is a vital and incontrovertible characteristic of a functioning energy market' (Mediterranean Energy Regulators 2018, p.5). The absence of such arrangements, together with a low awareness among customers of their rights, would be an indicator of a malfunctioning market and reflective of a serious imbalance between the rights and obligations of consumers and service providers (Mediterranean Energy Regulators 2018, p.5).

If an ombudsman scheme is to be effective to all potential users, irrespective of background or needs, users must be aware of the scheme's existence and feel comfortable in its use, and this requires extra understanding by those working in the ombudsman scheme towards those from a minority background or who are otherwise particularly vulnerable (Beqiraj et al 2018, p.16, Brennan et al. 2017). Ombudsman schemes need to be aware of any particular additional needs of

whatever type, exhibited by service users, at every stage of the complaints process (Beqiraj et al 2018, p.16).

Awareness of EWON

For three years, at EWON’s request, Energy Consumers Australia has included two questions in its annual energy consumer sentiment surveys to gauge prompted and unprompted awareness of energy ombudsman schemes in its energy customer survey. The questions used in the survey are:

Unprompted awareness question: “If you had a complaint about your electricity or gas services which you could not resolve by talking to your retailers or network company, which people or organisation/s would you contact?”

Prompted Awareness question: “How familiar are an organisation called the ‘Energy Ombudsman’ which assists consumers with complaints about energy?”

Table 2 provides details on the results of the survey for the last three years. Normally, industry-based ombudsman schemes achieve relatively low scores in awareness surveys, principally because unless, and until, people wish to make a complaint, they are unlikely to engage with complaint systems or pay much attention to promotional material.

Financial year	Unprompted awareness: the term ombudsman is mentioned	Unprompted awareness: the term energy ombudsman is specifically mentioned	Prompted awareness: very familiar/ familiar with the energy ombudsman
2018/19	39%	9%	31%
2017/18	43%	10%	30%
2016/17	30%	6%	30%

Table 2: Levels of prompted and unprompted awareness of EWON

It is difficult to comment on the representativeness of these figures. In its 2018 Annual Report Utilities Disputes Limited in New Zealand reported awareness levels of 2% for unprompted awareness and 7% for prompted awareness. However, it has been hard to find awareness figures for other Australian consumer ombudsman

schemes. It is a similar situation in the UK. It is commendable that EWON publishes these figures in its annual report and is indicative of a commitment to transparency.

The UK's Financial Ombudsman Service (FOS) is the only UK scheme to publish any significant data on awareness, demonstrating very high awareness levels overall over 90% (Gill et al. 2016). The figures are likely to be significantly higher than other industry-based schemes due to several mis-selling banking scandals that have occurred in the UK and the associated wide publicity on the role of FOS in securing redress. This is evidenced by the fact that prior to those high profile mis-selling scandals, research by FOS (2012) found an unprompted awareness level of only 17%. This indicates that the awareness of ombudsman is significantly affected by issues within the wider environment in which it sits.

One point is worthy of note. In the view of the review team, while all ombudsman strive for high levels of unprompted awareness, there is no correct level of unprompted awareness to which ombudsman should seek to achieve. What is of importance is the awareness of the overall complaints system and the role of an ombudsman within that system. This places significant responsibility upon members to ensure appropriate signposting of their ombudsman scheme. This is discussed further below.

EWON conducts much activity to promote awareness about its role and function. It is active on social media (Facebook, Twitter and LinkedIn) and tries to be active in the mainstream media. The problem for EWON is that in regards to social media, given the specialist role and function of EWON, followers are unlikely to be ordinary members of the public, and thus its social media activities can only be expected to have limited impact. However, it is important for EWON to continue its social media activities, as it does provide readily and easily accessible information about EWON to all, and those people and organisations which are followers of EWON on social media, are likely to be stakeholder organisations which would benefit from awareness of EWON's activities. Hubeau (2019, pps. 274-275) discusses the increasing move by ombudsman to use social media to promote their activities and identifies other forms of social media not currently used by EWON, for example, RSS feeds and YouTube channels.

While local newspapers will often pick up stories from EWON about its local community engagement activities, EWON finds it much harder to gain traction from the larger mainstream media on more general issues due to the nature and priorities of the mainstream media. The issue here is for EWON to produce material that is not only likely to be of interest to the mainstream media but is also produced in a format which enables a mainstream media outlet to use it with ease. One ombudsman office, known to the review team, when publishing a report will produce a complementary comprehensive media pack to enable journalists to use the story with minimal effort.

- 1. It is recommended that EWON continue its social media activities to at least at their present level.**
- 2. It is recommended that EWON continues to liaise with media teams of other ombudsman schemes to identify good practice in the preparation of material for use in media and other promotional activities.**

Raising awareness of the complaints system

Rather than focusing solely on the promotion of EWON, it is important for the public to be aware of the overall energy and water complaint's system and the role that EWON plays as part of that system. Information on the right to complain is part of the principle of transparency and involves organisations providing clear information on where to submit a complaint and how it will be treated (Mediterranean Energy Regulators 2018 P.20).

One of the activities of Australian industry-based ombudsman schemes is to refer back to member organisations potential complaints which the member organisation has not yet had an opportunity to resolve. For EWON these are called Complaint Enquiries, although other similar schemes may use different names. A review of the 2018 Annual Reports for EWON, EWOV and EWOSA reveals that the proportion of complaints received by EWON which are categorised as Complaint Enquiries are approximately twice that of the other two organisations (33% v 14% v 17%

respectively). In 2017/18, this meant that EWON fielded 8684 cases where the complainant should have initially contacted the member (at a cost to members of *circa* A\$1.5 million) while for EWOV the number was 4690 cases. That such a large number of cases are directed straight to EWON suggests that the promotion of the complaint system by members is not as effective as it could be.

In other jurisdictions, signposting to ADR has emerged as an important issue in relation to transparency and raising awareness (Williams et al. 2018). Effective signposting can also play an important role in ensuring that the complaints that reach ADR are not premature and are within jurisdiction. The *EU's Directive on Consumer Alternative Dispute Resolution 2013/11/EU* (Article 13) requires all consumers to be signposted to approved ADR organisations whether or not the trader is a member in order to raise awareness of ADR more generally. In the UK, regulators often include detailed requirements relating to signposting (Williams et al. 2018). Even where there is signposting, research for Ofgem, the UK energy regulator found that both consumers and micro-businesses thought that suppliers did not provide enough information about ADR, increasing the stress for those whose complaints are not resolved quickly (Ofgem 2016, p.4). Regulators in the UK are taking an increasingly firm position on companies that do not appropriately signpost companies to complaints processes and the ADR scheme – for example, Ofgem criticised eleven energy firms over their complaint handling, and opened compliance investigations as a result (Mason 2018), while Ofcom fined EE £1,000,000 for failing to comply with Ofcom's rules on complaint handling (Ofcom 2015)

There are three possible stages at which signposting can take place; (a) before a complaint is made, as part of the published complaint procedure; (b) at the time of the complaint, and (c) at the point the complaint is concluded or remains unresolved at the end of the prescribed time limit (usually 8 weeks). The UK requirements are shown below in Table 3:

	Office of Road and Rail	Ofgem (Energy regulator)	Ofcom (Communications Regulator)	FCA (Financial Conduct Authority)	Legal Services	Scottish Public Sector Ombudsman
As part of published complaint procedure	Yes	Yes	Yes	Yes	Yes	Yes
At time of complaint			Yes	Yes		
At eight weeks (SPSO 20 days) or / final decision reached (whichever is the earlier)	Yes	Yes	Yes	Yes	Yes	Yes

Table 3: Signposting to ADR UK examples

As shown in Table 3 above, all regulators require information regarding ADR to be provided as part of published complaint handling procedures. In some cases, it must also be included in bills or at the point of entering a contract (legal services for example). Service providers must also signpost at the conclusion of the process, or at the end of the prescribed time limit (see section on responsiveness). A study for the Mediterranean Energy Regulators identified the following methods used by companies to provide such information: contracts bills, company branches, letters, leaflets/brochures, meetings and campaigns (Mediterranean Energy Regulators 2018).

Paragraph 5.1 of EWON's constitution makes clear that member organisations must operate and publicise an effective complaints process, including the provision of information about EWON. An audit of members promotion of complaint policies and of EWON, conducted by EWON in 2016 revealed a disappointing picture of non-compliance by members, sometimes with legislation, but very often with the constitution of EWON.

A member of the review team examined a sample of bills issued by members together with a sample of member websites looking at how member organisations promote the complaints system. The reviewer found a mixed approach.

Disappointingly, only a minority of the sample bills provided advice on how to complain with the majority not mentioning complaints at all. Similarly, a review of the member websites demonstrated that, while companies do facilitate contact between customers and the company, it is often very difficult to identify how to make an actual complaint. Some members will provide details of the complaints process in the initial

contract between customer and business but, it is suggested that that is not an optimal method of informing individuals of their ability to complain.

The current situation seems to have improved from the 2016 audit but it is still not functioning appropriately. As people will look at their bill or, if they have access to the internet, the website for information about how to complain, the fact that not all companies promote their internal complaint systems appropriately is likely to be the explanation, in part at least, as to why EWON has to undertake such a relatively high level of signposting. A good complaints system will make the necessary information available and easily accessible. Some members have work to do in order to deliver this.

Increasingly, ombudsmen are viewed as experts in the complaints system and commentators argue that they should use this experience and their role within the overall system to improve the overall complaints processes at all levels. This is particularly true for industry-based ombudsmen operating in regulated sectors. For example, in a review by Lucerna (2015) of a UK industry-based ombudsman, Ombudsman Services: Energy Lucerna noted that Ombudsman Services: Energy had three roles: individual complaint handling, improving complaint handling by energy firms, and, identifying systemic industry wide issues. Lucerna (2015, p.43) encouraged Ombudsman Services: Energy to undertake greater activity in the latter two of these three roles stating that doing this “has the potential to drive significant benefits for all consumers – those who complain, those who complain initially but do not pursue their claim to the ombudsman, and those who never complain”.

The review team support this view and would suggest that consumer ombudsmen are at the apex of the complaints system over the industry(ies) for which it has jurisdiction. This is due in part to their position as final decision-maker but also includes their ability to oversee the whole complaints system, their expertise in complaint handling, and their ability to learn from other complaint systems.

