



9 June 2021

Dr Kerry Schott AO
Independent Chair
Energy Security Board

info@esb.org.au

Dear Dr Schott

Post 2025 Market Design Options

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 complaints from customers on metering work and electricity supply interruption issues relating to retailer and distributor activities. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have responded to those aspects of the consultation paper that align with issues customers raise with EWON, or with our organisation's operations as they relate to these issues. These are primarily the issues addressed in Part B: Section 3.2. Consumer Protections – Risk Assessment Tool.

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



EWON Response to Post 2025 Market Design Options Consultation Paper

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Four key aspects of the roadmap

Australia's electricity sector is in a state of change as renewable generation enters the system rapidly and in volume. Positively, given the relatively low-cost of renewable power, we are beginning to see a reduction in wholesale prices to fall as well as reduced emissions. Associated implications which need effective planning and implementation include:

- **Resource adequacy mechanisms:** to provide the right signals which will drive investment in an efficient mix of new resources which will minimise costs and maintain reliability.
- **Essential system services and ahead scheduling:** to ensure that the required essential services (frequency, control, operating reserves, inertia, and system strength) are available to maintain system security.
- **Integration of distributed energy resources and flexible demand:** to deliver benefits to customers through the integration of rooftop solar, battery storage, smart appliances, and other resources into the system in an efficient way.
- **Transmission and access:** to reconfigure the transmission system so that new renewable generation and large-scale storage can connect and be dispatched to meet customers' demand.

The electricity market is arguably undergoing the most significant period of change in its history. The range of emerging new products and services will significantly impact the way 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 effective consumer protections are in place for those consumers whose circumstances place them in situations where they cannot benefit from innovation, or worse, where innovation creates greater detriment or inequality for those consumers. It is critical that regulation does not unfairly favour any participants in the market or place some consumers in a position where protections are reduced or unavailable.

While some new energy products and services fall under current regulatory frameworks, others are outside energy specific protections. In our submission to the 2016 Australian Consumer Law Review, EWON identified that a fundamental principle for the regulation of new energy products and services needs to be in place:



“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.”¹

The proposed transformation of the current infrastructure so that it becomes fit for purpose should not directly impact on the average consumer. It is ‘a behind the scenes’ effort that will enable continued secure supply with minimal disruption. However, it will require significant change as outlined by the Options Paper. This transformation will incur costs, many of which will balance out the current lowering of wholesale prices.

New generation, retirement of old generation, system services, transmission, and network expenditure should provide long-term benefits and allow the development of a range of new products and services ensuring more efficient delivery of essential energy to all consumers. In the transition, the immediate costs will be balanced out by these long-term benefits. However, without careful planning these costs could have an adverse impact on vulnerable customers. The development of new products and services for customers will require a level of consumer protection that maintains confidence in the market while not hindering innovation.

Consumer Protections

The National Energy Retail Law (NERL) establishes a national energy retail objective (NERO) that provides the context for policy, law, and rules in the energy market.

The objective of this Law is to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.

The NERL specifies a consumer protection test to be applied in rule making, requiring the AEMC to:

“satisfy itself that the Rule is compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers.”

Aligned with that context, the Options Paper proposes, as an immediate reform, the development of a risk assessment tool that helps to assess whether customer protections may be needed with the expansion of new forms of energy services.

It is vital that consumer protections are co-designed alongside market reforms, rather than being only considered afterwards. The later approach would lead to significant consumer protection gaps such as those we have already seen in the solar and embedded network markets. These are discussed in further detail later in this submission.

The draft consumer risk assessment tool builds on the guiding principles which are set out below. EWON strongly endorses these principles, with a caveat that the Dispute Resolution principle is amended to no cost dispute resolution rather than low-cost dispute resolution, within the context of the NERO. Currently residential and small business consumers across the NEM have access to free, fair, and independent dispute resolution via Energy Ombudsman offices – this must continue in the future.

¹ [EWON submission: Australian Consumer Law Review Issues Paper May 2016, p2](#)



The revised principles, amended to reflect the above, should underpin the timely development of consumer outcomes and protections in the future market.

The principles

- **Access to Energy;** Recognising that energy is an essential service, customers should have access to at least one source of energy.
- **Switching providers:** Customers should be able to change retail providers if and when they choose.
- **Access to information:** Customers should have access to information that is sufficient, accurate, timely and minimises complexity and confusion to allow them to make informed decisions.
- **Vulnerable consumers:** The needs and circumstances of vulnerable consumers will need to be explicitly considered.
- **Dispute resolution:** Customers should have easy access to ~~low-cost~~ no cost dispute resolution mechanisms for when things go wrong.

