

Dispute resolution for residential embedded network customers – Regulatory Impact Statement

QCOSS Submission – February 2020

Introduction

Energy customers in embedded networks in Queensland do not currently have access to the free, independent, energy-specific dispute resolution services provided by the Energy and Water Ombudsman Queensland (EWOQ) as they have no direct relationship with an energy retailer. The energy retailer's direct relationship is with the 'exempt seller'. While there are other existing dispute resolution mechanisms available, such as the Queensland Civil and Administrative Tribunal (QCAT), only EWOQ can provide a free, energy specific, efficient, binding dispute resolution service for embedded network customers.

The AER *Retail Exempt Selling Guideline March 2018* now requires 'exempt sellers' to *have appropriate complaints and dispute handling processes*, and, 'exempt sellers' with residential customers *must be members of, or subject to, Energy Ombudsman schemes where the scheme allows*. This provides a clear policy directive for Queensland and importantly provides new protections for these consumers.

The Regulatory Impact Statement (RIS) on dispute resolution for residential embedded network customers in Queensland explores issues with implementation of this new policy direction and QCOSS is pleased to provide the following advice.

All customers deserve to have the same access to consumer protections, whether they have a direct relationship with the retailer or are within an embedded network or on-selling arrangement. This is particularly important for customers that are experiencing vulnerability. QCOSS is a member of the Advisory Council to the Energy and Water Ombudsman Queensland and continues to support the important work that EWOQ do to ensure consumers can access free, independent, energy-specific dispute resolution services.

Recommendations:

Our key recommendations are:

Recommendation 1: Ensure all customers in embedded networks and with on-selling arrangements have access to the free, independent, energy-specific binding dispute resolution services provided by the Energy and Water Ombudsman Queensland.

Recommendation 2: Establish a reliable register of embedded networks and exempt sellers within Queensland to support implementation.

Recommendation 3: Create an engagement and communication strategy, and establish support programs in partnership with community organisations, to increase embedded network consumers' literacy around energy rights and facilitate their access to dispute mechanisms.

Recommendation 4: Monitor uptake of dispute resolution services by people experiencing vulnerability, and establish a focus group of customers from each of the stakeholder groups and consumer advocates to understand cohort-specific barriers to accessing the dispute resolution services provided by the Energy and Water Ombudsman Queensland.

Recommendation 5: Ensure all residential exempt sellers are automatically deemed to be Energy and Water Ombudsman scheme participants.

Recommendation 6: To exempt small sellers from paying an annual participation (membership) fee, but instead have a sliding scale based on the number of customers.

Recommendation 7: Ensure that customers of exempt sellers have immediate access to the free, independent, energy-specific dispute resolution services provided by the Energy and Water Ombudsman Queensland either through provision of additional funding or through implementation of immediate fee-for-service charges.

Existing arrangements for embedded networks

Current Queensland dispute resolution mechanisms

Question 1 What type of energy disputes are likely to arise between exempt sellers and their customers?

There are many types of energy disputes that may arise between exempt sellers and their customers. These can include:

- **End-use customers wanting to change retailers.** Under the Power of Choice reforms customers can change retailers. This does not occur in practice in embedded networks as retailers in the market may refuse to take on the new customer. This is particularly in large multi-unit social housing complexes.
- **Access to payment plans or concessions.** Customers in many embedded networks, and all customers with an on-supplier arrangement, have no direct relationship with an energy retailer. They are therefore reliant on their provider to apply for concessions on their behalf. The on-supplier, e.g. caravan park operator or building manager or owner, may fail to apply for concessions and rebates on behalf of end-use customers.
- **Billing:** Many customers in on-selling arrangements do not have clear visibility of energy costs as it can be bundled with rent and other utilities.
- **Price rises.** Lack of forward communication can impact on end-use customers capacity to budget and pay on time.
- **Payment difficulties and disconnections.** This may be exacerbated by customers not getting access to payment plans or concessions and lack of visibility of energy costs.

Many of these disputes arise due to there being no clear accountability pathway. For example, there is no clear duty on the part of exempt sellers to support access to hardship programs, or registration of life support of property if tenanted.

