

Energy and Water Ombudsman Amendment Bill 2015

Explanatory Notes

Short title

The short title of the Bill is the Energy and Water Ombudsman Amendment Bill 2015.

Policy objectives and the reasons for them

The objectives of the Bill are to amend the *Energy and Water Ombudsman Act 2006* (EWO Act) to:

1. Allow non-residential electricity customers consuming between 100 and 160 megawatt hours (MWh) of electricity per year access to the dispute resolution services of the Energy and Water Ombudsman Queensland (EWOQ).
2. Extend the functions of EWOQ to allow it to become a recognised External Dispute Resolution (EDR) scheme in order to deal with credit reporting complaints in relation to the misuse of a customer's credit information.
3. Enable EWOQ to disclose customer identifying information about complainants to their respective energy and water entities for billing purposes.

The Bill also amends a minor administrative error in the *National Energy Retail Law (Queensland) Act 2014* (NERLQ Act).

Access to EWOQ for high energy using small business customers

The Queensland Government has committed to the creation of jobs and the strengthening of the state's diverse economy. There are now over 400,000 small businesses operating in Queensland. Small business enterprises are recognised by the Government as a significant contributor to the state's economic and jobs growth, and as the backbone of regional economies.

To ensure adequate dispute resolution services for electricity matters are available to small business customers that consume high amounts of electricity, the Queensland Government announced its intention to increase the consumption threshold for access to EWOQ services following a review of access arrangements to this service. This review arose out of long standing concern that high energy using small business (HESB) customers receive less attention and support compared to large business and residential customers, even though there is evidence that many of these small business customers do not have the expertise or resources to adequately represent their interests or negotiate with their energy retailer. For example, they experience similar difficulties as residential customers when speaking to their energy retailer, have a relatively poor understanding of contracts and tariffs, and experience

long waiting times and delays when making phone calls and attending to enquiries and disputes over services and bills.

Establishment of a recognised EDR scheme in Queensland

As a result of recent changes to the *Commonwealth Privacy Act 2008* (Privacy Act), a ‘credit provider’ (defined to include water, gas and electricity providers), must be a member of an EDR scheme in order to participate in the credit reporting system to assess a customer’s credit worthiness. To ensure Queensland has a scheme that meets this requirement, the Queensland Government has committed to expanding the functions of EWOQ to allow it to apply to the Australian Information Commissioner for recognition as a recognised EDR scheme. Establishing an EDR scheme in Queensland will provide customers with access to a local convenient, fast and independent avenue of redress for complaints or other issues that might arise between the individual and their service provider on credit reporting matters, such as the misuse of a customer’s credit report.

Water providers in Queensland are currently not subject to these new requirements as they do not fall within the definition of a ‘credit provider’ under the Privacy Act (most are local governments or ‘state authorities’ for the purposes of the Privacy Act) and/or do not participate in the credit reporting system. However should this situation change and a non EWOQ scheme participant participates in the credit reporting system, an appropriate mechanism will need to be identified.

Disclosure of customer identifying information

EWOQ is fully funded by industry members through participation and user-pays fees. Reconciliation of user-pays fees must occur at least twice a year and billable case types include a fee for complaints that are categorised as ‘refer back to provider’ cases. Energy and water utilities have encountered difficulties with reconciling their EWOQ user-pays fees as no information is currently provided to allow them to verify these case types against their customer records (e.g. to allow them to check that they are only billed for their customers’ complaints and to confirm billing errors have not occurred). The EWO Act does not specifically allow EWOQ to provide customer identification details to respective utilities for the purposes of billing ‘refer back to provider’ cases. The amendments in relation to these case types address this by allowing EWOQ to provide customer identifying information to water and energy entities for billing reconciliation purposes only.

Minor amendment to the *National Energy Retail Law (Queensland) 2014 Act*

There is currently a minor administrative error in the NERLQ Act. Section 15 of the Schedule to the NERLQ Act inserts a new section in the *National Energy Retail Law (NERL)* which refers to section 89B of the Electricity Act. The reference to section 89B is incorrect and should read section 89E. Section 89E is the application provision for price deregulation, whereas section 89B simply allows the Minister for Energy and Water Supply to give a direction to the Queensland Competition Authority (QCA) to report on competition, and is unrelated to section 22A(3)(b) of the NERL. Failure to rectify this error prior to 1 July 2016 will therefore prevent the NERL from operating as intended.

