



By email: energycouncil@industry.gov.au

4 October 2016

COAG Energy Council Secretariat
GPO Box 9839
Canberra ACT 2601

Dear Sir/Madam

Consumer Protections for Behind the Meter electricity supply

Consumer Action Law Centre (Consumer Action) and Consumer Utilities Advocacy Centre (CUAC) welcome the opportunity to respond to the Council of Australian Governments Energy Council (Energy Council) consultation on consumer protections for behind the meter electricity supply.

Introduction

We welcome the attention of the Energy Council to this important stream of work. A reliable, secure and affordable energy supply is essential to health, wellbeing, economic participation and social inclusion, so there is a high risk to consumers when things go wrong and supply of electricity is compromised. It is, therefore, appropriate that governments at the national and state jurisdictional level give significant attention to the regulation of this industry to protect consumer interests.

Despite a tailored consumer protection regime for energy services, many consumers have found the transition to retail competition in this market difficult. The complex array and marketing of offers has made effective comparison and meaningful participation difficult, with the effect that consumers' ability to exercise choice has not necessarily resulted in improved outcomes. The level of energy prices suggests that the market is not working in the interests of consumers.¹ For these reasons alone, many consumers have been quick to take up solar options and are likely to adopt solar/battery and other options that they believe will give them reduced price and to the

¹ For example, see: Bruce Mountain, *Australia's retail electricity markets: who is serving whom?* A report prepared for GetUp, August 2016, 14.

extent possible, independence from the network. But these new products and services carry those same risks for consumers.

As the Energy Council notes, the market for new energy products and services is growing quickly, and there is already evidence of problems faced by consumers. Consumer Action has received a large number of cases relating to poorly installed or defective products, mis-selling and solar financing (including high-pressure in-home sales, inflated costs and hiding the high cost of finance).

It is important for us to see swift action in this area to ensure the appropriate consumer protections are in place. In particular, energy-specific consumer protection is needed to ensure all customers have access to a reliable energy supply at a reasonable price. This requires the development of a base level of protections that apply to all electricity consumers, regardless of the products or services used to obtain supply.

We would caution policy makers not to use the changing nature of the supply chain as a prompt to allow consumer protections to be degraded, but to exercise vigilance to ensure that the regulatory framework remains fit-for-purpose to deliver long-term benefits to consumers.

Our organisations have also contributed to the recent Australian Energy Regulator (AER) review of its exempt selling guideline and similar policy and regulatory reviews underway in Victoria. It is clear from our research that while it is important to ensure that undue regulatory barriers are not placed in the way of innovation, new market activity needs to be carefully introduced to limit consumer detriment (such as occurred with door-to-door sales associated with the introduction of retail competition).²

About our organisations

Consumer Action is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

CUAC is a specialist consumer organisation established in 2002 to represent Victorian energy and water consumers in policy and regulatory processes. As Australia's only consumer organisation focused specifically on the energy and water sectors, CUAC has developed an in-depth knowledge of the interests, experiences and needs of energy and water consumers, in particular those from low income, disadvantaged and rural communities. CUAC's policy positions are informed by evidence based research.

² Consumer Action Law Centre, *Submission to the draft AER (Retail) Exempt Selling Guidelines*, November 2015, available online at: <http://consumeraction.org.au/wp-content/uploads/2015/11/AER-Retail-Exempt-Selling-Guideline-November-2015.pdf>; Alternative Technology Association and Consumer Utilities Advocacy Centre, *Draft AER (Retail) Exempt Selling Guideline*, November 2015, available online at: <http://www.cuac.org.au/advocacy/submissions/424-retail-exempt-selling-guideline/file>; Consumer Utilities Advocacy Centre and Consumer Action Law Centre, *Submission on the General Exemption Order Review - Draft Position Paper*, August 2016, available online at: <http://www.cuac.org.au/advocacy/submissions/449-submission-on-the-general-exemption-order-review-draft-position-paper/file>

Objectives: discussion points

We recognise that the issues raised in this consultation paper are complex, and that policy responses will need to balance consumer outcomes with efficient market evolution.