Question 2: What dispute resolution mechanisms do embedded network customers currently use in order to have their energy disputes settled? Are customers aware of and successfully using existing mechanisms? Are there any issues with the current mechanisms?

Figure 1 on page 9 of the RIS captures most of the mechanisms available to embedded network consumers that QCOSS is aware of, including:

- Residential Tenancies Authority

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- Body Corporate and Community Management Dispute Resolution Service
 - Dispute Resolution Centre, and
 - Queensland Civil and Administrative Tribunal (QCAT).

In practice, vulnerable customers rarely access these processes to advocate for their own rights around energy disputes. This is due to several barriers that vulnerable customers face, including:

- lack of awareness of the mechanisms;
- costs;
- not knowing their rights;
- confusion around dispute resolution processes;
- lack of support; and
- fears around being penalised or even evicted.

Furthermore, adjudicators involved the dispute resolution mechanisms in Figure 1 of the RIS do not always have the energy expertise needed for a fair and equitable process. This would require the energy specific process and personnel of EWOQ.

The problem is therefore not the lack of mechanisms, but the lack of free, relevant and effective dispute resolution and support.

The RIS suggests that that customers would “save” if the Ombudsman is expanded. However this is unlikely as these are processes that are, for the most part, not used.

In particular, vulnerable customers who raise issues with their management or their on-supplier may risk their relationship or even their tenancy. Current proposals for change to the Residential Tenancies and Rooming Accommodation Act will ameliorate some of these issues, however more must be done to protect vulnerable consumers.

As mentioned above, there are also no clear accountability pathways for access to hardship programs, concessions or registration of life support. QCOSS would like to see increased monitoring and enforcement of customer regulatory requirements around billing and access to payment plans or hardship and concessions to ensure managers who are meant to apply for concession and rebates on behalf of eligible customers do so. This includes customers in legacy embedded networks, not just new developments caught by new market rules.

QCOSS also recommends greater visibility, and therefore oversight of embedded networks in Queensland. Reiterating our position from previous submissions into the review of Queensland energy legislation¹, this could be achieved through establishing a reliable register of embedded networks and exempt sellers within Queensland. This would require an extensive search of distributor network connections and local government planning approvals for apartment buildings, retirement villages, commercial complexes and other constructions where embedded networks are known or most likely to be in place. Networks of existing stakeholders such as caravan parks, mobile homes and retirement homes could also be consulted. Such a register would assist in achieving fair outcomes of dispute

¹ QCOSS 2018 submission - <https://www.qcoss.org.au/publication/review-of-the-queensland-energy-legislation/>; QCOSS 2019 submission - <https://www.qcoss.org.au/publication/qcoss-submission-calls-for-stronger-energy-consumer-protections-for-queenslanders/>

resolution mechanisms (and increase the capture of customers eligible for concessions and rebates).

Based on our experience, customers experiencing vulnerability need information and support to understand and access their rights. We have found that one of the most effective mechanisms to reach low-income and vulnerable customers is via the community organisations they come into contact with on a day-to-day basis. While not a dispute resolution mechanism, programs to support community organisations in such a role (facilitating and understanding all such mechanisms) can greatly improve customer outcomes.

Recommendation 1: Ensure all customers in embedded networks and with on-selling arrangements have access to the free, independent, energy-specific, binding dispute resolution services provided by the Energy and Water Ombudsman Queensland (EWOQ).

Recommendation 2: Establish a reliable register of embedded networks and exempt sellers within Queensland to support implementation.

Recommendation 3: Create an engagement and communication strategy, and establish support programs in partnership with community organisations, to increase embedded network consumers' literacy around energy rights and facilitate their access to dispute mechanisms.

Extending access to the Energy Ombudsman for embedded network customers.

EWOQ is an independent official who represents the interests of the public by investigating and addressing complaints reported by individual citizens. In order to do this effectively and fairly, *all* consumers must have access to the free, independent, energy-specific dispute resolution services provided by EWOQ.

Question 3: Are there any stakeholder groups that the department should consider, and consult with, when assessing potential options for embedded network customers?

