



19 February 2020

Ms Suzanne Falvi
Acting Chief Executive
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Dear Suzanne

Consumer protections in an evolving market - RPR0013

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

While welcoming the opportunity to comment on this consultation paper, EWON is concerned at the narrow focus of the National Energy Consumer Framework (NECF) review. We strongly recommend that the AEMC widen the review's scope and undertake a comprehensive examination of all consumer protections relating to energy services, both new and traditional. A comprehensive review will fully test the efficacy of the current regime of consumer protections against actual consumer outcomes since the NECF's introduction. It is critical that a comprehensive suite of recommendations that will serve consumers well into the future be determined. To do otherwise is a missed opportunity.

In the meantime, we have responded to those questions in the consultation paper that align with issues customers raise with EWON, or with our organisation's operations as they relate to this rule change.

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

A handwritten signature in black ink that reads "Janine Young".

Janine Young
Ombudsman
Energy & Water Ombudsman NSW



Issues paper 1 – New energy products and services

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We have only responded to those questions in the issues paper that align with issues customers raise with EWON, or with our organisation's operations.

Context

In the issues paper, the AEMC identifies drivers of change in the energy market which are transforming the application and necessity of consumer protections. In particular:

- The roles of retailers, generators, networks and consumers are all changing.
- Consumers are exercising greater choice as to how, when and if they access energy from the grid.
- New classes of intermediaries are entering the market and offering non-traditional energy services to consumers.

A review of the consumer protection regime is therefore timely and presents an opportunity to ensure consumer protections are robust and applicable in the future.

A key consideration that must be applied to any proposed changes to consumer protections is consumer detriment, whether potential or actual. EWON strongly supports the Productivity Commission's statement in its 2008 review that industry specific consumer protection is desirable when:

- "the risk of consumer detriment is relatively high and/or the detriment suffered if things go wrong is potentially significant and possibly irreparable [and]
- the suitability and quality of services is hard to gauge before or even after purchase."¹

The AEMC is considering three, overlapping, consumer protection regulatory frameworks:

1. Australian Consumer Law (ACL)
2. The National Energy Consumer Framework (NECF)
3. Voluntary codes, in particular the Clean Energy Council's New Energy Technology code.

Critically, the AEMC has identified the definitions underlying the application of consumer protections in the energy market:

- "Central to the NECF is the principle that consumers have a right to access energy (as an essential service) on fair and reasonable terms." [...] Therefore, in this changing market it is increasingly important to consider what are the elements that define energy."
- "When analysing the application of the exemption framework to solar purchase agreement businesses, the AER identified two key elements to determine the nature of the service as follows:
 - if the service is optional or discretionary

¹ Productivity Commission, Review of Australia's consumer policy framework, Inquiry report, Volume 1, 20 April 2008.



- if the service is the primary source of energy to the premises.”²

As the Issues paper notes, the concept of ‘sale of energy’ has evolved in a number of ways as the market has changed in areas such as the supply of bulk hot water and the development of a framework for stand-alone power systems. The paper also notes that there will be trade-offs between risks and costs when defining the application of consumer protections. It is critical therefore that the ramifications of these very significant changes be fully understood.

QUESTION 6: CHANGES IN THE NATURE OF ENERGY SERVICE - Has the essential nature of the sale of energy changed with the market's evolution?

Yes. Energy, specifically electricity, has become even more essential given its supply is now linked to communications, mobility and therefore social inclusion.

QUESTION 7: REGULATORY IMPLICATIONS - If the answer to Question 6 is yes, what are the implications for the NECF as the energy specific consumer framework?

The market’s evolution and the increased essentiality of electricity has wide implications for the NECF.

The decline of the landline telephone, which will only accelerate with the completion of the rollout of the NBN, means that mobile phones are now the predominant means of communications for most people. A side effect of this ubiquity is that mobile phones need a power supply to recharge, whereas a landline can function even in a home without power. The recent extreme weather events - bushfires and floods - have seen large swathes of the country without power for days at a time, leaving people without communications at a time when they most need it.

The uptake of electric vehicles will create another dependency for customers on the electricity network that doesn’t currently exist.

A loss of power, therefore, also now leaves customers without communications and possibly transport, a situation that did not exist when consumer protections for energy were first envisaged.

