

Energy and Water Ombudsman Amendment Bill 2015

Report No. 7

Utilities, Science and Innovation Committee

October 2015

Utilities, Science and Innovation Committee

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Abbreviations

Committee	Utilities, Science and Innovation Committee
CCIQ	Chamber of Commerce and Industry Queensland
DEWS	Department of Energy and Water Supply
EDR	External Dispute Resolution
EWO Act	<i>Energy and Water Ombudsman Act 2006 (Queensland)</i>
EWOQ	Energy and Water Ombudsman Queensland
GWh	gigawatt hours
HESB	high energy using small business
MWh	megawatt hours
Privacy Act	<i>Commonwealth Privacy Act 2008</i>
NECF	National Energy Customer Framework
NERLQ Act	<i>National Energy Retail Law (Queensland) Act 2014</i>
OBPR	Office of Best Practice Regulation
OIC	Office of the Information Commissioner Queensland
RHLs	Referral to Higher Level (for investigation)
RIS	Regulatory Impact Statement

Chair's foreword

This Report presents a summary of the Utilities, Science and Innovation Committee's examination of the Energy and Water Ombudsman Amendment Bill 2015.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The Committee has unanimously agreed that the Bill be passed and that one amendment be made to the Bill.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on the Bill. I also thank the Committee's secretariat and the Department of Energy and Water Supply for their assistance.

I commend this Report to the House.



Mr Shane King MP

Chair

October 2015

Recommendations

Recommendation 1

10

The Committee recommends the Energy and Water Ombudsman Amendment Bill 2015 be passed.

Recommendation 2

19

The Committee recommends that the Minister for Main Roads, Road Safety and Ports and Minister for Energy and Water Supply amend Clause 11 of the Bill to enable the Energy and Water Ombudsman Queensland to disclose the customer identifying information details of a complainant to the relevant utility entity where this is required for the purpose of account verification and reconciling the Energy and Water Ombudsman Queensland user-pays fees for *all* case types.

1. Introduction

1.1 Role of the Committee

The Utilities, Science and Innovation Committee is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹ The Committee's primary areas of responsibility are main roads, road safety, ports, energy and water supply, housing, public works, science and innovation.²

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- for subordinate legislation – its lawfulness.

The Energy and Water Ombudsman Amendment Bill 2015 was introduced into the House and referred to the Committee on 15 September 2015. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the Committee to report to the Legislative Assembly by 2 November 2015.

1.2 Inquiry process

On 16 September 2015, the Committee wrote to the Department of Energy and Water Supply (DEWS) seeking advice on the Bill, and invited stakeholders and subscribers to lodge written submissions. The closing date for submissions was 1 October 2015.

The Committee received four submissions (see Appendix A). On 8 October 2015 as well as on 16 October 2015, the Committee received written advice from DEWS in response to matters raised in submissions. This advice is available on the Committee's [webpage](#).

On 14 October 2015, the Committee held a public briefing with representatives from DEWS as well as a public hearing (see Appendix B). On 16 October 2015, the Committee received answers to questions taken on notice from those witnesses who appeared at the public briefing and public hearing.

Copies of the submissions, the transcript of the public briefing and the public hearing, and other inquiry-related documents are available from the Committee's [webpage](#).

1.3 Policy objectives of the Bill

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

- 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)
- 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
- enable EWOQ to disclose customer identifying information about complainants to their respective energy and water entities for billing purposes.

The other objective of the Bill is to amend a minor administrative error in the *National Energy Retail Law (Queensland) Act 2014* (NERLQ Act).³

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

² Schedule 6 – Portfolio Committees, *Standing Rules and Orders of the Legislative Assembly* as amended on 27 March 2015.

³ EWOQ Bill 2015, Explanatory Notes:1

1.4 Overview of the Bill

1.4.1 EWOQ

Currently, EWOQ provides a free and independent dispute resolution service for non-residential electricity customers who consume less than 100 MWh per year who are unable to resolve a complaint with their electricity, gas or water supplier in south east Queensland.⁴ The EWOQ functions, which are legislated under the EWO Act, are to:

- receive and investigate energy issues in Queensland and water issues in South-east Queensland
- manage dispute resolution between customers and energy and water entities
- promote the services of EWOQ
- identify systemic energy and water issues.⁵

EWOQ routinely deal with issues such as: high and disputed bills; customers experiencing payment difficulties; connection, disconnection and restriction of supply; compensation for damage and loss; disputes about compliance with contractual obligations; energy marketers' conduct; customer service; and quality of supply.

EWOQ is fully funded by scheme participants through a combination of participation fees and user-pays fees. The following classes of entities are members of the Ombudsman scheme (currently there are 27 scheme participants):

- electricity distributors in Queensland
- electricity retailers and retailers of reticulated gas in Queensland
- water distributors/retailers in south east Queensland.⁶

1.4.2 Proposals in the Bill

Access to EWOQ for high energy using small business customers

The Bill proposes to extend the dispute resolution service for high energy using small business (HESB) customer consuming up to 160 MWh of electricity per annum.⁷

This type of customer includes a HESB customer that consumes up to 160 MWh of electricity per year but would be classified as a small business if evaluated by the metrics of turnover or employee numbers. Some examples of HESB customers include bakeries, laundries, small supermarkets, small food production and manufacturing businesses and any small business customer dependent on a high use of electricity for their daily operations. Many not-for-profit organisations such as community groups and amateur sporting clubs are also included in this category.⁸

The Queensland Government first identified a need to extend the service following a review of HESB customers. The review found that HESB customers 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.⁹