QCOSS recommends establishing a focus group of a variety of customers and consumer advocates, including community service organisations, to understand cohort-specific barriers to accessing dispute resolution services such as those provided by EWOQ. QCOSS recommends recording and monitoring uptake of dispute resolution services by people experiencing different kinds of vulnerability, to identify which cohorts may have lower levels of access.

We would recommend the department also consult social housing providers and tenants.

Some intentional communities (e.g. Crystal Waters in South East Queensland, and Trinity Beach near Cairns) are considering embedded networks and mini-grids.

Narara Village in NSW² are further down this path. Such communities may have low-income tenants and customers who currently have direct accounts but may fall under an on-selling arrangements in the future. The operation of these models in current and future regulatory and retail frameworks is unknown. Talking to the above groups may allow DNRME to be at the front end of these developments.

While small businesses are currently excluded under the current proposals, they (or their representatives such as EcoBiz and Chamber of Commerce and Industry) may also need to be consulted. Small businesses may operate in mixed residential/commercial premises, and often work in shared spaces with on-selling arrangements where both they and the on-seller are unaware of the regulations. Small businesses, both owners and staff can be made vulnerable through their energy and billing arrangements.

As above - Recommendation 3: Create an engagement and communication strategy, and establish support programs in partnership with community organisations, to increase embedded network consumers' literacy around energy rights and facilitate their access to dispute mechanisms.

Recommendation 4: Monitor uptake of dispute resolution services by people experiencing vulnerability, and establish a focus group of customers from each of the stakeholder groups and consumer advocates to understand cohort-specific barriers to accessing the dispute resolution services provided by the Energy and Water Ombudsman Queensland (EWOQ).

Estimating the number of complaints and cost to the Energy and Water Ombudsman

Question 4: Is the predicted number of complaints reasonable based on the information available?

As previously outlined, the current number of exempt sellers in Queensland is unknown. While we understand the need to make some assumptions, we have some concerns regarding the current assumptions and the estimated numbers within the RIS.

Firstly, Queensland is known to have a much larger number of embedded networks than other states and they cover a diverse range including body corporates, private landlords and owner-occupiers of 'six pack' style unit developments, occupants of caravan parks and manufactured homes, residents of retirement villages and lifestyle communities, many of whom are vulnerable consumers. While using data from other jurisdictions provides some information, it is not clear that we are comparing like scenarios.

Secondly, using data from existing dispute mechanisms is unreliable. As mentioned above, many customers are unaware of the existing processes available to them and are unlikely to use them even where they are aware of the opportunity. While the numbers of complaints are still likely to be small, the creation of a free, independent and energy-specific dispute resolution service, may see more consumers make complaints.

² <https://arena.gov.au/projects/narara-ecovillage-smart-grid/>
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In addition, we know from EWOQ that there is a completely unknown number of Class D2 residential exempt sellers (less than 10 residents), and that these exempt sellers were not included in the modelling. There could be a significant number of vulnerable customers associated with these exempt sellers.

Given this, QCOSS advocates establishing a reliable register of embedded networks and exempt sellers within Queensland prior to implementation. Such a register will assist implementation and in achieving fair and equitable outcomes for customers on legacy embedded networks or with on-selling arrangements.

As above - Recommendation 2: Establish a reliable register of embedded networks and exempt sellers within Queensland prior to implementation.

Establishing a suitable fee framework for exempt sellers

Question 5: Do you agree with the proposal for all residential exempt sellers to be automatically deemed to be Energy and Water Ombudsman scheme participants?

QCOSS strongly supports this proposal. All customers deserve to have consumer protections. Access to free energy-specific dispute resolution is absolutely necessary for fair and equitable outcomes for all consumers.

It will be critical that an effective communication strategy is implemented to ensure exempt sellers and their consumers become aware of new arrangements. A register of exempt sellers will support effective communication to the exempt sellers. Without this, communication strategies will be general and broad in nature and likely to miss their target.

QCOSS also believes that having deemed membership for all residential exempt sellers offers an opportunity for monitoring and reviewing issues, complaints and outcomes via the aforementioned register of embedded networks and exempt sellers within Queensland. Participation also offers the opportunity to educate the new participants in their rights and obligations, potentially reducing the number of disputes or referrals.

