



1 March 2024

Consumer Policy Team
NSW Department of Climate Change, Energy, the Environment and Water

By email: energy.consumerpolicy@dpie.nsw.gov.au

Dear Consumer Policy Team

Consultation – Consumer Energy Strategy: households

Thank you for the opportunity to comment on this consultation paper.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. EWON receives and responds to electricity complaints from customers who own or use consumer energy resources. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have only 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 Rory Campbell, Manager Policy & Systemic Issues, on (02) 8218 5266.

Yours sincerely

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

Janine Young
Ombudsman
Energy & Water Ombudsman NSW

EWON submission – Consumer Energy Strategy: households

Opening statement

The energy sector began with reliance on public utilities and has transitioned over a few decades into the energy market we know today. Now, the uptake of consumer energy resources (CER) by households has emerged as a critical step in achieving a sustainable energy future.

Traditionally, the regulation of energy has been approached as a standalone problem. With the increasing reliance on household CER as a key part of our energy system, it has become clear that the consumer framework for energy can no longer be designed in isolation. With the emergence of CER, the policy settings for energy consumers have become intertwined with the policies connected to our homes. This challenge is illustrated through state laws and policies regarding tenancy, strata corporations, and home building. For example, if we do not create clearer regulations about the kinds of long-term contracts that a developer can enter into on behalf of a fledgling strata corporation, or develop rules about who must benefit from these deals, the divide between the households that can access CER, and those that can't, will widen.

This means that development of an energy strategy that is not directly supported by the *Residential Tenancies Act 2010*, the *Strata Schemes Acts*, the *Residential (Land Lease) Communities Act 2013* or the *Home Building Act 1989* (to name a few), will not provide the required outcomes and will result in groups of consumers being left behind.

Consumer disputes have also become more complex with the uptake of CER. For a long time, the National Energy Consumer Framework (NECF), the Australian Consumer Law (ACL) and NSW home building legislation have operated as separate consumer safeguards. However, it is now increasingly common that a single energy complaint can be dealt with under all, or any, of these three options. This creates consumer confusion, lack of trust in the energy sector, and will result in a wide range of consumer experiences – and many of them will not be positive.

External dispute resolution (EDR) is a critical part of the program of the work involved in developing an effective consumer energy strategy. EWON must remain a fit-for-purpose ombudsman office for future energy consumers where complaints should be addressed via an energy ombudsman, and other EDR options, as applicable to the complaint also need to evolve. Regardless of the pathway taken to resolve complaints, households must benefit from a consistent consumer experience.

Considerations the NSW government should make for how external dispute resolution could underpin the energy consumer framework (questions 4, 11, 28)

4. What do you see as the key barriers to increasing the uptake of consumer energy resources?

See our answer to question 28 below.

28. How can the NSW Government build consumer confidence CER products and services?

For the last two years, EWON has been actively engaging with government, industry and regulators about the uptake of CER by residential customers and what this means for the current consumer protection framework for energy customers, including the external dispute resolution (EDR) services provided by EWON.

Maintaining consumer trust in the energy market as our system transitions to renewable energy has been a key principle underpinning our engagement.



We are particularly focused on two issues in this submission:

1. Consumer energy policy and housing policy have become intertwined. Standalone policies that focus only on energy will be increasingly ineffective, and therefore we need policies that target both energy and the home.
2. Consumer protection frameworks have also become blended over time. Fit-for-purpose EDR is the key to tying the patchwork of consumer protection frameworks together for energy customers.

EWON acknowledges the work the AER has undertaken to consider an energy consumer framework for future energy services. We support the advice it has provided to the Energy and Climate Change Ministerial Council. However, it is also a practical reality that consumer complaints do not neatly fit into any single energy framework we develop; there is no 'one size fits all' approach given the complexity of current, emerging and future energy products and services. As long as consumers can purchase CER technologies directly from their energy retailer or other entities, or acquire systems bundled together with virtual power plants (VPPs), it remains likely a single customer dispute will need to navigate multiple frameworks, such as the ACL, NECF, and home building laws and regulations.

