

Dispute resolution for residential embedded network customers

Regulatory impact statement

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Queensland Government

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Executive Summary

Background

The term 'embedded networks' refers to privately owned infrastructure that delivers electricity to customers. The owner of a site with an embedded network usually buys energy from an energy retailer and then 'on-sells' the energy to the various customers (e.g. residents or businesses) at the site.

Current estimates for embedded networks in Queensland are as high as 1,800[1] . Embedded networks are regulated under the National Energy Retail Law (NERL) – the regulatory framework that governs the national energy retail market. Under the NERL, any person or business who sells energy to another person for use at premises must have either a retailer authorisation or a retail exemption. If a person is successful in obtaining a retail exemption, they are referred to as an 'exempt seller'. Usually, the selling of energy for an 'exempt seller' is incidental to the main activities being undertaken, as is the case with most embedded networks (e.g. the running of a caravan park).

At present, embedded network customers in Queensland do not have access to the free, independent, energy-specific dispute resolution services provided by the Energy and Water Ombudsman Queensland (Energy Ombudsman) as they have no direct relationship with an energy retailer. The energy retailer's direct relationship is with the 'exempt seller'.

Over the past few years there have been a number of reform and consultation processes addressing various issues applicable to embedded networks undertaken by the Australian Energy Market Commission and the Australian Energy Regulator (e.g. Issues Paper: Access to dispute resolution services for embedded network customers). As a result there is now a clear policy direction (supported by the Council of Australian Governments (COAG) Energy Council) that embedded network customers should be able to access the services of the Energy Ombudsman, like all other small energy customers.

Although there are existing dispute resolution mechanisms available (e.g. Queensland Civil and Administrative Tribunal (QCAT)), only the Energy Ombudsman can provide a free, energy specific, efficient, binding dispute resolution service for embedded network customers. Therefore this Consultation Regulatory Impact Statement (RIS) seeks to consider the different fee options for 'exempt sellers' if residential embedded network customers in Queensland are given access to the Energy Ombudsman.

Policy objectives

In considering different fee options the following objectives were considered:

i. ensure residential customers of embedded network 'exempt sellers' have access to free and timely energy complaint and dispute resolution services

ii. ensure the dispute resolution service provides value for money and considers an 'exempt seller's' ability to pay

iii. recognise that the delivery of the Energy Ombudsman's high quality service incurs a cost

iv. do not increase the financial burden of existing 'scheme participants'

v. do not increase the regulatory burden of 'exempt sellers', existing 'scheme participants', the Energy Ombudsman and government and

vi. support the principle of evidence-based decision making.

Policy options

When developing options for a suitable fee structure for 'exempt sellers' the following issues were considered:

- a suitable fee scheme could help to encourage and raise awareness for 'exempt sellers' to become compliant with current AER requirements regarding consumer protections

1 Cameron, Ralph, Khoury (June 2018) *Energy and Water Ombudsman Qld (EWOQ) – Outcomes of review of EWOQ: embedded network reform.*

- a suitable fee scheme would be appropriate given that any complaint the Energy Ombudsman may receive and consider about an 'exempt seller' would be centred on some aspect of the 'exempt seller's' business activities (e.g. billing practices, management of rebates and refunds, maintenance of the embedded network, etc.)
- fees would only be payable by an 'exempt seller' once a complaint had been received against them by the Energy Ombudsman, provided that complaint was not frivolous or vexatious
- legally, an 'exempt seller' may be limited in their ability to recoup costs associated with providing electricity to their embedded network customers
- an 'exempt seller' may be supplying traditionally low cost housing (e.g. caravan parks), where the profit margins for such an enterprise can be quite low and
- selling electricity is often not the primary activity of an 'exempt seller' (i.e. running a caravan park, retirement village, apartment block, etc).

The impacts of extending the existing Energy Ombudsman framework to include 'exempt sellers' were assessed as being too great financially and administratively for 'exempt sellers' and the Energy Ombudsman respectively. As a result, this option was considered to be inconsistent with policy objective (ii) and has not been included as an option in this RIS.

While the options assessed in this RIS include full cost recovery (Option 1) and capping of fees (Option 2), the recommended option (Option 3) is based on a sliding scale (see table below).

The fee framework described in Option 3 is considered the preferred approach for the following reasons:

- it reflects the serious nature of an Ombudsman investigation and goes part of the way towards covering the costs associated with such an investigation
- it reflects the 'exempt seller's' ability to pay and therefore minimises the risk that it could place them in financial hardship, or result in excessive costs being passed through to residents, for example, via increases in site rent or any other residential levy

Case types	OPTION 1 maximum price / complaint uncapped	OPTION 2 Maximum price / complaint capped	OPTION 3 Maximum price/complaint based on customer numbers				
			Up to 50	51–100	101–500	501–2,000	>2,000
General enquiry	$0	$0	$0	$0	$0	$0	$0
Referral	$0	$0	$0	$0	$0	$0	$0
Refer back	$416	$0	$0	$0	$0	$0	$0
Level 1 Investigation	$832	$400	$40	$100	$200	$300	$400
Level 2 Investigation	$1,664	$800	$80	$200	$400	$600	$800
Level 3 Investigation	$4,160	$2,000	$200	$500	$1,000	$1,500	$2,000
Final order	Applicable level when case ceased + one off fee of $4,000	Applicable level when case ceased + one off fee of $1,500	Applicable level when case ceased + one off fee of $150	Applicable level when case ceased + one off fee of $375	Applicable level when case ceased + one off fee of $750	Applicable level when case ceased + one off fee of $1,125	Applicable level when case ceased + one off fee of $1,500

- the fees relate directly to the number of customers the embedded network 'exempt seller' has, and takes into account that larger 'exempt sellers' are more likely to have a greater capacity to pay and
- the level of cross-subsidisation that may be required (by either the Energy Ombudsman or retailers) is minimal, but likely to have a bigger impact on retailers and the Energy Ombudsman than Options 1 or 2.

The department is also considering the timing of the commencement of the user-pays fee scheme. In order to be as informed as possible, the department is recommending the fee scheme be deferred for 12 months. This deferment is expected to:

- enable valuable data to be collected on complaints (types and numbers) from embedded network customers that will be used to validate some of the assumptions made in this RIS
- provide an opportunity to gain a better understanding of the Energy Ombudsman's resourcing requirements to provide dispute resolution services to embedded network customers
- lessen the potential financial impact on 'exempt sellers' in the first year and provide time for them to put in place the necessary procedures to reduce the likelihood that their customers will need the services provided by the Energy Ombudsman and
- have minimal impact on electricity retailers.

Consultation

Stakeholders are invited to make submissions in response to the questions posed in this consultation RIS. The consultation period will be open until 31 January 2020. During this period, this consultation RIS will be available on the department's website, the Get Involved website, as well as the Queensland Productivity Commission website.

You can send your comments to:

Email: Energy.Reform@dnrme.qld.gov.au

[Subject line should read: Regulatory Impact Statement – Embedded Networks]

Mail: **Regulatory Impact Statement – Embedded Networks**
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PO Box 15456
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As this is a public consultation process, the Queensland Government is committed to openness in its considerations of public policy. For this reason, written comments and submissions may be published on the department's website. Please mark clearly any comments or information you wish to be kept confidential.

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1. Introduction

The term 'embedded networks' refers to privately owned infrastructure that delivers electricity to customers. The owner of a site with an embedded network usually buys energy from an energy retailer and then 'on-sells' the energy to the various customers (e.g. residents or businesses) at the site. Current estimates for embedded networks in Queensland are as high as 1,800[2].

Examples of embedded networks include traditionally low-cost accommodation, including caravan parks, manufactured homes parks, boarding houses, aged and supported care homes, and may also include residential apartments and shopping centres[3]. For this reason, many residential customers whose electricity is supplied via an embedded network (embedded network customers) may be more vulnerable to financial hardship as a result of their energy and other household costs.

At present, embedded network customers in Queensland do not have access to the free, independent, energy-specific dispute resolution services provided by the Energy and Water Ombudsman Queensland (Energy Ombudsman)[4] as they have no direct relationship with an energy retailer (i.e. a 'scheme participant'). By contrast, an 'exempt seller', as a direct customer of a retailer, is able to access to the services of the Energy Ombudsman, provided they use less than 160 megawatt hours (MWh) per annum[5].