⁴ DEWS, Written Brief, 8 October 2015:1

⁵ EWOQ, 'What we do': <http://www.ewoq.com.au/AboutEWOQ/Whatwedo.aspx>

⁶ EWOQ Submission No. 3:2

⁷ EWOQ Bill 2015, Explanatory Notes:3

⁸ DEWS, Written Brief, 8 October 2015:1

⁹ DEWS Public Briefing, Hansard transcript:2; EWOQ Bill 2015, Explanatory Notes:1-2

If the Bill is enacted, DEWS estimates that some 5,100 additional HESB customers would be eligible to seek access to EWOQ, which would generate approximately 200 additional cases for EWOQ per year. DEWS advised the Committee that EWOQ has identified that it should not have to employ any additional complaints officers to deal with the anticipated additional cases.¹⁰

The Explanatory Notes states that the proposed legislation aligns with the Queensland Government's policy of supporting small businesses to facilitate job creation.¹¹ DEWS advised that, if this part of the Bill is enacted, HESB customers would be on a more level playing field as they would enjoy access to the same electricity dispute resolution services as other small businesses, and it would "ensure that Queensland's arrangements are broadly consistent with HESB customer access to Ombudsman services in other jurisdictions".¹²

Establishment of a recognised External Dispute Resolution scheme in Queensland

The Bill proposes to establish EWOQ so that it is eligible to apply for recognition as an EDR scheme under the *Commonwealth Privacy Act 1998* (Privacy Act)¹³ 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.¹⁴

This proposed amendment results from recent reforms to the Privacy Act. The Privacy Act now includes new credit reporting provisions such as: the introduction of more comprehensive credit reporting; a simplified and enhanced correction and complaints process; and the introduction of civil penalties for breaches of certain credit reporting provisions.¹⁵

Under Part IIIA of the Privacy Act, credit providers (defined to include electricity, gas and water providers) must be members of an EDR scheme recognised under the Privacy Act to be able to disclose credit information about an individual to a credit reporting body and thereby participate in the consumer credit reporting system. The Privacy Act now gives the Office of the Australian Information Commissioner the power to recognise EDR schemes to handle privacy-related complaints. It is proposed that requirements of the Privacy Act will apply in Queensland from 1 January 2016.¹⁶

Energy providers participate in the credit reporting system so that they can assess the credit worthiness of their customers.¹⁷ The Bill proposes to ensure energy providers can continue to participate in this system by providing the necessary legislative power for EWOQ to resolve privacy complaints relating to the misuse of energy customers' credit information and to apply to the Australian Information Commissioner for recognition as the official scheme in Queensland for energy and water customers and provide consumers access to a local and independent avenue of redress for complaints or other issues that might arise between the individual and the service provider on credit reporting matters.¹⁸

¹⁰ DEWS Public Briefing, Hansard transcript:2

¹¹ EWOQ Bill 2015, Explanatory Notes:1

¹² DEWS, Written Brief, 8 October 2015:2

¹³ The Privacy Act regulates the handling of personal information about individuals, including the collection, use, storage and disclosure of personal information, and access to and correction of that information.

¹⁴ EWOQ Bill 2015, Explanatory Notes:2-3

¹⁵ DEWS, Written Brief, 8 October 2015:2

¹⁶ DEWS, Written Brief, 8 October 2015:2-3

¹⁷ Queensland water providers are not considered credit providers under the Privacy Act and therefore will not be subject to this system.

¹⁸ DEWS, Written Brief, 8 October 2015:2-3

Disclosure of customer identifying information

The Bill proposes to 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.¹⁹

DEWS explains:

*EWOQ is funded through user-pays fees and that means that scheme participants pay EWOQ's costs. This means that, for example, if a customer from Ergon Energy made a complaint to EWOQ, Ergon would then need to pay EWOQ for the cost of actually handling that complaint on a fee-for-service basis. This amendment seeks to ensure that scheme participants have the ability to actually reconcile the customer information with the billing that they are getting from EWOQ. It is quite specific to a specific type of case. One of the things that EWOQ does is, when it receives a complaint from a customer, it asks whether the customer has first raised it with their provider. If that has not occurred then EWOQ will ask the customer to contact their provider in the first instance. It is called a 'refer back to provider' case type. In that example, the retailer may never know that that conversation with EWOQ has occurred with the customer and yet they might receive a bill from EWOQ saying, 'We provided this service to a customer of yours', and the retailer would not know who that customer was, whether it was a customer of theirs or not. What this amendment is designed to do is to enable EWOQ to, when they are providing that bill to the provider, identify the name of that customer, some basic information, so the retailer can then say, 'Okay, that is our customer', and reconcile that back and pay the fee. It is quite specific. It is something that has been raised by retailers specifically with us and the purpose of this amendment is to enable that to occur.'*²⁰

The Explanatory Notes states that 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 proposed amendments, in relation to these case types, would address this by allowing EWOQ to provide customer identifying information to water and energy entities for billing reconciliation purposes only.²¹

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

The Bill proposes to amend an administrative error in the NERLQ Act to allow the EWO Act to operate as intended from 1 July 2016.

The administrative error is explained in the Explanatory Notes:

*Section 15 of the Schedule to the National Energy Retail Law (Queensland) Act 2014 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 to report on competition, and is unrelated to section 22A(3)(b) of the NERL.'*²²

¹⁹ EWOQ Bill 2015, Explanatory Notes:2

²⁰ EWOQ Public Briefing, Hansard transcript:2

²¹ EWOQ Bill 2015, Explanatory Notes:2

²² EWOQ Bill 2015, Explanatory Notes:2

1.5 Consultation on the Bill

The Explanatory Notes provide a brief overview on the consultation process. Further information was provided by DEWS in its written brief to the Committee dated 8 October 2015.

