



21 May 2014

Access to Justice Arrangements
Productivity Commission
GPO Box 1428
Canberra City ACT 2601
By email: access.justice@pc.gov.au

Thank you for the opportunity to comment on the *Access to Justice Arrangements: Productivity Commission Draft Report, April 2014*.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. EWON is a member of the Australian and New Zealand Ombudsman Association (ANZOA) and we have contributed to, and endorse, the ANZOA submission on the Draft Report.

For ease of reference we have adopted the same numbering as the Draft Report and this submission responds to some sections of the Draft Report relevant to EWON's jurisdiction.

Chapter 9 – Ombudsmen and other complaint mechanisms

Information Request 9.1

Given the difficulty in estimating the individual costs of the various functions of some ombudsmen and complaints mechanisms, the Commission seeks feedback on whether the estimates it has derived can be further refined. The Commission also seeks feedback on the costs of ombudsmen undertaking systemic reviews.

In response to Information Request 9.1 EWON has contributed information to the ANZOA Submission on the Draft Report. Please refer to this Submission for details relating to the costs of ombudsmen undertaking systemic reviews.

In addition, we provide the following comments relating to EWON's systemic work that is focused on complaints where:

- A policy, practice or process of a company is adversely impacting or has the potential to affect a number of customers and lead to complaints and disputes.
- There is a regulatory issue that may cause confusion, different interpretations or unforeseen consequences.
- There is an energy or water-related issue that is broader than the providers or the industry generally, where EWON can play a role, for example, the issue of affordability of essential services for low income households. .

The EWON Charter requires EWON to identify, investigate and report on systemic issues and other important industry issues raised in customer complaints¹. EWON's systemic work includes:

- identifying possible systemic or other issues during complaint investigations
- contacting the provider (Retailer or Distributor) when a series of complaints indicate a systemic issue, and referring the issue for remedial action. We continue to monitor until a reasonable outcome for the affected customers is achieved.
- researching issues and identifying case studies for quarterly reporting to EWON member providers, the regulator (Australian Energy Regulator, AER) and NSW government
- referral to the AER for advice when there is disagreement about the interpretation of legislation or guidelines.
- referral to the AER where an industry practice or process appears to be impacting negatively on customers but is not covered by current legislation.
- submissions, including responses to draft regulatory instruments, based on our experience of customer complaints, eg acceptance by the Australian Retail Credit Association of some of EWON's recommendations into the final version of the draft Credit Reporting Privacy Code. All EWON's submissions are publicly available at www.ewon.com.au
- special reports on issues of concern to the industry and regulators, eg two reports on the long term impact on consumers of the failure of an energy retailer Jackgreen.

EWON undertakes a broad range of activities within the scope of identifying and responding to systemic issues, and this work is undertaken by a number of staff, including the Energy & Water Ombudsman NSW herself. EWON has a team of Policy Officers, reporting to the General Manager Policy and Community Engagement whose focus is systemic and related policy work. EWON estimates the costs of dealing with systemic issues are indicated by the staff costs included in Attachment One.

¹ Systemic and Other Important Issues, Section 13, EWON Charter Page 9 available www.ewon.com.au



Draft Recommendation 9.1

Governments and industry should raise the profile of ombudsman services in Australia. This should include:

- *more prominent publishing of which ombudsmen are available and what matters they deal with*
- *the requirement on service providers to inform consumers about avenues for dispute resolution*
- *information being made available to providers of referral and legal assistance services.*

In general terms EWON supports Draft Recommendation 9.1. We would welcome new initiatives to promote awareness and access to Ombudsman schemes, as long as these were appropriately targeted and funded so that individual ombudsmen schemes received the appropriate referrals and complaints for their services.

The Draft Report suggests awareness of Ombudsmen schemes is low in disadvantaged groups, such as Indigenous communities, and we are aware of this from our own outreach and complaint handling experiences. EWON works in partnership with agencies such as Legal Aid NSW, financial counsellors, community welfare organisations, NSW Fair Trading and others to provide targeted awareness raising to disadvantaged and vulnerable groups. We note our previous submission outlined these initiatives in detail.

