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



**energy & water
OMBUDSMAN SA**

ABN 11 089 791 604
GPO Box 2947
Adelaide SA 5001

Free call 1800 665 565
Free fax 1800 665 165
contact@ewosa.com.au
www.ewosa.com.au

Dear Ms Proudfoot

**Submission to the Australian Energy Regulator (AER) Issues Paper:
Access to Dispute Resolution Services for Exempt Customers**

The Energy and Water Ombudsman (SA) Limited ("EWOSA") welcomes the opportunity to comment on the Australian Energy Regulator's Issues Paper on the *Access to Dispute Resolution Services for Exempt Customers*.

In this submission, the EWOSA primarily addresses matters that are specifically of interest to the EWOSA Scheme.

EWOSA is an independent Energy and Water Ombudsman Scheme in South Australia. It receives, investigates and facilitates the resolution of complaints by customers with regard to (*inter alia*) the connection, supply or sale of electricity, gas or water.

We appreciate the collaborative work the AER is doing with the Australian and New Zealand Energy and Water Ombudsman Network on the important issue of access to dispute resolution services for exempt customers and the support the AER has for Ombudsmen.

**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?**

We support customers of embedded networks having access to the services of energy Ombudsmen. This is an important customer protection within the National Energy Customer Framework that would ideally apply to all electricity consumers, irrespective of their supply arrangements.

One issue is that of the size of the operator and whether the benefits of joining an Ombudsman scheme would outweigh the costs. For embedded networks with a small number of customers, it is likely they would receive a very low quantity of complaints and may not receive any complaints at all. Requiring such operators to become members of an Ombudsman scheme may be too onerous for them and yield no benefits. For larger embedded networks, with a greater likelihood of receiving complaints, it is more appropriate for them to be required to become members of an Ombudsman scheme.

EWOSA submitted to the AER during the update to the Network Exemption Guideline in late 2016 that only embedded network operators with 30 or more customers should be required to join the energy and water Ombudsman in their jurisdiction. This would be consistent with the obligation on embedded network operators to appoint an Embedded Network Manager under the Australian Energy Market Commission's Embedded Network Rule. It would also mean that small embedded network operators that would be unlikely to ever have a complaint referred to an energy and water Ombudsman would not be required to pay the costs of joining an Ombudsman scheme, such as fees and administrative costs.

Nevertheless, embedded network operators with less than 30 customers should be monitored by the AER through their exemption guidelines and any evidence of poor complaint-handling should result in the relevant embedded network operator being required to join an Ombudsman scheme.

Another trigger for embedded network operators with less than 30 customers to join an Ombudsman scheme could be if one of their customers referred a complaint to an energy and water Ombudsman. This would also be consistent with the requirements on embedded network operators in appointing an Embedded Network Manager.

While such approaches would limit the number of customers having automatic access to the services of energy and water Ombudsmen, it attempts to find a balance so that requirements on small embedded network operators that are unlikely to ever receive a complaint are not excessive. It may also reduce some of the administrative costs for Ombudsmen.

Another issue related to the costs for embedded network operators to join energy Ombudsmen is the funding models of the Ombudsmen. With regards to a fee structure to accommodate new, relatively small, entrants to the EWOSA Scheme, the Board considered (at the request of the Essential Services Commission of South Australia) and approved a fee structure to address a similar issue with small water retailers in November 2012. This structure was developed giving consideration to fairness to existing members and to ensuring there would be no cross-subsidies.

This structure, which includes a joining fee and an annual fee – both very small for operators with fewer than 100 customers – as well as complaint handling fees, could also be applied to embedded network operators at a cost that would be reasonable.

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?

The two most important considerations, if the dispute resolution conditions in the Retail and Network Guidelines are to be aligned, are:

- Giving precedence to Ombudsmen schemes as the primary external dispute resolution mechanism for all energy customers
- Consistency

The key advantages of Ombudsmen schemes over other forms of external dispute resolution mechanisms in resolving energy disputes are that they are free for consumers, fair and independent and they have staff that are well trained in energy issues, thereby providing an efficient and effective service.

The current lack of consistency leads to confusion for operators of embedded networks that have both retail and network exemptions, as well for the customers of such embedded network operators. In this situation, there is no guidance on which guideline or condition takes precedence and it is likely that an embedded network operator will choose the condition that is the least onerous.

It is vital for the purposes of clarity and simplicity that the dispute resolution conditions in the Retail and Network Guidelines are consistent and do not cause confusion for small customers, operators of embedded networks and for the AER in its role as the regulator.

Question 3: Are there any issues specific to small scale operators to which we should have regard?

A key issue for small embedded network operators joining an Ombudsman scheme is the potential cost. This is discussed in some detail in the response to Question 1.

Another issue is the vulnerability of some of the residents located within small embedded networks, particularly those in small caravan parks or retirement villages. Some of these residents are on low incomes and may not have either the financial resources or the knowledge to be able to mount their cases in a residential tribunal. They may also be fearful to raise a complaint against their energy supplier, given that the embedded network operator is also likely to be their landlord and supply other services. That said, it is also possible that the residents and the embedded network operator have a good relationship and any problems can be dealt with efficiency and understanding.

