

16 February 2015

Attention: Sarah Proudfoot
General Manager
Retail Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne 3001

By email: AERInquiry@aer.gov.au

Dear Ms Proudfoot

Regulating innovative energy selling business models under the National Energy Retail Law

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide input to the AER on the approach to regulating innovative energy selling business models.

Consumer Action is an independent, not-for-profit, consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for vulnerable and disadvantaged 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.

The issue of appropriate regulation of alternative energy selling business models is timely, given the transformation of the energy market currently underway. This will see a proliferation of more complex energy products and services offered to consumers, predominantly unlocked by smart metering. This includes competitive provision of smart metering itself, in addition to generation and storage products and packages, the advent of cost-reflective network pricing and the myriad add-on services which will be offered by third party providers. This rapid evolution of the demand-facing energy market will challenge the current consumer protection framework, as unforeseen business models enter the market. The regulation of innovative energy sellers must be considered in this broader context, including the importance of strong consumer engagement and trust in realising the benefits of the Power of Choice reforms.

In previous submissions to the AER on the exemptions framework, we have expressed concerns with the complexity that alternative energy sellers can introduce into the market. It is important to be clear that Consumer Action does not oppose innovation in products and services and increasing effective competition in the energy market—indeed, we see great potential for consumers to find products that better suit their needs and help them to reduce their energy costs.

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However, we continue to be concerned that innovation is supported by effective consumer protection and dispute resolution to ensure a transparent market that builds consumer engagement and trust.

Further comments on the specific issues raised in the discussion paper are outlined below.

New and emerging technologies

Innovation in the supply and management of energy has proceeded rapidly in the last decade, particularly with the rapid commercialisation of solar rooftop generation and the advent of smart metering. New energy generation and metering services has already unlocked greater consumer choice in products and services, however with greater penetration of smart meters, and the focus of the energy market on demand-side participation to increase the efficiency of network utilisation, consumers will soon have unprecedented choice.

Within this, battery storage has the potential to be a game changer. A recent report by Citigroup predicted that solar and battery systems could reach grid parity in Australia by 2030,¹ allowing many consumers to exit the existing energy market. Having all (or the majority) of energy supply coming from the customer side of the meter will create a major challenge for consumer protections more broadly, and the retailer authorisation/exemptions framework more specifically. Energy is still an essential service and will require legislated consumer protections, regardless of where the supply is generated.

An increasing number of supply options in a market in which there is already a proliferation of demand-side services underway, will also make the energy market much more complex for consumers to navigate. The potential for consumer detriment is high—it will be hard for consumers to find the right suite of products to suit their needs and have confidence that those choices remain right for them in a rapidly evolving market. For this reason, the AER must consider not just the question of authorisation and exemption in relation to SPPA plus batteries arrangements, but how the framework is equipped to deal with other emerging technologies and business models.

We note that the AER recognises that a 'key consideration [of the issues paper] is how the current framework can be applied to these new products and services', while also acknowledging that 'the Retail Law is not equipped to deal with many emerging energy retail models' and that 'it may be time to revisit the framework more generally'.² While we agree that a clear approach to authorisations and exemptions is required in the short-term, we support a fuller review of the robustness of consumer protections more broadly, including within the exemptions framework, in the face of unprecedented change in energy service business models in the coming years.

In light of the pace of change, we support the AER's prioritisation of a flexible approach to retailer authorisations and exemptions that includes triggers that allow for review of exemptions over time. We believe that Option 2 presented in the issues paper provides this flexibility, provided that exemptions are accompanied by stringent conditions that recognise the right of consumers to

¹ Citigroup (2014). *Energy Darwinism II - Energy storage: Game changer for utilities, tech and commodities*. Accessed at: <https://ir.citi.com/UAXL%2F1gNFctVBgY9Y%2BYI2AVo44t83FCcT4CS6TgoRho8dlIkmltZOw%3D%3D> 9 February 2015.