In addition, this increasingly essential service has become fragmented in its delivery. Where previously a customer would open one electricity and one gas account, now it is possible for a customer to have to open accounts for multiple services. The rise of embedded networks has seen a corresponding rise in separate billing for services such as air-conditioning, hot water and recycled water. All of these, despite their main input costs being energy, are not covered by the NECF consumer protection framework. Yet, depending on a customer’s circumstances, each is an essential service. Case study 1 demonstrates this phenomena.

This fragmentation of the delivery of essential services means that vulnerable customers are now in a position of ‘juggling’ bills and only paying those they deem more essential than others. EWON has long dealt with customers who make do, as a result of financial disadvantage, without gas during winter, living in the cold instead. Customers self-disconnection from other essential services such as hot water will further widen the socio-economic gap, creating a larger cohort of vulnerable people. Moreover these customers will be largely invisible. As they are currently outside the NECF, the AER will have no jurisdiction over retailer conduct, and they will not be included in statistics related to

² AEMC (2019) Issues Paper 1 – New Energy Products and Services at https://www.aemc.gov.au/sites/default/files/documents/consumer_protections_in_an_evolutionary_market_-_new_energy_products_and_services_-_issues_paper_1_-_fv.pdf pp.18-19.



affordability and disconnection. With an aging population and government policy encouraging aged consumers to remain in their homes rather than moving to aged care, again the cohort of customers at risk of experiencing vulnerability is growing.

Another risk is that some energy services may be considered 'optional or discretionary' and therefore not warranting extra consumer protections. For example, contracts including electric vehicle recharging might be considered discretionary in 2020 but the move away from petrol to electric vehicles over the next 10-20 years could easily change that. The AEMC should take the opportunity to create a framework now that will accommodate emerging technologies becoming essential services over time in order to prevent isolation of energy consumers on the margins.

Moreover, many customers have minimal choice about the adoption of new energy products and services. EWON receives complaints from residents within embedded networks who only find that fact out after they have moved in. Similarly, it is unrealistic to think that the majority of tenants are able to exercise a choice over energy services. Factors such as availability, rental affordability and location drive decisions seeking somewhere to live. As a result, many tenants currently face high energy consumption costs through poor quality housing and appliances. This will be exacerbated in the future when an increased number of behind the meter services prevail.

It is therefore imperative that emerging new essential services are recognised as such and brought formally into the NECF.

QUESTION 8: NEW ENERGY PRODUCTS AND SERVICES - For the supply of new energy products and services, is there any risk of consumer detriment that needs to be considered to have additional consumer protections (industry-specific regulation) beyond the voluntary framework? Please explain.

Any product or service where the customer is at risk of curtailment of energy needs additional consumer protections due to the essentiality of energy. This includes battery and solar installations where the customer may be isolated from the grid, or arrangements where multiple customers are aggregated by third party providers to provide demand response services in the physical market.

Similarly, any product where the potential for higher than expected bills needs extra regulation, as we saw when some retailers marketed contracts with excessively high exit fees. We also saw this in the telecommunications industry where customers made seemingly innocuous decisions and ended up with higher than expected bills, for example by signing up to a ringtone provision service with one click, or by travelling overseas and incurring excessive global roaming charges. Until these impacts became clearly evident, and vulnerable and non-vulnerable were impacted, regulators were blindsided.

New energy products have similar potential to be poorly understood if sales communication is poor or and information provision incomplete, and detrimental consequences may not therefore immediately become apparent to consumers or regulators.

QUESTION 9: APPLICATION OF ENERGY CONSUMER PROTECTIONS - Which elements of the energy market are useful to define the scope of the energy specific consumer framework?

As discussed earlier, new business models have the potential to create regulatory gaps, similar to those created in embedded networks and in buildings with common hot water systems.



Accordingly, EWON is of the view that any energy service where:

- energy is a major input cost, or
- where users pay to use energy, or
- where users pay for the capacity to use energy,

should be covered by regulatory obligations and consumer protections. EWON believes that this definition captures the essential nature of energy, including for new markets, and that it sets an appropriate starting point to define the scope of energy specific consumer protections and AER authorisation requirements.

One important feature of energy specific consumer protections is that they provide direct protection for customers and end-users. This is critical. Many new energy technologies that are only covered by a code or the ACL, provide protections for the purchaser of the technology or the owner of the property where it is installed. However, the end user may be a tenant, flatmate or family member, all of whom also need consumer protections.

Case study 2 demonstrates the customer detriment that lack of regulation of an essential service can produce.

