Dear Sir or Madam

Re: Review of the Queensland Energy Legislation – Issues Paper

Thank you for the opportunity to make a submission on the Review of the Queensland Energy Legislation – Issues Paper.

The review of Queensland’s state-based energy legislation being conducted by the Department of Natural Resources, Mines and Energy (DNRME) invites feedback on the energy regulatory framework in Queensland so that it can readily and efficiently respond to changes in the energy sector.

We acknowledge that issues identified in our submission will be assessed against the criteria of appropriateness, effectiveness and efficiency. We support this review as it is an opportunity to broaden the scope and relevancy of the Ombudsman scheme, which will increase consumer protection, particularly for disadvantaged and vulnerable customers.

Background to EWOQ
The Energy and Water Ombudsman Queensland (EWOQ) provides a free, fair and independent external dispute resolution (EDR) 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 member of the Australia and New Zealand Ombudsman Association (ANZOA), EWOQ is required to observe the benchmarks of effectiveness and efficiency for industry-based customer dispute resolution schemes in addition to accessibility, independence, fairness and accountability.

Fast track issues
As an industry dispute resolution scheme established to provide consumer protection for energy-related disputes, we have identified a number of opportunities for reform that would immediately benefit both consumers and industry. Further information on each of these reforms is provided in this submission through our responses to the Issues Paper.
In terms of external dispute resolution, the Queensland legislation should align with the national principles of external dispute resolution. It is important that household consumers and small business customers have the same protection, irrespective of their location.

An example is that in the current market, EN’s customers such as a consumer in a residential caravan park or aged care facility are excluded from the EWOQ scheme (due to the jurisdiction in the Energy and Water Ombudsman (EWO) Act) as they are not supplied electricity by an authorised retailer.

Since the legislation was introduced in 2006, the energy sector has undergone rapid change and will continue to evolve exponentially. New products like energy storage systems (e.g. home batteries), digital metering and smart appliances are becoming commonplace as technology advances and costs fall.

This has resulted in new energy services and innovative business models such as power purchase agreements, solar leases, off-grid arrangements and remote control and management of home energy. These changes were not considered at the time the state-based energy legislation was first introduced.

We support increasing consumer protections in a way that provides adaptability, flexibility and efficiency, while also addressing the various risks associated with existing and new energy services and innovative business models that are entering the market.

Through state-based legislation and derogations, consumer protection will be assured for energy services provided by existing and new market participants.

**Question 9.2**

What opportunities exist to improve the effectiveness and efficiency of customer protections?

An expansion of dispute resolution services provided by EWOQ would improve the effectiveness and efficiency of customer protection.

Currently, there are some residential and small business energy consumers in Queensland that may not have the same level of protection as others. We strongly advocate for industry Ombudsman schemes to be expanded to operate across all relevant products and services. As industry Ombudsman schemes have industry specific knowledge, they are best positioned to provide an independent, free and fair “one-stop shop” approach for all energy-related complaints. Like other Ombudsman schemes, EWOQ has the power to enforce compliance on energy providers which avoids costly or lengthy enforcement or prosecution procedures.

Our ability to identify and report complaint trends and systemic issues will provide opportunities for scheme participants to improve delivery of their service to customers, rebuild some trust and increase consumer confidence in the energy market.
Dispute Resolution

**Question 10.1**
How well do existing dispute resolution provisions align with community and industry expectations?

Existing dispute resolution provisions create confusion among consumers. There are currently four different agencies that can assist with different energy-related complaints in Queensland. For some consumers, the complexity involved in finding assistance to resolve a dispute is insurmountable and can be a deterrent to seeking help.

EWOQ works to raise awareness of our service and connect with communities who need support to resolve disputes. This is an ongoing focus to ensure that we capture all residential and small business energy consumers across Queensland. Through this interaction, many issues are raised by consumers; unfortunately, we are not able to assist them with recent changes to metering contestability and product specific issues like solar, for example.

Whilst the current dispute resolution provisions under state-based energy legislation provide a framework for customers to resolve disputes with their energy supplier, it is timely for this to be reviewed to improve the framework for the current and future business models.

We support reviewing the existing dispute resolution provisions, including the recent changes implemented by the Australian Energy Regulator (AER) for metering contestability (from 1 December 2017) and residential and network guidelines for embedded networks (from 1 March 2018).

There is a reasonable expectation from the community and networks that support those in need, such as financial counsellors, that when a law is enacted, the state-based EDR scheme will be able to assist them or their clients. This is not always the case and their expectations are not realised.

We note that a review of our jurisdiction may identify energy-related provisions contained in other legislation that would need to be brought under the EWO Act.

**Embedded networks**
EWOQ will contribute to the DNRME’s upcoming Embedded Networks Consultation Regulatory Impact Statement (RIS) and will respond to these issues in our submission to this RIS.

There are an increasing number of non-traditional energy providers in the market, such as exempt suppliers. The current provisions do not offer consumer protections from an industry-based scheme such as EWOQ. This creates confusion and concerns from customers about why they are not able to access an Ombudsman scheme. These consumers rightly believe they should be afforded the same consumer protections as others, irrespective of who supplies their energy.

