

**OBTAINING AND PROVIDING INDEPENDENT TECHNICAL, LEGAL
AND REGULATORY ADVICE
January 2014**

Overview

In some EWOV case investigations, EWOV requires independent technical, regulatory or legal advice to make a full and appropriate independent assessment of the issues raised by the customer. EWOV's aim is to ensure that relevant, expert, timely, and cost effective advice is obtained from appropriately qualified technical experts. The advice obtained should take into account the circumstances of each individual case, and any relevant legislation, regulations, codes, guidelines and industry practice.

Depending on the complexity of the issue and/or customer/scheme participant, an EWOV investigation may benefit from independent technical advice. Some examples of issues that may benefit from independent technical advice include: high bill; supply damage cases; claims for loss; water/energy supply quality; complaints about electricity, gas and water assets, and their condition, placement and upgrade; complaints about vegetation management and licensing entitlement complaints.

Important information

- EWOV does not disclose the identity of the independent advisor to the provider or customer. This ensures that EWOV protects the independence of the source.
- EWOV does not provide a copy of the independent advisor's report to the provider or customer. The reports frequently have sensitive information about the customer. EWOV has an obligation to protect the customer's privacy and, while sensitive information may need to be made available to the provider for the benefit of the complaint, EWOV may need the customer's consent to disclose sensitive information and will often need to paraphrase the information in presenting it to the provider.
- The Conciliator should always discuss with their Team Manager (TM) the benefit of EWOV being present at the time the independent advisor visits the customer. Independence needs to be maintained at all times and therefore, the independent advisor cannot be influenced by the customer's perspective. Nor is the independent advisor qualified to manage customer queries/concerns about EWOV's case handling process. This must be managed by EWOV.

- EWOV may consider a joint meeting at the site with the independent advisor, EWOV, the customer and the provider. The decision to hold such a meeting is EWOV's and will only take place with the consent of all parties and only if it will assist and not hinder the resolution process. EWOV will schedule and run the onsite meeting. If in EWOV's opinion, the on site visit is not assisting in the resolution process, EWOV will draw the meeting to a close.
- Independent technical advice is one part of EWOV's investigation process/policy and should be reviewed in conjunction with all other information acquired during the investigation, and in line with EWOV's Fair and Reasonable framework.

PROCEDURE FOR OBTAINING INDEPENDENT TECHNICAL, LEGAL OR REGULATORY ADVICE

1. Internal Technical/Legal Advice

EWOV currently has access to the following in-house advisors: Legal Advisor, Electrical Contractor and Financial Assessor. The processes for obtaining independent advice from one these advisors is different to the process for obtaining independent technical/regulatory advice from external sources, such as the Essential Services Commission (ESC).

Appendix 1 provides a detailed step by step guide to the process that needs to be followed in requesting independent advice from one of EWOV's internal advisors.

2. External Technical Advice

EWOV has access to a number of external advisors across the energy and water industries. These include: arboriculturalists; plumber/auditor/gasfitter; an electrical engineer, water experts, pathology testing, structural engineer, etc. A list of EWOV approved technical advisors can be found at <http://intranet-sv/intranet/documents/4856/62962>.

Appendix 2 provides a step by step guide to the process that needs to be followed in seeking external expert technical advice.

If EWOV currently does not have an arrangement with a technical expert in the field required, please refer to page 11 for an overview of the steps that must be taken in finding/appointing an external technical expert.

Prior to seeking independent technical advice, the Conciliator must discuss the need for the advice with their TM or Lead Conciliator and/or relevant Senior Conciliator - Subject Matter Expert (SME).

3. Procedure for obtaining regulatory advice

Discuss the need for regulatory advice with the relevant TM. If approved, advise the customer that regulatory advice will be sought, and that their details may need to be provided to the relevant regulator. Obtain the customer's approval to pass on their details.

Draft an email to the relevant contact within the regulatory body. A list of regulatory contacts can be located on EWOK at ([LINK](#)).

Include in your email:

- a. Summary of the complaint
- b. Request for an approximate timeframe for report completion
- c. Request for answers to specific questions

The email should be proofread by your TM or Lead prior to being sent and your TM and the GMO must be copied on all emails to the regulatory body.

Once the advice has been received, it must be reviewed with the relevant TM and placed on the case file in Resolve.