Although embedded network customers can seek dispute resolution assistance from the Queensland Civil and Administrative Tribunal (QCAT), as well as a range of other dispute resolution mechanisms, there can be a cost involved and decisions may not be binding. As a result, a number of consumer groups have long advocated for an extension to the Energy Ombudsman scheme to cover embedded network customers (see sections 2.4 and 5.3 for more information).

This Consultation Regulatory Impact Statement (RIS) seeks stakeholder feedback on a number of different fee options and approaches that could be applied to 'exempt sellers' in order to give residential embedded network customers in Queensland access to the Energy Ombudsman.

2. Existing arrangements for embedded networks

2.1 Regulatory framework

Embedded networks are regulated under the National Energy Retail Law (NERL) – the regulatory framework that governs the national energy retail market. Under the NERL, any person or business who sells energy to another person for use at premises must have either a retailer authorisation or a retail exemption[6] . If a person is successful in obtaining a retail exemption, they are referred to as an 'exempt seller'. Usually, the selling of energy for an 'exempt seller' is incidental to the main activities being undertaken, as is the case with most embedded networks (e.g. the running of a caravan park).

There are three types of exemption that an 'exempt seller' may obtain: 'deemed', 'registerable' and 'individual' (s110(2), NERL). 'Registered' and 'individual' exemptions must be assessed and decided by, and then registered with, the Australian Energy Regulator (AER). An 'exempt seller' who is eligible for a 'deemed' exemption does not need to apply for an exemption or be registered with the AER as long as they comply with the conditions set out in the AER's (Retail) Exempt Selling Guideline (March 2018) (the Retail Guideline).

The Retail Guideline explains how to register or apply for, a retail exemption. It also discusses the factors that the AER will consider in assessing individual exemption applications. The Retail Guideline sets out the various classes of deemed and registrable exemptions and the conditions attached to each exemption class[7].

2 Cameron, Ralph, Khoury (June 2018) *Energy and Water Ombudsman Qld (EWOQ) – Outcomes of review of EWOQ: embedded network reform.*

3 AER (Retail) Exempt Selling Guideline, version 5 (March 2018), section 2

4 This is due to the limitations set out in the *Energy and Water Ombudsman Act 2006*, i.e. 'exempt sellers' must be 'scheme participants' for the purpose of the Act.

5 As required by the *Energy and Water Ombudsman Act 2006*

6 AER (Retail) Exempt Selling Guideline, version 5 (March 2018), section 1

7 https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/retail-exempt-selling-guideline-march-2018

Embedded network customers who buy their electricity from an 'exempt seller' have similar rights and protections as customers who buy their electricity from an authorised energy retailer. These are part of the 'exemption conditions' that the 'exempt seller' must comply with in order to sell energy in an embedded network[8].

In addition, under the National Electricity Rules[9], 'exempt sellers' are also required to obtain an exemption from the requirement to be registered as a network service provider. There are three types of exemption that an 'exempt seller' may obtain: 'deemed', 'registerable' and 'individual'. 'Registered' and 'individual' exemptions must be assessed and decided by, and then registered with, the AER. Similar to the retail exemption, exemption holders must comply with the conditions set out in the AER's Network Service Provider Registration Exemption Guideline[10] (Network Guideline), which are broadly consistent with the conditions set out in the Retail Guideline.

It is also worth noting that even though the AER is the regulator and investigates instances of non-compliance with the rules, it is not a dispute resolution service.

2.2 Queensland dispute resolution mechanisms

The current dispute resolution mechanisms available to embedded network customers are summarised in Figure 1. The diagram indicates whether the dispute resolution service is provided free of charge, the types of embedded network customers who can access the service and whether decisions are binding on the parties involved in the dispute.

Across Queensland, embedded networks are growing in number and type[11]. This growth means an increasing number of electricity customers are being regulated under Queensland specific frameworks (e.g. Residential Tenancies Authority (RTA) and *Manufactured Homes* (*Residential Parks) Act 2003*) that are different to those that apply to customers who buy their electricity from an authorised energy retailer and are supplied via a standard energy network connection.

In addition, while a dispute resolution service may be free to access, in some cases the recommendation or advice given is not binding (e.g. Dispute Resolution Centre (DRC), Department of Justice and Attorney General). As a result, any decision made may not be of any real assistance to the complainant/customer.

Providing embedded network customers access to a free, energy-specific dispute resolution service such as that provided by the Energy Ombudsman should resolve many of the issues detailed above for those embedded network customers who have an energy-related complaint.

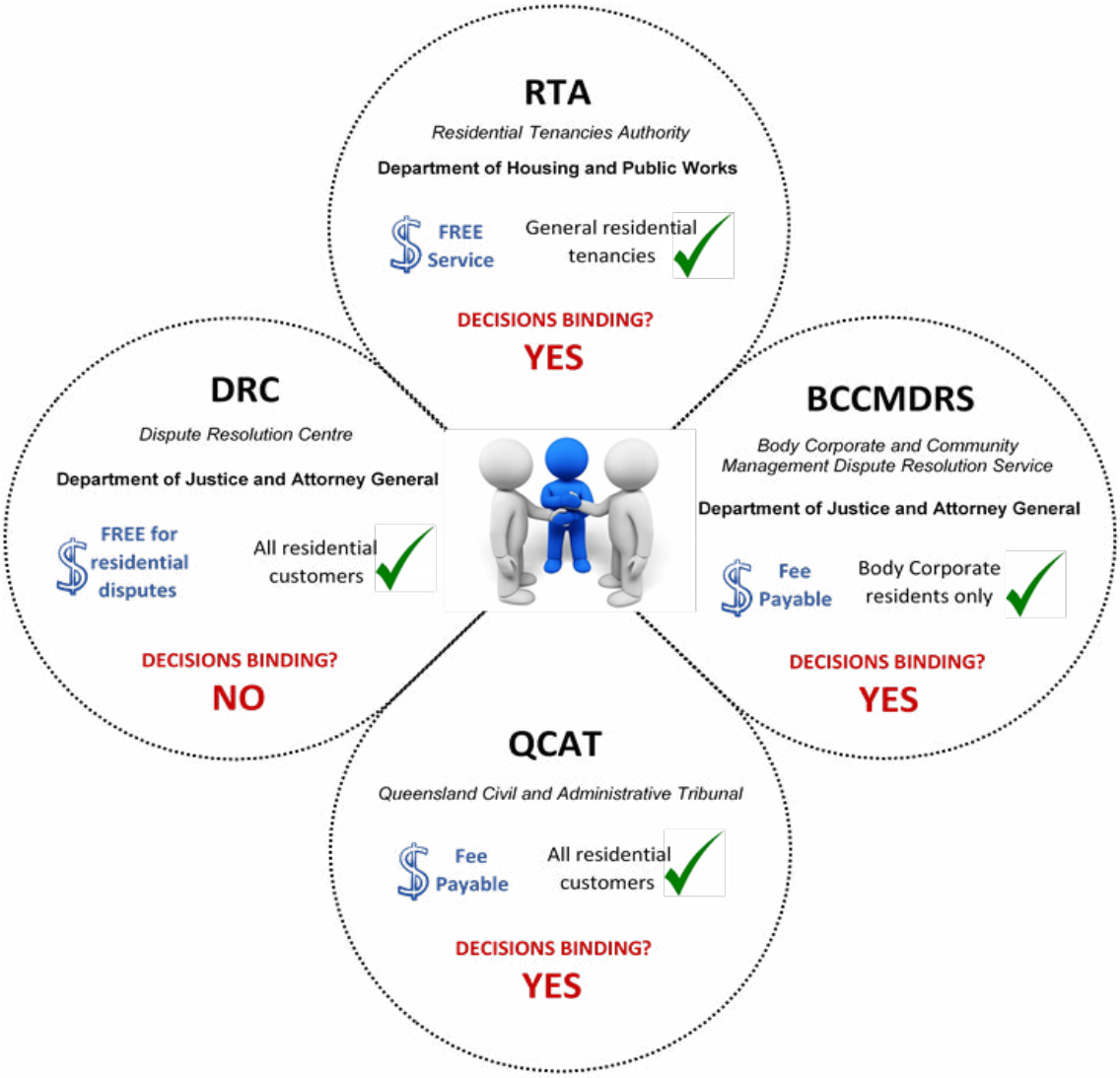
8 Refer AER website for more information on the rights and protections for embedded network customers.

