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Thank you for the opportunity to comment on AER's Issues Paper: *AER approach to retail exemptions, June 2010*.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers.

EWON's current jurisdiction of exempt retailers

EWON currently has jurisdiction over complaints by customers of exempt retailers of electricity by virtue of s. 70 of the *Electricity Supply (General) Regulation 2001* which states:

"... the exempt person is bound by, and must comply with, any decision of the electricity industry ombudsman in relation to a complaint or dispute relating to the provision of connection services or the supply of electricity by the exempt person ..."

In addition to this general jurisdiction, EWON has specific jurisdiction over the owners of Residential Parks, by virtue of clause 1.2 of the *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks*, published by NSW Fair Trading in 2006, which states:

"... the park owner is bound by, and must comply with, any decision of the Energy and Water Ombudsman (EWON) in relation to a complaint or dispute relating to the provision of connection services or the supply of electricity".

We understand that EWON is the only energy ombudsman with a specific jurisdiction over residential parks. Exempt retailers, including residential park owners, are not members of EWON's scheme and are currently not charged for our services.

The EWON Board has decided that as long as the number of complaints remains relatively low, the cost of investigating complaints against exempt retailers will be spread across all the members of the scheme in the same way as, for example, out of jurisdiction/other non member complaints.

In EWON's experience, permanent residents of Residential Parks are among the most vulnerable in the community. While many parks are very professionally operated, there are others where unfortunately this is not the case. Customers with genuine concerns about some aspect of their electricity supply are often reluctant to raise these with the park operator for fear of retaliation. Any ill-feeling between the park operator and a resident can have a profound effect on the day-to-day living conditions of the resident, and this can act as a deterrent to pursuing genuine complaints. As a result, when customers approach EWON, they often ask to remain anonymous. Our role is often limited to providing advice, and we will only approach the park operator in relation to a complaint with the customer's express permission.

EWON supports the policy principle expressed at 4.2.3 in the Issues Paper, that:

exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and the Rules

Our submission addresses those questions raised in the Issues Paper that are relevant to our experience of customer issues in relation to exempt retailers. For ease of reference we have adopted the same question numbering in this response.

Q4: Is the apparent growth in on-selling problematic, and if so why?

The table below provides a snapshot of the number of complaints in relation to exempt retailers received by EWON since 1 January 2006.

EWON's Exempt Retailer Cases		
Year	Residential Parks	Other
2006	121	11
2007	83	5
2008	110	11
2009	63	13
2010 to 30 June	32	6

The number of complaints received by EWON since 1 January 2006 does not indicate any 'apparent growth' in on-selling in NSW. The large majority of complaints come from residents of Residential Parks, though it needs to be noted that EWON has been contacted by the owners or managers of these parks as well, for advice on compliance issues.

The cases regarding exempt retailers other than residential parks include resort developments, marinas, airports, shopping complexes and small commercial developments.

While complaint statistics do not provide authoritative data as to the number of on-sellers as a whole, they often provide an indication of emerging trends and customer concerns, and there has been no recent increase in these.

Q7: How important is it for customers in onselling situations to have access to choice of retailer?

Q8: Once network configuration/metering issues are addressed, are there any other impediments to exempt customers having access to choice of retailer for electricity?

EWON has received very few complaints from customers about the lack of choice of retailer. The situation regarding the electricity supply is generally made clear to new residents in a Residential Park from the start of the tenancy, and in other exempt selling situations it is also documented in the lease or contract.

Where EWON has received complaints about the lack of choice of retailer, the situation has been clearly covered by the contract and the existing legislation.

CASE STUDY

Ms K is managing a new shop soon to open in a suburban shopping centre, where there is an embedded electricity network. The shop is part of a chain which receives discounted electricity from their supplier of choice. The Centre Management is requiring her to accept the electricity supply detailed in the contract, which represents the regulated rate charged by the standard retailer for the area. Ms K complained that she is being disadvantaged as a result, and wanted to know if this was legal, and whether she has a right to engage a separate supplier.

