Our ref: 0743-1608241381-402

6 June 2022

Mr Mark Feather

General Manager, Strategic Policy and Energy Systems Innovation

Australian Energy Regulator

GPO Box 3131

Canberra ACT 2601

By email: ConsumerPolicy@aer.gov.au

Dear Mr Feather,

Retailer Authorisation and exemption review – issues paper

Thank you for the opportunity to comment on the Australian Energy Regulator's (**AER's**) retailer authorisation and exemption review – issues paper (**the issues paper**) released 22 April 2022, and allowing an extension on the submission due date.

The comments set out in this letter reflect the views of the Energy and Water Ombudsman Queensland (EWOQ) and the Energy & Water Ombudsman South Australia (EWOSA). We are the industry-based external dispute resolution schemes for the energy and water industries in Queensland and South Australia.

We welcome the AER's review of the retailer authorisation and exemption frameworks to assess whether these frameworks remain fit for purpose in a rapidly transitioning energy market. As industry ombudsman schemes, we recognise the need to ensure appropriate consumer protections are available for new energy products and services, and are supportive of proposals that will improve outcomes for energy consumers.

We have collectively reviewed the issues paper and have provided comments targeted on key aspects of the issues paper.

External Dispute Resolution

Broadly speaking, we support the framing and direction inherent within the issues paper. The AER appears to have captured well the breadth of issues to be considered and developed a sound framework to assess risks and potential mitigants. A review of this nature is by necessity a vast undertaking and the AER's methodical and considered approach bodes well for the appropriateness of any conclusions about future reform.

We note that dispute resolution is included in the ESB's consumer risk assessment and welcome this inclusion. We also draw the AER's attention to the different types of external dispute resolution (EDR) that could be applied, as outlined in the table below:

External Dispute Resolution body	Features
Energy Ombudsman Schemes	• Fair • Independent • Accessible • Informal • Free to consumers • Advice, information, education • All complaints are resolved (conciliation or by Ombudsman decision) • Energy expertise • Non-binding on customers • Funding models have evolved and will evolve further to suit diverse membership base
Fair Trading/Consumer Affairs	• Impartial and fair • Free to consumers • Information and education • Assist customers and suppliers to mediate – complaints are generally resolved by negotiation between the parties
ACCC	• Information and education • Do not resolve individual complaints • Use the information complainants provide to help understand what issues are causing the most harm to Australian business and consumers, and where to focus compliance and enforcement efforts.
Administrative Tribunals	• Costs • Formal processes • Can be complex for customers

We propose a set of principles for application when an energy ombudsman scheme is considered to be the appropriate body for dispute resolution:

- Membership of the dispute resolution scheme is to be underpinned by statutory enforceability.
- Any imposed new jurisdiction for a dispute resolution scheme needs to be supported by appropriate legislation or enforceable rules that will allow the Ombudsman to properly address the complaint and, if necessary, determine the complaint.
- The proposed members must be a defined group which is legally accountable to a Regulator.
- The Regulator must be able to readily identify all proposed members.

- The Government/Regulatory body/Authority imposing a dispute resolution scheme membership requirement must be able to specifically identify individuals and businesses and have a range of powers such as licensing, performance monitoring, compliance and enforcement.
- The Regulator must be willing to ensure compliance of the requirement to become and remain a member and remediation of any systemic issues, or be in a position to take enforcement action.

A detailed outline of these principles is provided in Appendix A. While this Appendix relates specifically to EWOSA, the general principles apply more broadly.

Consultation questions
1. Do you agree with the approach of using use cases/business models to identify the harms and risks of new energy services and products? Please explain why.
In our view the approach proposed to identify the harms and risks of new energy services and products is sound. This could be supported by an analysis of consumer outcomes to deepen the analysis of harms and risks, such as the scenarios developed by the ESB in their Customer Insights Collaboration.
2. Do you consider the use cases/business models appropriate to assess the harms and risk of new energy services and products? In particular:
a. What, if any, changes should be made to the use cases/business models set out in this issues paper? The cases/business models are an appropriate tool for assessing the harms and risks of new energy services and products, complimented by customer profiles and scenarios. In relation to the application of the ESB consumer risk assessment tool to the proposed business models, an additional risk for aggregations services and/or energy management services is: • Energy management services may control the thermostat in a home and/or energy supply. These may impact the most vulnerable. It may be considered essential for a customer to be able to access external dispute resolution in some situations. **b. Are there any other use cases/business models we should consider? Please provide examples.** We are not aware of other business models that could be considered.
3. Do you consider any of the use cases/business models outlined to be essential in the same way as the traditional supply of energy arrangement is? If so, what is the appropriate level of consumer protections that should be applied to these products and services? Please explain.
We believe these models would be essential where they have potential to disrupt or disconnect supply to energy consumers. If broader applications are to be provided, it should be according to a set of principles – refer to our response under Question 16 for further information.

4. How do you see new energy services and products interacting with the essential nature of the supply of energy?

In today's modern age, the way in which people rely on electricity to facilitate their daily functioning and living has evolved. From the interactive use of appliances, accessing information and communications and working from home, to charging your electric vehicle. As new energy products and services continue to enter the market, the definition of *essentiality* may need to be broader to recognise the complete range of services that consumers are now or potentially will be dependent on to fully participate in our community.

a. Please specify which types of new energy services and products may substantially impact the supply of energy to a premises.

