

15 December 2022

Mr Mark Feather
General Manager, Strategic Policy and Energy Systems Innovation
Australian Energy Regulator

[REDACTED]
[REDACTED]

By email: [REDACTED]

Dear Mr Feather

Submission – Review of consumer protections for future energy services

Thank you for the opportunity to comment on the proposed models for reform of the National Energy Customer Framework (NECF) outlined in the options paper.

The comments set out in this letter reflect the views of the Energy and Water Ombudsman Queensland (EWOQ), Energy & Water Ombudsman South Australia (EWOSA) and Energy & Water Ombudsman NSW (EWON). We are the industry-based external dispute resolution schemes for the energy and water industries in New South Wales, South Australia, and Queensland.

We have collectively reviewed the options paper and our responses align with issues customers raise with each respective organisation's operations as they relate to the AER's proposed options for reform. Please note that we recognise the strength of a joint submission however we have included individual scheme specific information where state-based legislation/regulation or our Charter/Constitution warrants that approach.

We note that the main focus of this paper relates to the AER Reform models and we have responded with our position on this issue. We have provided some additional information initially to assist with the understanding the broader context of the schemes and the work we have undertaken so far and how this supports our model choice

If you require any further information regarding our submission, please contact Mr Jeremy Inglis, Principal Policy Officer (EWOQ) on [REDACTED], Ms Jo De Silva, Policy and Communications Manager (EWOSA) on [REDACTED] or Dr Rory Campbell, Manager Policy and Systemic Issues (EWON) on [REDACTED].

Yours sincerely

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Submission

We support the AER's preliminary position that the status quo will not be fit for purpose for the future energy market and therefore the need to regulate new products and services and extend the scope of the energy consumer protection framework.

We note that the main focus of this paper relates to the AER Reform models and we have responded with our position on this issue. We have provided some additional information initially to assist with the understanding the broader context of the schemes and the work we have undertaken so far and how this supports our model choice

Accordingly, our feedback on the options paper is focused on:

- 1. The complexity of applying external dispute resolution to future energy services:** The options paper states that many stakeholders supported a focus on how fundamental protections, such as access to external dispute resolution, should apply to new energy products and services. The options paper also asks which new products and services should be captured by the future framework. We have provided an overview (table 1) of the products and services that currently feature in complaints to ombudsman services.
- 2. Key principles and options for expanding external dispute resolution (EDR) under a new energy customer framework:** Our submission also draws attention to the key principles that we have developed which underpin effective external dispute resolution provided by energy ombudsman schemes. We also present a set of options / possible models for EDR under a future framework.
- 3. Consumer protections for a new energy customer framework:** We note the work the AER has done to identify the consumer risk themes related to new energy products and services and we have provided comments on bundling, control of assets, data and information. Many of the business models, services and technologies related to future energy services are still emerging and therefore new consumer risks will continue to be identified by industry participants, ombudsman schemes and consumer advocates. Accordingly, flexibility should underpin the development of the new framework progresses.
- 4. Centralised hot water services in embedded networks:** EWON has called for the regulation of centralised hot water services within embedded networks in several previous reviews conducted by the AER, the AEMC and the NSW Government. Customers paying for the supply of hot water encounter the same problems with billing, supply and affordability as any other energy customer, and for those customers experiencing vulnerability, they can be disproportionately impacted when problems occur with these services.
- 5. Feedback on AER reform models:** our feedback on the AER's proposed reform models is structured as follows:
 - A comment on the potential problems of applying principled or outcome-based consumer protections, particularly for consumers at risk of experiencing vulnerability
 - Responses to the consultation questions (table 3).

1. The complexity of external dispute resolution for future energy services

The options paper states that many stakeholders supported a focus on how fundamental protections, such as access to external dispute resolution, should apply to new energy products and services. The AER has noted that many submissions to the issues paper agreed that consumers need accessible and low-cost dispute resolution for all energy services, which would help build consumer trust in the sector.

This aligns with our views. We have been advocating for change for some time now, highlighting that consumers will likely find it difficult to distinguish the ‘essential’ components of their energy services that are covered by an ombudsman scheme and those that aren’t, given they are likely to be interlinked. A simple and effective solution would be to ensure consumers have a single entity EDR body to manage all energy related complaints ie energy ombudsman offices. However, ombudsman schemes will also need to retain the ability to refer some complaint issues to other appropriate forums ie Fair Trading / ACCC. If we adopt a new consumer framework that expands beyond the sale of energy to premises, the jurisdiction of ombudsman schemes will also need to be expanded to include additional regulated entities, services, and technologies.

This outcome would also support one of the key rationales for extending the current framework ie that the uptake of new energy products and services is a vital component to realising the benefits of the broader energy system transformation.

The option paper also seeks feedback on questions such as:

- which new products and services should be captured by the future framework?
- Who should be regulated in the future energy market?

Ombudsman schemes already receive complaints about a wide range of energy products and services as detailed in the below table. Some of these complaints are covered by the consumer protections under the National Energy Customer Framework (NECF) and some of these complaints can be managed under our current jurisdiction. However, some complaints about new energy services and technologies are not covered by NECF and fall outside the jurisdiction of ombudsman schemes.

Table 1: the new energy services and products that feature in current complaints to ombudsman services (Generally Outside of Jurisdiction (OOJ)).

Services	Rooftop solar (retail)	Residential Batteries	Power purchase agreements (PPAs)	Virtual Power Plants, Aggregators, HEMS	Bundled retail contracts (energy plan + solar + battery + SPPA + VPP)	Data products / services packaged with bundled Retail/CER products)
Connection and activation	✓	✓	✓	✓	✓	
Installation	✓	✓	✓		✓	
System performance (reliability &	✓	✓	✓		✓	✓

Services	Rooftop solar (retail)	Residential Batteries	Power purchase agreements (PPAs)	Virtual Power Plants, Aggregators, HEMS	Bundled retail contracts (energy plan + solar + battery + SPPA + VPP)	Data products / services packaged with bundled Retail/CER products)
product quality)						
Compliance and standards	✓	✓	✓	✓	✓	
Marketing and sales (Poor conduct)	✓	✓	✓	✓	✓	✓
Billing and export/trading credits			✓	✓	✓	
Control of customer assets		✓	✓	✓	✓	

The AER also identifies in the options paper that as the energy market evolves, the line between NECF-protected services, and non-NECF-protected services will become increasingly blurred. This is already true for complaints dealt with by ombudsman services.