The tool

The Options Paper has proposed a draft tool to examine the need for consumer protection based on the above principles. A 'benefits first' focus has been incorporated in the tool. This is that consumer benefits should be front of mind when considering market design to help facilitate a better energy environment for consumers and innovation. The tool has five key components:

- **Risk identification:** This seeks to identify aspects of the new market that could expose consumers to harms requiring protection.
- **Evaluation:** In evaluating the risks, it will be important for market bodies to understand the limitations on how they can influence consumer protections in the market.
- **Treatment of risks:** Treatment of risk is where consumer protection actions take place. This could include direct actions from market bodies such as through rule changes and changes to guidelines, procedures, and complementary measures.
- **Communicating and consultation:** This risk assessment tool will be a way to continue to communicate and consult with stakeholders and consumers on ways to protect consumers in the two-sided market.
- **Monitoring and reviewing the treatment:** The risk assessment tool will be used over the long term to reassess treatment and determine if or when further changes may be necessary.

This approach enables the consideration of consumer protections proportionately and should arrive at a balance that facilitates the flow of benefits to consumers. At the same time, the tool can ensure that adequate protections are retained or developed to maintain consumer confidence in the market.

Testing the tool

There are two current developments in the market which can provide the basis for a thorough testing of the proposed tool. The rapid and widespread growth of residential solar installations (and to a lesser extent batteries) has exposed a range of issues that current regulatory regimes do not adequately address. Similarly, the current retail and network exemption framework has proved to be unfit for purpose as the rapid growth in this area has seen an increasing number of customers excluded from consumer protections.

EWON proposes that these two areas of energy market activity could be tested by the proposed tool and the outcomes compared to the already identified consumer detriments. The lessons from this exercise could then be built into future considerations and refinement of the tool.



Solar

In 2019 the Australian and New Zealand Energy and Water Ombudsman Network (ANZEWON) commissioned a joint piece of independent research to better understand the dispute resolution needs of consumers in the energy and water markets over the next 5-10 years². Its findings reflect the broad range of “out of jurisdiction” complaints received by Energy Ombudsman schemes in both Australia and New Zealand. Specifically, chapters six and seven of the report explore the emerging issues associated with the rapid increase of solar in the market and the jurisdictional issues associated with this new energy market and Energy Ombudsman schemes. Issues of consumer detriment brought to the schemes, while out of jurisdiction, were able to be identified.

Similarly, in 2019 the Consumer Action Law Centre published “*Sunny Side Up: Strengthening the consumer protection regime for solar panels in Victoria*”. This report is strongly based upon case studies and identifies consumer detriment and regulatory gaps arising from the rapid growth of a new industry.

The key areas of concerns identified in both reports include:

- Failings in solar system installations or grid connection
- Inappropriate or unaffordable finance being offered to customers to purchase solar systems
- Misleading and high-pressure sales tactics in the context of the unsolicited sale of solar panels
- Product faults
- A lack of affordable dispute resolution
- Business closures and phoenix companies.

The exemption framework

At the time it was introduced, the retail and network exemption framework aimed to capture situations other than a retailer selling energy for profit to customers. Policy makers noted that the exemption framework typically applied to situations such as residential parks and landlords onselling electricity as an incidental part of their business.

Calling it an ‘exemption’ framework clearly implies it is for business models outside the norm. The system was set up to ensure that most operators were required to be authorised and customers were afforded the NECF’s appropriate standard of consumer protections warranted for essential services. But as the number of exemptions has grown, the system has become unwieldy. It can no longer be said that the exemption framework is for entities who are not selling energy for profit and as their ‘core business’.

In the last decade, since the introduction of the exemption framework, we have witnessed the rapid growth of the embedded network industry. The fact that authorised energy retailers have now moved into this section of the energy market is evidence that the embedded network industry is driven by the core business of selling energy to customers for profit. This situation creates an imbalance between the National Energy Retail Law (NERL) policy principles and the application of the current exemption framework.

Regulation no longer fit for purpose

In the face of the growth of the embedded network industry, the Australian Energy Market Commission (AEMC) found that the regulatory framework for embedded networks is no longer fit for purpose. We recognise the motivation for the development of some embedded networks has been

² What will energy consumers expect of an energy and water ombudsman scheme in 2020, 2025, and 2030? University of Sydney, October 2019



to deliver improved customer and environmental outcomes. However, the overall growth of the industry is not being driven by consumer demand. The benefits of embedded networks are geared towards offsetting building costs for developers and locking in long-term revenue streams for service providers that continue long after the developer has left the scene. This business model is particularly successful due to the sustained growth in Australian property prices and the increasing demand for affordable housing, i.e. apartments rather than stand-alone houses – rather than delivering benefits to consumers who reside in embedded networks.