EWON, as part of its role, provides support to members in this area, and, in particular, provides a template complaints policy which is comprehensive and valuable. If there is a gap in the template, it is that there is no guidance on how members may best promote the complaints system, including the role of EWON. There is a strong argument that members and EWON should work together to

promote the complaint system particularly as currently, not all members are fully in compliance with the requirements of EWON membership and this is leading to increased work and costs for EWON. In addition, it is likely that many persons with legitimate complaints do not pursue them given the challenge they may face in understanding how to make a complaint.

- 3. It is recommended that EWON, in its role of overseeing members' complaints handling, should strengthen its work with its members on how the energy and water complaints system will be promoted and publicised by all parties.**

Raising awareness of EWON in vulnerable communities

It is a recognised phenomenon that under-represented and disadvantaged communities underuse complaint systems (Hubeau 2019, Australian Productivity Commission 2014). This phenomenon will be due to a wide range of factors but it is essential that organisations encourage people to use their complaint systems, should they have a complaint. Organisations also need to recognise, that some people or groups will find making a complaint challenging. Such groups might include the young or elderly, people with a disability, people with a mental illness, people from a CALD background, or are isolated for whatever reason.

EWON conducts an extensive community outreach programme underpinned by a Community Outreach Strategy. A review of Annual Reports indicates increasing focus on community outreach by EWON. For example, if one were to compare the outreach activities highlighted in the 2013/14 report with the activities detailed in the 2017/18 report then one finds a significantly increased programme of activities both in number and geographical location. In 2013/14 the significant majority of such outreach activities took place in a narrow corridor from Wollongong to Newcastle while in 2017/2018 a much more comprehensive programme of outreach activities took place. This is despite the challenges created by the size of NSW and the reality of travel within it.

In addition, EWON organises anti-poverty week forums which are aimed at promoting EWON's services as well as the range of measures available from government to community workers, community organisations and members to assist individuals facing financial hardship.

It is not only the number of outreach activities that is important but also with whom you are trying to reach. The outreach strategy sets the parameters by which the outreach programme is constructed. It includes not only distance (inevitably) but also an area's relative level of disadvantage, using unemployment levels, median income, percentage Aboriginal and Torres Strait islanders, percentage of people from CALD communities, the number of over 55s, and people with a disability or mental health issue. This is an excellent attempt to focus the activities of EWON on those likely to need its services the most and counteracts the well-recognised 'Matthew' effect² inherent in the provision of ombudsman and other services.

What is also of value is that in many of its outreach activities, EWON works with other local organisations to maximise its impact. For example, on Bring Your Bills days, EWON will invite members to attend as well as local support groups and other agencies, thus creating a multiplier effect on the activity's effectiveness. During interviews, these Bring Your Bills days were highly regarded by community groups and members alike. Some members reported feeling pressurised to attend, but given the clear benefits to all concerned, the participation of members should be encouraged.

4. It is recommended that EWON continues the development of its community engagement strategy and works with members to ensure their continued participation in such events.

One issue for EWON is that it does not systematically collect socio-demographic data on users. Hubeau (2019, p.270) cites research which indicates that the perception of service users by ombudsman staff does not meet reality. Collecting

² For a discussion the 'Matthew effect' see Hubeau M., 2019, The profile of complainants, in Hertogh, M. and Kirkham, R., eds. *Research Handbook on the Ombudsman*, Cheltenham: Edward Elgar Publishing,

socio-demographic data on users is important for organisations such as EWON as it allows itself to ensure that service users are representative of those who need its service and if not, allow EWON to undertake more targeted awareness raising activities. If EWON was in possession of this data this would also allow it to speak more authoritatively on issues affecting under-represented and disadvantaged groups.

Hubeau (2019, p.270) expresses disappointment that few ombudsman schemes provide socio-demographic detail on service users which, in turn, makes it difficult to confirm that the ombudsman scheme provides a service to all sections of society. His paper indicates the importance of collecting socio-demographic data on service users. It is recognised that this is a sensitive area of questioning for people who may wish to make a complaint, as it may raise fears that if they answer 'wrongly' then their complaint will not be considered appropriately. Given its importance, it is, nonetheless, recommended that EWON consider how best it should collect this information. It is noted that the customer survey undertaken annually by EWON collects such data. If the survey company can confirm that this survey is representative of all service users then this may be an acceptable proxy.

The community engagement and awareness raising activities are supported by a small team and it is important that EWON protects this resource and, if future data indicates that specific socio-demographic or geographical groups are underrepresented, consideration should be given to further investment in this area.

- 5. It is recommended that EWON collect socio-demographic data from all service users.**
- 6. It is recommended that EWON further monitors the socio-demographic and geographical location of users of its services and, if necessary, undertake additional awareness raising and engagement activities.**

Vulnerability

Complaint systems need to be sensitive of the additional challenges vulnerable groups face and develop systems which can quickly identify such people and, are then able to provide a service which makes reasonable adjustments to meet their needs. This means making easily available information about the complaints system in a wide range of formats, including but not limited to, large print, braille or audio format, Auslan, videos, information sheets in a range of languages suitable for the population covered, Makaton or diagrammatic form. In addition to providing information in a range of formats, the complaint system should allow access to it via a range of means, for example, in person, by phone, in writing, email, online forms, and letters.

Once an individual has accessed a complaints system staff need to be trained in identifying those who have additional needs and be able to work with them to establish how best they may be served. This may include working with an advocate, or other person authorised to act on behalf of the complainant, the use of interpreters or other similar assistance.

The EWON website uses Google Translate to automatically translate its pages into 25 different languages. A review of EWON's website reveals that there is a video in Auslan which provides information on EWON and how it may help people. Although there is scope to change the size of font used on the website to a large font, it does not appear that material is available in Braille. The PHSO uses BrowseAloud software which enables visitors to the website to listen to the pages being read out loud to them in a wide range of languages.

Complainants are able to contact EWON using a wide range of approaches including the use of interpreters and the National Relay Service. Once they have accessed EWON complainants are able to make use of advocates or other persons authorised to act on their behalf, interpreters and other support. It was suggested by one interviewee that staff could do more to identify potentially vulnerable complainants, suggesting that many complainants may wish not to disclose their vulnerability. While this is certainly plausible, the review team are unable to state how much of a problem this is in practise.

- 7. It is recommended that EWON reviews the formats and media used to provide information to ensure that all vulnerable groups are able to obtain necessary information.**
- 8. It is recommended that EWON continues its work with community groups that work with vulnerable people to ensure that its staff are able to probe sensitively questions about vulnerability.**

In summary, the community engagement activity undertaken by EWON should be considered as good practice from which other ombudsman schemes can learn.

BENCHMARK TWO: INDEPENDENCE

Principle: The decision-making process and administration of the office are independent from participating organisations.

Purpose: To ensure that the processes and decisions of the office are objective and unbiased and are seen to be objective and unbiased.

EWON asked two additional questions for consideration by the review team in relation to this benchmark:

1. Are case handling and decision-making processes independent and impartial and are they seen to be independent and impartial?
2. Does the Constitution and Charter of EWON continue to support the independence of EWON?

The Key Practices document benchmark on effectiveness considers whether the scheme has an independent decision-maker (ombudsman) who is able to appoint their own staff, receives sufficient funding to undertake its functions (not only casework functions) and has an effective 'overseeing entity'. EWON meets all these requirements but the review team will make further comment on the overseeing body shortly.

Constitution

Paragraph 1.1 sets out EWON's 'objects' which are to provide a complaints service, assist in the reduction of complaints and 'anything incidental to those purposes'. One view of ombudsman, particularly industry-based ombudsman schemes, and indicated in Paragraph 1.1, is that they exist to assist in the resolution of complaints from customers against members. The review team suggest that this view is perhaps too narrow. It can be reasonably argued that the primary role of industry-based ombudsman schemes is to encourage trust and legitimacy between the population and the industry and, thus, support the industry's license to operate. The provision of

advice, the resolution of individual complaints and work on system improvement are the tools by which an industry-based ombudsman makes this contribution. The review team think it is important for EWON to set out its role at this higher level as it appropriately contextualises all of its activities and can help assist in the consideration of issues.

- 9. It is recommended that the 'Objects' of EWON are amended to reflect its key role in ensuring a publicly supported effective energy and water market.**

The Board of EWON

The review team has examined the structure of boards of other consumer ombudsman schemes and this is summarised in Table 4. As Table 4 demonstrates, the current construct of EWON's Board is not anomalous with its peers in Australia and is compliant with the Key Practices for Industry-based Customer Dispute Resolution document (Australian Government 2015, p.12 fn 18). However, there are three trends that are becoming apparent as consumer ombudsman modernise:

1. Boards are reducing the number of consumer and industry directors, replacing at least some board members with independent directors, in keeping with the recommended approach of the AICD;
2. Boards are increasingly assuming responsibility for the appointment of board members;
3. There are clear limits on the length of appointment and which is the same for all class of directors (excluding the chairperson)

EWON's constitution allows for a Board of up to eleven members (Paragraph 10.1) and the Board currently consists of an independent chairperson, five industry directors and five community directors. All directors are normally appointed for a period of three years, with the potential of a further three-year extension. The Board Chair is independent of both industry and community groups. Community Directors are appointed via open competition and interview. Industry Directors are elected by

members. However, in relation to the appointment of Industry Directors, EWON's Constitution is silent on the level of nominee within their host organisation and the skills required. This approach may not ensure that EWON obtains industry directors with skills which meet the needs of the Board. In addition, the current division of Industry Director posts no longer reflects EWON's membership and may reflect it even less in the future, dependent upon any change in jurisdiction. Industry members are elected by members and must reflect the range of companies in membership. At the present time there are three energy retail directors, one energy network sector directors and one water company director. There is no place for industry members reflecting embedded networks, for example. The Board has established a Nominations Committee to assist in the recruitment process.

When considering the composition of a board, the AICD (2016) argues that any board should have at least two totally independent members (two being the recommended minimum for small boards). The AICD (2016) provides guidance on the size of Boards, using Australian empirical norms. This guidance suggests that the current size of the Board of EWON is, at the high end of Australian norms, with it being strongly arguable that the Board should reduce in number.

The AICD (2016a) also stresses the importance of ensuring that a Board has the right mix of skills, knowledge and experience within its members. It states that the goal in 'selecting board members is to build a mix that can work as a well-rounded team of people each with an appropriate range of experience skills and attributes relevant to the purpose, needs and strategies of the organisation' (AICD 2016, p.3). Steffen et al's (2013) transnational Guide for Regulating Dispute Resolution suggest that close regulatory supervision of governance structures is required for CDR mechanisms, such as ombudsman schemes, because they are funded by industry leading to a perceived lack of independence. Table 4 below provides a comparison of the governance arrangements for EWON with comparator organisations.