The Queensland Government prepared a Consultation Regulatory Impact Statement (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. Prior to this, preliminary discussions occurred with retailers, the Chamber of Commerce and Industry Queensland (CCIQ) and the EWOQ in relation to potential expansion of the EWOQ service to small businesses that use high amounts of electricity.²³

In relation to EDR requirements under the Privacy Act, Queensland water providers (Wide Bay Water Corporation, Queensland Urban Utilities and Unitywater) were consulted and indicated that they had no desire to participate in the credit reporting system.²⁴

The Explanatory Notes advised that the Office of Best Practice 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.²⁵

EWOQ was consulted on the proposed amendments to disclosing customer identifying information on utility invoices.²⁶ The Office of the Information Commissioner Queensland (OIC) was consulted in relation to the proposed amendment to allow EWOQ to disclose the customer identifying information about complainants for billing purposes.²⁷

Consultation RIS Options Summary:

The Explanatory Notes state that a Consultation RIS was undertaken 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. Option 1 was DEWS' preferred option. A summary of those options are set out below.

Option 1 Access based on consumption (threshold increased to 160MWh per year) which would allow non-residential electricity customers consuming between 100 MWh and 160 MWh of electricity per annum to access EWOQ services.

Option 1 would provide approximately 5,100 additional small business customers with access to EWOQ services at the least cost to the community, business and government.

Option 2 Access based on small business metrics which would allow small business customers consuming more than 100 MWh of electricity but with less than 20 employees or a turnover of less than \$2 million per annum to access EWOQ services. Option 2 would also give EWOQ discretionary powers to accept referrals from small businesses that do not meet the above criteria at a point in time due to seasonal or other circumstances.

For this option, the number of additional small business customers able to access EWOQ services would be similar to Option 1. However, Option 2 would be more costly to implement, difficult to administer and potentially confusing for all parties.

²³ DEWS, Written Brief, 8 October 2015:3

²⁴ DEWS, Written Brief, 8 October 2015:3

²⁵ EWOQ Bill 2015, Explanatory Notes:4

²⁶ EWOQ Bill 2015, Explanatory Notes:4

²⁷ DEWS, Written Brief, 8 October 2015:4

Option 3 Status quo which would maintain current EWOQ access arrangements and utilise existing stakeholder consultation forums and working groups to investigate ways of strengthening the provision of information to large/HESB customers about resolving disputes and the large customer electricity market more broadly.

While Option 3 would maintain the status quo, it would aim to empower HESB customers to become more informed and proactive in the electricity market. This would provide HESB customers with more timely information about the large customer electricity market, existing dispute resolution mechanisms, energy efficiency measures and the National Metering Identifier reclassification process may raise awareness of the options available to HESB customers should they be unable to resolve a dispute with their retailer, help customers avoid disputes in the first place and build customer confidence to engage in the market.

Option 4 Access for all electricity customers (similar to the approach taken in Victoria, South Australia and Tasmania). Option 4 considered the maximum amounts EWOQ can award under 'final order' provisions in the EWO Act, but does not change the scope of matters that can be investigated by EWOQ.

Option 4 would place no restriction on the eligibility of large customers to access EWOQ services, therefore, this approach has the potential to be the most costly to implement. Another concern raised was about the benefits of expanding EWOQ access to large and very large customers generally.²⁸

Following the Consultation RIS process, a Decision RIS including the consideration of public comments was then provided to the OBPR. A copy of the Decision RIS has been published on DEWS' website as well as the Committee's website.

Committee Comment

While the Committee acknowledges the consultation undertaken during the Consultation Regulatory Impact Statement process, it is of the opinion that it would have been beneficial for the Department of Energy and Water Supply to consult with key stakeholder groups on the draft Bill. The Committee notes that while key stakeholders do not have an issue with the policy objective of the Bill they have raised issues with regard to certain aspects of the proposed legislation.

The Committee discusses the issues raised by key stakeholder groups under the section of this Report entitled 'Examination of the Bill'.

1.6 Should the Bill be passed?

Standing Order 132(1) requires the Committee to determine whether or not to recommend the Bill be passed.

After examination of the Bill, including the policy objectives which it will achieve and consideration of the information provided by DEWS and from submitters, the Committee unanimously recommended that this Bill be passed.

Recommendation 1

The Committee recommends the Energy and Water Ombudsman Amendment Bill 2015 be passed.

²⁸ The summary of options has been compiled from the DEWS Consultation RIS.

2. Examination of the Energy and Water Ombudsman Amendment Bill 2015

This section discusses issues raised during the Committee's examination of the Bill.

2.1 Access to EWOQ for high energy using small business customers

The Bill proposes to insert a new section 6C which outlines 'who is an eligible non-residential energy customer' and specifies it is a business customer which consumes electricity at business premise at or above the upper consumption threshold (100 MWh) and at or below 160 MWh per annum. An eligible non-residential energy customer does not include the State or the Commonwealth. Clause 6 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'.²⁹

Each of the four submitters to the inquiry have expressed in principle support for the Bill's proposal to expand the electricity consumption threshold to allow small business customers who consume 100 MWh to 160 MWh per annum access to EWOQ services.

EWOQ currently deals with small businesses consuming up to 100 MWh per year and is aware that there are many businesses and community groups that use more than 100 MWh of electricity per year but do not have the time, finances, or industry knowledge to be able to resolve a dispute themselves. Their position has long been to support an extension of their jurisdiction to accommodate those small businesses.³⁰ Further, EWOQ states that it is an important part of their work, including generating significant monetary outcomes for some customers:

Last financial year only 5% (or around 550) of cases – that is all contacts with customers – concerned small business. Of those, we conducted 105 investigations resulting in 341 outcomes for customers including billing adjustments, the payment of compensation and debt waivers. However, from those investigations nearly \$375,000 in monetary redress was achieved.

