

**Extension of Energy Ombudsman functions to
include water disputes in South East Queensland
Decision Regulatory Impact Statement**

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Executive summary

The Energy Ombudsman's functions were extended by legislative amendments passed in 2010 (and effective 1 January 2011) to provide an independent dispute resolution service for small water customers of the council owned water businesses in South East Queensland (SEQ).

In August 2016, the Department of Energy and Water Supply (the department) prepared a Consultation Regulatory Impact Statement (Consultation RIS) to:

- assess the impacts of amendments to the *Energy Ombudsman Act 2006* to extend the Energy Ombudsman's functions to receive, investigate and resolve disputes between small customers and water distribution and retail utilities in South East Queensland (SEQ)
- assess whether the regulation is being applied effectively and as intended
- estimate incurred and on-going compliance costs.

The policy objective behind extending the Energy Ombudsman's functions was to provide small water customers in SEQ with a timely, effective, independent and just way of having disputes with water entities investigated and resolved.

The expanded Energy and Water Ombudsman Queensland (EWOQ) scheme is fully funded by industry and provides a dispute resolution service for small customers in dispute with their service provider about the performance of a function or obligation under the SEQ Customer Water and Wastewater Code (Customer Code).

Combined energy and water ombudsmen schemes now exist in four other states: New South Wales, Victoria, South Australia and Western Australia. All combined energy and water schemes are industry-funded schemes.

Before establishing EWOQ, consideration was given to providing dispute resolution services through the Queensland Ombudsman (the status quo option) and the Queensland Civil and Administrative Tribunal (QCAT).

The Queensland Ombudsman's functions are mainly funded from consolidated revenue. The Queensland Ombudsman therefore has a set budget to perform its functions and undertake investigations. As such it is restricted in terms of the number of complaints it can investigate; on average, around 80 per cent of complaints made to the Queensland Ombudsman are declined each year. If the Queensland Ombudsman was the dispute resolution option available to small water customers in SEQ, it is likely the majority of complaints would not be investigated.

EWOQ has consistently closed around 90 per cent of its cases within 28 days, while around one to two per cent of cases have taken more than 90 days to close. In comparison, in the years 2008–09 to 2010–11, (when water and sewerage complaints were raised with the Queensland Ombudsman¹) less than 85 per cent of complaints were resolved within 30 days and around seven to eight per cent took longer than 90 days to resolve.² From 2011–12 onwards, the percentage of complaints resolved by the Queensland Ombudsman within 30 days increased to around 90 per cent or above.

Legislative amendments would be needed to confer jurisdiction on QCAT to give it the power to review decisions of water entities or to investigate and resolve disputes between the water entities and their customers about matters under the Customer Code. Small water customers using QCAT services would also incur filing fees. A case study shows that for complaints taken to QCAT for resolution, service providers incur higher costs in terms of resources

¹ As EWOQ began investigating complaints relating to water disputes in SEQ on 4 January 2011, all water and sewerage complaints would have been raised with the Queensland Ombudsman during the first half of 2010-11

² This covers all complaint types considered by the Queensland Ombudsman

required for investigations and to attend hearings. Cases are more likely to take longer to be resolved through QCAT compared to EWOQ.

The extra annual operating cost of the expanded EWOQ was estimated to be about \$655 000 and pass through costs for water customers were estimated as falling between \$0.62 to \$0.73 on an annual water bill. Actual costs have been much lower than this. In 2011–12, the first full financial year of EWOQ applying to small water customers, total fees incurred by water entities was around \$300 000, reducing to around \$200 000 in the following years. For 2014–15, this equated to costs of between \$0.15 and \$0.25 per average water customer.

However, dividing total costs for billable case types (user-pays fees) and participation fees by the number of closed cases each year, reveals a much higher cost burden for the smaller council water businesses, Logan City and Redland City councils. Using this methodology, for the 2014-15 financial year, costs per complaint averaged \$2386 for Redland and \$1164 for Logan, compared to \$490 for Unitywater.

An independent review into EWOQ, conducted by The Consultancy Bureau found that EWOQ was meeting its legislative and regulatory obligations and performing its functions to a high standard. EWOQ has also consistently closed around 90 per cent of its cases within 28 days.

The Consultation RIS concluded that EWOQ is the most appropriate and effective way of providing small customers with an independent dispute resolution service in SEQ.

This Decision RIS provides an overview of stakeholder responses to the Consultation RIS, discusses issues raised in submissions, and supports the original findings that EWOQ is the most appropriate and effective way of providing small customers with a free, fair and independent dispute resolution service. However, it is recommended that options to reduce the participation fee for the council water businesses be considered.

Stakeholders were asked to comment on the Consultation RIS, particularly in relation to the continued relevance of EWOQ to provide dispute resolution and investigations, the application of the regulation and compliance costs. In addition, the Consultation RIS contained a number of direct questions to stakeholders.

EWOQ and the five SEQ service providers were encouraged to make a submission in response to the Consultation RIS.

Three submissions were received, being from EWOQ, Logan City Council and Redland City Council. The main issue raised by the councils concerned the uniform participation fee for membership of the scheme for all SEQ service providers, regardless of the size of the provider or the number of complaints referred to EWOQ.

While participation and user-pays fees are uniformly levied, the \$10 000 participation fee makes up a greater proportion of overall costs for the smaller council providers than the larger distributor-retailers. For example, in 2014–15, this fee accounted for between 10 per cent (Queensland Urban Utilities) and 84 per cent (Redland City Council) of the total fees incurred.

While this is acknowledged, overall costs for the SEQ service providers for membership and use of the EWOQ scheme are small in the context of annual revenue of the businesses of over \$4 billion. Scaling participation fees according to case numbers or customer numbers as suggested by respondents could be costly and difficult to administer and is unlikely to make a significant financial difference for providers. However, a reduced participation fee of \$5000 for the three council water businesses could address these concerns while maintaining an acceptable and uniform level of customer service across SEQ.

Given that EWOQ's cost recovery arrangements rely primarily on user-pays charges for dispute resolution, a reduction in participation fees for the three council water businesses is unlikely to impact EWOQ's ability to recover all its costs.

Recommendations

It is recommended that:

1. EWOQ is retained as the designated dispute resolution service for small customers in SEQ as per current arrangements.
2. Membership of EWOQ continues to be a mandatory requirement for all SEQ water service providers.
3. Options for reducing the EWOQ participation fee for the small SEQ service providers (i.e. the council water businesses) be investigated to address equity concerns raised in submissions. The department, in consultation with EWOQ, should recommend a new fee basis to the Minister by 31 March 2018.

1 Introduction

The Queensland Government is committed to adopting best practice regulatory principles and to ensuring regulation is developed in a rigorous and transparent manner. To help achieve this, a regulatory impact statement is required for all proposals that may have significant impacts upon business, community, and government.

At the time the amendments to the *Energy Ombudsman Act 2006* were progressed, an exemption from preparing a regulatory impact statement was granted. Where such exemptions are granted, a post implementation review may be required to be undertaken to assess the regulatory impacts of the changes.

The review should be undertaken in the form of a consultation regulatory impact statement. The purpose of the review is to assess the impact, effectiveness and continued relevance of the regulation to-date. The review should be appropriate and proportionate to the regulatory issue being addressed.

In addition, the review should:

- assess whether the regulation is being applied effectively and as intended; and
- estimate incurred and on-going compliance costs.

