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## **Consumer Protections for Behind the Meter electricity supply – Consultation on regulatory implications**

The Australian Energy Council (AEC) welcomes the opportunity to make a submission to the COAG Energy Council (the Energy Council) Consumer Protections for Behind the Meter (BTM) electricity supply – Consultation on regulatory implications (Consultation Paper).

The AEC is the industry body representing 21 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 welcomes the Energy Council's Consultation Paper. The emergence of new products and services will be a major factor in the future of electricity markets and offers significant opportunity for consumers. The AEC acknowledges the importance of consumer protection reform regarding emerging technologies.

### **Definition of BTM systems**

The definition of BTM systems, provided in the consultation paper, needs to be further clarified as it is ambiguous despite being supported by potential scenarios. The AEC considers that the term BTM be used as a literal definition and not be specific about the technologies involved.

### **Consumer protection reform**

Consumer protection reform is an important priority for all State and Territory Governments. However as the Energy Council highlights there are "*certain technologies and businesses that are not covered by either a retailer authorisation or an exemption as they are not considered to be a 'sale of energy'*". Previously, sellers of emerging energy products and services have been regulated using a combination of the Australian Energy Regulator's (AER) exempt seller regime and the Australian Consumer Law (ACL). As this market continues to evolve, the AEC considers that consumer protections must be provided in a manner that are technology and provider neutral.

To this point, the AEC considers that the existing consumer protections in the National Energy Retail Law (NERL) developed for a market with centralised supply are no longer fit for purpose for all energy consumers. Consumers with greater control over their energy usage and generation (prosumers) do not need the same protections as a consumer solely reliant on the grid to provide access to energy as an essential service.

The AEC submits that the onerous consumer protection regime in the NERL results in prosumers paying more for their energy supply than they need to, thus encouraging them to invest more into additional technologies, and ultimately only relying only on an energy retailer to ensure security of supply. We are concerned that consumers with no ability to invest in new and emerging energy products (be it due to insufficient income, property ownership, or residence type) are left to recover

the vast majority of costs of the energy retailer, thus increasing the cost differential between those who can invest in emerging energy products, and those who cannot. This imbalance must be considered by the Energy Council as it determines appropriate consumer protections for behind the meter energy supply.

The AEC recommends that if regulatory reform is required then the following customer protection principles should be considered in the development of consumer protection provisions:

### **National consistency**

The AEC supports a nationally consistent approach to the consumer protection regime. The consumer protection regime should apply uniformly across the National Electricity Market (NEM) as this ensures the least cost and most effective way to protect consumers. The AEC considers that any variation to the national framework should only occur where jurisdictions require it and State Governments and Regulators must clearly demonstrate the costs of managing any unique externality are outweighed by improved consumer outcomes.

### **Disclosure and informed consent granted**

The AEC considers that consumers should be provided with the appropriate amount of information to be able to make an informed decision. The AER regulation of solar power purchase agreements (SPPA) is a useful example. Under their Regulator's (Retail) Exempt Selling Guideline, condition 20 requires that customers be informed of the fact that their SPPA is governed by the ACL and is a separate contract to their ordinary retail energy contract. The AEC supports customers being informed of which rules governs their contract with BTM providers.

### **Affordability**

Every consumer should be given the opportunity to engage and obtain the benefits of competitive energy markets. Energy affordability is a broad social issue that cannot be resolved through the actions of retailers alone. Service providers, governments and the community sector have a shared responsibility to ensure customers in financial hardship not only stay connected to essential energy supply but to also remove any specific barriers that hinders these customers from actively participating in the market.

This is not to say that retailers don't play an integral part in both educating and assisting customers to meet their financial responsibilities associated with their energy usage. However, the AEC considers that the State and Federal Governments need to play a greater role in assisting customers in a position of long term hardship.

### **Dispute Resolution**

Under the current schemes, a number of Energy Ombudsmen review complaints in relation to businesses providing embedded networks and alternative energy services. These businesses do not need to comply with the ruling of the Ombudsman as they do not pay in to the scheme to be a member. This means that retailers are effectively paying for this work to be done, with no guarantee of resolution for customers. The AEC does not believe this is a fair and equitable process for retailers and consumers.

The AEC considers as part of a broader evaluation of consumer protections, or as a more modest standalone project, there could be value in a review of dispute resolution practices throughout Australia in light of new and emerging technologies. The AEC submit that participation in any Ombudsman scheme by BTM service providers should only be on a voluntary and strictly user-pays basis. This could include examining each Ombudsman scheme's membership with a view to

recommending different categories of membership in these schemes or different funding models that make the process fair and equitable for service providers and consumers.

### **Contestability & competitive neutrality**

Competitive markets are best placed to facilitate the advancement of customer preferences and to encourage innovation around products and services and the development of new technologies. The AEC considers that where regulation is used to provide customer protection it should not advantage one form of service provision, business model or technology over others. Ring-fencing and other prohibitions should ensure no regulatory advantage is bestowed on any market participant.

Consumers benefit where they have access to competitive markets. Competitive markets develop and thrive where participants are able to compete on an equal footing in the provision of products and services. In order to achieve this, the concept of competitive neutrality is paramount. The objective of ring-fencing is to limit the ability of the regulated entity to confer an unfair advantage to itself or to an affiliate operating in a competitive market. Ring-fencing is therefore key to the delivery of competitive neutrality and its consequent benefits to consumers. The AEC is supportive of the principles of AER's recent Ring-Fencing Draft Guideline in that it seeks to create a more level playing field by addressing the two harms created by ineffective ring-fencing: cross subsidies and discrimination.

### **Remove duplication**

The AEC supports a more efficient consumer protection framework which removes duplication. Energy specific consumer protection regulation should be eliminated where general consumer laws provide consumer protection. Currently there is unnecessary duplication between state/territory fair trading regimes and the national *Competition and Consumer Act 2010*.

The AEC considers that that the overriding consumer protection principle should remain, which is that regulatory frameworks should reflect community expectations about how consumers are supplied with an essential service. However there needs to be more work done in understanding of the relative costs of complying with different aspects of the National Energy Customer Framework (NECF), in terms of how retailers consider these may be relevant to any competitive disadvantages.

Any questions about our submission should be addressed to Panos Priftakis, Policy Adviser by email to [panos.priftakis@energycouncil.com.au](mailto:panos.priftakis@energycouncil.com.au) or by telephone on (03) 9205 3115.

Yours sincerely,



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