

Our Ref: EWOQ/17/0049

13 July 2017



Ms Sarah Proudfoot
General Manager
Retail Markets Branch
Australian Energy Regulator
www.AERInquiry@aer.gov.au

Dear Ms Proudfoot,

Re: Issues paper – access to dispute resolution services for exempt customers

Thank you for the opportunity to make a submission on the Australian Energy Regulator's (AER) access to dispute resolution services for exempt customers.

Background to EWOQ

The Energy and Water Ombudsman Queensland (EWOQ) provides a free, fair and independent dispute resolution service for small electricity and gas customers across Queensland and water customers in south east Queensland who are unable to resolve a dispute with their supplier.

As a statutory body providing independent dispute resolution services in Queensland, EWOQ is governed by the *Energy and Water Ombudsman Act 2006* (EWO Act). EWOQ's dispute resolution framework was developed to accommodate businesses that provide retail energy services to customers. Under the EWO Act, EWOQ is unable to provide dispute resolution services to customers of exempt sellers (on suppliers).

Under Section 64 of the EWO Act:

- an exempt seller becomes an EWOQ scheme participant only when it starts to sell energy to a relevant energy customer.
- a retailer (person who is the holder of a retailer authorisation) becomes an EWOQ scheme participant only when it enters into a contract for the provision of, or starts to provide, a customer retail service to a relevant energy customer.

A relevant energy customer is (a) a small customer (energy); or (b) an eligible non-residential energy customer. In relation to a small customer (energy), the EWO Act refers the definition of a small customer to the *Electricity Act* (QLD) and the *National Energy Retail Law* (QLD).

Importantly, s.6(4) of the EWO Act states '*To remove any doubt, it is declared that the term small customer (energy) does not include a person who, under an energy Act, is a receiver of an on-supplier*'. An 'on-supplier' under the *Electricity Act* (QLD) is defined as:

on-supplier means a person who –

- (a) is the owner or occupier of premises or has the right to use premises; and
- (b) supplies electricity for use in the premises.

Examples of persons under paragraph (a) –

- an owner, occupier or a person who has a right to use a caravan park, exhibition centre, hostel, hotel, industrial park, lodging house, marina, market arcade, motel or shopping centre
- a relevant body corporate.

The effect of this provision is that customers of on-suppliers – even if the on-supplier possesses a retailer authority from the AER – are not small customers and cannot make complaints to EWOQ. This means that some energy consumers, including many vulnerable people, do not have a means to resolve a complaint against their on-supplier quickly and without cost.

If exempt sellers are to become scheme participants, the definition of ‘small customer’ under the EWO Act will have to be amended to include receivers of energy from on-suppliers (both exempt sellers and those holding a retailer authorisation).

Additionally, funding of the EWOQ scheme is prescribed under the EWO Act and consists of scheme annual participation fees and user pays fees.

Detailed response to the questions

In our submission to the ‘*Access to dispute resolution services for exempt customers issues paper*’, EWOQ has only provided responses to questions based on our experience as an industry external dispute resolution scheme and dealing with residential and small business customer complaints in Queensland.

EWOQ as a member of the Australia and New Zealand Ombudsman Network (ANZEWO) has participated in extensive discussions with ANZEWO members in relation to the provision of dispute resolution services to exempt customers. We support the principles developed by the ANZEWO group and we note that each ANZEWO member will be addressing the questions in the issues paper based on the key issues and challenges they foresee.

Question 1	Do you agree with our approach to external dispute resolution? What are the barriers to pursuing this approach and how might these be overcome?
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EWOQ agrees in principle with the AER’s approach to external dispute resolution that customers should not be denied access to Ombudsman schemes merely because they are supplied by an exempt seller rather than an authorised retailer.