Achievement of policy objectives

The Bill will achieve its objectives by amending the EWO Act to:

- provide an adequate dispute resolution service for HESB customers by introducing a new type of eligible customer under the EWO Act, described as a ‘non-residential energy customer consuming up to 160MWh of electricity per annum’;
- establish EWOQ so that it is eligible to apply for recognition as an EDR scheme under the Privacy Act, to provide eligible customers with access to a local dispute resolution service for complaints against their energy or water provider in relation to the misuse of a customer’s credit information; and
- allow EWOQ to disclose customer identifying information about complainants to their respective energy and water entities for billing reconciliation purposes for ‘refer back to provider’ case types.

This bill also amends the NERLQ Act to fix a minor administrative error in this Act.

Access to EWOQ for high energy using small business customers

The approach to achieving the policy objective outlined above is considered to be appropriate and reasonable. Introducing a new type of eligible customer will provide HESB with a free and independent dispute resolution service for customers that are unable to resolve a dispute with their energy retailer. This will also ensure HESB customers in Queensland are on a more level playing field, by enjoying access to the same electricity dispute resolution services as other small businesses.

Establishment of a recognised EDR scheme in Queensland

Establishing EWOQ so that it may apply for recognition as an EDR scheme is also appropriate and reasonable as the function and set up of EWOQ aligns with many of the requirements of an EDR scheme. This will allow the Australian Information Commissioner to recognise EWOQ as the official Queensland based EDR scheme for energy and water customers and will ensure consumers have access to a local convenient, speedy and independent avenue of redress for complaints or other issues that might arise between the individual and the service provider on credit reporting matters.

Disclosure of customer identifying information

Allowing EWOQ to provide customer identifying information to water and energy entities for billing reconciliation purposes only will increase the transparency of the EWOQ scheme by allowing energy and water utilities to fully reconcile the bills they receive from EWOQ against their own records.

Minor amendment to the *National Energy Retail Law (Queensland) 2014 Act*

This Bill amends the administrative error in the NERLQ Act to allow this Act to operate as intended from 1 July 2016.

Alternative ways of achieving policy objectives

There is no alternative to way to achieve the desired policy objectives.

Estimated cost for government implementation

There is no direct cost to the State Government in relation to the amendments in the Bill. EWOQ is industry funded and will recover any expected additional costs via participation and user-pays fees obtained from scheme participants.

Consistency with fundamental legislative principles

This Bill has been examined for compliance with the fundamental legislative principles, outlined in section 4 of the *Legislative Standards Act 1992* (Qld) (LSA). A potential breach of the fundamental legislative principles is addressed and justified below.

Legislation should have sufficient regard to the rights and liberties of individuals—LSA section 4(2)(a)

Clause 10 (Amendment of section 25A (Use and disclosure of personal information)) of the proposed Bill amends existing provisions of the EWO Act to allow EWOQ to disclose the customer identifying details of complainants to their respective energy and water provider for billing purposes. While the release of customer information has privacy implications for individuals, it is considered that this Bill takes this into sufficient regard by limiting EWOQ's release of a customer's identifying information to a utility entity for invoicing and billing reconciliation only.

Consultation

The Queensland Government prepared a Consultation RIS to assess the costs and benefits of four options aimed at providing HESB customers with improved access to dispute resolution and arbitration processes for energy matters. Queensland water providers were consulted in relation to EDR requirements under the Privacy Act.

The Office of Best Practise Regulation (OBPR) confirmed that the proposal to amend the EWO Act to support its recognition as a recognised EDR scheme in Queensland is unlikely to result in significant adverse impacts for stakeholders, and therefore no further assessment was considered to be required under the RIS process.

The Energy and Water Ombudsman was consulted on the proposed amendments to disclosing customer identifying information on utility invoices.

Consistency with legislation of other jurisdictions

The amendment of existing legislation will mean that the EWO Act will broadly align with the majority of other jurisdictions. All other jurisdictions, except for the Northern Territory and Australian Capital Territory, have an energy ombudsman scheme that handles customer disputes with energy entities. While states have different rules regarding who can access their

schemes, a cross jurisdictional comparison shows that HESB customers in other jurisdictions have access to their respective ombudsman's services.

