

FIVE-YEAR REVIEW OF THE  
ENERGY AND WATER  
OMBUDSMAN NEW SOUTH  
WALES -2024



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## List of Abbreviations

ACCA	Association of Chartered Certified Accountants
ACCC	Australian Competition and Consumer Commission
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	Australian and New Zealand Energy and Water Ombudsman Network
CaLD	Culturally and Linguistically Diverse
CDR	Customer Dispute Resolution
CER	Consumer Energy Resources
DCCEEW	Department of Climate Change, Energy, the Environment and Water
EAPA	Energy Accounts Payment Assistance
EWO	Energy and Water Ombudsman
EWON	Energy and Water Ombudsman New South Wales
EWOQ	Energy and Water Ombudsman Queensland
EWOSA	Energy and Water Ombudsman South Australia
EWOV	Energy and Water Ombudsman Victoria
IO	Investigation Officer
IPART	Independent Pricing and Regulatory Tribunal
LGSCO	(English) Local Government and Social Care Ombudsman
NSW	New South Wales
OAIC	Office of the Australian Information Commissioner
PV	Photovoltaic (solar panels)
RHL	Referral to Higher Level
SLO	Social License to Operate
TIO	Telecommunications Industry Ombudsman
UDL	Utilities Disputes Limited
VfM	Value for Money
WICA	Water Industry Competition Act

## EXECUTIVE SUMMARY

It has been an eventful period since the last quinquennial review of the Energy and Water Ombudsman New South Wales (EWON), including both a global pandemic and a global cost-of-living crisis, the latter particularly affecting the energy industry. However, despite these eventful times, EWON has continued to develop and consolidate its place as a leading ombudsman scheme. From responses, this appears to be due, to a significant part, to the leadership of the former Chair, Tony Crawford, credited for improving the governance, processes and procedures of the Board, and to the Ombudsman, Janine Young, for her leadership skills, integrity and personal values, which direct the operations of the organisation.

In the last quinquennial review, EWON's community outreach was held to represent best practice and it remains so. Indeed, with the ongoing appointment of a First Nation Outreach and Engagement Officer, together with the establishment of both a direct telephone line for First Nation residents and dedicated First Nation resources on its website, EWON has demonstrated again, its commitment to working with, and supporting, disadvantaged groups. During this review, participants were probed on EWON's approach to supporting vulnerable and disadvantaged complainants and it received praise from all stakeholder groups for its work in this area.

However, despite this important work, there is still more that EWON can do to work with both minority groups and residents in regional and rural remote New South Wales.

EWON's casework demonstrates high levels of both procedural and distributive justice although there are some issues relating to the timeliness of its casework. Some of this delay relates to the allocation of casework to investigation teams and principally reflects the large increase in complaints received by EWON since the relative quietening of the Covid pandemic. The other principal reason for the delay is that some cases take longer than desirable to close for which a number of factors are responsible.

All industry ombudsman face a challenge in balancing the competing interests of their key stakeholder groups: members, complainants and the wider public, and partner regulators. EWON appears to manage its relationships with these stakeholder groups very well with praise received from all stakeholder groups about EWON and its practices. EWON shows an openness and willingness to be held accountable to its stakeholders.

The review considered whether EWON delivers value for its funding. To address this issue needs the consideration of two prior order questions: is there agreement on what is the role of an industry ombudsman scheme, and is there agreement on the activities undertaken by such a scheme which should be included in such an assessment. Here the review found that, although there was some commonality between stakeholder groups, there was also some significant variance between them. The differences that do exist in the response to these questions create additional challenges for EWON in demonstrating that it does deliver value for its

funding. The opinion of the review team is that EWON is a very effective ombudsman which generally provides good value for its funding.

The review ends by noting the potential changes to EWON's jurisdiction arising from both the development of renewable energy and its transmission and also to the significant and unregulated development of Consumer Energy Resources. These changes will bring with them additional and novel challenges for EWON which are likely to have significant implications, not only for EWON's casework, but also to its Constitution, Charter, service model and funding model.

The Review Team would conclude by affirming that EWON is an excellent industry ombudsman scheme which demonstrates many areas of best ombudsmanry practice. The consequence that arises from this is that, as the Review Team was informed, EWON is seen to be one of the few trusted voices in the energy sphere. Such a position is very difficult to attain, easy to lose, but of the utmost importance to the members of EWON, service users and the wider public as it enables EWON to make significant contributions to the effectiveness of the energy market.



## RECOMMENDATIONS

**Recommendation 1:** It is recommended that EWON take steps to better understand its customer base, either through the routine collection of socio-demographic data from service users, or by the use of services similar to ACORN, or by a combination of approaches, so that it can identify which sections of the NSW population use and do not use its services, to support its awareness and community outreach activities.

**Recommendation 2:** EWON should continue the development and expansion of its community outreach programme with a particular focus on regional and rural remote NSW, First Nation citizens, CaLD communities and other vulnerable or disadvantaged groups.

**Recommendation 3:** EWON should discuss with members and other stakeholders to ascertain the degree and nature of the information that these stakeholder groups would find helpful and also to address any privacy issues that may arise from publishing more data and information.

**Recommendation 4:** EWON should review its complaint handling service model with a focus on:

- Development of position statements for specific complaints issues which educate, inform and manage the expectations of customers and members and as a result, lead to increased complaint outcome consistency and reduced resolution time frames.
- Improve the RHL process and consumer outcomes by requiring members to confirm that they
  - made contact with the complainant within the expected timeframe, and
  - achieved an outcome agreed with the customer by providing information to EWON about the how the complaint was resolved, the agreed outcome between the provider and customer, and the time taken to resolve the complaint.
- Investigations:
  - EWON should examine timeframes for closure rates for investigated complaints, identify whether inconsistency exists between staff, and, if so, to understand the contributing factors for improved consistency and reduce resolution rates.
  - EWON is an independent and neutral facilitator of complaint outcomes and should use this independence and neutrality with both parties to prevent consideration of extraneous issues that customers raise during investigations and to therefore resolve complaints more quickly. In rare circumstances it may require the Ombudsman to make a binding decision on the complaint.

**Recommendation 5:** EWON should seek to educate its stakeholders on the role of a leading industry ombudsman and use this shared understanding to agree what value for money means for EWON, its members and stakeholders, recognising the need for EWON to comply with the four accepted criteria for considering value for money.

## 1 SCOPE OF THE REVIEW

Paragraphs 20.2 – 20.4 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 2024 quinquennial review of EWON undertaken by Dr Gavin McBurnie and Professor Chris Gill. Short biographies of the members of the Review Team are attached as Appendix One.

The primary matters for enquiry and report were set by EWON in its Terms of Reference and are:

- Review of EWON's complaint handling service, complaint resolutions/remedies and procedures across all of EWON's primary complaint issues (including billing, credit, customer service, land, marketing, privacy, provision, supply, transfer) 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):
  1. accessibility
  2. independence
  3. fairness
  4. accountability
  5. efficiency
  6. effectiveness
- Member / stakeholder engagement.
- Promotion of EWON's services to customers.
- Complainant satisfaction.
- The effectiveness of the statute, charter, terms of reference or other document establishing the office, its jurisdiction, functions, rules and procedures.
- EWON's commitment to privacy.

### 1.1 Methodology

The following approach to the review was adopted.

**Phase 1:** Desk-top research was undertaken by the Review Team. Included within the Terms of Reference were a list of documents to be supplied by EWON to the Review Team and which were duly supplied. Further internal documents were provided by EWON to the Review Team upon the latter's request. Supplementary relevant documents were sourced from websites covering EWON's peers, industry bodies and academia prior to, and after, the field visit. EWON's stakeholders were invited to respond to an Issues Paper prepared by the Review Team.

**Phase 2:** Dr McBurnie conducted the fieldwork in Sydney. During this phase, he interviewed:

- 16 members of EWON (22 individually invited although all members were surveyed and could express interest in being interviewed).
- 8 community group representatives (10 invited – multiple others via a survey).
- 6 organisations from the regulatory sector and industry bodies (8 invited – multiple others via a survey).
- 11 members of staff.
- 5 board members.

The organisations with whom those interviews were held are listed in Appendix Two. A total of 46 interviews were undertaken. Dr McBurnie also undertook a review of 145 cases, representing a mix of casework undertaken by EWON, both in the type of case (customer enquiry, Referral to Higher Level (RHL), conciliation or investigation), industry sector and complaints that included concerns that an individual's privacy had been compromised. Table 1 provides detail on cases sampling. Eight responses to the Issues Paper were also received by the Review Team. The reviewers are confident that all relevant information necessary for this review was collected and considered.

<b>Complaint type</b>	<b>Complaint Totals</b>	<b>Number Sampled</b>
Complaint Enquiries	9013	20
Referrals to Higher Level	14550	40
Level 1 Investigations	1413	30
Level 2 Investigations	721	20
Level 3 Investigations	343	20
Internal Reviews	22	5
Privacy-related complaints	267	10
<b>Total</b>		<b>145</b>

*Table 1: Breakdown of case sampling*

## 1.2 Structure of the report

The report comprises two principal sections. The first section provides important background and context in which to situate the report findings and recommendations. It covers the changing energy and water markets. It also provides background information regarding leading ombudsmen and the context for industry ombudsmen before focusing on EWON as an organisation. This section concludes with a brief review of EWON's response to the previous five-year review. The second section of the report reviews the performance of EWON against the six Key Benchmarks for Industry-based Consumer Dispute Resolutions Schemes.

### 1.3 Acknowledgements

The Review Team wishes to thank:

- The many individuals from consumer groups, members and other stakeholders who generously gave their time to speak to the Review Team.
- The Ombudsman and all EWON staff, in particular Fiona Wong, for making the necessary arrangements to conduct the interviews.
- The staff of EWON for their time in answering questions and providing information.

Their input and support are greatly appreciated and ensured the Review Team was able to come to a holistic view on the performance of EWON.

## 2 BACKGROUND AND CONTEXT

### 2.1 Energy market

In recent history, the vast majority of energy in New South Wales has been provided by a network of private organisations. For electricity, the system typically 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), the Australian Energy Regulator (AER) and the Independent Pricing and Regulatory Tribunal (IPART).

There are a number of issues and trends affecting the energy market in NSW, including:

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

#### 2.1.1 Changing energy market

Traditionally, the energy market has involved the centralised generation and storage of energy, such as power stations, which is then transmitted and distributed into the homes of consumers. Today, and even more so in the future, this traditional model is being supplemented by local generation and storage of energy, where energy is generated and stored on a consumer's property, for example, through solar panels and storage batteries. Excess energy that is not used by consumers can also be aggregated and sold back to the National Energy Market. ANZEWON commissioned Benvenuti (2016) to review the changes in the energy market and the impact these changes might have on consumer access to external dispute resolution.

This new approach to energy generation and storage is often referred to as Consumer Energy Resources (CER). In brief, CER involves 'small-scale renewable energy generation and storage technologies, services, products and devices' (EWON 2022). This includes rooftop solar panels, batteries, smart meters, electric vehicles, microgrids and Virtual Power Plants. Changes in home energy management services and associated technologies, which includes the development of software to manage the interactions between solar storage, usage and tariffs, provides consumers with novel ways to manage and reduce bills (Benvenuti 2016, p.3). Other changes identified by Benvenuti was the recent growth in distributed generation as a means of trading excess generated power facilitated through new software technologies. The uptake of electric vehicles (EVs) is also of interest in the electricity market for two reasons: firstly, the increased uptake of EV will impact upon the demand for electrical energy, but, secondly, EVs can also act as a form of battery storage

which opens up their potential for playing a role in demand management through 'vehicle-to-grid' technology (Benvenuti 2016).

Rooftop solar is the second largest source of renewable electricity generation in Australia behind wind energy generation and provides over 11% of Australia's power supply (Clean Energy Council 2023, p.4). Battery installations attached to the rooftop photovoltaic panels (PV) are also growing although there is room for further uptake (Clean Energy Council 2023). Around one in three Australian homes have photovoltaic (PV) solar panels (Chandran 2024). Benvenuti found that eight Australian energy retailers had offerings to supply battery storage for residential customers but warned that 'Battery storage in combination with PV is likely to also result in more complex purchase arrangements' (Benvenuti 2016, p.2). The AEMC argues 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 (AEMC 2017, p.iii).

### 2.1.2 Rising prices and public concern

As a result of these changes in the market, the regulatory framework for consumer protection creates a complex interplay between national and state governments (Benvenuti 2016). Benvenuti stated that

The energy market is in a period of dynamic change, decentralising and fragmenting largely as a result of technological advances and the growth in distributed generation. In turn, new service providers are emerging, the relationships between providers and consumers are changing, and there is a growing convergence with other industries. It is increasingly difficult to distinguish between 'products' and 'services' and to untangle how this distinction impacts on the relationship between the consumer as a buyer or seller. As a result, consumers are facing a rapid increase in complexity, particularly in determining where they can resolve any problems that emerge. (Benvenuti 2016).

This challenge is one of the factors that has contributed to the reality that the regulatory framework to provide comprehensive consumer protection has not kept pace with changes in the market. The lack of a comprehensive consumer protection framework extends into the area of external dispute resolution, where EWON's jurisdiction is derived from the requirements of the National Energy Retail Law. Benvenuti (2016, p.5) concluded that 'a comprehensive jurisdiction is an essential component of an effective ombudsman scheme'.

These new developments in the market are subject to inadequate consumer protections which are often dependent upon generic consumer protection law and NSW Fair Trading. Commenting on this situation, the, then, Chair of the AEMC, John Pierce (2019), 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.

Energy Consumers Australia conducts a consumer sentiment survey every six months. In its latest survey, Energy Consumers Australia (2024) found:

- Following price hikes beginning in 2022, the % of households and small businesses who say that their electricity and gas services represent value for money remains low, particularly in NSW.
- Electricity and gas rank lower, with the exception of the insurance industry, than all other utilities in perceived value for money.
- Household and small business confidence that the energy market is working in their long-term interests also declined in the last two years.
- Consumers who identified as being under financial pressure were even less likely to feel confident (20%) compared to those who say they are financially comfortable (42%). Since June 2022 the number of households across all income brackets identifying as under financial pressure has increased.

Not only are a large proportion of NSW residents facing difficulties in paying their utility bills many NSW residents are missing out on assistance programs as they may not recognise their difficulties. Thus, their 'energy vulnerability' is hidden (RMIT 2023). Willand, Tarabi and Horne (2023) found six aspects of hidden energy vulnerability:

1. Underconsumption – households limit or turn off cooling, heating and/or lights to avoid disconnections.
2. Incidental masking – other welfare support, such as rent relief, masks difficulties in paying energy bills.
3. Some households disguise energy poverty by using public facilities such as showers or pooling money for bills between families.
4. Some people conceal their hardship due to pride or fear of legal consequences, such as losing custody of children if food cannot be refrigerated because the power has been cut off.
5. Poor understanding of energy efficiency and the health risks of cold or hot homes adds to the problem.
6. Eligibility criteria for energy assistance programs may exclude some vulnerable households. For example, people with income just above the welfare threshold are missing out on energy concessions. Energy retailer hardship programs also ignore people who have voluntarily disconnected due to financial hardship.