As identified in the issues paper, barriers to pursuing this approach include but are not limited to the following:

Barriers	Reason	Options/actions to overcome
Different characteristics of exempt sellers and exempt customers.	Exempt entities and exempt customers range in size and structure from small caravan parks and apartments, large to medium sized shopping centres, retirement complexes and apartment buildings and commercial building sites.	Ombudsman schemes to work with the AER/ANZEWO to provide small exempt entities with assistance to develop appropriate complaint policies and procedures and information about their internal dispute resolution requirements and EWOQ’s services.
Financial capacity of the exempt seller	Small exempt sellers may not have the financial capacity to pay the annual participation fee and user pays fees required to be members of an Ombudsman scheme.	EWOQ to review its funding model to accommodate new scheme participants including small exempt sellers to ensure participation in the

Barriers	Reason	Options/actions to overcome
		scheme is not viewed as a barrier to joining.
The sale of energy may not be the core business of the exempt seller.	This may impact the exempt entities commitment to providing dispute resolution services to customers as they will be more inclined to focus on their core business and not provide dispute resolution services to energy customers.	Ombudsman schemes to work with the AER/ANZEWO to provide assistance to exempt entities to develop appropriate complaint policies and procedures and information about their internal dispute resolution requirements and EWOQ's services.
Exempt entities may provide bundled services to exempt customers.	Exempt entities providing bundled services to exempt customers may include all services on the one bill. Exempt customers receiving one bill for bundled services may have difficulty in easily identifying the energy component on the bill.	When exempt sellers sell energy to exempt customers the current core condition under the AER Retail Exempt Selling Guideline requires the exempt entities to include the following particulars in a bill: <ul style="list-style-type: none"> energy tariffs, fees and charges calculated. Regular auditing of this requirement by the AER would ensure compliance by the exempt entity supplying exempt customers with bundled services.

Question 2 Noting the different approaches to dispute resolution in the Retail and Network Guidelines, what considerations should we be aware of if we align the two Guidelines?

Both the Retail Exempt Selling and Network Service Provider (NSP) Guidelines are consistent with the principle that dispute resolution is a core consumer protection provided to small customers of authorised retailers and exempt NSPs.

The Retail Exempt Selling Guideline details an exempt seller's dispute resolution obligation under Condition 15:

1. In the event of a dispute concerning the sale of energy to an exempt customer, and in the absence of a determination of the relevant tenancy tribunal if the customer is a tenant, the exempt person must:
 - a. make reasonable endeavours to resolve the dispute; and
 - b. advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located, it applicable.

Under Condition 6 of the NSP Guidelines exempt NSPs are required to take a hierarchical approach to dispute resolution. While Condition 15 of the Retail Guideline is captured within the condition it only applies if either the external energy dispute resolution mechanism or energy ombudsman is not available to the exempt customer. Condition 6 of the NSP Guideline provides that:

- a. Inform a customer who has a dispute of the availability of a specific external dispute resolution body where an external dispute resolution mechanism or Tribunal exists under energy matters.
- b. If 6(a) does not apply and an Energy Ombudsman in a State or Territory advises that an exempt embedded network service provider is eligible to join an Ombudsman scheme, the exempt embedded network service provider must join that scheme and inform a customer who has a dispute of the availability of the specific Ombudsman scheme.
- c. If 6(a) or 6(b) do not apply, a suitable dispute resolution mechanism must be specified in the formal agreements between the network owner or its appointed agent and the end-use customer. These procedures must allow as customer to request, and be provided with, written details of all charges applicable to that customer. In addition:
 - i. In the event of a dispute concerning the sale of energy to an exempt customer, and in the absence of a determination of the relevant tenancy tribunal if the customer is a tenant, the exempt embedded network service provider must:
 - Make reasonable endeavours to resolve the dispute, and
 - Advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the State or Territory in which the exempt customer is located, if applicable.
 - ii. The exempt person's dispute resolution process must meet, at a minimum, Australian Standards: AS/NZS 1002:2014 Guidelines for complaint management in organisations

In aligning the two Guidelines the AER must give consideration to ensuring consumer protections and access to the dispute resolution services provided by Ombudsman schemes is the primary external dispute resolution mechanism available to exempt customers. Additionally consideration should be given to ensuring the current conditions applicable to exempt customers are not diluted whilst simultaneously not unduly increasing the financial and administrative burden on small scale operators to implement dispute resolution processes.

