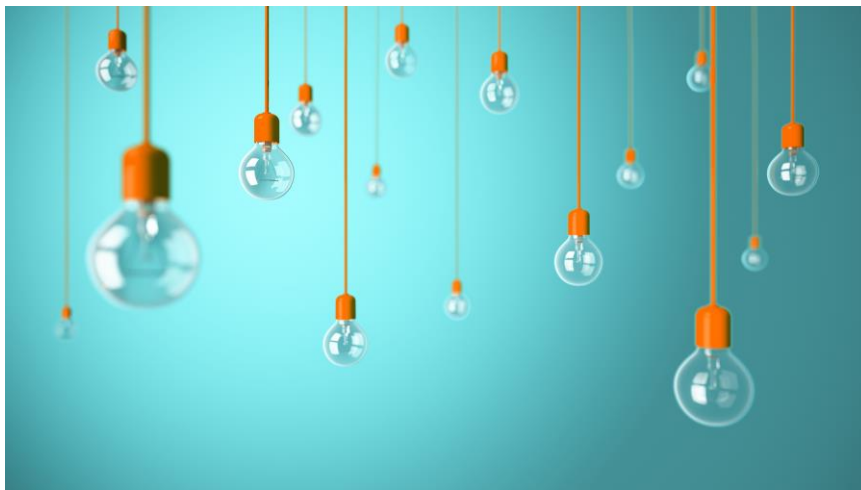


QCOSS

Queensland Council
of Social Service

*Submission to the AER
review of access to
dispute resolution services
for exempt customers*



21 July 2017

About QCOSS

The Queensland Council of Social Service (QCOSS) is the state-wide peak body representing the interests of individuals experiencing or at risk of experiencing poverty and disadvantage, and organisations working in the social and community service sector.

For more than 50 years, QCOSS has been a leading force for social change to build social and economic wellbeing for all. With members across the state, QCOSS supports a strong community service sector.

QCOSS, together with our members continues to play a crucial lobbying and advocacy role in a broad number of areas including:

- sector capacity building and support
- homelessness and housing issues
- early intervention and prevention
- cost of living pressures including low income energy concessions and improved consumer protections in the electricity, gas and water markets
- energy efficiency support for culturally and linguistically diverse people
- early childhood support for Aboriginal and Torres Strait Islander and culturally and linguistically diverse peoples.

QCOSS is part of the national network of Councils of Social Service lending support and gaining essential insight to national and other state issues.

QCOSS is supported by the vice-regal patronage of His Excellency the Honourable Paul de Jersey AC, Governor of Queensland.

Lend your voice and your organisation's voice to this vision by joining QCOSS. To join visit [the QCOSS website](http://www.QCOSS.org.au) (www.QCOSS.org.au).

ISBN –

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Introduction

QCOSS thanks the Australian Energy Regulator (AER) for the opportunity to make this submission to the review of access to dispute resolution services for exempt customers.

Electricity is an essential service for all Australian households, regardless of whether it is supplied by an authorised energy retailer or exempt entity. The consumer protections framework exists to ensure all households have access to a reliable, safe and affordable supply of energy. Free and independent external dispute resolution services are an important part of this framework.

As the energy market evolves, it is essential that dispute resolution schemes keep pace with new entrants and ongoing innovation in business models, products and services. Free, independent, timely and effective external dispute resolution should be equally accessible to all customers – regardless of the new types of arrangements they may rely on to meet their essential energy needs.

The current dispute resolution mechanisms are not fit-for-purpose for exempt customers. It is inequitable that some households have access to free and timely dispute resolution to resolve energy disputes, while others must pay a fee and/or undertake a more lengthy and formal legal process to resolve the same dispute. This is particularly inequitable when we consider that exempt arrangements are most common in marginal housing types, such as caravan parks, community housing complexes and retirement villages - or housing types where low-income consumers are overrepresented, such as units and apartment complexes. We believe this context is important to keep front of mind when investigating options to ensure appropriate access to dispute resolution for exempt customers.

