Regulatory Impact Statements for Energy Legislation Review and Embedded Networks

2.8.1 EWOQ fee options for complaints by embedded network customers

Q8.1.1 What type of energy disputes are likely to arise between ‘exempt sellers’ and their customers?

Generally, what has been seen in other states where embedded networks have become members are the following complaint trends:

- A customer is unable to leave the network, or finding a retailer to take on a customer in an embedded network becomes restrictive. It is often uneconomical for a retailer to accept these customers, and there is a risk they are then captive within an embedded network.

- If a customer does not know the site was an embedded network, the outcome could be a disconnection as there was an assumption they had signed up with an on-market retailer.

- Disputes relating to high bills or pricing related; whether ‘time to pay’ is available; whether the customer knows what he/she is paying for, as the bill may be bundled; whether rebates/concessions have been applied.

Q8.1.2 What dispute resolution mechanisms do embedded network customers currently use in order to have their energy disputes settled?

- Directly with their energy provider, however this approach rarely provides the right outcome for customers.

- Section 2.8.1 Figure 24 presents an accurate representation of mechanisms for Queensland customers; however, these are rarely used.

Are customers aware of and successfully using existing mechanisms?

- No.

- The more vulnerable the customer, the less likely they are to use these mechanisms, and if they do, it is not usually successful due to the dispute resolution process. For many people, these mechanisms are confusing, intimidating and time-consuming.

Are there any issues with the current mechanisms?

- There is currently no uniformity in the dispute resolution mechanisms for customers, which is problematic from fairness and equity standpoints.

- Current mechanisms are costly, complex, obscure and time-consuming. The customer can be concerned with accessing these systems due to the fear of retribution by the other party e.g. rental increases, lease termination and other living costs increases.

- There are particular issues for tenants, which may be improved through proposed tenancy law changes which, if passed, will mean an end to unfair termination of tenancies, as well as greater rental security.
Q8.1.3 Are there any stakeholder groups that the department should consider, and consult with, when assessing potential options for embedded network customers

- Authorised retailers where they operate within embedded networks only
- Exempt sellers (as per other ombudsmen schemes you may consider creating an exempt seller working group who meets with the ombudsman on a quarterly basis. This arrangement allows for advocates and drives exempt sellers to become members)
- Embedded network customers (focus groups may be worthwhile)
- Exempt network service providers
- Strata groups within Queensland
- Caravan parks associations
- Retirement villages and manufactured homes parks associations
- Local Government Association Qld
- National Retailers Association
- Chamber of Commerce and Industry Qld
- Unit Owners Association of Qld
- Any additional stakeholders noted in the Energy and Water Ombudsman Queensland (EWOQ) submission.

Q8.1.4 Is the predicted number of complaints reasonable based on the information available?

- Looking at the current trends regarding volumes of complaints with Energy and Water Ombudsman NSW (EWON) and Energy and Water Ombudsman Victoria (EWOV) from embedded networks, the complaints’ assumptions are in line with this and continue to be low.
- However, there is a degree of unpredictability as Queensland has a high number of embedded networks relative to other jurisdictions; there’s currently a low level of awareness amongst consumers about the embedded network model; and once a good free external independent dispute resolution service is made available, the complaint numbers may well rise.
- There is also an unknown element in terms of eligible members. We note the inclusion of Class Type D2 (fewer than 10 residential customers). Data provided by EWOQ, which has informed the modelling, has not included this category. On this basis, estimated complaint volumes could be higher.

Q8.1.5 Do you agree with the proposal for all residential ‘exempt sellers’ to be automatically deemed to be Energy and Water Ombudsman scheme participants?

- Yes, establishing all embedded networks deemed members of the scheme would be beneficial, giving earlier and more streamlined protection to customers.
- It will also reduce paperwork in regard to obtaining signed deeds of appointments, as is the case for EWOV and EWON.
- If membership of EWOQ is deemed to be automatic, how do customers find out they are eligible, and how best can EWOQ promote awareness of the scheme to exempt sellers if there is no action required on the part of an exempt seller? Would it be possible to require a registration with EWOQ as a first step? This would at least allow it, over time, to obtain a picture of the size and nature of the embedded network scheme participants.
- We understand that currently the Regulatory Impact Statement relates to residential embedded network customers only and small business is not included. This exclusion will impact on a group of electricity users which require access to an Ombudsman scheme. There are building complexes across Queensland with a mix of residential, small business and large business all in the one location. This current proposal will discriminate against the small business user who can be vulnerable in an embedded network arrangement.

