

Australian Energy Market Commission
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RPR 0012 – Consumer Protection – New Energy – Retail Markets Competition Review

The Australian Energy Council welcomes the opportunity to make a submission to the AEMC Consumer protections in an evolving market: New energy products and services, as part of the 2020 Retail Energy Competition Review.

The Australian Energy Council (AEC) is the industry body representing 23 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The AEC recognizes that Changes in technology is changing electricity markets. New energy products are facilitating greater and different forms of consumer engagement and participation in the energy market. This is also encouraging the growth and sophistication businesses to providing related products and services.

The AEC agrees that the regulatory frameworks must support consumer choice and appropriate consumer protections that are targeted and proportionate. This is a new sector, and voluntary regulation such as the New Energy Tech Consumer Code (NETCC) will in our view will, if able to be enacted, provide sufficient and appropriate consumer protections should a genuine detriment be identified.

Finally, consumer protection needs to match the potential demands upon it triggered by the sale of the device or service. If that purchase creates a vulnerability to the energy retailer, then that's a matter for retail regulation. However caution is required to ensure that Retailers are not providing consumer protections for matters outside their control simply because they (Retailers) are within regulatory reach of the AEMC when such matters should be a function of broader consumer regulation.

Our detailed responses the key areas of the report are provided below.

1. *Market developments and consumer protections: Are there any other market developments the Commission should consider when assessing consumer protections for new energy products and services?*

The marketing of DER and storage products requires review. Some energy retailers privately estimate that around one million, or 30%, of the small solar PV suite is now the subject of doubtful and difficult to access warranty protection¹, a result of the “phoenix” activity of suppliers and installers. Solar, storage and other power supply systems are high capital cost items that represent a significant financial purchase to most consumers. If correct, this doubtful warranty coverage also has an impact on the broader system; as to whether or not the difficulty in accessing warranty protection will lead to consumers not replacing failed inverters. We are also concerned that there is no compulsory disclosure of the expected inverter or storage life (as opposed to the warranty period). Consumers seem unaware as to what the lifetime of the asset is likely to be, and this disclosure will help them make better informed investment decisions.

Storage (batteries) in particular will experience deterioration over time. Their nameplate rating does not address that, for example, a 10 KWh battery bank with a stated end of life retained capacity of 70% will be able to store at least 7 KWh of energy by the end of its warranty period (10 years was the maximum warranty period identified²) or that its probable functioning life is 15 years.³ This is considerably shorter than customers generally understand; they often believe the product life is indefinite.

2. *New business models and innovation in the market: Are there other business models the Commission should consider in its analysis of new energy products and services?*

New electricity business models may have complex value propositions. To date the dominant supply business model has been the corporate utility, selling units of energy to consumers in national markets.⁴ The new opportunities that business model innovations are or could be creating in electricity can offer significant benefits to the electricity system and also generate economic, social, and environmental values that are not well accounted for in current policy or regulation.⁵

It is therefore our view we should not attempt to anticipate and regulate specific business models. Rather, consideration of the business model in terms of its relevance to existing regulation of either renewable energy, demand management and energy efficiency (or a combination of these) and overlaying that with where the business model impacts on the essentiality of the energy delivered, or the ability of the retailer to recover the costs of covering that essentiality, can guide

¹ We acknowledge that the ACL may provide for upstream warranty protection from importers or manufacturers in some circumstances where the installer has phoenixed, though this can be difficult in practice for small consumers to access. Installation expenses would not be recovered though.

² End of life retained capacity <https://carbontrack.com.au/guides/energy-efficiency-guide/battery-storage/>

³ In the short research to identify battery life undertaken for this submission, not one website examined that was promoting the sale of domestic battery storage addressed the likely battery life of their product in any way other than disclosing the warranty period.

⁴ Business model innovation in electricity supply markets: The role of complex value in the United Kingdom, Hall and Roelich, 2016, www.elsevier.com/locate/enpol

⁵ Ibid

where further regulation may be necessary⁶. Beyond these energy specifics, in our view the Australian Consumer Law would both suffice and be the framework that should address change.

3. Other key services and products to consider: Are there other energy products and services the Commission should consider in its analysis of the new energy products and services?

We recognise that there may be economic, social, and environmental values generated from new business models, along with advances in renewable energy, demand management and energy efficiency technologies and services. Constant changes in technology, industry practices, and communications will all impact innovation and consequently there is always a high degree of uncertainty as to what will actually eventuate. A regulatory management model that incorporates assessing the relevance to either renewable energy, demand management and energy efficiency (or a combination of these) in any suite of future business models would in our view be a better approach.

4. Efficiency of revenue streams: Which regulatory provisions may be preventing value creation through the adoption of new technology?

