



30 June 2017

Australian Competition & Consumer Commission
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Inquiry into retail electricity supply and pricing

Thank you for the opportunity to provide feedback to the ACCC *Inquiry into retail electricity supply and pricing*.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. Our comments are informed by our investigations into these complaints.

EWON believes that the rapid introduction of new products and services into the energy market, combined with rapidly increasing prices creates a significant challenge for all stakeholders. Change can bring benefits to many consumers, but it can also exclude some consumer sectors. The innovative disruption which is occurring across the energy industry could create a similar level of energy divide which parallels the digital divide which has occurred in other sectors such as telecommunications and internet, leaving those consumers experiencing, or at risk of experiencing, financial or social vulnerability, excluded from the rapid growth and benefits of new energy technology.

Consumers need assurance and trust in the market and the mechanisms which deliver the essential service of energy supply.

This inquiry provides the opportunity to learn from what has worked well in the energy market over the last twenty years of reform. It also provides an opportunity to address those aspects of the market that have not realised the expected benefits of competition. Affordability and vulnerability are aspects that need further consideration in order to ensure that all consumers gain the benefits of change and innovation that the energy market is experiencing now, and will increase in the future.

EWON has responded only to those specific sections and questions that have relevance with our casework, experience and expertise. Throughout this submission, we have provided relevant case studies which provide de-identified details of actual customer experiences which support our response.

Issue 2 – Market structure and nature of competition

The market in NSW

In NSW, three retailers Origin Energy, EnergyAustralia and AGL Energy supply 90% of retail customers and control 69% of generation capacity. They also supply 96% of gas retail customers. Snowy Hydro has 21% of generation in NSW and 4% of electricity retail customers and 2% of gas customers¹.

There are three distribution areas in NSW and there are the same number of electricity contract offers (90)² in each of these network areas, in all but some remote towns in Essential Energy's area, where there are fewer offers.

There is however a significant difference in price for regional customers in NSW due to differing distribution costs. Customers in the Ausgrid distribution area pay a service availability charge of 89c a day for Origin Energy's standing offer while Endeavour Energy area customers pay 86c per day. Essential Energy area customers pay \$1.50 per day reflecting the higher distribution costs for this distribution network.

The way that electricity offers are marketed and the use of discounting to attract customers

The majority of contracts offering the lowest prices have discounts dependent upon paying on time, paying in full and direct debit arrangements. In EWON's experience this means that financially vulnerable customers, who often encounter payment difficulties, are at risk when entering such contracts. If they take up these contracts, they lose the discounts, incur late payment fees and also have to pay bank fees associated with failed direct debit payments, often not understanding these impacts. Other customers experiencing financial vulnerability recognise that these offers are not open to them, and instead, remain by choice on standard contracts. And the most vulnerable are not aware that they have choice.

To our knowledge, retailers currently do not have specific discounted contract options which specifically reward customers, often referred to as 'battlers', who are on fixed / low incomes but pay in full over time, very often in advance through paying regular amounts weekly / fortnightly. The introduction of specific discounted contracts would also be an innovative initiative.

The proportion of customers without effective access to choice of retailer or offer

The number of customers receiving their supply of electricity through embedded networks has been rapidly growing. In NSW, the Electricity Supply Act gives customers of exempt entities the right to lodge a complaint with EWON. Prior to the introduction of the National Energy Customer Framework (NECF) on 1 July 2013 the majority of exempt entities in NSW were residential parks – the NSW legislation was introduced specifically with those consumers in mind, given their risk of financial and social vulnerability.

Since then, there has been a rapid growth in estates, apartment buildings and retirement villages being either built as, or converted to, exempt networks (see Table 1).

¹ [Page 142 AER State of the Energy Market May 2017](#)

² This figure based upon a search of the AER's *Energy Made Easy* website undertaken by EWON on 23 June 2017

Given the current housing market in Sydney, consumers experiencing, or who are at risk of experiencing financial vulnerability, are highly represented in these networks as owners, or more likely as tenants, many of which may have entered into purchase or lease contracts without knowledge/understanding of the exempt arrangement/implications.

