



27 October 2020

Dr Paul Paterson
Chair
Independent Pricing and Regulatory Tribunal
Level 15, 2-24 Rawson Place
Sydney NSW 2000

Dear Dr Paterson

Independent Pricing and Regulatory Tribunal (IPART) Draft report on monitoring the electricity retail market 2019-2020

Thank you for the opportunity to comment on this draft report.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. EWON receives and responds to complaints from customers on metering work and electricity supply interruption issues relating to retailer and distributor activities. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have only responded to those issues in the draft report that align with issues customers raise with EWON.

If you would like to discuss this matter further, please contact me or Rory Campbell, Manager Policy and Research, on [REDACTED].

Yours sincerely

[REDACTED]

Janine Young
Ombudsman
Energy & Water Ombudsman NSW

IPART Draft report on monitoring the electricity retail market

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IPART draft recommendation 1 – amendments about the Retailer of Last Resort

We generally support IPART's draft recommendation 1:

“To support retail market stability, the NSW Government, through the COAG Energy Council, should amend the National Electricity Retail Rules to:

- a. allow the Retailer of Last Resort (ROLR) to prepare a lower price market retail offer for small customers, and*
- b. reduce the impact of increased cash flow and/or credit support requirements including greater ability for the AER to appoint multiple ROLRs if appropriate.*

This can be achieved through an amending Act to amend the National Electricity Retail Law along with a set of Minister initiated Rules.”

We consider that any changes to ROLR requirements should support flexibility for customers and ensure continuity of consumer protections. In addition, any changes to the National Electricity Retail Law and National Electricity Retail Rules should ensure that the existing consumer protections are not removed.

IPART draft recommendation 2 – protections under the Social Programs for Energy Code

We generally support IPART's draft recommendation 2:

“The NSW Government should continue to work to ensure all customers receive adequate protections in line with the Social Programs for Energy Code, with a particular focus on current customers that are excluded, such as customers in apartment buildings that are not registered as strata title. It should ensure adequate protections apply to stand-alone power systems as they develop.”

We support the NSW Government's consumer protections under the NSW Social Programs for Energy Code (the Code) for customers receiving Low Income Household Rebate, NSW Gas Rebate, Life Support Rebate and Medical Energy Rebate. Clause A5.6 of the Code sets out the requirement for retailers to make sure customers keep receiving their rebates after changing contracts, changing retailers, moving residence and/or during the annual verification process.

As IPART identifies, some customers of embedded networks do not receive the same protections as other customers. Customers who receive their energy from exempt sellers within embedded networks do not have access to Energy Accounts Payment Assistance (EAPA) vouchers. Energy rebates are available to customers of authorised retailers within embedded networks, however customers have to apply via Service NSW.



Gaps in consumer protections and legislation

Many customers have minimal choice about the adoption of new energy products and services. EWON receives complaints from residents who only find out they are within embedded networks after they have moved into the premises.

Complaints to EWON about authorised retailers from customers living in residential parks highlight the need to address significant gaps in the current regulatory framework including lack of:

- Electricity price protections, including regulations which ensure that service availability charges reflect the quality of electricity supply, no longer apply when an authorised retailer becomes the on-seller.
- Protections of standing offers and guaranteed designated providers, which are not available in embedded networks serviced by an authorised retailer.
- A default market offer (DMO), which provides a price cap for most energy consumers, but does not extend to embedded network customers of an authorised retailer.

Regulators and policy makers should take action to ensure consumer protections for customers of embedded networks are provided to the same level received by customers in the mass market. IPART notes that the Australian Energy Market Commission (AEMC) has completed a review of regulatory frameworks for embedded networks and is working on its recommendations, which involve significant changes.

IPART also notes that the NSW Government has identified that due to gaps in the legislation, some embedded networks are not covered by the Code. IPART's position is that implementing the AEMC's framework could assist with increased access to the Code and rebates, however in place of that, the NSW Department of Planning, Industry and Environment should continue to ensure rebate and other assistance coverage is provided for embedded network customers.

