

5 February 2024

Mr Mark Feather  
General Manager, Policy  
Australian Energy Regulator  
GPO Box 3130  
Canberra ACT 2601

Via email: [AERexemptions@aer.gov.au](mailto:AERexemptions@aer.gov.au)

Dear Mr Feather,

## Review of the AER exemptions framework for embedded networks – Issues Paper

### Energy and Water Ombudsman Queensland specific comments

Further to our joint Energy and Water Ombudsman response to the review, please find below comments on the questions raised in the issues paper from the Energy and Water Ombudsman Queensland (EWOQ).

#### The Embedded Network landscape in Queensland

In Queensland it is estimated there are approximately 187,000 residential embedded network (EN) customers living in apartment buildings, retirement villages and caravan parks, with all indications that ENs and the popularity of on-supply arrangements are growing and will likely continue to grow. Queensland currently has almost double the number of exempt sellers registered on the AER website<sup>1</sup> than in any other region with 2,402 current retail exemptions and 2,930 network exemptions.

With an abundance of ENs in Queensland, EWOQ has long been a strong advocate for improved consumer protections for residential EN customers. Following years of advocacy, EWOQ welcomed reforms on 28 February 2022 to expand its jurisdiction to include some residential EN electricity customers with EN owners and operators in Queensland with a class D2, D6, R2, R4, ND2, ND6, NR2, NR3 or NR4 exemption required to join the scheme.

Fast forward two years, EWOQ has now onboarded 289 EN scheme participants comprising of 280 exempt sellers and 9 authorised retailers on-selling to EN customers and closed 550 complaints. Approximately two-thirds of these cases were managed as refer backs with the top issues relating to billing followed by credit and customer service. A complete breakdown of the case data is available in Attachment A.

Drawing on our learnings and experiences over this period, EWOQ provides the following targeted responses to the stakeholder questions presented in the issues paper.

<sup>1</sup> AER website – Public registers [Network exemptions](#) and [retail exemptions](#) – current registration data – 23 January 2024

State	Retail exemptions (current)	Network exemptions (current)
QLD	2402	2930
NSW	1156	1849
SA	823	512
ACT	359	76
TAS	334	12

## Consultation questions

### Chapter 2 Approach to the review

Q3. Is our proposed review scope reasonable? If not, what other supply arrangements should be considered and why?

We note the scope of the AER's current review primarily focuses on:

- energy to high density residential ENs
- improving compliance and performance monitoring; and
- family violence protections for all residential EN customers

Whilst we support this approach in principle, we are disappointed there is no consideration of bulk air conditioning or bulk hot water. EWOQ shares the same concerns articulated in EWONs response to this review, particularly with regards to bulk hot water which is common in Queensland.

Bulk hot water customers encounter the same problems with billing, affordability, payment difficulties and supply as any other energy consumers. Yet, the supply of hot water, considered by most as an essential service, currently falls outside the National Retail Law leaving many energy consumers without the same level of protection and redress.

Currently, EWOQ has no jurisdiction to investigate bulk hot water complaints with disputes referred to the Office of Fair Trading (OFT). Assistance provided by OFT is free, however, is limited to mediation services only with no binding powers.

Since 1 July 2022, EWOQ has referred 197 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. As such, EWOQ often may be the first point of contact for many customers.

Billing is the primary issue raised by bulk hot water customers who approach EWOQ for assistance. Matters include high and disputed accounts, estimated and delayed billing and the application of fees and charges. This is reflective of the type of matters raised by on-market energy customers.

### Chapter 6 – Benefits and harms of embedded networks

Q7 How do ENs result in lower energy prices for residential customers?

While this is out of our remit, there are arguments that residents benefit from bulk energy contracts at lower prices that can be shared with residential customers. As noted in some of the complaints received this is not always the case. It should however be emphasised that EN customers do not benefit from the protections provided by retail competition, in particular the ability to transfer retailers for more competitive pricing or due to poor service standards.

