



**AGL Energy Limited**

ABN: 74 115 061 375  
Level 24, 200 George St  
Sydney NSW 2000  
Locked Bag 1837  
St Leonards NSW 2065  
t: 02 9921 2999  
f: 02 9921 2552  
agl.com.au

---

**Ms Sarah Proudfoot**  
**General Manager, Retail Markets**  
**Australian Energy Regulator**  
**GPO Box 520**  
**Melbourne, VIC 3001**

**Lodged online:** [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

**17 July 2017**

Dear Ms Proudfoot,

**RE: Issues Paper on Access to Dispute Resolution Services for Exempt Customers**

AGL Energy (AGL) welcomes the opportunity to make a submission to the Australian Energy Regulator's (AER) Issues Paper on Access to Dispute Resolution Services for Exempt Customers (the Review).

AGL is one of Australia's largest integrated energy companies and the largest ASX listed owner, operator and developer of renewable generation. Our diverse power generation portfolio includes base, peaking and intermediate generation plants, spread across traditional thermal generation, battery storage and renewable sources. AGL is also a significant retailer of energy, providing energy solutions to over 3.7 million retail customers throughout the National Electricity Market (NEM), in addition to a growing suite of 'beyond the meter' distributed energy services and solutions.

AGL acknowledges the AER's view that while small retailer customers of authorised retailers and distributors have access to free and independent dispute resolution services, exempt customers do not because of access restrictions to existing Ombudsmen services applicable to exempt entities.

Noting the criticality of energy as an essential service, we consider that all retail customers, irrespective of how they take up energy supply (via authorised or exempt providers) should have access to the same level of customer protections, including access to suitable dispute resolution pathways (i.e. Ombudsmen services, tribunals, fair trading services etc.).

AGL broadly supports the AER's position that changes should be considered to the Retail and Network Guidelines (Guidelines) to impose a condition on exempt entities which support access to better dispute resolution services. However, AGL believes that this should not necessarily be locked to Ombudsmen schemes, provided an alternative body proposed by exempt sellers meet core criteria. For example, the scheme is independent, free, easy to access, timely and has the authority to hear customer cases and make binding decisions, as necessary.

Any changes to the Guidelines should consider strengthening existing protections offered to customers, the costs/benefits of external dispute resolution options, the need to support continued innovation in product and service delivery and changing customer preferences.



**AGL Energy Limited**  
ABN: 74 115 061 375  
Level 24, 200 George St  
Sydney NSW 2000  
Locked Bag 1837  
St Leonards NSW 2065  
t: 02 9921 2999  
f: 02 9921 2552  
agl.com.au

---

Exempt entities should have flexibility in the way that they resolve disputes with their customers, provided the exempt seller has provided a transparent, fair and reasonable internal mechanism.

Equally however, customers taking up energy services from exempt sellers should have the ability to waive their right to access independent dispute resolution pathway, where they have an ability to negotiate more favorable terms and mutual agreement (or explicit informed customer consent) exists between the two parties. Unfair contract terms and unconscionable conduct provisions of the Australian Consumer Law provide a safety mechanism against exempt sellers mis-using this provision. The AER could also use the exempt seller registration process to comfort themselves that the process for favorable terms and mutual agreement is appropriate in light of the particular exempt seller arrangement under consideration. Further, the AER should ensure that exempt customers are provided with the right information at the right time to make an informed decision and to explicitly opt out of alternative dispute resolution mechanism.

Where these conditions do not exist, then access to independent dispute resolution should be offered. We consider the AER should review and alter the Guidelines as a first step to improve internal access and processing of disputes, with external dispute resolution offered where internal resolution has failed to satisfactorily resolve a customer dispute.

AGL encourages the AER to publish any draft changes to the Guidelines and consult widely with industry. We are cognisant that potential changes are likely to impact individual exempt selling business models differently and that a cost/benefit assessment should be shared to demonstrate an approach. Should the AER intend to set a new obligation on exempt entities to provide access to external dispute resolution, AGL suggests it may be appropriate to set a minimum threshold on its applicability, for example compliance with the Embedded Network Manager threshold. We consider that this may appropriately balance the cost and process changes required by small exempt entities with customer benefits.

With respect to Ombudsmen schemes as a specific pathway to external dispute resolution, it is necessary to consider what energy-related dispute characteristics/issues could be brought forward for Ombudsmen determinations. For example, it may be appropriate to limit issues to non-price customer disputes such as billing, disconnection or credit collection issues etc. This direction is important to draw distinction on issues where other external pathways exist, such as the Australian Consumer Law for issues with warranties, information disclosure, sales practices etc.

Further, clarity on how bundled service disputes (i.e. where tenancy, energy and other services are provided by the same exempt entity) would be addressed is also necessary. AGL believes that consideration on the capability, capacity and approach of energy Ombudsmen should be explored further. In addition, it may be necessary to introduce Ombudsmen protocols to ensure suitable communication and resolution channels are implemented with other sector Ombudsmen (such as for telecommunications and residential tenancies). This would remove any expectation to resolve disputes or other issues beyond an energy Ombudsman general scope or expertise.

AGL also notes that while changes to the Guidelines will improve exempt customer access to independent dispute resolution, additional reforms are likely necessary to Jurisdictional legislative frameworks to give these effect.

We look forward to working further with the AER and ANZECON to provide alignment on dispute resolution access to all energy customers.



**AGL Energy Limited**  
ABN: 74 115 061 375  
Level 24, 200 George St  
Sydney NSW 2000  
Locked Bag 1837  
St Leonards NSW 2065  
t: 02 9921 2999  
f: 02 9921 2552  
agl.com.au

---

Should you have any questions or comments, please contact Dan Mascarenhas on (03) 8633 7874 or [dmascarenhas@agl.com.au](mailto:dmascarenhas@agl.com.au).

Your sincerely,

A handwritten signature in blue ink, appearing to read 'Elizabeth Molyneux', written in a cursive style.

Elizabeth Molyneux  
Head of Energy Market Regulations