



Dispute resolution for residential embedded network customers

Regulatory impact statement

September 2021

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Executive Summary

The term 'embedded networks' refers to privately owned infrastructure that delivers electricity to customers. The owner of a site with an embedded network usually buys energy from an energy retailer and then 'on-sells' the energy to the various customers (e.g. residents or businesses) at the site.

Current estimates for residential embedded networks in Queensland are as high as 1,800¹. Embedded networks are regulated under the National Energy Retail Law (NERL) – the regulatory framework that governs the national energy retail market. Under the NERL, any person or business who sells energy to another person for use at premises must have either a retailer authorisation or a retail and/or a network operator exemption. If a person is successful in obtaining either exemption, they are referred to as an 'exempt seller'². Usually, the selling of energy for an 'exempt seller' is incidental to the main activities being undertaken, as is the case with most embedded networks (e.g. the running of a caravan park).

At present, embedded network customers in Queensland do not have access to the free, independent, energy-specific dispute resolution services provided by the Energy and Water Ombudsman Queensland (Energy Ombudsman) as they have no direct relationship with an energy retailer. The energy retailer's direct relationship is with the 'exempt seller'.

Over the past few years there have been a number of reform and consultation processes addressing various issues applicable to embedded networks undertaken by the Australian Energy Market Commission and the Australian Energy Regulator (AER) (e.g. Issues Paper: *Access to dispute resolution services for embedded network customers*). As a result there is now a clear policy direction (supported by the Council of Australian Governments (COAG) Energy Council) that embedded network customers should be able to access the services of the Energy Ombudsman, like all other small energy customers. Embedded network customers in New South Wales, Victoria and South Australia have already been granted access to the relevant Energy Ombudsman.

Although there are existing dispute resolution mechanisms available (e.g. Queensland Civil and Administrative Tribunal (QCAT)), only the Energy Ombudsman can provide a free, energy specific, efficient, binding dispute resolution service for embedded network customers.

In October 2019, the (then named) Department of Natural Resources, Mines and Energy (the department) prepared a Consultation Regulatory Impact Statement (consultation RIS) to seek stakeholder feedback on an appropriate fee structure for 'exempt sellers' that would allow Queensland residential embedded network customers access to the Energy Ombudsman.

In determining a suitable fee framework, the following policy objectives were considered:

- (i) ensure residential customers of embedded network 'exempt sellers' have access to free and timely energy complaint and dispute resolution services;
- (ii) ensure the dispute resolution service provides value for money and considers an 'exempt seller's' ability to pay;
- (iii) recognise that the delivery of a high quality service incurs a cost;
- (iv) do not increase the financial burden of existing 'scheme participants';

¹ According to the Australian Energy Regulator (AER), Queensland currently has 2,541 registered retail exemptions across all eight exemption categories. This decision RIS only covers three of these categories (see page 6, Table 1 for more detail).

² For the purposes of this RIS, the term 'exempt seller' includes 'exempt seller' and 'Exempt Network Operator'.

- (v) do not increase the regulatory burden of 'exempt sellers', existing 'scheme participants', the Energy Ombudsman and government; and
- (vi) support the principle of evidence-based decision making.

When developing options for a suitable fee structure for 'exempt sellers' the following issues were considered:

- a suitable fee scheme could help to encourage and raise awareness for 'exempt sellers' to become compliant with current AER requirements regarding consumer protections;
- a suitable fee scheme would be appropriate given that any complaint the Energy Ombudsman may receive and consider about an 'exempt seller' would be centred on some aspect of the 'exempt seller's' business activities (e.g. billing practices, management of rebates and refunds, maintenance of the embedded network, etc.);
- fees would only be payable by an 'exempt seller' once a complaint had been received against them by the Energy Ombudsman, provided that complaint was not frivolous or vexatious;
- legally, an 'exempt seller' may be limited in their ability to recoup costs associated with providing electricity to their embedded network customers;
- an 'exempt seller' may be supplying traditionally low cost housing (e.g. caravan parks), where the profit margins for such an enterprise can be quite low; and
- selling electricity is often not the primary activity of an 'exempt seller' (i.e. running a caravan park, retirement village, apartment block etc.).

The impacts of extending the existing Energy Ombudsman framework to include 'exempt sellers' were assessed as being too great financially and administratively for 'exempt sellers' and the Energy Ombudsman respectively. As a result, this option was considered to be inconsistent with policy objective (ii) and was not included as an option in the consultation RIS.

The consultation RIS concluded that:

- a new and tailored user-pays fee structure should be established for residential 'exempt sellers' consisting of a price per complaint based on a sliding scale that relates to the number of customers the 'exempt seller' has;
- the user-pays fees for residential 'exempt sellers' should be deferred for at least 12 months; and
- there should be no annual membership fee for residential 'exempt sellers'.

All interested parties were invited to make a submission in response to the consultation RIS. The consultation period was open from the 25 October 2019 (when the consultation RIS was published to the department's website) to the 31 January 2020 when the submission period closed. During this time, the consultation RIS was available on the department's website, the Get Involved website, as well as the Queensland Productivity Commission website. Twenty one submissions were received from a range of stakeholders, including the Energy Ombudsman, embedded network peak bodies, consumer groups and individuals. The decision RIS provides an overview of stakeholder responses to the consultation RIS and discusses issues raised in submissions.

Overall, there was strong support for the fee framework proposed in the Option 3 presented in the consultation RIS. However some stakeholders suggested that fees for larger 'exempt sellers' should be based on the actual cost to serve, rather than a sliding scale. Therefore, it is recommended that amendments to the proposed fees for 'exempt sellers' with more than 2,000 customers be based on

full cost recovery, rather than a sliding scale³. The Option 3 being recommended (refer table below) has been amended to reflect this.

Case Types	OPTION 1 Maximum price / complaint uncapped	OPTION 2 Maximum price / complaint capped	Recommended OPTION 3 <i>[bracketed numbers indicates original Option 3 figures]</i> Maximum price/complaint based on customer numbers				
			Up to 50	51-100	101-500	501-2,000	>2,000
General Enquiry	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Referral	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Refer Back	\$ 416	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$416 [\$ 0]
Level 1 Investigation	\$ 832	\$400	\$ 40	\$ 100	\$ 200	\$ 300	\$832 [\$400]
Level 2 Investigation	\$ 1,664	\$800	\$ 80	\$ 200	\$ 400	\$ 600	\$1,664 [\$800]
Level 3 Investigation	\$ 4,160	\$2,000	\$ 200	\$ 500	\$ 1,000	\$ 1,500	\$4,160 [\$2,000]
Final Order	Applicable level when case ceased + one off fee of \$4,000	Applicable level when case ceased + one off fee of \$1,500	Applicable level when case ceased + one off fee of \$150	Applicable level when case ceased + one off fee of \$375	Applicable level when case ceased + one off fee of \$750	Applicable level when case ceased + one off fee of \$1,125	Applicable level when case ceased + one off fee of \$4,000 [\$1,500]

The fee framework described in the recommended Option 3 is considered the preferred approach for the following reasons:

- it reflects the serious nature of an Ombudsman investigation and goes part of the way towards covering the costs associated with such an investigation;
- it reflects the 'exempt seller's' ability to pay and therefore minimises the risk that it could place them in financial hardship, or result in excessive costs being passed through to residents, for example, via increases in site rent or other residential levy, thereby minimising any financial impact to embedded network customers;
- it recognises that user fees will only be payable after a valid complaint has been received by the Energy Ombudsman⁴;
- the fees relate directly to the number of customers the embedded network 'exempt seller' has, and takes into account that larger 'exempt sellers' are more likely to have a greater capacity to pay due to their overall higher operating costs, thereby minimising financial impacts on smaller 'exempt sellers';
- there was clear support for those 'exempt sellers' with greater than 2,000 residential customers to pay full cost-recovery fees;
- it minimises the level of cross-subsidisation (and therefore financial impact) that may be required (by either the Energy Ombudsman or retailers);
- there is no increase in regulatory burden expected for embedded network customers, 'exempt sellers', electricity retailers, the Energy Ombudsman or government; and

³ Please note, at this time there are no 'exempt sellers' with more than 2,000 customers operating in Queensland.

⁴ This recognises that 'exempt sellers' who are operating legally and ethically (i.e. the vast majority of them) will not have to pay anything, including membership fees.

- therefore the department considers this option is the one that creates the greatest nett benefit.

The timing of the commencement of the user-pays fee scheme was also considered. Consistent with the consultation RIS, the fee scheme will be deferred (i.e. no fees payable) for at least 12 months from the time the regulation is amended to deem 'exempt sellers' as 'scheme participants' in order to:

- enable valuable data to be collected on complaints (types and numbers) from embedded network customers that will be used to validate some of the assumptions made in this RIS;
- provide an opportunity to gain a better understanding of the Energy Ombudsman's resourcing requirements to provide dispute resolution services to embedded network customers;
- lessen the potential financial impact on 'exempt sellers' in the first year and provide time for them to put in place the necessary procedures to reduce the likelihood that their customers will need the services provided by the Energy Ombudsman; and
- have minimal impact on electricity retailers.

Recommendations

It is recommended that:

- 1) All residential 'exempt sellers' are to be automatically deemed to be Energy Ombudsman scheme participants, with no need for mandatory registration as a 'scheme participant', and with no user-pays fees payable by an exempt seller until the first valid complaint is received by the Energy Ombudsman.
- 2) All large 'exempt sellers' with greater than 2,000 residential customers will become full fee paying scheme participants from day one, and are to pay the standard annual membership fee expected of existing scheme participants.
- 3) All large 'exempt sellers' with greater than 2,000 residential customers will be charged, from day one, the cost-reflective user-pays fees outlined in the recommended Option 3.
- 4) All 'exempt sellers' with up to 2,000 residential customers will not be required to pay an annual membership fee, and commencement of the user-pays fee scheme outlined in the recommended Option 3 will be deferred for at least 12 months to allow time for data collection on actual complaint numbers and dispute types.

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1. Introduction

The term 'embedded networks' refers to privately owned infrastructure that delivers electricity to customers. The owner of a site with an embedded network usually buys energy from an energy retailer and then 'on-sells' the energy to the various customers (e.g. residents or businesses) at the site. Current estimates for residential embedded networks in Queensland are as high as 1,800⁵.

Examples of embedded networks include traditionally low-cost accommodation, including caravan parks, manufactured homes parks, boarding houses, and aged and supported care homes, and may also include residential apartments and shopping centres⁶. For this reason, many residential customers whose electricity is supplied via an embedded network (embedded network customers) may be more vulnerable to financial hardship as a result of their energy and other household costs.

At present, embedded network customers in Queensland do not have access to the free, independent, energy-specific dispute resolution services provided by the Energy and Water Ombudsman Queensland (Energy Ombudsman)⁷ as they have no direct relationship with an energy retailer (i.e. a 'scheme participant'). By contrast, an 'exempt seller'⁸, as a direct customer of a retailer, is able to access to the services of the Energy Ombudsman, provided they use less than 160 megawatt hours (MWh) per annum⁹.

Although embedded network customers can seek dispute resolution assistance from the QCAT, as well as a range of other dispute resolution mechanisms, there can be a cost involved and decisions may not be binding. As a result, a number of consumer groups have long advocated for an extension to the Energy Ombudsman scheme to cover embedded network customers (see sections 2.4 and 5.3 for more information).

Over the past few years, there have been a number of embedded network reform and consultation processes undertaken by the Australian Energy Market Commission (AEMC) and the Australian Energy Regulator (AER). As a result, there is now a clear policy direction (supported by the Council of Australian Governments (COAG) Energy Council) that embedded network customers should be given the same access to the services of the Energy Ombudsman like all other small energy customers. Embedded network customers in New South Wales, Victoria and South Australia have already been granted access to the relevant Energy Ombudsman.

A consultation Regulatory Impact Statement (consultation RIS) was released in October 2019 and sought stakeholder feedback on the different fee options and approaches that could be applied to 'exempt sellers' in order to give residential embedded network customers in Queensland access to the Energy Ombudsman. The consultation period was open until the 31 January 2020. During this time, the consultation RIS was available on the department's website, the Get Involved website, as well as the Queensland Productivity Commission website.

On 21 January 2020, a public workshop was held to discuss energy legislation reform matters. Residential embedded network customer access to the Energy Ombudsman was a key topic. There were 12 attendees (including representatives from retailers, consumer groups, Energy Ombudsman

⁵ According to the Australian Energy Regulator (AER), Queensland currently has 2,541 registered retail exemptions across all eight exemption categories. This decision RIS only covers three of these categories (see page 6, Table 1 for more detail).

⁶ AER (Retail) Exempt Selling Guideline, version 5 (March 2018), section 2.

⁷ This is due to the limitations set out in the *Energy and Water Ombudsman Act 2006*, i.e. 'exempt sellers' must be 'scheme participants' for the purpose of the Act.

⁸ For the purposes of this decision RIS, 'exempt seller' includes either a deemed or registered Retail Exemption and/or Network Exemption holders.

⁹ As required by the *Energy and Water Ombudsman Act 2006*.

and State Government¹⁰) and useful feedback was received and has been incorporated where relevant¹¹.

The department received 21 submissions from a variety of stakeholders including energy retailers (including 'exempt sellers'), peak bodies, consumer group, individual customers and government (see Appendix I for a complete list). These submissions were considered at length when coming to the final policy positions described here.

2. Existing arrangements for embedded networks

2.1 Regulatory framework

Embedded networks are regulated under the National Energy Retail Law (NERL) – the regulatory framework that governs the national energy retail market. Under the NERL, any person or business who sells energy to another person for use at premises must have either a retailer authorisation or a retail exemption¹². If a person is successful in obtaining a retail exemption, they are referred to as an 'exempt seller'. Usually, the selling of energy for an 'exempt seller' is incidental to the main activities being undertaken, as is the case with most embedded networks (e.g. the running of a caravan park).

There are three types of exemption that an 'exempt seller' may obtain: 'deemed', 'registerable' and 'individual' (s110(2), NERL). 'Registered' and 'individual' exemptions must be assessed and decided by, and then registered with, the AER. An 'exempt seller' who is eligible for a 'deemed' exemption does not need to apply for an exemption or be registered with the AER as long as they comply with the conditions set out in the AER's (Retail) Exempt Selling Guideline (version 5, March 2018) (the Retail Guideline).