2 Background

The Energy and Water Ombudsman Queensland (EWOQ) is a statutory body established under the *Energy and Water Ombudsman Act 2006* (the EWO Act). It is funded by industry participation and user-pays fees.

EWOQ was initially established as the Energy Ombudsman in 2006–07 following the then government's decision to move to full retail competition in gas and electricity. It was intended to give small electricity and gas customers in Queensland a timely, effective, independent and just way of having their disputes with energy sector entities investigated and resolved.

The Energy Ombudsman's functions were extended by legislative amendments passed in 2010 (and effective 1 January 2011) to provide an independent dispute resolution service for small water customers of the council owned water businesses in SEQ.

Large customers, such as large business users (commercial or industrial) of water do not have access to EWOQ, but can raise a complaint about their service provider with the Queensland Ombudsman.

Large and small customers are also not prevented from commencing a proceeding in QCAT if they choose and the matter is within QCAT's jurisdiction, for example, a minor civil dispute or debt dispute.

2.1 About the Energy and Water Ombudsman Queensland

The Energy and Water Ombudsman's functions are to:

- receive, investigate, and facilitate the resolution of disputes referred to it
- resolve the disputes if they cannot be resolved by agreement, negotiation or mediation
- identify systemic issues arising out of complaints made to it.

The Energy and Water Ombudsman has the power to issue interim orders during an investigation and once the investigation is complete, can order an entity to pay compensation to a customer, provide access to customers, amend or not impose a charge, fix a record, provide a non-monetary solution or carry out corrective work. The Energy and Water Ombudsman can also make an order to end a negotiated energy contract³ between parties if it considers the relevant entity's conduct in the formation of the contract was unfair, misleading or deceptive. An order is binding on an entity and certain orders (i.e. for an entity to pay a stated amount) can be filed in the Magistrates Court and enforced as a judgement of that court if an entity does not comply with the order.

Independence

EWOQ is the only statutory combined energy and water ombudsman scheme in any jurisdiction in Australia.⁴ The Energy and Water Ombudsman is appointed by the Governor in Council.⁵ The office of the Energy and Water Ombudsman is also established by statute and consists of the Energy and Water Ombudsman and officers appointed under the *Public Service Act 2008*.⁶ The Energy and Water Ombudsman is not subject to the direction of anyone in relation to any of the following:

- the way the ombudsman performs its functions
- decisions on dispute referrals
- the priority given to investigations or the resolution of dispute referrals.⁷

A person may be appointed as the Energy and Water Ombudsman for a period of up to five years and reappointed for another term or terms up to a maximum of all terms of 10 years.⁸ The Energy and Water Ombudsman may only be terminated before a term of office ends by the Governor in Council on an address or resolution of the Legislative Assembly.

Advisory council

Under the Act, an advisory council is established to provide advice to the Minister and represent industry members and consumers. The Act specifies the membership arrangements and the role of the advisory council.

2.2 Extending power to include water

Extension of existing energy ombudsman schemes to water has occurred in other jurisdictions with four other states having a combined energy and water ombudsman dispute resolution service that is funded by industry contributions.

³ This is not applicable to water customers

⁴ Tasmania has a statutory Energy Ombudsman and dispute resolution scheme but the scheme does not cover water sector entities.

⁵ See section 51 of the *Energy and Water Ombudsman Act 2006*

⁶ See section 59 of the *Energy and Water Ombudsman Act 2006*

⁷ See section 16 of the *Energy and Water Ombudsman Act 2006*

⁸ See section 52 of the *Energy and Water Ombudsman Act 2006*

New South Wales, Victoria, South Australia and Western Australia have combined energy and water ombudsmen schemes. These schemes initially covered only electricity and gas entities but were extended later to cover some or all water entities.

All schemes are industry funded through a combination of member or participation fees and user-pays fees for dispute resolution. In contrast to EWOQ, which is established by statute, other states' energy and water ombudsmen are not-for-profit companies limited by guarantee, and operate under a constitution and charter. Board composition is reflective of industry and consumer groups, with an independent chairperson. The New South Wales scheme has an established consultative council.

In Tasmania, the Energy Ombudsman is a statutory scheme pursuant to the *Energy Ombudsman Act 1998* (Tas). Water customers in Tasmania have access to the Tasmanian Ombudsman and can raise a complaint if they are not satisfied with the outcome of a complaint lodged under the 'customer complaint process' with the water provider (TasWater). Unlike the Queensland Ombudsman, the water entity is bound by, and must comply with, the Tasmanian Ombudsman's recommendations relating to a complaint involving the entity and a customer.⁹

South East Queensland reforms

The amendments to extend the Energy Ombudsman's functions to water disputes in SEQ were part of the second stage of water sector reforms involving a restructure of institutional arrangements as well as pricing reforms, improved customer protection and improved standards of service.

These reforms involved separating the distribution and retail functions from the SEQ councils and establishing three distributor-retailers (DRs) within three defined geographic areas. The DRs were established under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* and became operational on 1 July 2010.

Subsequent to this, the participating councils within the southern DR (Allconnex) resolved to reintegrate their water and sewerage business as commercial business units; this took effect on 1 July 2012. There are now two DRs and three 'withdrawn councils' supplying water and wastewater services in SEQ subject to the dispute resolution services of EWOQ, namely:

- Queensland Urban Utilities
- Unitywater
- Gold Coast City Council
- Logan City Council
- Redland City Council.

In conjunction with the expansion of the Energy Ombudsman's functions, the Customer Code was made to apply to the supply of water and wastewater services delivered by the water entities from 1 January 2011. This is a key customer protection measure that differs from arrangements outside SEQ, where individual service providers must develop and comply with tailored customer service standards applicable to the registered services they supply.

The Customer Code applies to small water customers (residential and small business customers) of the DRs and withdrawn councils.¹⁰

The water sector reforms aimed to deliver improvement in the accountability of the water utilities, and an improved and regionally consistent standard of service to customers. The Customer Code is key to delivering this.

⁹ See section 77 of the *Water and Sewerage Industry Act 2008* (Tas)

¹⁰ Section 1.2.4.2 of the Customer Code defines a small customer as either a residential customer or a small business customer

3 Issues statement

3.1 Background

Providing water and sewerage services to urban communities in Queensland has historically been a function of local governments and local government-owned entities. This remains the case for much of the state. Some local governments (but not all) also own and operate bulk supply assets such as dams and weirs.

The SEQ reforms instituted significant change to the supply arrangements in the south-east region with the creation of large monopoly businesses. The three DRs became the largest vertically integrated distribution-retail businesses in the Queensland water sector. Although established as statutory bodies, the DRs operate on a commercial basis, similar to government-owned corporations.

To address the impacts of the Millennium Drought, stage one of the SEQ reforms also saw the State acquire bulk water supply assets owned by the SEQ councils, consolidate ownership within new State-owned entities, and build new bulk supply assets such as the Western Corridor Recycled Water Scheme, the Tugun Desalination Plant, Wyaralong Dam and interconnecting pipelines between the region's major storages thus 'drought proofing' the region.

The government at the time decided to fund the cost of drought infrastructure through debt with the 'bulk water price' set to recover debt over a period of time. The SEQ service providers (DRs and the withdrawn councils) have been subject to 'price monitoring' by the Queensland Competition Authority for monopoly pricing behaviour but ultimately are free to set their own charges for services to customers. These entities pass on the bulk water price to customers on a consumption basis but the rate of increase to the bulk price varies between local government areas. This means that customers in certain local government areas have experienced greater price increases than other areas until all areas reach the same charge.

