



14 July 2017

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

Dear Ms Proudfoot

AER Reference 60582 / D17/74301 – Access to dispute resolution services for exempt customers

Thank you for the opportunity to comment on the Australian Energy Regulator's Issues Paper: *Access to dispute resolution services for exempt customers*. In answering specific questions below, we have used the numbering scheme from that paper.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. EWON endorses the submissions from other energy ombudsman offices provided to the AER in response to this Issues Paper, at the same time noting that this submission is EWON specific, as each ombudsman office has variances in relevant legislation and structure (Constitution, Charter and funding arrangements).

3.1 What should be [the AER's] approach to considering exempt customer access to ombudsman schemes

Access to free, effective, independent and expert external dispute resolution should be extended to all energy customers, including those of exempt entities. That was the fundamental premise underpinning the establishment of energy ombudsman schemes as part of the introduction of deregulation and privatisation of the electricity sector in the mid to late 1990's across the eastern states of Australia.

With further advances in technology and the structure of the energy sector, including new and emerging supply and retail energy products and services, there is strong and broad support for this essential service to continue to be underpinned by energy specific consumer protections. This includes the extension of access to free and independent dispute resolution protection for customers of exempt entities. Energy specific consumer protection is a key contributing element to maintaining confidence and fair competition in these markets.

In accordance with the NSW Electricity Supply Act (1995), EWON is currently able to accept complaints from customers whose supplier / retailer is an exempt entity but, as those entities are not scheme members, they are not required to:

- comply with the Ombudsman's determinative / binding decision powers;
- engage with EWON's investigations processes;
- make information available to EWON for the purpose of resolving complaints;
- inform their customers of their right to contact EWON.

It is, therefore, very difficult and time consuming to resolve these complaints. In addition, the cost of these complaints is borne by EWON's Members, a cross-subsidy that needs to be removed as the number of these complaints increases, as has recently been experienced.

When the NSW legislation which established the above arrangement was introduced, its key focus was ensuring that residents of residential parks, many of whom were at risk of vulnerability, had access to EWON. While this is not a fundamental argument for changing the current exemption guideline arrangements, it is evidence that NSW has always recognised the need for energy consumers, especially those at risk of vulnerability, to have access to free, fair and independent dispute resolution, irrespective of the setting in which they live.

Therefore the approach the AER should now be taking is to consider the wider risks to customers of exempt entities, especially those at risk of vulnerability, as well as the potential consumer detriment which could be associated with the introduction of new products and services for those consumers.

We support a common approach in amending both the Retail Exempt Selling Guideline and the Network Exemption Guideline to include access to ombudsman schemes for all energy consumers. As set out later in this paper, EWON recognises the differences between the types of exempt customers in regard to size (small to very large scale) and structure (residential parks to high rise apartment buildings which include business consumers ranging from family businesses to large scale supermarkets). Accordingly, ombudsman schemes are preparing, and will, introduce appropriate membership categories and funding arrangements.

3.2 What is the scale of the problem

While currently the number of disputes is small, the number of exempt entities is rapidly increasing. This means that the number of customers without access, or for NSW consumers, access on the same basis as consumers of authorised retailers / network companies, to external dispute resolution services will grow. In addition to embedded network on-selling in retirement villages, there is exponential growth in on-selling to residential customers in high-rise apartments. Traditional retailers are also moving into this market. In addition, new business models for solar and facilitated trading are both emerging into a space that is comparatively unregulated – and therefore outside ombudsman jurisdiction¹.

In the financial year 2015-2016 we received 104 exempt entity cases. In the 2016-2017 financial year there were 140 cases, an increase of 35%. We do not consider that the relatively low complaint numbers are indicative of the absence of a need for improved access to external dispute resolution for customers of exempt entities. The Australian & New Zealand Energy and Water Ombudsman Network (ANZEWO), through commissioning of a research paper by independent consultants, undertook an audit of the information regarding dispute resolution that was provided to consumers in embedded networks². The audit found that most of the companies offered fairly comprehensive information about internal dispute resolution, but that external dispute resolution information was sparse and often incorrect or inconsistent. This may be a significant factor in explaining the low complaint numbers.