Further, it is also significant that first and second tier authorised energy retailers have also obtained exemptions from the AER to operate in this space, with one major authorised retailer having briefed EWON about its plans to install and administer embedded networks. We understand other authorised retailers are also exploring this model, which indicates perhaps its potential commercial, rather than consumer, benefit.

Table 1

Exemption category	Type	April 2016	March 2017	% Increase
	Individual exemptions	118	122	3%
R1	Small commercial/retail	114	130	14%
R2	Residential customers, (estates and apartment blocks)	50	99	98%
R3	Retirement villages	15	20	33%
R4	Residential/caravan parks	114	123	8%
R5-8	Large customers and other categories including power purchase agreements	94	128	36%
Total		505	622	23%

The AER does not track customer numbers associated with the exemption regime, however the above table clearly demonstrates that the increases are highest in the exemption categories that have small customers and in particular the R2 category (residential customers). EWON has estimated that each exemption in this category averages out to around 200 customers. Extrapolated, in one year, this would see over 10,000 new customers who, at the very least, have significant difficulties in accessing the competitive market, and most likely the majority of whom are completely excluded from that market.

Not only do customers of exempt entities lose access to the competitive market, they also lose access to a range of consumer protections that have been recognised as being required by energy consumers given its essentiality, because only limited aspects of the NECF apply through the exemption regime.

Evidence on the extent of switching between retailers by customers, and the barriers to switching

Customers with a poor credit history are often limited to opening an account with the financially responsible retailer for their property – and then these customers may only have access to a standing offer, and not to competitive market contracts.

Case Study 1

Case	Customer information / outcome
Customer unable to setup electricity account	A customer moved into a rental property and tried to open an account for her electricity supply. After being refused by a number of retailers because of her credit history, the customer approached EWON to find out which retailer had an obligation to supply her site. EWON provided her with the name of the retailer and also her rights under a deemed supply arrangement. EWON also advised her that while she had a right to supply from that retailer, that right was for a standing offer and was not a right to a market offer.

Issue 3 – Customers and their interaction with the market

The complexity of retail offers and the way that they are presented

The NECF introduced new provisions relating to explicit informed consent. These provisions are applicable to contract renewal as well as to new contracts. Retailers quickly established ongoing contracts with fixed benefits terms which avoided the informed consent provisions around contract renewal. These ongoing fixed benefit period contracts are now the most common form of contract offering.

A large proportion of contract benefits are provided, in the form of discounts rather than competition on service availability, or consumption charges. As a result, there is customer confusion about the nature of the discounts. Some contract discounts are on the total bill while others are on the consumption charges only (see case study 5). This puts the onus on customers to understand that they must pay close attention to the detail of an offer, which for energy is complex, rather than just looking for the highest headline discount offer. This is just one aspect of complexity which consumers face in choosing the best offer to keep their lights and power on.

A further aspect of complexity is that retailers have set the unregulated standing offer price significantly higher than their market contracts. In the Ausgrid distribution area, one second tier retailer has a \$402 difference between their contract offer and their standing offer. This compares to an average difference of \$265 between the standing offer and the best market offer for the big three retailers in the same distribution area.³ Customers at the end of a contract, despite their loyalty to one retailer, and perhaps their initial investment in choosing that retailer, can find themselves on an expensive standing offer tariff. This also applies to new move in customers whose focus was on finding available and affordable housing without recognising that without negotiating the most appropriate energy market offer, their energy costs could offset the housing cost savings they achieved.

As noted before there are currently 90 contract offers available for a consumer to choose from in NSW. The sheer number of market offers can lead to a potential 'confusopoly' where customers are frozen from a decision-making perspective by the sheer magnitude of the offers available and therefore cannot take advantage of the benefits which a non-complex competitive market offers.

Finally, there is an increasing trend to add new fees and charges to contracts relating to the supply of electricity. These include opening and closing account fees, payment processing fees, credit card

³ These figures are based upon an Energy Made Easy search undertaken by EWON on 23 June 2017

processing fees, paper bill fees and fees for paying bills at the post office. It is EWON’s experience that some of these fees are introduced during the course of a contract. The increasing number of fees adds a further, but not fully transparent, aspect of complexity of choice when customers are considering making the decision to change retailers.