From 1 July 2010 when the DRs commenced operations until the first Customer Code was made, the customer service standards that had been adopted by the participating councils continued to apply and customers (large and small) could raise a complaint about their service provider with the Queensland Ombudsman. The *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* provides for the making of a code to provide for the rights and obligations of the water entities and their customers. Among other things, the code may provide for all or any of the following:

- rights and obligations of the SEQ service providers and their customers relating to the availability of water services and wastewater services
- minimum and guaranteed service standards for water services and wastewater services
- compensation for failure to comply with the service standards
- the amount of compensation or how it is to be worked out.

The first Customer Code was made by the Minister on 17 December 2010 and commenced to apply from 1 January 2011. The Customer Code sets out minimum service standards (but not guaranteed service standards) to be met by the water utilities. It was intended that a subsequent iteration of the code would move to guaranteed service standards and a compensation regime within the code for failure to comply with the service standards. This has not occurred. The Customer Code has been the subject of a statutory review during 2014–15. A revised draft Customer Code was released for comment in May 2015. The Minister for Energy and Water Supply must consider all submissions on the draft code in preparing a final code. A final code was approved by the Minister on 17 February 2017 and commenced to have effect on 1 April 2017.

Against a background of community dissatisfaction with the rising costs of water (and sewerage) services, extension of the Energy Ombudsman's functions to water disputes in SEQ was brought forward by six months, from its intended starting date of 1 July 2011 to 1 January 2011 and to coincide with commencement of the Customer Code. Although the Energy and Water Ombudsman cannot consider complaints about the 'price charged for a service', it can investigate matters related to charges such as billing errors, whether the correct tariff has been applied and calculation of accounts etc.

In assessing options for providing external dispute resolution services, extending the Energy Ombudsman's dispute resolution service to water disputes was seen as providing a more accessible, simple and efficient third party dispute resolution service for small customers and was the preferred option at that time.

3.2 About the Queensland Ombudsman

In this context, the Government considered it appropriate that the Queensland Ombudsman provide an interim complaints and dispute resolution service against the customer service standards of the participating councils and other customer protections until such time as the Customer Code was made but that once the Customer Code was made, applying consistent region-wide service standards, small water customers would have access to EWOQ. Large customers would continue to have access to the Queensland Ombudsman.

Prior to the establishment of EWOQ, around 10 per cent of complaints made to the Queensland Ombudsman about local government services were about water supply and sewerage and drainage issues.¹¹ Other complaint categories include laws and enforcement, development and buildings control, rates and valuations, roads, personnel, complaint handling, environmental management, parks and reserves, and other matters.

The Queensland Ombudsman's functions are funded from consolidated revenue and are finite. Its services are not charged to complainants nor to their service providers and it must give priority to investigating complaints that have a reasonable prospect of achieving a worthwhile outcome for the complainant, the broader community or the public sector. It declines a large number of complaints following assessment or preliminary inquiries for a range of reasons. In addition, complainants sometimes withdraw their own complaints for various reasons. On average, around 80 per cent of complaints made to the Queensland Ombudsman are declined each year.¹²

The *Ombudsman Act 2001* authorises the Queensland Ombudsman to:

- investigate administrative actions of agencies
- make recommendations to agencies, generally or in particular cases, about methods of improving the quality of decision-making and administrative practices.

On the expectation that the Customer Code would eventually include guaranteed service standards, it was also seen as inappropriate that the Queensland Ombudsman might be required to make decisions on compensation for customers where a service provider failed to meet the guaranteed service standards.

The Queensland Ombudsman does not have the necessary powers to assess or arbitrate a dispute and cannot make binding orders on parties. The Ombudsman's decisions are influential but ultimately not binding on an agency and cannot be enforced in the same way as the Energy and Water Ombudsman's orders.

¹¹ Queensland Ombudsman Annual Report 2009-10. Note this reflects disputes categories 'water supply' and 'sewerage and drainage' across all customers, including commercial customers, across Queensland

¹² Queensland Ombudsman Annual reports 2009-10 to 2014-15

3.3 About the Queensland Civil and Administrative Tribunal

The government also considered the option of referring complaints about the water entities to the Queensland Civil and Administrative Appeals Tribunal (QCAT) for arbitration and resolution.

QCAT was established in 2009 by amalgamating 18 separate tribunals. It has 23 different jurisdictions including the former jurisdiction of the Small Claims Tribunal and the Magistrates Court's minor debt claims.

Currently, QCAT can assist with resolving a dispute, complaint, grievance or other issue, provided the issue is within its jurisdiction and related to:

- administration for adults
- anti-discrimination
- building disputes
- children and young people
- consumer and trade disputes
- debt disputes
- guardianship for adults
- minor civil disputes
- other civil disputes
- occupational regulation
- residential tenancy disputes
- review of administrative decisions.

Although QCAT has power to deal with a wide range of matters and delivers justice in an independent and expert way, its jurisdiction does not expressly extend to utility services delivered by energy and water entities. Some disputes between small water customers and their service provider may fall within QCAT's minor civil disputes jurisdiction or the debt disputes jurisdiction (i.e. disputes up to and including \$25 000) so a customer is not prevented from starting a proceeding in QCAT if they wish to do so. Legislative amendments would be needed to confer jurisdiction on QCAT for it to be able to review decisions of water entities or to hear and arbitrate disputes between the water entities and their customers about matters covered by the Customer Code.

While the operations of QCAT are funded from consolidated revenue, small water customers using QCAT services would incur filing fees at a minimum, for example, fees for minor civil disputes range from \$23 to \$294.60 depending on the amount in dispute. Complainants would also have to go through a 'proceedings' process to obtain orders in any matter. Parties can either represent themselves in a matter before QCAT or apply for legal representation. By contrast, a customer referring a dispute to EWOQ pays no fee for referral, investigation and resolution of a dispute and referrals may be oral or written, made by the customer or another person on their behalf.

In addition to the fees incurred by customers, resolving disputes through QCAT is likely to lead to higher costs for the SEQ service providers and take longer to reach a resolution. This assertion is supported by Unitywater's experience of two cases commenced in QCAT. Further details on Unitywater's experience are outlined in the case study below.

Case study: Unitywater's experience with QCAT compared with EWOQ

Unitywater reported having 133 cases investigated by EWOQ in 2014–15. In addition to this Unitywater had two cases heard by QCAT. Unitywater reported that compared to investigations undertaken by EWOQ, the matters dealt with by QCAT:

- were more costly in terms of resources required to assist in the investigation, attend hearings and in being able to fully recover all charges payable from the customers (including QCAT costs and interest)
- took longer to resolve
- provided limited interaction with Unitywater and limited opportunities for Unitywater to interact with the customer.

Case 1: Water supply issues raised by a property manager on the tenant's behalf

A property manager lodged a claim against Unitywater through QCAT on behalf of a tenant over water supply issues. The property manager claimed there were ongoing water pressure/supply issues. Unitywater undertook testing and monitoring of the water supply including data logging. The data indicated a strong possibility of an issue inside the property contributing to the problem.