QUESTION 10: OBJECTIVES OF AN OVERARCHING CONSUMER FRAMEWORK - Do you agree with the objectives identified by the Productivity Commission? Are there other objectives the AEMC should consider?

We agree with the Productivity Commission's objectives as stated:

- consumers are well-informed to benefit from the market and stimulate effective competition
- the products and services are safe and fit for the purposes for which they were sold
- meet the needs of those who, as consumers, are most vulnerable, or at greatest disadvantage
- prevent practices that are unfair and contrary to good faith
- provide accessible and timely redress where consumer detriment has occurred
- promote proportionate, risk-based enforcement.

However, we believe an additional principle is required:

- promote increased trust in the energy market.

Since the Productivity Commission's report in 2008, energy prices have grown at a much faster rate than wages or CPI.³ In addition, recent market statistics published by the AER show that average energy debt is rising.⁴ Accordingly, EWON believes that Productivity Commission Objective 3, that a consumer regulatory framework should 'meet the needs of those who, as consumers, are most vulnerable, or at greatest disadvantage' is critical.

Energy markets can only be considered to be well functioning if they meet the needs of the most vulnerable customers. Or, energy markets could not be considered well-functioning if they create

³ ACCC Retail Electricity Pricing Inquiry: Preliminary Report, p13.

⁴ AER, Retail energy market performance update for Quarter 1, 2019-20



greater gaps between vulnerable and non-vulnerable customers or increase the cohort of consumers experiencing vulnerability.

QUESTION 11: INTEGRATING THE ENERGY CONSUMER FRAMEWORK - How can the three consumer frameworks be better integrated to make it easier for energy customers and businesses in terms of information requirements? Please give specific examples.

The three consumer frameworks – ACL, NECF and voluntary codes – are distinct instruments, set by different entities, with varying levels and methods of enforceability. Despite this, consumer redress does not have to be a complex process.

The Issues Paper gives the example of a white-label retailer supplying retail energy services to a customer while a third party provides demand response service, a non-traditional service not covered by energy consumer protections. It is imperative for a competitive, effective market which is trusted by consumers, that appropriate regulation is in place. While these products are in their infancy, they are increasing, and indicators forecast continual growth. An analogy which indicates potential impacts on consumers, i.e. not having access to appropriate consumer protection, could be drawn to embedded networks following the initial introduction of the exemption framework. Over time, thousands of consumers lost access to rebates, free, fair and independent EDR and other energy related consumer protections. Any dilution of consumer protections, and other appropriate checks and balances, could lead to customer confusion, lack of transparency and accountability. Further, it could create a market / competition gap between authorised retailers and new energy providers.

QUESTION 12: POTENTIAL RISKS TO CONSIDER - Are there additional risks to consumers that should be considered and are not already addressed by the NECF, ACL and the voluntary codes?

Again, the three consumer frameworks – ACL, NECF and voluntary codes – are distinct instruments, set by different entities, with varying levels and methods of enforceability. This does not mean that consumer redress is, or will become, a complex process.

EWON's Charter sets out that in considering a customer complaint, we should have regard to any applicable rule of law. The definition of applicable law includes all relevant energy legislation as well as any other relevant legislation, regulation or code that may apply. Accordingly resolving EWON complaints takes into account ACL and any voluntary code adopted by the EWON member. This means occasionally means that a complaint may initially be taken and later found to be out of EWON's jurisdiction. For example, a complaint about a water debt could lead to the investigation identifying that the debt was not dealt with correctly during transfer of property ownership. The prevailing legal issue would be identified as relating to conveyancing law and thus the complaint would be out of jurisdiction. Where this occurs, EWON ensures the consumer is referred to the relevant External Dispute Resolution body for resolution of their complaint.

The legislative and regulatory framework behind the energy market is necessarily complex, however it is critical that customer interaction with it, including seeking redress when things go wrong, is simple.

QUESTION 13: VULNERABLE CONSUMERS - For new energy services and products, what characteristics of a vulnerable consumer should be considered under the energy-specific regulatory framework different to any other industry? Why?

Our response to this question is included with our response to Q14.



QUESTION 14: CONSUMER PROTECTIONS FOR VULNERABLE CONSUMERS - For new energy services and products, are there additional risks to vulnerable consumers that should be considered and are not already addressed by the ACL and the voluntary codes?

New energy services and products could create additional risks for vulnerable consumers and could lead to an increased cohort of customers experiencing vulnerability.

