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# Consumer protections in an evolving energy market



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## Summary

Energy is an issue of significant concern for businesses. Over the last two years, energy costs have consistently appeared in the top three cost control priorities for businesses in NSW Business Chamber surveys. While the cost of energy is the headliner, a more complex picture plays out in the background. More and more businesses are taking a greater degree of control over their own energy use, generating electricity with solar panels and taking measures to reduce their consumption, especially at peak times of year.

As businesses' involvement in the energy market becomes more sophisticated, regulation will need to evolve in response to new complexities. Helping businesses navigate this more complex landscape will grow in importance as the energy market continues to change in the years ahead. Prescriptive rule-making will need to make way for more flexible approaches to consumer protection to reflect a greater diversity of energy-related products available in the marketplace.

In response to the request from the Australian Energy Market Commission (AEMC) to provide feedback to the New Energy Products and Services and Traditional Energy Retail issues papers, NSW Business Chamber makes the following recommendations:

1. The AEMC should continue exploratory work on moving from more prescriptive to more principles-based regulation of energy retail.
2. The concept of 'essential service' is an important starting point, but its value as a guide to regulation is diminishing as energy markets become more complex. The AEMC should consider other metrics to judge whether energy market specific protections (such as the National Energy Customer Framework (NECF)) are applicable.
3. Problems with solar PV sales show the limits of existing consumer protections to help business energy consumers avoid detriment in a 'new energy' product. For consumer protections to be effective in maintaining confidence in the market as new products are introduced, wider application of the protection regime (but less prescriptive terms) will be needed.
4. Consumers should be able to select which information is relevant to them and tailor communications from energy companies to their preferences. Regulations which specify paper communications (bill contents and notification rules) over other methods of communication should be withdrawn.
5. The Chamber supports reforms to explicit informed consent (EIC) and cooling off period rules that enable new products to be introduced to the market.

## Introduction

The NSW Business Chamber is one of Australia's largest business support groups, helping around 30,000 businesses each year. Tracing its heritage to the Sydney Chamber of Commerce founded in 1825, and the Chamber of Manufactures of NSW founded in 1885, the Chamber works with thousands of businesses from owner operators to large corporations, from product-based manufacturers to service provider enterprises. Operating through a network of offices in metropolitan and regional NSW, the Chamber represents the needs of business at a local, State and Federal level, advocating on behalf of its members to create a better environment for industry.

Australian Business, a division of the Chamber, delivers the Business Energy Advice Program (BEAP), funded by the Australia Government through the Department of Environment and Energy. BEAP was set up as a result of a recommendation (number 52) from the ACCC's Retail Electricity Pricing Inquiry (REPI) conducted in 2017-18. The ACCC specifically recommended that business organisations provide tailored retail electricity market advice to small businesses. BEAP provides free advice for small businesses with 6-20 employees and drought-affected businesses with 0-5 employees. Online self-service options for larger businesses are also provided. Advice falls into three main areas:

1. **Retail market advice:** ensuring small businesses have information to gain the best deal in the market for their energy.
2. **Energy efficiency advice:** helping small businesses be more efficient.
3. **Resource centre:** helping small businesses access grants, tools and online resources to take action.

The Chamber also operates Australian Business Energy (ABE), which offers a price comparison and switching service (for businesses and households). Since opening in 2018, Australian Business Energy has helped its customers find over \$7 million in energy bill savings, at an average saving of \$432 for households and \$2,818 for businesses.

Running these services alongside our regular engagement with our members gives us exposure to business concerns about energy issues, both around NSW and nationwide.

We are grateful for the opportunity to provide feedback to the Retail Energy Competition Review. This response addresses both "Consumer protections in an evolving energy market" issues papers – New Energy Products and Services and Traditional Energy Retail.

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## New energy issues

### Recommendation 1

The AEMC should continue exploratory work on moving from more prescriptive to more principles-based regulation of energy retail.

