

17 November 2017

Mr Rod Sims
Chairman
Australian Competition and Consumer Commission
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Dear Mr Sims

**Submission on the Preliminary Report of the
Retail Electricity Pricing Inquiry**

The Energy and Water Ombudsman (SA) Limited ("EWOSA") welcomes the opportunity to comment on the Australian Competition and Consumer Commission's (ACCC) Preliminary Report of the *Retail Electricity Pricing Inquiry*.

In this submission, the EWOSA primarily addresses matters that are specifically of interest to the EWOSA Scheme.

EWOSA is an independent Energy and Water Ombudsman Scheme in South Australia. It receives, investigates and facilitates the resolution of complaints by customers with regard to (*inter alia*) the connection, supply or sale of electricity, gas or water.

Our first point is one of clarification. The following statement is on page 16 of the Preliminary Report:

"The experience and prices paid by small businesses that fall into the definition of 'small customers' are generally in line with residential customers, but small businesses do not receive all the consumer protections under the National Energy Retail Law (NERL), for example hardship policies or access to Ombudsmen schemes."

The final part of this statement is not accurate. Small businesses that fall into the definition of small energy consumers do have access to Ombudsmen schemes. In South Australia, complaints from businesses accounted for five per cent of all complaints received by EWOSA in 2016-17.

You may wish to reconsider whether to include the statement "or access to Ombudsmen schemes" in the Final Report.

The remainder of our submission covers important issues under the following headings:

- Awareness of Ombudsmen schemes
- Retail electricity markets, which includes discussions on protections for consumers and providing consumers with more choice
- Wholesale electricity markets

Awareness of Ombudsmen schemes

We agree with the concerns highlighted in the Preliminary Report that there is generally a low awareness of energy Ombudsmen schemes.

EWOSA conducts a Customer Satisfaction Survey each quarter for internal operational purposes. One of the questions asked in the survey of people who have utilised EWOSA's services is: "How did you become aware of the Scheme?" Results from the September 2017 quarter survey indicate that around 40 per cent of people had a "general awareness of Ombudsman Schemes", a further 32 per cent had previous contact with EWOSA and about seven per cent of people heard about EWOSA through a family member, friend or colleague. Less than five per cent of respondents became aware of EWOSA through a retailer.

All of the Ombudsmen schemes undertake community awareness and outreach programs. In the case of EWOSA, these include providing presentations to Culturally and Linguistically Diverse community groups, attending field days in regional communities, community radio promotion and participation in the Utilities Literacy Program. During 2015-16, EWOSA participated in 44 forums where information was presented to community groups and stakeholders.

Some government bodies and other organisations provide the contact details of Ombudsmen schemes on their websites, including the Australian Energy Regulator (AER) and the Australian Energy Market Commission (AEMC). After some hunting, Ombudsmen details can also be found on most retailer websites. The Essential Services Commission of South Australia, the South Australian Government and the South Australian Council of Social Service also provide the contact details for EWOSA.

Given that very few consumers find out about energy Ombudsmen through their retailer and many of the people that use the dispute resolution services of Ombudsmen are vulnerable customers, many of whom do not use the internet, we support the ACCC considering actions that can be taken to raise awareness of Ombudsmen schemes and providing recommendations for inclusion in the Final Report.

We believe the main action that would help to raise awareness of Ombudsmen schemes would be requiring retailers to have the relevant Ombudsman's contact details on each bill, accompanied by wording along the lines of: "If you have made a complaint to us and were not satisfied by our response or the resolution provided, you have the right to lodge a complaint with the energy Ombudsman."

Retailers should also be clearly informing the customer of this right when they respond to the customer's complaint.

Retail electricity markets

While there are important signs of competition in retail electricity markets – such as substantial switching activity, second tier retailers growing their market share and a growing range of products and services being offered by retailers – it is clear that competition is not benefiting all electricity consumers. This is especially the case for vulnerable customers, who often have difficulty in engaging with the energy market and in keeping up to date with technological changes. This reflects the fact that retail electricity markets are unduly complex and lack transparency.

More needs to be done to encourage customers to seek out or be offered better market contracts, particularly vulnerable customers.

A few initiatives are already occurring to do this, including:

- The Final Rule regarding the Notification of End of a Fixed Benefit Period by the AEMC
- Consultation by the AER on Customer Price Information, which may result in improvements to the Energy Made Easy website, Energy Price Fact Sheets and Retail Pricing Information Guidelines, which hopefully will include reference prices or comparison rates that would enable easier comparison of offers and discounts, as well as other ways for energy consumers to better engage with the market
- Agreements between the Commonwealth Government and electricity retailers for retailers to better inform customers about their options

We support all of these initiatives, as well as the ACCC's view that additional resources should be provided to the AER to improve, market and promote the Energy Made Easy website.

Consideration should also be given to further improving the information provided to customers and simplifying the process for customers when their market contract and/or fixed benefit period end. We believe this could be enhanced by requiring retailers to provide their customers with options of the best deals they can offer. This may make decision-making for customers easier and it would reward loyal customers. It would also provide retailers with an opportunity to retain their customers.

We also consider that energy retailers could do more to engage customers. Network businesses (both transmission and distribution) have made substantial progress in their customer engagement practices recently, partly in response to regulatory requirements and partly in response to the demands of consumer groups. Improvements in this regard are continuing.

