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NECF Consultation
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Thank you for the opportunity to comment on the subordinate regulatory instruments designed to implement the National Energy Customer Framework (NECF).

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. EWON welcomes the adoption of the NECF in NSW, and is concerned to ensure that NSW consumers do not lose any of the specific NSW protections currently in place.

For this submission, we have confined our comments to three instruments:

- *National Energy Retail Law (Adoption) Regulation 2012*
- *Electricity Supply (General) Amendment (National Energy Retail Law) Regulation 2012*
- *Electricity Supply Act 1995*

For ease of reference our comments on these three instruments are on the following separate pages.

If you would like to discuss this matter further, please contact me or Emma Keene, Manager Policy, on 8218 5225.

Yours sincerely

A handwritten signature in cursive script that reads "Clare Petre".

Clare Petre
Energy & Water Ombudsman NSW



1. National Energy Retail Law (Adoption) Regulation 2012

This instrument aims to apply the NECF in NSW, with some additional variations that are specific to customers in NSW.

Clause 8: Limitation of liability of distributors

We note that distributors will be entitled to modify clause 8 of the *Model terms and conditions for deemed standard connection contracts* with this liability clause. This has the effect of limiting their liability to the lesser of the cost of repair or replacement of any property damaged, or \$5000.

We are pleased to note the inclusion of subsection (5) in this draft, which provides that this clause does not affect the operation of any determination made by an energy ombudsman scheme. This clearly addresses our earlier concerns about a potential conflict with the ombudsman's determinative powers – currently up to \$30,000 (\$50,000 with the consent of the company/EWON member) contained in clause 11.2 of EWON's Charter¹.

Other liability issues

EWON investigates customer claims for compensation against distributors for damage or loss experienced in several other situations not directly related to the "*partial or total failure to supply energy*".

Examples include customer complaints regarding:

- staff of the distributor leaving a farm gate open and allowing cattle to escape and sustain injury
- vehicles driven by staff of the distributor damaging a customer's front wall and driveway
- tree trimming by a distributor's contractor well outside the vegetation clearance envelope destroying rare or valuable plants
- incorrect information about the expected length of a supply interruption resulting in the unnecessary cancellation of a charity or other event.

We are not aware of any limitation on a customer's right to claim compensation in these cases, and would appreciate your confirmation of this.

¹ Available on our website at www.ewon.com.au



Clause 9: Carbon price information

We note that this information has been appearing on customers' bills in NSW since July 2012 following the *Ministerially imposed electricity retail supplier licence conditions December 2012*².

EWON has received customer complaints about this clause, as the following case examples illustrate:

The customer is concerned about the carbon tax message on his latest bill and queries who is responsible for this as he considers the message is misleading [#138265]

The customer considers his current account makes a misleading statement about the Australian Government's carbon tax, not once but twice. He states "I object strongly to my electricity account being used as political propaganda. Energy accounts are not a form of advertising. They should stick to facts about the supply of energy to my property". [#141835]

The customer has received her bill with a notice about the carbon tax. She feels this notice is not correct in its content. She feels that this is the government trying to "politicise my bill". [#145510]

The customer is concerned about the wording on her electricity bill regarding recent price increases. This is not a complaint about her retailer; it is a complaint about the NSW Government wrongly implying that the increased costs on her bill are from the Federal carbon pricing and green energy schemes. The bill states that the NSW Government estimates that Federal carbon tax and green energy schemes add about \$316 a year to a typical 7MWh household bill. However on the IPART website, the contribution of green schemes to the current price increase is 0.3% of the 18% increase averaged across NSW. [# 138027]

Clause 10: Late payment fees

The current NSW rules relating to when late payment fees must be waived are found in IPART's Electricity Determination³, which expires on 30 June 2013. Clause 10 aims to ensure that NSW customers will continue to have the same protections under the NECF as they had under the IPART Determination.

² Available on the IPART website: www.ipart.nsw.gov.au

³ *Review of regulated retail tariffs and charges for electricity 2010 to 2013*: Schedule 5 at page 32



There is only one point of difference. The IPART Determination included “*on a case by case basis as the Ombudsman considers appropriate*”.

We are aware that under clause 11.2 of EWON’s Charter, the Ombudsman can direct a retailer member to refrain from imposing a charge, and that under section 86 of the *National Energy Retail Law*, all retailers must comply with the requirements of an energy ombudsman scheme. However for the sake of completeness we would recommend that this same provision is included in the modifications to Clause 12 and 14 of the *National Energy Retail Rules*, so that it is clear to both customers and retailers.