The recent media exposé of issues facing residents in retirement villages, especially those of one provider, identifies that complaints about a range of bundled services are not always known until a much broader level of consumer detriment develops. Having access to an ombudsman's service would only require a single complaint about energy pricing / provision within an embedded network

¹ ANZEWO, *Consumer access to external dispute resolution in a changing energy market*, 24 June 2016

² Ibid

for the systemic ramifications of that complaint to be considered, responded to, and if necessary, raised with the relevant exempt entity and regulator.

3.3 What is the nature of energy disputes experienced by exempt customers

We agree with the AER's characterisation of energy disputes experienced by exempt customers. They are often based on more complex relationships than the traditional retailer-customer relationship and any complaint may be 'bundled' with other issues.

From 1 July 2016 to 31 March 2017, more than 50% of complaints received by EWON from customers of exempt entities were from people living permanently or periodically within residential parks. The next most common source of complaints in this period were from customers living in residential buildings established as embedded networks and customers of small businesses operating within shopping centres. Billing related complaints were one of the more common sources of complaints.

Residential park energy customers complained to us about:

- high bills;
- the level of energy consumption charges;
- the calculation of supply charges; and
- planned and unplanned outages.

Customers living and working within other embedded networks complained to us about:

- high bills;
- charges, including supply charges;
- access, or lack of access, to government rebates;
- cross wiring of metering;
- frequency of bills and the length of billing periods;
- the disconnection of supply for non-payment;
- difficulty negotiating an appropriate payment plan;
- difficulty making a complaint;
- difficulty understanding their energy bills;
- access to retail competition; and
- unplanned outages.

We recognise that exempt entities may have complex internal structures and multiple external supply relationships. We also recognise that exempt entities may have their primary operation outside the energy sector. Based on our own complaints experience, we are aware that energy issues need to be isolated from general complaints a customer may have about their exempt provider, such as those related to tenancy or maintenance, for the purpose of complaint investigation or the provision of information and advice.

3.4 Can existing external dispute resolution mechanisms effectively deal with energy disputes?

Jurisdictional civil and administrative tribunals are not an effective 'one stop shop' for energy consumers. Currently, in the absence of a satisfactory outcome through lack of exempt entity engagement with EWON's dispute resolution services, customers of exempt entities in NSW have to seek resolution through the Australian Consumer Law (ACL) via legal, fair trading or tribunal channels. For other jurisdictions this is the first step for customers of exempt entities. Or in both cases, it's seen as being too difficult and they choose to abandon pursuing their complaint.

Where customers seek dispute resolution through state and territory fair trading / consumer affairs offices, they incur costs and may have to represent themselves, both of which are barriers to access.

Under state legislation and the NERL, energy consumers have access to free and independent external dispute resolution through ombudsman schemes funded by energy market participants. Unlike tribunals, industry ombudsman schemes have industry specific knowledge. The NECF also requires a high level of information provision to consumers, with strong explicit informed consent provisions. These are not included in the ACL.

Responding and managing the complexity and types of complaints raised by customers of exempt entities, as outlined previously in this paper, requires expertise and knowledge of different models of energy supply, and, for example, different methods of billing. Further, it requires expertise with communicating with consumers about their broader complaint and isolating for them, the energy element as well as other elements that may need to be referred to, and managed, by appropriate bodies.

A customer's relationship with an exempt entity can be more complex than that with an authorised retailer or distributor. This can lead to concerns that making a complaint about energy provision may have a broader impact on the relationship with the exempt entity, given that this could be their landlord or the residential park operator. Industry ombudsman schemes have the specific skills and specialist knowledge to mediate complex disputes; and their member funding regime means that they are resourced to make relevant and appropriate referrals for other issues raised by customers.

Ombudsman schemes also strategically undertake extensive outreach work, connecting with communities and facilitating improved communication and understanding between energy entities and customers.

On occasion we currently also receive contact from the operators of exempt entities seeking information or advice. This is an example of how an industry ombudsman can assist in reducing customer complaints. Exempt entities, as members, will be able to obtain industry specific information, referrals or advice, as well as dispute resolution guidance/training.

A further factor which should also be considered is the current economic environment. The energy sector is currently experiencing a significant amount of volatility and this gives rise for business failure. In the past 18 months, two authorised retailers – GoEnergy and Urth Energy – have gone into administration and enactment by the AER of the retailer of last resort provisions. Membership of an ombudsman scheme increases the likelihood that customers are aware that the scheme is there to assist them in the event of the financial failure of their provider. While ombudsman schemes may not be able to provide direct assistance to customers due to jurisdictional issues, they are able to assist customers with information and to also alert energy regulators about wider systemic problems.