If the customer or scheme participant requests details of the regulatory advice, discuss this with the TM prior to providing it.

PROVISION OF INDEPENDENT TECHNICAL ADVICE TO PARTIES

EWOV is guided by principles of natural justice and procedural fairness and handles complaints in accordance with the National *Benchmarks for Industry-Based Dispute Resolution Schemes (August 1997)*¹. EWOV provides parties to a complaint the opportunity to be heard, and the opportunity to respond to independent advice which may negatively affect their position.

Where EWOV receives written advice from an independent advisor as part of an investigation, this advice will be handled in the following way:

- Procedural fairness does not require EWOV to provide direct copies of independent advice to a provider or to a customer
- In line with procedural fairness, EWOV provides a summary of independent advice to an affected party where there is a negative impact on that party's position. The

¹ <http://www.consumersonline.gov.au/downloads/selfreg/benchmarks/BMARK1.rtf>

summary deals with those parts of the advice that require the opportunity for a response from the affected party. To avoid debate over whose advisor is more correct EWOV will carefully consider the words used to communicate EWOV's independent advice to parties

For example, use *"EWOV's view of the relevant legal principles is..."* rather than *"EWOV's independent legal advisor stated that..."*

"Having considered the technical issues raised in the complaint EWOV considers that..." rather than *EWOV's independent technical advisor stated that ..."*

- EWOV gives consideration to the timing of the provision of advice and the timing of the affected party's response. EWOV ensures that the affected party has sufficient opportunity to provide a response prior to the relative strengths and weaknesses of the complaint being discussed with the other party
- If the affected party does not agree with the independent advice, they may provide information or reasons as to why they do not agree with the independent advice. EWOV may provide this information to the relevant independent advisor for their consideration, if further advice from them is required
- Ultimately it is EWOV's responsibility to evaluate the independent advice in light of the responses received and the circumstances of the complaint as a whole. It is not necessary to reach agreement with the parties about the content of the advice

PROCEDURE FOR OBTAINING INDEPENDENT ADVICE - IN-HOUSE

Procedure for obtaining an independent Energy Audit

- Arrange a time to have an informal, preliminary discussion about the case with EWOV's independent energy advisor
- Provide him with the case reference number and a brief overview of the complaint and issues in dispute, and discuss the information required by EWOV to progress/resolve the complaint and the benefits of a site visit or phone energy audit
- If a site visit is agreed upon:
 1. Complete the attached template with the details of your case
 2. Forward the completed template to a TM for approval
 3. Once a TM approves the energy audit, forward the approval email and completed template to the energy advisor
 4. The energy advisor will add the request to his master spreadsheet and call the customer to make a booking
 5. The energy auditor will then advise of the date and time for the site visit
 6. Diarise the date of the site visit, as the Conciliator handling the case is required to attend

Template Request for Energy Audit



Conciliator Peter
Kennedy Template v1

Procedure for obtaining legal advice

- Search EWOK and speak to EWOV's Legal Advisor to check whether EWOV has previously received formal legal advice on the issue you are investigating
- If no formal legal advice has been previously received, discuss the need for independent legal advice with the relevant TM. The nature of the complaint will determine whether you need to obtain formal legal advice or whether an informal discussion with EWOV's Legal Advisor will suffice in guiding the investigation

- If the TM approves obtaining formal legal advice, draft an email to the independent legal advisor detailing:
 - a. Summary of the complaint
 - b. Timeframe for advice completion (usually five working days)
 - c. The specific questions that you require answers to
 - d. Any options for resolution which have been proposed
- Once the draft advice has been provided, it must be reviewed and approved by the relevant TM. If substantial changes require another draft, contact EWOV's Legal Advisor accordingly
- Once the draft advice has been approved, ask the Legal Advisor to provide the final advice and check to ensure it incorporates any agreed changes
- Once a final legal advice is received, save it in Resolve. EWOV's Legal Advisor will ensure that the advice is also available on EWOK

