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19 April 2024

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

Dear Ben

ERC0346 – Unlocking CER benefits through flexible trading rule change

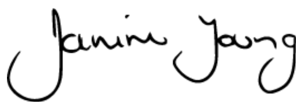
Thank you for the opportunity to comment on the draft determination and draft amendments.

The Energy and Water Ombudsman Queensland (EWOQ), Energy & Water Ombudsman South Australia (EWOSA), Energy and Water Ombudsman Victoria (EWOV) and Energy & Water Ombudsman New South Wales (EWON), are the industry-based external dispute resolution schemes for the energy and water industries in our respective states.

Our submission aligns with complaints issues customers raise with our offices, or with each respective organisation's operations as they relate to the issues paper.

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

Yours sincerely



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Submission

Housing policy settings in Australia must be considered when making changes to energy market rules.

Australia is in the middle of a housing crisis. The demand for housing has created affordability challenges for a generation of Australians, and the downstream impact of house prices is creating an accessibility barrier to people in the rental market. The need for an increase in the supply of high-density housing is also exposing regulatory gaps in some states relating to residential strata buildings and embedded networks.

There is little evidence that this situation will be quickly resolved, or that this cycle will not be repeated in coming years.

Traditionally, the regulation of energy has been approached as a standalone problem. With the increasing reliance on household consumer energy resources (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. The increased uptake of CER has seen the policy settings for energy consumers become intertwined with the policies connected to our homes. This challenge is illustrated through state and federal laws and policies regarding energy efficiency for homes, tenancy, strata management, and home building.

While recognising that the Commission is not responsible for making changes to state frameworks for tenancy, the AEMC should be considering the draft rule in light of the relationship between housing and energy in order to determine what consumer protections are required.

The fundamental assumption that **ALL** consumers will have a choice to enter a secondary metering arrangement is not correct. A draft rule decided on that assumption, will create gaps in the energy market which cause detriment to certain classes of consumers.

The growth of embedded networks in Australia over the last decade, and the subsequent slow pace of reform, has shown the energy sector that failing to get the right balance, at the right time, between innovation and consumer protections results in entrenched inequality across the energy market.

We explore this issue further in our discussion below about how the consumer protection test for the more preferrable rule should be applied, and the potential gap in consumer protections for customers experiencing financial vulnerability especially those facing disconnection.

Consumer protections for small customers with secondary settlement points.

This rule change is likely to be operational before consumer protection reforms focused on CER are considered and implemented. This risks consumer protection gaps emerging that will then need to be resolved.

EWOQ, EWOSA and EWON provided 53 case studies depicting individual examples identifying existing and potential future gaps in consumer protections related to CER in our submissions to the

AER issues paper for its review of consumer protections for future energy services[1]. These consumer risks are still unmitigated.

The consumer protection test for the more preferable draft rule.

The draft determination is reliant on the fact that proposed secondary settlement arrangements would be voluntary and based on consumer choice.

In our submission to the consultation paper, we noted that this analysis does not anticipate all the customer types that will engage with services at the secondary settlement point[2]. Different types of consumers and households will have varying levels of choice to enter contracts for the services at the secondary settlement point. A tenant signing a lease for a new home may have little to no choice on signing a contract for services at a secondary settlement point – or limiting their choice of retail offer from their landlord's preferred retailer.

Our previous submission included a table outlining customer scenarios where choice will be restricted:

Housing situation	Example of service offered at secondary settlement point	Level of consumer choice
Homeowner (house)	Virtual Power Plant	Homeowner choice to access additional benefits of CER
Tenant (house)	Hot water service	Limited or no choice for tenant when agreeing to a lease.
Homeowner (house/apartment under strata management)	Solar/battery Power Purchase Agreement (PPA)	Limited choice for homeowner resident

The draft determination also states that the Commission is satisfied that the more preferable draft retail rule meets the consumer protections test.

Secondary settlement arrangements will not be voluntary or based on consumer choice in every case, therefore, the consumer protection test should be reapplied in this light.