Vulnerable customers already disengage and/or partially self-disconnect from energy services. Though our outreach and dispute resolution work, it is now not uncommon for some customers to advise that they do not switch on their heater, use hot water or their air conditioner because they cannot afford their bills.

Disengaging or partially self-disconnecting from essential energy services creates flow-on effects including poor health outcomes. New technologies, products and services provide cost savings for those consumers who are able to invest in these products; while at the same time could lead to greater poverty for those with low capacity to pay for energy.

In NSW, approximately 26.5% of customers come from a household where a non-English language is spoken. For these customers, the NECF provides very little protection. There are various requirements, for example on bills, to provide “contact details of interpreter services in community languages”. However, the first point of contact with CALD customers is often when they phone retailers’ call centres and encounter language barriers. The only requirement in those circumstances is Rule 55 of the NERR which requires referral to interpreter services.

In response to our concerns arising about the current experience of some CALD customers who have had difficulty in accessing interpreter services through their retailer, we approached the AER. It advised us that the language of the rule regarding referral is broad and does not set an interpreter service standard, such as provision or engagement of the national Translating and Interpreting Service (TIS), a service that retailers traditionally partnered with. Some retailers are now relying on customers to provide their own interpreter service – i.e. a relative or friend to call on their behalf.

The NECF provisions regarding CALD customers therefore warrant review.

Another consumer protection for vulnerable customers that needs to be addressed is the uneven application of energy rebates and assistance. In NSW, customers who receive their energy from exempt sellers within embedded networks do not have access to Energy Accounts Payment Assistance (EAPA) vouchers. Energy rebates are available to customers of authorised retailers within embedded networks but they have to apply via Service NSW. In contrast, customers of authorised retailers outside embedded networks can apply through their retailers, who have a financial incentive to ensure vulnerable customers receive all applicable rebates. As a result those customers have the rebate directly applied to the bill. Within embedded networks, the larger billing entities have advised EWON that they have the IT capability to act in the same way as authorised entities with respect to energy rebates. While not covered by this review, it is suggested that the AEMC consider this capability as being a condition of market entry in the future.

Any growth in non-traditional, non-authorised energy providers will further erode customer access to this vital safety net if it is not considered as part of this review.



QUESTION 16: OTHER CHARACTERISTICS FOR CONSIDERATION - Do new energy products and services have specific characteristics that require additional protections to prevent unfair practices or conduct against good faith that should go beyond the ACL? Please explain.

Complaints to EWON across its 21 years of operation have at their core, information asymmetry or poor information disclosure. This is a critical aspect of building consumer trust in an even more complex future energy market.

Information needs to be timely and in plain English. The current situation where customers try to find the best offer for themselves, only to be overwhelmed with multiple offers, each with different characteristics making comparison difficult, has delivered an energy market in which consumers have limited trust.

Complexity and confusion will increase in the future as customers look to acquire new products and services, if plain / easy English advice and information about those products and services, and their impact on energy consumption, is not accessible. An approach that could be explored could be based on the star rating used for electrical appliances – a well-recognised indicator of energy consumption impacts available at the time of purchase.

QUESTION 17: ADDITIONAL REDRESS MECHANISMS - Does the nature of the market (new energy services and products) require an industry specific system/scheme to handle consumer complaints? Please explain.

Our response to this question is included with our response to Q20.

QUESTION 18: EFFECTS OF DIFFERENT REDRESS MECHANISMS - What are the risks of having different redress mechanisms under different consumer frameworks? Please explain.

Our response to this question is included with our response to Q20.

QUESTION 19: REDRESS MECHANISMS BEYOND THE ACL - Is there a better way to provide access to effective and strong redress mechanisms for consumers of new energy products and services?

Our response to this question is included with our response to Q20.

QUESTION 20: ENFORCEMENT OF THE ENERGY CONSUMER FRAMEWORK - How could the enforcement tools and actions under the voluntary framework be better integrated with the ACL and the NECF? Please explain.

As discussed earlier, customer redress for energy needs to be simple; it also needs to be free and quick. A key risk is that a customer with a legitimate complaint about a market participant will not be easily able to seek redress. Accordingly, there needs to be clear and transparent paths for customers to complain to their providers and, if required, to external dispute resolution services.