The issue of board composition is relevant to the independence and, of at least equal importance, the perceived independence of consumer ombudsman, from its funders. The fact that EWON is funded by the industry will, in itself, raise doubts among outsiders about its independence. With 50% of the director posts being reserved for industry directors this perception is likely to be reinforced. This is the

historical model of industry-based CDR schemes and reflects their history, as a form of statutory based self-regulation. While arguably necessary to ensure the confidence and participation of members upon the establishment of the scheme after

Organisation	EWON	EWOV	EWOSA	UDL	TIO	AFCA	PTO
Turnover ³	\$11,500,000	\$12,000,000	A\$3,400,000	NZ\$3,900,000	S\$29,000,000		\$2,000,000
Number of directors	11	9	9	5	9	Up to 11	7
Make up of directors ⁴	Chairperson 5 IDs 5 CDs	Chairperson 4 IDs 4 CDs	Chairperson 4 IDs 4 CDs	Chairperson 1 ID 1 CD 2 Ind Ds Moving to 4 Ind Ds	Chairperson 3 CDs 3 IDs 2 Ind Ds	Chairperson 5 IDs 5 CDs	Chairperson 3 IDs 3 CDs
Appointment basis	Chair – appointed by Board IDs elected by members CDs appointed by Board. Potential CDs must demonstrate experience and knowledge in activities of EWON. Nominations Committee makes recommendations of both IDs and CDs	Chair: Appointed by members following proposal from Nominations Committee IDs: Appointed by members. CDs are appointed by the Essential Services Commission and must be from consumer advocacy groups	Chair – appointed by Board IDs elected by members CDs proposed by Essential Services Commission and confirmed by Board	Chair – appointed by the Board but subject to consultation with Minister. In future the Board will have 4 Ind Ds – all will be appointed by the Board.	Chair and Directors proposed by Nominations Committee. The constitution sets out the skills and experiences required to be considered by the nominations committee for all director posts. For CDs and IDs there will be an advert in a national newspaper	Chair – appointed by directors CDs appointed by Directors – must be able to demonstrate applicable consumer representative experience. IDs appointed by Directors.	Chair and CDs appointed by responsible Minister; IDs rotation among members.
Duration in post	3 years with possible further 3 years	Chair – 3-year term with possible further 3 years. Other directors unstated	Chair – 3 years with possible extension of further 3 years Board members – 3 years.	Chair – 4 years with possible further 4 years Directors 3 years with possible further 3 years	3 years	3-year term but possible to serve 3 terms.	Unstated in constitution
Date that its Constitution last reviewed.	2018	2018	2018	2018	2018	2018	2014
Method by which annual funding agreed	Board decision	Members approval at a General Meeting	Members approval at a General Meeting.	Board decision	Board decision	Board decision	Members approval at a General Meeting

Table 4: Comparison of director arrangements in consumer ombudsman

³ Turnover is used as a proxy for size of the organisation.

⁴ ID stands for Industry Directors, CD for Consumer Directors and Ind D for Independent Directors.

twenty years it is no longer appropriate. The scheme is clearly mature and apart from concerns about the length and cost of investigations is generally well regarded by members, community groups and other stakeholders.

There is a developing trend towards the incorporation of independent board members onto Boards, with Utilities Disputes in New Zealand and the Telecommunications Industry Ombudsman already having made this step. It is suggested that EWON adopt this approach and should reserve some places for the appointment of independent board members. This would aid the Chair discharge his functions. For example, the Chair currently has to Chair all Board Committees, including the Finance and Risk Committee, which is problematic in governance terms. The construction of a Board comprised of three industry directors, three community directors and two independent directors, together with an independent chair, would ensure that no-one group has a majority or dominant position.

10. It is recommended that EWON reduces the size of its Board to nine members.

11. It is recommended that EWON amends the structure of its Board to have a mix of Industry Directors, Community Directors and Independent Directors with no one group being in a majority position.

12. It is recommended that EWON appoints Industry Directors via open competition rather than through an election of members. The focus should be on appointing Industry Directors that are reflective of the membership, are of the appropriate seniority within their host organisation and have the necessary skills to be an effective Board member.

The Constitution of EWON makes mention of a Nominations Committee but makes no mention of other important Board committees such as an Audit Committee or Finance and Risk Committee. The Board should review its committee structures including the membership of such committees and include this in EWON's Constitution.

13. It is recommended that EWON reviews its Board Committee structure and amend its Constitution to reflect the outcome of this review.

Paragraph 16.2 sets out that the Ombudsman must attend every meeting of the Board unless the Board otherwise decides. Given the responsibilities of the Ombudsman detailed in Paragraph 16.1 of the Constitution, the review team are concerned at the wording of Paragraph 16.2. The review team is of the view that the Ombudsman attend every meeting of the Board unless there is a personal conflict which would undermine good governance.

14. It is recommended that EWON amends Paragraph 16.2 of its constitution to require the ombudsman to attend all board meetings unless there is a personal conflict which would undermine good governance.

Charter

Paragraph 2.1 of the Charter sets out EWON's responsibilities. Hodges (2018) suggests that there are five potential roles that can be delivered by industry-based ombudsman:

1. Consumer advice
2. Individual dispute resolution
3. Data analysis: analysing data on complaints received to identify issues and trends
4. Data publication: provides feedback to consumers, the industry, regulators and other stakeholders
5. Improving market behaviour: This can be achieved through individual complaint investigations, the publication of information or systemic activities.

The three responsibilities detailed in Paragraph 2.1 are important responsibilities for EWON to undertake but, as Hodges suggests, there are other important responsibilities that modern consumer ombudsman can and should deliver.

Currently, as written, Paragraph 2.1 does not clearly set out all of EWON's responsibilities which is unfortunate. Being clearer about the role and responsibilities of EWON will assist in EWON demonstrating its effectiveness.

In Paragraph 3.1, there appears to be an issue with terminology which could be confusing to uninformed readers. -For example, 3.1(a) refers 'these Terms of Reference' when it appears to be referring to the Charter itself. As non-EWON persons, the review team found that it was not always sure when the term 'EWON' was referring to the company EWON or to EWON, the Board of the company. It would be helpful for the Charter to be explicit about the difference between the terms and responsibilities of EWON the company, EWON the board, and the ombudsman.

As discussed under Benchmark Five: Efficiency, EWON commences a small number of investigations which are subsequently closed as being out of jurisdiction. To aid the staff of Paragraph 5.1 could be rewritten to clarify exactly what is and is not within the jurisdiction of EWON.

One interviewee made comment about the jurisdiction of EWON to consider complaints made by small businesses and suggested that this should be reviewed. As Paragraph 5.1(i) includes reference to small businesses it may be opportune to review the wording of this section as well.

Paragraph 7.3(b) makes clear that EWON is able to obtain 'expert advice'. In the experience of one member of the review team, the term 'expert advice' can be loaded thus creating unintended expectations particularly as this term certain meanings within the legal system. EWON may wish to consider the use instead of terms such as 'specialist advice' or 'independent advice'.

Paragraph 9.3 requires EWON (presumably meaning the ombudsman, see above) to provide reasons to a complainant should the ombudsman decide to close a case without completing an investigation. That is appropriate but the clause does not set out the bases why the ombudsman may close a case without further investigation although this is detailed in the Case Handling Manual. In the interests of transparency and fairness it would be helpful to include the potential bases why a complaint may be closed without further investigation.

Paragraph 10.1 sets out decision-making criteria when making binding decisions. However, it is suggested that these criteria apply to all casework decisions. Consideration should be given to removing the term 'binding decisions.

Paragraph 11.1 makes reference to EWON making a binding decision, when in fact it is the ombudsman who makes all casework related decisions, and has a particular responsibility for binding decisions. This, again, is an example of a lack of clarity in terminology discussed above.

Under Paragraph 11 on binding decisions no mention is made of publishing binding decisions. This is a requirement under the Treasury Benchmarks and it would be appropriate to include this requirement in Paragraph 11.

15. It is recommended that EWON conduct a review of its Charter, to include consideration of the issues made by the review team.

BENCHMARK THREE: FAIRNESS

Principle: The procedures and decision-making of the office are fair and seen to be fair.

Purpose: To ensure that the office performs its functions in a manner that is fair and seen to be fair.

EWON asked two additional questions for consideration by the review team in relation to this benchmark:

1. Does EWON observe the principles of procedural fairness in the handling of complaints??
2. Does EWON have quality assurance processes to ensure fair processes are used and fair and seen to be fair?

While substantive outcomes appear to be of greater importance in ombudsman contexts than in other disputing contexts (Creutzfeldt 2014, 2016) it remains the case that when decisions are not in the complainant's favour the negative feelings that these generate can be mitigated through high levels of interactional and procedural justice. There is an extensive literature on this area. Organisational and service recovery literature favour a three-construct model of justice theory which consists of distributive justice (is the outcome fair?), procedural justice (is the process fair?), and interactional justice (was the individual treated well?). In contrast, socio-legal theory favours a two-construct model which combines the procedural and interactional justice elements. For the purposes of this report, the review team are adopting the three-factor approach of distributive, procedural and interactional justice.

Rapid Response Team

Once a complaint is accepted for investigation by EWON it will initially be reviewed by the Rapid Response Team (RRT). The purpose of this stage is to see whether the

complaint is suitable for quick resolution or whether a more formal investigation is required. In the 2018 Annual Report EWON states that 5126 complaints were resolved by the RRT while 1315 complaints were closed after a more formal investigation. It should be noted that the RRT may take on additional complaints where it is anticipated that they may be suitable for quick resolution but later become formal investigations. Thus, 80% of complaints accepted for resolution were closed by the RRT in 2017/18. The average time for a complaint to be closed by the RRT is 41 days. Each investigating officer in the RRT will close around ten complaints each week.

Although the RRT will formally investigate a small number of complaints, for the vast majority of complaints considered by the RRT, investigating officers operate a form of shuttle negotiation with the investigation officer acting as 'honest broker'. In practice, the investigation officer obtains information from the complainant and from the member organisation. The investigating officer then considers if a quick resolution is possible and, if so, tries to broker that resolution. This involves conversations, both in person and by email, with both parties.