Further investigations found that there was an intermittent pressure issue. The property manager sought compensation from Unitywater for the costs of checking plumbing within the property and the inconvenience caused by the issue.

Unitywater was unable to negotiate with the property manager as the billing relationship was with the property owner and the property manager was not authorised to act on the property owner's behalf.

QCAT agreed with Unitywater regarding privacy issues. To resolve the issue at the hearing, Unitywater offered to pay the property owner \$600 as a goodwill gesture.

Case 2: Fixed access charges on vacant land

A Unitywater customer disputed Unitywater's right to charge a fixed water access charge on a vacant block of land. The customer had not paid any of their bills and disputed the reasonableness of the charges.

QCAT decided in Unitywater's favour; however, the customer appealed the decision. The decision on appeal was upheld in Unitywater's favour.

Unitywater's experience with QCAT

Unitywater found that cases reviewed by EWOQ were on average resolved within 17 days and only one case took longer than 60 days to resolve. In contrast, matters to QCAT took between two weeks to two months for a hearing to occur, and it could take up to a further three months after the hearing date for a decision to be made.

Unitywater estimated that the costs incurred (excluding external agency fees) were around \$1500 for cases investigated by EWOQ, while cases heard by QCAT were estimated to be around \$5000. Additional costs of around \$5000 could be incurred if the customer chooses to appeal the initial QCAT decision. These costs include preparation and lodgement of submissions as well as time spent preparing for and attending the QCAT appeal hearing. Unitywater emphasised that these costs were indicative only and not based on in-depth analysis.

A further issue reported by Unitywater about costs is the difference in requirements for the customer to pay outstanding bills. Where the case is being investigated by EWOQ, EWOQ may require customers to pay the portion of the bill not in dispute. EWOQ may refuse to investigate the dispute if the customer refuses to pay these undisputed charges. If QCAT accepts a customer's application, no outstanding charges are required to be paid until the outcome of the hearing is known and a decision notice has been issued specifying the amount to be paid and timeframe to pay. If the customer chooses to appeal the decision, the

non-payment period will again be extended by up to 90 days until the appeal hearing decision is made. Interest cannot be charged on the outstanding amounts while investigations are being undertaken.

Unitywater reported that there are frequent interactions between it, EWOQ and the customer when a case is being investigated by EWOQ. This allows for strong relationships to be built between all parties, leading to trust and confidence in the rigour of the dispute resolution process. Conversely, interactions during the QCAT process were generally limited to the time of application and at the hearing.

4 Policy objectives

The extension of the Energy Ombudsman's functions to receive, investigate, and resolve disputes between small water customers and the SEQ service providers was implemented without a RIS on the condition that a post-implementation review (PIR) be undertaken.

It is important to note that the initial policy objectives in establishing the Energy Ombudsman were:

- to give small electricity and gas customers in Queensland a timely, effective, independent and just way of having their disputes with energy sector entities investigated and resolved;
- to establish dispute resolution processes and the functions and powers, including determination powers of the Energy Ombudsman to make binding orders against energy-sector entities;
- to establish an advisory council to provide advice to the Energy Ombudsman on policy and procedural issues and to the Minister on issues relating to the funding of the Energy Ombudsman Office;
- to provide for the fees to be paid by scheme members to fund the operations of the Energy Ombudsman Office.

The policy objectives in extending the functions of the Energy Ombudsman to water disputes were:

to provide small water customers with a timely, effective, independent and just way of having disputes with water entities investigated and resolved.

The decision to extend the functions of the Energy Ombudsman was the preferred option because:

- the Energy Ombudsman was already known by SEQ customers through their interactions with electricity and gas companies;
- the role would be a complementary activity for the Energy Ombudsman (dealing specifically with customer disputes around utility distribution and retail activities); and
- significant administrative costs would be avoided because the existing processes and databases of the Energy Ombudsman could be modified to include the expanded responsibilities.

5 Impact assessment

This section assesses the actual costs incurred by water entities due to EWOQ's operations compared to those forecast before its inception, the performance of EWOQ against national benchmarks and the satisfaction levels of complainants. The assessments found:

- actual costs incurred by water entities due to the extension are significantly lower than the preliminary impact assessment (PIA) had forecast;
- the costs of participation in the EWOQ scheme are higher for the withdrawn councils;
- EWOQ has been meeting its legislative and regulatory obligations and performing its functions to a high standard; and
- while customer satisfaction research reported that water customers have a lower level of satisfaction with EWOQ compared to energy customers, the results cannot be accepted with any confidence due to the small number of water customers (compared to energy customers) and small sample size in both the 2011 and 2013 studies.

5.1 Functions and powers of the Energy and Water Ombudsman Queensland

The Energy and Water Ombudsman’s functions are to:

- receive, investigate, and facilitate the resolution of disputes referred to EWOQ
- resolve the disputes if they cannot be resolved by agreement, negotiation or mediation
- identify systemic issues arising out of complaints made to EWOQ.

EWOQ is fully funded by the scheme participants—energy, gas and water entities through participation fees and user-pays fees for dispute resolution. EWOQ receives no funding from the Queensland Government. EWOQ must prepare, in consultation with the Advisory Council, a budget of estimated costs of performing the Energy and Water Ombudsman functions having regard to expected participation fees and user-pays fees for the year.

Participation fees are paid annually by scheme participants with the fee prescribed under sections 67 and 67A of the EWO Act, for energy and water entities, respectively. In the case of energy entities, a regulation may prescribe a particular participation fee. Generally, energy entities pay an annual participation fee of \$5000 for each ‘customer connection service’ and ‘customer retail service’ the entity provides under an energy Act (the *Electricity Act 1994* and the *Gas Supply Act 2003*).

The participation fee for water entities is stipulated by section 67A of the EWO Act at \$10 000 per year.

Table 1: Participation fees in 2014–15

Entity type	Annual fee - \$
Energy entity providing customer connection services under only one energy Act	5,000
Energy entity providing customer connection services under two energy Acts	10,000
Energy entity providing customer retail services under only one energy Act	5,000
Energy entity providing customer retail services under two energy Acts	10,000
Western Downs Regional Council for customer connection services or customer retail	250 for each service
Maranoa Regional Council for customer connection services or customer retail	50 for each service

Water entity	10,000
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User-pays fees are levied quarterly based on anticipated dispute numbers and are reconciled against actual case numbers at least twice each year. The user-pays fees are set at an amount the Energy and Water Ombudsman reasonably forecasts will be the scheme member's likely costs for the period for the resolution of disputes. The reconciliation also adjusts the cost per case type to ensure revenue does not exceed actual expenditure. EWOQ is not permitted to collect more revenue than is needed to meet actual expenditure.

Under the budget guidelines 2014–15¹³, user-pays fees are divided into six usage level:

- **Refer back to supplier** – the matter is referred back to the scheme participant for action.
- **Referral to higher level** – the matter is referred to a higher level within the scheme participant's organisation.
- **Investigation level 1** – EWOQ staff commence investigation and matter is resolved within four hours.
- **Investigation level 2** – matter escalates if EWOQ 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 EWO Act.
- **Investigation level 3** – matter escalates if EWOQ 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 EWO Act.
- **Final order** – if a matter cannot be resolved the Energy and Water 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.