In this context it is, perhaps, unsurprising to find that the number of residential complaints to retailers rose by 14% in 2022-23. More concerning is the fact that there was an increase of 21% in the number of complaints made to retailers that evolved to become a complaint to an ombudsman in the same period. For EWON, approximately 27% of all complaints received by retailers within its jurisdiction evolve into a complain to it (AER 2023, pp.115-117).

## 2.2 Water market

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 companies 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 (WICA) 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.

Of more importance may be changes in the management of water in New South Wales. ‘Water availability in NSW has always been highly variable - and this will continue. It is possible that extremes of wet and dry may become more pronounced and extreme events more frequent’ (NSW Government, 2024). There is the likelihood of ‘more frequent and extreme drought conditions in the future, together with reduced cool season rainfall in south-eastern Australia’ (NSW Government, 2024). NSW Government (2024) have stated that ‘water supplies in NSW could be less secure than ... thought’ due to longer droughts, higher temperatures and decreased rainfall all of which will combine to reduce the amount of available water. In the south of NSW winter and spring rains are likely to reduce but the rains that come will be of greater intensity and with this, the risk of significant flooding (NSW Government 2024). These changes have been summarised as follows (NSW Government 2024a), Figure 1:

Pressure to adapt	A more variable and changing climate					
	Reduced flows in rivers and streams	Changing rainfall patterns	Higher temperatures and more hot days	Sea level rises and increased salinity	More frequent extreme events	Harsher fire weather climate
	Additional pressures					
	Population growth	Community expectations	Changing industry needs	Changing economic conditions	Budget constraints	
	Need to adapt					
	Town and city water supplies	Water for agriculture and industry	Infrastructure resilience and maintenance	Social and community values	Aboriginal cultural values	Environmental values

Figure 1: Summary of potential changes in the water industry

The result of these changes is likely to be increased droughts, leaks, and floods, resulting in problems with water availability and sewerage. These could well result in increased complaints to both the provider and EWON in due course.

### 2.3 Social license to operate

In addition to meeting their formal regulatory and legal requirements, it has been argued that companies have wider social responsibilities to their stakeholders and communities, an idea reflected in the concept of a social license to operate (SLO) (see Kenton (2024) for example). The social license to operate refers to ‘the level of acceptance or approval by local

communities and stakeholders of organisations and their operations' (Learning for Sustainability 2019) and applies to companies working in the energy and water markets. Industry-based consumer dispute resolutions schemes, EWON in this case, are part of the integrity system which helps to ensure that such companies maintain their social license to operate.

A 'SLO is created and maintained slowly over time as a company builds trust with the community it operates in and other stakeholders. A company must be seen to be operating responsibly, taking care of its employees and the environment, and being a good corporate citizen. When problems do occur, the company must act quickly to resolve the issues, or the SLO is put in danger. ... Companies and industries often run into the concept only when it is too late' (Kenton 2024). The standards with which companies must comply, form part of its SLO which will change over time – what was once acceptable, very often, becomes inappropriate. Companies need to recognise these wider societal changes and respond accordingly. The longstanding and continued lack of confidence in the energy market in NSW by consumers, noted above, will inevitably become an issue for businesses. The loss of their social license to operate is possible with the low levels of customer satisfaction reported in the ECA's Consumer Sentiment Survey (2024) and the AEMC's 2018 Retail Energy Competition Review (AEMC 2018) a worrying indicator of a potential future loss of the energy market's social license.

### 3. INDUSTRY OMBUDSMAN

Speaking in the context of the European energy market, the Mediterranean Energy Regulators (2018, p.5) argue that consumer protection is seen as a core responsibility of an industry ombudsman. They contend that customers in the energy market are likely to be disadvantaged towards service providers due to an inequality in their knowledge and resources. Accordingly, '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: see also Mediterranean Energy Regulators 2020). Where complainants do not have access to 'efficient, effective and inexpensive means of dispute resolution', exacerbated by a low awareness among consumers of their rights, this should be seen as indicative of a malfunctioning market and of a significant imbalance between the rights and obligations of consumers and service providers (Mediterranean Energy Regulators 2018, p.5).

The former Commonwealth Ombudsman Colin Neave (2014) said of public sector ombudsman:

There are some people, both in the government and the community, who think that all the Ombudsman does is to handle complaints, ... This is a very narrow view and falls dramatically short. In fact, it is a very old-fashioned notion. In reality we are leaders in building better public administration. We have a critical place between government and the public, and we are a safety net for members of the community. ... We promote good governance, accountability and transparency through oversight of government administration and service delivery.

Neave (2014) continued that ombudsman achieve this through the consideration of individual complaints, systemic investigations, the feedback of data to organisations and other relevant agencies, and that their presence acts as an incentive to organisations to improve the services that they provide to their customers.

While obviously speaking about the public sector ombudsman and public administration, one can easily see how this applies to industry ombudsman. Replace 'government' with 'industry' and 'public administration' with 'industry practices' in the above quote and it remains true and applicable. A modern industry ombudsman is not simply an individual complaint resolver, it has broader responsibilities which help it in its role to support the maintenance of effective markets. Consequently, over time the functions of industry ombudsman have increased to include consumer advice (providing information to consumers), dispute resolution, the aggregation of data from each contact to provide an understanding of 'trading conditions, infringements, traders and trends', the publication of aggregated data as feedback to members, and 'information to consumers, competitions, regulators and investors, to support the maintenance of a level and fair market place', and improving market behaviour through mechanisms such as publication of information or referrals to regulators (Hodges 2018, p.57).

Starting from these views, the Review Team suggest that the purpose and role of an industry ombudsman is *to provide an accessible, fair and cost-effective dispute resolution service which uses its unique insights, gained from its dispute resolution activities, to inform*

members, the public, and policy and regulatory networks, to help deliver a market which works for both customers and businesses. An effective ombudsman will deliver on all facets contained within that statement.

One of the features of the Australian regulatory system is its preference for avoiding 'adversarial encounters with industry' which are undertaken only as an action of last resort (Stuhmcke 2002). This approach is predicated upon the basis that businesses within the jurisdiction of a regulator or ombudsman are seen, in the main as socially responsible and eager to be seen as law-abiding (Stuhmcke 2002, p.74). Stuhmcke (2002) goes on to argue that this conciliatory approach is 'quintessentially' that of an ombudsman, which should pursue all possible non-litigious avenues as a requirement of its neutrality.

### 3.1 EWON

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-level 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 networks<sup>1</sup>. As at June 2023, EWON had a total of 376 members. The chart below details the number of complaints both received and resolved by EWON for the period 2018/19 to 2022/23:

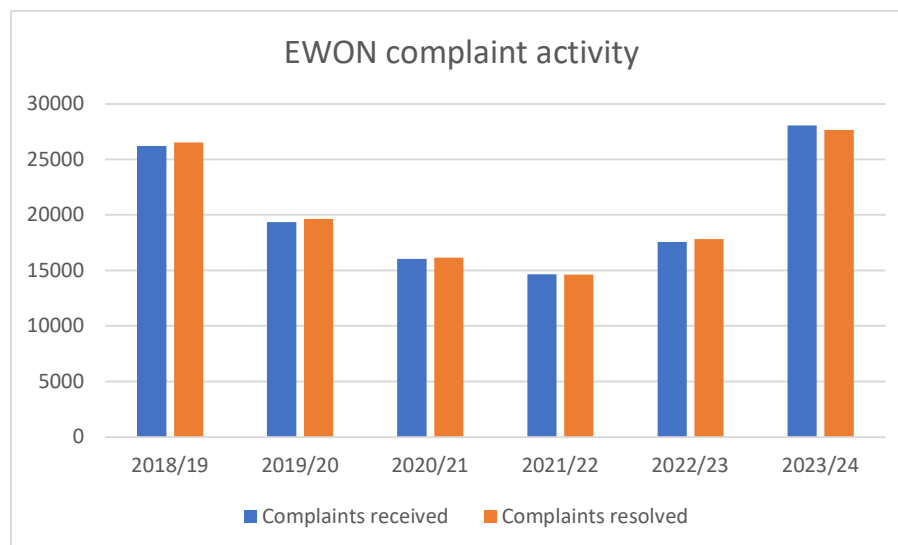


Figure 2: EWON complaint activity

According to staff at EWON, on current projections EWON is likely to receive 34,000 in 2024/25, effectively a doubling of complaints received in a two-year period.

<sup>1</sup> '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)

In 2022/23 the complaints received by EWON by case disposition was as follows:

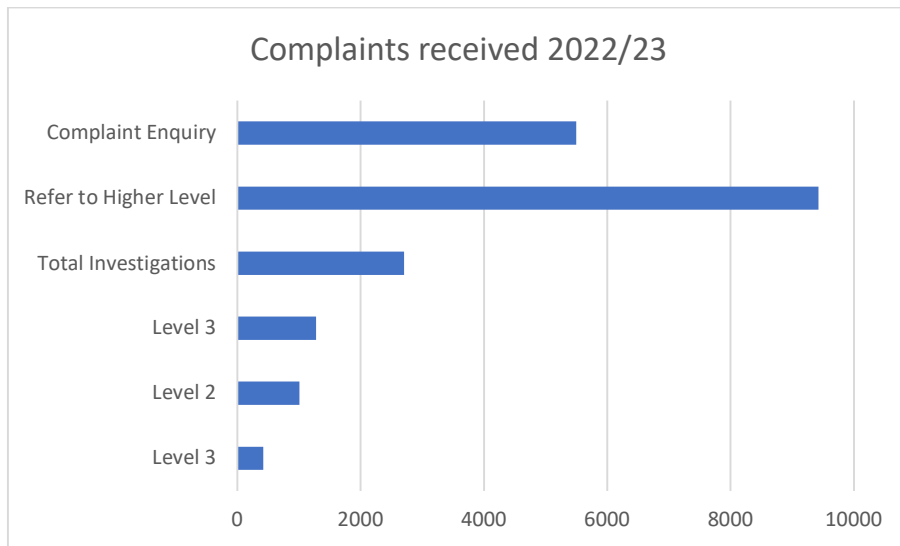


Figure 3: Complaint type received by EWON 2022/23

Of the complaints received by EWON, 77% relate to electricity complaints, 18% to gas complaints and 4% to water complaints. In addition, 67% of complaints related to billing issues, 10% to credits on accounts and 5% related to the transfer of accounts (EWON 2023).

## 4 BENCHMARKING THE SCHEME

The Review Team is aware of the detail contained within the Key Practices for Industry-based Customer Dispute Resolution (The Treasury 2017a). The focus of the section is however on the issues identified by the Review Team while conducting the review. Where individual elements within each key practice are not mentioned in this section, this does not mean that they were ignored by the Review Team but, rather, that the Review Team had no concerns that merited inclusion in the report. This allows EWON to focus on the key issues raised through the fieldwork.

The Review Team was tasked by the Board of EWON to assess the compliance by the Energy and water Ombudsman New South Wales (NSW) scheme with the Australian Government's *Benchmarks for Industry-based Customer Dispute Resolution* (which include accessibility, independence, fairness, accountability, efficiency and effectiveness), and should further include the effectiveness of the Scheme's:

- Member / stakeholder engagement.
- Promotion of EWON's services to customers.
- Complainant satisfaction.
- The effectiveness of the statute, charter, terms of reference or other document establishing the office, its jurisdiction, functions, rules and procedures.
- EWON's commitment to privacy.

In compiling this report these additional areas are included within the section for the relevant benchmark: see Table 2 below:

Issue	Benchmark
Promotion of EWON's services to customers	Accessibility
Complainant satisfaction	Efficiency
Member and stakeholder engagement	Independence
Complaint data and reporting	Accountability
The effectiveness of the statute, charter, terms of reference or other document establishing the office, its jurisdiction, functions, rules and procedures	Independence
EWON's commitment to privacy	Accountability
Value for its funding	Efficiency

Table 2: Placement of additional matters for enquiry

### 4.1 Follow up from the independent review of 2019

It has been five years since the last independent review. During this period, the world has faced both the Covid epidemic, which brought with it massive disruption in societies and their

functioning, and, a cost-of-living crisis, again disrupting world economies and societies. Despite these challenges, the Review Team is pleased to note the significant progress made by EWON since the last review. Despite the overall significant overall progress made by EWON in ensuring that the 2019 recommendations have been implemented, there are exceptions in two areas. The first of these exceptions relates to the collection and use of customer socio-demographic data. The second exception relates to recommendations concerning the construct and size of the EWON Board while the third relates to the scope of EWON's jurisdiction. These issues are discussed in the Review Team's consideration of the relevant Consumer Benchmarks.

The review team heard specific praise for the former Chair, Tony Crawford, for improvements he led in the governance of both the board and the organisation more widely. The review team also heard extensive praise for the Ombudsman, Janine Young, with participants praising her integrity, personal values and leadership abilities that she brings to EWON. It was not uncommon for participants to describe EWON as one of, if not the, leading industry Ombudsman.

## Benchmark One: Accessibility

**Underlying 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 identified two specific questions relating to this benchmark:

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

New South Wales (NSW) has a population of over 8 million persons with approximately 66% of the population residing within the Greater Sydney area (NSW Government 2024). The vast majority of the territory of New South Wales has a population density of below 1 person per square kilometre (NSW Environment Protection Authority 2024). More than 275 different languages are spoken within New South Wales (NSW Government 2024) with over 34% of NSW residents born overseas and only 43.7% of the population having both parents born in Australia (Australian Bureau of Statistics 2021). In approximately 30% of NSW homes, English is not the language used and in only two out of three homes in NSW is English the only language used (Australian Bureau of Statistics 2021).

### 5.1 Awareness and promotion of the scheme

An effective ombudsman scheme will be available and accessible to all consumers irrespective of their background or needs. To achieve this, potential users of ombudsman services must be both aware of the existence of the ombudsman's office and believe that they will be able to use the ombudsman's services easily and simply. To do this effectively may require additional understanding from staff within ombudsman offices towards those from a culturally and linguistically diverse background or who may be disadvantaged or vulnerable (Beqiraj et al. 2018, p.16, Brennan et al. 2017). Ombudsman offices need to be aware of any particular additional needs exhibited by its service users at any and every stage of the complaints process (Beqiraj et al. 2018, p.16).