Q8.1.6 Do you agree with the proposal NOT to require ‘exempt sellers’ to pay an annual participation membership fee? If not, why.
- Yes. We consider that EWOQ should remain principally aligned with the other states making it easier to communicate and justify, while leveraging a model that is already proven (and accepted). Fees should only recover cost for the administration component required by EWOQ.
- However, our position is contingent on EWOQ receiving sufficient funds for this model to be implemented. It has submitted advice to the Department regarding the requirement of a one-off grant for set up costs and ongoing funding to cover costs. If this is not approved, then EWOQ will need to recoup costs from embedded network participants and could possibly change the fee structure for scheme participants which will be difficult to achieve given the issue of cross-subsidisation.
- There could also be confusion for customers as EWOQ can manage disputes for small business within its current jurisdiction. We suggest the inclusion of small business access to EWOQ when it is a multi-function location and ensure that the Regulatory Impact Statement for small business is completed in a timely manner to ensure equity within the market.
- We note that EWOQ has developed an early engagement model with the aim of raising awareness, and providing education for embedded networks and their customers, including training and streamlined joining process. We strongly support this model and the associated EWOQ grant request to deliver it.

Q8.1.7 Do you agree that the proposed fees for ‘exempt sellers’ under option 3 are fair and reasonable, and proportionate to the level of impact the issue or complaint may have on the ‘exempt sellers’ customers? If not please explain why.
- Yes. On the data presented Option 3 would appear to be fair and reasonable and should introduce some uniformity. We note that EWOQ is proposing a shorter, more truncated process and will be submitting an updated costing table to reflect this. EWOQ is also proposing that the large embedded networks pay the same costs as the current members.
- We note that the scope of embedded networks under the classifications of D2 and D6 may vary and there is no data available on the size of these potential members. The fee model needs to ensure flexibility and adaptability as the embedded network pool in Queensland becomes more transparent. The department may need to undertake further research to best estimate the range of additional members.

Q8.1.8 Are there any other user-pays fee options the department should consider?
- No.

Q8.1.9 Do you see any issues with delaying the implementation of the user-pays fee scheme for at least 12 months in order to gather data to increase awareness and understanding of the Energy and Water Ombudsman services before fees are payable?
- The Advisory Council to the Energy and Water Ombudsman Queensland (Advisory Council) accepts the rationale for a 12-month delay in charging the fees on the basis that the grant requested by EWOQ for establishment and ongoing funding is approved. If no grant is provided, the fees will need to be charged immediately.
2.8.2 EWOQ structure

Q8.2.1 Of the options considered for this topic, which one do you prefer?

Option 1

Option 2

Option 3 YES

I do not like any of the options

Q8.2.2 Why?

The energy market is undergoing an unprecedented period of change, the rate of which will continue to be rapid and have major implications for consumers, industry and governments. Some changes are known and some are yet to emerge. However, is very clear that consumers will be purchasing and using energy in a much more dynamic and complex environment. They will need access to an excellent, free, external dispute resolution service that can deliver the following:

- More flexibility and agility
- More efficiencies
- Better value for its members and consumers.

These are challenging times for Energy and Water Ombudsman schemes and it is essential that the Queensland scheme is able to meet them.

We note that both Options 2 and 3 are underpinned by new enabling legislation, replacing the prescriptive Energy and Water Ombudsman Act 2006. The objective is to provide more flexibility in areas such as the subject matter for complaints; the budget process to avoid annual zero balance requirements; the inclusion of embedded networks; and stronger powers to investigate systemic issues. We consider this will make a significant and positive difference to EWOQ and how it operates. In particular, the budget flexibility will enable the organisation to plan on a longer-term basis.

However, in our view Option 2 approach is likely to be much less effective than Option 3 which greatly reduces the amount of legislation the scheme has to comply with and which will permit more flexibility and agility.

We support the requirement under Option 3 for reviews into the operation of the scheme, with the first review to be completed within three years. We would include in the scope of that review the legislative framework, with the inclusion of an independent person in such a review.