Procedure for arranging a Financial Assessment

- Discuss the complaint with a Lead Conciliator or TM with a view to determining whether a Financial Assessment is appropriate. In determining this, you should consider:
 - a. The customer's level of participation through both provision of information, accessibility and payment of undisputed amounts
 - b. The level of information received from both parties to date, e.g. ongoing consumption, historical usage, payment history, billing history, etc.
 - c. The outstanding issues and whether the assessment will add value to the investigation.
- Once approved, forward a Financial Assessment Request email to EWOV's Financial Assessor. The request should include:
 - a. The case number and customer's name in the subject line
 - b. A summary of the complaint
 - c. Information regarding the customer's participation to date
- Arrange a meeting with EWOV's Financial Assessor to discuss the complaint.
- Contact the customer to advise them that a financial assessment will be undertaken by EWOV.
 - a. The customer should be advised that the Conciliator handling their case will continue to be their direct EWOV contact.
 - b. Should a customer need to speak with the Financial Assessor the customer should contact the Conciliator and the call should then be transferred to the Financial Assessor
- It is the Conciliator's responsibility to provide the customer with the information and/or contact details of external resources the assessor may have discussed or

referred to the customer during the interview. (all details/contact information will be noted in the report)The Financial Assessor will contact the customer to make an appointment for the assessment to take place:

- a. The Financial Assessor will make two attempts on different days and time to contact the customer to arrange an appointment
- b. If unsuccessful, the Conciliator will be notified and the request will be placed on hold.
- c. The Conciliator must discuss the matter with a TM and provide further instruction to the Financial Assessor regarding how they want to proceed with the investigation (e.g. attempt 2nd booking, close request)
- d. The assessor will provide email confirmation of appointment, assessment completion and/or non phone contact
- e. The financial assessment report will be issued within two working business days of the assessment
- f. The financial assessment request will be closed when the report is issued or when it has been on hold for two weeks



Financial assessment
request flow chart V2

PROCEDURE FOR OBTAINING INDEPENDENT TECHNICAL ADVICE – EXTERNAL

Where an agreement already exists with that expert

- Submit a TM Approval Request For Expert Technical Advice (Appendix 3) to your TM
- Once a decision has been made to obtain expert technical advice, refer to EWOV's list of independent technical advisors <http://intranet-sv.intranet/documents/4190/19381> to obtain the contact details for the appropriate advisor. Please refer to point 2 in instances where EWOV does not currently have an agreement with a technical advisor in the field required
- Where possible, obtain two quotes from two separate advisors
- It is advisable to initially contact the technical expert via phone to confirm availability and willingness to provide a quote/conduct the works required. This also enables EWOV to provide a brief overview of the nature of the report/advice required to confirm that the selected technical advisor is able to provide it
- Email the technical advisors requesting quotes for the work to be undertaken. The quote request should include the following information:
 - a. The EWOV case reference number
 - b. A de-identified, brief overview of the nature of the complaint
 - c. The general location where the site visit (if required) needs to occur
 - d. Details of the information required by EWOV – purpose of the visit
 - e. A request for a itemised quote and timeframe for the work to be completed and a report to be prepared and submitted to EWOV
 - f. Request provision of the quote as soon as possible

Appendix 4 provides an example of a quote request for your reference.

- Once the quote has been received:
 - a. Acknowledge receipt of the quote and advise the technical advisor that it will be reviewed with EWOV management for approval
 - b. Discuss the quote with your TM to obtain approval to go ahead or decide whether an additional quote may be required from another technical advisor. Please note that, depending on the quoted cost, your TM may need approval from the General Manager Operations (GMO) or Ombudsman

- Once a quote is approved by the TM/GMO, you may confirm with the customer and the provider that the independent advice is to be obtained
- Ask the independent advisor to sign and return a Confidentiality Agreement (Appendix 5) prior to providing a more detailed overview of the complaint
- Provide the independent advisor with all relevant information about the complaint including:
 - a. Customer contact details (if appropriate and relevant to the work being undertaken)
 - b. Any relevant billing, usage, contact information
 - c. Any substantiation of the customer or scheme participant claim
 - d. Scope of the report required including:
 - Timeframe for report completion
 - Answers to specific questions required
 - Any options for resolution
 - e. Clarify whether additional information is required
Appendix 3 provides examples of emails confirming EWOV's acceptance of the technical advisor's quote for your reference.
 - i. in the event that additional information is required by the technical advisor, check EWOV's technical advisor register to confirm that EWOV has previously received a signed Confidentiality Agreement from that advisor:
 - if yes, provide the additional information
 - if not, ask them to sign an agreement prior to providing customer specific information
 - ii. Once a date for a technical inspection (if required) has been agreed upon, ensure that the customer is aware and able to attend the site visit
It is beneficial that EWOV attends the technical inspection where appropriate to ensure that the impartiality and integrity of the technical inspection are upheld
- Once the report has been received, it must be reviewed and approved by the relevant TM. If substantial changes or another draft are required, contact the technical advisor accordingly.
- Once a final technical advice is received, save it in Resolve, review it and provide a summary of the relevant findings to the customer and provider