Cases closed at this stage have not undergone a full investigation. The review team were interested in whether cases closed by the RRT reflected decisions that were just or were just decisions. There were contradictory views from member interviewees – the greater majority of member interviewees felt that there was no pressure from EWON to resolve inappropriately, while a small minority stated that they did feel some pressure to resolve. Nonetheless member interviewees overall suggested that the decisions reached by the RRT were fair and reasonable. As one member interviewee made clear, member companies do not need to agree to a resolution at this stage and are able to ask for an investigation. A number of member interviewees made clear that they settled at this stage for 'commercial reasons', that is, to avoid the cost of a full investigation. Such practices are common in industry ombudsman schemes.

In a survey of complainants whose complaints had been closed by the RRT, conducted by First Point Consulting on behalf of EWON, the actions of investigating officers scored highly with complainants: the effort made by EWON staff to understand the complaint (81%), the knowledge and skills of EWON staff (78%), the

length of time for the complaint to be resolved (75%), and, the way that EWON staff handled the complaint (76%). 72% of respondents were satisfied with the outcome of their complaint, although only in 50% of cases was the outcome in the complainant's favour.

The review team is of the view that the approach adopted by the RRT is very effective at achieving quick resolutions to complaints, that are acceptable to both complainant and member.

16. It is recommended that EWON continue the use of the Rapid Response Team.

The Fairness of EWON's Investigations

If a complaint cannot be resolved by the Rapid Response Team, then it will undergo a more formal investigative process. The efficiency of this investigative process is considered under Benchmark Five. At this stage the review team is considering the fairness of the procedures used by EWON and the interactions between EWON and both complainants and members.

Procedural fairness includes:

- People need to know if a complaint has been made against them
- People have a need to understand what the case is against them
- Both parties need to be able to make their case and be given reasonable time to do so
- The decision should be made solely on the basis of the material available
- This decision needs to take account of the evidence and answers the complaint.

A review of EWON's Case Handling Manual and the sample of cases indicates that EWON's approach to case handling is rooted in procedural fairness both in policy and in practice. No concerns were raised by member interviewees about the

procedures used by EWON and whether or not they were fair. However, in the review of cases, the review team noted, that on occasions, the investigating officer would accept statements, without seeking confirmatory evidence. Investigations by EWON staff tend to be paper-driven desk exercises, which is the norm for industry-based ombudsman schemes, but with this approach there is always the risk that some assertions, from either party, are insufficiently challenged.

17. It is recommended that EWON review its case handling manual to ensure that staff have increased guidance on when it is appropriate to gather supporting evidence and how that evidence may be obtained.

A qualitative review of industry-based ombudsman schemes in the UK highlighted the importance consumers place on being able to participate effectively and being able to speak to someone (Gill et al. 2016; Williams et al. 2020 forthcoming). The basic precepts of interactional justice include

- I was treated in a polite manner;
- I was treated with respect;
- My opinion was seriously listened to;
- The staff with whom I interacted were competent; and,
- The staff with whom I dealt were professional (adapted from Van Den Bos, Van Der Velden, and Lind 2014).

Listening into calls between caseworker and complainant, and a review of the written material in the case files, indicates that caseworkers perform highly against these statements. This is particularly important as high levels of interactional justice are important in maintaining confidence in the service especially when the decision is not in the complainant's favour. Some members, however, reported that, while the interactions between investigating officers and their staff was very positive, they sometimes felt that EWON could do more to interact with them regarding delays in the complaint being progressed.

18. It is recommended that EWON review the process by which staff provide updates to parties involved in the complaint.

Fairness of EWON's Investigation Decisions

Distributive justice is concerned with two things. Firstly, was the correct decision reached? And, secondly, was the final remedy appropriate? Some consumer dispute resolution and industry-based ombudsman schemes decide cases on the basis of the law – examples are WATRS in the UK and ombudsman schemes in Germany, but most industry ombudsman schemes reach their decisions based upon what is fair and reasonable in the overall circumstances, taking the law into account. This move is supported by two logics: firstly, the law, regulations or legal contracts will often require the provider to treat their customers fairly and, secondly, in western society there is the increasing importance of fairness as a basic element of the social contract (Hodges 2018, pp.64-65).

One of the strengths of industry-based ombudsman schemes is that they can go 'beyond the law' and look at the issue in a more rounded fashion. For Wheeler (2004, p.12), the former Deputy New South Wales Ombudsman, one factor that drives public trust in agencies will be their perception of whether the agencies have acted fairly and reasonably. Wheeler (2014, p.12) further suggests the objective of the fair and reasonable test is aspirational, 'directing consideration towards approaches or outcomes that are perceived to be morally right and in accordance with accepted standards of conduct'. Thus, it is more than whether or not a body acted in technical accordance with the law, regulations or code of conduct. A body may act in accordance with the law but still be found by an ombudsman to not have acted fairly and reasonably (Allen and Overy 2017).

In the review of cases, the reviewer did not identify any systematic biased towards either party. Interviews with member interviewees revealed that, generally speaking, their view was that *decisions* reached by EWON were fair and reasonable. A review of cases by the review team, did, however, identify that on some occasions a fairly restricted approach to the fair and reasonable test was being utilised. This is despite very clear guidance from EWON on the appropriate use of the fair and reasonable

test. That is, in some cases the investigating officer was reaching a decision with too much weight being placed on whether the body complied with relevant statute, regulations or code of practice, and insufficient weight being placed on whether, overall, the outcome experienced by the complainant was fair and reasonable in all the circumstances.

19. It is recommended that EWON strengthen staff training on EWON's approach to the use of the fair and reasonable test.

While the majority of members felt that EWON was fair in its processes and decisions, a small number of members suggested that EWON might be slightly biased towards the complainant. Work by Jespersen (2018) noted that complainants tended to exhibit three biases. These were optimism bias (unreasonable expectation about the final outcome), over-confidence bias (unreasonable expectations about how third parties will view a complaint) and self-serving bias (looking more positively on evidence which supports their complaint and minimising contrary evidence). While Jespersen's research focused on complainants, the review team would suggest that, as these are quirks of human personality, they are likely to be equally applicable to both parties. In addition, on the assumption that the member attempts to resolve a complaint in good faith, then, given that by the time the investigation is considered by EWON, the member will have probably had three attempts to resolve the complaint. The member will, therefore, be confident that they have been fair towards the complainant, but seeing a different body taking a different view on the same matter is likely to cause some dissonance.

Quality Assurance

EWON has a systematic quality assurance programme comprising three elements. The first is a case review of cases which assesses the quality of investigations, the quality of information provided in response to enquiries, and the quality of service provided to customers and members, a data integrity audit, which assesses the

accuracy of data collected from complainants, and a process audit, which assesses conformance with EWON processes. The results of the quality assurance activities are provided on a team basis and team managers work with the members of their teams to look at how they might improve their practise.

The case management review undertaken by the quality assurance team considers performance in four broad areas: timeliness, communication, process and resolution and the tool for the investigations audit has over 100 standards to be assessed against a binary met/not met assessment. 780 cases per year are assessed under the case management review process which means that EWON can have 95% confidence that the actual result is within 3.5% of the resulting score. Using the standard parameters of 95% confidence that the result will lie within 5% of the score, a sample size of only 379 cases per year is required. The data integrity audit considers the 26 data fields concerning the complainant's complaint, for accuracy. 3,600 cases (20% of cases) are analysed which again provides 95% confidence that the actual result is within 1.5% of the score achieved. Process audits aim to evaluate the effectiveness of EWON's processes and are bespoke to the process being audited. These quality assurance activities are supported by customer satisfaction surveys which are considered below.

EWON has a comprehensive quality assurance processes in place. However, it is a paper analysis. There is no listening into communications between staff and either complainant or member. An attempt is made to assess the quality of written communication but as staff increasingly are encouraged to communicate orally the current approach is unable to assess the qualities of that oral communication. The five questions listed under procedural fairness have been tested in research and could act as a valuable tool for assessing the qualities of interactions between staff and complainant or member

Interviewees were unaware of the quality assurance activities undertaken by EWON. EWON does not publish the results on their website and, apart from a summary of the customer satisfaction survey, does not include the results in the Annual Report. This is unfortunate, as not only would it improve transparency, it would signal an openness about their quality assurance activities.

20. It is recommended that EWON add to their Quality Assurance processes a method to assess the quality of oral communications.

21. It is recommended that EWON consider publication of some or all of the outcomes of its quality assurance activities.

Customer satisfaction

As one would expect EWON conducts regular customer surveys to assess the satisfaction of customers with the services provided. The latest survey available to the review team was the 2019 customer satisfaction survey.

The starting point for this discussion is whether it is the role of a consumer ombudsman scheme to satisfy customers and the review team would suggest not. Consumer ombudsman schemes are a form of alternative dispute resolution, the alternative being court action. This indicates that the outcome that has to be delivered by ombudsman schemes are high levels of distributive, procedural and interactional justice and not customer satisfaction. This is especially important, as there is significant evidence (see, for example, Creutzfeldt 2016) that for most complainants by far the biggest driver of satisfaction is the outcome. Thus, if an ombudsman scheme wanted high levels of customer satisfaction all it would need do would be to favour complainants in its decisions.

The 2019 survey was conducted by an independent research organisation which found the results to be 'generally positive' while noting that there had been small but statistically significant declines in performance metrics compared to the survey in 2017. The review team is of the view that these statistical declines may be due to a methodological artefact. The methodology used by the research company was to conduct both a telephone and an online survey, aimed at securing a wide range of responses.

What is interesting is that the socio-demographic groups for the online sample and the telephone survey sample are markedly different. The telephone survey sample were more likely to be older (over 65), female, have lower income, lower educational status, be an Aboriginal or Torres Strait Islander and less likely to be in work than the

online survey sample group which was more likely to be younger, have higher income and educational status, and be in work. The research company noted that

The key difference to emerge in the 2019 survey is the significantly higher level of satisfaction with EWON across a range of measures amongst older customers [that is the telephone survey sample group] compared with other customers [that is the online survey sample].

If one tabulates the sample sizes one finds the following, Table 5:

Year	Telephone survey sample size	Online survey sample size	Total sample size	% online/total sample
2017	226	389	615	63.25
2019	145	365	510	71.5

Table 5: Comparison of customer satisfaction survey samples

One can see that in the 2019 survey the online survey sample was a larger proportion of the overall sample than in 2017. It is also a fact that this online survey sample group is more likely to have negative feelings compared with the telephone survey sample group. Thus, the apparent decrease in satisfaction scores could simply be due to the differing proportions of online and telephone samples. The report viewed by the review team does not make clear that the research organisation took account of the differences in samples and weighted them to allow for accurate comparison.

