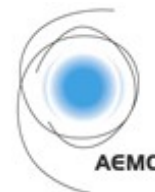


Consumer protections in an evolving market

Workshop - Discussion notes

Thursday 6 February 2020



The Commission held a workshop on consumer protections in an evolving market review. This workshop was focused on the issues papers published on 12 December 2019.

The organisations represented are listed below:

Organisation
Ashurst LLP
Aurora Energy
Ausgrid
Australian Competition and Consumer Commission
Australian Energy Council
Australian Energy Market Operator
Australian Energy Regulator
Australian National University
Australian Renewable Energy Agency
Australian Utilities Company
Clean Energy Council
Clean Energy Regulator
Department of Environment and Energy
Department of Planning Industry & Environment – NSW
Department of Planning Industry & Environment – VIC
Energy and Water Ombudsman New South Wales
Energy and Water Ombudsman South Australia
Energy and Water Ombudsman Victoria
Energy Australia
Energy Consumers Australia
Energy Intelligence Pty Ltd
Energy Security Board
ERM Power
Ethic Communities Council of NSW
Flow Systems
Meridian Energy
Momentum Energy
New South Wales Business Chamber
Nexa Advisory
Origin Energy
Powerpal Pty Ltd
Public Interest Advocacy Centre
QEnergy/Mojo Power
Queensland Council of Social Services
Red Energy
Transgrid

The AEMC's project team and staff who attended is listed below:

Name	Position
Alisa Toomey	Senior Adviser – Distribution and Transmission Networks
Ben Davis	Director – Retail and Wholesale markets (project sponsor)
Jessica Scranton	Lawyer
Lauren Taborda	Adviser – Retail and Wholesale markets
Michael Bradley	Executive General Manager – Retail and Wholesale markets
Mitchel Shannon	Adviser – Security & Reliability
Oliver Tridgell	Graduate Adviser
Ryan Esplin	Economist
Samuel Martin	Graduate Adviser
Stephanie Flechas	Adviser – Retail and Wholesale markets (project lead)

All enquiries on this project should be addressed to Stephanie Flechas on (02) 8296 0640 or stephanie.flechas@aemc.gov.au.

At the start of the discussion Michael Bradley provided an overview of the project and its nature. Michael noted this review has a forward-looking approach to analyse potential changes to the energy consumer framework and stakeholder feedback is essential to decision-making. Afterwards, Ben Davis summarised what the first stage of the review was and what would be the next steps of the project.

The workshop had five sessions where stakeholders discussed following topics:

Issues paper 1 – New energy products and services

1. Rationale for energy specific consumer protections
2. Application of consumer protections and regulatory boundaries
3. Objectives of consumer regulatory frameworks

Issues paper 2 – Traditional sale of energy

4. Information provisions, including bill contents and mandatory information provisions
5. Explicit informed consent and cooling-off periods

For each session, AEMC staff provided a brief overview of the relevant aspects in each topic and key questions. This was followed by an opportunity for attendees to discuss the questions in each table and following these discussions, the room shared their views and provided feedback.

ISSUES PAPER 1 – NEW ENERGY PRODUCTS AND SERVICES

Session 1 – Rationale for energy specific consumer protections

The project team provided a presentation on the different rationales for consumer protections under the Australian Consumer Law (ACL), the National Energy Customer Framework (NECF) and the voluntary codes. Following this presentation, attendees discussed about the elements that defines the nature of sale of energy as an essential service and if those elements have changed given the evolution of the market.

Feedback session 1

- From the discussion about the essential nature of the service, stakeholders noted it is unclear if what is essential is the access to energy or is the sale of energy, some mentioned there is no

difference between these two concepts and others mentioned the access to energy is what makes it essential. On this regard it was mentioned that the access is essential, but sale of energy could vary and is not always essential.

- When discussing the elements of the sale of energy to be considered essential, the following where some elements identified:
 - Ability to cut/interrupt energy supply
 - Primary source of energy: some stakeholders mentioned that regardless the source of energy (grid, stand-alone power system, solar panel, batteries) if it is the primary source of energy, it is essential.
 - Affordability
 - Not discretionary/optional: stakeholders discussed if it is essential even when the customer decided to be off-grid.
- For the discussion around the risks of consumer detriment that could be considered potentially significant and possible irreparable for new energy products and services, stakeholders mentioned that the main risks are:
 - Risk of disconnection/interruption for life support equipment customers
 - Financial risk for consumers in hardship

Session 2 – Application of energy-specific consumer protection

The project team provided a presentation on how the boundaries between the traditional sale of energy and new energy products and services is key to understand what triggers the application of consumer protections.

Feedback session 2

- It was discussed if the same consumer protections should apply to new energy products and services and the sale of energy. Some stakeholders were against a broader scope and some stakeholder supported it. In general, a broader scope is welcomed if it is principle-based and it does not overlap with the ACL.
- It was recognised that there are some areas where prescription is needed, and it is usually related to a higher degree of consumer risk/harm. Life support equipment customers for example, is one of these, there must be a specific/prescriptive rule to provide confidence, both to the consumer and the supplier. It was mentioned that prescriptive provisions are usually a reactive answer to a problem but principle-based approached might bring better outcomes in terms of regulation.
- Throughout the discussion on the risks and benefits of a prescriptive versus a principle-based framework it was mentioned that principle-based frameworks are more difficult to enforce and there is a higher level of difficulty from the controlling/enforcement body.
- It was noted that prescriptive frameworks are easier to enforce and to comply with but there is the big risk of ending up with a stiff framework unable to respond/adapt to technological change. On the other hand, principles-based frameworks have an additional interpretation challenge/risk when enforcing it or complying with it.