Such residents would derive substantial comfort knowing that they could access the free and independent dispute resolution services of an energy Ombudsman to resolve any complaint they have.

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

Another important consideration the AER should balance when forming a position on the access of embedded network customers to the services of energy Ombudsmen is the access to and effectiveness of other existing external dispute resolution services.

Please refer to our answer to Question 9 on this issue.

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

As discussed in the AER's Issues Paper, it is currently very difficult to determine how many energy disputes exempt entities encounter each year.

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?

We believe it is important to be able to quantify both the volume of disputes that customers of embedded networks have with their energy suppliers and the proportion of those disputes which need to be raised to an external dispute resolution mechanism.

Some measures that could assist in improving the data associated with disputes concerning exempt customers include:

- Requiring embedded network operators with a deemed exemption to register their exemption – this would effectively involve abolishing the deemed exemption classes
- Requiring registered embedded network operators to report the quantity of complaints they receive regarding energy issues to the AER – this would require a change in the Retail and Network Guidelines
- Ombudsmen reporting to the AER the quantity and type of complaints they receive from exempt customers in the event that embedded network operators are required to become members of Ombudsmen schemes.

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

We agree with the AER's characterisation of the energy disputes experienced by energy consumers located within embedded networks and believe that energy complaints are sometimes bundled with other issues affecting such customers.

An excellent discussion of this issue can be found in the South Australian Council of Social Services report: *The Retail and Network Exemption Framework: Emerging Issues for Consumers*, released in December 2015.

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

We believe it is possible to isolate and resolve energy-specific disputes where there are a number of issues raised by exempt customers. EWOSA already receives complex complaints from customers of energy retailers, the energy part of which can be resolved by EWOSA, while other aspects of the complaint, such as tenancy, can be dealt with by the appropriate authority, such as Housing SA.

However, for this to occur, it would be necessary for embedded network operators to issue electricity bills which have appropriate transparency and in particular, this would require the splitting of electricity from other costs that customers in embedded networks might incur, such as rent and water services. We understand that this already happens in many cases.

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

There are a number of external dispute resolution mechanisms designed to resolve disputes between different parties. While these forums are not dedicated to energy complaints, some of them are able to consider some energy issues.

Some of these operate as tribunals, which often have limited decision-making power and where a consumer needs a legal right to achieve a resolution. The consumer also has to argue their own case, often with no assistance, gather evidence, provide witnesses etc. This can be daunting for small energy consumers, who often have limited bargaining power relative to their energy supplier.

We believe that such dispute resolution forums are not as accommodating for small energy consumers, compared to access to a free, independent, informal ombudsman scheme. The fact that these forums are not dedicated to resolving

energy disputes means that they also do not have the experience or expertise of energy Ombudsmen and are therefore unlikely to be as effective.

The following paragraphs are from the report: *Consumer Access to External Dispute Resolution in a Changing Energy Market*, prepared by Jo Benvenuti and Caitlin Whiteman for the energy and water Ombudsmen of South Australia, New South Wales and Victoria:

"We heard criticism of state consumer regulators from some of the stakeholders we spoke to. One consumer sector stakeholder argued that the state agency does not provide satisfactory dispute resolution for consumers, and criticised the lack of transparency about dispute outcomes. Other stakeholders were less critical, but noted the constraints on state regulators' capacity to handle energy disputes and variation in performance across states. With regard to exempt selling, the lower standard of consumer protections also limits what state agencies can do to assist these customers. Consumer regulators themselves are likely to favour an approach that instead enables customers of on-sellers in embedded networks to take disputes to an ombudsman." (p 56)

"While these tribunals aim to be accessible, efficient, effective and responsive, there is broad agreement that they are a much less desirable dispute resolution avenue than energy ombudsmen. A broad cross-section of the stakeholders we spoke with – including regulators, industry and consumer advocates – noted that courts and tribunals lack specialist energy expertise and have processes that are more expensive, intimidating and cumbersome for consumers." (p 57)

"It is also worth noting here that from a consumer perspective, the jurisdiction of these courts and tribunals to handle energy-related matters is by no means obvious or clear. Their websites note complex internal divisions, each with their own areas of coverage and rules for inclusion and exclusion – none of which are comprehensively described or especially intuitive. None of the websites make reference to energy, electricity or any specific industry issues. This opacity is another barrier to access; it also highlights how important it is that energy industry players offer clear consumer advice about when and how tribunals and courts are an appropriate avenue for energy dispute resolution." (p 57)

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

As discussed in the AER's Issues Paper, it is currently very difficult to determine how many energy disputes encountered by exempt entities are escalated to external dispute resolution mechanisms. This reflects the fact that embedded network customers do not have access to the services of energy Ombudsmen, as well as the lack of visibility the AER has of embedded network operators.

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

We believe that many customers of embedded network operators do not have a clear understanding of external avenues to resolve energy disputes. This is in part caused by the information that is provided to them.