Analysis of our complaints show that when things go wrong for consumers, the underlying issues can exist on both sides of the meter. This means that a customer's problem with their energy supply will often result in a complaint about an energy retailer or electricity network, even though it was originally caused by the conduct of a solar retailer who is not a member of our schemes. This situation has knock-on effects:

- consumers must make multiple complaints in different forums to resolve a single energy complaint
- authorised energy retailers and electricity networks are often left responsible for providing solutions to complaints that were caused by solar retailers and (Consumer Energy Resources (CER) providers
- energy complaint outcomes, as a result, do not always address all the concerns raised by consumers – which erodes consumer trust in the energy sector.
- The complexity of some of these complaints is often difficult for experienced dispute resolution offers to unravel – the affected customers are experiencing significant confusion.

In **attachment 1**, we have provided five case studies that demonstrate how complaints about CER products and services are now increasing the complexity of complaints about retail energy services.

2. Key principles and options for expanding external dispute resolution (EDR) under a new energy customer framework

EWON, EWOQ and EWOSA have developed a set of ten key principles which underpin the effectiveness of external dispute resolution:

- Consumer protections, including dispute resolution, should be provided where a product or service has the potential to disrupt energy supply

- External dispute resolution is a baseline consumer protection. It supports innovation and creates consumer trust and confidence in the market.
- If the product or service is with an existing member it is within Ombudsman jurisdiction unless the Ombudsman advises otherwise
- Where an obligation is underpinned as part of a supply contract with an energy provider, the contractual arrangement should be subject to EDR, where there is a dispute about the contractual terms and obligations.
- Membership of the dispute resolution scheme is underpinned by statutory enforceability.
- Any imposed new jurisdiction for a dispute resolution scheme needs to be supported by appropriate legislation or enforceable rules that will allow the Ombudsman to properly address the complaint and, if necessary, determine the outcome of a complaint.
- Proposed new members must be a defined group which is legally accountable to a Regulator.
- The Regulator must be able to readily identify all proposed new members.
- The Government/Regulatory body/Authority imposing a dispute resolution scheme membership requirement must be able to specifically identify individuals and businesses and have a range of powers such as licensing, performance monitoring, compliance, and enforcement.
- The Regulator must be willing to ensure compliance of the requirement to become and remain a member and remediation of any systemic issues or be in a position to take enforcement action.

Options for expanding Ombudsman jurisdiction / EDR to new energy services

To address the emerging gaps in external dispute resolution, EWON has developed a range of options for expanding EDR to new energy services and products. This work has been supported by EWOQ and EWOSA – and together, we are continuing this work.

Table 2 provides a spectrum of five models which could be considered for a future External Dispute Resolution (EDR) framework. The spectrum ranges from a starting point of retaining the existing EDR framework through to expanding current jurisdiction of energy ombudsman offices to cover complaints that go beyond the supply and sale of energy to a customer's premises.

However, it is important to note that expanding external dispute resolution to new energy services and products will not necessarily mean that all complaints will be dealt with by an energy ombudsman. There are, and will always be, some complaint issues that will be **more appropriately** dealt with by another complaints body and this is reflected in our Charters with wording such as '*a complaint is outside of jurisdiction if it would be more appropriately dealt with by another forum, for example, another independent or statutory complaints or conciliation procedure*'.

When thinking about new energy services, a good example of this would be the installation of a device or hardware at a customer's home. If the technician installing the device causes damage to a customer's home, this complaint would most likely be better dealt with (in NSW) under the Home Building Act 1989 (NSW,) through referral to Fair Trading NSW or the NSW Civil and Administrative Tribunal (NCAT).

Table 2: Options for consideration for expanding external dispute resolution (EDR) under a new energy customer framework

Features	EDR Model 1: <ul style="list-style-type: none"> no change to external dispute resolution for consumer energy resources (CER) a focus on 'no wrong door' referrals for complaints 	EDR Model 2: <ul style="list-style-type: none"> extending external dispute resolution to consumer energy resources (CER) for existing ombudsman scheme members only 	EDR Model 3: <ul style="list-style-type: none"> extending external dispute resolution to consumer energy resources (CER) operated through partnerships existing scheme members only 	EDR Model 4: <ul style="list-style-type: none"> extending external dispute resolution to consumer energy resources (CER) operated through partnerships includes entities that are not authorised retailers 	EDR Model 5: <ul style="list-style-type: none"> extending external dispute resolution to consumer energy resources (CER) includes entities that are not authorised retailers
How would it operate?	<ul style="list-style-type: none"> ombudsman complaint jurisdiction would remain unchanged CER and energy services complaint bodies would need to coordinate to ensure that there are 'no wrong door' for consumers. 	<ul style="list-style-type: none"> ombudsman jurisdiction would be extended to customers who have purchased CER products and services from existing scheme members. complaint coordinate to ensure there are 'no wrong door' for complaints about non-members of ombudsman schemes. 	<ul style="list-style-type: none"> ombudsman jurisdiction would be extended to customers who have purchased CER products and services from existing EWO members. ombudsman complaint services expanded to entities (owned or related to an energy retailer) that offer CER products and services and participate in another industry scheme (like membership with a peak body or accreditation scheme) 	<ul style="list-style-type: none"> ombudsman jurisdiction would be extended to consumer complaints about providers of CER products and services (e.g. solar retailers) ombudsman complaint services expanded to entities that offer CER products and services and participate in another industry scheme (like membership with a peak body or accreditation scheme) 	<ul style="list-style-type: none"> ombudsman jurisdiction would be extended to customers who have purchased CER products and services
What change would it require?	<ul style="list-style-type: none"> complaint bodies for energy services and CER products and services would need to foster strong relationships. this would rely on the willingness of ombudsman, regulators, and industry bodies to engage with each other. 	<ul style="list-style-type: none"> may require legislative and rule changes, such as NECF. may require Ministerial approval at a state level. may require changes to ombudsman constitutions and/or corporate charters. 	<ul style="list-style-type: none"> require ombudsman to partner with another industry body or accreditation scheme this model may require a grant of approval from the ACCC. changes to ombudsman constitution and charters may be required. may require Ministerial approval at a state level. 	<ul style="list-style-type: none"> require ombudsman to partner with another industry body or accreditation scheme may require legislative and rule changes, such as NECF. may require Ministerial approval at a state level. may require changes to ombudsman constitutions and/or corporate charters. 	<ul style="list-style-type: none"> legislative change necessary to require providers of CER products and services (like solar retailers) to join an ombudsman scheme as member organisations. changes to EWO's constitutions and charters will be required. Ministerial approval will be required at a state level.
How would consumers benefit?	<ul style="list-style-type: none"> better relationships between complaint bodies would help consumers navigate a complex regulatory system. 	<ul style="list-style-type: none"> consumers could complain to an ombudsman scheme about the CER products and services offered by their energy retailer. a less complex complaint journey would help to improve public trust in the energy sector. 	<ul style="list-style-type: none"> consumers could complain to an ombudsman scheme about the CER products and services offered by their energy retailer. a less complex complaint journey would help to improve public trust in the energy sector. 	<ul style="list-style-type: none"> consumers could complain to an ombudsman scheme about CER products and services (e.g. both energy retailers, battery providers and solar retailers) a clearer role for ombudsmen and a less complex complaint journey would help to improve public trust in the energy sector. 	<ul style="list-style-type: none"> consumers could complain to an ombudsman scheme about CER products and services (e.g. both energy retailers, battery providers and solar retailers) a clearer role for ombudsmen and a less complex complaint journey would help to improve public trust in the energy sector.