This is perhaps evident by the fact that around 30% of NSW consumers remain on standing contracts.

The effect of bundling electricity plans with other services

EWON has limited experience, given the more recent introduction of behind the meter services (such as Solar Power Purchase Agreements) offered by retailers. However early indicators have become evident that there are some outcomes which are not in the best, and long term, interests of consumers.

For example, bundling new services with an energy plan can restrict customers’ options to switch retailers and benefit from competitive market offers. This is particularly concerning where the customer’s reason for wanting to switch retailers is because of poor service from their current retailer.

Case study 2

Case	Customer information / outcome
<p>Difficulty and cost of transferring from a bundled energy product</p>	<p>A customer had a solar installation from his retailer tied to a five year contract. The inverter failed and he contacted the retailer who sent him a new inverter and told him that he had to organise for its installation. The quote he got for the installation was for \$250 and the retailer only offered \$100 towards this cost. This left him very dissatisfied, however he could not change retailer without paying out \$2,000 for the balance of his contract. EWON referred the customer back to the retailer which having become aware of EWON’s involvement, then arranged for the installation free of charge. A fair and reasonable outcome for this customer was achieved, but other customers who experienced a similar event, and who did not contact EWON, may not have been as fortunate.</p>

The complexity of ‘bundled contracts’ has the potential of reducing customer’s full informed consent to what are often long term contracts. ‘Bundled products’ and ‘services’, such as solar and battery storage, are often outside the energy consumer protections offered by NECF and fall into the more general protections offered by the Australian Consumer Law. EWON regularly receives complaints from customers about solar installers relating to faulty installation and unrealistic promises of reductions in energy bills. These complaints are currently out of EWON’s jurisdiction and the customers are referred to NSW Fair Trading. Positively, EWON and Fair Trading work co-operatively, supported by an MOU to ensure that consumer responses are effectively and timely.

Case Study 3

Case	Customer information / outcome
Customer signing a contract without understanding the terms	<p>A customer signed a contract for a solar power purchase agreement with his electricity retailer. He had contacted his retailer seeking ways to save on his bill and was sold the solar deal. He contacted EWON as he felt that the contract he had signed was not being met and that he was being underpaid for the solar he exported.</p> <p>EWON's investigation established that he had signed a contract under which he paid 12c/kWh for all electricity generated, including that which was exported to the grid. His separate electricity supply contract then paid him 6c for the exported electricity, a net loss. This was explained to the customer who indicated that he expected to be paid for any energy exported to the grid.</p> <p>While the customer understood the situation once it was explained to him, he was insistent that this was not the explanation provided to him when he agreed to the two different contracts.</p>

Even where the product or services are within the NECF, the complexity of these products and services can still have the potential to reduce informed consent. And the transition to competitive metering and a possible increase in related associated costs such as meter testing fees has the potential for further consumer detriment.

The changing nature of the energy sector

There is a wave of technological change sweeping across the energy sector, creating new markets in energy supply, demand management and energy information. New products and services arising in the supply area include the leasing of solar equipment, and the selling or leasing of generation and storage packages. Demand management products include home energy management systems, and the aggregation of load with generation and /or storage of energy.

Further, the energy information market has seen the development of comparator websites and a range of energy efficiency advice services. Even the more traditional methods of energy supply through the grid are seeing the impact of change. Smart metering is opening up the possibilities for new retail products and much greater integration between traditional supply models and the range of new products and services.

Because of the already existing relationship with 90% of retail customers, the three major retailers are well positioned to offer many of these services. EWON has seen this in action during the offering of new digital net meters following the closing of the solar bonus scheme in NSW. One of the outputs of this has been that some customers have switched to these retailers because of the offer of a free net meter, an offer not matched by second tier retailers. EWON has received a number of complaints from these customers who have then experienced significant delays in installation of their net meter.

EWON has also received complaints from customers following the installation of a new digital meter who have then found that their option to switch retailer has been restricted by the relationship between the meter provider and the available retailers in their area. EWON understands that retailers are in the process of resolving this issue, and we will continue to monitor complaints as the new metering rules comes into effect at the end of 2017.