9 https://www.aemc.gov.au/regulation/energy-rules/national-electricity-rules/current

10 https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/network-service-provider-registration-exemption-guideline-march-2018

11 AEMC (January 2018), Updating the Regulatory Frameworks for Embedded Networks – draft report

Figure 1: Current complaint and dispute resolution mechanisms available to embedded network customers



Questions:

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

2.3 Energy and Water Ombudsman Queensland

An Ombudsman is an independent official who represents the interests of the public by investigating and addressing complaints reported by individual citizens[12].

Following the introduction of full retail contestability in the retail electricity market on 1 July 2007, the Energy Ombudsman was established under the *Energy and Water Ombudsman Act 2006* (EWO Act) to assist residential and small business energy customers to resolve their disputes with suppliers and was expanded to cover water disputes on 1 January 2011. The EWO Act also provides for the establishment of an Advisory Council to provide independent advice to the Energy Ombudsman on a range of matters.

At present, all residential customers and all small business customers consuming up to 160 MWh per annum and who purchase their power from an energy retailer (recognised as a 'scheme participant'), have access to the Energy Ombudsman's dispute resolution services. The Energy Ombudsman also provides guidance on:

- appropriate complaint policies and procedures
- information about internal complaint and dispute resolution requirements and
- mediation and conciliation activities.

In the 2017–18 financial year, the Energy Ombudsman closed 10,211 cases, of which 7,173 were related to electricity (approximately 70 per cent). Residential customers made up 95.3 per cent of all complaints with the remainder from business and government.

Total Ombudsman income for 2017–18 was $6.282 million (including electricity complaints). Annual (participation) fees made up $199,477[13] and user-pays fees made up $6.041 million (other revenue makes up $42,612[14]). Average user-pays case fees are presented in section 5.2, Table 6. The Energy Ombudsman receives no funding from government.

Total Ombudsman expenditure for the 2017–18 financial year amounted to $6.278 million; 71.2 per cent related to employee expenses (approximately $4.472 million). The Energy Ombudsman had 45 staff during 2017–18, 13 per cent of which worked part-time.

Electricity retailers in Queensland had approximately 2.2 million small customers in 2017–18 (88 per cent of which are residential, 75 per cent in South East Queensland).

2.4 Results of previous consultation

In April 2015, the department convened a reference group of industry and consumer advocates and consulted with this group on a range of embedded network issues. Reference group members noted that current complaint and dispute resolution mechanisms are complicated and that access to the Energy Ombudsman may be more beneficial for embedded network customers in resolving issues before they escalate.

In late 2015, the department released a consultation RIS[15] to assess options to improve embedded network customer access to complaint and dispute resolution services provided by the Energy Ombudsman. Stakeholder responses were mixed with no clear position, for or against. One of the factors in relation to the case against expansion is the Energy Ombudsman's 'user-pays' structure, which works well for large electricity retailers but could be difficult to administer for multiple smaller 'exempt sellers'. Also, while the Energy Ombudsman is considered user friendly (especially for smaller customers), the existing complaint and dispute resolution mechanisms available to embedded network customers (see section 2.2) were considered adequate by some stakeholders. Other stakeholders supported

12 https://www.ewoq.com.au/about-ewoq/

13 Up to $50,000 of these participation fees is from water entities (~$10,000 per retailer and/or distributer), the remainder from energy entities (~$5,000 per retailer and/or distributer, gas and/or electricity) (EWOQ Annual Report 2017–18).

14 "EWOQ receives bank interest and is legislated to charge scheme participants interest on unpaid fees. Both of these are recognised when due." EWOQ Annual Report 2017-18, p.71.

15 Consultation RIS: On-supply customer access to energy rebates and the Energy and Water Ombudsman Queensland (November 2015)

the expansion of the Energy Ombudsman's jurisdiction as the Energy Ombudsman presents a cheaper and more efficient complaint and dispute resolution body, and consider existing complaint and dispute resolution mechanisms out of reach in terms of cost for most vulnerable embedded network customers. There was no decision RIS prepared for the 2015 consultation RIS.

In December 2016, the Australian Energy Market Commission (AEMC) began a review[16] of the regulatory arrangements for embedded networks (as outlined in the NERL and National Energy Retail Rules). The review identified that the potential still existed for embedded network customers to receive lesser consumer protections than standard supply customers. Stakeholder submissions indicated general agreement that embedded network customers should be afforded similar (if not the same) consumer protections as energy users supplied by a standard energy network connection. This should include access to an appropriate free energy specific dispute resolution service such as that provided by an energy Ombudsmen scheme. As a result, one of the key recommendations of the AEMC final report, published in November 2017, is "for jurisdictions… to work with Ombudsmen to continue to develop required changes to state instruments to increase access to energy specific, independent dispute resolution services for exempt customers [i.e. embedded network customers]".

The other added benefit of utilising Ombudsmen schemes is the potential for coordinated complaint and dispute resolution when there are multiple affected parties / interests. Appropriate fees and charges were also raised during the 2016 AEMC consultation process and it was noted that fees should match an 'exempt seller's' ability to pay.

2.5 Subsequent changes to existing arrangements

In order to improve dispute resolution arrangements for embedded network customers, the AER published an Issues Paper in June 2017 titled — Access to dispute resolution services for embedded network customers. The AER sought stakeholders' views on expanding embedded network customer access to Energy Ombudsman schemes.

After considering stakeholder submissions, the AER finalised its policy position in November 2017 and in March 2018, amended both the retail and network exemption guidelines to improve dispute resolution arrangements for embedded network customers. New and amended core exemption conditions now require '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[17]. Table 1 briefly summarises the categories of 'exempt sellers' that the new requirements apply to.

Table 1: 'Exempt seller' class types eligible for membership of the relevant Ombudsman scheme where permitted (Note: eligible membership for similar class types is contained under the Network Guideline)

Class type	Description
Deemed exemption class	
Class D2	Persons selling metered energy to fewer than ten residential customers within the limits of a site that they own, occupy or operate
Class D6	Persons selling unmetered electricity to residential customers in Queensland
Registrable exemption class	
Class R2	Persons selling metered energy to ten or more residential customers within the limits of a site that they own, occupy or operate
Class R3	Retirement villages selling metered energy to residential customers within the limits of a site that they own, occupy or operate
Class R4	Persons selling metered energy in caravan parks, residential parks and manufactured home estates to residents who principally reside there (i.e. long term residents)

(Source: AER (Retail) Exempt Selling Guideline)

16 AEMC, Review of regulatory arrangements for embedded networks

17 https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/retail-exempt-selling-guideline-march-2018

There have been many different consultation and reform processes undertaken in the past few years addressing various issues applicable to embedded networks. As there is now a clear policy direction from both the AEMC and the AER (supported by the Council of Australian Governments (COAG) Energy Council), it is an opportune time to consider how best to provide residential embedded network customers access to the free, energy-specific dispute resolution service that the Energy Ombudsman provides.

3. Potential options for extending access to the Energy Ombudsman for embedded network customers

The two options that are considered in this section are:

i. do not extend access to the Energy Ombudsman

ii. extend access to the Energy Ombudsman.

3.1 Do not extend access to the Energy Ombudsman

This option involves maintaining the status quo whereby embedded network customers are not able to access the services of the Energy Ombudsman. Table 2 outlines the predicted stakeholder impacts and opportunities of not extending access to the services of the Energy Ombudsman to embedded network customers (i.e. no change is made and the existing dispute resolution framework continues to apply).

3.2 Extend access to the Energy Ombudsman

This option involves extending access to the Energy Ombudsman for embedded network customers. The predicted stakeholder impacts and opportunities associated with this option are outlined in Table 3.

Given the predicted impacts listed in Table 2, the predicted impacts and opportunities listed in Table 3, and the clear policy direction accepted by the government and reflected in the AER (Retail) Exempt Selling Guideline (section 2.5), the department believes that maintaining the status quo is not considered a viable option and recommends that access to the Energy Ombudsman be extended to embedded network customers.