**Question 10.2**
What opportunities exist to improve the effectiveness and efficiency of state-based dispute resolution provisions?

As a statutory scheme with a small number of sophisticated scheme participants, we strongly support broadening our jurisdiction to improve the effectiveness and efficiency of state-based dispute resolution provisions, and to modernise the EWO Act to accommodate an evolving environment and support innovative new technologies.
Between 1 July 2017 and 30 May 2018, EWOQ successfully managed more than 9400 disputes, successfully closing 92 per cent of these within 28 days. These figures demonstrate our effectiveness and efficiency as a dispute resolution scheme while giving our customers free, fair and independent access to best practice dispute resolution knowledge and skills.

To remain relevant in a rapidly changing world, it is crucial now more than ever that we become a “one-stop shop” to ensure we continue to support small energy customers across Queensland, particularly those who are disadvantaged and vulnerable. As we already use energy-specific knowledge and skills effectively to resolve disputes, it is logical that EWOQ becomes the body to manage a broader number of energy-related disputes.

We have identified the following opportunities for expansion of the EWOQ scheme:

**Bulk Hot Water Complaints**

Customers living in apartment blocks or unit complexes may be charged for the supply of bulk hot water from the Body Corporate or similar. Bulk hot water is heated water supplied from a common area of the building and the customer is billed for the heating of the water, based on the litres of water used. This bill is in addition to standard energy accounts and means a customer may receive three accounts for their energy use (electricity, gas and hot water accounts).

Disputes with service providers about bulk hot water are currently managed by the Office of Fair Trading (OFT). Assistance provided by OFT to resolve disputes about bulk hot water is free, however, it is limited to mediation services only with no binding powers.

Between 1 July 2017 and 31 May 2018, we referred 101 bulk hot water cases to the OFT. From our experience referring bulk hot water complaints to the OFT, customers are often confused about these bills and may incorrectly assume the bill is for a gas or water service.

The expansion of our jurisdiction to include bulk hot water matters would minimise confusion and improve the customer’s experience when resolving these complaints. EWOQ has the ability to offer customers a clear, best practice model to assist with the resolution of these complaints. The key considerations of appropriateness, effectiveness and efficiency through this expansion would all be met and the net benefit would be welcomed by consumers and industry.

**Solar Power Purchase Agreements**

With the increasing use of solar photovoltaic systems in Queensland, there is an associated increase in the number of customers entering into Solar Power Purchase agreements (PPAs). Customers who have entered or may enter into PPAs will experience similar issues to the type of complaints currently managed by EWOQ. We would be able to assist Solar PPA customers resolve complaints about the provision of services, including billing, credit and the correct application of rebates or concessions to name a few.

DNRME has installed solar panels on public housing in Far North Queensland as part of a trial to reduce the electricity costs for vulnerable customers. Participants in this trial may save up to $250 per annum on their electricity costs. Digital meters were also installed to provide monthly bills to these customers and assist them in managing their electricity usage and costs. EWOQ’s dispute resolution services have been provided to customers participating in this trial and we have assisted with billing issues and complaints about the provision of services.
We strongly support the expansion of our jurisdiction to include dispute resolution services for customers with PPA agreements. We have the expertise to deal with service complaints meeting the key considerations of appropriateness, effectiveness and efficiency underpinning the review of the legislation.

**Micro Grids**

As with Solar PPAs, there is an increasing number of customers moving to fringe-of-grid, off-grid or micro grids, such as service supplied from council-owned renewable generation. This is an area we strongly support for expansion of our jurisdiction. These customers are likely to experience the same issues as customers receiving energy services from authorised retailers. The issues may include billing, credit and customer service issues. As an industry dispute resolution service, we are best positioned to help these customers resolve these disputes.

**Systemic Issues**

One of our functions under the current EWO Act is to identify systemic issues that may arise from the complaints made to our office. This provision enables EWOQ to report systemic issues to regulators, however, we have a limited ability to investigate systemic issues or request resolution of the issues.

Systemic issues may be costly to the industry and detrimental to consumers and consumer confidence in the market. Through our dispute resolution service, we can identify potential service deficiencies before they become widespread, or organisational practices and procedures which may require changes. However, we currently have no authority to request a scheme participant or the industry to make the necessary changes or rectify the issue, and rely on regulators to ensure these issues are rectified.

Given the potential detrimental nature of systemic issues to both industry and customers, it would be more efficient and effective for EWOQ to investigate and request solution of these issues while maintaining the reporting of these issues to regulators to address code or legislation breaches.

**Capital Contributions and Land Holder Disputes**

We note the Review questions whether it would be appropriate for EWOQ to include matters associated with capital contributions and land holder disputes. We believe it is not appropriate for EWOQ to include these matters in our jurisdiction.

Generally, disputes relating to capital contributions for connections are primarily contractual and commercial in nature. Given these matters would require specific expertise in a number of areas and the costs associated with managing these disputes, we believe these disputes are better suited to be handled within current processes.