To assist in this process, Consumer Action, in collaboration with a wide variety of industry stakeholders, has published the *Power Transformed: Unlocking effective competition and trust in the transforming energy market* report.³ The report examines the transformation of the market from a consumer perspective and considers the implications for the consumer protection framework's application to new electricity technologies and finance arrangements. It proposes three primary principles that should underpin energy policy and regulation responses:

- It should be easy for people to engage and make effective decisions.
- Appropriate consumer protections should be applied to all energy products and services.
- The benefits of a transforming market should be shared across the whole community.

These principles support effective competition whilst maintaining the focus on consumer participation and trust in the market.

The report also proposed some short-term measures to improve consumer outcomes in new energy markets. Of those measures, some are directly relevant to this consultation:

1. *Market interventions should be tested against real consumer decision making.* Behavioural insights allow for better targeting of underlying issues for consumers. These insights are particularly important in the design of effective information-based remedies, should they be imposed.
2. *Ombudsman schemes jurisdictions should be expanded to all entities providing energy services.* This would extend to any entity providing ongoing energy supply or management services via a contractual arrangement. The ombudsman should have the power to hear disputes under both energy-specific and general consumer protection frameworks.
3. *Energy service providers should more clearly ensure products are fit for consumers' purposes.* While the Australian Consumer Law includes 'fit-for-purpose' protections, the law does not require service providers to proactively identify a customer's purpose at the time of purchase (rather, the law applies when a consumer discloses their purpose). Imposing a requirement to identify a customer's purpose, and note it in contractual documentation, should apply to all energy service providers, so that customers have confidence that the product or service are guaranteed to be fit-for-purpose.

These principles support effective competition whilst maintaining the focus on consumer participation and trust in the market.

Objectives: principles

That the Energy Council note the principles identified to support effective competition whilst maintaining participation and trust in the market:

- *Market interventions should be tested against real consumer decision making*
- *Ombudsman scheme jurisdiction should be expanded to all entities providing energy services*
- *Energy service providers should more clearly ensure products are fit for consumers' purposes.*

³ Consumer Action Law Centre, *Power transformed: Unlocking effective competition and trust in the transforming energy market*, July 2016, available online at: <http://consumeraction.org.au/power-transformed/>.

Electricity supply ‘behind the meter’: discussion points

We consider the definition of ‘behind the meter’ electricity systems proposed in the consultation paper to be unnecessarily restrictive.

A range of new products and services can impact on electricity supply, but do not themselves provide supply. For example, capacity control products or other energy management technologies allow a third party some control over supply and consumption for a household, and may interfere with the essential level of supply necessary by household occupants. Further, battery storage could be considered either a demand management or supply technology.

It is important that the consumer protection framework covers all entities providing ongoing energy supply or management services. The interactions of various energy products and services mean that effective resolution of electricity supply issues may only be possible where all elements of the supply arrangement are considered together.

The complexity of many new energy products and services means that consumers are unlikely to be able to make effective decisions without access to their actual consumption data. We therefore consider it important that issues around access to data by third parties, and how that is used to benefit consumers or is otherwise used to support further market innovation, should be explored in this consultation.

We also recognise that some of the issues raised in the consultation paper apply equally to customers supplied through a metered connection, but otherwise than from an authorised retailer (e.g. customers in embedded networks or micro grids). We urge that where changes to consumer protection framework are recommended, thought be given to whether it is appropriate to extend those protections to those other supply arrangements.

Behind the meter: discussion points

The Energy Council should:

- expand the definition of ‘behind the meter’ to include all products and services that impact supply
- consider issues related to data access and use as part of this consultation
- consider the interaction of energy products and how these may be included in consumer protection framework.

Competition in behind the meter services: discussion points

Complexity and effective participation

Our organisations have conducted research into the effectiveness of consumer participation in the context of retail competition. Our research shows that product complexity can make it difficult for people to understand and choose offers that meet their needs. While consumers who shop around are able to access lower prices, many consumers find the process difficult to negotiate. There is a risk that vulnerable consumers in particular may choose an offer that they do not fully understand, or ‘get stuck’ with an inappropriate offer because they lack the confidence to interact further with the process.