EWOQ is also aware there is still a lack of transparency in the industry, for example customer numbers, pricing information not being available prior to moving into a property and no access to information about customer numbers within EN.

Q10 What kind of innovative and emissions reduction arrangements can ENs offer residential customers?

We note the examples of renewable energy and innovative energy services cited in section 6.1.2 of the paper including solar, batteries and electric vehicle charging stations. Further arrangements may include participation in virtual power plants or micro grids – shared renewables, which may provide access to cleaner energy for vulnerable customers.

EWOQ welcomes the final advice from the AER on the review of consumer protections for future energy, which recognises the need to ensure protections evolve with a transitioning market and the role of Ombudsman Schemes supporting trust and confidence in an evolving market. These protections must extend to ENs so the benefits of the energy transition are shared more equitably.

From the perspective of EWO schemes, we are seeing issues popping up across all schemes in relation to the growing uptake of consumer energy resources (CER) or the desire to install or access CER in ENs. The following case studies are an example of this:

**Case example 1.**

*EWOQ received a complaint from a customer who lived in a lifestyle retirement village and was concerned about her high and fluctuating electricity charges. She had considered installing solar to help reduce her energy costs but was allegedly told by her that she could not do this because the grid was full.*

*EWOQ undertook a high bill investigation and further arranged for the owner/operator to provide details to the customer about the application process for solar installation.*

**Case example 2.**

*A customer approached EWOQ after receiving no benefit from solar panels she had installed almost two years prior. The customer lived in an over 50's retirement EN resort managed by a Body Corporate. The customer approached the authorised retailer servicing the resort multiple times but was told that as her electricity was signed up as an embedded service she not eligible for any solar feed-in tariff (FIT) rate benefits. The customer felt the outlay for solar was a waste of money as she was paying the same cost for electricity as her neighbours.*

*EWOQ was able to negotiate for the customer to receive her solar FIT once the authorised retailer received approval from the Body Corporate. This required the solar installer and body corporate to verify the solar installation in order to update the customer's billing. The customer was also offered a \$150 customer service gesture as a goodwill credit.*

Q13 What is the evidence that supports the view that EN customers are paying higher energy prices compared to on-market retail customers?

***Manufactured Homes (Residential Parks) Act 2003 (s 99A) v Condition 7 - AER Exempt Selling Guideline***

While pricing matters are outside EWOQ's jurisdiction, it has also come to our attention that there may be some opportunities to improve how Condition 7 of the AER's Exempt Selling Guideline interacts with the *Manufactured Homes (Residential Parks) Act 2003 - (s 99A)* in Queensland.

- Section 99A of the *Manufactured Homes (Residential Parks) Act 2003* provides that a park owner can pass on a separate charge for utility services including electricity provided it is not higher than the cost of supply for the use of electricity.
- Exempt sellers must also take into account Condition 7 of the AER Exempt Selling Guideline. (1) *An exempt seller must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections if the local area retailer were to supply that quantity of energy directly to the premises of the exempt customer.*
- We note per the AER Guideline (S 4.6.1.1) exempt sellers are entitled to offer an all inclusive tariff (bundling consumption and supply charges).

EWOQ notes this methodology (all inclusive tariff) poses the risk of ENs inadvertently charging a tariff higher than the local retailer failing condition 7 of the guideline. We note this is a potential issue and to avoid any perceived conflict with the *Manufactured Homes Act*, ENs should be encouraged to provide a proper breakdown of the bills (even if adopting all inclusive tariff) – enabling more accurate comparison with local standing offers.

We have referred complaints to the AER (noting pricing matters not within jurisdiction) and we note a recent decision by the AER in respect to [Trinity Place Investments](#).

Q14 What evidence is available to understand the scale, extent or risk of harms?

The pricing issue as noted above but how significant the issue is is unclear. Clearer price comparisons may overcome the issue.