The Retail Guideline explains how to register or apply for, a retail exemption. It also discusses the factors that the AER will consider in assessing individual exemption applications. The Retail Guideline sets out the various classes of deemed and registrable exemptions, and the conditions attached to each exemption class¹³.

Embedded network customers who buy their electricity from an 'exempt seller' have similar rights and protections as customers who buy their electricity from an authorised energy retailer. These are part of the 'exemption conditions' that the 'exempt seller' must comply with in order to sell energy in an embedded network¹⁴.

In addition, under the National Electricity Rules¹⁵, 'exempt sellers' are also often required to obtain an exemption from the requirement to be registered as a network service provider where they are then referred to as an 'exempt network operator'. There are three types of exemption that an 'exempt network operator' may obtain: 'deemed', 'registerable' and 'individual'. 'Registered' and 'individual' exemptions must be assessed and decided by, and then registered with, the AER and listed on their public facing *Public register of retail exemptions*¹⁶. Similar to the retail exemption, exemption holders

¹⁰ Energy Consumers Australia, Energy and Water Ombudsman Queensland, Energy Queensland Limited, Meridian Energy, Origin Energy, Queensland Council of Social Services, Red Energy / Lumo Energy, Transport and Main Roads.

¹¹ 'Exempt sellers' were invited to participate.

¹² AER (Retail) Exempt Selling Guideline, version 5 (March 2018), section 1.

¹³ <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/retail-exempt-selling-guideline-march-2018>

¹⁴ Refer AER website for more information on the rights and protections for embedded network customers.

¹⁵ <https://www.aemc.gov.au/regulation/energy-rules/national-electricity-rules/current>

¹⁶ <https://www.aer.gov.au/retail-markets/retail-exemptions/public-register-of-retail-exemptions>

must comply with the conditions set out in the AER's Network Service Provider Registration Exemption Guideline¹⁷ (Network Guideline), which are broadly consistent with the conditions set out in the Retail Guideline.

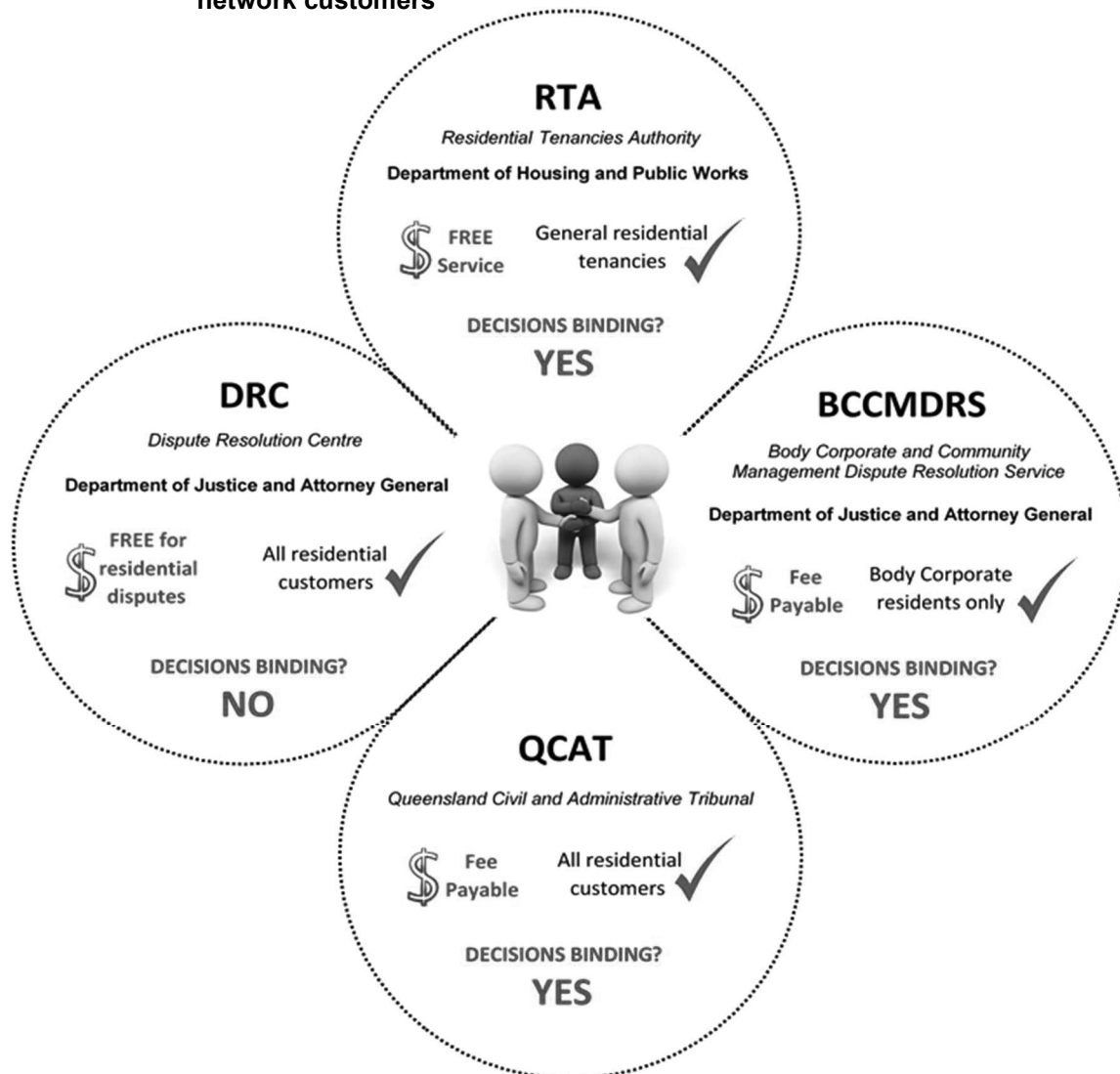
For the purposes of this decision RIS, 'exempt seller' is the collective term used to refer to 'exempt sellers' and 'exempt network operators'.

It is also worth noting that even though the AER is the regulator and investigates instances of non-compliance with the rules, it is not a dispute resolution service.

2.2 Queensland dispute resolution mechanisms

The current dispute resolution mechanisms available to embedded network customers are summarised in Figure 1. The diagram indicates whether the dispute resolution service is provided free of charge to embedded network customers, the types of embedded network customers who can access the service, and whether decisions are binding on the parties involved in the dispute.

Figure 1 Current complaint and dispute resolution mechanisms available to embedded network customers



¹⁷ <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/network-service-provider-registration-exemption-guideline-march-2018>

Across Queensland, embedded networks are growing in number and type¹⁸. This growth means an increasing number of electricity customers are being regulated under Queensland specific frameworks (e.g. Residential Tenancies Authority (RTA) and *Manufactured Homes (Residential Parks) Act 2003*) that are different to those that apply to customers who buy their electricity from an authorised energy retailer, and are supplied via a standard energy network connection.

In addition, while a dispute resolution service may be free to access for embedded network customers, in some cases the recommendation or advice given is not binding (e.g. Dispute Resolution Centre, Department of Justice and Attorney General (DRC)). As a result, any decision made may not be of any real assistance to the complainant/customer.

Providing embedded network customers access to a free, energy-specific dispute resolution service such as that provided by the Energy Ombudsman should resolve many of the issues detailed above for those embedded network customers who have an energy-related complaint.

2.3 Energy and Water Ombudsman Queensland

An Ombudsman is an independent official who represents the interests of the public by investigating and addressing complaints reported by individual citizens¹⁹.

Following the introduction of full retail contestability in the retail electricity market on 1 July 2007, the Energy Ombudsman was established under the *Energy and Water Ombudsman Act 2006* to assist residential and small business energy customers to resolve their disputes with suppliers, and was expanded to cover water disputes on 1 January 2011. The Energy and Water Ombudsman Act also provides for the establishment of an Advisory Council to provide independent advice to Energy Ombudsman on a range of matters.

At present, all residential customers and all small business customers consuming up to 160 MWh per annum, and who purchase their power from an energy retailer (recognised as a 'scheme participant'), have access to the Energy Ombudsman's dispute resolution services. The Energy Ombudsman also provides guidance on:

- appropriate complaint policies and procedures;
- information about internal complaint and dispute resolution requirements; and
- mediation and conciliation activities.

As an indication, in past years the Energy Ombudsman has managed 10,211 cases, of which 7,173 were related to electricity (approximately 70 per cent). Residential customers made up 95.3 per cent of all complaints with the remainder from business and government.²⁰

Average user-pays case fees are presented in section 5.2, Table 6. The Energy Ombudsman receives no funding from government.

¹⁸ [AEMC \(June 2019\), Updating the Regulatory Frameworks for Embedded Networks – final report](#)

¹⁹ <https://www.ewoq.com.au/about-ewoq/>

²⁰ [Energy and Water Ombudsman Queensland, Annual Report 2017-18](#). Corresponding figures decreased for the 2018-19 reporting period and decreased again for the 2019-20 reporting period. The higher figures were used in order to take a conservative approach in the decision RIS.

Electricity retailers in Queensland have (as at 31 March 2020) approximately 2.24 million small customers (91 per cent of which are residential, 63 per cent in South East Queensland).

2.4 Results of previous consultation

In April 2015, the department convened a reference group of industry and consumer advocates and consulted with this group on a range of embedded network issues. Reference group members noted that current complaint and dispute resolution mechanisms are complicated and that access to the Energy Ombudsman may be more beneficial for embedded network customers in resolving issues before they escalate.

In late 2015, the department released a consultation RIS²¹ (2015 consultation RIS) to assess options to improve embedded network customer access to complaint and dispute resolution services provided by the Energy Ombudsman. Stakeholder responses were mixed with no clear position, for or against. One of the factors in relation to the case against expansion is the Energy Ombudsman's 'user-pays' structure, which works well for large electricity retailers but could be difficult to administer for multiple smaller 'exempt sellers'. Also, while the Energy Ombudsman is considered user friendly (especially for smaller customers), the existing complaint and dispute resolution mechanisms available to embedded network customers (see section 2.2) were considered adequate by some stakeholders at the time. Other stakeholders supported the expansion of the Energy Ombudsman's jurisdiction as the Energy Ombudsman presents a cheaper and more efficient complaint and dispute resolution body, and consider existing complaint and dispute resolution mechanisms out of reach in terms of cost for most vulnerable embedded network customers. There was no decision RIS prepared for the 2015 consultation RIS.

In December 2016, the AEMC began a review²² of the regulatory arrangements for embedded networks (as outlined in the NERL and National Energy Retail Rules). The review identified that the potential still existed for embedded network customers to receive lesser consumer protections than standard supply customers. Stakeholder submissions indicated general agreement that embedded network customers should be afforded similar (if not the same) consumer protections as energy users supplied by a standard energy network connection. This should include embedded network customers having access to an appropriate free energy specific dispute resolution service such as that provided by an energy Ombudsmen scheme. As a result, one of the key recommendations of the AEMC final report, published in November 2017, is "*for jurisdictions... to work with Ombudsmen to continue to develop required changes to state instruments to increase access to energy specific, independent dispute resolution services for exempt customers [i.e. embedded network customers]*".

The other added benefit of utilising Ombudsmen schemes is the potential for coordinated complaint and dispute resolution when there are multiple affected parties / interests. Appropriate fees and charges were also raised during the 2016 AEMC consultation process and it was noted that fees should match an 'exempt seller's' ability to pay.

2.5 Subsequent changes to existing arrangements

In order to improve dispute resolution arrangements for embedded network customers, the AER published an Issues Paper in June 2017 titled, Access to dispute resolution services for embedded

²¹ Consultation RIS: On-supply customer access to energy rebates and the Energy and Water Ombudsman Queensland (November 2015)

²² [AEMC, Review of regulatory arrangements for embedded networks](#)

network customers. The AER sought stakeholders' views on expanding embedded network customer access to Energy Ombudsman schemes.

After considering stakeholder submissions, the AER finalised its policy position in November 2017 and in March 2018, amended both the retail and network exemption guidelines to improve dispute resolution arrangements for embedded network customers. New and amended core exemption conditions now require 'exempt sellers' to have appropriate complaints and dispute handling processes, and, 'exempt sellers' with residential customers must be members of, or subject to, Energy Ombudsman schemes where the scheme allows²³. Table 1 briefly summarises the categories of 'exempt sellers' that these requirements apply to.

Table 1 'Exempt seller' class types eligible for membership of the relevant Ombudsman scheme where permitted (Note: eligible membership for similar class types is contained under the Network Guideline)

Class Type	Description
Deemed exemption class	
Class D2	Persons selling metered energy to fewer than ten residential customers within the limits of a site that they own, occupy or operate
Class D6	Persons selling unmetered electricity to residential customers in Queensland
Class ND2	Persons supplying metered or unmetered energy to fewer than ten residential customers within the limits of a site that they own, occupy or operate. Not applicable if an Embedded Network Manager is appointed (see exemption class NR2).
Class ND6	Persons supplying unmetered electricity to residential customers in Queensland where premises are not separately metered and the relationship with the customer is covered by the <i>Residential Tenancies and Rooming Accommodation Act 2008</i> (Qld).
Registrable exemption class	
Class R2	Persons selling metered energy to ten or more residential customers within the limits of a site that they own, occupy or operate
Class R3	Retirement villages selling metered energy to residential customers within the limits of a site that they own, occupy or operate
Class R4	Persons selling metered energy in caravan parks, residential parks and manufactured home estates to residents who principally reside there (i.e. long term residents)
Class NR2	Persons supplying metered or unmetered energy to ten or more residential customers within the limits of a site that they own, occupy or operate. Additionally, persons that have appointed an Embedded Network Manager who would otherwise meet the ND2 class activity description.
Class NR3	Retirement villages supplying metered or unmetered energy to residential customers within the limits of a site that they own, occupy or operate.
Class NR4	Persons supplying metered or unmetered energy in caravan parks, holiday parks, residential land lease parks and manufactured home estates to residents who principally reside there.

(Source: [AER \(Retail\) Exempt Selling Guideline and Guideline - Exemption from registration as a network service provider](#))

The consultation RIS only listed the retailer exemption categories instead of both the retailer and 'Exempt Network Operator' exemption categories. For completeness, the decision RIS lists both in

²³ <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/retail-exempt-selling-guideline-march-2018>

Table 1. This added information does not change any of the assessments undertaken or recommendations presented in this decision RIS.