Question 3	Are there any issues specific to small scale operators which we should have regard?
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The issues specific to **small scale** operators which the AER would need to consider are:

- most small scale operators may not be adequately skilled or staffed to deal with the customer complaint management/dispute resolution procedures currently in place in Ombudsman schemes such as the ability to internally escalate a complaint to a higher level within the organisation to facilitate a speedy resolution for the customer
- customer confidence in the process and outcomes, as they may fear reprisals/retribution from small scale operators such as eviction or higher costs passed through to vulnerable customers due to the cost of participation fees/users pays fees the small scale operators may need to pay as members of Ombudsman schemes
- financial assessment undertaken by the AER of small scale operators in relation to granting exemptions is taken at a point in time and large numbers of small scale operators financial capacity to pay participation and user pays fees may pose a bad debt risk for EWOQ and other Ombudsman schemes
- small scale operators would be required to source the funding of participation and user pays fees from other areas of the business and this would likely result in costs being passed on to customers

- in Queensland small scale operators (such as residential park owners, unit body corporates or retirement villages) do not sell energy for profit and therefore may be unable to fund the cost of resolving a dispute.

Question 4 Are there any other considerations we should balance when forming a position on this issue?

In Queensland, it is estimated that 275,000 residential customers are on-supply account holders, indicating that embedded networks and the popularity of on-supply arrangements is growing and will likely continue to grow. With the increasing number of embedded networks, customer confusion with access to dispute resolution services is also likely to increase if these customers do not have access to an industry specific Ombudsman scheme.

Other considerations to be balanced when forming a position around the issues of access to Ombudsman schemes would include future business models of exempt sellers to enable these to be captured under the new guidelines framework.

The AER together with Ombudsman schemes would also need to consider whether membership in an Ombudsman scheme is voluntary or mandatory for all exempt sellers. Specifically, small scale exempt sellers may not have the financial capacity to be a member of an Ombudsman scheme and the costs associated with membership will likely be passed on to the customer.

EWOQ supports Ombudsman schemes being best positioned to provide an independent, free and fair one-stop-shop approach for energy related complaints for customers of authorised retailers and exempt entities.

Question 5 How many energy disputes do exempt entities encounter per year?

As an independent dispute resolution scheme which is currently unable to deal with complaints from exempt customers, EWOQ does not have this information available.

The current number of retail exemptions registered on the AER website for Queensland (as at 10/7/17) is 1,916. In comparison in New South Wales there are 661, South Australia 558, Australian Capital Territory 159 and Tasmania 143.

Given the significantly larger number of registered exempt sellers in Queensland, if exempt customers were to have access to the dispute resolution services provided by EWOQ, EWOQ would likely encounter far more exempt customer complaints than other jurisdictional Ombudsman schemes.

Question 6 What measures can assist in quantifying the scale of energy disputes concerning exempt customers? What weight should we place on being able to quantify the scale of the issue?

As no customer protections in relation to accessing ombudsman services are currently available to exempt customers in Queensland, the scale of energy disputes concerning exempt customers is unknown as is the weight to be placed on quantifying the scale of the issue.

EWOQ generally refers energy disputes concerning exempt customers to the Queensland Residential Tenancies Authority or the Body Corporate and Community Management Commissioner to assist customers resolve disputes with their exempt seller.

EWOQ strongly supports the principle that customers should not be denied access to Ombudsman schemes merely because they are supplied by an exempt seller rather than an authorised retailer. Quantifying the scale of energy disputes concerning exempt customers may not provide the evidence required to support exempt customers having access to Ombudsman schemes.

Question 7 Do you agree with our characterisation of energy disputes experienced by exempt customers? Is bundling of complaints with other issues common?