The novel nature of many new energy products, and increasing complexity of the technology required to deliver them, will only heighten the issues of consumers in finding and assessing appropriate options for their specific circumstances. This is particularly an issue for those products or services that alter the nature or source of a consumer's energy supply, or involve long-term contracts.

While we support clear, simple and comparable offers (including a unit pricing approach), we caution against an overly prescriptive regulatory approach that may have unforeseen consequences such as the mandatory introduction of 'vanilla' type offers for which consumers may end up paying a premium. In the UK, for example, Ofgem's 'Simpler Choices' limit on retail tariff offers was found by the Competition and Markets Authority to have had an 'adverse effect on competition' by 'reducing retail suppliers' ability to innovate in designing tariff structures to meet customer demand, in particular, over the long term, and by softening competition'.⁴

Consumers will also require a clear understanding of the various financing options associated with high capital cost products. A scan of these offers in recent research found that very little detail is immediately available on retailer websites and it is often difficult for consumers to understand the entity they are dealing let alone understand the consumer protections they will be afforded under such arrangements.⁵

Required protections

We consider that the generic consumer law is unlikely to provide adequate protections for consumers of new energy products and services. We note the Productivity Commission found that the generic consumer law does not provide adequate consumer protections where:

- The risk of consumer detriment is relatively high and/or the detriment suffered if things go wrong is potentially significant or irremediable; and/or
- The suitability and quality of services is hard to gauge before or even after purchase.⁶

Also of relevance are consumers' expectations of a safe, reliable and well-regulated electricity supply. These same expectations are likely to apply to new energy products and services, and need to be met through appropriate accountability of those new players given access to energy networks and network data.

Taken together, these issues provide a case for specific regulation of these products and service, with a base level of consumer protections that apply to all alternative energy sellers.

Particular thought needs to be given to appropriate requirements around the provision of information to consumers when entering into contracts, and for dispute resolution. We ask the Energy Council to consider whether light touch regulation of new products and services creates an opportunity trade-off favouring short term innovation opportunities for alternative energy selling businesses at the expense of consumer detriment, both in the short term and longer term.

⁴ Competition and Markets Authority (2016). Energy Market Investigation: Provisional decision on remedies. <https://assets.digital.cabinet-office.gov.uk/media/5706757340f0b6038800003b/Provisional-decision-on-remediesEMI.pdf>. Page 111.

⁵ Jo Benvenuti and Caitlin Whiteman, *Consumer access to external dispute resolution in a changing energy market*, (Energy and Water Ombudsman (Victoria), Energy & Water Ombudsman NSW, Energy and Water Ombudsman (SA), 2016).

⁶ Productivity Commission (2008). *Review of Australia's Consumer Policy Framework*. Productivity Commission Inquiry Report, No. 45, 30, April 2008.

In addition, we are concerned about the potential for significant consumer detriment where new businesses entering this alternative supply market fail, particularly where consumers are committed to long term contracts. We therefore suggest that the Energy Council also consider a last resort supply safety net or consumer compensation fund such as apply in other high risk consumer transactions such as building, or rental housing bonds.

The importance of consumer understanding in transitioning to new systems

We would like to emphasise to the Energy Council that consumers are unlikely to truly benefit from technology and innovation without appropriate tools to manage these choices and applications. It is not just systems that are in transition—consumers need to be ‘brought along’ to participate. For this to happen they need trusted, independent sources of information.

Our organisations provided insights to the Victorian Government in the mandatory rollout of smart meters in Victoria. Whilst this was initially seen by government as a simple rollout of new meter technology by distribution businesses, consumer concerns about issues such as cost, safety and privacy were such that the rollout had to be brought to a temporary halt to allow for a public education campaign involving the distributors, retailers and government.

We think the current market and framework changes require a comprehensive consumer education strategy.

As an immediate measure, the Energy Council should assign the AER responsibility for consulting with stakeholders regarding an appropriate consumer education and information model for the energy sector. The AER should also work with the Victorian Government and Essential Services Commission (ESC) to develop a similar model for Victoria. Further consideration should be given to the role of the AER, Australian Competition and Consumer Commission and jurisdictional fair trading offices in providing information that assists consumers to identify key matters to consider when making decisions that involve potentially large purchase or lease costs, or long contract terms. In particular, the AER’s consultation should include the potential role of bodies such as Energy Consumers Australia (ECA).