It is clear that legislation is not operating appropriately for embedded networks. EWON will continue to support the AEMC with respect to prioritisation of the implementation of the proposed recommendations, and we strongly recommend IPART also support prioritising progress. Further, the gaps in legislation need to be addressed without delay, to ensure that customers of embedded networks can access the same consumer protections as other customers.

We have attached three case studies. Case study 1 demonstrates the difficulties some customers of embedded networks have with accessing consumer protections, and the lack of information available to them. Case study 2 highlights the complexity of complaints from customers of embedded networks, in addition to the gaps in legislation and consumer protections for those customers.

Approach to ensure embedded network registration with EWON

IPART notes that the number of embedded networks and affected customers is unclear. IPART has invited EWON to comment on the most appropriate approach to ensure embedded networks become members of EWON. IPART suggests that one option is a multi-agency approach to documenting existing embedded networks.



Our view is that a regulator-led process with strong supporting compliance monitoring, reporting and action is required. Underpinning this requires an accurate register of all embedded network Australian Energy Regulator (AER) exemption holders. This approach would be strengthened by the active support of IPART, NSW Department of Planning Industry and Environment (DPIE) and the Office of Fair Trading (PFT) given state-based legislation requires these three entities to engage regularly with embedded network exemption holders.

Condition 17 of the AER (Retail) Exempt Selling Guideline provides that an exempt person must be a member of an energy ombudsman scheme for each jurisdiction it sells energy, if permitted to do so.

EWON's jurisdiction widened from 1 July 2018 in order for exempt entities to take up EWON jurisdiction following completion of a three-year project involving engagement with the AER, AEMC, DPIE, IPART and OFT and of course exempt entities and EWON members. While we anticipated that it would take some time for exemption holders to take up, membership we did not anticipate the pushback / lack of engagement many have exhibited. We also identified that completeness and accuracy of the AER exemption register, including clarity about identification of the actual exemption holder, was lacking; perhaps due to it not having been developed with the expectation that the AER would need to use it as the basis for requiring exemption holders to comply with revised exemption guidelines including EWON membership.

Since 1 July 2018, as at 30 September 2020, EWON had welcomed 172 exemption entities as members, having originally identified that the AER register could see membership of around 300 exemption holders.

EWON has recently identified that in fact a more accurate number is around 600, including entities granted membership since 1 July 2018.

With many embedded networks failing to join EWON despite our direct efforts and those of the AER to date, many embedded network customers are still without access to the consumer protections that EWON membership provides.

The failure of embedded networks to join EWON is therefore an ongoing problem for both the AER and EWON and to address it, strengthened AER action has become a priority. Additionally, while EWON continues to work very hard to achieve this, IPART's drive for multi-agency support for this objective outcome is also required.

Strengthened regulator-led approach for embedded network compliance with EWON membership

To address the problematic embedded network EWON membership compliance, strengthened regulatory-led support is now required which includes robust action to be taken against embedded networks that do not become EWON members. One model that is working more effectively is the Victorian approach. The Victorian Essential Services Commission identifies embedded networks and advises them that they must become members of EWOV. The Essential Services Commission can then take further action on advice from EWOV if embedded networks do not join EWOV.

Our view is that the Australian Energy Regulator (AER) could develop a set of clear and consistent principles and approaches, which EWON can then use as a basis for membership requirements. The AER could also create standards and a code of conduct for embedded networks exemption holders, that are mandated and enforced.



Establishment as part of the AER exemption approval process for new embedded networks to take up EWON membership at the time of exemption granting is also required.

Relevance of lessons learnt from expansion of EWON Membership for embedded network exemption holders

It is critical that lessons learnt are applied to set a precedent for future expansion of EWON's jurisdiction to ensure that NSW energy consumers continue to receive relevant consumer protections, particularly as stand-alone power systems and behind the meter products and services increase. Strengthen relevant regulatory compliance monitoring, reporting and action now will enhance consumer protections as the market evolves.