Clause 11: Tariffs and charges

The proposed additional subsection states:

*2A) A retailer must also set out in a fixed term market retail contract with a small customer all tariffs and charges that **will** be payable by the customer over the term of the contract.*

EWON supports full disclosure of all significant fees, so that customers can make informed choices about the value of a particular offer, its suitability for their particular circumstances, and whether the fees might outweigh any savings on the contract.

Clause 12: Variation of market retail contracts

EWON supports the inclusion of this subsection.

EWON received a number of customer complaints when one retailer significantly changed a contract term after the customers had agreed to the original contract. The change allowed the retailer to charge a significant security deposit mid-way through the contract term. This materially altered the commercial relationship between the parties, but under the contract, customers were still liable for a significant early termination fee if they cancelled the contract. Customers felt this to be unfair and unreasonable.

Clause 12 allows them to terminate without penalty in situations where the contract has been materially altered. This will assist customers should a similar situation arise in the future.

Clause 49AA (1) (a) provides that “*the retailer will notify the customer in writing of any variation of the contract*” – however no time frame is provided for this to be done. We note that clause 8.2 of the *Model terms and conditions for standard retail contracts* provides a time scale for notifying a change of tariff as “...we will publish the variation in a newspaper and on



our website at least 10 business days before it starts. We will also include details with your next bill if the variation affects you.” We suggest this could provide a guide for this subsection.

Clause 13: Provision of information by distributors about metering data

EWON supports the provision of information about their energy usage to customers. This can be a valuable tool to assist consumers to understand their patterns of consumption and to minimise their energy costs, particularly where they have an interval meter with ‘time of use’ pricing.

It has been EWON’s experience that metering data from distributors can often be very challenging for customers to interpret. Typically it will come in a spreadsheet with 48 columns across the page for each half hourly interval. The number of rows will depend on the time period covered, but will be approximately 91 rows for one billing quarter’s data, or 365 rows for a whole year. If customers want the original data in this format, we support the intention behind the subsection whereby customers would be entitled to receive this.

However not all customers find this information helpful as the following example illustrates.

The customer asked for assistance in trying to reconcile their bill, and was sent 618 pages of meter readings with 33,990 lines of data. [# 155003]

With some fairly minimal processing, we believe that the data can be presented in a much more user-friendly format. Most retailers will present the data in this way for their customers on request, and EWON also does this when analysing data in the course of an investigation.

The accompanying policy document refers to the data being provided in ‘a usable format’ and refers to providing the information electronically via an online portal. However the wording of the sub-section only refers to ‘metering data’.

If it is the intention that the data is provided in a useable format for customers, we suggest this is made clear in the subsection.

Clause 14: Planned interruptions to supply

In principle EWON has no objection to the customer agreeing with a distributor for a shorter notice period for a planned interruption, but there are some points we would like to see clarified.



- The section refers to agreement in writing, but does not specify that it needs to be signed. Without a signature, what confirmation is there of a customer's consent?
- Who is "the customer" in this case? There can be a number of members of a household, and problems can arise if the person potentially most affected by the interruption was not consulted before another household member consents to the shorter notice period.

In the retail area, we receive constant customer complaints when marketers approach members of a household who are not the current account holder. These can include spouses, children, flatmates and visitors, and potentially the same thing could happen with these customer agreements with a distributor.

Clause 43: Existing unresolved complaints to distributors or retailers

EWON supports this provision, clarifying that complaints that have arisen before the commencement date of the NECF should be dealt with according to the existing legislation in force before the commencement date.



2. Electricity Supply (General) Amendment (National Energy Retail Law) Regulation 2012

Clauses 7 – 11: Distributor Service Standards

Schedule 3 to the *Electricity Supply (General) Regulation 2001*, which currently contains some of the distributor service standards, will be repealed. The new clauses 8-11 aim to continue their application for NSW customers, and we have made some comments on some selected sections of these clauses.

Clause 7 – Connection on agreed date.

We note that this retains the same customer compensation of \$60 per day when the connection time frame is not met.

We also note that the provision relating to a customer service payment of \$25 for being 15 minutes late for an appointment, which was repealed in July 2012, has not been retained. We note that punctuality has rarely been the subject of customer complaints to EWON⁴.