The most effective way to ensure that customers navigating these consumer frameworks have a consistent and equitable experience is to ensure that the pathways for EDR are clear, well communicated and effective.

This means that customer complaints about a certain class of solar retailers, and other providers of CER products, may need to be brought within EWON's external dispute resolution scheme jurisdiction.

Throughout the work undertaken by the AER, and the Energy Security Board's previous work on its CER Implementation Plan, EWON has raised the question of whether EWON's jurisdiction and functions should change to keep pace with the energy transition. Failure to do so may result in a loss of effectiveness for the current EDR framework for energy customers, which would then risk impacting overall consumer trust in the energy market.

EWON thanks the NSW Government for engaging with us about these issues over the last two years. The effectiveness of the EDR framework is a key part of the proposed energy consumer strategy for NSW – and decisions made now will have a lasting impact on access to free, fair and independent EDR, and in turn consumer trust in the energy sector, in the future.

11a. what are the key barriers to rolling out community batteries?

EWON is already receiving complaints from the community about the placement of community batteries and EV charging infrastructure by licenced network providers.

While these entities are privately managed network businesses, they are also prescribed as determining authorities under the *Environmental Planning and Assessment Act 1979*, and able to assess and self-determine their own infrastructure projects in certain circumstances. This means that network businesses are both self-approving and implementing these renewable infrastructure projects.

Networks that carry out renewable infrastructure projects, such as community batteries and EV charging stations, must comply with the NSW Code of Practice for Authorised Network Operators,



and the Independent Pricing and Regulatory Tribunal (IPART) monitors compliance with this Code. The Code requires networks to develop protocols for community engagement and publish these protocols on their website.

Reviewing the complaints that EWON is now receiving about these projects, we have identified that there is significant risk of losing community support for these projects as a result of poor community engagement or complaints management. The Code does not require implementation of a network's consultation protocol if the impact of the project is assessed as being minor and neither extensive nor complex (class 3). These class 3 projects can include the placement and installation of community batteries and EV charging infrastructure, which means the network provider would only be required to follow general law consultation requirements for these projects (such as the consultation requirements in the *Environmental Planning and Assessment Act 1979*, the *State Environmental Planning Policy (Transport and Infrastructure) 2021*, and the *Electricity Supply Act 1995*). These general law consultation requirements appear to be limited and there is a lack of clear public information about these general requirements.

EWON has over 25 years of experience of customer complaints about the placement of poles, pole transformers and compact substations pad as a result of lack of engagement with, and clear advice to local residents about the positioning of residential small scale electricity infrastructure.

We expect this to increase with the rollout of community batteries and EV charging stations which could create barriers for rolling out this much needed infrastructure or further erode consumer trust.

Social licence calls for businesses to not only meet legal obligations, including with respect to community engagement.

As part of the development of the consumer energy strategy we encourage the NSW Government to consider the development of a framework for community consultation for renewable infrastructure projects by network distributors. Clearer information and consistent benchmarks for consultation at a community level will help network businesses to maintain support for these projects and build consumer trust.

Questions relating to embedded networks, strata regulation and housing (questions 17, 18)

17. How can the government help improve access to consumer energy resources for apartment residents?

Equitable access to CER can only be provided to households within residential buildings if changes are made to NSW Strata Schemes Acts.

EWON recognises the work that the NSW Government has undertaken in development of the Embedded Network Action Plan and the pricing referral to the Independent Pricing and Regulatory Tribunal (IPART). We strongly support the NSW Government's ongoing commitment to this work program.