A stepped approach to maintaining consumer protection for all NSW energy consumers

Regulator and multi-agency support should, in the future, include:

1. Raising raise awareness through information provision to entities, in and joining the energy market, and customers about consumer protections.
2. Provision of a clear and consistent regulatory approval process for new market entrants including identifying which entities are required to become EWON members (ie before beginning operation as occurs currently for authorised retailers) and ensuring that is enforced as part of the regulatory approval process.
3. Ensuring exemption or other registers provide complete, concise and accurate information.
4. Establishment of a transition process for entities which are already operating in the market by not only examining complex business arrangements, including identifying the legal entity that should hold an exemption and EWON membership, but also providing advice if consumer detriment may occur.
5. Establishment of, and communication about, a robust compliance monitoring, reporting and action framework with application to failure to become an EWON member within a set timeframe; failure to pay EWON membership fees or finalisation of EWON membership ie member decision or EWON imposed due to non-payment of fees or non-compliance with EWON membership conditions.

Additional issues raised by IPART

Future energy market

IPART's position is that technological change and increasing digitisation of energy services has the potential to deliver better outcomes for all energy consumers, including lower prices and better reliability. However, customers who experience, or are risk of experiencing, especially due to COVID-19, vulnerability may not have access to new technological devices and may not be able to access potential benefits.

We consider that the expected uptake of electric vehicles will create another dependency for customers on the electricity network. A loss of power, therefore, may leave customers without communications, as experienced by many consumers during last summer's bushfire and storm season, and possibly transport. This is a situation that did not exist when consumer protections for energy were first envisaged and needs to be addressed. In addition, customers of embedded networks should be able to access the same consumer protections for new technology services as other customers.



Vulnerable customers

We generally agree with IPART's position that the regulatory framework and consumer protections needs to evolve and take account of different preferences and behaviours of consumers to ensure these outcomes are achieved. This is particularly important for customers experiencing or at risk of experiencing, vulnerability. This includes customers include those experiencing financial hardship, culturally and linguistically diverse (CALD) customers and perhaps an increase number overtime of COVID-19 impacted customers.

Energy markets are only well functioning if they meet the needs of the most vulnerable. Energy markets are not well-functioning if they create greater gaps between consumer sectors or increase the cohort of consumers experiencing, or at risk of experiencing, vulnerability.

We consider that customer redress for electricity needs to be simple; it also needs to be free and expedient, particularly for customers experiencing vulnerability. A key risk is that a customer with a legitimate complaint about a provider cannot easily seek redress. Another issue is that existing processes requires some customers to approach different entities for different parts of their complaints. For example, a customer with a complaint about billing for a solar installation may come to EWON initially but may then have to go to Fair Trading should it emerge that the problem was caused by an installer that is not an EWON member or its agent. This is due to jurisdiction limitations and it leads to a complicated process for customers. Our view is that there needs to be clear and transparent paths for customers to complain to their providers and, if required, to external dispute resolution services.

COVID-19 and extreme weather impacts on vulnerable customers

COVID-19 and extreme weather (bushfires and floods) over the last 12 months have had an impact on a range of both residential and small business consumers in NSW. Casual workers and low paid workers will be impacted by the reduction in the COVID-19 government support schemes (JobSeeker and JobKeeper). Customers experiencing vulnerability may continue to accumulate debt and will need to be placed on retailers' hardship programs. Many small business operators are likely to face closure or reduced business. This may lead to retailers becoming responsible for outstanding electricity debts. There are some immediate remedial measures such as moratoriums on disconnections and mortgages in place. However, the inevitable outcome of such necessary measures will be accumulated debt, which is likely to have significant impacts on the electricity market itself.