This submission focuses mainly on the specific arrangements in the Queensland context and thus refers to the Energy and Water Ombudsman Queensland (EWOQ) throughout. However, most of the points made are relevant for all jurisdictions within the National Electricity Market (NEM) and other energy ombudsman schemes.

Current dispute resolution pathways

In exploring options to extend the reach of the Energy and Water Ombudsman Queensland (EWOQ) to exempt customers, it is necessary to understand the current dispute resolution arrangements for these customers.

QCOSS has recently released a research report which explores the experiences of renters in the energy market (**Appendix A**). Renters frequently find themselves in exempt energy arrangements – such as an embedded networks, on-supply situations or exempt business models which are being marketed to landlords. Our report identifies several areas of conflict and/or confusion in the consumer protections for exempt customers due to the intersection between the AER's Guidelines and provisions about energy charges contained within Queensland legislation, including:

- the Residential Tenancies and Rooming Accommodation (RTRA) Act 2008;
- the Manufactured Homes (Residential Parks) Act 2003;
- the Body Corporate and Community Management Act 1997; and
- the Retirement Villages Act 1999.

The complexity of the legislation that applies to exempt customers in different situations is a key barrier to accessing dispute resolution. If consumers do not understand their rights, they are unlikely to raise a dispute when their rights are breached. The conflict between the AER Guidelines and the above legislation is set out in the attached QCOSS report (pp24-36).

The Queensland Department of Energy and Water Supply (DEWS) released a Regulatory Impact Statement in 2015 which set out the dispute resolution options available to exempt customers in Queensland.ⁱ This includes:

- The Residential Tenancies Authority (Department of Housing and Public Works) – free and impartial service to assist tenants and exempt entities exchange information and resolve disputes under the RTRA Act by voluntary agreement.
- Body Corporate and Community Management Dispute Resolution Service – a fee-for-service dispute resolution service for body corporate residents to resolve disputes under the Body Corporate and Community Management Regulation 2006.
- Dispute Resolution Centre (Department of Justice and Attorney General) – mediation to assist in the resolution of disputes for residential customers including those in manufactured homes and retirements villages. The service is generally free; however, mediators do not investigate matters, provide advice, or look at documentation such as contracts or bills.
- The Queensland Civil and Administrative Tribunal (QCAT) – an independent tribunal where an exempt customer may apply if their dispute is not resolved through the RTA or other mechanisms. Applications fees are up to \$569.20.
- Consumer Policy Team (Department of Energy and Water Supply) – free service that provides information and assistance to parties by facilitating discussion between exempt customers and exempt entities related to disputes under the Electricity Act 1994 or disputes not covered by other legislation.

The key issues with the current dispute resolution arrangements are as follows.

Complexity

The combination of the various channels for resolving disputes is confusing for exempt customers to understand and navigate. It is not only confusing for 'vulnerable' consumers but all exempt consumers, and for community workers and consumer advocates. There is a lack of clear and coordinated information tailored for exempt customers on their rights and the appropriate dispute resolution pathways for their situation.

This complexity is likely to be equally confusing for exempt entities, and especially smaller-scale exempt entities, who under Condition 2 of the AER Guideline must provide customers with information about their dispute resolution options.

Cost

While exempt customers can utilise mediation or conciliation services to resolve their issue; in order to get a decision that is binding they must resolve the issue through QCAT. This involves an upfront cost to the customer of up to \$569.20, in addition to having to prepare a formal application, attend a tribunal hearing and participate in what can be a very formal and legalistic process. This may require the consumer to take time off work or incur others costs in pursuing their dispute. This is highly inequitable as it is likely to act as a significant deterrent for exempt customers to pursue complaints, especially low income and vulnerable consumers.