22. It is recommended that EWON contacts its research company and checks when making the comparison in results between 2017 and 2019, whether the company weighted the scores before making statistical comparisons.

This apart, the scores achieved by EWON in its 2019 customer survey are positive as stated by the research company. What is interesting, but perhaps not unexpectedly, is that EWON scored more highly for complaints subject to a quick investigation rather than a longer investigation. This supports the view that people want quick investigations and outcomes.

In the 2019 customer survey, EWON scored very highly with complainants for the ease of making a complaint, staff attitudes and behaviours, and for the explanation of the outcome but complainants were less happy at understanding EWON's remit and powers, and for not telling the complainant what action the complainant should take. This last point is reassuring as advising a complainant of what action to take would undermine EWON's independence and neutrality. Customer satisfaction with the length of time it took EWON to complete a complaint was modest.

BENCHMARK FOUR: ACCOUNTABILITY

Principle: The office publicly accounts for its operations by publishing its final determinations and information about complaints and reporting any systemic problems to its participating organisations, policy agencies and regulators.

Purpose: To ensure public confidence in the office and allow assessment and improvement of its performance and that of participating organisations.

EWON asked three additional questions for consideration by the review team in relation to this benchmark:

1. Does EWON have a process for accepting complaints about EWON (including complaints about case management, privacy, jurisdiction, and day to day operations of EWON)?
2. Does EWON fulfil the CDR Benchmarks for public reporting?
3. Does EWON have a process(es) in place to promote industry improvement?

The review team will fully consider the third question under Benchmark Six, Effectiveness but here will consider the relationship of EWON with members of the energy and water integrity network.

EWON has three core accountability relationships. The first is with the public and complainants, the second is to members, while the third is to other stakeholders in the energy and water integrity network, which includes IPART, the AER, the AEMC, NSW Fair Trading, and the responsible Government Department.

Accountability to the public.

EWON works hard to demonstrate its accountability towards the public. It undertakes significant community engagement and stakeholder activities as described under Benchmark One. Significant effort is made to work with representative community groups.

On its website it publishes a variety of information. EWON publicly issues a quarterly newsletter, to which individuals can subscribe, updating them on complaints and other topical issues. The newsletter published on the website can be translated into 25 languages using google translate. EWON also publishes a quarterly EWON insights document which provides a comprehensive overview of complaints received, current energy and water issues and its activities. Unfortunately, it appears that this Insights report is only available in English. It is worth noting that EWON produces this quarterly insight report in public, member and regulator versions, with each providing bespoke information and relevant analysis.

As expected, EWON publishes an Annual Report. This provides a large amount of detailed information to the public but there are two points worthy of comment. Firstly, while EWON does provide information on the timeliness of its complaint handling it is rather brief and does not provide a full picture of EWON's performance. In all other regards it meets the CDR Benchmarks for public reporting. The Board of EWON does receive more detailed performance information and consideration should be given to publishing additional performance information in the Annual Report. Secondly, as with the Insights report, it appears that the Annual Report is only available in English. Given that, according to the 2016 census, 26.5% of people in New South Wales speak a language other than English at home, it is suggested that the Annual Report (and other publications) should be available in other languages and formats.

23. It is recommended that EWON broaden the performance information provided in its Annual Report.

24. It is recommended that EWON reviews the languages and formats in which all its publications are available.

Notwithstanding these minor concerns the information published by EWON is comprehensive, detailed and informative. This demonstrates the commitment from EWON to transparency and accountability.

Internal Reviews and Complaints about EWON

EWON has a policy by which it can accept complaints about its decisions to finalise a complaint and in 2017/18 considered 17 such complaints, or as EWON refers to them 'internal reviews'. The review team looked at five internal reviews and found no cause for concern.

There is also a *Complaints about EWON* Policy that covers complaints about itself in the areas of case management, privacy, jurisdiction, and day to day operations of EWON. With regard to the policy it is not clear which team within EWON has responsibility for investigating such complaints. As most of the complaints are likely to arise from EWON's operations it would be good practice if the quality assurance team assumed responsibility for handling any resulting investigations. This does happen on occasion and such compartmentalizing would be of value. Where a complaint is made against the ombudsman personally, the policy states that the Chair of the Board will determine what action, if any, is appropriate.

25. It is recommended that EWON revise its 'Complaints about EWON' Policy to clarify which team would be responsible for investigations concerning the operations of the office.

Accountability to members.

The constitution, in particular, and the charter detail the nature of the accountability relationship between EWON and members. The key mechanism is the Annual General Meeting of members but EWON goes beyond that. It holds Consultative Council meetings, at which members, along with community representatives, regulators and other stakeholders are invited, where updates from EWON are provided and questions taken. Most members were very positive about the consultative council meetings although one or two members were uncomfortable at

the opportunity for community stakeholders to question them at the meeting. However, such questioning is part of a member's public accountability.

EWON undertakes other activities to work with members. These include induction training for the staff of member organisations, focusing on the role and functions of EWON, and effective complaint handling, EWON produces webinars which are welcomed by members, EWON staff visiting member organisations and the establishment of *ad hoc* groups on issues of particular concern to members. EWON also produces weekly, monthly and quarterly reports for members, with varying levels of company specific detail: the weekly reports are company specific while the quarterly reports are at a higher level of analysis. In order to improve functionality, and in a move that will be welcomed by members, EWON is planning to update its members portal, one of the results of which will be to allow members to manipulate and analyse its own complaints data.

EWON conducts membership surveys. The last survey was conducted in 2016 by an independent organisation and a new survey is planned for later in 2019. In 2016, the independent consultant concluded 'Stakeholder relationships appear to be an area of strength at EWON with activities such as the member forums, member inductions, and the regular reports available to members all rated very positively by members'. The conduct of casework by EWON was viewed less positively by members in the 2016 surveys.

For this review, the majority of members were positive about their overall relationship with EWON, although some members did offer positive suggestions as increasing the visits from EWON staff to members, the establishment of regular member forums, training the staff of member organisations on the effective management of complaints, and the manner by which it provides updates to member organisations of changes to policies or strategies. However, there was no consistent way by which members felt that the relationships could be improved.

Two criticisms were reported by a minority of member interviewees. The first related to the way that EWON communicates with members about individual complaints with some members suggesting that EWON could interact more effectively with members, for example, perhaps utilising 'account managers'. EWON does have regular contact with some members about cases, usually the members with the

highest number of complaints, and it may be worthwhile for EWON to consider extending this to a larger number of members. The second criticism related to water complaints. There was criticism that EWON focused too much on energy complaints and issues (perhaps unsurprisingly given the number of water members and complaints compared to the number of energy companies and complaints). However, there was some criticism that EWON was insufficiently aware of issues confronting the water industry and water complaints. It is worth stating that these criticisms do reflect a minority view and that there was no consensus on criticisms about EWON.

There was a third criticism from most members about the length of time EWON took to conclude cases and the associated costs. This is considered under Benchmark 5: Efficiency.

26. It is recommended that EWON considers extending its casework meetings with members where the volume of complaints from a member indicates that such an approach would be helpful to ensure efficient complaint handling.

27. It is recommended that EWON continues discussion with water members on issues affecting the water industry and water complaints.

[Accountability to members of the energy and water integrity network](#)

EWON is part of an integrity system which attempts to ensure that the energy and water markets operate effectively and facilitate the ongoing acceptance of market participants by its employees, stakeholders, and the general public. To do this it needs to work effectively with regulators such as the AER, the AEMC, IPART, Fair Trading and relevant government departments. To assist in this relationship EWON produces quarterly insight reports on issues and trends arising within its complaints and prepares policy submissions which are very well regarded and considered to be 'evidence based' by those who are in receipt of them. EWON arranges a quarterly meeting with recipients of its Quarterly Insights report for regulators and EWON's

contribution at these meetings is welcomed by other interviewees. These activities are part of the value added by EWON to its members, help contribute to the improvement of the system, and, yet, is probably not fully recognised. Such activities help in ensuring an effective market and helps contribute to members' social license to operate.

As part of the review, the review team interviewed individuals from key regulatory partners. All spoke positively of their relationship with EWON and the work that EWON undertook. There was clear support for EWON's position within the integrity system and many interviewees spoke positively of the quarterly insight reports produced by EWON and the contributions made by EWON when responding to consultations undertaken by regulators. The regulators found the reports informative and evidence-based and more than one interviewee stated that these reports made their work easier.

28. It is recommended that EWON continues working with members of the integrity network.

BENCHMARK FIVE: EFFICIENCY

Principle: The office operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.

Purpose: To give the community and participating organisations confidence in the office and to ensure that the office provides value for its funding.

EWON asked an additional question for consideration by the review team in relation to this benchmark:

1. Does EWON's structure and processes deliver timely, independent and fair outcomes for customers?

EWON was subject to some criticism from members in relation to the efficiency of its processes. These criticisms can be summarised as follows:

1. Investigations take too long to complete.
2. EWON's casework is too expensive.
3. The costing of cases is opaque to members.

The complaint handling process used by EWON which is illustrated in Figure 2. A case is initially received by the Initial Response Team (IRT). Complainants who bring complaints which have not previously considered by the member are referred back to the member. If the complaint has been considered by the member and it has not been resolved then it will be considered by EWON. The IRT will consider whether the person is a suitable complainant and if not whether the person making the complaint has authority to act, whether the complaint is within time, whether it is in jurisdiction, and the outcome sought. This triage takes place and the review team's audit of cases confirmed it. Yet there are a number of issues.