Features	EDR Model 1: <ul style="list-style-type: none"> no change to external dispute resolution for consumer energy resources (CER) a focus on 'no wrong door' referrals for complaints 	EDR Model 2: <ul style="list-style-type: none"> extending external dispute resolution to consumer energy resources (CER) for existing ombudsman scheme members only 	EDR Model 3: <ul style="list-style-type: none"> extending external dispute resolution to consumer energy resources (CER) operated through partnerships existing scheme members only 	EDR Model 4: <ul style="list-style-type: none"> extending external dispute resolution to consumer energy resources (CER) operated through partnerships includes entities that are not authorised retailers 	EDR Model 5: <ul style="list-style-type: none"> extending external dispute resolution to consumer energy resources (CER) includes entities that are not authorised retailers
What are the potential costs for consumers?	<ul style="list-style-type: none"> when things go wrong CER and energy consumers must still navigate a complex system for complaints. consumers may need to make multiple complaints about what they see as a single energy problem. may to result in inconsistent complaint outcomes. 	<ul style="list-style-type: none"> consumers with a CER complaint about a non-member of an ombudsman scheme must still navigate a complex system for complaints. some consumers will still need to make multiple complaints about a single energy problem. may to result in inconsistent complaint outcomes. 	<ul style="list-style-type: none"> consumers with a CER complaint about a non-member of an ombudsman scheme must still navigate a complex system for complaints some consumers will still need to make multiple complaints about a single energy problem. may to result in inconsistent complaint outcomes. an industry led framework, developed through partnerships, and based on voluntary memberships may not have the necessary enforceability required by ombudsman schemes. 	<ul style="list-style-type: none"> opportunity for some CER providers (energy retailers and solar retailers) may still exist to arbitrage the complaints system to the consumers detriment (the "bad" operators that do not currently participate in accreditation schemes). an industry led framework, developed through partnerships, and based on voluntary memberships may not have the necessary enforceability required by ombudsman schemes. 	<ul style="list-style-type: none"> possible continued uncertainty as new business models and technologies emerge.
What are the potential costs for industry?	<ul style="list-style-type: none"> no additional costs. 	<ul style="list-style-type: none"> some additional complaint costs for authorised entities that also provide CER services. 	<ul style="list-style-type: none"> some additional complaint costs for authorised entities that also provide CER services. 	<ul style="list-style-type: none"> some additional complaint costs for authorised entities that also provide CER services. additional complaint costs for non-authorised entities that provide CER products and services (e.g. solar retailers). 	<ul style="list-style-type: none"> some additional complaint costs for authorised entities that also provide CER services. additional complaint costs for non-authorised entities that provide CER products and services (e.g. solar retailers).

3. Consumer protections for a new energy customer framework

We also support the work the AER has done to identify the consumer risk themes related to new energy products and services. We also support using this risk analysis in the development of a set of technology agnostic principles that will support a new consumer framework.

Many of the business models, services and technologies related to future energy services are new and still emerging. Work to develop a new customer framework is timely but at the same time, it should be acknowledged that emerging consumer risks will continue to be identified by industry participants, ombudsman schemes and consumer advocates. Accordingly, the AER must continue to be flexible in its development of the new framework as it progresses.

We have a few additional comments to make on the risk themes identified by the AER.

Bundling

Some authorised energy retailers offer solar and battery services to their retail customers either directly or through a partnership. Where the sale, installation and ongoing services for solar and batteries are provided by an energy retailer directly to their own customers, it can be very difficult to separate out the solar/battery issues from the retail energy issues when a dispute occurs. In addition, if a problem occurs with the sale, installation or connection of a solar or battery system that was provided by an energy retailer, the dispute frequently carries over into the billing of the customers electricity account. The complaint issues that we see when a retailer is providing these additional services behind the meter include:

- problems with installation – such as delays or incomplete work, or failing to advise the customer that compliant metering is required before the system is activated.
- system performance – where the promises made by the retailer about the energy generated by the system or the benefits the customer would receive on their electricity bill are not met.
- Solar Power Purchase Agreements – where a customer is disputing the installation of systems, connection, billing or contract terms.
- Metering – where the retailer’s staff providing the solar or battery systems for the customer fail to arrange for a metering upgrade.