Session 3 – Objectives of an overarching consumer framework

The project team provided an overview on the objectives that an overarching consumer framework should meet and how each of these are addressed under each of the three consumer frameworks (ACL, NECF, voluntary codes).

Feedback session 3

- When discussing how each of the objectives are addressed in each of the three frameworks (ACL, NECF and Voluntary codes), it was mentioned the ACL is good enough to provide consumer protections for new energy products and services to prevent practices that are unfair or contrary to good faith. In this regard was noted there are provisions related to these practices that are also included in the voluntary codes, and it seems to be an area where the ACL and the New Technology Consumer Code (NETCC) overlaps.
 - Was mentioned this risk of duplication could be because of a lack of knowledge on the consumer protections available to new energy products and services (energy illiteracy issue).
- In terms of information provision, the NECF and the voluntary codes include protections in addition to what it is in the ACL. It was noted it might be relevant to discuss which information provisions are needed given the specific characteristics of new energy products and services.
 - As an example, it was discussed that the requirement to notify consumers when there is a price change for the sale of energy (price variation) in the NECF specific for the sale of energy given that the price of energy could vary, it is not a fixed price, for the term of the retail contract. However, it was also mentioned there are other industries where there are price variations, such as health insurance and banking. Therefore, it was questioned if this provision should be under an industry specific framework or this gap in the ACL should be fixed under the same general consumer framework.
 - In contrast, planned interruption notification requirements for the supply of energy was mentioned as a specific provision that only applies to energy and therefore, should only be under the energy-specific consumer framework.
- Regarding information provisions that are similar to what it is in the ACL, it was discussed the NETCC is largely about information provisions and customer understanding of the product/service they are buying.
 - It was mentioned there is no clarity on the differences between these protections and what the ACL includes and whether it is necessary to have two frameworks with similar protections.
 - As an example, it was noted that overlaps between the ACL and the NETCC are not a big problem, the main problem is that these provisions could have divergent interpretations given that there are no references to the ACL in the NETCC. This could raise enforcement and compliance issues when applying/enforcing the code.
- For the objective related to vulnerable consumers, or at greatest disadvantage, it was noted the NETCC may not be fit-for-purpose to protect life support equipment or hardship consumers.
- It was raised that the ACL has some gaps, especially regarding redress and enforcement. It was noted:
 - it is unlikely an individual consumer will receive support for a defective energy product through the ACCC, unless it is a wide-ranging issue
 - it is important for consumers to have a good avenue for disputes. For the sale of energy, energy ombudsmen work well as a dispute resolution body given that they have a good level of expertise. It was noted it is worth discussing if that level of expertise is needed for new energy products and services disputes.
 - It was questioned the effectiveness of the NETCC, in some tables it was mentioned the code is a marketing tool but it is doubt on its compliance/enforcement.

ISSUES PAPER 2 – TRADITIONAL SALE OF ENERGY

Session 4 – Information provisions for the traditional sale of energy

The project team presented how the evolution and digitalisation of the market could raise potential changes to bill content requirements and mandatory notifications to customers (notices).

Feedback session 4

- It was mentioned the bill itself has too many requirements and it is not clear how having all of them would benefit consumers. During the discussion it was questioned if the 24 requirements for bill contents are needed.
 - In one table, the minimum requirements were reduced to 4 requirements (amount to be paid, amount consumed for that period, when the bill is due, the billing period and contact details for further questions).
 - It was also mentioned if there is a need to have specific bill content requirements for the sale of energy and what is specific about this service that there is a need for additional requirements. As examples it was mentioned that the tariff structure in energy is more complex than tariffs in any other industry.
 - The UK was mentioned as an example where bill must include a QR code to access to their billing details (NMI, rates, address, name of the plan, etc).
 - It was discussed that presenting bill information digitally is easier to access comparison sites and the more digital it is, consumers find it easier to understand, especially if they have solar panels and feed-in tariffs.
 - Some stakeholders mentioned bill contents is not an issue but is how retailers present/send consumption data to consumers.
- It was also mentioned notification requirements need to be more generic. As an example, notices could refer to any changes in contract terms and conditions instead to price changes.
 - However, it was also noted that not any changes should trigger notification requirements, but only substantial /material changes. When trying to define substantial/material, it was noted that any change that modify how much the consumer has to pay for the service is a substantial/material change that must be notified to the customer.

Session 5 – Explicit informed consent and cooling-off period for traditional sale of energy

The project team presented on how explicit informed consent and cooling-off period requirements could change given the changing market (i.e. Consumer Data Right for energy, consumer switching in less than 2 days).

- In regard to the explicit informed consent, the objectives of this provision that were mentioned were:
 - Potential fraud for consumer switching, third parties acting on behalf of the consumer without their consent.
 - Consumer illiteracy/misunderstanding on the transaction (i.e. consumer switching or agreement accepted)
- It was questioned the need to have cooling-off period for solicited agreements in energy. If the customer is who reaches the new supplier, it should make the switching process easier for consumers.
 - It was noted it is not clear how many consumers use the cooling-off period when they find the agreement is not what they expected or understood but it seems to be a period for suppliers to delay consumer switching.
 - Some mentioned ACL cooling-off period is enough to protect energy consumers.
 - It was discussed that if there is the possibility to waive the cooling-off period it could be for a specific period or for that specific action when the consumer is who requested to be switched and would like to waive the cooling-off period for that transaction but not as a permanent decision.