There have been many different consultation and reform processes undertaken in the past few years addressing various issues applicable to embedded networks. As there is now a clear policy direction from both the AEMC and the AER (supported by the Council of Australian Governments (COAG) Energy Council), it is an opportune time to consider how best to provide residential embedded network customers access to the free, energy-specific dispute resolution service that the Energy Ombudsman provides to other small energy customers.

2.6 Types of energy disputes heard by the Energy Ombudsman

The Energy Ombudsman currently hears complaints about:

- **“Billing** – *high bills, disputed bills, estimated accounts, incorrect fees and charges, errors with rebates and concessions, problems with the tariff charged or incorrect meter readings*
- **Credit** – *if you’re having difficulty paying a bill, been debt-listed, or disconnected for not paying a bill*
- **Customer service** – *if you’ve received incorrect advice, poor service or have concerns about privacy issues*
- **Land** – *if the network assets (poles, wires, towers, pipes) or maintenance of these assets is impacting your property*
- **Marketing** – *if you’re given misleading information, felt pressured or coerced into signing a contract, or a non-account holder is signed up to a contract*
- **Provision** – *problems with new or existing connections*
- **Supply** – *problems with the reliability of supply, or damage or loss caused by supply issues*
- **Transfer** – *any problems when switching energy retailers, as well as contract terms, delays in transfers, or site ownership”²⁴.*

Electricity-related topics that the Energy Ombudsman cannot receive complaints about include²⁵:

- the way energy prices or tariffs are determined by the Queensland Competition Authority for regional Queensland and by the AER for South East Queensland (via the Default Market Offer process);
- electricity consumption more than 160 megawatt hours per year – larger consumers of energy are considered as having the appropriate resources and expertise to adequately represent their interests or negotiate with their energy retailer;
- bottled LPG – covered by consumer law, not energy law;
- reticulated bulk hot water, or chilled water – covered by consumer law, not energy law; and
- solar rebates or equipment – covered by consumer law, not energy law.

Any amendments made to the Energy Ombudsman regulatory framework to provide embedded network customers access to the Energy Ombudsman will not enable residential embedded network customers to make complaints on issues that standard grid-connected customers cannot.

²⁴ Source: Energy and Water Ombudsman Queensland webpage
<https://www.ewoq.com.au/userfiles/files/Folding%20Pocket%20Brochure%20Web.pdf>

²⁵ Source: Energy and Water Ombudsman Queensland webpage
<https://www.ewoq.com.au/userfiles/files/Folding%20Pocket%20Brochure%20Web.pdf>

2.7 Stakeholder feedback on the consultation RIS and departmental response

The consultation RIS posed a number of questions regarding Queensland's existing dispute resolution mechanisms:

- What type of energy disputes are likely to arise between 'exempt sellers' and their customers?
- What dispute resolution mechanisms do embedded network customers currently use in order to have their energy disputes settled?
- Are customers aware of and successfully using existing mechanisms?
- Are there any issues with the current mechanisms?

Energy dispute types

Fifteen of the stakeholder submissions responded to the question: *What type of energy disputes are likely to arise between 'exempt sellers' and their customers?*²⁶ Thirteen²⁷ of those submissions listed issues relevant for embedded network customers that were similar if not identical to those issues described in section 2.6, i.e. those issues that the Energy Ombudsman already receives complaints about from standard electricity connection customers. The AER also raised access to competition as an issue that embedded network customers may raise, which is out of scope of this decision RIS. Respondent, D Bevan raised issues around illegal electrical work which is also outside the scope of this decision RIS (see also section 7.3).

Recommendation: The existing list of matters that the Energy Ombudsman can currently receive complaints about is appropriate for embedded network customers and doesn't need to be modified at this stage. No change to the relevant sections of the Energy and Water Ombudsman Act is required.

Dispute resolution mechanisms for embedded network customers

Thirteen submissions²⁸ agreed with the list of dispute resolution mechanisms available to embedded network customers, as described in Figure 1 (section 2.2). Origin Energy and Caravan Parks Association of Queensland Ltd also highlighted that where an embedded network customer has a relationship with a retailer they can access the retailer's internal dispute resolution mechanisms²⁹, and that face-to-face resolution of issues is also a viable mechanism due to the usual close relationship that exists between a caravan park resident and their landlord³⁰. Caravan Parks Association of Queensland Ltd also highlighted that caravan park residents also have access to free legal services through Caxton Legal³¹.

²⁶ The remaining six submissions provided no response.

²⁷ I&D Wicks; G Artley; L&G Clemett; A Robertson; [redacted individual]; Origin Energy; Energy Queensland; AGL; Caravan Parks Association of Queensland Ltd; WINconnect; Queensland Council of Social Services; Energy and Water Ombudsman Queensland; Energy and Water Ombudsman Queensland Advisory Council

²⁸ AGL, Origin Energy, Caravan Parks Association of Queensland Ltd, Queensland Council of Social Services, Energy and Water Ombudsman Queensland, Energy and Water Ombudsman Queensland AC.

²⁹ Origin Energy, Submission to the Regulatory Impact Statement – Embedded Networks, page 1.

³⁰ Email submission from Caravan Parks Association of Queensland Ltd; answer to question 2 from the consultation RIS.

³¹ Email submission from Caravan Parks Association of Queensland Ltd; answer to question 2 from the consultation RIS.

A general opinion from almost a third of submissions (particularly from individual submitters) on the current dispute resolution mechanisms is that embedded network customers, particularly vulnerable ones³², have a limited knowledge and/or understanding of the dispute resolution services available to them. The exception to this, as highlighted by Caravan Parks Association of Queensland Ltd, seems to depend on the relationship the customer has with their 'exempt seller'. For example, where the relationship is positive, customers tend to have a good knowledge of the dispute resolution mechanisms available to them³³. Four individual submitters³⁴ indicated they were either unaware of current dispute resolution mechanisms or believed they were not effective. Submissions from the Queensland Council of Social Service and the Energy and Water Ombudsman Queensland Advisory Council also noted that current dispute resolution mechanisms are expensive, confusing and not supportive of the complainant.

However, even for those stakeholders who expressed satisfaction with the current dispute resolution mechanisms, support was expressed for providing residential embedded network customers access to the Energy Ombudsman³⁵.

Energy Australia and the Energy and Water Ombudsman Queensland Advisory Council also expressed the view that the expansion of the Energy Ombudsman scheme should not be limited to only residential embedded network customers. Energy Australia was of the view that small businesses³⁶ operating in an embedded network should also be able to access the Energy Ombudsman³⁷, especially as some embedded networks combine both residential and business customers. A submission from Energex on the 2015 consultation RIS also expressed this view³⁸.

However, the Shopping Centre Council of Australia was not in favour of extending Energy Ombudsman access to small business embedded network customers for the following reasons³⁹:

- the long-term nature of relationships between owners ('exempt sellers') and small business (~5-7 years) based on lease agreements means there is little incentive to be in a dispute;
- owners are reluctant to close a retailer's doors without making every attempt to resolve the issue in dispute by all available means; and
- the experiences of the sector indicate that if disputes were to arise over electricity supply and use, then that would also coincide with other lease breaches (including failure to pay rent).

The South Australian Council of Social Service (SACOSS) submission to the 2015 consultation RIS also supported extending access to the Energy Ombudsman for residential embedded network customers only⁴⁰. SACOSS also made the point that small business may be: in a better position to take up a competitive retail offer; avail themselves of legal advice; and be supplied by an AER exemption holder that is larger and more visible to the regulator (i.e. more able to avoid the risk of non-compliance).

³² Queensland Council of Social Services, Energy and Water Ombudsman Queensland AC, L&G Clemett, A Robertson, [redacted individual], I&D Wicks

³³ Caravan Parks Association of Queensland Ltd email submission

³⁴ I&D Wicks, L&G Clemett, A Robertson, [redacted individual].

³⁵ Origin Energy, AGL, WINconnect, Property Council of Australia, Caravan Parks Association of Queensland Ltd.

³⁶ Consuming less than 160 MWh per annum.

³⁷ Energy Australia submission to the consultation RIS, page 2.

³⁸ Energex submission on the 2015 consultation RIS: on-supply customer access to energy rebates and the Energy and Water Ombudsman Queensland.

³⁹ Reasoning provided as a part of the Shopping Centre Council of Australia submission to the 2015 consultation RIS: on-supply customer access to energy rebates and the Energy and Water Ombudsman Queensland, page 3. Cross-reference in their 2019 submission.

⁴⁰ As a part of SACOSS's submission to the 2015 consultation RIS: on-supply customer access to energy rebates and the Energy and Water Ombudsman Queensland, page 81.

Given these arguments and the lack of any data indicating that there are issues around small business embedded network customers accessing appropriate dispute resolution services, the department has not changed the position presented in the consultation RIS, i.e. access to the Energy Ombudsman will be extended only to residential embedded network customers at this time.

3. Potential options for extending access to the Energy Ombudsman for embedded network customers

The two options that were contained in the consultation RIS and are considered in this section are:

- 1) do not extend access to the Energy Ombudsman
- 2) extend access to the Energy Ombudsman.

3.1 Do not extend access to the Energy Ombudsman

This option involves maintaining the status quo whereby embedded network customers are not able to access the services of the Energy Ombudsman. Table 2 outlines the predicted stakeholder impacts and opportunities of not extending access to the services of the Energy Ombudsman to embedded network customers (i.e. no change is made and the existing dispute resolution framework continues to apply).

Table 2 Summary of predicted impacts for stakeholders if no change is made

Stakeholder Group	Predicted impacts
Embedded network customers	<p>Without access to the services of the Energy Ombudsman, residential embedded network customers would continue to rely on existing complaint and dispute resolution mechanisms, and will not enjoy the same access to the Ombudsman’s free, energy-specific dispute resolution services that all other small and/or residential customers currently do.</p> <p>A key risk of this approach is that existing complaint and dispute resolution mechanisms may not address disputes that can emerge from misunderstandings or simple problems (which could be quickly resolved by an energy specific complaint body) resulting in ongoing dissatisfaction by embedded network customers.</p>
‘Exempt sellers’ (industry)	There are no expected impacts on ‘exempt sellers’.
Electricity retailers (industry)	There are no expected impacts on electricity retailers as existing Energy Ombudsman scheme participants.
Energy Ombudsman	No impacts are expected on the Energy Ombudsman. Complaints from embedded network customers would continue to be referred to alternate dispute resolution mechanisms.
Government	<p>If no action is taken, Queensland would potentially be the only jurisdiction that does not allow ‘exempt sellers’ (and therefore their customers) to be members of an Ombudsman scheme.</p> <p>This is inconsistent with the AER’s Retail Guideline and does not meet the policy objective of ensuring residential customers of embedded network ‘exempt sellers’ have access to free and timely energy complaint and dispute resolution services.</p>

3.2 Extend access to the Energy Ombudsman

This option involves extending access to the Energy Ombudsman for embedded network customers. The predicted stakeholder impacts and opportunities associated with this option are outlined in Table 3.

Table 3 Summary of predicted impacts and opportunities on different groups if embedded network customers are given access to the Energy Ombudsman

Group	Predicted impacts and opportunities
Embedded network customers	<ul style="list-style-type: none"> • Opportunity to access a free, energy-specific dispute resolution service that can better meet their needs. • May have positive financial impacts for small customers if it assists them in resolving disputes over electricity bills or rebate delivery with their electricity suppliers. • While there would be impacts for these customers seeking to bring disputes before the Energy Ombudsman, they are not considered to exceed the existing regulatory burden that exists for these customers bringing a dispute before QCAT or in using other existing dispute resolution mechanisms • The Energy Ombudsman can provide a coordinated complaint and dispute resolution service when there are multiple affected parties and/or interests.
'Exempt sellers' (industry)	<ul style="list-style-type: none"> • Could help to encourage and strengthen awareness of 'exempt sellers' obligations to customers, and as a result complaint numbers may decrease further. • Would provide further incentive for 'exempt sellers' to resolve customer disputes in the first instance rather than triggering referral to the Energy Ombudsman. • The Energy Ombudsman could provide a useful support service for smaller sellers of electricity. • Possibility for 'exempt sellers' to avoid potential drawn out processes relating to other dispute resolution mechanisms available to embedded network customers (e.g. QCAT). • Will have to pay (in full or in part) the relevant Energy Ombudsman fee if their customers access the Energy Ombudsman's services (assuming 300 complaints, the total cost to the Energy Ombudsman has been estimated at approximately \$138,000 [sections 4 and 5.4]).
Electricity retailers (industry)	<ul style="list-style-type: none"> • No (or minimal) impacts are expected on electricity retailers, as existing Energy Ombudsman scheme participants. • May have to subsidise (in part) participation of embedded network customers in the Ombudsman scheme if the fee schedule for exempt sellers is not based on full cost recovery (section 5.4). However, this amount is expected to be low and have minimal impact (if any) on retailers or their customers (section 5.5).
Energy Ombudsman	<ul style="list-style-type: none"> • Minimal impacts on administrative processes and complaint management system requirements are expected due to the estimated low numbers of complaints (refer section 4). • Additional training (e.g. covering the national and state-based regulatory frameworks) and resources for the Energy Ombudsman may be required as a result of extending coverage to embedded network customers, but it is anticipated the use of online training platforms will assist to minimise any additional cost.
Government	<ul style="list-style-type: none"> • No direct impacts on government have been identified for this option. • Possibility exists of a reduction in the workload for other government-based dispute resolution mechanisms (e.g. RTA, QCAT).

Group	Predicted impacts and opportunities
	<ul style="list-style-type: none"> Delivers access to the Energy Ombudsman for small embedded network customers in a way that is compatible with government's commitment to supporting small business (e.g. caravan park owners and other residential complexes).

Given the predicted impacts listed in Table 2, the predicted impacts and opportunities listed in Table 3, and the clear policy direction accepted by the government and reflected in the AER (Retail) Exempt Selling Guideline (section 2.5), the consultation RIS concluded that maintaining the status quo was not considered a viable option and recommended access to the Energy Ombudsman be extended to embedded network customers.

The proposal to extend access to embedded network customers is also consistent with the Queensland Government's policy commitments to 'reduce community disadvantage by encouraging vibrant and prosperous communities' (The Queensland Plan: Queenslanders' 30-year vision).