Case studies 2-5 included with this submission provide examples of the difficulties consumers face when resolving disputes with their energy retailer that include both energy retail services and additional services provided behind the meter.

Control of assets

This is an emerging issue that our offices are now dealing with and we anticipate that over time, there will be additional consumer issues that are not yet evident. We have previously received complaints about whether the energy provider had the appropriate authority to exercise control, for example, where the provider has continued to control the customer’s battery after the contract had ended. While this issue can be investigated by an ombudsman scheme, it may not be a simple task to measure the financial impact or harm that the customer may have suffered.

We are also starting to see other kinds of complaints about the control of customer assets, where the customer complains that the control of their asset is not to their benefit – an example of this is contained in case study 5. In that case study, the customer noted that the control of his system was not designed in a way that he would benefit from the energy stored in his battery. These kinds of

complaints highlight the importance of what information is provided to customers about *how* the control of their assets will operate and *how* they will benefit from that service. Increased information clarity, plain English and transparency, about the control of customer assets will increase consumer understanding and trust and prevent complaints from increasing over time.

Data

It is standard practice now for energy retailers and CER providers (such as solar retailers) to supply customers with digital services through mobile apps and online platforms. These digital services are bundled/packaged with the retail energy contract or CER product/service and are sold to the customer as a key service that will help provide assurance about the promised energy savings/rewards of a retail contract or savings from the performance of a CER system.

Complaints to EWON demonstrate that customers consider the delivery of promised digital services as part of their overall energy service. When things go wrong, and digital services are not delivered as promised, this impacts on the net benefits that customers receive from retail contracts and CER products/services (or bundled contracts providing both).

It is important to note that the Consumer Data Right (CDR) regulates access to the data held by a retailer, but it does not regulate the delivery, quality and reliability of digital services provided by a retailer directly to its own customers.

Information

Complaints show that the new channels for customer communication and engagement used by retailers has created a new risk to consumers. The current rules contained in NECF provide consumer protections that focus on how a consumer is billed for their energy usage, and what information is provided on an energy bill. However, some complaints show that consumers are now placing an increasing importance on other 'off the bill' communication channels and digital services, such as mobile apps and online portals. Insights we have obtained from dealing with complaints include that 'off the bill' communication channels are being used for:

- Billing and account information
- Access to consumption and export data
- Personalised marketing of energy offers that are targeted at specific groups of customers through the retailer's mobile apps.
- Targeted financial support and crisis assistance information (such as floods).

A new NECF framework, whether it is prescriptive, principles based, or outcomes focused should cover the additional communication and information channels that retailers are now using to engage with their customers. Even if it is simply to extend the rules for transparency around billing information, for example, so a customer will know whether the data they receive from their retailer is actual or estimated.

4. Centralised hot water services in embedded networks

Heating water is widely recognised as comprising around 30% of the energy budget for a typical household. It is part of the reason why energy is seen as being an essential service.

However, for the growing number of energy customers living in apartment buildings, their hot water is supplied as a separate item from their energy account and as a result, it is not regulated or recognised as being an essential service.

EWON has called for the regulation of centralised hot water services within embedded networks in several previous reviews conducted by the AER, the AEMC and the NSW Government. EWON has also released reports on this issue. We refer you to the previous reports and submissions:

- [EWON Submission - AER retailer authorisation and exemption review](#) (July 2022)
- [EWON submission - Updating the Network and Retail Exemption Guidelines](#) (June 2021)
- [Spotlight On - hot water embedded networks](#) (March 2021)
- [EWON Submission - AEMC - draft report on updating the regulatory frameworks for embedded networks](#) (March 2019)

Customers paying for the supply of hot water encounter the same problems with billing, supply and affordability as any other energy customer, and those experiencing vulnerability are disproportionately impacted when problems occur with these services.

Introducing appropriate consumer protections for centralised hot water services is difficult due to the current definition of energy in the National Energy Retail Law – which does not extend to hot water services.

However, the supply of hot water is an essential service where the underlying cost and input is energy (usually gas and sometimes electricity).

In the Notice of Final Instrument for version 6 of the Retail Exempt Selling Guideline, the AER outlined its decision not to create a new class of exemption to regulate the sale of bulk chilled and hot water¹. The AER also stated that:

'The issue relating to the regulation of chilled water and bulk hot water is not a straightforward issue, but an issue the AER takes seriously. Ensuring embedded network compliance with exemption conditions, including consumer access to Ombudsman schemes, is a current AER Compliance and Enforcement priority.

In considering all the submissions to the issue and other relevant materials, we remain of the view that the sale of bulk chilled or hot water is unlikely to constitute the sale of energy for the purposes of section 88(1) of the Retail Law. Key issues include the nature of the service and how sale of energy is constructed.

We note the AER is currently considering the scope of the provision of energy services and the application of section 88(1) of the Retail Law as part of its broader NEM 2025 work program. This includes the AER's current Authorisations and Exemptions review.²

EWON calls on the AER to resolve this issue and include the regulation of the supply of hot water within embedded networks as part of the planning for a new consumer framework, through inclusion of new definitions of the sale of energy and essentiality. EWOQ and EWOSA are supportive of EWON's position on improving the consumer protections for customers paying for hot water services in embedded networks. EWOQ and EWOSA have also offered to provide data on hot water complaints from Queensland and South Australian consumers.

¹ Australian Energy Regulator (AER), Notice of Final Instrument - Retail Exempt Selling Guideline (version 6), July 2022, p13

² Ibid, p13

5. Feedback on AER reform models

We note that the three reform models in this options paper all involve extending the scope of the energy consumer protection framework beyond the sale of energy to premises – to cover a range new energy products and services. The reasons provided for the AER for this approach are that:

- the complexity of the future energy market is likely to be overwhelming for many consumers.
- the line between NECF-protected services, and non-NECF-protected services will become increasingly blurred.
- the AER’s risk assessment to date indicates existing protection frameworks are unlikely to be adequate.
- the uptake of new energy products and services is a vital component to realising the benefits of the broader energy system transformation.