EWON was able to provide information about the regulations that relate to electricity billing by exempt retailers, which indicated that the exempt retailer's actions in this case were compliant. #64181

Q10. What core customer protections should exempt sellers be required to provide for their small customers?

Q11. Are the core protections proposed in the draft categories of deemed and registrable exemptions attached to this paper appropriate?

EWON suggests that as far as possible the core protections for small customers of exempt sellers should be similar to those of other small customers, and should therefore include:

- to be billed on their usage by an electricity meter that complies with Australian Standards
- to receive regular bills with the details of their usage clearly identified
- to have safeguards against disconnection without significant notice, to allow for the cause of the impending disconnection to be addressed by the customer, and
- to have access to a form of dispute resolution when problems arise.

EWON often receives queries from customers about the accuracy of their billing where the Residential Park Operator (RPO) has failed to comply with basic minimum standards for the format and frequency of electricity bills.

Examples include:

- a park operator would not issue invoices for electricity, but would just verbally advise the customers how much they owed
- a park operator was issuing hand-written electricity bills, which the residents felt were subject to error and less professional than computer generated bills
- a park operator only issued electricity bills at irregular intervals, sometimes as long as 12 months between bills. Residents therefore found these bills difficult to budget for, and if they covered an extended period were for a considerable amount, which was difficult to pay immediately
- residents paid for their electricity by way of tokens they have to put in their meters – the park operator varies the cost of these tokens according to his calculation of what the appropriate tariff and Service Availability Charge should be, but this is not transparent to the residents
- a park operator attempted to impose a \$35 meter reading fee for performing regular meter reads.

EWON considers it to be essential that customers of exempt retailers have the same entitlement to receive bills complying with the minimum standards for format and frequency as do customers who are supplied by licensed retailers.

We have provided some specific feedback on other core protections proposed in Attachment 1 to the Issues Paper in our response to Q 45.

Q12. Do stakeholders agree with the requirement for exempt sellers to notify the AER, and their customers of the possibility of disconnection?

Q13. Are there any conditions which the AER could impose which might help to mitigate the risk of an exempt seller failing and leaving its customers without supply? Would it be appropriate for the AER to do this?

The requirement for an exempt retailer to advise their customers of an impending disconnection is a reflection of the current situation in NSW, contained in the provisions of the:

- *Electricity Supply (General) Regulation 2001* clause 71 (7)
- *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks* clause 6.2.

The suggestion in Condition 16 in Attachment 1 to the Issues Paper for the exempt retailer to advise both their customers and the AER ‘*if there is any likelihood that they will be able to continue onselling energy*’ is new, but EWON has concerns about its effectiveness.

In EWON’s experience, the only occasion when an exempt retailer was almost disconnected was at the Residential Park Operator’s request. EWON understood that he wanted to sell the property for re-development, and having the power disconnected was seen as a way to get the residents to leave so that the site could be rezoned. The only way EWON was alerted to this was by the intervention of the DNSP, who had received the request for disconnection of the site but realised the impact of carrying out the disconnection and contacted EWON for advice.

CASE STUDY

The Manager of the Residential Park rang the DNSP and asked for his electricity supply to the park to be disconnected. The DNSP was aware that this is a park, and as there is only one central metering point, disconnection will mean that all the residents will be disconnected.

The DNSP was reluctant to comply with the direction of their customer because of the impact on residents, and requested EWON's advice. EWON contacted the NSW Office of Fair Trading (OFT) as a matter of urgency, and they directed the DNSP not to disconnect the park, and sought an undertaking from the manager of the park to this effect. If he did not comply OFT would seek an injunction and join this matter to a current action in the Supreme Court. #54522

In a situation like this, there would be no apparent motivation for the park operator to voluntarily contact the AER about the impending disconnection. It would appear to be more effective to put the obligation on the DNSP to report to the AER if they have issued a Notice of Intention to Disconnect, and to not allow disconnection unless authorised by the AER. This would allow an opportunity for the AER to investigate the situation and take appropriate action to protect the interests of the customers of the exempt retailer.