As part of this proposition, we support the availability of independent comparator tools and additional resources to assist consumers in comparing and assessing complex offers. This requires additional modifications to the Energy Made Easy and Victorian Energy Compare comparator websites to take account of solar and battery and other technology and tariff options.

The model should also include a targeted advice line for vulnerable consumers to aid informed energy choices, similar to the Commonwealth Government’s previous Home Energy Saver Scheme, or the existing MoneySmart program run by the Australian Securities and Investments Commission or MoneyHelp program in Victoria.⁷

The Energy Council should also ensure that the needs of low-literacy and culturally and linguistically diverse (CALD) communities are met, in addition to the needs of particularly marginal communities such as Aboriginal and Torres Strait Islander communities, and people with disabilities.

⁷ See <https://www.moneysmart.gov.au/> and <http://www.moneyhelp.org.au/>

We are concerned that vulnerable and marginal communities are more susceptible to unscrupulous marketing practices. The Energy Council has a responsibility to ensure that consumer protections and strategies are in place to mitigate against this exposure.

There is evidence that vulnerable consumers benefit from targeted outreach education programs built around trusted agencies and relationships. Since 2014, CUAC has run more than 140 workshops reaching more than 2500 vulnerable consumers and training over 400 community workshops across Victoria. These workshops have focused on providing information on understanding smart meters, how to save energy and how to choose a market offer using the Victorian Energy Compare website. Evidence from these workshops indicates consumers feel more confident to engage in the market:

It was so helpful, I never understood my bill until the workshop. I now have confidence to speak with my retailer. I really benefited from the workshop.

Other participants found the workshop helped them to think more critically as a consumer and better engage in the market for other products and services:

It was very useful and informative. Since the workshop I have been more careful - shopping around for insurance and getting multiple quotes for my home maintenance.

Competition and effective consumer participation

The Energy Council should support effective consumer participation in the transitioning energy market by:

- ensuring that an appropriate consumer information and education model be developed in consultation with key stakeholders and implemented with appropriate resourcing. This should include the upgrading and promotion of the Energy Made Easy and Victorian Energy Compare websites to assist consumers in accessing independent information to assist their comparison of complex tariff offers, including information on new products and services
- support the introduction of an advice line to further assist vulnerable customers
- support the development of targeted resources and outreach education programs for vulnerable consumers (including low literacy, CALD, people with disabilities, Aboriginal and rural communities)
- support the funding of community outreach education programs to assist low vulnerable and marginal community participation (potentially through recommending a special category of funding through the ECA. We also suggest consultation occur with the Victorian government in this regard.)
- consider systems to support consumers where supply businesses fail.

Information requirements and marketing

The regulatory protection framework needs to support customers to make good choices, particularly for products and services that alter their supply arrangements, or involve high costs or long-term supply agreements. We do not agree with the statement that ‘the more information [consumers] have about the product or service that they are purchasing, the more confident they

are in making their decision'.⁸ Rather, it is well established that 'human decision-making markedly deteriorates as the amount or complexity of information increases'.⁹

More information for consumers is not sufficient, as has been shown with the failure of disclosure-based frameworks in the competitive telecommunications and financial services sectors. Rather than increased information, the quality and simplicity of the information needs to be improved in disclosure statements to enable consumers to make informed decisions. These information requirements should form the first line of consumer protection and assist in reducing the extent of any later consumer detriment.

All customers must be provided with easy to understand information that simply sets out the key matters to be aware of in making a decision about whether to agree to a contract or financial arrangement. This includes information about how the product or service works (including how it interacts with their existing energy supply), the anticipated risks and benefits, and protections or dispute resolution options that are available. To the extent that the provision of a product or service involves multiple businesses and protection frameworks, it is important that the customer can clearly identify the company/companies that are party to the contract and the extent to which various consumer protections apply to each. We also recommend that any information measures be tested for effectiveness before they are introduced, and be subject to ongoing monitoring.