When EWON receives a complaint about an EWON member offering non-traditional energy services, such as solar installations, we can manage and resolve the complaint as we would any other. But a customer with a similar complaint about a non-member will instead have to make a complaint to Fair Trading NSW and possibly to the NSW Civil and Administrative Tribunal for a ruling. EWON has a close relationship with Fair Trading NSW and makes complaint referrals as seamless and stress-free as possible, but customer dissatisfaction with the overlapping jurisdictions occurs. Case study 3



shows a customer complaint where EWON could only help with part of the problem, referring the customer to Fair Trading NSW for aspect of the complaint outside EWON's jurisdiction.

A set of principles that could help Energy and Water Ombudsman schemes explore appropriately widening their jurisdictions could include whether:

- the new function/product is closely aligned to the current core functions of the business (i.e. billing, connections, disconnection)
- services/products are provided by a company which is a member of the Ombudsman scheme
- the customer detriment is significant enough to require a specific dispute resolution body
- dispute resolution cannot be effectively provided by another body
- there currently is, or should be, a regulatory/policy requirement
- the issue has the potential to affect a broad range of consumers and therefore affect trust in the energy sector.

As far as is possible, redress mechanisms for new energy products and services should be the same as for traditional energy services. The risks of having different redress mechanisms under different frameworks include:

- decreased ability for customers to address urgent complaints in a timely manner (e.g. disconnection from a service, or denial of service by a service provider)
- decreased visibility of systemic issues
- inefficiency of complaint management and resolution
- the need for "forum shopping" by customers in order to resolve the issue
- customer confusion about jurisdiction
- authorised retailers being held to a higher standard than non-traditional retailers
- different redress outcomes.

This last can be particularly different. For example, complaints to EWON are dealt with through alternative dispute resolution methodology. While the Ombudsman has the power to issue binding decisions, this power is rarely used. Instead, most often we are able to negotiate/conciliate fair and reasonable outcomes for both parties, having regard to laws, codes, regulations and good industry practice. By contrast, redress under the ACL can involve going to NCAT, where the approach is an adversarial one in which arguments are presented by each side and a decision delivered by a member of the tribunal.

It should be noted, complaints may emerge about products which are better managed by other EDR entities such as Fair Trading or the ACCC. Further, any expansion of Ombudsman jurisdiction requires aligned regulatory back-up, including monitoring compliance and enforcement.

The advantages of energy Ombudsman schemes in delivering effective and strong dispute resolution mechanisms include:

- existing energy Ombudsman expertise and their trusted relationships with consumers and members who understand the schemes to be a trusted source of independent assistance and dispute resolution services
- energy Ombudsman schemes have demonstrated a capacity to bring complex new issues into the scope of issues for which they provide dispute resolution services (e.g. complaints arising from embedded networks and the digital meter rollout)



- where possible, energy Ombudsman schemes work to ensure consistency of process across schemes for energy related complaints, especially given many retailers operate in multiple state jurisdictions
 - in depth knowledge of state based jurisdictional/distribution arrangements
 - identification, investigation and reporting of systemic issues to members in order for them to address the issue and therefore reduce internal complaints and those raised with ombudsman offices
 - extensive energy industry knowledge and relationships that improves efficiency of complaint management, facilitates more effective identification of interconnected issues and delivers fair and independent outcomes across the full scope of energy issues
 - less confusion for the customer about who to contact in relation to their complaint
 - free (to consumers), fair, independent advice and dispute resolution.
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Our response to Issues Paper 2 begins on the next page.



Issues paper 2 – Traditional sale of energy

QUESTION 1: INFORMATION PROVISION IN THE CONTENTS OF BILLS - Are the current requirements for the information and delivery of information that is required to be included on restricting innovation and digitalisation? If so, what changes would allow innovation to occur?

QUESTION 2: FORMS OF REGULATION (BILLS) - Does the current form of regulation of information provision restrict innovation and digitalisation? If so, what form of regulation —the mechanism employed— could be introduced? For example, could industry self-regulation or principle-based regulation better facilitate innovation and digitalisation?

Questions 1 and 2 are inter-related. Energy Consumers Australia’s consumer confidence surveys have reported that trust in the energy market and energy providers is very low. A legitimate cause of distrust is the confusing nature of information made available to consumers. As part of our complaints management, EWON sees bills from all providers in NSW, many of which are initially confusing to trained EWON staff.