Australian ombudsman schemes have been said in the past to suffer from low awareness (Productivity Commission 2014). In its latest Energy Consumer Satisfaction Survey, Energy Consumers Australia (2024) found the following levels of awareness of the different Australian Energy and Water ombudsman (EWOs) (Figure 4):



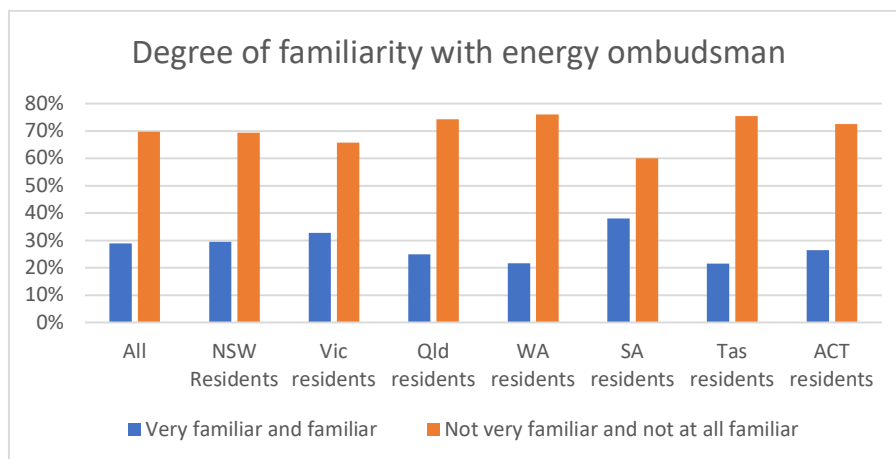


Figure 4: Degree of familiarity with energy ombudsman

These figures suggest that, generally, there continues to be relatively low levels of innate awareness of ombudsman schemes, with EWON reflecting the national average. In addition, Energy Consumers Australia (2024) found that residents in metro areas were more likely to be aware of their EWO than residents in county towns or rural areas, and those Australians more comfortable financially had higher awareness levels than those Australians under financial pressure. Overall, these findings are unsurprising as other research indicates that vulnerable and disadvantaged groups are less likely to be aware of, and use, third-party dispute resolution schemes (see Hubeau 2018, Productivity Commission 2014, Hertogh 2013).

In the last independent review of EWON, when considering the level of public awareness of EWON, the Review Team found figures of 10% for the unprompted awareness of EWON and 30% for prompted awareness of EWON (McBurnie and Williams 2019, p. 28). EWON (2023) reports that EWON now has figures of 34.2% for unprompted awareness and 31.7% for prompted awareness, as reported by Energy Consumers Australia in the latter's 2023 survey of the public. These figures represent a significant increase in the public's awareness of EWON.

The Key Practices for Industry-based Customer Dispute Resolution states that members should inform complainants about EWON when responding to a complaint (The Treasury 2017a, pp7-8). The constitution of EWON also makes clear that member organisations must operate and publicise an effective complaints process, including the provision of information about EWON (EWON 2022, para 5.1). As part of its efforts to assist consumers with a dispute against their energy company the AER (2023a, p.15) produced mandatory guidance which states that retailers must provide the telephone number of the relevant EWO on the front page of the bill.

It is interesting that in its 2023 Annual Report, EWON provided information on the source of complainants' knowledge about EWON and found that only 4% of EWON's customers stated that they had heard about EWON from the EWON member (Figure 5). In a 2024 Customer Survey, Schottler (2024) found that just over 5% of respondents reported that their provider encouraged them to take their complaint to EWON although there were noticeable differences between EWON members. In the same survey roughly one in eight respondents

found it difficult or very difficult to find EWON, with web search and word of mouth accounting for *circa* 55% of methods used to locate EWON.

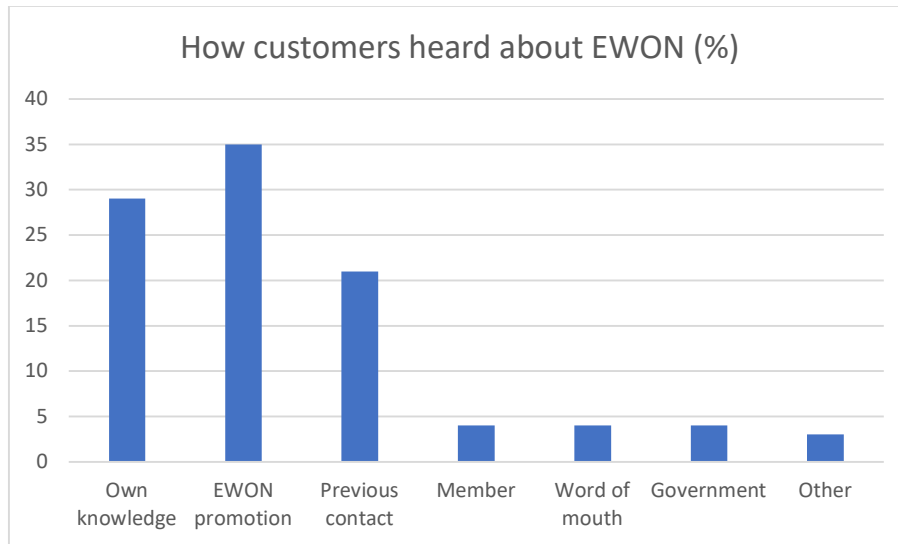


Figure 5: How customers heard about EWON

There are challenges faced by EWON when considering how best to promote its scheme.

- People only need ombudsman schemes when they have a problem, meaning promotion does not always lead to immediate awareness growth, and this is inherently difficult to measure.
- EWON does not routinely collect socio-demographic data.
- The need to preserve the independence of the Ombudsman and jurisdiction limits her ability to speak on certain matters.
- Awareness raising can be unfairly viewed by some members as encouraging consumers to make complaints.
- A strategic approach to community engagement needs to be maintained, including establishing partnerships with new consumer/non-government groups with wide associated networks.
- The cost of promotion/visits to regional/remote communities needs to be aligned with EWON's budget and with each area's population and demographics (EWON 2021).

EWON currently uses a wide range of systems and methods as part of its external communications in order to promote its existence and how it may help individuals. These include the production of factsheets which are also shared with partner organisations for them to use to promote EWON, hosting and attending forums such as the Anti-Poverty Forum, an active community outreach programme including the well-supported Bring Your Bills days, contributing material to online and print media, the production of reports such as EWON Insights and Spotlight On, an active social media presence and through running awareness raising campaigns (e.g. Aboriginal awareness campaign) (EWON 2021, p.16).

The EWON communication team works hard to ensure that mainstream media pick up on stories concerning EWON. EWON staff (EWON 2024) report that in the first nine months of the financial year 2023/24 the Ombudsman conducted 16 interviews and there were 293 separate media mentions of EWON. This compares with 2022/23, when, in the whole year,

there was also 16 Ombudsman interviews but only 43 EWON media mentions. EWON also used local radio stations and newspapers to promote its outreach events. This shows the strength of a very strong and proactive media strategy.

Interview participants reported to the Review Team that EWON undertook good work at promoting itself using the approaches detailed above. Nonetheless, an important element of a person’s ability to access EWON is through EWON’s website. It is here that many, if not most, potential complainants will seek information about whether they are able to, and how they can, make a complaint. The Review Team received mixed views from participants about EWON’s website. While many participants stated that EWON’s website was accessible to users, criticisms were received that, although there is the option for people to select a range of languages covering the most commonly spoken languages in NSW, the fact that EWON website’s landing page was, itself, in English acted as a barrier to potential users from culturally and linguistically diverse (CaLD) communities, and, also, that the website was not as friendly as it could be for individuals with a sensory impairment, particularly those individuals who have a visual impairment.

An effective complaints process will be designed in a way that it is able to identify who are its users or potential users and ask them what it is that they expect from the complaint system. Hubeau (2018, p.270) cites research which demonstrates that the perception by ombudsman staff of its service users does not match the profile of actual service users. Collecting socio-demographic data on users is important for industry ombudsman as it allows them to, both, ensure that service users are representative of those who need its services and to speak authoritatively on issues affecting under-represented and disadvantaged groups. In addition, where the data indicates that service users are not representative of those who needs its services, it allows industry ombudsman to undertake more targeted awareness raising activities. Table 3 provides information on the proportion of complaints received by EWON from different NSW populations relative to the overall NSW population.

	Number	Number of complaints received by EWON	Ratio of complaints to population
Total number of residents in NSW	8,100,000	17,852	0.002
Number of Aboriginal and Torres Strait Islanders in NSW	278,000	314	0.001
Number of Culturally and Linguistically Diverse residents in NSW	2,800,000	515	0.0002

*Table 3: Proportion of complaints received by EWON relative to the population (Australian Bureau of Statistics (2022) and EWON (2023))*

There is a belief that public sector ombudsman can play an important role in ensuring citizens have confidence in their government although there is little empirical evidence to support this view (Hertogh 2013). In a similar vein participants expressed the view that EWOs in general, and EWON in particular, had a role in securing public trust and confidence in energy and water markets. Most ombudsman schemes are utilised disproportionately by a narrow stratum of society, typically male, white educated middle classes (Hertogh 2013) and, as a rule, often find it difficult to engage with people outwith this stereotype. For EWON, that includes First Nation persons and CaLD communities, as the figures in Table 3 above demonstrate, as well as other vulnerable and disadvantaged groups. Individuals who are socially isolated and excluded find it difficult to trust government institutions and this overlaps with their trust in ombudsman offices.

Hubeau (2018), therefore, stresses the need for ombudsman schemes to collect socio-demographic data on its service users. It is the experience of the Review Team that in Australia and New Zealand, alternative dispute resolution (ADR) schemes do not systematically collect socio-demographic data on their users. Therefore, these schemes cannot be certain that some user groups are under-represented. Indeed, as the table above indicates, the evidence suggests that EWON is not receiving sufficient complaints from minority groups.

The lack of accurate socio-demographic data of service users collected by EWON remains a weakness. The Review Team notes that EWON staff attempt to understand its customer base through the use of data from online forms and proxies such as Energy Accounts Payment Assistance applications, disconnection rates and census data. However, it cannot be entirely confident that it collects sufficient data to truly and accurately understand the profile of its service users and, more importantly, those who do not use its service. The Review Team understands that this work is linked to the development of a new Casework Records Management System.

The Review Team recognises that collecting socio-demographic data from individuals can be a sensitive area of questioning for minority, vulnerable and disadvantaged groups who may wish to submit a complaint. It is, nonetheless, important that EWON consider how best it can collect this information. This will allow it to conduct targeted awareness raising campaigns on those groups under-represented among its service-users.

In 2021, the English Local Government and Social Care Ombudsman (LGSCO) commissioned a postcode survey, using the ACORN database<sup>2</sup>. This is a methodology which involves comparing the postcodes of complainants who have used the LGSCO with a range of postcode characteristics in the ACORN database. The database is created by drawing on a range of publicly and privately available data sources. This methodology provides an estimate of the likely demographic characteristics of those living in a certain postcode, which can then be compared to known information about the demographics of the population in England (Pottakis et al. 2023). UK postcodes cover an average of around 15 properties allowing this to provide an effective proxy for the collection of customer socio-demographic

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<sup>2</sup> ACORN 'By analysing data from hundreds of different sources, and segmenting UK postcodes by common characteristics, Acorn provides a detailed understanding of the various types of people who make up your customer base and catchment areas.' <https://acorn.caci.co.uk/>

data. Although ACORN is a UK product, the Review Team would imagine that a similar product is likely to be available in Australia and may be helpful to EWON to better understand its customer base.

**Recommendation 1:** It is recommended that EWON take steps to better understand its customer base, either through the routine collection of socio-demographic data from service users, or by the use of services similar to ACORN, or by a combination of approaches, so that it can identify which sections of the NSW population use and do not use its services, to support its awareness and community outreach activities.

## 5.2 Community outreach programme

There is increasing recognition that the problems faced by residents in NSW are likely to be multi-layered. That is, an individual will not just have a problem with their energy or water bill, but may well have additional problems affecting their employment status, housing or ability to travel. Focusing on one part of a person's problem may provide some short-term relief but any benefit is likely to be temporary.

EWON has a well-regarded community outreach programme that draws praise from both consumer groups and members. In the last five-year independent review of EWON, the Review Team stated that EWON's community outreach represented best practice and the Review Team confirms that this opinion still holds. Unsurprisingly, it is now receiving international recognition. EWON's approach to the financing and delivery of such outreach activities is through its Community Outreach Strategy. The identification of community outreach activities is shaped by a Rubik's Cube type matrix involving target groups, regional coverage and population demographics. The overall intention is to deliver community outreach activities that deliver both high value for money and targets, for assistance, those who need the help of EWON the most.

Community organisations or advocates are often the first place that people turn to when they need assistance. Ensuring that these community organisations and advocates know about EWON's services increases the likelihood that people in need of assistance will be able to find EWON. EWON works with the following community organisations and advocates:

- Aboriginal tenants' advice services, Land Councils, corporations and Koori interagency networks.
- Community welfare agencies that distribute energy accounts payment assistance vouchers.
- Community Legal Centres.
- Financial counsellors.
- Migrant interagency networks /resource centres.
- Tenant advice and advocacy services.
- Neighbourhood and community centres.
- Family support services (EWON 2024, p.7).

EWON will seek to maintain these relationships with partner organisations through:

- encouraging partner organisations to subscribe to EWON's newsletter.
- suggesting that partner organisations order EWON's material for display or distribution.
- presenting to the stakeholders of partner organisations online.
- contacting partner organisations regularly.
- informing the communications team about opportunities to interact with partner organisations, such as preparing articles for newsletters.
- following each other's social media and sharing posts.
- attending interagency groups across NSW – in person or online (EWON 2024).

When EWON conducts its outreach events, it not only invites members but it will also look to invite relevant government and non-government agencies, local councils and other local organisations. The Review Team were informed that at one regional event 22 different agencies attended. EWON is also part of two outreach networks – the Good Service Mob and the Joint Outreach Initiatives Network. EWON suggest that working with other organisations in these networks offers a range of benefits, including:

- access to broader networks.
- cross promotion of services.
- increasing awareness of each other's services.
- building positive working relationships.
- comprehensive information provision for consumers.
- building consumer confidence.
- opportunities to pool resources and save costs (EWON 2024, p.7).

Prior to conducting community outreach activities, EWON will undertake a proactive approach in promoting the events, such as the use of flyers, contacting local organisations and councils, the media, newspaper or radio advertisements (among other activities).

EWON was commended by many participants for its multi-agency working which was described as very effective. The Review Team heard very warm praise from all of EWON stakeholder groups about EWON's community outreach programme with phrases such as, being the 'industry leader', 'setting the benchmark in this area' and being a trusted voice and source of information. Members talked about how their attendance at EWON community outreach activities assisted them in understanding the changing needs of their customers.

In 2022/23, EWON participated in 81 community engagement activities and 10 community worker events reaching 50 local government areas. Focusing on those community groups which are harder to target, EWON undertook 13 activities with CaLD customers, 12 activities with Aboriginal and Torres Island Straits communities, 8 senior events and 3 youth events.

Nonetheless, many participants, from both members and community groups, expressed a desire for EWON to expand its community outreach programme. There were many participants that wanted EWON to expand its activities in rural remote and regional NSWs while two participants would like to see more Metro-based events. The Review Team did hear that, in rural remote areas, people in need can be particularly affected by the multi-layered problems discussed above and lack sufficient local support. As a result, EWON's

outreach activities in these areas are particularly important yet, due to constraints, EWON typically delivers two outreach programmes per year in rural remote areas. There is, therefore, essentially a rotational programme, as to which rural remote areas are targeted each year. Even where a targeted activity is in a general area, people in areas who may benefit from the help of EWON are unable to do so because of the distances and associated travel costs involved.