Process

To pursue a complaint through QCAT, many exempt customers would need some legal advice to prepare their application, and both parties (customer and exempt entity) may need legal assistance to argue their case adequately. The need for legal advice not only increases

the overall cost of the process, but also creates inequities between parties based on their resources and capacity to engage legal assistance. In referring to some of the decisions and appeals made through QCAT on issues relating to electricity in recent yearsⁱⁱ, we note:

- The legalistic nature of the language and process which is likely to be a significant barrier for customers to raise disputes, particularly those who are vulnerable.
- The number of steps involved for both parties, which not only increases the costs incurred and time taken to reach resolution (particularly where cases go to appeal), but also increases the potential the customer will give up on pursuing their complaint before achieving resolution.

Time

Not only is resolution through the QCAT not free, but it also takes time. One recent dispute about electricity charges through QCAT was resolved in September 2015, even though the complaint was originally lodged in July 2011.ⁱⁱⁱ

Power imbalance

Additionally, there is a significant disincentive for an exempt customer who rents their home, and who may already have limited affordable housing options, to take an energy-related issue to the RTA or QCAT. Many vulnerable renters will not use these dispute resolution mechanisms for fear of it affecting their landlord relationship or even putting their tenancy at risk if the exempt entity is also the customer's landlord and/or resides on-site.

More than one third of respondents to the *QCOSS Renter Survey* reported that they have not asked their lessor to make improvements to reduce their energy bills as they do not want to seem difficult or put their tenancy at risk.^{iv} Recent research by Choice found that 14 per cent of Australian renters have not made a complaint or requested a repair out of fear of adverse consequences, such as eviction or rent increases.^v This means that even if an exempt customer has consumer rights under the AER Guidelines, they may be unlikely to pursue those rights if they perceive there may be a risk to their tenancy. While this power imbalance will continue to exist regardless of the dispute mechanism available, it is even greater when the relevant dispute resolution agencies, such as RTA and QCAT, are the same agencies involved in tenancy disputes.

Extending dispute resolution to EWOQ

QCOSS supports the AER's approach to extend dispute resolution for exempt customers to EWOQ. We consider that energy services which impact the cost and/or supply of energy which delivers essential household outcomes (such as access to hot water, cooking, lighting and washing), must be covered by the consumer protections framework. For this reason, we believe EWOQ should not only be extended to cover exempt customer disputes, but also dispute for other energy services such as bulk hot water and unmetered gas. Currently, customers who receive bulk hot water cannot make a complaint to EWOQ, even though their hot water retailer is usually an authorized retailer who is already a member of EWOQ.

We agree with the AER that *"the changes we are considering making to the regulation of exempt entities to facilitate exempt customer access to ombudsman schemes are only one part of the changes required"*. In addition to changes to EWOQ scheme membership and fee structures, the state-based tenancy and body corporate legislation (as mentioned above) will also need to be reviewed and/or factored into EWOQ's jurisdiction, as these Acts have an impact on the consumer protections that apply to exempt customers. EWOQ will need sufficient scope to provide effective dispute resolution for exempt customers and exempt entities who may be subject to the additional provisions within these Acts – or at least have clear and formalised referrals pathways to ensure disputes are addressed holistically.

There are several characteristics of EWOQ which make this the most appropriate dispute resolution for exempt customers in Queensland. These include:

- **Free** - Access to EWOQ is free for consumers, which is in contrast to other dispute resolution pathways that are currently available to exempt customers. This is key principle as lack of income should not be a barrier for energy consumers to pursue a complaint about their essential energy supply.
- **Timely** – as highlighted above, dispute resolution through QCAT is time consuming. Additionally, mediation and conciliation that requires both parties to be present at the same time can also delay resolution. EWOQ has the flexibility to investigate matters and verify information to resolve disputes without considerably delays.
- **Independent and trusted** – EWOQ offers a channel for independent dispute resolution, which is critical at a time when trust in the energy market is low.
- **Industry expertise** - The significant changes expected in the energy market over the next 5-10 years necessitate that consumers have access to an industry-specific dispute resolution scheme. It is our experience that non-energy agencies such as the RTA are not familiar with the changes afoot in the energy market which compromises their capacity to provide effective and fair dispute resolution to consumers. Enabling exempt customers who rent to make energy related disputes to EWOQ also assists in addressing the potential for overlap of energy and tenancy issues within the dispute, which is likely to act as a deterrent for exempt customers to raised disputes through the RTA or QCAT.
- **Flexible resolution options** – EWOQ can resolve disputes via a number of avenues and can investigate documents. EWOQ does not require the parties to undertake mediation and does not need to follow a rigid 'legal' process to bring a dispute to resolution.
- **Education and empowerment outcomes** – EWOQ has a role in providing education to consumers – both as part of the dispute resolution process and handling of enquiries – as well as more broadly through online factsheets and community outreach activities. This is an important function in building engaged and empowered consumers who understand their rights and responsibilities in the market. EWOQ also has an Indigenous Liaison Officer which is a critical role to ensure culturally appropriate pathways to dispute resolution for Aboriginal and Torres Strait Islander consumers, many of whom live in regional and remote parts of the state.
- **Identification of systemic issues and non-compliance** – EWOQ can identify systemic issues in the market to highlight these to industry (so they can improve practices voluntarily) or report non-compliance to the regulator (to proceed with compliance and enforcement actions). This is an important function which is notably absent in the exempt selling space at present.

Scale of the problem

Unfortunately, there is no information available on the number of customers supplied via exempt entities to determine how many customers this issue affects. As noted in our submission to AEMC review of regulatory arrangements for embedded networks^{vi}, a better understanding of the number and spread of customers in exempt arrangements is needed to ensure consumer policy and protections remain responsive to trends in this market. This could be achieved if the AER collected and published information on the number of dwellings or customers supplied by each registered exempt entity and the category of each exemption at different locations/postcodes.

Despite the lack of data, the number of exempt customers could be estimated using the registrable retail and network exemptions published by the AER. These figures reveal that the scale of the problem is likely to be much more significant in Queensland, compared to other states. For example, there are currently 1,918 registered retail exemptions in Queensland, which is more than all other jurisdictions that operate under the AER exemptions framework combined (1,523 exemptions across other jurisdictions combined). Queensland also has the highest number of registered network exemptions (1,865).^{vii}

We note these figures do not include any 'deemed exemptions' who do not need to formally register with the AER, although are expected to comply with the AER's Guidelines (for example, individual landlords who retain the electricity bill in their own name or exempt entities supplying fewer than 10 customers).

Exempt registrations are expected to continue to grow alongside the recent spate of inner city apartment development in Brisbane, as well as the emergence of new technologies and business models such as power purchase agreements (PPAs), micro-grids and the retrofitting of embedded networks in older buildings. The Queensland Government has recently announced a trial of Solar Power Purchase Agreements (SPPAs) for public housing tenants.^{viii} This means up to 2,000 Queenslanders will be signing up to SPPAs under this trial and may thus become exempt customers under the AER's Guideline.

While referring to the AER's public register is useful, we are aware that these figures are likely to understate the true extent of exempt arrangements in Queensland due to under-registration and lack of awareness by some exempt entities. The AER's framework is relatively new in Queensland (adopted two years ago) and QCOSS is aware that there is still under-registration by some exempt entities. For example, some smaller community housing providers appear to be unaware of their obligation to register with the AER or are confused about whether their arrangements fall under the AER Exemption Guideline. This is largely due to the different ways community housing providers charge their tenants. For example, some community housing providers charge a fixed fee for energy (i.e. \$20 per week) – an arrangement which does not fall under the AER Guideline. However, if the community housing provider then does a 'true-up' of the energy charges for their tenants at the end of the quarter, this does fall under the AER Guideline. This is a small, but important distinction that has not been clearly articulated to community housing providers.

QCOSS suggests a targeted information campaign is required to increase awareness of the regulatory framework – including amongst community housing providers. This should include information on the various models of energy supply and charging arrangements that are possible, and a simple questionnaire that exempt entities can complete to help them determine whether their specific arrangements fall under the AER's Guidelines, and if so under which category.