An alternative approach to support EN customers is consideration whether the DMO, or an EN DMO would be appropriate at a national level. Further adding the standard retail price for the local area retail would provide a reliable comparison.

Q15 What other harms do EN customers face?

There are a range of potential harms faced by EN customers as evidenced in the various submissions listed in our covering letter. To summarise, EWOs are aware of the following issues raised in customer complaints to our schemes:

Harms evident:

- Lack of retail competition and higher energy prices
- Process and time to go on-market where no EN manager is appointed
- Limited consumer protections (including guaranteed continuity of supply following a ROLR event, payment difficulties and life support protections)
- Limited compliance framework (no reporting obligations on exempt entities and limited options to take compliance action when issues identified)
- Limitations on EN customers to instal appliances such as air conditioning as power consumption too high
- As networks become more complex, Increase in safety issues
- Insufficient or an absence of information for EN customers to clearly understand the implications of living in an EN. Many customers don't know they are moving into an EN when initially purchase or recent a property.
- Lack of protections for bulk hot water customers
- Complicated process to access rebates and concessions, particularly for Deemed exemption holders
- Handover process when the exemption holder changes service providers (this might be at the bulk metering point or the party engaged for end-to-end utility services)
- Body Corporate not retaining sufficient funds to maintain the network

We note [EWON's previous submission in June 2022](#) to the AER's authorisation and exemption review flags a range of examples highlighting risks and harms. In response to this question **Case studies 17, 33, 34, 38, 39 and 40** in particular are useful examples which highlight issues faced.

## Chapter 7 – Potential options under the Network Guideline

Q17 What are the risks and implications for EN service providers, prospective exempt sellers, customers and other relevant third parties if we require current deemed exemptions to be registered? How could any risks be mitigated?

We support the proposed approach to require all current and future EN service providers and exempt sellers to be registered on the AER's public registers of exemptions. Key benefit we see include:

- For Ombudsman schemes, registration will facilitate easier and faster identification of parties to a complaint and key contact information.

- Improved engagement of EN operators and owners with the AER has the potential to increase understanding of obligations and compliance with the relevant exemption requirements; one of which is membership to an EWO and addressing complaints when they arise.

EWOQ further endorses the development of a new class exemption as proposed in EWON's submission for EN operators on-selling gas (and measured with a hot water meter). We re-iterate our earlier comments that bulk hot water is an essential service and customers of gas embedded networks should benefit from the same consumer protections that other retail energy customers are entitled to, including:

- rights to access energy services and obligations to offer supply
- informed consent requirements
- dispute resolution procedures
- minimum contractual standards
- minimum requirements for billing, tariff, and payment
- protections for customers at risk of financial vulnerability
- protections for *disconnection and reconnection*.

On the flip side, EWOQ acknowledges there are some potential risks to consumers with broadened registration, particularly in small scale operations like non-profit schemes. The processes and systems required for adherence to the guideline conditions means some parties are moving away from selling energy rather to increasing rent to cover power. This has implications for some at risk customers, noting they can no longer access rebates to assist with the rising cost of living. EWOQ is currently managing such a case at present.

19 What are the risks and implications for EN service providers, prospective exempt sellers, customers and other relevant third parties if we revised the NR2 registrable network class exemption activity criteria to include prescribed customer benefits that must be met by NR2 registrable network class exemption holders? How could the risks be mitigated?

We support strengthening the conditions related to consumer protections. However, we do not support changing the AER Guidelines to provide extra benefits to customers in embedded networks, where those benefits would be greater than what can be experienced by “on-market” consumers. Changes should be about harm-minimisation and providing consistent customer protections, not increasing benefits. To that end, we do not support the option requiring future embedded networks to submit an application to the AER that demonstrates customer benefits before being permitted to register an exemption. This could create discrepancies in how embedded networks and their customers are treated, between existing and future embedded networks.