Case study 4

Case	Customer information / outcome
Customer unable to transfer to his preferred retailer	<p>A customer had a new digital meter installed by his incumbent retailer. He then attempted to transfer his account to another retailer but was refused on the basis that his preferred retailer did not have a commercial metering agreement with the retailer who had installed the new meter.</p> <p>The customer approached EWON to seek assistance to have the new meter removed as he had not been informed that the meter would limit his choice of retailers.</p>

Price comparator tools and the role and effectiveness of government run price comparator websites

The development of new products and bundled services, combined with a move to more cost reflective pricing requires a greater level of understanding of market offers. The information needs of customers are more complex, and decisions about how to plan energy usage and pick appropriate energy contracts is becoming more difficult. This environment, combined with the number of competing offers, points to the need of customers to have access to objective information to aid the decision making process.

When consumers are seeking independent advice about energy contracts, EWON provides information about the Australian Energy Regulator's website "Energy Made Easy" for free, reliable and independent comparison of the range of offers available.

If customers use a search engine to access "Energy Made Easy" they may not reach the official site. Commercial comparator services continually use internet search engine optimisation to ensure their services appear in the most prominent search result position by including in their own address code the words "energy" "made" and "easy". This can result in consumers using comparison sites which may not be reliable, are not independent and may only include a limited range of the offers available to energy consumers.

Particular issues that consumers experiencing vulnerability face in dealing with electricity retailers

As this submission is being written, electricity retailers are announcing price rises in the vicinity of 20% for the next financial year due to surging wholesale prices. Also, the legal proceedings around the NSW distributors' 2014-2019 regulatory determinations have concluded in the distributors' favour, pointing to an, as yet to be decided, increase in distribution charges, backdated to 2014.

In trying to address the impact of a price spike on customers and the issues that vulnerable customers will experience, EWON looked at complaint statistics from the period of the last significant distribution price surge, in the 2009-2014 regulatory period. When the last price spike hit customers, both complaints coming to EWON about affordability issues and also complaints about high bills rose sharply. These complaints declined during the last determination period as distributor charges stabilised or even slightly declined.

Table 2 Affordability Related Complaints

	2009- 2010	2010- 2011	2011- 2012	2012- 2013	2013- 2014	2014- 2015	2015- 2016	2016- 2017*
Number of complaints	4,103	4,433 (+8%)	5,963 (+35%)	7,610 (+28%)	9,720 (+28%)	8,512 (-12%)	6,644 (-21%)	4,003 (-40%)

* Actual figure from July 2016 to April 2017 is 3,336 which extrapolated to 30 June 2017 is 4,003

Complaints about affordability are now less than half the volume experienced in 2013/2014 (4,003 versus 9,720) and are back to similar levels as experienced in 2009/2010.

Table 3 High Bill Related Complaints

	2009 - 2010	2010- 2011	2011- 2012	2012- 2013	2013- 2014	2014- 2015	2015- 2016	2016- 2017*
Number of complaints	3,581	3,900 (+9%)	5,182 (+33%)	7,115 (+37%)	7,498 (+5%)	7,428 (-1%)	6,262 (-16%)	5,946 (-5%)

* Actual figure from July 2016 to April 2017 is 4,955 which extrapolated to 30 June 2017 is 5,946

Conversely complaints about high bills have only decreased by around 21% (5,946 versus 7498) when compared to their highest level in 2013/2014, and they are now 66% above the level they were in 2009/2010 (5,946 versus 3,581).

It is this statistic that is most concerning given the price increases which consumers will shortly face, and we anticipate that complaints relating to affordability and high bills will again increase.

It should be noted however, that complaint issues have changed over this period of time with the affordability related sub-issues of built-up of arrears, difficulty in arranging payment options and imminent and actual disconnection complaints being relatively low. Over more recent years, there has been a significant increase in energy retailers selling debt and taking debt collection and default/credit listing actions, as evident below in Table 4.