Where EWOV does not have a standing agreement with the expert technical advisor

Where EWOV has not previously utilised the services of the chosen technical advisor, EWOV must ensure that it remains compliant with the National Privacy Principles and/or the Australian Privacy Principles (as applicable) under the *Privacy Act 1988*. Accordingly, all technical experts must be asked to sign a Confidentiality Agreement prior to being engaged to review customer/provider information.

A copy of the Confidentiality Agreement can be found under “C” of EWOV Policies and Procedures on EWOK.

Once the signed agreement is received:

- a. Enter an action note in Resolve; and
- b. Provide a copy of the signed agreement to the Specialist Team Manager to update the spreadsheet and file away.

TM APPROVAL REQUEST FOR EXPERT TECHNICAL ADVICE

Customer Name:
OBO/Co-complainant:
Provider:
EWOV case reference:
Date received:
Issue:

Hi

Please find attached a quote for an energy audit/finco assessment for the above customer for your consideration. I have checked the quote for GST and administration accuracy.

I believe that an energy audit/finco assessment would be worthwhile to progress this case because: (please outline what benefit the audit/finco assessment will add with respect to closing the complaint, explaining if the discussion with the customer will not be of more/same benefit – use more or less numbers if necessary)

- 1.
- 2.
- 3.

Brief summary of case (1-2 short paragraphs)

EWOV investigation to date (complete as appropriate)

- a) Site visit conducted? (If yes, what was the outcome?)
- b) Billing calculations correct?
 - Type of meter?
 - Involves peak/off peak rates?
 - Special circumstances?
- c) Has customer complied with EWOV policy?
 - POUA
 - Contact
 - Provision of information

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- d) Repeat EWOV customer?
 - Has Same Customer Same Issue policy been considered?
- e) Is this a high risk complaint? If so, why?
- f) Provide details of technical expert (select who quote will be obtained from and why they were selected).
- g) Hardship (yes/no – please briefly explain if yes).
- h) What amount is being disputed if any?
- i) Current account balance?
- j) What needs to be done to close the complaint? How will the technical advice assist?

Thank you for reviewing this.

EMAIL REQUEST FOR TECHNICAL ADVISOR QUOTE – EXTERNAL

Subject: EWOV REQUEST FOR TECHNICAL ADVICE QUOTE

Example 1

Dear Mr XX

As a consultant providing specific services to the Energy and Water Ombudsman (Victoria) Limited (EWOV) you are bound by strict confidentiality requirements and the confidentiality, security and privacy of the information passing between you and EWOV must be respected and maintained at all times.

EWOV is currently investigating a complaint involving a customer's high bill concerns and requests that you provide a quote for the cost of an on site energy audit to be conducted in Doncaster East. EWOV is intending to conduct a site visit at the same time which will also be attended by retailer representatives and possibly a representative from the Distribution Network, as this customer has outstanding queries about the information that is being recorded by different registers on his interval meter which was installed in December 2006, following a test of the previous meter which failed to meet the relevant standard.

The account is being billed on the GDY8 tariff, which is billed on peak and off peak rates for the electric hot water usage. His daily average use since March 2006 is depicted below.

| Date | Daily Usage |
|------------------|--------------------|
| 26 February 2008 | 18.30kWh |
| 22 November 2007 | 15.40kWh |

| | |
|---------------------|----------|
| 23 August 2007 | 17.82kWh |
| 25 May 2007 | 15.23kWh |
| 22 February 2007 | 19.14kWh |
| 27 November 2006 | 19.45kWh |
| 28 August 2006 | 22.93kWh |
| 1 June 2006 | 21.20kWh |
| 1 March 2006 | 25.98kWh |

Please provide this quote at your earliest convenience.

