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SUBMISSION TO THE AUSTRALIAN ENERGY MARKET COMMISSION

Consumer protections in an evolving market

New energy products and services – 2020 Retail Energy Competition Review

Submission to Issues Papers 1 and 2

February 2020

Thanks for the opportunity to lodge a submission to this review. This submission addresses both the issues papers – Issue Paper 1 on new energy products and services, and Issues Paper 2 on the traditional sale of energy.

This submission is brief and focuses only on our key concerns or issues. If you would like more detail on anything we have raised, or wish to solicit our view on other matters, please don't hesitate to contact the author, Dean Lombard, on (03) 9631 5418 or at dean@renew.org.au.

About Renew

Renew (formerly known as the Alternative Technology Association) is a prominent advocate for all Australian residential energy consumers. As a member of the National Energy Consumer Roundtable, Renew works closely with other consumer advocacy organisations, providing expertise and experience in energy policy and markets, and conducting independent research into sustainable technologies and practices. It has long supported strong consumer protections that continue to help safeguard important consumer outcomes through evolutionary and revolutionary changes in technology, the energy market, and society.

Renew is also the direct representative of its 12,000 members – mostly residential energy consumers with an interest in sustainable energy and resource use – who, like many Australians, have entered or are preparing to enter the world of new energy products and services without fully realising that the energy-specific consumer protections they have taken for granted do not necessarily apply consistently to them once their energy usage draws from a combination of traditional energy supply and new energy products and services.

This submission was written as part of a project funded by Energy Consumers Australia (energyconsumersaustralia.com.au) as part of its grants process for consumer advocacy projects and research projects for the benefit of consumers of electricity and natural gas. The views expressed in this document do not necessarily reflect the views of Energy Consumers Australia.

ISSUES PAPER 1: New energy products and services

Renew has a long history of engagement with policy and regulatory processes that are concerned with consumer protections in emerging markets. It was through this work that Renew developed the underlying principle that *appropriate energy specific consumer protections should not be limited to situations where volumes of energy are purchased and delivered through the conventional grid. Rather they should be applied based on:*

- *the extent to which the service or product in question is being relied on by the consumer to deliver the essential service of a continuous supply of electricity; and*
- *the impact on the consumer of experiencing payment difficulties and hardship.*

By extending appropriate regulation to all energy products and services, the evolving energy market will better embrace the growing diversity and pace of innovation, while promoting:

- horizontal equity with regard to consumer access to a sufficient supply of energy;
- innovation and competition in provision of energy services; and
- consumer confidence in the energy market.

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Renew's primary work on this issues was the report *Empowering the future: Appropriate regulation and consumer protections in emerging energy markets*[1] from 2016. This submission draws partly from that work, and partly from Renew's more recent work with Energy Consumers Australia, the Consumer Action Law Centre, the Public Interest Advocacy Centre, the Australian Energy Council, Energy Networks Australia, the Smart Energy Council, and others in developing the New Energy Tech Consumer Code (NETCC), a voluntary industry code that seeks to establish a baseline for consumer protection for consumers of new energy products and services.

1. ***Market developments and consumer protections:*** *Are there any other market developments the Commission should consider when assessing consumer protections for new energy products and services?*

Smart appliances and orchestration

The issues paper canvasses a range of changes but focuses largely on behind-the-meter solar PV and batteries. Renew's previous work has certainly shown that there are consumer protection issues with solar and batteries that need to be addressed. However, in Renew's view an even bigger change is coming with the rise of smart appliances (including smart inverters) and orchestration – especially orchestration by third parties. When third parties are remotely operating customers' energy appliances, the scope for poor or harmful outcomes is considerable. And our engagement so far with Virtual Power plant (VPP) trials has suggested that many operators are largely ignorant of consumer protection issues and the risk of consumer harm.

The uninformed prosumer

Another thing to consider is that the days of new energy technologies being the province of highly engaged, well informed, technically savvy and financially comfortable consumers are over. The plummeting cost and widespread adoption of solar PV in particular has meant that uninformed and vulnerable consumers are increasingly in the market. In Renew's advice service and in the local government-run solar bulk-buy schemes that Renew frequently assists with, age pensioners in particular are well represented. State government solar and battery rebate schemes open these technologies up to many low-income homeowners who previously couldn't afford it. And in some places (such as South Australia and Victoria) solar and solar+battery schemes are specifically targeted at or being rolled out in public and community housing. VPPs are also being rolled out targeting public and community housing, and low-income renters. This trend will only continue. Many of these consumers are not well-informed, not tech savvy, and not financially secure; and their motivation for participating in this market is not to be on the cutting edge or to help the environment, but simply to save money on their energy bills. It's time to let go of the idea that we don't have to worry too much about consumers of new energy technologies because they can look after themselves. It's no longer true.