Q14. To what extent can the protections found in hardship policies be applied to customers of exempt sellers operating under deemed and registrable exemption?

In EWON's experience, the permanent residents of Residential Parks are often facing financial difficulties, and as they are responsible for paying both their rent and electricity bills to the park operator, are particularly vulnerable to the threat of eviction for non-payment. EWON acknowledges the statement in the Issue Paper that the requirements of a hardship policy may involve a potential conflict with tenancy law.

We have observed that if residents in financial hardship take a dispute to the Consumer Trader and Tenancy Tribunal in NSW (CTTT), the outcome is often the setting up of a payment arrangement, even though this is not a specific requirement under the *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks*. This appears to be providing those customers in hardship with some level of protection, and EWON's approach when contacted by customers facing disconnection or eviction for non-payment of their electricity charges is to refer them to the CTTT as a matter of urgency.

CASE STUDY

Ms L's site in a Residential Park is individually metered. The park operator only issues bills very occasionally, and so when they are received they are quite high as they cover a long period, and are difficult to pay all at once. She has just been issued with a series of bills for over \$7000 covering rent, electricity and water for the past two years. EWON confirmed that the lack of bills is contrary to the *Customer Service Standards*. Ms L was given a written report to confirm this, and EWON offered to provide the same advice to the park operator. As her problems at the park were greater than just lack of electricity bills, EWON referred Ms L to the CTTT for these wider tenancy issues. #72165

CASE STUDY

Ms S lives in a residential park in a cabin. Recently the Residential Park Operator (RPO) gave her a 2 week eviction notice for not paying \$429.8 for her power over a 6 month period. The RPO does not give the residents invoices, he just tells them how much it is and expects them to pay it. Over the past 6 months she continually asked for a bill - the RPO told her he would provide it but this never happens. Ms S would like to know whether she is entitled to a power bill/invoice from the RPO (showing usage etc) and also whether the RPO is entitled to evict her for not paying for the electricity bill even though the eviction notice was the first notification she had about the electricity?

EWON referred Ms S to the CTTT as a matter of urgency. #69162

In NSW there are two provisions in the *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks* which give added protection to customers:

- clause 3.1.3 prohibits the charging of late fees
- clause 3.5 has a more stringent requirement for disconnection, requiring the park owner to obtain an order from the CTTT, in addition to giving 14 days notice. They may not disconnect a customer while any application for a government rebate is pending, or while a payment plan is in place.

In the absence of a specific hardship program, these clauses appear to provide some significant protection for hardship customers in Residential Parks.

Q15. In jurisdictions where the Ombudsman or dispute resolution schemes do not extend to exempt sellers, what dispute resolution processes should the exempt seller provide to its customers?

EWON acknowledges the problems faced by ombudsman schemes in dealing with complaints from exempt sellers. Although EWON has jurisdiction to receive complaints from customers of exempt retailers, and the legislation requires the exempt seller to comply with any decision of the ombudsman there are two significant difficulties:

- many customers specifically ask that the Residential Park Operators is not contacted in relation to their complaint, for fear of repercussions in a number of ways that can affect their day to day living conditions
- EWON does not have any way of enforcing a decision made following an investigation into a customer's complaint, so unresolved disputes are generally referred on to the CTTT. NSW Fair Trading has more appropriate powers of inspection and enforcement.

EWON's role in investigating complaints is therefore often confined to providing advice (to both the customer and the exempt retailer) as to the regulatory framework around the supply of electricity, and providing referrals for other assistance as required.

As noted previously, there is no requirement for exempt retailers to become members of EWON's scheme. This means the costs of investigating complaints from their customers is shared across the rest of the membership of licensed electricity, gas and water retailers and distributors.

The option of a fee for service has been considered but rejected as being not cost effective to administer and enforce. EWON's Board of Directors has indicated that the current funding arrangement will continue while the number of complaints remains comparatively low.