For this draft rule, the consumer scenarios considered by the Commission must include classes of energy customers that have little to no choice in the energy supply arrangements in their home. For example, it is unrealistic to expect that a person looking for a home to rent in some cities will be able to choose their new home based on how the energy is supplied or have the power to negotiate alternative arrangements. In fact, we are yet to see any evidence that individual energy consumers have the power to negotiate the terms and conditions of market contracts.

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[1] EWOQ and EWOSA, Submission Retailer authorisation and exemption review – issues paper, 6 June 2022, pp.16-22; EWON, Submission Retailer authorisation and exemption review – issues paper, 10 June 2022, pp.43-62

[2] EWON, EWOSA, EWOV and EWOQ, Submission ERC0346 – Unlocking CER benefits through flexible trading rule change, 21 February 2023, p. 6

Closing / preventing further consumer protection gaps in the National Energy Retail Rules (NERR) relating to financial affordability and disconnections must also be central to these considerations.

Consumer protections relating to financial vulnerability (hardship) and disconnection.

The draft determination outlines that the draft rule is intended to maintain the application of consumer protections for small customers' premises. In this scenario, the customer's protections would apply to the premises as a whole (including any secondary settlement points). This means that if the premise is disconnected, the customer would also lose supply at the secondary settlement point.

For life support customers, disconnection protection provisions in the NERR would be applied specifically to the secondary settlement point as well as to the premises as a whole.

We consider that all consumer protections relating to customers experiencing, or at risk of experiencing financial vulnerability, and /or disconnection, should apply to both the premises as a whole and specifically to the secondary settlement point. The following possible consumer scenario illustrates how the structure of the draft rule would result in a weakening of these critical consumer protections for energy customers experiencing financial vulnerability.

Consumer scenario: a tenant experiencing vulnerability has the power supply to their hot water system disconnected while engaged with a retailer payment plan.

- A customer has a lease for a property with an existing secondary settlement arrangement.
- The home is free standing and not in an embedded network.
- The secondary settlement arrangement was requested by the landlord before the customer moved in and included the installation of a new hot water system, at a significant discount, provided by the energy retailer.
- The arrangement includes a contract that requires the energy account for the premises to remain with the energy retailer for a five-year period. An exit fee equal to the discount applied to the hot water system applies if the agreement is broken early.
- The secondary settlement arrangement is that:
    - the primary connection point/parent National Metering Identifier (NMI) services the home's inflexible load, such as lighting and appliances
    - the secondary connection point/child NMI services the home's hot water system.
- The tenant has been told that their energy account must be set up with that retailer and that they cannot switch retail market offers.
- The tenant/customer is experiencing vulnerability, has a history of late payments, and has previously broken a hardship payment plan offered by the retailer.
- The tenant does not understand why their current energy usage is so much higher than at their previous rental properties.
- The retailer agrees to offer the customer a final payment plan but advises the customer that the secondary settlement point will be de-energised (and therefore cutting off their hot water) until the customer completes the second payment plan successfully.

This scenario illustrates how a failure to apply all the relevant consumer protections to both the secondary settlement point specifically, and the premises as a whole, results in a weakening of consumer protections and subsequent consumer detriment.

This includes, for example, the general principle that disconnection should be a last resort option and only occur following provision of the support retailers are required to offer to customers experiencing payment difficulties.

Other consumer protections may also be at risk of being weakened, such as the obligation to supply small customers through standing offers.

The consumer protections for customers with a greater degree of choice – such as homeowner occupiers – could also lead to similar issues when their circumstances change, and they experience affordability issues and require support for payment difficulties or financial hardship. This is happening now because of energy price, mortgage and rental price increases – energy retailers, financial counsellors and Ombudsman officers are receiving an increasing number of requests for assistance from consumers, including homeowners, who have never before needed affordability assistance.

Our understanding of how the draft rule will operate for the consumer in the scenario we have provided, may be different to that of the Commission. If this is the case, and the Commission is of the view that the customer in this scenario is protected by the existing affordability / disconnection framework, we would appreciate more detailed information about how the disconnection rules will operate in the Commission's final determination.

Billing protections.