2. ***New business models and innovation in the market:*** *Are there other business models the Commission should consider in its analysis of new energy products and services?*

Although the Wholesale Demand Response rule change does not yet encompass residential consumers, there is an expectation that in time it will. This could be in the next few years, and will open up new business models involving aggregation of small customer loads to participate in demand response bids as well as other emerging markets such as ancillary services and network services. This may displace some or all of the 'white label retailer' model, especially if combined with a future rules change allowing multiple trading relationships.

Renew also expects the growth of some business models based on opportunities enabled by opening up various aspects of the energy system, metering, and so on; including business models based on:

- energy data and monitoring – perhaps combined with smart control of appliances – connected with the unfolding of the consumer data right, power of choice metering reforms, and as a value-add to solar PV and battery installations
- peer-to-peer trading of electricity, enabled by smart meter data services, a rule change allowing multiple trading relationships, and/or agreements with retailers

[1] https://energyconsumersaustralia.worldsecuresystems.com/grants/729/ap729-empowering-the-future-appropriate-regulation-and-consumer-protections-in-emerging-energy-markets_ATA.pdf

- selling electricity as something else – such as selling kilometres of range for electric vehicles or home temperature management services – enabled by smart meter data services, a rule change allowing multiple trading relationships, and/or agreements with retailers
- repairs, maintenance, 'optimisation', or removal of DER equipment.

With regard to the SPPA business model noted in the issues paper, the Commission should be aware that Renew and the Consumer Action Law Centre have encountered a number of cases where SPPA customers suffered considerable financial harm due to the interplay between oversized PV systems and the feed-in tariff policy of the SPPA provider. Many providers discount the PPA purchase price for energy that is generated but not consumed to the FiT rate, so consumers neither pay nor get paid for energy they don't use. But some do not: and in these cases, the customer ends up paying more for excess generation than they get back from the FiT. If the PV system is not well-matched to their consumption, they may export a considerable majority of total generation and end up paying much more than they would have if they had no SPPA at all and were simply paying typical prices for energy from a regular energy retailer. And this may be exacerbated by the increasing incidence of network curtailment of exports to manage voltage rise and other hosting capacity constraints – in these cases, customers may pay for energy generated that is neither consumed not exported. Since SPPA customers are most likely to be low-income and financially vulnerable (anyone who can afford to buy a system outright will be far better off doing so than going through an SPPA), this is a considerable consumer protection gap.

3. ***Other key services and products to consider:*** *Are there other energy products and services the Commission should consider in its analysis of the new energy products and services?*

The above section on new business models and innovation in the market also covers emergent services (some that may include products that enable them) by implication:

- demand response services
- home energy monitoring and management services
- peer-to-peer trading platforms, brokers, etc.
- lifestyle services such as selling kilometres for electric vehicles or internal temperature management for households
- maintenance, management, and removal of other energy products.

Perhaps more significantly, we envisage some growth in businesses that will offer broad, sometimes vague services to people ("we'll manage your entire energy use") while doing a whole lot of different things that the customers may sometimes have little or no idea about (wholesale market participation, arbitrage, network services, ancillary services, retail switching, and so on). A key aspect of these types of services – and a key issue for those of us concerned about energy consumer protections) will be the extent to which these businesses carry risk themselves, or pass risk on to the customer.

4. ***Efficiency of revenue streams:*** *Which regulatory provisions may be preventing value creation through the adoption of new technology?*

Renew agrees that the emerging 'white-label' retailer model is likely to become more common over time and raises some concerns for regulators and consumer advocates over the interaction with the consumer protection framework.

But to take a bigger picture view: the 'white-label' retailer model exists largely because only retailers can have a relationship through the meter with small customers. Third parties need these relationships with retailers in order to reach customers at all. This limits the opportunities for the sorts of services third parties are trying to offer to the market, because only some retailers choose to collaborate with third parties in this way and, presumably, only when it aligns with their interests (which, to be fair, may not only be direct financial interests, but also interests in trialing innovative products and services or promoting growth in renewable energy). The primacy of the retailer as the customer-face of the entire energy system is assumed throughout the regulatory framework, market rules, and so on, and is a huge obstacle to innovation. The multiple trading relationships rule change of 2016 did not proceed partly because consumer benefit was not established; but the growth of 'white-label' retailing and the evident consumer interest in innovative products and services suggests that there is more appetite than ever for a range of energy services outside of traditional retail. Breaking

the retailer monopoly on the customer relationship will unlock innovation and value for customers. And in this context, broadening the National Energy Consumer Framework beyond traditional retailers to a wider range of businesses that are delivering energy services to customers in an ongoing relationship will be essential.

