

Our Ref: EWOQ/17/0036

17 May 2017



Ms Anne Pearson
Chief Executive
Australian Energy Market Commission
www.aemc.gov.au

Attention: Ms Kate Reid

Dear Ms Pearson,

Re: Project Number RPR0006 Review of regulatory arrangements for embedded networks

Thank you for the opportunity to make a submission on the Australian Energy Market Commission's (AEMC) Review of regulatory arrangements for embedded networks.

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.

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. As a dispute resolution scheme EWOQ supports, in principle, the AEMC's review of the regulatory arrangements for embedded networks to ensure that the framework for embedded networks is transparent and provides predictable outcomes and consumer protections for on-supply account holders.

Queensland currently has more than three times the number of exempt sellers registered on the Australian Energy Regulator's (AER) website than any other region (see Table below).

Queensland	1,884
New South Wales	597
South Australia	546
Australian Capital Territory	153
Tasmania	139

Detailed response to the questions

In our submission to the '*Consultation Paper: Review of the regulatory arrangements for embedded networks*', EWOQ has only provided responses to specific questions based on our experience as an industry external dispute resolution scheme and dealing with residential and small business customer complaints.

Question 1	Does the two tiered framework of requiring either registration/authorisation or exemption remain fit for purpose?
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From a dispute resolution perspective, the current two-tiered framework of requiring registration/authorisation or exemption may give rise to differing interpretations of what is considered

incidental selling of energy. The importance of this interpretation is highlighted as some entities in Queensland selling energy to customers have been provided with a retailer authorisation based on this interpretation. Under the *Energy and Water Ombudsman Act 2006* (EWO Act) the business model the retail entity operates under in Queensland classifies the entity as an on-supplier and on supply customers are prohibited from accessing the EWOQ scheme.

Additionally when the exempt seller offers bundled services to embedded network customers but the selling of energy is not the core business of the entity, the cost of energy may be the largest component of the customers bundled service bill. This could make the service unaffordable to many vulnerable customers, resulting in hardship or disconnection from their energy supply. These customers will also be unable to access dispute resolution services from EWOQ as provided to retail customers under the National Energy Retail Rules (NERR) to resolve the complaint against their on-supplier quickly and without cost.

Question 2	Does the exemption framework remain fit for purpose?
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The adoption of the National Energy Customer Framework by Queensland (NECF) on the 1 July 2015 required sellers of energy to be regulated as either an authorised retailer or exempt seller. Under the EWO Act, EWOQ is unable to provide dispute resolution services to customers of exempt seller (on suppliers). Customers contacting EWOQ in relation to a dispute with an exempt seller (on-supplier) are referred to another agency to resolve the dispute. This suggests that the two-tiered framework may complicate the dispute resolution process for customers in embedded networks (exempt seller situations).

Question 3	How do jurisdictional legal instruments affect the regulatory framework for embedded networks?
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As identified in response to Question 1, the retail entity's business model may be classified as an on-seller under the EWO Act in Queensland, yet the entity could have been authorised as a retailer by the AER under the NERR.

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 on-suppliers 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).

Question 6 What consumer protections, in relation to the sale of energy, are appropriate for off-market embedded network customers?

EWOQ’s dispute resolution framework was developed to accommodate businesses that provide retail energy services to customers.

Most retailer customer complaints that EWOQ deals with are billing disputes (high bills, billing errors) and credit disputes (payment difficulties, collection activities, the threat of disconnection or disconnection for non-payment of accounts). Many of the credit related complaints concern the inability of customers to pay their energy bill requiring EWOQ to negotiate payment plans and/or arrange access to hardship programs or government funded concessions.

From the commencement of NECF in Queensland on 1 July 2015, customers in off-market embedded networks were provided with access to payment options, improved access to government concessions, and more detailed information bills.

EWOQ has concerns that some off-market customers residing in caravan parks, manufactured homes, retirement villages, and those that may be financially vulnerable due to unemployment or low income, their age, infirmity, or disability are not afforded these protections or may experience reprisals, such as eviction, being taken by an on-supplier if they were to lodge a dispute with EWOQ.

Consideration needs to be given to including an offence provision in regulation to apply in such circumstances, for example:

A person must not –

- (a) prejudice, or threaten to prejudice, the safety of any person; or
- (b) intimidate or harass, or threaten to intimidate or harass, any person; or
- (c) do an act that is, or is likely to be, to the detriment of any person;

because or substantially because the person mentioned in paragraph (a), (b) or (c), or someone else:

- (i) made a dispute referral to the Energy and Water Ombudsman or
- (ii) gave information or evidence to, or helped, the Energy and Water Ombudsman in the performance of the Ombudsman’s functions.

EWOQ has also seen new business models entering the on-supply market in Queensland. Some of these businesses have larger customer bases than authorised second tier retailers.

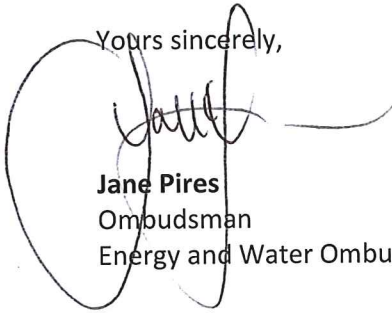
Consumer protections for these customers are limited as they do not have access to EWOQ's dispute resolution services including the Ombudsman's statutory power under the EWO Act to make binding orders against scheme participants.

Question 7 Are the current regulatory arrangements for gas embedded networks appropriate?

In Queensland gas in embedded networks in the main relate to Bulk Hot Water (BHW) services. This product type utilises gas to heat water in a central storage facility. Customers are billed for usage of BHW on a per litre basis. BHW is not currently within EWOQ's jurisdiction and as such access to dispute resolution services for BHW customers is limited. Access to a dedicated independent dispute resolution scheme would provide Bulk Hot Water customers and gas embedded customers with enhanced consumer protections and increase customer confidence in the market.

Thank you for the opportunity to contribute to this review. If you require any further information regarding this matter please do not hesitate to 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', with a long horizontal flourish extending to the right.

Jane Pires
Ombudsman
Energy and Water Ombudsman Queensland