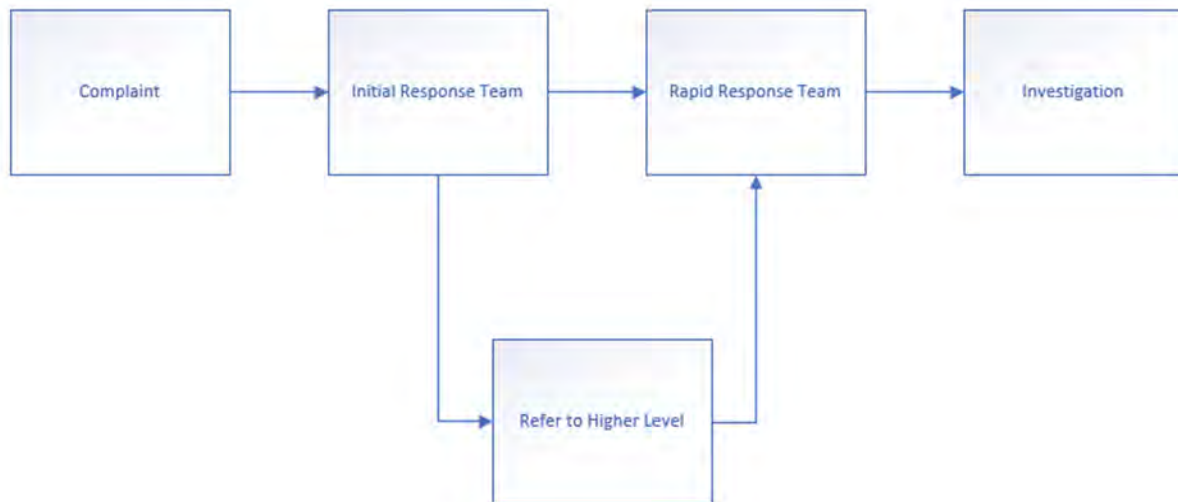


Figure 2: Overview of EWON’s complaint handling process

There is nothing within EWON’s Charter which states how long the member has to resolve the complaint. Many industry-based ombudsman schemes in the UK will give an organisation a forty working day time limit to complete the complaint, although this has come into criticism for being too long. UDL uses a twenty working days time limit, although this can be extended by a further twenty working days with the agreement of both parties. If the complaint is not resolved within this time it is viewed as having reached ‘deadlock’ and the ombudsman is able to accept it for consideration. As the timeliness of complaints system is of importance to all, having a time limit makes sense. Such a time limit will also ensure that complainants have reasonable expectations about how long the resolution of a complaint can take.

29. It is recommended that EWON introduces a time limit for member organisations to resolve complaints using their internal dispute resolution systems, after which EWON can accept the complaint for consideration.

There is the matter of whether or not the complaint is within the jurisdiction of EWON. Some interviewees were unhappy that a complaint had been accepted for

investigation only for it to be deemed out of jurisdiction after some degree of investigative activity had been undertaken by EWON, the cost of which the member was liable. EWON closed 0.4% of formal investigations as being out of jurisdiction and it appears that differences of view about jurisdiction are not uncommon in this sector. For example, according to the 2018 Annual report of EWOV, 2% of investigations commenced by EWOV are subsequently closed as being out of jurisdiction. That jurisdictional disputes arise so far into an investigation is clearly unsatisfactory for which both parties must share some responsibility. EWON, clearly has a responsibility to only consider complaints within its jurisdiction but, equally, members have a duty to raise jurisdictional disputes at the earliest time.

30. It is recommended that EWON consider delivering further training to casework staff on how to determine whether the issue is in or out of jurisdiction. Members should be encouraged to report potential disputes over jurisdiction when an investigation is begun.

[Refer to Higher Level \(refer backs\)](#)

Statistically, once the Initial Response Team, has considered the complaint, EWON is likely to refer the complaint back to the member under the Refer to Higher Level process. In the 2017/2018 Annual Report it is reported that EWON closed 11,136 complaints as refer to higher level (costing members A\$2.6 million). In practice, it is likely that a minimum of a further 2,500 complaints were referred back to members. This is the estimated number of complaints accepted for investigation by EWON but which are failed refer to higher levels. (There will also be failed refer to higher level complaints where the complainant decides not to pursue the complaint.) Assuming just 2,500 additional refer to higher levels, suggests an additional annual cost of around A\$600,000, leading to a minimum total of A\$3.2 million cost to companies for the refer back process.

When referring a complaint back to a member, the caseworker will often inform the complainant that they are referring the complaint to a senior contact within the

company. Unfortunately, this can be misleading as it is likely that, instead of being referred to a senior member of the organisation, it is instead being referred to a specialist dispute resolution team, while in some cases it is actually being referred back to the team that originally failed to resolve the complaint. It is important for EWON to be clear with complainants to whom they intend to refer the complaint.

31. It is recommended that should EWON refer a complaint back to a member, the caseworker accurately describes to whom they plan to refer a complaint.

This, of course, is predicated that it is appropriate to refer complaints back to members in the first place. If a member has an effective complaint system then the complaint is likely to have been considered by the member twice – an initial assessment followed by internal escalation. Referring a complaint back to a member provides the member with a third opportunity to resolve the complaint. Some interviewees suggested to the review team that all complaints should initially be referred back to the member before EWON could accept a complaint for investigation. Many member interviewees, not only in this review but in other reviews in which the reviewers have participated, were open that in many refer backs they offered a settlement to the complainant to prevent the case being returned to the EDR scheme and thus incurring the cost of any future investigation.

There are arguments supporting a refer back stage which have been best articulated by the Telecommunications Industry Ombudsman (TIO) in its response to the Consumers Safeguard Review. TIO highlighted the fact that a large number of industry-based consumer ombudsman schemes close high levels of complaints following refer backs, ranging from 43% to 94% of cases in the examples cited in its paper. TIO suggest that a high-resolution rate for refer backs is seen as indication of the effectiveness of EDR scheme and the skill of the EDR scheme's staff.

When considering refer backs one must not consider them in isolation. Instead, they need to be considered by comparing them to their alternative, which, for EWON would be, most likely, action by the RRT.

The review team is not supportive of refer backs for the following reasons:

1. Allowing an organisation a third opportunity to resolve a complaint may only increase the ineffectiveness of the IDR process. Removing the refer back step in the complaints process and replacing it with the case being sent straight to case management would encourage members to invest in, and provide appropriate authorities to, their dispute resolution teams.
2. The outcome secured by the complainant may be neither fair nor appropriate. In a survey of people whose complaints had been referred back nearly one in four people who obtained a resolution felt that they were obligated to accept the resolution rather than being satisfied with it.
3. The refer back process is not particularly effective. For EWON 40% of all investigations in 2017/18 were failed refer backs. Only 40% of people believed that the customer service that they received following the refer back was either good or very good.
4. In a survey conducted by EWON of its refer back process, one in ten respondents indicated that EWON had not informed them that they could return to EWON if dissatisfied with the outcome of their complaint. Of people whose cases had been referred back to the member, of those dissatisfied with the outcome, nearly two in three people did not return to EWON because they believed that it would not change the outcome. They walked away dissatisfied.
5. If a case has been referred back to the member, there is reduced opportunity for EWON to gather detailed information which helps identify systemic issues.
6. The use of refer backs creates an unnecessary step in the complaints process reducing accessibility. An effective complaints system has an effective in-house complaints system followed by a quick, external independent review leading to a final outcome (SPSO 2011, p.11). The system of using refer backs is likely to increase consumer fatigue. Referral fatigue where the user is passed from one person to another can operate as a barrier to effective participation in ADR and participation is viewed as tokenistic (Williams et al, forthcoming 2020)
7. If EWON were to refer back a vulnerable complainant, this vulnerable complainant will not be supported further while the case is being considered

by the member. Vulnerable consumers may need the additional support that an ADR body is able to provide.

8. It could be suggested that stopping refer backs would result in EWON being overwhelmed with complaints to investigate but the review team are unconvinced by this argument. One would expect members to increase their investment in dispute resolution reducing the number of complaints received by EWON. If this assumption is correct, and it seems reasonable to assume so, then it is unlikely to result in EWON being overwhelmed by large complaint volumes.⁵ EWON may want to conduct a formal cost-benefit analysis of the consequences of such a decision.

The Australian/New Zealand Standard 'Guidelines for complaint management in organizations' (Standards Australia 2014) suggests that a best practice complaint system should have three levels. The first two levels are within the initial organisation, comprising frontline assessment and internal escalation, followed by external assessment or review.

In summary, the review team is not supportive of the refer back step in the complaints process. Members have had two opportunities to resolve the complaint prior to it arriving at EWON. Refer backs encourage poor IDR processes and create additional barriers to resolving a complaint, leading to increased complainant fatigue. It may cost more for members to resolve complaints through its improved IDR processes and, dependent upon how effective these revised complaint processes are, for complaints ultimately considered by EWON. But that is in the hands of the member.

In addition, the refer back process could lead to negative views of EWON, reducing trust in it and its overall legitimacy. The Public Transport Ombudsman Victoria (PTO) surveyed customer satisfaction with the PTO following refer backs and investigations

⁵ If it were assumed that the removal of the Refer to Higher Level stage resulted in 50% of the current refer backs being received by EWON, then the extra net cost to members would be in the region of A\$300,000. This is calculated through multiplying the current estimate of the number of refer backs by the cost of a refer back, and subtracting the cost of 6,000 investigations by the rapid response Team. It is further estimated that, using current rapid response team caseload figures and case output figures, this additional caseload could be managed within EWON by a team of fourteen persons, many of whom would be already employed by EWON.

and these surveys demonstrate a sharp drop in satisfaction levels when one compares satisfaction levels of refer backs compared to those of investigations. This finding is in keeping with research findings from Citizens Advice (2016) in the UK which found that satisfaction with the overall complaints process fell in accordance with the number of times that a complaint is referred – if a complaint was resolved at the initial stage then 90% of consumers were satisfied with the outcome, compared to no person being extremely satisfied with the outcome if the complainant had been referred twice.

32. It is recommended that EWON conduct a formal cost-benefit analysis of the potential to remove the Refer to Higher Level stage in its casework process.

33. It is recommended that EWON review the appropriateness of the Refer to Higher Level step in its complaint process. Should it be decided to retain the Refer to Higher Level step then EWON should review the criteria by which it decides whether or not to treat a complaint as a Refer to Higher Level or as an investigation. Should a complaint be treated as a Refer to Higher Level, there should be more active follow up by EWON with the complainant of action taken by the operator.

Investigation

Once a complaint is accepted for investigation by EWON it is subject to investigation in accordance with EWON's policies. There was a general concern raised by member interviewees concerning the length of time that investigations took to complete, the cost of investigations, and the transparency over costing. One member interviewee correctly stated that 'every day a case is open is another day of anxiety for the complainant'. In this section the investigation process is considered, followed by an assessment of the timeliness of EWON's investigation process. The first stage of the investigative process is for the complaint to be normally considered by the RRT. This has been discussed earlier and will not be commented further here.

If the complaint cannot be resolved by the RRT it is passed to one of two investigative teams which will conduct a more formal investigation of the issues. The first principle for case handling is that it is phone-based – this will allow the investigating officer to clarify with both complainant and provider the issues in dispute, obtain further information quickly and explore options for resolution. Given the importance in complaints to secure high levels of interactional fairness and managing expectations, a phone-based approach to case management is to be commended.