Due to COVID-19, the current structural mechanisms for dealing with the delivery of essential energy to customers experiencing vulnerability could be overwhelmed. New approaches need to be considered and established before this happens. Further actions are required to ensure that both consumers and retailers can recover from the ongoing impacts of COVID-19. Case study 3 (attached) illustrates the impact of COVID-19 can have on customers ability to pay bills even if they receive support through a retailer's affordability program.

Energy comparison websites

IPART's position is that customers can obtain savings in their energy bills by shopping around to get a better deal using the government energy price comparison websites. However, this may not be useful for customers experiencing vulnerability who do not have access to the internet and are digitally excluded. Different information dissemination processes for energy comparison should be available for these customers.



EWON complaint numbers

IPART notes that the number of EWON complaints has decreased in the 2019-2020 financial year. As IPART also notes, the impact of COVID-19 on customers is expected to be more visible in the 2020-2021 financial year. EWON complaints will increase in the 2020-2021 financial year, particularly in relation to customers experiencing vulnerability and financial hardship due to COVID-19, once government stimulus support and AER Statement of Expectations requirements are wound down. Legislative and policy changes to existing requirements for the electricity market should consider the potential long-term impact of financial and personal difficulties for these customers.

**Enquiries about this submission should be directed to Janine Young, Ombudsman [REDACTED]
[REDACTED] or Rory Campbell, Manager Policy and Research, [REDACTED]**



Attachment – Case studies

Case study 1

Difficulty with accessing consumer protections

EWON received a complaint from a customer of an embedded network, who advised EWON that the authorised retailer did not accept her concession card for a government rebate or EAPA vouchers. The retailer did not provide an explanation as to why it was not accepted. With the customer's agreement, EWON referred the complaint to the retailer at a higher level with the customer accepting this approach, knowing she could return if her complaint was not satisfactorily dealt with.

Case study 2

Change of energy provider in residential park causes bill increase

EWON was contacted by 32 individual residents from five separate residential parks across a five-month period. The residents lived in residential parks established as embedded networks and had traditionally purchased their electricity from each of the individual park operators. The residents complained that they had recently received notification that the park operator was no longer billing them for their electricity usage, and that they would have to open an account with an energy provider contracted by the park operator. The residents said that they did not consent to this energy retailer taking over their accounts and were dismayed when they learned the price for energy usage and supply would increase significantly. Historically, the park residents benefited from additional price protections through the Residential (Land Lease) Communities Act 2013 and Residential (Land Lease) Communities Regulation 2015. The complainants said their new energy provider had refused to apply these price protections when billing their electricity.

The energy provider gave us copies of its written agreements with the residential park operators. We notified the provider that fees being charged for issuing paper bills were prohibited in NSW due to an amendment to the National Energy Retail Rules. In response, the provider gave us the requested documents and agreed to refund all fees for paper bills. EWON's assessment was that the provider was purchasing the energy independently at the parent connection point for each residential park, and on-selling the electricity directly to residents; a business model which is currently approved by the Australian Energy Regulator. The price protections contained in the Residential (Land Lease) Communities Act and regulations only apply if the site agreement requires the resident to pay utility charges to the park operator. After consulting with NSW Fair Trading, we advised the residents that the rules contained in the Residential (Land Lease) Communities Act do not apply to the contracts with their new provider. We noted that this was problematic for many of the residents at the park and as a result of our investigation, the NSW Government Department of Customer Service, responsible for this legislation, is looking at changing the legislation to better protect residential park residents. EWON will continue to monitor progress of legislation evolution.



Case study 3

COVID-19 impacted customer

EWON received a complaint from a customer of an embedded network who advised that she was COVID-19 impacted because she lost her job and she was on the retailer's hardship program. The customer was struggling to pay a bill that she considered to be high. With the customer's agreement, EWON referred the complaint to the retailer at a higher level with the customer accepting this approach, knowing she could return if her complaint was not satisfactorily dealt with.