Land holder disputes with entities other than distribution businesses may involve large transmission or generation infrastructure and assets located on easements. As the electricity component is usually the second or third issue of these disputes, the Land Court is the more appropriate for these parties.
Additional matters identified by EWOQ for consideration as part of the review of the EWO Act

**EWOQ Scheme Operating and Governance Model**

With an expanding jurisdiction and rapidly changing market, the EWO Act must be adaptable and flexible to enable EWOQ to assume responsibility for energy-related complaints from the variety of entities providing these services.

When considering an expansion of EWOQ’s jurisdiction, it is also appropriate to review the operating model of EWOQ. Currently EWOQ is a Statutory Body, with limited flexibility and adaptability, and this can then dilute the effectiveness of the scheme. The funding and membership models also need to be considered in this review.

Current limitations of the scheme’s operating model include:

- Restricted adaptability and flexibility compared with the interstate schemes
- Requiring approval for supplementary funding through a regulation
- Not being able to retain surplus funds from year-to-year to undertake improvements to technology and processes
- Lack of flexibility around options for resource management to address sudden increases or decreases in dispute resolution activity.

Alternative options to be considered include:

- Maintaining the current model while enabling EWOQ to include new products and services, funding models and other relevant changes in a more expeditious and effective manner.
- Move to a company structure – Incorporated limited by Guarantee with a Board of Directors.

It is noted that both options have positive and negative benefits and outcomes that need to be reviewed and considered.

The goal is to ensure that EWOQ can expand to include differing classes of scheme participants, offer EDR options to a wider number of household and small business consumers, and become flexible, dynamic and adaptable to the funding and membership models in a rapidly changing market.

**Energy and Water Ombudsman discretionary powers**

To ensure EWOQ is a scheme which is effective, efficient and appropriate, consideration should be given to providing discretionary powers to the Energy and Water Ombudsman (EWO) to determine whether a matter is within the scope of the scheme. An example is the work undertaken by the AER and the Australia and New Zealand Energy and Water Ombudsman Network (ANZEWON) in relation to introduction of metering contestability for embedded network customers.

On 1st December 2017, metering contestability was to commence and to date the changes to the Electricity Act and then the EWO Act for metering contestability have not yet occurred. Legislative changes are required to ensure these customers have the same consumer protection as provided by our interstate counterparts on this date. With discretionary powers, the EWO would have the ability to determine whether a matter is within the scope of scheme and to provide assistance and consumer protections to these customers, whilst legislative changes are being considered.
It would also be beneficial for the EWO to have discretionary powers for resourcing of the scheme as dispute resolution activities change, for example, streamlining approval of additional budgets and flexibility of the workforce such as temporary and casual employees.

Potential changes to Funding model

In reviewing the legislation to ensure EWOQ is an adaptable and flexible scheme, a more granular fees framework and fairer cost recovery approach is required. This framework will require a simplified cost recovery process with the ability to retain reserves, whilst minimising the impact on gas and water customers for the first two years.

The current cost recovery approach has a very small revenue component collected from annual participation fees. Almost all cost recovery occurs through case fees. This introduces some distortions to a user pays model. The cost of all activity that is not directly related to complaints is loaded onto case fees as an undeclared overhead. This produces what appears to be very high case fees, fuelling an impression that EWOQ is expensive, inefficient and a source of unfavourable comparison to other state’s Ombudsman schemes.

Similarly, the current case fees do not cover the cost of all case-related activity, so the pre-complaint activity is also loaded onto the case fees.

Review of Queensland’s energy legislation provides an opportunity to develop a new cost recovery framework to improve the fee structure and better match the actual costs and reduce cross subsidisation between scheme participant categories.

The funding structure should have greater focus on fairness including:

- Progressive annual fees reflecting (to some extent) the number of customers of a scheme participant,
- Fees for case activity reflecting the scale and sophistication of the category of the scheme participant,
- Minimal cross subsidy between categories of scheme participants,
- Introduction of a joining fee for all new scheme participants.

Additionally, a new funding structure should recover a greater proportion of EWOQ’s costs from annual fees paid in advance, this would enable:

- Greater predictability of costs for scheme participants,
- Efficiency in collection for EWOQ,
- More acceptable annual and case fees for scheme participants and enable them to have an improved understanding of and management of these costs.

Potential changes to membership model

The new regulatory framework for membership of the EWOQ will need to ensure flexibility to accommodate the varying size and sophistication of potential new scheme participants.

Definitions for membership of the scheme will need to be reviewed to consider the variety of the parties to the dispute. Current provisions require the entities to hold an authorisation and enter into a supply contract with a small customer and are unlikely to fit the potential new scheme participant categories.
Thank you for the opportunity to contribute to this review to modernise Queensland’s energy legislation and improve the efficiency, effectiveness and appropriateness of the EWO Act in providing consumer protections through our dispute resolution services to residential and small business energy customers in Queensland.

We look forward to discussing our submission in more detail to explore the issue and possibilities further.

If you require any further information regarding our submission, please contact me on 07 3087 9451 or Ms Ilona Cenefels, General Manager – Reporting, Policy and Research on 07 3087 9455 or ilona.cenefels@ewoq.com.au.

Yours sincerely,

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