Based on the type of retailer complaints received by EWOQ, we would agree that the most common complaint received from customers relates to billing issues. In Queensland exempt customers are also entitled to receive Government rebates and concessions, however, data on whether these exempt customers are receiving these entitlements and concessions is not available. Therefore future complaints received by EWOQ from exempt customers may see a rise in the number of customers who have not received their government rebate or concession.

EWOQ is aware that a number of exempt sellers in Queensland offer bundled services. The bundled services include energy, hot water, chilled water and in some instances internet services. With the increasing number of embedded networks in Queensland and the potential growth of this industry the bundling of utility services for exempt customers is likely to increase resulting in an increase in the bundling of complaints with other issues.

Question 8 Is it possible to isolate and resolve energy-specific disputes where there are a number of issues raised by exempt customers?

EWOQ is of the view that it is possible to isolate and resolve energy-specific disputes as the Retail Exempt Selling Guideline requires the exempt seller to include particulars in a bill for an exempt customer in relation to the following:

- a. Tariffs, fees and charges applicable to the exempt customer.
- b. The basis on which tariffs, fees and charges are calculated.

Additionally if services are bundled, EWOQ can refer customers to the appropriate agency to assist in resolving the complaint if EWOQ has a Memorandum of Understanding (MOU) with these agencies.

EWOQ is undertaking a review of its current MOUs to include agencies we can refer complaints to, specifically to address the issue of exempt entities providing bundled services to exempt customers.

Question 9 What other external dispute resolution mechanisms exist to resolve energy disputes? Do they effectively deal with energy disputes?

The following external dispute resolution bodies currently exist and may provide services to assist exempt customers resolve energy disputes.

Queensland State Agencies	Powers	Cost
Queensland Residential Tenancies Authority (provides dispute resolution services to tenants and landlords)	No binding powers – if the dispute is not resolved customers can apply to QCAT.	No fee is charged.
Queensland Office of Fair Trading (provides dispute resolution services for consumers purchasing services or	No binding powers	No fee is charged.

products)		
Queensland Civil and Administration Tribunal (is an independent tribunal which resolves complaints and makes and reviews decisions in jurisdictions including guardianship, civil disputes, administrative and anti-discrimination matters).	Binding power through the Magistrates Court.	Each applicant (customer or provider) must pay a fee to file an application. Fees range from \$25.45 to \$326.80 for lodging an application. Application fee for appeals range from \$326.80 to \$2,595 depending on matter type.
Body Corporate and Community Management Commission (assists parties resolve disputes under the BCCM Act)	Binding power through the Magistrates Court	Applicants (customer or provider) must pay a fee when lodging an application. Fees range from \$79.20 for a conciliation application to \$166.30 for an adjudication application (interim and final order).

National Agency	Powers	Cost
Australian Small Business and Family Enterprise Ombudsman (provides assistance to small business and family enterprises through referral or mediation services).	Customers are referred to alternative dispute resolution schemes such as industry Ombudsman schemes.	No fee is charged.

EWOQ strongly advocates for industry Ombudsman schemes with industry specific knowledge such as EWOQ as they are best positioned to provide an independent, free and fair one-stop-shop approach for energy related complaints for customers of authorised retailers and exempt entities. Ombudsman schemes also have the necessary binding powers to enforce compliance on the provider.

EWOQ is also proactively working with the Queensland Government on reviewing its legislation. EWOQ will also review its current MOUs to include agencies we can refer complaints to, specifically to address the issue of exempt entities providing bundled services to exempt customers.

Question 10 How many energy disputes encountered by exempt entities are escalated beyond internal dispute resolution processes?

EWOQ does not currently deal with complaints from exempt customers, however, we have reviewed the data available on the AER website in relation to the number of residential complaints received by retailers. For the third quarter of 2016-17 Queensland retailers received 27,528 residential complaints from a customer base of approximately 2.1 million or 1.3 per cent of the customer base. The number of energy cases escalated beyond the retailer's internal dispute resolution processes received by EWOQ for the same period was 1,953 or per annum approximately 7,800 cases.