Table 2: User-pays fees in 2014–15

Billable case types	Price per complaint for advance invoicing - \$
Refer back to supplier	357
Referral to higher level	655
Investigation level 1	1797
Investigation level 2	2828
Investigation level 3	Level 2 + actual minutes at level 3
Final orders	Applicable level when case ceased + one off fee of 4000

Level 3 investigations and final orders are not charged in advance and are included in the reconciliation processes.

This fee structure provides both base funding for the functions of EWOQ and an incentive for scheme participants to satisfactorily resolve customer disputes without referral to EWOQ.

¹³ Budget Guidelines 2014-15, Energy and Water Ombudsman, June 2015

Supplementary fees may also be levied if there is unforeseen expenditure, or receipts from participation and user-pays fees are not sufficient to fund all of EWOQ functions.

5.2 Cumulative regulatory burden

Impacts on water entities and their customers

The Queensland Government provided, through the then Department of Environment and Resource Management, \$533 000 to cover the establishment costs of extending the Energy Ombudsman's functions to water disputes. This was a one off grant to cover the additional set-up costs. However, \$83 000 of unexpended funds for establishment costs was returned to government at the end of the 2010–11 financial year.¹⁴

Under transitional provisions (section 99 of the EWO Act), the Advisory Council was required to provide a report to the Minister by the end of 2011 on the performance of EWOQ's functions as they relate to water entities in the first year. The Advisory Council's report, among other things, found the water dispute function was integrated smoothly and was established 'quickly, efficiently and effectively'.¹⁵

Prior to implementation, it was expected that the percentage of water complaints in the first year would be higher compared to subsequent years and possibly up to 10 per cent of EWOQ's case load. On this basis, the additional annual operating cost of the expanded scheme was estimated to be \$655 000; and pass through costs for water customers were estimated at \$0.62 to \$0.73 on an annual water bill.¹⁶

EWOQ's 2010–11 Annual Report indicates the percentage of cases closed relating to water disputes was around five per cent of the total (i.e. 607 out of 12 702) noting that complaints relating to water entities were only for a six-month period from 1 January to 30 June 2011.¹⁷

The Advisory Council's report (over the calendar year January to December 2011) found that water cases made up eight per cent of the total case load for that period, (i.e. 1115 of 13 801 cases closed).¹⁸

Water disputes referred to combined energy and water ombudsmen schemes in New South Wales and Victoria generally make up around four to five per cent of total cases.

Since 2011, the absolute number as well as the percentage of water cases compared to total cases, has declined. These figures are consistent with the predicted case load in the first year and subsequent years for the EWOQ scheme.

Analysis

Participation fees for water entities are not scaled according to the size of the water business, i.e. the number of connected properties. All water entities pay \$10 000 annually for membership regardless of the number of customers they have. Energy entities in comparison pay \$5000 for each service they provide under an energy Act. However, for two small energy providers (Maranoa Regional Council and Western Downs Regional Council), participation fees have been prescribed by regulation at \$50 for each customer connection or customer retail service provided under the *Gas Supply Act 2003* for Maranoa, and \$250 for each service for Western Downs. There is no ability to prescribe a different participation fee for water entities.

Table 3 presents the overall financial impact of extending the Energy Ombudsman's dispute resolution function to water disputes in SEQ. This shows that actual costs incurred by water entities due to the extension are significantly lower than the PIA forecast of \$655 000.¹⁹ At an

¹⁴ Energy and Water Ombudsman Queensland Annual Report 2010-11, page 15

¹⁵ Advisory Council report on the introduction of the water dispute function, January 2012

¹⁶ Preliminary Impact Assessment, Queensland Water Commission, 2010

¹⁷ Energy and Water Ombudsman Queensland Annual Report 2010-11, page 26

¹⁸ Advisory Council report on the introduction of the water dispute function, January 2012

¹⁹ Preliminary Impact Assessment, Queensland Water Commission, 2010

aggregate SEQ level, actual costs were less than half of that predicted in 2011–12, decreasing to less than one-third in 2013–14.

In 2014–15, water related complaints represented around three per cent of total cases closed by EWOQ. In 2014–15, revenue from water entities represented around four per cent of total revenue from user-pays charges.

Table 3: Estimated pass through costs versus actual costs for services since 1 January 2011 (\$000)

	2010-11	2011-12	2012-13	2013-14	2014-15
PIA forecast costs to water entities	\$655				
Total user-pays fees incurred by water entities	\$141	\$296	\$182	\$159	\$183
Total participation fees incurred by water entities	\$30	\$30	\$50	\$50	\$50
Total fees incurred by water entities	\$171	\$326	\$232	\$209	\$233
Proportion of total EWOQ user charges incurred by water providers	4%	6%	4%	3%	4%
Proportion of EWOQ cases relating to water	5%	7%	4%	3%	3%

Notes:

1. As EWOQ began investigating complaints relating to water on 1 January 2011, complaints relating to and fees collected from water providers in 2010-11 only represent a six-month period and therefore are not directly comparable to future years.
2. The increase in participation fees between 2011-12 and 2012-13 reflects the disestablishment of Allconnex. Following this, Gold Coast City Council, Logan City Council and Redland City Council each pay an annual participation fee of \$10 000.

Table 4 outlines the total fees incurred by each water entity as a result of complaints to EWOQ. Total fees incurred by the water entities in 2014–15 range from \$11 934 for Redland City Council to \$103 470 for Queensland Urban Utilities.

All water providers pay an annual participation fee of \$10 000. In 2014–15, this accounted for between 10 per cent (Queensland Urban Utilities) and 84 per cent (Redland City Council) of the total fees incurred.

Assuming user-pays fees are passed on to customers equally, the pass through cost per customer in 2014–15 ranged from around \$0.15 per customer serviced by Logan City Council to around \$0.24 per customer serviced by Unitywater.

If participation fees are discounted, costs per customer reduce to between \$0.03 per customer serviced by Redland City Council and \$0.20 per customer serviced by Unitywater.

Although participation costs are higher for the smaller water entities as a percentage of total costs, overall costs are very low when calculated as a pass through cost to individual customers.

Comparing total annual costs for the SEQ service providers divided by the number of cases closed by EWOQ, reveals significant variation among the five providers. In Tables 4 and 5 below, the highest cost burden falls on Redland City Council—with only five complaints in 2014–15. Each complaint averaged \$2386, with the least cost burden on Unitywater with complaints averaging \$490 each.