We believe that the ACCC should recommend in the Final Report that consideration be given to a rule change or an AER guideline that could require retailers to undertake similar customer engagement practices to explain changes in their prices and tariff structures. In particular, the customer engagement could involve consumer groups and other stakeholder representative bodies, including energy Ombudsmen. Under such a rule change or guideline, retailers could also be required to report to the AER on their customer engagement activities for compliance purposes.

Many consumer groups already provide information and education programs to vulnerable customers, which may include information in newsletters, public forums and one-on-one counselling on energy prices, options for clients to access better energy market contracts and understanding such contracts. The "Switched on Communities" program, outlined in Box 4.4 of the Preliminary Report, is a good example. Local governments could also provide education sessions on energy bills, particularly via libraries. Additional government funding should be allocated to help fund and expand these activities.

With regards to commercial price comparator websites, we agree that any commissions or affiliations the operators of the websites have with retailers should be disclosed to consumers on the comparator website. We also support the ACCC investigating whether the voluntary Energy Comparator Code of Conduct should be strengthened so that it meets the ACCC's guidelines for comparator website operators and suppliers and guidelines for developing effective voluntary industry codes of conduct.

We agree with the ACCC that the retailer practice of conditional pay-on-time discounts are a concern, particularly when they are applied to vulnerable customers who may not always be able to pay on time. We believe that some limitation should be placed on the application of such conditional discounts when the customer is vulnerable and particularly if they are on a payment plan with the retailer or can otherwise be identified as a hardship customer. However, it is important that any limitations do not impact on the ability of customers to benefit from such conditional discounts.

We believe that retailers' so-called win-back offers – provided to customers who have already switched or are “at risk” of switching to another retailer – should be required to be publicly available on the Energy Made Easy website. This would encourage transparency and provide customers with more information, be likely to improve competition and prevent opaque under-cutting pricing activities by some retailers.

We support the ACCC considering whether current regulations around door-to-door selling appropriately balance the benefits for consumers with the risks that this style of marketing might create and whether additional protections for consumers should be implemented to ensure that consumers are benefiting from contracting via door-to-door sellers. In particular, we believe that an additional protection could be for door-to-door sellers to be required to provide information about the Energy Made Easy website, so that the consumer can compare their existing contract, the contract the door-to-door salesperson is trying to sell them and other contracts, so they can find the best contract for their circumstances.

Given the recent large rises in retail electricity prices and the importance of concessions for low-income energy consumers, we agree with the ACCC that the COAG Energy Council should initiate a review of State and Territory concession schemes for vulnerable customers, with the aim of making the schemes more consistent, better targeted and flexible to change with electricity prices.

We support appropriate regulatory changes and/or the development of market mechanisms that encourage more demand response and reward customers for adjusting their behaviour to reduce peak demand, which will lead to reduced network expenditure and lower electricity prices overall. Recommendation 6.7 of the Finkel Review suggests that the COAG Energy Council direct the AEMC “to undertake a review to recommend a mechanism that facilitates demand response in the wholesale energy market. This review should be completed by mid-2018 and include a draft rule change proposal for consideration by the COAG Energy Council.” We support such a review.

Wholesale electricity markets

Given the discussion in the Preliminary Report regarding the possible impacts that high degrees of market concentration and vertical integration might have on the level of competition, as well as prices, in the wholesale market, we support the ACCC conducting further exploration of these issues, including in the context of strategic re-bidding by generators.

The recently passed *Misuse of Market Power* legislation, which has strengthened the previous “purpose” test into a “purpose, effect or likely effect” test of substantially lessening competition, may help to mitigate any impact of high levels of market concentration and vertical integration. This is because even the possibility of the use of the stronger legislation may have the effect of reducing any conduct that could be considered a misuse of market power.

However, with regards to strategic re-bidding by generators and individuals within those businesses, we agree with the ACCC that amendments need to be made to the National Electricity Rules to strengthen the AER's powers such that they are able to require individuals to give evidence before it.

Importantly, this should also apply to retailers' marketing and other practices where the AER believes conduct that may have breached regulations needs to be investigated.

One particular area of concern regarding wholesale market competition is the lack of liquidity and very small volume of hedging products in the contract market in South Australia. These factors are likely to be contributing to a number of issues, such as:

- both higher and more volatile wholesale prices
- higher retail prices
- difficulties for large customers in obtaining electricity supply contracts that enable them to maintain competitiveness
- higher costs for retailers
- barriers to entry for small retailers

Reflecting this, we support the ACCC further examining the hedging practices of all market participants and the transfer pricing approaches of gentailers for the Final Report.

We also believe that the ACCC should recommend in the Final Report that the AER should conduct a mandatory survey of market participants on their Over The Counter hedge contracts, so that there is greater visibility of the contract market. The survey should ideally be conducted so that it replicates the information provided by the previous Australian Financial Markets Association survey and so that it protects confidential information and adheres to privacy principles, such as that any reporting of the survey results by the AER does not identify individual market participants.

Should you require further information or have any enquiries in relation to this submission, please email me at antony.clarke@ewosa.com.au or telephone me on (08) 8216 1851.

Yours faithfully



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