New energy services and products we propose for consideration of impact on the supply of energy to a premises include:

- Community energy,
- Electrification of transport,
- Future bundling of services or Flexible Trading Arrangement (multiple service providers – complexity in services).

b. How do you think risks created by a new energy service or product on the supply of electricity should be addressed? Should they be treated the same as energy products and services considered essential? What factors should the AER take into account when considering what consumer measures are appropriate and proportionate?

As indicated above the reliance on electricity has evolved and a broader definition of essentiality may be needed to recognise the risks and identify commensurate consumer protections that should be afforded. An extension of essentiality could incorporate light, power, safety, mobility, and telecommunications (emergencies, education, social participation, health). It is noted the impact of supply curtailment is heightened as substitutes lessen for example as we move to great adoption of electric vehicles. While the Australian Consumer Law may offer adequate protection for many new energy services, we note consumers are likely to regard new energy and traditional energy as the one service and therefore expect a one stop shop for resolving issues. Due to the interconnectedness of services, a fault with a new energy service may impact the 'essential energy supply' of a customer, therefore implicating a traditional energy retailer. We support the view that risk needs to be worn by the party causing consumer detriment, and an appropriate consumer measure is extending energy specific EDR to the relevant new energy services.

5. Do you agree with the proposal to take into account the need to encourage the uptake of DER-based energy services and products when considering what measures are appropriate to address or mitigate potential harms and risks? Please explain why.

A broader demographic of customers is likely to engage with DER based energy services supported by incentives and advances in technology and associated services. Accordingly, measures to address or mitigate potential harms and risks need to account for the different customer archetypes as developed by Energy Consumers Australia.

6. Do you consider that issues may arise if retailers continue to bear the burden of regulatory responsibilities set out in the NECF? Should this review consider where traditional regulatory responsibilities belong under the consumer protection framework to ensure it is appropriate for an energy market with both traditional and new energy services? Please give reasons for your views.

We support this review of retailer authorisations and exemptions to ensure regulatory responsibilities of participants remain appropriate with the evolution of products and services, and new participants to the market.

7. Are the current authorisation and exemption frameworks fit for purpose?

a. What risks do you see with the current frameworks?

We are concerned that complex business models operating for profit are receiving light touch regulation due to the exemptions framework. We support the provision of consistent protections for authorised retailer and exempt entity consumers.

b. What consumer protections do you think are missing from the frameworks?

As industry Ombudsman schemes, we have observed that protections for consumers across a wider range of services, including access to external dispute resolution, are missing in some cases.

We provide case studies (appendix B) as examples of issues which are challenging our schemes.

We are also concerned about power surges which damage appliances due to voltage variations and the inability for customers to access compensation in some of these scenarios. Power surges, while still relatively low in number, are a continuing issue because of their impact. These sudden rises in power are transient and typically last for just a few milliseconds, but they can damage sensitive electrical equipment.

Customers need to be aware that it is often beyond the reasonable ability of a network to prevent events that cause power surges. Generally, it is only required to provide compensation to customers when it is at fault, such as when it has been negligent or has acted in bad faith.

EWOSA and EWOQ receive cases where a power surge has damaged equipment, but the customer is unable to receive compensation. Customers may wish to discuss surge protection and other options with a licensed electrical contractor and review their home and contents insurance policy, however, not all insurance companies provide cover for these situations.

8. Is the point-in-time assessment for retailer authorisations and individual exemptions fit for purpose? Why/why not?

In our view the point-in-time assessment for retailer authorisations and individual exemptions is not fit for purpose due to the changing business models, and services provided. The scenario where a retailer or exempt seller significantly expands or changes business activities and capabilities after authorisation or exemption highlights why the authorisations/exemptions frameworks should be reviewed.

9. How can we limit the risk of consumer harm when retailers or exempt sellers significantly expand/change business activities and capabilities after authorisation or exemption?

We consider the following as options to limit the risk of consumer harm following the significant expansion or change of business activities and capabilities by retailers or exempt sellers after authorisation:

- Introduce/ implement compliance monitoring activities and associated regulatory enforcement powers to enforce compliance.
- The expansion of external dispute resolution (EDR) (underpinned by statutory enforceability) to keep pace with evolving energy technologies and business models. EDR is a baseline consumer protection. It supports consumer protection and maintains trust in essential energy services.

10. How can the AER better address serious misconduct of authorised retailers and exempt sellers?

The AER has a strong record of addressing serious misconduct of authorised retailers. Enhanced resourcing to enable enhanced monitoring, compliance and enforcement for exempt sellers may position the AER to better address misconduct amongst exempt sellers.

11. Do you agree with our proposed approach to identifying the risks and harms that new energy products and services may pose to consumers? Please explain why.

As per our response to Question 1, in our view this approach is sound. This could be supported by an analysis of consumer outcomes to better balance the sharing of risks, such as the scenarios developed by the ESB in their customer insights work.

12. Do you agree with the identified risks and harms to consumers? Please explain why. Are there other key risks and harms we should consider?

The identified risks and harms to consumers are broadly covered by this analysis. Cases included in Appendix B canvass additional risks captured from case studies where new energy products and services may create challenges for EDR schemes.

13. Do you agree with the proposed approach to use the consumer archetypes developed by the ECA when assessing the identified risks? Please explain why. What other key consumer types should we consider?

We broadly agree with the approach. In our view, other consumer types that should be considered include:

- electric vehicle customers living within microgrids
- disability life support customers (acutely vulnerable).