Clause 9 – Mandatory periods for de-energisation

The current clause 3 of Schedule 3, relating to disconnections requested by customers, has a subsection (2) which provides that the customer remains liable for all charges at their premises until 48 hours after the service provider becomes aware that the contract is terminated or the supply is disconnected.

Customers who move out without contacting their retailer often complain about being billed for charges at a property after they have moved out. If another customer has moved in, this is usually resolved by clarifying the move-in and move-out dates of the respective parties with the retailer, who can reissue bills based on these dates. However if the property is vacant, the retailer continues to issue bills with a Service Charge of approximately \$60 per quarter.

This subsection was very useful for clearly identifying the customer's obligations here, and there does not appear to be an equivalent in clause 9 or in clause 118 of the National Energy Retail Rules. We query why the clearly expressed provision from Schedule 3 of the current Regulations has been omitted.

⁴ The most common complaint to EWON in this area is from customers who have a gas meter inside their premises and who arrange for a meter reader to attend to do an actual/final read. Customers often complain that the meter reader does not turn up at all on the agreed day, causing significant inconvenience to them.



Clause 10 – Post -disconnection Notices

We strongly support the inclusion of this clause for NSW customers. It is EWON's experience that for some customers, it is only when their supply is disconnected for non-payment that they actively decide to engage with their retailer, and to access any available assistance. Many customers first contact their retailer or EWON with the post-disconnection notice in their hand, so having the contact details there is a very valuable resource for them.

Customers are also periodically wrongfully disconnected after a transfer in error – without the post-disconnection notice they have no idea who to call for assistance.

We are pleased to see that this clause which had been repealed in July 2012 is now being reinstated. To make it even more useful, we suggest it could also include a generic statement about the availability of NSW Government funded rebate schemes and EAPA, with a direction to contact their retailer for further information.

Design Reliability and Performance Licence Conditions

Clause 17 of the Design Reliability and Performance Licence Conditions itemises the customer service payments payable when a range of performance and reliability standards are not met.

We note the comments in the Policy Document that this information does not need to be included in the *Electricity Supply (General) Regulation 2001* because it is required to be on the distributors' web-site:

“The majority of connection contracts are deemed and unlikely to be read by consumers. As a result, the inclusion of this in connection contracts is not likely to play a significant role in making consumers aware of this payment.”⁵

Clause 5.4 of the *Model terms and conditions for deemed standard connection contracts* refers to guaranteed service levels for particular jurisdictions. In keeping with the general thrust of the NECF, which clearly communicates customer entitlements in plain English, it would appear logical to gather all related service standard provisions together in the one place.

While we agree that customers may not refer to their deemed contracts when things are going well, as soon as a problem arises they look for information. It is an unnecessary impediment if they are required to search in a number of different places for this. When EWON has investigated customer complaints about a perceived failure of customer service, we refer to all these standards and provide customers with extracts of the relevant sections. It would assist complaint handling for customers if all related service standards are in the one place.

⁵ NECF – NSW Regulations – Policy document – 21 December 2012, pg 10



Clauses 12-13: Persons who may apply to energy ombudsman

The current clauses 50-52 in the *Electricity Supply (General) Regulation 2001* dealing with the energy ombudsman will be deleted, and replaced with new clauses 12-13. These jurisdictional provisions are in addition to those in ss. 79-87 of the *National Energy Retail Law* (NERL) for complaints arising under the NECF – though we note that the exempt seller regime in the NERL only applies to the retail function, not connection services. The provisions in clauses 12-13 therefore only apply to those specific NSW jurisdictional issues remaining in the NSW Acts and Regulations.

We query why clause 12 (a) appears to restrict the jurisdiction in regard to complaints from customers in an exempt selling situation such as Residential Parks to retail matters, and does not include complaints arising from connection related disputes. Clause 50 (1) (c) of the current Regulation does not appear to make this distinction.

Current clause – 50 ((1) c) <i>Electricity Supply (General) Regulation 2001</i>	Proposed amendment – 12 (1) (a) <i>Electricity Supply (General) Regulation 2001</i>
a person to whom connection services are provided, or electricity is supplied, under an arrangement exempted from a provision of the Act under clause 66 or 68 (other than clause 68 (2) (e) or (f)) and who occupies residential premises and whose electricity consumption is measured by a separate meter, in respect of any dispute or complaint under the electricity supply arrangement concerned,	a small customer in respect of a matter arising between the customer and an exempt person concerning a contract for the supply of electricity or gas (including charges for electricity or gas) or any other matter relating to the supply of electricity or gas by the exempt person to the customer,

This issue is linked to the amendments to clause 70, which also applies to the ombudsman’s jurisdiction in relation to exempt persons.