All providers should be required to assess the suitability of the product or service for the specific customer. This could include a requirement for providers to clearly identify the consumer's purpose in acquiring the product or service, and to note it in contractual documentation. This would assist consumers to enforce their rights through 'fit-for-purpose' protections such as those provided in the Australian Consumer Law.

These improvements to information requirements at the point of sale should be supported by a general tightening of marketing provisions. Consumer Action has seen multiple instances of business practices that trade on the 'false hope' of vulnerable consumers in particular to attain unachievable outcomes. In respect of solar photovoltaic products, for example, claims such as 'zero upfront solar', 'reduce your reliance on the retailers' and 'never pay for electricity again' may potentially inflate customers' expectations about the benefits to them of obtaining the product. Specific rules around marketing, when combined with effective disclosure requirements, should provide a strong foundation for effective consumer decision-making. In developing these rules, the Energy Council should consider the cognitive biases that affect consumers' decision-making.¹⁰

Finally, businesses selling behind the meter products and services should be required to obtain the explicit informed consent (EIC) of customers before they enter an arrangement. This provides a basic and essential layer of consumer protection. Some thought should be given to requirements to help low-literacy, CALD and other vulnerable consumers to fully understand information to provide EIC.

⁸ Page 8 of consultation paper.

⁹ Power transformed p.5; B. Schwartz, *The Paradox of Choice – why More is Less*, 2004.

¹⁰ Karen Stenner, Elisha R. Frederiks, and Elizabeth V. Hobman, 'Household Energy Use: Applying Behavioural Economics to Understand Consumer Decision-Making and Behaviour', *Renewable and Sustainable Energy Reviews* 41 (January 2015): 1385–94.

Information requirements and marketing

The Energy Council should:

- require energy product and service providers to provide simple and clear product disclosure statements to consumers
- require that the customer's purpose in purchasing/contracting a service is documented in the contract
- require businesses providing behind the meter services to require EIC (including support for EIC support for vulnerable communities) prior to finalising a contract
- note the need for the ACCC to monitor false or misleading product statements as a priority in this emerging market
- note the impact of consumer cognitive biases in considering appropriate information requirements.

Availability and Reliability

The Energy Council could explore the possibility of the development of an Australian Standard for a behind the meter supply 'reliability rating' for products and services that provide the basis for supply other than through the interconnected grid, to allow consumers to make a meaningful comparison between supply models. Behind the meter products and services could be rated on a ten-star basis or include an estimate of expected performance of the product. This could include such functions as the number of hours/days that a consumer might expect power (capacity) annually. Alternatively, the standard could identify battery storage capacity and the likelihood of power outage or reduced supply.

This could be compared with the same metrics for interconnected grid reliability for the customer's supply area. Ratings could be based on the average household cumulative usage, with a tool available to determine a consumer's individual usage (utilising smart meter data). This information, presented simply, could help consumers consider the value proposition of a behind-the-meter arrangement to determine whether it may meet their supply needs.

Availability and reliability

The Energy Council should consider the development of a reliability rating system to help consumers assess whether a behind the meter product or service will meet their needs.

Vulnerable Consumers: additional comments

We address the impacts on vulnerable consumers throughout this submission and offer additional comments here.

The Energy Council's consultation paper recognises that there may be particular groups of consumers for whom behind the meter supply of electricity is an indispensable necessity, in addition to supply from the interconnected electricity system, to ensure their health and wellbeing (for example, those on life support). We suggest that these consumers are unlikely to deliberately disconnect from the interconnected grid and knowingly forgo higher reliability. However, we agree

that consumer protections should ensure that consumers receiving energy supply other than through the interconnected grid are provided with a level of reliability that meets their needs (and is agreed to through an informed assessment of the available options). This could include, for life support customers, obligations on off-grid energy suppliers that mirror the current obligations on distribution businesses.