We support the AER’s goal of extending the scope of the energy consumer protection framework beyond the sale of energy to premises. We also agree with the reasons provided by the AER for extending energy specific regulation to new energy products and services.

We have provided responses to the consultation questions in table 3 at the end of this submission.

The potential problems of applying principled or outcome-based consumer protections, particularly for consumers at risk of experiencing vulnerability

Any transition to an outcomes-based or principle-based consumer framework must consider how consumer rights will be met so that intended outcomes are delivered / achieved. If the principles created for a new framework are not easily translated into actionable obligations or clear commitments that create accountability, dispute resolution may be less effective.

We recognise the benefits that a consumer framework based on principles or consumer outcomes would have – particularly for providing flexibility for regulating current, new and emerging energy services and business models. However, we also consider it will be necessary to retain prescriptive rules within the future NECF framework for:

- life support customers
- disconnections & reconnections
- assisting customers experiencing financial vulnerability, such as payment difficulties.

A good example that provides support for this position, is the rule change that was submitted by the AER to the AEMC for the development of a Customer Hardship Policy Guideline to strengthen consumer protection for customers experiencing vulnerability. In its rule change proposal, the AER noted the difficulty it had had enforcing the hardship obligations retailers had for customers experiencing vulnerability because of the principled nature of many of the retailer hardship policies:

“We consider that the general and principles-based nature of many hardship policies is contributing to some poor customer outcomes and, in particular, to customers most in need of assistance not always being able to access it. Many policies do not appear to sufficiently align with the minimum requirements and do not provide adequate guidance to customers to assist in their understanding of their rights and entitlements”³.

³ AER, Request for rule change – strengthening protections in the National Energy Retail Rules for customers in financial hardship, 21 March 2018

The AER's request for a new approach to regulating retailer policies and programs highlights the reasons why the new framework will need to retain prescriptive rules and/or actionable obligations for retailers to follow when managing customers experiencing vulnerability.

While this is critical for consumers at risk of experiencing vulnerability, it is also true that the effectiveness of all consumer protections is underpinned by their enforceability by the regulator, accessibility for the customer and applicability by ombudsman.

Table 3: Responses to the consultation questions

AER model 1: Tiered conditional authorisation framework, with reduced exemption framework

Consultation question	Our response
<p>1. What are your views on the policy positions and assumptions outlined for Model 1?</p>	<p>We are generally supportive of the policy positions and assumptions outlined by the AER for model 1.</p> <p>Access and essentiality</p> <ul style="list-style-type: none"> • We agree that the entity selling energy to a customer at a connection point (including a connection point within an embedded network) is the primary provider of energy and loss of this service carries the greatest customer risk. • We agree that energy is an essential service and significant obligations must be imposed on this entity to ensure customer access is maintained. We have provided feedback on how the definition and scope of ‘essentiality’ and ‘access to energy’ in our response to consultation question 3. However, we consider that the principles that underlie the framework must also be broad enough to cover future energy services that are interlinked with the customer’s primary connection point and may impact on the affordability of the customer’s primary source of energy. <p>Expansion of the scope of NECF</p> <ul style="list-style-type: none"> • We support expanding the scope of the NECF to cover the actions of an energy service provider where it may affect a customer’s access to energy and that they should be regulated even where there is no NECF ‘sale of energy’. The AER identifies energy aggregators and operators of virtual power plants (VPP) as potential examples of such service providers. • To support our position, we have: <ul style="list-style-type: none"> ○ defined the types of new energy services and products that currently appear in complaints to ombudsman services (Table 1 – appendix 1) ○ provided case studies which demonstrate that when resolving disputes there is already a blurred line between the issues that impact the customer’s primary energy supply and the provision of CER products and services – like solar and batteries. These case studies also highlight how consumers view all their energy products and services as a single service.(appendix 2) ○ some key considerations that the AER, and governments, must make when considering how to extend external dispute resolution – should this be – an appendix or in this table. ○ a range of models that might be considered to expand EDR to new energy services and products (table 2 – appendix 1 or 3). • The policy positions and assumptions outlined by the AER for model 1 focus on expanding NECF to energy services that may affect a customer’s access to their essential energy supply. We consider that to remain fit-for-purpose, the scope of EDR may need to be broader than this.

Consultation question	Our response
	<ul style="list-style-type: none"> Case studies 1-5 provided with this submission highlight that when the primary energy supplier (for example, an authorised energy retailer for the customer’s connection point) is also selling the customer additional energy products and services, like solar installations and battery products, it is not easy to separate the ‘essential’ from the ‘non-essential’. <p>Embedded networks and ‘agency’ arrangements</p> <ul style="list-style-type: none"> We support the position that all residential (and small business) customers should receive the full suite of customer protections, regardless of whether they are supplied energy through an embedded network. We also support improvement in the regulation of agents as the behaviour of billing agents has long been an issue impacting on consumers living in embedded networks.
<p>2. What are your views on the proposal to capture all residential embedded network sellers as “regulated entities”? What practical issues do you think may result from such a change?</p>	<p>We were supportive of the reforms proposed in the Australian Energy Market Commission’s (AEMC) final report on Updating the Regulatory Frameworks for Embedded Networks. That reform package has stalled at a national level. We consider that the AER’s policy position aligns with the reforms proposed by the AEMC.</p> <p>Practical issues include:</p> <ul style="list-style-type: none"> authorised energy retailers now control the retail services in a significant number of embedded networks. This means that the number of retail entities regulated by the exemption framework has reduced compared to the overall number of embedded networks. This means consumer protections that apply specifically to embedded network customers, such as information disclosure, will need to apply more broadly to all authorised entities. the question of how to manage existing or legacy embedded networks will need to be addressed. some classes of exempt entity may need to remain exempt from the proposed tiered framework, for example, operators of residential parks.
<p>3. Do you have any comments on the AER’s suggested principles for expanding the jurisdiction of the NECF as outlined in Model 1? Please provide details of any suggested additional or alternate principles</p>	<p>We support the development of sound principles that would apply to a redesign of the NECF. We consider that retaining flexibility within the new framework is critical as new products and services will emerge and the concept of essentiality may change over time.</p> <p>We have provided some suggested amendments [*] and comment to the principles for model 1:</p> <ul style="list-style-type: none"> access to energy: where the energy product or service may impact the customer’s ability to access energy needed for health, wellbeing, affordability, safety, mobility, communication, and education* access to competition: where the energy product or service may impact the customer’s ability to access substitute, or related, products and/or services energy interoperability: where the energy product and/or service affects the functionality of other energy products and/or services. Energy interoperability should also apply where the sale, installation and operation of

