

16 February 2023

Submission - Consultation paper Unlocking CER benefits

The current consumer protection framework is not fit for purpose to support consumers with Customer or Distributed Energy Resources (CER/DER). The regulatory framework should centre consumer outcomes to ensure that consumers have strong protections in place as novel products and services are introduced. This is particularly important where consumers may be supplied energy by multiple retailers or Financially Responsible Market Participants (FRMP).¹

CPRC has conducted research across energy, sustainable consumption, and the digital economy which is relevant to the issues canvassed in the consultation paper.

We recommend that:

1. The AEMC develop rules that outline key requirements for information and disclosure and service quality standards for FRMPs.
2. The AEMC require the collection and publication of data about CER/DER provider service quality and complaints handling practices. This data should be regularly released by the AER and provided by retailers to consumers at point of sale.
3. The AEMC should undertake a mapping exercise to identify gaps between regulations both in energy and overlapping industries such as finance and identify solutions.
4. The AEMC to work with State and Territory ministers responsible for consumer affairs to make it easier for consumers to use the consumer guarantees. This should include introducing penalties for non-compliance with this section of the Australian Consumer Law (ACL) and a specific requirement for software updates to be provided for a reasonable time for internet connected devices.
5. National Energy Customer Framework jurisdictions implement a ban on door-to-door sales for all providers of energy products and services.
6. The AEMC to consider how to bring retailers or Financially Responsible Market Participants into the state and territory ombudsman schemes.

CPRC is an independent, not-for-profit consumer research organisation. Our mission is to improve the lives and welfare of consumers by producing evidence-based research that drives policy and practice change.

CPRC would welcome the opportunity to work with the AEMC provide further insights from our consumer research as the strategy is finalised. If you have any queries about this submission or would like more information on our research, please contact Kristal Burry, Policy and Program Director at kristal.burry@cprc.org.au

Yours sincerely



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¹ AEMC, 2022, Consultation paper Unlocking CER benefits December 2022

Consumer protections in CER/DER

Consumer protections for the provision of distributed or consumer energy resources should be consistent with broader protections for energy consumers under the National Energy Consumer Framework (NECF). Consumer protections should be required regardless of what type of energy service is being provided. Energy supply is essential and anything that has the potential to interfere in or affect that supply of energy to a home needs to be regulated under the NECF. CPRC's submission focuses on issues related to consumer protections related to this issue as asked by the AEMC in Chapter 6 of the consultation paper.

The AEMC should focus on the outcomes of this rule change and other regulatory reforms. The AEMC should develop rules for secondary settlements that lead to positive outcomes for energy consumers. This would place the onus on businesses providing services through a secondary settlement to ensure they are providing services and products that have clear benefits for consumers, and consumer outcomes are prioritised.

Information and consent

Information disclosure alone is not sufficient to ensure good consumer decision making or ensure a well-functioning market. It is already challenging to provide consumers with information as part of the traditional energy system. CPRC has previously recommended the need for public facing measures of service quality in energy and complex markets.² In the financial services sector, legal protections now rarely use disclosure as a primary consumer protection given the complexity of providing information to consumers and the ineffectiveness of disclosure and warnings. The lessons ASIC has brought together about the limits of notification, consent, and disclosure may be informative as part of this rule change.³

Disclosure, notification, and consent are very poor tools to deal with business practices that are unfair, target vulnerable communities or cause harm. For disclosure to be effective it needs to be focused on the key information needed by a consumer and provided in a format that allows for clear comparisons.⁴ However even well designed disclosure cannot be the only protection available, it needs to be one of a range of tools used. Given the nature of CER/DER products and services, an ability to easily compare the costs and likely return on investment is essential. Consumers need tools to draw in different tariff and supply details to better understand the consequences of their purchases. CPRC's behavioural research has demonstrated that consumers respond to service quality measures when this information is made available.⁵

This is even more important in a rapidly evolving market to support consumers to compare across features of different plans, assets and services or different FRMPs. These measures need to be available at the point of purchase or decision point. Given the more complex consumer journey and the variety of touch points where a consumer will interact with a service or asset, service quality metrics and information³ will need to be updated with the best available data and information about the market. It is important that regulators and government departments are collecting performance data including consumer protection breaches and dispute resolution performance to capture emerging or systemic trends.

Recommendation 1

The AEMC should develop rules that outline key requirements for information and standard forms to support the consistent provision of information about service quality standards for FRMPs.

Recommendation 2

The AEMC require the collection and publication of data about CER/DER provider service quality and complaints handling practices. This data should be regularly released by the AER and provided by retailers to consumers at point of sale.

² Consumer Policy Research Centre, 2020, *Picking peaches Service Quality in the Victorian Energy Market a summary report*. August 2020

³ Australian Securities and Investments Commission (ASIC) and the Dutch Authority for Financial Markets (AFM), 2019, *Disclosure: Why it shouldn't be the default*

⁴ Consumer Policy Research Centre, 2018, *Five Preconditions of Effective Consumer Engagement*, April 2018

⁵ Consumer Policy Research Centre, 2020, *The experiences of older consumers: towards markets that work for people*, July 2020

Financing CER/DER products and services

There are gaps between existing legislative frameworks such as, the NECF the Australian Consumer Law (ACL), finance related legislation such as *National Consumer Credit Protection Act 2009* as well as the various industry voluntary codes both within and external to energy (such as the Buy Now Pay Later (BNPL) industry code).