Current clause – 70 (2) (c) <i>Electricity Supply (General) Regulation 2001</i>	Proposed amendment – 70 (2) (c) <i>Electricity Supply (General) Regulation 2001</i>
the exempt person is bound by, and must comply with, any decision of the electricity industry ombudsman in relation to a complaint or dispute relating to the provision of connection services or the supply of electricity by the exempt person, as referred to in clause 50 (1) (c).	the exempt person is bound by, and must comply with, any decision of the energy ombudsman in relation to a complaint or dispute relating to the provision of connection services



The current Regulation, clause 70 (2) (c) requires the exempt person to be bound by any decision of the ombudsman in relation to both the provision of connection services or the supply of electricity as covered in clause 50. However in the draft amendment to this clause this is confined to connection services only. We query why complaints about supply are now excluded from this section.

Section 96D of the *Energy Legislation Amendment (National Energy Retail Law) Act 2012*, which was passed last year but is not yet in force, also contains provisions relating to the jurisdiction of the energy ombudsman. This section is also confined to the retail function.

Energy Legislation Amendment (National Energy Retail Law) Act 2012

96D Obligations of retailers under energy ombudsman scheme

- (1) This section applies to the following decisions by an energy ombudsman under an approved energy ombudsman scheme of which a retailer or other exempt person is a member:
- (a) a decision relating to a matter concerning the retailer's or exempt person's functions under this Act or the Gas Supply Act 1996, or under any instrument under those Acts,
 - (b) a decision relating to a dispute or complaint involving the retailer or exempt person and a small customer or regulated offer customer, if that dispute or complaint arises under any such Act or instrument.
- (2) A retailer or exempt person is bound by a decision to which this section applies and must not fail to comply with any such decision.

Maximum penalty: (a) in the case of a corporation—100 penalty units, or
(b) in any other case—25 penalty units.

(3) In this section: exempt person means an exempt seller under the National Energy Retail Law (NSW) or a person exempted (under section 3B of that Law) from the requirement to hold a retailer authorisation.

In this context, we can appreciate that the draft amendment to clause 70 (2) (c) to the *Electricity Supply (General) Regulation 2001* has the effect of clarifying that exempt persons are bound by decisions of the NSW energy ombudsman in relation to connection disputes, as this is not otherwise covered by s 96D (2).

We query why clause 50 which provides for who may apply to the energy ombudsman, and clause 70 which deals with the ombudsman's authority over exempt persons, cannot apply to both retail and connection issues. This would make it much easier to locate this information.



Clause 73 - 74: Social Programs for Energy Codes

We understand that these clauses apply to exempt persons, as well as retailers and distributors, and appreciate that this is relevant to the extension of the NSW Government rebates to customers receiving supply from an exempt retailer.

We note the compliance provision imposing penalties in clause 74 (3), and would appreciate advice as to how this is to be enforced against exempt persons.

We would also appreciate advice as to the status of the *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks, August 2006*, published by NSW Fair Trading under the *Residential Parks Regulation 2006*.

These *Standards* provided NSW customers with additional protections that are not included in the AER's *Exempt Selling Guidelines*, in particular:

- a formula for a reduced service availability charge where there is reduced amperage supplied to a site
- no late payment fees
- disconnection only by order of the Consumer, Trader & Tenancy Tribunal (CTTT).

As the customers of exempt persons are often particularly vulnerable, we would appreciate advice as to how these protections are to be continued once the NECF is introduced in NSW.

Clause 118A : Point of supply and distribution systems

With regard to Sub clause 4 of the proposed Clause 118A (Point of Supply and Distribution System), EWON considers that the proposed definition of point of supply does not sufficiently address the wide range of situations that occur in practice, particularly in regard to substations on rural properties.



3. Electricity Supply Act 1995

Section 25: Contributions to augmentation of distribution system

We understand that this section will be repealed, but the equivalent provisions of IPART's 2002 Determination⁶ will continue in force until 30 June 2014.

EWON will continue to refer to this Determination when investigating disputes in this area until such time after this when the AER's *Connection Charges Guideline* will come into force.

⁶ IPART Determination: *Capital contributions and repayments for connections to electricity distribution networks in NSW, 2002*