Consultation question	Our response
	<p>consumer energy resources (CER) is bundled together by the authorised entity providing the customer's primary energy supply*.</p>
<p>4. What are your views on how a RoLR scheme would work in the context of the inclusion of new products and services under the NECF? Additionally, to what extent should there be a RoLR scheme for new energy products and services?</p>	<p>Customers that engage with CER technologies and services may be:</p> <ul style="list-style-type: none"> • investing a significant amount of money to purchase and install the technologies • agreeing to have technologies owned by the provider installed at their home (such as power purchase agreements, devices for virtual power plants, or demand response products). • agreeing to long term contracts (such as power purchase agreements) to access the benefits of these technologies, or • accessing the technologies through financial products that are provided by the CER provider or a third-party. <p>Long-term agreements for CER services and products (such as power purchase agreements), and the financial products offered to CER consumers, have the potential to disrupt a customer's energy services if the provider fails. Where this occurs, an alternative energy supplier must be available as occurs currently through the ROLR framework. We recommend that consideration is given to what kind of impacts the failure of a new energy services provider might have on consumers and this must occur at the time of authorisation of those entities. Where it is established at that time that consumer impacts following provider failure can be dealt with effectively through existing regulatory frameworks that apply when a business fails, then it may not be necessary in those circumstances for a new RoLR scheme to be established.</p> <p>Ultimately, the need for a RoLR scheme for new energy services would depend greatly on which entities are regulated by the new customer framework.</p>

AER model 2: Authorisation framework based on regulatory principles

Consultation question	Our response
<p>5. What are your views on the policy positions and assumptions outlined for Model 2?</p>	<p>We support the first two policy positions and assumptions underpinning model 2.</p> <p>We believe that careful consideration must be given to the final assumption that <i>“given the uncertainty around future energy services and products, the regulatory framework must be flexible and minimally prescriptive. Prescriptive legislation is difficult to future-proof”</i>.</p> <p>We recognise the benefits that a principle-based consumer framework would have – particularly for providing flexibility for regulating emerging energy services and business models. However, it will be necessary to retain prescriptive rules within the future NECF framework for:</p> <ul style="list-style-type: none"> • life support customers • disconnections & reconnections • managing customers experiencing vulnerability, such as payment difficulties. <p>Effectiveness of all consumer protections is underpinned by their enforceability by the regulator, accessibility for the customer and applicability by ombudsman.</p> <p>Any transition to an outcomes-based or principle-based consumer framework must consider how consumer rights will be met and that intended outcomes are delivered / achieved. If the principles created for a new framework are not easily translated into actionable obligations or clear commitments that create accountability for retailers, dispute resolution may be less effective</p>
<p>6. Model 2 sets out a market entry and consumer protection framework based on regulatory principles. If Model 2 proceeds, the regulatory principles we would recommend would be based in part on the outcomes of our risk analysis and feedback from stakeholders. What do stakeholders consider these regulatory principles should be?</p>	<p>AER consumer protection risk analysis for future energy services</p> <p>We acknowledge and support the work the AER has done identifying the consumer risk themes for future energy services. We have provided feedback on the risk analysis provided by the AER. Our feedback is based on complaints we have received.</p> <p>Enforceability of consumer protections and external dispute resolution</p> <p>We consider that it will be necessary to retain prescriptive rules within the future framework for:</p> <ul style="list-style-type: none"> • life support customers • disconnections & reconnections • managing customers experiencing vulnerability, such as payment difficulties.

	<p>If the remaining consumer protections are principle based, the regulatory principles must be clear and enforceable by consumers and the regulator. Consumer protections are only effective if they can be clearly understood by all stakeholders and if they are enforceable. If the consumer protections provided by a principle-based framework are not easily interpreted or enforced, this will also have a direct impact on how effective external dispute resolution will be.</p>
<p>7. Are there any advantages or disadvantages to a principles-based energy framework that we have not explored here? Would a less prescriptive principles-based framework support innovation or would it create regulatory uncertainty and why?</p>	<p>Balancing Innovation against appropriate consumer protections</p> <p>We consider that the regulatory framework for retail energy services should be easily understood by industry, consumers and other key stakeholders, while also encouraging innovation in new energy services. Allowing for innovation should not, however, come at an overall cost or risk to consumers. This is best illustrated by the rapid growth in an embedded network industry over the last decade and the challenge faced in trying to retrospectively provide appropriate consumer protections to embedded network customers.</p> <p>We believe that any trade-off that occurs, when encouraging innovation by creating more flexible principle-based consumer protections, should be carefully considered. For example, the questions that we need to ask are:</p> <ul style="list-style-type: none"> • What is the innovation – is it in technology offered, a new service, or is it just the business model that has changed? • Is the innovation benefiting consumers? How? • Is the benefit consumers receive from the innovative technology, service, or business model equal and proportionate to any loss in overall consumer protections? <p>In the case of embedded networks, the difference in regulation appeared to be justified on the basis that only small groups of customers would be serviced through each exemption. The problem was that when the embedded network industry scaled up, the two-tiered consumer protection framework was no longer fit for purpose.</p> <p>The principles that are developed for both reform models 2 & 3 must be designed to anticipate that a small scale, low-risk business model, that might justify a lower tier of regulation, may quickly change as the technology or business model is adopted by other energy providers.</p>