Table 2: Summary of predicted impacts for stakeholders if no change is made

Stakeholder group	Predicted impacts
Embedded network customers	Without access to the services of the Energy Ombudsman, residential embedded network customers would continue to rely on existing complaint and dispute resolution mechanisms, and will not enjoy the same access to the Ombudsman's free, energy-specific dispute resolution services that all other small and/or residential customers currently do. A key risk of this approach is that existing complaint and dispute resolution mechanism may not address disputes that can emerge from misunderstandings or simple problems (which could be quickly resolved by an energy specific complaint body) resulting in ongoing dissatisfaction by embedded network customers.
'Exempt sellers' (industry)	There are no expected impacts on 'exempt sellers'.
Electricity retailers (industry)	There are no expected impacts on electricity retailers as existing Energy Ombudsman scheme participants.
Energy Ombudsman	No impacts are expected on the Energy Ombudsman. Complaints from embedded network customers would continue to be referred to alternate dispute resolution mechanisms.
Government	If no action is taken, Queensland would potentially be the only jurisdiction that does not allow 'exempt sellers' (and therefore their customers) to be members of an Ombudsman scheme. This is inconsistent with the AER's Retail Guideline and does not meet the policy objective of ensuring residential customers of embedded network 'exempt sellers' have access to free and timely energy complaint and dispute resolution services.

Table 3: Summary of predicted impacts and opportunities on different groups if embedded network customers are given access to the Energy Ombudsman

Group	Predicted impacts and opportunities
Embedded network customers	Opportunity to access a free, energy-specific dispute resolution service that can better meet their needs and save them money by no longer using services such as QCAT. May have positive financial impacts for small customers if it assists them in resolving disputes over electricity bills or rebate delivery with their electricity suppliers. While there would be impacts for these customers seeking to bring disputes before the Energy Ombudsman, they are not considered to exceed the existing regulatory burden that exists for these customers bringing a dispute before QCAT or in using other existing dispute resolution mechanisms. The Energy Ombudsman can provide a coordinated complaint and dispute resolution service when there are multiple affected parties and/or interests.
'Exempt sellers' (industry)	Could help to encourage and raise awareness for 'exempt sellers' to become compliant with AER requirements given the advice the Energy Ombudsman could provide, and as a result complaint numbers may decrease further. Would provide further incentive for 'exempt sellers' to resolve customer disputes in the first instance rather than triggering referral to the Energy Ombudsman. The Energy Ombudsman could provide a useful support service for smaller sellers of electricity. Possibility for 'exempt sellers' to avoid potential drawn out processes relating to other dispute resolution mechanisms available to embedded network customers (e.g. QCAT). Will have to pay (in full or in part) the relevant Energy Ombudsman fee if their customers access the Energy Ombudsman's services (assuming 300 complaints, the total cost to the Energy Ombudsman has been estimated at approximately $138,000 [sections 4 and 5.4]).
Electricity retailers (industry)	No (or minimal) impacts are expected on electricity retailers, as existing Energy Ombudsman scheme participants. May have to subsidise (in part) participation of embedded network customers in the Ombudsman scheme if the fee schedule for exempt sellers is not based on full cost recovery (section 5.4). However, this amount is expected to be low and have minimal impact (if any) on retailers or their customers (section 5.5).
Energy Ombudsman	Minimal impacts on administrative processes and complaint management system requirements are expected due to the estimated low numbers of complaints (refer section 4). Additional training (e.g. covering the national and state-based regulatory frameworks) and resources for the Energy Ombudsman may be required as a result of extending coverage to embedded network customers, but it is anticipated the use of online training platforms will assist to minimise any additional cost.
Government	No direct impacts on government have been identified for this option. Possibility exists of a reduction in the workload for other government-based dispute resolution mechanisms (e.g. RTA, QCAT). Delivers access to the Energy Ombudsman for small embedded network customers in a way that is compatible with government's commitment to supporting small business (e.g. caravan park owners and other residential complexes).

The proposal to extend access to embedded network customers is also consistent with the Queensland Government's policy commitments to 'reduce community disadvantage by encouraging vibrant and prosperous communities' (The Queensland Plan: Queenslanders' 30-year vision).

The remainder of this Consultation RIS explores a range of options for establishing a suitable approach, including a fee framework, to enable embedded network customers access to the Energy Ombudsman.

Questions

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

4. Estimating the number of complaints and cost to the Energy Ombudsman

In order to develop options for extending access to the Energy Ombudsman, the department has undertaken analysis to estimate the number of complaints the Energy Ombudsman could expect to receive if residential embedded network customers are able to access their services.

The exact number of embedded network customers is unknown and a definitive number is difficult to quantify due to a lack of data. However, the department estimates that there are somewhere between 60,000 and 187,000 embedded network customers in Queensland.

The lower estimate is based on data obtained from the implementation of the 2018 Queensland Government Asset Ownership Dividend where 60,000 residential embedded network customers claimed the dividend payment[18]. This figure is also consistent with AER estimates on the average number of residents per residential site in the exemption categories presented in Table 4.

The upper estimate of 187,000 is based on the data presented in Table 5.

To determine the estimated number of complaints from embedded network customers that the Energy Ombudsman is likely to receive, the department has considered data from a range of sources, including the RTA, BCCMDRS (see Figure 1) and the Energy and Water Ombudsman New South Wales (EWON).

Anecdotal evidence provided by the RTA and the BCCMDRS suggests that the facilitation of energy related disputes concerning 'exempt sellers' is minimal, if any (e.g. 13 complaints were received from residential park customers in 2018, and two from retirement park customers: based on recent advice from the Department of Housing and Public Works). While the BCCMDRS has stated that energy related disputes are on the increase (accounting for a maximum of 5 per cent of 500 cases received in a week), it is unknown what proportion of these are related to embedded networks. Further anecdotal evidence provided by the Caravan Parks Association of Queensland suggests that it fields one to two electricity enquiries from its members each week. QCAT has only heard around 30 electricity-related matters in its minor civil disputes jurisdiction since its establishment in 2009 (mostly related to large customers).

In the absence of any detailed Queensland data, the most relevant information source is an equivalent Energy Ombudsman scheme to provide jurisdictional evidence to support these conclusions, in this case EWON.

Table 4: Estimated number of residential embedded network customers in Queensland based on exemption category

Class type	AER registered sites in Qld (June 2018)	Average number of customers per site	Total
R2 – persons selling metered energy to ten or more residential customers	602	68	40,936
R3 – retirement villages selling metered energy to residential customers	68	60	4,080
R4 – persons selling metered energy in caravan parks, residential parks and manufactured home estates to residents who principally reside there	168	80	13,440
Totals	**838**	**n/a**	**58,456**

18 Under the Queensland Government Asset Ownership Dividend, all residential embedded network customers were eligible for this payment.

Table 5: Data underpinning the maximum estimate of residential embedded network customers in Queensland

Sector	Estimated occupants	Data source	Assumptions
Flats, apartments and retirement villages	164,000	Land Titles Office Qld (246,000 lots x 66 per cent = 164,000)	Only captures retirement villages that are structured as a body corporate scheme Strata Communities Qld estimate 66 per cent of lots are likely to be part of an embedded network[19]
Caravan parks	8,933	2016 Australian Census	All caravan park residents are (likely) to be part of an embedded network, noting only those residents that are billed separately for their energy costs would be able to access EWOQ
Manufactured homes parks	14,000	Dep't of Housing & Public Works RIS 2016	All manufactured home residents are part of an embedded network (the department knows this is not the case as many have a direct relationship with a retailer)
Total estimated residential customers	**187,000**		

In New South Wales, embedded network customers have been able to access the dispute resolution services of EWON since 2015[20]. In 2017-18, EWON received 109 complaints from embedded network customers, which represents 0.5 per cent of the estimated number of embedded network customers in NSW. Applying this 0.5 per cent to the lower estimate of embedded network customers in Queensland (60,000) results in a predicted 300 complaints per year[21]. Applying the same percentage to the higher estimate (187,000) results in a predicted 935 complaints per year. However, the department believes the high range (935) is likely to be overstated and not realistic because:

- not all of the 187,000 customers will be supplied electricity via an embedded network (e.g. some apartment blocks and manufactured home parks are not embedded networks and in recent advice provided by Caravanning Queensland, they estimate that a little over 100 out of their 339 members are embedded networks[22])
- generous pricing protections in Queensland ensure embedded network customers receive the benefit of any bulk pricing discounts, and therefore billing disputes, which make up 51 per cent of total complaints raised with the Energy Ombudsman (2017–18 Annual Report), are less likely to be raised by embedded network customers and
- some embedded network customers, particularly those who rent, are likely to be dis-incentivised to make a complaint for fear of reprisal from their 'exempt seller'.