Table 4: EWOQ charges for functions on each water entity

Entity		2010-11	2011-12	2012-13	2013-14	2014-15
Queensland Urban Utilities						
Total charges	\$	47,414	80,804	86,654	73,615	103,470
Number of customers		474,903	483,520	487,684	495,084	502,546
Costs per customer	\$/hh	0.10	0.17	0.18	0.15	0.21
Costs per customer (excluding participation fees)	\$/hh	0.08	0.15	0.16	0.13	0.19
Costs per case type for 2014-15	\$	-	-	-	-	642
Unitywater						
Total charges	\$	52,909	78,060	63,174	62,140	65,207
Number of customers		266,365	264,161	264,854	270,127	275,118
Costs per customer	\$/hh	0.20	0.30	0.24	0.23	0.24
Costs per customer (excluding participation fees)	\$/hh	0.16	0.26	0.20	0.19	0.20
Costs per case type for 2014-15	\$	-	-	-	-	490
Allconnex						
Total charges	\$	70,961	167,067			
Number of customers		365,066	377,748			
Costs per customer	\$/hh	\$0.19	\$0.44			
Costs per customer (excluding participation fees)	\$/hh	\$0.17	\$0.42			
Costs per case type for 2011-12	\$	-	407	-	-	N/A
Gold Coast City Council						
Total charges	\$			46,422	40,781	38,175
Number of customers	no.			221,234	222,705	224,264
Costs per customer	\$/hh			0.21	0.18	0.17
Costs per customer (excluding participation fees)	\$/hh			0.16	0.14	0.13
Costs per case type for 2014-15	\$	-	-	-	-	647
Logan City Council						
Total charges	\$			21,315	19,752	13,973
Number of customers	no.			90,713	92,072	94,006
Costs per customer	\$/hh			0.23	0.21	0.15
Costs per customer (excluding participation fees)	\$/hh			0.12	0.11	0.04
Costs per case type for 2014-15	\$	-	-	-	-	1,164
Redland City Council						
Total charges	\$			14,751	12,332	11,934
Number of customers	no.			58,181	59,170	60,176
Costs per customer	\$/hh			0.25	0.21	0.20
Costs per customer (excluding participation fees)	\$/hh			0.08	0.04	0.03
Costs per case type for 2014-15	\$	-	-	-	-	2,386

Notes:

- Number of customers is estimated based on the number of connections presented in the Queensland Competition Authority (QCA) price monitoring reports for 2011-12, 2012-13, and 2013-15

- As EWOQ began investigating complaints relating to water on 1 January 2011, complaints relating to and fees collected from water providers in 2010-11 only represent a six-month period and therefore are not directly comparable to future years.
- The decrease in Unitywater customers between 2010-11 and 2011-12 is due to changes in Unitywater's methodology for estimating connections in 2012-13. In 2011-12 connections for Unitywater reflect 'estimated actuals' based on the updated methodology, however 2010-11 connections reflect the previous methodology.
- Connections in 2012-13 for Redland City Council, Logan City Council and Gold Coast City Council reflect 'estimated actuals'. Comparable numbers for 2011-12 are not available as these councils were not subject to price monitoring in 2012-13.

Table 5: EWOQ charges for 2014–15 divided by case numbers

Entity	Total EWOQ fees 2014-15 \$	No. of cases closed	Cost per case - \$
Queensland Urban Utilities	103,470	161	642
Unitywater	65,207	133	490
Gold Coast City Council	38,175	59	647
Logan City Council	13,973	12	1,164
Redland City Council	11,934	5	2,386

5.3 Review of Energy and Water Ombudsman Queensland

Background

At the Energy and Water Ombudsman's recommendation, the Advisory Council commissioned a performance review of the EWOQ's functions in 2013. In addition to its legislative obligations, EWOQ has been designed to meet or exceed the principles of an effective industry-based customer dispute resolution scheme and is periodically assessed against national benchmarks for such schemes.²⁰

The Consultancy Bureau was appointed by the Advisory Council and asked to assess the extent to which EWOQ was achieving the main purpose of the EWO Act by reference to the national benchmarks of accessibility, independence, fairness, accountability, efficiency, and effectiveness.

Analysis

The review found that EWOQ receives around 20 000 incoming telephone calls and over 3500 electronic lodgements each year, resulting in around 14 000 cases. Cases include enquiries, referrals to other agencies (as they are out of EWOQ's jurisdiction), referrals back to suppliers for consideration, investigation by EWOQ, or referrals to a higher level within the supplier organisation.

The review found that EWOQ receives and closes around 14 000 cases each year. Over 90 per cent of these cases are closed within 28 days. The review considered this to be a highly satisfactory performance overall.

This finding is further supported by Table 6 below from EWOQ's 2014–15 Annual Report which shows that EWOQ has consistently closed 90 per cent or more of its cases within 28

²⁰ Benchmark 6.11 provides that the operation of the scheme is reviewed within three years of its establishment and regularly thereafter, by an independent party commissioned by the overseeing entity

days. The table also shows that around one to two per cent of cases have taken more than 90 days to close.

Table 6: EWOQ performance targets–time taken to resolve complaints

Time	Target	2010-11		2011-12		2012-13		2013-14		2014-15	
		No.	%								
Less than 28 days	80	11,665	92	12,120	90	12,889	91	12,901	90	10,148	92
Less than 60 days	90	12,345	97	12,923	96	13,697	97	13,852	97	10,694	97
Less than 90 days	95	12,542	99	13,260	98	13,932	99	14,105	99	10,818	98
Over 90 days	95	160	1	262	2	164	1	177	1	231	2

Source: Energy and Water Ombudsman Queensland Annual Report 2014–15, page 12

In comparison, in the years 2008–09 to 2010–11, when water and sewerage customers would have had to raise complaints with the Queensland Ombudsman²¹, less than 85 per cent of complaints were resolved within 30 days and around 7 to 8 per cent took longer than 90 days to resolve.²² From 2011–12 onwards, the percentage of complaints resolved by the Queensland Ombudsman within 30 days increased to around 90 per cent or above. This change resulted from a restructure of the Queensland Ombudsman's Office in May 2012 which saw the creation of a new team focused on complaints intake and assessment and consolidation of investigative teams into a single unit. The annual report for 2011–12 notes that the office restructure 'has resulted in initial assessments being dealt with more efficiently with shorter timeframes'.²³ While complaint closure rates are now comparable to EWOQ, EWOQ investigates a higher number of cases overall each year compared to the Queensland Ombudsman which also declines to investigate around 80 per cent of complaints it receives each year.

Table 7: Queensland Ombudsman–time taken to resolve complaints

Time	2008-09		2009-10		2010-11		2011-12		2012-13		2013-14		2014-15	
	No.	%												
< 30 days	6,164	83	7,355	84	6,969	84	7,769	90	5,926	93	5,837	93	6,498	93
< 60 days	6,654	89	7,828	90	7,451	90	8,042	93	6,110	95	6,057	96	6,700	96
< 90 days	6,878	92	8,093	93	7,631	92	8,225	95	6,184	97	6,146	98	6,774	97
> 90 days	570	8	615	7	647	8	423	5	222	3	147	2	188	3

Source: Queensland Ombudsman Annual Reports: 2010-11 to 2014-15

In assessing the national benchmarks, The Consultancy Bureau found the following:

- **Accessibility:** Between 75 and 85 per cent of customers considered EWOQ to be highly effective in dealing with customers seeking access to lodge their complaints.

²¹ As EWOQ began investigating complaints relating to water disputes in SEQ on 1 January 2011, all water and sewerage complaints would have been raised with the Queensland Ombudsman during the first half of 2010-11.

²² This covers all complaint types considered by the Queensland Ombudsman

²³ Queensland Ombudsman Annual Report 2011-12, page 9

- Independence: 80 per cent of customers were satisfied that the Office was independent and lacked bias in its work, even though only 52 per cent of customers achieved outcomes that they considered to be in their favour.
- Fairness: EWOQ staff, scheme participants, and customers felt that processes were fair.
- Accountability: This criterion was considered to be adequately met. However, the review suggested this could be improved for scheme participants by making information such as cases per 10 000 customers of various categories, time taken to resolve categories of complaints, and costs for different categories more accessible.
- Efficiency: EWOQ was found to be performing in a productive and efficient manner, usually exceeding service standards that had been established.
- Effectiveness: Around 72 per cent of customers were satisfied or very satisfied with the final outcome of the complaint resolution process.