Many participants told the Review Team that EWON should undertake more culturally sensitive face-to-face activities work with First Nation peoples. Some participants appeared unaware that EWON has a dedicated direct line for First Nation customers, that the EWON website had a specific section highlighting the resources available for First Nation persons and that EWON employs a First Nation Outreach and Engagement Officer whose key role is to lead outreach and engagement with First Nations' communities. This apparent lack of awareness of EWON's support for First Nation residents is disappointing as they represent excellent practice and demonstrate genuine commitment to engage actively with the First Nation community.

The Review Team recognises that it is not the role of EWON to try to resolve everybody's problems, wherever they are located, but does suggest that EWON consider how it may further maximise the impact of EWON for people with energy and water complaints. The Review Team heard suggestions that this may take the shape of more frequent events in rural remote areas, staying longer in an individual rural remote area and doing 'drive-bys' to smaller towns or through 'training the trainer' initiatives to help develop the skills of people already located in, and trusted by, local communities. No doubt EWON, itself, will have further ideas. To achieve this will require additional resources.

**Recommendation 2:** EWON should continue the development and expansion of its community outreach programme with a particular focus on regional and rural remote NSW, First Nation citizens, CaLD communities and other vulnerable or disadvantaged groups.

### 5.3 Vulnerable and disadvantaged complainants

There are many definitions of vulnerability but the UK Competitions and Markets Authority (2019) defines consumer vulnerability as 'any situation in which an individual may be unable to engage effectively in a market and, as a result, is at a particularly high risk of getting a poor deal'. In research for the Australian Energy Regulator, O'Neill (2020, p.5) found that one in five national helpline users were experiencing mental health problems, one in five people in Australia speak a language other than English at home, one in six Australian women have experienced physical or sexual violence, one in five Australians have a disability, 44% of Australians have low levels of literacy, and two in three Australians experience some level of financial stress. These figures highlight that a large proportion of Australians are disadvantaged and may be vulnerable at any particular point in time.

The categories, described by O'Neill above, simply describe people who are disadvantaged and, as a result, can be vulnerable in specific situations. But disadvantage is not necessarily the same as vulnerability. Vulnerability is often about the situation which an individual faces

at any particular time and not about the individual. For example, in relation to legal services, a very specialist, technically complex area, people with no or minimal disadvantages may, nonetheless, still be vulnerable. The rapid change in technology may create vulnerability in an otherwise non-disadvantaged individual. Therefore, there is a need for EWON to consider both vulnerability arising from disadvantage and situational vulnerability (see Brennan et al. 2017). 'Protection of vulnerable consumers has been acknowledged and promoted as one of the basic rights of energy consumers' (MedReg 2021, p.7). The Mediterranean Energy Regulators went on to state that:

Identification of vulnerable consumers is not always an easy job as, in many cases, vulnerable consumers are not able to or fail to handle the required procedures for benefitting from protection measures. Therefore, a system that is linked with social, welfare and health databases, and works on the basis of the vulnerability criteria approach, can generate a reliable list of vulnerable consumers, at any given time (MedReg 2021, p.7).

Complaint systems need to be aware of the additional challenges vulnerable and disadvantaged 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. Potential tools to mitigate the challenges facing vulnerable and disadvantaged people include, but are not limited to, organisations undertaking vulnerability impact assessments, focusing on good inclusive product or service design, the identification of, and provision of support to, customers in vulnerable circumstances, the proactive identification of vulnerable and disadvantaged customers, and the provision of accessible, flexible, tailored services (O'Neill 2020).

For EWON, where it was identified that a customer needed additional support, the caseworker would work with the customer to identify how the customer may receive the help that they need. The complaint handling manual is specific about this (EWON 2022a):

When dealing with complaints, we consider any special needs of customers to enable their participation in the investigation and resolution of the complaint. This may include:

- for vulnerable customers and customers in hardship, being mindful of the barriers in making and pursuing complaints and taking steps to prevent these occurring
- for customers with a disability or impairment, taking practical steps to assist them in the complaint process including working with a support person, having face-to-face meetings, using the National Relay Service and providing information in an accessible format
- for Aboriginal and Torres Strait Islander people, providing a designated outreach officer and Dispute Resolution staff
- providing telephone interpreter services for customers from non-English speaking backgrounds and when available the assistance of investigations staff with multi-lingual skills.

In a 2024 customer survey commissioned by EWON, Schottler (2024) found that roughly one in five respondents reported that they had an additional need for which EWON needed to make an adjustment. Principal areas where respondents felt that they needed additional support were their lack of IT literacy, sensory impairment, psychological conditions, communication difficulties, and a lack of confidence with their English language skills. Nearly 80% of respondents who stated that they had an additional need stated that EWON were able to accommodate it. For those who EWON had not been able to accommodate satisfactorily their additional need, the researchers were able to identify a list of actions that EWON could take.



The Review Team probed participants for their views on how well EWON is able to identify and support vulnerable and disadvantaged customers. The overwhelming response was that EWON was able to achieve this very well, being cited as one of the two best Australian ombudsman schemes for working with vulnerable customers. Some participants stated that they had noticed that EWON had placed a particular focus on working and engaging with vulnerable and disadvantaged customers over the last few years. EWON should take great pride in this finding.

At the same time there was recognition from participants that this increase in the number of vulnerable and disadvantaged customers, particularly those who may be experiencing vulnerability for the first time, led, in consequence, to an increase in complex problems arriving at EWON and in the number of people requiring additional support. It was suggested to the Review Team that EWON should provide a support line and other support to assist individuals experiencing vulnerability and disadvantage to help them navigate the complaints process. This is an interesting proposal that merits consideration. It would be important to assess whether staff in such a team are at increased risk of burnout if they accept the transfer of complex emotions from customers.

## Benchmark Two: Independence

**Underlying 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 identified three specific questions relating 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?
3. The effectiveness of the statute, charter, terms of reference or other document establishing the office, its jurisdiction, functions, rules and procedures

### 6.1 Case handling and decision-making processes

Overwhelmingly, the Review Team heard warm praise about EWON from all participant groups regarding its impartiality and independence, particularly with respect to case handling. Some participants attributed this to the personal qualities arising from the Ombudsman herself and her leading by example. Members felt able to raise concerns with EWON's senior management if they had any concern about the handling of individual cases or EWON's general approach to case handling. They welcomed the facility within the new members portal which enabled them to track individual cases and raise any concerns that they have. Additionally, members welcomed the fact that EWON would separate disputed and non-disputed elements from any overall dispute and ask the complainant to pay any non-disputed charges. EWON was described to the Review Team as an industry leader in this regard and its approach helped members become better citizens.

There were some negative comments made by member participants. In two cases it was suggested that EWON could be slightly pro-consumer as it may ask the member if it was prepared to offer a small sum to help close a complaint. The Review Team considers that this approach may be based on a misunderstanding of EWON's approach to case resolution. As noted below, under the efficiency benchmark, EWON attempts to close its complaints through facilitated or negotiated resolution. As part of this process, the caseworker undertakes an assessment of the case to identify what a fair and reasonable outcome may look like and then uses shuttle approaches to gain an accepted settlement on both sides. Using this approach may mean that the caseworker approaches a member asking for some monies to close a case particularly if, during their assessment, the caseworker has identified poor complaint handling by the member leading to additional stress for the complainant. This should not be seen as pro-consumer but, simply, as a facet of negotiated settlements. The pros and cons of this overall approach is discussed under Benchmark Five: Efficiency.

## 6.2 EWON's foundational Statutes, Constitution and Charter

### 6.2.1 EWON's Legislative background

As might be expected as an Ombudsman with different jurisdictions, there are two pieces of legislation which act as EWON's foundational Statutes: the *Electricity Supply Act 1995 Sect 96B* and the *Gas Supply Act 1996 Sect33G*. Effectively, these schemes allow for the Minister to approve an energy ombudsman scheme whose focus must be the consideration of disputes and complaints.

EWON's foundational legislation, being approximately thirty years old, is now showing its age. As was discussed earlier, the idea that an ombudsman is solely a dispute and complaints handler is now considered an old-fashioned concept and has been overtaken by the development of the ombudsman schemes themselves, in partnership with members and community groups. For example, there is now general acceptance of the role of industry ombudsman in contributing to system improvement and in policy debates.

EWON may wish to consider approaching its co-regulators and the responsible government departments to seek support for the updating of the legislation. Doing so would make clear to members and the public what the government believes is the role of a leading ombudsman and what it expects of an ombudsman like EWON. This will become increasingly important as a result of the potential broadening of EWON's jurisdiction relating to renewable energy and its transmission and consumer energy resources. Ideally, a standalone piece of legislation would be the intended outcome which would reflect the modern concept of industry ombudsmanry detailed in Section 3 of this report.

### 6.2.2 Constitution

No participant raised any concerns about EWON's constitution and, other than concerns about the construction of the Board of EWON, neither does the Review Team. The objects detailed in paragraph 1.1 of the Constitution (EWON 2022b, Sect 1.1) are broad enough to enable the Board and Ombudsman to deliver the functions of a leading ombudsman:

EWON's objects are:

- a) to provide and promote, in accordance with the Charter, an independent complaint handling service for Energy or Water Services that is available to Complainants;
- b) to assist in the reduction and avoidance of Complaints; and
- c) to do anything incidental to those purposes.

EWON's Constitution does support its independence, although the Review Team suggests that more could be done on the structure and composition of the Board.

### 6.2.3 The Board

Industry ombudsman have a wide range of stakeholders including members, complainants, other regulators and government, and ombudsman schemes. To maintain their legitimacy, industry ombudsman need to be clear about how they interpret and explain their roles to these different stakeholder groups, each of which will have differing expectations or

demands. To do this successfully, industry ombudsmen need to manage their boundaries with each of these differing groups of stakeholders (Gilad 2008). Of particular interest to this report is EWON's relationships with both members and consumers.

Industry ombudsmen are reliant upon their members for their resources. Gilad (2008) identified that where such circumstances exist, there is a risk that the ombudsman can be subject to regulatory capture which may result in more lenient regulation or the ombudsman adopting a pro-industry stance. Steffen et al.'s (2013) Transnational Guide for Regulating Dispute Resolution suggests that close regulatory supervision of governance structures is required for ADR mechanisms, such as ombudsman schemes, because they are funded by industry which may lead to a perceived lack of independence.

Balancing this are the expectations of consumers. Should industry ombudsmen ignore the expectations of consumers then they risk adverse political and media scrutiny. As such, industry ombudsmen require both their members' support and resources as well as the confidence of consumers, resulting in a tension between both sets of stakeholders. Industry ombudsmen need to secure a legitimate compromise between both these competing sets of stakeholders.

The issue of board composition is relevant to the independence and perceived independence of industry ombudsmen from its funders and to the ombudsman's management of this tension between members and consumers.

The Review Team has examined the structure of boards of other consumer ombudsman schemes and the current construct of EWON's Board is not anomalous to its peers in Australia and is compliant with the Key Practices for Industry-based Customer Dispute Resolution (The Treasury 2017a, p.12 fn 18). However, there are three trends that are becoming apparent as industry ombudsmen continue to develop:

1. Boards are moving beyond the Customer Benchmarks and are replacing some, and in one case all, of consumer and industry directors with independent directors, in keeping with the approach recommended by the Australian Institute of Company Directors;
2. Boards are increasingly assuming direct 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 (EWON 2022b 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. As with other director roles, the Chair can serve for a maximum of two three-year terms. The length of terms for board members is consistent with those of peer ombudsmen but it was raised with the Review Team whether the terms of board members should be increased from the current maximum of two three-year terms, to either a model of two four-year terms or three three-year terms to reduce board turnover and associated loss of skills and experience. The Review Team does not have a view other than it may be something the Board may wish to consider in the future.

The Australian Institute of Company Directors (AICD 2016) 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). The AICD also (2016a, p.2) emphasises the importance having a range of board members able to provide a 'diversity of perspective to the board's deliberations', 'ensure an overall adequacy of skills and competencies', and 'the board meets the requirements of any diversity policy'. Speaking of Boards for not-for-profit organisations, the AICD (2013) states that where Boards appoint its members from within its stakeholders there is a risk of factionalism that needs to be managed and that a 'large proportion' of directors may not have the necessary business or legal experience risking Boards that do not have the 'appropriate skills, knowledge and experience to guide the organisation forward'.

When considering the composition of a board, the AICD (2016a) argues that any board should have at least two totally independent members (two being the recommended minimum for small boards). The AICD (2016a, p.2) states that,

Independence refers to directors who have true independence of mind in their deliberations as directors, and at least should not include those directors who may lack structural independence (that is, executives, substantial shareholders in the corporation or their representatives, and those representing corporations or businesses which are major purchasers or suppliers to the corporation), but without denigrating the value that such persons can contribute to a board.

With EWON, the typical approach to appointing industry directors is to seek nominations from members. EWON's Nominations Committee will then assess the nominations and make recommendations as to the suitability of the nominees based upon 'their knowledge, skills and experience' (EWON 2022). Members then elect board members from those nominated. It should be noted that nominated members not recommended by the Nominations Committee are still able to stand for election to the Board. In relation to the appointment of Industry Directors, EWON's Constitution is silent on the knowledge, skills and experience required from board members leaving it to the Nominations Committee to provide a view.

The current allocation of Industry Director posts no longer automatically reflects EWON's membership and will reflect it even less in the future, subsequent to likely future changes in EWON's jurisdiction. At this time there is no guaranteed place for industry members reflecting embedded networks, and, under the current constitution, there will be no reserved place on the board for renewable energy companies or transmission companies when EWON assumes jurisdiction over those areas of the energy market.

Community Directors are appointed via open competition and interview. The predicate that appointing community directors with 'experience in and knowledge about consumer and/or small business interests relating to some aspect of the complaints handling service provided by EWON' (EWON 2022, para 10.12) may not reflect the breadth of community interests that exist once renewable energy development zones are established and the concept of community becomes linked to a local area.

It was suggested to the Review Team that with changing jurisdictions the focus on board membership will have to move from that of numbers to the nature of the board representation and that if the Board draws its membership from only members and community groups then it will, unintentionally, be structurally narrowing the membership that the board has and can be drawn from.

With the changes that are imminent in EWON's jurisdiction relating to renewable energy and its transmission, and, possible, further changes relating to the developing market in consumer energy resources, it will become increasingly difficult for EWON to maintain a board structure predicated on an out-of-date industry model. There will be a need in the future for EWON to review its board structure and it should take this opportunity to consider how best it can guarantee that the Board has the correct skills, abilities and insights going forward.

EWON may also wish to include in this consideration the diversity of its board. While the Review Team was only able to speak with half of all board members, EWON's Annual Report (EWON 2023a) does provide brief details on all Board Members. From this, it appears that the current composition of the EWON Board does not reflect the diverse nature of the broader New South Wales population. The Review Team suggests that there is more that can be done by EWON to ensure that its Board reflects both NSW's socio-demographic diversity and its geography. Ensuring that the Board represents the totality of the NSW population should be seen as part of EWON's community outreach programme.

#### 6.2.4 EWON Charter

Paragraph 2.1 of EWON's Charter sets out its principal responsibilities:

- a) to handle Complaints about the conduct of providers of Energy or Water Services fairly, informally and expeditiously, without charge to the person making the enquiry or Complaint;
- b) to promote EWON to consumers and small businesses;
- c) to encourage and provide advice to Members on the development and maintenance of good complaint-handling practices to assist in the reduction and avoidance of Complaints (EWON 2012).