The AEC has previously sought the review of incentive schemes such as the Demand Management Incentive Scheme (DMIS) and the Efficiency Benefits Sharing Scheme (EBSS) to ensure they cannot be gamed by NSPs to share benefits with an affiliate and thus gain advantage over other providers.⁷ The adoption of new technologies (and thereby the services provided) must provide economic value to all electricity users, and not just to the asset owner or operator.

In addition tariff reform, connection standards, technical standards, and energy efficiency standards could impact the way that revenue streams can be accessed and prices determined; these being the first steps in value creation. The Oakley Greenwood report to ARENA on the pricing and integration of DER examines in detail the relevant scenarios and structures required to capture the economic value of DER services.⁸

5. The supply of energy is an essential service: What are the elements that define the supply of energy as an essential service?

Energy's essentiality arises from it delivering other services; be it heating, cooling, communications, water supply or sanitation, that are essential to life and to basic health, well-being and social participation. Disruption to the energy supply service disrupts the supply of these other services⁹.

Whilst not the subject of this consultation, the growth in the sophistication and scope of customer connected assets may make the generation/distribution/retail systems more vulnerable to attack and these customer assets may be difficult to disconnect from the network in such an event,

⁶ An example might be a battery installation agreement with “free energy for life” and accompanying conditions.

⁷ *Amendments to Chapters 5, 6, 6A and 7 of the National Electricity Rules in the implementation of Demand Response and Network Support Services*, Australian Energy Council, October 2016.

⁸ *Pricing and integration of distributed energy resources*, Oakley Greenwood, <https://arena.gov.au/projects/pricing-and-integration-of-distributed-energy-resources-study/>

⁹ In the context of DER, essentiality might mean that if it were not available – be it broken, disrupted, disconnected, that the customers access to energy to provide these other services might also be disrupted

causing further disruption. Mechanisms to explore the required technical specifications and terms of use to mitigate this risk are being explored under the general term cyber security.

6. Changes in the nature of energy service: Has the essential nature of the sale of energy changed with the market's evolution?

Market evolution refers to changes in primary demand for a product class and changes in technology. Primary demand for the product class (energy) has not varied considerably due to its essential nature. Whilst the sale of energy has changed from regulated supply from a monopoly utility to a range of suppliers with diverse offers, there is a cohort of customers who remain disengaged. Many customers regard energy as a homogenous, low-involvement commodity and they are not inclined to undertake market search activity to find better offers. This has been a consistent finding in both competition reviews and in justifications for market interventions. We do not believe that this has changed materially.

Conversely, there is also a cohort of customers who are highly active in the retail and appliance/technology market, seeking out newer and more innovative offers and products. These are generally the customers who (will) adopt renewable energy, demand management and energy efficiency type products and services first. However these products and services do not, and in terms of community expectations have not, changed the essential nature of energy. This is true even when they are sold in conjunction with energy.

In the evolution of technology, the first commercialised forms of new innovations are essentially primitive. Market evolution is rarely a predictable or smooth transition, and is often interrupted by step changes or even reversals that regulators find frustrating. Perhaps this is particularly true where the success of a business case approved by a regulator, such as a smart meter rollout, does not deliver its original "benefits".¹⁰ It's hard for regulators, as an arm of government policy, not to back winners. This can lead to the "chasing of losses". Policy shifts, such as changing the rollout of meters from a distribution rollout to market driven, to a great extent de-risks this financially from a regulatory perspective though there are always consumer facing issues. We should be mindful at this early stage of new energy technology development that some technologies will not persist (such as VHS vs. Beta for example) and therefore some consumers will have invested in technologies that will have a shorter life than consumers anticipate (remembering of course that both VHS and Beta have been supplanted). Regulators cannot protect consumers investment choices and to do so impedes market evolution. There will be an ongoing need to separate the essentiality of energy from the consumers investment choices.

7. Regulatory implications: If the answer to Question 6 is yes, what are the implications for the NECF as the energy specific consumer framework?

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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.

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The New Energy Tech Consumer Code (NETCC) intends to protect customers from foreseeable harms, in particular by providing consumers with clear, accurate and relevant information to help them make informed choices¹³, but realistically it does not protect them from choosing to make, or making, a bad decision.

Recognition that some technologies (products) will not persist in the market and therefore some consumers will have invested in technologies that will have a shorter life than consumers anticipate is required. Historical cases, such as VHS vs. Beta for example, highlight how difficult it is to determine “winners” in products, remembering that both VHS and Beta have been supplanted in any case.

Regulators should seek to prevent networks from acting as proxy regulators, which is already leading to consumer detriment. Networks are already using connection agreements and their own discrete technical standards to lock in their own redundant technologies (such as their failure to

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¹³ NETCC draft September 2019, Key commitments, P.2

address voltage control in even its most primitive form such as tap changes) or to lock out the development of new energy products and potential network support services (by insisting that network support services are provided “free” in return for a connection agreement)¹⁴. Thereby they are circumventing the opportunity for market-based solutions to the optimization challenge that would deliver more efficient outcomes.