Likewise, the amendment of existing legislation to extend the functions of EWOQ to incorporate credit reporting complaints is consistent with other jurisdictional energy and water ombudsman schemes (Victoria, New South Wales and Western Australian) that have been recognised by the Australian Information Commissioner as EDR schemes under the Privacy Act.

Notes on provisions

Part 1 Preliminary

1 Short title

Clause 1 states that, when enacted, the Bill will be cited as the *Energy and Water Ombudsman Amendment Act 2015*.

2 Commencement

Clause 2 states that sections 7 and 10 of the Bill is intended to commence on 1 January 2016. All other sections of the Bill commence on a day fixed by proclamation.

Part 2 Amendment of Energy and Water Ombudsman Act 2006

3 Act amended

Clause 3 states that Part 2 amends the *Energy and Water Ombudsman Act 2006*.

4 Amendment of s 3 (Main purpose of Act)

Clause 4 amends section 3 by inserting an additional reference to a 'relevant energy customer'. This creates a new type of customer with access to EWOQ (non-residential customers that consume between 100 and 160 MWh of electricity per annum).

5 Amendment of s 6B (Who is an *eligible* customer)

Clause 5 omits the reference to 'small customer (energy)' in section 6B and replaces it with a reference to 'relevant energy customer'. The reference to 'small customer (energy)' is re-inserted below in clause 6 (new section 6D).

6 Insertion of new ss 6C and 6D

Clause 6 inserts new sections 6C and 6D after section 6B.

New section 6C outlines 'who is an eligible non-residential energy customer' and specifies that this is a business customer which consumes electricity at business premises at or above the upper consumption threshold (100MWh) and at or below 160MWh per annum. It also clarifies that an eligible non-residential energy customer does not include the State or the Commonwealth. This clause also inserts a reference to the *National Energy Retail Law* as it applies in Queensland (NERLQ) as the source of the terms 'business customer', 'business premises' and 'upper consumption threshold'.

New Section 6D outlines 'who is a relevant energy customer' and specifies that this is a 'small customer (energy)' or an 'eligible non-residential energy customer'.

7 Amendment of s 11 (Functions)

Clause 7 renumbers section 11(1)(e) as 11(1)(f) and inserts new paragraph (e). This new paragraph has the effect of ensuring that EWOQ has the necessary functions to be recognised as an ‘External Dispute Resolution’ scheme under the Commonwealth Privacy Act. Clause 7 expands the functions of EWOQ to include receiving, investigating, facilitating the resolution of, making decisions or recommendations for, and reporting on complaints about acts or practices of scheme participants that may be an interference with the privacy of an individual under the Privacy Act (sections 13(1) or 13(2)).

8 Amendment of s 12 (Restrictions on functions – energy entities)

Clause 8 omits the reference in section 12(1)(c) to ‘small customers (energy)’ and replaces it with a reference to ‘relevant energy customer’ (to achieve consistency with new section 6D described above).

9 Amendment of s 18 (Disputes relating to energy entities that may be referred to energy and water ombudsman)

Clause 9 omits the references in section 18(1)(a) and (5) to ‘small customer (energy)’ and replaces them with a reference to ‘relevant energy customer’ (to achieve consistency with new section 6D and amended section 12(1)(c) described above).

10 Insertion of s 18B (Dispute may involve complaint about interference with privacy)

Clause 10 inserts a new section (18B) after 18A. This new paragraph has the effect of ensuring a dispute about the performance of a utility entity’s function may also involve a complaint that was or is an interference with the privacy of an individual within the meaning of the Privacy Act (sections 13(1) or 13(2)).

11 Amendment of s 25A (Use and disclosure of personal information)

Clause 11 renumbers section 25A(2) as section 25A(6). After section 25A, it inserts new paragraphs that have the effect of allowing EWOQ to disclose a customer’s identifying information to a utility entity, but only to the extent reasonably necessary for invoicing for user-pays fees as a result of dispute referrals (e.g. ‘refer back to provider’ case types), as well as for billing reconciliation purposes. It also includes the example of an entity using this information to confirm that it is being charged for ‘refer back’ cases that relate to its customers (and not another entity’s customers).

12 Amendment of s 64 (Scheme participation – energy entities)

Clause 12 omits the references in sections 64(1) and (2) to ‘small customer (energy)’ and replaces it with a reference to ‘relevant energy customer’ (to achieve consistency with new section 6D, amended section 12(1)(c), and amended section 18(1)(a) and (5) described above).