Based on the above information, if 1.3 per cent of the estimated 275,000 exempt customers in Queensland lodge a complaint with their exempt seller, this would equate to approximately 3,600 complaints per quarter and approximately 1,000 complaints escalated to EWOQ per annum.

Question 11 Do exempt customers have a clear understanding of external avenues to resolve energy disputes? What are exempt customer's experiences of using these avenues?

EWOQ is of the view that exempt customers may not have a clear understanding of the protections available to them under Australian Consumer Law.

Please refer to our response to Question 9, most external avenues available to resolve energy disputes can be costly and time consuming to exempt customers, some of which may be the most vulnerable customers experiencing financial hardship. Exempt customers may also experience dispute fatigue, whilst attempting to navigate the external avenues available to assist in resolving energy disputes.

Ombudsman schemes such as EWOQ will provide a fast, free and efficient mechanism to ensure that dispute resolution remains a core protection for customers of both exempt sellers and exempt NSPs.

Question 12 Do stakeholders have comments on these additional considerations?

Ombudsman coverage for on-market customers in embedded networks:

Whilst the Australian Energy Market Commission's embedded networks rule change effective 1 December 2017 will increase retail contestability for exempt customers, restrictions on accessing the dispute resolution services provided by EWOQ may still exist. If the embedded network is a privately owned and operated network and not required to be a member of the EWOQ scheme and the exempt customer is an on-market customer with a dispute in relation to a faulty meter within the embedded network, access to EWOQ's services will be restricted.

Use of related bodies corporate as exemption holders:

Together with ANZEWO members, EWOQ will be undertaking a comprehensive review of our membership and funding model to facilitate the provision of dispute resolution services to exempt customers. As part of this review consideration will be given to the issue of related bodies corporate and new membership categories which may impose a minimum customer base to our membership requirement.

Forum shopping

In relation to forum shopping, under the EWO Act, EWOQ cannot accept a referral about or investigate a matter that has already been decided by a proceeding or a matter the subject of an unfinished proceeding started before the referral. Additionally, if EWOQ makes a final order in relation to an exempt seller, the non-entity party (being the exempt customer) may, by written notice to the energy and water ombudsman, elect to accept or not accept the order. The non-entity party has 21 days to elect not to accept the notice, if the non-entity party does not give a notice within the 21 days, the non-entity party is taken to have elected to accept the order and be bound by it.

Question 13 What other issues should be considered?

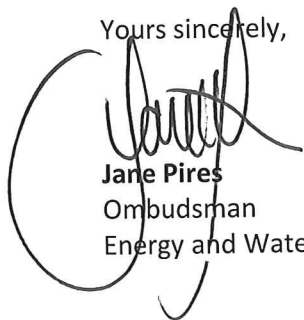
As highlighted in our above responses to the issues paper, we would advocate that Ombudsman schemes are best positioned to provide an independent, free and fair one-stop-shop approach for energy related complaints for customers of authorised retailers and exempt entities.

It is also recognised that there could be significant challenges for some small scale operators where the persons selling metered energy to small customers cannot on-sell for a profit such as caravan parks and/or people and businesses who sell energy incidentally, not as part of their main business, such as a landlord or a body corporate. In these circumstances it would be reasonable to consider that some small

scale operators operating under these class exemptions may not have the business and systems acumen or financial capacity to participate or contribute financially to an industry funded Ombudsman scheme. The above issues impacting small scale operators and other exempt sellers will be considered during EWOQ's review of our funding and membership model.

Thank you for the opportunity to contribute to this review. If you require any further information regarding this matter please contact Ms Ilona Cenefels, Manager Policy and Research on ph (07) 3087 9455 or Ilona.Cenefels@ewoq.com.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jane Pires', is written over a large, faint circular watermark or background mark.

Jane Pires
Ombudsman
Energy and Water Ombudsman Queensland