19 AEMC, Review of regulatory arrangements for embedded networks.

20 However, EWON have only been able to legally compel embedded network customers' energy providers to work with EWON to resolve disputes / complaints since 1 July 2018 (Ref: EWON 2017-2018 Annual Report).

21 Please note that this figure is less than the figure from the 2015 RIS (~1,600) due to an improvement in the quality and quantity of data that is now available.

22 Official correspondence from Caravanning Queensland, dated July 2018.

The lower range of predicted embedded network customer complaints is also supported by recent data collected by the Energy Ombudsman. In the 2017–18 financial year, the Energy Ombudsman received 160 queries / complaints relating to embedded networks[23], which had to be referred to other agencies given the current limitations of the Energy Ombudsman's jurisdiction.

Questions

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

Based on the expected complaint numbers a cost to the Energy Ombudsman can be estimated.

In order to cover all the potential costs incurred by the Energy Ombudsman in managing a single complaint received from an embedded network customer (including staff pay, resourcing and overheads), a maximum hourly rate of $200 per hour has been calculated. This figure is based on data contained in the Energy Ombudsman's 2017–18 annual report[24]. However, the approach used to develop an hourly rate for embedded network complaints differs from the way in which the Energy Ombudsman calculates scheme participant fees, and therefore cannot be applied to the existing fee framework.

Using this maximum hourly rate ($200/hour), complaint ratios stated in the Energy Ombudsman's annual report, and the maximum amount of time each case type (see Table 6 for more information) can take[25] it has been calculated that addressing 300 complaints could potentially cost the Energy Ombudsman approximately $138,000[26]. If this cost was to be passed to retailers, initial estimates suggest that energy consumer bills may increase by approximately 6 cents[27] per customer per year.

5. Establishing a suitable fee framework for 'exempt sellers'

5.1 Policy objectives

The following options for establishing a suitable framework to extend access to the Energy Ombudsman for residential embedded network customers, seek to balance the following policy objectives:

i. ensure residential customers of embedded network 'exempt sellers' have access to free and timely energy complaint and dispute resolution services

ii. ensure the dispute resolution service provides value for money and considers an 'exempt seller's' ability to pay

iii. recognise that the delivery of the Energy Ombudsman's high quality service incurs a cost

iv. do not increase the financial burden of existing 'scheme participants'

v. do not increase the regulatory burden of 'exempt sellers', existing 'scheme participants', the Energy Ombudsman and government and

vi. support the principle of evidence-based decision making.

23 Data provided by the Energy Ombudsman to the department as a part of a special data request.

24 Approximate hourly rate = total expenses / (maximum time taken per case type multiplied by number of cases). Figures used were sourced from the 2017-18 EWOQ Annual Report.

25 Energy and Water Ombudsman (February 2019), Scheme participant manual.

26 Total cost = $200/hour multiplied by (per cent proportion of complaint/case type multiplied by maximum amount of time each case type may take). Maximum times, including handling the complaint, and associated processing and record management activities (and relative per cent proportion): general enquiry <15 minutes (14 per cent), referrals <15 minutes (16 per cent), refer backs 2 hour (48 per cent), level 1 investigations 4 hours (16 per cent), level 2 investigations 8 hours (5 per cent), Level 3 investigations 20 hours (1 per cent).

If the Energy Ombudsman was to receive 935 complaints (albeit highly unlikely) it could cost the Energy Ombudsman approximately $430,000.

27 Spread out over retailers' customer base (section 2.3). This estimate increases to 18 cents per customer per year if the complaint range of 935 is used.

5.2 Applying the existing Energy Ombudsman fee structure to 'exempt sellers'

One option could be to simply apply the existing fee framework that the Energy Ombudsman uses for scheme participants (i.e. energy retailers).

The Energy Ombudsman currently receives no funding from the Queensland Government. Rather, it receives funding through participation (or membership) and user-pays fees. Once the Energy Ombudsman's budget for each financial year is approved by the Minister administering the EWO Act, funds can be collected from scheme participants.

Current participants providing connection and/or retail services to small customers pay a $5,000 per year participation (membership) fee. This fee is prescribed by the EWO Act.

User-pays fees are currently collected from participants in advance of each financial quarter and are based on complaint / dispute numbers from the previous quarter (i.e. for every complaint the Energy Ombudsman receives, the retailer must pay the appropriate fee). For embedded networks it would be the 'exempt seller' who pays this fee, not the 'exempt seller's' energy retailer.

User-pays fees vary depending on the level of investigation (or effort) required to resolve a given complaint / dispute (the more complicated the case, the higher the fees). Discrepancies between the two figures (pre and post financial quarter) are reconciled quarterly. Table 6 describes the **average** cost of each case type (user-pays fees) for 2017–18 across all sectors that the Energy Ombudsman deals with (electricity, gas and water).

Table 7 details the potential impacts that applying the current Energy Ombudsman fee structure to 'exempt sellers' may have on stakeholders. In addition, no specific impacts on competition have been identified if the current Energy Ombudsman fee structure is applied to 'exempt sellers'.

Table 6: Summary of all Energy Ombudsman case types, descriptions and average cost per case type[28] (electricity, gas and water)

Case types	Case description	User fees (average cost per case type)
General Enquiry	An enquiry received about electricity, water, gas or other issue that is not a complaint which relates to a scheme participant.	$0
Referral	An enquiry is referred to another organisation with whom the Energy Ombudsman has an agreement because the complaint is outside the Energy Ombudsman's jurisdiction.	$0
Refer Back	The matter is referred back to the scheme participant for action.	$298
Refer back to higher level	The matter is referred to a higher level within the scheme participant's organisation.	$685
Level 1 Investigation	Energy Ombudsman staff commence investigation and matter is resolved within four hours.	$1,363
Level 2 Investigation	Energy Ombudsman staff spend in excess of four hours but not more than eight hours on the matter, or the participant has not provided timely or adequate responses or breaches section 32 of the EWO Act.	$3,006
Level 3 Investigation	Energy Ombudsman staff spend in excess of eight hours on the matter, or the participant has not provided timely or adequate responses or breaches section 32 of the EWO Act.	$4,146
Final order	If a matter cannot be resolved, the Energy Ombudsman may consider the matter and either make a binding order against the 'scheme participant' or dismiss it. A matter can be referred to this level from any other level in the investigation process.	Applicable level when case ceased + one off fee of $4,500

28 Figures presented in the table are based on data and information sourced from the Energy and Water Ombudsman Queensland Annual Report 2017-18 (total numbers of case types – Figure 1, versus total revenue received – Table 18) for each case type.

Table 7: Summary of predicted impacts if existing Energy Ombudsman fee structure is applied

Stakeholder group	Predicted impacts
Embedded network customers	This option may result in impacts if their 'exempt seller' seeks to recover any Ombudsman-related costs (e.g. through site or other fees that are not energy-specific).
'Exempt sellers' (industry)	This option could see 'exempt sellers' potentially pay the same annual and user fees as Tier 1 energy retailers, even though some of these 'exempt sellers' (such as body corporates) have limited ability to recover these costs. This (rightly) could be seen as disproportionate, unfair and therefore inconsistent with the NERL. It also doesn't meet the following policy objectives (section 5.1): ii. Ensuring the service provided is value for money and considers 'exempt sellers' ability to pay. v. Does not increase the regulatory burden of 'exempt sellers', existing 'scheme participants', the Energy Ombudsman and government.
Electricity retailers (industry)	Minimal impacts are expected on electricity retailers as existing Energy Ombudsman scheme participants. There would be no cross-subsidisation by retailers for 'exempt sellers'.
Energy Ombudsman	If the administrative burden in managing 'exempt sellers' is sufficiently large it may start impacting on the Energy Ombudsman's capacity to deliver an efficient and effective service to existing 'scheme participants' if the Energy Ombudsman does not also have access to the additional resources required to successfully address the increase in administrative workload. It may also result in unnecessary regulatory burden for the Energy Ombudsman if faced with compliance issues around non-payment of mandatory annual fees.
Government	An increase in administrative burden may result if the Energy Ombudsman requires assistance from the department to deliver their complaint and dispute resolution service (e.g. financial assistance).