When considering customer’s bills, we make the following observations:

- The NERR is very non-prescriptive when it comes to how amounts owed are calculated. Rule 20 simply states “A retailer must base a small customer's bill for the customer's consumption of [...] electricity [...] on metering data”. Retailers therefore have a wide latitude as to how this information is presented. Despite this, in the course of hearing complaints, my office often reviews bills where the simple task of taking consumption figures, in either kWh of MJ, and applying a tariff to arrive at the amount owed is unnecessarily complex. This can be true even when the customer is on a simple single-rate tariff. My staff are experienced energy complaints professionals and can often find what should be a simple calculation difficult to replicate. If all retailers cannot effectively communicate this information, then less prescription does not seem warranted. Case studies 4 and 5 illustrate the un-necessary complexity customers can face.
- Many customers require paper-based bills. This is especially true of some vulnerable customers, including the elderly. The Aged Care Royal Commission has highlighted the desirability for elderly customers to remain at home, with appropriate care, rather than move into aged care. In this context, energy consumption therefore needs to be affordable and transparent. The move to digital delivery should not leave these customers behind; traditional information channels are as vital as they ever were.
- The market has evolved from a “saving cost” mindset to one where costs for customer service are allocated to customers in the same way that banks progressed to a ‘fee for service’ model, as highlighted in the Hayne Royal Commission. To explain this, when digital bills first became available, customers were encouraged to sign-up – some retailers even offered incentives, to maximise their cost saving. The mindsight then switched to charging customers who chose, or did not have the ability to switch from, their paper bill. Energy retailers do not sell energy, rather they sell energy services and the cost of service delivery needs to be factored in to market offers and not levied as an additional cost.



- Retailers should not need regulation to deliver bills in plain English. However very little innovation has been undertaken by retailers to move to a transparent, plain English billing format. Given the confusion that arises from energy bills, retailer investment in this would most likely be recovered through fewer contact centre contacts and Ombudsman complaints.
- Having made these points, we also recognise the challenges retailers face with respect to conflicting, regulatory requirements for bill contents. The AEMC has identified 24 requirements for the content of a retail bill in the NERR, to which some jurisdictions have added their own requirements. The challenge is evidenced by the work which has repeatedly been undertaken to simplify bills, for example the project jointly undertaken by Energy Retailers and other stakeholders at a roundtable in 2014, which did not achieve its objective of bill simplification. This does not mean it is not possible.

By contrast to the above, we were recently provided a copy of a bill issued by a UK energy provider, which transparently set out in plain English all the customer needed to know, including about internal and external dispute resolution options, and clear complaints information reporting.⁵

QUESTION 3: NOTIFICATIONS - Do the current requirements on delivery of information of notifications to consumers restrict innovation and digitalisation? If so, what changes would allow these to occur?

Similarly to bill contents, notifications need to be in plain English, through a customer's preferred delivery method, at no additional cost for service.

The prescriptive nature of the many notifications required by the NERR are there typically for two reasons:

1. Necessity, where the detriment to the customer is such that prescription is required. For example, disconnection notices.
2. Retailer behaviour, where policy makers have decided that retailer activity warrants prescription. For example, notices of changes to customer benefits.

If there are unnecessary notification obligations, then their removal could be achieved by a rule change proposal to the AEMC, which would consider all relevant arguments.

QUESTION 5: EXPLICIT INFORMED CONSENT IN A DIGITALISED MARKET Is the current method prescribed in the NECF for retailers to record EIC restricting innovation and digitalisation? If so, how could it be changed to allow these to occur?

The current method was developed when customer switching was in its infancy and protections deemed necessary. We understand that in order to demonstrate they have EIC, many retailers read and record a standard list of terms and conditions to customers, which can take minutes to complete by which time the customer is likely to be frustrated and not listening. Customers understanding of their right to be informed in order for them to make explicit informed decisions is vital to confidence in the market and market participants, however what has become for some retailers a box-ticking exercise, as was discussed at the AEMC's forum on 6 February 2020, does not help make the customer more informed.

⁵ Octopus Energy – see attachment.



As the Issues Paper points out, in the telecommunications industry, providers are required to “use reasonable endeavours” to ensure authorisation and consent. While noting telecommunications companies do not always get this right, it seems a reasonable approach in circumstances where the customer has approached the retailer to establish a contract.

However, where the retailer has made an unsolicited approach to the customer, for example by doorknocking or telemarketing, the current EIC provisions are still required. These unsolicited approaches have been accompanied in the past by poor practices by some retailers, and a reduction in the level of consent required to enter into a contract would be a retrograde step until these behaviours are eradicated. Case study 6 illustrates such poor practice.