The Chamber welcomes the AEMC's work to improve energy consumer protections in line with the evolution of technology and market practice. As a greater share of consumers are affected in some form by new energy technology products, it is important that consumer protections keep pace.

The way that current consumer protection laws apply to businesses varies according to business size. The National Energy Customer Framework (NECF) regulates the connection, supply and sale of energy to small business energy customers (i.e. those who consume less than 100MWh/year of electricity or 1TJ/year of gas). Larger users have the more generic protections from contract law and potentially the Australian Consumer Law (ACL), depending on the circumstances.

The Issues Papers reflect on the distinctions between the general Australian Consumer Law, which governs consumer protections across the economy, and the National Energy Consumer Framework, which sets additional consumer protections in the energy sector. It seems inevitable that the lines demarcating where the NECF applies will become less clear as the market evolves.

The Chamber is supportive of rethinking the limits of the NECF (particularly in relation to the increasingly ambiguous 'essentiality' concept). Potentially this could go further, by changing the NECF from a prescriptive set of actions to be taken by energy retailers, to a more open-ended principles-oriented model. The Chamber encourages the AEMC to carry out more detailed analysis of what a principles-based model would look like. Critical questions include:

- What would the principles be?
- How would they be enforced/implemented?
- Would more detailed guidance for market participants be required alongside principles, and if so what would those guidance codes contain?

The Issues Papers do not suggest that the AEMC is currently in a position to fully evaluate the merits of such a shift, but shows that this is a potentially fruitful area for further work.

Moving away from prescriptive regulation would require a rethink of regulatory attitudes. Regulators, industry, even some consumer advocacy organisations, take comfort in the clarity the current approach provides. However, its rigidity and limits in coping with technological and commercial changes make it an increasingly serious barrier to innovation in the energy markets.

## QUESTIONS 5-7

### Recommendation 2

The concept of 'essential service' is an important starting point, but its value as a guide to regulation is diminishing as energy markets become more complex. The AEMC should consider other metrics to judge whether energy market specific protections (such as the NECF) are applicable.

The concept of energy as an 'essential service' has underpinned the energy consumer protection regime since privatisation. In the traditional form of the energy market, where consumers bought energy from a single supplier, the concept of the essential service ensured that all consumers had the right to be supplied. The discussion paper devotes much attention to the underpinning concept of 'essentiality' in determining whether certain consumer protection provisions (including the NECF) apply to particular products/services. As the market has evolved and become more complex, the 'essential service' concept cannot provide the only foundation for consumer protections.

In a market where consumers' energy market interactions may feature multiple services and contracts with different parties, accounting for both consumption and production, determining which of those products or services are part of the 'essential service' and which are non-essential will become more challenging.

There is merit in pursuing clarity in consumers' understanding of their rights and redress pathways. It may be preferable to rely on other less ambiguous concepts if there is a need to distinguish between products and services governed by the NECF and excluded from it in future.

Energy costs continue to be a source of significant concern for businesses in NSW. Energy technologies including solar PV or battery storage can help businesses manage those costs. The regulation as it stands tests whether those energy technologies are optional or discretionary for the business. In a market where participants can combine many energy inputs into their supply mix, there is a risk that each element treated in isolation will be treated as discretionary, yet the inputs work in combination.

The 'essentiality' test, at least as it is currently implemented by the Australian Energy Regulator (AER), risks falling behind common practice in the market. A more expansive understanding on what constitutes an essential service (or maybe more accurately, a part of an essential service, which can be separated into components without losing its essentiality) will be needed as the regulatory framework adapts.

## QUESTION 8

### Recommendation 3

Problems with solar PV sales show the limits of existing consumer protections to help business energy consumers avoid detriment in a 'new energy' product. For consumer protections to be effective in maintaining confidence in the market as new products are introduced, wider application of the protection regime (but less prescriptive terms) will be needed.