AER model 3: Outcomes-based regulatory framework

Consultation question	Our response
<p>8. What are your views on the policy positions and assumptions outlined for Model 3?</p>	<p>We recognise the benefits that an outcome-based consumer framework would have – particularly for providing flexibility for regulating emerging energy services and business models. However, we suggest that it will be necessary to retain prescriptive rules within the future NECF framework for:</p> <ul style="list-style-type: none"> • life support customers • disconnections & reconnections • managing customers experiencing vulnerability, such as payment difficulties.
<p>9. How practical and effective do you think an outcomes-based regulatory framework would be?</p>	<p>Enforceability of consumer protections and external dispute resolution</p> <p>See also our response to question 5. We consider that it will be necessary to retain prescriptive rules within the future framework for:</p> <ul style="list-style-type: none"> • life support customers • disconnections & reconnections • managing customers experiencing vulnerability, such as payment difficulties. <p>If the remaining consumer protections are principle based, the regulatory principles must be clear and enforceable. Consumer protections are only effective if they can be clearly understood by all stakeholders and if they are enforceable by the regulator. If the consumer protections provided by a principle-based framework are not easily interpreted or enforced, this will also have a direct impact on how effective external dispute resolution will be.</p>

Attachment 1: case studies demonstrating the increasing complexity of dispute resolution for future energy services

Analysis of our complaints show that when things go wrong for consumers, the underlying issues can exist on both sides of the meter. This means that a customer's problem with their energy supply will often result in a complaint about an energy retailer or electricity network, even though it was originally caused by the conduct of a solar retailer who is not a member of the Ombudsman scheme.

This situation has knock-on effects:

- consumers must make multiple complaints in different forums to resolve a single energy complaint.
- authorised energy retailers and electricity networks are often left responsible for providing solutions to complaints that were caused by solar retailers and CER providers.
- energy complaint outcomes are not always fit for purpose – which may impact on consumer trust.

We have provided five case studies that demonstrate how complaints about CER products and services are now increasing the complexity of disputes related to retail energy services. This can include complaints related to:

- the connection of rooftop solar and battery systems where customers have relied on specialists to take the appropriate actions and provide correct advice about connecting the systems (case study 1)
- energy retailers offering retail energy contracts and the sale of rooftop solar systems (case study 2)
- solar marketing and the performance of rooftop solar and battery systems (case study 3)
- bundled services (case studies 4 & 5).

These case studies demonstrate that it is not always clearcut whether a complaint can be holistically dealt with by an energy Ombudsman depending on factors like whether the CER product was obtained from an energy retailer who is a member of an energy Ombudsman scheme or a solar/battery specialist who is not an energy retailer. They also demonstrate that complaints that would traditionally have been straightforwardly within jurisdiction for an energy Ombudsman can now involve jurisdiction grey areas. For example, it is difficult to separate a high bill complaint from a customer with a new rooftop solar or battery system from the promises made by their solar retailer.

Case study 1: Solar retailer fails to connect rooftop solar system.

The customer complained to her energy retailer about several estimated electricity bills she received that were much higher than she expected.

The energy retailer investigated the bills and identified that:

- an application had not been submitted to her electricity network provider to connect the rooftop solar system recently installed at her home.
- it had also not received a request to upgrade her electricity meter so the solar energy generated by her system and exported to the network could be recorded.

The retailer advised the customer that the estimated bills were caused by the illegal connection to the network, and the activation of the rooftop solar system before a compliant electricity meter was installed.

The customer had complained to her solar retailer but not obtained a resolution. She wanted to be reimbursed for the high estimated electricity bills and compensated for the loss of solar credits.



Rooftop solar and battery system

Consumers frequently rely on their solar retailer and solar installer to provide them with reliable advice about the requirements for metering and connecting the system to the network.

Problems with the installation and performance of the system are not within the traditional jurisdiction of ombudsmen.

Electricity metering

Electricity metering is the responsibility of the Financially Responsible Market Participant (FRMP) for the supply address.

Ombudsmen can manage complaints about metering, but this is effective only where the problem is caused by a retailer's conduct.

Electricity bills

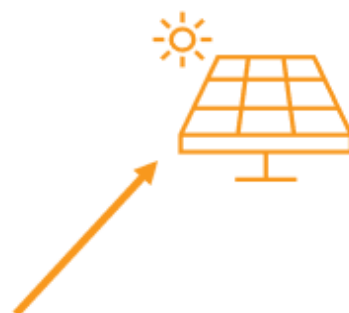
Ombudsmen are well equipped to deal with disputes about high energy bills. However, ombudsmen may not be able to address an underlying cause of the high bill such as the failure to deliver a behind the meter service, the installation of solar/batteries or the billing of a CER contract like a power purchase agreement.

Case study 2: Energy retailer offering retail energy contract and the sale of rooftop solar system.

A customer purchased a rooftop solar system from an energy retailer. He also agreed to transfer his energy account to the retailer.

The rooftop solar system was installed two months later, after the retailer missed the first two appointments arranged with the customer. After the installation was complete, he was told that he could not activate the system until a new meter was installed. However, the retailer could not arrange a meter replacement until his account had transferred.

After a further delay in completing the transfer, the customer complained again to the retailer. The retailer offered him a \$100 credit but also advised him that the energy plan he had accepted had now expired. The customer complained that the delays have resulted in him paying higher energy rates and he had missed the financial rewards he'd expected from the rooftop solar system.



Rooftop solar and battery system

Some authorised energy retailers are now offering solar retail products, including batteries.

The marketing of these products often includes references to the retail rewards the customer will receive from the retail plans it has on offer.

It can be difficult to separate out the complaint about the sale and installation of CER products from the marketing of the retail energy services.



Retail rewards for solar

The marketing, sale and installation of the rooftop solar system are not within an Ombudsman's traditional jurisdiction for complaints.

While ombudsmen can deal with billing disputes, an Ombudsman could not resolve the complaint about how the delay in installing the system resulted in a loss of retail rewards.



Energy marketing and switching

Energy marketing and transfers between retailers are within ombudsmen's jurisdiction. However, the line between marketing energy retail plans and marketing solar/battery products can become blurred for customers that purchase these products directly from their retailer.



Electricity metering

Electricity metering is the responsibility of the Financially Responsible Market Participant (FRMP) for the supply address.

Ombudsmen can manage complaints about metering, but this is effective only where the problem is caused by a retailer's conduct.