5. ***The supply of energy is an essential service:*** *What are the elements that define the supply of energy as an essential service?*
6. ***Changes in the nature of energy service:*** *Has the essential nature of the sale of energy changed with the market's evolution?*
7. ***Regulatory implications:*** *If the answer to Question 6 is yes, what are the implications for the NECF as the energy specific consumer framework?*

The essential nature of energy is anchored in its inextricable connection with basic human needs:

- Health and hygiene (washing, cleaning, temperature moderation, medical equipment)
- Food and drink (refrigeration, preparation, cooking, water pumping)
- Basic comfort (temperature management, lighting)
- Communication and social engagement (phones, internet access, email, radio and TV)

Although at other times in history and in other communities and societies in the present people have lived without ongoing access to a continual supply of energy, mainstream Australian has reached a point where there is an expectation of such access to energy, and people without such access cannot fully participate in society.

Renew asks the Commission to consider that it is not the *supply* of energy that is essential *per se*, but **access** to energy. It is essential that households have a dependable and accessible energy source *irrespective of how it is supplied*.

For a (shrinking) majority of Australian households this is indeed electricity and gas supplied by a retailer via the interconnected energy grids. But for the growing number that have reduced their reliance on retailer-supplied energy by supplementing it with private energy resources they have invested in themselves, the energy that is self-supplied is no less essential than the energy they purchase. Clearly these households have a backup source (the grid if their own DER fails); but with the growth of DER among lower income groups (especially age pensioners) it must be recognised that DER investments are a strategy vulnerable households use to protect themselves from the financial imposts of the unpredictable energy market and are effectively an advance purchase of energy at a discount price to provision for future needs. A failure of DER for these households can have exactly the same effect – and carry a similar risk of disconnection or harmful underconsumption – as an unaffordable bill from a retailer.

Because the essential nature of energy has transcended the bounds of what is generally considered the 'sale' of energy to also encompass alternative ways of giving households access to energy, the NECF also needs to evolve in order to encompass the *provision* of energy, not just the sale. This is not only a response to the way the essential nature of energy has changed, but also to the changes to the way even the literal sale of energy is conducted, as discussed in the responses to Questions 2 and 3 above.

8. ***New energy products and services:*** *For the supply of new energy products and services, is there any risk of consumer detriment that needs to be considered to have additional consumer protections (industry-specific regulation) beyond the voluntary framework? Please explain.*

Renew has been (and continues to be) heavily involved in the development of the New Energy Tech Consumer Code (NETCC). This project arose from COAG Energy Council's 2016 inquiry into whether there was a need for energy-specific customer protections for behind-the-meter products and services. Renew's submission to this review[2] advocated strongly that the requirement for either retail authorisations or exemptions (with relevant conditions) from retail authorisations be based on whether there is a *provision of energy services*, rather than simply a sale of energy. This would in effect extend the exemptions framework to behind-the-meter products and services, and pave the way for a more flexible authorisations

[2] http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Alternative%20Technologies%20Association%20-%20Response%20to%20consultation%20on%20behind%20the%20meter%20consumer%20protections.pdf

framework to encompass different types of energy service provision, with appropriate levels of regulation in key areas. A similar position was advanced by a number of other consumer advocacy organisations.

COAG Energy Council ultimately decided that regulation was not required, but that a voluntary code would suffice. On this basis, they directly asked a number of industry bodies to develop such a code (limiting the 'voluntary' aspect of the code to its membership, not its existence in the first place). The new code would need to cover all sorts of new energy products and services, including solar PV (already covered by the Clean Energy Council's Approved Solar Retailer (ASR) scheme) and household scale batteries (at the time, about to be included in the ASR scheme). It also needed to be constructed in such a way as to enable it to cover products and services that were still in development or yet to emerge.

A key difference between the NETCC and the ASR scheme is that the ASR scheme was always intended to be a 'best practice' while the NETCC was envisaged as a'minimum standard' code. A key complication was that it seemed unlikely that the two codes could co-exist – raising the prospect of the NETCC ultimately replacing the ASR code, leaving the new energy sector without a best-practice code.