² AER (2014). *Issues paper: Regulating innovative energy selling business models under the National Energy Retail Law*. Pg 6.

adequate and consistent protections across the energy market. The AER's approach to exemptions to date has lacked sufficient conditions on exempted energy sellers—we believe that with the increasing complexity of energy selling arrangements, and the energy market more broadly, broader and more stringent conditions will now be necessary.

Conditions and consumer protections

The exemptions framework includes a policy principle that 'regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers'.³ A similar principle should apply to consumer protections, with protections not unnecessarily diverging for consumers getting their energy from authorised versus exempt sellers, from the grid or from on-site generation and storage.

With the current approach to exemptions for SPPA providers, this is not the case. Customers who get the bulk of the energy via solar leases and SPPAs currently receive protection from the Australian Consumer Law for the solar part of their supply arrangement from the Australian Consumer Law, while all other consumers in NECF states are protected by the National Energy Retail Law. As the proportion of consumers' supply from on-site generation and storage increases, a potential minefield of protections and avenues for recourse will open up if effort is not made to streamline protections for energy consumers in relation to their energy supply under a single instrument. This will lead to poor outcomes for consumers, as evidenced by the many consumers who found effective dispute resolution difficult in the early boom in solar products (see case studies from our earlier submission to the AER on alternative energy sellers, copied in Appendix A of this submission).

While it is not our intention to stifle innovation, and believe that it is inappropriate to require all alternative energy sellers to have full retailer authorisation, we do think that the minimum condition that must be applied to all exempt energy sellers is that they must be a member of an Ombudsman scheme, regardless of whether their business model includes a storage element. This would ensure that regardless of which legal framework consumer protections fall under, the consumer has a single and consistent point of contact for disputes regarding energy provision.

As the case studies in Appendix A demonstrate, where there are problems with new energy services, dispute resolution can be complex—not least because they involve multiple parties, some that are members of an Ombudsman scheme and some that are not. This can give rise to consumer fatigue in the face of resolving disputes, impinging upon access to justice. Effective access to justice is important not only for individuals, but the functioning of the consumer marketplace more generally. Effective redress processes have positive incentive effects, such as deterring 'bad' behaviour by business, as well as public disclosure of complaints, which helps regulators to identify rogue traders and systemic problems that might require legislative change. It also ensures that businesses that do comply with the law are not at a competitive disadvantage.

We are also supportive of all the conditions listed in Attachment A of the issues paper being applied where they are appropriate to the business model in question. Protections relating to information provision, billing and payment arrangements, pricing (including under- and overcharging) and concessions and rebates are as important for customers of innovative business

³ *National Energy Retail Law (South Australia) 2011*. Section 114.

models as they are for traditional retailers. Protections relating to hardship and disconnection become increasingly important for innovative business models where storage is involved, given the majority of electricity supply may be from this business model rather than a traditional retailer.

In addition, where SPPA (or battery 'leasing' models) are exempted, a condition should be applied which requires the exempted seller to disclose the cost of credit of the payment arrangement. These products are highly complex and currently do not make it clear to the consumer what the real price of the system may be over the payment period. This does not foster a transparent market where consumer trust and engagement is prioritised, and introduces high potential for consumer financial detriment.

Finally, we support the use of triggers for a review of all exemptions granted to energy sellers, or imposing a time limit on exemptions so that they must be re-applied for after a set period of time. Reviewing all exemptions after 2 years to ensure that exemption is still the most appropriate approach to specific business or business models would give the AER the flexibility to change their approach in a transparent and predictable manner. This would also ensure that consumers remain adequately protected regardless of their energy supply choices.

Summary of Recommendations

1. Apply Option 2 outlined in the issues paper.
2. Require all exempted energy sellers to be members of an Ombudsman scheme as a matter of course.
3. Impose relevant stringent conditions on all exempted energy sellers from the list provided in the issues paper.
4. Impose a time limit of 2 years on all exemptions to ensure flexibility and transparency.
5. Work with the AEMC and consumer groups to undertake a review of the robustness of consumer protections in the NECF, and the exemptions framework, in the face of increasing complexity and unprecedented change in the supply of energy.