Over the last eight years, there have been multiple reviews into the regulation of embedded networks, and reform has been slow. However, as early as 2017 the Australian Energy Market Commission (AEMC) recognised there are limits on providing equitable access to energy for consumers in residential buildings:



*'The Commission acknowledges that developers may enter into these arrangements prior to an owners corporation being established, which raises a question of whether developers will enter arrangements that are in the interests of a future owners corporation and embedded network customers. However, the Commission considers that facilitating embedded networks customers' access to retail market competition, which places competitive pressure on the embedded networks service provider and on-selling authorised retailer, will counter any incentives the developer may have to place its own interest over those of consumers.'*¹

This problem cannot be resolved by a national solution alone – it also requires state specific solutions. It should be recognised that seven years later, the problem of providing embedded network customers with practical access to retail competition has still not been solved.

This intersection between housing and energy policy has never been so stark, and the integration of CER and small-scale energy generation into new developments is creating a new frontier for energy regulation. To illustrate this, a participant at IPART's stakeholder workshop on embedded networks advised that:

*'they are locked into a 20-year contract with the developer that allowed it to put solar panels on the roof of residents' building but residents do not share in the benefits. Residents are not able to install their own solar panels. They said that for their building, the entire owners corporation can collectively choose to buy out of the network, according to a buyout schedule, which is hundreds of thousands of dollars.'*²

If clearer regulations about the kinds of long-term contracts that developers can enter into on behalf of fledgling strata corporations, or develop rules about who must benefit from these deals are not developed, the divide between the households that can access CER, and those that can't, will widen.

EWON has previously provided submissions to the NSW Government on this issue, including our:

- 2018 submission to Fair Trading's [Easy and Transparent Trading - Empowering Consumers and Small Business](#), where we identified that the outstanding issue for energy consumers – that owners and residents are bound into long term utility contracts through up front agreements made by developers, and that these arrangements can have significant detriment to owners and residents (case study provided)³.
- 2021 response to the NSW Department of Customer Service's discussion paper on the [Statutory Review of the NSW Strata Schemes Laws](#), where we stated that embedded networks should not be exempt from the provisions limiting the long term contracts that developers can create on behalf of strata corporations⁴.
- 2023 response to the consultation paper for the [Statutory Review of the Strata Schemes Development Act 2015 and the Strata Schemes Management Act 2015](#) which called on the

¹ AEMC, Draft Report, Review of regulatory arrangements for embedded networks, 12 September 2017, p125

² IPART, Embedded networks stakeholder workshop: summary of proceedings, The future of embedded networks in NSW, 29 September 2023, p3

³ EWON, submission to consultation paper Easy and Transparent Trading - Empowering Consumers and Small Business, NSW Department of Finance, Services and Innovation, 27 August 2018

⁴ EWON, submission to discussion paper for the Statutory Review of the NSW Strata Schemes Laws, Department of Customer Service, 5 March 2021



NSW Government to implement recommendation 120 – to extend the application of section 132A of the Management Act to contracts for the supply of electricity through an embedded network⁵.

It is also clear now that contracts for CER infrastructure and services in residential buildings should also not be exempt from limits placed on these contracts (132A of the *Strata Schemes Management Act 2015*).

18. What are your views on IPART draft recommendations?

In our [submission to the IPART draft report](#), we addressed the following issues:

- we support the draft finding that the DMO is not an appropriate maximum price for electricity embedded networks.
- we support the draft decision that setting maximum prices by benchmarking them, on an equitable basis as detailed later in this paper to what on-market customers are paying would best protect embedded network customers.
- to ensure that all customers have access to free, fair and independent external dispute resolution, a mechanism must also be designed via the NSW Embedded Network Action Plan to require an entity that only provides embedded hot and chilled water services to join EWON.
- agreement that Embedded network sellers should be required to publish current prices on their websites- if adopted by the NSW Government, improvements to disclosure requirements will significantly strengthen as a consumer protection.

Critically, we submitted that the effectiveness of IPART’s proposal will be reliant on the NSW Government also progressing the NSW Embedded Network Action Plan⁶.

⁵ EWON, submission to consultation paper for the Statutory Review of the Strata Schemes Development Act 2015 and the Strata Schemes Management Act 2015, NSW Department of Customer Service, 19 January 2023, p2

⁶ EWON, submission to IPART’s draft report on embedded networks, 18 January 2023