It is important to emphasise the additional risks to consumers with life support equipment and medical heating and cooling needs. It is essential to consider and determine how to ensure consumers with these needs are protected and, more importantly, not disconnected.

In our experience, consumer detriment from new energy products and services which needs to be amongst that prioritised includes unexpected curtailment or withholding of energy.

14. How do you think the conduct of energy businesses is likely to impact the identified risks around new energy products and services? Do you agree with the need to consider whether additional consumer protections for these services should be included in the NECF?

It is noted that businesses providing products and services in an unregulated market, generally face low barriers of entry, and theoretically market forces should prevail in terms of customer choice and competition.

Industry codes such as the New Energy Tech Consumer Code (NETCC) can provide some protection for consumers for particular issues, ensuring appropriate commercial conduct, however given the voluntary nature of these frameworks they rely on a supportive and engaged industry.

The issues paper correctly identifies that consumer protections for these new energy products and services should take into account the ‘essentiality’ of these services, as such, additional consumer protections similar to provisions under the NECF may be appropriate. A much broader definition of essentiality is appropriate as outlined in section 4.2.2.

Expansion of external dispute resolution (underpinned by statutory enforceability) to keep pace with evolving energy technologies and business models will further support consumer protection and an appropriate mitigant against poor conduct by market participants.

15. Have we adequately captured potential mitigants? Are there other mitigants we should consider

There are significant and broad industry changes and associated reforms being considered as noted: ACL, NECF, Technical standards, Consumer Data Right (CDR) and Industry codes.

We concur that it will be critical for industry to build a strong social licence with energy consumers. Developing trust and demonstrating a strong willingness to satisfy consumer needs will give consumers the confidence and feeling of support they require to take up new technologies and engage with new service models. This will allow the benefits of the energy transition to be properly realised. We note if this is to happen, industry will need to be proactive in providing clear, trusted information to consumers, at the right times. Increasing transparency in product and service offerings and consumer information will be vital for consumers' ability to effectively engage in a two-sided market.

As an Ombudsman scheme, we recognise the need to ensure appropriate consumer protections are available in the energy market that is rapidly evolving through the introduction of new technologies. As we have emphasised throughout our submission, there are many situations where EDR schemes can mitigate issues with the industry, better balance the risks business and consumers, as well as provide a safety net to ensure consumer outcomes are taken into account with any reforms.

16. Do you agree with this review considering the need to expand the scope of the NECF where appropriate?

We support the following broad consumer protection principles for consideration of an expanded scope for the NECF:

- The framework/s should be underpinned by a focus on inclusiveness.
- Consumer protections, including dispute resolution, should be afforded where a new product or service has the potential to disrupt supply or if they are applied more broadly, according to a consistent set of principles.
- The framework/s should be developed according to the function of products and services as they are now and into the future.
- External dispute resolution is a baseline consumer protection. It supports innovation creating consumer trust and confidence in the market.
- Where the obligation is underpinned as part of a supply contract with a provider, the contractual arrangement should be subjected to EDR, where there is a dispute about the contractual terms and obligations.

Where external dispute resolution will be provided as a consumer protection via an energy ombudsman, we propose the following principles:

- Membership of the dispute resolution scheme is to be underpinned by statutory enforceability.
- Any imposed new jurisdiction for a dispute resolution scheme needs to be supported by appropriate legislation or enforceable rules that will allow the Ombudsman to properly address the complaint and, if necessary, determine the complaint.
- The proposed members must be a defined group which is legally accountable to a Regulator.
- The Regulator must be able to readily identify all proposed members.

- The Government/Regulatory body/Authority imposing a dispute resolution scheme membership requirement must be able to specifically identify individuals and businesses and have a range of powers such as licensing, performance monitoring, compliance and enforcement.
- The Regulator must be willing to ensure compliance of the requirement to become and remain a member and remediation of any systemic issues, or be in a position to take enforcement action.

A detailed outline of these principles is provided in Appendix A.

17. Do you consider the potential reform options outlined in section 6.2 will go some way to addressing current gaps in the frameworks in relation to future applications?

Yes. We support the AER's careful consideration of these significant reforms.

18. Would it be helpful to introduce limited authorisations and exemptions to apply to particular business models/business activities? Are there any risks to this approach?

We would be supportive of this approach provided there were provisions made to review assessments to ensure authorisation / exemptions remain appropriate as business models evolve.

19. Would it be preferable to tailor retailer obligations to the specific set of proposed retailer activities? For example: a. Should there be a core set of obligations on all retailers?

Utilising a core set of obligations is considered a pragmatic, fair and reasonable approach. For example, extending obligations for suppliers/providers to implement policies that identify and protect consumers in vulnerable circumstances would be prudent, particularly where there is a risk of curtailment or disconnection of energy supply.

20. Should the AER be able to impose ongoing obligations on authorised retailers to require them to undertake, or limit them from undertaking, particular activities?

Yes we agree the AER should be able to impose ongoing obligations as described.

21. Should retailers be required to apply for a variation if changing their business model or customer type from what was approved?

We support this approach. The onus should be placed on retailers to report any changes to their operations that would necessitate a review of their retailer authorisation to ensure a level playing field.

A tiered authorisation framework as canvassed in the issued paper is considered a sound approach. Further aligning the NECF regulatory approach with the Victorian framework would allow the AER to specify what activities a business is allowed to undertake (such as where and what customers they can service), again placing the onus on businesses to report any changes in circumstances.

