



13 April 2015

Manager
Small Business Ombudsman and Programmes Unit
Small Business, Competition and Consumer Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: small.business@treasury.gov.au

Thank you for the opportunity to comment on the exposure draft legislation establishing the Australian Small Business and Family Enterprise Ombudsman (ASBFEO).

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. As a member of the Australian and New Zealand Ombudsman Association (ANZOA), I endorse the views expressed in the ANZOA submission to this consultation.

Additionally, EWON has a vested interest with respect to small businesses and their access to independent external dispute resolution for energy and water disputes.

Under EWON's Charter¹, EWON has jurisdiction to receive complaints from small businesses which have less than 20 full time equivalent employees or an aggregated annual turnover of less than \$2 million. EWON also has jurisdiction over businesses that are classified as small customers under the *National Energy Retail Law*, that is, businesses that consume electricity below 100 megawatt hours per year or gas below 1,000 gigajoules per year.²

In 2013-14, we received around 2,400 complaints from small businesses about a range of issues; including complaints about:

- Disputed high bills and capacity demand charges

¹ EWON Charter, available at

http://www.ewon.com.au/ewon/assets/File/Constitution/EWON%20Charter_1July2012.pdf

² *National Energy Retail Law (NSW) No 37a*, s5(2)(b).

- Incorrect network tariffs (this can arise because of sites being incorrectly configured as residential sites, or the tariffs charged are not appropriate for the meter at the site)
- Incorrect service availability charges being applied to bills
- General lack of understanding of meter types and which type of offers best suit the small business usage profile.

All electricity and gas retailers and distributors who supply small retail customers, some public water authorities, and all licensed private water utilities are required to be members of EWON and refer complaints to EWON. Our members would appear to be within the remit of the ASBFEO under s65 of the draft legislation either as constitutional corporations or as entities affecting small businesses or family enterprises who are constitutional corporations.

Section 69 of the draft legislation allows the ASBFEO to transfer a request for assistance to the relevant State agency if a relevant matter is raised under s65. EWON understands that the intent of s69 is for the ASBFEO to avoid any duplication with the jurisdictions of other alternative dispute resolution schemes. We also note that s70 allows the ASBFEO to enter into a formal arrangement with a State agency to deal with requests for assistance.

EWON is an industry ombudsman scheme established for the public purpose of receiving and resolving energy and water complaints. Although we understand that the Treasury intends for the ASBFEO to refer requests for assistance to the appropriate industry or statutory dispute resolution body, we note that sections 69 and 70 do not make specific reference to industry ombudsman schemes. Instead, s8 (2) (c) allows industry ombudsmen schemes to be considered an agency of the State if it is 'established for a public purpose by or under a law of the State'.

EWON's jurisdiction is established under several NSW laws:

- EWON's jurisdiction over energy matters is established under s96B of the *Electricity Supply Act 1995*
- EWON's jurisdiction over state water utilities is established under their respective operating licences which are enabled by their respective Acts (e.g. *Sydney Water Act 1994*, *Hunter Water Act 1991*, *Water NSW Act 2014*)
- EWON's jurisdiction over private water utilities is established under s49 of the *Water Industry Competition Act 2006*
- EWON's jurisdiction over privacy-related disputes related to energy and water accounts is established under s35A of the *Privacy Act 1988*.

EWON considers that the draft legislation is unclear about whether the ASBFEO must transfer relevant requests for assistance to industry ombudsmen schemes or is able to formally co-operate with these schemes. We suggest that there is a need for sections 69 and 70 to make

clear reference to industry ombudsman schemes. This would address concerns about jurisdiction and ensure that complaints about financial services, telecommunications, energy and water are dealt with by the most appropriate body and expertise.

EWON also suggests that it may be appropriate for a Memorandum of Understanding to be established between the ASBFEO and relevant industry ombudsman offices. This would enable discussions and the establishment of appropriate referral pathways so that complaints can be referred effectively and efficiently between the ASBFEO and relevant industry ombudsman offices.

EWON would welcome the opportunity to develop a mutually beneficial and effective relationship with the ASBFEO. As a comparison, EWON engages with the NSW Small Business Commissioner to share information and conduct outreach activities. The NSW Small Business Commissioner refers enquiries and complaints about energy and water to EWON which we investigate and resolve. This works effectively for both organisations and for the businesses which seek the services of either organisation. Therefore a similar arrangement with the ASBFEO would most likely achieve similar outcomes.

If you would like to discuss this matter further, please contact me or Emma Keene, General Manager Policy and Community Engagement, on 02 8218 5250.

Yours sincerely



**Janine Young
Ombudsman
Energy & Water Ombudsman NSW**