These are important responsibilities that EWON has to deliver, but as has been discussed earlier, there are many other important roles and responsibilities that a modern industry ombudsman can and must also deliver. One of the issues that arose during interviews with participants, particularly those participants from members, was that many of them saw the role of EWON as being that of a complaints and dispute handler and did not fully appreciate the wider important roles now, and appropriately, being undertaken by EWON. Indeed, one submission received by the Review Team argues strongly that EWON should not comment on issues that extend beyond complaint handling and complaint minimisation roles and should be very cautious about any policy submissions not about these areas.

When the Charter is next revised, it would be helpful for EWON to update this paragraph to bring it in line with its current practice and that of typical leading industry ombudsman practice. Doing so would be educational for members and service users but it would also help inform future discussions on EWON's value for money, discussed below.

### 6.2.5 Small businesses

EWON is able to consider complaints made by small businesses about either an energy or water member of EWON as long as the business is:

- I. a small business (unless the complexity of the issue would absorb a disproportionate amount of EWON resources to address, relative to the resources available to the customer); or
- II. a small customer for the purposes of the National Energy Retail Law (EWON 2012, para 5.1 (i))

According to the *National Energy Retail Law 2012*, a small business customer is a customer who consumes energy at business premises below the following consumption thresholds (NSW limits): for electricity - 100MWh pa and for gas – 1 TJ (AER 2020). The logic that lies behind including small businesses as potential complainants within EWON's jurisdiction, is that small businesses are not likely to have the internal expertise or knowledge or resources to challenge major energy and water companies through legal routes<sup>3</sup>. It was a means to reduce an imbalance of resources and provide small businesses with a means to access free informal dispute resolution.

Notwithstanding this, it was reported to the Review Team that what most people would call a small business may have a large energy usage, such as family bakeries, and these would be excluded from using the scheme unless EWON was able to find reasonable grounds for accepting the case. However, some member participants suggested to the Review Team that, in their opinion, on some occasions, the grounds used by EWON when accepting a complaint from a small business were not reasonable. The Review Team is not in a position to take a view. It is unhelpful, for both EWON and members, to have this potential avenue of discord between themselves. It would be helpful to members, small businesses and EWON for there to be clarity on these issues. When EWON next reviews its Charter it may wish to consider consulting with members and small business organisations to determine whether there is a need to amend its definition of a small business.

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<sup>3</sup> This legislation and EWON Charter definition predates changes in the market which have seen smaller energy companies increase market share in recent times

## Benchmark Three: Fairness

**Underlying 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 identified two specific questions relating 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 (distributive fairness) appear to be of greater importance in ombudsman schemes than in other dispute resolution contexts (Creutzfeldt 2016) it is still the case that the negative feelings that an adverse outcome produces can be mitigated if the ombudsman's office has delivered high levels of procedural fairness during the complaint resolution process. This next section looks at EWON's performance against both of these areas of fairness.

Distributive fairness is concerned with two things. Firstly, was the correct decision reached? And, secondly, was the final remedy appropriate? Most industry ombudsman schemes attempt to secure the appropriate resolution to a complaint based upon what would be fair and reasonable in all the circumstances, taking into consideration relevant laws, industry codes and regulations. This approach is underpinned by the fact that in western society there is the increasing importance of fairness as a basic element of the social contract (Hodges 2018, pp.64-65).

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.

One of the strengths of industry-based ombudsman schemes is that they are able to go 'beyond the law' and look at an issue in a more holistic manner. Wheeler (2014, p.12) suggests that 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 industry code. A body may act in keeping with relevant laws but still be found by an ombudsman not to have acted fairly and reasonably (Allen and Overy 2017). Wheeler concludes that the answer to the question on whether an organisation's 'conduct was fair and/or reasonable will depend almost entirely on the circumstances in which the question arises and the role and/or interests of the person making the assessment' (Wheeler 2014, p.12).



In considering whether EWON observes the principles of distributive and procedural fairness when managing complaints, it is important to provide the general overview from participants regarding EWON's performance in this area. Overall EWON was viewed very positively with regards to its attempts to ensure fairness in its work and decisions. There were comments made to the Review Team from members such as, they [EWON] are head and shoulders above the rest, the only scheme that takes into account its members concerns, we can have a case reviewed if concerned, EWON is very strong on independence and fairness, teams report no concerns about unfairness by EWON in its complaints handling and EWON is viewed as being open to feedback when we feel that it might have missed something. Community group participants also reported to the Review Team that, from their perspective, EWON acted fairly in its cases and listened to complainants.

One member reported that they felt the fairness of the decision was dependent upon the outcome of the complaint - what was the commercial outcome. Two specific issues were raised by other member participants. Two member participants raised a concern that at Bring Your Bill days, the approach of EWON was to try and secure a bill waiver for the complainant even if it was not justified. The Review Team is not in a position to verify such a claim but would be concerned if that was the approach. It may be helpful for EWON to conduct a review of decisions made at Bring Your Bill days to see whether the decision-making process and outcome are in line with other decisions reached by EWON.

The second concern raised by, again, two members, was that members may feel pressurised to make a good will gesture to aid closure of the complaint, even if, in their opinion, it is undeserved and they feel that their organisation has not made any error. Again, the Review Team is not able to confirm how often, if at all, this occurs. The Review Team would make the point that people actively involved in a dispute may not be best placed to take a dispassionate view on the correct decision to be reached and how well an organisation conducted itself throughout the entire complaints process. Even if the technical aspect of the complaint was handled correctly, poor complaint handling can, in itself, justify a good will gesture in recognition of the stress and imposition placed upon the complainant. This is what is meant by a fair and reasonable outcome, discussed above. In all, the Review Team were satisfied that during EWON's complaint handling processes high levels of procedural and distributive fairness were achieved.

In its survey Schottler (2024) found that 53% of respondents felt that the decision reached by EWON was in its favour, while 26% felt the decision was partly in their favour and 21% felt that the decision was in the members' favour. Where a respondent felt that the outcome was not in its favour, this, typically, was because they wanted a bigger discount on the bill (18%) or the bill waived completely (11.5%), that the member should formally apologise for making the error (15%) and that the complainant wanted the complaint and outcome to be rectified more quickly (13%). Where EWON conducted an investigation into a complaint, rather than attempted conciliation or a referral to higher level, respondents were found to be more willing to accept the final outcome in these four particular areas.

Schottler (2024), asked EWON complainant respondents if they agreed that EWON had considered their complaint fairly and impartially. Overall, 69% of respondents suggested that EWON had acted fairly and impartially, with a slightly higher score achieved in conciliation as

opposed to investigation cases. Examination of casework by the Review Team indicated very high levels of both procedural and distributive justice in EWON's casework.

## Benchmark Four: Accountability

**Underlying 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 identified three specific questions relating 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. How well does EWON engage with members and other stakeholders?

EWON has three core accountability relationships. The first is to the public and complainants, the second is to members, while the third is to other stakeholders in the energy and water industries, which include industry bodies, the AER, the AEMC, IPART and the responsible government departments. Each of these three relationships are considered in turn.

### 8.1 Engagement with, and accountability towards, the public

EWON makes particular efforts to discharge its accountability towards the public. Although EWON's website landing page is in English, the content of its website can be translated with a couple of clicks into one of 25 languages commonly spoken in NSW. Key factsheets are available in 40 languages. EWON makes available an extensive range of customer resources covering the complaint process and a specific list of customer resources which provide information on some of the more important issues that customers are likely to face. Separately, EWON has a specific link on its landing page for resources targeted towards First Nation peoples. It will be recalled that there was a concern raised that EWON's website could be more accessible for people with sensory impairments. A review of the website does suggest that there is more that EWON could do in this regard and also for people with an intellectual or developmental disadvantage. Overall, the website does provide an impressive amount of information for those able to access the information.

As discussed under EWON's approach to community outreach, EWON makes great effort to engage with members of the community and community groups. In its 2023 Annual Report, EWON reported that it had undertaken a total of 81 community engagement activities 'across 50 local government areas including two large Community Assist Days in areas badly affected by flooding and bushfires in recent years' (EWON 2023b). EWON has a Consultative Council which meets twice a year and to which representatives from community groups are invited.

It was suggested to the Review Team that EWON should consider establishing consumer panels similar to those formed by both the TIO and with the Australian Financial Complaints

Authority (AFCA). For example, in 2020, the TIO established a Consumer Panel, consisting of 11 members from a diverse range of community groups, which meets at least twice a year, to provide the TIO with access to a range of consumer perspectives to help inform its work. The purpose of the panel is to provide the TIO with advice on a range of issues, including:

- the needs and interests of vulnerable, disadvantaged and hard-to-reach consumers
- the needs and interests of small business consumers
- consumer relationships with telecommunications providers
- systemic issues, trends and regulatory issues
- consumer views on the awareness and accessibility of the Telecommunications Industry Ombudsman to consumers
- community outreach
- offering feedback on the continuing development and enhancement of complaint handling processes
- key issues arising in the sector likely to impact on telecommunications complaints and complaint handling. (TIO 2019).

The Review Team believe that the suggestion to create a consumer panel has merit.

Feedback from community representatives was extremely positive with some groups stating that EWON engages more with communities and the public than other ombudsman schemes. Some community representatives expressed that they felt confident to be able to pick up the phone to speak to EWON if they had a particular concern about what EWON was doing. EWON was described as a bit of a leader in this area, that it tends to be at the vanguard of progressive changes in the ombudsman world, particularly in its work with First Nation peoples, and that it was one of the more robust and influential ombudsman. EWON was described as a trusted voice in the energy space.

## 8.2 Engagement with, and accountability towards, members.

EWON's constitution details the nature of the accountability relationship between it and members and where the key mechanism is EWON's Annual General Meeting of members. EWON undertakes a range of other activities with which it attempts to engage with members.

These activities include induction training for the staff of member organisations, the production of webinars on topical issues, and the establishment of ad hoc groups on issues of particular concern to members. In an act warmly lauded by members, EWON has updated its members portal which allows members to see progress on individual cases and also benchmark its performance against that of its peers on an anonymised basis. The portal also allows access to important documents such as the member manual, case handling manual, industry updates and previous webinars.

EWON holds two regular meetings relating to members. The first is the bi-annual consultative council meeting. It also holds a bi-annual exempt entity and WICA provider Operational Advisory Group meeting which provides a valuable opportunity for EWON to engage with its embedded network members in partnership with government and regulators.

Over the last two years EWON has worked with colleague EWOs such as those for Queensland, Victoria and South Australia to help members improve promotion of their responsible EWO.

Members generally spoke of very positive relationships between themselves and EWON. EWON were seen as approachable and easy to work with. EWON was considered responsive to members who felt comfortable at reaching out to relevant EWON staff if they had a concern or wished to challenge a decision. Some responses from members include, great relationship, compared with other schemes EWON does very well, we interact in positive manner, not adversarial but cooperative, we really value our relationship with EWON – better value and more transparent than others, feedback from teams is that EWON are great to deal with, the team reports that EWON are very proactive and responsive, and, the systemic improvement work by EWON really helps and better insights leads to better services.

It was suggested several times to the Review Team that participants saw benefits that could arise if the Ombudsman and Chair of EWON were able to have regular meetings, perhaps yearly, with their counterparts in member organisations.

Where EWON did receive criticism, it tended to be because of an alleged lack of technical understanding in network and water complaints and, that, because of their relative sizes, linked to the number of complaints received by EWON, water members and water issues tended to be crowded out by energy complaints and issues. It was argued that this crowding out of water issues and complaints by energy issues and complaints extends to newsletters, reports and the agenda of consultative council meetings.

According to EWON's Annual report (2023), water complaints made up around 4% of complaints received by EWON. Understandably EWON's focus is on energy complaints as they generate over 95% of EWON complaint activity. Water members did have sympathy towards EWON because of the relative scale of issues that it has to address. The Review Team think that, nonetheless, it would be beneficial for EWON to consult with its water members on how best they might work together whether through a bespoke annual water company consultative council type meeting or specific newsletters and reports.

### 8.3 Engagement with, and accountability towards, members of the energy and water regulatory networks.

As noted above, EWON is part of a regulatory system which attempts to ensure that the energy and water markets operate effectively. To do this it needs to work effectively with regulators such as the AER, AEMC, IPART and relevant government departments as well as bodies such Fair Trading and Customer Service NSW and Planning NSW. All such participants spoke positively of their relationships with EWON. There was clear support for EWON's position within the regulatory system. To facilitate the relationships that exist between EWON and its key regulatory and governmental partners, there are published Memoranda of Understanding. The implementation of those memoranda is demonstrated through both regular planned meetings between senior members of both parties. Participants described the meetings as working well. The Review Team were advised that

regulators can miss the human element in their work but EWON can provide that humanity, EWON are showing up and providing information and insights, and that EWON works well, and is collaborative and cooperative and that some saw EWON as a peer. The Review Team commends the strong working relationships that EWON has established with its regulatory and governmental partners. These relationships take significant efforts to both establish and maintain and provide benefits not only to the establishment of an effective market but also are of direct benefit, even if unrecognised, to members.

#### 8.4 EWON's fulfilment of CDR Benchmarks for public reporting

The Benchmarks say relatively little on an industry ombudsman's requirement for public reporting. There is a requirement for an industry ombudsman to produce an annual report providing both general information about the ombudsman scheme as well as information about complaints received and their outcome. EWON does meet this requirement and it is made available to all relevant groups and people. However, as was noted in the last review, EWON's Annual Report is available only in English. Given the known high level of NSW residents who do not speak English at home it was suggested that EWON look at the languages and formats in which all its publications are available including the Annual Report. EWON has done so for its routine reports but not the Annual Report. It would be a major task to produce the Annual Report in 25 plus languages but EWON may wish to consider producing a summary Annual Report providing key information in a range of commonly spoken languages in NSW.

As well as producing more documents in more languages, EWON has also increased the amount of information available both within the Annual Report and via its website using Microsoft Power BI. However, the Review Team heard from members, community group and regulatory stakeholders that they all desired EWON to publish more information albeit for different reasons.

EWON issues a quarterly eNewsletter (EWONews), to which individuals can subscribe, updating them on complaints and other topical issues. It also publishes a quarterly EWON Insights report which provides information on complaints received as well as information about topical energy and water issues. EWON publishes a series of Spotlight On reports which provides detail on its systemic issues work. These reports will outline policy issues that are arising from its systemic issues work as well as proposing industry discussion points. Finally, EWON publishes any submissions that it makes as part of wider consultations by regulators and government.

Community groups argued for increased publishing of data and especially of trends and issues identified by EWON. Members, while welcoming the ability to interrogate data within the members portal, stated that they would welcome EWON publishing more data together with better analysis of trends about what is happening and the publication of real-time data to allow members to benchmark themselves against their competitors. Regulators suggested that EWON could provide more data and analysis such as trends, a dashboard of top issues, which regulators stated helped them understand gaps and issues within the market. In addition, regulators suggested that EWON could leverage its data and insights more than it currently does to influence and shape policy and policy responses. Since the last review

EWON has commenced publishing its award-winning Spotlight On reports which 'highlights issues revealed in [its] casework, outlines policy challenges and proposes industry discussion points' (EWON undated). In summary, there was a wish for EWON to publish more of its findings, both in the form of data and statistics but also in the form of case studies.