The application of the exemption framework guidelines for retail and network exemptions and the lack of administration of the AER's register of exemptions has played a role in the development of a for-profit industry selling energy to exempt residential customers with no clear oversight and inadequate protections under the NECF.

The consumer detriment arising from this situation includes:

- Rapid and uncontrolled growth, outstripping regulation
- Business models existing between the cracks thus reducing consumer protection
- Limited support for vulnerable customers
- Lack of competition
- Lack of regulatory oversight.

The same outcomes cannot be replicated in the future – history enables unintended consequences to be foreseen and prevented.

Conclusion

It is clear there is a wealth of information available concerning the growth of the residential solar industry and the embedded network markets. If both areas of energy market activity are tested against the five key principles outlined in the Options Paper, it should become clear that the principles are effective and so identify the consumer detriment which has occurred in the solar and embedded network markets. On the other hand, they will be found to be lacking if they do not identify the consumer detriment which has emerged across these markets.

EWON strongly suggests therefore, that both markets be used to fully test the proposed tool for its effectiveness in identifying consumer detriment and therefore provide the impetus for consumer protection framework evolution.

Specific consideration for vulnerable customers

Monitoring and updating protections for customers of the traditional energy market is also required. As technological advances, new services, and new providers arrive in the market, the traditional provision mechanisms will be left with significant infrastructure costs. It will place the vulnerable and disadvantaged in our community most at risk of being left behind as they most likely will remain dependent upon traditional energy systems. This may lead to an energy divide where all customers pay for transition costs through current bills, but some customers will not be able to access the benefits of cheaper energy that new products and services offer.

This will mean regularly reviewing rebate and emergency assistance schemes to ensure adequacy and appropriate targeting. It will also mean regularly reviewing financial affordability provisions in the current regulatory regime to ensure that they remain fit for purpose. Finally, it means that reform proposals currently underway, such as cost reflective network tariffs, must be reviewed thoroughly to ensure that vulnerable pockets of customers are not adversely impacted.



Dispute Resolution

The main purpose of the ANZEWON paper noted earlier was to determine what changes, if any, are required to ensure that the energy and water ombudsman schemes remain fit for purpose.

Small consumers are often vulnerable in periods of market transition. As markets and the regulatory environment change, those consumers whose complaints are currently outside the jurisdiction of Ombudsman Schemes are often left trying to navigate a complex maze of dispute resolution options in the event of a dispute with their supplier³. As this research shows, even with the best of intentions, the existing alternatives to the Energy and Water Ombudsman Schemes often end up being either unable to satisfactorily resolve an individual dispute or are more expensive or time consuming (pp.31-37). This places these consumers at a significant disadvantage and can create uncertainty and undermine trust and confidence in the energy sector, more broadly.

A key finding of the report was that the definition of jurisdictional coverage of the current schemes be expanded to **'any service relating to the sale or supply of energy, or that may otherwise interrupt the supply of energy or impact upon the sale or supply of it.'**

The report finds that:

*"this recommendation reflects the weight of opinion from the full range of stakeholders that we consulted including: existing Scheme Members, prospective Scheme Members, jurisdictional regulators, government entities and energy market institutions, consumer advocates and members of Scheme boards, staff and management."*⁴

These stakeholders believed all consumers should have the right to access a specialised Energy Ombudsman Scheme as a matter of fairness and best practice. They also acknowledged resolving disputes through the Schemes was far faster and minimised the costs borne by all parties, relative to pursuing a dispute through either a tribunal or court.

The report does not overlook the fact that Ombudsman schemes need to change their governance structures, membership and funding models in order to remain sustainable through, and beyond, a period of expanding jurisdiction. The schemes have already begun this process with the onboarding of a range of new members arising from the expanded jurisdiction in the exempt network market. The Ombudsman schemes are ready and able to contribute their skills and expertise in a process that will ensure that customers have easy access to no cost, fair and independent dispute resolution mechanisms for when things go wrong in this rapidly changing environment.

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.

³ A good example of this is where customers in apartment blocks are being sold hot water by energy retailers. For a full analysis see [EWON Spotlight On Hot water embedded networks](#)

⁴ What will energy consumers expect of an energy and water ombudsman scheme in 2020, 2025, and 2030? University of Sydney, October 2019, p5