The following reproduces a small section of the report: *Consumer Access to External Dispute Resolution in a Changing Energy Market*, which contains the result of research on the information provided by embedded network operators to their customers on external dispute resolution:

"Box 3. Embedded network operator consumer information on EDR

WINenergy's website notes that customers have access to third party resolution. Its 'FAQ' correctly advises consumers that they can contact the 'relevant tribunal in your state' for dispute resolution, listing VCAT and NCAT as examples. It also states that 'WINenergy act on behalf of the exempt seller and therefore are exempt from state Ombudsman schemes.'

Active Utilities has information about EDR options in both its Complaints Handling Policy and its Power Supply Terms and Conditions, which includes supplementary conditions for each jurisdiction. This information is conflicting and incomplete.

The Complaints Handling Policy, which also covers Active Utilities' telecommunications services, states that Active Utilities will inform customers who are dissatisfied with its IDR 'about your options for EDR such as the TIO and/or the AER'. It makes a number of similar references to the AER and goes on to provide AER contact details alongside TIO details under an 'External Contacts' heading.

Its Power Supply Terms and Conditions, on the other hand, correctly references court or tribunal avenues:

'If You are not satisfied with the outcome of the dispute resolution procedure set out in this clause 9 You may have the matter heard by the appropriate Court or Tribunal in the State in which the Services are provided to You by Us. In this regard, please contact Us if you require details of the appropriate Court or Tribunal.'

Supplementary Terms and Conditions for Victoria make a more specific reference to VCAT, while Terms and Conditions for NSW contain no additional EDR information (and no reference to EWON).

ENSA's Terms & Conditions state that 'where ENSA is unable to resolve the complaint or dispute through negotiation, The Customer may take the complaint to either the Ombudsman or the Small Claims Tribunal (where the retailer is an Embedded Network)'. 'Ombudsman' is then defined as 'the Energy Ombudsman scheme operating in the State where your supply address is located'.

An FAQ page on ENSA's website also references ombudsmen in relation to billing investigations: 'if you want to dispute the investigation's findings, your State Ombudsman may be of assistance.'

Although **OC Energy** does not directly refer its customers to an ombudsman, it makes two incidental references to ombudsman complaints.

Describing specific marketing complaint processes, its Complaint Handling Policy states that: 'we will [...] ensure that we provided all required information to you [...] including [...] your right to complain to us in respect of any energy marketing activity of the retail marketer conducted on behalf of us and, if the complaint is not satisfactorily resolved by the us [sic], of the your [sic] right to complain to the energy ombudsman'.

Its Customer Charter also implies that customers can access the ombudsman in its discussion of disconnection procedures: 'You will not be disconnected in any of the following circumstances: [...] if any formal complaint you have made to an Energy and Water Ombudsman, directly related to the reason for disconnection, remains unresolved'.

Energy-ON's Complaint Handling Policy states: 'It is important to note that the Energy Ombudsman in each state does not have the authority to manage complaints on behalf of customers in an Embedded Network. Notwithstanding this fact, Energy-ON acts in all dealings with its customers in a fair and balanced way and agrees to submit to an independent body for resolution of a dispute if required.'

A later section of the policy then states that 'if, after a period of time, the complaint remains unresolved, you may request that it be referred for mediation to the Institute of Arbitrators and Mediators, Australia, or any successor body.'

Clearly, customers in embedded networks are being given confusing and sometimes contradictory and incorrect information about the EDR avenues open to them. It seems that in some cases, this reflects embedded network operators' own lack of understanding of both the regulatory framework and the EDR avenues that apply to exempt selling in the states in which they operate.

WINenergy advises its customers that the reason they cannot complain to the ombudsman (even in NSW) is because WINenergy is not itself the exempt seller, but only acts on its behalf. This raises a critical issue about the relationship between exempt sellers and embedded network operators in relation to ombudsman jurisdiction." (pp 59-60)

It should be noted that EWOSA receives the occasional query from embedded network customers, but we must inform them that their concern is currently out of our jurisdiction and they are often referred to the AER.

Question 13: What other issues should be considered?

It should be noted that there are a number of administrative and operational implications for EWOSA from the integration of embedded network operators into the Scheme. These include:

- Additional case-handling resources as a result of a higher volume of complaints
- Changes to IT and case-handling processes
- Staff training, including about embedded network operators
- Additional invoicing and budgeting considerations
- Educating embedded network operators about EWOSA and dispute resolution processes
- Educating customers of embedded network operators about their options
- Updating the Constitution and Charter of EWOSA, Member Manual, Fact Sheets, website and other relevant business and operational material

However, we do not consider these to be a barrier to extending access to the dispute resolution services of Ombudsmen to customers of embedded networks.

We believe a staggered approach to integrating embedded network operators into Ombudsmen Schemes would be the most sensible, most likely with the largest embedded network operators included first, followed by progressively smaller operators. This could occur over a six to 12 or 18 month timeframe.

Should you require further information or have any enquiries in relation to this submission, please email me at antony.clarke@ewosa.com.au or telephone me on (08) 8216 1851.

Yours faithfully



Antony Clarke
Policy and Research Officer
Energy and Water Ombudsman SA