Q22 What are the risks to EN service providers, prospective exempt sellers, customers and other relevant third parties if we introduced a requirement to apply to the AER to register an NR2 network class exemption?

A modified assessment process prescribed under the Network Guideline requiring EN operators to demonstrate that the EN is consistent with the National Energy Objectives and provides additional benefits to customers is likely to be a burden on small players like your mum and dad operators - noting it's not for profit and not their core business. While this option would provide the AER with improved visibility of EN proposals, we acknowledge it would impose increased administrative costs on the AER.

Some caution is warranted so the AER can further consider change of ownership issues. Change of ownership of an EN is a regular event in Queensland. From an Ombudsman perspective, clarification is required on change of ownership of an EN in respect to the transfer of liability from the previous owner to the new owner in relation to current disputes and future disputes which relate back to the previous owner. Under the current exemptions framework, the AER has advised a person does not become subject to (and is not required to comply with) applicable exemption conditions until they hold a relevant network or retail exemption. EWOQ notes this is likely to lead to unfavourable customer outcomes (e.g. overcharging) if no recourse is available, as demonstrated in the case study below.

#### **Case example**

*EWOQ commenced an investigation against a caravan park (Operator A). An Investigation notice was issued but EWOQ was then notified that the business had been sold to new owners.*

*The investigation stopped when the Operator A was no longer the SP. We could not start another investigation, until the new owner was registered as an exempt seller or an EWOQ SP. This didn't occur until a month later. In this instance, we were dealing with a vulnerable customer, who was in severe financial hardship.*

Q25 What would be the impacts on customers, EN service providers, exempt sellers, EN managers, and other parties if we ceased granting exemptions for ENs with more than 10 residential customers?

If the AER decided to close the NR2 class developers of higher density residential apartments would need to engage with the relevant local network service provider to ensure customers are directly connected to the grid. This has the potential to increase costs and stifle other innovative approaches and benefits of shared infrastructure.

## Chapter 8 – Potential options under the Retail Guideline

Q 26 What compliance breaches should exempt sellers be required to submit to the AER, if they on-sell to residential customers?

EWOQ supports the introduction of mandatory compliance and performance reporting requirements. In our view, exempt sellers should be required to report to the AER on the following compliance breaches:

- Wrongful disconnections
- Life support
- Vulnerability - Family violence breaches (if adopted)
- Membership to relevant Ombudsman scheme
- The requirements to develop, implement, maintain, and comply with a hardship policy

We do recognise the impact implementing such requirements would impose on exempt sellers including additional administrative costs and the potential outsourcing of the on-selling of energy to authorised retailers. However, this must be balanced against the benefits which will help ensure customers that reside in ENs receive appropriate consumer protections.

Q27 What performance reporting indicators would best support the AER to identify consumer trends and inform regulatory reform for EN.

We acknowledge that authorised retailers must currently report quarterly, half yearly or on an annual basis, depending on the nature of the breach and its potential to harm customers. Failure to comply attracts penalties. We agree that placing similar obligations on exempt sellers would significantly improve the AER's ability to monitor compliance and take enforcement action.

We suggest indicators such as number of customers by type (residential, small business, large customer), life support customer numbers, residential customers who have accessed payment plans and those disconnected due to debt, as well as those on concessions/rebates should be captured.

We further support EWOSA's proposal to consider placing some reporting requirements around pricing. As suggested, this could include a pricing metric such as a comparison to the Default Market Offer price, with some guidance provided by the AER on calculations.

Q28 What would be the benefits, costs and risks to exempt sellers, and other stakeholders, if the AER were to impose compliance and/or performance reporting obligations on exempt sellers, who on-sell to residential customers?

As indicated above, EWOQ is supportive of some reporting requirements to improve transparency of outcomes in ENs and information for customers within ENS. EWOQ suggests some caution however in terms of the degree of these requirements to ensure they are not too onerous and there is an appropriate balance of risks and benefits.