As above - Recommendation 1: Ensure all customers in embedded networks and with on-selling arrangements have access to the free, independent, energy-specific dispute resolution services provided by the Energy and Water Ombudsman Queensland (EWOQ).

Recommendation 5: Ensure all residential exempt sellers to be automatically deemed to be Energy and Water Ombudsman scheme participants.

Question 6: Do you agree with the proposal NOT to require exempt sellers to pay an annual participation (membership) fee? If not, why.

We agree with the proposal. Smaller exempt sellers should not pay a membership fee, especially at the current rate. Any additional costs are likely to be passed on to customers. Smaller exempt sellers do not have the capacity to pay the \$5,000 as currently prescribed by the *Energy and Water Ombudsman Act 2006*, and it would be unfair to pay such a large flat rate where they have less customers than the larger operators and retailers participating in the ombudsman scheme. Finally, requiring

smaller operators to pay a membership fee will be administratively burdensome to EWOQ.

Recommendation 6: To exempt small sellers from paying an annual participation (membership) fee, but instead have a 'user pays approach' on a sliding scale based on the number of customers.

Analysis of options for user-pays fee scheme

Question 7: Do you agree that the proposed fees for exempt sellers under Option 3 are fair and reasonable, and proportionate to the seriousness of the issue or complaint that an 'exempt seller's' customer may have? If not please explain why.

Option 3 is the best option in QCOSS' opinion. A sliding scale based on the number of customers addresses the issues discussed in Question 6 – namely is fairer, takes into consideration the capacity to pay of smaller providers, and prevents excessive costs being passed on to low-income customers. This is similar to the approach taken by the Energy and Water Ombudsman New South Wales (EWON), which provides opportunities for learnings and provides comparability for monitoring and review.

While we acknowledge that option 3 represents a cross subsidy, the benefits to the most vulnerable customers outweighs the costs, which the RIS suggests is likely to be in the order of around 6 cents per customer per year (p16). In addition, the RIS also acknowledges that larger on-sellers may be able to bundle complaints, and they are likely to also have larger teams working on those complaints and therefore be more efficient than smaller players without such capacity.

Option 3 creates incentives for those who are doing the right thing and therefore attracting less complaints. There may also be need for a monitoring, education and awareness program to ensure good customer outcomes are achieved.

Options 1 and 2 are unrealistic given the lower capacity to pay of smaller on-sellers.

As above - Recommendation 6: To exempt small sellers from paying an annual participation (membership) fee, but instead have a 'user pays' approach on a sliding scale based on the number of customers.

Question 8: Are there any other user-pays fee options the department should consider?

QCOSS has no recommendations for other available options.

Timing of commencement of a user-pays fee scheme

Question 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?

QCOSS does not see any issues in deferring the fee scheme, providing that EWOQ are successful in gaining additional funding as requested. Should this additional funding not be approved, we understand fees would have to be charged immediately to support implementation. It is critical that access to the dispute resolution services

of EWOQ is provided as soon as possible and that EWOQ has capacity to respond to complaints received.

We would re-iterate that a parallel communication and engagement campaign will ensure all small on-sellers and customers will know their rights and responsibilities, will allow them to put management systems in place, and potentially reduce the need for dispute resolution and ensuring vulnerable customers have access to consumer protections and eligible concessions and rebates.

Recommendation 7: Ensure that customers of exempt sellers have immediate access to the free, independent, energy-specific dispute resolution services provided by the Energy and Water Ombudsman Queensland (EWOQ) either through provision of additional funding or through implementation of immediate fee-for-service charges.

About QCOSS

We are QCOSS (Queensland Council of Social Service), Queensland's peak body for the social service sector.

Our vision is to achieve equality, opportunity and wellbeing for every person, in every community.

We believe that every person in Queensland – regardless of where they come from, who they pray to, their gender, who they love, how or where they live – deserves to live a life of equality, opportunity and wellbeing.

We are a conduit for change. We bring people together to help solve the big social issues faced by people in Queensland, building strength in numbers to amplify our voice.

We're committed to self-determination and opportunity for Aboriginal and Torres Strait Islander people.

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.

Join us to mobilise a force for equality, opportunity and wellbeing. To join visit the QCOSS website (www.QCOSS.org.au).

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