There were examples of significant monetary outcomes for some customers:

- *payment plans of \$55,000 and \$18,00 (payment plans allow a customer to pay off energy debt over time)*
- *bill adjustments of \$34,000 and \$15,000.*³¹

Other submitters, Master Electricians Australia (MEA) and Energy Retailers Association of Australia (ERAA) are supportive of the amendment to expand EWOQ's functions to allow access for small businesses consuming up to 160 MWh of electricity per year, however, they differ on the way this should be implemented. MEA would like the consumption threshold increased to include small business customers who use up to 4 gigawatt hours (GWh). ERAA has raised three issues in their submission, including:

- that the proposed threshold may inadvertently capture small businesses that are part of a larger group with multiple sites who would have access to appropriate resources to deal with any energy account disputes
- whether EWOQ would be able to resolve complex contractual disputes
- clarification on the level of assistance EWOQ would be able to provide to those small business given they don't fall within the National Energy Customer Framework (NECF) consumption threshold (e.g. up to 100 MWh per annum).³²

These concerns are discussed in more detail below.

²⁹ EWOQ Bill 2015, Explanatory Notes:6

³⁰ EWOQ, Correspondence, 16 October 2015:1

³¹ EWOQ, Correspondence, 16 October 2015:1

³² ERAA, Submission No. 4:1-2

2.1.1 Proposed electricity consumption threshold of 160 MWh

MEA submits that the proposed electricity consumption threshold of 160 MWh would “unnecessarily exclude many small businesses from the changes”.³³ For this reason, MEA recommends extending the electricity consumption threshold to HESB customers who use up to 4 GWh to align with distributor (Energex/Ergon) network tariff structures.³⁴

DEWS advises that they do not support MEA’s recommendation to increase the electricity consumption threshold to 4 GWh for the following reasons:

*The policy intent of this change is to assist customers who do not have an ability to negotiate on a level playing field with their retailers, and so specifically the threshold of 160 MWh has been identified. While any threshold is always going to be somewhat arbitrary, it is consistent with the threshold that a number of other states use. We did consult with consumer and industry representatives on this in 2013, I think it was, and there was broad agreement that 160 was the appropriate threshold. If we move beyond that, I guess we move outside of the policy and potentially capture businesses or large operations that are able to effectively fend for themselves, if you like, in terms of their relationship with their electricity retailer. Clearly that also would open up a lot more potential cases to EWOQ and a lot more cost. Just as a broad estimate, the number of customers that use between 100 MWh and 4 GWh is about 20,000, so obviously that would open up a lot more cases and potentially more complex cases.*³⁵

DEWS states that the proposed electricity consumption threshold of 160 MWh strikes an appropriate balance between providing assistance to customers who need it while minimising the financial, administrative and regulatory impacts on the community, business and EWOQ.³⁶ DEWS advises that, for EWOQ, the implications are:

*... they should be able to accommodate these additional complaints within their existing staffing arrangements so there will be no significant impact on EWOQ. It fits within their current expertise and role. Talking about industry, there are three retailers that will be required to pay a fee of \$5,000 each per annum as a result of this change, and retailers will be required to pay a fee for service for each complaint to EWOQ. So if we identify that there are 200 complaints per annum, then there will be a fee attached to each of those. Just to give you an idea of the fee schedule, the large bulk of issues that come to EWOQ are dealt with by a ‘refer back to supplier’ or a referral to a higher level within the retailer. The fee for refer back to supplier is \$307 and the referral to higher level is \$451. That applies to the 2013-14 financial year.*³⁷

While acknowledging that the proposed 160 MWh consumption threshold is not expected to capture every HESB customer, DEWS advises:

*Increasing the access threshold to 4 GWh would capture much larger organisations that are likely to have a dedicated account manager with their energy retailer and are also likely to have the knowledge, sophistication and internal resources to be able to deal with issues and disputes that may arise with their energy accounts.*³⁸

³³ MEA, Submission No. 1:1

³⁴ MEA, Submission No. 1:1

³⁵ EWOQ Public Briefing, Hansard transcript:4

³⁶ DEWS Written Brief, 8 October 2015, appendix 1:1

³⁷ EWOQ Public Briefing, Hansard transcript:4

³⁸ DEWS Written Brief, 8 October 2015, appendix 1:1

DEWS also points out that those customers who consume up to 4 GWh could be considered outside the purpose of EWOQ, which is to be available to those that need it most, including residential and small business customers.³⁹

Committee Comment

The Committee has noted the concerns raised by Master Electricians Australia. However, the Committee is of the view that the proposed energy consumption threshold of 160 MWh per year will provide the right balance between the estimated 200 additional customer cases per year and in terms of financial, administrative and regulatory implications on the community, business and EWOQ.

The Committee is also cognisant of the fact that increasing the access threshold to 4 GWh would capture much larger organisations who have the capacity to deal with issues with their energy accounts and any disputes that may arise with their supplier. The Committee considers the provision of dispute resolution services to such organisations to be outside the core purpose of EWOQ, which is to provide the service to those that need it the most, that is, residential and small business customers.

For these reasons, the Committee does not support extending EWOQ's dispute resolution services to small business customers that consume electricity above the proposed consumption threshold of 160 MWh per annum.