22. Should the AER audit retailer activities and organisational capacity against arrangements set out in retailer authorisation applications, and if so, what should be the trigger and/or frequency?

No comment

23. As authorisation and individual exemptions are currently a point-in-time assessment, should retailers and exempt sellers be required to provide ongoing certification of their suitability to maintain their authorisation or exemption?
a. How can the AER provide ongoing certification of retailer and exempt seller suitability to maintain their authorisation or exemption?
b. What should this involve – for example audit, reapply under criteria, certificate of compliance? 64 AEMC, Updating the Regulatory Frameworks for Embedded Networks, AEMC,

No comment

24. If applying additional and/or ongoing obligations on authorised retailers, how can we limit the additional regulatory cost?

A tiered approach to compliance, based on risk, should reduce the burden/cost on businesses, with appropriate coverage, whilst ensuring fairness (competitive neutrality).

25. What, if any, regulatory approvals should be required if there is a change in control of an authorised retailer?

Notification to the AER regarding a change in control of an authorised retailer is considered prudent. This can be self-reported along with appropriate demonstration of compliance with applicable obligations.

26. If there are changes to the framework that applies to new retailers or exempt sellers, what changes should be made to existing retailers or exempt sellers?

A key principle behind the reforms should be creating a level playing field for all participants. We believe that the changes should apply to all retailers and exempt sellers.

27. What are other possible solutions to ensure the authorisation and exemption frameworks remain effective within the context of new energy services?

No comment

28. How can we ensure the authorisation and exemption frameworks achieve effective regulation and balance the need for innovation and an appropriate level of protections for energy consumers?
a. How can we effectively regulate new business models?

The current legislative and regulatory framework that governs the energy sector is expansive with differing rules at the national level across a range of different bodies and further provisions under state legislation.

We reiterate that EDR is critical to maintain consumer trust in the market and will be important for mitigating against the risks emerging from new energy products and services.

Ombudsman schemes have demonstrated that EDR can be introduced to the exemption framework – with embedded networks - and has not stifled innovation.

We support EDR applying to all authorised entities and most exempt entities as a measure to assist regulating new business models.

29. If changes are made to the authorisation and exemption frameworks, what (if any) changes should be made to apply to existing retailers and exempt sellers/embedded networks? Should there be a trigger for changes to existing authorisations and exemptions and, if so, what should they be?

As indicated in our response to question 26, changes that support a level playing field would be encouraged.

30. Are the existing protections under the NECF adequate to protect consumers from the potential risks posed by the transformation of the energy market and emergence of new energy products and services?

No since NECF is not applicable to new energy products and services that reside generally behind the meter but which may impact on supply. Community energy and peer to peer trading also need to be considered.

There are some cases where energy ombudsmen schemes can provide redress mechanisms and are able to draw on the following:

- in depth knowledge of state based jurisdictional/distribution arrangements
- visibility of systemic issues
- leverage extensive energy industry knowledge and relationships that improves efficiency of case handling, facilitates more effective identification of interconnected issues and delivers fair and independent outcomes across the full scope of energy issues
- less confusion for the customer about who to contact in relation to their issue
- free and impartial service.

31. Should energy products and services not currently captured by the NECF be regulated and how?

There are cases where new energy products and services are outside of the jurisdiction of an energy ombudsman, or where the jurisdictional boundaries are unclear.

We believe there are cases where energy products and services not currently captured by the NECF should be regulated. We support the AER identifying these through the business model framework. We believe a set of principles should be developed to frame any reforms to the NECF.

In considering such reforms it is important to note the risks of having different redress mechanisms under different consumer frameworks include:

- failure to align with state based jurisdictional/distribution arrangements
- decreased visibility of systemic issues
- potential inefficiency of case handling
- data collection is impeded
- confusion for the customer about who to contact in relation to their issue
- differential redress dependent on mechanism accessed.

32. Do we need new specific protections added to the NECF to protect against emerging harms, including harms that may be particular to emerging business models?

Yes –if consumer harm / detriment can be foreseen, it would be in the long term interests of consumers to expand NECF to prevent it.

33. Are there potential reforms to the ACL that we should consider as part of our review?

The ACL provides consumer protections for new energy products and services to prevent practices that are unfair or contrary to good faith, generally considered complimentary to the NECF.

It is noted that in contrast to the specific provision under NECF that provide additional protections for vulnerable customers, the ACL only provides general protections for consumers that purchase products and services.

The AERs statement that EDRs have consideration of the ACL where there is a price change is a positive step, clarifying application to energy related services and ensuring appropriate redress mechanisms are in place via energy ombudsman schemes.

34. Are there merits in implementing principles-based or outcomes-based regulation to support the energy sector's transition? What are the potential risks in taking this kind of approach to regulation?

There may be appropriate circumstances (new products or services) that outcomes-based regulation could apply. As outlined, a principles-based approach might achieve better outcomes in terms of regulation however they are more difficult to enforce.

Prescriptive frameworks are easier to enforce and to comply with, but there is the risk of ending up with a rigid framework unable to adapt/respond to technological change.

A safety net such as redress schemes outlined above should be in place to guard against consumer detriment.

Prescription may be needed where there is considered a higher degree of consumer harm/risk, for example life support customers shared earlier.

