

Our ref: EWOQ/0023

Your ref: RPR0013

13<sup>th</sup> February 2020

Ms Stephanie Flechas  
Advisor  
Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

Dear Ms Flechas

**Consumer protections in an evolving market: New Energy Products and Services – 2020 Retail Energy Competition Review Issues Paper 1**

Thank you for the opportunity to make a submission on the New Energy Products and Services Issues Paper.

**Background to the Energy and Water Ombudsman Queensland (EWOQ)**

EWOQ provides a free, fair and independent dispute resolution service for small electricity and gas consumers across Queensland, and water consumers in South East Queensland, who are unable to resolve a dispute with their supplier.

EWOQ welcomes the Australian Energy Market Commission's (AEMC) review of the consumer protection framework to determine whether new energy products and services require further safeguards. As an Ombudsman scheme, we recognise the need to ensure appropriate consumer protections are available in the energy market that is rapidly evolving through the introduction of new technologies. We are supportive of proposals that will improve outcomes for energy consumers.

The Queensland energy sector is currently in the process of review to improve Queensland's state energy legislation. This review will likely impact on EWOQ and our jurisdiction. EWOQ therefore provides the following responses to the consultation questions based on present jurisdiction.

We have provided a response to some of the questions raised and they are attached to this letter.

If you require any further information regarding our submission, please contact Miss Jonnita Gillam, Principal Policy Officer on 07 3087 9404 or [jonnita.gillam@ewoq.com.au](mailto:jonnita.gillam@ewoq.com.au).

Yours sincerely



**Jane Pires**

**Energy and Water Ombudsman**

**Question 5. The supply of energy is an essential service.**

**What are the elements that define the supply of energy as an essential service?**

Despite the changing market, the primary elements that define the supply of energy as an essential service in our view, remain relatively unchanged. People rely on electricity to facilitate their daily functioning and living. Some of the essential components that people rely on in today's modern age include, but are not limited to:

- Heating and cooling of dwellings
- The heating of water
- Preparation, cooking and storage of food
- Illumination
- Operating appliances (washing and drying of clothes)
- Access to information and communication (use of TVs, computers, charging mobile devices, reliance on NBN for telephone systems in contrast to traditional landline telephones)
- The powering of medical and life support devices

**Question 6. Changes in the nature of energy service**

**Has the essential nature of the sale of energy changed with the market's evolution?**

In the current digital and technologically dependent environment, energy may be considered even more of an essential service than ever before. There is an increasing reliance on the use of energy in every aspect of a consumer's life. Consumers are using electricity virtually every minute of every day.

The way in which consumers use energy has certainly changed over time. There is a strong dependency now on energy for key functions such as to charge communication devices and access information which previously occurred without electricity. Energy is essential to some people's lives for example through the powering of medical devices and to provide mobility to Australia's ageing population. Market evolution with the introduction of new technologies has provided opportunities for consumers to use electricity in a variety of different ways for a number of different purposes in daily life, which has meant that not only do consumers use electricity in new ways they are also consuming energy at higher amounts. This technology continues to evolve and demand continues to increase with the consumption of technological products to replace traditional products in all aspects of daily life, including usage of electric vehicles which will create a reliance on energy for broader population mobility. With the change in consumer interactions with the market, the essential nature of the sale of energy has, in our view, magnified.

**Question 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?**

With the transformation of Australia's energy market and the introduction of new products and services, there are potential risks of consumer detriment that need to be assessed, with additional safeguards developed, to ensure all energy consumers enjoy similar protections.

It is recognised that a range of new products and services may not fall under the definition of the sale of electricity that the National Energy Consumer Framework (NECF) applies to and therefore consumers would not be afforded the same regulatory protections. However, we note the developing self-regulating voluntary framework that will provide additional consumer protections beyond Australian Consumer Law (ACL) for services and products not covered by the NECF. Broadly, EWOQ is supportive of the introduction of frameworks that increase consumer protection and appreciate the flexibility that voluntary frameworks offer,

making them more responsive to change. However, it is also noted that the voluntary nature of these frameworks relies on a supportive and engaged industry and therefore cannot be wholly relied upon. They also can lead to disparate consumer outcomes where a provider has not elected to be a signatory to a particular Code. The governance of energy is contained within a complex regulatory framework, as such it is important that consumers are extended the same protections regardless of which framework they fall under. Consideration also needs to be given to flexibility of frameworks to ensure that regulatory protections can be applied to the emergence of new technologies, products and services.

Current areas of potential for consumer detriment to be considered include:

- Demand response
- Solar power purchase agreements
- Virtual Power Plants
- Energy flow related issues for electric vehicles

**Question 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?**

EWOQ agrees, in principle, with the objectives identified by the Productivity Commission in its review of Australia's consumer policy framework and supports further analysis of how these objectives are addressed through the three regulatory frameworks (ACL, NECF, voluntary codes) for energy consumers of new products and services.