If exempt retailers were brought within the jurisdiction of ombudsman schemes for dispute resolution for residents, EWON would be interested in consulting with the AER about how such an arrangement could be implemented and paid for.

Q22. Will the proposed pricing protections adequately protect exempt supply customers?

The provisions of Condition 7, which limits the tariff to that of the standing offer of the local area retailer is reflected in NSW in:

- *Electricity Supply Act 1995* – section 72
- *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks* – clause 3.1.1

These provisions have proved effective in NSW in preventing the exempt seller making a profit out of the onselling of electricity.

Q23. What additional information might the AER have regard to when considering the significance of the energy likely to be sold by an exempt seller?

As well as the actual tariff, a more significant issue for customers in Residential Parks in NSW has been the service availability charge (SAC). Many of the sites in caravan parks have a lower amperage available to them within the park than is available on the normal network, with a result that if they try to operate a toaster or a microwave while their air-conditioner is operating, they will blow fuses. In this context, it appeared unreasonable that they should be charged the same SAC as customers supplied by the normal distribution network.

The *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks* introduced a sliding scale for the SAC, depending on the amperage available at the site, with additional provisions for the amperage to be advised to residents at the start of their tenancy, and for it to appear on each bill.

We note that the Issues Paper has not attempted to extend this provision to customers in other states.

Q25. Are there any instances where state/territory tenancy and related legislation comprehensively addresses onselling, such that the conditions proposed in the attached draft determinations of deemed and registrable Will the proposed pricing protections adequately protect exempt supply exemptions should not be applied?

We have previously made reference to the *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks*, published by the NSW Office of Fair Trading in August 2006.

Q37. What other customer related factors might the AER consider in addition to those outlined in the Law and those discussed in section 4.2.3?

While the majority of customer complaints with respect to exempt sellers has been in relation to billing, EWON also receives a steady stream of complaints relating to the condition of the electricity infrastructure within a Residential Park.

Examples of customer complaints include:

- voltage fluctuations resulting in damaged appliances
- restrictions on the appliances residents are allowed to have in their homes due to the limited capacity of the network
- residents were told they must switch from double to single power points
- residents were not allowed access to their own meters which were kept in locked boxes
- whether a meter manufactured in Spain complied with Australian Standards
- a cross-wiring and cross-metering situation between four different sites
- a resident had been illegally allocated a site for his relocatable home directly under transmission lines
- concerns about the reliability of supply following frequent outages
- concerns about the safety of the aging infrastructure within the park.

EWON would recommend consideration being given to some enforceable standards with regard to the operation of the embedded network as a condition to being able to operate as an exempt retailer.

Q38. Do stakeholders agree with the AER's registration threshold of 25 premises with a single site? Why or why not?

As far as EWON is aware, most of the complaints relating to exempt sellers we have investigated have been for sites with many more than 25 separately metered premises. It would appear that a property with less than 25 premises is likely to be a very small business operation.

However EWON disagrees with the AER's view that it is not practical to require these smaller sites to be registered, as it would place a large administrative burden on them. EWON considers that these businesses are engaged in selling an essential service to customers, and as such should be made accountable and subject to a monitoring regime so they are not operating 'under the radar'.

The following benefits of registration are discussed in the Issues Paper:

- the mere awareness that a regulatory framework applies to it may be enough to encourage the exempt seller into greater compliance with its obligations

- once the AER becomes aware of an exempt seller, by means of registration, it may be able to provide the exempt seller with information regarding the exempt sellers obligations
- registration will give the AER an idea of the scale of the exempt sellers activities, to enable it to make more informed regulatory decisions.

In EWON's view, these benefits are valid for all exempt sellers, regardless of their size. EWON considers the benefits of increased accountability that flow from registration should be just as available to customers living in smaller sites as they are to customers in larger sites.

Q39: Do stakeholders agree with the AER's proposed Class 1 deemed exemption? Why or why not?