2.1.2 Definition of an eligible non-residential energy customer – Clause 6C

ERAA has raised an issue about the absence of qualifying parameters in relation to access of the scheme other than consumption as a large proportion of businesses consuming between 100-160 MWh per annum are part of a larger group with multiple sites associated with a holding or parent company, trust or association with supply arrangements covering multiple sites (with all sites generally receiving uniform pricing and conditions). ERAA argues the total customer contract size (the total of all sites) rather than the individual sites, should form the basis of any expected eligibility to access the resolution assistance provided by EWOQ.⁴⁰

Drawing on the solution to the same issue applied in the National Energy Retail Rules, ERAA suggests this can be addressed by replacing Clause 6C(2) with the following:

However, an eligible non-residential energy customer does not include the State or the Commonwealth or a business customer in receipt of customer retail services to 2 or more business premises (the relevant premises), where:

(a) the customer is or would be an eligible non-residential energy customer in relation to at least one of the relevant premises; and

(b) the aggregate of the actual or estimated annual consumption level for the relevant premises is greater than 160 MWh.⁴¹

DEWS does not believe it is necessary to adopt ERAA's recommendation as EWOQ already has the power under 22(1)(g) of the EWO Act to refuse to investigate a dispute. Section 22(1)(g) states that:

The Energy and Water Ombudsman may refuse to investigate a dispute referral or, having started to investigate a dispute referral, may refuse to continue the investigation, if the Ombudsman is reasonably satisfied that because of a preliminary inquiry, the relevant dispute should not be investigated.⁴²

³⁹ DEWS Written Brief, 8 October 2015, appendix 1:1

⁴⁰ ERAA, Submission No. 4:1-2

⁴¹ ERAA, Submission No. 4:2

⁴² DEWS Written Brief, 16 October 2015:3

DEWS provides some examples of how EWOQ may apply their discretion in the decision to investigate a dispute for a small business customer that meets the consumption threshold:

EWOQ may accept a complaint from a small business customer who independently owns and operates a number of laundromats or bakeries that, when considered together, consume over 160 MWh of electricity per year, but who isn't part of a larger corporation and has limited resources or time to resolve issues with their retailer.

Likewise, EWOQ may decide not to investigate a complaint about a single site using less than 160 MWh per year from a customer with multiple business sites where that customer fits within a corporate arrangement that provides them access to in-house professional services (e.g. legal or energy consultancy advice). An example of this includes a complaint from a business customer concerning a site that is a delivery warehouse using less than 160 MWh per year, but where the site is owned and operated by a large supermarket chain with multiple warehouses using over 160 MWh of electricity per year when aggregated.

Under this discretion, EWOQ can consider whether the customer has a written agreement with their retailer agreeing for the customer's sites to be aggregated in order to access large business customer prices and contract terms.⁴³

This issue was also considered by EWOQ who are concerned that ERAA's proposed "hard and fast rule would also exclude some 'Mum and Dad' businesses and small community groups which have more than one site, sometimes at the same premises, and use greater than 160 MWh".⁴⁴ EWOQ advises that their "preference is to assess jurisdiction in the first instance based on consumption at the supply point that is the subject of the dispute", and:

If information comes to our attention that the customer has multiple sites, and it is reasonable to conclude that they have the resources to pursue their complaint through other means, I can exercise my discretion not to investigate under s.22(1)(e) of the Energy and Water Ombudsman Act 2006.

...

Clearly, in exercising my discretion, relevant considerations would include whether a dispute resolution process has been agreed to under the contract between the customer and the retailer, and the number of sites held by the customer.⁴⁵

Committee Comment

The Committee notes the concern raised by Energy Retailers Association of Australia that the Bill's proposed definition of an eligible small business customer may inadvertently capture business customers who are part of a larger corporation and have the resources to negotiate and resolve disputes with their energy retailer. The Committee has also considered the solution proposed by Energy Retailers Association to change the definition in Clause 6C of the Bill to exclude those small business customers who meet the consumption threshold but are part of a larger corporation.

The Committee notes EWOQ's concern that the Energy Retailers Association's proposed amendment may have unintended consequences, citing the potential to exclude 'Mum and Dad' businesses as well as small community groups which have more than one site, sometimes at the same premises.

The Committee also notes the advice from the Department of Energy and Water Supply and EWOQ that EWOQ currently has the power under 22(1)(g) of the EWO Act to refuse to investigate a dispute. Under the EWO Act, EWOQ can refuse complaints from business customers who are part of a larger

⁴³ DEWS Written Brief, 16 October 2015:3

⁴⁴ EWOQ, Correspondence, 16 October 2015:2-3

⁴⁵ EWOQ, Correspondence, 16 October 2015:2-3

corporation and have the resources to negotiate and resolve disputes with their energy retailer on a relatively even playing field.

The Committee is satisfied that EWOQ is not obligated under the EWO Act to consider all complaints from small business customers who are part of a larger corporation if EWOQ is satisfied that they have the resources to negotiate and resolve a dispute with their energy retailer. Therefore, the Committee *does not* support the Energy Retailers Association's proposed amendment to the definition of an eligible non-residential energy customer.

2.1.3 Restricting access to those customers on a standard large customer retail contract

ERAA has submitted that it is unclear as to how EWOQ would resolve disputes for HESB customers who are parties to complex commercial contracts with their retailer which are distinct from the regulated market retail contracts applying to small business customers under the NECF.

ERAA explains:

Commercial contracts may include termination clauses requiring the customer to compensate the retailer for their costs. This could include the underlying hedge position which supports the commercial contract, which is a very different proposition to how termination fees are prescribed in regulated market contracts.