Case study 3: Customer complains about the performance of a rooftop solar system purchased from their energy retailer.

A customer purchased a rooftop solar system directly from her energy retailer. She advised EWON that she paid \$21,000 for the installation of the system and relied on advice from her energy retailer that her energy bills would be significantly reduced.

After some time, she noticed the system did not appear to be working and the solar rewards were not appearing on her energy bills. The customer complained to the energy retailer who remotely reviewed her energy data and agreed with her that the output of her system did not appear to be correct.

The retailer arranged for a subcontractor to visit the property and check the rooftop solar system. The subcontractor advised the customer that the system she was sold was not an appropriate fit for her home and was not located or configured correctly for the pattern of sunshine over her property. The customer complained to the retailer about the subcontractor's assessment of the system. She also asked the retailer to provide her with records that show what she was promised when she purchased the system.

The customer complained that the retailer had not responded to her complaint.



Rooftop solar and battery system

Consumers frequently rely on their solar retailer and solar installer to provide them with reliable advice about the requirements for metering and connecting the system to the network.

Problems with the installation and performance of the system are not within the traditional jurisdiction of ombudsmen.

Solar marketing

Consumers frequently rely on their solar retailer and solar installer to provide them with reliable advice about the benefits they will receive from their investment in a new technology.

However, if the promises made to the customer do not materialise when they receive their electricity bills, the complaint is not within the traditional jurisdiction of ombudsmen – even if that service was provided by an energy retailer.

Electricity bills

Ombudsmen are well equipped to deal with disputes about high energy bills.

In this case, the customer complained that her energy retailer had promised that her bills would reduce after purchasing solar.

Ombudsmen may not be able to address a billing complaint that stems from promises made related to the sale and installation of a solar or battery product.



Case study 4: Bundled service – rooftop solar & battery, VPP and retail energy services.

A customer's energy plan included participation in a virtual power plant (VPP). The customer purchased the installation of a rooftop solar system and battery through solar retailer that was partnered with the energy retailer. The retail contract offered through a white label brand associated with the manufacturer and operator of the battery he purchased.

The customer received high bills for a period of nine months, despite his household getting smaller, and the installation of a solar and battery system.

The customer complained that the billing of his account was difficult to understand and involved an additional electricity meter behind the connection point that measured the energy generated through his solar panels and used from his battery.

He advised that the partnership between the energy retailer and battery operator have made the issue more complex. His complaint has been passed back and forth between the energy retailer and battery operator. He had identified that his meter was not upgraded as required after the solar and battery was installed.



Rooftop solar and battery system

In this case the rooftop solar system and battery were provided by a solar retailer partnered with the energy retailer. The design of the system was intended to allow the customer to participate in the VPP energy plan.

The VPP contract was offered under white label brand based on the battery provider and operator.



Control of the customer assets and additional energy meter

The retail energy plan includes the operation of a VPP. An Ombudsman may deal with complaints about the remote control of the customer assets and billing based on the meter behind the connection point, if it is managed through the contract with the authorised energy retailer.



Electricity metering

Electricity metering is the responsibility of the Financially Responsible Market Participant (FRMP) for the supply address.

Ombudsmen can manage complaints about metering, but this is effective only where the problem is caused by a retailer's conduct, and not the conduct of the solar retailer.



Electricity bills

Ombudsmen are well equipped to deal with disputes about high energy bills. However, ombudsmen may not be able to address an underlying cause of the high bill such as the failure to deliver a behind the meter service, the installation of solar/batteries or the billing of a CER contract like a power purchase agreement.

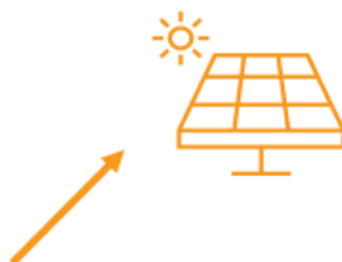
Case study 5: Bundled service – rooftop solar & battery, SPPA and retail energy services.

The customer had signed a solar power purchase agreement (SPPA) contract with his authorised energy retailer 9 months ago. The solar and battery system was installed at his home by a subcontracted solar installer.

The customer complained that:

- the incorrect inverter was installed, and six solar panels were not working.
- the design of the rooftop solar system was not what was promised and did not face north.
- the system was only producing 55kWh per day and not the 92 kWh per day that his household required.
- the programming that controlled the system was focused on exporting the electricity generated by the system to the grid, rather than charging his battery.
- the electricity meter at the property had not been upgraded to a smart meter.

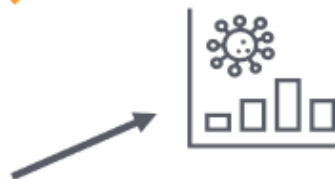
The customer asked for his electricity bills to be reviewed and adjusted to compensate him for the missed benefits of the SPPA over nine months.



Rooftop solar and battery system

The design and installation of the solar is bundled with retail energy services.

Problems with the installation and performance of the system are not within the traditional jurisdiction of ombudsmen.



Solar power purchase agreement (SPPA)

Consumer protections and jurisdiction of the Ombudsman depends on what entity services the SPPA contract.

If the entity that holds the contract is an authorised retailer, the customer has access to an Ombudsman and NECF protections. If the entity is an exemption holder, the customer must rely on the Australian Consumer Law (ACL).



Control of the customer assets

The retail energy plan includes the operation of a virtual power plant (VPP). An Ombudsman may deal with complaints about the remote control of the customer assets and billing based on the meter behind the connection point, if it is managed through the contract with the authorised energy retailer.



Electricity metering

Electricity metering is the responsibility of the Financially Responsible Market Participant (FRMP) for the supply address.

Ombudsmen can manage complaints about metering, but this is effective only where the problem is caused by a retailer's conduct.



Electricity bills

Ombudsmen are well equipped to deal with disputes about high energy bills. However, an Ombudsman may not be able to address an underlying cause of the high bill such as the failure to deliver a behind the meter service, such as the installation of solar/batteries or the billing of a CER contract like a power purchase agreement.