It is a common finding in such reviews that participants across stakeholder groups request that industry ombudsman publish more information. But industry ombudsman have to ensure that the data and information that they publish is of sufficient value to external stakeholders to justify the costs of collecting, analysing, interpreting and publishing the data and information. In addition, some participants recognised that the publishing of increased amounts of data by EWON raised privacy issues if it allowed the identification of individual members.

**Recommendation 3:** EWON should discuss with members and other stakeholders to ascertain the degree and nature of the information that these stakeholder groups would find helpful and also to address any privacy issues that may arise from publishing more data and information.

## 8.5 Funding model

In financial year 2022/23 EWON launched a new funding model. In essence this is a user-pays type model with a fixed element of 15% of EWON's income and the remaining 85% of its income arising through the number, complexity and disposition of complaints arriving at EWON. Assessing the funding model was not a specific matter of enquiry within the Terms of Reference for this review but the Review Team would report that members, by and large, were very positive about the new funding model stating that it brought greater clarity on fees, allowed more accurate billing and more accurately reflected the costs incurred by EWON relating to individual members.

As a result of EWON's jurisdiction being expanded to include embedded networks, EWON's membership now includes what may be described as micro-businesses which may have both a very small customer base and profit margin. The variable cost element of a complaint considered by EWON can rise rapidly, particularly if the complaint results in an investigation. Concerns were raised that a small number of investigated complaints could lead to serious financial problems for micro-businesses. Like rubbing salt into a wound, if EWON ultimately found that there was no justification to the complaint, the micro-business could be financially disadvantaged even when EWON did not uphold the complaint. EWON may like to review this as part of the settling in consultation of the new funding model.

## 8.6 Does EWON have a process for accepting complaints about EWON, including complaints about case management, privacy, jurisdiction and day to day operations?

EWON has a bespoke *Complaints about EWON* policy (EWON 2024a) which sets out two internal complaint categories, which can be either, firstly, a complaint about the handling and/or outcome of an individual complaint or complaints about EWON's services which includes jurisdictional issues and decisions not to investigate, and, secondly, complaints

about EWON's services and/or staff which include complaints about privacy, the behaviour of and/or service provided by EWON personnel, the Ombudsman and day-to-day operations. In 2022/23 EWON received seven complaints about itself (which they call internal reviews) for which an independent review was undertaken and a written response provided (EWON 2023) but did receive 22 complaints in 2023/24. Complaints about EWON are managed by EWON's quality assurance team in line with the recommendation made in the last review. The Review Team looked at a sample of five internal reviews and found no cause for concern.

## 8.6 EWON's commitment to privacy

In this section of the report the Review Team considers two aspects to this issue. Firstly, EWON's commitment to privacy in its own internal operations and, secondly, as EWON has delegated authority from Office of the Australian Information Commissioner (OAIC) to consider privacy complaints about members, how well does EWON discharge that responsibility.

EWON is fully committed to the security of the personal data that it receives and holds as a result of its casework. It has a very clear and publicly accessible Privacy Policy stating how EWON will collect and use personal information, including its disclosure during casework. All breaches of privacy are reported by staff to their manager and to the governance team. The governance team keep a register of all breaches and the number of breaches is reported to the Board. Serious breaches would be reported to the OAIC but that has not been necessary to date. In addition, EWON has a Privacy Champion team, led by the governance team but with representation from both the Dispute Resolution and the Quality Assurance teams. EWON has undertaken Privacy Impact Assessments and made recommendations for processes and policies that have privacy implications. It holds a Privacy Awareness Week where it promotes the importance of privacy to staff, including how it impacts their work and life outside work. Finally, staff can attend training run by the OAIC, when available, but, in any event, all staff have to complete regular compliance training in privacy. This is a comprehensive approach to protecting the privacy of users and demonstrates EWON's commitment to privacy.

EWON has delegated authority from the OAIC to consider complaints against members that include concerns that their privacy had been breached. In 2023/24 EWON received 267 complaints about breaches of privacy. EWON's approach to handling privacy complaints is the same as its normal complaint handling process. That is, there can be complaint enquiries, referral to higher levels, conciliation and investigations dependent upon the status and nature of the complaint. This approach is broadly similar to that used by the OAIC which refers complaints back to an organisation if it has not had the opportunity to try and resolve the issue(s). If the customer has previously submitted their concern to the original organisation and then attends the OAIC, the OAIC will attempt to use conciliation as a means of resolving the issue and only rarely will it investigate the complaint. A review of privacy complaints data suggests that, in 2023/24 EWON closed privacy complaints at the following levels:

- Complaint enquiry 30%
- Referral to higher level 55%



- Conciliation 9%
- Investigation 5%.

By comparison, in 2022/23, the latest published reporting period, the OAIC (2023, p.28) closed 94% of complaints through early resolution and conciliation and 6% after an investigation. The energy and water sectors are not listed by the OAIC as sectors that drive privacy complaints at the OAIC.

Analysis of a sample of privacy complaints was undertaken by the Review Team. As with EWON's other casework, the Review Team found a high standard of work undertaken by casework staff. EWON does not have any explicit closure codes to specifically identify privacy complaints, but the Review Team were advised that case workers would add the information to the systemic issues field. EWON may wish to consider having a specific privacy complaint code which would enable it to more quickly identify and analyse privacy complaints should the need arise.

## Benchmark Five: Efficiency

**Underlying 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 the office provides value for its funding.

EWON identified three specific questions relating to this benchmark:

1. Does EWON's structure and processes deliver timely, independent and fair outcomes for customers and members which in turn, builds confidence in the office and ensures the office provides value for its funding?
2. The quality of the EWON's complaint resolution services.
3. How satisfied are complainants with the service and outcomes that they receive from EWON?

### 9.1 EWON's complaint handling model

EWON has a relatively straightforward complaint handling process comprising three different stages. The first stage is a Complaint Enquiry where a customer contacts EWON to request information or a complaint resolution before they have approached their provider. EWON refers the customer to the energy or water provider's contact centre. The second stage is RHL when a complaint received by EWON is referred to the provider's specialist dispute resolution team for action<sup>4</sup>. The final stage is that of Investigation where EWON investigates complaints that were not resolved between the customer and their energy or water provider. Investigations are categorised as Level 1, 2 and 3 based on the time taken for EWON to resolve the complaint (EWON 2023a, p.23). This next section examines the RHL and investigation stages.

#### 9.1.1 Referral to higher level

An RHL is a complaint that has been referred by EWON to the provider's specialist dispute resolution team because:

- the customer has raised the complaint with the provider and given it a reasonable opportunity to respond, and
- the customer is not satisfied with the provider's response to the complaint (EWON 2022a, p.48).

The intention behind the RHL process is to promote early resolution of a complaint by providing members with another opportunity to resolve the complaint. It is a standard approach used by industry ombudsman in Australia and New Zealand. An RHL would be sent where:

- The complaint is with an EWON member
- The complaint has been raised with the provider (minimum one contact required but not more than two contacts)
- The complaint remains unresolved/customer is not satisfied with the response

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<sup>4</sup> Not all members have a specialist dispute resolution team.

- There is no specific reason why the complaint is not appropriate for RHL
- The RHL is accepted by the customer (EWON 2022, p.49)

EWON may choose not to use the RHL process if:

- there is some urgency to the complaint, such as disconnection, restriction, or safety concerns
- the customer appears to be particularly vulnerable
- the customer has had two or more contacts with the provider and the complaint remains unresolved
- the customer has stated that they do not wish to have further dealings with the provider (EWON 2022, p.49).

When an RHL is made, the member must:

- contact the customer or advocate within 5 business days
- advise the customer during the initial contact of the steps the provider will take to resolve the complaint, and the contact details of the person handling the complaint
- investigate the complaint
- keep in touch with the customer during their investigation
- provide the customer with a full response and attempt to resolve the complaint within 28 days (EWON 2022, p.48).

It is a requirement of the scheme that members must inform EWON if the complainant remains dissatisfied after their attempt at resolution (EWON 2022). Once an RHL has been made, complainants receive a letter from EWON explaining that the case has been referred back to the member; what they, the complainant, can expect to happen, and, makes clear that, if they remain dissatisfied at the end of the process, or, if the member does not contact them, then they can return to EWON. Complainants also receive phone texts from EWON about their provider's responsibilities and how they can return to EWON. Should they do so, the complaint is automatically accepted for further action by EWON casework staff (EWON 2023). Some, but not all, members will provide EWON with details of the outcome of the RHL that they reach with the complainant.

In its 2022/23 Annual Retail Market Report, the AER (2023) reported that around 27% of all complaints received by energy retailers from NSW residents turned to EWON for assistance in resolving the complaint suggesting that many members in-house complaint handling processes have scope for improvement. Thus, the EWON refer to higher level acts as a form of safety net for weaknesses in members own in-house complaint handling. EWON may wish to consider whether it is appropriate to refer complaints back to members with a particularly high percentage of complaints that reach EWON.

There is little published data on how complainants view the refer back process. Research findings from Citizens Advice (2016) in the UK 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. The Public Transport Ombudsman Victoria (PTOV) surveyed complainants' satisfaction with the PTOV after the equivalent RHL stage and the

investigation stage and found that there were significant decreases in satisfaction scored in the RHL stage compared to those cases that underwent investigation by about 15% with overall satisfaction dropping from 90% to 64% (McBurnie and Williams 2019a). The TIO conducted a similar style survey and found that 70% of respondents felt frustrated dealing with their provider, 57% felt anger towards their provider, 51% felt stressed and 47% of respondents felt powerless with their provider (McBurnie and Williams 2022). EWON's Customer Survey (Schottler 2024, pp.50-54) included questions on this issue. Key findings include:

- 54% of respondents were satisfied by the outcome.
- 43% of respondents thought that the members' staff had the knowledge skills and experience to manage the complaint.
- 38% of respondents were satisfied by the ease of communicating with the member.
- 38% of complainants were satisfied with the way that the member handled the complaint.

These scores compare poorly with the scores recorded for EWON's staff for its role in the RHL process where EWON scored an average of around 80%. EWON needs to be careful that customer dissatisfaction with the RHL process does not seep into dissatisfaction with EWON itself. Previous reviews by the Review Team indicated that some people still believe that the industry ombudsman remains responsible for the complaint during the RHL process. EWON's good work with sending a letter immediately following the decision to make an RHL and the subsequent texts to complainants may help to mitigate these concerns.

The Review Team suggests that there is more that EWON can do to mitigate the risk of customer dissatisfaction with RHL reverting back towards it. Firstly, it could require all members to notify EWON when it has made contact with the complainant. If the five-day target is missed EWON can step in and accept the complaint. Secondly, at the culmination of the 28-day resolution period, or earlier if the case is resolved earlier, members should send EWON a note stating that the case is resolved or not, and if resolved, what was the agreed outcome. By requiring members to send to EWON the outcome of the RHL, this would allow EWON to collate a better picture of the outcomes, including financial outcomes, achieved and also provide further data to allow a better understanding of issues and trends in the energy and water markets.

### 9.1.2 Investigations

Investigations involve speaking to both parties to determine the facts and circumstances from both points of view. EWON caseworkers analyse the information obtained from both the customer and the provider such as billing information, metering data, telephone records, and energy contracts. EWON will also review relevant legislative provisions, conduct research and, in some cases, undertake site visits, and, may, on occasions, consult independent experts. Some investigations also involve referring the customer to other services such as welfare agencies, financial counselling and tenant advisory services (EWON 2023, p.23).

Level 1 investigations are most often resolved with conciliated outcomes in four to six weeks because they are generally not complex. Level 2 investigations involve more in-depth research, investigation and analysis. Providers are often asked to supply detailed billing and metering information or reports from engineers or asset repairers. Customers need to

provide supporting information for their position including appliance receipts where a damage claim is made or records relating to interactions with their providers, for example text messages or emails. Level 3 investigations involve detailed information requests to the provider and the customer and may require independent expert advice to reach an outcome (EWON 2023, p.24). Certain cases will bypass the conciliation stage and go straight to an investigation where triage indicates that it is likely to be complex. Examples include cases involving land easement complaints, network and water complaints.

There are four potential outcomes to complaints accepted by EWON for investigation and these are facilitated resolutions, where an EWON conciliator works with both parties on non-complex complaints to reach a fair and reasonable outcome using a conciliatory approach, negotiated resolution, where EWON conducts a full investigation into the complaint and uses their subsequent assessment of the complaint to negotiate a fair and reasonable settlement between the two parties based upon relevant laws, codes and industry practices, no further investigation which occurs when the EWON investigator finds no basis to investigate further, and, finally, binding decisions, where the complaint is escalated to the Ombudsman to make a determination. It is very rare for EWON to make a binding decision as complaints are resolved through either facilitated or negotiated resolution (EWON 2023, p.24).

Two issues were raised by participants regarding EWON's casework. The first related to delays in allocation while the second related to delays in case closure for investigated cases.

At the time of writing, there are delays of around four weeks to allocate a case for conciliation and around three months to allocate a case for investigation. Before any case is placed in the investigation queue it undergoes triage to determine the nature of the issue, the vulnerability of the complainant and whether it is a high-risk case that needs urgent attention, such as an imminent disconnection. With respect to the wait for an investigation to commence, it should be noted that EWON staff keep in touch with the complainant to assess any changes in the complainant's circumstances which may result in a change in a priority and to inform them of progress with their case.

Participants commented that such delays in allocation made resolving a complaint more difficult, as positions and expectations may harden, complainants may assume that there is a degree of collusion between EWON and the member, and that for small companies, where the disputed amount is relatively sizeable, then it can have a serious adverse impact on the members cashflow position. For EWON, it is important for it to close cases as timeously as it can, as the longer a case takes to close the lower the level of complainant satisfaction engendered.

Since the start of the cost-of-living crisis there has been a significant increase in the number of complaints and an associated backlog in handling them and this applies to members as much as EWON. As members have been working to reduce their backlog, with a steady 27% transfer rate of cases from members to EWON, the more cases closed by members the more that arrive at EWON. The result is that in four years EWON has seen a doubling of cases received, see Table 4 with the approximate number of cases:

Financial year end	Number of cases
2022	15,000
2023	18,000
2024	27,000
2025 <sup>5</sup>	34,000

*Table 4 Number of cases closed per year:*

Increases of this scale in such a short timescale will cause challenges. A suggestion was made to the Review Team, from some member participants, about whether EWON should consider referring a case back to a member for a second time. The Review Team would have significant concerns should this proposal be accepted. Discussed above (9.1.1) was the research finding that customer dissatisfaction increases with refer-backs. At present, by the time that a complaint is accepted by EWON for conciliation or investigation the member will have had at least two, if not three, attempts to resolve the complaint. Schottler's findings on the low levels of customer satisfaction with members' handling of the RHL process suggest that referring complainants a second time to the member would be likely to have a significant adverse impact upon customer satisfaction with EWON and, from this, customer trust and legitimacy in EWON itself.