3.2.1 Stakeholder feedback on the consultation RIS and departmental response

The consultation RIS posed the question: *Are there any other stakeholder groups that the department should consider, and consult with, when assessing potential options for embedded network customers?*

As part of the consultation process, the department sent the consultation RIS to a wide range of stakeholder groups known to be active in the embedded network sector in Queensland. Submissions received provided a comprehensive list of stakeholder groups. A comparison was done between the list of stakeholder groups that the consultation RIS was sent to and the list of stakeholder groups provided in submissions, and there were no major omissions identified. The department always seeks to engage with key stakeholders to the best of its ability and will take the advice provided by stakeholders when consulting on the development of any required regulatory changes.

Recommendation:	The department will continue to consult with appropriate stakeholders on the development of any associated regulatory changes for embedded network customers.
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4. Estimating the number of complaints and cost to the Energy Ombudsman

In order to develop options for extending access to the Energy Ombudsman, the department undertook analysis to estimate the number of complaints the Energy Ombudsman could expect to receive if residential embedded network customers are able to access their services.

The exact number of embedded network customers in Queensland is unknown and a definitive number is difficult to quantify due to a lack of data. However, for the consultation RIS, the department estimated that there are somewhere between 60,000 and 187,000 embedded network customers in Queensland.

The lower estimate (used for the Consultation RIS) was based on data obtained from the implementation of the 2018 Queensland Government Asset Ownership Dividend where 60,000 residential embedded network customers received the dividend payment⁴¹.

However for this decision RIS, the lower estimate has now been updated based on data obtained from the implementation of the 2019 Queensland Government Asset Ownership Dividend where approximately 90,000 residential embedded network customers received the dividend payment⁴². This figure is also consistent with current AER estimates on the average number of residents per residential site in the exemption categories presented in Table 4.

Table 4 Estimated number of residential embedded network customers in Queensland based on exemption category

Exemption Category	AER registered sites in Qld (December 2020)	Average number of customers per site	Total
R2 – persons selling metered energy to ten or more residential customers	643	111	71,373
R3 – retirement villages selling metered energy to residential customers	75	104	7,800
R4 – persons selling metered energy in caravan parks, residential parks and manufactured home estates to residents who principally reside there	178	79	14,062
Totals	896		93,235

The upper estimate of 187,000 is based on the data presented in Table 5.

Table 5 Data underpinning the maximum estimate of residential embedded network customers in Queensland

Sector	Estimated occupants	Data Source	Assumptions
Flats, apartments and retirement villages	164,000	<i>Land Titles Office Qld</i> (246,000 lots x 66% = 164,000)	<ul style="list-style-type: none"> Only captures retirement villages that are structured as a body corporate scheme Strata Communities Qld estimate 66% of lots are likely to be part of an embedded network⁴³
Caravan Parks	8,933	<i>2016 Australian Census</i>	<ul style="list-style-type: none"> All caravan park residents are (likely) to be part of an embedded network, noting only those residents that are billed separately for their energy costs would be able to access the Energy Ombudsman

⁴¹ Under the Queensland Government Asset Ownership Dividend, all residential embedded network customers were eligible for this payment.

⁴² Under the Queensland Government Asset Ownership Dividend, all residential embedded network customers were eligible for this payment.

⁴³ AEMC, Review of regulatory arrangements for embedded networks.

Sector	Estimated occupants	Data Source	Assumptions
Manufactured Homes Parks	14,000	<i>Dep't of Housing & Public Works RIS 2016</i>	<ul style="list-style-type: none"> All manufactured home residents are part of an embedded network (the department knows this is not the case as many have a direct relationship with a retailer)
Total estimated residential customers	187,000		

To determine the estimated number of complaints from embedded network customers that the Energy Ombudsman is likely to receive, the department considered data from a range of sources, including the RTA, BCCMDRS (see Figure 1), the Energy and Water Ombudsman New South Wales (EWON), the Victorian Essential Services Commission (VESC) and the Energy and Water Ombudsman Victoria (EWOV).

Anecdotal evidence provided by the RTA and the BCCMDRS suggests that the facilitation of energy related disputes concerning 'exempt sellers' is minimal, if any (e.g. 13 complaints were received from residential park customers in 2018, and two from retirement park customers: based on advice from the (then named) Department of Housing and Public Works). While the BCCMDRS has stated that energy related disputes are on the increase (accounting for a maximum of 25 out of 500 disputes⁴⁴ received in a week), it is unknown what proportion of these are related to embedded networks. Further anecdotal evidence provided by the Caravan Parks Association of Queensland suggests that it fields one to two electricity enquiries from its members each week. QCAT has only heard around 30 electricity-related matters in its minor civil disputes jurisdiction since its establishment in 2009 (mostly related to large customers)⁴⁵.

In the absence of any detailed Queensland complaint data, the most relevant information source is an equivalent Energy Ombudsman scheme to provide jurisdictional evidence to support these conclusions, in this case EWON and EWOV.

In New South Wales (NSW), embedded network customers have been able to access the dispute resolution services of EWON since 2015⁴⁶. In 2019-20⁴⁷, EWON received 54 complaints from exempt customers, which represents 0.3 per cent of the estimated number of embedded network customers in NSW. Applying this 0.3 per cent to the lower estimate of embedded network customers in Queensland (60,000) results in a predicted 210 complaints per year⁴⁸. Applying this same percentage to the more recent estimate (~90,000) results in a predicted 315 complaints per year. And applying the same percentage to the higher estimate (187,000) results in a predicted 655 complaints per year. However, the department believes the high range (935) is likely to be overstated and not realistic because:

- not all of the 187,000 customers will be supplied electricity via an embedded network (e.g. some apartment blocks and manufactured home parks are not embedded networks and in

⁴⁴ Or 5% of cases.

⁴⁵ The department received less than 10 complaints from embedded network customers in 2019-20.

⁴⁶ However, EWON have only been able to legally compel embedded network customers' energy providers to work with EWON to resolve disputes / complaints since 1 July 2018 (Ref: [EWON 2017-2018 Annual Report](#)).

⁴⁷ [EWON Annual Report 2019-2020](#).

⁴⁸ Please note that this figure is less than the figure from the 2015 RIS (~1,600) due to an improvement in the quality and quantity of data that is now available.

recent anecdotal advice provided by Caravanning Queensland, they estimate that a little over 100 out of their 339 members are embedded networks⁴⁹),

- generous pricing protections in Queensland ensure embedded network customers receive the benefit of any bulk pricing discounts, and therefore billing disputes, which make up 51 per cent of total complaints raised with the Energy Ombudsman (2019-20 Annual Report), are less likely to be raised by embedded network customers, and
- some embedded network customers, particularly those who rent, are likely to be disincentivised to make a complaint for fear of reprisal from their 'exempt seller'.

In Victoria, the VESC have estimated there are approximately 152,901 residential embedded network customers⁵⁰. In 2019-20, EWOV dealt with 565 complaints from embedded network customers⁵¹ resulting in a complaint rate of approximately 0.4 per cent.

Applying the complaint rate of 0.4 per cent to the estimate of embedded network customer numbers in Queensland, the following results can be calculated:

- for 60,000 customers, the Energy Ombudsman could expect to receive 240 complaints;
- for 90,000 customers, the Energy Ombudsman could expect to receive 360 complaints; and
- for 187,000 customers, the Energy Ombudsman could expect to receive 748 complaints.

This low range of predicted embedded network customer complaints is also supported by data collected by the Energy Ombudsman. In the 2019-20 financial year, the Energy Ombudsman received 48 queries / complaints relating to embedded networks⁵², which had to be referred to other agencies given the current limitations of the Energy Ombudsman's jurisdiction.

Even though there is a range of complaint numbers, the department uses 300 complaints as the main benchmark for the remainder of the decision RIS. While slightly lower than the figures calculated based on EWON's data, this number still reflects the relatively low complaint numbers that the Energy Ombudsman is expected to receive and was supported by most submissions (see section 4.1 for more information).

Based on the expected complaint numbers a cost to the Energy Ombudsman can be estimated.

In order to cover all the potential costs incurred by the Energy Ombudsman in managing a single complaint received from an embedded network customer (including staff pay, resourcing and overheads), a maximum hourly rate of \$200 per hour has been calculated. This figure is based on data contained in the Energy Ombudsman's 2017-18, 2018-19 and 2019-20 annual reports⁵³. However, the approach used to develop an hourly rate for embedded network complaints differs from the way in which the Energy Ombudsman calculates scheme participant fees, and therefore cannot be applied to the existing fee framework.

Using this maximum hourly rate (\$200/hour), complaint ratios stated in the Energy Ombudsman's annual report, and the maximum amount of time each case type (see Table 6 for more information) can take⁵⁴, it has been calculated that addressing 300 complaints per year could potentially cost the

⁴⁹ Official correspondence from Caravanning Queensland, dated July 2018.

⁵⁰ VESC as of 1 October 2020.

⁵¹ EWOV 2019-20 Annual Report, page 48. EWOV also received 302 enquiries from embedded network customers, but these are reported on separately to complaints and not described as a part of their complaint hierarchy.

⁵² Data provided by the Energy Ombudsman to the department as a part of a special data request.

⁵³ Approximate hourly rate = total expenses / (maximum time taken per case type multiplied by number of cases). Figures used were sourced from the 2017-18 and 2018-19 Energy and Water Ombudsman Queensland Annual Reports.

⁵⁴ Energy and Water Ombudsman (February 2019), Scheme participant manual.

Energy Ombudsman approximately \$138,000⁵⁵ annually. If this cost was to be passed to retailers, initial estimates suggest that energy consumer bills may increase by approximately 6 cents⁵⁶ per customer per year⁵⁷.

4.1 Stakeholder feedback on the consultation RIS and departmental response

The consultation RIS posed the question: *Is the predicted number of complaints reasonable based on the information available?*

Nine submitters agreed⁵⁸ with how the department calculated the number of expected complaints the Energy Ombudsman could expect to receive from embedded network customers per year. While AGL and the AER were not explicit in stating their support, they did express support for the proposal overall as outlined in the consultation RIS. Eight submitters didn't respond to the question at all⁵⁹.

For the submissions provided by the Energy Ombudsman⁶⁰ and the Queensland Council of Social Services⁶¹, who disagreed with the estimate provided (saying it was too low), no comment was made on the calculations undertaken by the department. Rather, the comments that were made discussed the lower figures that the Energy Ombudsman presented in their submission to the consultation RIS.

Recommendation: The department will use the calculations presented in section 4 of the consultation RIS as the basis for developing an appropriate user-pays fee framework.

5. Establishing a suitable fee framework for 'exempt sellers'

5.1 Policy objectives

The following options for establishing a suitable framework to extend access to the Energy Ombudsman for residential embedded network customers, seek to balance the following policy objectives:

- (i) ensure residential customers of embedded network 'exempt sellers' have access to free and timely energy complaint and dispute resolution services;

⁵⁵ Total cost = \$200/hour multiplied by (% proportion of complaint/case type multiplied by maximum amount of time each case type may take). Maximum times, including handling the complaint, and associated processing and record management activities (and relative % proportion): general enquiry <15 minutes (14%), referrals <15 minutes (16%), refer backs 2 hour (48%), level 1 investigations 4 hours (16%), level 2 investigations 8 hours (5%), Level 3 investigations 20 hours (1%).

If the Energy Ombudsman was to receive 935 complaints (albeit highly unlikely) it could cost the Energy Ombudsman approximately \$430,000; 450 complaints could cost approximately \$207,000; and, 90 complaints could cost approximately \$45,000.

⁵⁶ Spread out over retailers' customer base (section 2.3). This estimate increases to 18 cents per customer per year if the complaint range of 935 is used and decreases to 2 cents per customer per year if the complaint range of 90 is used.

⁵⁷ This represents an increase of approximately 0.004 per cent increase to the average Queensland electricity bill, as calculated by CanStar (<https://www.canstarblue.com.au/electricity/average-electricity-bills/>).

⁵⁸ WINconnect, Caravan Parks Association of Queensland Ltd, [redacted individual], Origin Energy, Energy Ombudsman Advisory Council, A Robertson, L&G Clemett, Shopping Centre Council of Australia, Energy Queensland.

⁵⁹ I&D Wicks, G Artley, D Bevan, Urban Development Institute of Australia Queensland, Energy Australia, Property Council of Australia, Lumo Energy, Queensland Farmers Federation.

⁶⁰ Energy Ombudsman submission to the consultation RIS, page 4.

⁶¹ Queensland Council of Social Services submission to the consultation RIS, page 5

- (ii) ensure the dispute resolution service provides value for money and considers an ‘exempt seller’s’ ability to pay;
- (iii) recognise that the delivery of a high quality service incurs a cost;
- (iv) do not increase the financial burden of existing ‘scheme participants’;
- (v) do not increase the regulatory burden of ‘exempt sellers’, existing ‘scheme participants’, the Energy Ombudsman and government; and
- (vi) support the principle of evidence-based decision making.

5.2 Applying the existing Energy Ombudsman fee structure to ‘exempt sellers’

One option could be to simply apply the existing fee framework that the Energy Ombudsman uses for scheme participants (i.e. energy retailers).

The Energy Ombudsman currently receives no funding from the Queensland Government. Rather, it receives funding through participation (or membership) and user-pays fees. Once the Energy Ombudsman’s budget for each financial year is approved by the Minister administering the Energy and Water Ombudsman Act, funds can be collected from scheme participants.

Current participants providing connection and/or retail services to small customers pay a \$5,000 per year participation (membership) fee. This fee is prescribed by the Energy and Water Ombudsman Act.

User-pays fees are currently collected from participants in advance of each financial quarter and are based on complaint / dispute numbers from the previous quarter (i.e. for every complaint the Energy Ombudsman receives, the retailer must pay the appropriate fee). For embedded networks, it would be the ‘exempt seller’ who pays this fee, not the ‘exempt seller’s’ energy retailer.

User-pays fees vary depending on the level of investigation (or effort) required to resolve a given complaint / dispute (the more complicated the case, the higher the fees). Discrepancies between the two figures (pre and post financial quarter) are reconciled quarterly. Table 6 describes the average cost of each case type (user-pays fees) for 2019-20 across all sectors that the Energy Ombudsman deals with (electricity, gas and water).

Table 6 Summary of all Energy Ombudsman case types, descriptions and average cost per case type ⁶² (electricity, gas and water)

Case Types	Case description	User fees (average cost per case type)
General Enquiry	An enquiry received about electricity, water, gas or other issue that is not a complaint which relates to a scheme participant.	\$ 0
Referral	An enquiry is referred to another organisation with whom the Energy Ombudsman has an agreement because the complaint is outside the Energy Ombudsman’s jurisdiction.	\$ 0
Refer Back	The matter is referred back to the scheme participant for action.	\$410

⁶² Figures presented in the table are based on data and information sourced from the [Energy and Water Ombudsman Queensland Annual Report 2019-20](#) (total numbers of case types – Figure 1, versus total revenue received, page 53) for each case type.