Given the overall expense of the current fee structure for 'scheme participants' (i.e. $5,000 participant fee plus user-pays fees – **average** costs set out in Table 6), the department does not recommend the use of the current framework for 'exempt sellers'. Applying the current framework does not take account of the regulatory limitations placed on some 'exempt sellers' (such as owners of manufactured home parks and caravan parks) which restricts their ability to recover these costs and could be seen as disproportionate and unfair. The department therefore considers this option to be inconsistent with policy objective (ii) – *ensure the dispute resolution service provides value for money and considers an 'exempt seller's' ability to pay* – and is not recommended.

5.3 Establishing a more suitable approach for 'exempt sellers'

While the current Energy Ombudsman fee structure is not recommended for 'exempt sellers' (section 5.2), this does not preclude considering a more suitable fee structure for 'exempt sellers' given the benefits for 'exempt sellers' and their customers.

For instance, a suitable fee scheme could help to encourage and raise awareness for 'exempt sellers' to become compliant with current AER requirements regarding consumer protections. A fee scheme would also be appropriate given that any complaint the Energy Ombudsman may receive and consider about an 'exempt seller' would be centred on some aspect of the 'exempt seller's' business activity (e.g. billing practices, management of rebates and refunds, maintenance of the embedded network, etc.). However, there are other considerations that must also be taken into account.

Pricing protections exist in Queensland with a number of pieces of legislation limiting what fees and charges 'exempt sellers' can pass through to their customers as part of their energy bill.[29] Any fee scheme for 'exempt sellers' must therefore recognise that their capacity to pay may be limited, for example:

- legally an 'exempt seller' may be limited in their ability to recoup costs associated with providing electricity to their embedded network customers[30]

  … section 99A(2) of the MHRP Act states that the park owner must not charge the home owner, or arrange for the home owner to be

29 Body Corporate and Community Management Regulation 2008, *Manufactured Homes (Residential Parks) Act 2003, Residential Tenancies and Rooming Accommodation Act 2008, Electricity Act 1994*.

30 Section 99A, *Manufactured Homes (Residential Parks) Act 2003* (MHRP Act)

charged, an amount for the use of a utility that is more than the amount charged by the relevant supply entity for the quantity of the service supplied to, or used at, the site…

… section 167(2) of the Body Corporate and Community Management (Accommodation Module) Regulation 2008 states that the body corporate may, by agreement with a person for whom services are supplied, charge for the services (including for the installation of, and the maintenance and other operating costs associated with, utility infrastructure for the services), but only to the extent necessary for reimbursing the body corporate for supplying the services…

- an 'exempt seller' may be supplying traditionally low cost housing (e.g. caravan parks), where the profit margins for such an enterprise can be quite low

  …our sector has been defined as Residential Parks. Our representation is largely those mixed-use parks, which is parks that cater to both the tourist sector as well as offering permanent sites. The on-supply of electricity in these mixed-use parks is an incidental part of our member's business which they do not act to profit[31].

  The type of accommodations that are generally set up as on-supply [embedded network] *arrangements include retirement villages, apartment complexes, social housing, caravan parks and boarding houses. Residents of these accommodations are frequently people on low incomes who may be vulnerable and have less opportunity to exercise choice about where they live. This means it is unlikely that these customers have actively chosen to receive their energy via an on-supply arrangement – rather, that is simply the arrangement in place at the accommodation option they could afford and was available to them*[32].

- selling electricity is often not the primary activity of the 'exempt seller' (i.e. running caravan parks, retirement villages (including gated communities), apartment blocks, etc.).

The department therefore considers that the current user-pays fees collected from scheme participants are not appropriate for 'exempt sellers' and would likely cause significant financial hardship for some, particularly given many 'exempt sellers' are prevented by legislation from passing these costs onto their residents via energy bills.

In addition, given the expected low numbers of complaints that the Energy Ombudsman could expect to receive (see section 4), the department does not consider it reasonable for all embedded network 'exempt sellers' to be subject to mandatory paid scheme participation. In particular, the department does not consider there is a sound policy rationale for enforcing paid membership for all 'exempt sellers', who may never have a complaint made against them.

Further, requiring all 'exempt sellers' in Queensland (of which estimates are as high as 1,800[33]) to pay a mandatory membership fee is likely to be administratively onerous for the Energy Ombudsman. This could impact the Energy Ombudsman's capacity to deliver an efficient and effective service to existing 'scheme participants', especially if the Energy Ombudsman does not have access to the additional resources required to successfully address the increase in workload.

The previous Energy Ombudsman also recognised that a fixed participation (membership) fee "*will not be appropriate for some small on-suppliers (especially 'exempt sellers') given their size and likely use of the scheme*"[34].

As an alternative, the department proposes to amend the EWO Act to enable all residential 'exempt sellers' to be automatically deemed to be scheme participants, thereby giving all residential embedded network customers access to the services of the Energy Ombudsman. However, it is not proposed to require 'exempt sellers' to pay an annual membership fee given their limited capacity to recover this cost and the estimated low number of complaints likely to be received.

31 Caravan Parks Association of Queensland Ltd (CPAQ), 28 January 2016, *Submission to Regulatory Impact Statement: On-supply customer access to energy rebates and the Energy and Water Ombudsman Queensland*.

32 Queensland Council of Social Service (QCOSS), January 2016, *Submission to Regulatory Impact Statement: On-supply customer access to energy rebates and the Energy and Water Ombudsman Queensland*.

33 Cameron, Ralph, Khoury (June 2018) *Energy and Water Ombudsman Qld (EWOQ) – Outcomes of review of EWOQ: embedded network reform*.

34 Energy and Water Ombudsman Queensland, 18 December 2015, *Submission to Regulatory Impact Statement: On-supply customer access to energy rebates and the Energy and Water Ombudsman Queensland*.

In this way, any user-pays fees related to the Ombudsman scheme would only be required to be paid by an 'exempt seller' once the Energy Ombudsman receives a valid complaint. This approach will reward those sellers who are operating in a way that meets the needs and standards of their customers and meets one of the key policy objectives of minimising administrative costs for both the Energy Ombudsman and 'exempt sellers'.

Given this and the issues discussed above, the department believes that 'exempt sellers' should not be required to pay an annual participation (membership) fee in order to give their customers access the Energy Ombudsman's services. However, consideration should be given to the establishment of a suitable user-pays fee framework (to cover actual work undertaken by the Energy Ombudsman in responding to complaints). Potential options are discussed in more detail in section 5.4.

Questions

5. Do you agree with the proposal for all residential 'exempt sellers' to be automatically deemed to be Energy Ombudsman scheme participants?
6. Do you agree with the proposal not to require 'exempt sellers' to pay an annual participation (membership) fee? If not, please explain why.

5.4 Options for establishing a user-pays fee scheme

In developing options for a user-pays fee scheme for 'exempt sellers', the department has considered the policy objectives (refer section 5.1, in particular an 'exempt seller's' capacity to pay (objective (ii)).

The department also considers that while an 'exempt seller's' capacity to pay must be considered, so too efforts must be made to limit cross-subsidisation by existing scheme participants, particularly given any subsidisation would eventually be borne by the remainder of the Queensland energy customer base. However, while cross-subsidisation of 'exempt seller' fees is not desirable (and every effort should be taken to not increase the financial burden of Queensland energy customers), the proposed options seek to minimise any potential cross subsidisation (see section 4).

In addition, the Energy Ombudsman's existing administrative process and complaint management systems are, in the department's opinion, sufficient to cater for the relatively small number of complaints expected to be received from embedded network customers annually (i.e. 300–935, section 4). According to figures presented in the Energy Ombudsman's 2017–18 annual report[35], the Energy Ombudsman received 10,329 cases in 2017–18 and closed 10,211[36] cases with a workforce of 45 staff members (of which 13 per cent work part-time).

When considering options for a user-pays fee framework, the department is also cognisant of the potential for any proposed fee structure to provide a potential disincentive for 'exempt sellers', encouraging them to make every effort to satisfactorily resolve customer disputes in the first instance rather than triggering referral to the Energy Ombudsman (thereby incurring additional expense).