As identified earlier, the legislative and regulatory framework that governs the energy market is complex, therefore it is important to consider accessibility of all consumers, especially vulnerable consumers, in utilising available protections when needed.

**Question 13. Vulnerable consumers**

**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?**

Identification of energy as an essential service means that it is imperative that all consumers have access to the market and the requisite protections. For vulnerable consumers, there is arguably a greater requirement for a robust regulatory consumer protection framework. The characteristics of a vulnerable consumer identified under the voluntary codes are a useful starting point of considerations for this consumer group. Additionally, a greater emphasis is required on education of consumers to understand their rights, given that this is not always easily identifiable under existing regulatory frameworks or the overwhelming amount of available information. Education should also extend to providing accessible information to all consumers, including culturally and linguistically diverse consumers, to ensure that there is an understanding of how new energy services and products work and how associated fees and charges will be charged. The energy sector is different from many others as, in addition to a complex legislative and regulatory framework, it is also difficult for the average to consumer to understand tariffs and charging structures for energy related products and services. Another key difference is the essential nature of the energy sector which often leaves consumers in a vulnerable position due to reliance on the product or service.

**Question 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?**

In contrast to the specific provisions under NECF that provide additional protections for vulnerable consumers, the ACL only provides general protections for consumers that purchase products and services. The voluntary codes also appears to only somewhat address the management of vulnerable consumers. It is

noted that whilst the voluntary codes include ‘*circumstances in which a supplier should take additional care to respond to promptly when offering their products and services*’, there is no obligation on suppliers of new energy products and services to implement a policy to protect and identify vulnerable consumers, including those suffering hardship. Given the findings by the AEMC and AER on consumer hardship and ensuing reforms, an effective policy is unquestionably an essential requirement to ensure the needs of vulnerable consumers in hardship are adequately considered and addressed.

There also appears to be additional risks to consumers with life support equipment and medical heating and cooling needs. It was noted in the Issues Paper that ‘*during the development of the NET consumer code, the consequences of consumers with life support equipment and medical heating and cooling needs were considered to be too severe to be managed by a voluntary code*’. With the identification of this significant gap, it is essential to consider and determine how to ensure consumers with these needs are protected and more importantly, not disconnected.

EWOQ advocates that energy consumers of new products and services, including vulnerable consumers, be afforded the same consumer protections as those connected to the grid.

#### **Question 15. Policy risks**

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

EWOQ would support the extension of obligations for suppliers to implement policies that identify and protect consumers in vulnerable circumstances. Whilst it is acknowledged this may result in an increase in costs to the suppliers and service providers, a consistent policy approach would provide consumers of new products and services with the same existing protections for those consumers who are connected to the grid.

EWOQ also acknowledges that identification of vulnerable consumers can be difficult for service providers/suppliers/retailers and often this process relies on the consumer providing notification of their vulnerability. As such, it is recognised that a large number of vulnerable consumers are often missed. However, this should not impact the protections that are available to them.

#### **Question 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?**

As highlighted throughout this response, the energy market is often complex for the average consumer to navigate and with the emergence of new energy services and products there is greater opportunity for increased confusion. EWOQ submits that to ensure adequate protection for all consumers, there should be alignment of redress mechanisms to new energy services and products with existing energy services and products. This will ensure that the appropriate mechanism will be able to apply specialised knowledge and skills to ensure more efficient and effective outcomes. In Queensland, the legislation governing the jurisdiction of energy dispute resolution mechanisms is currently under review and will hopefully ensure greater flexibility in the assessment of complaints about a broader range of energy services and products. Consumers rightly have an expectation that their energy related disputes would be considered by one specialised dispute resolution mechanism.

#### **Question 18. Effects of different redress mechanisms**

**What are the risks of having different redress mechanisms under different consumer frameworks?**

The current legislative and regulatory framework that governs the energy sector is expansive with differing rules at the national level across a range of different bodies and then further provisions under state legislation which often don’t align at an inter-jurisdictional level. Adding to that complexity different redress mechanisms for consumers to navigate during their time in need is likely to result in consumer confusion and impact the accessibility of such mechanisms. By having multiple redress mechanisms there is the

opportunity for consumers to receive different levels of service and therefore different levels of protection, for example:

- Some dispute resolution bodies have binding decision making powers whereas others do not
- To have a matter considered some consumers would be required to pay a fee whereas others are able to access free dispute resolution services
- Disputes may fall under a legislative framework which would offer a clear resolution pathway whereas disputes that fell under a voluntary framework would likely have a lower protection threshold for a consumer.

Having one mechanism to assess energy complaints ensure that all consumers have the same protection regardless of their chosen product or service.

**Question 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?**

EWOQ supports an efficient, effective and affordable model for resolving consumer complaints about new energy products and services. Consumers need to be able to readily identify where they need to direct their complaint to rather than having to contact multiple jurisdictions and being referred to different bodies, which is only likely to antagonise the consumer further.

EWOQ believes that alignment with redress mechanisms that are currently available to energy consumers should be available to new energy products and services consumers.