35. Is there a role that additional industry codes could play in supporting consumers through the energy transition?

We identify a need for industry specific provisions beyond the voluntary framework to provide greater consumer protections for the supply of new energy products and services. In our view, the associated potential consumer detriment includes:

- Energy supply disconnected, curtailed or withheld due to:
    - non-payment of a bill without notice and no application of hardship criteria or payment options
    - failure to provide supply of the energy leaving the customer with no other means of access to supply
- Non grid connected customers being disconnected, curtailed of having supply withheld for:
    - non-payment of a bill or due to financial mismanagement of the system
    - failure to provide supply of the energy leaving the customer with no other means of access to supply.

We believe that billing for energy in and out should be separate and discrete, showing meter data to support the billing unless the meter data is unrelated to usage. For example, if the customer's bill includes cost for a service/product not related to the supply of energy then the supply component should be separately itemised and metered as it is today.

We note that the New Energy Tech Consumer Code is only recently established, and we do not have data available to determine whether it is working or not. The Code needs to be monitored for

compliance, and also whether it will change customer experience in the areas energy ombudsman traditionally receive complaints about.
36. Are there other approaches that should be considered?
To reaffirm our position, we are strong advocates for providing access to effective and strong redress mechanisms for consumers of new energy products and services. We support an efficient, effective and affordable model for resolving consumer complaints about new energy products and services. Consumers need to be able to readily identify where they need to direct their complaint to rather than having to contact multiple jurisdictions and being referred to different bodies, which is only likely to antagonise the consumer further. We believe that alignment with redress mechanisms that are currently available to energy consumers should be available to new energy products and services consumers, as well as bringing some legacy items within jurisdiction (eg Bulk Hot water) creating a “one stop shop”.

To further illustrate the challenges presented by new energy products and services, we have provided case studies in Appendix B.

These examples illustrate the importance of dispute resolution services for issues surrounding billing of energy services and access to energy.

In conclusion, we broadly support the direction of the AER in the issues paper and propose some specific principles to aid the progress of the review, including in relation to dispute resolution by an energy ombudsman.

If you require any further information regarding our submission, please contact Mr Jeremy Inglis, Principal Policy Officer (EWOQ) [redacted] or Ms Jo De Silva, Policy and Communications Lead (EWOSA) [redacted]

Yours sincerely

[redacted]

Jane Pires

Energy and Water Ombudsman Queensland

[redacted]

Sandy Canale

Energy and Water Ombudsman South Australia

Appendix A

The following list outlines the key matters which need to be accepted by a Regulator or Legislator where jurisdictional expansion is being considered. They are a set of principles that EWOSA use to guide discussions about expanded jurisdiction, to ensure their scheme remains future focussed and fit-for-purpose. While this Appendix relates specifically to EWOSA, the general principles apply more broadly.

1. Energy and Water Ombudsman (SA) Limited (EWOSA) is a company, limited by guarantee, governed by a Board of Directors, and regulated by ASIC. It was created in October 1999 at privatisation of the energy industry as part of the consumer protection framework to allow consumers to resolve disputes with their energy suppliers in an informal, accessible, independent, and free (to consumers) manner. The Scheme was expanded in 2003 to include the gas industry and 2012 the water industry. Jurisdiction of the Ombudsman has also been expanded in recent times to include privacy complaints, embedded networks and consumer data rights.

2. EWOSA is a membership-based dispute resolution scheme, not a general consumer complaints resolution body.

3. Members of EWOSA comprise those legal entities that are required, by a Regulator (at this stage the AER or ESCOSA), or legislator usually as a condition of a licence (or a formal exemption from a licensing requirement) or legislation to be Members of a dispute resolution scheme.

4. The Regulator is responsible for ensuring compliance with the licence or exemption condition (i.e., that the entity joins and remains a member of the Scheme) and is responsible for any enforcement action arising from that requirement i.e., action to revoke licence or exemption if conditions are not met, or if systemic issues in relation to a member are identified.

5. Membership of EWOSA is underpinned by statutory enforceability. Membership is not reliant on the voluntary goodwill of participants in the scheme nor is membership able to be “gamed” by members leaving the scheme to avoid undesired outcomes.

6. EWOSA can only resolve those complaints which arise from specified activities undertaken by its members. It is important to note that it is a specific legal entity which is required by the Regulator to be a member of EWOSA. That legal entity may be a subsidiary or owner of other legal entity(ies) which may undertake a broad range of activities in the electricity, gas or water industries which do not require licencing or do not attract a legal requirement imposed by a Regulator to become a Member of EWOSA.

7. Members of EWOSA, are required to comply with the EWOSA Constitution and Charter. Failure to comply may lead to EWOSA taking its own action in relation to a member. But there is the additional expectation that the Regulator will act against the Member from a breach of licence or other perspective. To this end, there an on-going and effective communication loop between the Regulator and EWOSA must be established.

8. In a future which promises more dispersed means of securing energy supply, unless there is a political appetite and determination to impose requirements on businesses to join EWOSA or there is a Regulator (which could be any Government statutory licencing or approval authority), prepared to impose a specific legal requirement on an entity which is participating in a particular way in the energy industry to join and remain a Member of EWOSA, the Scheme can have no jurisdiction.

9. The Government/Regulatory body/Authority imposing an EWOSA membership requirement must be able to specifically identify individuals and businesses and have a range of powers such as licensing, performance monitoring and enforcement.