A number of commercial disputes are often due to differences in contractual interpretation and queries relating to prices. This is typical of disputes in commercial contracts and these parties understand that legally binding contracts govern the terms of their arrangement - inclusive of dispute resolution mechanisms.⁴⁶

ERAA therefore proposes that "access to the scheme should be limited to customers on a market retail contract as defined under the NERLQ".⁴⁷

If this proposal is not accepted, ERAA recommends "a dedicated and specialist team would be required within EWOQ in order to manage more sophisticated contractual and pricing complaints" and that this additional cost be borne by industry and consumers through higher prices.⁴⁸

DEWS does not support restricting access to the scheme to customers on a market retail contract as defined under the NERLQ. DEWS' rationale is that while disputes may be complex and contractual, EWOQ offers a valuable advocacy, investigation and information service that would be able to assist customers to resolve disputes with their retailer, including being effective in assisting in the resolution of disputes before the matter progresses to litigation over contractual issues.⁴⁹ Alternatively:

If a resolution cannot be reached and a breach of a contract is clear, EWOQ may refer the customer to other options, including recommending that the customer seek independent legal advice.⁵⁰

DEWS states that EWOQ would deal with HESB customers as it currently deals small customers (many of whom are on market contracts), for example, EWOQ would offer the complainant the option to escalate their complaint to a higher level within their energy retailer, or electing to commence an investigation. DEWS advises that "because the nature of EWOQ's role will not change, it is not considered necessary for a specialist team to be established within EWOQ to handle HESB complaints".⁵¹

⁴⁶ ERAA, Submission No. 4:2

⁴⁷ ERAA, Submission No. 4:2

⁴⁸ ERAA, Submission No. 4:2

⁴⁹ DEWS Written Brief, 16 October 2015:4

⁵⁰ DEWS Written Brief, 16 October 2015:4

⁵¹ DEWS Written Brief, 16 October 2015:4

EWOQ also does not support restricting access to the scheme as proposed by ERAA as in this context the customers with whom they deal with, in the main, are on a standard large customer retail contract, which is no more complex than a small customer residential market contract.⁵²

EWOQ advises that, should they decide the contract is overly complex, in exercising their discretion under section 22 of the EWO Act, they could take this into consideration.⁵³ However, EWOQ states that Ombudsman offices are called on from time to time to deal with complex legal issues and, in the Queensland office, the usual practice is to seek independent legal advice from lawyers with suitable expertise.⁵⁴

Committee Comment

The Committee notes the recommendation by the Energy Retailers Association of Australia that access to the scheme should be limited to customers on a market retail contract, as defined under the *National Energy Retail Law (Queensland) Act 2014*, due to issues concerning the complexity of commercial contracts.

The Committee also notes the following reasons provided by the Department of Energy and Water Supply and EWOQ as to why they don't support this recommendation:

- EWOQs customers, in the main, are on a standard large customer retail contract, which is no more complex than a small customer residential market contract, and
- while some disputes may be complex and contractual, EWOQ offers a valuable advocacy, investigation and information service and would be able would assist customers to resolve disputes with their retailer, including seeking external legal expertise if required.

The Committee is satisfied with the response provided by the Department of Energy and Water Supply and EWOQ in relation to including customers on a market retail contract and therefore does not support the Energy Retailers Association's recommendation.

The Committee also notes the Energy Retailers Association's recommendation that if it's recommendation to exclude customers on a market retail contract is not accepted then EWOQ should establish a specialist team to handle high energy using small business customers. Given the nature of EWOQ's role will not change, the Committee agrees with Department of Energy and Water Supply and EWOQ that it is not necessary for a specialist team to be established within EWOQ to handle these complaints.

2.1.4 National Energy Customer Framework protections

NECF boosts customer protections to small business customers, including requiring retailers to more actively identify, and offer assistance to, customers finding it difficult to pay their bill on time. NECF, as it applies in Queensland, covers small customers who is anyone that is a residential customer, or uses less than 100 MWh (electricity).⁵⁵ Customers consuming over 100 MWh do not currently have protection under the NECF in Queensland.

⁵² EWOQ, Correspondence, 16 October 2015:3

⁵³ EWOQ, Correspondence, 16 October 2015:3

⁵⁴ EWOQ, Correspondence, 16 October 2015:3

⁵⁵ NECF commenced in Queensland on 1 July 2015, and provides electricity consumers with better tools to engage confidently in the retail market and better support if they are in financial hardship. NECF is a set of national laws, rules and regulations governing the sale and supply of energy (electricity and reticulated natural gas) to consumers. Accessed from <https://www.dews.qld.gov.au/policies-initiatives/customer-framework>

ERAA seeks clarity around the assistance that EWOQ will be able to provide to HESB customers given that they do not fall within the NECF consumption threshold (up to 100 MWh of electricity per year) and, therefore, do not qualify for NECF protections.⁵⁶

DEWS' position is that, given the core functions of EWOQ will not change under the EWO Act, EWOQ would be able to provide a valuable advocacy, investigation and information service to HESB customers, and may be effective in assisting this type of customer resolve disputes with their retailer in the absence of the customer protection framework in the form of NECF.⁵⁷

EWOQ agrees and advises that they would expect that many of the same issues which routinely arise in respect of customers using less than 100 MWh of electricity per annum will arise for those using between 100 to 160 MWh, that is, complaints relating to billing disputes, capacity to pay and customer service. EWOQ is of the opinion that they would still be able to resolve such complaints even in the absence of the statutory obligations contained in the NECF. EWOQ refers to its obligations under section 28(3)(e) of the EWO Act, which states that it must act in a way which is fair, reasonable, just, informal and timely, and maintain confidentiality. EWOQ states it then follows that they are obliged to seek a fair and reasonable outcome to disputes.⁵⁸

Committee Comment

The Committee notes the request by the Energy Retailers Association of Australia for clarity around the assistance that EWOQ will be able to provide to high energy using small business customers given that they do not fall within the National Energy Customer Framework (NECF) consumption threshold (up to 100 MWh of electricity per year) and therefore do not qualify for NECF protections.

The Committee notes:

- that these customers do not currently have protection under the NECF as they are not a residential customer, or use less than 100 MWh
- EWOQ's obligations under section 28(3)(e) of the EWO Act in which it must act in a way which is fair, reasonable, just, informal and timely, and maintain confidentiality throughout its dispute resolution process.