The Energy Council notes that many behind the meter products and services require upfront capital which might limit future consumer detriment unless the product breaks. In our view, there is potential for these products and services to be provided to vulnerable consumers through expensive leasing arrangements, causing significant consumer detriment.¹¹

The Energy Council should consider the different factors of disadvantage that create vulnerabilities in determining the appropriate consumer protections to implement. The principles developed in Consumer Action's *Power Transformed* report provide a foundation for this assessment. The recommendations in this submission, including universal access to external dispute resolution, information provision and disclosure requirements, effective comparison mechanisms and reliability ratings for new products and services, will all go to support vulnerable customers.

Vulnerable consumers

The Energy Council should impose on all primary energy suppliers of life support consumers, obligations that mirror the current obligations on distribution businesses.

Dispute resolution

Simple, consistent arrangements for dispute resolution should apply to all alternative energy sellers, and cover all parts of bundled energy retail products. This should include access to an ombudsman scheme for all energy consumers. During 2016, Consumer Action received a high volume of complaints to its legal advice line about unsolicited solar sales and poor installation that have created poor outcomes for clients. These complaints highlight the complexity of dispute resolution where a number of parties are involved, particularly where at least one of these parties is not an authorised retailer. The potential for buck-passing and blame shifting between parties in these circumstances is high. Uncovering the most suitable course for resolution and identifying the party responsible for the issue has proven difficult for our qualified solicitors acting on behalf of our clients.

The following example of a case received by Consumer Action highlights some of the challenges for consumers in resolving disputes where multiple parties are involved:

In February 2016, we received a call from a client who is on WorkCover and her husband is a recipient of the disability support pension. They were approached by a solar sales company and purchased a 15 kW solar panel system for \$27,485. An electrician later attended the property to install the system, however the first solar contribution didn't

¹¹ See, for example: ASIC, *Cost of consumer leases for household goods*, September 2015, available online at: <http://download.asic.gov.au/media/3350956/rep-447-published-11-september-2015.pdf>; Consumer Action Law Centre, *The hidden cost of 'Rent to Own'*, September 2013, available online at <http://consumeraction.org.au/report-the-hidden-cost-of-rent-to-own/>.

appear on our client's bill until eight months after installation, and this contribution was only \$1.53.

Our client tried to resolve the matter with the seller of the system, but they referred her to the subcontracted installer of the system. The installer referred our client back to the solar sales company which by then was entering into administration.

Our client contacted another installer to look into the problem, who identified that the system was wired incorrectly. The second installer fixed the problem and the output significantly increased. Consumer Action assisted the client to seek compensation for the cost of repair plus the lost solar contribution through the Victorian Civil and Administrative Appeals Tribunal.

Prior to the hearing, a lengthy defence was filed by the opposing party raising a broad range of issues that had not previously been raised. The client eventually chose not to proceed and the complaint was withdrawn.

With respect to essential services, effective consumer protections cannot be ensured where consumers are required to resolve disputes through consumer affairs departments or small claims tribunals. There are significant barriers for energy consumers seeking outcomes through these channels. Consumer Affairs Victoria (CAV), for example, has no binding powers, meaning traders can choose not to participate. Likewise, the Victorian Civil and Administrative Tribunal (VCAT) in our experience can be very lengthy, time and cost intensive and fail to produce fair outcomes. Consumer Action's July 2016 report, *Review of Tenants' and Consumers' Experience of Victorian Civil and Administrative Tribunal*,¹² provides information about consumers' recent experience of the tribunal and highlights some key issues identified with the tribunal process. As part of the report, consumer representatives expressed the following concerns about the VCAT process:

- Parties can be pushed to mediation where there are significant power imbalances and without regard to the merits of the case¹³
- 'Fairness [may be] adversely impacted by the Member failing to provide adequate compensation where a finding is made in favour of the tenant or consumer'¹⁴
- The process itself is intimidating and the applicant form can be difficult to fill out¹⁵
- Members sometimes bypass the VCAT appointed interpreter because the interpreter slows down the process, and instead seek a direct answer from a consumer with limited English. This was observed in a hearing attended by Cameron Ralph Navigator, the consultant commissioned to produce the report.¹⁶
- VCAT does not enforce monetary orders. Rather, a VCAT payment order must be pursued through the Magistrate's court.¹⁷ This also requires legal assistance, an up-front court fee and creates another barrier to resolving a dispute.