10. The Regulator must:

    - have the legal authority to impose binding requirements on a particular person/entity to become a Member of EWOSA.
    - be prepared to articulate how and why a member-based dispute resolution scheme will be effective for the group of proposed Members.
    - demonstrate an understanding of the financial and business costs of membership for the proposed Members – i.e., Membership and complaint handling costs, system and business costs (e.g., establishing and appropriate internal complaints handling process) and be prepared to justify the imposition of those costs.
    - demonstrate an understanding that membership of more than one member-based Ombudsman scheme will be required for any proposed Member operating across State borders and be prepared to deal with issues and complaints from businesses that need to join multiple schemes.
    - be willing to prosecute the argument for mandating membership of EWOSA including communicating with and educating proposed Members on costs and requirements relating to Membership of EWOSA. In other words, the Regulator must be willing to stand by its regulatory decision.

11. The proposed Members must be a defined group which is legally accountable to a Regulator (usually by virtue of an act of Parliament – e.g., a requirement to be licensed or authorised or formally exempted to participate in a particular industry).

12. The Regulator must be able to readily identify all proposed Members:

13. The Regulator or Legislator must be able to enforce Membership of EWOSA via a licence condition, authorization, or other legally enforceable requirement. It is not the role of the EWOSA to identify potential Members and enforce membership – that is the role of the Regulator/Legislator which is requiring membership as a condition of operation in a particular sector. Weak or ineffective regulation could result in some, but not all, of a group or sector joining EWOSA and would point to the inappropriateness of mandating Membership in the first place.

14. The Regulator must be willing to engage with EWOSA on a regular basis and be resourced to undertake compliance and enforcement action in respect of:

    - the requirement to become and remain a member. Ideally a Regulator would compare the list of EWOSA Members with their list of regulated/authorised/licensed entitles and take appropriate enforcement action in relation to those which fail to join EWOSA.
    - any systemic issues identified by EWOSA in respect of a particular Member or group of Members.

15. The Regulator must have the power via administrative or legal processes to take disciplinary, remedial, compliance or enforcement action in relation to any person or entity it requires to be a Member of EWOSA and must be willing and resourced to do so. (i.e., the existence of a compliance and enforcement team). Mandating membership of EWOSA is not a mechanism by which the Regulator can abrogate its own responsibilities for the proper functioning, conduct and compliance of the person or entity.

16. Any imposed new jurisdiction needs to be supported by appropriate legislation or enforceable rules that will allow the Ombudsman to properly address the complaint and, if necessary, determine the complaint. Products and Services only covered by voluntary Codes of Conduct and have no enforceable provisions on the Member should be deterred from membership as it may lead to consumer frustration in terms of complaint resolution and possible reputational damage to EWOSA.

Appendix B – Case Studies

From EWOSA:

Case Study 1 presents a "bolt off" scenario, where a customer entered a premises in which the battery had been operated as part of a Virtual Power Plant.

Case Study 2 presents a high bill complaint, where the customer's solar and battery installation had to be tested in order to assess the accuracy of the bill. Testing the operation of a solar and battery installation is on the boundary of the Scheme's jurisdiction as these products are behind the meter. It was not possible to ascertain the accuracy of the bill without undertaking the testing.

Case Study 3 presents an embedded network where two off market child meters needed to be replaced. As off market meters they were on the boundary of the Scheme's jurisdiction but it was difficult to ascertain any other dispute resolution avenue for the customer.

Case Study 4 presents a voltage inverter issue. It was only after investigation that the Scheme was able to ascertain that the inverter needed to have the recommended settings applied, a matter for the customer to have resolved rather than the distributor or retailer. Voltage issues can either be on the customer or network side, but it is not always apparent who is responsible. This issue is on the boundary of the Scheme's jurisdiction.

Case Study 5 presents a Virtual Power Plant case.

Case Study 6 presents an example of a customer having their solar curtailed due to high voltage in the network.

From EWOQ:

Case Study 1 presents a Virtual Power Plant case.

Case Study 2 presents an example of a vulnerable customer having bulk hot water issues.

Case Study 3 presents a solar FIT issue.

Case Study 4 present a tariff issue linked to a meter replacement.

Case Study 5 presents an insolvency case for a solar company.

Case Study 6 presents a solar and battery configuration case

EWOSA cases:

CASE STUDY 1

"Bolt Ons"

What does the complaint relate to: Unauthorised operation of battery

Complaint date: 19 April 2022

Case type: Facilitation

Number of Customers Affected: 1

Description of the conduct that forms the basis of the complaint:

The customer resides in a premises which was previously part of a Virtual Power Plant (VPP).. The VPP service was supposed to have been "bolted off" by the previous owners and their retailer. When the customer entered the premises, they took ownership of the battery and solar system but did not want to remain with the former retailer as their retailer. The new resident entered into a contract with a different retailer but found her battery was still being operated as part of the VPP by the previous retailer.

The customer corresponded with the previous retailer and received correspondence from them. The customer contacted EWOSA when they were unable to resolve the issue with the previous retailer. The issue presented challenges to the Scheme in terms of what was in and out of jurisdiction. The issue was resolved by negotiation.

Is the investigation open or closed? Closed

CASE STUDY 2

What does the complaint relate to: High Bill

Complaint Date: 13 September 2019

Case Type: Investigation

Number of Customers Affected: 1

Description of the conduct that forms the basis of the complaint:

The customer contacted EWOSA to complain of an unexpectedly high bill. The customer reported that their bill from 7 February until 7 May 2018 was $247.38 in credit. The disputed bill from 8 May until 7 August 2018 was $331.45. The customer stated that nothing in the property had changed and was concerned that his bill had increased significantly.

