



ENERGY & WATER  
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15 April 2024

Dear Sir/Madam,

**Submission to the Department for Energy and Mining (DEM):  
Hydrogen and Renewable Energy Act – Draft Regulations**

The Energy and Water Ombudsman (SA) Limited (EWOSA) welcomes the opportunity to submit on the Department for Energy and Mining's Draft Regulations associated with the *Hydrogen and Renewable Energy Act 2023* (HRE Act).

EWOSA is the independent energy and water ombudsman scheme in South Australia. It receives, investigates and facilitates the resolution of complaints by customers with regard to (*inter alia*) the connection, supply or sale of electricity, gas or water.

Our comments relate to the dispute resolution processes outlined in the HRE Act and Draft Regulations and the possibility of EWOSA being involved in the mediation stage of these processes.

EWOSA is generally comfortable with the dispute resolution clauses contained within the HRE Act and Draft Regulations. We support there being an escalation process that involves mediation as an early stage of dispute resolution, followed by referral to a higher court with greater powers when disputes cannot be resolved at the mediation stage, in this case the Environment, Resources and Development Court (ERD Court). We believe the ERD Court is the appropriate body to deal with such matters at this higher level.

We note that the procedures associated with mediation and the agency to conduct mediation have not yet been decided upon. We also note that Recommendation 5 of the Australian Energy Infrastructure Commissioner's Review of Community Engagement suggests a role for an Ombudsman in the resolution of complaints or disputes between landowners and/or other interested parties and licence holders associated with renewable energy projects. One of the options the review suggests is for the existing Energy and Water Ombudsman to be that Ombudsman.

Given this, EWOSA believes it could play an important role in resolving disputes between landowners and licence holders under the HRE Act at the mediation stage. There are a number of benefits to this option:

- EWOSA is a free service for complainants, in addition to being fair, objective and independent

- EWOSA is a well-established, experienced and widely respected external dispute resolution body in the energy and water industry
- EWOSA is trusted by energy and water consumers, with 93% of customers to our December 2023 Customer Feedback Survey being either satisfied or very satisfied with EWOSA's service overall and 96% of customers indicating that they would be likely to recommend EWOSA to others
- EWOSA would be a cost-effective option, compared to establishing a new external resolution dispute body or utilising a range of lawyers or legal counsel.

Nevertheless, there are a number of matters to consider.

First, EWOSA resolves complaints between consumers of energy and water and their service providers through facilitation and investigation, rather than mediation. This involves referring complainants to their providers, sometimes at a customer service level and sometimes to a dedicated complaint resolution team. If complaints cannot be resolved at these levels, EWOSA takes on the case as an investigation. This involves a dedicated dispute resolution officer within EWOSA conducting analysis of the complaint to establish an objective and independent view of the issues and to negotiate a fair and reasonable outcome for the complainant and the provider.

There are also other categories within our complaint handling processes and further details of case management at EWOSA can be found on pages 14-16 of our 2022-23 Annual Report (<https://ewosa.com.au/publications/annual-reports>).

At no time does EWOSA require or have both parties sit in a room to discuss their issues and come to a resolution together. That is, we don't mediate between the affected parties, but we do facilitate the resolution of disputes.

Second, for someone who has a complaint about their energy or water service provider to complain to EWOSA, the provider must be a Member of EWOSA. This is usually enforced through laws and regulations – such as the national energy rules – or licence conditions.

Given the absence of such a requirement in the HRE Act and Draft Regulations, if EWOSA was to be involved in external dispute resolution in this space, it would be necessary for there to be a licence condition for licence holders, across the six types of licences and one type of permit, under the HRE Act to become a Member of EWOSA.

The two exceptions would be if Electranet was to be involved in the transmission of electricity from a renewable energy project, or Australian Gas Networks was to be involved with the piping of gas from a hydrogen generation project, given that Electranet and Australian Gas Networks are already Members of EWOSA.

Third, there are some aspects of mediation or dispute resolution described in the HRE Act and Draft Regulations that EWOSA currently does not get involved in. In particular, this involves negotiating agreements. But EWOSA would get involved in resolving disputes between a landowner and the licence holder about an existing agreement and try to facilitate a fair and reasonable outcome.

A parallel situation is that EWOSA does not negotiate the terms and conditions of electricity market contracts between a consumer and an electricity retailer. But when there is a complaint, we consider the terms and conditions of the market contract and whether any of those have been contravened, when facilitating a fair and reasonable outcome for both the consumer and provider.

Fourth, complaints to EWOSA are made by individual customers of energy and water service providers. We do not take complaints from communities or groups of people. Whether such complaints are enabled by the HRE Act and Draft Regulations, we are not sure. But such complaints would be better handled by other dispute resolution providers, rather than EWOSA, such as lawyers that deal with class actions and the like, or the ERD Court.

Fifth, where a complaint has been unable to be resolved after investigation and without a conciliated settlement, the Ombudsman can make a binding decision to resolve the complaint, “provided that the total cost to a Member of such determination or direction in relation to an individual complaint, does not exceed in value \$50,000 (as determined to the satisfaction of the Ombudsman).”

This is part of clause 7.1.1 (a) of EWOSA’s Charter, which is publicly available on our website (<https://ewosa.com.au/about-ewosa/governance/legal>).

In addition, clause 7.1.2 of EWOSA’s Charter states:

“The Ombudsman may, with the consent of all parties, make a determination or direction the cost to a Member of which exceeds \$50,000 but does not exceed \$125,000 (as determined to the satisfaction of the Ombudsman).”

Given that some of the disputes and complaints that may arise with renewable energy project operators could involve significant sums of money or compensation, even if EWOSA does become involved in external dispute resolution under the HRE Act, there would be some complaints that would be better handled by other dispute resolution providers.

There are also a number of important internal matters for EWOSA to consider before taking on external dispute resolution under the HRE Act and Regulations and a new category of membership. These include:

- resources
- staff training
- funding and funding models
- changes to key governance documents, including the Constitution and Charter
- IT and associated systems
- new and current Member engagement, including changes to Member Manuals
- other communications, such as the website, fact sheets and community outreach.

Therefore, being involved in external dispute resolution under the HRE Act and Regulations is not a decision EWOSA would take lightly and would require consultation not only with the Department for Energy and Mining (DEM), but also EWOSA’s Board and existing Members.

We look forward to any further discussions that the DEM may wish to have with EWOSA on this very important issue.

EWOSA supports the review of the HRE Act and Regulations, as specified within the HRE Act, five years after it comes into operation. Such a review will be important in ascertaining whether dispute resolution has operated appropriately and to the satisfaction of all parties concerned. Also, given the likelihood of Energy and Water Ombudsman interstate becoming involved in resolving disputes around renewable energy projects in those States, a comparison of any differences between dispute resolution processes could be fruitful in determining whether any changes need to be made to the HRE Act and Regulations.

Thank you for consideration of this submission. Should you require further information or have any enquiries regarding this submission, please contact me at [antony.clarke@ewosa.com.au](mailto:antony.clarke@ewosa.com.au) or on (08) 8216 1861.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A Clarke', written in a cursive style.

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Antony Clarke  
Policy and Governance Lead