Case Types	Case description	User fees (average cost per case type)
Refer back to higher level	The matter is referred to a higher level within the scheme participant's organisation.	\$840
Level 1 Investigation	Energy Ombudsman staff commence investigation and matter is resolved within four hours.	\$1,716
Level 2 Investigation	Energy Ombudsman staff spend in excess of four hours but not more than eight hours on the matter, or the participant has not provided timely or adequate responses or breaches section 32 of the Energy and Water Ombudsman Act.	\$ 3,630
Level 3 Investigation	Energy Ombudsman staff spend in excess of eight hours on the matter, or the participant has not provided timely or adequate responses or breaches section 32 of the Energy and Water Ombudsman Act.	\$ 5,205
Final order	If a matter cannot be resolved, the Energy Ombudsman may consider the matter and either make a binding order against the 'scheme participant' or dismiss it. A matter can be referred to this level from any other level in the investigation process.	Applicable level when case ceased + one off fee of \$4,500

Table 7 details the potential impacts that applying the current Energy Ombudsman fee structure to 'exempt sellers' may have on stakeholders. In addition, no specific impacts on competition have been identified if the current Energy Ombudsman fee structure is applied to 'exempt sellers'.

Table 7 Summary of predicted impacts if existing Energy Ombudsman fee structure is applied

Stakeholder Group	Predicted impacts
Embedded network customers	This option may result in impacts if their 'exempt seller' seeks to recover any Ombudsman-related costs (e.g. through site or other fees that are not energy-specific).
'Exempt sellers' (industry)	This option could see 'exempt sellers' potentially pay the same annual and user fees as Tier 1 energy retailers, even though some of these 'exempt sellers' (such as body corporates) have limited ability to recover these costs. This (rightly) could be seen as disproportionate, unfair and therefore inconsistent with the NERL. It is also doesn't meet the following policy objectives (section 5): <i>(ii) Ensuring the service provided is value for money and considers 'exempt sellers' ability to pay.</i> <i>(v) Does not increase the regulatory burden of 'exempt sellers', existing 'scheme participants', the Energy Ombudsman and government.</i>
Electricity retailers (industry)	Minimal impacts are expected on electricity retailers as existing Energy Ombudsman scheme participants. There would be no cross-subsidisation by retailers for 'exempt sellers'.
Energy Ombudsman	If the administrative burden in managing 'exempt sellers' is sufficiently large it may start impacting on the Energy Ombudsman's capacity to deliver an efficient and effective service to existing 'scheme participants' if the Energy Ombudsman does not also have access to the additional resources required to successfully address the increase in administrative workload. It may also result in unnecessary regulatory burden for the Energy Ombudsman if faced with compliance issues around non-payment of mandatory annual fees.

Stakeholder Group	Predicted impacts
Government	An increase in administrative burden may result if the Energy Ombudsman requires assistance from the department to deliver their complaint and dispute resolution service (e.g. financial assistance).

Given the overall expense of the current fee structure for ‘scheme participants’ (i.e. \$5,000 participant fee plus user-pays fees – average costs set out in Table 6), the department does not recommend the use of the current framework for ‘exempt sellers’. Applying the current framework does not take account of the regulatory limitations placed on some ‘exempt sellers’ (such as owners of manufactured home parks and caravan parks) which restricts their ability to recover these costs and could be seen as disproportionate and unfair. The department therefore considers this option to be inconsistent with policy objective (ii) – *ensure the dispute resolution service provides value for money and considers an ‘exempt seller’s’ ability to pay* – and is not recommended.

5.3 Establishing an alternative approach for ‘exempt sellers’

While the current Energy Ombudsman fee structure is not recommended for ‘exempt sellers’ (section 5.2), this does not preclude considering a more suitable fee structure for ‘exempt sellers’ given the benefits for ‘exempt sellers’ and their customers.

The department considers that a suitable fee scheme for ‘exempt sellers’ would be appropriate given that a complaint to the Energy Ombudsman about an ‘exempt seller’ would be related to the ‘exempt seller’s’ business activity (e.g. billing practices, management of rebates and refunds, maintenance of the embedded network, etc.), and therefore a fee to investigate such activity is appropriate. However, in setting a suitable fee scheme, there are other considerations that must also be taken into account.

Pricing protections exist in Queensland with a number of pieces of legislation limiting what fees and charges ‘exempt sellers’ can pass through to their customers as part of their energy bill.⁶³ Any fee scheme for ‘exempt sellers’ must therefore recognise that their capacity to pay may be limited, for example:

- legally an ‘exempt seller’ may be limited in their ability to recoup costs associated with providing electricity to their embedded network customers⁶⁴

... section 99A(2) of the MHRP Act states that the park owner must not charge the home owner, or arrange for the home owner to be charged, an amount for the use of a utility that is more than the amount charged by the relevant supply entity for the quantity of the service supplied to, or used at, the site...

... section 167(2) of the Body Corporate and Community Management (Accommodation Module) Regulation 2008 states that the body corporate may, by agreement with a person for whom services are supplied, charge for the services (including for the installation of, and the maintenance and other operating costs associated with, utility infrastructure for the services), but only to the extent necessary for reimbursing the body corporate for supplying the services...

⁶³ Body Corporate and Community Management Regulation 2008, *Manufactured Homes (Residential Parks) Act 2003*, *Residential Tenancies and Rooming Accommodation Act 2008*, *Electricity Act 1994*.

⁶⁴ Section 99A, *Manufactured Homes (Residential Parks) Act 2003* (MHRP Act)

- an ‘exempt seller’ may be supplying traditionally low cost housing (e.g. caravan parks), where the profit margins for such an enterprise can be quite low

...our sector has been defined as Residential Parks. Our representation is largely those mixed-use parks, which is parks that cater to both the tourist sector as well as offering permanent sites. The on-supply of electricity in these mixed-use parks is an incidental part of our member’s business which they do not act to profit.⁶⁵

The type of accommodations that are generally set up as on-supply [embedded network] arrangements include retirement villages, apartment complexes, social housing, caravan parks and boarding houses. Residents of these accommodations are frequently people on low incomes who may be vulnerable and have less opportunity to exercise choice about where they live. This means it is unlikely that these customers have actively chosen to receive their energy via an on-supply arrangement – rather, that is simply the arrangement in place at the accommodation option they could afford and was available to them⁶⁶.

- selling electricity is often not the primary activity of the ‘exempt seller’ (i.e. running caravan parks, retirement villages (including gated communities), apartment blocks, etc.).

The department therefore considers that the current user-pays fees collected from scheme participants are not appropriate for ‘exempt sellers’ and would likely cause significant financial hardship for some, particularly given many ‘exempt sellers’ are prevented by legislation from passing these costs onto their residents via energy bills.

In addition, given the expected low numbers of complaints that the Energy Ombudsman could expect to receive (see section 4), the department does not consider it reasonable for all embedded network ‘exempt sellers’ to be subject to mandatory paid scheme participation. In particular, the department does not consider there is a sound policy rationale for enforcing paid membership for all ‘exempt sellers’, many of whom may never have a complaint made against them.

Further, requiring all ‘exempt sellers’ in Queensland (of which estimates are as high as 1,800⁶⁷) to pay a mandatory membership fee is likely to be administratively onerous for the Energy Ombudsman. This could impact the Energy Ombudsman’s capacity to deliver an efficient and effective service to existing ‘scheme participants’, especially if the Energy Ombudsman does not have access to the additional resources required to successfully address the increase in workload.

The previous Energy Ombudsman also recognised that a fixed participation (membership) fee “*will not be appropriate for some small on-suppliers... given their size and likely use of the scheme*”⁶⁸.

As an alternative, the department proposes to amend the Energy and Water Ombudsman Act to enable all residential ‘exempt sellers’ to be automatically deemed to be scheme participants, thereby

⁶⁵ Caravan Parks Association of Queensland Ltd, 28 January 2016, *Submission to Regulatory Impact Statement: On-supply customer access to energy rebates and the Energy and Water Ombudsman Queensland*.

⁶⁶ Queensland Council of Social Service, January 2016, *Submission to Regulatory Impact Statement: On-supply customer access to energy rebates and the Energy and Water Ombudsman Queensland*.

⁶⁷ Cameron, Ralph, Khoury (June 2018) *Energy and Water Ombudsman Qld (EWOQ) – Outcomes of review of EWOQ: embedded network reform*.

⁶⁸ Energy and Water Ombudsman Queensland, 18 December 2015, *Submission to Regulatory Impact Statement: On-supply customer access to energy rebates and the Energy and Water Ombudsman Queensland*.

giving all residential embedded network customers access to the services of the Energy Ombudsman. However, it is not proposed to require 'exempt sellers' to pay an annual membership fee given their limited capacity to recover this cost and the estimated low number of complaints likely to be received.

In this way, any user-pays fees related to the Ombudsman scheme would only be required to be paid by an 'exempt seller' once the Energy Ombudsman receives a valid complaint. This approach will reward those sellers who are operating in a way that meets the needs and standards of their customers, and meets one of the key policy objectives of minimising administrative costs for both the Energy Ombudsman and 'exempt sellers'.

Given this and the issues discussed above, the department believed that 'exempt sellers' should not be required to pay an annual participation (membership) fee in order to give their customers access to the Energy Ombudsman's services. However, consideration should be given to the establishment of a suitable user-pays fee framework (to cover actual work undertaken by the Energy Ombudsman in responding to complaints). Potential options are discussed in more detail in section 5.5.

5.4 Stakeholder feedback on the consultation RIS and departmental response

The consultation RIS posed the questions:

- *Do you agree with the proposal for all residential 'exempt sellers' to be automatically deemed to be Energy Ombudsman scheme participants?*
- *Do you agree with the proposal not to require 'exempt sellers' to pay an annual participation (membership) fee? If not, please explain why?*

Deeming of scheme participants

Approximately half⁶⁹ of the submissions responded to the 'deeming' question posed by the consultation RIS. Only the Urban Development Institute of Australia Queensland didn't support the automatic deeming of 'exempt sellers' as 'scheme participants' in the Energy Ombudsman scheme citing regulatory overlap with the *Manufactured Homes (Residential Parks) Act 2003* as the main reason (this issue is further addressed in section 7.1).

The issue of some kind of mandatory registration requirement for all 'exempt sellers' was raised in three submissions⁷⁰. Resourcing impacts were also raised. There was insufficient articulation of the benefits that could be expected with mandatory registration for either 'exempt sellers' or their customers that would outweigh the expected financial impacts of such an option. Given the level of concern raised in submissions about cross-subsidisation by existing scheme participants⁷¹, the department concludes that there is insufficient justification for such an option. However, the department also supports closely monitoring complaints from embedded network customers received by the Energy Ombudsman so that proactive action can be taken before any serious financial impacts are felt.

⁶⁹ L&G Clemett, A Robertson, Energy Ombudsman Advisory Council, Origin Energy, [redacted individual], Caravan Parks Association of Queensland Ltd, Energy Queensland, WINconnect, Australian Energy Regulator, Energy Ombudsman, Queensland Council of Social Services.

⁷⁰ Energy and Water Ombudsman Queensland, Energy and Water Ombudsman Queensland Advisory Council, Queensland Council of Social Service.

⁷¹ AGL, Energy Queensland, Lumo.

Exemption from annual participation (membership) fee

Just over half (52 per cent) of the submissions⁷² (including individual customers, retailers, embedded network stakeholders, and statutory / regulatory groups) expressed support to not require 'exempt sellers' to pay an annual Energy Ombudsman membership fee. There were no submissions that did not agree with the proposal.

Recommendation: All residential 'exempt sellers' to be automatically deemed to be Energy Ombudsman scheme participants, with no need for mandatory registration as a 'scheme participant', and with no fees payable by an 'exempt seller' until the first valid complaint is received by the Energy Ombudsman.

5.5 Options for establishing a user-pays fee scheme

In developing options for a user-pays fee scheme for 'exempt sellers', the department considered the policy objectives (refer section 5.1, in particular an 'exempt seller's' capacity to pay (objective (ii))).

The department also considered that while an 'exempt seller's' capacity to pay must be considered, so too efforts must be made to limit cross-subsidisation by existing scheme participants, particularly given any subsidisation would eventually be borne by the remainder of the Queensland energy customer base. However, while cross-subsidisation of 'exempt seller' fees is not desirable (and every effort should be taken to not increase the financial burden of Queensland energy customers), the proposed options set out in the consultation RIS sought to minimise any potential cross subsidisation (estimated \$100,000-135,000 depending on option - see section 4).

In addition, the Energy Ombudsman's existing administrative process and complaint management systems are, in the department's opinion, sufficient to cater for the relatively small number of complaints expected to be received from embedded network customers annually (i.e. 300-935, section 4). According to figures presented in the Energy Ombudsman's 2017-18 annual report⁷³, the Energy Ombudsman received 10,329 cases in 2017-18 and closed 10,211⁷⁴ cases with a workforce of 45 staff members (of which 13 per cent work part-time).

When considering options for a user-pays fee framework, the department was also cognisant of the potential for any proposed fee structure to provide a potential disincentive for 'exempt sellers', instead encouraging them to make every effort to satisfactorily resolve customer disputes in the first instance rather than triggering referral to the Energy Ombudsman (thereby incurring additional expense).

In determining the relevant case types, the department considered that seven of the eight Energy Ombudsman case types are applicable to embedded network customers, and for which user-pays fees would need to be established. The full list of case types are described in Table 6. The 'refer to higher level' case type is not considered relevant for embedded network customers. Given the nature of many (if not most) embedded networks, and their relatively small corporate structure (especially

⁷² L&G Clemett, A Robertson, Energy Ombudsman Advisory Council, Origin Energy, [redacted individual], Caravan Parks Association of Queensland Ltd, Energy Queensland, WINconnect, Australian Energy Regulator, Energy Ombudsman, QCOSS.

⁷³ [Energy and Water Ombudsman Queensland, Annual Report 2017-18](#). Corresponding figures decreased for the 2018-19 reporting period and decreased again for the 2019-20 reporting period. The higher figures were used in order to take a conservative approach in the decision RIS.

