



11 June 2024

Energy Consumers and Competition Policy
NSW Department of Climate Change, Energy, the Environment and Water

Email to: energy.consumerpolicy@dpie.nsw.gov.au

Dear Energy Consumers and Competition Policy Team

IPART Final Report – Future of Embedded Networks in NSW

Thank you for your call for submissions on the IPART Final Report – Future of Embedded Networks in NSW.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have only responded to those questions in the consultation paper that align with issues customers raise with EWON, or with our organisation's operations as they relate to this process.

If you would like to discuss this matter further, please contact Rory Campbell, Manager Policy & Systemic Issues, on (02) 8218 5266.

Yours sincerely

A handwritten signature in black ink that reads "Janine Young".

Janine Young
Ombudsman
Energy & Water Ombudsman NSW

EWON submission IPART final report – Future of embedded networks in NSW

EWON support for IPART’s final recommendations

In our submissions to IPART’s draft report and the consultation paper on NSW’s Consumer Energy Strategy: households, we expressed our specific support for the draft recommendations¹.

IPART’s final recommendations maintain the same overall approach to price setting and compliance and enforcement as in the Draft Report. However, the report provides an overview of changes to the pricing methodologies contained in the Draft and Final Reports². We support the new recommendation that embedded network sellers must charge customers for the consumption of hot water in the underlying energy units, rather than also being able to charge in water units. This recommendation aligns with the position taken by EWON since 2021³.

We also strongly support the final recommendations related to increasing transparency over customer outcomes, which includes:

- that sellers would be required to publish their prices on their websites. In cases where the embedded network seller does not have a website, the prices would be published on the regulator’s website.
- sellers would also be required to publish on their websites:
 - efficiency information on their centralised air-conditioning systems provided where they are charging for the consumption of chilled water through an embedded network
 - the site addresses of their embedded networks.

Requiring this level of disclosure and transparency would go a long way to avoiding complaints and reducing the risk of consumer harm.

Recommendations relating to EWON’s role and functions

For the purposes of this submission, we are focused on IPART’s recommendations that relate to EWON’s complaint functions and membership. This includes recommendations 26, 28 and 29.

26. The NSW Government impose a statutory obligation on embedded network operators and exempt sellers supplying or selling energy to business customers to become members of the Energy and Water Ombudsman NSW (EWON).

The final report recommends that business customers that are not large corporate entities should be treated in the same way as residential customers, because:

- small business customers do not have the same level of bargaining power that they can rely on when negotiating the price and other terms and conditions of supply for embedded network services, and

¹[https://www.ewon.com.au/content/Document/Publications%20and%20submissions/Submissions/2024/Submission%20CCEEW%20Consumer%20Energy%20Strategy%20\(Households\).pdf](https://www.ewon.com.au/content/Document/Publications%20and%20submissions/Submissions/2024/Submission%20CCEEW%20Consumer%20Energy%20Strategy%20(Households).pdf)

² IPART, Embedded Networks, Final Report, April 2024, pp13-14

³ <https://www.ewon.com.au/page/publications-and-submissions/reports/spotlight-on/hot-water-embedded-networks>

- they are likely to be as susceptible as residential customers to monopolistic pricing and other exercises of market power by embedded network sellers.

IPART has found that business customers of exempt sellers in shopping centres and other sites that the exempt sellers own, occupy or operate, do not have access to EWON (unlike for on market business customers). This is because embedded network operators and exempt sellers at these sites are not subject to the requirement in the AER's Network Exemption Guideline and the Retail Exempt Selling Guideline to be a member of an energy ombudsman scheme.

Therefore, IPART has recommended that The NSW Government impose a statutory obligation on embedded network operators and exempt sellers supplying or selling energy to business customers to become members of the Energy and Water Ombudsman NSW (EWON).

A recently completed Council of Small Business Organisations Australia (COSBOA) report, 'Small Steps. Bright Future', found that 34% of small businesses have experienced energy hardship in the last 12 months. However, the report also found that small businesses operating within a shopping centre or embedded network are most at risk of energy hardship – with 62% experiencing energy hardship in the same timeframe⁴.

EWON therefore supports IPART's recommendation which will result in all small business customers having access to EWON's external dispute resolution services.

It is important note that outside embedded networks, EWON already accepts complaints from small business energy and water customers. Under our Constitution EWON's principal responsibilities are

- to handle Complaints about the conduct of providers of Energy or Water Services fairly, informally and expeditiously, without charge to the person making the enquiry or complaint;
- to promote EWON to consumers and **small businesses**; and
- to encourage and provide advice to Members on the development and maintenance of good complaint-handling practices to assist in the reduction and avoidance of Complaints⁵.

Our Charter also makes it clear that EWON can accept general energy and water complaints from small business customers where:

- the complainant is a small customer for the purposes of the National Energy Retail Law⁶.

In IPART's report, the term 'small customer' is used to refer to customers that consume less than 100 MWh of electricity or 1,000 MJ of gas per year. Unless otherwise stated, the term 'business customer' is used throughout this report to refer to a business customer that consumes less than these amounts⁷. This reflects the thresholds for defining a small customer in the National Energy Retail Law⁸.

