

9 October 2015

Mr Shane King MP
Chair
Utilities, Science and Innovation Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: usic@parliament.qld.gov.au

Dear Mr King,

RE: Energy and Water Ombudsman Amendment Bill 2015

The Energy Retailers Association of Australia (**ERAA**) welcomes the opportunity to provide comments to the Committee in relation to the expansion of *Energy and Water Ombudsman Amendment Bill 2015 (Bill)*

The ERAA represents the organisations providing electricity and gas to over 10 million Australian households and businesses. Our member organisations are mostly privately owned, vary in size and operate in all areas within the National Electricity Market (NEM) and are the first point of contact for end use customers of both electricity and gas.

Our submission specifically addresses the amendments at Clause 6 of the Bill, particularly the introduction of the definition of an *eligible non-residential energy customer*, being an energy consumer consuming up to 160 megawatt hours (MWh) per annum.

Scope of the Bill

The stated aim of the expansion of the scheme is to provide access to high energy small businesses (HESB). Our members understand and support this aim, however we note that the drafting of the legislation in its current form does not adequately address significant implementation issues, which includes:

- clarifying how the expansion of the scheme applies where there are multiple sites controlled by a parent organisation;
- recognition that large number of customers have negotiated non-standard commercial contracts where there are already negotiated dispute resolution mechanisms; and
- the absence of access to dispute relief under the *National Energy Customer Framework (NECF)* for customers consuming over 100MWh per annum.

We discuss each of these issues in our submission below.

Corporate Groups

The ERAA is concerned about the absence of qualifying parameters in relation to access of the scheme other than consumption. It is the experience of our members that that a large proportion of businesses consuming between 100 and 160MWh are part of a larger group



with multiple sites associated with a holding or parent company, trust or association with supply arrangements that cover multiple sites. In these instances, the holding company often executes a supply agreement with a retailer and all sites generally receive uniform pricing and conditions. Therefore, the total customer contract size (the total of all sites) rather than the individual sites, should form the basis of any expanded eligibility to access the resolution assistance provided by the Energy and Water Ombudsman Queensland (EWOQ). Drawing on the solution to the same issue applied in the National Energy Retail Rules, this can be addressed by replacing sub-clause 6C(2) with the following:

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

- (a) the customer is or would be an eligible non-residential energy customer in relation to at least one of the relevant premises; and*
- (b) the aggregate of the actual or estimated annual consumption level for the relevant premises is greater than 160MWh.*

Commercial Contracts

The ERAA is unclear as to how EWOQ would resolve disputes considering the nature and complexity of the commercial contracts which generally govern commercial customer relationships. These are distinct from the regulated market retail contracts applying to small business customers under the NECF. For example, commercial contracts may include termination clauses requiring the customer to compensate the retailer for their costs. This could include the underlying hedge position which supports the commercial contract, which is a very different proposition to how termination fees are prescribed in regulated market contracts.

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

We therefore propose that access to the scheme should be limited to customers on a *market retail contract* as defined under the *National Energy Retail Law (Qld)*. If this is not implemented, we recommend a dedicated and specialist team would be required within EWOQ in order to manage more sophisticated contractual and pricing complaints. This increase in capability and therefore cost would be borne by industry, which will eventually flow through to end consumers through higher prices.

Absence of NECF Protections

Finally, given the threshold applying to the NECF is 100MWh, clarity should be provided as to the assistance EWOQ will be able to provide customers who do not fall within this limit.

Should you wish to discuss the details of this submission, please contact me on (02) 8241 1800 and I will be happy to facilitate such discussions with my member companies.

Yours sincerely,



Alex Fraser
Interim CEO
Energy Retailers Association of Australia