Scale of disputes

Given the much higher numbers of registrations in Queensland compared to other states, it is reasonable to assert that the scale of the problems associated with exempt arrangements are likely to be particularly significant in Queensland.

Evidence about the incidence and scope of electricity issues experienced by exempt customers is difficult to obtain – in fact, it is highly likely given the vulnerability of the customer group and the power imbalance described earlier that many problems do not get raised or recorded through any formal process. However, even in the absence of clear channels for complaints or enquiries related to exempt entities, there are records of complaints kept by DEWS, RTA, EWOQ and other agencies of the issues exempt consumers encounter that require assistance to resolve. EWOQ hosts an online portal which asked customers questions to determine whether their complaint is within with the scope of EWOQ or another agency.

Given the diverse range of agencies involved in the current dispute resolution framework for exempt customers, we recommend that formal mechanisms be put in place to ensure exempt customer complaints are being tagged and recorded by all relevant dispute resolution agencies to ensure effective monitoring of the scale and nature of disputes. This may require MOUs between parties to enable data sharing and smooth referral pathways for exempt customers.

We also recommend a survey of exempt customers would help to identify where there are problems occurring that are not being raised (due to the barriers exempt customers face in raising disputes).

However, while we suggest these options to assist the AER in gathering relevant data on disputes, QCOSS considers the AER should not place undue weight on the quantity of disputes involving exempt sellers. The profile of exempt customers and the nature of complaints are also important factors to consider when making decisions regarding the appropriate consumer protections and access to justice. The nature of the housing types where exempt arrangements are common indicate that these customers are often unlikely to have actively chosen to receive their energy via an exempt arrangement – rather, that is simply the arrangement in place at the accommodation option they could afford and was available to them. We believe this context is important to keep front of mind when investigating options to ensure appropriate access to dispute resolution for these customers. Exempt customers are often some of the most vulnerable members of our communities and as such these issues warrant special consideration regardless of the lack of available data on the issues they encounter.

Nature of energy disputes

The limited access to appropriate dispute resolution mechanisms means that it is difficult not only for customers to resolve disputes, but it also limits the transparency around common complaints for exempt customers which may assist in identifying the nature of systemic issues. Extending dispute resolution to EWOQ may assist in better monitoring of potential systemic issues and common disputes.

The DEWS^{ix} data demonstrates that around half of all on-supply complaints (56 per cent) relate to billing and disconnections. A further 33 per cent of enquiries involve requests for information or clarification on tariff arrangements and access to rebates. Additionally, according to a 2013 survey of Queenslanders living in a manufactured home, two of the three most significant areas of dispute raised by residents to the QCAT relate to electricity supply – 16 per cent were identified as disputes related to utility and service charges and a further 13 per cent related to solar power^x.

More information about on-supply complaints can be gathered from EWON who report that *“the issues brought to EWON by customers of exempt sellers are primarily about billing”^{xvi}* – including *“queries about the accuracy, format and frequency of bills”^{xvii}*, as well as problems related to *“payment difficulty, poor customer service, and requests for information (often from residential park operators) about the regulations and rules for supplying and billing residents”*.

QCOSS is aware of landlords in Queensland retaining the electricity bill at their investment property in their own name in order to recoup Solar Bonus Scheme feed-in-tariff payments. The Solar Bonus Scheme arrangements apply to households until 2028, unless the account holder changes – which acts as an incentive for the landlord to retain the account in their own name regardless of who might be living in the property. There is limited data on this activity, however it is significant enough that the RTA has published information on this issue on their website.^{xviii} While the scale of this activity is unknown, we understand the RTA and EWOQ receive complaints about this. In these instances, the landlord will generally have a contract with an authorised retailer and will bear the financial risk of their tenant’s non-payment. However, this also puts the tenant in a situation where non-payment of their electricity bill puts their tenancy at risk. The nature of disputes that arise from this type of arrangement are highlighted in the attached **Case Study**.