⁴ <https://energyconsumersaustralia.com.au/news/newsletter-may-2024>; <https://www.cosboa.org.au/post/small-steps-bright-future>

⁵ Clause 2.1, EWON Constitution

⁶ Clause 5.1(i), EWON Charter

⁷ IPART, Embedded Networks, Final Report, April 2024, pvi

⁸ Clause 4, National Energy Retail Law (Adoption) Regulation 2020



However, it is also important to note that it is the size of the business, and not the thresholds set out in the regulations that determines EWON's jurisdiction for complaints. EWON's Charter defines a "Small Business" as a business that either has less than 20 full time equivalent employees or an aggregated annual turnover of less than \$2 million⁹. EWON will review whether our jurisdiction and Charter are fit for purpose to meet the intention of IPART's recommendation, and if necessary undertake amendment.

If the NSW Government decides to adopt this recommendation, careful consideration should be given to what entities will need to join EWON, and what the mechanism for requiring membership will be. EWON's Charter can be modified, if necessary, by its Board of Directors, after consultation with members.

EWON would welcome further discussion on this issue if the NSW Government decides to adopt this recommendation.

28. That the NSW Government enact legislation to require all embedded network sellers of hot and chilled water in NSW to become members of the Energy and Water Ombudsman NSW (EWON).

Currently there is no requirement for operators of hot and chilled water embedded networks to join EWON. However, some of our existing members that operate electricity embedded networks, or on-sell within electricity embedded networks, also operate hot and chilled water networks.

We do not know how many operators of hot and chilled water embedded networks there are that are not already members of EWON.

If the NSW Government adopts this recommendation, it will have the following consequences for operators of hot and chilled water embedded networks:

- If the company (based on the ABN) is not already a member of EWON, they will need to apply for EWON membership, pay a joining fee and agree to pay the ongoing fixed and variable fees.
- if the company (based on the ABN) is already a member of EWON, the number of customers by which their EWON fees are calculated, may increase based on the number of customers within their hot and chilled water embedded networks.

The current mechanism for operators of embedded networks to join EWON

EWON is approved by the Minister for Energy under s96B Electricity Supply Act 1995. The Act allows EWON to deal with complaints from small customers about:

- matters under the National Energy Retail Law (NSW)
- exempt entities under the National Energy Retail Law (NSW)
- retailers and distributors under the Electricity Supply Act 1995
- reticulators under the Gas Supply Act 1996
- any other disputes and complaints of such classes as are prescribed by the regulations or specified under any other Act or law.

Section 96D of the Act requires retailers and exempt entities to be bound by EWON decisions relating to small customer disputes and contains a penalty provision for non-compliance.

⁹ Clause 4.1, EWON Charter



Clause 11 of the Electricity Supply (General) Regulation 2014 allows small energy customers to complain about:

- a) a matter arising between the customer and an exempt person concerning a contract for the supply of electricity or gas (including charges for electricity or gas) or any other matter relating to the supply of electricity or gas by the exempt person to the customer
- b) matters arising out of the obligations of the retailer or distributors have for small customers under the Act or this Regulation
- c) matters arising out of the obligations of the retailer or distributors have for small customers under the *Gas Supply Act 1996* or regulations under that Act
- d) a matter arising between the regulated offer customer and a retailer concerning regulated offer prices or a regulated pricing agreement under the *Gas Supply Act 1996* or the *National Energy Retail Law (NSW)*.

Clause 11(a) was added to allow consumers to complain about the delivery of energy services by exempt networks and sellers. However, the Act and Regulations did not require exempt entities to become members of EWON. This created practical barriers to resolving consumer complaints about embedded networks because exempt entities were:

- not bound by EWON determinations
- not required to comply with EWON's dispute resolution procedures
- not required to pay for the cost of managing ombudsman complaints.

In March 2018, the AER published revised network and retail exemption guidelines requiring exempt entities servicing residential customers, but not small business customers, to become members of EWON.

Constitution, Charter and funding model

The Energy & Water Ombudsman NSW is established as a not-for-profit company limited by guarantee. As an industry-based Ombudsman scheme, our funding comes from fees paid by energy and water providers, which are required by law to be our members.

Each legal entity (based on a single ABN) is limited to one membership of EWON¹⁰. Membership does not include third party agents.

Membership fees consist of fixed fees and additional charges for complaints we receive from customers. Charging fees for individual complaints, provides an incentive for energy and water providers to improve their internal complaint handling, so that fewer customers need to come to us to resolve their complaint. Our Constitution, Charter and funding model are designed to be flexible enough to accommodate new entities and business models – both large and small.

29. That the compliance and enforcement framework authorise the Energy and Water Ombudsman NSW (EWON) to:

- a. refer to the regulator any complaints that EWON reasonably suspects indicate an embedded network seller may have breached an embedded network pricing determination

¹⁰ Clause 4.1, EWON Constitution



- b. provide to the regulator any supporting information or documentation regarding customer complaints it receives related to embedded network sellers not complying with the maximum price

The energy ombudsman schemes in NECF jurisdictions already have a reporting framework with the Australian Energy Regulator (AER) and EWON's Charter provides for the reporting of systemic issues to regulators.

If the NSW Government decides to implement this recommendation, then the NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) and IPART will need to engage with EWON on the details of how a reporting framework will be implemented. This may include updated Memorandums of Understanding (MOUs) with IPART and DCCEEW.