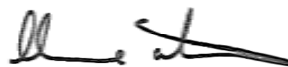
If you have any further enquiries in relation to this submission, please do not hesitate to contact Claire Maries, Senior Energy Policy Officer, directly at claire@consumeraction.org.au or on 8554 6907.

Yours sincerely,

CONSUMER ACTION LAW CENTRE



Gerard Brody
Chief Executive Officer



Claire Maries
Senior Energy Policy Officer

Appendix A: Dispute resolution and solar products - Case Studies

Case study 1 (151545)

Client X had solar panels and an inverter installed in May 2012 by company Solar Mega Mart (SMM), for the cost of approximately \$8,000. The company the solar panels were purchased from subsequently underwent an ownership change (Illuminate Pty Ltd) followed by liquidation (Tech Energy). In November 2012 Client X's inverter was not working, and they tried to get them repaired. The Client replaced the inverter however the Client was then told by Tech Energy that it too was unsafe and was switched off.

Working with the client, Consumer Action advised about a potential claim for damages under the Australian Consumer Law against the seller, but as they were under external administration this could be problematic.

Further advice was that the client approach the manufacturer with one last opportunity to replace with a functioning inverter, but that if the problem still persisted that the client would reclaim purchase price and or damages suffered with advice to go to VCAT if they refuse to pay.

Case study 2 (151329)

Client Y entered into an agreement to acquire solar panels with company Unleash Solar. They subsequently closed down/went into insolvency.

Our client found that the way that the solar system was installed was problematic; the feed in tariff allocated was not correct, the watts in the system were higher than that required, and that the installation was not approved.

Further, our client had issues with a meter installed by SP Ausnet but which the solar system was not connected to.

Our client continued to pay for the solar system via the finance company, but is concerned that they are doing so without alterations or certifications for approval.

Case study 3 (162593)

Client Z entered into an agreement to acquire solar panels with company Unleash in September 2012. They subsequently closed down/went into insolvency.

The inverters however were not working, ie producing enough solar power. In June/July 2013 our client had an independent meter installed (\$400 brand new from wholesaler) to check whether the smart meter was correct or the inverter. The independent meter agreed with the smart meter which further demonstrated the inverter was not working (it stated it would produce 50kw a day, however it produced 25kw a day).

Our client had paid for a 10 year warranty on the inverter, however Unleash Solar did not forward this to the manufacturer (JFY Son Twins) in China. The manufacturer has a five year guarantee.

The client had the inverter upgraded, so now all devices align and confirm 50kw produced per

day. However over that time, with the inverter stating it produced 8000kw, and the smart meter recording 4000kw, our client was out of pocket for \$1000 of the shortfall in energy produced.

Seeking refund for the consequential loss of acquiring the independent meter, a refund for the electricity rebate lost, we discussed whether the ACL would apply, re section 55 in relation to 'fitness for purpose', but the issue was whether there was anyone in Australia who was solvent to pursue for the loss. There was found to be no company to take action against.

Case study 4 (146211)

Client W entered into an agreement with company Sunburst Solar in 2011, however while their retailer was Simply Energy, our client was not getting the offset they thought they would get due to failed application to apply the correct feed in tariff, combined with a faulty inverter which was not feeding energy into the grid.

The client tried to resolve the dispute with Simply Energy, who claimed they didn't know any thing about it. The client then got their own electrician to look at the inverter who confirmed it wasn't working.

The Client raised the dispute with Sunburst Solar who claimed the issue was the fault of the manufacturer.

At time of contract the lock in the rate was 60ckw feed in tariff which the client was eligible for. That opportunity passed, and the feed in tariff is much lower at 21.3ckw. However as the inverter was not working, it was difficult to claim initial rate as no energy was being fed into grid at this point.

The client suggested to Sunburst that if they fixed the inverter by a certain date they would forego the loss suffered. They have done this, but then the client received a demand for \$900 for payment of travel costs associated with fixing the inverter, who later filed against the client in VCAT for these costs.

Consumer Action provided extended advice to Loddon Campaspe Community Legal Centre throughout this process.

Outcome, settled with Sunburst Solar, Simply Energy continued to be unresolved.