In determining the relevant case types, the department considers that seven of the eight Energy Ombudsman case types are applicable to embedded network customers, and for which user-pays fees would need to be established. The full list of case types are described in Table 6. The 'refer to higher level' case type is not considered relevant for embedded network customers. Given the nature of many (if not most) embedded networks, and their relatively small corporate structure (especially when compared with a large energy retailer), this case type is likely to be redundant as there is, in all likelihood, no higher management level to refer a case to.

35 Energy and Water Ombudsman Queensland, Annual Report 2017–18.

36 8,838 of these related to energy.

Based on the estimated cost to the Energy Ombudsman (section 4), the following three user-pays fee options have been developed for each applicable case type for embedded network 'exempt sellers':

1. maximum price per complaint applying full cost recovery fees
2. maximum price per complaint based on capped fees (less than full cost recovery) and
3. maximum price per complaint based on a sliding scale that relates to the number of customers that the embedded network 'exempt seller' has (less than full cost recovery).

The proposed fees for each case type under **Option 1** are outlined in Table 8. These fees have been set to fully recover the cost of each case type (i.e. the estimated cost of energy-specific complaints and the approximate, maximum length of time each case type takes to process, as stated in the Energy Ombudsman's annual reports). A maximum length of time was chosen, instead of an average, so that a 'worst-case scenario' could be presented for consideration. A worst-case scenario was chosen because given the lack of information about the key concerns for embedded network customers there is no way of knowing exactly whether the average time per case type for embedded network customers will be the same as for other residential electricity customers, and average times cannot be calculated as case revenues are reported on across the entire Ombudsman's business (electricity, water and gas)[37].

In order to make fees more affordable, **Option 2** proposes to cap the fees while still reflecting the serious nature of an Ombudsman investigation. The proposed capped fees are approximately 50 per cent of the full cost recovery fees and are also outlined in Table 8.

Under **Option 3**, the maximum fees are set on a sliding scale based on customer numbers (see Table 8), similar to the approach taken by EWON.

When considering the proposed fees outlined in Table 8, it should be noted that there have been no 'Final Orders' issued by the Energy Ombudsman for the past three financial years[38], and the majority of embedded network-related case types that the Energy Ombudsman is expected to receive are 'Refer Backs' (i.e. almost half), for which there would be no fee under Options 2 and 3[39].

37 Please note that if the complaint takes less than the maximum time, the resultant fee will also be less.

38 Energy and Water Ombudsman Queensland, Annual Report 2017–18

39 Based on data from Energy and Water Ombudsman Queensland, Annual Report 2017–18.

Table 8: Options for the proposed user-pays fee scheme

Case Types	OPTION 1 maximum price / complaint uncapped	OPTION 2 Maximum price / complaint capped	OPTION 3 [40] Maximum price/complaint based on customer numbers				
			Up to 50	51–100	101–500	501–2,000	>2,000
General enquiry	$0	$0	$0	$0	$0	$0	$0
Referral	$0	$0	$0	$0	$0	$0	$0
Refer back	$416	$0	$0	$0	$0	$0	$0
Level 1 Investigation	$832	$400	$40	$100	$200	$300	$400
Level 2 Investigation	$1,664	$800	$80	$200	$400	$600	$800
Level 3 Investigation	$4,160	$2,000	$200	$500	$1,000	$1,500	$2,000
Final order	Applicable level when case ceased + one off fee of $4,000	Applicable level when case ceased + one off fee of $1,500	Applicable level when case ceased + one off fee of $150	Applicable level when case ceased + one off fee of $375	Applicable level when case ceased + one off fee of $750	Applicable level when case ceased + one off fee of $1,125	Applicable level when case ceased + one off fee of $1,500

5.5 Analysis of options for a user-pays fee scheme

Table 9 indicates how well the proposed user-pays fee options meet the stated policy objectives (refer section 5.1).

Table 9: Analysis matrix of user-pays fee options against policy objectives

Policy objectives		Option 1	Option 2	Option 3
(i)	Ensure residential customers of embedded network 'exempt sellers' have access to free and timely energy complaint and dispute resolution services.			
(ii)	Ensure the dispute resolution service provides value for money and considers an 'exempt seller's' ability to pay.			
(iii)	Recognise that the delivery of the Energy Ombudsman's high quality service incurs a cost.			
(iv)	Does not increase the financial burden of existing 'scheme participants'.			
(v)	Does not increase the regulatory burden of 'exempt sellers', existing 'scheme participants', the Energy Ombudsman and government[41].			
(vi)	Supports the principle of evidence-based decision making.			

Achieves policy objective	Partially meets policy objective	Does not meet policy objective

40 The Option 3 sliding scale has 100 per cent cost recovery for the 'exempt sellers' with large customer numbers (>2,000) and at 10 per cent of full cost recovery figure for the 'exempt sellers' with small customer numbers (up to 50). This approach is attempting to strike a balance between charging an appropriate fee and the ability of the 'exempt sellers' to pay.

41 The preferred option will not result in an increase in regulatory burden due to the utilisation of the existing processes of the Energy Ombudsman and by having the complaint framework only apply to those 'exempt sellers' who have a complaint made against them. Given the expected low numbers of complaints and the predicted total number of 'exempt sellers', the expectation is that the impact overall will be negligible.

Table 10 details the potential impacts that the user-pays fee options may have on stakeholders, including embedded network customers, 'exempt sellers' and retailers. No specific restrictions on competition have been identified with any of the options presented in Table 8 and assessed in Table 10.

Table 10: Summary of predicted impacts for user-pays fee options

Stakeholder group	Predicted impacts
Embedded network customers	There may be an impact on customers associated with Option 1 if their electricity suppliers seek to recover any additional costs from them (e.g. through site or other fees that are not energy-specific). This impact should be mitigated by either capping the fees (Option 2) or more so by applying a sliding fee scale (Option 3), as the expense to the 'exempt seller' is lowered.
'Exempt sellers' (industry)	The application of the fees set in Option 1 may result in 'exempt sellers' experiencing financial hardship if they have a complaint made against them as they may not be in a position to easily recover any fees. The department considers the fees under Option 1 are unreasonable given an 'exempt seller's' limited capacity to recover these costs. This impact should be mitigated by either capping the fees (Option 2) or more so by applying a sliding fee scale (Option 3). Option 3 is considered preferable given that larger 'exempt sellers' are likely to have a greater capacity to pay for the services an Ombudsman can provide and a smaller 'exempt seller' could be very hard pressed to recover any sort of expense (section 5.3). Larger 'exempt sellers' may also have more of an opportunity to have complaints 'bundled' by the Energy Ombudsman in the event that a number of similar or the same complaints are raised by their embedded network customers. There may be some regulatory duplication for those 'exempt sellers' who have a complaint made against them to the Energy Ombudsman. This will not be the case for those 'exempt sellers' who have no complaints made against them.
Electricity retailers (industry)	No financial impacts are expected if Option 1 is adopted as full costs are borne by the 'exempt seller'. However, minimal impacts are still expected if Options 2 or 3 are adopted as cross-subsidisation may occur. The level of cross-subsidisation required would depend on the Energy Ombudsman's ability to absorb these costs without negatively impacting on their ability to deliver their services, but is estimated to be between 5-6 cents per year per customer (assuming 300 complaints).
Energy Ombudsman	No financial impacts are expected if Option 1 is adopted, as the fees are set for full cost recovery. Minimal financial impacts (if any) are expected if Options 2 or 3 are adopted due to the estimated low numbers of probable complaints. The minimum estimated cost to the Energy Ombudsman (which may result in minor cross-subsidisation by retailers) is around $100,000 for Option 2 and $100,000[42] to $135,000[43] for Option 3[44] (assuming 300 complaints).
Government	No impacts on government are expected for any option.

At this stage, given the amount of information available and the analysis against the policy objectives, **Option 3** (price per complaint based on a sliding scale that relates to the number of customers that the embedded network 'exempt seller' has) is the preferred option.

Questions

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

42 Option 3 cross-subsidisation amount if all complaints are from customers of larger scale 'exempt sellers' (›2,000 customers).

43 Option 3 cross-subsidisation amount if all complaints are from customers of smaller scale 'exempt sellers' (up to 50 customers).