Conclusion

The report concluded that EWOQ was meeting its legislative and regulatory obligations and performing its functions to a high standard. The review found that EWOQ:

- fully met its legislative mandate and obligations, especially in terms of its independence and ability to reach fair and unbiased resolution of complaints;
- established sound strategic directions and is performing in accordance with those strategic intentions;
- was very effective in terms of governance, leadership and management arrangements;
- was very productive in terms of addressing its case load.

The report also stated that:

'An assessment of the performance of the Ombudsman's functions against key benchmark standards established for industry-based complaint resolution schemes confirmed that the Office is rated highly against all of these benchmark standards. Industry, customer and other regulatory stakeholders all confirmed that the Office is fulfilling its obligations in respect to all of these standards and in most cases, to a very high level.'²⁴

This review assessed EWOQ's performance as a whole. No assessments focusing specifically on the water function of EWOQ were conducted.

5.4 Customer satisfaction research

At the establishment of the Energy Ombudsman in 2006–07 there was a requirement that the scheme's performance be assessed within the first three years of operation. Before the EWOQ water function commenced, this performance review was completed in 2010. Colmar Brunton was commissioned to conduct the full performance review, with the customer satisfaction component of this research separately recommissioned in 2011. As part of the performance review of EWOQ in 2013, Colmar Brunton was again commissioned to conduct customer satisfaction research.

The methodology used by Colmar Brunton involved using computer assisted telephone interview survey of customers. The 2011 research was conducted between 24 October and 6 November 2011 and was designed to include residential and business customers of

²⁴ Report on Independent Review of the Office of the Energy and Water Ombudsman Queensland, The Consultancy Bureau, November 2013, page 95

EWOQ between 1 January and 30 June 2011. The 2013 survey used the same computer assisted telephone interview methodology.

However, Colmar Brunton noted in both customer satisfaction surveys (2011 and 2013) that research results for water customers were based on a small sample, noting for example that water customers that lodged complaints to EWOQ in 2011 were only five per cent of all complainants. Only 18 water customers were interviewed in 2013. The results of the customer satisfaction research for water customers must therefore be qualified accordingly.

Table 8 below outlines the number of cases closed by EWOQ relating to water entries. This shows that in 2011–12, the first full financial year of EWOQ being available to water customers, there were 739 closed cases from a customer base in SEQ of around one million customers. The number of closed cases fell by around 40 per cent in 2012–13 and by a further 20 per cent in 2013–14. While the number of cases closed increased by 6 per cent in 2014–15 this still represents a decrease over four years of around 50 per cent.

Table 8: EWOQ cases closed–water entities

Entity	2010-11 ²⁵	2011-12	2012-13	2013-14	2014-15
Queensland Urban Utilities	94	160	139	131	161
Unitywater	133	169	192	122	133
Allconnex	246	410			
Redland City Council			12	8	5
Gold Coast City Council			70	69	59
Logan City Council			23	17	12
Total	473	739	436	347	370

Source: EWOQ Annual Reports: 2010-11 to 2014-15

In the 2011 review, Colmar Brunton found that overall customers were satisfied with EWOQ, with 82 per cent of customers being 'very satisfied'. However, while satisfaction among customers with energy complaints was considered high (86 per cent very satisfied; four per cent very dissatisfied), satisfaction among customers with water complaints was lower (51 per cent very satisfied; 23 per cent very dissatisfied).

The 2013 review found that customers overall satisfaction with EWOQ was positive but the level of satisfaction had declined to 74 per cent being 'very satisfied'. The survey again found a higher proportion of customers with electricity complaints being satisfied compared to customers with water complaints. The percentage of water customers who raised complaints with EWOQ who were very satisfied had dropped to 29 per cent, compared to 75 per cent for electricity complainants and 78 per cent of gas complaints. In addition, the proportion of very satisfied water complainants was smaller than the proportion of water complainants who were very dissatisfied (31 per cent).

The survey also found that water customers were less likely to recommend EWOQ (69 per cent), compared to gas (97 per cent) or electricity customers (92 per cent).

While both surveys indicated lower levels of satisfaction from water customers compared to energy customers, these are based on extremely small samples and therefore may not accurately reflect water customers as a whole.

²⁵ This period was from 4 January 2011 to June 2011

6 Consultation

The department sought information from EWOQ and Unitywater during the development of the Consultation RIS. The Office of Best Practice Regulation was also consulted during development of the Consultation RIS and provided valuable assistance and advice on the adequacy of the regulatory impact assessment in proportion to the issues under consideration.

This Decision RIS has been prepared following the completion of the public consultation on the Consultation RIS and provides a summary and assessment of the key issues raised in the submissions.

6.1 Consultation Process

On 19 August 2016, the Consultation RIS was released for public consultation. The document was available from the Get Involved website and the department's website. The SEQ service providers and other interested parties were advised of the timing and process for making submissions to the review. The Consultation RIS contained a number of question boxes with direct questions to stakeholders on particular issues. These questions are provided in Appendix 1.

Written submissions in response to the Consultation RIS could be made for a 28-day period closing on 16 September 2016.

6.2 Submissions received

Three submissions in response to the Consultation RIS were received, being from EWOQ, Redland City Council and Logan City Council.

All three respondents expressed general support for EWOQ to continue in its role to provide small customers with dispute resolution services and affirmed the findings of the Consultation RIS that EWOQ is the most appropriate and effective way of providing small customers with a free, fair and independent dispute resolution service in SEQ.

Logan City Council acknowledged EWOQ's high degree of knowledge regarding SEQ service provider operations, associated legislation, the Customer Code and issues raised by customers, which contributes to the timely and efficient turnaround of disputes and is beneficial for all parties involved.

The following sections consider specific issues raised in the submissions.

6.3 Customer satisfaction and other dispute resolution service providers

The Consultation RIS provided some analysis of customer satisfaction with EWOQ where a small sample size was used for water customers. This analysis found that water customers were generally less satisfied with EWOQ's services compared to energy customers.

Logan City Council noted that the context in which disputes are made should be considered when analysing survey data as EWOQ will only be approached when a customer is dissatisfied with the outcome determined by the SEQ service provider. A suggestion was also made regarding the comparison of energy and water customers based on satisfaction levels that case types should also be considered to provide better context for the analysis.

Questions 2 and 7 asked whether other bodies could provide similar services that would lead to higher customer satisfaction. As stated earlier, around 80 per cent of complaints to the Queensland Ombudsman are not investigated each year. As SEQ service providers are

already required to have customer dispute resolution processes in place, the cases that are referred to EWOQ would typically require attention and the 80 per cent decline rate is considered to be too high for these cases. Logan City Council also submitted that given EWOQ's approach to dispute resolution, it is unlikely that having the Queensland Ombudsman or QCAT address the matter would result in improved customer satisfaction levels.

6.4 Participation and user-pays fees

Issues around the fee structure of EWOQ were the main area of concern raised by the two withdrawn councils in their submissions.

Logan City Council recognised the need for EWOQ to be adequately funded, for the scheme to work but argues that participation fees should be based on case numbers from the previous year and be tiered according to those case numbers, to reduce the cost of the dispute resolution service to those participants that do not create a high workload for EWOQ. Redland City Council similarly noted that the participation fee does not recognise the difference in size between the SEQ service providers.