We are also concerned about the consumer protections for energy accounts generally. For example, clause 4.3(b) in the Model Terms and Conditions for Standard Retail Contracts provides that when vacating a premises, the retailer must use its best endeavours to arrange for the reading of the meters. We also note the intention for this to clause to be amended such that it extends only to the primary meter.

This amendment is likely to cause problems for the final meter read and subsequent billing to a customer vacating a premises where the billing relies on a reading of the meter at the secondary settlement point. Inaccurate or incomplete meter readings would lead to estimated bills for a final bill, which would subsequently require revising. This would reduce trust and confidence in the electricity market. Such situations would also result in higher complaints regarding meter reading and bills to energy ombudsman schemes.

Contracts, consumer information, and consent.

We note that rule 64(1) (a2) would be amended so that the information provided by a retailer to a prospective customer would need to include information about terms and conditions associated with a proposed secondary settlement arrangement, including prices, charges and benefits and any requirements for operational control by the retailer or the distributor of equipment within the customer's premises.

We support this amendment.

However, this rule, on its own, is not adequate to ensure that individual consumers will benefit from secondary settlement arrangements.

Through power of choice, and the retailer-led rollout of smart meters, it has become common practice for energy retailers to include a standard clause in market contracts that waives rule 59A of the NERR for opting out of a meter replacement.

It is likely that it will also become standard industry practice for market contracts to include a clause that allows retailers to create a secondary settlement arrangement if the customer is eligible, without the customer's further consent.

We have provided two case studies (case studies 1 and 2) relating to a virtual power plant (VPP) operated by an energy retailer in NSW. At this early stage, the complaints received about this VPP indicate that:

- some customers are unaware that they are participating in the VPP despite being sent a notice by the retailer informing them of changes to their energy supply; and
- not all customers that were deemed eligible to participate in the VPP were benefiting from the operation of the program. The onus was placed on customers to work out if participation is benefiting them, and if not, to proactively ask to be removed from the program.

A fit for purpose consumer protection framework, including at secondary settlement points, that places obligations on providers to deliver the right outcome for consumers, will assist in ensuring that secondary settlement arrangements will deliver benefits for consumers and retailers and contribute to building consumer trust in energy service.

Case studies 1 and 2

The following case studies relate to a VPP that is operated by a retailer to control the controlled load hot water service of its customers to help the consumer use more of their energy at times of excess solar or wind generation. Customers are deemed eligible for participation if they have a smart meter and a controlled load hot water service. Participation is consented to through the market contract terms and conditions and customers can opt out of the program.

The case studies collected at this stage indicate that some of the drivers of these complaints include:

- that some customers making complaints about high bills and/or the operation of their controlled load hot water service are only finding out that they are participating in a VPP after making a complaint to EWON
- that the operation of the VPP may not be benefiting customers with underfloor heating, solar hot water, or pool pumps.

Case study 1: Customer receives higher than expected bills after purchasing rooftop solar system from retailer and being placed on VPP.
A customer purchased a rooftop solar system directly from their energy retailer. The customer stated that they had spent approximately $20,000. After the installation was complete, the customer made multiple high bill complaints, as his energy costs had increased on a quarterly basis, rather than reducing with the benefit of solar. The complaint was escalated to EWON because the customer was dissatisfied with the retailer's response to his high bill complaints. EWON referred the matter to a specialist team at the retailer in the first instance. The complaint returned to EWON as it remained unresolved. EWON's review of billing information and meter data found that the billing was accurate based on the data. The EWON investigation also revealed that the customer's controlled load electricity supply was now being managed through the retailer's VPP. The customer was receiving a $20 credit each month for participation in the VPP. This means the retailer had taken over the customer's controlled load service and was focused on shifting the customer's energy consumption to times of the day when there is excess solar generated power being feed into the grid. The customer was sent a letter advising them that their controlled load hot water was now being managed by the retailer rather than the network.

The letter advised the customer to email the retailer if they had other services connected to the controlled load. The customer had not investigated this issue. The customer was prompted by the EWON investigation to check their installation and was advised by an electrician that their pool pump was also connected to the controlled load circuit. The customer had assumed that their hot water/pool pump usage was being offset by the energy generated by newly installed rooftop solar system.