3.5 Additional Considerations

1. We agree with the AER's opinion that the AEMC's embedded networks rule change enabling more exempt customers to have access to market retailer contracts could add complexity to dispute resolution. For example, customers who hold a contract with an authorised retailer will have access to an industry ombudsman for their retail account, but may not if they have a complaint about an exempt network. This creates an imbalance in access to dispute resolution.
2. If the AER considers customer numbers relevant to the requirement to join an ombudsman scheme, consideration needs to be given to corporate entities that have multiple sites, for

example a shopping centre operator or retirement village operator. Businesses may declare their sites as separate entities when they are operated by the same entity, thus under-representing their customer numbers.

3. We also suggest that the AER considers transition arrangements, noting that it is seeking advice about whether small commercial customers may have a lesser need to access ombudsman services. EWON's jurisdiction currently provides for small businesses and NSW legislation extends this to small businesses operating in embedded networks. If the AER amends the exemption guidelines to include membership of EWON, an approach where residential customers were prioritised, with small business customers transitioning over a 12 – 18 month timeframe, may be most effective. A transition timeframe will allow ombudsman schemes to modify their constitutions, charters and fee structures. It will also allow exempt entities to prepare for membership of an ombudsman scheme.
4. Customers of exempt entities may also have difficulty accessing government rebates, be unable to use Centrepay, and have reduced access to hardship programs. While outside the scope of the AER's Issues Paper, collectively these diminished consumer protections create inequities. Being required to be members of an Ombudsman scheme will highlight these inequities and enable these gaps to be closed.
5. Where customers of exempt entities do not have access to effective external dispute resolution there may be no incentive for exempt networks to use customer feedback for continuous improvement of their customer service / complaints handling.
6. Under EWON's Charter, we must identify actual and potential systemic issues. These issues could be systemic to a particular member, or group of members. If EWON receives complaints from customers of exempt entities, we can provide valuable information about the types of complaints received and feedback to members, which can lead to improvements which help prevent further consumer detriment and complaints.

EWON's preparation

EWON has used the recent changes to the Network Exemption Guideline and the potential changes arising from this review to start looking at our membership, governance and funding model structures. Similar action is being undertaken by other state-based energy ombudsman schemes.

As well as examining our own structure, we are reviewing the structures of other external dispute resolution schemes in Australia. We are paying particular attention to the Telecommunications Industry Ombudsman (TIO) and the Financial Ombudsman Service (FOS), given both sectors have already responded to disruptive digital and structural change, which saw their membership grow to include many different types and sizes of providers. For example, FOS now has over 16,000 members ranging from single traders (financial advisors) to large scale financial services corporations.

We are committed to ensuring that scheme membership is not a barrier to any organisation or individual currently operating as an exempt entity, now and in the future. We have experience in effectively responding to changes in the sector, having been established with a very small number of large scale energy retailers and network/distribution companies. EWON now has over 50 members ranging from start-up community energy retailers who commence membership with few or no customers to retailers / networks who supply the mass market.

To prepare for exempt entities becoming members of our scheme, we anticipate we would need to make a number of changes to the way we currently operate, including:

- undertaking an engagement program with exempt entities;
- developing an expanded community outreach program with more focus on customers of exempt entities;
- developing internal resources and a training program for EWON staff;
- developing a range of right size / right fit membership categories including perhaps, considering peak body membership to cover situations where there is a large number of small business exempt entities (e.g. residential parks)
- reviewing and streamlining our current member application process;
- facilitating face to face and streamed / digital member induction sessions for new members;
- amending our Constitution and Charter; and
- amending our membership, governance and funding structures.

The EWON Board regards these changes as having fundamental importance to the effectiveness and credibility of EWON. The Board is committed to supporting and prioritising a work agenda that sees all energy consumers receiving equal access to free, fair and independent dispute resolution.

If you would like to discuss this matter further, please contact Rory Campbell, Manager Policy & Research, on (02) 8218 5266.

Yours sincerely



Janine Young
Ombudsman
Energy & Water Ombudsman NSW