



By email: energycouncil@industry.gov.au

4 October 2016

COAG Energy Council Secretariat
GPO Box 9839
Canberra ACT 2601

Dear Sir/Madam

Stand-alone energy systems in the Electricity Market

Consumer Action Law Centre (Consumer Action) and Consumer Utilities Advocacy Centre (CUAC) welcome the opportunity to respond to the Council of Australian Governments' Energy Council (Energy Council) consultation on stand-alone energy systems in the electricity market.

We support the Energy Council's focus on assessing the appropriateness of the existing energy regulatory framework for stand-alone energy systems. As a general principle, we consider that consumer protections available to grid connected customers under the current frameworks should, to the extent possible, be available to customers in stand-alone systems.

For new energy selling models to be successful, it is paramount that consumers can participate with confidence, knowledge and trust. This is particularly important for stand-alone systems that represent a major departure from traditional energy supply arrangements and come with greater financial and supply risks. If consumers are not front and centre in the market, there is significant risk that new products and services will not deliver the market efficiencies and consumer outcomes that policy makers are seeking from a reformed energy market. Our recent *Power Transformed: Unlocking effective competition and trust in the transforming energy market* report provides a framework for considering the implications for consumers of energy policy and regulation responses to the transforming energy market.¹

Many of the issues raised by stand-alone systems are already experienced by customers of embedded networks. The existing national approach to embedded networks by the Australian

¹ Consumer Action Law Centre, *Power transformed: Unlocking effective competition and trust in the transforming energy market*, July 2016, available online at: <http://consumeraction.org.au/power-transformed/>.

Energy Regulator (AER) and the ongoing review of Victorian arrangements by the Department of Environment, Land, Water and Planning therefore provide a good base for an assessment of the appropriate regulatory arrangements for stand-alone systems. Our submissions to these processes set out what we consider to be the key protections required by customers in these supply arrangements.²

About our organisations

Consumer Action is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

CUAC is a specialist consumer organisation established in 2002 to represent Victorian energy and water consumers in policy and regulatory processes. As Australia's only consumer organisation focused specifically on the energy and water sectors, CUAC has developed an in-depth knowledge of the interests, experiences and needs of energy and water consumers, in particular those from low income, disadvantaged and rural communities. CUAC's policy positions are informed by evidence based research.

General principles

To achieve outcomes that are in the long-term interests of consumers, Consumer Action and CUAC consider the following principles should underpin the regulatory framework for stand-alone systems:

- Consumer protections should be comparable to those for grid customers, including access to free external dispute resolution services.
- Access to retail competition should be retained where possible, and pricing controls should be in place where competition cannot reasonably occur.
- Effective information provision and explicit informed consent are fundamental requirements for any alternative supply arrangements that lock in customers long-term via the physical setup of the system or contractual terms.
- Competition in the provision of stand-alone system services should be encouraged where possible.

² See: Consumer Action Law Centre, *Submission to the draft AER (Retail) Exempt Selling Guidelines*, November 2015, available online at: <http://consumeraction.org.au/wp-content/uploads/2015/11/AER-Retail-Exempt-Selling-Guideline-November-2015.pdf>; Alternative Technology Association and Consumer Utilities Advocacy Centre, *Draft AER (Retail) Exempt Selling Guideline*, November 2015, available online at: <http://www.cuac.org.au/advocacy/submissions/424-retail-exempt-selling-guideline/file>; Consumer Utilities Advocacy Centre and Consumer Action Law Centre, *Submission on the General Exemption Order Review - Draft Position Paper*, August 2016, available online at: <http://www.cuac.org.au/advocacy/submissions/449-submission-on-the-general-exemption-order-review-draft-position-paper/file>

Consumer protections

Consumer protections available to grid connected customers that should extend to customers of stand-alone systems include, but are not limited to:

- an obligation on the system operator to supply all customers within the system
- billing and payment requirements, including flexible payment arrangements for customers in financial hardship and access to concessions
- requirements around disconnection and reconnection of supply
- access to free external dispute resolution
- specific obligations in respect of customers requiring life-support equipment
- arrangements for consumers to continue to receive supply in the event of the system operator failing.

Most of these protections are already available to customers in embedded networks under the national framework and should extend readily to stand-alone systems.

Dispute resolution

Access to free external dispute resolution through energy ombudsman schemes is not currently available to embedded network customers, although extending the schemes to these customers is largely supported as a matter of principle. Support for the extension of ombudsman scheme jurisdiction was expressed in recent reviews by the AER and the ombudsman schemes themselves.³

We consider access to these schemes will be equally essential for customers in stand-alone energy systems. The nature of the supply arrangement for these customers creates the potential for significant consumer detriment, and the customers have little bargaining power or choice to move away from their current supplier if issues arise. The Productivity Commission found both a consensus among general stakeholders and quantitative data to support the assertion that ombudsmen provide an effective, timely service with good outcomes for consumers.⁴ The ombudsman concept has also received praise internationally and ‘significant agreement amongst observers that this development has been a broad success, improving access to justice and providing redress for consumers that would not otherwise have been available.’⁵ Resolving energy disputes through ombudsman schemes provides the additional benefit of the schemes being able to provide effective insight into emerging and systemic issues in the sector.