An additional complication is that with the growth of government-funded new energy tech schemes (such as solar PV and battery rebates) and the understandable desire of governments to minimise poor consumer outcomes from these schemes, it is likely that a voluntary code will become *de facto* regulation due to governments requiring businesses participating in rebate schemes to be signatories of relevant voluntary codes. This has been the case for the CEC's ASR code and is expected to occur with the NETCC once it has replaced the ASR code.

If a voluntary code was as effective as appropriate regulation to guide market conduct, this may be unimportant. But it's not, for a few important reasons including:

- Voluntary codes do not generally go through the level of scrutiny that regulatory changes do, and which should ensure that benefits outweigh costs and that interactions with other regulatory obligations are managed
- Voluntary codes do not generally have compliance and enforcement regimes as effective as regulatory systems – with regard to both protecting consumers, and ensuring fair and consistent outcomes for businesses

And importantly, voluntary codes may fail to protect the most vulnerable consumers because they are the most price sensitive and thus more likely to patronise lower cost, less reputable (and thus not members of voluntary codes) businesses out of necessity. This risk may be mitigated in part by the requirement of code membership for businesses working through government rebate schemes, but still exists especially in the emerging services market where price points are likely to be lower.

Because of these factors, Renew continues to hold the view that appropriate regulation to safeguard the important consumer outcomes of minimising the risks of both f*inancial hardship* and *losing access to energy* should be extended to the new energy products and services sector. This creates consistency for consumers with respect to access to energy regardless of how energy is sourced; and has the added advantage of creating space for a best-practice voluntary code to coexist with a minimum standard in order to help drive up standards in the industry.

Issues out of scope of voluntary codes

In addition to the above, the Commission should note the out-of-scope issues documented in Attachment C to the NETCC, *The New Energy Tech Consumer Code Journey*.[3] The working group that developed the code considered these issues to be areas that were outside control of a voluntary code and thus required other instruments to ensure the necessary consumer protections were able to be delivered, and include:

- Obligations on energy retailers and distributors pertaining to the connection of DER to the grid and registration for retail purposes
- Protections around use and privacy of energy data
- Protections for off-grid customers
- Regulation of residential power purchase agreements (to address issues discussed above)
- Safety of new energy products

[3] See Attachment D to the Code Journey document, available at https://www.accc.gov.au/system/files/public-registers/documents/AA1000439%20-%20New%20Energy%20Tech%20Consumer%20Code%20-%20Application%20Received%20-%2029.04.19%20-%20PR.pdf (page 73).

- Issues related to sale of new energy products or services to multiple consumers or community-based collectives, such as development of microgrids
- Access to dispute resolution
- Risks for customers with life support or medical cooling needs (these are addressed in the NETCC but the consequences of poor practices are too severe to be left with a voluntary code).

Unregulated credit

The NETCC working group attempted to address the well-documented[4] risks of poor financial outcomes due to new energy vendors using unlicensed credit providers or unregulated credit products by prohibiting code signatories from using these providers and products. However significant pushback from the unregulated credit industry first weakened these provisions, and subsequently delayed code implementation due to an appeal against the ACCC's approval of the code. At this time, there is still no certainty as to whether or not customers of NETCC signatories will be properly protected from the risks of unregulated credit – if the appeal is upheld in July 2020, this risk may remain for vulnerable consumers.

9. ***Application of energy consumer protections:*** *Which elements of the energy market are useful to define the scope of the energy specific consumer framework?*

This question should be considered with reference to:

- the principle, stated earlier, that consumer protections should be applied not according to the business model used but to the extent to which the service or product is relied on by the consumer to deliver the essential service of a continuous supply of electricity, and the impact on the consumer of experiencing payment difficulties and hardship.
- the understanding that the essentiality of energy is fundamentally a need for *access*, not a particular mode of supply
- the recognition that investment in DER is, for all practical purposes, an advance purchase of energy.

With all this in mind, it is clear that consumer protections are needed to help consumers avoid situations that limit their access to essential energy, and that can tip them into financial hardship. The extent of protection required depends on the extent to which a lack of protections would leave a customer vulnerable to those outcomes. Thus the most stringent consumer protections would apply where both loss of access and financial hardship are possible (such as traditional energy retail), but some are clearly still needed where access is only partly at risk but financial hardship still possible (such as a new energy product or service that involves an ongoing financial relationship between the customer and the provider that could result in debt) and perhaps still a base level of protections where financial losses are a risk even though there is no ongoing financial relationship (for example, some obligations on sellers of DER to give clear and evidence-based estimates of economic value).