SA Power Networks tested the meter on 10 October 2017 at the retailer's request because the customer queried the higher than expected bill from 9 May to 7 August 2017. EWOSA reviewed the meter data recorded on the meter and found that SA Power Networks obtained actual reads on all attendances since the customer account started with their current retailer on 6 March 2017. EWOSA also reviewed the meter reads provided by the customer which were consistent and in line with the meter reads obtained by SA Power Networks.

EWOSA reviewed the bills from 6 March to 7 August 2018 and verified that the retailer billed the actual reads recorded on the meter and the actual imported and exported electricity that passed through the meter based on the actual reads.

EWOSA tried to explain the case for the disputed imported and exported electricity billed from 8 May to 7 August 2018 and sent two independent energy consultants to review the solar and battery installation at the customer's property. EWOSA undertook these assessments of the customer's private electrical infrastructure, which is beyond the meter and therefore outside SA Power Networks' responsibility, to attempt to reconcile the recorded consumption with appliance use, obtain a load profile of the customer's use and assess whether the customer's solar and battery systems were compliant and operating as they should. Both consultants found no assignable reason for the disputed higher than expected use and lower than expected export.

EWOSA found no evidence that the customer had been overcharged and therefore there was no basis to adjust the disputed bill. Without establishing that the installation was operating as intended, EWOSA could not have confirmed the accuracy of the billing. Testing the operation of the solar and battery installation is on the boundary of the jurisdiction of EWOSA as they are behind the meter but it was not possible to ascertain the accuracy of the bill without doing so.

Is the investigation open or closed?: Closed.

CASE STUDY 3

What does the complaint relate to: 2 child meters not replaced

Complaint Date: 5 March 2019

Case Type: Investigation

Number of Customers Affected: 2

Description of the conduct that forms the basis of the complaint:

On 29 May 2018, the retailer agreed to replace two faulty embedded network meters at a caravan park. The customer was advised that these two child meters would be replaced within 12 weeks of 29 May 2018. At the time of raising the complaint, the meters were still not replaced and the customer was being issued with estimated bills.

SA Power Networks had originally installed both meters and then invested them to the retailer under a private arrangement. Both meters are off market. They were considered simple installations.

The retailer sourced two second hand meters from SA Power Networks which they intended would replace the faulty meters. They experienced difficulty engaging anyone to install the meters.

The retailer approached SA Power Networks to facilitate the installation of these private meters at the site. After investigation, SA Power Networks identified that this was not work they could perform, based on advice from their Regulatory Team.

EWOSA identified that as the meters were off market meters, they did not need to be market ready. EWOSA provided the retailer and the customer with contact details for sourcing an electrician who could conduct this type of work. A registered electrical contractor was engaged to have this work completed for the retailer. The customer was very satisfied with the outcome.

As off market meters, the complaint was on the boundary of jurisdiction for EWOSA.

Is the investigation open or closed?: Closed.

CASE STUDY 4

What does the complaint relate to: Voltage Inverter Issue

Complaint Date: 18 December 2017

Case Type: Investigation

Number of Customers Affected: 1

Description of the conduct that forms the basis of the complaint:

At this time of year, when solar panels are operating at their optimum and households are using less energy, we expect to see an associated rise in complaints. Generally, these complaints relate to inverters turning on and off due to high voltages which may be caused either by issues with the customer's inverter or on the network side (due to high voltage input from solar panels).

The customer stated that he had a new 4.8kW solar system inverter which was cutting out due to the voltage coming in too high. The customer stated that this was happening 2-3 times every day between 12-3pm and that independent electricians told him to organise for SA Power Networks to re-tap the transformer on the street.

SA Power Networks installed poly logger test equipment at the property on 16 January 2018 and removed it on 24 January 2018. During the test period, voltage level at the service point to the customers' property complied with the levels prescribed in the Australian Standard for voltage levels.

On 14 February 2018, the customer was advised by SA Power Networks that during periods when there is lower demand for electricity and solar PV installations in the area are exporting significant electricity, network supply voltages may increase. The solar PV inverter may switch off in this situation as it is designed to do, protecting against damage to the customer's solar panels. SA Power Networks advised that this type of nuisance tripping can be minimised by having a solar installer apply the recommended SA Power Network settings to the inverter.

EWOSA sought the view of the Office of the Technical Regulator (OTR) on the SA Power Networks response. The OTR suggested that the customer inverter was the most likely cause of the problem and that the recommended settings should be applied.

The matter was closed shortly after EWOSA notified the customer of the need to arrange an electrician to modify the settings on the inverter. The customer advised that they were no longer experiencing voltage issues at their property after the work was completed.

Is the investigation open or closed?: Closed.

CASE STUDY 5

What does the complaint relate to: Time of use Tariffs and battery compatibility in a Virtual Power Plant

Complaint Date: 1 October 2021

Case Type: Facilitation

Number of Customers Affected: 1

Description of the conduct that forms the basis of the complaint:

Mr M complained that his original 5 year Virtual Power Plant contract was based on a single rate tariff.

His supplier changed the tariff structure to time of use which prevented him from optimising his solar and battery system.

