

23 August 2024

Mr Ben Barr  
Chief Executive Officer  
Australian Energy Market Commission  
GPO Box 2603  
Sydney NSW 2000

Dear Ben

**EPR0097 – Market Review – Electricity pricing for a consumer-driven future**

Thank you for the opportunity to comment on the terms of reference for this review, which is a project aligned with the National Consumer Energy Resources (CER) Roadmap.

The comments contained in this submission reflect the feedback of the Energy & Water Ombudsman NSW (EWON), Energy & Water Ombudsman South Australia (EWOSA), Energy and Water Ombudsman Victoria (EWOV) and Energy and Water Ombudsman Queensland (EWOQ). We are the industry-based external dispute resolution schemes for the energy and water industries in New South Wales, South Australia, Victoria and Queensland. We have collectively reviewed the consultation paper and we have only responded to those questions that align with issues consumers raise, or with each respective organisation's operations as they relate to the consultation paper.

We note that the National CER Roadmap, and implementation plan, were endorsed by the Energy and Climate Change Ministerial Council in July 2024. The Roadmap includes a workstream focused on consumers, to which this review is related.

The draft Terms of Reference notes that the Australian Energy Regulator's review of consumer protections for future energy services has been completed, and that a full review of the consumer protection framework is not in scope for this review.

However, we know things don't always go to plan. Establishing a new fit-for-purpose consumer protection framework will face challenges on implementation. This was the case with the package of reforms proposed by the AEMC for the regulation of embedded networks, and we have seen in the years since that review, that consumer protection gaps easily become entrenched as markets evolve and regulation fails to keep pace.

It is critical that the AEMC's review of electricity pricing for a consumer-driven future considers how a lack of fit-for-purpose consumer safeguards may impact on the benefits consumers receive from the packaging of CER services. This could be undertaken by the AEMC or another appropriate body. Energy and Water Ombudsman have already provided numerous case studies to the AER and the AEMC that show how the intended benefits of packaged services (retail contracts bundled with CER)

do not always materialise for the customer. This has an ongoing impact on the affordability of energy for these consumers and on trust and confidence in new products, services and business models.

The draft Terms of Reference states that consumers with CER will directly benefit if there is flexibility in how and when they use energy so they can save money within their own home or business. However, there is no evidence to support this view. Neither competition between energy providers nor the current National Energy Customer Framework (NECF), are enough to guarantee that consumers will benefit from CER in this way.

Critical to this is how retailers and energy service providers package and price electricity products and services to match consumer preferences. We can already name a wide range of potential risks to consumers by the packaging of these services, evidenced by:

1. The case studies we provided in our joint Ombudsman submission to the AEMC's draft determination on the Unlocking CER benefits through flexible trading rule change<sup>1</sup> which illustrated how CER products and services can be detrimental to consumers. In this submission, the case studies highlighted that some customers who had been deemed eligible by their retailer to participate in a virtual power plant were:
  - unaware that they are participating in the VPP, and
  - not benefiting from the operation of the VPP, and that the onus was placed on those customers to work out if their participation was detrimental and if so, to proactively ask to be removed from the program.
2. Ombudsmen have also previously highlighted the essentiality of access to data for consumers to fully benefit from CER services. Proposed reforms around access to data, and the consumer data right, do not address all the consumer risks related to data services that are packaged together with energy contracts. For example, EWON has published an analysis of the consumer risks associated with the digital platforms and apps designed by energy retailers to help customers realise the full benefits of their energy plans<sup>2</sup>.

There is also a significant risk of unnecessary costs to consumers where there is no access to free and independent external dispute resolution for these packaged energy services.

Too much onus is being placed on consumers to navigate the energy market which is known to be complex and confusing. To negotiate this new energy market, and to build consumer trust, and/or prevent trust being further eroded, an overarching consumer safeguard needs to be introduced to ensure that the products and packages are either designed to benefit the customer, or adequate accessible information is provided to consumers on the benefits being sold to them. The AEMC's review should include consideration of the impact on consumers, and industry, if these essential safeguards are not in place.

We also note that the draft terms of reference also provides a list of stakeholders expected to have an interest in this review. Energy ombudsmen are independent bodies that interact with a vast number of energy consumers across Australia. Our complaint data provides insights into the real-world challenges consumers face when engaging with CER and the retail energy market. It would be worth including energy ombudsmen in the list of key stakeholders, and potentially including an Ombudsman representative on the Stakeholder Reference Group.

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<sup>1</sup> [Energy & Water Ombudsman Submission Unlocking CER benefits through flexible trading April 2024 0.pdf \(ewon.com.au\)](#)

<sup>2</sup> [Consumer energy resources complaints and case studies - Energy & Water Ombudsman NSW \(ewon.com.au\)](#)

If you require any further information regarding our submission, please contact Dr Rory Campbell, Manager Policy & Systemic Issues (EWON) on 02 8218 5266, Mr Antony Clarke, Policy and Governance Lead (EWOSA) on 08 8216 1861, Mr Ben Martin Hobbs, Manager, Policy Insights and Engagement Manager (EWOV) on 03 8672 4239 or Mr Jeremy Inglis, Manager Policy and Research (EWOQ) on 07 3212 0630.

Yours sincerely



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