Financing new energy products is a key area where these gaps are likely to result in consumer harms. BNPL products are not currently subject to the same regulatory oversight as traditional credit models such as bank loans or credit cards.⁶

The other risk consumers face is unfair contract terms or unfair business practices from CER/DER providers. Contracts between consumers for market services, such as demand response or VPP, are likely to be complex and unfair contract terms and unfair practices need to be prevented. While unfair contract terms reforms have strengthened consumer protections, these new protections need to be the focus of enforcement action consumer affairs regulators and the AEMC should consider how to identify misconduct and coordinate with consumer affairs regulators.⁷

The AEMC should undertake a mapping exercise to clearly articulate and identify gaps between regulations both in energy and overlapping industries such as finance and identify solutions. Greater collaboration between regulators across energy, finance and fair trading is necessary to ensure these different regulatory frameworks create a sufficient set of consumer protections.

Recommendation 3

The AEMC should undertake a mapping exercise to clearly articulate and identify gaps between regulations both in energy and overlapping industries such as finance and identify solutions.

Key risks for households and businesses when installing and connecting CER/DER products and services

Consumer protections have not adequately kept pace with the rapid expansion of digital products and services. Many existing consumer issues - information asymmetries, lack of accessible remedies and redress and inadequate consumer protections - are heightened in these emerging sectors that do not neatly fit within existing frameworks. Further to this, digital products have the potential to cause both physical or digital harms and CER/DER products such as smart home energy devices or smart invertors, could fall into this category.⁸

As the Productivity Commission identified in its Right to Repair inquiry, consumer protections need updating.⁹ They recommended changes to the Australian Consumer Law (ACL) to ensure that consumer guarantees require software updates for a reasonable period. This is an important measure to enhance consumer protections more broadly, and to ensure that internet connected devices have critical software updates that ensure they remain secure and reduce the potential for consumer harm. This recommendation is particularly relevant to the CER/DER market, where consumers may rely on software updates for security and to continue to access services.

Another key risk is the safety of these products, Australia does not have a general safety provision which means that when products are found to be unsafe, we are reliant on a recall process that alerts consumers to take action if they have a product that has been found to be unsafe. The ACCC has indicated it will be communicating directly with consumers who have an LG solar battery which has recently been recalled to ensure they have the battery replaced.¹⁰ Consumer protections for CER/DER products must ensure that consumers are given timely information and support to act when there is a safety issue.

⁶ On 21 November 2022 the Federal Government released a consultation paper with options to regulate BNPL.

⁷ Consumer Policy Research Centre, 2021, *Submission to The Treasury – Strengthening protections against unfair contract terms*

⁸ Consumer Policy Research Centre, 2021, *Submission to the Department Home Affairs – Strengthening Australia’s cyber security regulations and incentives*

⁹ Productivity Commission 2021, *Right to Repair*, Inquiry Report no. 97, Canberra

¹⁰ ACCC, 2022, *ACCC warns consumers about potentially deadly solar batteries*. 21 November 2022

Recommendation 4

The AEMC to work with State and Territory ministers responsible for consumer affairs to strengthen consumer guarantees. This should include introducing penalties for non-compliance with this section of the ACL and a specific requirement for software updates to be provided for a reasonable time for internet connected devices.

Recommendation 5

National Energy Customer Framework jurisdictions implement a ban on door-to-door sales for all providers of energy products and services.

Contracts and dispute resolution for secondary settlement points.

Consumers are increasingly participating in multiple complex markets at once. CER/DER creates the potential for distributed responsibility for problems as well as the energy resources making it challenging for consumers to seek redress.

As CPRC has identified in its digital economy work program, the ACL takes a narrow view of the supply chain which can result in difficulties determining where an incident or issue has occurred and what party is responsible for fixing the problem. This is also likely to be the case with CER/DER where multiple parties may be providing services to a household through a single meter or where a home and a third party are both using energy generated from household solar and batteries at different times, that use might degrade to reduce the life span of the product, making it difficult for consumers to be able to either identify where the fault is or prove it wasn't their use of the product that caused the fault.¹¹

Consumers need a single point to contact where they need information or support to seek redress. Where an issue may fall outside of the energy and water ombudsman, they should work with other relevant ombudsman to refer and support consumers to access redress through other schemes.

Poor sales tactics

It is critical that we do not create a system where business adopt problematic marketing tactics, especially door-to-door sales of new energy technology or solutions. The issues of door-to-door sales is not new¹² and the Victorian Government has banned this practice for providers receiving funding from the Solar Homes program. However, we are concerned that the Victorian ban does not go far enough and there are no such comparable bans in other jurisdictions. There should be ban on door-to-door sales for any energy related products in NECF jurisdictions. This is particularly important as new models of providing demand response or virtual power plant (VPP) services are introduced these may also be marketed and sold via high pressure tactics and door-to-door sales.

Recommendation 6

The AEMC to consider how to bring retailers or Financially Responsible Market Participants into the state and territory ombudsman schemes.

¹¹ Consumer Policy Research Centre, 2021, *Submission to the Department Home Affairs – Strengthening Australia's cyber security regulations and incentives*

¹² CALC, 2022, *Submission Retailer authorisation and exemption review: Issues Paper*