One approach is to look at the different aspects of the traditional and emerging energy markets, and where they are similar and different, together with the different objectives of the various frameworks. For example, the traditional market comprises the direct sale of energy to customers, and the NECF has significant focus on energy-specific matters such as connections, outages, safety, obligations to supply, metering, and so on. But energy is also a financial product (as credit is a fundamental part of the retail model), so the NECF also covers matters of payment and hardship such as are also found in finance and credit-specific customer frameworks. And as energy retail is largely a sales activity, the NECF also has provisions around marketing, sales, and contracts – and many of these provisions are either additional to what is already in Australian Consumer Law on those matters, or serve to clarify the applicability of existing ACL provisions to this specific market.

In contrast, the new energy products and services market encompasses the indirect provision of energy (for example through the sale of energy generation and storage equipment, peer-to-peer trading services, and so on), services and products that are ancillary to those products and services (such as maintenance and monitoring), and other products and services that leverage off the direct and/or indirect provision of energy to add value (i.e. help consumers manage their energy costs). When the essential nature of energy is considered to be about *access* rather than supply, the applicability of aspects of the NECF to this sector is apparent. In particular, matters around connection, safety and performance, metering accuracy, notification of downtime (an issue highlighted in one of the VPP trials recently where an un-notified remote

[4] For example, in https://consumeraction.org.au/wp-content/uploads/2019/06/1904_Sunny-Side-Up-Report_FINAL_WEB_NEW-1.pdf

firmware upgrade shut down inverters for an extended period preventing use of generated and stored energy by both the households and the aggregator), and so on. Sales, marketing, and contracting are key activities, requiring appropriate protections just like the traditional retail market. And where an ongoing financial relationship is entered into as part of a new energy product or service (as finance for equipment or subscription to a service), appropriate protections around payments, contracting, and hardship are warranted. In this area, it must be recognised that while payment difficulties may not carry the same direct energy access risk as payment difficulties in the traditional market (i.e. disconnection), it may still carry this risk indirectly (e.g. with access cut off to a supplementary energy supply or value stream causing payment difficulties for the traditional energy supply to a household), and may well carry a similar financial hardship risk as traditional energy (the consequences of debt, diversion of non-discretionary expenditure to debt repayment, risk of bankruptcy).

Another matter that applies equally to both sectors is dispute resolution. The energy ombudsman schemes have been established to ensure that customers have simple access to dispute resolution and redress. Part of the rationale for this was access difficulties and the absence of consumer redress processes in state fair trading bodies, which are more focused on dealing with breaches of law than resolving disputes between individual consumers and businesses.

10. ***Objectives of an overarching consumer framework:*** *Do you agree with the objectives identified by the Productivity Commission? Are there other objectives the AEMC should consider?*

The objectives identified by the Productivity Commission are appropriate.

An additional objective that is particularly important with energy products and services is that *price and performance of the product or service are clear*. This was a key objective of both the ASR scheme and the NETCC. It is particularly important in the energy market because these two factors determine the effective energy cost for the energy provided through products and services, and cost is probably the primary factor in most investments in energy products and services where the underlying motivation is to secure an affordable supply of essential energy – as noted earlier, this is a major driver for an increasing number of consumers entering this market.

11. ***Integrating the energy consumer framework:*** *How can the three consumer frameworks be better integrated to make it easier for energy customers and businesses in terms of information requirements? Please give specific examples.*

Australian Consumer Law is the underlying consumer protection framework. Other regulation builds on it by accounting for specific needs and issues of the particular sector. For example, as noted above, the NECF adds provisions around financing, sales, hardship, and energy-specific matters that ACL, as a generalist framework, does not address. It also clarifies the application of ACL and other relevant legislation where necessary. For example, the Explicit Informed Consent provisions are really a way of ensuring that the legal provision that contracts must be entered into knowingly and deliberately applies in the energy sector, where the way contracts are entered into is different to the expectation in contract law.

The NETCC, in the absence of energy-specific regulation of the new energy sector, takes a similar approach. Broadly, it aims to do two things:

1. Clarify the application of ACL in specific circumstances
2. Provide additional energy-specific consumer protections over and above ACL where warranted

And example of the first point is the fit-for-purpose provisions. ACL requires that products be fit for purpose, and entitles consumers to refunds if products are not fit for purpose. But while it's simple to see if a toaster or television is fit for purpose (does it toast bread? does it display TV programs?), it's not so clear for a solar or battery system, since they must be tailored to the needs and expectations of the purchaser. This is especially pertinent when new energy products and services are often sold in terms of what they can deliver ("never pay an electricity bill again!"). The fit-for-purpose provisions in the NETCC require vendors to document the consumer's stated purpose for the product or service and state the extent to which the product or service can or cannot meet these expectations. This provides a basis for the ACL's fit-for-purpose provisions to be applied.