Mr M was dissatisfied that his supplier wanted to charge him a $800 break fee for leaving the contract when they were the ones who changed the conditions

Mr M's supplier agreed to waive the break fee on the Virtual Power Plant contract

A final bill was issued to Mr M with a credit equal to the value of the break fee on the day the contract was cancelled

Is the investigation open or closed?: Closed.

CASE STUDY 6

What does the complaint relate to: High network voltage causing solar inverter cut outs

Complaint Date: 3 February 2021

Case Type: Conciliation

Number of Customers Affected: 1

Description of the conduct that forms the basis of the complaint:

In May 2021 the customer installed a 6kW solar system. Soon after installation they receive system alerts that their solar system was cutting out. They confirmed that their inverter settings were correct and then contacted the distributor and raised concerns with the quality of their supply.

The distributor installed monitoring equipment at the property in July 2020 to measure the voltage and subsequently advised the customer that the tests show that the voltage complied with the levels set out in the Australian Standard for voltage levels (between 216 volts and 253 volts). Despite being satisfied that the supply voltage was compliant, the distributor advised that additional work would be undertaken to ensure that the current quality of supply is maintained. The work would involve repair of the distributor's substation voltage regulator which was completed in January 2021.

The customer's solar system continued to cut out after the distributor had completed their work. Working with EWOSA, the distributor conducted further network monitoring, which it completed in March 2021, with the results showing that the voltage had on occasions exceeded the levels set out in the Australian Standard. The distributor applied further settings to the Voltage Regulator in April 2021 to remedy the situation.

The distributor undertook to perform further testing in May 2021 to confirm if the adjustments to the Voltage Regulator were successful and undertook to communicate the results to the customer by May 2021. The distributor gave a further commitment to performing additional work to the network infrastructure to correct any further high voltage if detected after the further testing was completed. The customer accepted the distributor's commitments.

Is the investigation open or closed?: Closed.

EWOQ cases:

Case Study 1:

What does the complaint relate to: incorrect advice energy trading in a Virtual Power Plant

Complaint Date: 25 May 2022

Case Type: Refer Higher Level

Number of Customers Affected: 1

Description of the conduct that forms the basis of the complaint:

Customer says she installed solar panels and battery on 24 March 2022 on the basis of setting up a Virtual Power Plant with an Energy Retailer in order to start Energy Trading. Retailer offering $0.45 FiT for Energy Trading for 12 months and customer eligible once meter was reconfigured. There was a delay in reconfiguring the meter was reassured still eligible for the same plan; however, when ready to sign up Retailer were no longer offering this plan. Customer tried to sign up for $0.30 FiT but was advised that they are not ready to offer this. Retailer had removed their plans off of their website and customer unable to sign up to any plan with them either online or over the phone and are unable to provide any time frame as to when these plans will be available. Whilst a Retailer's Solar FiT is outside jurisdiction of EWOQ, EWOQ facilitated a good faith customer service gesture. Retailer honoured the $0.45 FiT plan.

Case Study 2:

What does the complaint relate to: incorrect high billing – vulnerable customer - Bulk Hot Water

Complaint Date: December 2021

Case Type: Referral to OFT

Number of Customers Affected: 1

Description of the conduct that forms the basis of the complaint:

A vulnerable customer with a disability approached EWOQ multiple times seeking assistance with a high bill after alleging receiving no help from OFT. The customer indicated that she has a disability and uses very little hot water and she is concerned about the high charges.

Case Study 3:

What does the complaint relate to: incorrect advice – changes to FiT

Complaint Date: January 2022

Case Type: Referral to OFT

Number of Customers Affected: 1

Description of the conduct that forms the basis of the complaint:

Complaint with customers retailer concerning disclosure re: changes to FIT if solar system modified/upgraded This matter is outside of EWOQ jurisdiction as it concerns the installation of the solar PV system & contract for Solar system.

Matter had to be referred to Office of Fair Trading.

Case Study 4:

What does the complaint relate to: Failure to notify pricing changes following meter replacement.

Complaint Date: 11 May 2022

Case Type: Refer Higher Level

Number of Customers Affected: 1

Description of the conduct that forms the basis of the complaint:

The customer alleged after his meter replacement the Retailer changed the rates and pricing structure of his account to a demand based system without any prior advice or notification. Further insufficient explanation was provided for how demand charges are calculated. Customer changed retailer.

Case Study 5

What does the complaint relate to: insolvency solar provider

Case Type: Out of jurisdiction

Number of Customers Affected: 1

Description of the conduct that forms the basis of the complaint:

A solar company became insolvent, which prevented a customer from being able to claim a warranty on faulty equipment. Lack of redress options – noted intersection with Australian Consumer Law.

Case Study 6:

What does the complaint relate to: Solar and Battery configuration issues

Complaint Date: May 2021

Case Type: Refer Higher Level

Number of Customers Affected: 1

Description of the conduct that forms the basis of the complaint:

Customers solar and battery installation had been incorrectly configured. The detriment to the customer was from the energy generated all being exported to the Grid at an inferior rate, rather than the benefit being maximised for the customer by being utilised at the customers premises.

Customer contacted EWOQ alleging he is experiencing issues relating to solar export and battery storage with no agency taking responsibility for the issues including NSP, with other agencies advise it is the NSP's responsibility.

EWOQ initially progressed the matter through RHL process with RHL notice issued to the NSP, however, based on the response this office received from the NSP, it appears the matter lies with the solar installers.

EWOQ referred the solar installer matter to the Office of Fair Trading (OFT) and notified the customer of the referral.