



21 November 2013

Attention: Jacqui Thorpe
Acting General Manager, Retail Markets Branch
Australian Energy Regulator
Level 35, 360 Elizabeth Street
Melbourne 3000

Email: AERInquiry@aer.gov.au

Thank you for the opportunity to comment on the *Regulation of alternative energy sellers under the National Energy Retail Law: Issues Paper*.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. Our comments on this paper are confined to the issue of jurisdiction over disputes between customers and alternative energy sellers in NSW.

Section 96D of the *Electricity Supply Act* gives EWON jurisdiction to investigate disputes between customers and an exempt seller under the *National Energy Retail Law (NSW)* or between a person exempted from the requirement to hold a retailer authorization under the NSW Regulations¹. The exempt seller is bound by a decision of the ombudsman and must not fail to comply with any such decision.

Similarly, clause 12 of the *Electricity Supply (General) Regulation 2001* gives customers the right to apply to EWON for a review of a decision arising from any matter relating to the supply of electricity or gas by the exempt person to the customer.

We understand that EWON is the only energy ombudsman scheme with this specific jurisdiction. Exempt retailers are not members of the EWON scheme and are currently not charged for matters brought to EWON by their customers. Some years ago the EWON Board decided that as long as the number of complaints remains relatively small, the cost of dealing with complaints against exempt retailers will be shared by all the members of the scheme. This was in recognition of the difficulty of potentially compelling hundreds (or thousands) of exempt retailers to join EWON, and in managing their membership and billing them for dispute resolution services.

¹ National Energy Retail Law (NSW): s 3B



It is EWON's view that this jurisdiction was only intended to extend to those situations where the exempt seller was the primary provider of energy to the customer, for example where there is a private network within Residential Parks.

The supply of energy in the situations covered by this Issues Paper is separate and additional to this primary supply. In relation to the products and services to be offered by alternative energy sellers we consider that NSW Fair Trading would be the most appropriate complaints body. We have alerted the NSW Fair Trading Commissioner to these new energy-related business models and the potential for complaints to be directed to his office.

If these alternative sellers are granted an individual exemption under the *AER (Retail) Exempt Selling Guidelines*, we note that Condition 15 places an obligation on the exempt person to:

"advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located, if applicable."

We are concerned that the position regarding the respective jurisdictions of EWON and NSW Fair Trading is made clear to all parties.

If you would like to discuss this matter further, please contact me or Emma Keene, General Manager Policy and Community Engagement, on 02 8218 5250.

Yours sincerely

A handwritten signature in dark ink that reads "Clare Petre". The signature is written in a cursive, flowing style.

Clare Petre
Energy & Water Ombudsman NSW