We also consider more robust governance arrangements will be required to assist EWOQ achieve its objectives, and to operate efficiently and effectively in what is effectively a commercial environment. We believe the most appropriate governance model is one which delivers a decision-making capability, not just an advisory function, which is the model we currently have with the Advisory Council.

Therefore, we support the option to transition EWOQ to a company limited by guarantee, rather than retain its statutory authority status.

This change would bring EWOQ into line with its New South Wales, Victorian and South Australian counterparts, all of which function as companies limited by guarantee. We think this alignment is more appropriate than one which mirrors similar Queensland Government Ombudsman models, such as the Health Ombudsman, the Land Access Ombudsman and Queensland Ombudsman because, as the options paper identifies, these are predominantly government rather than industry funded. By contrast, the EWOQ scheme is 100% industry funded.

We consider Option 3 better meets consumer needs and industry expectations, and delivers a more attractive value proposition for scheme participants and consumers, particularly as New South Wales, Victoria and
South Australia have demonstrated an ability to achieve equivalent levels of non-financial performance at lower cost.

We agree with the options paper’s contention that efficiencies could be gained from restructuring EWOQ as a company limited by guarantee in terms of greater flexibility to respond to changes in the market; in consumer needs; and to plan and resource a casual labour strategy to respond to variable demand for its services.

We note the options paper suggests that one of Option 2’s benefits is ‘flexibility’ in terms of subject matter of complaints and fees. However, whilst such flexibility is an important requirement in this dynamic and uncertain environment, it is required in all areas. Importantly, and as indicated earlier, we consider that ‘agility’ is also an essential requirement.

In addition, the Ombudsman scheme needs the backing of a decision-making and accountable Board and not just an Advisory Council with more limited responsibilities.

We also consider that there should be equal numbers of industry and consumer representatives on the board. This is a basic principle for such schemes and is a positive feature of the current Advisory Council model. The model for inclusion of embedded networks in the governance model is not as straightforward, and advice could be sought on the merits of interstate representative arrangements.

We appreciate this option has some additional costs, particularly set up and transition phase. However, we consider the advantages outweigh the disadvantages, particularly in delivering on customer expectations about responsiveness. We also consider that, taking a long-term view, these additional costs are not prohibitive.

We recognise that this option has implications for the EWOQ staff in terms of their public service terms and conditions. However, we consider there would be precedence to draw on and consider this change could be managed to ensure the entitlements of existing employees are not reduced as a consequence of this option. We also note that legislative provisions would be necessary.

Q8.2.3 Thinking of your preferred option, would you like to suggest any improvements

In relation to the Advisory Council’s preferred option, any suggestions for improvement are identified above.

Whilst we do not advise on Option 2, we note this is a preferred model at this stage, and also one which EWOQ supports. If Option 2 remains the recommended model, we would want to ensure the following can be achieved in the interests of both the end consumer, and the industry which funds the scheme:

- A flexible dispute resolution scheme able to adapt to emerging energy products and services without complex cumbersome operational and approval processes. As the option paper identifies, the legislative framework which underpins the scheme needs to be lean and give the Ombudsman wide discretionary powers, in line with other states.
- A review of the legislation within three years of commencement is recommended to ensure it can support EWOQ being able to operate efficiently and effectively. We consider an independent person should lead such a review.
- EWOQ being able to retain reserves to enable effective and efficient operations, and importantly, the ability to plan over the medium to longer-term.
- Timely advice on the appointment or re-appointment of Advisory Council members to avoid long gaps in representation and or the expiry of Advisory Council members’ term, both of which have occurred. We note the approval process for the Advisory Council resides at Ministerial level and not requiring the approval of the Premier. However, in practice, both levels of endorsement have been sought.
- A governance model which provides the Ombudsman with more than an advisory body providing non-binding strategic advice. We consider the suggested broadening of the Advisory Council functions identified under Option 2 (commenting on the Ombudsman’s fee structures; and including in budget advice to the Minister whether or not it endorses the annual budget) are marginal amendments. We consider these are already within the scope of the Advisory Council’s functions, as set out in Section 49 (d) of the Energy and Water Ombudsman Act 2006.
Whilst Option 2 retains a Council with an advisory function, we would like consideration of further improvements to achieve the above outcomes. This would deliver a more optimal model for the EWOQ. It would also benefit both the customers who use the dispute resolution service, and the industry which funds the scheme.