And example of the second point is the set of requirements around activation of DER. The need to connect equipment to distribution network infrastructure and with retail systems is not typical of most products and services, and thus not covered by ACL. The activation requirements of the NETCC are a recognition that this is unique to the sector and so fundamentally connected to consumer outcomes that it needs to be managed.

Integration

The case study in *BOX 2*[5] is a perfect example of why a multiple-consumer-framework approach is problematic. If an authorised retailer provides both retail electricity and demand response, it makes no sense to the consumer that an issue with the electricity supply can be referenced to specific energy regulation and dealt with through the energy ombudsman, while an issue with the demand response service provided by the same retailer cannot. What if the customer isn't even sure whether an anomaly on a bill is due to an energy retail or demand response issue? Similarly, if a third party is providing the demand response service in partnership with the retailer via the 'white-label' model, it is no less confusing for the customer that two different framework apply, one being easy to sort out and one not.

This shows the importance of dispute resolution working across the sectors. A single point of energy for a consumer with a problem mitigates the impact of a multi-framework approach. But simplifying the framework applicability seems like a more elegant solution from the consumer point of view.

A good outcome would be where:

1. the ACL is the underlying framework;
2. the NECF both delivers energy-specific additional protection as required (and in proportion to the seriousness of potential impacts, depending on the business models and nature of the customer–vendor relationship) and guides the application of ACL where required, across the traditional and new energy sectors; and
3. the NETCC embodies a best-practice standard that is over and above the minimum requirements of ACL and NECF.

An allegory to the way the NECF may apply to different extents in the traditional and new energy sectors may be in the food handling regulatory framework, where much more stringent regulations apply to food manufacturers, food transportation and restaurants, but there are still some regulatory requirements for small community organisations who put on a BBQ at an event. In the latter case, the regulatory burden is made as light as possible to account for the smaller size and financial resources of the entity, the fact that food service is not their main purpose, and in recognition of a lower level of overall risk. But there is still a level of obligation to address potential poor consumer outcomes.

12. ***Potential risks to consider:*** *Are there additional risks to consumers that should be considered and are not already addressed by the NECF, ACL and the voluntary codes?*

Unregulated credit products are a significant risk to consumers within the ACL and voluntary codes. Hardship policies and payment difficulties frameworks in the NECF and Victorian Retail Code mitigate this risk in the traditional energy market. Unregulated credit is a huge failing of ACL. This gap in consumer law has allowed the industry to proliferate and a flow-on effect of this is that the unregulated credit industry has been powerful enough to prevent voluntary codes from protecting consumers against these products.

Dispute resolution is another risk. The ACCC and state fair trading bodies are not equipped to provide the kind of easy access to dispute resolutions that energy ombudsmen can. The NETCC has attempted to address this by committing to develop its own dispute resolution framework. However resources to enable extension of energy ombudsmen's jurisdiction to the new energy tech sector (as well as the imminent consumer data industry that will emerge from the Consumer Data Right process) will be needed to properly address this issue.

13. ***Vulnerable consumer:*** *For new energy services and products, what characteristics of a vulnerable consumer should be considered under the energy-specific regulatory framework different to any other industry? Why?*
14. ***Consumer protections for vulnerable consumers:*** *For new energy services and products, are there additional risks to vulnerable consumers that should be considered and are not already addressed by the ACL and the voluntary codes?*

[5] Page 26 of *Issues Paper 1*

15. ***Policy risks:*** *What are the risks of extending the obligation of having policies that identify and protect consumers under vulnerable circumstances to new energy services and products suppliers?*

The NECF has specific protections for vulnerable consumers for three main reasons: to prevent loss of access to essential energy due to payment difficulties; to help prevent impacts of financial hardship and debt due to payment difficulties in other areas of vulnerable consumers' lives; and to protect consumers with health and well-being difficulties who are dependent on energy to manage their condition from the impacts of energy outages or the financial impact of unavoidable high energy consumption.

These concerns are still relevant for consumers of new energy products and services because where an ongoing financial relationship is entered into as part of a new energy product or service (as finance for equipment or subscription to a service) because while payment difficulties may not carry the same direct energy access risk as payment difficulties in the traditional market (i.e. disconnection), it may still carry this risk indirectly (e.g. with access cut off to a supplementary energy supply or value stream causing payment difficulties for the traditional energy supply to a household), and may well carry a similar financial hardship risk as traditional energy (the consequences of debt, diversion of non-discretionary expenditure to debt repayment, risk of bankruptcy).

