

4 October 2016

COAG Energy Council Secretariat  
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Canberra ACT 2601  
By email: [energycouncil@industry.gov.au](mailto:energycouncil@industry.gov.au).

Dear COAG Energy Council Secretariat

Thank you for the opportunity to comment on the consultation paper "*Consumer Protections for Behind the Meter electricity supply: Consultation on regulatory implications.*"

The Energy & Water Ombudsman NSW investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. EWON also has jurisdiction to investigate and resolve complaints from customers of exempt energy retailers and networks in NSW. Exempt sellers, however, are currently not required to be members of EWON. With respect to the latter, the cost of those complaints is met by EWON Members, and the exempt retailer is not obliged to engage in EWON's dispute resolution processes or accept direction or Binding Decision from the Ombudsman.

This consultation is very timely given the electricity market is, arguably, undergoing the most significant period of change in its history. The range of new products and services becoming available is significantly impacting how electricity is delivered and consumed by residential and business customers. In this context it is vital to review how regulation can influence the adequacy and development of this changing market. Regulation needs to maximise consumer benefit and ensure adequate consumer protections are in place for those consumers whose circumstances place them in situations where they cannot benefit from innovation, or worse, innovation creates greater detriment or inequality for those consumers in the future. It is critical that regulation does not unfairly favour any participants in the market or place some consumers in a position where protections are unavailable.

## Principle based approach

The National Energy Customer Framework (NECF) was developed on the basis that the majority of consumers would purchase energy through a retail contract and that the energy was supplied from the source of generation via a regulated network.

The retail and network exemption framework managed by the Australian Energy Regulator (AER) provides for innovation in the energy market, which in turn gives energy consumers access to new products and services. The exemption framework empowers the AER to provide energy consumers with consumer protections that are matched to the nature and scale of the alternative energy product or service.

While some new energy products and services fall under the exemption framework, others are outside energy specific protections. In EWON's submission to the Australian Consumer Law Review, EWON identified as a fundamental principle for the regulation of new energy products and services that:

*“Energy-specific consumer protections are required when a product or service impacts on a customer’s access to a reliable, safe and high-quality supply of energy on fair and reasonable terms.”<sup>1</sup>*

EWON is of the view that the National Electricity Law (NEL) and the NECF are too prescriptive for some products and services. However, having services, including behind the meter electricity supply, outside energy specific regulation leaves consumers vulnerable in relation to the provision of an essential service which has already been accepted as warranting industry specific protections. These key consumer protections cover disconnection, billing, dispute resolution and quality of supply.

To address the need for innovation and consumer access to new products, the AER exemption framework provides a model of matching regulatory protections to the nature of, and the impact that, a new product or service will have on consumers. Such a model, when applied to **“behind the meter electricity supply”**, will ensure that each proposal would be judged and an appropriate level of consumer protection applied.

Three key features for establishing the need for energy specific protections for behind the meter electricity supply are:

1. The essentiality of the product and associated service to reliable supply.
2. The level of complexity of the commercial arrangement associated with the supply of electricity.
3. The contractual links which exist between the behind the meter supply and a standard supply arrangement and the potential for a problem with one to generate issues with the other.

Once the needs for energy specific protections are established, they could be applied by extending the current exemption framework to include behind the meter electricity supply arrangements. The

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<sup>1</sup> *New Products and Services in the Electricity Market: Consultation on Regulatory Implications*, Energy Market Reform Working Group December 2014, p8

same result could be achieved by developing a parallel framework, administered by the AER, which identifies different classes of systems and then attaches relevant conditions to each class.

## Particular issues

### *Vulnerable consumers*

NECF provides a range of protections for vulnerable customers including payment plan options, disconnection protection, continuity / alternate supply for life support situations, and access to hardship protections. Similar protections are required for customers in regard to behind the meter electricity supply arrangements, with the level of protections required for vulnerable customers varying significantly depending upon the nature of the supply and the commercial contract associated with that supply.

The highest level of protection is needed where the behind the meter electricity supply provides the major source of energy and is linked to a long term supply contract.

Further, some protections should be required with respect to default on long term commercial arrangements due to unforeseen circumstances, for example a mortgage default resulting from a job loss which may require the customer to leave the premises where the installation is, thus voiding the contract.

### *Dispute resolution*

Energy customers need access to relevant, expert and consistent independent dispute resolution services for issues associated with the sale and provision of energy whether they are a customer of an authorised retailer, an exempt retailer or a provider of a behind the meter electricity supply. Generally, energy ombudsman schemes structure the way their members pay for Ombudsman services on a user pays basis. These funding models are flexible and can be structured to enable new entrants operating under different models to become members.

In NSW under section 95B and section 96D of the *Electricity Supply Act 1995* and clause 11 of the *Electricity Supply Regulation 2014*, EWON has jurisdiction to investigate and resolve complaints from customers of exempt energy sellers and networks. The AER, EWON and other jurisdictional Ombudsman schemes are currently considering how such exempt providers should be required to participate in, be members of, and pay for dispute resolution services.

While Australian Consumer Law protections provided through State fair trading offices may be sufficient for the straightforward purchase and installation of a solar array, an energy specific service would be more appropriate for customers engaging in more complex purchases with long-term financial arrangements for the sale of electricity. It is confusing and unsatisfactory for customers with arrangements linked to authorised supply contracts that EWON can currently deal

with only some aspects of an interrelated dispute - the energy supply contract, while the installation aspect of the dispute must be dealt with by NSW Fair Trading.

EWON strongly supports this agenda for change as these arrangements should be addressed now.

If you would like to discuss this matter further, please contact me or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

Yours sincerely



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