I will contact you to advise if the quote is approved and if so, will provide additional complaint details at that time.

Please don't hesitate to call me if you have queries relating to this matter in the interim.

Kind Regards

Example 2

Dear Mr XX

EWOV is seeking a quote for a review of a customer's bills and tariffs to assist in determining the correct amount the customer should be billed.

As a consultant who may be providing specific services to the Energy and Water Ombudsman (Victoria) Limited (EWOV) you are bound by strict confidentiality requirements and the confidentiality, security and privacy of the information passing between you and EWOV must be respected and maintained at all times.

Summary of complaint

The customer was charged an incorrect demand from August 2003 to January 2007 due to the retailer's oversight. The retailer:

- incorrectly charged the customer with a demand rate of 120 instead of 235
- in July 2007, cancelled the last three bills (January 2007 to March 2007) and rebilled with the correct demand rate of 235, leaving the account balance at \$3,334.73
- in October 2007 cancelled all bills (27 August 2003 to 10 January 2007) and rebilled \$29,636.68 for the incorrect demand.

EWOV has:

- copies of the reissued bills from 11 January 2007 to 28 March 2007 an account reconciliation from August 2003 to October 2007
- the consumption from 27 August 2003 to 10 January 2007
- an adjustment spreadsheet for the demand component (a sample of the spreadsheet is set out below)

| Bill Period | | Original Charges | | | | | Amended Charges | | | | | Difference |
|-----------------|-----------------|------------------|------|-----------|--------|--------|-----------------|------|-----------|--------|----------|------------|
| 27-Aug-03 to | 20-Sep-03 | Quantity | Unit | Rate | /Unit | Amount | Quantity | Unit | Rate | /Unit | Amount | \$ |
| Invoice number: | 1132216 | | | | | \$ | | | | | \$ | |
| | Off Peak | 13754.53 | kWh | 0.9920 | c/kWh | 136.44 | 13754.53 | kWh | 0.9920 | c/kWh | 136.44 | \$0.00 |
| | Peak | 13302.61 | kWh | 1.6610 | c/kWh | 220.96 | 13302.61 | kWh | 1.6610 | c/kWh | 220.96 | \$0.00 |
| | Demand | 120.00 | kW | 4.524650 | \$/kW | 542.96 | 235.00 | kW | 4.524650 | \$/kW | 1,063.29 | \$520.33 |
| | Standing Charge | | | | | \$ | | | | | \$ | |
| | | 25 | Days | 10.340300 | \$/Day | 258.51 | 25 | Days | 10.340300 | \$/Day | 258.51 | \$0.00 |

The distribution company has advised that from September 2004, the maximum actual demand for the property was 113kW.

Background

The customer contacted EWOV when it received notice of an incorrect charge from the retailer stating that the customer had \$3,334.73 outstanding.

The customer had a previous complaint with EWOV which related to a change of tariff following the expiry of a contract in 2005. The retailer had confirmed that the outstanding balance was \$19,100.18 and the customer had agreed to pay this amount. The original complaint was closed in August 2006.

In this current case, the customer argued that during the original complaint the retailer had an opportunity to review the customer's contract, including demand tariff, hence, the retailer should have picked up on any billing errors at that time. It is therefore the customer's view that the retailer should not be allowed to revisit and recover any undercharged amounts.

The retailer advised EWOV that the adjustment amount was actually \$29,636.68, not \$3,334.73. It states the previous EWOV case related to contract rates and contract cancellation only and therefore shouldn't impact on this case which is a back bill of demand charges.

Information requested

EWOV would like the advice to include:

1. Whether the customer has been back billed correctly.
2. Considering the actual consumption at the property, what tariff the customer should have been on from August 2003, and the amount the customer could have been billed.
3. An opinion on what is fair for the customer to pay considering the circumstances.

I would appreciate a quote by **Monday 30 June 2008**. If you require any further information to provide the quote, please let me know.

Further information can be provided if EWOV requests you proceed with the work. Please indicate what further information you may require.

Kind regards

Example 3

Good afternoon XX,

Further to our discussion, the Energy and Water Ombudsman (Victoria) (EWOV) is seeking specialist assistance.