Businesses in post-Covid Australia have faced high staff turnover rates and, unsurprisingly, EWON has faced the same challenge. Nationally, staff turnover rates are now trending back to the pre-Covid norm and this also applies to EWON. However, as a consequence of this change in staff turnover rates, it was reported to the Review Team that 85% of staff working at the front end of EWON's casework are relatively new in post.

EWON tries to be a good employer and has an impressive staff engagement score of 81%. One area of dissatisfaction among staff related to pay scales and it was reported to the Review Team that EWON has lost staff to other organisations where they will perform similar roles but for higher pay. EWON has introduced the EWON Everywhere scheme to take advantage of the changing working arrangements post-covid which allows greater home working and to employ staff not resident in Sydney. This has the potential to bring significant benefits as Sydney salaries are generally higher than non-Sydney salaries making them relatively attractive to non-Sydney residents, and it would allow EWON to employ staff in regional and rural remote NSW, providing EWON with a staff profile more reflective of NSW overall and the ability to gain insights on the issues and challenges affecting NSW residents in these areas.

Several member participants raised concerns that EWON staff lacked the technical knowledge to consider complaints, particularly in the transmission, network and water sectors and suggested that this led to delays in closing complaints and increased costs. EWON does try to redress this by the development and provision of guidance notes but this issue is not helped by the recent high level of staff turnover and the fact that complaints in these areas are relatively low in number meaning that it would be difficult for individuals to gain expertise across all areas. Members did offer to provide training to EWON staff on this area. It would certainly be helpful for the EWON to work with network and water companies

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<sup>5</sup> EWON forecast

to identify what they believe to be the commonest technical issues that so that a bespoke training programme with supporting guidance notes can be developed.

During the case file review, the Review Team noted that for Level 2 and 3 investigations, all Investigation Officers (IOs) reached a very sound assessment of the case relatively quickly but that differing IOs took different lengths of time to close the case. There appeared to be three groups of IO performance; the first group closed cases post assessment quickly, in a matter of weeks, a second group of IOs which took a little longer and a third group of IOs which took significantly longer than the first group of staff. The Review Team would urge caution with this observation as it was based on a small and statistically insignificant sample of cases but the observation was noticeable. It is important to stress that the Review Team did not identify any difference between IOs in the standard of either procedural or distributive justice, only in the time to close.

The review team suggests that the reason for these delays is likely to be multi-factorial. Nonetheless, some direct casework related reasons do include:

- Complainants, when they feel that the likely outcome is not what they sought, may introduce new issues or demand further investigation by the IO.
- Some IOs appear to try for too long to reach a negotiated settlement.
- In some cases, multiple casework staff can be involved and case handovers are recognised as a cause for delay and customer dissatisfaction.

The Review Team would suggest that EWON select a statistically significant sample of closed investigation cases, and, using the time to close from a completed case assessment, determine whether the Review Team's observation is an artefact or if there is differential performance. Should this be found then it would enable EWON to identify potential underlying causes and any appropriate remedial actions.

The EWON service model is to use either facilitated or negotiated shuttle discussions to reach an agreed settlement. There are two areas of control in any dispute resolution exercise: who controls the process and who makes the decision. Where participants have greater control in these two areas the more likely that they will accept the outcome, even if it is not the outcome that they sought. This is very important – it provides both parties to the dispute the ability to contribute actively to the process and to participate in the final determination. For a complainant it is especially important for them to feel heard and to believe that their views were fully considered. Doing so will improve their satisfaction with the outcome achieved and with both trust in, and the legitimacy of, EWON. However, this approach is not without cost. Utilising this approach can result in final settlements taking longer. While acknowledging this consequence, with slightly increased costs to EWON, and hence members, the Review Team suggest that the benefits of the approach, increased customer satisfaction, trust and legitimacy in EWON outweigh the financial costs.

Several member participants highlighted that, within their organisation, there existed performance measures relating to the timeliness of complaint handling and compared EWON's timeliness unfavourably with these internal performance measures. The Review Team would highlight that by the time a complaint is accepted for investigation by EWON, the member is likely to have had a minimum of two, and probably three, attempts to resolve that complaint. This would suggest that the complaints accepted by EWON for investigation

have a degree of complexity and difficulty that makes them atypical to those complaints resolved by members, and for that reason, it would be erroneous to argue that a similar timescale should apply. In addition, the Review Team were informed that for multiple reasons, complainants are exhibiting more difficult and challenging behaviours during complaint resolution which will, again, adversely affect the timeliness of EWON's complaint resolution.

## 9.2 Customer satisfaction with EWON complaint handling

Table 5 below provides details on customer satisfaction, where the complainant was either very or fairly satisfied at the handling of their complaint by EWON, separated into the scores for conciliation and investigation (Schottler 2024):

	Conciliation	Investigation	
EWON staff were courteous and helpful	83%	65%	
EWON clearly explained the complaints process	76%	62%	
Knowledge, skills and expertise of EWON staff	75%	60%	
Effort made to understand your complaint	75%	57%	
EWON staff did what they said they would do	73%	58%	
EWON staff were fair and impartial	73%	54%	
EWON kept you informed of progress	71%	61%	
Length of time to resolve the complaint	69%	53%	
Satisfaction with the outcome	69%	52%	
Clarity of reason for outcome	76%	70%	
Was outcome in complainant's favour <sup>6</sup>	Completely	53%	29%
	Partially	22%	32%

Table 5: Customer satisfaction with EWON<sup>7</sup>

From this table one can see that the scores achieved for conciliations were noticeably better than those achieved after an investigation. While multi-factorial, there are two causes that are likely to be the main determinants of many of these scores: did the complainant receive what they sought when raising a complaint and the length of time to close the case. Schottler (2024, p.8) argue that the satisfactions ratings achieved were strongly determined by the degree of success achieved by the complainant in gaining what they sought at the outset. They conclude that, while accepting outcome was the single greatest driver of customer satisfaction, EWON could do more in this area by clarifying jurisdictional issues as early as possible (over 30% of complainants said they were dissatisfied because the complaint was out with the jurisdiction of EWON) and better management of customer expectations at the outset (Schottler 2024, p.8).

The management of customer expectations involves caseworkers 'reshaping consumers' perceptions of their disputes in such a way that they feel able to move on' (Gill and Hirst 2016, p.21). This is deemed necessary when there is a gap between the caseworker's

<sup>6</sup> As perceived by the complainant. In addition, respondents who had their complaint resolved by RHL reported that in 55% of cases they achieved entirely what they wanted and in a further 27% of case they partially achieved what they sought.

<sup>7</sup> Figures rounded to nearest integer



professional analysis and the consumer's expectations (Gilad 2008a). To be able to deliver this role, caseworkers require additional skills to those historically thought necessary: Gilad (2008) suggests that, to be effective, caseworkers require sensitivity to complainants' emotions and communication skills to manage these emotional sensitivities. Gilad (2008, p.249) argues that

'What is at stake for complainants is not just financial or physical loss, but recuperation for their identity as responsible and worthy citizens. Complainants want to be heard, understood, taken seriously, offered satisfactory explanation, and responded to with respect.'

Research 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, that is, in their favour) and self-serving bias (looking more positively on evidence which supports their complaint and minimises contrary evidence). Such biases help explain Schottler's findings but inevitably make it more challenging for caseworkers to resolve a case, particularly investigation cases, as complainants may well interpret that the opening of an investigation demonstrates legitimacy of their complaint.

When a case is waiting for allocation to an IO, there is the opportunity at the triage stage to identify what is required from the complainant, in terms of substantiation of their complaint and alleged loss, from members in terms of their response to the complaint and supporting evidence, that any non-disputed elements of a complaint are paid, and, any authorisation to act documents are signed.

After the case is assessed by the caseworker, the caseworker will send to both parties a letter detailing the heads of complaint. It will be recalled that O'Neill (2020) found that one in five people in Australia speak a language other than English at home and 44% of Australians have low levels of literacy (see also Australian Government 2024). EWON does have a style manual that explains and provides advice on both the need to, and how caseworkers might, write in simple English. The letters reviewed by the Review Team were perfectly readable providing a reasonable level of English literacy. However, it is likely that some complainants may have difficulty in fully understanding the contents, particularly if English is not their first language. There may be some work for EWON to consider in this area.

In addition, it should be made explicit in these letters that these are the final heads of complaints and new issues will not be considered. The reason for this second suggestion is that, in a small number of cases examined by the Review Team, where a complainant felt that the case might be going in their favour, they may introduce new issues, information or arguments and, on occasion, the caseworker may accept this intervention. Having tight heads of complaints to which the caseworker can refer the complainant, means that the caseworker will be able to advise the complainant to raise any new issue with the member or explain their investigation more clearly.

**Recommendation 4:** EWON should review its complaint handling service model with a focus on:

- Development of position statements for specific complaints issues which educate, inform and management the expectations of customers and members and as a result, lead to increased complaint outcome consistency and reduced resolution time frames.
- Improve the RHL process and consumer outcomes by requiring members to confirm that they
- made contact with the complainant within the expected timeframe, and
- achieved an outcome agreed with the customer by providing information to EWON about the how the complaint was resolved, the agreed outcome between the provider and customer, and the time taken to resolve the complaint.
- Investigations:
  - EWON should examine timeframes for closure rates for investigated complaints, identify whether inconsistency exists between staff, and, if so, to understand the contributing factors for improved consistency and reduce resolution rates.
- EWON is an independent and neutral facilitators of complaint outcomes and should use this independence and neutrality with both parties to prevent consideration of extraneous issues that customers raise during investigations and to therefore resolve complaints more quickly. In rare circumstances it may require the Ombudsman to make a binding decision on the complaint.

### 9.3 Quality Assurance

EWON has a systematic quality assurance programme which has been revised since the last independent review and comprises four objectives: the measurement of quality, ensuring the reliability of data that is captured, that it should drive organisational improvement and support individual learning. In seeking to secure these objectives EWON staff will undertake focused reviews of specifically identified topics or emerging topics to assess the quality of case management and service delivery, undertake data integrity audits to assess the accuracy of EWON's data capture and undertake internal reviews of EWON's procedural fairness. In the last activity, EWON customers are able to ask for an internal review of an investigation if the complainant can meet certain requirements relating to concerns about partiality by the EWON caseworker, provide additional evidence that was not previously available but be likely to change an investigation outcome or believe that the EWON caseworker made an error during their investigation. 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 practice.

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. The data integrity audit considers the 26 data fields concerning the complainant's complaint, for accuracy. Calls made by caseworkers are now recorded and a sample are examined to assess the quality of verbal communication. This is a welcome

change since the last review particularly given that EWON's preferred method of communication with parties is through the use of the telephone. Around one in three cases is subject to some part of the quality assurance process but the focus is on closed cases.

EWON has a comprehensive quality assurance process in place but member participants appeared to be unaware of these quality assurance activities undertaken by EWON. There were several requests that EWON be more transparent in its quality assurance activities and publish more information. The Review Team has sympathy with this view. As in the last review it is suggested that EWON publish more of its quality assurance data.

Finally, the Review Team was informed that EWON is looking to revamp its quality assurance processes to determine how the quality assurance process can be better linked to caseworker staff learning and development and whether the quality assurance process can be undertaken in real-time, that is with open cases. These are interesting initiatives which the Review Team would support.

#### 9.4 EWON's value for its funding

Despite the general praise for EWON from all groups of stakeholder participants, some member participants suggested to the Review Team that EWON was expensive, and that the costs of EWON were passed on to customers through higher bills. This leads to the question, does EWON offer value for the funding that it receives from members. The purpose of the efficiency benchmark is 'to give the community and participating organisations confidence in the office and to ensure the office provides value for its funding'. As shall be seen below, this purpose is sometimes simplified to mean EWON's complaint resolution activity. The Review Team would argue that, to fully assess whether or not EWON provides value for its funding, the assessment must include all the activities associated with a leading ombudsman which EWON is.

The Association of Chartered Certified Accountants argues that profit-seeking organisations have an underlying objective: to maximise profit in order to maximise value for shareholders (ACCA undated), but not-for-profit organisations, which includes EWON, cannot have this as an underlying objective. Instead, assessments of value for money (VfM) are seen as an appropriate framework to assess performance (ACCA undated). ACCA (undated) stresses that value for money 'is not simply about minimising cost'. Thus, demands that not-for-profit organisations should demonstrate year on year efficiency savings are not appropriate. Thomas et al. (2022, p.21) state that assessing value for money 'requires significant contextualisation and sensitivity in terms of its interpretation' as it 'involves a nuanced judgment'.

There are a number of challenges that arise when assessing value for money in not-for-profit organisations: they are likely to deliver public goods which are not easy to value as cost is not the only measure, they are likely to have multiple stakeholders who may well have differing and unclear definitions of what they understand as value for money for a particular organisation (Karanja 2021), and there are particular difficulties in assessing the effectiveness of an ombudsman when there can be difficulty in isolating the impact of ombudsman from other causes and influences (Thomas et al. 2022).

To begin to understand how an organisation like EWON can begin to assess its value for money there are two prior order issues that need considering:

1. Firstly, there should be agreement among its stakeholders on what is the role of EWON and, from this, what is EWON trying to achieve.
2. Secondly, among the differing stakeholder groups, is there a commonly held definition of what is meant by the concept of value for money and how it is to be measured when applied to EWON. For example, if one group believes that the role of EWON is to handle complaints, as was suggested to the Review Team, then its system improvement work is less relevant. Or if there is too strong a focus on efficiency and economy then EWON's ability to be an effective and equitable organisation could be compromised.

To help understand this second issue, the Review Team asked each participant what did they understand by the term value for money when applied to EWON.

- Member participants tended to talk about EWON's role as a complaint handler and talked mostly in terms of the cost of the service to their organisation and the efficiency of EWON's complaint handling. This is unsurprising as members fund EWON. Some members did talk in terms of EWON's effectiveness – interestingly, those member participants who raised this aspect also said that they felt that EWON should publish more information about its non-casework activities as EWON had a good story to tell in these areas.
- Consumer groups tended to talk about the efficiency of EWON's complaint handling but would also speak to the importance of EWON's non-casework activity, particularly EWON's community outreach and work with vulnerable and disadvantaged complainants.
- Regulator participant responses were similar to those from community group participants with a focus on efficiency and effectiveness, particularly on its policy submission work, although one regulator acknowledged the importance of cost.

It was stated earlier in this report that, *the role of an industry ombudsman is to provide an accessible, fair and cost-effective dispute resolution service, which uses its unique insights, gained from its dispute resolution activities, to inform members, the public, and policy and regulatory networks, to help deliver a market which works for both customers and businesses.*

Increasingly, when assessing value for money, four criteria are used in its assessment:

**Economy:** minimising the cost of resources used or required – spending less;

**Efficiency:** the relationship between the output from goods or services and the resources used to produce them – spending well;

**Effectiveness:** the relationship between intended and actual results of spending – spending wisely; and,

**Equity:** the extent to which services are available to and reach all people that they are intended to – spending fairly (National Audit Office undated a).