⁷⁴ 8,838 of these related to energy. Corresponding figures decreased for the 2018-19 reporting period and again for the 2019-20 reporting period. The higher figures were used in order to take a conservative approach in the decision RIS.

when compared with a large energy retailer), this case type is likely to be redundant as there is, in all likelihood, no higher management level to refer a case to.

Based on the estimated cost to the Energy Ombudsman (section 4), the following three user-pays fee options were developed for each applicable case type for embedded network 'exempt sellers':

- 1) maximum price per complaint applying full cost recovery fees;
- 2) maximum price per complaint based on capped fees (less than full cost recovery); and
- 3) maximum price per complaint based on a sliding scale that relates to the number of customers that the embedded network 'exempt seller' has (less than full cost recovery).

The proposed fees for each case type under **Option 1** are outlined in Table 8. These fees were set to fully recover the cost of each case type (i.e. the estimated cost of energy-specific complaints and the approximate, maximum length of time each case type takes to process, as stated in the Energy Ombudsman's annual reports). A maximum length of time was chosen, instead of an average, so that a 'worst-case scenario' could be presented for consideration. A worst-case scenario was chosen because given the lack of information about the key concerns for embedded network customers as there is no way of knowing exactly whether the average time per case type for embedded network customers will be the same as for other residential electricity customers, and average times cannot be calculated as case revenues are reported on across the entire Ombudsman's business (electricity, water and gas)⁷⁵.

In order to make fees more affordable, **Option 2** proposes to cap the fees while still recognising that the issue requires investigation by the Ombudsman. The proposed capped fees are approximately 50 per cent of the full cost recovery fees and are also outlined in Table 8.

Under the **Option 3** presented in the consultation RIS, the maximum fees are set on a sliding scale based on customer numbers (see Table 8), similar to the approach taken by EWON⁷⁶.

When considering the proposed fees outlined in Table 8, it should be noted that there have been no 'Final Orders' issued by the Energy Ombudsman for the past four financial years⁷⁷, and the majority of embedded network-related case types that the Energy Ombudsman is expected to receive are 'Refer Backs' (i.e. almost half), for which there would be no fee under Options 2 and 3⁷⁸.

Table 8 Options for the proposed user-pays fee scheme

Case Types	OPTION 1 Maximum price / complaint uncapped	OPTION 2 Maximum price / complaint capped	OPTION 3 (presented in the consultation RIS) ⁷⁹ Maximum price/complaint based on customer numbers				
			Up to 50	51-100	101-500	501-2,000	>2,000
General Enquiry	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0

⁷⁵ Please note that if the complaint takes less than the maximum time, the resultant fee will also be less.

⁷⁶ EWON also used a sliding scale: <100 customers; 100-500 customers; >500 customers. However, given the limited number of large embedded networks in Victoria, the sliding scale model used by EWON (NSW has a few larger embedded networks similar to Queensland) was assessed as being more appropriate for use by the Queensland Energy Ombudsman.

⁷⁷ <https://www.ewoq.com.au/userfiles/files/ewoq-annual-report-2018-19.pdf>

⁷⁸ Option 3 as presented in the consultation RIS – based on data from [Energy and Water Ombudsman Queensland, Annual Report 2017-18](#)

⁷⁹ The Option 3 (as presented in the consultation RIS) sliding scale has 50% cost recovery for the 'exempt sellers' with large customer numbers (>2,000) and at 5% of full cost recovery figure for the 'exempt sellers' with small customer numbers (up to 50). This approach is attempting to strike a balance between charging an appropriate fee and the ability of the 'exempt sellers' to pay.

Case Types	OPTION 1 Maximum price / complaint uncapped	OPTION 2 Maximum price / complaint capped	OPTION 3 (presented in the consultation RIS) ⁷⁹ Maximum price/complaint based on customer numbers				
			Up to 50	51-100	101-500	501-2,000	>2,000
Referral	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Refer Back	\$ 416	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Level 1 Investigation	\$ 832	\$400	\$ 40	\$ 100	\$ 200	\$ 300	\$400
Level 2 Investigation	\$ 1,664	\$800	\$ 80	\$ 200	\$ 400	\$ 600	\$800
Level 3 Investigation	\$ 4,160	\$2,000	\$ 200	\$ 500	\$ 1,000	\$ 1,500	\$2,000
Final Order	Applicable level when case ceased + one off fee of \$4,000	Applicable level when case ceased + one off fee of \$1,500	Applicable level when case ceased + one off fee of \$150	Applicable level when case ceased + one off fee of \$375	Applicable level when case ceased + one off fee of \$750	Applicable level when case ceased + one off fee of \$1,125	Applicable level when case ceased + one off fee of \$1,500

5.6 Analysis of options for a user-pays fee scheme

Table 9 indicates how well the proposed user-pays fee options presented in the consultation RIS met the stated policy objectives (refer section 5) and this is described further in Table 10.

Table 9 Analysis matrix of user-pays fee options presented in the consultation RIS against policy objectives

Policy objectives		Option 1	Option 2	Option 3
(i)	Ensure residential customers of embedded network 'exempt sellers' have access to free and timely energy complaint and dispute resolution services.			
(ii)	Ensure the dispute resolution service provides value for money and considers an 'AER exemption holder's' ability to pay.			
(iii)	Recognise that the delivery of a high quality service incurs a cost			
(iv)	Does not increase the financial burden of existing 'scheme participants'.			
(v)	Does not increase the regulatory burden of 'exempt sellers', existing 'scheme participants', the Energy Ombudsman and government. ⁸⁰			
(vi)	Supports the principle of evidence-based decision making			

Achieves policy objective

Partially meets policy objective

Does not meet policy objective

⁸⁰ The preferred option will not result in an increase in regulatory burden due to the utilisation of the existing processes of the Energy Ombudsman and by having the complaint framework only apply to those 'exempt

Table 10 details the potential impacts that the user-pays fee options presented in the consultation RIS may have on stakeholders, including embedded network customers, 'exempt sellers' and retailers. No specific restrictions on competition have been identified for any of the options presented in Table 8 and assessed in Table 10.

Table 10 Summary of predicted impacts for user-pays fee options presented in the consultation RIS

Stakeholder Group	Predicted impacts
Embedded network customers	<p>There may be an impact on customers associated with Option 1 if their electricity suppliers seek to recover any additional costs from them (e.g. through site or other fees that are not energy-specific).</p> <p>This impact should be mitigated by either capping the fees (Option 2) or more so by applying a sliding fee scale (Option 3 as presented in the consultation RIS), as the expense to the 'exempt seller' is lowered.</p> <p>There is no increase in regulatory burden expected for embedded network customers associated with any option.</p>
'Exempt sellers' (industry)	<p>The application of the fees set in Option 1 may result in 'exempt sellers' experiencing financial hardship if they have a complaint made against them as they may not be in a position to easily cover any fees. The department considers the fees under Option 1 are unreasonable given an 'exempt seller's' limited capacity to recover these costs. This impact should be mitigated by either capping the fees (Option 2) or more so by applying a sliding fee scale (Option 3 – as presented in the consultation RIS).</p> <p>Option 3 (as presented in the consultation RIS) is considered preferable given that larger 'exempt sellers' are likely to have a greater capacity to pay for the services an Ombudsman can provide and a smaller 'exempt seller' could be very hard pressed to recover any sort of expense (section 5.3). This capacity stems from larger revenue streams and the operating efficiencies (and therefore financial savings) that come from being a larger business.</p> <p>Larger 'exempt sellers' may also have more of an opportunity to have complaints 'bundled' by the Energy Ombudsman in the event that a number of similar or the same complaints are raised by their embedded network customers.</p> <p>There may be some regulatory duplication for those 'exempt sellers' who have a complaint made against them to the Energy Ombudsman. This will not be the case for those 'exempt sellers' who have no complaints made against them.</p>
Electricity retailers (industry)	<p>No financial impacts are expected if Option 1 is adopted as full costs are borne by the 'exempt seller'.</p> <p>However, minimal impacts are still expected if Options 2 or 3 (as presented in the consultation RIS) are adopted as cross-subsidisation may occur. The level of cross-subsidisation required would depend on the Energy Ombudsman's ability to absorb these costs without negatively impacting on their ability to deliver their services, but is estimated to be between 5-6 cents per year per customer (assuming 300 complaints³²).</p> <p>There is no increase in regulatory burden expected for electricity retailers associated with any option.</p>
Energy Ombudsman	<p>No financial impacts are expected if Option 1 is adopted, as the fees are set for full cost recovery.</p> <p>Minimal financial impacts (if any) are expected if Options 2 or 3 (as presented in the consultation RIS) are adopted due to the estimated low numbers of probable complaints. The minimum estimated cost to the Energy Ombudsman (which may</p>

sellers' who have a complaint made against them. Given the expected low numbers of complaints and the predicted total number of 'exempt sellers', the expectation is that the impact overall will be negligible.

Stakeholder Group	Predicted impacts
	<p>result in minor cross-subsidisation by retailers) is around \$100,000 for Option 2 and \$100,000⁸¹ to \$135,000⁸² for Option 3 (as presented in the consultation RIS)⁸³ (assuming 300 complaints).</p> <p>There is no increase in regulatory burden expected for the Energy Ombudsman associated with any option.</p>
Government	No impacts (financial, administrative or regulatory) on government are expected for any option.

At the consultation RIS stage, given the amount of information available and the analysis against the policy objectives, **Option 3** (price per complaint based on a sliding scale that relates to the number of customers that the embedded network ‘exempt seller’ has) was the preferred option.

5.6.1 Stakeholder feedback on the consultation RIS and departmental response

The consultation RIS posed the questions:

- *Do you agree that the proposed fees for ‘exempt sellers’ under Option 3 are fair and reasonable, and proportionate to the level of impact the issue or complaint may have on the ‘exempt seller’s’ customer? If not, please explain why.*
- *Are there any other user-pays fee options the department should consider?*

Sixteen submissions from stakeholders provided responses to these questions. Seven of these supported the proposal, with Origin Energy⁸⁴ and AGL⁸⁵ providing a case for those ‘exempt sellers’ with greater than 2,000 residential customers to be treated as full scheme participants and charged the same fees. Only three (Urban Development Institute of Australia Queensland⁸⁶, Lumo⁸⁷ and Energy Queensland⁸⁸) rejected the proposal outright citing concerns around cross-subsidisation by existing scheme participants.

Expanding Option 3 (as presented in the consultation RIS) to include full cost recovery

In response to stakeholder feedback, further analysis was undertaken on the proposal for ‘exempt sellers’ with more than 2,000 customers to be treated as full scheme participants.

The department also investigated whether 2,000 customers was an appropriate figure to use. While noting that there was support expressed for the 2,000 figure by Origin Energy and AGL⁸⁹, it was also apparent that the majority⁹⁰ of current Energy Ombudsman scheme participants have more than

⁸¹ Option 3 (as presented in the consultation RIS) cross-subsidisation amount if all complaints are from customers of larger scale ‘exempt sellers’ (>2,000 customers).

⁸² Option 3 (as presented in the consultation RIS) cross-subsidisation amount if all complaints are from customers of smaller scale ‘exempt sellers’ (up to 50 customers).

⁸³ Note that if the expected complaint rate is at the higher end (935), the cost to the Energy Ombudsman is estimated to be \$313,000 for Option 2 and \$313,000-\$419,000 for the Option 3 presented in the consultation RIS. However, please note, for the reasons stated in section 4, the department believes that the lower estimates (included in Table 10) are far more likely.

⁸⁴ Origin Energy submission to the consultation RIS, page 2.

⁸⁵ AGL submission to the consultation RIS, page 2.

⁸⁶ Urban Development Institute of Australia Queensland submission to the consultation RIS, page 3.

⁸⁷ Lumo submission to the consultation RIS, page 1.

⁸⁸ Energy Queensland submission to the consultation RIS, page 6.

⁸⁹ Origin Energy and AGL.

⁹⁰ ~63 per cent.

2,000 customers⁹¹ as well. Also there are no ‘exempt sellers’ in Queensland with more than 2,000 customers at this time.

As noted in section 5.5, the proposed sliding scale using customer numbers is based on the approach taken by EWON. It is difficult to get a clear picture for either the total number of ‘exempt customers’ or numbers of ‘exempt sellers’ for Queensland because of the way ‘embedded networks’ are regulated nationally. However, the department received no material objections to the numbers proposed for the sliding scale during consultation. Caravan Parks Association of Queensland Ltd proposed slightly different scale numbers based on their membership⁹², but caravan parks represent only some of the ‘embedded networks’ in Queensland whereas the numbers used by EWON are based on a more informed view of the ‘embedded network’ sector which is based on NSW embedded network data collected by EWON. The department will include a review of the sliding scale numbers as a part of the implementation strategy.

Expanding Option 3 also strikes a balance for those ‘exempt sellers’ who may appear to have large customer numbers, but in fact have only a few permanent residential customers, with the remaining customers being of a transient nature who pay for electricity (for example) as a part of another fee (e.g. site fees for campers at caravan parks).

In addition to the inclusion of full cost recovery user pays fees, there is also a compelling argument that ‘exempt sellers’ with more than 2,000 residential customers should also be expected to pay the standard annual membership fee of \$5,000 that other scheme participants pay. If energy retailers (even those with fewer than 2,000 customers⁹³) are expected to be scheme participants, then it is considered equitable that large ‘exempt sellers’ be treated in the same way.

The recommended Option 3 in Table 11 below has been updated to reflect the feedback provided in the submissions that ‘exempt sellers’ with more than 2,000 customers be required to pay a user-pays fee that reflects full cost recovery and is consistent with what the Energy Ombudsman would charge ‘exempt sellers’ (with more than 2,000 residential customers) as full scheme participants. The potential impacts that the recommended Option 3 may have on stakeholders is detailed in Table 13 below.

Table 11 Recommended Option 3 for the proposed user-pays fee scheme

Case Types	RECOMMENDED OPTION 3 ⁹⁴				
	Maximum price/complaint based on customer numbers				
	Up to 50	51-100	101-500	501-2,000	>2,000
General Enquiry	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Referral	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Refer Back	\$ 0	\$ 0	\$ 0	\$ 0	\$ 416

⁹¹ Energy and Water Ombudsman Queensland Annual Report 2018-19, and Australian Energy Regulator, Retail energy market performance update for Quarter 1, 2019-20 (schedule 2)

⁹² Caravan Parks Association of Queensland Ltd email submission on the consultation RIS.