EWOV's investigation

EWOV has been advised that since 2006, the water pipe that runs along a customer's property, has leaked seven times. The water company fixed the leaks on each occasion and explained that:

- The pipe was constructed in 1970 and has a lifespan of approximately 50 years
- Pressure release valves were installed (on 26 July 2011) to release some of the pressure in the pipe to try and reduce the leaking

The customer has contacted EWOV and asserts that the leaks from the pipeline are causing the soil to saturate and the end posts of his vineyard trellis to move. He is concerned that this will damage his vineyard.

EWOV is investigating if the leaks from water pipeline has directly attributed to a damaged vineyard trellis on the customer's property. EWOV will seek to demonstrate if a causal relationship between the leaks from the pipeline and the damaged trellis can be established.

Assistance required:

EWOV seeks specialist advice regarding the leaks and the effect on the trellis. EWOV is considering conducting testing on the customer's site to determine the cause of any soil saturation and its impact.

Please advise whether you may be able to provide assistance, I can then provide additional information for consideration.

Thanks for your assistance.

Kind regards

**A POSITION OF CONFIDENCE
EWOV CONSULTANTS**

June 2013

As a consultant providing specific services to the Energy and Water Ombudsman (Victoria) Limited (EWOV), you are bound by strict confidentiality requirements and the confidentiality and privacy of the information passing between you and EWOV must be respected and maintained at all times.

You are also bound to declare any potential, perceived or actual conflicts of interest in providing independent advice to the Ombudsman's office.

In the normal course of the assignment you are likely to have access to information concerning customers' personal and business affairs, and the number and nature of cases being received against EWOV scheme participant businesses. This information is often not publicly known, and in some cases the customer and scheme participant may have taken particular steps to preserve the privacy or confidentiality of that information. In any event, the customer and scheme participant company are entitled to have their privacy and the confidentiality of their information respected.

Any breach of privacy or confidentiality will result in direct action.

In addition to complying with the National Privacy Principles or the Australian Privacy Principles (as applicable) under the *Privacy Act 1988* (Cth), the following Privacy Protection Principles must be observed by you and your organisation at all times:

- Information regarding a customer's personal or business affairs cannot be disclosed to any other person without EWOV's express approval, unless that disclosure is to a member of your staff on a 'need to know basis', EWOV's auditors, or is authorised by legislation or by a court order.
- Information regarding a scheme participant company's case details or business affairs cannot be disclosed to any other person without EWOV's express approval, unless that disclosure is to a member of your staff on a 'need to know basis', EWOV's auditors, or is authorised by legislation or by a court order.
- Information provided to you by EWOV is not to be used for any personal advantage.
- Papers provided to you by EWOV must be kept secure and, in particular, must not be left in any place where they can be readily accessed or seen by unauthorised persons.

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- No customer’s name, address and complaint details or scheme participant’s details should be revealed to any other person without EWOV’s express approval.
- You must not communicate in any way with any person other than EWOV staff in relation to the assignment without EWOV’s express approval. This includes representatives of a scheme participant, customers or their representatives and includes written communication as well as verbal. If contacted by any third party, the third party must be advised as follows, and the contact reported as soon as practicable to EWOV:
 - Advise the third party that client confidentiality precludes you from discussing the affairs of your clients without their prior consent, and therefore, even if you were involved in the specific matter, you would not be able to discuss it.

In order to provide independent advice to EWOV, it is necessary that you have no conflict of interest in general, or in relation to a particular matter. Any potential, perceived or actual conflicts must be declared to EWOV for discussion of whether the conflict is material, and may prevent you providing independent advice on a particular case or in general. The onus for declaration of conflicts rests with you.

I AGREE TO COMPLY WITH THE NATIONAL PRIVACY PRINCIPLES OR THE AUSTRALIAN PRIVACY PRINCIPLES (AS APPLICABLE) UNDER THE PRIVACY ACT 1988 (CTH) AND THE PRIVACY PROTECTION PRINCIPLES STATED ABOVE, AS PART OF MY CONTRACT WITH THE ENERGY AND WATER OMBUDSMAN (VICTORIA) LIMITED

ORGANISATION:

.....

**NAME AND TITLE OF
AUTHORISED REPRESENTATIVE:**

.....

SIGNATURE:

.....

DATE:

.....