ACCA (undated) argues that there is the potential for conflicts to exist between these four VfM criteria as each of the criteria seek to achieve different goals. Organisations can find it difficult to ensure a balance between them.

In this part of the review, the focus is on the criteria relating to efficiency and effectiveness. Equity has, effectively, been considered under the accessibility benchmark. Assessing economy will require individuals with knowledge of econometrics.

#### 9.4.1 Efficiency

With the efficiency criterion, the focus is on the relationship between the output from goods or services and the resources used to produce them, that is output per unit of resource. Table 8 below provides some data that relate to the efficiency of EWON. The important point to note here is that this table does not include other essential non-casework activity that EWON needs to undertake such as raising public awareness, community outreach and policy work. This table demonstrates that in its casework related activities, EWON has become more efficient with more cases closed per caseworker in each of the three years while, at the same time, there has been no significant negative impact on closure times.

Year	2024	2023	2022
Total number of complaints closed in the year	27650	17844	14652
Complaints closed per caseworker	553	446	366
Number CE/RHL/Level 1 closed in the year	17111	10812	7566
Number CE/RHL/Level 1 closed per caseworker	439	386	291
Number of Level 2/3 complaints closed in the year	1242	1327	1244
Number of Level 2/3 complaints closed per caseworker	207	190	138
Time taken resolve complaints <30 days	92%	94%	93%
Time taken resolve complaints 30<90 days	6%	5%	5%
Time taken resolve complaints >90 days	2%	1%	2%

*Table 6: Efficiency of EWON's casework*

#### 9.4.2 Effectiveness

This criterion is concerned with the relationship between the intended and actual results of spending. For the purposes of this review, the issue is how well does EWON discharge its role as an industry ombudsman and how well does it achieve its strategic objectives.

The following are examples of non-casework activities that contribute towards EWON's effectiveness: general awareness raising, community outreach, working with members, systemic investigations, Spotlight On reports, policy submissions, meetings with, influence on, and recognition of EWON's contribution by regulators, government departments and other stakeholders. Casework related indicators of effectiveness are high levels of procedural and distributive fairness delivered by EWON caseworkers during complaint resolution and the levels of customer satisfaction with EWON's complaint handling.

One could list the number of each of these activities delivered by EWON but that would not capture their effectiveness. Instead, one has to consider whether EWON delivered what it set out to achieve for these activities and, if possible, consider whether or not they had impact. As part of its governance arrangements, the Ombudsman reports to the Board EWON's performance against its Tealprint. For each of EWON's strategic objectives, the Board has agreed a set of success indicators most of which relate to non-casework activities. Indicators include items such as levels of consumer awareness, financial and budget adherence, members compliance with systemic investigations, compliance with KPIs, customer satisfaction, adoption of proposals contained within Spotlight On papers and stakeholder acknowledgement of the value of EWON.

EWON also produces a Strategic Impact Register which links EWON's strategic objectives to their associated risks and records the strategic impact of its work based on information and feedback provided by members and other stakeholders, such as regulators and government departments. In financial year 2021/22 EWON recorded 21 items on its strategic impact register, in 2022/23 it recorded 25 such items and in 2023/24 it recorded 26 items. These figures suggest that members and other stakeholders recognise the contribution that EWON makes as a result of its activities. As two member participants suggested to the Review Team, EWON should look to publish more of information about its non-casework activities.

Many participants from all stakeholder groups talked of EWON being a trusted voice in the energy and water spheres which demonstrates EWON's effectiveness. The high level of trust provides EWON with its legitimacy which means that its contributions on regulatory and policy areas are influential and treated with respect to the benefit of members and the wider public. The Review Team would confirm that EWON is a very effective ombudsman scheme.

The overall view of the Review Team is that EWON is an extremely effective organisation which delivers good value for its overall funding. It would be helpful for EWON and its stakeholders to have a shared understanding of what value for its funding means for it. This would include a shared understanding of its role as a leading industry ombudsman.

**Recommendation 5:** EWON should seek to educate its stakeholders on the role of a leading industry ombudsman and use this shared understanding to agree what value for money means for EWON, its members and stakeholders, recognising the need for EWON to comply with the four accepted criteria for considering value for money.

## Benchmark Six: Effectiveness

**Underlying 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 identified two specific questions relating to this benchmark:

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 a process(es) in place to promote industry improvement?
3. Does EWON have sufficient powers and mechanisms in place to ensure member compliance with EWON policies and processes?

### 10.1 EWON's jurisdictional coverage

#### 10.1.1 EWON's jurisdiction

Within EWON's jurisdiction are electricity or gas retailers and distributors, exempt energy sellers and networks and certain water providers including those licensed under the Water Industry Competition Act 2006. Although the number of EWON members has increased significantly since the last review that is due to exempt and WICA providers joining the scheme rather than any further change in EWON's jurisdiction. Two issues relate to EWON's jurisdiction.

EWON has recently commenced a project to consider the implications that arise from its future role as the ombudsman for renewable energy and its transmission. This is not within the scope of the review. However, the Review Team would simply highlight that this change represents a risk to EWON, that will necessitate new ways of case management for some of the complaints which may require high levels of technical and legal expertise, and, consequently, the current funding model will probably not be suitable for these complaints. The Review Team is pleased to note that these issues are already on EWON's radar.

The second jurisdictional issue relates to changing CER. As was discussed earlier, there are significant changes in this area currently underway and the regulatory and EDR response has been lagging. These changes are considered more fully in the section on the energy market. However, the changes that have already arisen to date have led to problems for consumers, some current members, and for EWON.

#### 10.1.2 Implications for EWON of changes in the energy market

Consumers who take advantage of the changes in CER and the shift to local energy generation and storage can encounter a range of novel problems that are different to those affecting traditional energy customers. For example, consumers may complain about:

- The installation, maintenance or functioning of generation and storage devices

- The financing of generation and storage devices (such as Solar Power Purchasing Agreements)
- Miss-selling of generation and storage devices (where the anticipated benefits of installing particular devices are not realised)
- The way in which Virtual Power Plants (where power, stored locally in a number of consumers' homes, is aggregated and traded in the National Energy Market) are being operated

The developing CER market was described to the Review Team by one participant as a frontier industry which over-promised and under-delivered, where the focus was inappropriately on selling a technology and not a service and concern was raised by a community group participant that this sector of the industry was subject to obfuscation and manipulation by providers. Another participant stated that current consumer protection framework was not fit for purpose. Some member participants also called for greater clarity in this area and with one member participant raising a concern about the market behaviour of some entrants in the solar panel business sector.

The complaints that arise are likely to be diverse and the problem facing consumers who have such complaints is that most of the companies providing these new technologies, services, products and devices are not members of external dispute resolution schemes, such as EWON. As the Review Team was told, consumers face multiple decisions using unclear pathways. This means that, although they have a complaint that is related to energy, they cannot currently complain to the energy ombudsman unless the CER has been provided by a current EWON member.

Instead, the current regulatory framework means that consumers need to complain to different external dispute resolution bodies, depending on the product or service they are complaining about. For example, depending on who and what they are complaining about, consumers may be able to make a complaint to bodies such as NSW Fair Trading, the NSW Civil and Administrative Tribunal or the Australian Financial Conduct Authority. In some circumstances, consumers may also need to take legal action where other pathways to external dispute resolution are not available (EWON 2022c).

Another problem that consumers may face is that a single complaint may require a number of different dispute resolution pathways. For example, 'complaints made to EWON about energy retailers, and electricity distributors, frequently involve customers that own or use these [CER] technologies ... [and] it is increasingly difficult to separate a complaint about traditional network and retail services from the issues a customer is also experiencing with CER' (EWON 2023c).

These problems are largely caused by the fact that the current legal and regulatory framework was not designed with CER in mind and, consequently, requires to be updated in order to ensure that clear pathways to external dispute resolution are available to consumers. This is an issue that has long been recognised by stakeholders and, indeed, since 2016, EWON has been working with the Energy and Water Ombudsman Victoria (EWOV) and Energy and Water Ombudsman South Australia (EWOSA) to ensure



developments in the energy market do not lead to consumer detriment and that external dispute resolution arrangements keep pace with these changes.

While various potential options are available, from a consumer's perspective, being able to refer all energy complaints to a single, authoritative external dispute resolution is likely to be beneficial. Failing this, the result is likely to be confusion among consumers, a growing number of complaints made to EWON that are outside of its jurisdiction, consumer detriment as consumers do not know where to complain, and inefficiency driven by inter-organisational referrals. As EWON has noted, 'an effective consumer protection framework including provision of free, fair and independent dispute resolution needs to be established to include all aspects of transformation of the energy sector to renewables. The development of an overarching consumer framework for CER in NSW would help protect customers by providing a clear pathway for dispute resolution and promote a level playing field for all retailers (EWON 2023c).

The need for such a framework is becoming more pressing as the uptake of CER continues to gather pace. It was suggested to the Review Team that EWON might be given jurisdictional responsibility for CER issues before the licensing and regulatory issues have been resolved. This would create complications for EWON such as which providers would be required to become members and the implications that may arise for its historical business, service and funding models. EWON staff would need to become conversant with a significant and wide range of new technical and legal areas of expertise. The Review Team notes that EWON staff have undertaken significant work to understand future changes within the energy sector and its potential impact upon EWON.

## 10.2 EWON's processes to promote industry improvement

In its last review, the Review Team noted that there are three 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. As a response EWON started the publication of its award-winning Spotlight On reports which are regular systemic issues reports. These online reports highlight issues revealed in EWON's casework and outlines the policy challenges that arise and proposes potential industry discussion points (EWON undated).
3. Conducting systemic investigations in line with the current approach adopted by both EWON and other consumer ombudsman.

### 10.2.1 Conducting systemic investigations

The intended benefits to be gained through EWON's systemic investigation work are three-fold: to reduce complaints, strengthen consumer protection frameworks, and improve public trust in the energy and water sectors (EWON 2023a). EWON 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, and work with the member, until it is satisfied that appropriate remedial action has taken place. EWON (2015, p.3) uses the following approach to managing systemic issues:



Figure 6: EWON's approach to systemic investigations

In 2022/23 EWON closed 29 systemic investigations. EWON will use the outcome of its systemic issues reports in a number of ways. EWON will raise the response with the member concerned to provide it with an opportunity to resolve the issue, inform regulators, urgently if the potential impact on customers warrants it, provide quarterly reports to the EWON Board, use the reports to inform policy submissions and law and regulatory reform processes, colleague ombudsman and peak ombudsman bodies where appropriate and also with other industry bodies. Taking these actions increases the potential impact of the results of systemic investigations.

### 10.2.2 EWON's policy work

EWON holds regular meetings with regulators and statutory bodies to inform them of industry trends and issues identified through its complaint handling, outreach and stakeholder engagement activities, including the Australian Competition and Consumer Commission (ACCC), AER, AEMC, IPART and the Clean Energy Regulator. EWON submitted quarterly compliance and complaints insight reports to the AER and also provided the ACCC, AER and IPART with complaint statistics and case studies on topics in which they

were interested in investigating (EWON 2023, p.55). EWON also met regularly with NSW Fair Trading and the Department of Climate Change, Energy, the Environment and Water. In addition to these meetings in 2022/23 EWON provided a total of 19 policy submissions covering issues relating to embedded networks, energy affordability, consumer protection and family violence.

EWON's work in this space was warmly welcomed with EWON described as a trusted voice, that provides trusted and accurate information, and that its support in specific areas meant that projects can be implemented more quickly with reduced costs. One regulator participant stated a desire for EWON to become engaged even more widely as they suggested that there are some issues where EWON's input could help. Community group participants were positive about EWON's work in the policy area.

Most member participants were also very positive about EWON's contributions in this area and recognised the value to their organisations from EWON's outputs, particularly its systemic investigations and Spotlight On reports. One member suggested that EWON should be more vocal about what it is seeing in the energy space, while another described its systemic work as really important helping them better understand customers and complainants and appreciated EWON's work as providing valuable updates on research findings and initiatives aimed at improving the industry. One member participant suggested that members might find it helpful if EWON were able to provide more member specific feedback on systemic issues. Another member participant suggested that EWON's effectiveness arose from its learning from the complaints that it received and using that learning to educate regulators and politicians.

Collectively, participants agreed that EWON was a very effective Ombudsman. The only recurring concern arose from changes in the energy market, discussed above, and that EWON needed to ensure that its jurisdiction was sufficiently broad to accommodate these changes.

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## Appendix One – biographies of the Review Team

The independent review will be delivered by Dr Gavin McBurnie and Chris Gill.

**Dr Gavin McBurnie** is an honorary research fellow at Queen Margaret University. In this role Gavin was the lead researcher on the five-year reviews of the TIO (2022), EWON (2019), the PTO (2019) and for Utilities Disputes Limited (2017). He has acted as an independent external adviser to the Welsh Senate (Parliament) as it considered proposals to develop the role of the Public Services Ombudsman for Wales. Gavin has delivered training on complaint handling on behalf of the International Ombudsman Institute for the Caribbean Ombudsman Association, and for Greek civil servants on behalf of the Organisation for Economic Co-operation and Development. Gavin previously worked at the Parliamentary and Health Service Ombudsman (PHSO) where, over seven years he led on a number of senior roles.

Gavin originally trained as a doctor at Glasgow Medical School, becoming a General Practitioner before returning to Edinburgh 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. Gavin was awarded a PhD from Queen Margaret University for his research on the methods used by health ombudsmen in their system improvement role and the response of bodies in jurisdiction to these approaches.

**Professor Chris Gill** is Director of Justice Research and Innovation Ltd and helps businesses in the public and private sectors deliver innovation through cutting edge research and analysis services.

Chris has provided consultancy services to a wide range of clients including the Canadian Ombudsman for Responsible Enterprise, the Council of Europe, Utilities Disputes Ltd, the Legal Services Board, the Business Banking Resolution Service, Citizens Advice, Ombudsman Services: Energy, Ombudsman Services: Communications, the Office for Legal Complaints, the Equality and Human Rights Commission and many more.

Prior to becoming an academic and providing consultancy services, Chris worked in the ADR sector, first at the Advertising Standards Authority and then at the Scottish Public Services Ombudsman. Chris remains actively involved in ombudsman and ADR policy and practice in the UK and internationally, sitting on the Administrative Justice Council's Academic Panel, the Scottish Legal Complaints Commission's Consumer Panel, the Ombudsman Association's Validation Committee, and being a validated member of the International Ombudsman Institute's Peer Review Panel.



## Appendix Two- List of organisations with whom the Review Team conducted an interview.

### **Members**

AGL  
Ausgrid  
Endeavour Energy  
EnergyAustralia  
Engie  
Essential Energy  
Home in Place  
1st Energy  
Hunter Water  
Jemena  
Momentum  
Origin Energy  
Powershop  
Red Energy  
Sydney Water

### **Regulators and other key stakeholders**

AEMC  
AER  
Customer Service NSW  
Energy Charter  
IPART  
Planning NSW

### **Community Groups**

Energy Consumers Australia  
Financial Counselling Australia (two interviews)  
Financial Rights Legal Centre  
Justice and Equity Centre  
Murdi Pakki Regional Assembly  
Salvation Army  
Tenants Union Support and Education Project