⁹³ Four retailer/scheme participants have <500 residential customers (Ref: Australian Energy Regulator, Retail energy market performance update for Quarter 1, 2019-20 (schedule 2)).

⁹⁴ Recommended Option 3’s sliding scale has 100% full cost recovery for ‘exempt sellers’ with large customer numbers (>2,000) and has 10% full cost recovery for ‘exempt sellers’ with low customer numbers (up to 50). This approach is attempting to strike a balance between charging an appropriate fee and the ability of ‘exempt sellers’ to pay.

Case Types	RECOMMENDED OPTION 3 ⁹⁴				
	Maximum price/complaint based on customer numbers				
	Up to 50	51-100	101-500	501-2,000	>2,000
Level 1 Investigation	\$ 40	\$ 100	\$ 200	\$ 300	\$832
Level 2 Investigation	\$ 80	\$ 200	\$ 400	\$ 600	\$1,664
Level 3 Investigation	\$ 200	\$ 500	\$ 1,000	\$ 1,500	\$4,160
Final Order	Applicable level when case ceased + one off fee of \$150	Applicable level when case ceased + one off fee of \$375	Applicable level when case ceased + one off fee of \$750	Applicable level when case ceased + one off fee of \$1,125	Applicable level when case ceased + one off fee of \$4,000

Recommendation: That large 'exempt sellers' (with more than 2,000 residential customers) pay the standard annual user-pays fee expected of existing scheme participants.

Table 12 indicates how well the Option 3 presented in the consultation RIS and the recommended Option 3 meet the stated policy objectives (refer section 5) and this is described further in Table 13. The recommended Option 3 was given a higher score for criteria (vi) given the quantitative data that was available from the AER and the Energy Ombudsman to aid in the department's assessment.

Table 12 Analysis matrix of user-pays fee options against policy objectives

Policy objectives		Option 3	Recommended Option 3
(i)	Ensure residential customers of embedded network 'exempt sellers' have access to free and timely energy complaint and dispute resolution services.		
(ii)	Ensure the dispute resolution service provides value for money and considers an 'exempt seller's' ability to pay.		
(iii)	Recognise that the delivery of a high quality service incurs a cost		
(iv)	Does not increase the financial burden of existing 'scheme participants'.		
(v)	Does not increase the regulatory burden of 'exempt sellers', existing 'scheme participants', the Energy Ombudsman and government. ⁹⁵		
(vi)	Supports the principle of evidence-based decision making		

⁹⁵ The preferred option will not result in an increase in regulatory burden due to the utilisation of the existing processes of the Energy Ombudsman and by having the complaint framework only apply to those 'exempt sellers' who have a complaint made against them. Given the expected low numbers of complaints and the predicted total number of 'exempt sellers', the expectation is that the impact overall will be negligible.

Achieves policy objective

Partially meets policy objective

Does not meet policy objective

Table 13 details the potential impacts that the recommended Option 3 may have on stakeholders, including embedded network customers, 'exempt sellers' and retailers.

Table 13 Summary of predicted impacts for user-pays fee of the recommended Option 3

Stakeholder Group	Predicted impacts
Embedded network customers	<p>The potential impact on customers associated with the recommended Option 3 (if their electricity supplier seeks to recover any additional costs from them, e.g. through site or other fees that are not energy-specific) should be mitigated by the capping of user pays fees for those 'exempt sellers' with up to 2,000 customers, as the expense to the 'exempt seller' is lowered.</p> <p>The recommended Option 3 also recognises that larger 'exempt sellers' are well-placed to absorb any Ombudsman-related costs (including an annual membership fee) without passing on the additional expense to their customers.</p> <p>There is no increase in regulatory burden expected for embedded network customers associated with the recommended Option 3.</p>
'Exempt sellers' (industry)	<p>The financial impact on smaller 'exempt sellers' will be lessened through the use of a sliding scale fee schedule.</p> <p>The recommended Option 3 is considered preferable given that larger 'exempt sellers' are likely to have a greater capacity to pay for the services an Ombudsman can provide. This capacity stems from larger revenue streams and the operating efficiencies (and therefore financial savings) that come from being a larger business. Often the larger exempt sellers are able to purchase electricity at a bulk discounted rate from a standard electricity retailer.</p> <p>Larger 'exempt sellers' may also have more of an opportunity to have complaints 'bundled' by the Energy Ombudsman in the event that a number of similar or the same complaints are raised by their embedded network customers. Predicted financial impacts are also expected to be negligible given there are no 'exempt sellers' in Queensland with more than 2,000 customers at this time.</p> <p>There is no increase in regulatory burden expected for 'exempt sellers' associated with the recommended Option 3.</p>
Electricity retailers (industry)	<p>Minimal financial impacts are expected if the recommended Option 3 is adopted as only low levels of cross-subsidisation (if any) may occur. The level of cross-subsidisation required would depend on the Energy Ombudsman's ability to absorb these costs without negatively impacting on their ability to deliver their services, but is estimated to be as low as between 5-6 cents per year per customer (assuming 300 complaints⁹⁶).</p> <p>The recommended Option 3 is preferred as full cost recovery fees are proposed to be set for those 'exempt sellers' with more than 2,000 customers. This will further minimise any risk of cross-subsidisation as those 'exempt sellers' who can afford to pay, will be required to do so.</p> <p>There is no increase in regulatory burden expected for electricity retailers associated with the recommended Option 3.</p>
Energy Ombudsman	<p>Minimal financial impacts (if any) are expected if the recommended Option 3 is adopted due to the estimated low numbers of probable complaints. The minimum estimated cost to the Energy Ombudsman (which may result in minor cross-</p>

⁹⁶ Note that if the expected complaint rate is at the higher end (935), the cost to the Energy Ombudsman is estimated to be \$313,000-\$419,000 for the recommended Option 3. However, please note, for the reasons stated in section 4, the department believes that the lower estimates are far more likely.

Stakeholder Group	Predicted impacts
	<p>subsidisation by retailers) is around \$100,000⁹⁷ to \$135,000⁹⁸ for the recommended Option 3⁹⁹ (assuming 300 complaints).</p> <p>Even smaller financial impacts are expected with the recommended Option 3 with large 'exempt sellers' (with more than 2,000 customers) expected to pay the same fees as current retailers / scheme participants.</p> <p>There is no increase in regulatory burden expected for the Energy Ombudsman associated with the recommended Option 3.</p>
Government	No impacts (financial, administrative or regulatory) on government are expected for either option.

Recommendation: Large 'exempt sellers' with more than 2,000 customers to be treated as full scheme participants and charged the same user-pays fees as current retailers/scheme participants (the recommended Option 3).

Recent discussions with the AER have also brought to the department's attention the issue of retailers authorised to on-sell energy in Queensland embedded networks. According to the AER, these 'specialised' retailers are considered retailers under the National Energy Retail Law and therefore should be included in the Energy Ombudsman scheme as per one of the conditions of their retail authorisation. However, the way in which the Energy and Water Ombudsman Act has been drafted means there is some ambiguity about whether or not the customers of these particular retailers can access the services of the Energy Ombudsman. The department is proposing to address this issue separately via a regulation to ensure these customers do have access to the Energy Ombudsman as intended under the National Energy Retail Law.

Telecommunications Industry Ombudsman user-pays process

Another option raised by an individual submitter¹⁰⁰ involved modelling embedded network customer access to the Energy Ombudsman off the framework for the Telecommunications Industry Ombudsman (TIO). The TIO uses the same approach to funding that the Energy Ombudsman currently does, i.e. a combination of user-pays fees and participation/annual fees. The TIO model is weighted more towards higher participation/annual fees. This could be in part due to the much higher complaint numbers the TIO receives from Queensland customers compared to the Energy Ombudsman, i.e. 23,427¹⁰¹ versus 5,370¹⁰². There is also a marked difference in the number of retailers operating in the telecommunications space versus the electricity space, i.e. 348¹⁰³ retailers versus 32¹⁰⁴ respectively.

⁹⁷ The recommended Option 3 cross-subsidisation amount if all complaints are from customers of larger scale 'exempt sellers' (>2,000 customers).

⁹⁸ The recommended Option 3 cross-subsidisation amount if all complaints are from customers of smaller scale 'exempt sellers' (up to 50 customers).

⁹⁹ Note that if the expected complaint rate is at the higher end (935), the cost to the Energy Ombudsman is estimated to be \$313,000-\$419,000 for the recommended Option 3. However, please note, for the reasons stated in section 4, the department believes that the lower estimates (included in Table 12) are far more likely.

¹⁰⁰ As a part of [individual redacted for publication] submission to the consultation RIS (email).

¹⁰¹ [Telecommunications Industry Ombudsman Annual Report 2019-20](#)

¹⁰² [Energy and Water Ombudsman Queensland Annual Report 2019-20](#)

¹⁰³ [Telecommunications Industry Ombudsman Annual Report 2019-20](#)

¹⁰⁴ AER quarterly retail performance reporting – Quarter 3, 2019-20.

Given these differences, the department considers it is more appropriate to base the proposed fees for 'exempt sellers' on the current fee framework of the Energy Ombudsman, rather than the TIO.

Energy Ombudsman's proposed truncated dispute resolution model for embedded network customers

Included in the Energy Ombudsman's submission¹⁰⁵ to the department's *Review of Queensland energy legislation: issues paper*¹⁰⁶ was a proposed truncated dispute resolution model for embedded network customers. The Energy Ombudsman described the truncated process as follows:

"Under the truncated dispute resolution model for embedded networks, once a complaint is received the enquiry will be referred to the Embedded Network Manager who will consider and look to resolve the complaint within 10 days with EWOQ's [the Energy Ombudsman] assistance. If both parties agree to the resolution, the matter will be closed. It is anticipated that most exempt seller disputes will be closed at this stage. For those disputes that are unable to be resolved at this stage, EWOQ [the Energy Ombudsman] will then commence a conciliation process". No other information was provided.

At this point in time, there isn't sufficient publically available data to support such a model, however the existing Energy Ombudsman dispute resolution process and associated complaint numbers will be closely monitored to ensure the framework remains fit-for-purpose once embedded network customers are given access to the Ombudsman's services.

5.7 Proposed timing of commencement of a user-pays fee scheme

As noted above, the department proposes to implement a user-pays fee scheme for 'exempt sellers' that is structured around a sliding scale based on the number of customers the 'exempt seller' has (refer to the recommended Option 3 in section 5.4).

In relation to the timing of the commencement of the user-pays fee scheme, the consultation RIS outlined two potential approaches:

- 1) extend access to the Energy Ombudsman for residential embedded network customers but defer commencement of the fee scheme for at least 12 months to allow time for data collection on actual complaint numbers and dispute types, or
- 2) commence the fee scheme from the day embedded network customers are given access to the services of the Energy Ombudsman (i.e. no delay).

Deferral of the fee scheme will still ensure all embedded network customers have access to a free, energy-specific dispute resolution service such as that provided by the Energy Ombudsman. It will also enable the Energy Ombudsman to collect sufficient data to be able to determine whether or not the inclusion of embedded network customers will have a longer-term resourcing impact on the Energy Ombudsman and therefore support the introduction of the preferred fee approach (i.e. the recommended Option 3). Data collected during the 12 months will help inform the final fee structure to be implemented.

In addition, this approach will lessen the potential financial impact on 'exempt sellers' in the first year and provide time for them to get the necessary procedures in place that will reduce the likelihood that their customers will need the services provided by the Energy Ombudsman. This approach is also expected to have minimal impacts on electricity retailers.

¹⁰⁵ Energy and Water Ombudsman Queensland submission to the *Review of Queensland energy legislation: issues paper* (2020), page 17.

¹⁰⁶ <https://www.dnrme.qld.gov.au/energy/initiatives/review-energy-legislation>

Table 14 shows how well the two implementation options meet the policy objectives (referred to in section 5.1).

Table 14 Analysis matrix of options against policy objectives

Policy objectives		Minimum 12 month delay	No delay
(i)	Ensure residential customers of embedded network 'exempt sellers' have access to free and timely energy complaint and dispute resolution services.		
(ii)	Ensure the dispute resolution service provides value for money and considers an 'exempt seller's' ability to pay.		
(iii)	Recognise that the delivery of a high quality service incurs a cost		
(iv)	Does not increase the financial burden of existing 'scheme participants'.		
(v)	Does not increase the regulatory burden of 'exempt sellers', existing 'scheme participants', the Energy Ombudsman and government.		
(vi)	Supports the principle of evidence-based decision making		

Achieves policy objective

Partially meets policy objective

Does not meet policy objective

Delaying the implementation of the fee scheme for at least 12 months meets the majority of the policy objectives, compared to an immediate commencement of the fee scheme. Given this, and the issues discussed above, the consultation RIS concluded that the implementation of the fee scheme should be deferred for at least 12 months to allow for data collection and to ensure the fees are appropriate.

5.7.1 Stakeholder feedback on the consultation RIS and departmental response

The consultation RIS posed the question: *Do you see any issues with delaying the implementation of the user-pays fee scheme for at least 12 months in order to gather data to increase awareness and understanding of the Energy Ombudsman services before fees are payable?*

Nine submissions provided by stakeholders addressed this question¹⁰⁷. Seven of these¹⁰⁸ had no issue with the proposal to delay the implementation of the user-pays fee scheme for at least 12 months in order to gather data to increase awareness and understanding of the Energy Ombudsman's services before any fees become payable.

One submitter¹⁰⁹ requested that fees be payable from the very start, and five submissions¹¹⁰ expressed concern about the potential cost to the Energy Ombudsman and cross-subsidisation of

¹⁰⁷ Energy and Water Ombudsman Queensland Advisory Council, [redacted individual], Origin Energy, Caravan Parks Association of Queensland, Energy Queensland, AGL, WINconnect, Energy and Water Ombudsman Queensland, Queensland Council of Social Services.

¹⁰⁸ Energy and Water Ombudsman Queensland Advisory Council, Origin Energy, Caravan Parks Association of Queensland, AGL, WINconnect, Energy and Water Ombudsman Queensland, Queensland Council of Social Services.

¹⁰⁹ As a part of [individual redacted for publication] submission to the consultation RIS (email).

¹¹⁰ Energy and Water Ombudsman Queensland, Energy and Water Ombudsman Queensland Advisory Council, Queensland Council of Social Services, Energy Queensland and AGL

'exempt sellers' by existing scheme participants if complaint numbers far exceeded those predicted in the consultation RIS.