The plummeting cost of solar PV and the emergence of numerous government-funded schemes that cut that low cost even further have meant that many vulnerable consumers are able to invest in it in order to lower their energy costs. This is a great outcome for vulnerable households, which have long been locked out of these opportunities; but equally, a strong rationale for ensuring that vulnerable customers are protected as necessary in this emerging market.

16. ***Other characteristics for consideration:*** *Do new energy products and services have specific characteristics that require additional protections to prevent unfair practices or conduct against good faith that should go beyond the ACL? Please explain.*

Because some new energy products effectively constitute an advance payment for future energy consumption (e.g. buying a solar or solar+battery system), there is also a need to ensure that consumers are able to make an informed decision about such investment. This is why the NETCC has obligations on signatories with respect to how they show a customer the expected performance of an energy system and translate that into dollars. It's impossible to predict with pinpoint accuracy, but they are required to base their estimates on reasonable assumptions in a transparent fashion. This aligns with the long-time concern in the traditional energy market about how consumers understand the actual price of different energy offers – a concern which has led to government-funded energy offer comparators and regulatory interventions like the DMO, VDO, and Best Offer Notification. It is also an example of an approach that seeks to give guidance to the application of the ACL provisions on advertising claims. "Have a zero $ electricity bill" is not really any different from "this vitamin cures <whatever>".

There are some specific characteristics of new energy products and services that require specific regulation (such as activation and financial hardship matters, as discussed above); but in many cases clarifying how the ACL applies or applying a higher level of protection for key issues is sufficient.

17. ***Additional redress mechanisms:*** *Does the nature of the market (new energy services and products) require an industry specific system/scheme to handle consumer complaints? Please explain.*

The ACCC and state fair trading bodies are generally designed to support compliance with relevant regulations, and are not focused on customer redress. Energy ombudsmen, on the other hand are well placed to do both. Handling complaints and providing redress are important needs in a complex industry like energy products and services. This warrants an ombudsman; and because the central issue is energy, consumers will assume that the energy ombudsman is the right forum. Energy ombudsmen already receive many complaints regarding new energy products and services, which are outside their jurisdiction. Thus expanding the remit of energy ombudsmen (along with the necessary resources to do so) is required.

18. ***Effects of different redress mechanisms:*** *What are the risks of having different redress mechanisms under different consumer frameworks? Please explain.*

Having different complaints mechanisms under different consumer frameworks risks **consumer confusion** and people **slipping through the gaps**. The example given in the case study in *BOX 2* illustrates the nonsensical (from a consumer perspective) situation that can arise when services that consumers understand as related – perhaps even inextricably connected, as they are delivered by the same business – have different redress mechanisms.

19. ***Redress mechanisms beyond the ACL:*** *Is there a better way to provide access to effective and strong redress mechanisms for consumers of new energy products and services?*

Energy ombudsmen are the appropriate bodies. No other body has shown it is capable of delivering both the industry compliance and consumer redress outcomes required.

20. ***Enforcement of the energy consumer framework:*** *How could the enforcement tools and actions under the voluntary framework be better integrated with the ACL and the NECF? Please explain.*

Voluntary frameworks are limited in their ability to impose enforcement and compliance because ultimately the most they can do is expel non-compliant signatories, who are still free to practice. ACL and NECF have more powerful compliance and enforcement mechanisms. It's not clear how enforcement tools and actions under the voluntary framework can be better integrated with the ACL and the NECF. This is a limitation of using voluntary frameworks to deliver concrete consumer protections.

21. ***Principles:*** *Are there any other principles the Commission should consider?*

Renew urges the Commission to adopt the principle that energy specific consumer protections should be applied not according to the business model used (e.g. sale of metered energy through the interconnected energy grid), but based on:

- the extent to which the service or product in question is being relied on by the consumer to deliver the essential service of a continuous supply of electricity; and
- the impact on the consumer of experiencing payment difficulties and hardship.

ISSUES PAPER 2: Traditional sale of energy

1. ***Information provision in the contents of bills:*** *Are the current requirements for the information and delivery of information that is required to be included on restricting innovation and digitalisation? If so, what changes would allow innovation to occur?*
2. ***Forms of regulation (bills):*** *Does the current form of regulation of information provision restrict innovation and digitalisation? If so, what form of regulation —the mechanism employed— could be introduced? For example, could industry self-regulation or principle- based regulation better facilitate innovation and digitalisation?*

The existing requirements for information to be included on bills have evolved over a considerable period of time. Every one of the 24 items had a rationale for its inclusion, but the end result is the energy bill equivalent of a 100-year old cottage that has been renovated and extended incrementally by a dozen different owners. Renew recommends that a new process be undergone with relevant stakeholders that starts with a blank slate and determines what information needs to be conveyed to customers, and in what way. We expect that such a process would produce a few outcomes:

- A set of core information that needs to be conveyed to customers by whichever means the customer prefers – paper, email, SMS, app-delivered, and so on; and
- A subset of critical information that is presented in a 'bill' (which may be on paper, via email, or other delivery method) in a standard format that enables it to be both human-read, and machine-read for use in online comparators and other energy-related online services. This information would be sufficient to enable financial comparison calculations.