Accompanying any changes to EIC requirements should be a review of the rules governing transfers in error and transfers without consent, with the aim of ensuring no detriment to customers who are switched by mistake.

QUESTION 6: TEMPORARY EXPLICIT INFORMED CONSENT WAIVER - Should energy consumers be able to waive EIC for certain services for a given time period?

Any waiver of EIC rights would itself need to be explicit and informed and providers would need to keep records of the waiver. Accordingly, this is at odds with a suggestion that EIC should be waived. While EIC is a necessary consumer protection, it should also be recognised as a business risk mitigation strategy.

QUESTION 8: EXPLICIT INFORMED CONSENT DELEGATION ON A THIRD PARTY - Should energy consumers be able to provide EIC to a third party to interact with the retail market on their behalf? If so, what arrangements should be in place?

The forthcoming introduction of the Customer Data Right is intended to give third parties access to customer data in order for those parties to make offers to those customers. Customers giving third parties the right to interact with the retail market on their behalf seems a logical step, provided it is accompanied with appropriate record keeping and third-party accreditation.

Having third parties that can provide advice about energy contracts and also initiate the customer switching would be desirable if the third parties are appropriately regulated. For trusted third parties such as the NSW government’s Energy Switch (<https://energyswitch.service.nsw.gov.au/>) or the AER’s Energy Made Easy (<https://www.energymadeeasy.gov.au/>), having the ability to compare offers and also provide customers at that point, the ability to initiate a transfer to a preferred retailer would be desirable. We understand that this ability was initially considered for NSW Energy Switch, however EIC requirements made it problematic.

QUESTION 9: COOLING-OFF PERIOD UNDER THE NECF - Are cooling-off period protections for solicited retail market contracts still beneficial? If so, why? If not, what improvements could be made?

Having an appropriate cooling off period is required where customer detriment exists if the customer changes their mind after entering into a new contract arrangement. The market has evolved to an extent where removing the cooling off period will not have that detriment. Early termination fees (customer detriment) for market contracts have been banned in NSW and are not extensively utilised in other States. If necessary, a customer can easily switch back to their old retailer if they change their minds about a supply contract they have entered into.



As the market moves to a two-day switching period, detriment will be further reduced. For this reason, in principle, we support the waiving of cooling-off requirements for solicited retail market contracts. If the environment changed and early termination fees again emerged this would need to be reconsidered.

However, the AEMC's rule change to facilitate two-day switching has yet to be fully implemented. It is not clear how it will work in practice for customers with manually read meters, approximately 75% of NSW customers. Accordingly, we urge caution and propose that waiving the cooling off period only apply initially to customers with remotely read meters and further consideration be given to applying it to other customers only after two-day switching has been operational for a time.

A further benefit of reducing cooling off periods, combined with two-day switching for consumers who have or will be provided with a digital meter, may be that retailers will have an incentive to accelerate the rollout of digital meters across NSW.

However, reducing cooling-off periods should only apply to solicited requests where the customer has approached the retailer. For unsolicited approaches by the retailer through doorknocking or telemarketing, the current cooling-off period should be maintained.

Enquiries about this submission should be directed to Janine Young, Ombudsman on (02) 8218 5256 or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.



Case studies

Case study 1

Multiple customers from a single residential complex complain about bundled centralised services, including electricity, hot water and air conditioning

Between April and June 2019 EWON was contacted by 12 residents of the same residential complex established as an embedded network. The embedded network retailer was billing customers usage charges for electricity, and other centralised services, such as hot water consumption and air conditioning. The customers complained to EWON about:

- not being provided with adequate information when opening their energy accounts that they would also be billed for centralised services (hot water usage and air conditioning)
- delayed bills for hot water usage and air conditioning which resulted in unaffordable backbills
- high bills for electricity usage.

In each case, EWON provided the residents with advice, and either referred the customer to their retailer in the first instance or referred them to the specialist resolution team at their retailer.

Case study 2

An embedded network customer disputes the accuracy of her hot water billing

A customer had lived in an apartment with an individual hot water meter for four months. Her meter indicated that she had used approximately 9,500 litres of hot water in that time. The customer complained that the billing agent for the building had issued her bills that showed she was using 4,500 litres per month. The meter readings on the bills she received did not match her reading of the meter. The customer contacted the billing agent to complain but did not receive a response for months. The customer also complained that she paid her first bill by direct debit and the billing agent then continued to deduct payments from her account without permission. The billing agent told her that direct debit was the only payment option provided.