The Committee is cognisant of the fact that the only change for these business customers is that they will be afforded the dispute resolution service provided by EWOQ and, given the nature of EWOQ's role and its obligations under the EWO Act, the Committee is satisfied with the assurance provided by the Department of Energy and Water Supply and EWOQ that EWOQ will resolve customers' routine issues, including billing disputes, capacity to pay and customer service, in a fair and reasonable manner.

2.2 Disclosure of customer identifying information

Clause 11 of the Bill proposes to replace section 25A of the EWO Act regarding the use and disclosure of personal information. The Explanatory Notes state that the proposed amendment will allow EWOQ to disclose 'customer identifying' details of complainants to the relevant utility entity, but only for the limited purposes of account verification and invoicing for user-pays as a result of dispute referrals (e.g. 'refer back to provider' case types) as well as for billing reconciliation purposes.⁵⁹

2.2.1 The use and disclosure of personal information – Clause 11

EWOQ submits that proposed Clause 11 of the Bill be amended to enable it to disclose the personal information of a complainant to the relevant utility entity for any of the three complaint case types EWOQ deals with because entities would be "most interested in [the more complex cases]" and EWOQ

⁵⁶ ERAA Submission No. 4:2

⁵⁷ DEWS Written Brief, 16 October 2015:5

⁵⁸ EWOQ, Correspondence, 16 October 2015:3-4

⁵⁹ EWOQ, Explanatory Notes:1-3

does not “expect that customers will have any concerns in this regard, as their personal information is already in possession of the entity that provides them with water or energy”.⁶⁰ The three case types are ‘refer back to provider’, cases referred to a higher level (RHLs) within the energy or water entity, and investigations. ‘Refer back to provider’ cases represent only 35% of all closed cases.⁶¹

EWOQ recommends that proposed new section 25A (2) to (5) be removed and a new section 25 (1) (d) be inserted as follows:

*The eligible customer is taken to have agreed to the eligible customer’s personal information being disclosed to the scheme participant to the extent reasonably necessary for the purpose of invoicing the utility entity for a user-pays fee.*⁶²

EWOQ also submits that the term ‘customer identifying information’ as proposed in section 25A(5) is not aligned with the definitions in the *Information Privacy Act 2009 (Qld)* and is not consistent with section 25 of the EWO Act and the term ‘personal information’ should be used instead to align it with these Acts.⁶³

Should this new section be inserted, EWOQ also advises that there would be no need for a new section 25A(6) containing a definition of ‘user pays fee purpose’.⁶⁴

In response, DEWS states that throughout the policy development and consultation process, water and energy entities only expressed a need to access “refer back to provider” information. Given that EWOQ’s proposal would allow the disclosure of customer information that entities have not specifically requested, DEWS considers that the Bill drafted as it stands effectively addresses the concerns raised by industry on this matter whilst maintaining the appropriately stringent safeguards over individual customer privacy in the current EWO Act.⁶⁵

In relation to EWOQ’s recommended use of the term ‘personal information’ rather than ‘customer identifying information’, DEWS advises:

Whilst it is acknowledged that streamlining such terminology is of use for the purposes of legislative interpretation, DEWS is of the view that replacing ‘customer identifying information’ with ‘personal information’ would permit EWOQ to pass on more information than is necessary to address the issue i.e. ‘refer back to provider’ billing reconciliation.

Throughout the policy development and consultation process, water and energy entities only expressed a desire to obtain information that would allow them to identify if a ‘refer back to provider’ complainant was their customer – they did not argue for access to any more than this very basic knowledge. As such, the Bill has been drafted to allow sufficient information to be provided for this specific purpose.

*To provide guidance on what information EWOQ can disclose for these purposes, the Bill states as an example: [EWOQ] disclosing a customer account number to the utility entity to allow the entity to confirm that the account is held with it.*⁶⁶

The *Information Privacy Act 2009* defines the meaning of personal information as:

Personal information is information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or

⁶⁰ EWOQ Submission No. 3:5

⁶¹ EWOQ Submission No. 3:5

⁶² EWOQ Submission No. 3:5-6

⁶³ EWOQ Submission No. 3:6

⁶⁴ EWOQ Submission No. 3:6

⁶⁵ DEWS Written Brief, 8 October 2015, appendix 1:1

⁶⁶ DEWS Written Brief, 8 October 2015, appendix 1:3

*not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*⁶⁷

Committee Comment

The Committee is aware that the release of any ‘customer identifying’ details has potential implications for the privacy of the individual customer whose details are disclosed.

The Committee considered EWOQ’s advice that:

- utility entities would be most interested in the more complex cases
- out of the three case types which EWOQ deals with (‘refer back to provider’, RHLs and investigations), ‘refer back to provider’ cases represent only 35% of all closed cases
- EWOQ doesn’t expect customers to have any concerns with the disclosure of their personal information to the relevant utility entity, as their personal information is already in possession of their utility entity.

The Department of Energy and Water Supply does not support extending the disclosure of personal information of an eligible customer to an entity for all case types and the Committee notes the Department’s position that:

- there is no need to allow the disclosure of customer information other than what was requested by the utility entities
- the Bill, as it currently drafted, provides the right balance between the concerns raised by industry whilst maintaining appropriately stringent safeguards over individual customer privacy.

The Committee is of the view that EWOQ should have the discretion to disclose individual customer information to utility entities in any cases where EWOQ considers this is necessary for the purposes of account verification and reconciling the EWOQ user-pays fees. While the Committee is not in a position to assess whether EWOQ’s proposed wording for its recommended new section 25A(1)(d) is appropriate, the Committee is recommending an amendment to the Bill to enable the EWOQ to disclose the customer identifying information of a complainant to the entity where this is required for the purpose of account verification and reconciling the EWOQ user-pays fees for all case types.