Table 4 Affordability Related Issues

Issues	2009- 2010	2010- 2011	2011- 2012	2012- 2013	2013- 2014	2014- 2015	2015- 2016	2016- 2017*
Arrears/utility debt	2,084	2,003 (-4%)	2,381 (+19%)	2,777 (+17%)	3,267 (+18%)	3,437 (+5%)	2,393 (-30%)	1,598 (-33%)
Facing disconnection due to non-payment	1,389	1,502 (+8%)	1,931 (+29%)	2,056 (+6%)	2,023 (-2%)	1,719 (-15%)	983 (-43%)	479 (-51%)
Disconnected due to non-payment	689	813 (+18%)	1,090 (+34%)	1,293 (+19%)	1,702 (+32%)	1,489 (-13%)	949 (-36%)	604 (-36%)
Contacted by debt collectors	561	650 (+16%)	977 (+50%)	1,467 (+50%)	1,942 (+32%)	1,575 (-19%)	1,239 (-21%)	862 (-30%)
Credit rating affected	280	439 (+57%)	710 (+62%)	1,116 (+57%)	1,705 (+53%)	1,638 (-4%)	1,676 (+2%)	1,087 (-35%)
Payment arrangement declined	463	386 (-17%)	409 (+27%)	703 (+43%)	1,151 (+64%)	1,368 (19%)	868 (-36%)	606 (-30%)

* These figures are extrapolated from the actual figures for July 2016 to April 2017

Disconnections

The last price spike saw residential disconnections for credit reasons in NSW rise from 15,835 in 2009-10 to 32,940 in 2013-14.⁴ Since then disconnection numbers have dropped slightly to 30,065 in 2015-16. With the price spike that will be experienced in 2017/2018, it would be surprising if there was not a further increase in disconnections arising from lack of energy affordability with more customers expected to face experiencing financial vulnerability.

Other hardship indicators

The number of customers in NSW on payment plans for electricity accounts increased from 60,960 in June 2014 to 86,327 in March 2017.⁵ The average level of electricity debt has risen from \$529 in June 2014 to \$663 in March 2017. At the same time the number of electricity customers in retailer hardship programs increased from 18,293 in June 2014 to 24,921 in March 2017.

Again, without the introduction of new forms of affordability assistance or some other type of intervention, it would be surprising if each of these financial hardship factors do not increase in 2017/2018.

A social tariff

The solutions for customers in financial hardship are complex and require all participants in the energy industry to contribute to ensuring that customers remain connected. Distributors as well as retailers have an important role in contributing to affordability solutions.

The National Electricity Objective, as stated in the National Electricity Law, is:

“to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to – price, quality, safety, reliability, and security of supply of electricity; and the reliability, safety and security of the national electricity system.”⁶

Where the price of electricity leaves some customers in a position where they are unable to individually be responsible for maintaining security of their supply in the short or long term, it could be argued that the objective is not being fully met.

The concept of a distributor social tariff is therefore worth exploring. The success or otherwise of a social tariff is in part dependent upon the tariff structure. Hardship and vulnerability are complex, and a suitable tariff for a large single parent family may be very different to that for a single person with very low consumption.

Housing quality also contributes significantly to energy consumption. A “one size fits all” approach to a social tariff would therefore not deliver the desired outcome for all relevant consumers. Consideration needs to be given to a flexible social tariff framework which has relevance to the spectrum of consumption use which vulnerable customers experience.

A good starting point for social tariff eligibility would be to offer it to customers who are participating in retailer hardship programs and customers who are eligible for rebates.

⁴ <http://www.aer.gov.au/retail-markets/retail-statistics>

⁵ <http://www.aer.gov.au/retail-markets/retail-statistics>

⁶ <http://www.aemc.gov.au/Australias-Energy-Market/Markets-Overview/National-electricity-market>

However it also needs to be recognised that eligibility for rebates does not also mean that each eligible consumer is financially vulnerable, or at risk of being financial vulnerable, and therefore would welcome a social tariff. And conversely, there are many working consumers who are financially vulnerable or at risk of being financially vulnerable, and the imminent increase in energy pricing is that risk.

Therefore, if introduced, a social tariff would need to be fully accessible to all consumers requiring access, and energy retailers and distributors would need to embrace accessibility as key to the tariff's success in preventing increased financial hardship. Implementation would therefore require a comprehensive communication plan.

In summary, the concept of a social tariff should be explored with particular focus on four aspects:

- design flexibility to suit variable consumption needs;
- retailer and distributor support;
- have broad eligibility criteria; and
- accessibility.