With respect to essential services, effective consumer protections cannot be ensured where consumers are required to resolve disputes through consumer affairs departments or small claims tribunals. There are significant barriers for energy consumers seeking outcomes through these channels. Consumer Affairs Victoria, for example, has no binding powers, meaning traders can choose not to participate. Likewise, the Victorian Civil and Administrative Tribunal in our experience can be very lengthy, time and cost intensive and fail to produce fair outcomes.

³ See: AER, March 2016, *Notice of Final Instrument – Retail Exempt Selling Guideline Version 4.0*, p. 32; Jo Benvenuti and Caitlin Whiteman, *Consumer access to external dispute resolution in a changing energy market*, (Energy and Water Ombudsman (Victoria), Energy & Water Ombudsman NSW, Energy and Water Ombudsman (SA), p. 56.

⁴ Productivity Commission, *Access to Justice Arrangements Inquiry Report*, Vol. 1, (5 September 2014), 345.

⁵ Chris Gill *et al*, 15 July 2013, *The future of ombudsman schemes: drivers for change and strategic responses*, Queen Margaret University, Edinburgh, p. 9.

Consumer Action's July 2016 report, *Review of Tenants' and Consumers' Experience of Victorian Civil and Administrative Tribunal*,⁶ provides information about consumers' recent experience of the tribunal and highlights some key issues identified with the tribunal process. The Productivity Commission presented similar findings in its 2014 *Access to Justice Inquiry*. The Commission found that tribunals did not always meet expectations in delivering an informal, timely and low-cost dispute resolution process and provided recommendations to address the 'creeping legalism' in some tribunals.⁷

Information requirements

A further essential layer of consumer protection is an enhanced requirement on exempt sellers to obtain the explicit informed consent of consumers before they enter into an arrangement for supply through a stand-alone system. These supply arrangements fundamentally alter the nature of the customers' energy supply and provide little scope for customers to revert to receiving grid supply. Effective information requirements must therefore form the first line of consumer protection and assist in reducing the extent of any later consumer detriment.

It is well established that 'human decision-making markedly deteriorates as the amount or complexity of information increases'.⁸ It is therefore critical that all information provided to customers is easy to understand and targets the key features of the supply arrangement that are likely to matter to customers. This includes how the supply arrangement differs from a standard grid-connected arrangement, the anticipated costs, risks and benefits, and protections or dispute resolution options that are available. We recommend that any information measures be tested for effectiveness before they are introduced, and be subject to ongoing monitoring.

The Energy Council could explore the possibility of the development of an Australian Standard 'reliability rating' for supply arrangements other than through the interconnected grid, to allow consumers to make a meaningful comparison between supply models. Proposed supply models could be rated on a ten-star basis or include an estimate of expected performance. This could include such functions as the number of hours/days that a consumer might expect power outages or reduced supply. This could be compared with the same metrics for interconnected grid reliability for the customer's supply area. This information, presented simply, could help consumers consider the value proposition of a proposed supply arrangement to determine whether it meets their supply needs.

Energy supply arrangements in most cases are not given much thought by consumers in making decisions to purchase or rent. Consideration should be given to how this information can be effectively presented to consumers before they sign a sale or lease agreement (for example, as a required property characteristic when describing a property for rent or sale in marketing material). Further, contract length and break fees should be restricted to what is reasonably necessary for the commercial viability of the arrangement, to provide customers with as much ongoing flexibility as possible in respect of their energy supply.

Stand-alone energy arrangements represent a fundamental shift in the nature of energy supply. To raise awareness of this development and what it means for consumers, the Energy Council

⁶ Cameron Ralph Navigator, *Review of Tenants' and Consumers' Experience of Victorian Civil and Administrative Tribunal*, (Consumer Action Law Centre, Tenants Union of Victoria and WEstjustice Western Community Legal Centre, July 2016), available online at: <http://consumeraction.org.au/review-tenants-consumers-experience-victorian-civil-administrative-tribunal/>

⁷ Productivity Commission, *Access to Justice Arrangements Inquiry Report*, Vol. 1, (5 September 2014), 345.