Despite being bracketed as part of the 'new energy' sector, solar PV has already risen to become one of the most common areas of complaint. We have heard feedback from customers who are dissatisfied that they have not reduced bills by expected amounts after installing solar systems. This can sometimes be due to them not having contacted their energy retailer to add a solar feed-in tariff to their contract. Likewise, there have been cases where solar system sellers told customers to expect a very low or \$0 bill, which is evidently misleading.

These cases highlight the limitations in practice of the voluntary Code of Conduct for solar installers. The Chamber does not have visibility over whether the installers described were party to the Code of Conduct but were not abiding by it, or were instead active in the market while not operating under the Code of Conduct. However, the persistence of problems relating to misleading or deceptive statements about solar products potentially contributes to the lack of trust in the energy sector more broadly.

# Traditional energy retail

## QUESTIONS 1-3

### Recommendation 4

Consumers should be able to select which information is relevant to them and tailor communications from energy companies to their preferences. Regulations which specify paper communications (bill contents and notification rules) over other methods of communication should be withdrawn.

The Chamber has significant concerns about the effectiveness of current requirements on bill information and notifications. In particular, we still see several incidents where business energy consumers are unaware contracts are coming to an end, or are unaware of the terms of the contract their supplier intends to roll them onto if no action is taken. Suppliers are providing this information, but customers are not always cognisant of the need to respond to it. For example:

- users with automated bill payment may not read paper bills, and will miss other information included
- users check their bills for the amount owed and ignore other information supplied
- business energy bills can be long documents and pertinent information may be 'buried' amid lots of other content.

Enabling consumers to control their information preferences is an obvious first step in reform. If a user wants to receive information in an email, text message or through an app, this should not be restricted by regulation steering information provision through paper bills. Using electronic means of communication may also enable a system which require a confirmation or response from the consumer, potentially ensuring greater awareness of significant changes to prices or contract terms.

Going further, there may be value in allowing consumers to also select which of the 24 currently required information components they wish to receive. Admittedly, there may be an element of some consumers 'not knowing what they need to know', but if done on an opt-out basis, retaining the current information requirements as the default option, consumers who want to make changes would be able to filter out information that is less relevant to them and focus on what is most important.

The introduction of the default market offer (DMO) in July 2019 has helped with this problem, but there is still room to improve. Before the DMO was brought in, small business customers would be moved onto more expensive standard tariffs following the end of a market contract. In many of the instances brought to our attention via Australian Business Energy, this had occurred when those customers had missed their notification from the supplier that their contract was due to expire. The DMO makes the consequences of missing these notifications less severe, but DMO terms still commonly imply an increase in costs, and possibly also changes to other service terms, compared with the business's expiring deal. With typical business customers often on longer duration contracts than households, re-contracting presents an infrequent opportunity to improve their tariff.

**Recommendation 5**

The Chamber supports reforms to explicit informed consent (EIC) and cooling off period rules that enable new products to be introduced to the market.

Under current market conditions, the Chamber is not aware of significant problems for business energy customers created by rules around informed consent and cooling-off periods. Were conditions in the energy market static, we would not endorse changing these requirements. However, we recognise the potential problems highlighted by the Issues Paper: these regulations could impede new technologies and platforms, which could otherwise be beneficial for business energy users, from being brought to market.

Of the specific reform options identified in the Issues Paper, we would support enabling consumers to provide EIC to a third party, who would be able to then manage their energy supply arrangements on their behalf. This EIC could be time-limited (requiring it to be re-consented after fixed period) or open-ended (thus needing only to be revised when the customer requests it, the third party provider is no longer able to fulfil its commitments, or when there is a material change such as the sale of a business premises to a new owner).

The small business sector is a good fit for third party switching services to establish their business model. The discussion paper notes that the UK has already made changes to enable these business models. It will be interesting to see whether they prove viable and durable and whether they can be adapted to the Australian market.