Although the heads of complaint are recorded by the investigating officer, it is not usual for an investigating officer to produce an investigation plan to guide the investigation. The production of investigation plans would be helpful, particularly in complex cases. An investigation plan would set out what evidence is required from whom and where for each of the heads of complaint. It will allow for potential interlinkages between issues and evidence to be identified and will act as a road-map to manage the investigation (Jones 2009). An investigation plan will also assist in assuring the quality of investigations.

34. It is recommended that EWON consider using investigation plans, as a minimum in complex cases.

In some cases, but by no means all, the investigating officer will produce a case assessment outlining the issues, the standards, the evidence and their initial conclusions. This is good practice and should be commended. It was not clear from the manual or review of records in what circumstances an investigating officer should undertake a case assessment.

35. It is recommended that EWON should consider introducing formal and early case assessment, as a minimum in complex cases.

During the review of cases, the reviewer noted that, on some occasions, the investigating officer would attempt to negotiate a settlement once they had conducted their investigation. It would be appropriate to share a case assessment together with the investigating officer's determination of a fair and reasonable outcome and to talk that through with both parties, but there should not really be any significant negotiation. The review team understand that this is EWON's intended approach to investigations.

36. It is recommended that EWON review its case handling manual to ensure that there is greater clarity on the closure procedures for investigated cases.

Mention was made above of the concerns raised by members about the length of time taken to allocate cases, to close cases, and on the transparency of the costs of individual cases. It is true that last year EWON had a significant backlog of cases, leading to delays in allocation. This was due in part to the increase in complaints received that year, which had followed a steady decline in the number of complaints received over the previous three years. It is not uncommon for CDR schemes to have to manage fluctuating complaints volumes and this can cause schemes problems. Despite not being actively worked on, complainants and/or members will have contacted EWON asking for information about the case's progress in the queue. Due to EWON's costing mechanism, these information requests would incur a cost to the member. EWON has worked to reduce its backlog in case allocation and, as of 18 October 2019, it stands at 28 days (one month). It is noticeable that this is not in keeping with member interviewees' perception, which is of longer delays in allocation. The review team is of the view that in the interests of operational efficiency, there needs to be a short delay between receipt and allocation of the case.

Concern was also raised about the overall length of time taken to investigate a case. Table 6 provides data on the length of time taken to close investigation cases.

Investigation	0-45 days	46-90 days	91-180 days	181-365 days	>365 days
Actual	70%	82%	91%	99%	1%
Target	>65%	>85%	>96%	<100%	0%

Table 6: Closure times for investigations

These times are from receipt of the case and not from allocation. The delays in allocations will have negatively impacted upon performance. Notwithstanding this, it is noticeable that the energy and water schemes in both Victoria and South Australia appear to close cases more timeously. This indicates that EWON must continue its efforts to reduce the length of times that cases are closed.

37. It is recommended that EWON continue its focus on the timeliness of allocation and on reducing the length of time taken to close cases.

The cost of each case is costed on actual time taken and it is clear that for many members the costing of cases is an issue. During the review of cases undertaken by the review team, it was not always apparent why some cases seemed to take as long as they did. This statement needs to be received with caution – the reviewer was undertaking a desk-based review of cases and it is often difficult to assess timeliness utilising such an approach.

38. To help understand whether there is an issue or not and, if so, the scale of the issue, it is recommended that as part of its quality assurance programme, the Quality Assurance team audit the timeliness and accuracy of times involved in casework.

It is hard not to have sympathy with members on the costing of cases. This is in part due to the method utilised to fund the scheme. EWON uses a 15:85 split between fixed and variable fees, variable fees representing the cost of actual casework. However, this split does not appropriately reflect the activities undertaken by EWON.

As well as casework, EWON conducts good practice community engagement of a standard not achieved by other consumer ombudsman schemes, and, EWON is active in energy and water policy areas, working with regulators and providing highly regarded evidence to help ensure that the market works effectively. But the costs attributed to casework are applied to these other core, non-casework activities of EWON.

The other issue about costing is that EWON calculates a cost per individual case based on the amount of time spent on that case. One can see the attractions – charges are attributed to actual costs. That is an appropriate and fair approach. However, one does need to ask, does it need to be calculated in such detail? Other schemes, such as Utilities Disputes adopt a broadly similar approach and do calculate the time spent on each case. It then allocates the cases into different broad categories dependent upon length of time spent. Thus, the focus is not on the specific number of minutes spent.

39. It is recommended that EWON review its funding model to better reflect the activities that it undertakes.

Several members stated that EWON was expensive compared to other ombudsman. It is always hard to compare costs because it is not just the cost of casework that needs to be considered but other more intangible elements, such as community engagement and policy input. Even with casework, as each ombudsman scheme conducts it differently, this makes strict comparison difficult. Table 7 below provides data on key comparators.

	EWON 2018	EWOV 2018	EWOSA 2018	EWOQ 2018
Population (Million)	7.5	6.4	1.7	5
Cost (A\$ Mill)	11.6	8.7	3.2	5.7
Cost per head of population	1.55	1.36	1.9	1.14
Activity	%	%	%	%
General Enquiry	0.06	0.5	28	22
CE	33	14	17	36
RHL	43	66	41	24
Ix	24	16	14	17
Total	26189	34524	9309	10211
Cost per case A\$	443	252	344	558

Table 7: Key comparators NSW, Victoria, SA and Queensland Energy and Water Ombudsman

If one were to consider a crude cost per case measure then EWON looks costly compared to both EWOV and EWOSA. But that is due, in the case of EWOV to the high proportion of refer backs, and for EWOSA the high proportion of enquiries. The second possible comparator is the cost per head of population. Here EWON is cheaper than EWOSA but more expensive than EWOV. That is unfair on EWOSA because of its low denominator, and in the case of EWOV takes insufficient account of the fact that EWON undertakes much more and more costly community engagement and outreach. On this evidence, there is little to support that one scheme offers better value for money than another scheme. It would take more detailed analysis of all the schemes to be able to make an informed view. However, the information needed to make that analysis is not publicly available.

BENCHMARK SIX: EFFECTIVENESS

Principle: The office is effective by having an appropriate and comprehensive jurisdiction and periodic independent reviews of its performance.

Purpose: To promote community confidence in the office and ensure that the office fulfils its role.

EWON asked two additional questions for consideration by the review team in relation to this benchmark. In addition, the review team fully consider the third question identified by EWON under Benchmark Four: Accountability:

1. Does EWON's Charter provide sufficient jurisdictional coverage to enable EWON to handle complaints about current and emerging issues in the energy and water sectors?
2. Does EWON have sufficient powers and mechanisms in place to ensure member compliance with policies and procedures?
3. Does EWON have a process(es) in place to promote industry improvement?

An effective industry-based ombudsman scheme will contribute to the improvement of the industry over which it has jurisdiction, has appropriate jurisdictional coverage to ensure that it is able to consider the vast majority of complaints arising from within that industry and is able to secure compliance from members with its rules and decisions.

Contribution to system improvement

There are four approaches to systemic activity that can be undertaken by an ombudsman:

1. Publication of data: the analysis and publication of data, highlighting trends or specific areas of complaint can be helpful to operators improve services and discussed above.
2. Publication of themed reports – here the ombudsman identifies a recurring subject of complaint, which may be across operators, and produces a report which has this subject as its theme. The subsequent report provides case examples as way of illustration of the issues involved. It is likely that themed

reports will attract media interest and coverage, thus increasing public awareness of EWON.

3. Conducting systemic investigations in line with the current approach adopted by both EWON and other consumer ombudsman.
4. EWON conducts the systemic investigation in its entirety. Rather than pass the complaint back to operators, EWON conducts the investigation and works with operators on solutions to its findings. This may be appropriate for those issues that affect more than operator.

EWON currently undertakes data analysis and many member interviewees stated that they found this of value although some would like to see a greater production of data. EWON, shortly, will enable members to have access to base data with functionality which will permit them to manipulate it.

EWON publishes data to provide feedback to consumers, the industry, regulators and other stakeholders. It does so in various formats dependent upon the recipient. Of particular comment, is the quarterly insights report which provides large amount of data and comment and is produced in three versions: one for the public, a more bespoke one for members and a third for regulators. This data is well regarded and, in particular, regulators, stated that they found it a very helpful contribution to their work.

EWON is required by both The National Energy Retail law and its own Charter and Constitution to identify and resolve systemic issues. In meeting these obligations EWON undertakes a range of systemic investigative activity which is aimed at improving the services provided by members. It uses a multifactorial approach in identifying potential systemic issues – complaints, feedback from stakeholders, feedback from members and industry or regulatory changes. EWON will then either monitor potential systemic activities (if it is believed that further evidence is needed) or investigate the issue. If investigated EWON will refer the issue to senior management within the member organisation and the member organisation will be expected to undertake remedial action and report back to EWON. EWON will monitor the issue until it is satisfied that acceptable remedial action has taken place. EWON provides examples of systemic investigations in its Annual Report. The public quarterly Insights report provides examples of interesting cases which may be of wider resonance to the industry from which they can learn. EWON will use systemic investigations as part of its contribution to regulatory and policy debates. In its 2018

Annual Report EWON reported that it has closed 19 systemic investigations while eight systemic investigations were still in progress.

On occasions EWON will identify a potential systemic investigation and the member may not fully co-operate. In such circumstances, EWON's only recourse is to not close the case until appropriate action is taken, thus pushing up the cost of the case to the member.

40. It is recommended that EWON amends its Charter to provide it with sufficient powers to enable it to enforce members to co-operate with systemic investigations.

There are numerous examples of themed reports from ombudsman schemes in Australia and the UK. By themed report, it is meant that should EWON identify an area of particular concern, as happened with smart meters or embedded networks, it should publish data and case studies which exemplify the issue, along with its analysis. Adopting this broader approach to systemic activity will create real added value to the complaints system. It will lead to increased improvements in the energy and water markets resulting in greater confidence in the industries concerned as well as EWON. The publication of themed reports or the outputs of other systemic activities and promotion in the media could increase awareness of EWON and promote trust that complaints can lead to system improvement, thus enhancing trust in EWON.

41. It is recommended that EWON revises its approaches to systemic activities to adopt a broader range of approaches, ideally all four detailed in the body of the report, and include the publication of complaints data, the publication of themed reports, the conducting of systemic investigations by members as at present, and the conducting of systemic investigations by EWON, and EWON should work with operators on the development of these approaches.

42. It is recommended that EWON publishes more of the outputs of its systemic activities, including themed reports and promotes them in the media.