EWON advised the customer that they had been billed correctly based on the meter data provided, and that the retailer had offered a $200 credit as a goodwill gesture. The customer did not respond to the retailer's offer. EWON made no assessment of whether the customer was financially disadvantaged by their participation in the VPP due to the fact that the retailer was unaware of the pool pump connected to the controlled load circuit – or from the advice the customer had received from the retailer about the installation of the solar system.

Case study 2: Customer experiences a loss of hot water after connection to the retailer's VPP.

A customer's meter was upgraded to a smart meter at the end of August 2023. The customer complained that since this time they were running out of hot water around late afternoon. She did shift work and therefore it was important for her to have access to hot water at nighttime. The customer made a complaint to their retailer and was advised that it would cost $200 to have their electricity meter checked. She considered they did not have any issues in the past and the retailer should fix the problem without charging a fee.

EWON checked the national metering database and advised the customer that their hot water appeared to be connected to a controlled load circuit which was controlled by their network. EWON provided the customer with information on the operation of the network's controlled load service. EWON also contacted the retailer to obtain information about the billing of the controlled load account.

The retailer advised EWON that it had taken over the customer's hot water controlled load service through its VPP after the smart meter was installed. Through the VPP the retailer controlled the times that the hot water system could heat up. Initially the retailer advised that the controlled load appeared to be heating at random times that were outside the network's defined hours for controlled load. Later the retailer advised by email that the VPP was programmed to emulate the network's timing until they had a profile of the customer's hot water usage. The retailer made adjustments to the VPP program to boost the customer's hot water usage to ensure she would have hot water at the time she needed it. The retailer offered to apply a customer service credit of $200 for the inconvenience.

White-label retailers and "distributed responsibility" for EDR.

Recent case studies show how white-label retailers operating Virtual Power Plants utilising the licence of a licenced energy retailer, can create further complexity for consumers in both accessing external dispute resolution as well as understanding billing or other problems arising with their white label VPP provider.

Licenced retailers are responsible for energy sold through their licence by a white-label retailer. This can create a kind of "distributed responsibility" where a consumer seeks to resolve a problem through external dispute resolution. If a licenced retailer does not hold key data or evidence about the issue and needs to seek this from a white-label retailer, including on request of an ombudsman investigating a complaint, complexity in resolving the complaint occurs.

This particularly occurs where behind-the-meter assets impact a consumer's bill, either as a result of charging, discharging, or load shifting, as there is a potential for further complexity in billing, with consequences for broader consumer protections.

In the short term, non-licenced businesses may be incentivised to leverage these arrangements (rather than to meet licencing requirements) at a secondary settlement point, particularly where they seek to participate in, and respond to, incentives in the wholesale market or Frequency Control Ancillary Services market.

Case study 3: Customer has difficulty accessing external dispute resolution and resolving billing complexities arising from white-label VPP provider*.

A consumer called EWOV dissatisfied with a licenced "retailer A" regarding a billing error. The consumer is part of a VPP run by unlicenced "retailer B"– which operates as a while-label retailer, via the licence of retailer A. The consumer receives bills that outline energy plans with retailer A's branding, but also includes retailer B's logo on the bill. On first contact with EWOV to make a complaint about retailer A, the consumer clarified they had contacted retailer B more than five times to try to resolve his complaint without success. He had not been referred to retailer A by retailer B.

EWOV escalated the case to investigation when retailer A did not respond to either the consumer's complaint or EWOV's subsequent attempt to refer this complaint back to the business. The consumer complained that:

- his battery was charged and discharged at strange intervals - for example overnight
- his property was drawing power from the grid during peak periods (at peak rates) when his battery was full, rather drawing from his battery
- he was being charged the incorrect rate off peak periods (27cent p/kwh rather than 8c), which he suggested could be causing the VPP's software to perform incorrectly.

Through its investigation, EWOV determined the consumer was on a Time-of-Use tariff, charged the correct rate and billed correctly based on interval data. However, EWOV was unable to determine whether the consumer's battery was recharged during a peak period at peak rates without battery data. This battery data has not been provided by retailer A.

**Note – this investigation is still underway.*