44 Note that if the expected complaint rate is at the higher end (935), the cost to the Energy Ombudsman is estimated to be $313,000 for Option 2 and $313,000-$419,000 for Option 3. However, please note, for the reasons stated in section 4, the department believes that the lower estimates (included in Table 10) are far more likely.
Formula used: Cost to the Energy Ombudsman = Revenue raised from full cost recovery – revenue raised by option [stated fee per case type multiplied by ratio of predicted case numbers]

5.6 Timing of commencement of a user-pays fee scheme

As noted above, the department proposes to implement a user-pays fee scheme for 'exempt sellers' that is structured around a sliding scale based on the number of customers the 'exempt seller' has (refer Option 3 in section 5.4).

In relation to the timing of the commencement of the user-pays fee scheme, there are two potential approaches being considered as part of this Consultation RIS:

i. extend access to the Energy Ombudsman for residential embedded network customers but defer commencement of the fee scheme for at least 12 months to allow time for data collection on actual complaint numbers and dispute types or

ii. commence the fee scheme from the day embedded network customers are given access to the services of the Energy Ombudsman (i.e. no delay).

Deferral of the fee scheme will still ensure all embedded network customers have access to a free, energy-specific dispute resolution service such as that provided by the Energy Ombudsman. It will also enable the Energy Ombudsman to collect sufficient data to be able to determine whether or not the inclusion of embedded network customers will have a longer-term resourcing impact on the Energy Ombudsman and therefore support the introduction of the preferred fee approach (i.e. Option 3). Data collected during the 12 months will help inform the final fee structure to be implemented.

In addition, this approach will lessen the potential financial impact on 'exempt sellers' in the first year and provide time for them to get the necessary procedures in place that will reduce the likelihood that their customers will need the services provided by the Energy Ombudsman. This approach is also expected to have minimal impacts on electricity retailers.

Table 11 shows how well the two implementation options meet the policy objectives (referred to in section 5.1).

Delaying the implementation of the fee scheme for at least 12 months meets the majority of the policy objectives, compared to an immediate commencement of the fee scheme. Given this, and the issues discussed above, the department's preferred approach is to delay the implementation of the fee scheme for at least 12 months to allow for data collection and to ensure the fees are appropriate.

Questions

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 Ombudsman services before fees are payable?

Table 11: Analysis matrix of options against policy objectives

Policy objectives		Minimum 12 month delay	No delay
(i)	Ensure residential customers of embedded network 'exempt sellers' have access to free and timely energy complaint and dispute resolution services.		
(ii)	Ensure the dispute resolution service provides value for money and considers an 'exempt seller's' ability to pay.		
(iii)	Recognise that the delivery of the Energy Ombudsman's high quality service incurs a cost.		
(iv)	Does not increase the financial burden of existing 'scheme participants'.		
(v)	Does not increase the regulatory burden of 'exempt sellers', existing 'scheme participants', the Energy Ombudsman and government.		
(vi)	Supports the principle of evidence-based decision making.		

Achieves policy objective	Partially meets policy objective	Does not meet policy objective

6. Conclusion and recommended options

At this stage, given the amount of information available and the analysis against the policy objectives (section 5.5), the department considers Option 3 is more closely aligned to the six policy objectives, compared to Options 1 and 2 and recommends that:

- residential embedded network customers in Queensland be allowed access to the services of the Energy Ombudsman, with 'exempt sellers' (who use less than 160 MWh per annum) automatically deemed to be 'scheme participants'
- the Energy Ombudsman establish a 'user-pays' fee structure for 'exempt sellers', which consists of a price per complaint based on a sliding scale that relates to the number of customers the 'exempt seller' has
- the application of these user-pays fees be delayed for at least 12 months and
- there should be no annual membership fee for 'exempt sellers'.

Implementing these options:

- ensures all embedded network customers have access to a free, energy-specific dispute resolution service such as that provided by the Energy Ombudsman
- lessens the potential financial impact on 'exempt sellers' and provides time for them to get the necessary internal procedures in place to reduce the likelihood that their customers will need the services provided by the Energy Ombudsman
- gives the Energy Ombudsman time to collect sufficient data to be able to determine whether the inclusion of embedded network customers will have any longer-term resourcing impacts on the Energy Ombudsman and therefore support the introduction of the preferred fee approach and
- is expected to have minimal impacts on electricity retailers and the government.

7. Implementation and evaluation strategies

The following strategies are proposed as a part of implementing and evaluating the preferred option of this consultation RIS.

7.1 Implementation strategies

Implementation would occur in two stages, through:

i. amendments to the Energy Ombudsman legislation to allow embedded network customers to access the Energy Ombudsman's services and

ii. information campaign aiming to educate and inform embedded network users of the Energy Ombudsman scheme.

Stage 1 would involve amendment to the EWO Regulation to enable customers of embedded networks access to the Energy Ombudsman scheme in the most cost effective and efficient way possible. The specific details of the amendments would be consulted upon with the Energy Ombudsman.

It is anticipated that Stage 2 would involve the development of material that would assist customers using embedded networks in understanding the Energy Ombudsman functions, what the Energy Ombudsman can do to help and how embedded network customers can access it.

7.2 Evaluation strategies

Evaluation would be ongoing, based on monitoring of indicators such as the number of embedded network customers accessing the Energy Ombudsman complaint and dispute resolution services, costs to 'exempt sellers' and/or retailers (depending on preferred option) and complaint and dispute outcomes.

Evaluation will be done using a number of different measures that relate to the policy objectives listed in section 5.1. Table 12 lists the policy objectives, proposed measures, and other steps required for successful implementation.

Table 12: Evaluating proposal success: policy objectives, proposed measures and implementation steps

Policy objectives		Proposed Measures	Implementation
(i)	Ensure residential customers of embedded network 'exempt sellers' have access to free and timely energy complaint and dispute resolution services.	Number of embedded network customers who access the Energy Ombudsman	Ensure the Energy Ombudsman collects this data. *If complaint numbers exceed 300 and move towards 935 (albeit unlikely) within the fee-free trial period, the department will work with the Energy Ombudsman and key stakeholders to determine the best way forward, including whether the trial period should be suspended.*
(ii)	Ensure the dispute resolution service provides value for money and considers an 'exempt seller's' ability to pay.	Indication of whether fees set provide value for money	Seek feedback from 'exempt sellers' on value for money once fees become payable.
(iii)	Recognise that the delivery of the Energy Ombudsman's high quality service incurs a cost	Fees set	Seek feedback from the Energy Ombudsman to confirm the fees are sufficient to cover their costs.
(iv)	Does not increase the financial burden of existing 'scheme participants'.	Fees set	Existing 'scheme participants' do not note an increase in their Ombudsman fees as a result of embedded network customers accessing the Energy Ombudsman.
(v)	Does not increase the regulatory burden of 'exempt sellers', existing 'scheme participants', the Energy Ombudsman and government.	Regulatory requirements do not increase	Regulation is a consideration of the Queensland Energy Legislation Review.
(vi)	Supports the principle of evidence-based decision making	Decision based on clear evidence	Documentation of evidence used to support decisions made.

8. Have your say

The department values the input of stakeholders in developing this proposal.

Interested parties can access and respond to this consultation RIS via the department's website at www.dnrme.qld.gov.au, the Get Involved website, and the Queensland Productivity Commission website. Submissions close on 31 January 2020. The department will take account of all submissions received by the due date.

Stakeholder feedback is critical to ensuring that the regulatory framework reflects the extensive knowledge, skills and experience of key interested parties throughout Queensland. In addressing the questions raised throughout this document, the department encourages stakeholder feedback on all issues relevant to the identified sets of options (including costs and benefits both quantitative and qualitative in nature).

The government will continue to work with other state agencies, local councils and stakeholder groups, and consider public feedback on the consultation RIS as the policy is further developed and implemented.

Lodging a submission

You can send your comments to:

Email: Energy.Reform@dnrme.qld.gov.au

[Subject line should read: Regulatory Impact Statement – Embedded Networks]

Mail: **Regulatory Impact Statement – Embedded Networks**
Consumer Strategy and Innovation
Department of Natural Resources, Mines and Energy
PO Box 15456
City East Qld 4002

As this is a public consultation process, the Queensland Government is committed to openness in its considerations of public policy. For this reason, written comments and submissions may be published on the department's website. Please mark clearly any comments or information you wish to be kept confidential.