Jurisdiction

EWON has jurisdiction over all energy companies operating in the traditional energy market, some water companies (the two Government owned water companies, one volunteer local government water supplier and those companies covered by WICA). There are a number of areas that need considering however.

In making these considerations the review team will base its considerations on the following: Dunleavy et al (2010) discuss how complainants see their complaint as a single whole yet may find themselves faced with a fragmented or partial complaints system. In an effective complaint system, there should only be one second-tier dispute resolution body per sector.

For some NSW residents, bottled gas is their main supply of energy. However, the review team were informed that users of bottled gas as a principle source of energy are often some of the most vulnerable people in NSW, yet they do not have the protection of an energy ombudsman but must rely on the less satisfactory general consumer protection law. This is matter of concern to the review team. Not only are some people denied access to an ombudsman scheme, they may well be some of the most vulnerable citizens. The review team noted that EWON has jurisdiction over LPG companies but also notes that this is backed by a voluntary but enforceable industry code.

43. It is recommended that EWON discuss with appropriate regulators and Government departments about extending its jurisdiction to LPG retailers.

Mention has been made earlier concerning the changing nature of energy supply. As a recap the following changes in the energy environment have been identified:

- The growth of bundled services
- Self-generation and consumer energy trading

- Increased collective action such as microgrids
- The increased use of intermediaries
- The advent of smart technologies (University of Sydney 2019)

with the Chair of the AEMC, John Pierce (2019), stating,

“We have recommended jurisdictional action to improve consumer protection for some years and this job is fast becoming absolutely essential,” ...

“Solar, being led by widespread roll-out of household PVs, is experiencing strong market penetration and the steadily falling costs of batteries will reinforce this trend.

“Consumers are also more actively engaging with the market, and selling the surplus energy they are generating themselves to the grid.

“These market shifts are happening so rapidly that consumer protections that fully take into account all the issues associated with this new technology are yet to be devised or available”.

The changes in the energy market were well recognised by interviewees although there was differing views on the solution. There was acceptance that the market was changing – the increased use of solar panels, the development of storage batteries and micro-grids all were likely to change the way many people obtained energy in the future with many energy companies were moving into, or looking to move into these areas and there existed a clear interface between the old and new technologies. This meant that the issue came back to the chain of supply. There was a feeling that regulators needed to catch up with these changes.

Energy and water are seen as essential services but are solar panels and batteries also essential services? There is a need to decide what is energy and who should be responsible for it. Even if they are not essential services, does the current consumer protection system provide sufficient consumer safeguards, including access to a quick, cheap dispute resolution service? NSW Fair Trading was not seen to be such a body given its overall role, comparative lack of expertise in this area, and some concerns from industry members about the time and process it utilises. There was agreement for clarity about where the boundary should lie and a general feeling that these new technologies needed some regulation and oversight. There was also a suggestion that ombudsman should work with industry and regulators to understand these future developments and how they should be regulated and overseen.

Although complex, it is possible to reduce this to a few points that may assist in attempting to understand where the appropriate boundary should lie.

- The energy market is rapidly changing and current energy retailers are heavily involved in these developments as well as new entrants.
- It will be very difficult to separate out new technologies from traditional energy supplies as they become increasingly integrated.
- There is general, although not complete, agreement that these new technologies should be regulated.
- Again, there was general, although not complete, agreement that the current consumer protection arrangements were insufficient at present to provide suitable safeguards to customers.
- Ombudsman will need to work closely with regulators and the industry to understand future developments and their impact on consumers, including the approach to consumer protection.
- Should EWON be identified as the appropriate second-tier body for complaints, which some interviewees suggested, there will be implications to it on its service and funding model.

As a provisional view, unless events indicate otherwise, in keeping with the view that there should be a single ombudsman for each industry, it would suggest that EWON is best placed to assume jurisdiction over these new technologies and companies.

44. It is recommended that EWON should work with regulators, colleague ombudsman bodies and industry to understand the future changes in energy technologies with an understanding that EWON is currently best placed to assume jurisdiction for all energy related complaints.

45. It is recommended that EWON consider the impact that any such change would have on its service and funding model and contribute this assessment to the above work.

With regard water complaints only a small number of water providers are required to be members of EWON. The majority of NSW residents receive their water and sewerage services from local government water organisations. With the exception of Shoalhaven Water, which has elected to be under the jurisdiction of both EWON and the NSW Ombudsman, all other council water providers are under the jurisdiction of the NSW Ombudsman. In 2018, the NSW Ombudsman reported 1130 formal complaints about local government but this figure is not broken down to identify how many of these related to water and sewerage complaints but it is suggested that it is likely to be only a minority. By way of contrast in 2017/18 EWON received 828 water complaints. The 2018 NSW Ombudsman Annual Report provides little information

about water and sewerage complaints as does a search of the NSW Ombudsman website. The concern that arises is that the majority of NSW residents do not have meaningful access to an ombudsman for complaints about water and sewerage. The review team have been informed that people have approached EWON about water complaints relating to local government providers. They are disappointed that EWON is not able to help them. It is suggested that this situation is confusing to the public and is an unnecessary hurdle for complainants.

The review team recognise that it would be challenging to transfer responsibility for water complaints from the NSW Ombudsman to EWON. This is due partly to the move of public services from the jurisdiction of a public sector ombudsman to a private sector ombudsman and the costs involved: currently the NSW Ombudsman is funded through taxation while EWON is funded by the industry. A transfer of jurisdiction would probably increase costs to local government water providers.

46. It is recommended that EWON discuss with regulators, the NSW Ombudsman, Local Government NSW and the responsible government department the potential for EWON to assume jurisdiction for all water complaints.

[EWON's ability to ensure compliance with policies and procedures.](#)

The review team was asked to consider whether EWON has sufficient powers and mechanisms in place to ensure member compliance with policies and procedures. There is inevitably a tension between bodies in jurisdiction and their overseeing ombudsman. It is a feature of ombudsman schemes that they tend to work co-operatively with their members and there is research which indicates that this is a more successful approach than a coercive approach (Hertogh 2001). It is therefore with great caution that EWON should adopt more coercive measures to ensure compliance.

EWON's authority flows from its Constitution and Charter. In the Constitution at Paragraph 5.1(a), it states, 'Each member must at all times comply with the Constitution, the Charter, and the Membership Agreement entered into by the Member and EWON'.

Paragraphs 5.1(b) and 5.1(c) of the Charter describe the obligations on Members to provide and publicise a complaints policy, including making reference to the role of EWON, and yet, as was discussed earlier, not all bodies are in full compliance with this obligation. There is no sanction available to EWON except expulsion which, in the view of the review team, would be disproportionate and unfair. The review team is of the view that, generally, there is no real issue that needs to be addressed but would bring to EWON's attention the following points.

Within the Charter, at Paragraph 13.1, there are details of EWON's requirement to report to the Senior Management of members, issues which EWON has identified as systemic issues. Also, within the Charter, at Paragraph 13.2(c) there is a clause which states that EWON can report to the Senior Management of a member, cases where in the opinion of EWON, the member has impeded an investigation, or has failed to comply with a reasonable request from EWON. In both these cases, the implicit assumption is that upon receiving such a report Senior Management will ensure that appropriate action is taken.

In the examples above, the issue arises whether it is for EWON to have powers to ensure compliance or whether, as in the UK, it is a role for regulators.

While a member is required to comply with the Constitution, Charter and Membership Agreement, it is not clear whether members are required to comply with policies approved by the Board of EWON or at a General Meeting.

As stated, there is a careful balance to be struck. For EWON to be an effective organisation, members need to comply with appropriately approved policies and procedures, yet it also needs to retain the confidence from members that any additional power will not be open to misuse. However, it is also in the public's interest that members co-operate with the work of EWON.

47. It is recommended that EWON, discuss with members, community organisations and other stakeholders, including relevant regulators, its ability to ensure compliance with its policies and procedures.

APPENDIX ONE: SHORT BIOGRAPHIES OF THE REVIEW TEAM

Dr Gavin McBurnie

Dr Gavin McBurnie worked at the Parliamentary and Health Service Ombudsman (PHSO) where, over seven years he led on a number of senior director level roles. Gavin was the lead consultant on the five-year review of Utilities Disputes Limited and the Public Transport Ombudsman Victoria, and a member of the team that conducted the review of the post-company complaints system for water and sewerage companies in England and Wales. He acted an independent external adviser to the Welsh Assembly as it considered proposals to develop the role of the Public Services Ombudsman for Wales. Gavin originally trained as a doctor at Glasgow Medical School before returning to Edinburgh University to study for an MBA. Following this he entered health service management where he held a number of director roles within the NHS in both Scotland and England. Gavin has also studied for an LLM at de Montfort University in Health Care Law and is currently studying for a PhD at Queen Margaret University on the methods used by health ombudsmen in their 'system improvement' role.

Jane Williams

Jane Williams is a Senior Lecturer in Dispute Resolution at Queen Margaret University in the Consumer Dispute Resolution Centre. Her current research focuses on consumer experiences of complaint handling in the context of consumer ADR, vulnerable consumers, the impact of being complained about and fairness in complaint handling. Jane was the lead researcher on the Office of Road and Rail report on first-tier complaint handling in regulated sectors. Jane also led the qualitative research and analysis for the Citizens Advice (2017) report on alternative dispute resolution. She is a member of the Chartered Trading Standards Institute and works with them as an examiner and moderator. She has extensive experience of running short courses for regulators, ombudsman organisations and complaint handlers working in both the public and private sector. Until recently Jane was a consumer representative on the Scottish Civil Justice Council and a member of their Access to Justice Committee.

APPENDIX TWO - List of organisations with whom a member of the review team conducted an interview.

Members

AGL

Amaysim

Ausgrid

CovaU

Endeavour

Energy Australia

Essential Energy

Flow Systems

Hunter Water

Jemena

Living Utilities

Momentum

Origin Energy

Red Energy

Shoalhaven

Sydney Water

Note: all members were provided the opportunity to make a submission to the review or seek an interview with the researchers.

Regulators and other key partners

AEMC

AER

Department of Planning, Industry and Environment (two interviews)

IPART

NSW Fair Trading

Community Groups

Coastal Communities

Public Interest Advisory Centre (PIAC)

SydWest Multicultural Services

Tenants Support and Education Project

EWON

Chair

Industry Directors * 2

Community Directors *2

EWON staff *11 members of staff: three senior managers, six managers and two non-managerial staff members.

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