Ombudsmen do not have the resources for mass advertising of their services and we query whether this is appropriate and cost effective in any case. EWON has found one of the best ways to effectively raise awareness is through 'gatekeeper services' - those services that consumers will approach when they have a problem. These services include the offices of Members of Parliament, community agencies, financial counsellors, Fair Trading and other government offices. We strongly support the suggestion for information about Ombudsmen to be made available to these key services.

EWON supports the suggestion that there be a requirement on service providers to play a role in informing consumers about the avenues for dispute resolution. In fact, it is already a requirement in NSW that energy and water providers tell their customers about EWON as an alternative dispute resolution option if the customer cannot resolve a complaint with their provider. Retailers are required by regulation to include information about EWON on all overdue and disconnection notices.



Draft Report reference to national energy ombudsman²

EWON notes the Draft Report makes reference to the “ultimate formation of a national energy ombudsman” in the context of rationalizing ombudsmen services as follows:

The Commission has also previously recommended that jurisdictions consider the potential for bilaterally combining energy ombudsman offices, and the ultimate formation of a national energy ombudsman (PC 2008). As identified at the time, relative cost efficiencies vary significantly, with the highest cost scheme currently around seven times more expensive per complaint than the least (figure 9.2, panel C). An important reason is that the smaller schemes have a limited capacity to spread their fixed costs over many complaints. For example, the smallest, the Tasmanian Energy Ombudsman, finalised only 515 complaints in 2011-12, less than 1 per cent of the number finalised in Victoria.

As well as reducing the average cost in smaller jurisdictions by spreading fixed costs across greater complaint numbers, rationalisation would allow the development of greater expertise within a larger body on complex issues, enable better benchmarking of the consumer performance of suppliers across jurisdictions, and provide greater capacity to feed regulators advice about systemic issues.

The question of a national energy ombudsman is a matter for the key stakeholders – industry, government and ombudsmen.

While consideration of a national energy ombudsman may be appropriate in the longer term, we consider that there is little support for this at present for reasons including:

- While some states and the ACT have adopted the National Energy Customer Framework (NECF), a number of states continue to work within a state energy jurisdiction rather than the national framework. In addition, although New South Wales has adopted NECF, EWON continues to have a number of state jurisdiction responsibilities.
- A number of energy ombudsmen also have a water jurisdiction that remains with the state jurisdiction.
- Current energy ombudsmen have different structures in that some ombudsman offices are state authorities, others are private companies.
- Any such change would need to be subject to a rigorous cost-benefit test.
- There are many issues to address in the energy industry, including extension of NECF to all states and territories. These issues need to be resolved before any consideration of a national energy ombudsman scheme.

² Draft Report, page 289



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We continue to support the current state based model where the ombudsman offices are working well. Through the Australia & New Zealand Energy and Water Ombudsman Network (ANZEWON), the Ombudsmen are working on greater consistency in processes, approach and the like.

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

Yours sincerely

Clare Petre

Energy & Water Ombudsman NSW

Attachment One: EWON estimated costs for systemic work						
Estimated effort on systemic work	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
<p>Estimated cost of systemic work</p> <p>Please note EWON has defined this as EWON policy staffing costs, as the policy staff are responsible for EWON's systemic issues management, policy submission writing, special reports and similar activities.</p> <p>Please note this does not include the time and cost of the Ombudsman and other senior EWON staff who have an ongoing role in systemic work.</p>	\$147,000	\$148,000	\$202,000	\$176,000	\$196,000	\$257,000
Cost of systemic work as a proportion of all organisation costs	3.30%	3.10%	3.60%	2.70%	2.40%	2.40%
FTE involved in systemic work as a proportion of all organisation FTE	2.0FTE = 5.8%	2.5 FTE = 6.2%	2.4 FTE = 5.2%	1.8 FTE = 3.1%	2.2 FTE = 2.8%	3.4 FTE = 3.5%