Under the regulatory requirements of the AER, distributors are being required to move to more cost reflective pricing. This has the potential to see the introduction of tariffs which have higher fixed fees which will in turn result in customers with low consumption paying a higher energy bill without increasing consumption. This will also result in removing some of the benefits that a reduction in consumption currently provides for vulnerable customers. A social tariff that rewarded customers for reducing consumption or maintaining low consumption would be of great benefit; provided that it did not cause detriment to vulnerable consumers who are not in a position to reduce consumption, such as large families or those in social / private rental housing which is not energy efficient.

Marketing

One in five sales agents interviewed for a 2012 ACCC report⁷ described sales practices specifically targeted at elderly, low income, or other vulnerable consumers. EWON has seen a dramatic reduction in marketing cases since the major retailers stopped door to door marketing. This has been assisted by the actions taken by the ACCC in addressing systemic breaches of the ACL by energy retailers. There has been a slight increase in complaints about door to door marketing in recent months reflecting more activity in NSW from second tier retailers.

⁷ Page 9 report by Frost and Sullivan for the ACCC: Research into the Door-to Door Sales Industry in Australia, 2012

Case study 5

Case	Customer information / outcome
Potential misleading door to door marketing	<p>A customer signed a contract with a door to door marketer for his small business. This was on the basis of a 25% discount on the whole of his bill. When his first bill arrived he noted that the 25% discount was only applied on the consumption. When he contacted the retailer he was told that it was a misunderstanding on his part and that it would have someone call back to discuss this dispute. He did not receive a call back, so he approached EWON as he did not accept the assertion that it was a misunderstanding on his part and felt that he had been misled.</p> <p>EWON referred this dispute back to the retailer at a higher level with the advice that if he was not satisfied with the retailer's resolution he was able to return to EWON.</p>

In a recent EWON outreach visit to Wilcannia, Menindee and Dareton, remote indigenous communities in NSW, a number of customers presented with invoices from a second tier retailer. A number of these consumers were not aware of how they transferred to that retailer but indicated that they may have spoken to a salesman. EWON initially requested confirmation of explicit informed consent from the retailer, concerned that door to door marketing had been directed at vulnerable consumers, a practice of some retailers in the past. In each case the retailer agreed to return the customers to their original retailers and there was no further investigation or information provided about the sales channel.

EWON, in a meeting with senior management of that retailer, raised the issue of direct marketing in disadvantaged communities, advising that many of the customers in these communities have debts and are participating in hardship programs. Transferring retailers, while possibly resulting in a lower tariff, can remove the protections provided through hardship programs, and thus can leave the consumer in an overall more detrimental situation, coupled with debt collection activity and later default listing.

The retailer responded and advised that it had not engaged in direct marketing in these communities but that these consumers had signed energy contracts through a major electrical goods retailer which the energy retailer had partnered with. It appears that the customers, when buying other products, were also signed up for electricity accounts. In the past, EWON experienced a similar situation with a different retailer when customers had signed phone contracts through pop up stores in shopping centres, only to find that they also had a new electricity contract.

The linking of electricity supply contracts to the purchase of other products, whether they be phones or fridges, especially when the latter may be purchased through a long term finance agreement, can have a detrimental impact on customers, particularly vulnerable ones.

In closing

This inquiry is very timely as it provides the ACCC with the opportunity to consider, from a retail perspective, the effectiveness of competition in the energy market since privatisation. The Inquiry also positions the ACCC to consider how prepared the retail energy market is for dynamic change and the impact it will have on all consumers. While affordability and vulnerability are a key focus of this submission given the impact these factors have EWON's day to day work, EWON equally understands and appreciates the benefits which change and innovation will bring to many

consumers and the energy sector overall. It is critical though that the retail energy sector ensures that all consumers gain the benefits of change and innovation that the energy market is experiencing now, and will experience in the future.

If you would like to discuss these matters further, please contact me or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

Yours sincerely

A handwritten signature in blue ink that reads "Janine Young". The signature is written in a cursive, flowing style.

Janine Young
Ombudsman
Energy & Water Ombudsman NSW