The Productivity Commission presented similar findings in its 2014 *Access to Justice Inquiry*. The Commission found that tribunals did not always meet expectations in delivering an informal, timely

¹² Cameron Ralph Navigator, *Review of Tenants' and Consumers' Experience of Victorian Civil and Administrative Tribunal*, (Consumer Action Law Centre, Tenants Union of Victoria and Westjustice Western Community Legal Centre, July 2016), available online at: <http://consumeraction.org.au/review-tenants-consumers-experience-victorian-civil-administrative-tribunal/>

¹³ *Ibid.*, 25.

¹⁴ *Ibid.*, 27.

¹⁵ *Ibid.*, 11.

¹⁶ *Ibid.*, 18.

¹⁷ *Ibid.*, 32.

and low-cost dispute resolution process and provided recommendations to address the ‘creeping legalism’ in some tribunals.¹⁸

Ombudsman schemes, on the other hand, have been shown to provide informal, timely and low-cost dispute resolution. In the Access to Justice Inquiry, the Productivity Commission cited from the Energy and Water Ombudsman NSW (EWON):

‘...94 per cent of the people who did not receive a satisfactory outcome from [EWON] said that it was easy to make a complaint to [EWON]’

drawing attention to the accessibility of a complaints process and considering the measurements of a ‘just’ outcome.¹⁹ The Commission found both a consensus among general stakeholders and quantitative data to support the assertion that ombudsmen provide an effective, timely service with good outcomes for consumers.²⁰ The ombudsman concept has also received praise internationally and ‘significant agreement amongst observers that this development has been a broad success, improving access to justice and providing redress for consumers that would not otherwise have been available.’²¹

We also note that the AER has signalled its own preference for the ombudsman scheme to be extended to cover exempt sellers:

*“...it is important that small energy customers have access to cheap, robust and effective dispute resolution mechanisms. We encourage the ombudsman schemes to extend participation to exempt sellers and we will work collaboratively with these schemes to determine the best way of ensuring exempt customers and sellers can access effective dispute resolution services.”*²²

Requiring all alternative energy sellers that provide ongoing energy supply or management services to become members of an external dispute resolution body, such as energy ombudsman schemes, would allow for coordinated resolution of disputes involving multiple parties and reduce the potential for confusion among consumers. For this arrangement to be effective, the ombudsman or equivalent dispute resolution body should have the power to hear disputes under both energy-specific and general consumer protection frameworks.

Requiring customers to seek resolution of related issues through different channels may itself create a barrier to effective resolution, resulting in consumer detriment. This is evident in Victoria, with EWOV noting a number of cases where embedded network (and solar and other) complaints were referred from CAV to EWOV and then back to CAV, or on to a different body.²³

Resolving all energy disputes through a single body provides the additional benefit of that body being able to provide more effective insight into emerging and systemic issues in the sector. Identifying systemic issues quickly can assist the industry, the regulator or policymakers to respond effectively. We refer the Energy Council to the Energy and Water Ombudsman Victoria’s

¹⁸ Productivity Commission, *Access to Justice Arrangements Inquiry Report*, Vol. 1, (5 September 2014), 345.

¹⁹ *Ibid.*, 318.

²⁰ *Ibid.*, 318.

²¹ Chris Gill *et al*, 15 July 2013, *The future of ombudsman schemes: drivers for change and strategic responses*, Queen Margaret University, Edinburgh, p. 9.

²² AER, March 2016, *Notice of Final Instrument – Retail Exempt Selling Guideline Version 4.0*, p. 32.

²³ Jo Benvenuti and Caitlin Whiteman, *Consumer access to external dispute resolution in a changing energy market*, (Energy and Water Ombudsman (Victoria), Energy & Water Ombudsman NSW, Energy and Water Ombudsman (SA), 56.

(EWOV) 2015 research paper, *Can I speak with a manager?*, which demonstrates how EWOV's particular insights can inform and encourage complaint handling improvements within industry.²⁴

Dispute resolution recommendation:

The Energy Council should support a requirement that all alternative energy sellers providing ongoing energy supply or management services via a contractual arrangement to become members of an independent, free external dispute resolution body, such as provided through energy ombudsman schemes.