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 noted earlier in this submission, a regulatory management model that incorporates assessing the relevance to what products and services deliver as opposed to what they are; either renewable energy, demand management and energy efficiency (or a combination of these) is a better approach in establishing any specific consumer framework for the contemplated “new” energy.

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?

The AEMC consultation refers to two circumstances where the Productivity Commission has previously identified industry-specific consumer regulation may be desirable:

- a. When the risk of consumer detriment is relatively high and/or the detriment suffered if things go wrong is potentially significant and possibly irreparable
- b. The suitability and quality of services is hard to gauge before or even after purchase.¹⁵

Many energy generation and storage products are expensive in absolute terms and at several if not tens of thousands of dollars will comprise a substantial portion of disposable income for many households. There is the possibility of significant detriment. There is no doubt that some technologies (products) will not persist in the market, and that some technologies that will have a shorter life than consumers anticipate, either because of information deficiencies as to their expected life or because the product or technology is supplanted in any case. Regulators can address information issues, but will be likely unable to address protect consumers from the detriment of their investment choices where technology is supplanted. To do so may impede market evolution.

In the evolution of technology, customers are rarely indemnified from technology change; a new phone will inevitably require a new form of charger, car holder and protective case. The old ones become ‘stranded assets’.

¹⁴ SA Power Networks Distribution Annual Planning Report 2019/20 – 2023/24 .Page 28. SAPN proposes to include modification of the connection standard to require new generation to utilise the capability of their inverters to assist negating the impact of their solar generator on the local voltage.

¹⁵ *Consumer protections in an evolving market - Issues paper 1 - New energy products and service*, AEMC, December 2019

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.

No response.

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?

One important and generally overlooked drivers should be to achieve cost-effective risk control. Generally this means trivial risks will be discounted, and remaining risks regulated for in a manner proportional to both their likelihood and impact. We cannot identify any additional material risks to consumers outside the scope of the existing energy consumer framework.

13. Vulnerable consumer: 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?

In energy specific regulation a customer is identified as vulnerable when it is apparent that they are at risk of experiencing significant financial stress from an increase in their energy bills, or are experiencing financial stress due to their existing circumstances.

In broader regulation, vulnerable consumers appear to be those who are considered as significantly less able than ordinary consumers to protect (and in some cases identify) their own interests. It should be noted that this still applies to energy marketers as well, in addition to energy specific characteristics.

Energy specific regulation therefore covers a broader cohort of vulnerable customers than consumer regulation and is as such already different to other industries. We cannot identify any additional material risks to consumers outside the scope of the existing energy consumer framework.

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?

We do not see apparent additional risks to vulnerable customers from new energy. We believe it is important to ensure that the ACL and voluntary codes do not rely heavily on energy specific protections to cover any vulnerabilities caused by the new energy services and products.

15. Policy risks: What are the risks of extending the obligation of having policies that identify and protect consumers under vulnerable circumstances to new energy services and products suppliers?

The risks of over regulation, and in particular the provision of inappropriate or unnecessary protections, risks the ability of this new entrant sector to grow. This would be to the detriment of consumers more broadly.

For example, it has previously been suggested that PV installers should be part of energy ombudsman schemes. This is unnecessary and outside the intent of the schemes. It is unrelated

to essentiality and not different to buying any other electrical appliance. Only the products sold related to supply, such as the Feed in Tariff, are related to the essentiality of energy. In the new energy services, that might capture something like a combined energy use and home cooling or storage deal, such as lease arrangement, that is comparable to the supply of grid energy. Then perhaps that would be justify additional protections.

Consumer protection regulation already seeks to assist those consumers less able to protect or identify their own interests. This is consistent with the view that to market goods to the vulnerable in ways that take advantage of their vulnerability is to treat them unfairly, and it is morally wrong for precisely this reason.¹⁶ Marketers can target the vulnerable, but not in ways that take advantage of their vulnerability.¹⁷

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.

Additional focus on better disclosure is the key driver behind the NETCC. Better disclosure particularly includes information about payback, warranties, lifespan, complaint management and other relevant characteristics that it is not fair or reasonable to expect the average consumer to work out on their own. Retailers are supportive of this better disclosure, as retailers often bear the brunt of customers being provided poor or misleading information about product performance. For example, the claim “never pay a bill again if you install this” will result in a customer complaining to the retailer when their retailer sends them a bill, even though the retailer did not make the original claim.

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.

No. However consumers are often not aware of how to bring a complaint and this can be addressed through education at the point of sale of new energy products and services.

Any questions about our submission should be addressed to David Markham by email to david.markham@energycouncil.com.au or by telephone on (03) 9205 3107.

Yours sincerely,

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¹⁶ *The Ethics of Marketing to Vulnerable Populations*, Brenkert, 1998

¹⁷ Ibid