Further, the Committee considered EWOQ’s recommendation that the term ‘customer identifying information’ in Clause 11 be replaced with the term ‘personal information’ to align it with the definitions as defined in the *Information Privacy Act 2009 (Qld)* and ensure consistency with section 25 of the EWO Act. The Committee notes that the term ‘personal information’, as defined in the *Information Privacy Act 2009*, is broader than the term ‘customer identifying information’ and is of the view that ‘customer identifying information’ more accurately reflects the type of information that EWOQ should be enabled to provide to utility entities. The Committee is, therefore, not recommending a change to the use of the term ‘customer identifying information’.

Recommendation 2

The Committee recommends that the Minister for Main Roads, Road Safety and Ports and Minister for Energy and Water Supply amend Clause 11 of the Bill to enable the Energy and Water Ombudsman Queensland to disclose the customer identifying information details of a complainant to the relevant utility entity where this is required for the purpose of account verification and reconciling the Energy and Water Ombudsman Queensland user-pays fees for *all* case types.

⁶⁷ *Information Privacy Act 2009*, Chapter 1 Preliminary, Part 2 Interpretation, s 11(12):15

3. Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill. The Committee considers that Clause 11 of the Bill raised a potential FLP issue, which is brought to the attention of the House.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

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

Clause 11 amends section 25A of the EWO Act regarding the use and disclosure of personal information. It will allow the EWOQ to disclose ‘customer identifying’ details of complainants to the relevant utility entity, but only for the limited purposes of account verification, invoicing and billing reconciliation.

Potential FLP issue

The Committee notes that any release of ‘customer identifying’ details has potential implications for the privacy of the individual customer whose details are disclosed.

The former Scrutiny of Legislation Committee considered the reasonableness and fairness of treatment of individuals as relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals.

The Explanatory Notes acknowledge the implications of clause 11:

While the release of customer information has privacy implications for individuals, it is considered that this Bill takes this into sufficient regard by limiting the Energy and Water Ombudsman Queensland’s release of a customer’s identifying information to a utility entity for invoicing and billing reconciliation only.⁶⁸

Committee Comment

The Committee notes that proposed section 25A(5) regarding the use and disclosure of customer identifying details gives an example of disclosure as being the disclosure by EWOQ to a utility entity of a customer account number, to allow the entity to confirm that the customer account is held with that entity.

The Committee considers that in light of:

- the limited purposes for which customer identifying information can be disclosed (i.e. for the purpose of account verification and reconciling EWOQ user-pays fees)
- the likelihood that most utility companies would already hold personal customer data of a similar nature for billing purposes (eg. name, address, payment history)

⁶⁸ EWOQ Bill 2015, Explanatory Notes:4

the limited release of customer identifying information by EWOQ to utility entities for bill reconciliation or account verification is unlikely to involve any real risk that a person's right to protect their private information would be inappropriately compromised.

For this reason the Committee considers that the potential risk to a person's privacy is, for all practical intents and purposes, negated.

Policy issues related to Clause 11, along with related committee comments and recommendations are discussed in a previous section of this report.

3.2 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to Explanatory Notes. It requires that an Explanatory Note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an Explanatory Note should contain.

Committee comment

The Committee is of the view that the Explanatory Notes tabled with the Bill are fairly detailed and contain the information required by Part 4 of the *Legislative Standards Act 1992* as well as a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

The Explanatory Notes also provide a reasonably comprehensive analysis of the intended impact or operation of each clause, which goes beyond a mere reiteration or summation of clauses.

The Committee, however, notes there is a minor error under the heading 'Consistency with fundamental legislative principles' where reference is made to Clause 10 amending section 25A, whereas in the final tabled version of the Bill, Clause 11 amends section 25A.⁶⁹

This minor error aside, the Committee is satisfied that the Explanatory Notes are of a high standard and provide the reader with a comprehensive overview of how the various provisions of the Bill interact and why the various amendments are necessary to achieve the Bill's policy aims.

⁶⁹ EWOQ Bill 2015, Explanatory Notes:4; EWOQ Bill 2015, Clause 11:7

Appendix A – List of Submissions

Sub #	Submitter
001	Master Electricians Australia
002	Chamber of Commerce and Industry Queensland
003	Energy and Water Ombudsman Queensland
004	Energy Retailers Association of Australia

Appendix B – List of Witnesses

Witnesses at the public briefing held on 14 October 2015

Mr Phil Richardson, A/General Manager, Energy Consumer and Pricing Policy, DEWS

Ms Rebekah Stylianou, A/Manager, Energy Consumer Policy, DEWS

Mr Rod Cameron, Principal Policy Officer, Energy Consumer Policy, DEWS

Witnesses at the public hearing held on 14 October 2015

Mr Nick Behrens, Director of Advocacy and Workplace Relations, Chamber of Commerce and Industry Queensland (Sub No 2)

Mr Gary Veenstra, State Manager – Queensland, Master Electricians Australia (Sub No 1)

Mr Dominic McMahon, QEnergy on behalf of Energy Retailers Association of Australia (Sub No. 4)

Mr Forbes Smith, Energy and Water Ombudsman (Sub No. 3)

Mr John Jones, General Manager Operations, Energy and Water Ombudsman Queensland

Mr Phil Richardson, A/General Manager, Energy Consumer and Pricing Policy, DEWS

Ms Rebekah Stylianou, A/Manager, Energy Consumer Policy, DEWS

Mr Rod Cameron, Principal Policy Officer, Energy Consumer Policy, DEWS