Transaction costs

Whilst there are difficulties for consumers in negotiating the current retail market, it is clear that significant price savings can be made by moving from standard offers to competitive retail offers. Recent research indicates that Victorian consumers can save 'up to \$610 - \$830 per annum (depending on their network area) if switching from the worst standing offer to best market offer.'²⁵ However, this ability to identify a better offer and switch to that offer relies on an effective comparison tool. As stated earlier, we support the value of upgrading and promoting the government-run price comparator websites. The Energy Council should consider how tariff offers for behind the meter products and services may be facilitated on these websites to improve transparency and enable more effective choice.

Extending the existing websites is preferable to developing a stand-alone site for behind-the-meter products and services. The ability for consumers, through a single site, to compare the cost across a range of products and services (including grid-supplied energy tariffs, solar power purchase or leasing agreements, and battery systems) would provide significant benefits. The number of variables and complexity in a comparison of different supply or financing options makes it difficult for a consumer to accurately determine the best fit for their circumstances. There is evidence to suggest that some consumers have invested in a solar system as part of an 'all-or-nothing' decision to reduce their energy bill, rather than first determine whether they were on an appropriate energy retail offer.²⁶ Consumer awareness of these websites is obviously critical for benefits to be realised. A single site simplifies the requirements around branding and marketing.

We suggest that the most effective method for consumers to determine a suitable product, service or tariff is through their smart meter data, where available. This capability is already available for tariff comparison on the Victorian Energy Compare website. Enabling consumers to compare grid-supplied energy tariffs with different behind the meter arrangements based on actual usage data would provide a good use of smart meter capabilities.

Using a consumer's actual consumption data when buying new behind the meter products or services can help to avoid perverse outcomes for consumers. For example, some solar power purchase agreements require consumers to buy all the energy generated by the solar system at the agreed rate, even if it is not used. Excess energy is sold into the grid for a feed-in tariff, typically well below the purchase rate. This arrangement has the potential to leave consumers

²⁴ EWOV, *Can I speak with a manager? An analysis of energy and water company performance in handling your complaint*, March 2015.

²⁵ St Vincent de Paul and Alvis Consulting Pty Ltd, *Victorian Energy Prices January 2016: An Update report on the Victorian Tariff-Tracking project*, 2016, 4.

²⁶ Darren Miller, 'A good look at the economics of solar PV and storage', *One step off the grid*, 3 May 2016.

significantly out of pocket if the solar system is not appropriately sized for their usage. We encourage the Energy Council to consider and adopt the Alternative Technology Association's recommendations outlined in their submission to the *General Exemption Order Review - draft paper* with regard to solar power purchase agreements.²⁷

Transaction costs

The Energy Council should consider the benefits of enhancing the government-run price comparison websites to include behind the meter tariff and product comparison.

Off-grid supply arrangements

Additional protections may be appropriate for households that go 'off-grid'. These may include strengthened information consent arrangements (with a focus on the risks of disconnecting from the grid), and a right to revert to the grid (with clearly defined rules around reconnection costs). For off-grid arrangements where there is an ongoing supply relationship, restrictions must be placed on the ability of the supplier to disconnect customers. Protections should be similar as those for grid-connected customers, including the requirement to offer flexible payment arrangements before disconnection and restrictions on disconnecting while there is an ongoing dispute. Arrangements should also be required to ensure continuity of supply in the event of the failure of the supplier. Further views on the protections for off-grid arrangements are provided in our submission to the Energy Council's consultation paper on *Stands-alone energy systems in the Electricity Market*.

Off-grid supply arrangements

The Energy Council should consider additional protections to apply to off-grid supply arrangements including strengthened information consent arrangements and, where there is an ongoing supply relationship, flexible payment, disconnection, and back-up supply arrangements.

Please contact Gerard Brody at Consumer Action on 03 9670 5088 or at gerard@consumeraction.org.au, or Petrina Dorrington at CUAC on 03 96397600 or at petrina.dorrington@cuac.org.au if you have any questions about this submission.

Yours sincerely



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²⁷ Alternative Technology Association, *Submission to GEO framework review*, September 2016.