Q30 Should family violence obligations be extended to exempt sellers who on-sell to residential and small business customers?

EWOQ strongly supports extending family violence obligations to exempt sellers who on-sell to residential and small business customers to ensure similar protections exist for customers experiencing family violence in ENs.

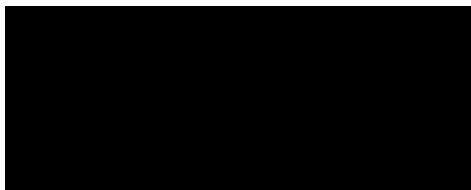
We acknowledge the difficulties this may impose on owners and operators as identified in section 8.2.1 and agree with the AER's view that any conditions placed on exempt sellers "*is reasonable and compliance is feasible*".

Q31 What obligations would, and would not be feasible, to implement?

To establish what obligations may or may not be feasible we suggest consulting with industry associations and corporate bodies. These agencies would be best placed to provide relevant guidance and advice on behalf of their constituents or members.

If you require any further information regarding this letter, please contact [REDACTED], Manager Policy and Research (EWOQ) on [REDACTED].

Yours sincerely

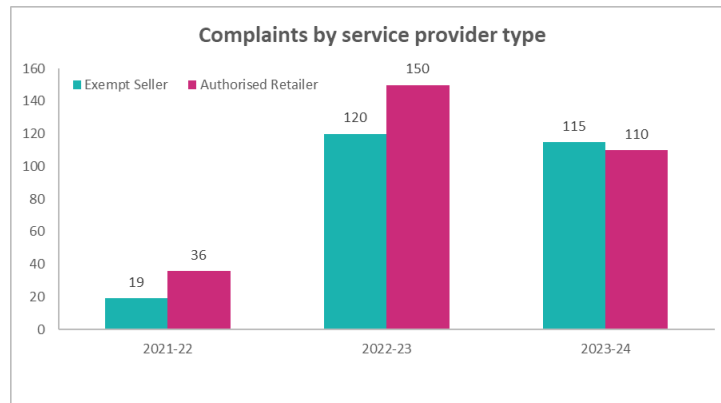


**Jane Pires**  
**Energy and Water Ombudsman**  
**Queensland**

## Attachment A

EWOQ Embedded Networks complaints data from 28 February 2022 – 31 December 2023

### (i) Closed complaints by financial year

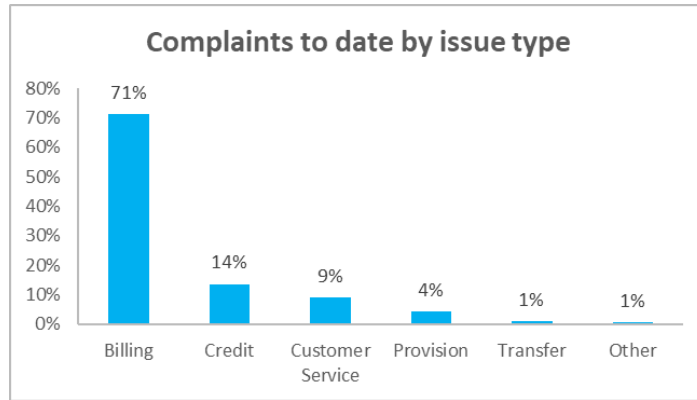


CLOSED COMPLAINTS	2021-21	2022-23	2023-24 to December
Authorised retailer complaints	36	150	110
Exempt seller complaints	19	120	115

### (ii) Case types data

CASE TYPES	2021-22	2022-23	2023-24 to December
Refer Backs	69%	56%	67%
Return to Higher Level	16%	19%	19%
Investigations	15%	24%	14%

### (iii) Top Issues



TOP ISSUES	2021-22	2022-23	2023-24 to December
Billing	58%	68%	78%
Credit	18%	16%	10%
Customer Service	15%	9%	8%
Provision	9%	4%	3%