The department accepts the concerns raised by stakeholders, especially the issue of cross-subsidisation by existing scheme participants and/or financial impacts to the Energy Ombudsman. By expanding Option 3 (as presented in the consultation RIS) to include full cost recovery for large exempt sellers (the recommended Option 3 – see section 5.6.1), these concerns should be largely mitigated.

Similar to the policy rationale underpinning the recommended Option 3 (see tables 13 and 14), it is considered that large 'exempt sellers' (i.e. with more than 2,000 residential customers) could afford to pay the prescribed fees from day 1, and should therefore be treated like any other retailer / scheme participant. That is, only those 'exempt sellers' with up to 2,000 customers would have their fees deferred for at least 12 months while the Energy Ombudsman monitors complaint numbers.

Recommendations: For those 'exempt sellers' with up to 2,000 customers, extend access to the Energy Ombudsman for residential embedded network customers but defer commencement of the fee scheme for at least 12 months to allow time for data collection on actual complaint numbers and dispute types.

For those 'exempt sellers' who have a residential customer base greater than 2,000, the recommendation is that they become full fee paying scheme participants from day 1.

6. Conclusions of the decision RIS

Based on the information available, the analysis against the policy objectives, and the feedback the department has received on the consultation RIS, the following conclusions and recommendations are made:

- 1) The existing list of matters that the Energy Ombudsman can currently receive complaints about is appropriate for embedded network customers and does not need to be modified at this stage. No change to the relevant sections of the Energy and Water Ombudsman Act is required.
- 2) The department will use the calculations presented in section 4 of the consultation RIS as the basis for developing an appropriate user-pays fee framework.
- 3) All residential 'exempt sellers' are to be automatically deemed to be Energy Ombudsman scheme participants, with no need for mandatory registration as a 'scheme participant', and with no user-pays fees payable by an exempt seller until the first valid complaint is received by the Energy Ombudsman.
- 4) All large 'exempt sellers' with greater than 2,000 residential customers will become full fee paying scheme participants from day one, and are to pay the standard annual membership fee required of existing scheme participants.
- 5) All large 'exempt sellers' with greater than 2,000 residential customers will be charged, from day one, the cost-reflective user-pays fees outlined in the recommended Option 3.
- 6) All 'exempt sellers' with up to 2,000 residential customers will not be required to pay an annual membership fee, and commencement of the user-pays fee scheme outlined in the

recommended Option 3 will be deferred for at least 12 months to allow time for data collection on actual complaint numbers and dispute types.

The department concludes that implementing these recommendations will:

- ensure all residential embedded network customers have access to the free, energy-specific dispute resolution service provided by the Energy Ombudsman;
- lessen the potential financial impact on 'exempt sellers' and provide time for them to get the necessary internal procedures in place to reduce the likelihood that their customers will need the services provided by the Energy Ombudsman;
- give the Energy Ombudsman time to collect sufficient data to be able to determine whether the inclusion of residential embedded network customers will have any longer-term resourcing impacts on EWOQ, and therefore support the introduction of the preferred fee approach;
- have minimal impacts on electricity retailers and the government; and
- create the greatest overall net benefit.

7. Other issues raised in submissions

The following issues were raised by stakeholders in submissions and have not yet been addressed:

- regulatory duplication;
- embedded network representation on the Energy Ombudsman Advisory Council;
- issues outside the jurisdiction of those Acts listed as 'energy Acts' (section 5, Energy and Water Ombudsman Act); and
- frivolous or vexatious claims by disgruntled embedded network customers.

7.1 Regulatory Duplication

Submissions from the Caravan Parks Association of Queensland Ltd and the Urban Development Institute of Australia Queensland raised the issue of regulatory duplication, particularly in relation to the potential overlap that would exist between the dispute resolution processes of the Energy Ombudsman and those outlined in the *Manufactured Homes (Residential Parks) Act 2003*.

As discussed previously (section 2.2) although there are other dispute resolution services available to embedded network customers, they are not energy specific nor are they always free. While there may be other dispute resolution mechanisms technically available, stakeholder feedback (in particular from L&G Clemett and A Robertson) indicates the reality of the situation is that these services sometimes aren't¹¹¹. The submission from the Caravan Parks Association of Queensland Ltd, while indicating their "*preference that park residents continue to use existing dispute resolution processes*"¹¹², also suggests that "*dispute resolution as it related to electricity be removed from the oversight of Department of Housing & Public Works*"¹¹³¹¹⁴ and managed by the Energy Ombudsman.

The department considers that while the provision of another dispute resolution service may lead to a perception of regulatory duplication, as the current situation stands the service that the Energy

¹¹¹ As a part of their submissions the submitters described being passed from body to body with no assistance provided.

¹¹² Caravan Parks Association of Queensland Ltd email submission to the consultation RIS.

¹¹³ The state Agency that administers the *Manufactured Homes (Residential Parks) Act 2003*.

¹¹⁴ Caravan Parks Association of Queensland Ltd email submission to the consultation RIS.

Ombudsman provides is the only free (for customers), energy specific dispute resolution service available in Queensland.

7.2 Embedded network representation on the Energy Ombudsman's Advisory Council

With respect to embedded network representation on the Energy Ombudsman Advisory Council, the department considers it is too early to make any recommendations on this matter. Data collected in the first 12 months following implementation of access to the Energy Ombudsman for residential embedded network customers should help inform further consideration. It should also be noted that there are already strong consumer advocates on the Advisory Council, who actively advocate for the interests of embedded network customers.

7.3 Issues outside the jurisdiction of those Acts listed as 'energy Acts'

Other issues raised in submissions that can't be addressed by this decision RIS, include those outside the jurisdiction of those Acts listed as 'energy Acts' under section 5 of the Energy and Water Ombudsman Act¹¹⁵ and therefore are outside the jurisdiction of the Energy Ombudsman. For example, electrician services, illegal electrical work, or, electrical work undertaken by a non-qualified person is regulated by the *Electrical Safety Act 2002* administered by the Electrical Safety Office¹¹⁶.

7.4 Frivolous or vexatious claims by disgruntled embedded network customers

The issue of frivolous or vexatious claims by disgruntled embedded network customers looking to create problems for a park owner or supplier of electricity in an embedded network was raised in submissions from the Caravan Parks Association of Queensland Ltd, L&G Clemett, and A Robertson¹¹⁷. However, this issue is addressed by section 22(1)(b)¹¹⁸ of the Energy and Water Ombudsman Act, which provides the Energy Ombudsman with the power to refuse to investigate a complaint if the Energy Ombudsman reasonably believes the complaint to be frivolous or vexatious. The department believes there is no need for any further regulatory change as the Energy Ombudsman already has the power to successfully address frivolous or vexatious claims.

¹¹⁵ *Electricity Act 1994, Electricity—National Scheme (Queensland) Act 1997, Gas Supply Act 2003, National Electricity (Queensland) Law, National Gas (Queensland) Act 2008, National Gas (Queensland) Law, and, the NERL (Qld)*

¹¹⁶ <https://www.worksafe.qld.gov.au/laws-and-compliance/electrical-safety-laws/laws-and-legislation/electrical-safety-act-2002>

¹¹⁷ Email submissions to the consultation RIS.

¹¹⁸ Section 22 Refusal to investigate dispute referral: (1)*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— (b)the dispute referral is frivolous or vexatious or has not been made in good faith.*

8. Implementation and evaluation strategies

The following strategies have been developed to assist in implementing and evaluating the recommendations of this decision RIS.

8.1 Implementation strategies

It is proposed implementation will occur in three stages.

It is anticipated that Stage 1 will involve the development of an Energy and Water Ombudsman Regulation amendment to enable residential embedded network customers to access the services of the Energy Ombudsman in the most cost-effective and efficient way possible.

Subject to government approval, it is expected the proposed regulation amendment will be progressed as soon as practicable, and will prescribe those categories of 'exempt sellers' listed in Table 1, page 6, as 'prescribed energy entities'. The proposed fee schedule for these 'prescribed energy entities' will be as per Table 11, page 27, with a proposed minimum 12 month deferment of user-pays fees for 'exempt sellers' with up to 2,000 residential customers. It is proposed that 'exempt sellers' who have a residential customer base greater than 2,000, will become full fee paying scheme participants from the day the regulation commences. The specific details of the proposed regulation will be consulted upon with the Energy Ombudsman.

These proposed amendments (subject to approval by government) will result in 'prescribed energy entities' becoming part of an already well established Energy Ombudsman scheme. Given the maturity of the scheme, existing processes both within the Energy Ombudsman and the department, and similarity in the type of complaints expected (section 2.6) from embedded network customers, there have been no implementation issues or risks identified for this proposal.

It is anticipated that Stage 2 will involve the development of material to assist residential customers in embedded networks to better understand the Energy Ombudsman's functions, what the Energy Ombudsman can do to assist customers, and how embedded network customers can access the Ombudsman's dispute resolution services. In doing so, the department will also consider any suggestions and matters raised by stakeholders in their submissions on the consultation RIS. This material will be developed concurrently with the regulation amendment process.

Stage 3 will involve a review of embedded network customer complaints (types and numbers of) received by the Energy Ombudsman, the resourcing impacts on the Energy Ombudsman and whether the proposed recommended fee structure remains appropriate.

8.2 Evaluation strategies

Evaluation would be ongoing, based on monitoring of indicators such as the number of embedded network customers accessing the Energy Ombudsman complaint and dispute resolution services, direct correspondence with the department, costs to 'exempt sellers', and complaint and dispute outcomes.

Evaluation will be done using a number of different measures that relate to the policy objectives listed in section 5.1. Table 15 lists the policy objectives, proposed measures, and other steps required for successful implementation.

Table 15 Evaluating success: policy objectives, proposed measures and implementation steps

	Policy objectives	Proposed Measures	Implementation Steps
(i)	Ensure residential customers of embedded network 'exempt sellers' have access to free and timely energy complaint and dispute resolution services.	Number of embedded network customers who access the Energy Ombudsman	Ensure the Energy Ombudsman collects this data. <i>If complaint numbers exceed 300 and move towards 935 (albeit unlikely) within the fee-free period, the department will work with the Energy Ombudsman and key stakeholders to determine the best way forward, including whether the fee-free period should be suspended.</i> Seek regular (quarterly) feedback from embedded network customers (who have used the Energy Ombudsman's services) and key stakeholder groups on whether there has been an increase in electricity bills since embedded network customers have gained access to the Energy Ombudsman.
(ii)	Ensure the dispute resolution service provides value for money and considers an 'exempt seller's' ability to pay.	Indication of whether fees set provide value for money	Seek feedback from 'exempt sellers' on value for money once fees become payable. Seek feedback from 'exempt sellers', stakeholder groups and the Energy Ombudsman on the numbers establishing the sliding scale for fees.
(iii)	Recognise that the delivery of a high quality service incurs a cost	Fees set	Seek feedback from the Energy Ombudsman to confirm the fees are sufficient to cover their costs.
(iv)	Does not increase the financial burden on existing 'scheme participants'.	Fees set	Existing 'scheme participants' (i.e. retailers) do not note an increase in their Ombudsman fees as a result of embedded network customers accessing the Energy Ombudsman.
(v)	Does not increase the regulatory burden on 'exempt sellers', existing 'scheme participants', the Energy Ombudsman and government.	Regulatory requirements do not increase	Any additional regulatory burden on stakeholders to be minimised.
(vi)	Supports the principle of evidence-based decision making	Decision based on clear evidence	Documentation of evidence used to support decisions made.

9. Other considerations

This section addresses the following issues:

- consistency of the proposal with clause 5 of the Competition Principles Agreement¹¹⁹;

¹¹⁹ [Competition Policy Agreements](#)

- consistency of the proposal with fundamental legislative principles; and
- compatibility with the *Human Rights Act 2019*.

9.1 Consistency of the proposal with clause 5 of the Competition Principles Agreement

Clause 5 of the Competition Principles Agreement states (ss5(1)):

“The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:
(a) the benefits of the restriction to the community as a whole outweigh the costs; and
(b) the objectives of the legislation can only be achieved by restricting competition.”

It is anticipated that neither the decision RIS recommendations nor the proposed regulatory amendment will restrict competition. The proposal is considered to be consistent with Clause 5 of the Competition Principles Agreement.

9.2 Consistency of the proposal with fundamental legislative principles

Fundamental legislative principles are defined in section 4¹²⁰ of the *Legislative Standards Act 1992*.

The decision RIS is consistent with the relevant fundamental legislative principles as the proposed regulatory amendment (subject to approval by government):

- is consistent with the policy objectives of the Energy and Water Ombudsman Act;
- contains only matters appropriate to subordinate legislation;
- will not amend any statutory instruments; and
- does not subdelegate any powers of the Energy and Water Ombudsman Act not provided for by the Act.

9.3 Compatibility with the *Human Rights Act 2019*

The proposed regulatory amendment to implement the decisions of this decision RIS would engage, but not affect, the following human right prescribed under the *Human Rights Act 2019: Recognition and equality before the law* (section 15). The proposed amendment would give parts of the community (namely residential embedded network customers) access to the services of the Energy Ombudsman, thereby removing an existing restriction on residential embedded network customers which limits their access to fair and independent dispute resolution.

¹²⁰ <https://www.legislation.qld.gov.au/view/html/inforce/current/act-1992-026#sec.4>

Appendix 1 Submissions received on the *Consultation Regulatory Impact Statement: Dispute resolution for residential embedded network customers (October 2019)*

Name	Stakeholder
AGL	Retailer
Artley, Gail	Individual customer
Australian Energy Regulator	Statutory / regulatory
Bevan, Dianne	Individual customer
Brown, David	Individual customer
Caravan Parks Association of Queensland Ltd	Embedded network
Clemett, Lauren & Graeme	Individual customer
Energy and Water Ombudsman Queensland	Statutory / regulatory
Energy and Water Ombudsman Queensland Advisory Council	Statutory / regulatory
Energy Australia	Retailer
Energy Queensland	Retailer
Lumo Energy	Retailer
Origin Energy	Retailer
Property Council of Australia	Business
Queensland Council of Social Services	Consumer
Queensland Farmers' Federation	Business
Robertson, Alexander	Individual customer
Shopping Centre Council of Australia	Business
Urban Development Institute of Australia Queensland	Business
Wicks, Ilene & Des	Individual customer
WINconnect	Embedded network