In implementing this new flexible and outcomes-focused approach it will be critical to ensure that consumers who are not digitally literate or connected are still able to receive paper bills without penalty. ABS surveys of household internet and computer usage still show that disproportionate numbers of some demographic groups (particularly seniors and low-income households) have no reliable way to access the internet.

3. ***Notifications:*** *Do the current requirements on delivery of information of notifications to consumers restrict innovation and digitalisation? If so, what changes would allow these to occur?*
4. ***Forms of regulation (innovation):*** *Does the current form of regulation of information provision restrict innovation and digitalisation? If so, what form of regulation —the mechanism employed— could be introduced? For example, are industry self-regulation or principle-based regulation appropriate methods of regulation?*

Renew agrees that the current requirements limit innovation and restrict consumer choice.We support principles-based regulation that defines consumer outcomes and requires businesses to provide notifications in the format for which customers have expressed a preference. Customer choice is the critical thing here: customers who prefer to receive notification in the traditional manner should continue to do so. In recognition that it is likely that more vulnerable customers are unable to receive notification via newer communications technology, a requirement that customers who prefer to receive notifications the traditional way should not be financially penalised is appropriate.

With respect to the form of regulation, Renew has a strong preference for principles-based regulation based on customer outcomes. The purpose of consumer protection regulations is to deliver valuable customer outcomes; so outcomes-based regulation is most appropriate.

5. ***Explicit informed consent in a digitalised market:*** *Is the current method prescribed in the NECF for retailers to record EIC restricting innovation and digitalisation? If so, how could it be changed to allow these to occur?*
6. ***Temporary explicit informed consent waiver:*** *Should energy consumers be able to waive EIC for certain services for a given time period?*
7. ***Explicit informed consent, innovation and digitalisation:*** *Are the current provisions that require retailers to have a record of EIC restricting innovation and digitalisation? If so, how could these be changed to allow these to occur?*
8. ***Explicit informed consent delegation on a third party:*** *Should energy consumers be able to provide EIC to a third party to interact with the retail market on their behalf? If so, what arrangements should be in place?*

Explicit informed consent is important, but it's not a magic bullet. It's predicated on the principle in contract law that contracts should be entered into knowingly and willingly. The important thing is that customer consent is documented and can be referred back to if there is a dispute. Consequently, the body to which consent is given is less important than the authenticity of the consent. If a customer has made a clear and transparent choice to enter a contract, the important thing is whether the consent can be verified and acted upon. Anecdotal reports to the Commission during the consultation workshop made it clear that some energy retailers have, at times, used their monopoly on explicit informed consent to, perversely, deceive customers and flagrantly corrupt their decisions. Renew thus supports the proposal to give accredited third parties the authority to be given the explicit informed consent of customers to act on their behalf in the energy market.

We note that when the Consumer Data Right for energy is implemented, third parries will be required to take the explicit informed consent of customers for data-related purposes.

9. ***Cooling-off period under the NECF: Are cooling-off period protections for solicited retail market contracts still beneficial? If so, why? If not, what improvements could be made?***

Renew can see no reason why a cooling off period is required for solicited retail contracting. If a consumer elects to pursue and sign onto an energy retail contract, they should be able to do so without regulatory impediment .

On the other hand, Renew strongly supports the cooling off period for unsolicited retail sales. Even though contracts these days tend to be non-fixed term and, if they are fixed term, have low exit fees, an explicit cooling off period provides additional reassurance to customers who may have felt pressured into signing up to an unsolicited offer.

Renew is aware of the difficulty in determining whether an offer was solicited or unsolicited in certain circumstances (such as booths in shopping centres). More guidance may be required here; but for the avoidance of doubt, any interaction that cannot be clearly identified as solicited or unsolicited should be considered unsolicited for the purposes of this provision.

Thanks for the opportunity to contribute to this process. For more information, pleaser contact me at dean@renew.org.au or on (03) 9631 5418

Sincerely yours,

Dean Lombard

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