EWON advised the customer that we were limited in the assistance we could provide as the billing agent providing the hot water service was a not an authorised energy retailer or a member of EWON. The customer provided EWON with her billing information and EWON contacted the billing agent to confirm what action was being taken to address the customer's complaint. The billing agent advised that the customer's meter was identified as faulty and would be replaced. The billing agent then contacted the customer and offered her a credit to the account of \$300 which would average her hot water usage for the disputed period to 3,000 litres per month.



Case study 3

Solar installer’s failure to request a digital meter prevents customer transferring to a new retailer

The customer installed solar panels in February 2019 and then received an estimated bill that did not show a reduction in usage or exported electricity. On speaking with her retailer, the customer learned that the solar installer had not notified the retailer or distributor of the completed works, requested a digital meter, or submitted a compliance certificate. The contractor had also turned on the solar generation system while it was connected to the existing meter, resulting in the meter readings being estimated.

The customer was dissatisfied with the process for obtaining a digital meter through the retailer and the need for documents from the solar installer who she had difficulty contacting, and so decided to switch to another retailer. However, as the non-compliant activation of the solar system meant that the meter readings were being estimated, this prevented the transfer from occurring.

After speaking with EWON, the customer decided to continue discussions with her current retailer about obtaining a digital meter and advised she would continue to follow up with the solar installer about submitting the necessary documents. The customer was also referred to NSW Fair Trading if she was unable to resolve the issues she had with the solar installer.

Case study 4

A high bill complaint where the bill had missing information

The retailer, an authorised energy provider, billed the customer for hot water. Calculation for gas consumption was as follows, with an explanation.

Current reading:	19,974.00
Previous reading:	11,682.008
Volume:	8,292.00
M [^] :	10.00
CF*:	0.00
H/V**:	0.00
Usage (MJ):	40,346.9

The *CF (Correction Factor) converts gas volumes measured by basic meters to a standard volume, which is then multiplied by the average **H/V (Heating Value) for the billing period to determine the energy usage in mega-joules (MJ) value. [^]M = Volume Multiplier.

The Common Factor (CF) is based on the information provided to network for the centralised hot water system installed at the site.

“CF” is confusingly identified as standing for both “Correction Factor” and “Common Factor” and is erroneously displayed as 0.00. EWON staff were able to approach the relevant distributor and establish what the CF was. We were then able to assist the customer with her complaint.



Case study 5

A disputed bill with confusing information

The retailer, an authorised energy provider, billed the customer for electricity consumption. The peak, shoulder and off-peak consumptions were displayed as follows.

Pricing details	Period	Quantity	Rate	Days
Off Peak	12/04/18 to 10/05/18	2239.94 kWh	25.25c/kWh	29
Peak Usage	12/04/18 to 9/05/18	620.17 kWh	37.21c/kWh	28
Shoulder Usage	12/04/18 to 10/05/18	999.46 kWh	31.15c/kWh	29

We were not able to obtain an adequate explanation as to why the dates the three rates applied to were different. 10/05/18 was a Tuesday and should have incurred peak consumption, but the retailer's billing system did not include it. We were able to assist the customer with their complaint, but the confusing nature of the bill did not help.

Case study 6

A market offer not honoured by the retailer

A customer said that he agreed to an offer by a door to door marketer. It was a two-year fixed rate offer and he was given a contract with the fixed rate box ticked. The second invoice he received had a price increase and he contacted his retailer. Its response was that he should not have been on a fixed rate contract and that he had to pay the bill. The customer then received a disconnection warning, despite the fact he was disputing the bill.

EWON investigated and the retailer responded that it offered a contract with a fixed discount but with variable rates or alternatively a contract with fixed rates but no discount. The offer that had been made to the customer was made in error and it had advised the customer that he had to choose between the two offers available. The retailer said that if the customer chose the fixed rates over the discount offer it would result in a credit of \$91. The retailer also offered a \$100 customer service gesture.

The customer was unhappy that the deal he was offered by the marketer would not be honoured and felt that the retailer was breaking a contract. The customer reluctantly accepted the retailer offer of credits (which reduced his arrears from \$507 to \$315) but indicated that he was extremely dissatisfied with the retailer and he intended to transfer to a new retailer.