Exempt customers in Queensland would not currently have complaints about marketing, customer transfers or any other aspect of the energy market which involves choice of retailer in a competitive market. However, the Rule Change on Embedded Networks^{xix} which comes into effect from 1 December 2017 will open up retail competition to some exempt customers by creating new metering entities. Introducing choice of retailer is likely to increase areas of possible dispute for exempt customers in the future.

Given the rapid pace of change in the energy market and the ongoing development of new business models and technologies, it is critical to ensure effective and appropriate dispute resolution services are in place. Poor performance by new entrants (or existing players who move into new markets) can quickly erode consumer trust, and dispute resolution will play an important role in promoting consumer confidence in the evolving energy market. Based on this, we can reasonably expect to see an increase in the number of exempt customer complaints in the future, and potentially an increase in more complex disputes that require specialist energy knowledge and an understanding of the interactions and responsibilities across a number of related energy-related service providers. For these reasons, we consider it essential that the AER and other agencies increase efforts to ensure ombudsman schemes are extended to exempt customers as soon as possible.

Case Study

Natalie is a young mother who had recently had a decrease in income due to a medical problem. Natalie presented to her local Community Centre seeking support with her electricity bill. During the interview process it was determined that Natalie was renting a house through a local real estate agent and the property had solar panels. The electricity account was in the landlord's name as the landlord was receiving the Solar Bonus Scheme 44c feed in tariff payments for the solar. The landlord was passing on the full electricity charges to Natalie each quarter. This means that Natalie is an on-supply customer and her landlord is a deemed registration category of on-supplier under the AER Guideline.

Natalie did not have a full copy of the bill and was only given a portion of the bill by her landlord (so the landlord could keep their details private). The Community Centre worker advised Natalie to request the full bill from the real estate agent to accurately determine how she was being charged. Natalie did so, but was only given the first 2 pages which did not show the full charges. The Community Centre workers again advised Natalie to return to the real estate to ask for a complete copy.

Natalie eventually returned with a full copy of the bill which revealed that:

- She was being charged for GreenPower
- She was not receiving an Electricity Rebate which she is eligible for
- The bill was in credit.

Natalie stated that the real estate agent has not been able to assist her and had advised her to seek legal advice.

The Community Centre worker sought further information about the Natalie's rights in this situation. There was information online to say that on-supply customers are eligible for the Electricity Rebate and Home Energy Emergency Assistance Scheme (HEEAS) but no information on how to apply. The Community Center workers contacted the AER and Concessions Services to find out more information. From the advice provided at that time, it appears:

- Under the AER Guideline, the landlord (as an on-supplier) must pass on any concessions that Natalie is eligible for.
- According to Concessions Services, on-supply customers are eligible for the Electricity Rebate and are also eligible to apply for the HEEAS.
- Because the account is in the landlord's name, the landlord must apply for the HEEAS grant on Natalie's behalf. This would require the real estate agent to pass information onto the landlord, and for the landlord to contact their retailer to initiate the process and provide a reference number to the real estate agent to pass onto Natalie so she can complete the application form. The retailer would then apply the grant to the bill and the landlord would need to deduct the grant amount from the charges on the next bill they passed onto Natalie to pay.
- However, because the bill is in credit, the account is not eligible to apply for HEEAS, even though Natalie owes \$1,100 on her bill and is in crisis.

Natalie has been unable to get access to the Electricity Rebate or HEEAS. She is not able to access assistance through EWOQ. Natalie does not wish to obtain legal advice or initiate a dispute through channels which might affect her tenancy.

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- ^{xi} EWON, September 2015. Submission to AER Review of Exempt Seller Guideline.
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<http://www.aemc.gov.au/getattachment/50d52eb7-8ae5-4257-9372-eb701329e591/Energy-Water-Ombudsman-NSW.aspx>
- ^{xiii} RTA, 2017. <https://www.rta.qld.gov.au/Renting/During-a-tenancy/Rent-and-other-bills/Solar-power>
- ^{xiv} National Electricity Amendment (Embedded Networks) Rule 2015 <http://aemc.gov.au/Rule-Changes/Embedded-Networks> (accessed 17th July 2017).