⁸ Power transformed p.5; B. Schwartz, *The Paradox of Choice – why More is Less*, 2004.

should assign the AER responsibility for consulting with stakeholders regarding an appropriate consumer education and information model for the energy sector. The AER should also work with the Victorian Government and Essential Services Commission (ESC) to develop a similar model for Victoria. Further consideration should be given to the role of the AER, Australian Competition and Consumer Commission and jurisdictional fair trading offices in providing information that assists consumers to identify key matters to consider when making decisions regarding their energy supply. In particular, the AER's consultation should include the potential role of bodies such as Energy Consumers Australia (ECA).

The model should also include a targeted advice line for vulnerable consumers to aid informed energy choices, similar to the Commonwealth Government's previous Home Energy Saver Scheme, or the existing MoneySmart program run by the Australian Securities and Investments Commission or MoneyHelp program in Victoria.⁹

Supply risk

Disconnection protections should be similar to those for grid-connected customers, including the requirement to offer flexible payment arrangements before disconnection and restrictions on disconnecting while there is an ongoing dispute.

In a recent report prepared for energy and water ombudsman schemes, *Consumer access to external dispute resolution in a changing energy market*, it was highlighted that there had been reported incidents where Aboriginal consumers in remote areas had been disconnected from stand-alone alternative supply for up to five days at a time.¹⁰ We recommend that the Energy Council examine this issue and address the need for consumer protections to prevent this.

Arrangements for continued energy supply in the event of supplier failure could be managed through contractual requirements to appoint a back-up provider for the system, or through a last resort supply safety net or consumer compensation fund such as apply in other high risk consumer transactions such as building, or rental housing bonds.

Retailer of choice

Retailer of choice should be provided in all systems where this is feasible. In systems where offering retailer choice is not ultimately practical, regulatory pricing controls should apply. The potential variety of products and services offered through stand-alone systems mean that this area is not well suited to formal price controls. Rather, providers could be required to clearly communicate how price variations will apply over the life of the supply arrangement, including triggers for price reviews. Price variation disputes should be heard by the energy ombudsman.

Where choice of retailer is not available, this should be included in the information provided upfront to potential customers. While the form of this information should be consumer-tested for effectiveness of the messaging, it may be best expressed as a warning to enable consumers understand the significance of the decision. Additionally, information should be provided on how the proposed rates compare to those for equivalent grid-connected customers.

For network-led transitions from the interconnected network, affected customers should not be disadvantaged in the pursuit of overall network efficiency. Price controls should ensure prices

⁹ See <https://www.moneysmart.gov.au/> and <http://www.moneyhelp.org.au/>

¹⁰ Jo Benvenuti and Caitlin Whiteman, *Consumer access to external dispute resolution in a changing energy market*, (Energy and Water Ombudsman (Victoria), Energy & Water Ombudsman NSW, Energy and Water Ombudsman (SA), p. 67.

for these customers are based on the network charges they would otherwise be liable for if they remained connected to the network.

Greenfield or customer-led developments versus network-led transitions from the interconnected network

We consider that the protections outlined above should be available to all customers of stand-alone systems regardless of the basis on which the system was developed. There is, however, scope for variation in requirements around reliability and service standards across these systems.

For *greenfield or other customer-led developments*, there is merit in providing customers with the ability to determine the appropriate trade-off between these factors and the cost of the system. Flexibility in this area, subject to a set of minimum standards, would allow for greater innovation and customer choice in how energy is supplied.

The high cost and long-term nature of these arrangements presents significant risk of consumer detriment. Effective customer choice in these circumstances will therefore require a strong framework covering information provision, explicit informed consent and contractual requirements.

Concepts of reliability and security of supply are unlikely to mean much to most consumers that have received energy through the interconnected grid. Information requirements in this area must therefore present customers with clear 'real-world' examples of what their choices will mean for their energy supply. For example, information could be provided on how many minutes of outages are expected per year and target response times for outages.

Requirements should also specify how agreed service levels are set out in customer agreements, and provide for performance to be tracked and reported on. Transparency in this area is essential to empower customers to enforce their rights.

For *network-led transitions of customers from the interconnected network*, the lack of consumer choice in these circumstances is a critical differentiating factor from other development models. Customers in these circumstances should not be placed in a worse position because of the network business's decision to remove them from the network. This applies to issues of reliability and security of supply, and cost of service.

Competition in the provision of stand-alone systems

The development and operation of stand-alone energy systems is a potentially competitive service. Therefore, we recommend that network businesses be excluded from participating in this area of the energy market. For network-led transitions to stand-alone energy systems, it is important that opportunities for these systems are communicated effectively to the market, and that network businesses be required to put out a competitive tender for the development and operation of the systems. Costs of acquiring the system services would then be treated as an operating expense for the purposes of network revenue determinations.

Please contact Gerard Brody at Consumer Action on 03 9670 5088 or at gerard@consumeraction.org.au, or Petrina Dorrington at CUAC on 03 96397600 or at petrina.dorrington@cuac.org.au if you have any questions about this submission.

Yours sincerely



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