User-pays fees are only charged to service providers for actual use of the scheme and therefore already provide an incentive for providers to have good customer service and sound complaints resolution processes to reduce the number of cases referred to EWOQ.

While participation and user-pays fees are uniformly levied, the \$10 000 participation fee makes up a greater proportion of overall costs for the smaller council providers than the larger distributor-retailers. For example, in 2014–15, this fee accounted for between 10 per cent (Queensland Urban Utilities) and 84 per cent (Redland City Council) of the total fees incurred. While this is acknowledged, overall costs for the SEQ service providers for membership and use of EWOQ scheme are small in the context of annual revenue of the businesses of over \$4 billion.

Scaling participation fees according to case numbers or customer numbers as suggested by respondents could be costly and difficult to administer, particularly if fee calculations must be revised annually for each individual provider. Alternatively, the government could investigate a tiered fee structure, whereby small providers would pay a reduced participation fee of \$5000, and larger providers would pay the existing \$10 000 fee. This option has the potential to address Logan and Redland City councils' concerns about equitable participation fees, while maintaining uniform dispute resolution services for customers across SEQ. Given that EWOQ's cost recovery arrangements rely primarily on user-pays charges for dispute resolution, a reduction in participation fees for small providers is unlikely to impact EWOQ's ability to recover all its costs.

Redland City Council questioned whether EWOQ continued to be appropriate for the small providers due to their smaller customer base and fewer number of complaints referred to EWOQ. Redland City Council also requested that the legislation be amended to allow smaller water utilities to join EWOQ voluntarily. However, it is unclear how strong the demand would be for a small provider to actually leave the current arrangements, given the limitations and cost burden of investigations by the Queensland Ombudsman and QCAT.

7 RIS Conclusion

The post implementation review was undertaken in the form of a Consultation RIS. The purpose of the review was to assess the impact, effectiveness and continued relevance of the regulation to date and also to:

- assess whether the regulation is being applied effectively and as intended; and
- estimate incurred and on-going compliance costs.

Impact – the impact of the amendments to extend the Energy Ombudsman’s function to water disputes has imposed relatively minor costs on SEQ service providers while small water customers in SEQ have gained access to a free, fair, efficient and independent means of having their disputes with their service provider resolved.

The Advisory Council’s review on the integration of the water function into EWOQ’s jurisdiction in 2011, found that the new service had been integrated smoothly and was established ‘quickly, efficiently and effectively’.²⁶

Effectiveness – the analysis undertaken as part of this report indicates that EWOQ has been effective in providing small water customers in SEQ with a timely, effective, independent and just way of having disputes with water entities investigated and resolved. The legislative amendments to extend the Energy Ombudsman’s jurisdiction to water disputes meet the policy intent at the time and the policy has been implemented as intended.

Continued relevance – although EWOQ provides an effective dispute resolution service for small water customers of the SEQ service providers, the question was put as to whether this remained the appropriate external dispute service for the withdrawn councils, particularly Logan City Council and Redland City Council. With a smaller customer base and evidence of fewer complaints made to EWOQ, the financial impost on these entities is higher compared to the larger Gold Coast City Council and the two DRs—Queensland Urban Utilities and Unitywater. The approach in NSW allows for water utilities, other than the large metropolitan providers, to join the Energy and Water Ombudsman scheme voluntarily, thereby allowing those utilities to weigh up the costs and benefits of the industry-funded scheme vis-à-vis the State ombudsman.

Logan City Council supports that EWOQ continue in its role to provide small customers with dispute resolution services, despite suggesting a scaled approach to participation fees. The submission affirmed the findings of the Consultation RIS that EWOQ is the most appropriate and effective way of providing small customers with a free, fair and independent dispute resolution service in SEQ.

Redland City Council submitted that voluntary membership of EWOQ for the small providers should be considered. However, it is unclear whether there is actual demand from small providers to leave the EWOQ scheme. As this Decision RIS outlines, alternative dispute resolution options have a high decline rate for complaints and limited directional powers (Queensland Ombudsman), and can have a significantly higher cost and resource burden on service providers (QCAT). As a result, it is unlikely that voluntary participation in the EWOQ scheme would maintain an acceptable level of service for customers, or have a significantly lower financial impact on the providers.

Is it being applied effectively and as intended – there is no evidence presented in this paper or found during research to suggest that the regulation is not being applied effectively or as intended. Performance reviews into EWOQ have consistently found that EWOQ is performing to a very high standard and meeting or exceeding national benchmarks. Customer satisfaction research found a lower level of satisfaction with EWOQ from water customers compared to energy customers, however, these results are not reliable because of the small sample size.

EWOQ has consistently closed around 90 per cent of its cases within 28 days while around one to two per cent of cases have taken more than 90 days to close. In addition, the independent review found that EWOQ has been meeting its legislative and regulatory obligations and performing its functions to a high standard.

The Queensland Ombudsman has a set budget which is funded from consolidated revenue. This means the Queensland Ombudsman may decline to investigate disputes that are referred to it due to limited resources. Therefore, the access to such a service for small water

²⁶ Advisory Council report on the introduction of the water dispute function, January 2012

customers may be limited. Expanding the Queensland Ombudsman's jurisdiction and budget so that it could investigate all disputes from small water customers would lead to increased costs for the Queensland Government.

As outlined in the case study, raising disputes through QCAT can be a costly and lengthy process, both to the customer and the service provider.

Incurred and ongoing compliance costs – by funding EWOQ through charges on the SEQ service providers, no cost is being borne either by the customers raising disputes or by the Queensland Government. While these costs may be ultimately passed on to all water customers, the estimated cost impact of EWOQ in 2013–14 is around 20 cents per customer. Recovering costs through user-pays charges can also act as an incentive for scheme participants to satisfactorily resolve customer disputes without referral to EWOQ. The reduction in cases closed by EWOQ since 2011–12 suggests this may be effective. There is less of an incentive for the council water businesses because the impact of the fixed charge (the participation fee) is a greater component of costs for them compared to the larger providers.

7.1 Recommendations

This report considers EWOQ to be the most appropriate and effective way of providing small customers with a free, fair and independent dispute resolution service. The following recommendations are made:

1. EWOQ is retained as the designated dispute resolution service for small customers in SEQ as per current arrangements.
2. Membership of EWOQ continues to be a mandatory requirement for all SEQ water service providers.
3. Options for reducing the participation fee for the smaller SEQ service providers (i.e. the council water businesses) be investigated to address equity concerns raised in submissions. The department, in consultation with EWOQ, should recommend a new fee basis to the Minister by 31 March 2018.

Appendix 1 – Questions posed in Consultation RIS

Question box 1 (section 3):

1. Given that the Customer Code has not moved to 'guaranteed service standards' and a compensation regime for failure to meet service standards, is it appropriate that the external complaints and dispute resolution service for small customers continues to be EWOQ?
2. Could the Queensland Ombudsman provide an adequate dispute resolution service?

Question box 2 (section 5.1):

1. Are the participation fees for water entities fair and reasonable?
2. Are the fee scales for billable case types appropriate?

Question box 3 (section 5.2):

1. How much would it cost for the Queensland Ombudsman or QCAT to carry out the water function of EWOQ?
2. Are EWOQ charges equitable for all five SEQ service providers?

Question box 4 (section 5.4):

1. Would satisfaction levels be significantly different if either the Queensland Ombudsman or QCAT were responsible for dispute resolutions for small water customers?