Q40: Do stakeholders agree with the conditions outlined in the attached draft determination that will apply to this class of deemed exemption? Why or why not?

According to the Issues Paper, NSW permanent residents of Residential Parks classified as Class 1 (less than 25 sites) will continue to receive the protection of the *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks*. This means there will be no change in the protections offered to these customers in NSW.

The 18 conditions listed in Attachment 1 to the Issues Paper appear to only relate to exempt sellers of the proposed Class 1 other than Residential Parks. As noted previously, EWON receives very few complaints from customers of these retailers.

We have made comments about Conditions Nos 8 and 12 in our comments under Question 45 below.

Q41: Do stakeholders support the AER providing a blanket exemption (the Class 2 deemed exemption) to cover situations where energy is passed through without a separate charge? Why or why not?

Q42: Do stakeholders agree with the AER's proposal for this exemption to be issued without conditions?

EWON does not currently have the jurisdiction to investigate complaints involving the passing on of energy costs where there is no separate meter for the customer and the energy costs are not itemised but absorbed into other charges such as rent. We believe this is appropriate.

When we receive complaints from customers in this situation, we provide appropriate referrals, such as to a tenancy advice service or NSW Fair Trading.

Q44: Do stakeholders agree with the AER's proposed Classes 4 and 5 deemed exemptions? Why or why not?

Q45: Do stakeholders agree with the conditions outlined in the attached draft determination that will apply to small customers under the Class 4 deemed exemption? Why or why not?

According to the Issues Paper, NSW permanent residents of Residential Parks with over 25 metered premises will continue to receive the protection of the *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks* until this class of exemptions is revoked on 30 June 2013.

We would be interested to know whether it is anticipated that these *Customer Service Standards* will continue to apply after 30 June 2013 when the Class 4 exemption is proposed to be replaced by a registrable exemption. If not, what conditions may be applied to these Parks?

We would also be interested to know what conditions are proposed to apply to those exempt retailers (other than Residential Parks) in NSW after 30 June 2013.

For those exempt retailers other than Residential Parks in NSW, whether Class 1 (under 25) or Class 4 (over 25 until this class is revoked on 30 June 2013), the list of 18 conditions set out in Attachment 1 appear to form a basic set of consumer protections. We have some specific concerns about two of these:

- **Condition 8**

Condition 8 allows for disconnection following only 10 business days notice after the bill has not been paid by the due date.

This is a significant reduction in the protection against disconnection which customers of normal retailers will receive under the National Energy Customer Framework (NECF). There is no requirement for an initial reminder notice or for the exempt retailer to use their best endeavours to contact the customer in person or by telephone to ensure they are aware of the impending disconnection.

This seems very little protection for a customer in hardship, allowing very little opportunity for the customer to either negotiate a payment arrangement with the supplier, or to access any external financial assistance.

- **Condition 12**

Condition 12 provides that the exempt person must not seek to prevent an exempt customer from electing to purchase energy from a retailer of their choice “*by unreasonably hindering any metering or network changes required to enable choice of retailer*”.

This condition does not specify who bears the cost of any metering or network reconfiguration. Without specifying this, this clause may suggest to some readers that ‘*unreasonably hindering*’ could include requiring the customer to bear the cost of the work. We suggest the wording of this clause is expanded and clarified to make the intention clear and to avoid potential ambiguity.

Q46: Do stakeholders agree with the AER’s proposed classes of registrable exemptions? Why or why not?

EWON supports the AER’s intention to have registrable exemptions, which they have stated will assist them in ‘*monitoring and educating exempt sellers in relation to their obligations, as well as enforcing these obligations where necessary*’.

It is not clear as yet how the AER intends carrying out their enforcement role, and EWON would appreciate a briefing on this in due course so that we can liaise appropriately when examples of breaches are revealed through our investigation of customer complaints.

If you would like to discuss this matter further, please contact me or Emma Keene, Manager Policy and Projects, on 02 8218 5225.

Yours sincerely



Clare Petre
Energy & Water Ombudsman NSW